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çağırışlar” mövzusunda
2-ci Beynəlxalq Tələbə Konfransının
Məruzələrinin Tezisləri**

**Тезисы докладов
2^{ой} Международной студенческой конференции
по теме “Современные вопросы и вызовы в сфере
таможенного управления”**

**Theses of Reports
of the 2nd International Student Conference on
“Contemporary Issues and Challenges
in Customs Management”**

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ОБЩАЯ КОНЦЕПЦИЯ ПО СОЗДАНИЮ ЕДИНОЙ АВТОМАТИЗИРОВАННОЙ УПРАВЛЯЮЩЕЙ СИСТЕМЫ ТАМОЖЕННОЙ СЛУЖБЫ

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Резюме: Статья посвящена общей концепции построения платформы и требованиям к разработке инновационных проектов в таможенном деле, в частности создания Единой Автоматизированной Управляющей Системы таможенной службы. Данная система разработана и внедрена в Государственном Таможенном Комитете Азербайджанской Республики, с целью роста эффективности таможенных услуг, обеспечения прозрачности, дальнейшего расширения и модернизации сфер внедрения электронной таможенной службы. В статье также рассмотрены методы внедрения инновационных проектов с применением методологий управления проектами.

Развитие таможенной системы является одной из самых приоритетных направлений государственного управления в области экономики и торговли. Развитием таможенного дела существенно влияет на уровень развития экономики в целом. Главной целью нового этапа является обеспечение в долгосрочной перспективе продолжительности динамического социально-экономического развития в стране

посредством повышения конкурентоспособности национальной экономики и ее рациональной интеграции в мировую хозяйственную систему.

Азербайджанская таможенная служба с целью модернизации бизнес процесса и упрощения торговли, уделяет особое внимание внедрению новых инновационных проектов с применением информационно-коммуникационных технологий и в результате осуществил коренные реформы в этой сфере.

Внедрение инновационных проектов, таких как, Единая Автоматизированная Управляющая Система Таможенной Службы (ЕАУС) осуществляется посредством применения методологии управления проектами. На сегодня управление проектами стало признанной во всех развитых странах методологией инновационной деятельности. При этом руководители проектов должны тщательно относиться к отбору методов управления инновационными проектами с целью достижения положительного эффекта от их реализации, т. е. необходимо выбрать из них наиболее целесообразные, соответствующие новой стратегии, обеспечивающие минимум затрат и максимальный эффект.

На основе ряда принятых нормативно-правовых актов, связанных с развитием таможенной службы страны, в том числе такие нормативные акты по развитию ИКТ, как «Государственная программа по развитию связи и информационных технологий в Азербайджанской Республике на 2010-2012 гг. (Электронный Азербайджан)» и «Национальная стратегия на 2014-2020 гг. по развитию информационного общества в Азербайджанской Республике» создана и представлена электронная таможенная услуга участникам внешнеэкономической деятельности.

Осуществляемые инновационные проекты в сфере таможенной службы с целью модернизации и упрощения торговли в стране создают благоприятные условия для участников внешнеэкономической деятельности. Поэтому,

требований к созданию единой автоматизированной управляющей системе таможенной службы можно классифицировать на следующие:

- требование к системе;
- требование к окружению системы;
- требование к таможенной инфраструктуре;
- требование к правовым базам по таможенному делу.

Разработка инновационных проектов и управление данными проектами в области таможенного дела осуществляется в рамках ряд следующих требований к окружению, такие как:

1. Политическая воля. Этот вопрос регулируется указом Президента страны или решением законодательного органа. Например, с целью выполнения задач, вытекающих из Указа Президента Азербайджанской Республики «О некоторых мерах в области организации оказания государственными органами электронных услуг» от 23 мая 2011 года, основной задачей ГТК АР является повышение эффективности таможенной службы, обеспечение прозрачности и расширение применения ИКТ и их модернизация.

2. Создание соответствующего механизма, разработка технологической схемы и модернизация бизнес-процесса в таможенных органах.

3. Создание на основе нового бизнес-процесса Единой Автоматизированной Управляющей Системы (ЕАУС).

4. На основе разработанной ЕАУС внедрение безбумажной технологии в таможенной службе. Внедрение безбумажных технологий осуществляется поэтапно в рамках государственной программы «Электронный Азербайджан». На первом этапе все процедуры проводятся параллельно как в бумажном, так и в электронном виде. На втором этапе сотрудничество «Таможня-Бизнес» реализуется и в бумажном, и в электронном виде, а сотрудничество «Таможня-Таможня» - только в электронном виде. Третий этап начинается после

введения электронной подписи, и все процедуры осуществляются в электронном виде.

Область применения инновационных проектов в таможенной сфере охватывает весь цикл таможенной процедуры, начиная от пересечения товаров и транспортных средств через государственную границу, до выпуска их клиенту, в том числе ряд бенефициаров проекта, таких как международные грузовые перевозчики, импортеры и экспортеры, таможенные брокеры, связанные государственные учреждения, банки, таможенные органы, терминалы, порты.

Объектами для модернизации являются: таможенный контроль, таможенное оформление, борьба с таможенными нарушениями и контрабандой, финансовая деятельность, статистический анализ, управление ресурсами предприятия (ERP), управление рисками, документооборот и канцелярия.

Основными требованиями к самой созданию автоматизированной системе являются:

1. Определение целей проекта. В нашем случае цель заключается в следующем: упрощение процедур торговли, устранение субъективных факторов, оперативный обмен информацией, обеспечение прозрачности в таможенной службе.
2. Формирование требований для реализации проекта. Например, система должна действовать в рамках существующих законов в соответствии с реальной ситуацией и должны учитываться основные 4 критерия:
 - законодательная и нормативно-правовая база;
 - экономические показатели страны;
 - география страны и ее расположение, границы, приграничные государства;
 - национальная культура, традиция, календарь и т.п.

3. Установление жизненного цикла проекта. Система должна соответствовать динамичному развитию технологий, то есть она должна быть построена таким образом, что при развитии технологий была возможность модернизировать систему.
4. Определение виды инструментов для пользователей. Должен иметь простой пользовательский интерфейс, чтобы не создавать проблемы для пользователей.
5. Формирование требований к техническим системам. Должна быть обеспечена информационная безопасность.

Внедрение инновационных проектов в любой сфере деятельности страны создает определенные проблемы, от решения которых зависит дальнейшее развития данной области. Глобальные проблемы порождаются в процессе интеграции и неравномерностью развития разных областей и противоречиями порождаемыми в социально-экономических, политико-идеологических, социо-природных и других отношениях проектной организации. Такими глобальными проблемами, которые могут возникнуть в ходе реализации проекта, являются:

- **Усложненный бизнес-процесс в таможенном деле:** Формализованность и регламентированность бизнес-процессов на сегодняшний день являются одним из ключевых факторов успеха любой организации. Для каждого бизнес-процесса выясняют его сложность. Таможенная служба находится в динамически изменяющейся внешней среде и поэтому бизнес-процесс этой области постоянно подвергается изменениям. В результате чего усложняется бизнес-процесс таможенной услуги.

- **Желание реализовать инновационных проектов или Фактор «Первого лица»:** Главная задача руководителя заключается в том, чтобы рассматривать возникшие проблемы во всех аспектах и принимать своевременные решения по их устранению. Руководитель ключевое звено кадровой системе.
- **Проблема в восприятии реинжиниринга бизнес процесса и внедрения новой технологии, т.е. возникают психологические барьеры сотрудников:** Важным психологическим моментом, способным затормозить инновационный процесс, является неприятие инноваций. Это и можно оценить как сопротивление переменам. Таким образом, барьер по отношению к инновационным проектам необходимо исследовать в каждом конкретном случае.
- **Несовершенное или неграмотное составление технического задания:** Отсутствие технического задания или ее не профессиональной подготовки во взаимоотношениях заказчика и исполнителя - **беззаконие**. А беззаконие, всегда приводит к хаосу. Это скрывает отсутствие опыта, слабое представление сути дела, за которое берётся разработчик. Это даёт возможность затянуть разработку, увеличить бюджет и снизить качеству продукта
- **Обращение или умение с техникой, предпочтение классических методов и компьютерная неграмотность сотрудников:** Внедрение инновационных технологий в таможенной сфере и применение их продуктами не возможно без использования информационных технологий. Поэтому компьютер занимает одно из

важнейших мест в развитии той или иной организации и в целом жизни современного человека. Умение работать с компьютером, знание основных пользовательских программ – признак компетентности и профессионализма специалиста любой сферы деятельности.

Реализация любого инновационного проекта не может осуществляться без его экономического обоснования. Необходимо верно оценить имеющиеся материальные, трудовые и финансовые ресурсы с точки зрения их рационального использования в перспективе. Поэтому, Единая Автоматизированная Управляющая Система (ЕАУС) таможенной службы формируется на основе нижеуказанных требований и в общем контексте, инновационные проекты реализуются при необходимости наличия следующих факторов, которых можно называть инновационными потенциалами:

1. Инфраструктура по ИКТ: коммуникационные системы, электроснабжение, техническая база, законодательная база, человеческие ресурсы, критерии определения рисков.
2. Локальная информационная платформа: база данных главного таможенного управления, база данных региональных таможенных органов, база нормативно-правовых документов в таможенной сфере.
3. Глобальная информационная платформа: информационные ресурсы правительства, база данных международных организаций, межгосударственный обмен информацией, база местных и международных нормативно-правовых документов.

4. Платформа принятия решений: решения управления, формирование документов разрешения, создание статистических данных и их анализ.

В рамках вышеуказанных требований можно формировать основные составляющие ЕАУС, которая состоит из модулей:

- Регистрация товаров и транспортных средств
- Управление и мониторинг таможенных складов
- Таможенные процедуры
- Финансы и тарифное регулирование
- Блок правонарушения в таможенном деле
- Таможенное оформление и блок декларирования
- Статистика и Аналитика
- Блок партнерства с внешним миром.

Структура Единой Автоматизированной Управляющей Системы (ЕАУС) таможенной службы приведены ниже (Рис.1):

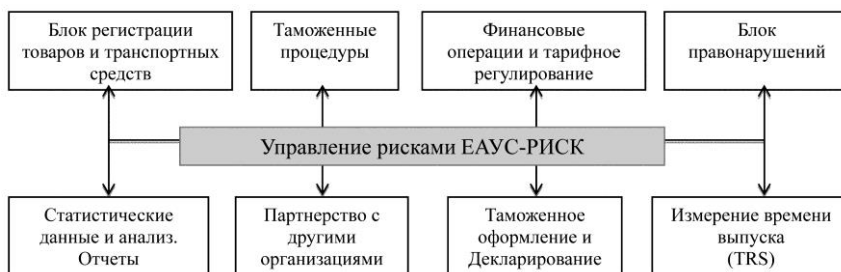


Рис.1. Составляющие части ЕАУС

Концептуальный подход к формированию ЕАУС таможенной службы включает в себя все жизненно необходимые модули для полного функционирования таможенного дела, т.е. ЕАУС с одной стороны интегрирован с блоками: управления документооборота, управление

ресурсами и управление кадрами, а с другой стороны с внешними блоками, такими как: База паспортных данных граждан, Таможня-Таможня (C2C), Таможня-Бизнес (C2B), Таможня - Государственные органы (C2G), Почтовых перевозок, AVIA-CARGO терминалы и др. (Рис.2). При осуществлении проекта «Электронная таможня» появляется возможность интегрирования общества, региональных и коммерческих организаций в национальный проект «Единое окно». Развитие программы «Электронный Азербайджан» заменяет некоторые функции «Единого Окна».

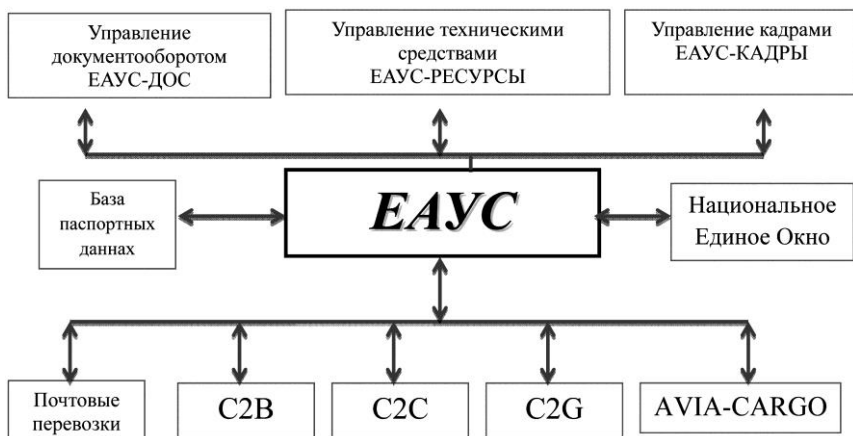


Рис.2. Структурная схема ЕАУС

Исходя из вышеизложенных можно сделать вывод, что каждая организация должна стремиться к развитию своего инновационного потенциала и использовать методологию управления инновационными проектами. Однако большинство успешно работающих организаций обязаны своим успехом разработке и внедрению новых инновационных проектов. Но, следует учитывать, что каждый новый проект связан с риском. С другой стороны, без применения инноваций практически невозможно развивать и модернизировать бизнес

процесс и содействовать упрощению торговли и повысить уровень услуги. Таким образом, сегодня инновационные проекты во всех сферах деятельности государства являются эффективным средством развития самой организации.

Литература:

- 1) Бабаев И.А. Управление программами развития организаций на основе генетической модели проекта. - Киев: Наук.світ., 2005, 164 с.
- 2) Бабаев И.А. Методология управления проектами.: Монография. - Баку: Изд-во ЭЛМ. 2003. – 300 с.
- 3) «О некоторых мерах в области организации оказания государственными органами электронных услуг» / Указ Президента Азербайджанской Республики от 23 мая 2011 года.
<http://ru.president.az/articles/2251>
- 4) «Национальная стратегия на 2014-2020 гг. по развитию информационного общества в Азербайджанской Республике».
<http://ru.president.az/articles/11308>

РАЗВИТИЕ И ТЕХНОЛОГИИ ПОМЕЩЕНИЯ ТОВАРОВ ПОД ТАМОЖЕННУЮ ПРОЦЕДУРУ ТАМОЖЕННОГО ТРАНЗИТА В ЭЛЕКТРОННОЙ ФОРМЕ

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Аннотация. Данная статья посвящена вопросу о декларировании товаров, помещаемых под таможенную процедуру таможенного транзита, в электронной форме – важному шагу, направленному на совершенствование таможенных операций, в котором заинтересованы как таможенные органы, так и участники внешнеэкономической деятельности.

Ключевые слова: транзит, товар, внешняя экономическая деятельность, технологии, декларация, таможенная процедура, электронная подпись, электронная форма.

Annotation: This article is devoted to the issue of declaring goods placed under the customs procedure for customs transit in electronic form, as an important step aimed at improving customs operations, in which both customs authorities and participants in foreign economic activities are interested.

Keywords: transit, goods, external economic activity, technology, declaration, customs procedure, electronic signature, electronic form.

Тенденция интеграции национальных экономик в региональные, межстрановые и единые межхозяйственные комплексы особенно выделяется в современном экономическом развитии. Наряду с этим, следует отметить что, особенно актуально создание зон свободной торговли, которые смогут обеспечивать более быстрое движение не только финансовых ресурсов, но и ускорят обмен товарами и услугами. Так же следует отметить все возрастающий рост роли международных соглашений в мировой экономической практике. Происходит формирование финансового рынка с едиными правилами, которые регламентируют оборот, не только материальных ценностей, но и денежных средств. Экономике всех государств в какой-то мере становятся открытыми, участвуя в мировом разделении труда и в международной конкуренции.

На данный момент внешние экономические связи являются важнейшим фактором экономического роста. Именно они определяют состояние национальной экономики во многих странах. Внешнеэкономическая деятельность России развивается довольно быстрыми темпами. Неотъемлемую часть в системе органов государственного управления внешнеэкономической деятельностью занимает Федеральная таможенная служба Российской Федерации, которая характеризуется как наиболее динамично развивающаяся структура. Таможенное оформление является одним из основных институтов таможенного права, который представляет собой совокупность юридических норм, определяющих очередность проводимых мероприятий, которые направлены на обеспечение процесса перемещения товаров и транспортных средств, уполномоченными лицами через таможенную границу РФ.

Таможенная декларация (ТД) – это документ, который содержит в себе сведения о товарах, об определенной таможенной процедуре и многие другие сведения, которые являются необходимыми для выпуска товаров.

В процессе таможенной процедуры все товары подлежат обязательному таможенному декларированию. Таможенное декларирование товаров производится декларантом либо таможенным представителем, который действует от имени и по поручению декларанта. Таможенное декларирование может быть, как в письменной, так и в электронной форме с использованием таможенной декларации.

В таможенной практике выделяют три формы декларирования: письменное, устное и электронное декларирование.

Письменное декларирование. Существует определенный список товаров, который подлежит обязательному письменному декларированию, а также определенные правила заполнения пассажирской таможенной декларации, прежде всего она должна быть представлена в двух экземплярах. Все записи должны быть, быть четкими и разборчивыми на русском или английском языках.

Допускается любые изменения и дополнения в декларации, но они должны быть подписаны лицом, декларирующим товары, и заверены должностным лицом таможенного органа.

Устное декларирование. Эта форма декларирования используется тогда, когда физическое лицо имеет в багаже предметы, которые не надо декларировать в письменной форме, в соответствии с законодательством Российской Федерации. Этот вид декларирования подразумевает, что физическое лицо информирует уполномоченное должностное лицо таможенного органа об отсутствии в своем багаже товаров и продукции, которые нужно обязательно задекларировать в письменной форме.

Электронное декларирование. Федеральная таможенная служба является одной из самых технологичных и технически оснащенных в стране и в тоже время является полностью открытой организацией к новым процессам. Этот факт подтверждается результатом уже реализованных ФТС России

IT-проектов. В настоящее время использование современных информационных технологий в процессе деятельности таможенных органов совершенствуется и облегчает сам процесс таможенного оформления и таможенного контроля, повышает пропускные способности пунктов пропуска на государственной границе РФ. Информационная система таможенных органов - одна из крупнейших информационных систем в стране.

В настоящий момент в России имеется большое количество перспективных и активно внедряемых IT-разработок. Для автоматизированных систем и различных технологий таких как: электронное декларирование, предварительное информирование, система контроля таможенного транзита, система обеспечения уплаты таможенных платежей и многие другие - необходим переход на другой уровень централизации обработки и хранения информации.

В условиях постоянного роста объема внешней торговли и возрастающей нагрузки на таможенные органы применение информационных систем и технологий приобретает все большее значение для таможенного дела.

Применение информационных технологий позволяет не только повысить контроль над участниками внешнеэкономической деятельности, но и значительно ускорить процесс таможенного оформления. Кроме того, вступление России во Всемирную Торговую Организацию в ближайшем будущем приведет к увеличению грузопотока, что приведет к увеличению нагрузки на таможенные органы.

Использование информационных систем и технологий в деятельности таможенных органов позволяет решить следующие задачи таможенного администрирования:

- Упрощение и ускорение таможенного оформления и контроля, в том числе за счет использования электронного декларирования.

- Использование системы управления рисками; в том числе накопление информации об участниках внешнеэкономической деятельности и иных лицах; введение баз данных, реестров лиц, осуществляющих деятельность в области таможенного дела и т.п.

- Осуществление информационного обмена с иными органами государственной власти, как российскими, так и зарубежными, в порядке и на условиях, установленных законодательством, в том числе в режиме реального времени.

Более десяти лет в России происходит процесс внедрения электронного декларирования в сферу таможенных органов. Началом развития электронного декларирования в России можно считать 2002 год, в котором приняли Федеральный закон «Об электронной цифровой подписи» (от 06.04.2011 N 63-ФЗ). Реализация технологии электронного декларирования была начата в 2004 году, в рамках единой автоматизированной информационной системы (ЕАИС) таможенных органов с целью реализации принципиально новых подходов, обеспечивающих взаимодействие таможенных органов и участников трансграничных цепей поставок в процессе проведения таможенного декларирования. В экспериментальном режиме технология электронного декларирования впервые была применена на Каширском таможенном посту Московской южной таможни и Заводском таможенном посту Зеленоградской таможни. Эксперимент был осуществлен в соответствии с Распоряжением ФТС России от 30.08.2006 313-р «О проведении эксперимента по представлению сведений в электронной форме для целей таможенного оформления с использованием сетей Интернет» в период с 15 сентября 2006 по 01 ноября 2006.

Автоматизированная система электронного декларирования начала действовать на Чертановском таможенном посту в Москве в июле 2004 года. Первое время этими технологиями пользовались не многие, так как она была достаточно затратной, но постепенно в течение нескольких лет эта система распространилась по всей территории Российской Федерации. Так же 1 января 2011 года вступила в силу «Инструкция о порядке предоставления и использования таможенной декларации в виде электронного документа» № 494 от 8.12.2010 года. Данная инструкция определяет порядок предоставления и использования таможенной декларации в виде электронного документа. С 1 января 2014 года таможенное декларирование товаров производится в электронной форме и носит обязательный характер. Исключения составляют случаи, указанные в постановлении Правительства Российской Федерации «Об утверждении категорий товаров, лиц, перемещающих товары, а также таможенных процедур, при которых таможенное декларирование товаров может осуществляться в письменной форме.

В первую очередь эти исключения связаны:

- со спецификой информации о товаре, например, информация может нести в себе государственную тайну;
- со спецификой таможенных процедур, например, уничтожение, отказ в пользу государства, специальная таможенная процедура.

И другие случаи, такие как пересылка товаров в международных почтовых отправлениях, декларирование товаров отдельными категориями иностранных лиц, перемещение товаров физическими лицами или в адрес физических лиц. Причем в этом случае право выбора формы декларирования останется за декларантом.

Электронное декларирование на практике может быть осуществлено двумя способами:

Электронное декларирование напрямую. Этот способ заключается в том, что специалист отдела таможенного оформления готовит пакет электронных документов, которые в дальнейшем будут необходимы в процессе таможенного оформления, визирует документ. Для оформления таможенных деклараций и многих других документов необходимо наличие электронной цифровой подписи. После обработки документа, ставя свою электронную цифровую подпись, специалист отправляет документы в ЦИТТУ ФТС России (Центральное информационно-техническое таможенное управление). Затем подтверждается право доступа конкретного участника ВЭД к системе электронного декларирования и достоверность его электронной цифровой подписи.

Следующим пунктом является отправка пакета документов из ЦИТТУ ФТС России в базу данных регионального таможенного управления. Далее документы проверяются при первичном форматном контроле, затем их пересылают на конкретный таможенный пост, где и будет проходить таможенное оформление товаров, обозначенных в таможенной декларации. Для оформления таможенных деклараций и других документов члены ВЭД должны помимо заведения электронной цифровой подписи, установить у себя программное обеспечение, прошедшее сертификацию в ЦИТТУ ФТС России.

Существует множество преимуществ использования электронного декларирования, так как именно оно позволяет через интернет участникам ВЭД оформлять свои грузы на любой пограничной таможне, и при этом не тратить деньги на перемещение сотрудников в приграничные районы и оборудование офисов. Помимо этого, система электронного декларирования является удобной для таможенного оформления таких не простых грузов как продукция рыболовного промысла. Используя систему электронного декларирования, и такую сложную продукцию будет

возможно оформлять, когда судно еще идет в море. Она делает легче не только процедуру таможенного оформления, но и таможенный контроль.

Электронное декларирование через информационного оператора. Это еще один способ электронного декларирования, при котором используется посредник, которым выступает информационный оператор.

Информационный оператор - это организация, предоставляющая канал передачи данных, а также гарантирует выполнение требований безопасности отправляемых от участника ВЭД в ЦИТТУ ФТС России данных, при осуществлении электронного декларирования через Интернет.

Информационный оператор является звеном, которое соединяет участника ВЭД и таможенные органы, и ведет техническую поддержку, такую как настройка каналов передачи данных, установка и обслуживание сертифицированных программ, которые предназначены для работы с системой электронной декларирования. Этот процесс может быть поделен на несколько этапов.

На первом этапе специалист по таможенному оформлению производит подготовку документов, необходимых для прохождения процедуры таможенного оформления, ставит свою электронную цифровую подпись и отправляет по защищенному каналу информационному оператору.

На втором этапе проверяется право доступа и достоверность его электронной цифровой подписи. Пакет документов проходит через сервер маршрутизации информационного оператора и следует далее в ЦИТТУ ФТС России по защищенному каналу.

На третьем этапе полученный пакет документов проходит первичный форматно-логический контроль. Этот процесс состоит из пересылки документов из ЦИТТУ ФТС России в базу данных регионального таможенного управления.

Далее документы сначала поступают в таможенную и только затем непосредственно в систему конкретного таможенного поста, на котором и будет происходить таможенное оформление товаров, заявленных в таможенной декларации.

О завершении таможенного оформления оповещает специальное сообщение, которое поступает обратно по таможенным каналам к участнику ВЭД через информационного оператора.

Для подключения участники ВЭД должны получить электронную цифровую подпись и установить у себя специальное программное обеспечение необходимое для оформления таможенных деклараций и других документов, сертифицированное в ЦИТТУ ФТС России.

Информационный оператор должен установить у себя сервер маршрутизации, которая будет иметь лицензированную операционную систему и специальное программное обеспечение. Так же деятельность информационно оператора предполагает выполнение всех требований безопасности. Таможенные органы разных уровней должны быть подключены к транспортной технологической подсистеме и работать с АПС «Электронное предоставление сведений».

Таким образом, основной деятельностью таможенных органов выступают организация таможенного контроля по поводу перемещения товаров и транспортных средств через таможенную границу. Порядок и основные принципы перемещения товаров и транспортных средств основываются на ТК ТС (Центральное информационно-техническое таможенное управление), а также на других нормативно-правовых актах. На процессе перемещения товаров и транспортных средств основывается система взимания таможенных платежей, институты таможенного оформления и таможенного контроля, все эти элементы содействуют в обеспечении экономической и государственной безопасности страны, поэтому он так важен. Вследствие этого важна и необходима модернизация и улучшение работы таможенных

органов в области таможенного оформления и таможенного контроля товаров и транспортных средств. Этого можно достигнуть путем планирования и поэтапной реализации на практике специальных мероприятий, которые предусмотрены ФТС и Правительством РФ. Например, отмена бумажного и переход на безбумажное декларирование товаров является одним из таких мероприятий, которое подразумевает внедрение полного электронного документооборота между таможенными органами и участниками ВЭД.

