

BEST PRACTICES

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**INTERNATIONAL TRADE PROMOTION IN UKRAINE
BY HARMONIZING CUSTOMS PROCEDURES**

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Abstract

Trends in international trade and the place of Ukraine in the global trade space have been considered on the basis of updated statistics. The modern issues of international trade in the context of Ukraine's economic development were determined.

In order to promote foreign economic activity, to deregulate, to accelerate and to simplify customs formalities the author suggests an approach to multi-objective optimization of customs procedures

Key words: international trade, Ukraine, issues, customs procedures, optimization, harmonization, efficiency.

Introduction

The agenda as for ensuring foreign economic security develops the whole range of priorities as well as makes it possible to study and analyze how the global processes develop in international trade and what they mean for Ukraine's economy and society. In addition, the recent trends in global trade processes require identifying all possible threats and revealing adverse patterns which can potentially affect Ukraine's economy.

In other words, it would be relevant to define important factors of international trade development which represent the connection between international trade and processes of ensuring economic security in Ukraine.

There are no doubts as for the topical issue concerning efficiency and effectiveness of customs procedures in the context of our country's interest in further facilitation processes in international trade, which leads the development of the national economy.

Moreover, customs procedures facilitation, their improvement and transfer to electronic document circulation represent one of the main vectors in reforming the State Customs Service of Ukraine.

It should be noted that a great attention has recently been paid to the case study as for increase in customs procedures efficiency. Among researches done by international scholars who monitor customs procedures in Ukraine we will mention the works performed by such organizations as the World Trade Organization, the World Bank, the United Nations, the World Economic Forum, the World Customs Organization, different authorized government authorities together with interstate associations as well as many

other international governmental and non-governmental organizations.

Among Ukrainian researchers who dealt with this domain were Bosak A.O., Vinnikov.M., Golomovzyi.M., Grygoriev.Y., Derkach.G., Dudchak.I., Zhorin.L., Kivalov.V., Kormich.A., Martunyk.V., Nastuk.Y., Pankova.A., Trofimov.A., Shishka.B., Shulga.G., Tsalina.S. and many others. The latest works by Berezhnuk.G., Kolyada.P., Pashko.V. need special attention as they were dedicated to the stated agenda, as we think, in more topical context.

It should be noted that due to adoption of a new Customs Code and further reformation in the work of the State Customs Service there arises a need in creating new approaches to solve current problems in conditions of changing the legislation base and capacity building processes in the international trade both at world and national levels.

1. Ukraine in international trade

The modern issues of international trade

When choosing indicators of international trade for an analysis, let us address the statistical and analytical information of the World Trade Organization (WTO) – a leading international economic organization with 157 countries as its members; they provide more than 96 per cent of world trade volume. Firstly, we will look into the recent issue of the statistical and analytical report of this organization “World Trade Report 2012 – trade and public policies: a closer look at non-tariff measures in the 21st century [1].

**Table 1. GDP and merchandise trade by region.
(annual percentage change)**

Regions	GDP			Exports			Imports		
	2009	2010	2011	2009	2010	2011	2009	2010	2011
World	-2.6	3.8	2.4	-12.0	13.8	5.0	-12.9	13.7	4.9
North America	-3.6	3.2	1.9	-14.8	14.9	6.2	-16.6	15.7	4.7
United States	-3.5	3.0	1.7	-14.0	15.4	7.2	-16.4	14.8	3.7
South and Central America	-0.3	6.1	4.5	-8.1	5.6	5.3	-16.5	22.9	10.4
Europe	-4.1	2.2	1.7	-14.1	10.9	5.0	-14.1	9.7	2.4
European Union (27)	-4.3	2.1	1.5	-14.5	11.5	5.2	-14.1	9.5	2.0
Commonwealth of Independent States (CIS)	-6.9	4.7	4.6	-4.8	6.0	1.8	-28.0	18.6	16.7
Africa	2.2	4.6	2.3	-3.7	3.0	-8.3	-5.1	7.3	5.0
Middle East	1.0	4.5	4.9	-4.6	6.5	5.4	-7.7	7.5	5.3
Asia	-0.1	6.4	3.5	-11.4	22.7	6.6	-7.7	18.2	6.4
China	9.2	10.4	9.2	-10.5	28.4	9.3	2.9	22.1	9.7
Japan	-6.3	4.0	-0.5	-24.9	27.5	-0.5	-12.2	10.1	1.9
India	6.8	10.1	7.8	-6.0	22.0	16.1	3.6	22.7	6.6
Developed economies	-4.1	2.9	1.5	-15.1	13.0	4.7	-14.4	10.9	2.8
Developing and CIS	2.2	7.2	5.7	-7.4	14.9	5.4	-10.5	18.1	7.9

Source: [1].

