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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.

Науковий журнал «Customs Scientific Journal» об'єднує відомих вчених та практиків у сфері митної справи та зовнішньоекономічної діяльності.



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## ЗМІСТ

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# MODERN ADMINISTRATIVE AND LEGAL MODEL OF ASSISTANCE FROM THE CUSTOMS AUTHORITIES OF UKRAINE TO THE DEFENCE AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS WHEN MOVING GOODS ACROSS THE CUSTOMS BORDER

***The purpose of the article****. To analyze the administrative and legal status of the customs authorities of Ukraine in the system of subjects of assistance for the defence and protection of intellectual property rights when moving goods across the customs border.*

***Methods.*** *The methodological basis of the study is a comparative method that allows us to consider the most effective approaches to the protection of intellectual property rights at the customs border. In the course of the research, we also used historical and legal, systemic and structural, structural and functional methods, the method of ascent from the abstract to the concrete.*

***The study determined*** *the administrative and legal status of the customs authorities of Ukraine as subjects of assistance to the defence and protection of rights to intellectual property. The analysis of the powers granted to the customs authorities to promote the protection of intellectual property rights during the import and export of goods, and also made proposals for improving the methodological support for customs control over goods containing objects of intellectual property rights. The principles of interaction of the customs authorities of Ukraine with the subjects of assistance to the defence and protection of intellectual property rights of general, industry and special competence are considered. The article describes the problems of legal, personnel and material and technical support, as well as organizational activities and interaction of customs authorities with other subjects of assistance in the defense and protection of intellectual property rights.*

***Conclusions.*** *The conclusion is made about the directions of assistance in the protection of intellectual property rights, which are protected in accordance with the legislation of Ukraine. The features of customs control and customs clearance of goods containing objects of intellectual property rights protected in accordance with the law and imported into the customs territory of Ukraine or exported from the customs territory of Ukraine are studied, carried out in a general manner, taking into account the specifics established by the Customs Code of Ukraine and other laws of Ukraine. The problematic issues of the algorithm of intradepartmental relationships within the organizational structure of customs authorities as subjects of public administration in the field of intellectual property are highlighted. The problematic aspects of the organizational and legal mechanism for promoting the defence and protection of intellectual property rights by the customs authorities of Ukraine are analyzed. The ways of improving the administrative and legal status of the customs authorities of Ukraine as subjects of assistance to the defence and protection of intellectual property rights of special competence are proposed.*

**Key words:** Legislation in the Field of Intellectual Property, Intellectual Property, Infringing Goods, Customs Authorities, Object of Intellectual Property Rights, Public Administration, the Field of Intellectual Property, Adulterated Products.

**JEL Classification:** K23, K33, K34, K41, O23, O53, P48.

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## 1. Introduction

The results of human intellectual and creative activity occupy an increasingly dominant place in the global volume of property value, and therefore require reliable protection from any unlawful encroachments. The strategy chosen by our country for building civilized market relations, ensuring the social orientation of the economy and innovative socio-economic development, based primarily on the activation of its own intellectual potential, has necessitated the formation of an effective domestic mechanism for the defence and protection of intellectual property rights.

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In recent years, the theory and practice of customs activities in the field of protection of intellectual property rights have fundamentally changed. In particular, the protection of rights in various aspects was carried out by a number of scientists, and a separate area of research is the study of the organization of activities to promote the protection of intellectual property rights by customs authorities. At the same time, the issues of the place of the customs authorities of Ukraine in the system of subjects of assistance for the defence and protection of intellectual property rights during the movement of goods across the customs border remain unresolved. Over the past decade, an active law-making process in this direction has been carried out in Ukraine, and today it can already be argued that a modern legislative framework for the protection and protection of intellectual property has been created in our country (Prevention of customs offenses, 2017). The domestic system of legal sources, consisting of constitutional norms, norms of codes, laws, a number of by-laws, generally meets the international requirements defined by the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter – the TRIPS Agreement). In particular, the World Intellectual Property Organization noted significant positive changes in Ukrainian legislation in this area. But a significant number of infringing goods and adulterated products sold in Ukraine, as well as the volume of their distribution, still cause significant damage not only to the economy of our state, but also to the image of Ukraine. Therefore, it is not by chance that the international community points out to our state the need to apply more effective measures for the defence and protection of intellectual property, which not only declare, but also bring practical results. And despite the functioning in Ukraine of a rather ramified system of defence and protection of intellectual property rights, there is still a need to search for qualitatively new ways to solve the problem of strengthening the defence and protection of the rights of subjects of intellectual property rights. A significant part of the powers in the field of defence and protection of copyright holders is vested in the bodies exercising control over the movement of cargo and goods across the customs border of Ukraine.

The purpose of the article is to analyze the administrative and legal status of the customs authorities of Ukraine in the system of subjects of assistance for the defence and protection of intellectual property rights when moving goods across the customs border.

**2. Methodology and Methods**

Philosophical, general and specific methods are used to achieve the purpose of the article. The dialectical method was used to make a comprehensive analysis of the administrative and legal status of the customs authorities of Ukraine as subjects of assistance to the defence and protection of intellectual property rights when moving goods across the customs border. The use of methods of analysis, synthesis, systemic and structural-functional methods made it possible to study the main components of the administrative legal status of the customs authorities of Ukraine as subjects of assistance in the defence and protection of intellectual property rights when moving goods across the customs border. The use of the structural and functional method contributed to a comprehensive study of administrative and legal relations arising in the process of violation of intellectual property rights at the customs border of Ukraine.

**3. Modern model of Intellectual Property Protection**

According to Art. 398 of the Customs Code (hereinafter – CC) of Ukraine, the rightholder, if there are grounds to believe that when goods are moved across the customs border of Ukraine, his rights to an intellectual property object are or may be violated, he has the right to submit an application for assistance in protecting these rights (Verkhovna Rada of Ukraine, 2012). And the central executive body that implements the policy in the field of state customs affairs maintains customs register of intellectual property rights protected in accordance with the law. After registration of the object of intellectual property rights in the customs register of objects of intellectual property rights, on the basis of an application by the copyright holder or his authorized person, the customs, on the basis of the information contained in this register, take measures to prevent the movement of infringing goods across the customs border of Ukraine.

The largest number of those intellectual property objects that are included in this register are trademarks, but it also contains the results of scientific and technical creativity (inventions, utility models, industrial designs, etc.), and objects of copyright (different types of work). The list of these objects of intellectual property included in the customs register of objects of intellectual property rights is constantly growing. After registration of the object of intellectual property rights in the customs register of objects of intellectual property rights protected in accordance with the law, the customs authorities, on the basis of the data of such register, take measures to prevent the movement of infringing goods across the customs border of Ukraine.

Every year, taking into account the effectiveness of customs actions to promote the defence and protection of intellectual property rights when moving goods across the customs border of Ukraine, the number of applications with declarations from rightholders or persons authorized by them to promote the protection of intellectual property rights is increasing (Cherednik, 2014). By preventing the circulation of infringing goods in the state through the implementation of measures specified in the CC of Ukraine to promote the protection of intellectual property rights at the customs border, customs authorities create favorable conditions for legal business. However, in the activities of customs on the implementation of Section XIV of the CC of Ukraine ("Assistance in the Protection of Intellectual Property Rights When Moving Goods Across the Customs Border of Ukraine"), as practice shows, there are a number of urgent problems that need to be addressed. These problems can be classified according to the problem of legal support, staffing, logistics, organizational activities and interaction of customs authorities with other subjects of assistance in the defence and protection of intellectual property rights when moving goods across the customs border.

According to Art. 403 of the CC of Ukraine, when exercising control over the movement of goods containing objects of intellectual property rights across the customs border of Ukraine, customs authorities interact with other state bodies authorized in the field of protecting intellectual property rights, in the manner prescribed by the legislation of Ukraine (Svirida, 2013). To implement this provision, an appropriate mechanism should be developed for interaction of customs authorities with other entities promoting the defence and protection of intellectual property rights when moving goods across the customs border.

Transforming the acquisition of legal science in relation to the mechanism of legal regulation, as well as the theory of legal relations and the implementation of legal norms, which constitute the mechanism of interaction of customs authorities with the subjects of assistance in the defence and protection of intellectual property rights when moving goods across the customs border, it is advisable to determine the following components: the legal basis and scope of this mechanism (legal component); subjects of interaction, what are the bodies of all branches of government and their governmental powers (organizational component); interconnection through the system of legal relations of subjects (organizational and legal component).

The subjects of customs and legal relations that arise when exercising control over the movement of goods containing intellectual property objects across the customs border of Ukraine are, on the one hand, the customs authorities: the central executive body, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine and implements the policy in the field of state customs affairs, state policy on the administration of a single contribution to compulsory state social insurance, state policy in the field of combating offenses in the application of customs legislation, as well as legislation on the payment of a single contribution, a customs authority that, in its area of activity, ensures the fulfillment of the tasks entrusted to on the bodies of revenues and fees), a customs post (a customs body that is part

of the customs as a separate structural unit, and in the area of its activity ensures the fulfillment of tasks assigned data to customs authorities). The subjects of customs and legal relations are also state bodies, institutions and structures endowed with direct and indirect functions and responsibilities in the field of intellectual property, and judicial authorities. The list of such bodies is set out in the draft "National Strategy for the Development of the Sphere of Intellectual Property in Ukraine for 2020–2025": executive authorities (Ministry of Economic Development and Trade of Ukraine, Ministry of Internal Affairs of Ukraine, etc.); state bodies with a special status (Prosecutor General's office of Ukraine, Security Service of Ukraine, Antimonopoly Committee of Ukraine), as well as judicial authorities (National Strategy for the Development of the Sphere of Intellectual Property, 2019). And in addition to the listed subjects of legal relations in the interaction of customs authorities with other subjects of assistance in the defence and protection of intellectual property rights when moving goods across the customs border are the parliament and the government of Ukraine.

The central executive body, the activities of which are directed and coordinated by the Cabinet of Ministers of Ukraine and implements the state tax policy, state policy in the field of state customs, state policy on the administration of a single contribution to compulsory state social insurance, state policy in the field of combating offenses during the application of tax , customs legislation, as well as legislation on the payment of a single fee may propose to the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine draft regulations to resolve legal gaps or to improve the mechanism of public administration in the field of intellectual property when moving goods across the customs border of Ukraine. Such relationships are subordinate or vertical relationships (Komarov, 2017).

The relationship of interaction between customs authorities and government bodies (without the participation of parliament and government) is characterized by a dispositive method of legal regulation. This is a legal relationship of free expression of will and equality of the parties – the customs authorities enter into legal relations with state authorities at their level (Bondarenko, 2015). If it is necessary to apply to the highest authority from the above list of state authorities, then the customs, for example, have to apply for the need for such an appeal to the central executive authority, which ensures the formation and implements the state tax and customs policy. That, in turn, already enters into an appropriate legal relationship with a subject of equal status.

Thus, in addition to the listed subjects, one should remember about the presence of intradepartmental administrative relations between subordinates and their heads of customs authorities, relations between hierarchically lower and higher structural divisions of this department, etc. These relations are characterized by the presence of power and subordination, the power inequality of the participants in these legal relations, cases within the system between: services and subdivisions of different bodies; between them and senior officials; on the line "boss-subordinate" in the service, a division of legal theorists is called internal legal relationship (Mykolenko, 2018).

An important element of the investigated legal relationship is their object. N. Yu. Golubeva refers to material and intangible benefits as the object of legal relations, about which the subjects enter into legal relations, exercise their subjective legal rights and subjective legal obligations (Golubeva, 2013). Individual Scientists are of the opinion that the object of customs legal relations is the activity of moving goods, objects, vehicles across the customs border of Ukraine (Nikanorova, 2014). The subject of customs legal relations is goods, objects, vehicles that move across the customs border of Ukraine.

Part of the argument can be accepted. Since from the totality of objects of legal relations, objects of the material world (things, values, property), as well as certain products of intellectual creativity, are characteristic of customs legal relations. In legal relations to promote the protection of intellectual property rights when moving goods across the customs border of Ukraine, there may be a different object depending on the type of legal relationship. In regulatory legal relations, this is the procedure for moving such goods, the procedure for entering goods into the customs register of intellectual property objects, in security ones – specific measures of customs authorities to suspend customs clearance of such goods, placing them in a warehouse of the customs authority, customs clearance in accordance with the established procedure, destruction of such goods.

**4. Directions for Improving the Protection of Intellectual Property Objects**

Interaction of customs authorities with the Department for the Development of the Sphere of Intellectual Property of the Ministry of Economy of Ukraine, as a rule, is carried out on the following issues: maintaining state registers of objects of intellectual property rights; organization of information

and publishing activities in the field of legal protection of intellectual property; organization of work on training and retraining of specialists in intellectual property issues; issuing official bulletins on intellectual property issues (Berlach, Fil', 2017); studying, summarizing and analyzing the experience of foreign countries, as well as the practice of applying Ukrainian legislation in the field of intellectual property, developing and submitting proposals for improving and harmonizing the norms of Ukrainian legislation with the norms of international treaties to which Ukraine is or intends to be; issuance of documents for customs control and customs clearance of goods transported across the customs border of Ukraine; implementation of state supervision (control) over the observance by subjects of all forms of ownership of the requirements of legislation in the field of intellectual property.

Consequently, the objects of legal relations of interaction in legal relations on the listed issues can be: issues of maintaining state and customs registers of objects of intellectual property rights; issues and forms of participation of customs officials in information and publishing activities in the field of legal protection of intellectual property objects; issues and forms of participation of customs officials in activities for the training and retraining of specialists in intellectual property issues; forms of participation in studying, generalizing and analyzing the experience of foreign countries, as well as the practice of Ukrainian legislation in the field of intellectual property, developing and submitting proposals for improving and harmonizing the norms of Ukrainian legislation with the norms of international treaties to which Ukraine is or intends to be; documents for customs control and customs clearance of goods transported across the customs border of Ukraine; issues related to state supervision (control) over the observance by subjects of all forms of ownership of the requirements of legislation in the field of intellectual property.

Under the legal fact, scholars understand the life circumstances with which the rules of law link the emergence, change or termination of legal relations (Theory of State and Law, 2017). Therefore, the legal facts of the relationship of customs authorities with the Department of Intellectual Property Development of the Ministry of Economy of Ukraine may be actions of officials or events related to maintaining state registers of intellectual property rights, information and publishing activities in the field of intellectual property protection, organization work on training and retraining of specialists in intellectual property, issuing official bulletins on intellectual property, studying, summarizing and analyzing the experience of foreign countries, as well as the practice of applying Ukrainian legislation in the field of intellectual property, developing and submitting proposals to improve and harmonize Ukrainian legislation with the norms of international agreements to which Ukraine is or intends to be a party (Fil', 2016); issuance of documents for customs control and customs clearance of goods moving across the customs border of Ukraine, the implementation of state supervision (control) over compliance by economic entities of all forms of ownership of the requirements of legislation in the field of intellectual property.

The content of this type of customs legal relationship is traditionally subjective rights and legal obligations of their subjects. Subjective law is a measure of permitted behavior guaranteed by the state, and legal obligations are the type and measure of obligatory behavior of the subject of customs legal relations. Subjective law is traditionally characterized by the unity of three elements: the type and measure of permitted behavior of the bearer of this right, within which the bearer himself exercises his right; the right to demand from other persons such behavior, ensuring the achievement of the goal of entering into these legal relations; the right to demand the use by the state, represented by its authorized bodies, of coercion against the bearer of a counter legal obligation in the event of its non-fulfillment or improper fulfillment (Lyutikov, 2013).

Legal obligation is the type and measure of required conduct as prescribed by law. The basis of subjective law is the legal support of the possibility, and the basis of the legal duty is the consolidation of the need. The bearer of the possible behavior is the authorized person, and the bearer of the obligation is the obligated person. An authorized person has the right to perform certain actions, but is obliged to perform and ensure them (Gamanyuk, 2015). In the legal relations under consideration, the subjective legal obligation corresponds to the subjective law of the counterparty and consists of such elements as: the need to perform certain actions or abstain from them; the need for the obligated entity to respond to legal requirements addressed to him by the authorized entity; the need to bear responsibility for failure to comply with these requirements (in our case, the legal relationship will be held accountable by the officials of these entities); the need not to prevent the counterparty from using the right that is guaranteed to him by law in these legal relations.

Legal relations on the interaction of customs authorities with other subjects of assistance in the protection and protection of intellectual property rights when moving goods across the customs border are formed on the basis of written requests and correspondence. For example, the Department for the Development of the Sphere of Intellectual Property of the Ministry of Economy of Ukraine sends a letter to the State Customs Service of Ukraine (hereinafter referred to as the SCS of Ukraine) with a proposal to send its specialists to training and retraining courses for specialists in intellectual property issues organized by the Ministry of Economy of Ukraine. SCS of Ukraine, in turn, sends a response with a list of persons who will improve their qualifications at such courses. The subjective rights and obligations of the Department for the Development of the Sphere of Intellectual Property of the Ministry of Economy of Ukraine and the SCS of Ukraine arise from the agreement received on the basis of correspondence and on the basis of the current legislation of Ukraine. The SCS of Ukraine has a subjective right to advanced training for its employees. The Ukrainian Institute of Intellectual Property undertakes to improve the qualifications of employees of the SCS of Ukraine in the protection of intellectual property rights. The State Customs Service of Ukraine undertakes the obligation to ensure the arrival of its specialists at a certain time and at the agreed place, as well as to require proper attitude to the training of these specialists. The Department of Intellectual Property of the Ministry of Economy of Ukraine has the right to demand this from the SCS of Ukraine. From the outside, everything looks pretty simple. In fact, such a simple correspondence is only an external form and the result of a complex system of intradepartmental legal relations, burdened by a significant number of conciliatory bureaucratic actions. Often, such actions slow down the adoption of necessary decisions and reduce the effectiveness of public administration activities.

It is necessary to develop such a model of interaction of customs authorities with other subjects of assistance to the defence and protection of intellectual property rights when moving goods across the customs border of intellectual property, which would ensure quick adoption of the necessary decisions and increase the efficiency of management activities.

**5. Conclusions**

Today, Ukraine has formed a legal framework and a system of subjects to promote the defence and protection of intellectual property rights when moving goods across the customs border. Confirmation of this thesis is the fact that Ukraine is a member of the World Trade Organization, a prerequisite for which was the mandatory compliance of national legislation with the norms of the TRIPS Agreement. At the same time, the legislation in the field of defence and protection of intellectual property when moving relevant goods across the customs border requires further revision. Further development is also required by the methodological support of the activities of customs authorities related to the promotion of the defence and protection of intellectual property when moving goods across the customs border. In order to improve the level of protection of goods containing objects of intellectual property, it is necessary to conduct a deep legal analysis of international experience and legislation to expand the competence of customs authorities in this matter. It is advisable to see and conduct a systematization of legislation governing the defence and protection of intellectual property in order to establish in Ukraine their unified and integral system. The strategic direction remains the creation of divisions for the defence and protection of intellectual property in the customs authorities. And in order to conduct customs control of goods containing objects of intellectual property rights, at the proper level, it is necessary to conduct thorough training and advanced training of specialists of customs authorities and to complete customs laboratories with new equipment. According to Art. 258 of the Customs Code of Ukraine, customs authorities interact with other subjects of assistance to the defence and protection of rights to intellectual property objects when moving goods across the customs border, in the manner determined by the legislation of Ukraine. We believe that cooperation is necessary not only at the state level, it is necessary to establish close and mutually beneficial relations with foreign and international bodies and organizations. Cooperation between the state and business structures in the field of defence and protection of intellectual property should be mutually beneficial and effective.

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## СУЧАСНА АДМІНІСТРАТИВНО-ПРАВОВА МОДЕЛЬ СПРИЯННЯ З БОКУ МИТНИХ ОРГАНІВ УКРАЇНИ ОХОРОНІ ТА ЗАХИСТУ ПРАВ НА ОБ'ЄКТИ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ ПІД ЧАС ПЕРЕМІЩЕННЯ ТОВАРІВ ЧЕРЕЗ МИТНИЙ КОРДОН

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***Мета статті*** *– аналіз адміністративно-правового статусу митних органів України в системі суб'єктів сприяння охороні та захисту прав на об'єкти інтелектуальної власності під час переміщення товарів через митний кордон.*

***Методи.*** *Методологічну основу дослідження становить порівняльний метод, який дозволяє розглянути найбільш ефективні підходи до охорони прав на об'єкти інтелектуальної власності на митному кордоні. Під час дослідження також застосовувалися історико-правовий, системно-структурний, структурно-функціональний методи, метод сходження від абстрактного до конкретного.*

***Дослідженням визначено*** *адміністративно-правовий статус митних органів України як суб'єктів сприяння охороні та захисту прав на об'єкти інтелектуальної власності. Проведено аналіз наданих митним органам правомочностей щодо сприяння захистові прав інтелектуальної власності при імпорті та експорті товарів, а також внесено пропозиції щодо вдосконалення методичного забезпечення для проведення митного контролю за товарами, що містять об'єкти права інтелектуальної власності. Розглянуто засади взаємодії митних органів України з суб'єктами сприяння охороні та захисту прав на об'єкти інтелектуальної власності загальної, галузевої та спеціальної компетенції. Охарактеризовані проблеми правового, кадрового і матеріально-технічного забезпечення, а також організаційної діяльності та взаємодії митних органів з іншими суб'єктами сприяння охороні та захисту прав на об'єкти інтелектуальної власності*

***Висновки.*** *Зроблено висновок про напрями сприяння захисту прав інтелектуальної власності, які охороняються відповідно до законодавства України. Вивчено особливості митного контролю і митного оформлення товарів, що містять об'єкти права інтелектуальної власності, які охороняються відповідно до закону, та ввозяться на митну територію України або вивозяться з митної території України, здійснюються в загальному порядку з урахуванням особливостей, установлених Митним кодексом України та іншими законами України. Виокремленні проблемні питання алгоритму внутрішньовідомчих взаємозв'язків всередині організаційної структури митних органів як суб'єктів публічного адміністрування у сфері інтелектуальної власності. Проаналізовані проблемні аспекти організаційно-правового механізму сприяння охороні та захисту прав інтелектуальної власності митними органами України. Запропоновані шляхи удосконалення адміністративно-правового статусу митних органів України як суб'єктів сприяння охороні та захисту прав на об'єкти інтелектуальної власності спеціальної компетенції.*

**Ключові слова:** законодавство у сфері інтелектуальної власності, інтелектуальна власність, контрафактна продукція, митні органи, об'єкт права інтелектуальної власності, публічне адміністрування, сфера інтелектуальної власності, фальсифікована продукція.

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# REGULATION OF FOREIGN ECONOMIC ACTIVITY BY THE STATES OF THE NORTHERN BLACK SEA COAST (V–I CENTURIES B. C.)

***Purpose:*** *This work is devoted to the analysis of regulation methods of trade in the ancient states of Northern Black Sea Region in Classical, Hellenistic and Roman periods such as the free-trade privilege's (athelia), trade monopoly, financial regulation etc.*

***Methods:*** *The theoretical and methodological aspects of the historical process of integration the Hellenic states of Northern Black Sea Region into trade and customs relations of the Pontic basin and the Aegean region, as well as into the imperial customs system of Rome have been identified in this research.*

***Results:*** *This article is the new research in the historiography where the results of a long study of the ancient foreign economic activity and customs relations of the Northern Black Sea coast in the historical science are summarized concerning the different narrative, epigraphic, numismatic and historiographical sources. The author's conception of the role of customs regulation and other ways of regulation of foreign economic relations in antiquity is suggested. The special emphasis is put on the genesis of historiographic concepts being formed around the issues of taxation and customs relations in connection with the problems of the international trade of Tyra, Olbia, Chersonesus, Bosporus, Egypt, cities-states of islands of the Aegean region in the Classic and Hellenistic periods and the Roman age. The possibilities of constructing the satisfactory model of international trade's and customs relations' history in the East Mediterranean region in the Ancient time are examined in this article.*

***Conclusions:*** *This article defines the role of international trade agreements to ensure the grain trade of Bosporus with Athens and Mytilene (Lesbos) and Bosporus-Egypt likely trade competition. The possibilities of constructing the satisfactory model of international trade's and customs relations' history in the Aegean region and all East Mediterranean region in the Classic, Hellenistic periods and the Roman age are examined in this article.*

**Key words:** Ancient Economic History, Ancient Economy, Hellenic States of the Northern Part of the Black Sea Region – Tyra, Olbia, Chersonesus, Bosporus, Methods of Regulation of International Trade, Trade Policy, Customs Policy, Customs Regulations, Customs and Tax Relations, Athelia (Tax-Free), Psephismata, Proxenia, Non-Trade Forms of Exchange.

**JEL Classification:** A10, B11, F10, H30, O19, O23, N70.

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**Introduction.** The problem of studying various methods of regulating economic life, in particular, foreign economic activity, will never lose its *relevance. The novelty* in this regard marks all the studies in the field of ancient economic history. The issues of state regulation of trade in the ancient colonies of the Northern Black Sea region are a component of a much broader problem, covering the role of trade in the economy and in general in the life of ancient Greece. In the history of mankind, many models of interaction between the state (or institutions of public authority similar to the state) and the national economy have been worked out. These models formed a wide range from the complete absorption of the economic life of society by the royal temple ("state") complexes of the 3rd dynasty of Ur in Sumer to the complete non-interference of political institutions in natural food production under European feudalism of the Middle Ages. It should not be thought that all these extremes are a thing of the past. The flourishing of the Stalinist "gulag economy" in the totalitarian USSR was remarkably reminiscent of the forced distribution economy of the Sumerian 3rd dynasty of Ur. The economic life of the Hellenistic world combined the private initiative of individuals (manufacturers, merchants,

financiers), their communities and associations with active attempts by public institutions (Hellenistic monarchies and city-states) to introduce regulatory foreign economic mechanisms. *The purpose of this article* is to study the problem of application (non-application) by the ancient states of the Northern Black Sea Region of regulatory methods of influencing on foreign economic activity. *The tasks* of the work include the study of financial regulation of foreign trade; consideration of attempts to establish monopolies for the import/export and production of "strategic" goods of the Hellenic economy – bread, oil, wine; studying methods of customs (tariff and non-tariff) regulation, in particular, granting the privilege of duty-free (athelia); tracking non-economic, non-trade, means of solving the most acute problems of food shortages for ancient states. *The methodology* used in the study is based on a hierarchy of methodological principles, general and special scientific methods and techniques. Among the principles the leading place is occupied by the principles of objectivity, consistency and historicism. An interdisciplinary approach is actively used, certain provisions of the methodological paradigm of social history and the provisions of the historical-anthropological approach are used. The following methods were important in the work: historical and logical, comparative (synchronous and diachronic), induction and deduction, retrospective and chronological methods of classification, reconstruction and modeling. During research with different groups of epigraphic sources, for example, with official acts of public authorities, the method of formulary-diplomatic analysis of the multi-temporal complexes of these northern Black Sea sources gained enormous weight in comparison with the formulary features of the protocols of lapidary sources from other parts of the Hellenic world. According to many experts, the Hellenistic and Roman eras of the economic history of the Ancient World are very similar to postclassical capitalism of the late 19th–20th centuries. *The logic of presenting the studied material* proceeds from the fact that the analysis of the attempts of the Hellenic states of the Northern Black Sea region of the 4$^{th}$–1$^{st}$ centuries BC. It is extremely important to regulate certain aspects of foreign trade and customs affairs. Over the past century, an extensive historiography has formed around this problem, represented by supporters of mainly two directions: opponents and supporters of the idea of the existence of free trade as a key factor in the economic survival of ancient polisys and Hellenistic monarchies.

**Literature Review.** Researcher of the second half of the twentieth century. M. Finley noted that since the main economic unit of the ancient Greek society was a closed oikos ("farm"), and the policy is the sum of oikos and, thanks to this, an autarkic organism, trade was undeveloped, and the dominant role belonged to non-trade forms of exchange (Finley, 1973; Shtaerman, 1977, p. 165). However, such a position, first formulated in the late XIX – early XX centuries, at the same time became the object of severe criticism of the supporters of the concept of the wide development of trade relations and financial transactions in Ancient Greece. The dispute of "primitivists" – supporters of the concepts of a closed oikos economy (J. Karl Rodbertus, K. Bücher) and "modernists" – adherents of the theories of ancient "capitalism" (E. Meyer, K. J. Beloch), which lasted from the end of the XIX century. (Beloch, 1897; Markov, 1987, pp. 7–8; Brashynskyi, 1958), attracted the attention of specialists more than once during the 1920s–1960s. For example, in landmark works on the history of the ancient economy in 1928 and 1931.