Развитие и внедрение электронных технологий в сферу таможенного дела началось более 20 лет назад и идет по настоящее время, с учетом внедрения новых технических возможностей обработки, передачи и хранения данных следует отметить, что ФЗ-1 об ЭЦП принятый от 10.01.2002 N 1-ФЗ (утратил силу) и ФЗ-63 принятый от 06.04.2011 N 63-ФЗ позволили в свою очередь внедрять технологии электронного декларирования товаров и предоставления государственных услуг. ФТС России с 2014 года осуществляет декларирование товаров и подачей ДТ в России только в электронной форме, а с начала 2016 года-только с использованием технологий ЭД-2(через Интернет).

Одним из важных направлений деятельности таможенных органов Северо-Западного таможенного управления (СЗТУ) в прошлом году было дальнейшее развитие передовых информационных технологий. В рамках этой работы проводился эксперимент, целью которого было внедрение в практику таможенных органов региона технологии, предусматривающей декларирование товаров в соответствии с таможенной процедурой таможенного транзита (ТПТТ) в электронной форме.

Она применяется при перемещении через границу различными видами транспорта импортируемых грузов, их выпуск осуществляется по электронным транзитным декларациям (ЭТД). Данная технология будет активно

внедряться дальше. С 20 марта 2017 года применение технологий электронного декларирования перестало быть экспериментальной.

Использование данной информационной таможенной технологии в качестве повседневной нормы определено приказом Минфина от 30.08.2016 № 144н «Об утверждении Порядка использования Единой автоматизированной информационной системы таможенных органов при таможенном контроле, таможенном декларировании и выпуске (отказе в выпуске) товаров, помещаемых под таможенную процедуру таможенного транзита, в электронной форме».

Документ регламентирует осуществление предварительного декларирования процедуры транзита, использование сведений, содержащихся в ЭТД в качестве предварительной информации при прибытии товаров и транспортных средств на территорию РФ. Кроме того, в документе закреплено информационное взаимодействие таможенных органов и декларантов в электронной форме, в том числе с перевозчиками, если те не являются декларантами.

Следует отметить, что в основу эксперимента был положен принцип использования при заявлении декларантом таможенной процедуры таможенного транзита заверенных электронной подписью электронных документов, которые равнозначны по своей юридической силе их оригиналам на бумажных носителях. Главной целью было обеспечить сокращение либо исключение бумажного документооборота, а также повышение уровня прозрачности проведения таможенных процедур.

Ранее порядок совершения таможенных операций при таможенном декларировании таможенной процедуры таможенного транзита в электронной форме регламентировался распоряжением ФТС России от 18.02.2015 № 62-р. Ему на смену с 20 марта 2017 года пришел приказ Минфина № 144н.

Первоначально по всей стране в пилотную зону по проведению эксперимента были включены всего 17 таможенных постов, из них от СЗТУ были представлены только два: многосторонние автомобильные пункты пропуска (МАПП) Куничина Гора и Шумилкино Псковской таможни. Постепенно количество участников расширялось, а с 18 мая 2016 года были полностью сняты ограничения по подключению уполномоченных таможенных органов к эксперименту.

Сейчас в регионе деятельности СЗТУ технология электронного декларирования транзита применяется в 9 таможнях, на 49 таможенных постах, в 6 морских, 13 автомобильных, 9 железнодорожных и одном воздушном пунктах пропуска. Специфика географического положения таможенных органов управления и значительная транзитная составляющая требует адекватного отношения к реализации задачи по внедрению указанной электронной технологии.

В настоящее время все таможенные органы имеют доступную техническую оснащенность для применения технологий электронного декларирования процедуры таможенного транзита.

Специфика географического положения таможенных органов управления и значительная транзитная составляющая требует адекватного отношения к реализации задачи по внедрению указанной электронной технологии.

За период с мая, когда все посты Северо-Запада смогли участвовать в эксперименте, по ноябрь 2016 года общее количество оформленных транзитных документов превысило 257 тыс. штук. Из них почти 91 тыс. транзитных документов, или 35,3%, приходится непосредственно на таможенные органы отправления и назначения внутри СЗТУ. В иных таможенных органах России и государств - членов Евразийского экономического союза (ЕАЭС) оформлено почти 167 тыс. транзитных документов.

Поскольку доля электронного транзита внутри СЗТУ по сравнению с транзитом в иные таможенные органы меньше в два раза, это позволяет говорить о наличии внутреннего резерва увеличения количества ЭТД именно в таможенных управлениях. Здесь стоит уточнить, что в последнее время практически по всем таможенным регионам отмечается поступательный рост объемов оформления ЭТД.

При этом приходится констатировать значительную неравномерность по доле ЭТД в иных видах транспорта, а особенно в автомобильном. В первую очередь это характерно для Выборгской и Кингисеппской таможен, в которых доля ЭТД в разы ниже, чем, например, в МАПП, находящихся в регионе деятельности Псковской таможни.

В ближайшее время необходимо минимизировать неравномерность в применении электронного таможенного транзита на местах. В настоящее время доля ЭТД в среднем по СЗТУ составляет около 25%. Даже с учетом исключений по применению электронного транзита таможенным необходимо наращивать объемы его оформления.

Чтобы активизировать внедрение указанной технологии, с 1 января 2017 года приказом ФТС России от 02.12.2016 № 2270 установлен индикативный показатель № 2 «Динамика оформления ЭТД». Для применения декларирования товаров в соответствии с ТПТТ в электронной форме ФТС России и СЗТУ утвердили соответствующие планы мероприятий.

В соответствии с ними управлением и таможенными организована и на постоянной основе проводится целенаправленная работа. Она предусматривает проведение в видеорежиме обсуждения текущих проблемных вопросов реализации распоряжения № 62-р; рабочих встреч, совещаний с участниками ВЭД, иными заинтересованными лицами с целью их вовлечения в проведение эксперимента.

В последнее время подготовлены и выпущены многочисленные презентационные материалы, видеоролики, информационные памятки и буклеты для вручения в местах

совершения таможенных операций; на официальном сайте СЗТУ и в СМИ публикуются соответствующие пресс-релизы; на таможенных постах на информационных стендах размещена подробная информация о порядке участия в эксперименте; проводится анкетирование участников ВЭД, организациям-перевозчикам рассылаются информационные письма. Кроме того, в автомобильных пунктах пропуска оборудуются отдельные окна для водителей, использующих электронную форму декларирования таможенного транзита.

Опросы участников ВЭД, прежде всего крупных организаций, ассоциаций, в целом говорят о положительной оценке бизнесом данной технологии. Ее неоспоримыми преимуществами при условии полноценной работы программных средств, как это предусмотрено нормативными документами, являются доступность сервиса подачи ЭТД через «Личный кабинет участника ВЭД», возможность использования электронного архива документов декларанта, оперативность информационного обмена.

Как и в любой технологии, при электронном транзите наблюдается ряд проблемных вопросов и недостатков, от решения которых зависит удобство и востребованность данной технологии участниками ВЭД. В ближайшее время заинтересованным лицам общими усилиями предстоит реализовать основные планы развития электронного транзита. Так, таможенные органы должны проработать вопрос о возможности внедрения технологии авторегистрации ЭТД и разработки алгоритма ее осуществления.

Среди прочего предусмотрено распространение технологии электронного транзита на таможенные органы государств - членов ЕАЭС. Оно закреплено решением от 30.11.2016 № 21/15 Объединенной коллегии таможенных служб государств - членов Таможенного союза. Из него следует, что с 1 февраля по 31 июля 2017 года проводится эксперимент, связанный с выпуском товаров в соответствии с ТПТТ и завершением указанной таможенной процедуры, в

случае если декларирование осуществлялось в таможенном органе другого государства - члена ЕАЭС. В настоящее время ФТС России формируется перечень таможенных постов, которые будут допущены к участию в эксперименте.

Декларирование товаров, помещаемых под таможенную процедуру таможенного транзита, в электронной форме – важный шаг, направленный на совершенствование таможенных операций, в котором заинтересованы как таможенные органы, так и участники внешнеэкономической деятельности.

ТК ЕАЭС содержит положения о том, что ЭТД может использоваться в качестве предварительного информирования, что в свою очередь приведет к сокращению так же числа электронных документов, подаваемых в таможенные органы, и облегчит деятельность бизнеса в сфере ВЭД.

Можно выделить следующие преимущества декларирования таможенной процедуры таможенного транзита в электронной форме:

- сокращение сроков совершения таможенных операций при помещении товаров под таможенную процедуру таможенного транзита;
- взаимодействие между декларантами, помещающими товары под таможенную процедуру таможенного транзита, и таможенными органами осуществляется исключительно посредством обмена электронными сообщениями;
- снижение влияния человеческого фактора на процесс принятия решений(подача ЭТД (через сайт ФТС и операторов связи)
- минимизация бумажного носителя таможенных документов при совершении таможенных

операций, связанных с помещением товаров под таможенную процедуру таможенного транзита.

- не требуется проставление отметок таможенных органов на транспортных (перевозочных) документах.
- возможность подачи электронной транзитной декларации через портал ФТС России.

Таким образом, декларирование товаров и транспортных средств, помещаемых под таможенную процедуру таможенного транзита в электронной форме, – перспективная и активно развивающаяся технология. Она направлена на расширение возможностей электронного документооборота, активное применение практики онлайн-решений, протоколирование любых значимых информационных процессов.

Библиографический список

1. Федеральный закон "О таможенном регулировании в Российской Федерации" от 27.11.2010 N 311-ФЗ
2. Таможенный кодекс Таможенного союза" (ред. от 08.05.2015)
3. Таможенный кодекс Евразийского экономического союза (не вступил в силу)
4. Федеральный закон "Об электронной цифровой подписи" от 10.01.2002 N 1-ФЗ (утратил силу)
5. Федеральный закон "Об электронной подписи" от 06.04.2011 N 63-ФЗ
6. Приказ Минфина России от 30.08.2016 N 144н "Об утверждении Порядка использования Единой автоматизированной информационной системы таможенных органов при таможенном контроле, таможенном декларировании и выпуске (отказе в выпуске) товаров, помещаемых под таможенную

- процедуру таможенного транзита, в электронной форме" (Зарегистрировано в Минюсте России 16.12.2016 N 44758)
7. Распоряжение ФТС России от 18.02.2015 N 62-р (ред. от 18.05.2016) "О проведении эксперимента по совершению таможенными органами таможенных операций при таможенном декларировании товаров, помещаемых под таможенную процедуру таможенного транзита, в электронной форме" (утратил силу)
 8. Приказ ГТК РФ от 13.05.2003 N 500 "Об утверждении Порядка таможенного оформления и таможенного контроля товаров отдельной категории, перемещаемых через таможенную границу Российской Федерации" (Зарегистрировано в Минюсте РФ 06.06.2003 N 4646)

ОСОБЕННОСТИ ЭКСПЕРТИЗЫ КУЛЬТУРНЫХ ЦЕННОСТЕЙ В ТАМОЖЕННЫХ ОРГАНАХ РЕСПУБЛИКИ БЕЛАРУСЬ.

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Тезис: В последние десятилетия проблема незаконной торговли культурными ценностями приобрела тотальный характер. В связи с этим, а также для учета ввозимых и вывозимых с территории страны культурных ценностей их перемещение ограничено законодательством. В июле 2015 года впервые в истории таможенной службы Республики Беларусь Таможенной лабораторией УО «Государственный институт повышения квалификации и подготовки кадров Республики Беларусь» было освоено направление экспертизы культурных ценностей, изделий религиозного назначения и предметов коллекционирования. Первоочередная цель данной экспертизы это сохранение культурных ценностей и предотвращение их вывоза из страны. Основу исследования составляет определение возраста объекта. Сохранение культурных ценностей имеет приоритетное значение, т.к. свободный доступ к культурным ценностям и ознакомление с культурным наследием страны является важнейшим из инструментов формирования общественного сознания и целостной системы духовных ценностей, влияющих на все сферы государственной и общественной жизни, особенно подрастающего поколения.

Развитие рыночных отношений в мире привело к тому, что культурные ценности все чаще становятся объектами сделок. В последние десятилетия проблема незаконной торговли культурными ценностями приобрела тотальный характер. Скупка и продажа антиквариата и предметов искусства стало одним из самых выгодных методов вложения капитала. Стоимость их с годами только возрастает, а современные технологии позволяют реставрировать и сохранять их на долгое время. Незаконная торговля культурными ценностями во всем мире достигла громадных масштабов, сравнимых лишь с незаконной торговлей наркотиками. Спрос на культурные ценности неуклонно растет, что побуждает незаконных торговцев расширять свою деятельность. В связи с этим, а также для учета ввозимых и вывозимых с территории страны культурных ценностей их перемещение ограничено законодательством.

Перемещение культурных ценностей через таможенную границу Республики Беларусь в рамках ЕАЭС регламентируется Решением Коллегии Евразийской экономической комиссии от 21.04.2015 N 30 "О мерах нетарифного регулирования" – п. 2.20 Перечня товаров, в отношении которых установлен разрешительный порядок ввоза на таможенную территорию Евразийского экономического союза и (или) вывоза с таможенной территории Евразийского экономического союза – культурные ценности, документы национальных архивных фондов, оригиналы архивных документов.

В июле 2015 года впервые в истории таможенной службы Республики Беларусь Таможенной лабораторией УО «Государственный институт повышения квалификации и подготовки кадров Республики Беларусь» было освоено направление экспертизы культурных ценностей, изделий религиозного назначения и предметов коллекционирования.

Это событие имеет важное значение для таможенной системы в целом. Таможенный эксперт совместно с ведущими

искусствоведами, сотрудниками музеев, специалистами соответствующих направлений проводит таможенные и судебные экспертизы, в полном объеме удовлетворяя потребности таможенных органов, отвечая на поставленные вопросы в рамках действующего законодательства.

Первоочередная цель данной экспертизы это сохранение культурных ценностей и предотвращение их вывоза из страны. Таможенный эксперт работает с широким перечнем объектов, таких как предметы антиквариата, нумизматики, фалеристики, живописные картины, предметы декоративно-прикладного искусства, книги, уникальные и редкие музыкальные инструменты, иконы и так далее. Основу исследования составляет определение возраста объекта. Для проведения комплексного и всестороннего исследования эксперт должен обладать обширными знаниями, сочетая методы технологической и стилистической экспертизы, а также методы стоимостной экспертизы предметов искусства и коллекционирования.

Таможенная лаборатория располагает необходимой современной приборной базой для исследования объектов, относящихся к категории культурных ценностей, а также разработанный алгоритм проведения экспертиз и соответствующее методическое обеспечение

За 2015-2017 год в Таможенной лаборатории было исследовано около 9 тысяч объектов, около 7,5 тысяч из которых были отнесены к категории культурных ценностей.

Спектр предметов, поступающих на таможенную экспертизу, достаточно широк. Все виды объектов из групп товаров, поименованных в перечне, были представлены на исследование.

Незаконно перемещаемые объекты, отнесенные к категории культурных ценностей, и конфискованные по решению суда становятся собственностью государства, и могут быть переданы в музеи, дворцово-парковые ансамбли, библиотеки, и т.д.

Сохранение культурных ценностей имеет приоритетное значение, т.к. свободный доступ к культурным ценностям и ознакомление с культурным наследием страны является важнейшим из инструментов формирования общественного сознания и целостной системы духовных ценностей, влияющих на все сферы государственной и общественной жизни, особенно подрастающего поколения.

СОВРЕМЕННЫЕ ПРИНЦИПЫ ВЗАИМОДЕЙСТВИЯ ТАМОЖНИ И БИЗНЕСА В РОССИИ

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MODERN TENETS OF COOPERATION BETWEEN CUSTOMS AND BUSINESS IN RUSSIA

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Аннотация

В статье анализируются цели, принципы и пути взаимодействия таможенных органов и представителей бизнес-сообщества. Особое внимание уделено важнейшим направлениям эффективного взаимодействия в рамках ЕАЭС.

Abstract

The article analyzes the goals, principles and ways of cooperation between the customs authorities and the business community. Particular attention is given to the most important directions for the effective cooperation in the framework of the Economic Union.

Ключевые слова: взаимодействие, таможенные органы, участники внешнеэкономической деятельности, бизнес сообщество.

Key words: cooperation, customs, participants of foreign trade activities, business community.

Эффективное взаимодействие таможенных органов и бизнес – структур занимает важное место в условиях развития таможенных и информационных технологий.

Развитие взаимоотношений России с представителями отечественного бизнеса – одна из первостепенных задач в работе Федеральной таможенной службы. В этом направлении постоянно разрабатываются и активно внедряются эффективные, высокотехнологичные методы работы во всех таможенных и пунктах пропуска страны.

Основной целью деятельности таможенных органов является обеспечение соблюдения законодательства РФ и ТС, а также упрощение таможенных операций и процедур. Тогда как для представителей бизнес - структур основная цель – осуществление таможенных операций в максимально короткое время с минимальными затратами. Взаимодействие таможенных органов и бизнеса преследует единую цель — минимизировать затраты на осуществление таможенных операций при соблюдении таможенного законодательства.

На сегодняшний день ФТС России осуществляет деятельность по взаимодействию с деловыми кругами, основываясь на следующих принципах:

- изучение мировых практик взаимодействия бизнеса с таможней;
- разработка правовых актов с привлечением представителей предпринимательских структур в качестве консультантов;
- упрощение таможенных процедур и применение информационных технологий для участников внешнеэкономической деятельности;

- применение специальных схем оформления товаров для инвестиционных поставок для крупных проектов;
- информирование по вопросам таможенного законодательства и таможенным операциям.

Данная деятельность осуществляется на разных уровнях:

1. Глобальный уровень.

На данном уровне изучаются опыт работы с бизнесом Всемирной таможенной и Всемирной торговой организаций, участие в международных семинарах, конференциях, обмен опытом с разными странами, а также изучение практики ведущих мировых держав;

2. Интернациональный уровень.

Основные аспекты интернационального уровня - встречи с национальными бизнес-структурами как в странах-резидентах, так и в России;

3. Федеральный уровень.

Федеральный уровень включает взаимодействие с российскими ассоциациями, крупными компаниями;

4. Региональный уровень.

На региональном уровне осуществляется создание, развитие и содействие работе Консультативных советов при региональных таможенных управлениях, а также «горячей линии» при Федеральной таможенной службе России.

Опыт разных стран показывает, что эффективное взаимодействие таможенных служб с представителями бизнеса способствует выполнению стоящих перед таможенными службами задач по ускорению товарооборота, обеспечению национальной безопасности, а также пополнению бюджета.

Развитие отношений между бизнес – структурами и таможенными администрациями осуществляется через множество элементов. В 2010 году газета The Moscow Times организовала конференцию «Таможня и бизнес. Таможенный союз Россия – Беларусь - Казахстан» при поддержке

Федеральной таможенной службы России. Впервые в рамках этой конференции на обсуждение был вынесен вопрос взаимодействия таможни и бизнеса.

Касательно законодательства, взаимодействие таможни и бизнеса по вопросам реализации таможенной политики регулируется статьей 53 Федерального Закона «О таможенном регулировании в РФ» № 311-ФЗ.¹

Таможенная служба активно способствует развитию отношений с участниками внешнеэкономической деятельности. Сегодня в России действует Институт уполномоченного экономического оператора, который является одним из основополагающих аспектов в развитии системы взаимодействия участников внешнеэкономической деятельности. В законодательстве деятельность института УЭО регулируется главой 6 Федерального закона от 27.11.2010 № 311-ФЗ «О таможенном регулировании в Российской Федерации» и 38-41 статьями Таможенного кодекса Таможенного союза. В России также действует Приказ ФТС России «Об утверждении типовой формы соглашения, заключаемого между таможенным органом и уполномоченным экономическим оператором», который вступил в силу 9 января 2012 года. Данный приказ определяет порядок взаимодействия между таможней и уполномоченным экономическим оператором. Касательно нового таможенного кодекса ЕАЭС, институту УЭО посвящена отдельная глава. В новом кодексе изменился подход к порядку включения юридический лиц в реестр УЭО. Также уполномоченным экономическим оператором теперь могут быть как лица, осуществляющие внешнеэкономическую деятельность, так и лица, осуществляющие деятельность в сфере таможенного дела (например, владельцы СВХ, таможенные представители).

¹ Федеральный закон от 27.11.2010 № 311-ФЗ «О таможенном регулировании в Российской Федерации»;

Таким образом, действующий в России институт уполномоченного экономического оператора способствует уменьшению затрат, которые несут участники внешнеэкономической деятельности, а также развитию связи «таможня – участники ВЭД», сокращению расходов и упрощению таможенных процедур.

Развитию системы взаимодействия способствует и тот факт, что таможня полномасштабно внедряет информационные технологии. На сегодняшний день Федеральная таможенная служба провела значительную работу по совершенствованию таможенного администрирования. Благодаря этому, был осуществлен полномасштабный переход на применение электронного декларирования. В результате, на сегодняшний день более 99% таможенных деклараций подается в электронном виде.

Одной из наиболее перспективных технологий, которая была внедрена в 2015 году, является автоматическая регистрация деклараций на товары, осуществляемая во всех таможенных органах в отношении экспортируемых товаров. С конца 2015 года данная технология стала применяться и при импорте товаров. Реализация данной технологии позволяет должностному лицу таможенного органа не принимать участие в регистрации декларации на товары и значительно сокращает в целом сроки таможенных операций и процедур. Среднее время автоматической регистрации составляет от 20 до 40 секунд.

Сегодня ФТС России реализует автоматический выпуск товаров экспорта во всех таможенных органах, правомочных регистрировать декларации на товары. Также ФТС России приступила к практической реализации данной технологии в отношении ввозимых товаров.

Еще одной перспективной технологией является «удаленный выпуск товаров». Данная технология разделяет процесс таможенных операций на документальный и фактический контроль товаров. Таким образом,

предполагается, что ввоз, хранение и контроль осуществляются в регионе деятельности таможенного органа, который приближен к государственной границе, а декларирование и выпуск товаров – в другом таможенном органе, расположенном внутри страны по месту регистрации участника ВЭД. Технология «удаленного выпуска товаров» позволяет участникам внешнеэкономической деятельности оптимизировать логистику поставок, сократить время и издержки на транспортировку товаров и работу таможенных специалистов.²

Стремясь к созданию благоприятных условий для участников ВЭД, таможенной службой реализована возможность уплаты таможенных платежей в режиме реального времени. В настоящее время у бизнеса в ходе совершения внешнеторговых операций отсутствует необходимость отвлекать финансовые ресурсы на авансирование таможенных платежей. Сроки поступления в ФТС России информации о зачислении денежных средств на счет Федерального казначейства сокращены до 2 часов. На сегодняшний день в соответствии с распоряжением ФТС России от 19 декабря 2013 г. № 406-р созданы правовые и технические условия, а также обеспечено подключение к системе, обеспечивающей возможность удаленной уплаты таможенных и иных платежей, во всех таможенных органах Российской Федерации.³ Для организаций предусмотрена возможность удаленной уплаты таможенных платежей через портал электронного декларирования, а для граждан – банковскими картами или наличными денежными средствами

² Электронный ресурс:

http://www.customs.ru/index.php?option=com_content&view=article&id=23627:2016-07-07-13-12-15

³ Распоряжение ФТС России от 19.12.2013 N 406-р (ред. от 05.06.2014) "Об утверждении Временного порядка действий должностных лиц таможенных органов при удаленной уплате таможенных платежей лицами, осуществляющими декларирование товаров в электронной форме, с использованием электронного терминала

через электронные терминалы, платежные терминалы и банкоматы, обслуживание которых обеспечивают операторы таможенных платежей.⁴

ФТС России также была разработана система «Личный кабинет». Благодаря данной системе плательщики могут оперативно получать информацию о движении денежных средств, как на сайте ФТС России, так и на сайте оператора таможенных платежей. Данная информация носит справочный характер. Кроме того, сервис личного кабинета плательщика используется таможенными представителями в качестве отчетности о своей деятельности.

В целях снижения издержек участников внешнеэкономической деятельности, а также сокращения времени совершения таможенных операций ФТС России с внедрением информационных технологий были осуществлены мероприятия по сокращению количества документов, которые предоставляются при таможенном декларировании. К таким документам могут относиться контракты, лицензии, сертификации соответствия. При этом в декларации на товары указывается номера документов, а также проверяется наличие сведений о них в информационных ресурсах таможенных органов. Проведение данных мероприятий стало возможным в связи с переходом Федеральных органов исполнительной власти на использование системы электронного взаимодействия, направленная на обеспечение совершения таможенных операций без предоставления участниками внешнеэкономической деятельности документов, которые требуются при перемещении товаров через таможенную границу Евразийского экономического союза. Система межведомственного электронного взаимодействия направлена также на обеспечение автоматической регистрации деклараций и автоматический выпуск товаров, а также на увеличение скорости проведения таможенных операций без потери эффективности.

⁴ Официальный сайт ФТС России: www.customs.ru

В части таможенных платежей работу осуществляет Некоммерческое партнёрство «Содействие развитию ВЭД», которое с 2013 года реализует проект по предоставлению Ассоциацией поручительства в отношении обеспечения обязательств членов Ассоциации по уплате таможенных платежей перед ФТС России. Предоставляемое Ассоциацией поручительство принимается таможенными органами Российской Федерации в качестве обеспечения уплаты таможенных платежей таможенных представителей, владельцев СВХ, таможенных перевозчиков и владельцев магазина беспошлинной торговли наряду с банковскими гарантиями и денежным залогом.

Таким образом, проведенная ФТС России модернизация системы позволила значительно снизить количество проводимых при таможенном оформлении контрольных мероприятий для участников ВЭД, сократить сроки выпуска товаров, что привело к снижению временных и финансовых издержек участников внешнеэкономической деятельности. Реализация информационных технологий позволяет осуществлять выпуск товаров без личного присутствия таможенника, значительно сокращает сроки совершения таможенных операций и издержки на транспортировку товаров. Внедрение в деятельность таможенных органов информационных технологий помогает совершенствовать процесс таможенного оформления и таможенного контроля, повышать работоспособность пропускных пунктов.

В год своего 25-летия Федеральная таможенная служба и деловые круги вышли на качественно новый уровень общения. Был создан Общественный Совет при ФТС России, первое заседание которого состоялось в апреле 2016 года. На мероприятии присутствовали Министр Российской Федерации Михаил Абызов, руководитель ФТС России Андрей Бельянинов, первый заместитель руководителя ФТС России Владимир Малинин, руководящий состав профильных

структурных подразделений центрального аппарата таможенной службы, а также представители Аппарата Правительства Российской Федерации, Экспертного совета при Правительстве Российской Федерации, Общественной палаты Российской Федерации. По результатам голосования председателем Общественного совета был избран Леонид Лозбенко, заместитель генерального директора АО «Крокус».⁵

В состав Общественного совета входят 16 членов, в том числе представители крупнейших общественных некоммерческих организаций – Торгово-промышленной палаты Российской Федерации, ОПОРА России, Российского союза промышленников и предпринимателей, Деловой России.