We see the combination of low export volume growth and high import volume growth in the Commonwealth of Independent States in 2011 can be referred to 32 per cent rise in energy resources prices for a year, which increased income from export and allowed more foreign goods to be imported (see Table 2).

**Table 2. World prices of selected primary products, 2000-2011.
(annual percentage change)**

Commodities	2009	2010	2011	2000-2011	2005-2011
All commodities	-30	26	26	12	14
Metals	-19	48	14	15	18
Beverages (comprising coffee, cocoa beans and tea)	-15	11	20	8	11
Food	2	14	17	10	13
Agricultural raw materials	-17	33	23	5	9
Energy	-37	26	32	15	15
Crude oil (price in US \$/barrel)	62	79	104	56	76

Thus, the current development trend we see in the total rise in energy prices accompanied by general unstable world market which is typical of market economy.

The point is to define issues of the first importance which require separate examination in the context of both international trade and Ukraine's economic development.

At the beginning, we will study the first group of topical issues: the instability of the present world market, price fluctuations, supply and demand fluctuation. At the same time we will consider the considerable volatility of the global merchandise markets studied earlier on the example of the food market [2].

The factor forming the second group of topical issues is the high level of national economy's openness. In the list compiled by the WTO's experts Ukraine can be found in three out of four rating lists of leading exporters and importers (table 3 and 4).

**Table 3. Merchandise trade: leading exporters and importers, 2011
(US \$ billion and percentage)**

Rank	Exporters	Value	Share	Annual percentage change	Rank	Importers	Value	Share	Annual percentage change
1	Extra-EU(27) export	2,131	14.9	19	1	Extra-EU (27) import	2,344	16.2	17
2	China	1,899	13.3	20	2	United States	2,265	15.6	15
3	United States	1,481	10.3	16	3	China	1,743	12.0	25
4	Japan	823	5.7	7	4	Japan	854	5.9	23
5	Korea, Republic of	555	3.9	19	5	Korea, Republic of	524	3.6	23
6	Russian Federation	522	3.6	30	6	Hong Kong, China	511	3.5	16
7	Hong Kong, China	456	3.2	14	7	Canada	462	3.2	15
8	Canada	452	3.2	17	8	India	451	3.1	29
9	Singapore	410	2.9	16	9	Singapore	366	2.5	18
10	Saudi Arabia, Kingdom of	365	2.5	45	10	Mexico	361	2.5	16
11	Mexico	350	2.4	17	11	Russian Federation	323	2.2	30
25	Kuwait	98	0.7	46	25	Ukraine	83	0.6	36

It should be noted that there exists a positive correlation between international trade's openness and economic growth, which, in its turn, is required to provide constant poverty reduction and to foster human development [3].

However, in our opinion, we need to carefully treat possible threats and risks of existing dependence of export-orientated branches and import-dependent segments of national market economy on world market fluctuations.

Table 4. Leading exporters and importers in world trade in commercial services, 2011

Rank	Exporters	Value	Share	Annual percentage change	Rank	Importers	Value	Share	Annual percentage change
1	Extra-EU (27) export	789	24.8	12	1	Extra-EU (27) import	639	21.1	8
2	United States	578	18.2	11	2	United States	391	12.9	6
3	China	182	5.7	7	3	China	236	7.8	23
4	India	148	4.7	20	4	Japan	165	5.4	6
5	Japan	143	4.5	3	5	India	130	4.3	12
6	Singapore	125	3.9	12	6	Singapore	110	3.7	15
7	Hong Kong, China	121	3.8	14	7	Canada	99	3.3	10
8	Switzerland	96	3.0	17	8	Korea, Republic of	98	3.2	3
9	Republic of Korea,	94	2.9	8	9	Russian Federation	90	3.0	24
10	Canada	74	2.3	10	10	Brasil	73	2.4	22
11	Russian Federation	54	1.7	22	11	Australia	59	2.0	18
23	Ukraine	19	0.6	13	23	South Africa	20	0.7	13
30	Croatia	13	0.4	13	30	Ukraine	14	0.5	19

Let us address the analytical research headlined “Aid for Trade Needs Assessment: Trade and Human Development” and conducted by Blue Ribbon Analytical and Advisory Center. The publication is commissioned by the United Nations Development Programme and with the assistance of the European Union [3].

