



## SAFEGUARDS AGAINST VIOLATIONS OF CUSTOMS RULES IN THE MODERN CONDITIONS OF THE FORMATION OF THE FISCAL SPACE OF UKRAINE

Halyna Vasylevska, Iryna Novosad

### Abstract

A reliable protection of the vital interests of Ukraine depends on the development of a scientifically sound concept of customs security and a mechanism for its implementation, enacting legislation in the field of customs and coordinating the activities of state administration bodies in practice, in order to prevent, detect and eliminate actual and potential internal and external threats. The priority direction for Ukraine is the protection of economic interests by means of security of customs in general.

The paper discusses the forms in which violations of customs rules occur and their social impact is considered. The measures are analyzed to identify and stamp out violations of customs rules. The main directions of efforts to ensure customs security have been outlined.

**Keywords:** customs security, violation of customs rule, fiscal space

**JEL classification:** E62

### Introduction

One of the prerequisites for a sovereign state operating under the rule of law in the face of an emerging fiscal space and the need for appropriate reforms is, first of all, to safeguard citizens' rights and freedoms, ensure security in all spheres of foreign and domestic policy, prevent violations as well as identify and eliminate their root causes. At the same time, the instability of Ukraine's socio-economic development and the ineffective combat against the consequences of a crisis, coupled with Russia's calls for military aggression, increase the need to tighten certain security measures in all spheres of the functioning of Ukrainian society. The

key area of concern in this context is, undoubtedly, customs security, which is one of the main components of fiscal space.

Customs security is the main task of the customs authorities in every state. It is their responsibility to ensure the efficient inflow of customs revenues to the state budget, assist in the development of and support domestic manufacturers, prevent the import of prohibited and dangerous products, and guarantee compliance with the applicable legislation.

Significant contributions to the study of this topic have been made by leading scholars: theorists and practitioners, in particular I. Berezhnyuk, M. Guba, A. Krisovaty, V. Martynyuk, K. Novikov, P. Pashko.

The purpose of the article is to present the state of customs security in the area of counteracting the violation of customs rules, as well as to identify the problematic aspects and main directions of reform in Ukraine.

## **1. Key issues in the functioning of customs authorities in the context of ensuring the customs security of the state**

A reliable protection of Ukraine's national interests depends on the creation of a scientifically sound concept of customs security, as well as effective mechanisms for its implementation, the enactment of legislation in the field of customs and the practical coordination of the activities of state administration bodies in order to prevent, detect and eliminate the existing and potential internal and external threats. The priority direction for Ukraine is to protect its economic interests through ensuring customs security in general.

The development of a market economy contributes to the formation and efficient functioning of a wide range of state institutions that operate to apply organizational and economic mechanisms for the protection of their strategic national priorities. The main institution for ensuring economic stability and national state interests, especially on the international level, is the customs authorities. In their activities, customs authorities are selective in customs checks and usually limit themselves to the procedural minimum necessary for compliance with the provisions of customs legislation (Krysovaty, 2015, p. 50).

The success of the customs authorities in terms of ensuring economic security is measured by a combination of a number of factors, among which the dominant one is effective management. At the same time, management decisions usually cannot be implemented competently and consistently without gauging the effectiveness of customs authorities, as this allows determining whether the chosen actions and directions of their work are correct, as well as enables an objective evaluation of their performance.

In the context of deepening and accelerating the European integration processes, the problem of preventing and detecting customs offenses becomes particularly relevant (Dodin, 2009, p. 76). It is precisely the violation of customs rules that adversely affects the economic interests of our state and, consequently, the living standards of the population.

The geographical location of Ukraine at the intersection of trade routes running north to south and east to west makes it attractive not only for foreign partners, but also for the so-called supporters of illegal business. Business entities and individuals moving goods and vehicles across the state border must adhere to the established order of movement across the customs border of Ukraine. However, cases of violations have been noted, with smugglers moving goods and other items across the state border in defiance of tax and other charges imposed by the state in an effort for unjust enrichment. Therefore, the main task of the customs authorities is to counteract customs offenses and fight against smuggling.

The customs authorities of Ukraine have been entrusted with establishing controls over compliance with transit procedures for goods and vehicles travelling across Ukraine's customs border; they also conduct customs clearance, ensure that correct tariff rates are charged for the

goods and enforce other non-tariff measures. Still, there still remains the problem of illegal goods and other objects moving across the customs border despite laws prohibiting this.