J. Hasebroek would have smashed the "modernist" positions of E. Meyer and K. J. Beloch (Beloch, 1912–1927) if he himself had not resorted to exaggerations (Hasebroek, 1966). In a study by W. Zimmermann on piracy and maritime trade in Ancient Greece, it was noted that J. Hasebroek's mistake was a misunderstanding of the "Greek character": the ancient Greek was "an innate sailor and colonizer". M. I. Rostovtsev wrote in 1932 that in the Hellenistic era, the economy differed from the modern one only quantitatively, and not qualitatively. Half a century after the works of W. Zimmermann and J. Hasebroek, John M. Findlay stated that qualitatively the study of the problem of the economic history of Ancient Greece had not advanced. At the II International Conference on Economic History in Aix-en-Provence (France, 1962), the futility of studying economics only from written sources and the need to attract archaeological sources was proved (Brashinsky, 1984, p. 11–13). Thanks to the latter, it was possible to discover many facts that contradict the point of view about the underdevelopment of commercial forms of exchange in ancient Greece in general and in the Northern Black Sea Region in particular, and now the importance of trade in those times is recognized. At the same time, a comparison of archaeological data with written evidence does not allow us to speak about the qualitative identity of modern and ancient economies.

**Empirical results.** Newly established apoikias of the Northern Black Sea Region in the VII–V centuries BC were constituted as polisys, the main task of which was the creation of an independent community

capable of self-sufficiency. An integral part of the economy of such autarchic polisys was trade, designed to provide the community with those goods that were vital (both from a physical and spiritual point of view) for its full functioning, and the production of which could not be established locally for various reasons. Therefore, trade occupied, by and large, a marginal place in the economy of the archaic societies of Greece, because they bought only what was objectively impossible to work out on the spot (Kuznetsov, 2000, p. 36).

Since the time of the Classics the situation has changed: in the ancient economy, trade occupies an increasingly significant place, which is facilitated by the gradual specialization of production. And although throughout its history, ancient civilization remained agrarian, during the era of economic prosperity and the rise of certain industries, mainly crafts and trades, they were market-oriented. In agriculture, the absolute advantage remained with natural forms of farming over commodity ones, which is typical for all traditional societies. Therefore, in the agricultural production of ancient states, as a rule, only one or two agricultural crops were intended for sale. For Attica, these were olives, or rather oil; for Chios, Thasos, Aegina – grapes, or rather wine; for the Bosporus – wheat. In general, the economy remained multicultural, and everything necessary for the life of the owner and his family was produced mainly on the spot (History of Europe, 1988, p. 278–279). This was further promoted by the ideal of polis autarky. In the course of the specialization of production in ancient Hellas, the archaic ideal of autarchy for many polisys, especially the most economically developed ones, became unattainable. In this sense, it is significant how during the 5$^{th}$ century BC the content of this concept has changed: it no longer means complete economic isolation and self-sufficiency, but the ability to provide oneself with everything necessary through trade relations (or in another way) (History of Europe, 1988, p. 282–283). During the Classics, free trade took one of the leading places in the system of providing polisys, however, of course, this concerned prestige goods (fine wines, fish sauces, jewelry, precious weapons) and popular goods (ceramics, lanterns, architectural decorations), as well as those that could not be worked out on the spot and vital (marble, olive oil, wine, bread). However, in ensuring the normal functioning of the policy in all areas from the sacred to everyday life, city magistracies from the very beginning took upon themselves the issues of the uninterrupted supply of strategic goods. Now it is oil and gas, and in antiquity it is bread and butter. Along with trade, there are such forms of economic interaction in the international sphere as tribute, gifts, regular taxation, and outright robbery. In the Hellenistic era, with the emergence of large territorial states-monarchies, as evidenced by inscriptions and data from narrative sources, the last forms of provision sometimes come to the fore (Trofimova, 1961, p. 51). Along with this, direct or indirect state intervention in foreign trade and even in production is becoming almost systematic. Such interference was not something new and unprecedented, but it was precisely in the classical and even more so in the Hellenistic era that in some ways it acquires the features of conscious economic regulation. The leaders in this were the Egyptian Ptolemies and the Syrian Seleucids, but similar processes took place in other parts of the ecumene.

The ancient colonies of northern Pontus actively used various methods to regulate foreign economic activity, for example, **monetary and financial regulation**. If local, as a rule, copper coins were used for domestic trade, then foreign merchants were paid with silver, gold or electronic coins minted in different cities. Not later than IV century BC states prohibit the circulation of all foreign money on their territory. The convenience of trade turnover and fiscal affairs was facilitated by the general right to freely transport money across the customs border, the establishment of a single place for the implementation of trade and money transactions and the determination of a rigid exchange rate, the abolition of both trade duties for exchange transactions and import and export duties on chopped gold and silver. This practice was consolidated, in particular, by the Olbian law 340/330 BC. e., proposed by Kanoba and approved by the people's assembly of Olbia (IOSPE, I$^2$, 24). The monetary reform of Kanoba, as noted by P. O. Karyshkovsky, along with positive shifts in monetary circulation – the introduction of coins from two unequal metals, silver and copper, into circulation – created the conditions for the destruction of the main patterns of financial development, which led to an economic crisis. (Ancient History of Ukraine, 1998, p. 315).

The unsuccessful (or premature) financial measures in the field of trade policy include an attempt by Athens to unify monetary circulation within the framework of the Delos symmachia. According to the so-called Coin Decree (449–419 BC), allied cities were forbidden to mint their own silver coins and use non-Athenian coins, as well as weights and measures (Anthology of sources, 2000, p. 26). The Olbian law of Kanoba, the junior of the Athenian decree by almost a hundred years, in its main features imitated the financial practice of the first Athenian maritime union. Together with the transition of Olbia to the

Athenian monetary, weight and dimensional systems, this allowed some experts to insist that this northern Black Sea policy belonged to the Athenian Union.

We obtain important information about financial transactions at the state level from the corpus of Demosthenes' speeches. From the speech against Leptinus, one can conclude (Dem., XX, 40) that part of the trading operations for the purchase of Bosporus bread was carried out by Athens on credit, because "you [Athenians] always have his [Levkon's] money" (Demosthenes, 1994, p. 24). It could only be the money received from the bread sold to the Athenians. Zhebeliev offers an understanding of the words of Demosthenes in the sense that crediting operations for the purchase of Bosporan grain was carried out through the Athenian "state bank", where the money received by the kings for the sold bread was kept as a deposit. Although, strictly speaking, the researcher clarifies, the Δημοσία τράπεζα mentioned in the text was not a state, but a private institution, but also conducting its business together with the Athenian financial department and was endowed with a monopoly to perform operations on behalf of the Athenian people. (Zhebelev, 1953, p. 132, note 2). There is confirmation of this in the Athenian decree of 346 BC (IG, II 2, 212 = MIS, No. 3), which says that the sons of Leukon Spartokos II, Perisad I and Apollonius should be returned the money due to them so that they "do not reproach the Athenian people" (Grakov, 1939, p. 239–241). It can be seen from the decree that the debtors of Levkon, and after the death of his children, were not private Athenian merchants, with whom, probably, trade on credit was not carried out, but the "Athenian people", that is, the state. The money had to be returned from the treasury; the prohedra were instructed to conduct business first after religious matters. It was extremely important for Athens to maintain trust and credit with the rulers of the Bosporus, since they were not able to cover all the costs of purchasing Bosporan bread with their exports (Brashinsky, 1958, p. 137).

Consequently, we are forced to recognize a significant, slowly but steadily growing role of financial resources among the methods of state regulation of trade. However, the poverty and fragmentation of the Northern Black Sea Region sources from this area does not allow either to reconstruct all financial measures, or at least approximately calculate the budgets of the ancient states of the region[1].

No less effective than the method of financial regulation was the **method** of direct state intervention in economic production through the establishment of a **monopoly** on the sale or sometimes on the production of a certain group of goods. As Aristotle noted in Politics (I, 4, 6), the Greek polisys established monopolies when they experienced financial difficulties and the need to significantly increase revenues to the treasury (Aristotle, 2002). As a rule, monopolies concerned high-demand goods – bread, vegetable oil, wine. In addition, monopolies were introduced in those regions where the corresponding goods were produced in large quantities and constituted a significant export article.

For example, in Egypt, whose agriculture under Alexander the Great (332–323 BC) was under royal control, grain exports were controlled by the royal agent Cleomenes. In Hellenistic Pergamum, the highly profitable oil trade was monopolized. In Ptolemaic Egypt, the state controlled the wine trade and the olive oil trade. State monopolization also covered the grain trade: according to the royal order, 50–49 BC. e. The purchase of wheat and leguminous fruits in Middle Egypt by private individuals and the importation of these goods into the Delta or Thebaid was forbidden under any guise[2], however, the import to Alexandria was declared unimpeded (Chrestomathy, 1936, p. 226).

The state monopoly provided for certain measures of influence on the manufacturer and seller of goods by state structures and the bureaucracy in order to receive additional funds from the treasury and support the income of its own population. So, according to the Thasian decrees of the 5th-4th century BC the sale of wine only in vessels with the seals of astynoms was considered as legal, the import of foreign wine into the territory between Athos and Pachaia, which was oriented to the Faso wine market, was also prohibited, the sale of wine was also limited to a certain time of the year, and the sale of grapes in the vine was prohibited. According to the inscriptions from the city of Korresii on about. Keos, the duties of the astinoms included export supervision (Neichardt, 1963, p. 313). In Ancient Egypt, under the

[1] In the work of 1953 "Agriculture in the ancient states of the Northern Black Sea region" (Appendix No. 1 "On the budget of the Bosporan state"), V.D. Blavatsky tries to calculate the state budget of the Bosporus of the Spartocidae period (Blavatsky, 1953, p. 201–204). Unfortunately, this attempt cannot be considered satisfactory, since the researcher takes as the basis for calculating the annual profit from grain exports the export figure of 400,000 medimns, which is given by Demosthenes (XX, 31). However, the speaker gives data only on the annual export from Panticapaeum to Athens, without specifying the amount of export to other Bosporan partners or from other Bosporan ports. Therefore, the figure of annual income from the grain trade of 260–270 talents and the total income of the Spartocidae state of 300–350 talents per year is clearly underestimated. It should also be noted that the ancient states, unlike modern ones, in principle did not have clear and rigid budgets.

[2] As you can see, we are talking about the practice of internal customs borders.

conditions of the state monopoly on the production and sale of oil, fixed in the "Tax Charter" of Ptolemy Philadelphus, the local administration forced the royal lands and plots of cleruchs to be planted with olive crops (Vinokurov, 2003, p. 23).

In Chersonesus, astynomial stamps, which occasionally contained rough images of a stick or a bunch of grapes, and most often – the position and name of an astynom, for example, about 160 names of these magistrates are known (Borisova, 1955, pp. 143–148), guaranteed the correct volume and measure of products sold in amphoras: wine, salted fish, oil, bulk products. Undoubtedly, the astinoma stamp, the "trademark" of the state, is evidence of the regulation of trade by it, but for Chersonesus we have no other parallel evidence that allows us to assert the direct intervention of polis magistrates in trade itself – in pricing, determining the volume of purchase and sale or the range of goods.

The possibility of the existence of grain and wine monopolies, according to indirect data, is fixed in the Bosporus. It is reliable that the settlers on the tsarist lands (χώρα βασιλική) were dictated which agricultural crops that were beneficial for the treasury should be grown to a greater extent (Vinokurov, 2003, p. 23). The author of the second book of the pseudo-Aristotelian "Economics" (320s BC) names specific examples of monopolies, among which there is no Bosporus. Zhebelev, noting the significant participation of the Spartocidaes in grain exports, rejects the opinion that it was monopolized by the ruling dynasty. This export was under the direct control of the tsars, but it was not monopolized, in the proper sense of the word: one can only speak of a monopoly tendency or partial monopoly (Zhebelev, 1953, p. 136).

Chersonesus civil oath dating from the 4th-3rd century BC, strictly prohibits the sale of "bread brought from the plain" to another place, except for Chersonesus (Oath of citizens of Chersonesus, 1902, p. 8). Even the first translator of this decree, V. Latyshev, offered two explanations for the establishment of a strict grain monopoly: either the lack of grain resources for the export, which was only enough to meet the needs of the policy itself, or the desire of the authorities to increase the income of the main city of the state by turning it into a single grain one. a market for its citizens (Oath of citizens of Chersonesus, 1902, p. 15). Such a prohibitive norm of the Chersonesus oath is very similar to the legislative provisions originating from the two leading regions of the Hellenic ecumene, distant not only geographically, but also chronologically. Firstly, this is the already mentioned order of the Egyptian monarchs of the middle of the 1st century BC. about the prohibition to export a number of agricultural goods from the Nomes above Memphis to the Delta and Thebaid, against the background of the simultaneous unimpeded permission to import such goods to Alexandria (Chrestomathy, 1936, p. 226). It can be assumed that the prohibitive and permissive norms of this decree are associated with the status of Alexandria as the most important trading center of Egypt, through which many export-import operations were carried out, which were subject to state taxes and duties. Secondly, these are the Athenian grain laws (operated in the 5th–4th and probably in the 3rd century BC), which should guarantee the regular provision of citizens with bread. It can be assumed that the law, the violation of which in Athens was punishable by death – to import bread only to the Athenian market (Dem., XXXIV, 37; XXXV, 50), was aimed not only at providing the given state with bread in the first place, but also designed to fulfill fiscal tasks. These latter – an increase in the income of the policy through customs taxation of the grain trade – were decided by the relevant city decrees.

In this regard, M.K. Trofimova put forward an interesting assumption. A fragment from an official letter from Antigonus[3], which deals with taxes on exports, which were provided for as a result of the merger of the polisys of Lebedos and Theos (Syll 3, 344, 94–101), genetically proceeds not only from the carefully thought-out fiscal system of the Hellenistic monarchs, but also from the Polis orders (Trofimova, 1961, p. 56).

It is possible to find out the potential ability of Chersonesus to introduce a grain monopoly and to determine whether there was a need for it, by comparing the available facts. To do this, as Aristotle believed, it is necessary to calculate the size of the grain resources of the city-state and establish when financial crises took place and how the citizens of Chersonesus reacted to them. The dimensions of the own grain resources of the Hellenistic Chersonesus, as well as the origin of the Chersonesus bread mentioned in the oath, have attracted the attention of historians for a long time. Some researchers, on the basis of predominantly speculative constructions, deny the richness of the grain potential of the Kherson chora, while others, on the contrary, exaggerate it (look Kadeev and Sorochan, 1989; Katsevalov,

[3] Antigonus I Monophthalmus (around 380–301 BC), being the Macedonian governor of Phrygia, Lycia and Pamphylia, he made an attempt, together with his son Demetrius I Poliorcetes, to establish his own state in Asia Minor, taking the royal title in 306. Here we are talking about his letter on Sinoykism to Lebedos and Teos, in which this letter, unprecedented in variety of content, experts consider it an invaluable source (див. : Welles, 1934, p. 15 & next).

192?). However, no matter what they understand by the concept of the "plain" of the Chersonesus oath – the chorus, which consisted of the Herakleian Peninsula and, in its heyday, the coastal strip of Western Crimea, or the spacious expanses of the steppe Crimea, which belonged to settled Scythian farmers, the private export of bread remains indisputable abroad. The plain Scythian Crimea, located to the east of the Chersonesus state and to the west of the Bosporus, as Strabo noted, produced a large amount of grain, in the purchase of which both the Bosporus and Chersonesus acted as a kind of competitor. However, we do not know how the import of Scythian bread was organized both to Chersonesus and to the Bosporus.

In the first centuries AD, Chersonesus exported mainly salt and fishing products, not bread: the limited grain base on the Herakleian Peninsula did not provide such opportunities. Even with a minimum consumption of 500 g per inhabitant of Chersonesus and its district, it turns out that a city with a population of 10–15 thousand people could export a maximum of 900-1800 tons of its own grain per year, which was not more than one or two dozen medium-tonnage ships. This was the extreme limit of export capacity, which assumed the full use of arable land and stable yields. In the first centuries, the price of bread averaged a denarius according to the mode of grain (6.5 kg). It turns out that the sale of such a quantity of bread could bring the city about 132–271 thousand copper denoria. However, if the population of the city and the district increased to 20 thousand, such reserves were no longer enough to meet the needs of the domestic market. This was one of the reasons Chersonesus establishes trade with the local population of the Southwestern Crimea form I century BC, developing it mainly in the northeast direction, along the third ridge of the Crimean Mountains. This area should at least partially cover and compensate for the loss of the grain-growing base in the North-Western Crimea. But, according to epigraphic sources, in I century BC – II century AD food complications were periodically felt, especially during conflicts with the Scythians and other tribes. Consequently, in conditions of dependence on grain supplies from the South-Western Crimea, Chersonesus grain exports could not be large. (Sorochan, Zubar, Marchenko, 2001, c. 123).

The Chersonesus oath does not prohibit either the free importation of grain through any points, or the private internal grain trade. The famous Chersonese oath contains, according to Francott, a ban on private individuals to conduct direct foreign (rather than internal) trade (Katsevalov, 192?, p. 21). According to S. A. Zhebeliev (Zhebelev, 1953, pp. 232–233), following the logic of V. V. Latyshev (Oath of Citizens, 1902, pp. 8–15), Chersonesus could have at its disposal that its surplus for export. The demand contained in the oath of the citizens of Chersonesus was aimed not only at compiling a grain business, but at concentrating the export of grain in the hands of the state. The state not only strove to receive an appropriate duty from the exported grain, but also revealed clearly expressed monopolistic tendencies in the organization of the grain trade, apparently imitating the neighboring Bosporan Kingdom. Some analogy of the paragraph of the oath under consideration is contained in the Theos inscription of the end of the 4th century BC – the mentioned letter of Antigonus regarding the projected Sinoikism of Theos and Lebedos (Syll$^3$, 344). In one of the clauses of the contract, which was never implemented, it was noted that all grain arriving in both cities must be brought to the common market, and the export of bread is carried out after a formal declaration and payment of duties (Zhebelev, 1953, p. 233, note 1).

The assumption (unfortunately, unsubstantiated) by Zhebelev about the hidden political and economic reason for the mentioned ban is of interest. Yes, it is known that the Chersonesus oath was developed and put into practice after the failure of an anti-democratic coup attempt. It is possible that individual representatives of the upper strata, who initiated the recent unsuccessful coup and sought to change the constitutional system of Chersonesus, dreamed of receiving the benefits that a democratic state had from the grain business and customs duties (Zhebelev, 1953, p. 233).

The categorical prohibition to bring grain from the plain to any place other than Chersonese also suggests that there are cases of smuggling of grain to Kerxinitis, Kalos limnn or another place on the western coast of the peninsula. In general, there are enough examples of smuggling in ancient history. For example, the excessive increase in duties by Carthage in the III century BC not only allowed to wage war with Rome, avoiding total taxation of the population, but also forced merchants, bypassing customs rules, to resort to smuggling. According to W. Zimmermann, this weakened the economy of Carthage so much that it became one of the reasons for its conquest by the Romans. Fall of Greece the same W. Zimmermann explained similar reasons. "Smuggling, which is so easy to do on the protruding bowls and peninsulas along the coast of Greece, organized and increased to such an extent that only customs guards, smugglers and robbers lived on the borders of Attica ... This state of Greece was ... one of the main

reasons for its fall" (Zimmermann, 1859, p. 8, Neichardt, 1963; Markov, 1987, p. 7). Smugglers were often severely punished. So, in the middle of the I century BC guilty of violating the already mentioned order of Ptolemy XIII and Cleopatra VII 50–49 BC, which established a state ban on the export of bread from Central Egypt (and a very non-poor person could afford to buy batches of bread), was subject to the death penalty. The criminal's property was confiscated, and if the smuggler was arrested on a denunciation, the scammer received a third of the confiscated property, and the scammer-slave – one-sixth and freedom (Chrestomathy, 1936, p. 226).

The maintenance of the trade monopolies introduced by the ancient states, as can be seen from the examples given, by the way, also fell on the customs officers. Such a practice, in addition to enriching the treasury, could provoke internal conflicts, and, along with an unjustified increase in customs duties, lead to the emergence and growth of smuggling. The latter was both a manifestation of individual money-grubbing and a thirst for wealth, and the result of an imbalance in the personal or group interests of the merchants and the aspirations and interests of the state.

Finally, the most active methods of regulating foreign economic activity were the methods of simplifying the structure and reducing the number of customs payments. The main instruments of this method of regulating trading activity – granting the right to duty-free trade – belonged to the Atelos (ἀτέλεια)[4]. This right extended both to individuals and their associations, and to states. Among the first were their own citizens, who could be granted the right to duty-free during periods of special economic success of the policy, honored foreigners (also members of their families, heirs, partners, slaves), who were awarded citizenship and duty-free mainly for special merits, most often for supporting citizens in their homeland donor polis.

The concept of Atelos (ἀτέλεια) covered not only the right to trade without duties, but also freedom from various kinds of taxes. So, in the decree 330/320 BC about the isopoliteia "ἰσοπολιτεία" (equality of rights) of the citizens of Miletus and Olbia, it is written: "The Miletians use the Atelos on the same grounds as before" (Skrzhinskaya, 2000, p. 208). Translating this treaty, B. N. Grakov conveys the term ἀτέλεια in a broad sense not just as freedom from duties, but as "freedom from taxes", "exemption from taxes" (Grakov, 1939, p. 264–265). Such legislative provisions represent precisely the privilege of the Milesians in Olbia and the Olbianites in Miletus, and not a mass exemption of all Olbians and all Milesians from taxes. The common view that the entire mass of natural citizens was covered by the privilege of duty-free, and this was a common universal practice, is not entirely fair. Only a powerful (or closed, economically undeveloped) state could refuse such a source of profit as duty. Therefore, it is unlikely that the citizens of the North Pontic cities throughout the history of their cities enjoyed duty-free. So, according to Diodorus Siculus (XX, 24), after the victory in the internecine fratricidal war of 309 BC Bosporus king Eumel promised the people's assembly to preserve the right to duty-free (SC, I, 477). For his ancestors, the citizens of Panticapaeum used this right in the capital and, possibly, in other Bosporan harbors, and also, probably, during trade travels by land (Anthology of sources, 2000, p. 501, note 3).

The very fact of such a promise spoke not only of the possibility of abolishing such a right by the monarch, but that it had recently been abolished[5]. No less expressive is the example of Athens, where 355 BC Leptin, in order to overcome financial difficulties, proposed to the Athenians to pass a law abolishing the freedom from duties for citizens (Dem., XX).

Consideration of ways to regulate foreign economic activity will not be complete without answering the question: could these methods, even with their conscious and complex application, radically change the economic situation in the Mediterranean or contribute to changes in the economic situation of a particular country, for example, as it happened in the XIX-XX centuries during the industrial revolution in connection with the introduction of a protectionist or free trade model of customs policy. Directly connected with this question is another, already: whether there was **competition in international markets between the leading Hellenic states**.

[4] This problem is considered in more detail by the author in separate works (Kolesnikov, 2008, p. 3–9; Kolesnikov, 2010, p. 262–275).

[5] In the literature, there is also an alternative point of view on the nature of the Eumelian atelos. According to a number of experts, Diodorus (XX, 24) speaks of the abolition of the tax from Panticapaeum citizens for the maintenance of a hired royal army, established instead of military service in the civil hoplite militia (see: SC, I, 477). The very fact of such a tax against the background of the removal of citizens from military affairs, which contradicted the polis ideology and morality, could be perceived as an insult (Rostovtsev, 1989, p. 189). In fairness, it should be noted that the Spartocidaes, according to Polyaenus (VI, 9, 2), had well-founded reasons to doubt the loyalty of the hoplite citizens (Polyaenus, 2002, p. 214–215).

The existence of interstate trade competition (possible if there is an appropriate correlation between supply and demand) implies the leading role of international trade in meeting the needs of the population with essential goods, meaning by the latter "strategic" food products, which cannot be produced in sufficient quantities locally, and it is also impossible to imagine the satisfaction of the basic vital needs of the ancient Greeks without them – from food to cult-religious. Of the three main types of such commodities: olive oil, wine and bread, the latter was by far the most important[6]. Establishing the fact of the existence of international trade competition immediately increases the importance of ways to regulate trade to the level of a system of conscious state management of the economy of more developed countries. From this point of view, within the framework of this study, the hypothesis of the existence of trade competition between the Bosporus and Egypt in the III century BC was subject to verification, which became one of the topical topics of historiography in 1928–1961. Having proved the existence of such competition, it will be possible to agree with the thesis of M.I. Rostovtsev that the ancient economy in the Hellenistic (and Roman-imperial) day differed from the modern one (it was said about the end of the XIX – the first half of the XX century) only quantitatively, not qualitatively. And this expands our understanding of the functions and arsenal of state regulatory measures in the field of economic production and exchange, and also in a certain way likens the functions of the then customs and tax services and the customs systems of modern countries. This similitude, associated with the exaggeration of the influence of trade on politics in ancient times, leads to the notion that trade routes inevitably coincide with political connections.

For the first time, the possibility of formulating a hypothesis about competition between the Bosporus and Egypt in the grain trade in the vast Eastern Mediterranean was provided by M.I. Rostovtzeff in the article "Greek Sightseers in Egypt" (Rostovtzeff, 1928, 13–15), productive forces in Hellenistic agriculture, rejected the possibility of this assumption. Authorship of the hypothesis about the Egyptian-Bosporan competition in the grain trade of the III century BC, thus, belongs to S. A. Zhebelyev, who in the works "The Last Perisad and the Scythian uprising in the Bosporus" (1933) and "The main lines of economic development of the Bosporan state" (1934) took the fact of this competition as the basis for his further reasoning on about the reasons for the progressive political and economic decline of the Bosporus from III to I Century BC. This hypothesis was quickly picked up and replicated in historiography, although it was based on only a few lines of the so-called Zenon papyri, which refers to the measures of the assistant manager of the royal household, Ptolemy II Philadelphus, to provide transport for "ambassadors from Perisad and feors from Argos", to observe the holiday in Arsinoe nome (Grakov, 1939, p. 261).

Without going into criticism of this entry, but considering in detail the argumentation of S. Zhebeliev's hypothesis (mainly indirect evidence), the international political and economic situation in the then Eastern Mediterranean, and carefully analyzing the epigraphic and narrative sources of the history of the Hellenistic economy. in the article "From the history of the Hellenistic economy. On the issue of trade competition between the Bosporus and Egypt in the III century BC" (1961) establishes several basic forms of providing the Aegean polisys – the main consumers of overseas exports – with bread. So, firstly, direct passion was quite a simple means of appropriating the right goods. For example, in the corpus of the works of Demosthenes (Dem., L, 6) and the pseudo-Aristotelian "Economics" (Ps.-Arist. Oecon., II, 1346b) it is reported about the forced unloading of Athenian ships with bread during the famine by the Byzantines, Calchedonians and in speeches The orator Lycurgus mentions the robbery of Athenian bread vessels on the way from Egypt to Piraeus (Trofimova, 1961, p. 59). In this regard, the standard norm-privilege of proxenic acts is filled with special meaning – "the right to enter and leave the harbor in time of war and peace without robbery and without a contract."

Secondly, gifts played a significant role in replenishing grain resources. This practice, which was vividly attested in the 4th century, in the 3rd century. – during the rivalry of the Hellenistic monarchs, who paved the way for their political interests with such gifts, – spread significantly. An example here is the gifts of Cyrene to the Greek cities affected by the famine in the amount of about 805 thousand medimns (SEG, IX, 2); a gift of the king of the peons Avdoleont in 7,500 Macedonian medimns, delivered by him at his own expense to the harbor of Piraeus (Syll$^3$, 371, 25–34); a gift of the Bosporan king Spartok in 15,000 medimns, made, like the previous one, in connection with the liberation of Athens from the power of Demetrius Poliorketes, which was certified by a decree of 289–288 BC (Syll$^3$, 370, 23–24); a gift from Lysimachus to Athens of 10,000 Attic medimns of wheat (Syll$^3$, 374, 7–12); дар (δῶρον) Hieron

[6] The leitmotif of all the documents of the era was the fear of a grain famine, constant concern, which was caused by the problem of providing the population with bread.

of Syracuse to Ptolemy during the grain disaster in Egypt, certified by Athenaeus – a ship loaded, among other things, with 60,000 coppers of bread (Athen., V, 209b); huge in their amount gifts and customs privileges from rich polisys and powerful monarchs of Rhodes, who suffered from the terrible earthquake of 227 BC, as reported by Polybius (Polyb., V, 88, 89) and other examples.

Thirdly, not the last place among the forms of economic relations of a non-commercial nature was occupied by military indemnity and gifts (δῶρα), which were forcibly collected from the conquered population and often turned into a regular tribute – foros ( Polyb., IV, 46). A vivid example of this is the mention in the Olbian decree in honor of Protagen of gifts paid to King Saitaferne and the "scepter-bearers" (IOSPE, I$^2$, 32).