From the international experts' viewpoint, international trade plays an important role in Ukraine's economic life at the same time improving its population's living standard. Taking into consideration the country's openness, export-orientated sectors are one of the significant sources of people's earnings whereas the import provides the better access to new technologies, new medicine, new food products etc.

At present the country has developed a rather liberal trade regime in terms of the level of import duties. Moreover, Ukraine has either already concluded free trade areas agreements or is still negotiating with key trade partners as for establishing free trade areas, which allows us to speak about duty-free trade. Accordingly, the issues that move to the forefront of the political agenda today are the ones of aid for trade aimed at addressing the more complicated tasks of domestic reforms and reduction of non-tariff barriers.

As we can see, international experts advise that we should not stop at what has been accomplished and should go towards further trade liberalization.

Thus, they consider trade policy improvement to become an efficient process consisting of four components – situation analysis aimed at identifying shortcomings and opportunities; formulation of strategies and identification of its implementation tools; the process of practical implementation of the decisions made; monitoring and evaluation that should be conducted on the regular basis. In conclusion, efficiency is determined both by each component’s efficiency and by quality of linkage among them. International experts assume these considerations as a basis of relevant proposals concerning trade policy [3].

Nevertheless, competitiveness of all economic sectors and, accordingly, the level of human development, in our opinion, should be considered as significant factors which directly affect the successful implementation of Ukraine’s foreign trade policy.

Let us address the Global Competitiveness Report 2011-2012 published by the World Economic Forum [4]. According to the methodology used to measure the stated ranking, 12 pillars of competitiveness are taken into account: institutions, infrastructure, macroeconomic environment, health and primary education are grouped into the basic requirements and make up 40 per cent of the ranking; higher education and training, goods market efficiency, labour market efficiency, financial market development, technological readiness, market size are grouped into the efficiency enhancers and make up 50 per cent of the ranking; business sophistication, innovation are grouped into innovation and sophistication factors and make up 10 per cent of the general ranking.

Ukraine has the following indices shown in the table 5.

Table 5. Ukraine in Global Competitiveness Index.

Indicator	Rank out of 142 countries	Score (1-7)
GCI 2011–2012	82	4.0
GCI 2010–2011 (out of 139)	89	3.9
GCI 2009–2010 (out of 133)	82	4.0
Basic requirements (40%)	98	4.2
Institutions	131	3.0
Infrastructure	71	3.9
Macroeconomic environment	112	4.2
Health and primary education	74	5.6
Efficiency enhancers (50 %)	74	4.0
Higher education and training	51	4.6
Goods market efficiency	129	3.6
Labour market efficiency	61	4.4
Financial market development	116	3.4
Technological readiness	82	3.5
Market size	38	4.5
Innovation and sophistication factors (10%)	93	3.3
Business sophistication	103	3.5
Innovations	74	3.1

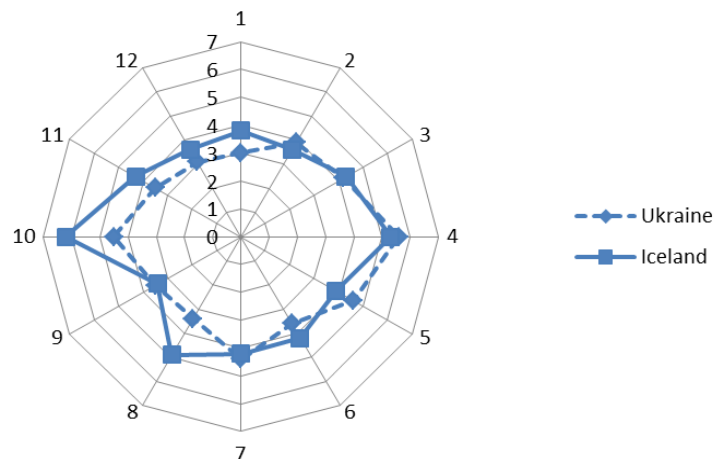
In this respect it can be interesting to find an answer to the question which firstly

looks rather simple: to what extent does country's place in international trade affect its competitiveness?