Violations of customs rules constitute a special type of illegal activity carried out in the conduct of foreign trade operations. Solving the problem requires a concerted effort of state customs authorities in the interested countries, utilizing the means at their disposal more efficiently. (Dodin, 2009, p. 76).

Counteraction programs introduced by the Government of Ukraine over the past years include the establishment of a system for the prevention and detection of relevant crimes, in particular the implementation of radical measures, not only on effective combat against smuggling and customs violations directly at the border, but also creating conditions that will prevent the transportation, storage and sale of illegally imported goods on the domestic market of Ukraine. To this end, it is proposed to combine the efforts of law enforcement, control and customs authorities within the framework of their powers and competencies to address the general task of protecting the economic interests of Ukraine.

The foreign economic activity of business entities is one of the areas which, as a rule, is characterized by a large number of violations that cause damage to the national economy of any country. That is why the main tasks that must stabilize customs security include a set of measures aimed at detecting violations of customs rules and smuggling of goods. Customs authorities, when carrying out customs control and customs clearance procedures, detect cases of illegal movement of goods and services through the customs border of Ukraine.

The need to control goods transported across the customs border of Ukraine is due to the economic and financial consequences of trafficking in smuggled and counterfeit products (Kivalov, 2002, p. 11). These consequences include reduced tax revenues from international trade and international transactions, lower customs revenues to the state budget, cramped development of legal production, inhibition of manufacturing processes contributing to production output and disadvantages to other factors supporting the development of the domestic economy.

## **2. Contemporary obstacles to counteracting the violation of customs rules**

Today, the main task set by the State Fiscal Service of Ukraine is, above all, to protect the economic interests of the state, which can be achieved by using specific methods of regulation of foreign economic activity.

The main economic measure in the fight against violations of customs legislation is the optimization of tax legislation both in the direction of taxation on imported goods (import duty, VAT and excise taxes on imports), and setting up taxation rules favourable to domestic businesses (corporate income tax, other taxes), as well as simplification of customs control procedures, since the effectiveness of customs authorities in putting a stop to customs offenses depends on the proper organization of customs control, whose purpose is to ensure the implementation of the procedure and rules for the movement by state agencies, enterprises and their officials of vehicles, goods and other objects through the customs border of Ukraine and protect the economic interests of the state.

An important way of solving the problem of the spread of violations of customs rules is to optimize the administration of collecting import duties, excise taxes, value added tax, taking into account the provision of the necessary level of protection of the domestic market (Krysovaty, 2015, p. 52; Novosad, 2012, p. 143):

- unification of import duty rates for identical and similar goods in order to avoid excessive detail and prevent abuse;
- creation of management procedures to provide equal treatment for importers moving goods into the customs territory of Ukraine.

The main role of customs administration is, at the macro-level, to collect payments in fulfilment of the tax policy, i.e. to ensure that customs obligations are met and resolve any organizational issues related to the efficient operation of customs authorities. In general, customs administration is responsible for designating authorities competent with respect to customs relations, laying down the rights and obligations of entities engaged in economic activity, delimiting the powers of customs authorities, managing customs control and customs clearance of goods as well as procedures for challenging the decisions of customs authorities (Novosad, 2012, p. 143). The introduction of customs duties itself supplies the incentive for the socially detrimental practice of smuggling goods and violating customs rules. This is due to the fact that traders in goods and vehicles wish to minimize their financial costs and maximize profits. Such activities are related to risks, both from the business entities and customs authorities.

In 2006, customs authorities as part of their efforts to detect and stop smuggling reported 24,178 cases of violation of customs rules (Table 1). However, this figure in 2016 amounted to 19,153 cases of violation of customs rules.

**Table 1.** Indicators in cases of violation of customs rules in 2006-2016

Years	Indexes	
	Number of completed protocols on violation of customs rules, units	Cost of violations in mln. UAH.
2006	24178	1378.2
2007	21918	1119.8
2008	25004	6089.32
2009	22005	14626.76
2010	22005	19486.97
2011	28353	2223.13
2012	23386	2000.0
2013	23299	796.3
2014	15108	704,0
2015	17808	1787,19
2016	19153	1957,12

Source: Written by the authors (*Implementation by the State...; Conclusions on the implementation...*, 2009; *Conclusions on the implementation...*, 2011; *Report on the results...2009; Report on the results...2010; Report on the results...2011; Main results of the activity...; Main results of the activities...*; <http://sfs.gov.ua>; <http://www.minfin.gov.ua>; <http://treasury.gov.ua/main/uk/index>.)