К основной цели Общественного совета при ФТС России относится общественный контроль за деятельностью Федеральной таможенной службы, который включает в себя несколько элементов. Во-первых, рассмотрение разрабатываемых общественно значимых нормативных правовых актов. Во-вторых, реализацию контрольно-надзорных функций, хода проведения антикоррупционной и кадровой работы. И наконец, участие в мониторинге качества оказания государственных услуг, рассмотрение ежегодных планов деятельности ФТС России, оценке эффективности государственных закупок и отчета об их исполнении, а также иные вопросы, предусмотренные законодательством Российской Федерации.

Состав совета формируется на добровольной основе и с учетом представительства различных профессиональных объединений и иных социальных групп, которые осуществляют деятельность в сфере полномочий данного федерального органа. Правом выдвижения кандидатур в состав Общественного совета обладают Экспертный совет и Общественная палата.

⁵ Официальный сайт ФТС России: www.customs.ru

Состав Общественного совета формируется из числа кандидатов, выдвинутых в члены Общественного совета следующими организациями и в соответствии со следующей квотой представительства:

- кандидаты в члены Общественного совета в количестве $3/4$ от общего количественного состава Общественного совета при ФТС России предлагаются Общественной палатой из числа поступивших в процессе приема заявок, отобранных в соответствии с процедурой конкурса;
- кандидаты в члены Общественного совета в количестве $1/4$ от общего количественного состава Общественного совета при ФТС России предлагаются Экспертным советом из числа поступивших в процессе приема заявок, отобранных в соответствии с процедурой конкурса⁶.

Количественный состав Общественного совета при ФТС России составляет 16 человек.

Развитию двустороннего общения также способствует деятельность Экспертно-консультативного совета по таможенной политике при ФТС России. В настоящее время издан приказ от 19 мая 2016 года № 983 «Об утверждении состава Экспертно-консультативного совета по таможенной политике при ФТС России». Председателем Совета является Валерий Шнякин, вице-президент группы компаний «БИОТЕК».

В состав Совета входят представители крупнейших объединений, которые осуществляют свою деятельность в разных секторах экономики РФ. К ним относятся Торгово-промышленная палата Российской Федерации, Союз производителей и импортёров, Российский союз

⁶ Официальный сайт ФТС России: www.customs.ru

предпринимателей текстильной и легкой промышленности, ОАО «Российские железные дороги», ОАО «Аэрофлот», Российский союз нефтеэкспортеров, Российский Зерновой Союз, Ассоциация экспресс-перевозчиков и другие.

Консультативный совет по таможенной политике был создан в 1996 году в качестве органа связи с участниками внешнеэкономической деятельности. Совет доказал высокую эффективность, благодаря его работе было внесено много предложений по совершенствованию процессов таможенного регулирования, которые в результате использовались при написании разных нормативных правовых актов.

Основными задачами Совета являются:

- разработка предложений по совершенствованию таможенной политики Российской Федерации и ее реализации таможенными органами с учетом мнения представителей бизнеса, а также предложений по созданию условий по упрощению таможенных процедур для ускорения совершения таможенных операций;
- разработка предложений по совершенствованию и упрощению форм и методов таможенного контроля, борьбы с нарушениями таможенных правил, совершаемыми при перемещении через таможенную границу товаров и транспортных средств;
- содействие осуществлению мер, направленных на единообразие применения таможенного законодательства РФ, а также защиту интересов национальных производителей и потребителей.

Совет является общественным консультативным органом. На основе взаимодействия таможенных органов и бизнес кругов он оказывает содействие разработке и реализации таможенной политики Российской Федерации в целях обеспечения защиты экономических интересов РФ, создания оптимальных условий для предпринимательской деятельности, рационализации структуры экспортно-

импортных операций, привлечения иностранных инвестиций. Деятельность Совета осуществляется в соответствии с годовыми планами, заседания проводятся ежеквартально.⁷

Информирование и оповещение представителей бизнес-структур по актуальным вопросам осуществляются благодаря интернет-семинарам и видеоконференциям с участием представителей таможенных органов и бизнес-структур государств – членов ЕАЭС.

Каждый год проводится мониторинг общественного мнения, по результатам которого определяется доля участников ВЭД, удовлетворительно оценивающих качество предоставления государственных услуг таможенными органами.

Таможенная служба находится в постоянном развитии, поэтому 25 мая 2017 года Коллегия ФТС России обсудила Комплексную программу развития ФТС России на период до 2020 года, а также готовность таможенных органов к работе в условиях нового Таможенного кодекса ЕАЭС. Комплексная программа развития ФТС России на период до 2020 года реализует главные задачи таможенных органов, которые были поставлены руководителем ФТС России В.И. Булавиным. К этим задачам относятся: обеспечение прозрачности и удобства для ведения бизнеса, а также безопасность и эффективность для государства. В рамках Общественного совета при ФТС России прошло обсуждение данной программы с бизнес – сообществом, с четырьмя крупнейшими предпринимательскими объединениями России (РСПП, «Деловая Россия», «Опора России» и ТПП РФ).

Программой предусмотрено 18 направлений развития таможенных органов. А план мероприятия по реализации программы содержит 102 пункта. В программе представлен 41

⁷ Приказ от 19 мая 2016 года № 983 «Об утверждении состава Экспертно-консультативного совета по таможенной политике при ФТС России

целевой показатель для определения степени достижения поставленных задач. Среди них важным представляется выделить показатели «10 шагов навстречу бизнесу».

В результате реализации Комплексной программы сектор бизнеса получит существенную поддержку. Это будет осуществлено благодаря многим элементам. Бизнес-процессы, связанные с таможенным администрированием, будут окончательно автоматизированы, повысится уровень взаимодействия таможенных органов с бизнесом в электронном виде. Электронная таможня способствует переводу бизнес-процессов в электронный формат, а также гарантирует равную и справедливую конкуренцию, минимизирует временные и финансовые издержки бизнеса одновременно со снижением рисков для бюджета страны.

Коллегия ФТС России обсудила также готовность таможенных органов к работе в условиях вступления в силу Таможенного кодекса Евразийского экономического союза.

Ключевые новшества предлагались Федеральной таможенной службой после консультаций с бизнес-сообществом. В частности, в ТК ЕАЭС заложен приоритет электронного декларирования. Отменена необходимость подачи вместе с таможенной декларацией документов, на основании которых она заполнена. Кодексом предусмотрено применение технологий автоматической регистрации деклараций на товары и автоматического выпуска товаров. Установлено сокращение сроков выпуска товаров до четырех часов и использование механизма «единого окна», в чем особенно заинтересован бизнес, работающий в морских портах. Также предусмотрено представление предварительной информации о прибытии товаров в виде электронного документа. И еще один важный момент – принципиальное изменение института уполномоченного экономического оператора.⁸

⁸ Официальный сайт ФТС России: www.customs.ru

Одновременно с Таможенным кодексом ЕАЭС должны вступить в силу и более 30 решений Евразийской экономической комиссии, и новый Федеральный закон «О таможенном регулировании в Российской Федерации», проект которого ФТС России уже направила в Минфин России. Федеральная таможенная служба также будет активно участвовать в работе по совершенствованию российского законодательства в таможенной сфере. В изменении нуждаются около 180 нормативно-правовых актов.

Взаимодействие бизнес – сообщества с таможенной службой также осуществляется через государственно – частное партнёрство. Государственно-частное партнерство (ГЧП) – один из способов развития общественной инфраструктуры, основанный на долгосрочном взаимодействии государства и бизнеса. Как правило, ГЧП предполагает, что не государство подключается к проектам бизнеса, а, наоборот, государство приглашает бизнес принять участие в реализации общественно значимых проектов.

Государственно-частное партнерство как современная форма взаимодействия государства и бизнес-сообщества является, прежде всего, проявлением таможенных отношений во внешнеэкономической сфере.

Целями участия таможенной службы от имени государства в государственно-частном партнерстве являются:

- привлечение частных инвестиций в экономику России;
- реализация социально значимых проектов в сфере таможенного дела и таможенной политики;
- обеспечение эффективности использования имущества, находящегося в собственности государства (таможенной службы);
- повышение качества таможенных услуг.

Институт государственно-частного партнерства в сфере ВЭД может быть развит посредством развития таможенно-

логистической и транспортной инфраструктур, усовершенствования концепции и стратегии государственно-частного партнерства в сфере ВЭД, разработке программы инвестиций в таможенно-логистической инфраструктуре на среднесрочную перспективу, а также принятии нормативно-правовой базы для применения механизмов государственно-частного партнерства в таможенной сфере;

Таким образом, в настоящее время взаимодействие ФТС России с бизнес-сообществами осуществляется в рамках:

- Экспертно-консультативного совета по реализации таможенной политики при ФТС России;
- взаимодействия с участниками Общественного Совета при ФТС России;
- сотрудничества руководства службы с руководителями крупных отечественных и зарубежных компаний;
- участия сотрудников ФТС России в семинарах, видеоконференциях, круглых столах и иных подобных мероприятиях;
- мониторинга общественного мнения.

Подводя итог, можно выделить основные направления взаимодействия таможни и бизнеса:

- контроль внешнеэкономической деятельности, выявление интересов российского бизнеса во внешней торговле;
- создание и усовершенствование законодательства, способствующего развитию ВЭД;
- внедрение современных информационных технологий;
- сокращение времени таможенного оформления, упрощение таможенных процедур, применение системы управления рисками;
- уменьшение административных и экономических барьеров во взаимной торговле;

- рост товарооборота между государствами-членами Таможенного союза и транзита по их территории;
- внедрение международных стандартов;

Наиболее важными направлениями эффективного взаимодействия таможенных органов и бизнес-структур, которые необходимо развивать в дальнейшем представляются:

- мониторинг внешнеэкономической деятельности, учет национальных интересов и интересов бизнеса-сообщества во внешней торговле;
- дальнейшее совершенствование законодательства, способствующего развитию партнерских отношений;
- упрощение таможенных процедур, совершенствование системы управления рисками, сокращение времени таможенного оформления;
- партнерские взаимоотношения таможенных органов и бизнеса, дальнейшее применение таможенного аудита.

Итак, взаимодействие таможенных органов и участников ВЭД осуществляется с применением информационных технологий, использование которых позволяет снизить издержки, а также избежать чрезмерного влияния субъективных факторов, исключить, в том числе, коррупционную составляющую. Другими словами, повышение эффективности таможенного администрирования на основе внедрения информационных технологий позволили сократить время проведения таможенных операций и уменьшили издержки участников внешнеэкономической деятельности, что поспособствовало развитию благоприятных условий для ведения бизнеса в стране.

В добавление к вышесказанному, развитие и совершенствование взаимодействия таможенных органов и бизнес – структур необходимо для создания наилучших условий для перемещения товаров через таможенную границу ЕАЭС и обеспечения экономической безопасности страны.

Процессы взаимодействия таможенной службы и бизнес-сообщества постоянно развиваются. Этому способствует как законодательство, применяемое в РФ, так и действия Федеральной таможенной службы по созданию благоприятных условий для представителей деловых кругов. Деятельность Общественного и Экспертно-консультативного советов позволяет принимать решения с учетом мнения представителей бизнеса. Таможенными органами также изучается мировая практика взаимосвязи с бизнесом, что способствует укреплению общения. В работе с бизнес – структурами применяются современные методы, основанные на мировом опыте и направленные на достижение максимального уровня взаимодействия.

В заключение, главным принципом взаимодействия таможни и бизнеса представляется постоянная взаимосвязь с целью выявления возникающих проблем и совместного их решения, что способствует ускорению товарооборота, и повышает эффективность таможенного администрирования.

Список литературы

1. Федеральный закон от 27.11.2010 № 311-ФЗ «О таможенном регулировании в Российской Федерации»;
2. "Таможенный кодекс Таможенного союза" (ред. от 08.05.2015) (приложение к Договору о Таможенном кодексе Таможенного союза, принятому Решением Межгосударственного Совета ЕврАзЭС на уровне глав государств от 27.11.2009 N 17);
3. Приказ ФТС России от 19 мая 2016 года № 983 «Об утверждении состава Экспертно-консультативного совета по таможенной политике при ФТС России»;
4. Распоряжение ФТС России от 19.12.2013 N 406-р (ред. от 05.06.2014) "Об утверждении Временного порядка действий должностных лиц таможенных органов при

удаленной уплате таможенных платежей лицами, осуществляющими декларирование товаров в электронной форме, с использованием электронного терминала;

5. Дорощенко Г.И. Экономические и информационные аспекты взаимодействия таможни и бизнеса на современном этапе // Экономика и современный менеджмент: теория и практика. — 2014. — № 42. — С. 33—39.
6. Официальный сайт ФТС России: www.customs.ru.
7. Электронный ресурс:
http://www.customs.ru/index.php?option=com_content&view=article&id=23627:2016-07-07-13-12-15

ИННОВАЦИОННЫЕ ПОДХОДЫ К ПОДГОТОВКЕ СПЕЦИАЛИСТОВ В СФЕРЕ ТАМОЖЕННОГО ДЕЛА

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Резюме: *Статья посвящена анализу современных методов обучения, применяемых в образовательном процессе учреждения образования «Государственный институт повышения квалификации и переподготовки кадров таможенных органов Республики Беларусь» и способствующих формированию высокообразованных, компетентных, конкурентоспособных специалистов в сфере таможенного дела, готовых входить в глобализированный мир, открытое информационное общество.*

В настоящее время учебный процесс требует постоянного совершенствования, поскольку научно-технический прогресс все больше осознается как средство достижения такого уровня жизнеобеспечения, который в наибольшей мере отвечает удовлетворению постоянно повышающихся потребностей человека.

Вопрос, связанный с выработкой единых стандартов образования в области таможенного дела, является актуальным не только для учреждений образований, но и для организаций-заказчиков. Широкий спектр профессиональной деятельности сотрудников таможенных органов ставит перед учебными заведениями очень сложную задачу, дать слушателям требуемый уровень знаний в таких серьезных областях как: таможенно-тарифное регулирование, борьба с правонарушениями в области таможенного дела, совершение таможенных операций, проведение таможенного контроля и т.д.

Международная торговля является важнейшей движущей силой экономического развития общества. Мировая торговая система уязвима перед различными внешними посягательствами, прежде всего, такими как терроризм, эпидемии, природные катаклизмы, которые могут принести ущерб всей мировой экономике. Таможенные органы, являясь государственными органами, контролирующими перемещаемые международные грузовые потоки и управляющие этими потоками, находятся в уникальном положении, позволяющем повысить безопасность мировой цепи поставок товаров, способствовать социально-экономическому развитию стран. Необходимость поиска путей повышения эффективности таможенного контроля, становится особенно актуальной в условиях создания Таможенного союза в рамках ЕврАзЭС.

Кроме того, всё возрастающие требования участников внешнеэкономической деятельности к качеству работы таможенных органов заставляют нас искать более эффективные подходы к подготовке специалистов в области таможенного дела.

Таким образом, можно констатировать, что в настоящее время созрела объективная необходимость в создании эффективной системы управления таможенной

деятельностью, опирающейся на солидный научный фундамент.

Новые стандарты деятельности таможенных органов могут быть основаны на применении перспективных управленческих технологий, актуальных методов инновационных моделей и концепций, зарекомендовавших себя и доказавших свою эффективность в сфере экономики.

Также является правильной актуализация вопроса связанного с сокращением периода адаптации выпускника к выбранной специальности. Часто меняющееся законодательство, создание новых программных продуктов и технологий в сфере таможенного администрирования, не позволяют выпускникам в полном объеме приступить к выполнению своих обязанностей.

Подготовка специалистов в области таможенного дела должна иметь непрерывный характер и осуществляться на протяжении всей трудовой деятельности в целях постоянного расширения и углубления знаний, повышения уровня профессионального мастерства в соответствии с меняющимися требованиями.

Именно современная ситуация в подготовке специалистов потребовала коренного изменения стратегии и тактики обучения в учреждении образования «Государственный институт повышения квалификации и переподготовки кадров таможенных органов Республики Беларусь».

Главными характеристиками слушателя нашего образовательного учреждения являются его компетентность и мобильность. В этой связи акценты при изучении учебных дисциплин переносятся на сам процесс познания, эффективность которого полностью зависит от активности самого слушателя. Наиболее удачными методами в усвоении слушателями знаний являются активные методы обучения, суть которых состоит в том, чтобы обеспечить выполнение

слушателями тех задач, в процессе решения которых они самостоятельно овладевают умениями и навыками.

Основной задачей нашего учебного заведения является подготовка специалистов, способных нестандартно, гибко и своевременно реагировать на изменения, которые происходят в мире. Поэтому для подготовки слушателей к профессиональной деятельности в будущем и используются инновационные методы обучения. К таким методам относится проблемное обучение, предусматривающее формирование навыков для решения проблемных задач, которые не имеют однозначного ответа, самостоятельной работы над материалом и выработку умений применять приобретенные знания на практике.

Лекция вдвоем. В этой лекции учебный материал проблемного содержания дается слушателям в живом диалогическом общении двух преподавателей между собой. Здесь моделируются реальные профессиональные ситуации обсуждения теоретических вопросов с разных позиций двумя специалистами, например теоретиком и практиком, сторонником или противником той или иной точки зрения. При этом нужно стремиться к тому, чтобы диалог преподавателей между собой демонстрировал культуру совместного поиска решения разыгрываемой проблемной ситуации, с привлечением в общение слушателей, которые задают вопросы, высказывают свою позицию, формируют свое отношение к обсуждаемому материалу лекции, показывают свой эмоциональный отклик на происходящее. Лекция вдвоем заставляет активно включаться в мыслительный процесс. С представлением двух источников информации задача слушателей сравнить разные точки зрения и сделать выбор, присоединиться к той или иной из них или выработать свою.

Новой формой получения образования в Институте, а также новым видом взаимодействия между преподавателями и слушателями является дистанционное обучение.

Дистанционное обучение является формой получения образования, при которой в образовательном процессе используются традиционные и специфические методы, средства и формы обучения, основанные на компьютерных и телекоммуникационных технологиях. Основу образовательного процесса при ДО составляет целенаправленная и контролируемая интенсивная самостоятельная работа обучаемого, который может учиться в удобном для себя месте, по индивидуальному расписанию, имея при себе комплект специальных средств обучения и согласованную возможность контакта с преподавателем и другими обучающимися по телефону, электронной почте. Интерактивное взаимодействие между преподавателем и обучаемым в диалоговом режиме, которое, в ряде случаев, может приближаться по форме к взаимодействию, происходящему при традиционном аудиторном обучении. По материалам, отведенным на самостоятельное изучение, дополнительно проводятся on-line-консультации. У слушателей появляется возможность пообщаться с преподавателем по средствам Форума, который создан специально для данной группы. On-line-консультации организовываются после каждого изученного раздела и направлены на выявление проблемных вопросов и сложных для понимания нюансов. В помощь слушателям также разработаны тесты в режиме самопроверки, что подразумевает проверку знаний слушателя после прохождения раздела. Тест можно сдавать неоднократно, при этом все правильные ответы доступны по окончании тестирования. Эта форма контроля рассчитана на добросовестное выполнение теста и закрепление полученных знаний слушателем.

Заключительной задачей преподавателя является контроль знаний, умений и навыков обучающихся. Эта задача решается в дистанционном обучении при разработке тестовых заданий текущего и итогового контроля. Таким образом,

главными задачами преподавателя в организации дистанционного образования являются:

- разработка учебного курса;
- разработка инструкции по обучению;
- консультирование и помощь обучающимся по изучаемому предмету;
- контроль результатов обучения.

Учебный курс в системе дистанционного образования для обучающегося включает два обязательных компонента:

- индивидуальную работу, предполагающую использование различных форм учебных материалов и учебно-технологических средств;
- диалог с преподавателем и другими слушателями.

Инновационные и активные формы обучения нам уже сегодня позволили изменить и роль преподавателя, который является не только носителем знания, но и наставником, инициирующим творческие поиски слушателей.

Более подробно хотелось бы остановиться на особенностях организации такой формы учебного занятия как «практическое», на которое в нашем учебном заведении в основном выносятся вопросы, требующие особого участия преподавателя в их успешном усвоении.

Практические занятия представляют собой, как правило, занятия по решению различных прикладных задач, образцы которых были даны на лекциях. В итоге у каждого обучающегося должен быть выработан определенный профессиональный подход к решению и интуиция. Отбирая систему упражнений для практического занятия, преподаватель нашего учебного заведения стремится к тому, чтобы это давало целостное представление о предмете и методах изучаемой науки, причем методическая функция выступает у нас в качестве ведущей.

Практические занятия по любой учебной дисциплине в нашем Институте - это коллективные занятия. И хотя в овладении теорией вопроса большую и важную роль играет

индивидуальная работа, тем не менее, большое значение при обучении имеют занятия, опирающиеся на групповое мышление. Они дают значительный положительный эффект, если в ходе их царит атмосфера доброжелательности и взаимного доверия, если обучающиеся находятся в состоянии раскрепощенности, спрашивают о том, что им неясно, открыто, делятся с преподавателем и слушателями своими соображениями.

Наш педагогический опыт показывает, что нельзя на практических занятиях ограничиваться выработкой только практических навыков и умений решения задач. Обучающиеся должны всегда видеть ведущую идею курса и ее связь с практикой. Цель наших занятий понятна не только преподавателю, но и слушателям. Это придает учебной работе актуальность, утверждает необходимость овладения опытом профессиональной деятельности, связывает её с практикой жизни.

Таким образом, для повышения познавательной активности слушателей, преподавателю предлагается множество различных разработанных методов, которые он может использовать в своей преподавательской деятельности.

Активные методы обучения создают условия для формирования и закрепления профессиональных знаний, умений и навыков у слушателей. Они вооружают слушателей основными знаниями, необходимыми специалисту в его квалификации, формируют профессиональные умения и навыки, т.к. для практики необходима теория, а для теории – практика.

Использование различных форм и видов обучения в нашем Институте способствует формированию высокообразованных, компетентных, мобильных, самоорганизующихся, конкурентоспособных специалистов, готовых входить в глобализированный мир, открытое информационное общество.

Литература:

1. Активные методы обучения как средство формирования высокой компетентности специалиста / Н. С. Миноранская [и др.] // Мед. образование и профессиональное развитие. – 2012. – № 1. – С. 153-156.
2. Аркусова, И. В. Компьютерные инновации в современном высшем образовании / И. В. Аркусова // Педагогика. – 2012. – № 8. – С. 33-39.
3. Макаренко, О. В. Интерактивные образовательные технологии в вузе / О. В. Макаренко // Высшее образование в России. – 2012. – № 10. – С. 134-139.
4. Стародубов, В. И. Оценка качества образовательной среды: учеб. / В. И. Стародубов, П. И. Сидоров, Е. Ю. Васильева. – М.: Литера, 2013. – 464 с.

ПСИХОЛОГИЧЕСКОЕ СОПРОВОЖДЕНИЕ ПРОФЕССИОНАЛЬНОГО ОБРАЗОВАНИЯ ДОЛЖНОСТНЫХ ЛИЦ ТАМОЖЕННЫХ ОРГАНОВ

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Резюме:

В статье рассматриваются теоретические и прикладные аспекты проблемы психологического сопровождения профессиональной подготовки таможенных кадров в Республике Беларусь. Описывается опыт организации психологического сопровождения образовательного процесса в профильном учреждении образования.

В настоящее время профессиональная подготовка специалистов в сфере таможенного дела в Республике Беларусь представлена системой первичного профессионального образования и последующего профессионального совершенствования специалистов в процессе профессионализации. Первый блок – «основ специальности» – реализуется в рамках высшего образования на базе профильных факультетов высших учебных заведений. Второй блок – «профессионального совершенствования» – реализуется в рамках дополнительного образования на базе профильного учреждения образования «Государственный институт повышения квалификации и переподготовки кадров таможенных органов Республики Беларусь», который подчиняется Государственному таможенному комитету

Республики Беларусь и осуществляет повышение квалификации и переподготовку должностных лиц таможенных органов Республики Беларусь, а также обучение и повышение квалификации специалистов по таможенному декларированию.

Важной составляющей современной системы подготовки кадров в любой отрасли является психологическое сопровождение профессионального образования. Сфера таможенного регулирования внешнеторговой деятельности не исключение. Более того, профессиональная деятельность должностных лиц таможенных органов характеризуется высокой сложностью, напряженностью и динамичностью. Современный таможенник должен быть подготовлен и как эксперт в области разрешения конфликтов и противодействия лжи, и как субъект, способный эффективно совладать с профессиональными трудностями, обладающий высоким уровнем волевого самоконтроля и регуляции эмоциональных состояний, и как специалист (в первую очередь, это касается руководителей), способный использовать арсенал практической психологии в интересах управления персоналом. Все эти профессионально важные компетенции должны быть сформированы в ходе профессиональной подготовки специалистов.

Анализ образовательных программ подготовки бакалавров и магистров по специальности «Таможенное дело», показал, что элементы психологической подготовки представлены в содержании некоторых учебных дисциплин социо-гуманитарного цикла. Однако, преобладание теоретических форм изложения материала и незначительное количество часов, отведенных на его изучение, позволяют заключить, что на этапе первичного профессионального образования будущие специалисты в сфере таможенного дела не имеют возможности приобрести психологические компетенции, необходимые для успешной профессиональной деятельности. Следовательно, указанные компетенции

формируются уже непосредственно в ходе осуществления профессиональной деятельности на этапе профессионального совершенствования, что обуславливает высокие требования к психологической подготовке таможенных кадров на местах.

В тоже время, система психологической подготовки кадров в таможенных органах Республики Беларусь находится в стадии формирования и нормативного закрепления. Поэтому в рамках дополнительного образования должностных лиц таможенных органов на базе профильного учреждения образования психологической подготовке уделяется серьезное значение. Именно психологическое сопровождение образовательного процесса в Институте призвано на сегодняшний момент обеспечить должный уровень психологической подготовки таможенных кадров.

В широком смысле под психологическим сопровождением профессионального образования подразумевается психологическое сопровождение становления личности в профессии, которое заключается в оказании помощи специалисту в развитии позитивной профессиональной перспективы, в преодолении трудностей профессиональной жизни, коррекции деструктивных тенденций развития (кризисов, конфликтов, деформации) в оптимизации процесса адаптации к изменяющимся социально-экономическим и технологическим условиям.

Анализ литературных источников показывает, что большинство исследований по проблеме психологического сопровождения, в которых отражены общие и прикладные аспекты профессионального развития и успешности личности, выполнены в рамках акмеологического подхода [1; 2; 3; 5]. Главной задачей психологического сопровождения с точки зрения данного подхода является «предложить предельно технологическую стратегию и тактику ...процесса перевода начинающего свою самостоятельную деятельность специалиста на все более высокие уровни профессионализма» [1, с. 15].