Ukraine enters the list of 30 largest international traders. As indicated in the Global Competitiveness Index prepared by the World Economic Forum, Iceland ranks 30th and leaves Ukraine behind. Figure 1.

Figure 1: Comparison of competitiveness indexes between Ukraine and Iceland.

Source: [4].



However, Iceland has the smallest share of international trade, which is understandable because, according to the World Bank's data, this small insular country where 320. 000 people live ranks 137th in the world.

Besides, there is a question which, as we think, remains topical: what helps Ukraine enter the list of 30 leading international traders? If it is not its global competitiveness which means the quality of economy, then, perhaps it is the volume of its economy. In the ranking presented above Ukraine is near the largest economies of the world such as the European Union (27), the United States, China, India, Japan, Singapore, Hong Kong (China), Switzerland, Korea, Canada, Russian Federation etc.

According to the the World Bank's data, in 2010 owing to GDP's volume Ukraine ranked 39th which is a rather high world position in view of the fact that all 27 European Union countries traditionally enter this ranking separately. Therefore, at the second stage of the further research we will study the dependence between the volume of the national economy and the relevant volume of the international trade.

2. Efficiency of customs procedures in trade facilitation programs: state and development prospects

At the beginning, we need to clarify the concept of the term "customs procedure", which is defined by current legislative domain. According to item 21, Article 4 of the Customs Code of Ukraine [7] the customs procedure is a set of customs formalities and the order of their execution conditioned by the movement of goods through the customs border of Ukraine. According to item 3, Article 7 of the Customs Code of Ukraine there are procedures of customs control and procedures of customs clearance of goods crossing

the customs border of Ukraine. Items 23 and 24, Article 4 of the Customs Code of Ukraine say that customs clearance is the execution of customs formalities which are necessary to release goods and vehicles of commercial purpose; customs control is a set of measures taken by customs authorities within their competence with the aim of ensuring the compliance with the norms of the Code, laws and other legal and normative acts dealing with state customs practice, and international agreements of Ukraine, concluded in keeping with the procedure established by law.

The Ministry of Finance of Ukraine approved the order of 20.09.2012 “Classification of state budget revenues controlled by customs authorities” which entered into force on 1 October, 2012. According to this classification, there are 43 kinds of revenues which are controlled by customs authorities; among them there is a duty, an excise duty, a value added tax, and other kinds of state budget revenues.

It should be noted that the share of revenue from customs procedures in total tax receipts in Ukraine in 2005-2012 accounted for, respectively, 39.9 %; 41.4 %; 44.3 %; 55.6 %; 53.8 % and 46.3 % [3].

We can see that both the former and the present systems of customs procedures represent a very efficient instrument for state budget revenues of Ukraine.

Let us study customs procedures looking at trade facilitation. In 2002 the World Bank launched Doing Business Project and, according to its ranking in 2012 report, in the ease of doing business Ukraine ranked 152nd among 183 countries whereas in 2011 it ranked 149th. In particular, Ukraine has the following indicators in the ranking: trading across borders – 140 rank; documents to export (number): 6; time to export (days):30; cost to export (US \$ per container): 1,865; documents to import (number): 8; time to import (days): 33; cost to import (US \$ per container): 2,155 [8].

The World Bank's Logistics Performance Index (LPI) includes performance indicators in six areas: the efficiency of the customs procedures and the clearance processes, the quality of trade and transport-related infrastructure, the ease of arranging competitively priced shipments, the competence and quality of logistics services, the ability to track and trace consignments, the frequency with which shipments reach the consignee within the scheduled or expected time, Ukraine ranks 135th among 155th countries in the efficiency of the customs clearance process. It is the same level as a number of African countries. It should be noted that indicators which measured the efficiency of the customs procedures and customs clearance were determined based on the speed, simplicity and predictability of customs procedures in the country [3, P. 63].

According to data from the Global Competitiveness Report published by the World Economic Forum (issues from 2008-2009, 2009-2010, 2010-2011, 2011-2012, and 2012-2013) with years Ukraine's ranking declined from 109th to 138th in terms of the indicator 6.13 “Burden of customs procedures” (fig. 2) [9, 10, 11, 4, 12].

It is worth noting, though, this ranking does not show positive changes in tax and customs policies which took place in 2012, the results confirm unsatisfactory state of customs procedures in Ukraine.