The largest number of reported cases is related to failure to declare goods and vehicles for commercial purposes, and bank transfers or actions undertaken to move concealed goods across the customs border of Ukraine. So, in 2012, the number of cases of violations of customs rules regarding non-declarations was 7908 units for the amount of 136.1 million UAH and concerning the movement of goods concealed from customs control – 4896, amounting to 642.8 million UAH; in 2016 - 8225 units for the amount of 374.2 million UAH and 6541 units for the amount of 971.5 million UAH, respectively. Violations of the procedure for passing customs control in the zones (corridors) of simplified customs control increased from 1849 in 2006 to 4326 in 2016, totaling 25.5 million UAH, which represents an increase to 70.1 million UAH

The difference between the terms: ‘violation of customs rules’ and ‘smuggling of goods’ is related not only to the responsibility of perpetrating individuals, but also in the cause of violation the established order of movement if – in case of violation of the customs rules – the violation is caused by goods moving through the customs border in violation of the procedure of customs control and customs clearance, or transactions on goods under customs control. At the same time, smuggling is a dangerous practice, which involves the illegal movement of prohibited goods through the customs border and adversely affects economic processes and social protection of the population. The smuggling of goods and the violation of customs rules are common features – it is illegal movement and violation of established customs rules and formalities.

In the case of illegal transportation through the customs border of Ukraine of goods and objects, the procedure for state regulation of foreign economic activity is violated: smuggling causes direct economic losses to the state related to non-payment of duties, other taxes and duties both during the crossing of the customs border of Ukraine and in connection with the sale of smuggled goods in the territory of Ukraine.

The specific forms of smuggling and their social detriments are as follows:

- due to the non-receipt of income from customs payments, the state monopoly of foreign trade is undermined, the revenue to the state budget is diminished;
- large-scale direct economic damage to the state, weakening its international position and status;
- smugglers gain opportunities for unjust enrichment running to hundreds of thousands or even millions of hryvnias;
- smuggling is one of the most dangerous ways of obtaining criminal proceeds, which essentially undermines and distorts the processes of the normal operation of distributive social relations;
- in connection with the smuggling of weapons and ammunition into the country there is a serious threat to the public safety of our citizens;
- a threat to the national security of Ukraine and the security of other countries in case of illegal export (import) of weapons of mass destruction, materials or technologies used for their manufacture;
- outbound smuggling of foreign currency and valuables in the form of gold, silver, platinum and natural jewels undermines the currency and gold reserves of Ukraine;
- it weakens the economy of Ukraine, strengthens criminal groups and mafia structures;
- serious damage to the state economy is caused by smuggling waste products, illiquid, vtor raw materials of defective non-ferrous metals and their alloys (copper, brass, aluminum, alloyed grades of metal rolled, including rare mined resources);
- the social danger of smuggling also manifests itself in the fact that it is the main channel for the foreign export of national heritage items, unique works of art of immense social, historical and cultural importance;
- an increased social danger, especially for the young generation, is in the smuggling of drugs;
- far-reaching side effects of smuggling in the form of triggering other criminal activity such as bribery, theft, abuse of authority, forgery, drug use, etc.;
- the international nature of smuggling as one of the main forms of criminal activity of organized crime.

Smuggling is aimed against the established procedure for the movement of relevant goods and items across the customs border of Ukraine. Other regulatory mechanisms which smuggling is designed to bypass, include: the established procedure for the circulation of objects of the permit system; the procedure for paying taxes; fees and other mandatory payments; public safety, public health.

There is a distinction between forms of smuggling: traditional and commodity. The traditional one involves weapons, drugs, antiques, and the like. Commodity smuggling is the impor-

tation of any goods without proper payment of customs duties or with a significant reduction in their value (Lysenko, 2013, p. 126).

Commodity smuggling will disappear with the strengthening of the Ukrainian economy, when the cost of production located in Ukraine is lower than in other countries (*Framework standards for security...*). The study of the groups of goods imported into Ukraine, their quantities, the ways of delivery allows precisely to identify enterprises that use various illicit schemes in order not to pay the corresponding funds to the budget, and to fight smuggling not only at the stage of crossing the smuggled goods across the border, but also at the stage when the possibility of illegal import-export appears.