Fourthly, a common form of regulation of the grain problem was such measures of the territorially large Hellenistic states as in-kind deliveries and the sale of grain by the government to areas that suffered from its shortage. For example, if the letter of Antigonus declared the delivery of grain to Lesbos polisys from directly taxed territories, then the Egyptian Tebtunis papyri of 201 (Teb., I, 8), on the contrary, reports the payment of foros in the form of bread by Lesbos and Thrace.

Fifthly, in many cases, trade forms of providing bread were characterized by elements of the same gifts, only not in a direct, but in a transformed form. We are talking about the repeated and varied only method of assistance provided to the state by citizens of this policy or foreigners (IG, II 2, № 903 = MIS, № 5; IOSPE, I$^2$, 32; Syll$^3$, 493, 10–11; OGIS, 4, 21–23; SEG, I, fasc. II, 366, 40–45) in the purchase of bread (financial subsidies, the sale of grain at lower prices, etc.). The degree of voluntariness has always been different: from compulsory liturgies to completely free initiative, caused by the desire to become famous as an everget, to raise one's own political weight, or to achieve purely business material benefits and privileges. (Trofimova, 1961, p. 59–62).

However, one should not underestimate the prevalence of trade methods of grain supply. In the classical and Hellenistic eras, the practice of concluding treaties and contracts between polisys (συνθῆκαι καί συμβολαί) spread. So, during the 4th and some part of the 3rd century, there was a trade agreement between Athens and the Bosporus (more precisely, the Bosporan royal house of Spartocidae), which was confirmed with each change of ruler on the Bosporan throne (Istoria Mutnoi spravy (in Ukrainian), 2006, p. 116–131). Aristotle mentions contracts and agreements as effective measures to ensure nutrition (τροφή) of the policy in his Rhetoric (Arist., Rhetor., A 4, 1359b, 19). Various polisies in the III century BC, despite the political situation and real threats due to the expansionist policy of the Hellenistic monarchs, still used the old way of grain supply for the Greek world – sithonia, expeditions for the purchase of bread. For example, there is information about the Athenian sithonia of the III century BC in Metapontus and Syracuse (SEG, III, 92), Athenian Sithonia 271–270 BC to an unknown place (SEG, XIV, 65), data have been preserved on three Samian sithonia mentioned in the decree in honor of Bulagor 246–245 BC (SEG, I, fasc. II, 366) тощо (Trofimova, 1961, p. 64).

Any form of providing food (τροφή) to the population of the policy hid some problems and conflicts, however, the trading form was the most problematic, because it forced the weak administrative structures of the city to seek a balance between the exorbitant prices that private traders sought to impose and the prospect of leaving the city on a hungry. soldering. To solve this dichotomy in the conditions of permanent financial complications that arose due to a rather primitive budgetary organization, it was possible, as we have already said, thanks to the involvement of a voluntary or semi-voluntary initiative of citizens and foreigners. (Trofimova, 1961, p. 64). It cannot be said that no attempts were made to remove this contradiction. So, in a decree from Ios at the end of the III century BC, we are talking about Dionysiodorus, the son of Demophilus, who was elected agoran, who, so that "citizens had the opportunity to buy sufficient [quantity] of grain, persuaded other citizens to contribute in advance and contributed in advance himself without money" (IG, XII, 5, 1011, 3–4). Parallels to this method of solving the problem of nationwide grain purchases can be traced in other decrees (IG, XI, 4, 1049), including the Olbian decree in honor of Protogenes. (IOSPE, I$^2$, 32). In preparation for the Synoecism of Lebedos and Teos, by producing the status of a new policy, the representatives of the Lebedosites reach Antigonus's consent to the creation of a permanent monetary fund for the needs of grain imports. "Representatives of the Lebedos people said that it was necessary to allocate 1,400 golden coins from the income for the grain supply, so that everyone who wishes, taking this gold as a pledge, imports grain into the city and sells it during the year, whenever he wants; when the year ended, he gave the gold to the city and the [amount] itself, and the interest at which it was taken" (Syll$^3$, 344, 72–76). In the objections of Antigonus,

financial considerations are at the forefront: “We did not want to give any city [the right to independently] import grain, or create a grain reserve, without allowing cities to spend a lot of money on this, which is not necessary ...”, but “we establish it by making sure cities become debt-free” (Syll$^3$, 344, 80–82; 87–88; Welles, 1934, p. 15 & next; Trofimova, 1961, p. 55). The hope to deprive the city of debts forces Antigonus to agree to the project of the citizens of Lebedus. A certain parallel to this project of creating a reserve fund, which guarantees the stability of trade and reduces risks, was the practice of selling bread on credit, which was characteristic of the Athenian-Bosporan trade operations in IV century BC (IG, II$^2$, № 212, 54–59 = MIS, № 3, c. 240; Dem., XX, 40). Consequently, the dependence of the grain supply of polisys on trade gave rise to the complex problem of financing this trade.

Against the background of the preservation of traditional forms of ensuring food needs in the Hellenistic era, as already noted, centralized methods of solving the grain problem for the population of cities that had nothing to do with the polis trade in bread, in which the interested city was free both in choosing its counterparty and and under the terms of the contract. In fact, we are no longer talking about free trade, but about the supply of grain from the satraps regulated by the tsarist administration to the city. Hellenistic rulers readily agree to a wide resolution of regulated trade, since it was precisely from it that, through a duty, the incomes of the royal satraps could increase. Thus, with close attention and thoroughness, the procedure for the import and export of goods for the united Lesbos and Teos is determined (Syll$^3$, 344, 94–101).

Another feature of the trade exchange of the era of classics and Hellenism was, according to N.K. Trofimova, the fact that “foreign trade relations left a kind of “canvas” on which politics created their essays, but these essays did not repeat the outline of the canvas: the political situation changed, trade relations remained unchanged for a long time” (Трофимова, 1961, с. 67). Thus, in numerous proxenic decrees addressed to merchants, covering the entire Mediterranean with a small network of foreign trade relations, it is difficult to find any political logic. Citizens of the same polis trade with regions subordinate to Egypt, Syria, and Macedonia, although these countries are at enmity with each other. The ties of the colony with the metropolis remained very persistent. Relations with grain-supplying centers turned out to be no less strong: for example, behind the Clazomenes, who, according to the Antalcidian peace, went to Persia, the Athenian decree of 387–386 BC confirmed the right to arrive in the harbors of those cities in which the Clazomenians supplied themselves with bread.

**Results.** Summing up the preliminary considerations, it should be emphasized that the free foreign trade in grain was by no means the only form of solving the problem of grain supply to the Greek policies. Gifts, spoils of war, tribute, the system of taxation and sale of grain in the territories subject to the Hellenistic kingdoms – all this indicates a significant influence of the political factor on the distribution of grain wealth. This means that agricultural products by no means always took the form of a commodity sold and bought on the market. Their wealth or deficiency was not directly determined by the amount of grain-product, in other words, by the offer in trade. Grain supply did not depend on the ratio of supply and demand; therefore, a permanent grain shortage was not necessarily associated with a shortage of bread or with supposedly low agricultural technology (the example of a technologically advanced and at the same time centralized “command-administrative” agricultural production in Egypt in the III century BC seems to be very significant). Consequently, for “international relations, where the methods of non-economic coercion manifested themselves with such force, the assumption that there could be trade competition between two states (Bosporus and Egypt), which took place in forms similar to modern ones (one of the states tends to decline as a result of defeat in the international market) seems unjustified” (Trofimova, 1961, p. 68).

On the one hand, the means of a non-economic, non-trade solution to the most acute food problem for ancient policies, discussed above, limit the scope of the functioning of free foreign trade. This, of course, narrows the sphere of influence of state-regulatory methods of managing foreign economic activity, if not turning them into marginal government measures. Consequently, these methods, even in conditions of their conscious and complex application, could not radically change the economic situation in the Mediterranean Region or contribute to changes in the economic situation of specific countries. However, on the other hand, these non-economic means of intervention of the Hellenistic states in the sphere of food (and not only) exchange can be considered as attempts to regulate trade by limiting the segment in which the mechanisms of the free market would function.

In conclusion, it should be noted that in the ancient world, of all forms of economic exchange, trade, although it did not occupy a marginal place, did not at all dominate over non-commercial forms of supply and exchange. Given that even the most important food products for the survival of the population,

primarily bread, mostly did not acquire (or, in other words, acquired in an insignificant part) the form of a commodity, there was no place for interstate economic competition, similar to the epochs of the New and Modern times, in the ancient Mediterranean Region has not been as a fact. From the time of the archaic through the period of the classics to the Hellenistic era, the change in the meaning of the role of trade as one of the forms of economic exchange can be metaphorically likened to a parabola. That is, from a marginal, auxiliary tool in the archaic era, when the ideal of polis autarky was systematically cultivated, trade became one of the most common ways to provide the most advanced policies with everything necessary that could not be worked out on the spot, in the classical era, and in the Hellenistic period – just one of the available effective methods of supplying the population with scarce products. In this regard, such methods of state regulation of trade activity as monetary and financial regulation, the establishment of a state monopoly on the sale (sometimes on production) of a certain group of goods, the legislative consolidation of specific points (mainly ports) for the implementation of purchase and sale operations, the simplification of the structure and the reduction in the number of customs payments, and finally, the donation of ateliers – the right to trade without duties (and freedom from various kinds of taxes), basically did not seek to stimulate their own production and promote the development of certain economic sectors, fight foreign competitors and support domestic producers. The main goal of the entire complex of these measures was to satisfy the interests of the state fiscal, that is, to guarantee the further enrichment of the treasury through trade duties, customs payments and other means.

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# РЕГУЛЮВАННЯ ЗОВНІШНЬОЕКОНОМІЧНОЇ ДІЯЛЬНОСТІ ДЕРЖАВАМИ ПІВНІЧНОГО ПРИЧОРНОМОР'Я В V–I СТ. ДО Н. Е.

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***Мета.*** *Дана робота присвячена аналізу методів регулювання торгівлі в стародавніх державах Північного Причорномор'я в класичний, елліністичний та римський періоди, зокрема йдеться про привілей вільної торгівлі, або безмитності (ателія), торговельну монополію, фінансове регулювання тощо.*
***Методи.*** *В цьому дослідженні виявлено теоретико-методологічні аспекти історичного процесу інтеграції еллінських держав Північного Причорномор'я в торговельні та митні відносини Понтійського басейну та Егейського регіону, а також в імперську митну систему Риму.*
***Результати.*** *Запропоновано авторську концепцію ролі митного регулювання та інших способів регулювання зовнішньоекономічних відносин у давнину. Особливий акцент робиться на генезі історіографічних концепцій, що формуються навколо питань оподаткування та митних відносин у зв'язку з проблемами міжнародної торгівлі Тіри, Ольвії, Херсонесу, Боспору, Єгипту, міст-держав островів Егейського регіону в класичний та елліністичний періоди та римську епоху. У статті розглядаються можливості побудови задовільної моделі історії міжнародної торгівлі та митних відносин у Східно-Середземноморському регіоні в античні часи.*
***Висновки.*** *У цій статті визначено роль міжнародних торговельних угод у забезпеченні зернової торгівлі Боспору з Афінами та Мітіленою (Лесбос) і ймовірною торговельною конкуренцією Боспору та Єгипту. У цій статті розглядаються можливості побудови задовільної моделі історії міжнародної торгівлі та митних відносин в Егейському регіоні та всьому Східному Середземномор'ї в класичний, елліністичний та римський періоди.*

**Ключові слова:** стародавня економічна історія, античне господарство, еллінські держави Північного Причорномор'я – Тіра, Ольвія, Херсонес, Боспор, методи регулювання міжнародної торгівлі, торговельна політика, митна політика, митне регулювання, митні та податкові відносини, ателія (безмитність), псефісма, проксенія, неторговельні форми обміну.

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# VALUE ADDED TAX: CUSTOMS REGIMES

*Purpose of the Article. The author in the article examines the normative regulation of the collection of value added tax, including the use of preferential regimes providing for partial or complete exemption from tax, when importing / exporting goods placed in the appropriate customs regimes (re-export). The legal problematics of the tax sphere consists mainly in determining and effectively ensuring the boundaries of freedom and the need for the behavior of subjects of tax legal relations through the relevant legal and legislative norms. These legal and legislative norms should ensure a balance between public and private interests, as well as exclude their ambiguous, multiple interpretation. National legislation should introduce internal procedures for the administration (collection) of taxes, which enhance the transparency and clarity of the actions of all subjects of tax legal relations and, accordingly, minimize the risk of errors (abuse), including the possibility of understating tax objects. In addition, they should not allow subjects of tax legal relations to benefit from their illegal actions and / or avoid performing their duties. The above concerns, among other things, full or partial exemption from value added tax when subjects of foreign economic activity move goods across the customs border of Ukraine, placed in the appropriate customs regimes (temporary import, re-export), since under certain circumstances it provides an opportunity for abuse by unscrupulous taxpayers. There are currently no researches on this issue. In the context of the active development of integration processes (Ukraine's accession to the European space), the need for legislative support (regulatory regulation) of the transparency of tax collection, in particular, value added tax, is becoming increasingly important for the effective growth of the economic well-being of our state. Thus, there is a need for further scientific research on the application of benefits providing partial or full exemption from the payment of value added tax when importing / exporting goods placed in the appropriate customs regimes (temporary import, re-export). The article analyzes the current state of legal regulation of the collection of value added tax in terms of exemption from taxation (application of benefits) when moving goods across the customs border of Ukraine. This made it possible to identify problematic issues of a legal nature that lead to a violation of the balance of the budget and tax system, public and private interests, ways to solve them, and to draw scientifically based conclusions from the indicated problems.*

**Key words:** Tax Obligations, Tax Credit, Tax Incentives, Temporary Import, Re-export.

**JEL Classification:** K34

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## 1. Introduction

The presence of value added tax in the tax system of any country in the European space is mandatory for joining the European Union. Also, in world practice, value added tax is considered one of the most efficiently working taxes from a fiscal point of view. One of the obligatory structural features of the state is the taxation system, since one of the goals of state regulation is the system of administration of taxes and fees, in which, on the one hand, the collected taxes should be sufficient to ensure the fulfillment of tasks and the implementation of functions facing the state, and on the other – the burden of the tax collection procedure should not be excessive for the payer.

The main legal issues in the tax sphere are mainly in determining and effectively ensuring the boundaries of freedom and the need for the behavior of subjects of tax legal relations through the relevant legal and legislative norms, in protecting the property rights of individual payers and the interests of society, implemented in the financial and tax activities of the state.

At the same time, the relevant legal and legislative norms must ensure a balance between public and private interests, as well as exclude

their ambiguous, multiple interpretation. National legislation should introduce internal procedures for the administration (collection) of taxes, which enhance the transparency and clarity of the actions of all subjects of tax legal relations and, minimize the risk of errors (abuse), including the possibility of understating tax objects. Thus, the introduction of legislative regulation of the relevant procedures for the administration (collection) of taxes should not enable the subjects of tax legal relations to benefit from their illegal actions and/or avoid fulfilling their duties.

Value added tax has a high efficiency from a fiscal point of view, since a wide tax base, which includes not only goods, but also works / services, provides constant revenues to the budget, therefore, it is necessary to constantly improve the norms of national legislation to ensure the transparency of its collection procedures. The above concerns, among other things, full or partial exemption from value added tax when moving goods across the customs border of Ukraine, placed in the appropriate customs regimes (temporary import, re-export), since under certain circumstances it provides the possibility of abuse by unscrupulous taxpayers.

In turn, it should be emphasized that currently no research has been carried out on this issue. At the same time, in the context of the active development of integration processes (Ukraine's accession to the European space), the need for legislative support (regulatory regulation) of the transparency of tax collection, in particular, value added tax, is becoming increasingly important for the effective growth of the economic well-being of our state. In this connection, there is a need for further scientific research on the collection of value added tax, the use of preferential regimes providing for partial or complete exemption from tax, when importing / exporting goods placed in the appropriate customs regimes (re-export).

Based on the analysis of current legislation and judicial practice, the article identifies problematic issues of legal regulation of the collection of value added tax (application of exemption from taxation) when moving goods across the customs border of Ukraine and ways of solving them. In addition, scientifically substantiated conclusions were made on the indicated problems.

**2. Value Added Tax and Benefits: Balance Sheet.**

Administration of taxes and fees is one of the hallmarks of the state and an important component of its existence. In this article, we will not dwell on the definition of the concept and essence of the administration (collection) of taxes, since in the scientific literature many scientists have given a sufficiently substantive justification for this category, including the value added tax (hereinafter – VAT). However, we only note that the efficiency of tax collection is achieved due to its proper regulatory consolidation and the legal basis of the relevant provisions.

In turn, the administration (collection) of any tax is inextricably linked with the object and taxable base. In our opinion, for value added tax, one of the main elements of its legal mechanism is such concepts as tax liability (base and object for the corresponding operations for the sale (sale) of goods / services) and tax credit, thanks to which the amount of tax to be transferred is determined. to the budget. In our previous publications, we have dwelt on these concepts more than once, so we just recall that the tax liability for value added tax is an unconditional obligation of the payer to determine and reflect it in tax reporting, and a tax credit is the right of the taxpayer to be reflected in tax reporting, allows reduce the size of the tax liability and, accordingly, affects the amount of tax payable to the budget towards its reduction. In addition, taking into account the introduction of electronic administration of value added tax (hereinafter – e-VAT), such an amount of value added tax on received tax invoices / customs declarations (tax credit) affects the amount (automatically increases the amount of the registration limit), on which the taxpayer can subsequently register tax invoices.

The Tax Code of Ukraine (hereinafter referred to as the Tax Code) (Law of Ukraine No. 2755-VI, 2010) defines the procedure for the formation of tax liabilities (Art. 187) and a tax credit (Art. 198), the ratio of which in the tax reporting (declaration) for VAT in the future leads to the calculation of the amount of tax payable to the budget. At the same time, it is necessary to pay attention to the fact that the amount of tax paid for the purchased goods (services) on duly executed tax invoices / customs declarations can be attributed to the tax credit. At the same time, Art. 198 of the Tax Code stipulates that in the event that previously purchased goods (the amount of VAT for which were included in the tax credit) are assigned for their use or begin to be used in transactions that: are not subject to taxation; exempt from taxation; is not an economic activity of the payer, such a tax payer is obliged to accrue tax liabilities based on the taxable base determined in accordance with paragraph 189.1 of Article 189 of this Code, and draw up no later than the last day of the reporting (tax) period and register in the Unified Register (hereinafter – UR) within the time frame established by this Code for such registration.

According to the Tax Code (Law of Ukraine No. 2755-VI, 2010), a tax benefit is the exemption of a taxpayer from the obligation to calculate and pay taxes and fees, provided by tax and customs legislation, and pay them less tax and fees if there are grounds. In addition, this regulatory legal act provides for the conditions (grounds) for exemption from taxation of certain transactions (they are not subject to taxation and do not provide for the accrual (determination) of tax liabilities) or taxation at a zero rate. This also applies to operations related to the movement (import / export) of goods across the customs border of Ukraine in the appropriate customs regimes. According to Art. 206 of the Tax Code provides that:

– operations for the export of goods in the customs regime of re-export are exempt from taxation, except for export operations in accordance with paragraphs 3 (for goods in the form of products of their processing) and 5 of the first part of Article 86 of the Customs Code of Ukraine, taxed at the rate determined by subparagraph 195.1. 1 clause 195.1 of article 195 of this Code (Art. 206.5);

– to operations on the import of goods into the customs territory of Ukraine under the customs regime of temporary import, a conditional full exemption from taxation or conditional partial exemption from taxation is applied, subject to the requirements and restrictions established by Chapter 18 of the Customs Code of Ukraine (Art. 206.7).

Analyzing the above norms, we can conclude that exemption from the payment of value added tax in the relevant customs regimes is possible only for goods that are moved (imported) across the customs border of Ukraine and are used solely for the purpose of moving them and only by payers who imported them (moved) across the customs border). For example, if equipment for the production of certain products is imported, then it should be used only for the production of such products, and, accordingly, production is carried out exclusively by such a payer (importer), that is, without the right to transfer it for use to other payers (third parties) for their implementation of certain activities.

Before proceeding to a description of the relevant customs regimes, substantiation of problematic issues related to the use of privileges and possible ways of solving them, the following should be noted. In our opinion, the determination of tax liabilities, the formation of a tax credit and the payment of value added tax, including the use of incentives (full or partial exemption from taxation), in particular, on operations for the movement of goods across the customs border of Ukraine in the appropriate customs regimes (temporary import, re-export), should take place taking into account the provision (observance) of a balance of the budget and tax system, public and private interests. In turn, the application of exemption from taxation, including value added tax, in the relevant customs regimes should take place in a certain way and taking into account the actual operations carried out, without harming national interests. This refers to the deliberate use of the appropriate customs regimes, contrary to the conditions of their provision, in order to understate the object of taxation and, accordingly, reduce the payment of tax to the budget.

**3. Customs regimes.**

According to Art. 4 of the Customs Code of Ukraine (hereinafter – Customs Code) [2], the customs regime is a set of interrelated legal norms, according to the stated purpose of moving goods across the customs border of Ukraine, they determine the customs procedure for these goods, their legal status, taxation conditions and stipulate them use after customs clearance.

According to the definition contained in the Customs Code (Law of Ukraine No. 4495-VI, 2012):

– re-export is a customs regime, according to which goods previously imported into the customs territory of Ukraine or the territory of a free customs zone are exported outside the customs territory of Ukraine without paying export duties and without applying measures of non-tariff regulation of foreign economic activity (Article 85);

– temporary import is a customs regime according to which foreign goods, commercial vehicles are imported for specific purposes into the customs territory of Ukraine with conditional full or partial exemption from taxation by customs payments and without the use of non-tariff regulation of foreign economic activity and are subject to re-export before the end of the specified period without any changes, with the exception of normal wear and tear as a result of their use (Art. 103).

At the same time, in the Law of Ukraine of April 16, 1991 No. 959-XII On Foreign Economic Activity (hereinafter referred to as Law No. 959-XII) (Law of Ukraine No. 959-XII, 1991), the concept of re-export is defined differently. Thus, according to the definition contained in Law No. 959-XII, the term re-export means the sale to foreign economic entities and the export outside Ukraine of goods previously imported into the territory of Ukraine. At the same time, the provisions of the Customs Code do not

provide for the placement into the customs regime of re-export of goods previously imported (brought in under the import customs regime and released for free circulation) into the customs territory of Ukraine. Thus, in accordance with the norms of the current legislation, the concepts of "re-export" and the concept of "customs regime of re-export" are not identical.

Nevertheless, returning to the Customs Code (Law of Ukraine No. 4495-VI, 2012), we note that this Code provides for cases (conditions) under which a certain customs regime can be applied to goods that, when imported into the customs territory of Ukraine, may be subject to a certain customs regime, in particular, a temporary import regime (Article 104) and re-export (Article 86).

It is pertinent to note that in accordance with Art. 106 of the Customs Code (Law of Ukraine No. 4495-VI, 2012), in the case of the release of goods placed in the customs regime of temporary import with conditional partial exemption from taxation by customs payments, **into free circulation in the customs territory of Ukraine** (customs import regime) ***or the transfer of such goods for use to another person,*** **customs payments paid in the amount provided by law for the import of these goods into the customs territory of Ukraine in the customs regime of import**, minus the amount already paid on the basis of conditional partial exemption of these goods from taxation by customs payments.

Moreover, according to the condition of Art. 71 of the Customs Code (Law of Ukraine No. 4495-VI, 2012), the declarant has the right to choose the customs regime in which he wishes to place the goods, subject to the conditions of such a regime and in the manner determined by this Code. The placement of goods in the customs regime is carried out by declaring them (drawing up cargo customs declarations) and fulfilling the customs formalities provided for by this Code. The customs regime in which the goods are placed may be changed to another one chosen by the declarant in accordance with part one of this article, provided that the measures of tariff and non-tariff regulation of foreign economic activity established in accordance with the law for goods placed in such other customs regime are observed.

As you can see, the above customs regimes are somewhat similar, since under certain conditions determined by the relevant regulatory documents, they provide for further export outside the customs territory of Ukraine of goods previously imported into the customs territory of Ukraine, including without paying customs duties (conditional full or partial dismissal from taxation), including value added tax, and without the use of non-tariff regulation measures.

At the same time, there are problematic issues of a legal nature associated with the use of these regimes by some payers for the possibility of understating tax liabilities for value added tax, including through a tax credit formed according to cargo customs declarations (hereinafter – CCD) based on the results customs clearance of goods moved (imported) across the customs border of Ukraine.

For example, there are cases when:

1. The payer of the tax has imported goods (equipment) into the territory of Ukraine for carrying out economic activities (production of goods). When importing goods into the customs territory of Ukraine, the relevant documents (CCD) were drawn up and the necessary payments were paid, including VATT indicated amounts of value added tax were included in the tax credit (based on the executed CCD) in the respective reporting periods. When moving (importing) through the customs border of Ukraine and executed by the customs declaration, the payer does not indicate their placement in the customs regimes of temporary import / re-export. In the future, the taxpayer (importer) shall return to the non-resident previously imported goods (equipment) and export it outside the customs territory of Ukraine under the customs regime of temporary import or re-export, without paying the corresponding payments.

2. The payer of the value added tax imported goods (equipment, etc.) into the territory of Ukraine under the customs regime of temporary import for the production of economic activities (production of goods, provision of services / performance of work). When importing goods into the customs territory of Ukraine, the relevant documents (CCD) were drawn up and the necessary payments were paid, taking into account partial or complete dismissal. At the same time, after import, such goods (equipment, etc.) were transferred for use (rent) to other payers (third parties) to carry out their activities. In fact, the specified goods (equipment, etc.) were not used within the economic activities of the payer (direct provision of services / performance of work using such equipment), by which they were imported into the territory of Ukraine. That is, the payer (importer) transferred the relevant goods (equipment, etc.) across the customs border of Ukraine solely for one purpose (transfer to other persons for use). In the future, the payer (importer) shall return to the non-resident previously imported goods (equipment, etc.) and export them outside the customs territory of Ukraine, of course, without paying the corresponding payments.

Yes, indeed the examples given are inherently different, but in both cases, the amount of value added tax is underestimated.

As for the second case, everything is clear here, taking into account the requirements of Art. 106 of the Customs Code, a taxpayer, in the case of release of goods placed in the customs regime of temporary import with conditional partial exemption from taxation by customs payments, into free circulation in the customs territory of Ukraine or **transfer of such goods for use to another person, must pay customs payments** in the amount provided for the law for the import of these goods into the customs territory of Ukraine in the customs regime of import. At the same time, in this case, it is possible to identify the fact of transfer of goods (equipment), which, upon import, are placed in the customs regime of temporary import, for use by other persons is possible only when checking the financial and economic activities of the payer (who imported goods and placed them in the appropriate customs regime). Thus, a taxpayer can, in a certain sense, calmly unreasonably (unlawfully) use the privilege of paying customs duties, including value added tax, when importing goods and placing them in the customs regime for temporary import with their subsequent transfer to other persons for use. (Actually released into free circulation).

Regarding the first case, the underestimation of the payment of value added tax occurs due to the failure to increase tax liabilities in accordance with clause 198.5 of Art. 198 of the Tax Code due to the fact that imported (received, purchased) goods (equipment), the amounts of value added tax for which were previously included in the tax credit, are subsequently intended for their use (began to be used) in operations that: is subject to taxation; exempt from taxation; is not an economic activity of the payer. At the same time, in our opinion, in this case, it is necessary to increase the tax liability for VAT, regardless of whether the payer would indicate or not during import (movement across the customs border of Ukraine) to place such goods (equipment) into the appropriate customs regime (temporary import). or re-export), since upon import, the payer paid VAT and the corresponding amounts were included in the tax credit.

To substantiate the need in this case (upon the export of goods (equipment) to increase the tax liability for VAT, we note that the payment of value added tax when importing goods made it possible to exercise the right to a tax credit and include the paid amounts of tax in its composition on the basis of a CCD, in addition , the formation (increase) of a tax credit made it possible to reduce tax liabilities and, accordingly, the amount of tax payable based on the results of the corresponding reporting period. In addition, the generated tax credit for the CCD increased the registration limit (amount) for which the taxpayer can subsequently register tax invoices. Therefore, the payer, in the event that such goods (equipment) are subsequently placed in the appropriate customs regimes (temporary import or re-export), still needs to increase tax liabilities.

The State Tax Service of Ukraine adheres to a similar opinion (Letter of the State Tax Service of Ukraine No. 891/99-00-07-03-02-06/IPK, 2020).

That is, the formation of a tax credit and the assignment to its composition of the corresponding amounts of tax paid upon the acquisition (import) of goods, and further determination of tax liabilities during their implementation (export) (placement in the appropriate customs regimes) is to ensure a balance of the budget and tax system.