Furthermore, “Burden of customs procedures” indicator (can be seen in fig.3) burdens a more general one, to which it is included, – “Goods market efficiency” as well as the country's overall position in the World Economic Forum's ranking.

Figure 2: “Burden of customs procedures” and “Goods market efficiency” indicators with the country’s overall position in the World Economic Forum’s ranking.

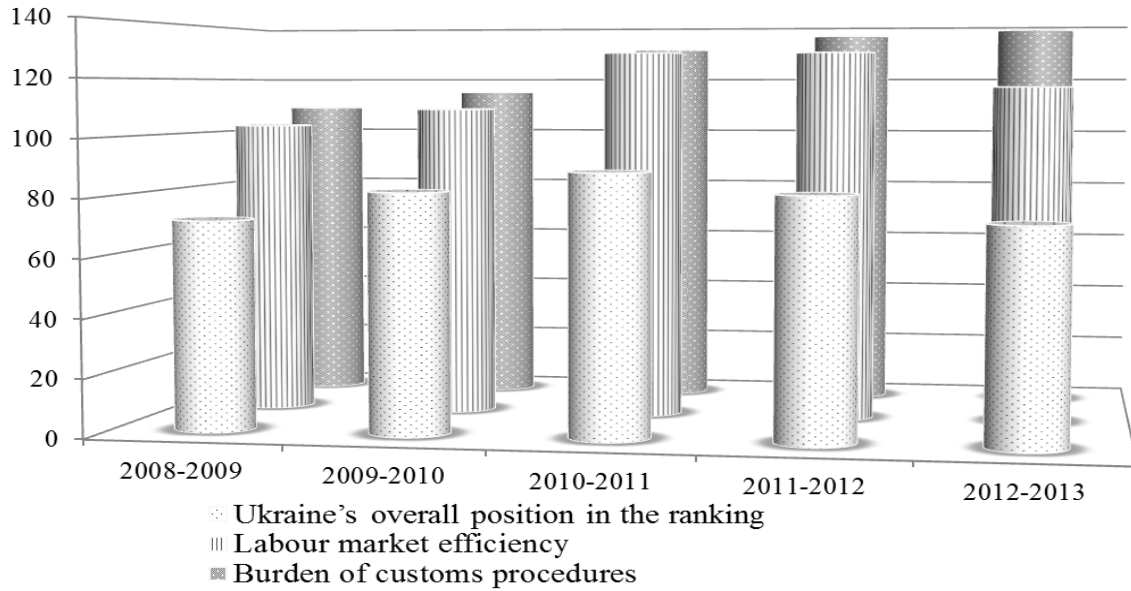
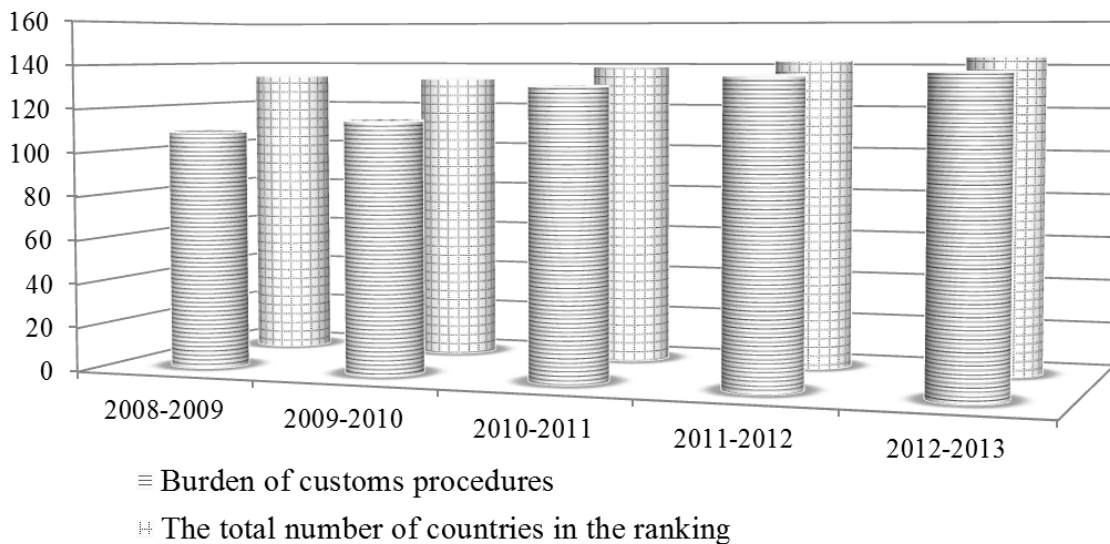


Figure 3: “Burden of customs procedures” indicator inclusive of the total number of countries in the World Economic Forum’s ranking “the Global Competitiveness Report”.