Философским основанием проблемы психологического сопровождения является концепция свободного выбора как условия развития. Исходным положением для формирования теоретических основ психологического сопровождения стал личностно ориентированный подход, как выбор и освоение человеком тех или иных инноваций, путей профессионального становления, каждая ситуация выбора порождает множественность вариантов решений, опосредованных социально-экономическими условиями. Кроме того, сопровождение может трактоваться как ответственность личности за профессиональные действия, которые она совершает. Важнейшим положением данного подхода выступает приоритет опоры на внутренний потенциал субъекта, на его право самостоятельно совершать выбор и нести за него ответственность. Вне зависимости от выбранного подхода, цель психологического сопровождения — полноценная реализация профессионально-психологического потенциала личности и удовлетворение потребностей субъекта деятельности.

Таким образом, психологическое сопровождение — это целостный процесс изучения, формирования, развития и коррекции профессионального становления личности, а также технология, основанная на единстве четырех функций: диагностики сути возникшей проблемы, информации о проблеме и путях ее решения, консультации на этапе принятия решения и выработки плана решения проблемы, первичной помощи на этапе реализации плана решения.

Анализ литературы по данной проблеме, позволяет выделить следующие концептуальные положения психологического сопровождения профессионального становления личности:

- наличие социально-экономических условий для того, чтобы личность могла реализовать себя в профессиональной жизни;

- необходимость для полноценного профессионального становления социально-психологического обеспечения, помощи и поддержки со стороны общества;
- признание права личности на самостоятельный выбор способов реализации своих социально-профессиональных функций;
- принятие личностью собственной ответственности за качество профессионального становления и реализации своего профессионально-психологического потенциала;
- гармонизация внутреннего психического развития личности и внешних условий социально-профессиональной жизни [2; 4].

В соответствии с данными положениями, функциями психологического сопровождения являются:

- информационно-аналитическое сопровождение отдельных этапов профессионального становления (выбора профессии, начального этапа профессиональной адаптации, профессионализации и т.д.);
- проектирование сценариев отдельных этапов профессионального становления;
- психологически компетентное оказание поддержки и помощи личности в преодолении трудностей профессионального становления, особенно при изменении социально-профессиональной среды;
- профессиональная реабилитация личности в случаях длительного перерыва в профессиональной деятельности;
- профилактика развития профессиональных деформаций, оказание помощи в преодолении кризисов и стагнации;
- коррекция социально-профессионального и психологического профиля личности [1; 4; 5].

В качестве основных направлений психологического сопровождения специалисты-практики еще всего выделяют:

- изучение условий и факторов, влияющих на продуктивность труда и эмоционально-психологическое состояние персонала;

- эффективное воспроизводство и сохранение профессионально подготовленного персонала организаций;

- проектирование профессиограмм, отражающих динамику профессионального становления личности и альтернативные варианты профессионального развития;

- формирование операциональной структуры будущей деятельности, а также целенаправленная подготовка к устойчивой и безопасной реализации профессиональной карьеры (включая профессиональную миграцию, социальную адаптацию, реориентацию, профессиональное самосохранение и комфортную жизнь после завершения карьеры);

- формирование и развитие акмеологической культуры персонала, его потребности в самореализации и способности к оптимальной деятельности, профессиональной и индивидуальной компетенции, коммуникации;

- обеспечение психологической безопасности персонала, комфортных условий его деятельности, а также восстановление профессионально-психологического ресурса специалистов;

- психологическое содействие при решении проблем профессионального становления личности на всех его стадиях.

Реализация описанных выше функций психологического сопровождения возможна при использовании личностно-ориентированных технологий профессионального развития:

- развивающей диагностики;
- тренингов личностного и профессионального развития и саморазвития;

- мониторинга социально-профессионального развития;

- технологий формирования психологической аутокомпетентности;

- психологического консультирования по проблемам социально-профессионального развития;
- проектирования альтернативных сценариев профессиональной жизни;
- лично ориентированных тренингов повышения социально-профессиональной и психолого-педагогической компетентности;
- ретроспекции профессиональной жизни (психобиографический метод);
- тренингов самоуправления, саморегуляции эмоционально-волевой сферы и самовосстановления личности [2].

С момента создания психологической службы в таможенных органах Республики Беларусь в 2015 году, в учреждении образования ГИПКиПК ТО Республики Беларусь, ведется целенаправленная работа по созданию системы психологического сопровождения профессионального образования специалистов в сфере таможенного дела.

Особое внимание при этом уделяется психологическому сопровождению образовательного процесса методом профессионального тренинга, который предполагает создание ориентационного поля профессионального развития личности, укрепление профессионального «Я», поддержание адекватной самооценки, оперативную помощь и поддержку, саморегуляцию жизнедеятельности, освоение технологий профессионального самосохранения.

Тренинги для сотрудников, контактирующих с подконтрольными лицами, традиционно направлены на развитие:

1. профессионально-психологической ориентированности и чувствительности сотрудника (стремление, интерес и умение понимать психологические аспекты ситуаций и людей, с которыми он имеет дело, умение разобраться в них);

2. подготовленности сотрудника по психологическим аспектам эффективности профессиональных действий и тактики, проявляющейся в понимании психологических условий эффективности профессиональных действий и умении обеспечивать их создание; умелом использовании психологических средств реализации профессиональных действий речевых и не речевых, в умелом применении всего комплекса психологических приемов, обеспечивающих более высокую эффективность решения служебных задач;

3. развитой профессиональной наблюдательности и памяти сотрудника (включает умение применять психологически обоснованные приемы и правила для повышения эффективности профессионального наблюдения, развитой профессиональной внимательности, натренированности органов чувств и восприятий, натренированности в быстром, полном и точном запоминании, хорошем сохранении в памяти и правильном воспроизведении значимой для решаемых задач информации);

4. психологической устойчивости (выражается в способности сотрудника действовать спокойно и уверенно в психологически сложных, эмоционально напряженных, опасных и ответственных ситуациях профессиональной деятельности).

Кроме того, в Институте разработаны и успешно реализовываются программы повышения квалификации психологической направленности для руководителей структурных подразделений, сотрудников отделов идеологической работы, должностных лиц, осуществляющих таможенный контроль и специалистов-психологов. В программы переподготовки специалистов на базе высшего образования введены психологические дисциплины «Управленческий потенциал руководителя», «Профессиональная этика и культура», «Психология профессионального общения», «Психология оперативно-розыскной деятельности». Все учебные программы носят

прикладной характер и ориентированы на формирование у должностных лиц таможенных органов практических психологических компетенций, необходимых для эффективной профессиональной деятельности и способствующих профессиональному и личностному росту.

Литература:

1. Деркач А. А. Психолого-акмеологические основы изучения и развития рефлексивной культуры государственных служащих / А. А. Деркач, С. Ю. Степанов, И. Н. Семенов. — М., 2008. — 312 с.

2. Зызыкин В. Г. Понятие личностно-профессионального развития в системе подготовки и переподготовки государственных служащих / В.Г. Зызыкин. — М.: РАГС, 2009. — 218 с.

3. Зеер, Э.Ф. Психология профессий / Э.Ф. Зеер. — М.: Академический проект, Фонд «Мир», 2006. — 336 с.

4. Касьяник, Е.Л. Формирование конкурентоспособного специалиста: методический аспект / Е.Л. Касьяник, Е.И. Сутович // Кіраванне ў адукацыі. — 2009. — № 6. — С. 23-32.

5. Маркова А. К. Психология развития профессионала / А. К. Маркова — М.: РАГС, 2010. — 250 с.

TRADE IMPACT ON IMMIGRATION POLICY IN THE UNITED STATES

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Introduction

The initial goal of any given trade agreement is generally to ease merchant relationships between countries and to make sure they are provided the same trade benefits and advantages as local businesses. However, trade agreements often have a significant impact on immigration policy. In return, immigration related issues often directly impact the political and policy aspects of international trade. There have been numerous studies to examine what effects immigration might have on the increase in foreign direct investment (FDI) in the country of origin, or if immigration policy will attract investment in the host country. The various aspects of immigration and trade relationships between countries will be discussed below. In past years, there have been a numerous policy changes in the United States related to immigration and foreign investment. These changes are often guided by national political trends. As background for discussion on future trade policy, this paper will explore relevant portions of immigration and trade history from the last half century. While other nations have passed various acts that have impacted world trade, this paper will focus on correlation between American trade and immigration policies.

Early immigration laws in the United States were often focused on the immigrants country of origin, often giving preference to immigrants from England, Germany, Sweden and a few other countries of Western Europe, often these preferences were given without regard to the immigrants professional skill set. At

the same time, immigration law generally prohibited the entry of significant populations if immigrants from Asian and African countries. This situation started to change in the second half of 20th century, when government started taking into consideration the demand of the labor market and geopolitical condition of the trade market.

In 1940s the rise in agricultural sector and beginning of the World War II gave rise to bracero program (from Spanish “manual laborer”), a joint program under the State Department, Department of Labor, and Immigration and Naturalization Services. Franklin D. Roosevelt set the direction in international trade for the next few decades stating that “the purpose of the whole effort is to eliminate economic warfare, to make practical international co-operation effective on as many fronts as possible, and so to lay the economic basis for the secure and peaceful world we all desire.” The bracero program was an agreement between the United States and Mexican government allowing Mexican citizens to enter U.S. for a seasonal agricultural work and construction of railroads. The program included inviting Chinese immigrants to the United States for seasonal work. This program became the precedent to later established H1B and other work visas. Workers were guaranteed decent living conditions, minimum wage and allowed to “white” areas. The program was responding to economic demands and the government was willing to adjust previously established policies to allow immigrants in select trades to enter the country. However, many Mexican workers were unable to obtain legal immigration permits but the often still entered the country illegally to work, often establishing a family in the United States at the same time (and the children born in the United States from parents illegally in the country nevertheless became United States citizens living with parents illegally in the United States). Initially the bracero program was planned as a temporary policy with a policy goal of returning the immigrant workers back to their country of origin once their contracts were completed. However, the migration trend of Mexican workers coming to the United States became a common

and long term trend due to increased border enforcement that made it more difficult and costly to cross the board and it became cheaper to stay in the United States instead of shuttling between the two countries. The population of Mexicans who stayed permanently in the U. S. rapidly increased from less than a quarter of a million per year in 1970s to over half million mark in 2000's. The government perspective on the large presence of Mexican population in the United States varies between these two countries. What the United States sees as immigration, Mexico sees simply as migration, implying the reasoning that workers will come back to their country of origin after making money. Currently, about 80% of Mexico's exports go to the United States, and about 50% of Mexico's imports are come from the United States. The United States mostly supplies Mexico with raw materials, while the United States gets back ready to use, manufactured products. That slows down the economic growth of Mexico and limit options for creating new working spaces. Shortly after the end of World War II, on June 30, 1948 the United States entered General Agreement on Tariffs and Trade (GATT). The multilateral free trade agreement demanded all its' members were to treat each other equally in regards to tariffs and eased restrictions on several imports and exports. The agreement initially had 23 members that later by 1993 expanded to 100 countries. Seemingly created as strictly trade agreement changed the immigration distribution of the United States. In addition to the GATT agreement in 1958, Senator John F. Kennedy in his book "A nation of Immigrants" argued that the national origins quotas "violated the spirit expressed in the Declaration of Independence that 'all men are created equal.' The discussion of new trade agreements and skilled migration versus traditional origin-based immigration started a new wave of immigration movement. However no new major immigration policies we adopted into law until 1965.

The Immigration and Nationality Act, also known as Hart-Celler Act, signed in law in 1965 by President Lyndon B. Johnson ended ethnic selection on immigration that favored Western

Europeans and discriminated some other origins as Asian and Caribbean Blacks. The implementation of the Hart-Celler Act created, among other policy changes, a limit of 20,000 immigrants per year with a preference given to the immigrants based on their skills and demand of U.S. Labor Department. (“From the Archives: A New Mix for America's Melting Pot in 1965” U.S. News Staff, Oct. 2, 2015). The number of immigrants from Europe in 1980s was twice less than immigrant from the same amount of time in the 1950s. At the same time the number of immigrants from Africa, Asia and Oceania increased four to seventeen times (depending on the region of origin) for the same periods of time. Interestingly, over the half of the countries that entered GATT were representing the above three regions - Africa, Asia and Oceania. However, new immigration act had significantly fewer visa quotes than it had during the bracero program, since GATT was focused on permanent residence vs temporary migration. Over the 25 years of existence of the bracero program severance from seasonal work became a significant income for many families in Mexico and part of national economy. Although they were unable to come to the United States legally, significant numbers of workers from Mexico still came to the United States looking for jobs illegally. The Hart-Celler act elevated the discussion on professional migration, while at the same time created new problems of illegal immigrants.

In 1972 geopolitical interests allowed Richard Nixon to establish diplomatic relations with China. This was a major policy shift in the White House that led to new immigration wave and a new chapter on trading and financial relationship, that has significantly strengthened in recent times. Many student immigrants from China stayed in U.S. under President George H.W. Bush’s Executive Order #12711 and “Act 106 Student-at-Large” known as “Chinese Student Protection Act.” Being an ally between the United States and China many of them made an impact on further development of trade relationship between these countries. Remaining connected with friends and family has led to substantial inflows of foreign capital that varied in different years

from several to \$10 billions a year. The easement in imports and exports within GATT made stronger trade and cultural connections between China and the United States, despite major differences in tariffs between countries with capitalist economy and non-tariff economy of communist country.

Immigration policy continued to evolve under President Reagan. In keeping America open to trade and immigration, he noted “[o]ur trade policy rests firmly on the foundation of free and open markets. I recognize . . . the inescapable conclusion that all of history has taught: The freer the flow of world trade, the stronger the tides of human progress and peace among nations.” The Reagan administration created World Trade Organization and United States and the Canadian Free Trade Agreement, that later in 1994 lead to the North American Free Trade Agreement (NAFTA) which included Mexico. Understanding that there is no trade without proper employment regulations, the President signed the Immigration Reform and Control Act of 1986 that enforced borders and applied sanctions against employers who hired illegal immigrants. Regan increased boarder enforcement while Reagan meanwhile legalized 2.8 million undocumented immigrants. In his final speech as a president Reagan beautifully expressed the complex idea of immigration and economy development in the United States “I’ve spoken of the shining city all my political life, but I don’t know if I ever quite communicated what I saw when I said it. But in my mind it was a tall, proud city built on rocks stronger than oceans, windswept, God-blessed and teeming with people of all kinds living in harmony and peace; a city with free ports that hummed with commerce and creativity. And if there had to be city walls, the walls had doors and the doors were open to anyone with the will and heart to get here.” (Reagan Embraced Free Trade and Immigration, Daniel Griswold, June 24, 2004 at the Cato Institute).

The NAFTA agreement was created to simplify trade relationships between the United States, Canada, and Mexico. “The 1994 North American Free Trade Agreement (NAFTA) formalized

‘free trade’ between the United States, Canada, and Mexico yet particularly disadvantaged Mexico’s domestic industries in manufacturing and agriculture” (Barajas 2009, 31). The simplified trade process increased international transactions involving the purchase of raw materials and mineral resources, while slowing down domestic agriculture in Mexico. Facing strong competition from subsidized American farms, large numbers of Mexican farmers went out of business and had to relocate to the United States in search of an income. The influx of Mexican farmers helps to explain the significant spike in immigration from Mexico around that time. According to statistics there were 2.5 million Mexican illegals in 1995; by 2006 that number increased to 8 million people.

While trade is free, there are obstacles in the way of foreign investors such as the Committee on Foreign Investment in the United States (CFIUS), dealing with investments that could result in foreign control of the United States business, or background checks involving the Bureau of Land Management, and the Foreign Investment in Real Property Tax Act of 1980. The United States is the world’s largest recipient of foreign direct investment. Recognizing significant benefit for the U.S. from foreign investment the United States government has been working to alter its’ foreign investment and immigration policy to meet current needs. One of these steps towards closer collaboration is the approval of the Foreign Investment and National Security Act (FISIA) by Congress in 2007. The new Act declared an “open door policy” for foreign investors and at the same time clarified the process for reviewing foreign acquisitions of U.S. firms, which is managed by the interagency Committee on Foreign Investment in the United States (CFIUS). The more clear and structured security review simplified the process for foreign investors without jeopardizing national security. The United States experience been so successful that other countries are considering applying FISIA models in their own formal procedures to attract foreign capital without compromising national security.

In 1995 World Trade Organization (WTO) was established to replace GATT. The move was designed to respond to the increased complexity of modern trade world. The new organization expanded to 123 countries and set up unprecedented globalization of the United States economy with investment capital moving from various parts of the world. Interest in investing to the United States economy by foreign investors is continue to grow in the past ten years at a rate faster than ever before. According to U.S. Bureau of Economic Analysis “expenditures by foreign direct investors to acquire, establish, or expand U.S. businesses totaled \$420.7 billion in 2015, an increase of 68 percent from 2014, when expenditures were \$250.6 billion. In 2015, as in 2014, the majority of the expenditures were to acquire existing businesses. In 2015, expenditures for acquisitions were \$408.1 billion. Expenditures to establish new U.S. businesses were \$11.2 billion, and expenditures to expand existing foreign-owned businesses were \$1.4 billion. Planned total expenditures, which include both actual and planned future expenditures, totaled \$439.2 billion”. “New Foreign Direct Investment in the United States, 2014 and 2015,” news release (July 13, 2016). Energy resources became one of the focus points in foreign investment affecting national economy and immigration policy.

On the first day of 2016, for the first time in over forty years, an oil tanker left an American dock on its way to Europe. (Joe Carroll and Sheela Tobben “First U.S. Oil Export Leaves Port; Marks End to 40-Year Ban,” Bloomberg, Jan. 1, 2016). The end of the oil ban, and the increase in free oil trade created more stable oil price. Oil value became less effectuated by political situations in the Middle East and allowed to review the immigration practice for certain countries at that region. Active exploration of national oil resources attracts international investors and opens new areas applicable for professional immigration as investors and H-1B visas distribution. The daily domestic crude oil production increased from 3.2 million barrels per day in 2013 to 9.3 million in second quarter of 2017, significant growth attracted not only

domestic, but foreign investors as well. While earlier oil and energy industries were precluded from external economic influence to protect national security, now there appeared to be a niche for foreign investors. Though foreign corporations can not directly purchase a share in the U. S. oil company, they can establish subsidiaries and operate under conditions that original country of the investor has reciprocal arrangement.

Changes in the oval office lead to the changing climate in trade and immigration policy. On April 3, 2017, USCIS temporarily suspended premium processing for all H-1B petitions, threatened to ban the entrance of citizens from certain countries in the Middle East, and increased concern on security of the United States borders and starting. Shortly after presidential Executive Order on April 18, 2017 “Buy American and Hire American” opened a new chapter in future trade and immigration policy in the United States.

The Trans-Pacific Partnership (TPP) between twelve countries in Pacific Ocean was rejected by newly elected President Donald J. Trump. The idea behind TPP was similar to European Union, however the population of the countries involved was twice the number of the people involved in the European Union and one could only imagine the financial potential of that union. The purpose of that union was to strengthen trade partnerships between these countries, work together on economic policies and regulations leading towards growth in trade relationship and form strong opposition towards cheaper goods from China taking over significant margin of the market.

The United States is interested in attracting more of world’s capital is proving to have a direct correlation between bilateral investment and migration policy. For instance, Azerbaijan has had a bilateral investment treaty with the United States since 1997. There has been a long established history of collaboration in exploration and export of Azerbaijan’s energy resources to Europe. Both countries have been working closely on the development of offshore crude oil sources within Baku-Tbilisi-Ceyhan and Shah Deniz pipelines development. “Azerbaijan has been designated as

a beneficiary country under the Generalized System of Preferences (GSP) program, under which a range of products that Azerbaijan might seek to export are eligible for duty-free entry to the United States”. (Bureau of European and Eurasian Affairs, Fact Sheet, June 9, 2016.) Successful trade collaboration has often impacted immigration policy between countries. In this case, the current president signed an executive order to allow Azerbaijanis visa free travel for the period of up to 180 days.

Conclusion

There is a clear connection between trade benefits and immigration openness. Based on a historical review, economic interest often effects the immigration politics of the country and the United States, in particular. Mutual collaboration on various economic and trade projects would likely induce money flow as foreign direct investment which in its turn effects government decisions on immigration policy. Looking at the history over the past half century it appears the United States government is willing to tailor its’ immigration policies to comply with economic demand.

Abstract

This paper examines impact of trade on immigration policy in the U.S. First, it will go over historical background of immigration policy. Second, it will examine the implications of governmental economic decisions on civilians. In conclusion, the paper will try to project the near future of trade and immigration policies based on decisions from our historical past.

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Bibliography:

1. U.S. Bureau of Economic Analysis, "New Foreign Direct Investment in the United States, 2014 and 2015," news release (July 13, 2016).
2. Foreign Investment in the United States: Major Federal Statutory Restriction. Michael V. Seitzinger, Legislative Attorney June 17, 2013.
3. Barajas, Manuel. 2009. *The Xaripu Community Across Borders*. Notre Dame, IN: University of Notre Dame Press.
4. From the Archives: A New Mix for America's Melting Pot in 1965. U.S. News Staff, Oct. 2, 2015.
5. Joe Carroll and Sheela Tobben "First U.S. Oil Export Leaves Port; Marks End to 40-Year Ban," Bloomberg, Jan. 1, 2016.
6. A History of Immigration Reform. More than 300 years of border policy reform has shaped modern immigration legislation in the U.S. By Andrew Soergel, Economy Reporter, Nov. 20, 2014.
7. Reagan Embraced Free Trade and Immigration, Daniel Griswold, June 24, 2004 at the Cato Institute.
8. "USCIS Will Temporarily Suspend Premium Processing for All H-1B Petitions". USCIS. March 3, 2017.
9. U.S. Energy Information Administration <https://www.eia.gov/naturalgas/importexports/annual/>
10. Faux, Jeff. 2003. "How NAFTA Failed Mexico." *The American Prospect* 14, no. 7 (2003). Accessed January 8, 2013. <http://prospect.org/article/how-nafta-failed-mexico>.
11. Bybee, Roger, and Carolyn Winter. "Immigration Flood Unleashed by NAFTA's Disastrous Impact on Mexican Economy." *Common Dreams Newscenter*(2006). 11 Nov. 2007.
12. New Foreign Direct Investment in the United States, 2014 and 2015. July 13, 2016.

13. “A Nation of Immigrants”, Susan F. Martin, November 8, 2010.
14. Mexico’s Free Trade Agreements, M. Angeles Villarreal, April 25, 2017.
15. U.S. International Trade Policy: An Introduction, W. Charles Sawyer, 2017.

STUDY ON THE IMPROVEMENT OF SHANGHAI INTERNATIONAL TRADE "SINGLE WINDOW": FROM THE PERSPECTIVE OF ENTERPRISE LOGISTICS INFORMATION QUALITY IN CUSTOMS CLEARANCE

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Abstract

In order to promote international trade facilitation, improve customs clearance efficiency and enhance enterprises' logistics performance, "single window" has gradually become a universal acceptance which is widely practiced by the countries all over the world. "Single window" aims to make sharing information between enterprises and government departments more smooth and convenient. It helps to enhance the competitiveness and the efficiency of China's import and export trade to a greater extent. This paper explains the symbiotic relationship between the customs and the business through the theory of symbiosis, and studies the importance of improving international trade "single window" with Shanghai "single window" as the benchmark research object. The quality of enterprise logistics information in customs clearance process is an important factor affecting the operation effect of single window. The paper proposes some suggestions for improvement based on the customs - business partnership.

Key Words: *Single window, logistics information, trade facilitation, customs clearance, symbiotic relationship*

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I. Introduction

"Single Window" is a key measure to promote trade facilitation. It is an important means to improve the clearance efficiency, enhance the trade competitiveness of countries or regions. In 2005, WCO, the World Customs Organization, developed the SAFE Framework of Standards to secure and facilitate the global trade, requiring governments to actively build a single window. GACC announced in February 2006 that China is preparing to implement the SAFE Framework of Standards and putting the building of single window on the agenda. *The Guidelines for the Establishment of International Trade Single Window and the Legal Framework for Building International Trade Single Window* put forward the core idea of implementing the "single window": import and export trade enterprises can submit all the relevant information, data and documents to the regulatory authorities of government through a single channel to meet all the requirements of the related authorities. Meanwhile, the government agencies can also deal with the information through a one-stop process.

To put it in short, "single window" is to concentrate all the departments and institutions involved in the regulation of the imports and exports on a platform to accelerate and simplify the process of information flow between enterprises and regulatory authorities of government. Therefore, "single window" can not only enhance the logistics performance of the import and export trade enterprises, but also reduce trade costs, improve traders' awareness of law-abiding and promote trade facilitation.

1. Current status of single window

According to the different forms of organization, "single window" can be divided into three categories: "single institution" mode, "single system" mode and "public platform" model.

The "single institution" model is through a single government regulatory agency to deal with all the relevant import and export regulatory business. The agency can handle the import and export

trade data immediately after receiving them from the enterprises. The trade structure of the countries, which implement this kind of "single window", is relatively simple, so that the agency can effectively support its administrative and regulatory activities. At present, Sweden and the Netherlands are using this model.

The "single system" model is designed to integrate, collect, use and transmit electronic data related to international trade through the establishment of an information system that handles the import and export business, and the regulators are still independent of each other. The import and export trade structure of the countries, which implement this kind of "single window", is often complicated and various types of goods need to be differently supervised. It includes ITDS (International Trade Data System) of the United States, UNI-PASS of South Korea and e-Customs of Azerbaijan, etc.

The "public platform" model is a public information processing platform for trade enterprises to declare to different relevant regulatory authorities at one time, and through this platform the enterprises can receive confirmation information from various institutions and departments. It helps to achieve the information sharing and the business collaboration. The various regulatory authorities of the countries, which implement this kind of "single window", have established their own regulatory system. In this situation, the establishment of a public information sharing platform is the most economical program. Many developing countries use the experience of Singapore's TradeXchange for reference and combine with their national conditions to build this model of "single window".

- China's implementation of the "single window"

As China's trade regulators have their own basic system, as well as the difference of the various departments' operation efficiency and the distribution of benefits, our country hasn't achieved the condition that all the existing system can be fully integrated. Therefore, taking the model similar to "public platform"

and supplementing it by advanced network technology, is the most realistic idea of constructing China's "single window".