So, if the payer made the movement (import) of goods (equipment) across the customs border of Ukraine, taking into account the appropriate customs regime (temporary import, re-export), without paying customs payments (conditional full or partial exemption from taxation), including tax value added and without the application of non-tariff regulation measures would not have the right to: Formation of a tax credit; decrease in tax liabilities (decrease in the amount of tax payable based on the results of the corresponding reporting period); increase in registration limit. Objectively, in this case, such a payer, when exporting goods (equipment) in these regimes, is also exempt from paying value added tax (enjoys the appropriate privilege), taking into account the requirements of clause 206.5 and clause 206.7 of Art. 206 of the Tax Code (Law of Ukraine No. 2755-VI, 2010).

Thus, the taxpayer, without defining tax liabilities based on the results of the export and placement of goods in customs regimes (temporary import and re-export), the amounts of VAT on which were previously (upon import) included in the tax credit, receives an unjustified benefit, since in fact the attribution of the amounts to tax credit reduces the amount of tax payable for the relevant reporting period and increases the registration limit.

Since the relevant customs regimes (temporary import or re-export) provide for a conditional full or partial exemption from taxation, including value added tax, and without the use of non-tariff regulation

measures, therefore, when importing, the payer must refrain from paying the corresponding payments in order to avoid further disputes with regulatory authorities.

In our opinion, in order to ensure a more effective mechanism for administering (collecting) value added tax, taking into account the use of customs regimes (temporary import, re-export) and avoiding situations of their use to obtain unjustified tax benefits (understatement of tax obligations), it is necessary to amend the relevant regulatory – legal acts, in particular, the Tax Code and the Customs Code, which provide for:

– the impossibility of attributing to the tax credit the amounts of value added tax (if paid) on cargo customs declarations, which indicate (made a corresponding note) about the placement of goods (imported into the customs territory of Ukraine) into the customs regimes temporary import or re-export, including number of technological changes in the software of the electronic VAT administration system and the customs data accounting algorithm;

– the need to increase tax liabilities for value added tax when goods are placed under customs regimes (temporary import and re-export), the amount of VAT on which was previously (when imported) included in the tax credit.

**4. Judicial practice**

Regarding the second case, the position of the courts is somewhat ambiguous, since at the moment there are quite opposite decisions of the Supreme Court of Ukraine. Thus, the resolution of March 12, 2019 in case No. 813/2435/17 (Resolution of the Supreme Court of Ukraine in the case No. 813/2435/17, 2019) confirmed the legality of the taxpayer's actions to transfer to third parties for use the goods (equipment) previously imported into the territory of Ukraine and placed in the customs regime of temporary import with conditional partial exemption from taxation by customs payments. In turn, already by the order of September 30, 2020 in case No. 826/14324/18 (Resolution of the Supreme Court of Ukraine in the case No. 826/14324/18, 2020), the Supreme Court of Ukraine made the opposite conclusions and confirmed the legality of the previous instances of the relevant court decisions on the absence of grounds to satisfy the taxpayer's claim, since the latter transferred for the use by third parties of property imported into the customs territory of Ukraine under the customs regime of temporary import with conditional partial exemption from taxation by customs payments.

As for the first case, the position of the judges on the available court decisions is quite unambiguous. So, by the decision of the Supreme Court of Ukraine dated of April 3, 2020 in case No. 813/2377/16 (Resolution of the Supreme Court of Ukraine in the case No. 813/2377/16, 2020), the taxpayer's claim was satisfied to cancel the tax notification-decision on additional accrual of the monetary liability for value added tax upon the re-export of property previously imported to the customs territory of Ukraine in the customs regime of temporary import. A similar position was expressed in the ruling of the Second Administrative Court of Appeal of December 8, 2020 in case No. 440/1239/20 (Resolution of the Second Administrative Court of Appeal in case No. 440/1239/20, 2020). At the same time, in the cases considered by the courts, the placement of goods (property) into the customs regime of temporary import, during their movement across the customs border of Ukraine (import), taxpayers paid VAT in full (in the amount of 20%), and not in the amount of 3%, as this is provided for by the terms of article 106 of the Customs Code. That is, in this case, the Plaintiffs deliberately made the payment of value added tax in order to obtain the corresponding benefit, which was indicated above, in particular, obtaining the right to a tax credit, increasing the registration limit and, accordingly, reducing the VAT payable based on the results of the corresponding reporting period.

In addition, the above court decisions, which satisfied the claims of taxpayers and canceled the tax authorities-tax notices-decisions adopted by the tax authorities, indicate the inconsistency of the provisions of Art. 206 of the Tax Code and Art. 86 of the Customs Code. In our opinion, such inconsistency is due to the fact that paragraph 206.5 of Art. 206 of the Tax Code provides for exemption from taxation of the export of goods under the customs regime of re-export (regardless of the customs regime in which they were before their export), except for export operations in accordance with paragraph 3 and paragraph 5 of Art. 86 of the Customs Code, which are still subject to taxation (albeit at a zero rate). In turn, Art. 86 of the Customs Code defines the conditions for placing goods in the customs regime of re-export without payment of export mail and without the application of measures of non-tariff regulation of foreign economic activity.

It should be emphasized that the Tax Code, in terms of the collection of value added tax, made a distinction between operations: taxed at the basic rate (Art. 194) and at a zero rate (Art. 195); is not subject to taxation (Art. 196); exempted from taxation (Art. 197).

**5. Discussion**

In our opinion, when considering the above court cases (accrual of VAT tax liabilities based on the results of property re-export operations), it was not taken into account that the taxpayer, without defining tax liabilities based on the results of the export and placement of goods in customs regimes (temporary import and re-export), the VAT amounts for which were previously (upon import) attributed to the tax credit, receives an unjustified benefit, since upon the inclusion of the amounts in the tax credit, it reduces the amount of tax payable for the corresponding reporting period and increases the registration limit.

In turn, as if an enterprise when moving (importing) goods (property) across the customs border of Ukraine and placing them in the appropriate regime (temporary import, re-export), taking into account the provisions of the Tax and Customs Codes on the exemption of such operations from tax refrained from paying tax value added, then, accordingly, would not be able to include such amounts in the tax credit, increase the registration limit and reduce the amount of VAT payable to the budget based on the results of a certain reporting period. It is understood that the exemption from payment of the respective payments upon exportation is conditioned by the absence of their payment upon importation.

That is, the placement of goods (property) in customs regimes (temporary import, re-export) should correspond to the purpose of their placement in the appropriate customs regime without the possibility of abuse and obtaining unjustified benefits.

So, under certain circumstances arising in the implementation of economic activities, it becomes necessary to return (export) goods (previously imported into the customs territory of Ukraine), given the impossibility for objective reasons of their use in economic activities, and placing them in the appropriate customs regimes (re-export). However, given that when they were imported, the corresponding payments were paid, including the amount of value added tax, which influenced the possibility of forming a tax credit, an increase in the registration limit, a decrease in tax liabilities payable based on the results of the corresponding reporting period, for such circumstances it is advisable and reasonable, from the point of view of the norms of clause 198.5 of Art. 198 of the Tax Code, an independent increase in tax obligations by the payer is required.

Thus, the determination of tax liabilities, the formation of a tax credit and the payment of value added tax, including the application of incentives (full or partial exemption from taxation), in particular, on operations for the movement of goods across the customs border of Ukraine in the appropriate customs regimes (temporary import, re-export) should take place taking into account the provision (observance) of a balance of the budget and tax system, public and private interests.

In a sense, the above also applies to the application by payers of an "export" customs regime (subject to a zero rate), which in some cases is used to optimize tax liabilities for value added tax ("atypical exports"). "Transactions) and for the purpose of avoiding the payment of value added tax and receiving reimbursement of the budget by exporting companies (they are not actual producers), mainly agricultural products purchased from agricultural producers, and in some cases of unknown origin, legalized by documenting transactions. for its purchase from a number of unscrupulous taxpayers (documentary registration of virtually nonexistent transactions). In turn, it should be noted that this is the subject of a separate study.

**6. Conclusions**

Based on the results of the analysis:

1. The peculiarity of the existence of normative legal support for the administration of value added tax in Ukraine has so far been legal collisions of certain provisions of legislative documents, leading to disputes between regulatory authorities and taxpayers.

2. Determination of tax liabilities, the formation of a tax credit and the payment of value added tax, including the application of incentives (full or partial exemption from taxation), in particular, on operations for the movement of goods across the customs border of Ukraine in the appropriate customs regimes (temporary import, re-export) should occur taking into account the provision (observance) of the balance of the budget and tax system. In turn, the application of exemption from taxation, including value added tax, in the specified customs regimes should take place in a certain way and taking into account the actually carried out operations, without causing harm to national interests. This implies the deliberate use of the relevant customs regimes, contrary to the conditions for their provision, in order to understate the object of taxation and, accordingly, reduce the payment of tax to the budget.

3. To ensure a more effective mechanism for administering (collecting) value added tax, taking into account the use of customs regimes (temporary import, re-export) and avoiding situations of their use

to obtain unjustified tax benefits (understatement of tax obligations), it is necessary to amend the relevant regulatory legal acts, in in particular, the Tax Code and the Customs Code, which provide for:

– the impossibility of attributing to the tax credit the sums of value added tax (in case of payment) on cargo customs declarations, which indicate (made a corresponding note) about the placement of goods (imported into the customs territory of Ukraine) into customs regimes temporary import or re-export, including technological changes in the software of the electronic VAT administration system and the customs data accounting algorithm;

– the need to increase tax liabilities for value added tax when goods are placed under customs regimes (temporary import and re-export), the amount of VAT on which was previously (when imported) included in the tax credit;

– elimination of inconsistencies in Art. 206 of the Tax Code and Art. 86 of the Customs Code, since the provisions of the Customs Code provide for exemption from taxation on operations for placing goods into the customs regime of re-export during export, and the Tax Code provides for both exemption from taxation and taxation of value added tax on such operations.

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**ПОДАТОК НА ДОДАНУ ВАРТІСТЬ: МИТНІ РЕЖИМИ**


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*Автором в статті досліджується нормативне регулювання справляння податку на додану вартість, в тому числі застосування пільгових режимів, які передбачають часткове або повне звільнення від сплати податку, під час ввезення/вивезення товарів, поміщених у відповідні митні режими (реекспорт). Юридична проблематика податкової сфери полягає переважно у визначенні та ефективному забезпеченні меж свободи й необхідності у поведінці суб'єктів податкових правовідносин через відповідні правові, законодавчі норми. Зазначені правові, законодавчі норми повинні забезпечувати збалансованість публічних та приватних інтересів, а також унеможливлювати їх неоднозначне, множинне трактування. Національне законодавство повинно запроваджувати внутрішні процедури адміністрування (справляння) податків, які посилюють прозорість і ясність дій всіх суб'єктів податкових правовідносин та відповідно мінімізують ризик помилок (зловживань), в тому числі можливості для заниження об'єктів оподаткування. Крім того, вони не повинні давати можливість суб'єктам податкових правовідносин отримувати вигоду від своїх протиправних дій та/або уникати виконання своїх обов'язків. Зазначене стосується в тому числі повного або часткового звільнення від сплати податку на додану вартість під час переміщення суб'єктами зовнішньоекономічної діяльності товарів через митний кордон України, поміщених у відповідні митні*

*режими (тимчасове ввезення, реекспорт), оскільки за певних обставин надає можливість для зловживань з боку несумлінних платників податку. На даний час дослідження з цього питання на проводились. В умовах активного розвитку інтеграційних процесів (вступ України до Європейського простору), необхідність законодавчого забезпечення (нормативної урегульованості) прозорості справляння податків, зокрема, податку на додану вартість, набуває все більш вагомого значення для ефективного зростання економічного благополуччя нашої держави. Таким чином, постає необхідність подальших наукових досліджень з питань застосування пільг, які передбачають часткове або повне звільнення від сплати податку на додану вартість, під час ввезення/вивезення товарів, поміщених у відповідні митні режими (тимчасове ввезення, реекспорт). В статті здійснено аналіз сучасного стану правового регулювання справляння податку на додану вартість в частині звільнення від оподаткування (застосування пільг) під час переміщення товарів через митний кордон України. Вказане дозволило виявити проблемні питання правового характеру, які призводять до порушення збалансованості бюджетної та податкової системи, публічних та приватних інтересів, шляхи їх вирішення та зробити науково обґрунтовані висновки з окресленої проблематики.*

**Ключові слова:** податкові зобов'язання, податковий кредит, податкові пільги, тимчасове ввезення, реекспорт.

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# CUSTOMS DISPUTES RESOLUTION THROUGH MEDIATION: INTERNATIONAL PRACTICES

*Based on the studies of foreign rules and regulations concerning mediation of disputes arising from customs and other administrative activities, the article defines that a significant number of developed foreign countries adhere to the vision that customs disputes should be resolved through a mediator, or allows resolving any public law dispute through a mediation procedure. It is noted that the settlement of a customs dispute via mediation is allowed only in cases where the subject is an administrative act of the customs authority adopted within its discretion, or if there is an issue of compensation for damages by decisions, actions or omissions of customs authorities (China, Macedonia). The article represents the American provisions on mediation in the public sphere, which are stated to be particularly progressive in their part establishing specific circumstances under which the settlement of public disputes through mediation is excluded, including the need for final and authoritative resolution of the issue forming legal precedent, the significant impact of the case on the rights and obligations of individuals or legal entities that are not parties to the case; particular importance of the consistency in approaches to resolving relevant issues, so it is impractical to increase variations in individual cases; importance of publicity of means and procedures of decision-making in the case, etc. The author highlights the legislative provisions detailing the exclusive reasons for exemption from the obligation to respect the confidentiality of mediation, which include, inter alia, the prior disclosure of information, the need to use information to establish the existence or content of a mediation agreement or to enforce it or a judgment regulating the dispute settlement, a court decision on disclosure of information to prevent harm to public health and safety of appropriate severity, etc. (USA, Georgia). Moreover, the author argues that some sound legislative measures are of a particular value, for instance those determining the contractual nature of mediation solution, as well as setting out the possibility of resolving the issue of its enforcement within a simplified procedure (Kazakhstan) and establishing special rules for timeframes for addressing a court for protection with claims in disputes in which private mediation has been initiated (Georgia).*

**Key words:** dispute settlement through mediation, foreign practice of mediation in customs disputes, mediation, mediation in the public sphere, customs dispute.

**JEL Classification:** K23, K33, K34, K41, O23, O53, P48.

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## 1. Problem Statement and Objectives of the Study

Optimization of state mechanisms for resolving public disputes is often associated with the deployment of appropriate legal coverage and a proper institutional design of alternative ways to resolve disputes. The wholeness of this intention is convincingly confirmed by the comprehensive democratization of public administration and the adoption of dispositive methods of administrative and legal regulation as the ones that are as important as the regulatory and statutory tools of public administration. However, the prospect of a large-scale implementation of alternative means of dispute resolution has been perceived with some caution by the industry experts and scientific community. The most pronounced restraint in supporting the development of a system of alternative means of resolving public disputes is demonstrated in the context of their use in complex areas of public relations, such as, for example, those related to customs administration. At the same time, it should be borne in mind that international practices, which always serve as an abundant and inexhaustible source of legal and organizational solutions for the systematic improvement of customs legislation, indicates the commitment of many developed countries to resolving customs disputes using alternative means, one of which is mediation.

In view of the above, the scientific objective, pursuing which this article is focused on, is to study the provisions of regulatory sources of foreign countries stipulating the rules for settling the disputes arising from customs relations in order to formulate scientific provisions and recommendations on the mediation for this purpose in Ukrainian realities. It should also be noted that the subject of the investigation will be limited to out-of-court mediation, without considering the dispute settlement involving a judge.

**2. Review of sources and presentation of the key points of the study**

First of all, based on the materials of analytical research of the Organization for Economic Cooperation and Development, we'd like to note that mediation is considered as a process where a mediator helps disputing parties to communicate with each other, understand each other and, if possible, agree on the conditions of the dispute resolution that satisfy both parties. The mediator facilitates discussions between the parties and their efforts to agree on a way out of the situation that suits their interests (Consensus Building Institute, 2012). Similarly, the Guiding Principles on Mediation in Civil Cases, approved by Recommendation Rec (2002) 10 of the Committee of Ministers of the Council of Europe to member states on mediation in civil cases, defines mediation as a dispute settlement process in which parties negotiate through one or more mediators regarding the disputes in order to reach an agreement (The Committee of Ministers of the Council of Europe, 2002)

A review of the legislation of foreign countries on mediation reveals that there is no consensus on using this alternative means of resolving disputes in the public sphere. In particular, the regulations of China, Macedonia, Poland, Singapore, and the United States stipulate that public disputes may be settled based on the results of mediation. Moreover, in China and Macedonia, the statutory provisions explicitly allow a mediator involvement in resolving disputes related to customs control and customs clearance. In contrast, the legislation of Georgia, Kazakhstan and Lithuania excludes administrative and legal relations from the scope of mediation, but the approaches to the legal regulation of the organization and implementation of mediation in other categories provided by the legislation of these countries are still of considerable interest.

Thus, having read the provisions of the customs legislation of the People's Republic of China, we've noted that they provide a fundamental possibility of contractual regulation of customs relations based on the results of negotiations with the mediators involved. Moreover, detailed rules for mediation in customs disputes have been established at the level of customs authorities' subordinate legislation.

Thus, when describing the circumstances under which a mediation procedure may be initiated to resolve customs disputes, art. 88 of the Rules of the General Administration of Customs on Administrative Reconsideration approved by the Decree of the General Customs Administration of the People's Republic of China dated September 24, 2007, No. 166 (hereinafter referred to as the Rules of the General Administration of Customs of the PRC on Administrative Reconsideration) stipulate that the customs administrative reconsideration bodies may voluntarily and legally resolve the dispute out-of-court through mediation, if: 1) a natural person, legal entity or other organization has applied for an administrative review in connection with objections to a specific administrative ruling, which the customs authority has adopted to perform its discretionary powers; or 2) the issue of compensation for damage caused by customs officials during customs control, customs clearance or in other circumstances has been raised. It should be noted that the customs administrative reconsideration bodies are responsible for the management of out-of-court mediation in the administrative reconsideration of customs rulings, study and approval of administrative mediation agreements (paragraph "c" of Art. 4 of the Rules of the General Administration of Customs of the PRC on Administrative Reconsideration). In this case, mediation with the guidance of the customs administrative reconsideration bodies must meet the requirements as follows:

– the mediation is conducted based on the established facts of the case;
– the customs administrative reconsideration bodies must fully respect the will of the applicant and the defendant;
– the mediation should be arranged based on the principles of impartiality and reasonableness;
– the result of the mediation must comply with the provisions of general administrative law and customs rules and must not contradict the nature and principles of law;
– the result of mediation should not endanger any national interests, public interests or the rights and legitimate interests of any other persons (art. 89 of the Rules of the on Administrative Reconsideration). (General Administration of Customs of the PRC, 2007)

At the same time, prior to considering the issue of mediation in a particular customs case, a customs administrative reconsideration body must send a request to the customs authority, the administrative ruling of which is appealed, in terms of which this customs authority must give an opinion on the need to

reject the proposal regarding customs settlement or on the expediency of mediation (art. 43 of the Rules of the General Administration of Customs of the PRC on Administrative Reconsideration). If, taking into account the circumstances of the case, the customs administrative reconsideration body concludes that mediation is possible and expedient, it shall take the following successive steps: 1) specify the intention of the applicant and the customs authority as to whether they agree to mediation; 2) initiate mediation with the consent of the applicant and the customs authority; 3) consider the views of the applicant and the customs authority; 4) suggest a way to resolve the dispute; 5) state the possibility of concluding an agreement on the dispute resolution based on the results of mediation. Instead, where, during the mediation, the applicant or the customs authority has clearly stated its intention of not having any mediation, the mediation shall be terminated and at the request of the applicant a standard customs appeal procedure shall be initiated (art. 90 of the Rules of the General Administration of Customs of the PRC on Administrative Reconsideration). If the applicant and the customs authority with the help of a mediator reach agreement after mediation, the customs administrative reconsideration body shall prepare an administrative reconsideration mediation agreement based on the administrative reconsideration results, which shall bear the following data:

– personal data and address of residence of the applicant, or, if the applicant is a legal entity or other organization, its name and address of registration, as well as personal data of the legal representative or manager;
– information about the customs authority and personal data of its legal representative;
– requests, facts and reasons specified in the application for administrative reconsideration;
– requests, facts, evidence and reasons specified in the reply of the customs authority;
– facts established during the administrative reconsideration, as well as relevant evidence;
– an overall introduction on the mediation conducted;
– the outcome of the mediation;
– the obligations of the applicant and the customs authority to execute the mediation agreement based on the results of the administrative reconsideration;
– date of agreement (part 1 of art. 91 of the Rules of the General Administration of Customs of the PRC on Administrative Reconsideration). (General Administration of Customs of the PRC, 2007).
– In this case, the mediation agreement based on the results of the administrative reconsideration must be sealed by the customs administrative reconsideration body and shall become legally binding once signed or sealed by the applicant and the relevant customs authority (part 2 of art. 91 of the Rules of the General Administration of Customs of the PRC on Administrative Reconsideration). (General Administration of Customs of the PRC, 2007).
– In addition to the out-of-court settlement of a customs dispute through a mediator, Chinese customs laws allow for direct reconciliation between an individual or a company and a customs authority. According to the art.83 of the Rules of the General Administration of Customs of the PRC on Administrative Reconsideration, if an individual, legal entity or other organization has objections to a particular administrative act, which the customs authority has adopted to exercise its discretion, it may offer the customs authority to reconcile on a voluntary and legal basis. Completion of conciliation negotiations with a positive result must be formalized by written deed of conciliation, approved by the customs administrative reconsideration body and shall be binding, unless the provisions of the deed of conciliation do not threaten any national interests, public interests or rights and legitimate interests of any other persons (art. 83-86 of the Rules of the General Administration of Customs of the PRC on Administrative Reconsideration). (General Administration of Customs of the PRC, 2007). In light of the above, it seems clear that conciliation without applying to the customs administrative reconsideration body may be reached with the help of professional mediators outside the public sector. It should also be borne in mind that the common practice in China is to regulate mediation procedures, that is to include the rules on mediation in the terms of the mediation agreement that shall be approved by the professional mediators associations, particularly, the Rules of Mediation of the Hong Kong International Arbitration Centre and the Mediation Code of the Hong Kong Mediation Accreditation Association (World Bank Group, 2016).

Having considered the above, we can state that in customs disputes under Chinese law, both mediation involving an independent and impartial representative of the state and private mediation are allowed. Moreover, the mediation agreement is always subject to approval by the customs administrative reconsideration body, which verifies its compliance with the provisions of administrative laws and checks there are no threats to the rights and legitimate interests of third parties. It is also noteworthy that

the settlement of a customs dispute through mediation is allowed only in cases where the administrative act of the customs authority adopted in the exercise of its discretion is objected, or if the issue of compensation for damages caused by decisions, actions or omissions of the customs authorities is raised.

As a comparison, the Law of the Republic of Macedonia on Amending and Appending the Customs Code of January 4, 2008 No. 07-87/1 introduced a provision that the customs authority must suggest settlement and mediation procedures to the perpetrator of the customs offence before submitting a request for offence procedure in the usual manner. The purpose of the settlement and mediation procedure is defined by the law as reaching an agreement between the customs authority and the perpetrator of the custom offence for the purposes of eliminating the negative consequences of the offence and preventing perpetration of further offences, as well as avoiding conducting offence procedure for the customs authorities (Republic of Macedonia, 2008). Thus, the Macedonian customs authorities should suggest resolving the disputes through the mediation procedure within the offence proceedings.

Unlike the national legislation of the above-mentioned states, the US regulations do not specify the possibility of applying mediation procedures in customs cases. However, federal law provides for the possibility of using alternative means of resolving disputes, including mediation, in administrative and legal relations.

In particular, according to Chapter 5 Administrative Procedure, Part I The Agencies Generally, Title 5 Government Organization and Employees of the US Code, the alternative means of resolving disputes may be any procedures designed to resolve differences and achieve optimal solutions in terms of any disputes, including, but not limited to, conciliation, mediation, fact-finding, prompt and simplified proceedings involving the parties under quasi-judicial rules, arbitration, the agency of government authorised representatives on relevant matters, or any combination of these procedures. The procedures for the out-of-court settlement of public disputes, as a rule, result in a final written agreements (paragraph 5 of Part 1 of Art. 571 of Title 5 of the US Code) (5 U.S.C., 1996).

At the same time, despite the advantages and potential of procedures for public disputes resolution on the basis of mutual concessions documented in an administrative agreement, in some circumstances a public body shall make management decisions under general rules only. In particular, the law does not allow to take measures for the public dispute resolution if:

– a definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

– the matter involves or may bear upon significant questions of government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;

– maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

– the matter significantly affects persons or organizations who are not parties to the proceeding;

– a full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record;

– the agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the agency's fulfilling that requirement (part "b" of art. 572 of Title 5 of the US Code). (5 U.S.C., 1996).

Moreover, a particular attention should be paid to the detailed regulation of aspects of mediation confidentiality. The point is that according to art. 574 of Title 5 of the US Code, mediators shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication or any communication provided in confidence to the mediator, unless: 1) all parties to the dispute resolution proceeding and the mediator consent in writing, and, if the dispute resolution communication was provided by a nonparty participant, that participant also consents in writing; 2) the information has already been made public; 3) the dispute resolution communication is required by statute to be made public, but a mediator should make such communication public only if no other person is reasonably available to disclose the communication; 4) a court determines that such testimony or disclosure is necessary to: 4-1) prevent a manifest injustice; 4-2) help establish a violation of law; 4-3) prevent harm to the public health or safety of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases

that their communications will remain confidential. Similarly, a party to a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication, unless: 1) the communication was prepared by the party seeking disclosure; 2) all parties to the dispute resolution proceeding consent in writing; 3) the information has already been made public; 4) the dispute resolution communication is required by statute to be made public; 5) a court determines that such testimony or disclosure is necessary to: 5-1) prevent a manifest injustice; 5-2) help establish a violation of law; 5-3) prevent harm to the public health and safety of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential; 6) the dispute resolution communication is relevant to determining the existence or meaning of a mediation agreement or award that resulted from the dispute resolution proceeding or to the enforcement of such an agreement or award. The information related to the dispute resolution through a mediator, which was disclosed in violation of the above provisions shall not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made. (5 U.S.C., 1996).

Taking into account the above, we'd like to emphasize that the US practice of legal regulation of mediation in the public sphere is notable for the establishment of specific circumstances that exclude the settlement of public disputes through mediation, including, in particular, the fact that the final and authoritative resolution of the issue is necessary for administrative and legal precedent; the case has a significant impact on the rights and obligations of individuals or legal entities that are not parties to the case; the observance of established approaches to addressing relevant issues is of particular importance, which is why it is impractical to increase variations in individual cases; total publicity of the tools and procedures of decision-making in the case is important, etc. Moreover, a progressive legislative solution is a detailed specification of the exclusive grounds for exemption from the obligation to respect the confidentiality of mediation, which include, in particular, prior disclosure of information, the need to use information to establish the existence or content of a mediation agreement or a decision on the dispute resolution, the availability of a court judgement on the disclosure of information to prevent obvious injustice, to promote the establishment of violations of the law, to prevent harm to the public health and safety of sufficient magnitude.

While continuing the studies of international practice of administrative mediation, we'd like to note that the Code of Administrative Procedure of Poland also provides for the use of alternative means of resolving public disputes, one of which is mediation. Mediation is allowed in all cases where the nature of the dispute is not incompatible with the mediation that takes place, for example, when an administrative body has to act in the only possible way. Turning to the scientific works of A. Bartosiak and M. Kilbowski, we've discovered that according to the laws of Poland, at the request of the parties or on its own initiative, an administrative body must provide information on the possibility of mediation. If the party does not agree to mediation within 14 days of notification, mediation will not take place, as there is no presumed consent of the party. If the method of resolving the dispute is within the law, the relevant decisions, actions or omissions will be binding on the administrative body (Bartosiak A., Kiełbowski M., 2017).

The opportunities for conciliation between the parties to administrative legal relations are also enshrined in laws of Lithuania, however they are limited to the procedure for resolving a public dispute with an administrative court judge involved and through an out-of-court conciliation. Thus, under the laws of Lithuania on administrative proceedings, the parties may terminate the proceedings at any stage by concluding a conciliation agreement if the nature of the dispute so permits (unless the official authorities do not have to strictly adhere to explicit legal provisions and have no discretion to join in the transaction). At the same time, it is noteworthy that according to part 1 of art. 80 of the Law on Administrative Procedure of Lithuania, in order to prevent any abuse of administrative proceedings if the parties wish to conclude an out-of-court agreement, the court may adjourn the trial once for the time necessary for negotiations between the parties (Lietuvos Respublikos Seimas, 1999). At the same time, it is noteworthy that the out-of-court method of public disputes conciliation, which is similar to mediation and is widely practiced in Lithuania, is consultation with the parliamentary ombudsman, who gives recommendations to the parties on the best way to resolve it (The Supreme Administrative Court of Lithuania, 2016).