Thus, we can conclude that customs procedures which create barriers in international trade need further reforms.

Trends, which Ukraine sets in its way to reforms, are laid down in the Revised, International Convention on Simplification and Harmonisation of Customs Procedures. Ukraine acceded to this Convention on 5 October, 2006 in accordance with the Law of Ukraine “On acceding to the Kyoto Convention” [13]. We will point out that in Ukraine the Convention took effect on 15, September, 2011.

In accordance with the sated document Ukraine entered into commitments to facilitate simplification and harmonization of customs procedures and with this aim to comply with the provisions and the following principles of this Convention:

- to implement programmes aimed to improve and increase the efficiency of the customs rules and procedures;
- to apply customs rules and procedures which are predictable, consistent and transparent;
- to provide Parties with all necessary information concerning laws, normative and legal acts as well as administrative acts as for customs regulations, customs rules and procedures;
- to approve modern methods of work such as risk analysis system and the method of audit control as well as practical use of information technologies at most;
- to cooperate with other government bodies, customs services of other countries and trading communities in all cases when it is possible;
- to implement relevant international standard;
- to provide the Parties involved with the unimpaired access to procedures of administrative and judicial control;

Berezhnyuk I.G., who made a research into customs domain, states that having the special rank among standards the International Convention on Simplification and Harmonisation of Customs Procedures, 1973, (Kyoto,Convention) being revised and supplemented with numerous Annexes can be considered as the code of countries’ conduct in customs relations. This convention covers all issues regarding customs formalities and customs procedures [14].

The most important way of harmonizing customs procedures lies in introducing electronic document circulation.

The European Parliament and the Council jointly adopted the Decision № 70/2008/EC of 15 January, 2008 on a paperless environment for customs and trade and took steps towards electronical performance of customs procedures. It also provides the full-scale exchange of data between the customs administrations of the Member States.

The strategy in facilitating trade for the US Customs and Border Protection of the Department of Homeland Security consists in developing customs administration that is to receive preliminary information and then to use it in the automated risk management system at post-audit control. Herewith, the key risks for developing the customs matter in the USA are seen in time-consuming customs procedures, manual operations and incompatibility of the automated information systems.

The draft concept of the state target-orientated programme “Creating Multifunctional Complex System “Electronic Customs” for 2013-2017 is aimed at settling

the issues mentioned above. Thus, with the aim of promoting foreign economic activity, deregulating, accelerating and simplifying customs formalities we need to consider eliminating the following restrictions and take into account such impact factors as:

1. A security factor. It implies preventing and counteracting the movement of smuggled goods across the customs border of Ukraine. This factor affects the percent of customs examinations and, respectively, the time required for customs formalities and time required to cross the border;

2. An information factor. It implies the amount and quality of the preliminary customs information on goods and vehicles crossing the customs border of Ukraine. This factor affects customs examinations ratio and, respectively, the time required for customs formalities and time required to cross the customs border;

3. An infrastructure factor. It implies throughout capacity of border-crossing points through the state border of Ukraine. This factor affects the time required to cross the customs border;

4. A corruption factor. It implies the corruption of customs officials. This factor affects transaction expenses connected with the customs formalities, time required for customs formalities as well as confidence level and partner approach in relations between customs bodies and market players;

5. A human factor. It implies the number of customs officials who carry out customs procedures. This factor affects time required for customs formalities;

6. A non-tariff factor. It implies probable illegitimate movement of goods to which the state applies measures of non-tariff regulation. This factor requires submitting permits from other countries' government authorities;

7. A technical factor. It implies the top level technical equipment to be used to execute customs control, compliance of equipment with modern requirements and integration of outcomes into information systems. This factor affects customs examination efficiency and, respectively, their ratio;

8. A professional factor. It implies the professionalism of customs officials who carry out customs procedures. This factor affects time required for customs formalities;

9. A fiscal factor. It implies probable purposeful actions concerning part or full tax evasion. This factor affects customs examinations ratio, quantity and sophistication of documents required to perform customs clearance, time to check the accurate determination of the customs value and calculation of customs fees;

It should be noted that groups of risks mentioned above are well known for specialists in customs procedures and, in our opinion, should be used as a criteria to perform a multiple task in streamlining and harmonising customs procedures. In addition, the main problem for customs procedures improvement is their predictability. Institutional stability should be recognized as the additional significant criteria for harmonization of customs procedures and, as a result, transaction expenses paid by the subjects of foreign economic activity, while undergoing customs procedure, can be reduced.