In July 2012, the State Council issued the *Notice of the General Office of the State Council on Printing and Distributing "the 12th Five-Year" Plan for the Development of E-Port*, which marks the construction of China's E-port into a high-speed development stage. GACC, along with the Ministry of Commerce, the State Administration of Foreign Exchange, the Finance Bureau, the Quality Supervision Bureau, the Trade Promotion Bureau, the Ministry of Transport, the Public Security Bureau and other 15 management departments, as well as Bank of China and other 15 commercial banks, further promotes China's "single window" platform - the development of electronic ports. The platform integrates information flow, capital flow and logistics in one and helps to share the cross-sectoral and cross-industry data to effectively exchange data and audit network. In addition, 35 regional E-port platforms have initially been built with the help of local government and the relevant port management departments according to local characteristics of the region, including 15 physical platforms and 20 virtual platforms. They provide more than 600 kinds of the integrated services such as manifest declaration, warehouse networking and so on. Among them, Shanghai has a solid foundation in the policy measures of the customs clearance.

- Shanghai international trade \$ingle window"

On June 18, 2014, Shanghai international trade "single window" pilot project began to run with the basis of using computer as a technical means and docking government regulatory systems and the "single window". By registering the "Shanghai International Trade Single Window" platform and filling in a form that complies with the requirements of the government department, the enterprises can share information, generate the relevant form, and finally receive the release permit on the exports through the "single window" platform.

China (Shanghai) Free Trade Experimental Zone, as a "test field" for the reform of customs clearance throughout the country, has a solid foundation for the innovation and reform of policy measures in the areas of trade facilitation and customs clearance, etc. It greatly helps to improve the degree of accessibility of FTA enterprises. At present, the country has built the single window of the provinces and cities, and most of the functions and frameworks contain the "factor" of Shanghai. Cargo declaration, transportation declaration, trade permits and other functions in Shanghai "single window" are generally welcomed and have already been copied and promoted all over the country.

Although the implementation of the Shanghai international trade "single window" is widely recognized and it benefits multiple parts, this does not mean that the "single window" in Shanghai is operating very perfectly. The problems still exist and they are representative across the country. Among them, there is a manifest section in Shanghai international trade "single window" 3.0. It includes the original manifest, pre-assigned manifest and loading manifest. The significance of this manifest section is: first, the need for the customs to promote the risk management; second, ensuring the safety and convenience of the trade; third, combating smuggling violations; fourth, the risk analysis before the goods arrive and the provision of the data base.

There are two core requirements of the manifest section: first, the transport unit must complete the manifest declaration in advance; second, the import and export trade enterprises must carry out "one to one" measure in accordance with the bill of lading. (a bill of lading corresponding to a customs declaration). These two regulations have caused a hustle and bustle in the industry, as the implementation of them will inevitably lead to a prominent increase in customs clearance costs and a significantly negative impact on customs clearance time.

2. Literature review

"Single window" started late in China, so the amount of domestic research theses in this field is relatively small, but there are still many literatures on "single window", mainly focusing on its operation mode, the trend of international trade facilitation and the main issues on the establishment of "single window". It is suggested that the aim of establishing international trade single window is to promote the process of international trade facilitation, and the research of strengthening the promotion and application of the international trade facilitation standards is the main factor to improve the competitiveness of China's international trade (Hu Hanjing, 2012). Some research shows that most of the foreign trade enterprises have encountered clogging events of customs clearance due to the filling mistakes in the contents of the documents. The use of national standards can effectively eliminate the clogging problems of customs clearance and reduce the transaction costs and the enterprises will take the initiative to understand the national standard of filling international trade documents and actively adopt it (Zhang Mingzhou, 2014). It is argued that China's trade promotion index is far behind the major developed economies, such as United States, Japan and the United Kingdom, especially in the "import time", "export time" and "export documents". China should explore the establishment of a highly efficient management system which enables the customs, commodity inspection department and other government agencies to share information and maximize the efficiency of import and export system. It plays a greatly important role in trade facilitation (Li Mosi, Peng Yu and Shen Yuliang, 2013). Jonathan Koh Tat Tsen (2011) examines the development of "single window" practices over the past decade, and he believes that more regional and global cooperation is needed in the implementation and development of "single windows", including not only national governments, but also international organizations and import and export trade enterprises.

II. The importance of improving “single window” and the theoretical basis

The goal of trade in the whole world is to reduce costs and improve efficiency to enhance competitiveness. In terms of Singapore, all the previous import and export sectors are manual, consuming a lot of manpower and time and there are still many uncertainties. Singapore government has discovered the weakness of economic development and put forward the concept of "single window" construction.

Today, Singapore's companies benefit a lot from one-stop, low-cost, fast and efficient port services. More than 8,000 business processes of 35 government departments have been integrated and the enterprise can declare through the “single window” 24/7. The feedback time from the customs to the enterprises is reduced from the original 4-7 working days to 10-15 minutes. The cost of each declaration is reduced from the original 10 Singapore dollars to an average of 3 Singapore dollars. The emergence of “single window” is not only to facilitate the business, but also to facilitate the customs and other government agencies, so that it is not only the national government which promotes the building of single window, but also the needs of the enterprises leads to the continuous improvement of single window.

1. it's greatly important to build and improve single window" ***- The drive of the national policy and background***

"Single window" is one of the results of China's FTA policy. At the fifth meeting of the 12th National People's Congress, Premier Li Keqiang mentioned that in the 2017 government work report, it was necessary to promote the international trade “single window” and realize the national integration of customs clearance.

On April 7th 2017, GACC issued the notice of *The Key Point of Customs' implement of "The Belt and Road" initiative*, and the fourth article proposed to deeply promote the reform of customs clearance integration and basically realize the national customs clearance integration within the year. Our country should accelerate

the development of the standard version of international trade "single window", and promote it nationwide. Besides, it is also of great significance to communicate and cooperate with the countries and the major trading partners who participate in the "Belt and Road" initiative about carrying out "single window" construction and other related areas, and to carry out docking with the countries and regions which are closely related to our country's trade and have a more mature construction of the "single window". The emphasis of customs supervision also mentioned to deepen the existing customs clearance reform initiatives and focus on rapidly promoting the change from the customs clearance model of "one declaration, one inspection, one release" to the "single window".

In addition, the specific tasks of the customs suggest that the enterprise credit management will be fully blended into the reform of customs clearance integration, which can help to provide one-stop service for enterprises, further deepen the mutual trust and cooperation between customs and enterprises, encourage enterprises' self-discipline of credit constraints, share information through the Internet and implement the management philosophy of "goods by the enterprise", as well as continuing to optimize the "single window" to improve enterprises' logistics performance, promote trade facilitation, build win-win partnership between customs and business and realize 100% of enterprises' declaration rate through the "single window" by 2020.

- The needs of import and export trade enterprises in trade and logistics

As the economic globalization is continuously developing and the trade volume and trade scale are gradually expanding, global trade facilitation is imperative. However, when China's enterprises are trading imports and exports, they need to submit the relevant information to a number of regulatory authorities, such as customs, commodity inspection, etc. To a large extent, this process affects the efficiency of customs clearance and the logistics performance of enterprises. It is understood that the regulations of China's current import and export control have reached 55,

involving 26 departments. It is conceivable that, for ordinary import and export trade enterprises, it is a serious challenge to ensure that they not only compliance in line with norms, but also efficiently do the import and export trade activities without hindrance.

For the further development of China's economy and greater benefits obtaining, China must make changes on the most critical part throughout the import and export process, which is the operation mode of the customs clearance. It must rely on national policy and the cooperation between the government departments to implement the change measures. "Single window" is the solution taken by the developed countries to solve this problem. This measure aims to simplify the customs clearance process and help to reduce the delay time of imports and exports at the port, which can improve the customs clearance efficiency of the goods and the logistics performance of the enterprises, as well as reducing enterprises' trade cost. This is exactly the results that the import and export trade enterprises wish for nowadays. China must construct and optimize the international trade "single window" which facilitate import and export trade enterprises in accordance with China's national conditions.

2. The theory of symbiosis between customs and business

The theoretical circle has developed a consistent understanding of the relationship between customs and business. It has become a consensus that the "partnership" between customs and business is a win-win basis. In WCO SAFE framework of standards, which is to secure and facilitate global trade, the second pillar is Customs-to-Business partnership. The core is to make cooperation between enterprises and customs to strengthen cooperation and maximize the realization of trade facilitation. The symbiotic relationship between them has been gradually clear.

Symbiosis is a common phenomenon in the biological world. In 1879, the German fungal scientist Anton de Bary first proposed the concept of "symbiosis" and defined "symbiosis" as different

species living together. Some biologists have developed Anton de Bary's idea of symbiosis and formed a systematic symbiosis theory. Since 1950s, symbiosis theory has been widely used in the economy, management and other social sciences. In most literature of social science, symbiosis is defined as a coexistent status between people. In 1998, Yuan Chunqing, a Chinese scholar, introduced the symbiosis theory into the economic field, and used the concept and analysis method of symbiosis theory to analyze the small economic problems in depth. He defined "symbiosis" as the relationship between coexistence units, and this relationship is formed in a symbiotic pattern in a symbiotic environment. He proposed to describe the nature of symbiosis by three symbiotic elements (symbiotic units, symbiotic pattern, and symbiotic environment) and established the preliminary theoretical framework to analyze the status of symbiotic relationship.

There are also three elements in the symbiosis between the customs and the business. In these three elements, the symbiosis model is the key, the symbiosis unit is the foundation and the symbiotic environment is the important external condition. Any symbiotic relationship is the result of the interaction among the symbiosis units, the symbiosis model and the symbiotic environment. These three elements also reflect the dynamic change and law of the symbiotic system formed between the customs and the business. The relationship between the symbiotic units is reflected by the symbiotic pattern. In the symbiotic relationship between the customs and the business, the customs and the business are symbiotic units, the way of interaction is the symbiotic model, "single window" is a very important part of its symbiotic model. Trade situation, international standards and other external environment elements become a symbiotic environment that affects their symbiotic relationship.

To the extent that Customs can rely on its partners in the trade community to evaluate and address threats to their own supply chain, the risk confronting Customs is reduced. Therefore, companies that demonstrate a verifiable willingness to enhance

supply chain security will benefit. Minimizing risk in this way helps Customs in performing their security functions, and in facilitating legitimate trade.

III High cost and low efficiency in single window: The quality problem of logistics information

The logistics information proposed in this paper refers to the related good information that the enterprises declare to the customs and the customs gives feedback to the enterprises through the single window. It includes pre-assigned manifests, loading manifests, declarations, bills of lading and so on. This information of documents is very important and it determines the efficiency and cost of the import and export goods. At present, due to the low quality of these logistics information, the success rate of information submitted is low, making the customs clearance efficiency low and the customs clearance cost high. In the international import and export trade, the time cost is very critical and the low quality of information has led to the weak competitiveness of China's import and export enterprises.

1. Declaration in advance and one to one'lengthen the clearance time

In the manifest section, the requirement of declaring the manifest in advance has a great negative impact on the enterprises. Regardless of whether the enterprises operate in accordance with the norms and whether the credit has always been good, they must be completed the process of declaring the transport manifest in advance and waiting for the approval. To a large extent, it reduces the enterprises' logistics performance of customs clearance.

In addition, the customs regulates that the names of each declaration shall not exceed 50, or it needs to be split to make the customs declaration corresponding to the bill of lading. However, it is very common that in actual import and export trade, each batch of goods contains more than 50 names, such as cars, mobile phones, machinery and equipment parts, clothing, food, etc. Compared to developed countries, which regulate that the declaration names are

not restricted in the same batch of goods, the split declaration increased the cost of customs clearance and enterprises' burdens also further increased.

After the goods are imported, there can be also a requirement for a bill of lading to split in a declaration due to the different trade methods, different processing trade manual and other reasons. This requires contacting with multiple parties. First, contact with the shipping agent and determine the modification of the manifest; then the ship agency contact with the foreign shipping company about the manifest changes; the customs must receive the modifying information of the manifest after the process. This modifying process needs about 2 or 3 days if it's smooth and successful.

2. Increase in the costs of customs clearance

According to the enterprises' reflection, the cost of using current international trade "single window" charges higher than the original mode of operation.

The producing cost of the bill of lading and documents increase. According to a rough estimate, the number of new bills of lading is about 10 million copies a year and the cost of this one new logistics document is very high in accordance with the estimate of 200 yuan per bill.

There also exists the shipping companies' cost of the modifying the manifests and the customs' cost of change the documents information and the need for deletion is very common. In addition, if a manifest must be split, the packaging must also be split. This produces the cost of packaging and the risk cost of the loss of goods. After the split, the cost of transport packaging correspondingly increases. According to the estimate of 200 yuan per single package, an annual increase is estimated to be one billion yuan. This forces to change the international logistics practices. Requiring all import and export goods to be packed in accordance with the requirements of the Chinese customs and requiring the enterprises to provide all the documents in the whole process can be done theoretically, but the cost is high.

There are other billing items, such as electronic information transmission fees, transfer fee, etc. These costs, to a large extent, affect the enthusiasm in using the “single window” of the enterprises declaration companies whose profits are originally meager.

3. Risk prevention costs and problems with the transmission of manifests

In order to ensure that the implementation of trade and production plans won't be affected, "pre-storage costs" may be produced, that is, stocking in advance; in order to avoid the situation that the manifests are required to be split after the goods are imported, the cost of packaging, logistics, freight and bill of lading may all increase, that is, importers should split the bill of lading and the goods in advance.

In the process of manifests' transmission, multiple parts are involved and the negotiation time of modifying manifests is very long. The parties' working time and time difference are the objective factors, the examination and approval process and the cycle issues of different parties are the subjective factors. Furthermore, due to the influence of trade terms, different trade terms involve different booking parties, and the procedures involved in the process are not the same.

4. Incompleteness of logistics information increases the trade risk

Before the emergence of the new manifest system, the customs provides the principle of "the consistent three documents", that is, the information of the export pre-assigned manifest, customs declaration and the arrival report are consistent. In such circumstances, the enterprises are difficult to “fish in troubled waters”. However, after the Chinese customs introduces the new manifest system, electronic packing list is removed and the customs can only master the customs declaration and the pre-assigned manifest. The enterprises are allowed to fill in the pre-assigned manifests with such words as "consolidation" without filling out the

actual name of goods. The loading manifest is submitted by the shipping company to the customs only 30 minutes before the shipment. In fact, customs is not able to get hold of the real contents of the goods, so the illegal enterprises can swoop in. Such a situation in the manifests filling in the United States customs will never happen. The "single window" of the United States requires the enterprises to complete the manifest declaration 24 hours before the shipment and it needs the declaring content to be quite detailed. Descriptions like "general cargo" and "said to contain" cannot be accepted by the US customs. The contents of the manifest can be modified, but any changes to the original declaration information may affect the US customs' risk assessment of the goods and lead to the customs' targeting at the goods and even the prohibition on the import the unloading.

Thus, the logistics information that the current China customs obtains through the "single window" is not complete and has a poor quality. This adds to an increase of smuggling, tax evasion and other trade risks and insecurity, and China should give the quality of logistics information obtained more consideration.

IV. "Single window" should control and manage the quality of logistics information: from the perspective of enterprises

1. Optimization of the declaration process

UN/CEFACT has issued 35 recommendations, 7 sets of standards and 5 sets of technical specifications from 1981 to 2016. Among them, the recommendations have *United Nations Layout Key for Trade Documents; Measures Facilitate Maritime Transport Documents Procedures, Data Simplification and Standardization for International Trade*. They all indicate that the norm of the international trade documents and the simplification of the international trade data are highly important.

- Expand the goods name of declaration

Customs can properly modify the declaration format. The names of each declaration have been increased from the original 20

to 50 due to various channels of the appealing and they can be further expanded to more than 100 to solve a considerable problem of the documents split due to the excess quantity. It can avoid the unnecessary split process and reduce the resulting cost of customs clearance.

- Take the dual - track control management of UNIPASS for reference

Dual-track means safety rails of low-risk and non-safety rails of high-risk. In the process of customs clearance, rapid clearance (automatic clearance) are provided for the low-risk and high credit rating enterprises. They can be exempt from declaration in advance and they can receive other trade facilitation services in order to stimulate and encourage the high-risk enterprises to move to the safety track as soon as possible. For the high-risk enterprises, which operate non-standard and have low credit ratings and bad records, non-secure tracks will ensure more stringent control and regulatory measures, such as risk-based deployment. These enterprises will face higher probability of reviewing documents and inspecting goods, which will slow down the customs clearance process, but ensure the correctness of the information. At the same time, the government can establish dishonesty blacklist system and market exit mechanism, strengthen the enterprises credit publicity and supervision, and promote business integrity management.

2. Form a data pool to adapt to the trend that China is becoming the center of world's supply chain

According to a report released by UK market research firm Markett, China is "no longer the target country for cheap outsourcing business" and "has become the center of the global supply chain." This has changed the long-term view of China's "world factory" impression, and China holds a larger part of the global supply chain nowadays, making the global trade model change.

China Customs, especially Shanghai international trade "single window" which is in the leading position, should make a

corresponding change. The wide range of the related logistics information obtained through the "single window" can form a high-quality and effective "data pool". This "data pool", served as the support of customs risk analysis and the prevention and control management, can help enterprises to complete the entire customs clearance process better and faster. More considerations should be given from the aspects of international trade practices and China's customs management, and China should find a balance between trade security and trade facilitation as far as possible.

3. Fully integrate enterprises' credit management into the construction and create reward and punishment mechanism of credit

In order to deeply promote the customs clearance integration reform and achieve efficient "double-track control" management, enterprise credit management must be fully integrated into the construction and reform of "single window". Enterprises incentives and punishment mechanism on operations and credit should be established, and the enterprises should also actively blend into the construction of national social credit system to facilitate their own business and improve customs clearance performance.

Furthermore, the uniform social credit code system should be implemented fully to coordinate and simplify data. Chinese government should also establish a unified national credit information collection system and management standard and the enterprises' credit information collection mechanism to perfect the national credit information sharing platform. Besides, establishing the national enterprise credit information publicity system and the information disclosure and integrity file system to speed up the improvement of enterprises' credit records can form a mechanism that encourages enterprises' self-discipline of credit constraints and a multi-regulatory system that other social forces are involved.

4. Deepen the mutual cooperation between customs and enterprises

The government should further deepen the trust and cooperation between the enterprises and the customs. The enterprises' credit rating should be dynamically adjusted and it should be recognized that the enterprises are not the subordinates. Combined with credit management of the customs and enterprises, the governments should strengthen the adjustment of non-standard operation of enterprises, increase learning and training opportunities for them, help enterprises to understand the corresponding legal framework to reduce the decision mistakes due to the lack of legal awareness, promote the development of foreign trade comprehensive services, cross-border e-commerce and other emerging business and build a win-win partnership between the customs and the enterprises.

V. Conclusions

Building a great "single window" is the implementation of "information exchange, mutual recognition of supervision, law enforcement mutual assistance" of the certain departments on ports mentioned in the third Plenary Session of the 18th CPC Central Committee. It is a specific initiative of the FTA regulatory innovation and a measure to support the steady growth of China's foreign trade. Shanghai E-port has made many achievements in years of construction, and the next step should be based on the actual needs of the enterprises to strengthen the port law enforcement agencies and the information systems and data exchange of the local administrative departments. What's more, realizing the "one-time submission", "Cross-system sharing", "multi-sector sharing" of declaration data and other aspects to speed up the pace of construction can make an exemplary role in promoting applying the "single window" nationwide and sum up a reproducible experience.

The perfection and optimization of China's international trade "single window" should be combined with China's port

management practice and should learn from the international advanced successful experience, follow the international rules, requiring high quality logistics information. While ensuring the trade security, avoiding risks, China should vigorously promote trade facilitation, enhance the efficiency of enterprises' customs clearance, promote the rapid growth of China's import and export trade and achieve the mutual benefit and win-win partnership between the customs and enterprises.

Reference

- [1] Hu Hanjing. The Rapid Promotion of the International Trade Standardization Process [J], China Standards Review, 2012(8)
- [2] Zhang Zhuo Min. The Promotion and Application Research of the International Trade Documents' Standardization [J] , Chongqing institute of science and technology. 2014(3): 57-59
- [3] Li Mosi, Peng Yu. Shen Yuliang. China (Shanghai) Free Trade Zone: Realize the Reproducible and Promotable National Strategy [J]. International trade. 2013(12): 11
- [4] Jonathan Koh Tat Tsen, Single Windows and Supply Chains in the Next Decade, Global Trade Facilitation Conference 2011 Connecting International Trade
- [5] Hua Zhihu, A Study on the Construction of China 's Customs and Enterprise Partnership [D]. East China University of Political Science and Law. 2013.4
- [6] Cao Jie, Wu Na. "Single window": the major infrastructure projects of free trade zone's trade facilitation of [J]. Port economy. 2015.1
- [7] Zhang Zhuo-min. "Shanghai model" of single window orderly reproduced and promoted [N]. International Business Daily .2016.12.9 B03 version
- [8] Ji Congmin. Construct the "single window" to promote trade facilitation [J]. Business Review .2014.10

- [9] Fang Xiaoli, Zhu Mingxia. Build the "single window" to enhance the level of China's trade facilitation [J]. Foreign trade practice .2014.2
- [10] Wang Wei, Liu Enzhi. The research review and outlook of international trade single window [J]. Price Monthly .2017.1
- [11] Jae Young Choi. A Survey of Single Window Implementation, 2011.8
- [12] Ma Haiqian, Zhu Chunlin. Deepen the promotion of Shanghai international trade "single window" construction [J]. Scientific development .2016.5
- [13] Shen Yan. An important measure to achieve international trade facilitation – establish international trade single window [J]. Commercial economy .2015.4
- [14] Ruan Zhihua. The construction model and countermeasures' analysis of international trade single window [J]. Economic theory .2015
- [15] Chen Huaide, Fei Lei. Promote the "single window" to improve customs clearance efficiency [N]. China Inspection and Quarantine Times. 2015.12.15 003
- [16] Ujie. Current examples of international trade single window [J]. Business class .2014.9
- [17] Korea Customs e-Clearance System UNI-PASS
- [18] Liang Danhong. The implementation and enlightenment of the US single window ACE / ITDS [J]. Customs and Economic Research .2016.9 Volume 37
- [19] Jim McMaster, The Evolution of Electronic Trade Facilitation: Towards a Global Single Window Trade Portal, University of the South Pacific Graduate School of Business
- [20] Chen Suming, Wang Xinyi. A Summary of Research and Trends of China's Customs and Enterprise Partnership. Journal of Shanghai Customs College, 2010.4

E-COMMERCE AND INTELLECTUAL PROPERTY RIGHTS VIOLATION

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Abstract

In the last two decades the global economy experienced a variety of opportunities developed by the emerging of e-commerce. However, not all of the new possibilities had a positive impact. Development of e-commerce has also contributed in illicit trade growth and infringement of intellectual property rights. Measures have been taken in order to protect IPR from violations in e-commerce, however a lot of challenges still persist. The aim of this paper is to analyze the impact of e-commerce upon infringement of IPR, as well as illicit trade developments. E-commerce in some countries is at its very beginning, however in others it is well established. Nevertheless, the world already faces illicit trade challenges and violations of IPR through e-commerce. Therefore it is necessary to participate actively at national and at international level in countering illicit trade and lowering infringement of IPR.

Key Words: *e-commerce, intellectual property rights violation, auction pages, social media, REACT.*

Introduction

E-commerce became important phenomena as it has been expanding in the last two decades regarding its value, scope and impact, but also as a new source of certain illicit trade practices. It is especially important to refer to e-commerce as a source of violation of intellectual property rights (IPR) as it gives a whole new dimension of this very important issue within the international economy.

An e-commerce transaction is the sale or purchase of goods or services, conducted through computer networks by methods specifically designed for the purpose of receiving or placing of orders. The goods or services are ordered by those methods, but their payment and the ultimate delivery does not have to be conducted online. An e-commerce transaction can be between enterprises, households, individuals, governments, and other public or private organisations.¹⁰ Hence, e-commerce includes sales or purchases of goods or services that can be in electronic or physical form between business-to-business, business-to-consumer, consumer-to-consumer or consumer-to-business. Thereby, e-commerce as a part of the process of globalization facilitates the modern way of life and creates new opportunities.

The first secured transaction online has been made in the late nineties. Since then e-commerce has grown and now it is worth billions of dollars. In 2015, the global population amounted to around 7.3 billion people, of which 1.4 billion people had purchased goods and/or services online at least once. In total, they spent 2,272.7 billion American dollars online, which resulted in an average spending per e-shopper of 1,582 American dollars. China increased its participation in comparison to the United States of America as the country with the highest B2C e-commerce turnover in 2015. With 766.5 billion American dollars, it was ranked higher on the list than the US (595.1billions) and the UK (174.5 billions).

¹⁰ <https://stats.oecd.org/glossary/detail.asp?ID=4721>

Together, these three countries account for 68% of the total global B2C e-commerce turnover.¹¹

Such an impressive growth is a result of globalization in terms of business behavior, lifestyle, rapid development in technology, internet accessibility, etc. The primary advantages of e-commerce revolve around the fact that it eliminates limitations of time and geographical distance. In the process e-commerce usually streamlines operations and helps to achieve lower costs.¹² Unfortunately, sometimes the advantages of e-commerce are misused and converted into disadvantages. One disadvantage is that the improvements on the Internet are used to violate IPR, and consequently damage their owners as well as the consumers.

We found the topic of violation of IPR through e-commerce growth as especially important issue that deserves to be analyzed and researched. That is why the main goal of this paper is to elaborate the specifics of the violation of intellectual property rights on the Internet. At the beginning we refer to e-commerce as a new source for infringement of intellectual property rights. Then we elaborate the actions taken in order to protect IPR, with emphasize on actions undertaken by some of the major actors in the online world. Next, in the paper we explain the main challenges that need efficient solution. The paper continues with presentation of a case study that describes how IPR can be protected online. At the end some conclusion remarks are presented.

1. E-commerce as a source of violation of intellectual property rights

¹¹https://www.ecommercewiki.org/wikis/www.ecommercewiki.org/images/5/56/Global_B2C_Ecommerce_Report_2016.pdf

¹² <http://www.ipeg.com/tackling-the-scourge-of-counterfeit-products-online/>

Intellectual property rights refer to the general term on the assignment of property rights through patents, copyrights and trademarks. These property rights allow the holder to exercise a monopoly of the usage of the item for a specified period.¹³ E-commerce has contributed to the growth of illicit trade. By lowering risk, providing anonymity, direct interaction with potential consumers, lower costs etc. counterfeiters moved into the new era of selling counterfeit goods, which is a more efficient and effective way than outdoor sales. This stated, intellectual property rights' violation has never been more frequent before. It may have resulted from the fact that e-commerce is not clearly defined yet. Actually there is no precise definition of e-commerce accepted worldwide in terms of what does it include and which fields and actions it comprises. Therefore, it increases the complexity of the whole process in defining duties and obligations of certain parties involved. This ambiguity complicates the solving of current or potential problems.