Similar to the above-mentioned mechanism of ombudsman advice is the Singapore network of primary dispute resolution centres in courts, which offer alternative ways of resolving any legal disputes in consultation with the so-called mediation judges. Surveys showed that these judges successfully resolved

85% of the cases submitted to them and a high level of satisfaction with this quasi-judicial mediation. Moreover, under the legislation of this state, conciliation agreements are subject to enforcement similarly to a court decision (World Bank Group, 2016)

Given the above, the mediation implementation by special status mediators, which can be special judges or ombudsmen, is an extremely useful institutional and regulatory mediation-related tool.

At the same time, in contrast to the states where mediation is allowed for settling public law issues, the legislation of Kazakhstan on mediation excludes the mediation procedure application for the resolution of disputes arising from civil, labour, family and other legal relations involving natural and (or) legal persons when one of the parties is a state body (Part 3 of Art. 1 of the Law of the Republic of Kazakhstan "On Mediation"). At the same time, Kazakhstan's legislative model of mediation is of considerable interest in terms of its implemented approaches to regulating some important aspects of mediation. First of all, it is noteworthy that according to part 4 of art. 27 of the Law of the Republic of Kazakhstan "On Mediation", the agreement on the dispute resolution, concluded out-of-court, is defined as a transaction aimed at establishing, changing or terminating the civil rights and obligations of the parties. Moreover, it is noteworthy that the approval of the agreement on the dispute resolution based on the results of mediation by the court in court proceedings allows returning the court fee to the payer in full (paragraph 2, part 5, art.27 of the Law of the Republic of Kazakhstan "On Mediation"). It should be taken into account that according to part 9 of art. 27 of the law, in case of non-performance, the party concerned shall apply to the court regarding the performance of obligations under the agreement within a simplified written procedure (Low of the Republic of Kazahstan, 2021). Thus, the laws of Kazakhstan defines the agreement on the dispute resolution through mediation as a transaction, provides for the repayment of the court fee to the payer in full if this agreement has been approved in court proceedings, and establishes that in the event of non-performance the case is considered according to the simplified written proceedings.

Similar to the legislation of Kazakhstan, the Law of Georgia "On Mediation" does not provide for the possibility of resolving public disputes based on the results of mediation, however to improve the legislation of Ukraine on mediation it might be appropriate to implement some provisions of this foreign law.

In particular, the optimal legislative solution is that at the request of a party to the dispute the mediator shall issue a document certifying the beginning or end of the mediation process (part 3 of art. 7, part 4 of art. 9 of the Law of Georgia "On Mediation"). Moreover, for the purposes of incorporating advanced international practices in the Ukrainian legislation, the most interesting are the provisions of part 4 of art. 7 of the Law of Georgia "On Mediation", according to which with the mediation agreement under which the parties agree not to go to court or arbitration before a particular term or circumstances, the court or arbitration shall not consider the dispute until the mediation agreement provisions are met in full, except for the cases where the applicant can testify that it will suffer irreparable damages without judicial or arbitral proceedings. Highly progressive is the rule according to which the period of limitation of claims shall be suspended from the moment of initiation of private mediation until its completion, but not more than for 2 years from the initiation of mediation. If the private mediation is unsuccessful, the time, during which the period of limitation of a claim has been suspended, shall not be included in that period (art. 12 of the Law of Georgia "On Mediation"). (Low of Georgia, 2019)

In addition to the above, it is noteworthy that the laws of Georgia on mediation regulate its confidentiality in detail. In particular, its provisions separately stipulate that a mediator shall not provide a party with information disclosed by another party during individual communication, unless the mediator has obtained an explicit consent of that party (part 3 of art. 10 of the Law of Georgia "On Mediation"). The list of circumstances that exclude the need to observe the confidentiality of mediation is wide and sufficiently adapted to the variety of circumstances in connection with mediation. These circumstances are as follows: 1) the need to protect life or health of a person, or to ensure the freedom of a person, or to protect the best interests of a minor; 2) the need to provide information to prove the fact of drawing up an agreement resulting from mediation if the other party disputes or denies that fact; 3) the party is obliged to fulfil the legal obligation undertaken before the initiation of mediation, to disclose the information that became known to the other party during the mediation process, considering the fact that the disclosed information shall be limited to the maximum extent; 4) the disclosure of information is specified by a court decision or by other legally binding decision (the disclosed information shall be limited to the maximum extent and the respective party shall be preliminarily notified thereof); 5) the disclosure of information is necessary for the investigation of a particularly serious crime (the disclosed information shall be limited to the

maximum extent and the respective party shall be preliminarily notified thereof); 6) the disclosure of the content of an agreement resulting from mediation is necessary for the voluntary fulfilment of its terms or its enforcement; 7) a legal or disciplinary dispute has been raised against the person disclosing information and it has derived from the mediation process (at the same time, the disclosure of such information is necessary for the protection of the legal interests of that person); 8) the information, disclosed during the mediation process on condition of maintaining confidentiality, had been known to the party before the initiation of mediation, or the party had obtained such information by other means determined by law, or the information had become public otherwise so that the party has not violated, either directly or indirectly, the obligation of confidentiality determined by this article (part 4 of art. 10 of the Law of Georgia "On Mediation"). (Low of Georgia, 2019)

**3. Conclusions of the study**

Summing up the study of international practices in the legal regulation of mediation in disputes arising from customs and other legal relations, we'd like to note that a significant number of developed foreign countries share a view that allows the customs disputes resolution with a mediator involved, or resolving any public disputes through the mediation procedure. The resolution of a customs dispute through mediation is allowed only in cases where the administrative act of the customs authority adopted in the exercise of its discretion is objected, or if the issue of compensation for damages caused by decisions, actions or omissions of the customs authorities is raised (China, Macedonia). The US practice of legal regulation of mediation in the public sphere is notable for the establishment of specific circumstances that exclude the settlement of public disputes through mediation, including, in particular, the fact that the final and authoritative resolution of the issue is necessary for administrative and legal precedent; the case has a significant impact on the rights and obligations of individuals or legal entities that are not parties to the case; the observance of established approaches to addressing relevant issues is of particular importance, which is why it is impractical to increase variations in individual cases; total publicity of the tools and procedures of decision-making in the case is important, etc. The legislative provisions with a detailed specification of the exclusive grounds for the discharge of obligations to respect the confidentiality of mediation are quite common, which include, in particular, prior disclosure of information, the need to use information to establish the existence or content of a mediation agreement or a decision on the dispute resolution, the availability of a court judgement on the disclosure of information to prevent obvious injustice, to promote the establishment of violations of the law, to prevent harm to the public health and safety of sufficient magnitude. Another positive legislative solution is, in particular, the establishment of the contractual nature of the agreement on dispute resolution through mediation, as well as the possibility of resolving the issue of its enforcement according to a simplified procedure (Kazakhstan) and establishing special rules for the terms of applying to the court in terms of disputes, regarding which private mediation has been initiated (Georgia).

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## ВРЕГУЛЮВАННЯ МИТНИХ СПОРІВ ЗА ДОПОМОГОЮ МЕДІАТОРА: ЗАРУБІЖНИЙ ДОСВІД

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*За підсумками дослідження зарубіжного досвіду правового регулювання спорів, що випливають з митних та інших правовідносин, у статті визначається, що значна кількість розвинених зарубіжних держав дотримується бачення, за яким має допускатись врегулювання митних спорів за допомогою медіатора, або дозволяє вирішення будь-яких публічно-правових спорів із застосуванням процедури медіації. Зауважується, що врегулювання митного спору шляхом медіації допускається лише у випадках, якщо оскаржується адміністративний акт митного органу, прийнятий на виконання його дискреційних повноважень, або якщо порушене питання про відшкодування шкоди рішеннями, діями чи бездіяльністю митних органів (Китай, Македонія). Прогресивним визнається американський досвід нормативно-правового регулювання використання медіації у публічно-правовій сфері є примітний встановленням конкретних обставин, за яких виключається врегулювання публічно-правових спорів шляхом медіації, з-поміж яких, зокрема, те, що остаточне та авторитетне вирішення питання необхідне для адміністративно-правового прецеденту, справа має істотний вплив на права та обов'язки фізичних або юридичних осіб, які не є сторонами у справі, особливе значення має дотримання усталених підходів до вирішення відповідних питань, через що недоцільним є збільшення варіацій у індивідуальних справах, важливою є повна публічність засобів та процедур прийняття рішення у справі тощо. Підтверджується, що широке поширення мають законодавчі положення з детальним викладом виключних підстав звільнення від обов'язку дотримуватись конфіденційності медіації, які включають, зокрема, попереднє оприлюднення інформації, необхідність використання інформації для встановлення факту існування або змісту угоди про медіацію чи для забезпечення виконання цієї угоди або рішення про регулювання спору, наявність судового рішення про розголошення інформації для відвернення шкоди здоров'ю та безпеці суспільства відповідного ступеню серйозності тощо (США, Грузія). Також, автор обґрунтовує, що позитивними законодавчими рішеннями слід визнати, зокрема, визначення договірної природи угоди про врегулювання спору за допомогою медіації, а також можливості вирішення питання про її примусове виконання у спрощеному порядку (Казахстан) та встановлення спеціальних правил перебігу строків звернення до суду за захистом з вимогами у спорах, у яких розпочата приватна медіація (Грузія).*

**Ключові слова:** врегулювання спору за допомогою медіатора, зарубіжний досвід медіації у митних спорах, медіація, медіація у публічно-правовій сфері, митний спір.

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# PANDEMIC AS A CHALLENGE TO INTERNATIONAL AND NATIONAL LAW

*The article is devoted to the analysis of the impact of the pandemic caused by COVID-19 on human rights. The analysis is carried out through the prism of studying two practices: (a) the use by states in the new conditions of a specific instrument "derogations from the Covenant"; (b) interpretation by the courts of government anti-epidemic restrictions and prohibitions.*

***The purpose of the article** is a legal analysis of the impact of the pandemic on interstate and national mechanisms for ensuring human rights.*

***Methods.** In the article, a comparative method was used (it made it possible to systematize information about the redistribution of the vaccine between states as an important means of global counteraction to the pandemic), the method of analysis and synthesis (the algorithm for derogation of states from the implementation of previously assumed international legal obligations in the field of guaranteeing human rights was determined), as well as the method of generalization (makes it possible to form conclusions on the analysis).*

***Results.** The human rights paradigm is under threat. More and more acute than these new conditions, problems of a civilizational nature arise: commensurability, humanity, justice. The human right to health on different continents and in countries with different per capita incomes is provided differently. International organizations are making efforts to somehow balance the situation with the distribution of the COVID-19 vaccine. One should agree with the prediction that the relatively low rules and standards in international human rights law will obviously have to be strengthened. Now there is a practice of derogation from human rights conventions. Four human rights treaties contain a derogation clause from the obligation to comply with the provisions of the treaties in full – ECHR, ICCPR, ACHR, EU. These international human rights treaties require official notification of derogations. However, not a single contract specifies the time period for such information. Justice is the foundation for building civilized relations between the state and its citizens. Especially during crises, states of emergency and other special regimes, when there is a real threat of violation of basic rights and freedoms. The published Priority Actions for Customs Administrations to Take Emergency Measures to Preserve International Supply Chains and Implement the Objectives of Counteracting the COVID-19 Crisis are focused mainly on revenue mobilization deals, trade facilitation, and ensuring the security of state borders.*

***Conclusions.** One of the expected results of cooperation in the context of the WHO, UNDP, UNAIDS pandemic should be the assertion of the principle of respect for human rights and fundamental freedoms, and specifically the right to health. As never before, harmonization of the practice of interpreting and applying international human rights treaties is relevant. Prohibitions and restrictions imposed by governments and other subjects of power, if they apply to specific subjects, can cause denial and unwillingness to comply. The experience of the response of the courts of other states to human rights violations deserves a separate study and generalization. As well as the practice of the activities of state authorities, in particular, customs, in the new conditions of the threat of further spread of coronavirus.*

**Key words:** COVID-19, Human Rights, Right to Health, Derogation from an International Treaty, Constitution, Justice, Customs Administration.

**JEL Classification:** F53, F69, I18, K33.

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## 1. Introduction

With the entry of mankind into a new era, and until now the globalizing world did not know the spread of the virus on such a scale, there was an urgent need to know the new reality, to adapt the international and national legal systems to it. Social, economic, political, legal, biological, moral and other dimensions of such reality are subject to research. Scientists around the world are focusing their attention on the relevant issues. There is a clear understanding that the further existence of a person, no matter what continent he lives

on, depends on a quick and effective search for answers to the questions of recent times. The pandemic has also intensified the discussion about the global legal order built after the Second World War. Seemingly indisputable postulates about the inviolability of human rights, laid down in the formulas of conventions under the auspices of the UN, are violated by countries with authoritarian regimes and large reserves of hydrocarbons (such as the Russian Federation, Kazakhstan), or without such (such as Syria, Belarus, etc.). The pandemic is an unprecedented challenge to the international legal order and at the same time actualizes the discussion about unity and mutual support in the development of democracies, in which a person is not only recognized by the Constitution, but also in practice is a high social value. And then the resources are spent not on military aggression, but on developing a vaccine against the still deadly virus and financing state support programs for their own citizens.

We look at the future from the standpoint of a modern understanding of international legal and national algorithms for ensuring human rights, in particular, the right to health. The subject of the study is the pandemic as a challenge to the human rights paradigm, including the issues of derogation from human rights conventions as a temporary forced government remedy, the possibility of judicial protection of rights and freedoms during a pandemic.

**2. Analysis of recent research and publications**

In the last two years, there have been many scientific publications on the topic under study. Some of them directly relate to the mutual influence of the global pandemic and the norms of international law (Hathaway, OA et al., 2021; Fidler, DP, 2020; Danchin, P. et al., 2020; Nyinevi, C., 2020; Buchan, R. Et al., 2020). Domestic researchers are also working on this topic, for example, Butkevych, O. (2020), Yatsyshyn, M. (2020). Works began to appear in print (Menezes, W., & Marcos, H., 2020; Kessedjian, C., 2021), in which researchers are trying to predict the "post-COVID" period in the development of international law.

This list should supplement the proposed work, in which the author tried to synthesize the results of a study of the functioning of international legal (in terms of temporary refusal to comply with an international treaty in an emergency) and national (in terms of the administration of justice in cases of appealing against epidemiological restrictions on the exercise of human rights) legal mechanisms.

**3.1. The New Reality: The Pandemic Tests the Human Rights Paradigm**

It should be recognized that the fundamental / basic principles of international law should be understood, first of all, the principles enshrined in the UN Charter, the Declaration of Principles of International Law concerning friendly relations and cooperation between states in accordance with the UN Charter (adopted by resolution 2625 (XXV) of the General UN of October 24, 1970, OSCE Helsinki Final Act (1975) Interstate/international cooperation has one of its main goals to ensure the observance of human rights.Currently, the human rights paradigm is under threat (Cohen, J., 2020). regarding risks in the field of fundamental human values, in particular the right to health, would find its supporters, taking into account acute, but well-known broad masses, problems: poverty, poor ecology, food shortages, unequal living conditions, discrimination, imperfect healthcare legislation and many others .Now to the undeniable factor m, capable of shaking the health care system or protection of human rights in both rich countries and developing countries, was added the pandemic caused by the coronavirus. The coronavirus pandemic that has swept the world has radically changed the lives of many and the information space we are in (Shul'ha, M.G., Mazur, A.V., Heorhievskyy, Y.V., 2021:2992).

More and more acute than these new conditions, problems arise, so to speak, civilizational: commensurability, humanity, justice. Is, for example, the effect of redistributing a vaccine through COVAX fair and satisfying to all concerned? When answering this question, one should proceed from the interests of everyone, not only the inhabitants of the European continent. We are talking about statistical data for February-May last year. During this time period, African countries received only 18.2 million of the 66 million doses they expected through COVAX. Of nearly 1.3 billion people in Africa, only 2% received a single dose of the COVID-19 vaccine. According to the WHO Africa Office, just over 1% – 26 million people – are fully vaccinated (Padma, T.V., 2021). The unfair distribution of vaccines allowed the virus to continue to spread. Unvaccinated populations are already at risk of infection, especially with new strains of coronavirus. Therefore, as Forman, L., & Kohler, JC (2020) predict, we may need to reinforce hitherto relatively low rules and standards in international human rights law. If their norms truly promote global solidarity in the context of crises like COVID-19, especially when it comes to global access to a future vaccine. The pandemic has revealed other problems with the

realization of the right to health, as well as broad public health problems. These tools need to be updated and revised if we hope to effectively address now and prevent future threats to the lives and health of hundreds of millions of people around the world. In this context, the COVID-19 Law Lab initiative to share experience in health care legislation in partnership with WHO, the United Nations Development Program (UNDP), The Joint United Nations Program on HIV/AIDS (UNAIDS), etc., is extremely relevant and useful. After all, one of the expected results of such cooperation is the affirmation of the principle of respect for human rights and fundamental freedoms, and specifically the right to health.

**3.2. Derogation from human rights conventions during the pandemic**

Since the start of the COVID-19 pandemic, several human rights scholars have argued that human rights can be better protected if governments move away from international human rights protection mechanisms during the pandemic. Thus, these government authorities of a given country clearly separate the emergency regime from the usual regime, and therefore limit the measures they take to combat the pandemic in time. Article 15 "Derogation in an emergency" allows such derogations from the European Convention on Human Rights (ECHR). Dzehtsiarou K. (2020) questioned the thesis expressed by human rights researchers. Firstly, deviation from the requirements of an international treaty, sometimes, is justified by the emergence of an emergency in the military sphere. But, the author points out, it is unacceptable to draw parallels between the state of emergency caused by the virus and the threat of a military nature. Secondly, it is argued that the human rights enshrined in the ECHR have a "natural quarantine effect", and derogations from Article 15 cannot significantly change the Court's approach to human rights during a pandemic.

One way or another, but there is a practice of derogation from human rights conventions. Four human rights treaties contain a derogation clause from the obligation to comply with the provisions of the treaties in full. We are talking about Article 15 of the European Convention on Human Rights (ECHR), Article 4 of the International Covenant on Civil and Political Rights (ICCPR), Article 27 of the American Convention on Human Rights (ACHR), Part V of Article F of the European Social Charter (ESS). All derogation clauses under these treaties require States Parties to (a) formally report the relevant treaty regime, (b) state the reasons for the derogation, and (c) report the termination of the derogation. The purpose of the message differs on the one hand within the ECHR and ESS on the one hand, and the ICCPR and ACHR on the other hand. In the first case, the purpose is to notify the Secretary General, who is entrusted with the monitoring function. In the second case, the goal is primarily to inform the other states parties to these two treaties. The relevant official must forward the received notice of withdrawal to the representatives of the other states parties to the treaties.

Consequently, the human rights treaties require precisely the official notification of derogations. However, not a single contract specifies the time period for such information. The European Court of Human Rights has ruled that two weeks (hudoc, 1961) of a delay in reporting a derogation is susceptible, but four months, as the corresponding decision of the European Commission of Human Rights shows, is excessive (European Commission of Human Rights, 1956). This leads to the fact that in order to counteract the spread of coronavirus infection, states implement a state of emergency or other special legal regime and after an indefinite period of time officially announce the derogation from human rights treaties (Istrefi K., Humburg I., 2020), or not at all inform about this fact.

Many governments have responded to the COVID-19 pandemic by declaring a state of emergency and restricting individual rights and freedoms protected by international law. However, a much larger number of states have decided to introduce emergency measures before officially derogating from international human rights treaties (Helfer, L. R., 2020). Most often, the suspension concerned the right to move freely, freedom of assembly and association – they are directly related to the measures to combat the pandemic, because they are designed to ensure the social distance necessary to prevent airborne viral infections.

The problem, according to Lebret A. (2020), is the failure of certain states to comply with the obligation to notify the relevant officials of their intention to deviate from the prescriptions of the convention norms. European states and ACHR signatories have regularly notified regional organizations rather than depositaries of signed conventions. It was as a reaction to such a situation that on April 24, 2020, the appeal of the UN Human Rights Committee (UN, 2020) was published, in which it called on the participating states (note that we are talking about the G7 countries!), Which have taken emergency measures, to immediately implement duty and notify the Secretary-General of the United Nations. After all, for example, neither the UK nor Germany notified the Council of Europe in time of their intention to derogate from the convention to counter COVID-19.

While the enjoyment of some human rights may be subject to special restrictions in an emergency, such restrictions should never go so far as to destroy the essence of human rights (UN Human Rights, 2020:827). The rule of law is inviolable even when a threatening epidemic situation develops.

As of July 2021, 11 states have declared derogations from the ECHR in response to COVID-19. This list does not include Ukraine and the Republic of Poland. Ukraine reported a "derogation" in connection with the military aggression of the Russian Federation, the Republic of Poland – a statement due to "some violations of the rights to freedom of speech and assembly ... in 1993." 8 out of 25 States reported suspension of safeguards under ACHR. 14 out of 173 states (8%) reported derogations from the ICCPR (Poland and Ukraine have signed and ratified the Convention and have not declared a derogation from it).

Unlike the ECHR and the ICCPR, the ACHR speaks of the suspension, not the derogation, of human rights and fundamental freedoms (Coghlan, N., 2020). The American convention uses at least four different terminologies for suspension: a) termination of warranties; b) termination of performance of contractual obligations; c) suspension of rights; and d) right to stop). This terminological difference, stresses N. Coghlan (2020), has already been emphasized by the Inter-American Court of Human Rights (ICHR) in its advisory opinion OC-8/87 on the Habeas Corps in Emergency Situations (American Convention on Human Rights, 1987:7) ) : states can never suspend the rights inherent in man, they can only limit their full and effective exercise. This postulate clearly formulates the idea of anthropocentrism.

There is another specific feature of the so-called Inter-American Human Rights System: the limited judicial tools for enforcing ACHR orders compared to ECHR. It, according to M.M. Antoniazzi and S. Steininger can be compensated by the work of inter-American human rights bodies demonstrating the importance of a proactive and dialogic approach, as well as continuous monitoring and information support of participating States and civil society in order to ensure the widest possible protection of human rights during Covid-19 (Antoniazzi, M., Steininger, S., 2020).

As noted above, the COVID-19 pandemic threatens to undermine the commitments made by States to protect human rights. Consideration of the "derogation clauses" included in most international human rights treaties that allow for the suspension of certain rights in emergency situations leads to the conclusion of a "worrisome trend in the approach of states towards them" (Zdravkovic, A ., 2021 ). On the other hand, in the absence of this "necessary evil", states are more likely to fail to fulfill their obligations during emergencies, but with a greater risk of violations due to lack of oversight (Lebret, A., 2020). "Derogation provisions" allow the international community not only to detect and monitor human rights violations in exceptional circumstances, but also to preserve and protect the fundamental (non-derogable) rights of individuals" (Zdravkovic, A., 2021).

Gorodovenko et al. (2020) noted during the acute phase of the pandemic that "derogation from the provisions of the European Convention on Human Rights in the context of the implementation of measures to combat the COVID-19 pandemic is a common problem for European countries, requiring the introduction of emergency measures by the governments of these countries…". Under no circumstances should emergency measures justify the violation of human rights and the restriction of fundamental freedoms.

Now that there is much more information about the virus, protocols for its treatment have been improved, drugs against COVID-19 are announced, new strains of it are emerging, however, the effectiveness of existing vaccines that can minimize the harmfulness of SARS-CoV-2 variations is declared, one way or another, there is a need to rethink the attitude to many once-established constants. These include the assertion that the state of emergency is a short-term phenomenon, that parliaments cannot be responsive compared to governments and are unable to quickly respond to changes in the epidemiological situation when adopting "emergency" legislation (Istrefi, K., Radoš, M., Merison, W., 2021). There is a risk that COVID is being used to justify violations of human rights and restrictions on fundamental freedoms (SIIAEC Conference, 2021:1). In particular, when the right to vaccination is transformed into a general obligation.

**3.3. The right to judicial protection of rights and freedoms during a pandemic**

Questions remain about how long the government can take emergency measures to combat COVID-19 when this pandemic has become the new normal, and how such government measures affect checks and balances in a democratic society. This issue, of course, will be the subject of consideration by the national courts when considering and resolving disputes regarding the restrictive measures taken by the public administration authorities against the backdrop of COVID-19.

The Convention for the Protection of Human Rights and Fundamental Freedoms for the sake of protection or public health involves the limitation by law of certain rights: Article 8 "Right to respect for private and family life", Article 9 "Freedom of thought, conscience and religion", Article 10 "Freedom of expression", article 11 "Freedom of assembly and association". Therefore, the problematic issues of the application of these norms by the European Court of Human Rights deserve a separate study. As well as the application of the ACHR prescriptions by the Inter-American Court of Human Rights.

Let us only pay attention to the fact that justice is the foundation for building civilized relations between the state and its citizens. Especially during crises, states of emergency and other special regimes, when there is a real threat of violation of basic rights and freedoms. Prohibitions and restrictions imposed by governments and other subjects of power, if they apply to specific subjects, can cause denial and unwillingness to comply. Lawyers may have differing views on whether the actions of the authorities in such situations are lawful. When the principle of universality yields to the principle of expediency. For example, judges of the US Supreme Court were divided in their views in interpreting the instructions of the California state authorities to limit attendance at religious services to 25% of the capacity of the church premises or 100 visitors, whichever is less in a particular case (SUPREME COURT OF THE UNITED STATES, 2020). An application for an injunction filed by the church was denied. Significantly, the plaintiff expressed a willingness to comply with the rules applicable to secular businesses, including social distancing and hygiene rules, but objected to the 25% limit imposed on religious institutions and did not apply to offices, supermarkets, restaurants, retail stores, pharmacies, shopping centers , bookstores, beauty salons – crowded places where the requirement of social distancing is not always observed. Some judges pointed out that the California decision discriminated against religious institutions compared to secular ones, which do not have such restrictions, and that the issue of interpretation of the Constitutional rule is on the agenda. Chief Justice Roberts C. J. opined that "the Constitution pre-eminently entrusts the safety and health of the people to politically responsible officials," but the Constitution also places the protection of the rights of the people in the judiciary. Judge Alito J. did not uphold the majority and voiced his legal position that the state must prove that nothing less than the above restrictive measures will reduce the spread of COVID-19 in public places at closed religious meetings to the same extent as restrictions. that the state applies to other activities.

The experience of the response of the courts of other states to human rights violations deserves a separate study and generalization. As well as the practice of the activities of public authorities in the new conditions of the threat of an unprecedented spread of COVID-19. For example, the Fiscal Affairs Department of the International Monetary Fund has developed Special Recommendations (Special Series on Fiscal Policies to Respond to COVID-19) to public authorities authorized to implement fiscal policy, designed to help IMF member countries overcome the negative economic impact caused by COV 19 On April 20, 2020, the Priority Actions for Customs Administrations to Take Emergency Action to Preserve International Supply Chains and Achieve Objectives to Address the COVID-19 Crisis were released. These activities are focused mainly on operations to mobilize revenues, facilitate trade, and ensure the security of state borders. The document clarifies the issues of customs activity, set out in the IMF methodological document "Appropriate measures of the tax and customs service. It is recognized that proactive customs activities are extremely important. After all, the effectiveness of epidemiological, socio-economic measures to counteract COVID-19 depends on specific government steps and their timeliness. It is recorded that "the customs service is an important authority helping to save people's lives by ensuring the reliability of international supply chains, especially in terms of importing essential goods, including those related to the treatment of COVID-19, and also ensures the security of tax revenues, the economy, serves other purposes." Of practical interest is the answer to the question of success in the implementation of measures in three areas: (a) continuity of operation, (b) taking measures to combat COVID-19, (c) taking control measures. In general, the COVID-19 pandemic has shown the importance of both the Revised WTO Kyoto Convention (RKC) and the WTO Trade Facilitation Agreement (TFA), including the core concepts of a fully digital customs clearance process and efficient customs risk management.