Continuing to look into the agenda above, we need to define two domains where to streamline customs procedures.

Firstly, it is the efficiency and performance of the customs procedures, on the one hand, as the mechanism to support state budget revenues, whereas as the tariff measure of international trade regulation, on the other hand.

Secondly, customs procedures are the most significant non-tariff barriers. Thus, international trade promotion and non-tariff measures, which influence the processes of international trade, determine the increase in efficiency of customs procedures.

The priority of the approach given above can be seen in undertaking multi-objective tasks which increase the customs procedures efficiency. This approach enables budget revenues to be increased at most and different expenditures on customs procedures to be decreased.

Summary and concluding remarks

In conclusion, we need to summarise that Ukraine's economy is comparably large and less competitive; it is open to the world, which provides a great volume of international trade. For further research in this sphere we need to determine such issues to be settled: instability of the world market system, considerable openness, and, accordingly, dependence on import together with national economy export-orientated as well as its comparably low competitiveness.

The matter of the customs procedures efficiency is of great importance for trade facilitation programmes. It is a well known fact that customs procedures and their efficiency directly affect export and import volumes and often act as essential non-tariff barriers. Therefore, there exists a necessity of further reforming customs procedures which hinder the interantional trade.

National customs structure experiences the stage of dynamic transformations which influences the present state of customs procedures in Ukraine

The results of the monitoring, performed by the World Trade Organization, the World Bank, the United Nations, the World Economic Forum, the World Customs Organization, many other international governmental and non-governmental organizations as well as national scholars who dealt with this kind of research, encourage us to improve national standards while carrying out customs procedures, to increase demands for the compliance of these procedures with the revised International Convention on Simplification and Harmonisation of Customs Procedures, to which Ukraine has already acceded.

In order to promote foreign economic activity, to deregulate, to accelerate and to simplify customs formalities we suggest using multicriteria approach which will streamline customs procedures.

To perform a multi-objective task for streamlining and harmonizing customs procedures we also suggest using the following impact factors which can decrease different risks and expenditures on undergoing these procedures:

- a security factor;
- an information factor;
- an infrastructure factor;
- a corruption factor;
- a human factor;
- a non-tariff factor;
- a technical factor;
- a professional factor;
- a fiscal factor;
- a factor of institutional stability.

Furthermore, a multicriteria approach mentioned above will help us to increase the customs procedures efficiency as well as apply it as the mechanism for the state budget revenues and as non-tariff measures of international trade regulation.

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JEL Classification: K34, K40, H27, H71

THE BURDEN OF PROOF IN THE CONTEX OF A POST-CLEARANCE RECOVERY OF CUSTOMS DUTIES

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Abstract

This paper considers issues of post-clearance recovery of customs duties. Based on a certain legal case the main conditions to be taken into account to decide on whom the burden of proof lays are discussed. The paper also gives an example of a judgement taken by the European Court of Justice concerning a certificate of origin.

Key words: burden of proof, clearance, recovery of customs duties, judgement, certificate of origin.

Introduction

Whenever the customs administrations want to recover customs duties a posteriori in form of a post-clearance recovery, the question comes up, who has to prove the fulfillment of the conditions for such a recovery.

Even in cases, where the conditions are clearly stated in the legal provisions like the Community Customs Code (Regulation 2913/92 of 12 October 1992) doubts may arise which parts of the condition has to be proved by the customs administration and which part by the economic operator.

Recently the European Court of Justice brought some light into the dark by a judgment from 8 November 2012 in the Case C-438/11.¹

1. Basic Facts of the Case

A company imported shoes into the European Union. To the customs declaration certificates were attached, attesting the origin of Macao. On the basis of these documents the Main Customs Office granted a preferential rate of customs duties to the importing company.

After having received some information that in other cases than this one certain

¹ Official Journal C 9/18 from 12.1.2013,