One way of violation of IPR online is actually the participation of counterfeit goods in e-commerce in order to reach final consumers, which is the focus of this paper. Therefore, "counterfeit trademark goods" shall mean any goods including packaging, bearing a trademark without authorisation which is identical to the trademark validly registered in respect of such goods or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of that trademark under the law of the country of importation.¹⁴ Besides the fact that counterfeit goods damage IPR owners, they can also be harmful to the health and safety of consumers who most of the time are misled and believe that buy original products but actually are doing the opposite. Counterfeiters

¹³ R. S. Khemani and D. M. Shapir, eds.: *Glossary of Industrial Organisation Economics and Competition Law*, commissioned by the Directorate for Financial, Fiscal and Enterprise Affairs, OECD, Paris, 1993, p.49

¹⁴ Hema Vitlhani, *The Economic Impact of Counterfeiting*, OECD, Paris, 1998, p.5

are taking full advantage of e-commerce growth by adapting new approaches to consumers. In fact, they are able to anonymously access a far wider market and leverage every advance in technology to be more efficient and organized. New opportunities enable them to widen their outreach, anonymity and profitability. Counterfeiters are present everywhere in the online world from unregulated auction sites, online marketplaces and rogue websites, to illicit sales via social media and fraudulent mobile apps. This means that they have more tools in their disposal than ever before.¹⁵

In that sense, counterfeit goods are sold on fake websites that very often look very similar to the genuine brand's web site. For example, if the counterfeit goods are Ray-Ban sunglasses, it is very likely that they will be sold on a site that looks alike or it is even better than the official Ray-Ban web site. Moreover, counterfeiters are abusing all the technologies on the internet in terms of internet marketing in order to reach a mass of people. Hence, they are using Search Engine Optimization (SEO) for their fake sites which are a tool for increasing popularity of the sites and making them to be in the top of the results in search engines such as Google, which means more potential consumers interacted.

The growth of e-marketplaces has helped counterfeiters as many of them sell their counterfeit goods using these platforms. An e-marketplace is a type of e-commerce site where product or service information is provided by multiple third parties, whereas transactions are processed by the marketplace operator. In general, because e-marketplaces aggregate products from a wide army of providers, selection is usually wider, availability is higher, and prices are more competitive than in vendor-specific online retail store.¹⁶ In recent years, those markets experienced rapid growth and the best examples are the well-known Amazon.com, Alibaba.com, eBay.com and so on. Counterfeiters are selling their products on

¹⁵ <https://www.netnames.com/assets/shared/whitepaper/pdf/The-Online-Counterfeit-Economy-web-FINAL.pdf>

¹⁶ <http://www.ipeg.com/tackling-the-scourge-of-counterfeit-products-online/>

these e-markets despite of continuous removal of infringing listings.

Furthermore, counterfeiters get full advantages of the social media platforms and their advertising techniques. Facebook was the world's most popular social media platform in 2014 and in 2015. About 1.6 billion people in total were active on Facebook. Tumblr ranked second with 555 million users, followed by Instagram with 400 million users.¹⁷ Using this platforms enables direct interaction with potential consumers.

It is even a bigger irony that counterfeiters earn money not only from the sales of counterfeit goods but from their fake sites, too. If their sites reach huge traffic in terms of visits, clicks and views, they get paid from advertising companies. Actually, if their sites have certain level of popularity, they can rent space from their sites for advertising banners, thus they get paid. According to one research, nearly 600 infringing sites had generated 227 million American dollars in advertising revenues in one year alone.¹⁸ This remains a problem and advertising companies need to find a solution in order to avoid funding counterfeiters.

With direct access to consumer worldwide, counterfeiters have been able to reduce mass shipments of fake goods to local distributors instead opting for more frequent, but smaller consignments sent by mail. Unfortunately, many of these shipments effortlessly arrive at their destinations, since authorities struggle to check enormous numbers of international shipments.¹⁹ Hence, it is understandable that Customs Administrations across the globe are challenged to deal with this problem. It also indicates that Customs have not the power or the tools to protect IPR online. The Customs is not in a position to control small shipments because it is nearly impossible to check all of them. Actually those shipments will lose

¹⁷https://www.ecommercewiki.org/wikis/www.ecommercewiki.org/images/5/56/Global_B2C_Ecommerce_Report_2016.pdf

¹⁸ EUROPOL and OHIM, *Situation report on counterfeiting in the European Union*, EUROPOL and OHIM, Alicante-Spain, April 2015, p.31

¹⁹<https://www.netnames.com/assets/shared/whitepaper/pdf/The-Online-Counterfeit-Economy-web-FINAL.pdf>

their attribute “express shipments” if they are waiting in line at the border in order to be checked.

Counterfeiters are aggressively abusing the improvements in the field of internet and e-commerce with one aim - to sell their goods no matter what. Due to their behavior online, most online shoppers are victims of illicit trade. All this indicates that counterfeiters are well informed or advised and they are in track with all the trends not just in the online world but in the reality, too. Hence, illicit trade counter fight and protection of IPR should be provided simultaneously offline and online. For that purpose, cooperation between world organizations, governments, businesses, corporations, experts, customs administrations, etc. is a must.

2. Challenges in the online protection of Intellectual Property Rights

Because of IPR enormous value, it is expected that their infringement has vast impact. It represents treat to both the global economy and consumers, to the environment or to the stability of states.²⁰ For example, the Organization for Economic Cooperation and Development (OECD) measures the economic impact of counterfeiting and roughly estimates that in 2007 international trade in counterfeit and pirated goods could have accounted for up to 250 billion American dollars, which is an amount that is greater than the national GDP of 150 economies.²¹ According to the International Chamber of Commerce, **counterfeit and pirated products put the health and safety of consumers worldwide at risk while robbing governments, businesses and communities of tax revenues, profits and legitimate jobs. The negative impacts of counterfeiting and piracy are projected to drain 4.2**

²⁰ UNIFAB, *Counterfeiting and Terrorism report 2016*, UNIFAB, Paris, 2016, p.2

²¹ EUROPOL and OHIM, *Situation report on counterfeiting in the European Union*, EUROPOL and OHIM, Alicante-Spain, April 2015, p.10

trillion American dollars from the global economy and put 5.4 million legitimate jobs at risk by 2022.²² From the numbers above, we can consider illicit trade as a significantly profitable business and the main reason for this is the continued emerging demand for goods with lower prices coupled with low production costs.

In the online world, especially in the fields where IPR is commonly violated, some things have been done to provide protection

Social media platforms such as Facebook, Instagram and other advertising platforms, have developed their own anti-counterfeiting tools. Actually, on their platforms there is an option to report infringement of IPR through posts, groups, pages, advertisements, etc. If there are clear evidences, those platforms will take actions towards infringers. Such actions can be brought against fake sites (rogue sites) from their domain registers. There are also plenty intellectual property rights consulting firms that offer various services such as advisory work, risk management, etc., who can even search the online word in order to report sites, adds and listings that are abusing intellectual property rights.

Every participant in the online world, especially the business sector, is and should be, dealing with this issue. We may look back at the examples presented earlier in the text. E-markets where the major violation of IPR is happening have developed their own techniques for fighting counterfeiters. We would like to single out few of them.

Amazon.com, the world's biggest online retailer is one of the most serious examples. It has made fighting phonies a major goal for 2017, building teams in the U.S. and Europe to work with major brands on a registry to prevent fakes.²³ The registry should include even those who were never selling their products on this e-market in order to protect Amazons' shoppers who always believe that buy genuine products, but instead they may be counterfeited. Also

²² <https://iccwbo.org/global-issues-trends/innovation-ip/counterfeiting-piracy/>

²³ <https://www.bloomberg.com/news/articles/2016-11-28/amazon-gets-real-about-fakes>

Alibaba.com launched its anti-counterfeit system in 2016. It is an online platform designed to streamline IP-related communications between brands and Alibaba. Through this IP Joint-force system, Alibaba.com and IPR owners can focus on mutually concerned issues and work proactively on IPR protection.²⁴ . Alibaba also uses algorithms to locate listings that contain in their descriptions or pictures words such as fake, replica, mimic, etc. Ebay.com lets registered brand owners report suspected counterfeit listings for removal, as does Alibaba via their vero program. The Verified Rights Owner (VeRO) program allows the owners of intellectual property rights and their authorized representatives to report listings that may infringe those rights.²⁵ Also in some cases, when a buyer proves to e-Bay that he bought counterfeit item in their market, he can ask for a money return.²⁶

These techniques are good in protecting IPR, but still there persists the problem of owners' obligation to report goods that are considered to be fake. In other words, Amazon, e-Bay and Alibaba are largely shielded from legal liability as long as they have processes in place to report fake goods and take timely action to suspend their sale once notified, thus protecting brands. The online marketplaces often do not have the inventory, so there is nothing to seize. The result is an endless loop with brands buying and reporting fakes, marketplaces suspending accounts, and the fraudsters creating new accounts to hawk the same fake goods under new pseudonyms.²⁷ Hence stems the need and importance to counter illicit trade offline, actually in the real world.

In the online world, besides the problem of consumer misleading which is still actual, additional difficulty is the obligation of IPR holders to report that their rights might be infringed. At the same time social media, e-markets, web sites, advertising companies, etc. should only have good faith as their

²⁴ <http://ipp.alibabagroup.com/copShow/en.htm>

²⁵ <http://pages.ebay.com/seller-center/listing/create-effective-listings/vero-program.html>

²⁶ <http://pages.ebay.com/help/policies/money-back-guarantee.html>

²⁷ <https://www.bloomberg.com/news/articles/2016-11-28/amazon-gets-real-about-fakes>

help is not mandatory. IPR holders have not only massive profit losses due to counterfeiting, but they also have additional expenditures for consulting companies or those who are able to hunt counterfeiters online. Although e-commerce led to increment of IPR violation in terms of sales counterfeit goods directly to consumer, the goods which are in physical form cannot be seized online. Anonymity on internet additionally increases the complexity of illicit trade and IPR violation and makes it nearly impossible to find trace of counterfeiters. Another problem that still persists is revenues that counterfeiters earn from advertising companies due to the popularity of their fake sites, which we explained earlier in the text.

On the other hand, counterfeit goods bought online usually are sent to their destination by postage or courier services. This raises a problem for the Customs administration to deal with huge numbers of international shipments. More effective and efficient way of checking these packages has to be implemented, and customs risk management should be more rigorous to those shipments.

As things stand, counterfeiters are expanding rapidly in every sphere of products that there is demand for. In that context, we declare that the most important role in illicit trade counter fight belongs to the consumers. If the demand of those goods is not that enormous these illegal activities won't be profitable and will stop expanding in other fields. Thus counterfeiters will lose their interest and hopefully will not continue into other destructive activities. Consequently, everyone who is well informed about counterfeit goods, their negative effects, and the violation of IPR should spread its knowledge and help in raising awareness.

3. E-commerce in the Republic of Macedonia and Macedonian role in protecting of IPR - the React case-study

E-commerce contributes to increasing productivity, reducing inefficiencies and represents driver of economic growth in a country. Macedonia lagged behind in this area due to numerous factors such as: long low internet penetration, small number of payment cards in circulation, and later a small representation of the population actively using cards, preferences for cash payment, low computer literacy, high bank fees that discourage large companies in adding this new channel of sales etc. Thus, the participation in e-commerce in the Republic of Macedonia is relatively small but continuous to grow especially since 2011.²⁸

Despite of this, Macedonian citizens spent significantly more funds to purchase online from foreign traders than from domestic ones. As the supply of the domestic online retailers is still very limited and having on mind the possibility to use new technology in placing orders and making purchases of goods on the global market, it is logical for Macedonians to spend more on foreign markets. In the period from January to September 2016 a total of 63 million euros worth of transactions was made with cards issued by domestic banks. Out of this amount, 72.7% is the value of transactions paid with domestic card to foreign traders (45.8 million euros) while 18.9 million euros were spent on purchases from domestic online merchants. At the same time only 1.4 million euros worth of purchases were made by non-residents to Macedonian online merchants. In September 2016 there were 669 registered online shops.²⁹ These numbers represent that Macedonian e-commerce is not yet developed compared to other countries.

Although e-commerce in the Republic of Macedonia is still at the early stages of development, the fact that Macedonians are spending millions euros online to foreign traders should not be underestimated. It should be born in mind that there may exist a potential participation in counterfeit trade, but nothing can be stated

²⁸ <http://www.bankarstvo.mk/index.php/analizi/item/5768-nina-angelovska-grouper-sostojbata-etrgovija-makedonija>

²⁹ <http://bankarstvo.mk/index.php/analizi/item/5234-63-milioni-evra-online-2016-godina>

since there are not any official numbers and connections between those transactions made online and the customs seizures via mail, small packages etc.

Besides the fact that the e-commerce is at its starting point the Republic of Macedonia hosts the premises of the Internet Monitoring Team of REACT which is a non-profit organization with over 20 years of experience in fighting counterfeit trade for 200 members in more than 65 countries in the world. The Internet Monitoring Program of REACT is designed specifically to meet the needs of IPR holders. The program is founded on six pillars: monitoring and removal of advertisements from about 200 auction platforms worldwide; worldwide search and removal of web shops (B2B exchanges, e-commerce sites and search engines); monitoring and removal on social media platforms like Facebook, Instagram, Youtube, Weibo and Twitter; monitoring and removal of infringing apps including Itunes store and Google play; monitoring and removal of unauthorized use of trademark keywords; and monitoring and removal of unauthorized use of trademarks in (sub)domain.³⁰

The REACT Internet Monitoring Program offers advantages that after identifying an Internet case they can follow up through practical and lawful enforcement actions such as: making test purchases; investigations of registrants or any other connected addresses; initiate raids; blocking of payments (PayPal, Master card, Visa); provide cluster analysis; localization of big traders and finding links to their internet shops; initiating legal action through local lawyers and investigators; removal of search results from search engines; domain dispute procedures.³¹

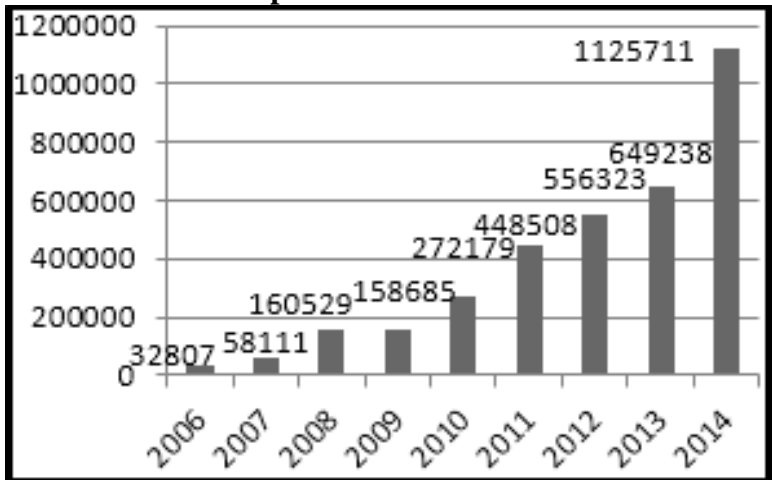
The dedication of the REACT Internet Monitoring Program to the efficient fight with counterfeit goods in the global trade has resulted with success which can be seen in Graph 1 and Graph 2. Graph 1 presents the results from the number of auction pages that have been removed from the Internet in the observed period from

³⁰ React, *Service Guide 2015-2016* (SNB-REACT 2015/2016).

³¹ React, *Service Guide 2015-2016* (SNB-REACT 2015/2016).

2006 to 2014. It shows that at the beginning, in 2006, 32,807 auction pages have been removed from the Internet. The number of pages removed was constantly growing which is evident with the sharp increase in 2011 with 448,508 pages removed and especially in 2014 when 1,125,711 auction pages were removed from the Internet by the REACT Internet Monitoring Team. These data cannot be taken as completely precise, as they also indicate the sharp increase of the usage of the Internet as a media through which counterfeit products are sold.

Graph 1. Number of auction pages removed by REACT in the period 2006-2014

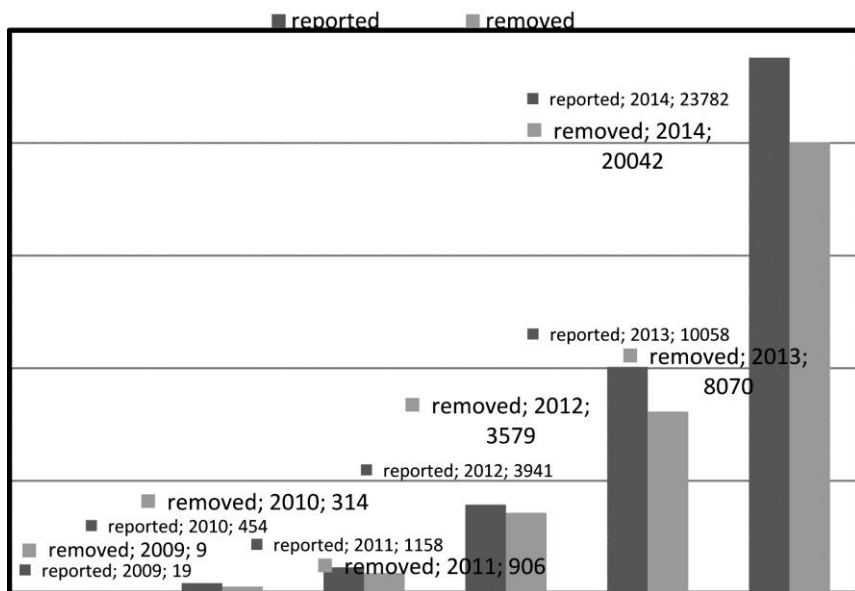


Source: REACT (data are obtained directly through e-mail)

Graph 2 shows the number of commercial pages that have been reported as infringing IPR and the number of commercial pages that have been successfully removed from the Internet because of certain IPR infringement in the period of 2009 until 2014. The data confirm success of the team in the fight with online sale of counterfeit products, since in 2014 more than 20,000 webpages have been removed from the Internet because of infringement of intellectual property rights. But again it must be stressed that these results are relative since sharper increase can be

expected in the usage of commercial pages for sale of counterfeit products and other deception practices aimed for consumers.

Graph 2. Number of commercial pages removed by REACT in the period 2009-2014.



Source: REACT (data are obtained directly through e-mail)

From data obtained from REACT, two main conclusions can be addressed. First of all, it must be recognized that the fight REACT is leading with counterfeit products on Internet is serious, dedicated and because of that results with success. But, at the same time, it must be recognized that the online sale of counterfeit products is flourishing in the world and different counterfeit products can reach consumers at every single point in the world³²

³² Toshevska-Trpchevska Katerina, *WIPO-WTO Colloquium Papers Research Papers from the 2015 WIPO-WTO Colloquium for teachers of intellectual property law*, Compiled by the WIPO Academy and the WTO Intellectual Property, Government Procurement and Competition Division, Geneva, 2017, pp.42-43

Conclusion

Intellectual property rights violation has significant direct or indirect impact to all engaged economic entities and individuals in the global trade. It has a negative influence to a vast range of spheres. The violation itself can cause losses in jobs, brand's profits, governments revenues and can also be very harmful to the environment, health, safety and sometimes it can be life-threatening. All this brings up infringement of these rights to be in the focus.

The Internet in some way facilitates infringement of intellectual property rights. Hence, it contributed to the growth of illicit trade globally by enabling new approaches to potential consumers and new methods of operating. Actually, the collision of globalization and the booming online economy created an ideal environment for counterfeiters, allowing them to sell goods directly to consumers worldwide with virtually no barriers to entry, low overheads, easier distribution and less risk of being caught. Meanwhile, the growth of international brands has provided the perfect environment to target and take counterfeit versions to market, with consumers worldwide now using the web to hunt down big names at small prices.³³

Plenty of activities and measures have been taken to protect intellectual property rights and counter illicit trade at national and international level. However, there are challenges that must be overcome in order to strengthen the protection of these rights. We believe that investing in technology development will offer smart solutions that will be compatible with existing challenges.

If we assume that most of the online shoppers are actually not well informed about the background of the products they buy, and if we consider that they always believe in the originality of the goods, we can declare that major source of illicit trade and actually

³³<https://www.netnames.com/assets/shared/whitepaper/pdf/The-Online-Counterfeit-Economy-web-FINAL.pdf>

infringement of IPR is the consumers demand. Hence, we can state that the key role in counter fighting these illegal activities belongs to the consumers. Therefore, raising awareness about the complexity of the problem has a crucial meaning. We consider that appropriate actions are being taken, but still there is much to be done. In other words, maybe there is a need of a global campaign, online and in the reality, for raising awareness, aiming to educate the population how to shop online safely and how to manage risks to the minimum.

References:

1. EUROPOL and OHIM, *Situation report on counterfeiting in the European Union*, EUROPOL and OHIM, Alicante-Spain, April 2015
2. Hema Vithlani, *The Economic Impact of Counterfeiting*, OECD, Paris, 1998
3. R. S. Khemani and D. M. Shapir, eds.: *Glossary of Industrial Organisation Economics and Competition Law*, commissioned by the Directorate for Financial, Fiscal and Enterprise Affairs, OECD, Paris , 1993
4. React, *Service Guide 2015-2016* (SNB-REACT 2015/2016).
5. Toshevska-Trpchevska Katerina, *WIPO-WTO Colloquium Papers Research Papers from the 2015 WIPO-WTO Colloquium for teachers of intellectual property law*, Compiled by the WIPO Academy and the WTO Intellectual Property, Government Procurement and Competition Division, Geneva, 2017
6. UNIFAB, *Counterfeiting and Terrorism report 2016*, UNIFAB, Paris, 2016

Internet Web Sites:

1. <http://www.ipeg.com/tackling-the-scurge-of-counterfeit-products-online/>

2. https://www.ecommercewiki.org/wikis/www.ecommercewiki.org/images/5/56/Global_B2C_Ecommerce_Report_2016.pdf
3. <https://iccwbo.org/global-issues-trends/innovation-ip/counterfeiting-piracy>
4. <http://ipp.alibabagroup.com/copShow/en.htm>
5. <http://pages.ebay.com/seller-center/listing/create-effective-listings/vero-program.html>
6. <http://pages.ebay.com/help/policies/money-back-guarantee.html>
7. <https://www.bloomberg.com/news/articles/2016-11-28/amazon-gets-real-about-fakes>
8. <https://stats.oecd.org/glossary/detail.asp?ID=4721>
9. <https://www.netnames.com/assets/shared/whitepaper/pdf/The-Online-Counterfeit-Economy-web-FINAL.pdf>
10. <http://www.bankarstvo.mk/index.php/analizi/item/5768-nina-angelovska-grouper-sostojbata-etrgovija-makedonija>
11. <http://bankarstvo.mk/index.php/analizi/item/5234-63-milioni-evra-online-2016-godina>

CURRENT PROBLEMS FOR CUSTOMS VALUATION OF POST CONSIGNMENTS TO EUROPEAN UNION

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Abstract

In my article I would like to raise up the current problem of the undervaluation of the post consignments to European Union. Nowadays we are struggling with the impacts of imported goods from Far East which are changing our economy and businesses.

More and more Europeans decide to purchase products from Asians web sites, because they are fairly cheap and very often in a good quality. Since the Internet is a global network, the electronic trade has started dynamically developing. Undoubtedly one of the most interesting areas is the Chinese market. Low costs of production have made this country highly competitive in many areas of economy. Currently, we can find almost all electronic production mass in the “Asian powerhouse”. Whether we want it or do not, we have to agree that it is an economic power and we cannot indifferently go beyond the huge offer trade of this country. Moreover, thanks to the duties exemptions those purchases are not that expensive. Very often, sellers perfectly know about those trading-friendly regulations and try to help the receiver “cut the costs” of the procurement. Using those practise are maybe beneficial for buyers, however in the longer term they might be a thread to the local market, native producers and also the country budget.

Key words: *undervaluation, post consignments, Far East, European Union, trade market.*

I. The procedure of admission and introduction to trading through the customs territory of the European Union.

The customs value is essential to determine to correct amount of any customs duty to be paid on imported goods. It is used to determine the value of goods while they are being entered into the various customs procedures. In majority, customs value is

charged as a percentage of the value of the goods being imported – ‘*ad valorem duty*’³⁴.

Customs valuation is a customs procedure applied to determine the customs value of imported goods. If the rate of duty is *ad valorem*, the customs value is essential to determine the duty to paid on an imported good.

In the Article VII of the General Agreement on Tariffs and Trade all general principles for an international system of valuation are laid down. It is said that the value for customs purposes of imported merchandise has to be based on the actual value of the imported merchandise of national origin or on arbitrary or fictitious values³⁵.

Starting from the beginning, in the 1950s, according to the Brussels Definition of Value (BVD) many countries assessed customs duties. Thanks this method, we can describe a normal market price as ‘the price that a good would fetch in an open market between a buyer and seller independent of each other’.

There exists a lot of legislation documents which are also related to customs value e.g. Articles 69 to 76 of Regulation (EU) No. 952/2013 (the Union Customs Code), in Articles 127 to 146 of Commission Implementing Regulation (EU) No. 2015/2447 (the Implementing Act) and in Article 71 of Commission Delegated Regulation (EU) No. 2015/2446 (the Delegated Act)). All of these introduce to the Agreement of the Implementation of Article VII of the General Agreement on Tariffs and Trade which is well known as GATT³⁶.

³⁴ Schropp Simon A. B., „*Trade policy flexibility and enforcement in the WTO*”, Cambridge University Press, Cambridge 2009, p. 237.

³⁵ World Trade Organization, „*Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation Agreement)*”, Publications, WTO Agnatical Index, implementation of article VII, https://www.wto.org/english/res_e/booksp_e/analytic_index_e/cusval_e.htm (date of read 05.05.2017).

³⁶ World Trade Organization, „*GENERAL AGREEMENT ON TARIFFS AND TRADE*”, Genève 1986, https://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf, (date of read 05.05.2017).

In the European Union, the custom value is required for VAT purposes, import statistics, some tariff quotas and rules of origin. The transaction value method, is the *sale occurring immediately* before the introduction of the goods into the EU customs territory. The relevant sale for goods brought into the Union is the sale when crossing the border. In this fact, the ultimate sale taking place, in performance of the contract of sale, at the time. To determine a customs value under the provisions of Article 70 UCC, it must be established whether the parties to a transaction can be regarded as buyer and seller and thus whether the transaction continues a sale in legal terms as well as in a commercial sense.

Referring to the WTO Agreement, to make sure that valuation of the goods reflects as close as possible their actual market value. All the primary basis for customs value are defined in Article 1. The most important thing which can be read in this Agreement it is that customs value should be based on simple and equitable criteria consistent with commercial practices and all the valuation procedures should be of general application without distinction between sources of supply. Going further, calculating customs value of imported goods we should use their transaction value, that is the price actually paid or payable for the products when sold for export to the country of importation. In this case, all transactions which legally and economically qualify as sales should be used for customs valuation.