**4. Conclusions**

One of the expected results of cooperation in the context of the WHO, UNDP, UNAIDS pandemic should be the assertion of the principle of respect for human rights and fundamental freedoms, and specifically the right to health. More than ever, the manifestation of international cooperation in the practice of interpreting and applying international human rights treaties is relevant. Perhaps the idea of solidarity

in the face of the threat of a pandemic in an era of pragmatism, bordering on state egoism, will sound naive. However, in order to preserve man as a biological being, to search for the much-needed balance and harmony on planet Earth, the role of legal scholars is to clearly articulate and defend the possibility of international treaties and institutions in maintaining civilized cohabitation. Prohibitions and restrictions imposed by governments and other subjects of power, if they apply to specific subjects, can cause denial and unwillingness to comply. Lawyers may have differing views on whether the actions of authorities are lawful in situations where the principle of universality is inferior to the principle of expediency. The experience of the response of the courts of other states to human rights violations deserves a separate study and generalization. As well as the practice of the activities of public authorities, in particular customs (on the implementation of the IMF recommendations of 04/20/2020 – Priority measures for customs administrations to take emergency measures to preserve international supply chains and implement the tasks of countering the COVID-19 crisis), in the new conditions of the threat of further the spread of the coronavirus.

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## ПАНДЕМІЯ ЯК ВИКЛИК МІЖНАРОДНОМУ ТА НАЦІОНАЛЬНОМУ ПРАВУ

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*Статтю присвячено аналізу впливу пандемії, викликаною COVID-19, на права людини. Аналіз проведено крізь призму дослідження двох практик: (а) використання державами в нових умовах специфічного інструменту «відступ від конвенції» («derogations from the Covenant»), (б) тлумачення судами урядових протиепідемічних обмежень і заборон.*
***Метою статті** є правовий аналіз впливу пандемії на міждержавні та національні механізми забезпечення прав людини.*
***Методи**. Для написання статті використано компаративний метод (дав можливість систематизувати відомості щодо перерозподілу вакцини поміж державами як важливого засобу глобальної протидії*

*пандемії), метод аналізу та синтезу (окреслено алгоритм відступу держав від виконання раніше взятих на себе міжнародно-правових зобов'язань у сфері гарантування прав людини), а також метод узагальнення (дає можливість сформувати висновки з проведеного аналізу).*

***Результати**. Парадигма прав людини перебуває під загрозою. Дедалі гострішою за цих нових умов постають проблеми цивілізаційного характеру: співмірності, гуманності, справедливості. Право людини на здоров'я на різних континентах і в країнах із різним доходом на душу населення забезпечується неоднаково. Міжнародні організації докладають зусиль, аби урівноважити бодай якось ситуацію із розподілом вакцини проти COVID-19. Слід погодитися із прогнозом про те, що вочевидь доведеться зміцнити досі відносно занижені правила та стандарти у міжнародному законодавстві з прав людини. Тепер існує практика відступу від конвенцій з прав людини. Чотири договори з прав людини містять пункт про відступ від зобов'язання виконувати приписи договорів у повному об'ємі – ECHR, ICCPR, ACHR, ESC. Вказані міжнародні договори про права людини вимагають саме офіційного інформування про відступи. Утім, жоден договір не вказує на строк такого інформування. Правосуддя є фундаментом побудови цивілізованих відносин між державою та її громадянами. Особливо під час криз, надзвичайних станів та інших особливих режимів, коли виникає реальна загроза порушення базових прав і свобод. Оприлюднені Пріоритетні заходи для митних адміністрацій щодо вжиття екстрених заходів задля збереження міжнародних ланцюгів постачань і реалізації завдань протидії кризі COVID-19 зорієнтовано, головним чином, на операціях із мобілізації доходів, полегшення торгівлі, забезпечення безпеки державних кордонів.*

***Висновки.** Одним із очікуваних результатів співпраці в умовах пандемії WHO, UNDP, UNAIDS має стати утвердження принципу поваги прав людини й основних свобод, і конкретно права на здоров'я. Як ніколи на часі узгодження практики тлумачення й застосування міжнародних договорів з прав людини. Запроваджувані урядами та іншими суб'єктами владних повноважень заборони та обмеження, якщо вони розповсюджуються на конкретних суб'єктів, здатні викликати заперечення й небажання виконувати. Досвід реагування судових інстанцій інших держав на порушення прав людини заслуговує окремого дослідження й узагальнення. Як і практика діяльності органів державної влади, зокрема митних, в нових умовах загрози подальшого поширення коронавірусу.*

**Ключові слова:** COVID-19, права людини, право на здоров'я, відступ від міжнародного договору, Конституція, правосуддя, митна адміністрація.

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# PROVISION OF STATE SUPPORT FOR PROJECTS OF INTERNATIONAL INDUSTRIAL COOPERATION

*An approach has been developed to substantiate the choice of instrumental support and the use of organizational forms of state support for projects of international industrial cooperation. The rationale of decisions on determining the ways of state support for such projects is proposed to be carried out through generalization in space of a three-dimensional matrix of characteristics of effective (expected total social effect from cooperation), structural (variety of areas of cooperation collaboration), competitive (competitive positions of the national producer in the domestic and foreign markets) development parameters international production and cooperation relations of enterprises. The rationale of the choice of tools and organizational forms of state support for international industrial cooperation projects is further carried out using the developed set of recommendations in accordance with the positioning of project indicators in the space of the specified three-dimensional matrix. It has been established that the proper organizational design of measures to create favorable conditions for the development of international industrial cooperation makes it possible to ensure the harmonization and coordination of divergent interests and aspirations of potential participants in this kind of integration cooperation. It has been determined that the development of effective instrumental support and organizational rationalization of the system of state support for the implementation of international industrial cooperation projects is a significant factor in achieving comparative quasi-competitive efficiency of national regimes for regulating the participation of enterprises in global value creation chains. It is noted that the interest of the state in the development of international production and cooperation collaboration between enterprises, even in the absence of direct support for cooperation projects. It has been established that such interest can be realized through the creation of favorable conditions for national producers to start production and cooperation interaction, which constitutes the proper infrastructural support for supporting cooperation collaboration in the regions of presence.*

**Key words:** State, Support, Project, International Production Cooperation, Instrumental Support, Organizational Forms Of State Support.

**JEL Classification:** F23, J54; Q13.

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## 1. Introduction

The unrestrained increase in the pace of implementation and the expansion of the boundaries of the globalization of the world economic system is accompanied by a natural increase in the tightness of the dependence of the processes of development of national economic complexes on the depth of integration and the fullness of participation in international production cooperation and international trade operations. The unification of the rules of world trade, the gradual elimination of artificial obstacles to the intensification of operations in international markets, the development of extensive transnational transport and logistics networks determine a significant increase in the economic potential of resident producers to intensify development processes and increase efficiency. The strengthening of the competitive positions of national economic entities with the expansion of operations in foreign markets, the intensification of the participation of domestic enterprises in the implementation of global infrastructure projects, the increase in the volume of attracting foreign investment in the context of the liberalization of the movement of global capital flows constitute a solid financial and economic basis for the growth of revenues to the state budget, the creation of appropriate principles of ensuring productive employment

of the economically active population, improving the quality of life and welfare of citizens. The steadfast intensification of the severity of global competitive rivalry with the easing of national customs and tariff regimes in domestic markets that are increasingly open to foreign manufacturers, the spread of the use of strict monetary instruments for regulating the economy and the strengthening of the role of supranational institutions in international financial and credit relations naturally determine the growth of risks of a critical restriction of state sovereignty in economic sphere, an unjustified reduction in the effectiveness of antimonopoly measures and state regulation of prices for socially significant goods and services, an unjustified increase in external and internal government municipal, corporate debt obligations (especially for countries on the "periphery" of world-system civilizational development), etc. in. In addition, the accumulation of disproportions in the global distribution of productive forces and the aggravation of imbalances in the distribution of produced value within the framework of the restoration and functioning of global value chains, increasingly controlled by large transnational corporate structures, increase the threats of irrational depletion of the resource base of social wealth and unjustification, volumes of illegal economic activity, increasing levels of corruption and inefficient public administration in countries with developing economies and identifying the risk of other negative consequences.

A mandatory requirement for ensuring the sustainability of development and stability of the functioning of national economic complexes in the context of globalization is not just attracting domestic enterprises to participate in international trade, but ensuring high rates of economic growth based on mutually beneficial cooperation in the plane of integrating spatially distant stages of development, production, sales of goods and services, as well as overcoming the gap in the amount of income and consumption of the population of developed countries and other countries of the world. Therefore, the presence of a favorable regulatory environment is becoming a basic prerequisite and a weighty basis for enhancing the development of international industrial cooperation, within which the foundations for regulating the implementation of economic activities are formed and the practices of state influence on the business sphere will be focused on stimulating and supporting projects of interstate economic cooperation.

**2. Analysis of recent research and publications**

The issues of formation and development of public-private partnership are devoted to the works of many domestic and foreign scientists. (F. Uzunov, 2013; O.Solodovnik, 2014; O. Nahorna, 2014; D. Popovych, 2015; ZH. Yermakova, N. Tryshnina, 2011; N.Khachaturyan, 2013; O. Popov ta P. Karkaliova, 2013; T.Kolyada, 2015 and others).

A number of scientific papers are devoted to the issues of instrumental support of state support for projects of international industrial cooperation (O. Havrylyuk, 2006; T. Kelder, V. Hrubas, 2009; S. Maystro, 2007; I. Matyushenko, S. Berenda, V. Ryeznikov, 2015; L.Pismachenko, 2008; A. Podlevskyi, 2016; A.Slyvotskyi, 2001; I.Chychkalo-Kondratska, 2011; J. Dunning, 1993; F. Entry Root, 1998), identification of organizational forms of state support for projects of international industrial cooperation (ZH. Yermakova, N. Trishkina, 2011; O.Ivanova, 2002; T. Kolyada, 2015; O. Nagornaya, 2014; O. Popov, P. Karkaleva, 2013; D. Popovich, 2015; O. Solodovnik, 2 ; F. Uzunov, 2013; N. Khachaturyan, 2013; I. Chichkalo-Kondratskaya, 2011).

At the same time, insufficient attention is paid to the development of approaches to justifying the choice of instrumental support and the use of organizational forms of state support for projects of international industrial cooperation.

**3. The purpose of the article** is to develop an approach to substantiating the choice of instrumental support and the use of organizational forms of state support for projects of international industrial cooperation.

**4. Presentation of the main material of the article**

State regulation of relations of international economic integration and industrial cooperation has undergone substantial changes over a long period of unfolding the processes of civilizational and formational development of society. The nature and orientation of such changes in general corresponds to the manifestation of the patterns of global contradictions in the development of the world economic system. The primary forms of export orientation of foreign trade operations in pre-industrial and initially industrial formation conditions were characterized by the concentration of state influence on stimulating export supplies in combination with aggressive protectionist measures to protect the national market and products of domestic entrepreneurs from expanding similar competitive production.

State support for the development of international industrial cooperation in the context of strengthening the volume of international trade and intermediary cooperation in the marketing and procurement areas was determined by the traditional focus on the implementation of the priorities of the export orientation of production and marketing operations (as in the supply of fixed assets and the further scale of the international economic activity of residents), as well as the newest focus on diversification and expansion of the participation of national enterprises in world trade (primarily for countries in whose jurisdictions new industries arose). Further improvement of the practices of ever closer interaction and interpenetration of commodity and financial markets and a significant simplification of foreign exchange and settlement services for international production and trade operations also influenced the instruments of state regulation of the international integration of countries. That is why, in the plane of state regulation of world economic cooperation and state support for international industrial cooperation, at that time they found quite a natural reflection of the trend of spreading the practices of unification and standardization to a wide variety of components of the institutional regulation of economic relations. The objective nature of the prerequisites for expanding this kind of institutional homogenization of regulatory regimes was determined by a number of circumstances. First, the need to avoid and reduce artificial barriers to deepen the international division of labor in the direction of developing economic cooperation between business entities in different regions and countries has become extremely urgent. Secondly, the gradual disappearance of differences in transactions in international and domestic markets has determined the urgent need for adequate convergence and harmonization of national regulatory regimes. Thirdly, the uneven distribution of market power in the world between enterprises located in the jurisdictions of countries with different levels of economic development, in some cases logically determines the fundamental expediency of the implementation by individual states of measures to ensure proper economic competition in domestic commodity markets and maintain stable employment in national markets. works. On the other hand, the introduction of such measures, of course, must be fully consistent with the international obligations assumed by the state on unified and standardized provisions of the institutional basis for the implementation of economic relations.

The expansion of spatial boundaries and sectoral frameworks of the processes of global economic integration and international industrial cooperation led to the emergence of new, but extremely significant problematic issues (such as the establishment of rules for the avoidance of double taxation, the regulation of customs and tax requirements for transfer pricing when moving resources and semi-finished products, etc.), the solution of which required urgent adoption at the interstate level of decisions regarding the harmonization of the provisions of national legislation regarding the streamlining of the activities of transnational business structures with the regulatory rules for conducting business transactions in the global interaction space. The international dimension of economic integration determines at the same time an increase in the opportunities for enterprises and the able-bodied population of countries with different levels of development to use the significant advantages of economic activity and human life in the process of global consolidation and unification of planetary productive forces. However, an important and necessary prerequisite for the intensification of this kind of integration and cooperation interaction is the need for the most complete and comprehensive harmonization of the national regulatory framework and regulatory regimes, not so much with respect to the practices that have developed at the international level and the foundations for streamlining interstate economic cooperation, but to meet the needs of participants in global chains of creating a new value. Specific manifestations of this kind of regulatory adaptation should be considered the introduction of special investment regimes, preferential rules for taxation and customs clearance, additional preferences for the conditions for using territorial transport and logistics opportunities and other measures streamlined as part of the development and establishment of effective functioning of the cooperation mechanism (Figure 1) .

In the context indicated in Figure 1 of the scheme, it should be noted the features of determining the purpose of the functioning of the mechanism of state support for the implementation of projects of international industrial cooperation. The definition of such a goal should take into account the interests of all participants in international production and cooperation cooperation, focusing on the “onion diagram of stakeholders”. Taking into account the divergence of interests of stakeholders, it is proposed to ensure the coordination of these interests within the framework of such a global strategic priority as ensuring the growth of the level of competitiveness of the product obtained as a result of cooperation and directly of the participants in international production and cooperation interaction. The choice of

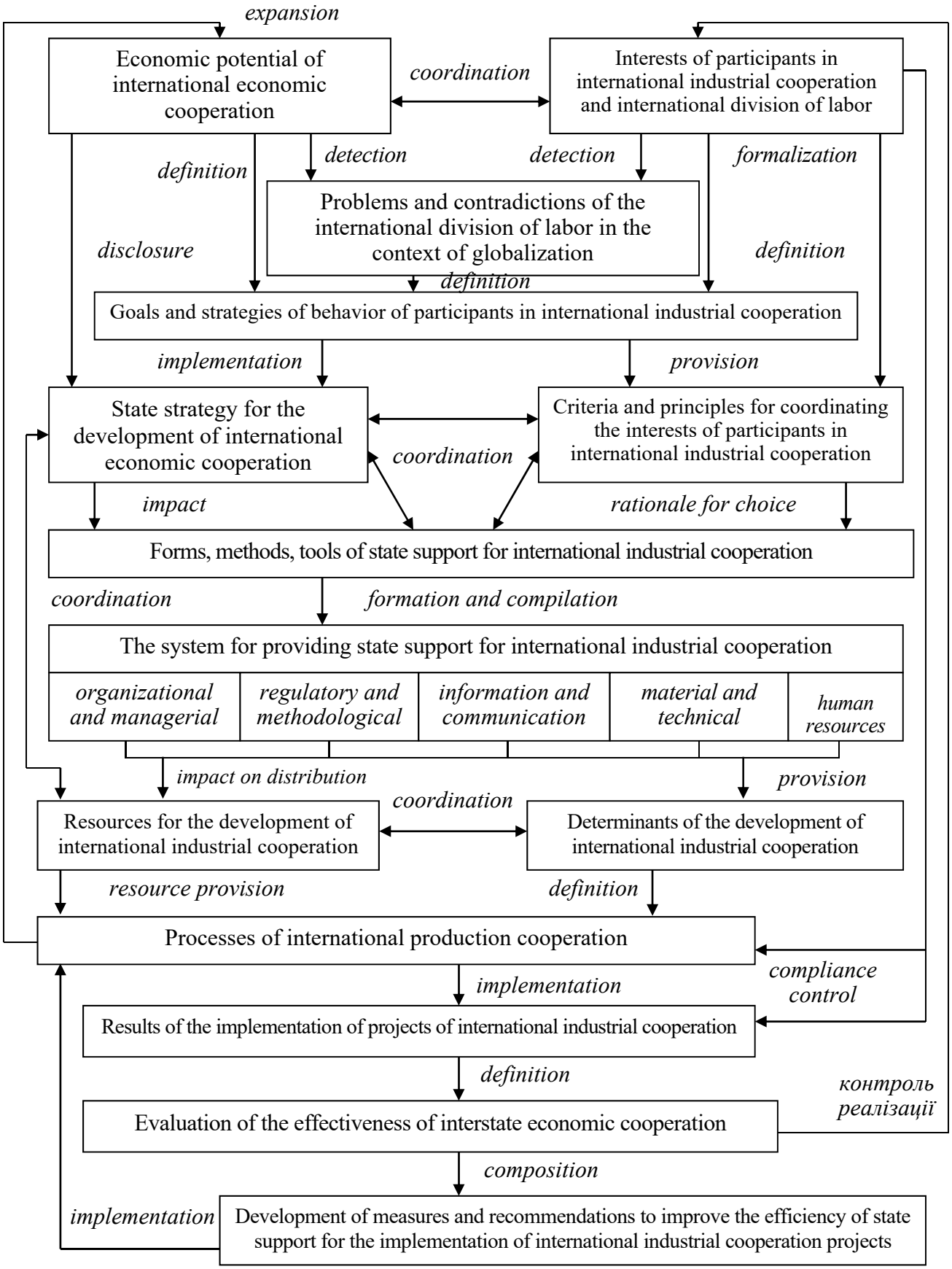


**Figure 1. The Structure Of The Mechanism Of State Support For The Implementation Of International Industrial Cooperation Projects**

*Source: developed by the author*

such a global strategic priority makes it possible to ensure its translation between the levels of the holarchy of international industrial cooperation. The orientation indicated in Element on Figure 1 "Goals and strategies of behavior of participants in international industrial cooperation" on the growth of the level of competitiveness of representatives of different levels of the holarchy of international industrial cooperation requires the definition of a typical structure of international industrial cooperation projects, the presence of which will allow initiating project support, as well as choosing forms of organizational, institutional and instrumental support for projects.

An example of the implementation of this provision is the agreement between the Government of Ukraine and the European Commission on the implementation of the program "EU Support for the Development of Agriculture and Small Farms in Ukraine" (Agreement, 2020), which provides for funding at the level of 26 million euros for projects to increase the level of competitiveness of the national agricultural sector. An increase in the level of competitiveness is expected to be achieved through the development of small and medium-sized enterprises (farmers).

It is quite clear that the growth of the level of international competitiveness of such enterprises is possible, first of all, on a cooperative basis. The implementation of such or similar projects presupposes the primary structuring of the plane of priorities for achieving the international competitiveness of international industrial cooperation (ICPiic). Appropriate state support for projects of international industrial cooperation will be determined within the content of the elements of this plane, given by the tuple (1):

$$ICP_{iic} = < A, AG, CCP, SCI, EPI > , \quad (1)$$

where: $A$ – a set of actors (agents), whose actions form the space of international production cooperation relations of enterprises (with their mandatory differentiation according to the levels of the holarchy of international production cooperation); $AG$ – a set of actors' goals in production and cooperation relations; $CCP$ – characteristics of the competitive positioning of participants in international industrial cooperation and the network that they form as a result of establishing interaction; $SCI$ – structural characteristics of the implementation of international industrial cooperation as a reflection of the likely areas of cooperation between companies; $EPI$ – effective parameters for the implementation of international production and cooperation between enterprises and other stakeholders.

It can be seen that three key content blocks are distinguished within the framework of the ICPiic plane, each of which can be specified by the corresponding tuple. The SCI block determines the characteristics of the competitive positioning of the network of international production and cooperation between enterprises in the target markets. When accepting the requirements of ISO 15288 regarding the structuring of the network of cooperation, this block is more consistent with the target system. Here we note that from the point of view of state support for projects of international industrial cooperation, the target system of the network of cooperation is not the main interest of state regulation. The state has other economic interests, which are determined on the basis of one form or another of state regulation (export orientation of producers, internationalization of production, interstate and interregional cooperation, international economic integration, globalization of the world economy).

From the point of view of public administration, the target system is precisely the network of cooperation. Although from the point of view of describing the competitive positioning characteristics of national producers, such a representation is not included in the tuple (2):

$$CCP = < CA, SSA, CPA, PP, MP, APA, ACP >, \quad (2)$$

where: $CA$ is a set of competitive advantages, the formation of which is an indispensable prerequisite for ensuring the achievement of a set of goals ($AG$) according to the architectonics of relations ($AR$); $SSA$ – a set of strategic alternatives to competitive behavior focused on achieving goals ($AG$) through the formation of appropriate advantages ($AA$); $CPA$ – a set of strategic alternatives for building an assortment and commodity policy of actors ($A$) that meet the requirements for the implementation of the $SSA$; $PP$ – a set of strategic alternatives to the pricing policy of actors ($A$) that meet the requirements for the implementation of the $SSA$; $MP$ – a set of strategic alternatives to the marketing policy of actors ($A$) that meet the requirements for the implementation of the $SSA$; $APA$ – a set of strategic alternatives to the policy of actors ($A$) in the field of after-sales and warranty services that meet the requirements for the implementation of the $SSA$; $ACP$ – a set of strategic alternatives to the advertising and communication policy of actors ($A$) that meet the requirements for the implementation of the $SSA$.

The EPI block of the tuple indicated by formula (1) reflects the effective parameters of the implementation of international production and cooperation interaction between enterprises and other interested parties.

Such parameters, as can be seen from the components of the tuple (3), describe both the expected total social effect from cooperative cooperation and the economic effect that each of the participants in the international production and cooperation interaction of enterprises receives. This parameter determines the possible manifestations of synergy and emergence from attracting enterprises to cooperative interaction:

$$EPI = < MS, SN, EM, CF > , \quad (3)$$

where: *MS* is the economic structure of the market space for production and cooperation interaction, taking into account its competitive structure (*CS*), segmentation (*MSA*), institutional regulation system (*IRS*), state of the market infrastructure (*ISRP*); *SN* – possible synergistic effects arising from the interaction of individual participants in international industrial cooperation within the level of their presence in the holarchy of such cooperation; *EM* – a set of emergent effects, the manifestation of which occurs during the transition between the levels of the holarchy of international industrial cooperation and to support the emergence of which the actions of the state are oriented in the field of supporting projects of international industrial cooperation; *CF* – cash flows arising from international production and cooperation cooperation (directed both directly to the participants in international production cooperation and in support of government programs for the development of international production cooperation in the form of tax and other payments).

The SCI block of the tuple indicated by formula (1) characterizes the structural characteristics of the implementation of international industrial cooperation. Such parameters reflect the possible areas of cooperation between enterprises. When defining such forms, it is appropriate to focus on the characteristics of the main forms of international industrial cooperation. From the point of view of state regulation of the implementation of projects of international industrial cooperation, the strength of manifestation of cooperation interaction (the degree of dependence of participants in international industrial cooperation on each other) is of greater importance. Depending on the strength of manifestation of cooperative restrictions, the forms and instruments of state support for enterprises involved in international production cooperation will be determined.

$$SCI = < SO, OB, SC, SA, MB, LB > , \quad (4)$$

where: *SO* – a set of objects of interaction between actors of production and cooperation relations, the architectonics and hierarchical construction of which are determined by the technological conditionality of production processes and the economic logic of economic interaction; *OB* – the organizational basis for the implementation of the components of the complex of marketing support for the implementation of the $ICP_{iic}$; *SC* is a socio-cultural component that characterizes the differences in the worldview and cultural basis for the implementation of economic activity by the participants in the population (*A*); *SA* – a set of strategic alternatives to the innovation policy of the actors (*A*) that meet the requirements of the implementation of the $ICP_{iic}$; *MB* – methodological basis for the implementation of the components of the complex of marketing support for the implementation of the $ICP_{iic}$; *LB* is the logistical basis for the implementation of the components of the complex of marketing support for the implementation of the $ICP_{iic}$.

The generalized set of elements of tuples (1)–(4) allows us to get such a comprehensive representation of the plane of priorities of state support for projects of international industrial cooperation of enterprises (priorities for achieving international competitiveness of international industrial cooperation), the presence of which is the basis for increasing the level of international competitiveness of Ukraine:

$$ICP_{iic} = < A, AR, AG, AA, MS, ICP, SN, EM, CF, CPA, PP, SA, MP, APA, ACP, MB, LB, OB, SC >. \quad (5)$$

Focusing on the tuple given by formula (5), we note that the functioning of the tuple formed in Fig. 1 of the mechanism of state support for the implementation of projects of international industrial cooperation is possible only if there is an appropriate instrumental and organizational support for its work, focused on the implementation of the goal of maintaining the desired level or increasing the competitiveness of international industrial cooperation. It is proposed to base the formation of such support on an approach in the structure of which blocks are allocated by a tuple (2)–(4). The author's proposal here boils down to the fact that the rationale for decisions on determining the ways of state support for international industrial cooperation projects should be carried out through generalization in space of a three-dimensional matrix

of characteristics of the resulting (marked by formula (3) the expected total social effect from cooperation), structural (defined by formula (4) variety of spheres of cooperative collaboration) and competitive (described with the help of formula (2) the competitive positions of the national producer in the domestic and foreign markets) parameters of the development of international production and cooperation relations.

Therefore, to justify the choice of tools and organizational forms of state support for international industrial cooperation projects, a set of recommendations has been developed for positioning project indicators in the space of a three-dimensional matrix (X). Thus, the core component of the construction of this mechanism is the procedure for identifying and coordinating the strategic set of goals and behavioral patterns of participants in international industrial cooperation, in accordance with the identification of the basic interests of which (through the formation of an appropriate state strategy for the development of international economic cooperation), streamlining and selection are carried out for the introduction of various forms of instrumental providing state support for projects of international industrial cooperation (Table 1).

