

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.

Volodymyr VARAVA,

*Head of the Department of Law Enforcement and Criminal Law disciplines
University of Customs and Finance
Candidate of Juridical Science,
Associate Professor
warawa@ukr.net
orcid.org/0000-0001-7856-1711*

Anna MAKSYMOVA,

*Leading specialist at the Department of Law enforcement and Criminal law disciplines
University of Customs and Finance
Candidate of Science in Public Administration
anna305@i.ua
orcid.org/0000-0002-8332-4988*

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>]

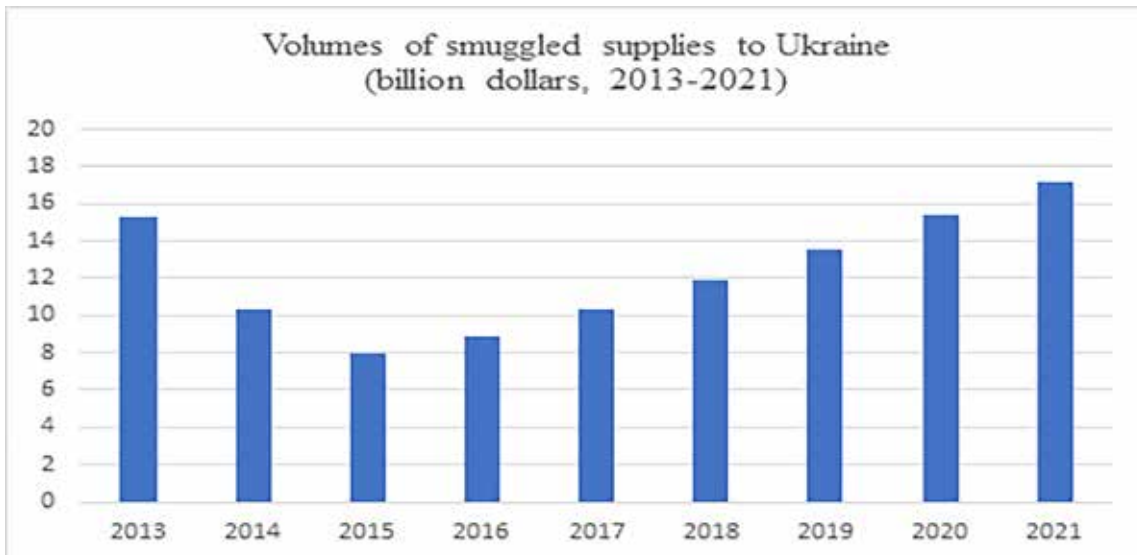


Fig. 2. Volumes of smuggled supplies to Ukraine

[<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.

References:

1. Kukuza, G. (2019), Ukraine Economic Outlook: Special report Analiz obsyagiv kontrabandy v Ukraini&: obsyagy, pryami, nepryami vtraty budgety ta econoniky [Volume analysis smuggling in Ukraine volumes, direct and indirect losses of the budget and economy]. Kyiv (in Ukrainian).
2. Lesyk M. (2020), Tchi potribna krymynalizatsiya tovarnoy kontrabandy? [Is the criminalization of commodity smuggling necessary? analytical and consulting work]. Kyiv (in Ukrainian).
3. Mazur, A. V., (2005), Mytne regulyuvannya v Ukraini ta ES [Customs regulation in Ukraine and the EU]. Kyiv : TOV Nika Print (in Ukrainian).

ПРОТИДІЯ КОНТРАБАНДИ: ТЕНДЕНЦІЇ, ПРОБЛЕМИ І ПЕРСПЕКТИВИ

Володимир ВАРАВА,

*завідувач кафедри правоохоронної діяльності та кримінально-правових дисциплін
Університету митної справи та фінансів,
кандидат юридичних наук, доцент
warawa@ukr.net
orcid.org/0000-0001-7856-1711*

Анна МАКСИМОВА,

*провідний спеціаліст кафедри правоохоронної діяльності та кримінально-правових дисциплін
Університету митної справи та фінансів,
кандидат наук з державного управління
anna305@i.ua
orcid.org/0000-0002-8332-4988*

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 контрольної перевіркової 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.