At present, there exists 6 Valuation Methods indentified in the Customs Act and which have to be applied in sequence. The list contains:

1. The transaction value method;
2. The transaction value of identical goods;
3. The transaction value of similar goods;
4. The deductive method;
5. The computed method;
6. The residual valuation provision³⁷.

³⁷ World Trade Organization, „*Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation Agreement)*”, Trade

The first valuation method is defined as the price actually paid to the seller, for the goods being imported, when they are sold for export to the customs territory of the Community.

The valuation is very significant, it is an assessment and application of what is essentially an *ad valorem* customs tariff. It is an every country duty to pay a special attention to the requirement for importers to declare the full and correct value of all products. Moreover, this valuation should be based on the open-market or acceptable transaction value basis including additional charges³⁸.

II. Customs Declaration – database of Custom Duty, Value Added Tax (VAT) and Excise Duty

The customs value consists the price actually paid or payable for the goods, increased by the different calculation elements. Usually, this value is due to the invoice received from the manufacturer.

As soon as the importer buys a product from a non-EU country, he become liable to Customs and Excise Duty as well as Value Added Tax (VAT) payments. What is important, the importer by himself has to set the duty and declare it in the application. On this basis of the data provided in the Customs Declaration, the supporting documents that accompany it and any information which they may request, the competent customs officers determine, impose and collect Customs duties that are due. The Customs Declaration should indicate correctly the nature of the goods and their value not taking into account taxes, charges, transport or other additional costs. Documents represent pieces of evidence, whose form of presentation can vary. Their main function is to reflect the commercial life of the goods while recording details of the transactions to which they refer. The information which is

Topics, Customs Valuation, Technical Information,
https://www.wto.org/english/tratop_e/cusval_e/cusval_info_e.htm (date of read 05.05.2017).

³⁸ U.S. Customs and Border Protection, “*Customs Valuation Encyclopedia 1980-2015*”, Washington D.C. 2016, p. 171.

contained in the documents should be the same as the information contained in an invoice. Buyer and seller agree contractually in advance that such documents are acceptable³⁹.

Custom duty is calculated as a percentage of the customs value of the goods, also depends of the type of goods which are listed in the TARIC database. It is also made up of: the price paid for the goods and the shipping and insurance cost. What is important, Custom Duty is not due for goods which are provided directly to the buyer when their value does not exceed 150 euro.

VAT is calculated as a percentage of the taxable amount. It is also applicable in the country where the goods are being delivered. The taxable amount can be counted by adding the customs value, the duty paid, the transportation and insurance costs. Like in case of Custom Duty, VAT is not due when the total of all goods in a consignment is less than a threshold. It may vary from 10 euro to 22 euro, depending on the EU country⁴⁰.

Rates of excise duty are set by each individual Member State. What is more, some EU Members apply excise duty exemptions for small gifts.

III. Causes and consequences of the undercutting the custom price of the goods

Nowadays, there is more and more importers who benefit from tax exemptions to avoid unwanted taxation. Some commercial website can offer to show a value on the Custom Declaration that is much lower than the actual price paid so that the customer does not have to pay duty and/or VAT when the goods enter the EU of import.

Undervaluation of the post consignments, declaring goods as a gift or falsification the certificates of origin – those are the most

³⁹ European Commission, “*Buying goods online coming from a non-European Union country*”, Taxation and Custom Union, http://ec.europa.eu/taxation_customs/individuals/buying-goods-services-online-personal-use/buying-goods/buying-goods-online-coming-from-a-noneu-union-country_en (date of read 05.05.2017).

⁴⁰ Ibidem.

frequent methods for avoiding customs duties. Everybody who does not extent of the customs obligation, exposes for the fine or even in some cases, imprisonment penalty.

The community Customs Code, and the internal rules, they are intend to create a single system designed to simplified customs procedures, also ensure consistency and eliminate loopholes. In practise, it turns out that procedures are complicated, regulations unclear and difficult to grasp by the average entrepreneur. Cases of avoidance or even lowering customs duties are commonplace, both by natural persons and by entrepreneur.

One of the most common way applied by traders to avoid customs duties is using regulations about low value shipment regulations. According to the Customs Code, post consignments directly which are send from a third country to a consignee in the European Union shall be exempt from customs duties, in the cases when they contain goods of the low value, not exceeding EUR 150 per consignment. It does not matter whether it is a commodity for commercial purposes or for personal use. The exemption covers shipments between companies and natural persons as well. However, it does not cover alcohol beverages, perfumes and toilet waters, tobacco and manufactured tobacco.

The customs value includes all costs incurred by the recipient, which are: purchase of goods, packaging, freight, etc. All costs are indicated on the document which confirms the purchase and they are basis and necessary for calculating the duty fee.

The entrepreneurs who want to reduce customs duties are resorting to various methods of lowering the value of the shipments. The most commonly used are:

- not showing all of the costs,
- diversification of post consignments (one purchase, several shipments),
- sending invoices in the separate consignments,
- declaring goods, as they have been already used,
- insuring the shipment from lower value.

Any information received by the customs authority may indicate that the declared value of the consignment is incompatible with the actual value. Officials are particularly sensitive to such activities, so they controlling packs with a great care, though with a large number of shipments it is not always effective operation.

Incompatible with the customs regulations is, for example, not declare contract or another document stating that the buyer is obligated to pay the seller a fee for using the trademark. Not counting the licenses fees underestimate the value of the declared goods. Products with additional restarted trademarks represent a higher market value than the same one which is deprived of them.

All those ways of avoiding customs duties require agreement with a seller who exports its goods form a third country. Considering, the fact that the most of commercial transactions conducted via the Internet, this kind of agreement it is not possible. For larger entrepreneurs it is not profitable using those kind of methods. So it mostly applies individuals or small scale business.

The other way to avoid fees it is declaring goods as a gifts. Those shipments have to be send by the person form a third country to the person who lives in European Union. They are exempt from custom duties and VAT. However they have to be non-commercial and their value cannot be higher than EUR 22.

We can characterise those shipments as a goods which are intended for the personal use and they are send by the shipper to the receiver without any payments. Moreover, those goods has to be shipped occasionally as birthday gift for example. In this case, if the custom official checks out the post consignment, valuates the goods and decides that this a product under EUR 22, he will let it without any fees into the European Union. The receiver does not to need to present an invoice and declare this post consignment.

The same conditions apply to an alcohol beverages, perfumes and tobacco products, if they do not exceed set limits for those goods.

Last but not least, post consignments declared as a gifts, has to be send from natural person to the other natural person and has

to have a non-commercial character. If customs officers get a little bit suspicious, because they found in one pack a lot of goods, the receiver has to declare that he will use those products only for a personal use.

In case of receiving products declared as a gifts, there is no difference if the product is new or already used. However, the old, used goods have definitely less value than the new ones.

Those tactics are more and more used on the large scale, mostly when it comes to the small entrepreneurs, very often in the beginning their activity. However not only insignificant companies are trying to avoid paying taxes and customs duties. We can find a lot of web sites where people are describing how literally the custom value can be understated in the declaration and how we can save up money.

The Customs Offices are trying to control customs value some of the goods, however sometimes entrepreneurs use different ways not to declare the whole value of their purchases. Control activities are based on the risk analysis and involved more detailed examination of customs declarations in terms of customs value imported textiles, footwear, electronic devices, gadgets from the Far East. They are run in such a way that they do not interfere with the liquidity of trading in these commodities.

In dealing with goods which belongs to this commodity group, the Custom Service encounters with a grossly coincidences of the under valuation. There are even incidents when customs declarations for garments are almost twenty times less as it should be.

The phenomenon of undervaluing the customs value of imported goods is a component of unfair competition for entrepreneurs who are reliably fulfilling their customs and tax obligations and also robbing the state budget.

The buyers on non-EU auctions web sites mainly Chinese, deliberately underestimate the value of the imported goods to save up and do not pay for custom duty and VAT. The scale of this

occurrence is already substantial – estimates say that 4.5 billion euro of losses a year.

Sellers and customers use in bulk the tax exemption for low value goods. The European Union introduced it in 1983 to reduce administrative burdens and facilitate work of the custom officers. In most of the European countries, preference concerns mostly products worth less than 22 euro.

However, this exemption does not fulfil its role. Experts claim that the regulations distort the principle of free competition and VAT neutrality. The registered companies in European Union's territory cannot take an advantage of this exemption. No matter that some of them use those regulations, violating the law and introducing unfair competition to the market.

The regulation which was supposed to serve honest taxpayers, is abused in whole European Union. But even the risk being charged or imprisoned does not deters people to cheat and avoid the fees. Irregularities related to intra-Community purchases of goods which causes drastically reducing the income from VAT and income tax to the budgets of the Member States. They also contribute indirectly to the formation of unfair competition for European entrepreneurs.

Current statistics, concerning international trade are saying that import from China grows every year, and now constitutes more than 20% of all European import. We can see in the shop and our native web site a lot of Chinese products, which are not as expensive as a products which were made in EU or even in Asia. Many entrepreneurs, buy illegally goods and declare shipments as a gifts or undervalued the invoices sell those products to get rid of competition and to earn more, however dishonestly. This is nothing else than running an aggressive pricing policy. Competitive companies are eliminated from the market. Dishonest entrepreneurs not only deceive Customs Offices, but also they are spoil the market by offering way more cheap prices. Thanks to those practices, companies may become a monopolist, and then increase the prices in order to provide a monopolist income.

The main thread which is posed by dumping is the elimination of domestic entrepreneurs and producers from the market and the seizure their place by a foreign entrepreneur and the foreign product. Right now, in the Christmas season Europeans are storming Asians web sites to look for some present for the loved ones instead of going to the shop. Many of those transactions are illegal and causing a huge losses in the EU's and Member State's budgets.

IV. Conclusions

In conclusion, currently, it rolls on a huge discussion about duties fees, economy development and about free trade. Experts cannot decide if the institution of the open market works properly. Some of the politicians, are starting questioning them, they can see the threads of this system very clearly and also a high possibility of collapsing the European's economy.

The story of undervaluation goods is also connected with the macro economy, its changes and the recent crises. European producers are struggling with impacts of the newly developed markets, mainly Far East markets. It is a hard decision to constantly stringent the customs regulations when the processes go forward and we cannot resist them. Definitely, current system is not adjusted to the present conditions.

Undervaluation goods in the post consignments undermines the European Union's and Member's State budgets, creates unhealthy competition and eliminates native producers. It also introduces impure and unethical playing field where entrepreneurs or even natural persons, providing and selling imported products to customers with the high margin.

Duties exemptions and the loopholes are perfect opportunity to gaining a cheap product and Europeans are not afraid to use them, even if sometimes they are illegal.

Bibliography

Books

1. Schropp Simon A. B., „*Trade policy flexibility and enforcement in the WTO*”, Cambridge University Press, Cambridge 2009
2. U.S. Customs and Border Protection, “*Customs Valuation Encyclopedia 1980-2015*”, Washington D.C. 2016

Internet Sources:

1. European Commission, “*Buying goods online coming from a non-European Union country*”, Taxation and Custom Union,
http://ec.europa.eu/taxation_customs/individuals/buying-goods-services-online-personal-use/buying-goods/buying-goods-online-coming-from-a-non-eu-union-country_en
2. World Trade Organization, „*Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation Agreement)*”, Publications, WTO Agnatical Index, implementation of article VII,
https://www.wto.org/english/res_e/booksp_e/analytic_index_e/cusval_e.htm
3. World Trade Organization, „*GENERAL AGREEMENT ON TARIFFS AND TRADE*”, Genève 1986,
https://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf

DIGITAL CUSTOMS AND A NEW PERSPECTIVE: E-TIR

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Abstract

The new era is called the ‘Digital World’, and customs transactions have accordingly evolved within the framework of new developments. Electronic procedures cover all aspects of the Customs procedures and TIR operations, as well.

Therefore, this study aims at leading for a new aspect in the e-TIR Pilot Projects launched by Turkish Customs Administration with Islamic Republic of Iran within the joint efforts of United Nations Economic Commission for Europe (UNECE) and International Road Transport Union (IRU) where another e-TIR Pilot Project is on the way between Turkey and Georgia under the aegis of UNECE.

Introduction

Nowadays, Customs Administrations face many challenges in the modern world. Hence, several initiatives were launched to confront different kinds of problems by taking into account security issues, with a view to reducing the risk of fraud.

In this sense, Digital Customs is an issue on the agenda which is referred by the World Customs Organization (WCO) to resolve current problems. Thus, 2016 was dedicated to promoting the digitalization of Customs processes under the slogan of “Digital Customs: Progressive Engagement”. Furthermore, 2017 is dedicated to “Data Analysis for Effective Border Management” by the WCO. This reflects the new era.

The term Digital Customs refers to any automated or electronic activity that contributes to the effectiveness, efficiency, and coordination of Customs activities, such as automated Customs clearance systems, the Single Window concept, electronic exchange of information, websites to communicate information and promote transparency, and the use of smart phones⁴¹. This new Digital Customs era also transforms the way that Customs operates.

As a consequence, digitalization in customs procedures is considered a ‘must’ in the modern world.

Digital Concept from the Vision of the Turkish Customs Administration

The Digital Customs initiative specifically aims to ensure the secure exchange of data between national Customs systems related to the international transit of goods, vehicles or containers (freight) as well as passenger transportation.

In this context, several Customs Administrations launch different projects for expeditious and safe & secure transactions.

Hence, Ministry of Customs and Trade of Turkey is very keen on adapting the Information and Communication Technology (ICT) as a center of Digital Customs, by using ICT at all levels, from the office automation to the use of automated clearance systems by performing risk management, undertaking validations and processing approvals.

In Turkish Customs, all customs transactions are performed electronically via BILGE System which means “computerized customs transactions”. Declaration is submitted and accepted electronically not to mention the risk management.

The Single Window Project has also been in operation in Turkey since 2014 and currently 15 institutions are interconnected through this Project. Single Window System ensures obtaining the desired documents (e-document) at the time of the customs procedures only for goods from one place and completing the

⁴¹ <http://www.wcoomd.org/en/media/newsroom/2015/november/world-customs-organization-declares-2016-to-be-the-year-of-digital-customs.aspx>

customs operations by means of submitting an application to one single place (e-application) in Turkey.

Another ICT initiative in Turkish Customs is the Container Tracking System which is designed for exchanging container information with ports electronically. This system provides for producing statistics, implementing and tracking transactions electronically, saving cost and time in ports. For the time being, the system is on pilot phase.

New Computerized Transit System (NCTS) is also operational in Turkey since 2012 for common transit procedures based on the use of advanced computer systems and the electronic data processing. The common transit procedure is used for the movement of goods between the 28 EU Member States, the EFTA countries (Iceland, Norway, Liechtenstein and Switzerland), Turkey (since 1 December 2012), the Former Yugoslav Republic of Macedonia (since 1 July 2015) and Serbia (since 1 February 2016), as well.

In addition, the Turkish Customs Administration has recently launched several projects for ensuring an efficient work at Customs. These are namely “e-TIR Pilot Projects”, “Application for Proof of Origin and Movement Certificates Issued by Turkish Exporters”, “Setting up of Advance Passenger Information (API) System”, “Operator Track and Trace System” and “Project on Liquidation Management System” aiming at the transmission of customs procedures on electronical environment.

Furthermore, Turkey has participated the creation of a Utility Block (UB) (Phase 1) for the e-ATA Carnet as a co-author in the framework of Globally Networked Customs (GNC) under the umbrella of WCO. The Turkish Customs is also willing to participate in the phase II, the preparation of a proof of concept (pilot), of the aforementioned project.

The e-Approval Certificate is recently also in use in Turkey for the TIR transactions.

Thus, the projects have made their marks on Digital Customs theme.

A New Era on TIR Transport Operations: e-TIR Projections

Referring to the aforementioned projects and initiatives, one of the most significant, a rip-roaring and challenging initiative is the e-TIR Project. e-TIR Project will pave the way forward for a better customs environment in the future transit transactions.

e-TIR Project is conducted under the aegis of the *United Nations Economic Commission for Europe (UNECE)*.

UNECE was set up in 1947 by United Nations Economic and Social Council (ECOSOC) which constitutes one of the five regional commissions of the United Nations⁴². *UNECE's main target is to encourage economic cooperation among its member states. She is also keen on with the transport issues and hosts the biggest customs transit system worldwide, TIR (TIR stands for "Transports Internationaux Routiers" or "International Road Transports).*

The TIR meetings are mostly convened in Geneva/Switzerland which is also the headquarters of UNECE.

The first TIR Agreement was concluded in 1949 between a small number of European countries with a view to regularize the border crossing procedures among the European economies severely hit at World War II, and thus to strengthen transportation relations and contribute to the trade facilitation.

The success of this limited scheme led to the new negotiations of a TIR Convention which was adopted in 1959 by the UNECE Inland Transport Committee and entered into force in 1960.

The afore-mentioned TIR Convention was revised in 1975 to take account of practical experience in operating the system and to give effect to technical advances and changing Customs and transportation requirements. The experience gained in the first 10 to 15 years of the system was thus used to render the TIR System more efficient, less complex and at the same time more Customs secure.

⁴² <https://www.unece.org/mission.html>

Another reason leading the modification of the original TIR System was that in the early 1960's, a new transport technique emerged: the maritime container. That was followed a little later by the inland container used by the European railways and by the swap-body introduced for improving the efficiency of road/rail transport.⁴³

Since it was revised and renamed as TIR Convention, 1975 (The Customs Convention on the International Transport of Goods under Cover of TIR Carnets), recently is one of the most successful international transport conventions and is so far the only universal Customs transit system in existence.

To date, 70 Contracting Parties, including the European Union have acceded to the Convention. It covers the whole of Europe and reaches out to Africa and the Middle, Far East and America. More than 33,000 operators are authorized to use the TIR System, and around 1.5 million TIR transports are issued on an annual basis. Many countries are interested in acceding to the TIR Convention and preparing the administrative, legislative and technical infrastructure for completing the procedures.

Meanwhile, a period of around 70-years has elapsed since the implementation of the TIR Customs Transit System. Permanently updating itself and adapting to the new developments since then, the unique transit system has reached beyond the borders of Europe and is currently applicable in 5 continents with a huge volume of Contracting Parties.

The system is based on the 5 main principles. You may add electronic TIR (e-TIR) as a 6th pillar.

⁴³ TIR Handbook, Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention, 1975), Tenth Revised Edition, BM New York - Geneva, 2013, s. 1.



(The TIR System is based on the 5 main principles. e-TIR may be added as the 6th pillar.)

The TIR Carnet is an international Customs document and constitutes the administrative backbone of the TIR System. It also provides proof of the existence of an international guarantee for the goods transported under the TIR System.

Mutual Recognition of Customs Control means that the customs control measures taken in the country of departure should be accepted by the countries of transit (enroute) and destination.

Controlled Access to the TIR System have been introduced to safeguard the system against fraudulent activities, committed in particular by internationally organized crime by establishing further requirements and obligations for the transport industry with an ultimate view to utilize the TIR System including electronic features.

International Guarantee System was designed to ensure that Customs duties and taxes at risk during transit operations are covered at any moment by a national guaranteeing association, if the TIR transport operator cannot be held responsible.

Approval of Road Vehicles and Containers Mechanism is established concerning the requirement of security. The TIR Convention stipulates that goods shall be carried in containers or road vehicles, the load compartments of which are constructed in a manner not to allow any access to the interior when secured by a Customs seal and that any tampering will be clearly visible.

This pillars are the main functioning principles of the system administered by TIR Administrative Committee as well as the UNECE Working Party on Customs Questions affecting Transport (WP.30) and TIR Executive Board (TIRExB) with the support of TIR Secretary based in the UNECE headquarters.

These pillars support the geographical extension of the TIR System on a daily basis. For instance, Pakistan acceded to the Convention on 21 February, 2016 and China is a Contracting Party since 5 January, 2017.

On the other hand, under the supervision of the Working Party (WP.30), the Contracting Parties to the TIR Convention launched in 2003 the so-called “e-TIR Project”, which aims at providing an exchange platform for all actors (Customs authorities, holders, guarantee chains) involved in the TIR System, known as the “e-TIR International System”. The project is based on the e-TIR Reference Model which is a guidance for the future TIR transactions, modelling the workflows, also.

The e-TIR System will offer benefits to all actors involved in the TIR System. First, it will bring about additional security and risk management opportunities, thus reducing the risk of fraud. Second, advanced international cooperation will allow all actors to significantly reduce their administrative burden and maximize the benefits of integrated supply chain management. Finally, the provision of advance cargo information and the exchange of information in real time will speed up the TIR procedure by reducing international transit costs and increasing security.⁴⁴

e-TIR Transactions: Is it a Necessity? The Challenges?

Since TIR is a worldwide transit system allowing intermodal, multimodal etc. transports, with new revisions, it has been a trade facilitating tool for decades.

⁴⁴ TIR Handbook, Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention, 1975), Tenth Revised Edition, BM New York - Geneva, 2013, s.19

On the other hand, by witnessing the technological developments take part, the paper-based transit transactions are out of scope of the new digital era. While performing almost all the customs processes via electronic programs, the e-TIR Vision is not a necessity but a ‘must’ in today’s modernized organizations.

In the meantime, the data sets are logged to the computer screen manually by the customs officer leading to extra costs for both the public and the private sides. Besides, it does not allow for an efficient risk analysis. To prevent these challenges, the e-TIR Project was launched where all stakeholders of the TIR operations would benefit⁴⁵. Furthermore, it would serve for the World Trade Organization’s trade policies...

Basically, e-TIR Project will be a major upgrade of the TIR System, enhancing its crucial role as the world’s only universal transit system.

The e-TIR System depends on the administrative, legislative, technical and financial matters. The solutions for the technical questions will be raised according to results of the pilot projects implemented by Turkey and counterparts.

The rest are the political support, legislative and financial courses which should be vitalized on a national and international basis. In this case, negotiations are being kept at UNECE organs.

On the other hand, there are still some steps to be completed before the fully fledged e-TIR System.

As indicated before, the technical issues are almost concluded since the Version 4.1a of the e-TIR Reference Model is about to be finalized. The final deliberations will be added after the results of the e-TIR Pilot Projects. In this context, 3 declaration mechanism options are foreseen in hand preferred by the transport operator. As the first option, the e-declaration via e-TIR System will be lodged which will also allow the departure customs office to check the data sets via national customs system. In the second one, the transport operator may lodge the information via national customs system

⁴⁵ Anil EVMEZ, Thesis: Operation of TIR System, Its Impacts on International Trade and Reflections on Turkey at the Economic and Political Level

which will transfer the data to the e-TIR System, as well. The last one is the e-declaration using the third parties' own systems such as IRU's TIR-EPD⁴⁶. These data are also transmitted to the e-TIR System and departure country's national customs system.⁴⁷

Furthermore, the legal procedures are being conducted by the Group of Experts on the Legal Aspects of the Computerization of the *TIR* Procedure working under the aegis of WP.30. The first draft document is already prepared to launch the long-lasting compromise.

In this case, one of the biggest and challenging issue for finalizing the process seems as the financial structure of the whole e-TIR Project. Even the discussions are ongoing, they fall apart from compromise yet.

Turkish Experiences

The modernization process reflects also the general perspective of Turkey to the TIR System which acceded it in 1966 and plays a determining role in the international policies.

Turkey is using almost 20% of the whole TIR Carnets issued worldwide (which is approximately 1,5 million nowadays) and is the largest beneficiary of the system for a couple of years. Moreover, more than 1,500 transport companies possessing over 60,000 trucks are performing under TIR regime in Turkey.

The two main objectives of Turkey is to extend the geographical coverage and to computerize the TIR System under a paperless environment.

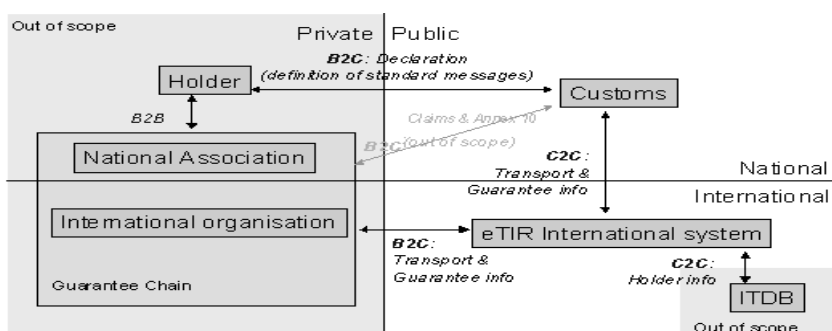
In this regard, Turkey presented TIR training courses/programs for Afghan, Pakistani and Chinese officials representing the public and private sector, as from 2012 and covering more than 4 days each, and all of them are the TIR Contracting Parties, recently.

⁴⁶ Ruken Mermer (2017) Sorularla e-TIR Projesi. Gümrük ve Ticaret Uzmanları Derneği, 44-45, p. 13

⁴⁷ *Turkish-Iranian e-TIR Pilot Project is based on this sort of e-declaration mechanism.*

Additionally, on a voluntary basis Turkey launched e-TIR Pilot Projects with Islamic Republic of Iran and Georgia, respectively.

By doing so, Turkey aims to ensure the secure exchange of data amongst national Customs systems for the international transit of goods, vehicles or containers according to the provisions of the TIR Convention and to allow Customs to manage the data on guarantees, issued by guarantee chains to authorized users of the TIR System. Thus, by eliminating the paper-based TIR transactions, this model will play a leading role for the universal customs transit regime.



(e-TIR scheme⁴⁸)

In this context, the first e-TIR Pilot Project was developed by UNECE-IRU and conducted by the Turkish and Iranian Customs Administrations. This project aims at Customs to Business and Business to Customs (C2B2C) electronic data exchange on the basis of TIR-EPD (electronic pre-declaration) and SAFE-TIR Applications.

Pursuing the completion of the signing of the Terms of Reference (ToR) by 6 parties [namely Turkey, Iran, UNECE, IRU and two National Guarantee Associations: TOBB and ICCIMA)], the pilot Project officially started.

⁴⁸ <https://www.unece.org/trans/bcf/etir/background.html>

The first pilot transports between İzmir to Tehran and Tehran to İzmir followed by the return journeys have been completed with a great success during November, 2015; August, 2016 term, respectively. Thereby, 31 accomplished transports were carried out by using e-guarantees.

After the successful completion of the first step, both sides were much eager to expand the pilot with a more comprehensive manner by including more transport companies and more Customs Administrations for the multiple loading and unloading transactions.

Moreover, it was also run with a great success and the first Turkish truck under the second phase of the pilot project completed its journey on 17th September, 2016 in Tehran.

Therefore, the second phase covered a period from September 2016 to February 2017 (The Terms of Reference foresees a 1-year implementation) with 64 pilot transports in total. The conclusion report of the project is being prepared by the stakeholders.