Table 1

**Characteristics Of The Instrumental Support of State Support for Projects of International Industrial Cooperation**

| Support | Support toolkit | Characteristics of measures for state support of international industrial cooperation projects | Priority matching 3D matrix X |
|---|---|---|---|
| Direct | Preferential taxation of investments | Providing an investment tax credit (postponing the deadlines for paying tax liabilities) within the funds of targeted financing for the implementation of projects of international industrial cooperation | $[EPI_B, SCI_B, CCP_H]$<br>$[EPI_B, SCI_C, CCP_H]$<br>$[EPI_B, SCI_B, CCP_C]$ |
| | Preferential taxation of the main activity | Establishment of preferential tax regime for projects of international industrial cooperation. Dismissal (full or partial) from paying tax to the budget; deferral or installment of tax payments to the budget | $[EPI_B, SCI_B, CCP_B]$<br>$[EPI_B, SCI_B, CCP_C]$<br>$[EPI_B, SCI_C, CCP_B]$ |
| | Concessional lending | Provision of government loans on favorable terms for the implementation of projects of international industrial cooperation | $[EPI_C, SCI_B, CCP_B]$<br>$[EPI_B, SCI_C, CCP_B]$ |
| | Concessional financing | Provision of direct subsidies (on a non-refundable basis or with a deferred return and payment for the use of funds) from budgetary sources for the implementation of projects of international industrial cooperation | $[EPI_B, SCI_B, CCP_B]$<br>$[EPI_B, SCI_C, CCP_B]$<br>$[EPI_B, SCI_H, CCP_B]$ |
| | Joint investment | Direct state financing on the basis of the implementation of projects of international industrial cooperation (when creating joint ventures and industries, implementing large infrastructure projects, etc.) | $[EPI_H, SCI_B, CCP_B]$<br>$[EPI_C, SCI_B, CCP_C]$<br>$[EPI_B, SCI_B, CCP_B]$<br>$[EPI_H, SCI_B, КПА_C]$<br>$[EPI_C, SCI_B, КПА_B]$<br>$[EPI_B, SCI_B, КПА_C]$ |
| | | Provision of investments (participation by capital) from extra-budgetary trust funds for the implementation of projects of international industrial cooperation (targeted financing within the framework of the implementation of state development programs) | |
| | Preferential use of assets | Lease-concession of state-owned objects, rights to use state-owned land plots and infrastructure facilities, transfer of powers to dispose of state corporate rights on preferential terms for the implementation of international cooperation projects | $[EPI_B, SCI_B, CCP_B]$<br>$[EPI_B, SCI_C, CCP_B]$<br>$[EPI_C, SCI_C, CCP_B]$<br>$[EPI_C, SCI_B, CCP_B]$ |
| | Preferential access to infrastructure services | Establishment of special conditions for the use (preferential access) and payment for the use of services provided by transport, industrial, energy and other infrastructure facilities that are state-owned (owned by territorial communities) | $[EPI_C, SCI_B, CCP_B]$<br>$[EPI_C, SCI_C, CCP_C]$<br>$[EPI_C, SCI_B, CCP_B]$<br>$[EPI_C, SCI_C, CCP_C]$ |
| | Providing credit guarantees | Issuance of state guarantees on the reliability of providing private lending within the funds raised for the implementation of projects of international industrial cooperation | $[EPI_B, SCI_B, CCP_B]$<br>$[EPI_B, SCI_B, CCP_C]$<br>$[EPI_B, SCI_C, CCP_B]$ |

End of Table 1

| 1 | 2 | 3 | 4 |
|---|---|---|---|
| Direct | Special customs regime | Establishment of special exceptional rules for cross-border movement and customs clearance of consumed resources and products and services produced as part of the implementation of international industrial cooperation projects | $[EPI_B, SCI_B, CCP_B]$<br>$[EPI_B, SCI_B, CCP_C]$<br>$[EPI_C, SCI_B, CCP_B]$ |
| Indirect | Government Procurement | Financing public procurement (establishment of special conditions for transactions) of products and services produced as part of the implementation of projects of international industrial cooperation | $[EPI_B, SCI_B, CCP_B]$<br>$[EPI_B, SCI_B, CCP_C]$<br>$[EPI_C, SCI_B, CCP_B]$ |
| | Quota | Establishment of quotas and restrictions on the volumes and conditions of market circulation of goods and services produced within the framework of the implementation of projects of international industrial cooperation | $[EPI_H, SCI_C, CCP_B]$<br>$[EPI_H, SCI_H, CCP_B]$<br>$[EPI_H, SCI_C, CCP_B]$ |
| | Permission of special technological conditions | State funding of the activities of industry research institutions involved in the implementation of projects of international industrial cooperation | $[EPI_B, SCI_C, CCP_B]$<br>$[EPI_C, SCI_B, CCP_B]$ |
| | Special tax regimes for projects | Establishment of permanent preferential conditions for the taxation of certain types of business activities that are the subject of activity in the implementation of projects of international industrial cooperation | $[EPI_H, SCI_C, CCP_B]$<br>$[EPI_H, SCI_H, CCP_B]$<br>$[EPI_H, SCI_C, CCP_B]$ |
| | Special technical regulation | Formation of a system of industry standards and quality norms, technical requirements and conditions for the consumption of products and services produced within the framework of the implementation of projects of international industrial cooperation | $[EPI_B, SCI_B, CCP_B]$<br>$[EPI_B, SCI_B, CCP_C]$<br>$[EPI_C, SCI_B, CCP_B]$ |
| | | State organizational and methodological support for the functioning of national and sectoral systems of technical expertise of industrial cooperation projects | $[EPI_B, SCI_C, CCP_B]$<br>$[EPI_C, SCI_B, CCP_B]$ |
| | Special conditions for institutional support | State organizational and advisory support for the implementation of projects of international industrial cooperation | $[EPI_B, SCI_B, CCP_C]$<br>$[EPI_C, SCI_B, CCP_B]$ |
| | | State organizational and methodical support for the implementation of projects of international industrial cooperation | $[EPI_B, SCI_B, CCP_C]$<br>$[EPI_C, SCI_B, CCP_B]$ |
| | | Development and monitoring of compliance with the provisions of industry codes and business ethics | $[EPI_B, SCI_B, CCP_C]$<br>$[EPI_C, SCI_B, CCP_B]$ |
| | | Organizational and methodological support for the activities of industry self-regulatory organizations | $[EPI_C, SCI_B, CCP_C]$<br>$[EPI_C, SCI_B, CCP_H]$ |
| | Special conditions for personnel support | Development and implementation of sectoral programs for retraining personnel, the introduction of social programs to stimulate productive employment in sectors and sectors of the economy in which projects of international industrial cooperation are being implemented | $[EPI_B, SCI_B, CCP_B]$<br>$[EPI_B, SCI_C, CCP_B]$<br>$[EPI_C, SCI_C, CCP_B]$<br>$[EPI_C, SCI_B, CCP_B]$ |

The compilation of the components of the mechanism and the choice of methods for instrumental support for the implementation of projects of international industrial cooperation are proposed to be carried out on the basis of the justification for the choice of adequate organizational forms of state support, a list of which is presented in Table 2.

The characteristics of the instrumental support of state support for projects of international industrial cooperation are summarized by the author based on scientific works (O. Havrylyuk, 2006; T. Kelder, V. Hrubas, 2009; S. Maystro, 2007; I. Matyushenko, S. Berenda, V. Ryeznikov, 2015; L.Pismachenko, 2008; A.Podlevskyy, 2016; A.Slyvotskyy, 2001; I.Chychkalo-Kondratska, 2011; J. Dunning, 1993; F. Entry Root, 1998).

Table 2

**Characteristics of Organizational Forms of State Support for Projects of International Industrial Cooperation**

| Organizational forms of support | Characteristics of the organizational form of support | Characteristics of the main activity in the field of state support for projects of international industrial cooperation |
|---|---|---|
| National Development Agencies | Central public authorities with special status | Strategic planning, interdepartmental coordination, information and fundraising support for the implementation of projects of interstate economic cooperation and cooperation |
| National Councils | Sectoral (intersectoral) consultative and advisory body established under the authority | Scientific and technical, advisory and expert support for the formation of the regulatory framework and state regulation of international industrial cooperation |
| National and branch scientific and innovation centers | Non-profit organization or enterprise established with the participation of the state | Implementation of research, scientific and technical, innovation and search activities, preparation of business plans and other services for the examination and support of international cooperation projects |
| Regional Development Agency | Public association of representatives of the territorial community | Strategic planning of projects for the development of international economic cooperation, organization of interaction between participants in industrial cooperation projects and local governments at the regional level |
| Chambers of Commerce and Industry | Non-profit association of legal entities (residents and non-residents of the country) | Implementation of public communications, provision of advisory services, lobbying in state authorities for decisions and measures to create favorable conditions for the development of international economic cooperation |
| Self-regulatory professional organization | Non-governmental public association of professional participants in economic relations | Advisory support, design and presentation, lobbying in state authorities for decisions and measures to ensure the common interests of professional participants in international economic cooperation |
| Territory of priority development | Special regional administrative and legal regime for regulating investment activities | Establishment of special preferential conditions for investment and implementation of industrial cooperation projects within an administratively isolated part of the state territory, which is in a particularly critical state and requires special measures to stimulate socio-economic development |
| Free economic zone | Special regional administrative and legal regime of regulation of economic relations | Establishment within a certain part of the territory of the state of special preferential conditions for investment, economic interaction, customs and tax regimes, other additional preferences for the implementation of production, marketing, foreign economic and other types of economic activity, as well as the implementation of international cooperation projects for enterprises (residents and non-residents) |
| Regional technological (industrial) park | Municipal (or created with the participation of local governments) enterprise, the basis of which is a certain territorial infrastructure or industrial complex | Consulting service, organizational and administrative support for the implementation of projects of international industrial cooperation. Fulfillment of design orders. Expert service. Provision of production facilities for experimental, exemplary or small-scale production. Implementation of communication and information exchange. Selection, training and retraining of personnel |
| Regional business center | Enterprise (public organization or non-profit association in which the bodies of the territorial community may be represented) | Organizational, methodological and administrative-legal support for the regional development of certain types of economic activity, the implementation of entrepreneurial projects, etc. Consulting and expert support of projects. Training, selection, retraining and promotion of personnel. Implementation of communication and information exchange |
| Venture fund | Corporate (mutual) institution of mutual investment | Participation in joint non-diversified investment of international cooperative cooperation projects. Expertise of business plans and investment projects |

End of Table 2

| 1 | 2 | 3 |
|---|---|---|
| Regional business incubator | Enterprise (public organization or non-profit association in which the bodies of the territorial community may be represented) | Organizational, methodological and administrative-legal support for the implementation of innovative entrepreneurial projects for regional development, assistance in the start-up and sustainable development of new enterprises. Consulting and expert support of projects. Implementation of communication and information exchange |
| Guarantee fund | Joint Investment Institute | Providing financial guarantees for the reliability of providing private lending within the funds raised for the implementation of projects of international industrial cooperation. Financial monitoring and control of project implementation |
| Leasing fund | Utility or private enterprise | Lending to leasing operations with partial attraction of funds provided on a repayable basis from budgetary or non-budgetary sources. Consulting service and expert support for industrial cooperation projects. Monitoring and control of project implementation |
| Joint venture | Business entity based on share ownership | Organizational and legal registration of economic and managerial separation of contributions (in property and non-property form) of participants in international industrial cooperation projects in joint activities |
| Group communication | Events (conferences, seminars, symposiums) channels and networks of group and interpersonal interaction | Development of communication support to support access to information, as well as providing the opportunity to use intelligent planning tools, situational analysis, etc. |

The characteristics of the organizational forms of state support for projects of international industrial cooperation are summarized by the author in scientific papers (ZH. Yermakova, N. Trishkina, 2011; O.Ivanova, 2002; T. Kolyada, 2015; O. Nagornaya, 2014; O.Popov, P.Karkaleva, 2013; D. Popovich, 2015; O. Solodovnik, 2 ;F. Uzunov, 2013; N. Khachaturyan, 2013;I. Chichkalo-Kondratskaya, 2011).

The described approach involves the selection of projects of international industrial cooperation and the formation of appropriate support from the state. Here we note that not all projects of international industrial cooperation need state support. As can be seen from Table 1, state intervention is considered inappropriate given the low social effect from the implementation of international industrial cooperation projects (such an effect is determined not so much through the cash flows indicated by the CF element of the tuple (3), but through the social and institutional context of the cooperative interaction of enterprises). At the same time, it should be noted that the state is interested in developing international production and cooperation cooperation between enterprises, even in the absence of direct support for cooperation projects. Such interest can be realized through the creation of favorable conditions for national producers to start production and cooperation interaction, a component of which will be the proper infrastructural support to support cooperation in the regions of presence.

**5. Conclusions**

An approach has been developed to substantiate the choice of instrumental support and the use of organizational forms of state support for projects of international industrial cooperation. The approach is based on a three-dimensional matrix that combines performance (expected total social effect from cooperation), structural (a variety of areas of cooperation cooperation) and competitive (competitive positions of the national manufacturer in the domestic and foreign markets) parameters of the development of international production and cooperation relations of enterprises. For each of the segments of this matrix, a set of recommendations has been developed in accordance with the positioning of the indicators of the project of international production and cooperation between enterprises.

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## ЗАБЕЗПЕЧЕННЯ ДЕРЖАВНОЇ ПІДТРИМКИ ПРОЄКТІВ МІЖНАРОДНОЇ ВИРОБНИЧОЇ КООПЕРАЦІЇ

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*Розвинуто підхід до обґрунтування вибору інструментального забезпечення та використання організаційних форм державної підтримки проєктів міжнародної виробничої кооперації. Обґрунтування рішень щодо визначення способів державної підтримки таких проєктів запропоновано здійснювати через узагальнення в просторі тривимірної матриці характеристик результативних (очікуваний сукупний суспільний ефект від співробітництва), структурних (різноманіття сфер кооераційної співпраці), конкурентних (конкурентні позиції національного виробника на внутрішньому та зовнішньому ринках) параметрів розвитку міжнародних виробничо-кооераційних відносин підприємств. Обґрунтування вибору інструментарію та організаційних форм державної підтримки проєктів міжнародної виробничої кооперації здійснюється надалі з використанням розробленого комплексу рекомендацій відповідно до позиціонування показників проєкту в просторі зазначеної тривимірної матриці. Встановлено, що належне організаційне оформлення заходів щодо створення державою сприятливих умов для розвитку міжнародної виробничої кооперації дає можливість забезпечити гармонізацію та узгодження різноспрямованих інтересів та прагнень потенційних учасників такого роду інтеграційного співробітництва. Визначено, що розбудова ефективно діючого інструментального забезпечення та організаційного упорядкування системи державної підтримки реалізації проєктів міжнародної виробничої кооперації являє собою вагомий фактор досягнення компаративної квазіконкурентної ефективності національних режимів регулювання участі підприємств у глобальних ланцюгах створення нової цінності. Зазначено, що зацікавленість держави в розвитку міжнародного виробничо-кооераційного співробітництва підприємств є навіть за відсутності прямої підтримки проєктів налагодження співробітництва. Встановлено, що реалізовуватися така зацікавленість може через створення сприятливих умов для національних товаровиробників для старту виробничо-кооераційної взаємодії, складовою яких буде належне інфраструктурне забезпечення підтримки кооераційної взаємодії в регіонах присутності.*

**Ключові слова:** держава, підтримка, проєкт, міжнародна виробнича кооперація, інструментальне забезпечення, організаційні форми державної підтримки.

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# INTERNATIONAL COOPERATION OF THE REPUBLIC OF AZERBAIJAN ON CUSTOMS AFFAIRS

***Purpose of the article****. International cooperation in customs affairs is one of the highest priority areas of international cooperation between states. With its help, states are trying to strengthen both individual efforts in the areas of customs that are relevant to them, and to achieve the necessary results in overcoming problems of a regional and universal nature. The purpose of the article is to reveal the foundations of international cooperation of the Republic of Azerbaijan on customs issues. Achievement of the intended goal necessitates the solution of the following tasks: to analyze the normative-legal and organizational foundations of international cooperation on the issues of customs affairs of the Republic of Azerbaijan; to characterize the principles of international cooperation on customs issues of the Republic of Azerbaijan and Ukraine.*

***Methods.*** *Achievement of the research goal necessitated the use of various methods of scientific knowledge, including: dialectical method, historical and legal method, comparative method, systemic-structural method, hermeneutic method, method of analysis; method of synthesis; the method of generalization; prediction method and the like.*

***Results.*** *The normative and legal foundations of international cooperation on the customs affairs of the Republic of Azerbaijan are the normative legal acts of its legislation, in particular the Customs Code, as well as numerous multilateral and bilateral international customs treaties. Direct implementation of international cooperation on customs issues is ensured by the State Customs Committee of the Republic of Azerbaijan and the Department of International Cooperation acting in its structure. Other government bodies of the Republic of Azerbaijan are also actively involved in this activity. International cooperation on customs issues between the Republic of Azerbaijan and Ukraine has a long history and is carried out at several levels. At the universal and regional levels, it manifests itself in interaction within the framework of the activities of the WCO, the Organization for Democracy and Economic Development – GUAM, during the work of multilateral international conferences, as well as within the framework of multilateral international customs treaties. At the particular level – within the framework of bilateral international customs agreements and direct operational interaction.*

***Conclusions.*** *The research, highlighted in the article, is only the first step towards a systematic study of the relations of international cooperation on the issues of customs in the Republic of Azerbaijan. Therefore, further research of the theoretical and applied aspects of international cooperation on the customs affairs of the Republic of Azerbaijan, in particular with Ukraine, is of great importance both for the development of the sciences of national customs and international customs law, and for the practical activities of both states in the international arena.*

**Key words:** international cooperation, international customs conventions, international customs law, customs affairs, customs law.

**JEL Classification:** K33.

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## 1. Introduction

The relevance of the study of relations of international cooperation in customs matters is recognized by both representatives of the doctrine of international law and sectoral domestic sciences, including administrative law, criminal law, customs law. Many aspects of these relations have repeatedly been the subject of research by Ukrainian (Ivan Berezhniuk, Olga Votchenikova, Kostyantyn Sandrovskiy) and Azerbaijani (Aliev A., Aliev V., Heidarov K., Kasumova U.) scientists. However, a comprehensive, systematic study of theoretical and applied aspects of international cooperation of the Republic of Azerbaijan (AR) on customs issues has not been carried out. Considering the above, the study is timely, and its provisions are of great importance for the theory and practice of both domestic customs law and international customs law.

The purpose of the article is to reveal the foundations of international cooperation of the Republic of Azerbaijan on customs issues. Achievement of the intended goal necessitates the solution of the following tasks: to analyze the legal and organizational foundations of international cooperation on the customs affairs of the Azerbaijan Republic; to characterize the principles of international cooperation on customs issues of the Republic of Azerbaijan and Ukraine. The methodological basis of the research was formed by various methods of scientific knowledge, in particular: the dialectical method, the historical-legal method, the comparative method, the systemic-structural method, the hermeneutic method, the method of analysis; synthesis method; generalization method; prediction method and the like.

**2. Legal and Regulatory Framework for International Cooperation on Customs Affairs in the Republic of Azerbaijan**

From the first days of independence, Azerbaijan began to establish relations of international cooperation on customs issues at all its possible levels, from particular to universal. One of the first steps in this direction was the accession on June 17, 1992 to the Convention on the Establishment of the Customs Cooperation Council of December 15, 1950 (WCO, 1950). This step made it possible to start interaction between Azerbaijan and the Customs Cooperation Council (CCC) and join the multilateral international customs cooperation carried out within its framework.

After the creation of the Customs Committee of the Republic of Azerbaijan on January 30, 1992, the implementation of international cooperation on customs issues was attributed to his direct responsibilities. (SCCRA, 2021b). Among the most significant further steps in this direction, it is appropriate to recall the following: the accession in October 1995. Prior to the Agreement on Cooperation and Mutual Assistance in Customs Affairs between the Member States of the Commonwealth of Independent States (CIS) dated April 15, 1994; signed in 1996 Partnership and Cooperation Agreements with the European Union (EU) and its member states and accession to the Customs Convention on International Transport Using BYD; accession in February 2000 before the Protocol of the Agreement on Border Control, and in May 2000. before the International Convention on the Harmonized Commodity Description and Coding System dated June 14, 1983 .; election of AR to the Finance Committee of the World Customs Organization (WMO) accession in February 2002. to the International Convention on the Harmonization of Conditions for Carrying Out the Control of Goods at Frontiers dated October 21, 1982, and in December 2003, to the International Convention on Mutual Administrative Assistance in the Prevention, Investigation and Suppression of Violations of Customs Legislation of June 9, 1977; joining in January 2005 before the Customs Convention on Containers of December 2, 1972 .; joining in February 2006 to the International Convention on the Simplification and Harmonization of Customs Procedures of May 18, 1973; election in 2019 of the representative of the Republic of Azerbaijan as the Vice-Chairman of the WMO Council and the head of its European region, etc. (WCO, 2021).

The State Program for the Development of the Customs System of the Republic of Azerbaijan dated February 2, 2007 played a significant role in the formation of the regulatory and legal framework for international cooperation on customs affairs in the Azerbaijan Republic. According to its provisions, it was planned to perform the following tasks:

a) ensure the acceleration of commodity circulation at the customs border of the Republic of Azerbaijan and create favorable conditions for business entities;

b) accelerate measures in the field of limiting monopoly activities and preventing unfair competition;

c) improve the mechanism of regulation in the field of encouraging and expanding exports, protecting the internal market;

d) to strengthen the material and technical base of the customs system. Regarding the ways of performing certain tasks, they included: 1) improvement of the legislative framework and regulation; 2) bringing customs control methods in line with international standards, as well as automation of customs procedures; 3) strengthening the fight against smuggling and other offenses in the field of customs; 4) development of customs infrastructure; 5) training and expanding international cooperation (SZAR, 2007).

Following the instructions of this program, V. Kasumova notes, the state also took an active part in the activities of international customs structures, their programs of economic cooperation and partnership. One such structure is the Central Asia Regional Economic Cooperation Program on Customs Modernization (CAREC). The main goal of CAREC is to help Central Asian countries realize their economic potential by promoting regional cooperation in four main areas: transport, trade promotion, trade policy and energy.

To a large extent, its participation in other forms of international customs cooperation influenced the formation of the regulatory and legal framework for international cooperation on customs issues in Azerbaijan. Thus, during the work of the international conference of representatives of the customs services of the countries of Europe, the South Caucasus and Asia, held in October 2011 in the city of Batumi, special attention was paid to the issue of modernizing the customs legislation of the states of the South Caucasus region on the basis of generally recognized norms and standards of international customs law. First of all, this issue concerned the new edition of the Customs Code of the Azerbaijan Republic, in the development of which the experience of many European states, in particular Estonia and Sweden, was taken into account. The initial version of the Customs Code passed the examination of the European Commission in Brussels and was recognized by experts from twenty-four partner states as complying with applicable international standards, in particular the provisions of the International Convention on the Simplification and Harmonization of Customs Procedures of May 18, 1973 and other international customs treaties of the WCO and acts of the World Trade organizations (WTO) (Kasumova, 2015).

Presented standards and norms of international customs law and in the current Customs Code of the Azerbaijan Republic. In particular, it contains numerous provisions on the status and legal personality of authorized economic operators. The attention is repeatedly focused on the need to bring the activities of customs authorities in accordance with the requirements of WTO norms and standards and WTO acts. In accordance with Art. 319 of the Customs Code, the nomenclature of goods for foreign economic activity of the Republic of Azerbaijan must comply with the Harmonized System of Description and Coding of Goods (HS) of World Trade Organization and the Combined Nomenclature (CN) of European Union and the Common Commodity Nomenclature of Foreign Economic Activity of the Commonwealth of Independent States. In addition, the Customs Code states that Azerbaijan participates in international cooperation in the field of customs regulation in order to unify Azerbaijan's legislation and practice in this area with the norms of international law and generally recognized international practice. According to the provisions of Art. 14 of the Customs Code of the Republic of Azerbaijan, customs authorities in the performance of their functions in accordance with international agreements cooperate with customs and other competent authorities of foreign states, as well as with international organizations. In this regard, the relevant executive authority is empowered to appoint its representatives (customs attaché) in states and international organizations. For its part, in Art. 20 of the Customs Code of the Republic of Azerbaijan, it is noted that in order to implement measures to ensure the security of customs authorities, the latter can cooperate with other law enforcement agencies, as well as with customs services of other countries. (SCCRA, 2021a).

**3. Organizational Bases of International Cooperation on Customs Affairs of the Republic of Azerbaijan**

The direct implementation of international cooperation on customs issues in the Republic of Azerbaijan at the national level is entrusted to the State Customs Committee of the Republic of Azerbaijan (SCC or Committee) – the central executive body with the status of a law enforcement body carrying out state policy and regulation in the field of customs. In its activities, the Committee is guided by the Constitution of the Republic of Azerbaijan, laws of the Republic of Azerbaijan, decrees and orders of the President of the Republic of Azerbaijan, decisions and orders of the Cabinet of Ministers of the Republic of Azerbaijan, international treaties to which the Republic of Azerbaijan is a party.

To ensure the implementation of international cooperation on customs issues, the Committee has the following responsibilities: maintaining and improving customs statistics and special customs statistics of foreign trade in Azerbaijan in accordance with international standards and practice; participation in the development of draft international agreements related to customs, ensuring the fulfillment of international obligations provided for by these agreements; ensuring the application of scientific and technical achievements in the field of customs, taking into account the best international practice; facilitating international trade by exchanging information on the import and export of goods with the customs services of other states in electronic form, minimizing the period of customs clearance and control, participating in the integrated management of international trade and supply chain; ensuring the implementation of international agreements, to which the AR is a party on issues within the competence of the Committee, etc. (SCCRA, 2021c).

As regards the direct organization of the implementation by the Committee of international cooperation on customs issues, the corresponding volume of work in this direction is carried out by the Department

of International Cooperation of the State Customs Committee of the Republic of Azerbaijan (Department). The Department carries out its activities in cooperation with the structural divisions of the Committee's staff, customs authorities and institutions that are part of its system, law enforcement and other state bodies, as well as local self-government bodies. The activities of the Office are as follows: organization of work in the field of international customs cooperation; supporting the improvement of customs operations using international experience; organization and implementation of protocol events within the framework of international cooperation of the Committee; organization of the work of departments and subordinate structural units and control over their activities; organization of its activities in other areas determined by legislation.

The responsibilities of the Department include: analysis of the results of activities in the direction of studying international experience and making proposals to the management of the Committee on improving the customs service; analysis of international legal documents in the field of customs, preparation of proposals for joining international customs agreements, development of documents submitted to the government on the basis of international customs cooperation; development of bilateral and multilateral cooperation in the field of customs, as well as preparation of draft agreements, protocols and memorandums, letters of intent with the customs services of foreign countries, international organizations and other relevant bodies in order to strengthen the legal framework of agreements; coordination of interaction of structural units of the national customs service with the customs services of other states; analysis of documents and materials received from WCO with the aim of expanding relations with the WCO, active participation in sessions and meetings of committees and departments of the organization and their use in the activities of the national customs service; ensuring the establishment and development of relations with other international organizations and the participation of representatives of the customs service in bilateral negotiations; preparation of action plans between the national customs service and the customs services of other countries, as well as between the structural divisions of the Committee and the relevant structures of the customs services of other countries; negotiating with international organizations, foreign missions, customs services of other countries, as well as with representative offices of the Republic of Azerbaijan abroad, as well as working with representatives of state customs committees of foreign states (customs attachés) within the competence of the Department; informing state bodies and institutions on international customs issues (SCCRA, 2021d).

In addition to the State Customs Committee, other bodies of state power of the Azerbaijan Republic are also involved in international cooperation on customs matters.

**4. International Cooperation on Customs Issues of the Republic of Azerbaijan and Ukraine**

One of the international organizations within which Azerbaijan and Ukraine interact on customs issues is established in 2006. Organization for Democracy and Economic Development – GUAM. Within its framework, international cooperation takes place both at the bilateral and multilateral levels and is developing towards the creation of a GUAM free trade zone.

The following international agreements constitute the legal and regulatory framework for international cooperation in customs matters within the framework of GUAM: Agreement on the establishment of a free trade zone between the GUAM member states of July 20, 2002; Agreement between the governments of the GUAM member states on mutual assistance and cooperation in customs matters of July 4, 2003; Protocol between the customs authorities of the GUAM member states on organizing the initial exchange of information on goods and vehicles crossing the state borders of the GUAM member states dated July 8, 2015; Protocol on cooperation between the customs administrations of the GUAM member states in the fight against customs offenses related to the carriage of goods by air from the state borders of the GUAM member states dated October 5, 2018; Protocol of Intent between the customs administrations of the GUAM member states on mutual recognition of authorized economic operators dated December 12, 2019 and other international agreements.

It is important to note that working meetings of experts and heads of customs services of the GUAM member states are held on an ongoing basis to resolve urgent issues of international cooperation on customs issues.

Regarding particular international cooperation on customs issues between Ukraine and the Republic of Azerbaijan, its implementation takes place on the basis of existing bilateral agreements, namely: the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Azerbaijan on cooperation in customs affairs dated March 24, 1997; Memorandum on the provision

of mutual assistance between the State Customs Service of Ukraine and the State Customs Committee of the Republic of Azerbaijan dated July 30, 1999; Agreement between the State Customs Committee of the Republic of Azerbaijan and the State Customs Service of Ukraine on cooperation in combating smuggling and violation of customs regulations, as well as illegal circulation of weapons, ammunition, explosives, drugs, psychotropic substances and precursors dated June 3, 2004; Agreement between the State Customs Committee of the Azerbaijan Republic and the State Customs Service of Ukraine on cooperation in the field of vocational training and advanced training of September 7, 2004; Protocol on cooperation between the State Fiscal Service of Ukraine and the State Customs Committee of the Republic of Azerbaijan in the field of combating customs offenses related to the movement of goods by air, dated December 9, 2016.

**5. Conclusion**

The normative and legal foundations of international cooperation on the customs affairs of the Republic of Azerbaijan are the normative legal acts of its legislation, in particular the Customs Code, as well as numerous multilateral and bilateral international customs treaties. Direct implementation of international cooperation on customs issues is ensured by the State Customs Committee of the Republic of Azerbaijan and the Department of International Cooperation acting in its structure. Other government bodies of the Republic of Azerbaijan are also actively involved in this activity. International cooperation on customs issues between the Republic of Azerbaijan and Ukraine has a long history and is carried out at several levels. At the universal and regional levels, it manifests itself in interaction within the framework of the activities of the WCO, GUAM, during the work of multilateral international conferences, as well as within the framework of multilateral international customs treaties. At the particular level – within the framework of bilateral international customs agreements and direct operational interaction.

Further research of the theoretical and applied aspects of international cooperation on customs issues in the Azerbaijan Republic, in particular with Ukraine, is of great importance both for the development of the sciences of national customs and international customs law, and for the practical activities of both states in the international arena.