According to the analytical references of Ukraine's foreign trade research, using the "mirror statistics" method, both in the export and import sectors of Ukraine, there are significant statistical differences that cause serious suspicion regarding the existence of various schemes of "harmful" national economy for the international movement of goods ([http://sfs.gov.ua.](http://sfs.gov.ua;); *Framework standards for security...*). Such schemes negatively affect both the Ukrainian economy and its image. First, the manipulation of the customs value of goods, as a rule, is aimed at minimizing tax liabilities, or tax evasion - the short-term effect of such manipulation is to reduce revenues to the state budget and social insurance funds in the current budget period. Secondly, illegal imports, which enter Ukraine without the relevant taxes being paid at the customs border, poses a serious threat to the domestic industry, which it would be difficult to describe as highly developed. On the other hand, the manipulation of the value of exports leads to aggravation of problems with VAT refunds (in case of excessive export value) or outflow of domestic companies' profits abroad and losses of their activity in Ukraine.

The need for further improvement of the fiscal service as an institution for the provision of customs security is dictated by high requirements for the quality and effectiveness of the activities of the customs authorities and the need for its compliance with international practice in the implementation of international trade. The importance of improving the work of this structure is also due to the intentions of associate membership in the EU and the establishment of a free trade area.

Ukraine is a member of the World Trade Organization, so its territory is open to international trade operations. At the same time, despite all the positive factors such as the expansion of commodity exchange markets, the improvement of the quality of domestic products, etc., this fact may be the cause of negative effects, for example, failure to receive customs duties in that amount. Moreover, due to violations of customs rules; smuggling rings thrive preventing domestic manufacturers from developing their operations. In such conditions, it is expedient to increase the effectiveness of customs policy on external threats, prevent possible consequences of these threats, protect the economic interests of the country, harmonize the regulation of international rules and requirements.

Most countries of the world focus on the administrative and regulatory aspects of their customs operations related to imported goods. It is precisely these goods subject to taxation, in addition, they are subject to tariff and non-tariff regulation to protect the interests of consumers and national producers. In addition, the amount of additional data that is usually added when the import declaration is made, the countries have a much larger number of documents when they export goods (Dodin, 2009, p. 82). In order to improve the work on obtaining import duties, the commodity classifications used in the customs clearance of goods are constantly supplemented, adjusted and expanded by the breakdown of a specific product code. From this point of view, the deviation from data on import of goods should be positive.

Due to the phenomenon of smuggling, the flow of funds is reduced, thus creating threats and threats to the financial and economic security of the state. According to expert groups, smuggling is associated with the financial and credit system of the state, with different levels of profitability of certain areas of production, with investments and entrepreneurship. Contraband

import flows negatively affect the development of the state's economy, destabilize the state of the domestic market and are the main factors in committing corrupt actions by employees of various authorities, that is, smuggling is one of the most dangerous threats to the country's economic security nowadays.

It should be a state priority to fight against smuggling - a socially and economically dangerous and harmful phenomenon. This will allow the country to receive additional funds to fill the budget, bring the domestic commodity manufacturers up to speed with the international market, protect its competitiveness, reduce the level of corruption among various sectors of entrepreneurship, and so on. It is this provision that serves as the basis for providing foreign trade and customs components of economic security of the country.

There are facts of the export of goods, indicating in the documentation of deliberately incorrect information about their value. Also, very often the non-existing enterprises-buyers or sellers - manufacturers of the goods are noted. Such deals are mostly fictitious. Also, imports of goods from firms registered in offshore zones that may carry out unprofitable supplies of goods to Ukraine with a lower cost through customs warehouses are also common (<http://treasury.gov.ua/main/uk/index>, p. 60). The main reasons for the prevalence of smuggling and violations of customs rules in our country are the high rates of customs duties, low wages, difficult conditions for the development of the national commodity producer, a complicated tax mechanism, relatively high inflation, imperfect customs tax legislation, high corruption among officials, a significant amount of shadow foreign economic activity of domestic enterprises.

The volume of smuggled contraband varies annually according to changes in the current legislation. In general, getting rid of this phenomenon is completely impossible, but it can be prevented and take a number of preventive measures to minimize and prevent it. It is a pity on the violation of customs rules and smuggling that the budget of the country loses a lot of money, which increases its deficit. By locating problem phenomena, the state will be able to significantly improve the relevant indicators, increase revenues to the budget, support the national commodity producer, and also minimize the level of corruption, which in turn will promote modern European standards in this area.