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# МІЖНАРОДНЕ СПІВРОБІТНИЦТВО АЗЕРБАЙДЖАНСЬКОЇ РЕСПУБЛІКИ З ПИТАНЬ МИТНОЇ СПРАВИ

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***Мета статті.*** *Міжнародне співробітництво з питань митної справи належить до найбільш пріоритетних напрямів міжнародного співробітництва держав. За його допомогою держави намагаються посилити як індивідуальні зусилля в актуальних для них напрямах здійснення митної справи, так і досягти необхідних результатів у подоланні проблем регіонального та універсального характеру. Мета статті полягає у розкритті засад міжнародного співробітництва Азербайджанської Республіки з питань митної справи. Досягнення окресленої мети зумовлює необхідність розв'язання таких завдань: проаналізувати нормативно-правові та організаційні засади міжнародного співробітництва з питань митної справи Азербайджанської Республіки; охарактеризувати засади міжнародного співробітництва з питань митної справи Азербайджанської Республіки та України.*

***Методи.*** *Досягнення мети дослідження зумовило потребу використання різних методів наукового пізнання, серед яких: діалектичний метод, історико-правовий метод; компаративний метод; системно-структурний метод; герменевтичний метод; метод аналізу; метод синтезу; метод узагальнення; метод прогнозування тощо.*

***Результати.*** *Нормативно-правові засади міжнародного співробітництва з питань митної справи Азербайджанської Республіки складають нормативно-правові акти його законодавства, зокрема Митний кодекс, а також численні багатосторонні та двосторонні міжнародні митні договори. Безпосереднє здійснення міжнародного співробітництва з питань митної справи забезпечує Державний митний комітет Азербайджанської Республіки та діюче у його структурі Управління міжнародного співробітництва. Активну участь у цій діяльності приймають й інші органи державної влади Азербайджанської Республіки. Міжнародне співробітництво з питань митної справи між Азербайджанською Республікою та Україною має тривалу історію та здійснюються на декількох рівнях. На універсальному та регіональному рівнях воно проявляється у взаємодії в рамках діяльності ВМО, Організації за демократію та економічний розвиток – ГУАМ, під час роботи багатосторонніх міжнародних конференцій, а також в рамках багатосторонніх міжнародних митних договорів. На партикулярному рівні – в рамках двосторонніх міжнародних митних договорів і безпосередньої оперативної взаємодії.*

***Висновки.*** *Висвітлене у статті дослідження є лише першим кроком у напрямі системного вивчення відносин міжнародного співробітництва з питань митної справи Азербайджанської Республіки. Тому подальше дослідження теоретичних і прикладних аспектів міжнародного співробітництва з питань митної справи Азербайджанської Республіки, зокрема з Україною, має вагоме значення як для розвитку наук національного митного та міжнародного митного права, так і для практичної діяльності обох держав на міжнародній арені.*

**Ключові слова:** міжнародне співробітництво, міжнародні митні конвенції, міжнародне митне право, митна справа, митне право.

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# COUNTERACTION TO SMUGGLING: TENDENCIES, PROBLEMS AND PROSPECTS

*International and Ukrainian anti-smuggling legislation is analyzed. The three main variants of such criminalization are most actively discussed: to criminalize illegal movement across the customs border of any goods committed in significant quantities, setting a minimum amount of such smuggling, above which criminal liability begins; to criminalize the illegal movement of only excisable goods (tobacco and alcohol products, fuel) with the establishment of minimum amounts, the excess of which begins with criminal liability; to criminalize the illegal movement of goods across the customs border, committed in large quantities, establishing criminal liability in the form of financial sanctions and other types of punishment without imprisonment. It is substantiated that the priority approaches and standards that should be introduced in Ukraine taking into account foreign concepts of customs control in order to combat smuggling of goods are the following: the transition from the fiscal focus of control and verification work to advisory work aimed at increasing the conscious level of compliance with the subjects of foreign economic activity of customs and tax legislation; - granting FEA participants (business entities) priority rights to correct inaccurate data in their declarations; - introduction of electronic information exchange systems (electronic copies of documents) between the supervisory authority and the taxpayer and development of such areas of inspections as electronic on-site audit - verification of these declarations based on electronic copies of documents provided by the transport taxpayer and other primary documents) international and Ukrainian legislation, smuggling trends and types of goods carried out in this way.*

*Purpose is analyzing international and Ukrainian law, tendencies of smuggling and types of goods, which are carried in such way. Spending research we used such methods like synthesis, analysis, induction, deduction.*

***Results.*** *The need to criminalize the smuggling of goods is justified in Ukraine.*

*Conclusions. In further research, we should examine the experience of individual countries, which will help to introduce something new in the fight against smuggling.*

**Key words:** smuggling, dynamic, laws, international agreements, goods.

**JEL Classification:** K13, K34.

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## 1. Introduction

Attempts to ban easy money by failing to pay customs duties and fees are attractive in trade and have encouraged the smuggling of goods. All goods and products that do not exist in Ukraine and cannot be banned can affect smuggling relations in our country.

## 2. Literature review

The daily work examines the latest statistics on smuggled goods (Corn, 2020; Lesyk, 2019) and general information on the functioning of customs (Mazur, 2005)The doctrine of international customs law

## 3. Legal support

The problem of smuggling is extremely relevant for the world community and, in particular, for Ukraine. However, the emphasis is different: for Ukraine, smuggling means the loss of state budget revenues, violations of the law, the development of the shadow economy, and for European countries - the receipt of low-quality and untested goods on the domestic European market, which violates consumer rights and undermines confidence in producers and the state.

Since 2011, in legal terms, the concept of "smuggling" in Ukraine is not related to general trade flows, because according to the Criminal Code of Ukraine, the objects of "smuggling" are exclusively cultural

property, poisonous, potent, explosives, radioactive materials, weapons or ammunition ( in addition to smooth-bore hunting weapons or ammunition), parts of firearms, as well as special technical means of covert information (Article 201 of the Criminal Code) and narcotic drugs, psychotropic substances, their analogues or precursors or counterfeit drugs (Article 305 of the Criminal Code) ).

At the same time, despite the legislative aspect, smuggling in this work will be understood as operations to illegally minimize the tax burden on imports of goods. The President paid special attention to the fight against smuggling, as only Ukraine's legal foreign trade turnover in 2018 amounted to $ 104.5 billion, which is equivalent to 80% of Ukraine's GDP, while shadow imports traditionally range from 10% of GDP (Kukuruz, 2020).

Ukraine, as an independent subject of international law, even before the collapse of the Soviet Union, the provisions of certain multilateral international treaties were applied. For example, the Customs Convention on the International Carriage of Goods under Cover of a TIR Carnet entered into force for Ukraine on December 8, 1982, and the obligation to comply with its provisions was subsequently ratified by the Verkhovna Rada of Ukraine in 1994.

Ukraine's accession to multilateral international agreements in the field of customs has significantly intensified with the accession to WMO, the intensification of Ukraine's accession to the WTO and the strengthening of the European integration direction of Ukraine's foreign policy. In particular, Ukraine has acceded to the Convention on Temporary Admission and all its Annexes. The Verkhovna Rada of Ukraine adopted the Law of March 24, 2004 № 1661-IV "On Ukraine's Accession to the Convention on Temporary Admission".

According to the decrees of the President of Ukraine, the accession to:

– Nairobi WMO Convention;

– International Convention on the Harmonized Commodity Description and Coding System3. In Ukraine, the Ukrainian Classification of Goods for Foreign Economic Activity (UKTZED), based on the Harmonized Commodity Description and Coding System, has been introduced to implement the objectives of tariff regulation, measures to regulate foreign economic activity, conduct foreign trade statistics and customs clearance of goods;

– Convention on the Harmonization of Frontier Controls of Goods (entered into force for Ukraine on December 12, 2003) (Mazur, 2005).

In order to establish stable political relations, consolidate and expand ties between Ukraine and the European Union, the Partnership and Cooperation Agreement between Ukraine and the European Communities (PCA) was signed on 16 June 1994. on customs issues, including the approximation of customs legislation. The article states that the purpose of cooperation is to ensure compliance with all provisions and, as a result: the convergence of the Ukrainian customs system with the customs system of the Community.

Cooperation, in particular, includes:

– information exchange;

– improvement of working methods;

– introduction of a unified nomenclature and a single administrative document;

– the relationship between the transit systems of the Community and Ukraine;

– simplification of inspections and formalities related to the transportation of goods;

– support for the introduction of modern customs information systems;

– organization of seminars and training cycles.

The Protocol consists of 15 articles, which enshrine the provisions on mutual administrative assistance in resolving customs issues and oblige them to assist each other in various ways in order to prevent, detect and investigate violations of customs legislation. Such violations include, in particular, trade in counterfeit goods and services, drugs and psychotropic substances, etc. (Mazur, 2005). Ukraine's cooperation with the EU in the context of combating smuggling continues to this day.

One of the leading functions of the state is to ensure the protection of the rights and legitimate interests of citizens, individuals and legal entities from unlawful encroachments, ensuring the principle of legality, as well as the protection of law and order established in the state. Each of these tasks is performed with the help of law enforcement activities, which are implemented by the relevant state bodies.

A special place among the tasks of law enforcement is the protection of human rights and freedoms, life, health, honor, dignity, inviolability and security.

**4. Empirical results**

**The impact of the pandemic on the volume of smuggling and current trends**

The Security Service has exposed another channel of illegal shipment of wholesale consignments of tobacco products to Ukraine. The smugglers were found to have more than 750,000 packs of foreign cigarettes worth almost 10 million hryvnias. The goods were exported from the south of Europe and had to be delivered to one of the Central Asian countries according to the declared route.

In addition to cigarettes, the most risky product groups are: machinery and electronics 21.4%, chemical products 14.3%, transport 10.6%, textiles and clothing 9.8%, and the agricultural sector – an average of 5% for each subsector: products of animal origin, crop products and food (Fig. 1).

The coronavirus pandemic and quarantine restrictions have affected more than just the legal sector of the economy. The temporary closure of borders, the general decline in migration flows and the decline in economic activity could not help but affect smuggling.

Due to periodic restrictions on entry and exit from Ukraine, attempts to smuggle goods across the border have been expected to decrease, especially with regard to official checkpoints. But after the restrictions on movement were lifted, the activities of smugglers quickly returned to normal.

At the same time, the longer-term effect of quarantine restrictions - the economic downturn and rising poverty - on the contrary, stimulated smuggling and counterfeiting.

According to a World Bank report, the annual budget losses from smuggling, counterfeiting and other illegal transactions in the cigarette market are about 40–50 billion US dollars.

It should be remembered that we are talking only about the official figures. How many times the smugglers managed to deceive or corrupt the border guards – of course, we can only guess.

According to the head of the State Fiscal Service of Ukraine Vadym Melnyk, starting from January 2021, fiscal officers seized 443 tons of alcoholic beverages worth UAH 108.8 million and more than 13 million packs of tobacco products worth almost UAH 450 million.

One of the most high-profile cases of cigarette smuggling last year was an attempt to import 16 tons of cigarettes through the port of Odessa, worth about UAH 20 million. In general, border guards say smuggling by sea accounts for almost two-thirds of all illegal cigarette shipments. The second largest destination is Belarus – about 16%.

However, very notable episodes of cigarette smuggling were recorded last year.

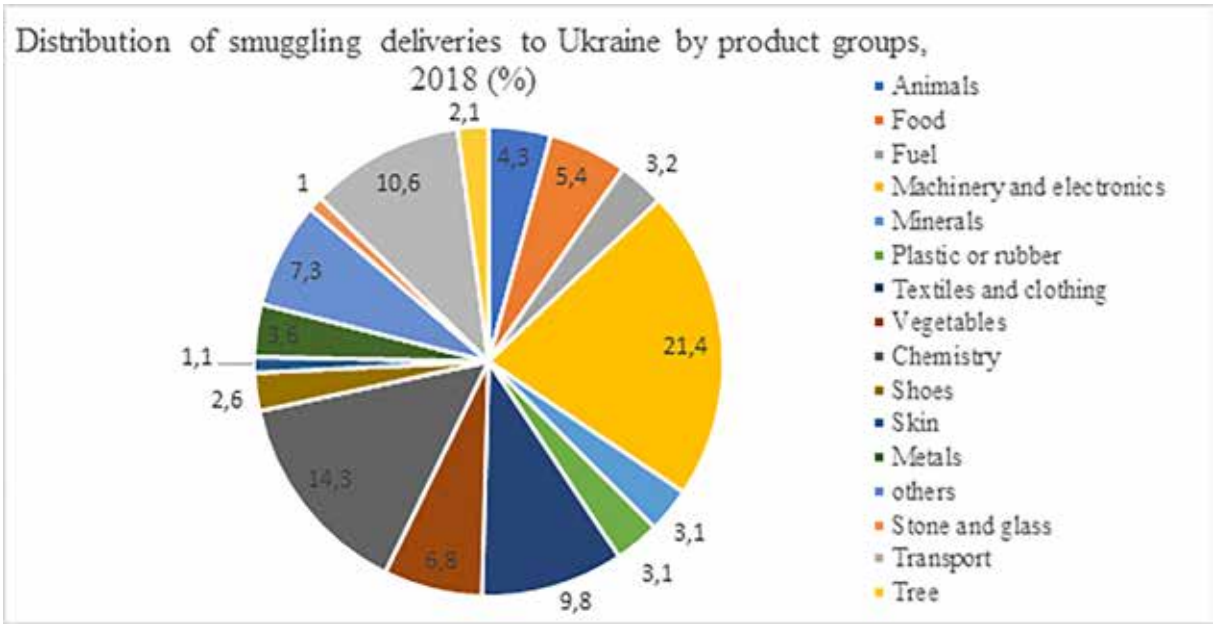


**Fig. 1. Distribution of smuggled supplies to Ukraine by product groups, %**

*[http://ua-outlook.com.ua/wp-content/uploads/2019/07/%D0%90%D0%BD%D0%B0%D0%BB%D1%96%D0%B7-%D0%BE%D0%B1%D1%81%D1%8F%D0%B3%D1%96%D0%B2-%D0%BA%D0%BE%D0%BD%D1%82%D1%80%D0%B0%D0%B1%D0%B0%D0%BD%.pdf]*

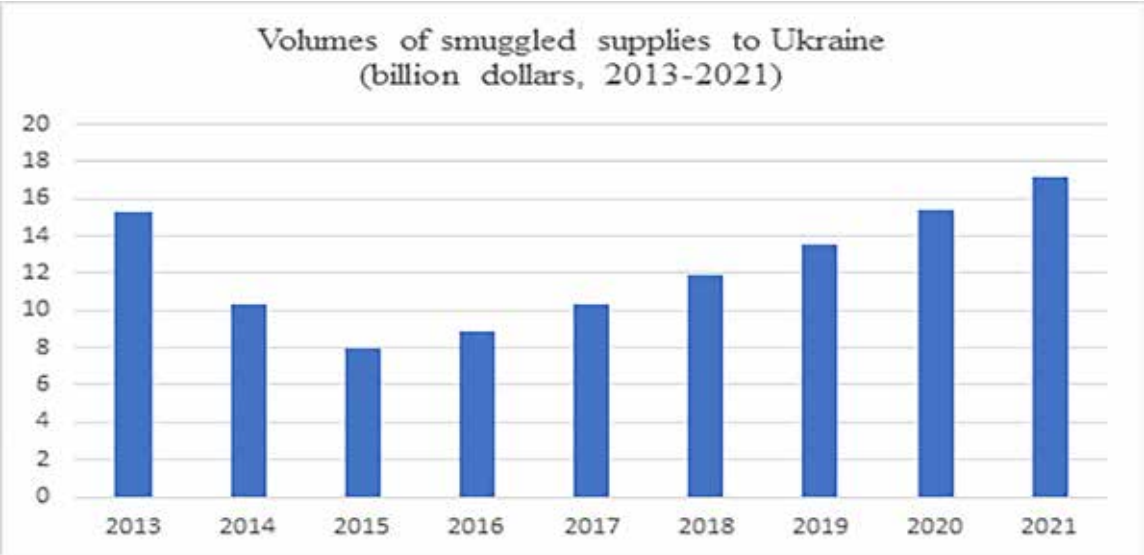


**Fig. 2. Volumes of smuggled supplies to Ukraine**

*[http://ua-outlook.com.ua/wp-content/uploads/2019/07/%D0%90%D0%BD%D0%B0%D0%BB%D1%96%D0%B7-%D0%BE%D0%B1%D1%81%D1%8F%D0%B3%D1%96%D0%B2.pdf]*

According to forecasts, based on the built regression "Ukraine's imports – GDP" and "smuggled supplies – GDP", the volume of smuggled supplies to Ukraine in 2018–2021 will continue to grow (Fig. 2).

Last year, detectives detained a smuggler pilot who repeatedly violated the border with Romania (dpsu.gov.ua).

The main flow of smuggled cigarettes goes to Ukraine from Belarus, the Transnistrian region and the uncontrolled territories of Donbass.

As part of the work aimed at implementing the WMO Framework Standards, the SFS of Ukraine is taking measures to automate information customs technologies and implement an electronic declaration

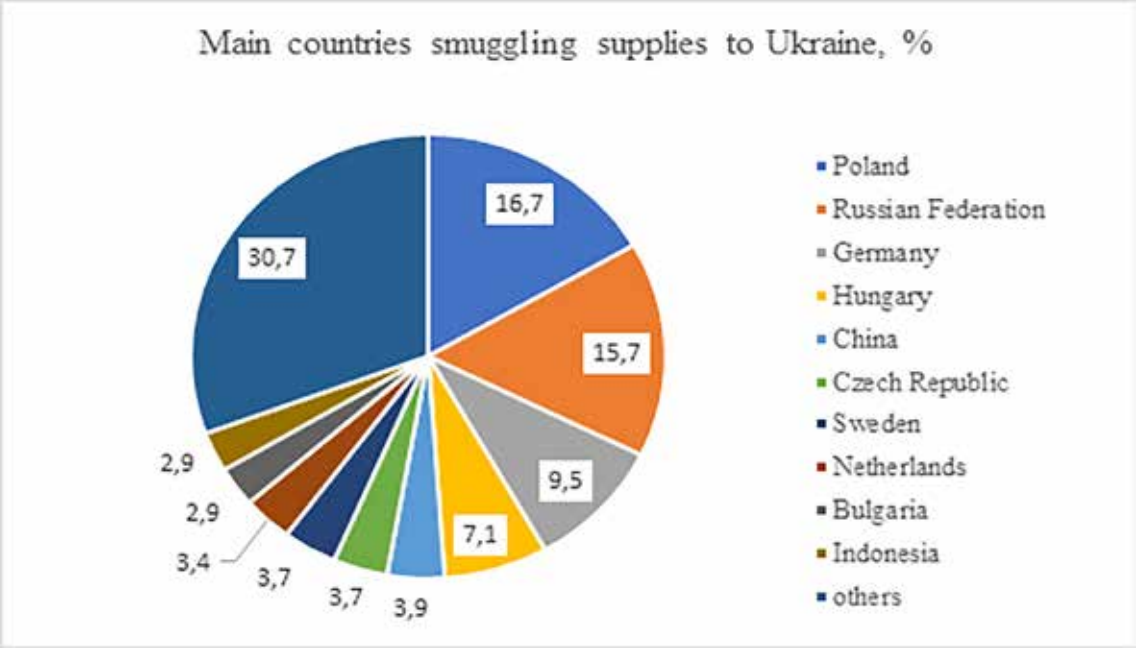


**Fig. 3. The main countries-sources of smuggled supplies to Ukraine,%**

*[http://ua-outlook.com.ua/wp-content/uploads/2019/07/%D0%90%D0%BD%D0%B0%D0%BB%D1%96%D0%B7-%D0%BE%D0%B1%D1%81%D1%8F%D0%B3%D1%96%D0%B2-%D0%BA%D0%BE%D0%BD%D1%82%D1%80%D0%B0%D0%B1%D0%B0%-D0%BD%D0%B4%D0%B8-%E2%80%94.pdf]*

system. In addition, preparations are underway for the introduction of an integrated control system based on interagency cooperation at border crossings and work is underway to create a single interagency automated system for collecting, storing and processing information needed to control foreign trade (Lesyk, 2019).

The largest violations in trade are observed with Ukraine's "neighbors" on the land border and the largest trade and economic partners in foreign relations: Poland (16.7%), the Russian Federation (15.7%), Germany (9.5%), Hungary (7.1%) and China (3.9%).

It is important to note that the estimate of the share of China in smuggling flows is somewhat underestimated compared to the actual, due to the above-mentioned "black" supplies. Thus, the level of the shadow economy in China averages 12.1%, which is equivalent to $ 1.5 trillion; a significant share of exports is shipped in the shadow mode and is not reflected in China's trade statistics.

**5. Promising opportunities to solve the problem of smuggling in Ukraine**

November 15, 2021 will mark ten years since the smuggling of goods was decriminalized in Ukraine. This means that instead of criminal punishment for such a crime comes administrative liability.

Talks about various options for criminalizing acts of illegal movement of goods across the border continue to this day. In fact, the choice concerns the following important issues: criminalize smuggling or increase administrative liability, if criminalized – for all goods or only for certain categories, for all volumes or only for significant volumes (ie, set a minimum threshold), with which sanctions – imprisonment or criminal responsibility, but without imprisonment.

The three main options for such criminalization are most actively discussed:

1. To criminalize the illegal movement across the customs border of any goods committed in significant quantities, establishing a minimum amount of such smuggling, in excess of which criminal liability begins.

2. To criminalize the illegal movement of only excisable goods (tobacco and alcohol products, fuel) with the establishment of minimum volumes, in excess of which criminal liability begins.

3. Criminalize the illegal movement of goods across the customs border, committed in large quantities, establishing criminal liability in the form of financial sanctions and other types of punishment without imprisonment.

In all these cases, the arguments for the need to criminalize commodity smuggling include examples of Poland and Germany, which provide for penalties for smuggling in the form of fines or imprisonment, depending on the volume of such smuggling (Lesyk, 2019).

In addition to the above criminalization, the priority approaches and standards that should be implemented in Ukraine, taking into account foreign concepts of customs control in order to combat smuggling of goods are the following:

– transition from the fiscal orientation of control and verification work to advisory work aimed at increasing the conscious level of compliance with the subjects of foreign economic activity of customs and tax legislation;

– granting FEA participants (business entities) priority rights to correct inaccurate data in their declarations;

– introduction of electronic information exchange systems (electronic copies of documents) between the supervisory authority and the taxpayer and the development of such areas of inspections as on-site electronic audit – verification of these declarations based on electronic copies of documents provided by the taxpayer transport and other primary documents) (Kukuruz, 2020).

Thus, in order to minimize smuggling and effectively facilitate trade in the current environment, customs authorities should take measures to increase the efficiency and effectiveness of control and verification work. Risk management and customs post-audit – proven tools to revive trade, increase compliance with customs legislation.

Combined with international standards and best practices, customs post-audit makes it possible to do what WTO experts describe as a "philosophical and operational transition" from 100% customs inspections to risk-based inspections (Mazur, 2005).

Results. The necessity of criminalization of smuggling is substantiated in Ukraine.

Conclusions. In further researches we should study experience of specific countries, which will help to implement something new in fighting with smuggling.

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**ПРОТИДІЯ КОНТРАБАНДІ:**
**ТЕНДЕНЦІЇ, ПРОБЛЕМИ І ПЕРСПЕКТИВИ**


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*Проаналізовано міжнародне та українське законодавство щодо боротьби з контрабандою. Найактивніше обговорюються три основні варіанти такої криміналізації: криміналізувати незаконне переміщення через митний кордон будь -яких товарів, вчинених у значних кількостях, встановивши мінімальну кількість такої контрабанди, вище якої починається кримінальна відповідальність; криміналізувати незаконне переміщення лише підакцизних товарів (тютюнові та алкогольні вироби, паливо) із встановленням мінімальних сум, перевищення яких починається з кримінальної відповідальності; криміналізувати незаконне переміщення товарів через митний кордон, вчинене у великій кількості, встановлення кримінальної відповідальності у вигляді фінансових санкцій та інших видів покарання без позбавлення волі. Обґрунтовано, що пріоритетними підходами та стандартами, які слід запровадити в Україні з урахуванням зарубіжних концепцій митного контролю з метою боротьби з контрабандою товарів, є такі: перехід від фіскального фокусу контрольно перевірочної роботи до консультативної роботи, спрямованої на підвищення свідомого рівня дотримання суб'єктами зовнішньоекономічної діяльності митного та податкового законодавства; надання учасникам ЗЕД (суб'єктам господарювання) пріоритетних прав на виправлення недостовірних даних у своїх деклараціях; впровадження електронних систем обміну інформацією (електронних копій документів) між контролюючим органом та платником податків та розвиток таких напрямків перевірок, як електронний виїзний аудит – перевірка цих декларацій на основі електронних копій документів, наданих платником транспортного податку та інші первинні документи) міжнародне та українське законодавство, тенденції контрабанди та види товарів, що здійснюються таким чином.*

***Мета** – проаналізувати міжнародне та українське законодавство, тенденції контрабанди та види товарів, які здійснюються таким чином. Витрачаючи дослідження, ми використовували такі методи, як синтез, аналіз, індукція, дедукція.*

***Результати.** Необхідність криміналізації контрабанди товарів виправдана в Україні.*

***Висновки**. У подальших дослідженнях нам слід вивчити досвід окремих країн, який допоможе внести щось нове у боротьбу з контрабандою.*



**Ключові слова**: контрабанда, динаміка, закони, міжнародні договори, товари.

## NOTES

# Для опублікування статті

у науковому журналі «Customs Scientific Journal» необхідно заповнити довідку про автора за посиланням на сайті та надіслати електронною поштою на адресу editor@csj.umsf.in.ua такий пакет документів:

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– копія квитанції про оплату вартості публікації (оплата здійснюється виключно після прийняття редакцією наукової статті до друку).

Мова публікацій: **англійська**.

## Вимоги до оформлення наукової статті:

Обсяг – 12-20 сторінок тексту, формат паперу – А4, поля з усіх сторін – 20 мм, міжрядковий інтервал – 1,5, кегль шрифту – 14, гарнітура – Times New Roman, абзац – 1 см (лише для основного тексту статті).

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5. *Анотація та ключові слова*.

Обсяг анотації: мінімум – 300 слів, максимум – 350 слів. Обов'язковою є така структура анотації: Мета, Методи, Результати та Висновки. До анотації обов'язково додають 5–10 ключових слів чи словосполучень, жодне з яких не дублює назву статті.

6. *Класифікація* **JEL** для ключових слів.
7. *Текст статті*:

Вступ (Introduction) є обов'язковою частиною роботи, в якій автор вказує новизну теми та актуальність наукових рішень. Мета дослідження повинна бути чітко вказана поряд з науково-дослідницькими завданнями. Необхідно вказати методологію дослідження, логіку уявлення дослідженого матеріалу.

Основний текст повинен бути поділеним на змістовні розділи з окремими заголовками (до 4–6 слів).

Стаття повинна містити висновки з проведеного дослідження (Conclusions), в яких представлені розгорнуті конкретні висновки за результатами дослідження і перспективи подальших досліджень у цьому напрямку.

8. *References.* Оформлюється відповідно до стандарту APA (APA Style Reference Citations). Автор (трансліт), назва статті (трансліт), назва статті (в квадратних дужках переклад англійською мовою), назва джерела (трансліт), вихідні дані (місто з позначенням англійською мовою), видавництво (трансліт). Наприклад:

Dikhtiievskyi, P. V., Lahniuk, O. M. (2015). Kadrove zabezpechennia sudiv zahalnoi yurysdyktsii: administratyvno-pravovyi aspekt [Staff assistance of of courts of general jurisdiction: administrative and legal aspect]. Kherson: Helvetyka. [in Ukrainian]

Bondarenko, I. (2002). Sudova systema Ukrainy ta yii reformuvannia v suchasnykh umovakh [Judicial system of Ukraine and its reforming in the modern conditions]. Pravo Ukrainy, no. 8, pp. 37–39.

Транслітерація імен та прізвищ з української мови здійснюється відповідно до вимог Постанови Кабінету Міністрів України «Про впорядкування транслітерації українського алфавіту латиницею» від 27 січня 2010 р. № 55.

Транслітерація з російської мови здійснюється відповідно до ГОСТ 7.79-2000. Система стандартов по информации, библиотечному и издательскому делу. Правила транслитерации кирилловского письма латинским алфавитом.

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– посада, місце роботи/навчання, науковий ступінь, вчене звання (за наявністю), електронна адреса;

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Обсяг анотації українською мовою: мінімум – 300 слів, максимум – 350 слів. Обов'язковою є така структура анотації: Purpose, Methods, Results, Conclusions. До анотації обов'язково додають 5–10 ключових слів чи словосполучень, жодне з яких не дублює назву статті.

## Правила оформлення посилання на літературу та бібліографічного опису:

Посилання на літературу подаються у тексті тільки в круглих дужках відповідно до прикладу:

Many researchers have considered the issues of theory and implementation of international customs law's standards in their publications, thus the analysis of existing developments in the sphere of scientific research indicates the diversity of views upon their understanding. The generalization of published scientific papers allows us to combine the existing diversity of views in understanding the standards of international customs law within the framework of two approaches: scientific and practical (Baimuratov, 2006).

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