To reduce the phenomenon of smuggling and violation of customs rules it is necessary:

- to open access of customs officials to databases of other bodies of power and enterprises - subjects of entrepreneurial activity;
- selectively check, according to certain guidelines, all documentation for goods passing through the “green” corridor;
- to increase the safety of international cargo movement and to create favorable conditions for participants of foreign economic activity;
- implement international standards and standards.

Notwithstanding all of the above factors, the facts show that Ukraine is dominated by the import of goods from abroad, that is, Ukrainian domestic markets constantly experience the pressure of Western commodity producers. Domestic commodity producers are in disadvantaged conditions, which poses a real threat to the economic security of the state.

## **Conclusions**

Customs security should be based on containing the flow of smuggled products and put in place sampling procedures to be carried out by mobile groups, on a comprehensive assessment of passengers for the identification of suspect persons, on the use of reconnaissance networks, on the basis of formal customs agreements with the business world, on the basis of bilateral and multilateral international joint actions within the framework of the World Customs Organization, on the basis of cooperation with various law enforcement agencies, coordination of actions

their customs services, on the basis of laws permitting confiscation of illegal financial accounts to prevent the money laundering of "dirty" money.

Thus, in order to ensure the foreign trade security of Ukraine, first of all, it is necessary to:

- reduce import dependence on strategic raw materials and fuel; define strategic directions of support of high-tech industries at the state level;
- to support traditional directions of specialization of Ukraine in the international division of labor;
- provide import of advanced technologies;
- develop domestic import-substitute production;
- develop economically grounded system of tariff regulation of foreign trade activity;
- ensure the fulfillment of the requirements of the anti-dumping code.

In order to improve the activities of customs authorities in the direction of prevention, detection and prevention of violation of customs rules, organizational and structural construction, forms and methods of activity of structural units of customs bodies that reveal customs violations should be improved, to complete the recruitment and training of personnel, as well as to carry out the proper legal regulation of their activities.

The current level of efficiency of counteracting the violation of customs rules is low. Therefore, the following priority directions of improvement of the activities of customs authorities in the prevention of violations of customs rules should be highlighted: rationalization of the control system for the prevention of offenses; differentiation and ensuring optimal correlation of the functions of the relevant units of the customs authorities for the prevention of offenses, increase coordination of their actions and interaction with other subjects of prevention; raising the professional level of officials of customs authorities who directly carry out the prevention of offenses, strengthening their discipline; improvement of the legal regulation of the activities of customs authorities involved in the prevention of violations of customs rules.

Summing up, it should be noted that the development of the economy is closely linked with the provision of foreign economic security of the country. Sustainable development involves preserving the values of significant internal changes of economic security within certain limits, despite the various external influences, while the existing system of indicators of foreign economic security requires the addition of customs indicators in order to qualitatively determine the current changes in the impact of external factors on the economic security of our state.

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## **ZABEZPIECZENIA PRZED NARUSZENIAMI PRZEPISÓW CELNYCH W WARUNKACH TWORZENIA SIĘ WSPÓŁCZESNEJ PRZESTRZENI FISKALNEJ NA UKRAINIE**

### **Streszczenie**

Warunkiem niezawodnej ochrony żywotnych interesów Ukrainy jest opracowanie rzetelnej naukowo koncepcji bezpieczeństwa celnego i mechanizmu jej realizacji, uchwalenie ustaw w dziedzinie celnictwa, jak również praktyczne uzgodnienie działań organów administracji państwowej w taki sposób, aby wykrywać i eliminować wyraźne, potencjalne zagrożenia wewnętrzne i zewnętrzne, jak też im zapobiegać. Priorytetem na Ukrainie jest ochrona interesów gospodarczych poprzez ogólne bezpieczeństwo celne. W pracy rozważone zostały formy, w jakich występują naruszenia przepisów celnych oraz określona została ich szkodliwość społeczna. Wykonana została analiza podejmowanych działań w celu identyfikacji i zwalczania naruszeń przepisów celnych. Określone zostały kierunki działań zmierzających do zapewnienia bezpieczeństwa celnego.

**Słowa kluczowe:** bezpieczeństwo celne, naruszenia przepisów celnych, przestrzeń fiskalna

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Halyna Vasylevska  
Candidate of Economic Sciences, Associate Professor  
Department of Taxes and Taxes Fiscal Policy  
Ternopil National Economic University  
st. Lvivska 11, Ternopil  
e-mail: kadilyak@ukr.net

Iryna Novosad, postgraduate  
Department of Taxes and Fiscal Policy  
Ternopil National Economic University  
st. Lvivska 11, Ternopil