As regards the works done for the computerization process of TIR, for the first time, e-TIR guarantee mechanism was tested. During the pilot, all transports were realized under e-guarantee scheme which also led to a great success.

This constitutes a real great step and a role model for the future prospects of the e-TIR System. This pilot project also reflects one of the most important cooperation in line with the Public Private Partnership (PPP) Model. This covers both aspects of the e-TIR scheme reflected above. Thereby, the haulage companies were involved and tested the first e-transit transports. One of the two main components of the e-TIR transactions, e-guarantee was tested during the transports, thereto. On the other hand, the data sets are stored in the national customs systems as well as the IRU and UNECE servers, separately where UNECE hosts the light-weight version of the e-TIR international system.

In the Turkish - Iranian Pilot Project, the workflow was conducted on a sample basis from the point of view of the Turkish side shown above step by step:

At the beginning of the procedures of the pilot project, TOBB activates the company via Association Portal. Then, transport company orders a new TIR electronic guarantee via Holder Portal; TOBB approves/issues the order by Association Portal. Accordingly, IRU issues e-guarantee number and shares it with UNECE International TIR Data Bank (ITDB). The relevant company runs the transport process by lodging the EPD data on Holder Portal. IRU transmits the info to Turkish & Iranian Central Customs. The Customs Administrations approve the company's EPD. The company receives customs' references and print his TIR electronic guarantee reference number/barcode and submits it to office of departure. The customs officer logs into his customs system and checks the e-guarantee info and inspects the vehicle/goods as usual.⁴⁹

Therefore, these pilot transports performed with digital procedures have brought the next generation of TIR into one step closer to reality⁵⁰. This will be a first step for the digital era for the customs on TIR procedures.

In addition to that success story, on the occasion of International Customs Day, Turkey and Georgia concluded a Protocol on Data Exchange in the frame of e-TIR Pilot Project on 26 January 2016. Taking into account the 2016 theme announced by the WCO as "Digital Customs: Progressive Engagement", the two neighboring countries wished to mark this day with a significant step.

The Protocol includes the ToR for a Customs to Customs (C2C) data exchange of an e-TIR Pilot Project. The pilot will start soon where the connecting process for the database is on the way, thus aiming at testing specific features of the e-TIR Reference Model.

⁴⁹ <https://www.iru.org/etir>

⁵⁰ <http://automotive-exports.com/etir-pilot-success-between-iran-and-turkey/>

The objective of the project is to strengthen the capacities of developing countries and countries with economies in transition to facilitate legitimate border crossing, by means of increased secure electronic exchange of information between Customs Administrations.⁵¹ Simultaneously, the project will further secure the supply chain and the government revenues related to the international transport of goods. Ultimately, this project will contribute to increasing the cooperation between Customs Administrations and promote the use of international standard electronic messages, in particular, for transit operations.

The Turkish and Georgian sides have met under the auspices of UNECE for realizing the project, and mapping for the data platform was already concluded. Thereby, Turkish BILGE and Georgian ASYCUDA Systems are the sources of information.

Furthermore, there will be 6 types of messages consisting of Record Advance Cargo Information, Notify Customs, Start TIR Operation, Terminate TIR Operation, Discharge TIR Operation and Query Guarantee to be sent and these will construct the push method envisaged in the e-TIR Reference Model. On the other hand, the pull method will be tested by using the Notify Customs message which may be a new component of the e-TIR Reference Model if implemented successfully.

Meanwhile, one of the last steps to connect to Central Exchange Platform (CEP), located in UNECE premises was conducted and the secure connection was accomplished through Turkish system on 28 April 2017.

Results

The e-TIR Pilot Project Initiatives will lead a significant role for the only global transit regime implemented in 70 TIR Contracting Parties performing under UNECE.

⁵¹ <https://www.unece.org/info/media/news/transport/2015/georgia-and-turkey-kick-start-etir-pilot-project/georgia-and-turkey-kick-start-etir-pilot-project.html>

Turkish Customs Administration is involved in both e-TIR Pilot Projects separately with Iran and Georgia, for a smooth e-data exchange which substitute the paper-based TIR Carnet. Considering the benefits of the C2B2C and C2C aspects, the two e-TIR Pilot projects will shape the future e-TIR vision together by completing the inadequacies of the current system.

A new data exchange approach (pull) may be reflected in the e-TIR Reference Model concerning the results of the Turkish-Georgian e-TIR Pilot Project.

UN centralized data exchange platforms were established in line with the pilot projects, and the Contracting Parties will ultimately be able to render the system more secure by ensuring that future TIR data are provided via these databases.

For the time being, the technical matters are almost resolved as administrative and legal infrastructure should be completed. According to the general and large-scale implementation of e-TIR, a full-fledged legal framework must first be constructed under the aegis of UNECE. Furthermore, budgetary issues should be settled.

On the other hand, e-TIR Pilot Projects were developed in accordance with the provisions of the WCO SAFE Framework of Standards, where all data elements as required for safety and security (S&S) in the framework of transit, had already been included in the e-TIR messages. In this context, upon completion of the pilot projects with success, e-TIR Pilot Projects may match up with the GNC⁵² envisaging the facilitation of the electronic exchange of information in a systematic and incremental way by the use of UB concept. By implementing the e-TIR Pilot Project with Georgia, both Parties are dedicated to test the C2C data exchange which might serve as a role model for GNC concept. Additionally, e-TIR Pilot with Iran proposing C2B2C data exchange, might be another tool for the future projections of the GNC concept by taking into account the business component of the UB via aspiring a new aspect for the transit transactions. Hence, it

⁵² <http://www.wcoomd.org/en/topics/facilitation/activities-and-programmes/gnc.aspx>

will serve for filling the gaps within the GNC UB for the business sector for Customs-Business Partnership.

Furthermore, e-TIR Pilot Projects are already included in the WCO Transit Guidelines.

References:

‘TIR Handbook’, Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention, 1975), Tenth Revised Edition, BM New York- Geneva, 2013.

EVMEZ A. Thesis: Operation of TIR System, Its Impacts on International Trade and Reflections on Turkey at the Economic and Political Level

MERMER R. (2017) Sorularla e-TIR Projesi. Gümrük ve Ticaret Uzmanları Derneği, 44-45, 12-15

<http://automotive-exports.com/etir-pilot-success-between-iran-and-turkey/>

<https://www.iru.org/etir>

<https://www.unece.org/info/media/news/transport/2015/georgia-and-turkey-kick-start-etir-pilot-project/georgia-and-turkey-kick-start-etir-pilot-project.html>

<https://www.unece.org/mission.html>

<https://www.unece.org/trans/bcf/etir/background.html>

<http://www.wcoomd.org/en/media/newsroom/2015/november/world-customs-organization-declares-2016-to-be-the-year-of-digital-customs.aspx>

<http://www.wcoomd.org/en/topics/facilitation/activities-and-programmes/gnc.aspx>

http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/activities-and-programmes/gnc/gnc_handbook.pdf?db=web

CHALLENGES AND RISK MANAGEMENT IN CUSTOMS OPERATION

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Modernization of customs is an indispensable requirement for the socio-economic development and international integration of our country. Face to the fact, Vietnam Customs has made continuous efforts to apply a number of reform and modernization solutions to improve state management on customs and already achieved great results. One of these solutions is to shift management from a traditional management approach to a modern management approach based on risk management techniques that help balance the state management on customs and convenience in import-export, exit, entry and transit.

The concept of risk management was first formally introduced in the in the amended Law in customs 2005 "Customs inspection is carried out on the basis of information analysis and assessment of the legislation compliance of the goods owner and the risk level of tariff legislation violations in order to ensure state management on customs and not to cause difficulties for export and import activities". Along with the promulgation of the the amended Law in customs 2005 , the financial sector in general and the customs sector in particular have actively developed and issued legal documents providing guidelines for the application of risk management in customs operation. Legal basis for risk management in customs operation is detailed in the Decision No. 48/2008/QĐ-BTC dated July 4, 2008 of the Ministry of Finance on the promulgation of the Regulation on Application of risk management in customs operation; Circular No. 175/2013/TT-BTC dated November 29, 2013 of the Ministry of Finance regulating the application of risk management in customs operation. Besides,

since Customs law No. 54/2014/QH14 dated June 23, 2014 of the National Assembly of Vietnam (hereinafter called the Customs law 2014) was effective, it has created a strong legal basis for fully applying the principles of risk management in our customs operation. It also shows the importance of risk management techniques as well as the high appreciation of our government of the application of these risk management techniques in customs operation.

So what is the risk management in customs operation?

According to the World Customs Organization WCO (Handbook about risk management), risk management in customs operation is understood as "the systematic application of management procedures and practices that give the Customs necessary information to solve the problem of shipping or shipments that pose a risk problem". In Vietnam, according to the provisions of the Law and the guiding documents under the Law, "Risk management in customs operation is the systematic application of statutory regulations, procedures and professional measures to identify, assess and classify the risks that negatively impact on the effectiveness and result of customs administration and tax administration which is the basis for customs authorities to allocate reasonably resources and apply effectively customs management measures and tax administration measures" (Circular No. 175/2013/TT-BTC dated November 29, 2013 of the Ministry of Finance).

Risk management in customs operation includes the collection and processing of customs information; formulation of criteria and organization of the assessment of law observance by customs declarants, and classification of the level of risk; organization of the implementation of appropriate customs management measures (Customs Law 2014). The information that Customs authorities collect and analyze includes information inside and outside of sector, and information domestic and abroad) on the subjects of organizations and individuals executing import and export activities, transit of goods, exit, entry and transit of means

of transport; Domestic and foreign organizations and individuals that are partners or related to these activities; Information on the place of origin of the imported goods, country, area of import or export of goods or place of transit of goods into Vietnam; Information on management policies of state management agencies over export and import goods, preferential policies on import and export of goods, preferential tariff quotas of Vietnam or between Vietnam and other countries. In addition, customs authorities have also developed risk management criteria that are issued as a basis for risk assessment, and customs code and tax law compliance assessment, satisfying the requirements of customs administration and tax administration for export, import, exit, enter and transit activities. The results of the risk assessment are updated on the Customs Information System. This system is directly linked to the Customs Clearance Systems and relevant information Systems of the Customs sector to monitor, supervise and make decisions on the application of inspection and surveillance measures and other professional measures to ensure the observance of law in the process of customs procedures for export, import or transit goods, transport means on entry, exit or in transit. Customs authorities apply the risk management in a sequential manner based on the principle both to enhance the state management of customs and to encourage and facilitate import, export, exit and entry and transit activities. Customs authorities will focus on the inspection, supervision and control of high risks and the application of appropriate measures to low risks.

So why customs must apply risk management? Why should our government emphasize the application of risk management in customs operation?

Firstly, it is the challenge of the times. The WTO encourages all reforms of customs procedures towards facilitating trade between countries. In that spirit, the WTO has an agreement on tariffs and harmonization of customs procedures, which stipulates the principles that customs in the countries must adhere to, such as the principle of basing on transaction prices to impose tariffs, the

principle of no use of customs procedures to unnecessarily obstruct commercial activities, the principle of non-discrimination when carrying out customs formalities in respect of goods of different countries, except Areas association, principles of harmonization of customs procedures of different countries, etc. In addition, the WTO encourages countries to apply customs clearance norms recommended by the World Customs Organization, one of which is the application of risk management techniques to customs procedures for import and export goods. In periodic trade negotiations, the WTO puts certain pressure on countries to reform their customs in the direction of applying risk management techniques. In other words, risk management in customs operations is supported by the WTO and pressures to put into place. As a result, member countries, including Vietnam, are forced to reform customs procedures in the direction of widespread use of risk management techniques. In addition, globalization and the rapid development of world trade are accelerating the speed of economic development and growth in many parts of the world. The growth of international trade has also put pressure on countries to move quickly to the application of risk management techniques in state management of customs.

Secondly, it is challenge of state management requirement. Foreign trade plays a very important role in promoting the development of the country. To facilitate the development of foreign trade, reform and modernization of customs is an indispensable requirement. In particular, customs procedures must be simple, transparent, and speed up the rotation of goods in foreign trade; Clearance time must be shortened to minimize the cost of the enterprise carrying out customs procedures, etc. Therefore, the application of risk management in customs procedures is an effective solution not only to ensure strict management of the state on customs but also create favorable conditions for export, import, exit, entry and transit activities. That is the premise for our country's extensive integration into the regional and world economy.

Thirdly, it is due to the requirements of reality. Vietnam has officially become a member of the World Trade Organization and other economic organizations. When we joined the WTO, we made multilateral commitments, commitments related to import duties, and commitments to keep our market open. Vietnam also participates in the Agreement on Common Effective Preferential Tariff Schemes for the ASEAN Free Trade Area, and is a party of the Kyoto Convention, and carries out customs valuation under the Gatt Agreement to create a unified customs valuation system in line with bilateral or multilateral international commitments that Vietnam has acceded to. With such tariffs commitments and preferences, Vietnam has attracted and promoted foreign trade more and more developed. The number of importers and exporters of our country is increasing; the volume of import and export goods has become more and more diversified, constantly changing; and means of transport on exit, entry and transit are also increasing, that create a huge volume of work. In actual fact, the average customs clearance time of Vietnam Customs is still longer than the average customs clearance time of other countries. Despite many efforts, Vietnam Customs is still considered slow to innovate. In the face of such a situation, if Vietnam's customs are not reformed vigorously without the application of risk management techniques, it is difficult to meet the requirements of state management of customs.

It has been proven that the risk management in customs operation has brought about substantial and practical benefits in the state management of customs. The application of risk management has helped customs authorities achieve the objectives of modernization such as ensuring the balance between trade facilitation and strict control of the law-abiding process; it works to prevent undue management of workloads by identifying high risk subjects and prioritizing resources for managing these subjects, help reduce administrative procedures; reduce the role of customs officers during the customs clearance process, thus eliminating the

troublesome harassment that may arise during the customs clearance process.

Example 1: The streaming of imported and exported goods in Customs, known as customs clearance, is considered to be an effective tool for the customs authorities to carry out the supervision, inspection and management of the goods entering into and exiting from the territory of Vietnam. Currently, Vietnam Customs classifies goods according to 3 streams which indicate the level of customs assessment of goods in the risk management process: Green stream (exemption from detailed customs document inspection, exemption from actual goods inspection), yellow stream (detailed inspection of customs documents, exemption from inspection of actual goods), red stream (detailed inspection of customs documents, and inspection of actual goods). The streaming of customs declaration creates many advantages for import-export enterprises. Instead of 100% actual inspection, the customs authorities choose the enterprise with the highest risk to focus its inspection force. Enterprises that obey the law well and risk-free goods will be distributed into green stream and cleared automatically and quickly. The customs clearance is in seconds. The enterprises failing to abide law, , depending on different frequency and level, will be distributed into yellow or red stream. The rate of actual inspection of goods has decreased significantly over the years, particularly in 2011, the actual inspection rate was 12.62%, by 2016 only 5.36% (Source: Online Customs). Thus, the streaming of declarations helps the customs authorities to reduce the workload, reduce the customs intervention to the customs clearance of goods, help imported and exported goods cleared quickly, minimize cost, and save time and effort of the enterprises.

Example 2: The focus management in customs has also helped the customs authorities to detect many violations throughout the country. Implementation under the topic Risk control in the operation of cancellation of import and export declaration in 2016 of the Risk Management Department has found 215 enterprises had signs of canceling and altering declarations. Expanding the analysis

of above mentioned enterprises, customs officers discovered many cases of fraudulent in terms of types, quantities, names of goods, etc. Specifically, there were 14 enterprises importing facing bricks of Chinese origin, 02 enterprises importing stone powder, 08 enterprises importing wood products, machinery and functional foods, 39 enterprises importing consumer goods. (Source: Online Customs News).

The application of risk management techniques also contributes to the promotion of other modernization programs in the customs sector, which is a prerequisite for the implementation of the sector's development and modernization program, ,for example the national one-stop mechanism, Vnaccs/Vciss automatic electronic customs clearance system, etc. The synchronous reform makes the customs administration system operate smoothly; help simplify administrative tasks; facilitate the import and export activities of the enterprises from pre-customs clearance through customs clearance and post-clearance.

Risk management also creates a transparent competitive environment based on compliance with the law. The principle of risk management is that the customs authorities focus on inspecting, monitoring and controlling the high risk, so those who comply well with the law and have low risk will be facilitated on customs procedures clearance. This will encourage enterprises to voluntarily comply with law to receive customs incentives. Especially, the enterprises with large turnover and complying with the import-export law, the customs authorities will consider selecting such enterprises to join the priority enterprise program in the customs field. The enterprises will enjoy a lot of priorities in the field of state management of customs, helping to increase the competitiveness of the enterprises.

In addition, thanks to the method of applying risk management, the customs sector has taken the initiative in detecting and controlling the risks of violating the customs legislation, creating a compliance environment and enhancing the competitiveness of our country's economy. Through the collection,

analysis and processing of information, Customs Authorities can assess the risks before they happen. As a result, there will be measures to control such risks, which will greatly assist in the prevention and combat of smuggling of goods across the borders.

Although risk management in the customs operation has brought great benefits in the process of improvement and modernization of the country, the results are still modest and have not met the expectations from enterprises, society as well as customs sector yet. Specifically, the rate of inspection in customs clearance has been reduced and satisfied with customs management requirements, but the quality of clearance streaming is limited. Accordingly, the goods of the law-abiding enterprises are still divided into yellow and red streams. Products subject to specialized inspection are divided into these two streams, leading to lengthening time of customs clearance and increasing the cost of the business. In addition, the portfolio of commodities with price risks has also widened, leading to a rise in yellow stream declarations. The reasons for above mentioned limitations are primarily from the collection, analysis and processing of information. Collected information and data is the basis for making decisions on the form of management in customs. However, over the past time, this work has not been paid adequate attention, leading to the inadequacies that obstruct the application of risk management in the customs operation in particular as well as the process of reformation, modernization the customs sector in general. Actually, the information collection is fragmented, overlapping and inconsistent. For example, the risk management information system (RM), the anti-smuggling information system (Ci02), the post-clearance inspection information system (STQ01) are jointly taking the task of collection the enterprises' information. However, the source of information from these systems is sometimes heterogeneous and dispersed, leading to inaccuracy of risk rating and classification. It leads to waste of manpower and budgets in developing, managing and operating systems. In addition, information from other agencies has not yet been

adequately linked to the customs information system, leading to the ineffective application of information technology as expected, and causing enterprises to waste time, efforts and money for export and import activities. The team of managers and staffs engaged in risk management is lacking in both quantity and quality. Ability of assessment and analysis of risk is limited. The assessment results are inaccurate and unpredictable, leading to the impossibility or passive possibility of dealing with the risk of smuggling and trade frauds.

At present, Viet Nam has signed 11 free trade agreements and this number will be larger in coming time. This fact has actually provided Viet Nam customs considerable opportunities in prompting the risk management. Viet Nam customs has approached a lot of modern customs inspection and control equipments, advance technologies, useful projects such as VNACCS/VCIS project, container X-ray machine project, risk management enforcement project, project of strengthening management capacity of border customs staff. Viet Nam customs has also accessed systematically, in detail and in full modern risk management solutions that effectively improve Viet Nam customs modernization process by international standards. Besides, Viet Nam has also faced a number of challenges in the integration of economy with countries in region and in the world. Viet Nam's participation in Trans Pacific Partnership Agreement (TTP) is a typical example. When Viet Nam took part in TTP, customs law and policies have changed a lot to conformity with common regulation. But in reality, there is a wide gap between Viet Nam customs policies and the international standards. For example the time for the clearance of express commodities is 6 hour, but in fact, the time is from 2 days to 3 days, even 5 days. For the priority enterprises, each country build priority enterprise scheme on the base of the standards of World Customs Organization (WCO).

In facing to these challenges, overcoming the existing limitations of current risk management methods, as well as the rapid adoption of a modern compliance risk management approach

is a necessity. Compliance management requires that modern customs authorities carry out administrative measures, including advocacy, education and awareness raising for enterprises about voluntary compliance with the law; technical support by instructing to install software programs and consulting about business policy for enterprises; implementation of a risk management policy that is aligned with the sector strategy and objectives; development of indicators of risk signs to be applied in each management and assessment of customs operations; enhancement of the quality and effectiveness of information collection and processing; improvement of the quality and efficiency of the streaming of customs inspection; implementation of the Schemes and programs to encouraging voluntary compliance of enterprises; improvement of the capacity of customs staffs in analyzing and evaluating risk information. The application of a standard compliance management framework based on modern risk management will enable the Customs to save human resources when carrying out customs procedures, inspections, control and supervision, and to make correct and effective decisions based on the principles of reasonable analysis, evaluation and processing of risk information, thereby enabling a balance between facilitating benefits and state management of customs in the new period to 2010.

ORGANIZATION OF CUSTOMS CONTROL AS A PRIORITY METHOD OF STRUGGLE AGAINST SMUGGLING AND ILLICIT TRADE

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Abstract:

The role of Customs in securing territories at the border and against threats accompanying trade and financial flows, in different frameworks and environments is extremely important. We believe that most prominent results can be achieved due to wide use of modern IT technologies and cross-border management. The experience of Russian customs of implementing this principle in counteracting smuggling and illicit trade is given in the article.

One of the most important functions of customs authorities of the Russian Federation is to ensure economic safety of the state. In modern conditions, taking into consideration that 5 states (Belarus, Kazakhstan, Russia, Armenia, Kyrgyzstan) form the Eurasian Economic Union, enforcement customs mission extends and changes in accordance with modern terms. All kinds of improvement of customs regulation assumes increase in efficiency of applying measures for the practical use of customs operations

and development of customs technologies, mostly tariff and non-tariff regulation of the foreign trade activity.

Target indicators of the specified direction of development of customs service of the Russian Federation are the following:

- To develop the Customs Service of the Russian Federation;
- To reduce time of passing low risk export goods under customs procedure (from 72 hours to 2 hours);
- To minimize time of customs operations when low risk goods are being placed under customs procedure of release for internal consumption (from 96 hours till 2 hours);
- To improve the number of declarations on low risk goods processed in electronic form without representation on papers (from 40 percent in 2012 to 100 percent by 2014);
- To improve the number of declarations on goods imported on the territory of the Russian Federation possessed in the customs authorities located in border subjects of the Russian Federation (from 34 percent in 2012 to 65 percent by 2020);
- To reduce the number of documents demanded for the customs purposes while moving imported goods through the customs border of the Russian Federation (from 10 pieces in 2012 to 4 pieces by 2018);
- To reduce the share of cases of non-complying customs restrictions and also violations of the currency legislation when placing goods under customs procedures (from 17 percent in 2012 to 11 percent in 2020);
- To improve effectiveness of execution of the state function of implementing within the competence of control of the currency transactions of residents and nonresidents connected with movement of goods through the customs border of the Customs union (from 14 percent in 2012 to 25 percent by 2020).

At the same time we should focus our attention on improving law-enforcement activity of customs authorities. Indicators of improving the law-enforcement activity:

- Share of cases of administrative offenses with the result of assigning punishment (from 82 percent in 2012 to 85 percent by 2020);

- Share of offenses revealed by quick and investigation divisions of the customs authorities (from 70 percent in 2012 to 81 percent by 2020).

- Share of the participants of foreign economic activity who can highly estimate quality of services provided by customs authorities (from 30 percent in 2012 to 70 percent by 2020);

- Share of the electronic customs services (from 1 percent in 2012 to 100 percent by 2020).

Technologies of counteracting illicit trade (this definition has same meaning in the Russian customs law as illicit movement of goods through customs border) are being upgraded by the Russian Federal Customs Service in terms of promoting international trade and increase in a foreign trade turnover of state members of the Eurasian Customs Union.

According to the Customs code of the Customs union (part 19 of article 4) illicit movement of goods through customs border means movement (or attempt of such movement) of goods through customs border in certain way: not in the established places or in unspecified working hours of customs authorities; with concealment from customs control; with false declaring or without declaration of goods; with use of documents containing false information on goods, and (or) with the use of counterfeit or other false means of identification.

At the same time smuggling means moving through the customs border of goods or other objects (which figure in the legislation as prohibited) besides or with concealment from customs control or with deceptive use of documents or means of customs identification or interfaced to a non-declaring or doubtful declaring. Smuggling has always attracted people as a chance to make easy money. But it has always been very risky because of the prosecutions of the authorities. The governments, fairly believing that smuggling undermines economic bases of the state and

discredits the power, established severe punishments for customs offenses.

We would like to mention that secret movement of goods through customs border without declaring is the most ancient method which has been applied within many centuries. The hope of smugglers is that customs officers will not find declared goods or currency and after passing of formal procedures illicit goods can be sold with benefit. Another popular method of smuggling is transportation of goods through customs border with doubtful (inadequate) declaring. This method of smuggling has wide distribution in the world and is used for deliberate inadequate declaring of goods for the purpose of lowering customs payments, taxes and fees.

The main types of smuggling relating to this method are lowering the customs cost of goods; illegal use of customs privileges; transit procedure; temporary import or export of goods; diplomatic channels for smuggling; measures of counteracting smuggling.

Classification of illicit operations and smuggling is the following:

- On degree of danger to the state and society: arms, weapon and ammunition; drugs, poisonous, poisoning and radioactive materials; objects of art, historical and archaeological property, cultural values; consumer goods; luxury goods.
- On scales of economic damage;
- By types of illicit goods (most popular illegal import or export goods: mobile phones, cigarettes, foreign cars, alcoholic beverages, medicines);
- On implementation modes, etc. (concealments ...).

Importance of problem of illicit movement of goods through the customs border and smuggling is still noted in the Russian Federation despite some decrease of export and import level in 2014-2015. Official customs statistic data assumes that cost of illicit trade, including strategically important goods and resources,

has reached amount of more than 1.7 billion rubles in 2014 and constituted 2.2 billion rubles in 2015.

At the same time size of illicit movement of cash in 2015 has been around 244 million rubles (in 2014 – 228 million rubles). This are considerable sums not to mention that total amount of alcoholic and tobacco products illegally moved through the Russian customs border prevailed more than 256 million rubles.

In general, drugs, psychotropic and strong substances, foreign currency and currency of the Russian Federation, trucking facilities, consumer goods have been main objects of administrative offenses or crimes in the field of illicit trade in 2015. It is a positive achievement of the Russian customs authorities that illicit traffic of weapons, ammunition and meat products has been almost excluded in comparison with the 2014.

The analysis of statistical data and information on the official site of the Federal Customs Service of Russia shows that in 2014-2016 illicit movement of cargo through customs border has been proceeded with the use of false declaring or non declaring of goods, also with the use of documents containing false information about goods. Such methods are still widely used for concealing from customs control such goods as drugs, psychotropic and strong substances, foreign currency and currency of the Russian Federation, tobacco production.

As we have already mentioned, specific place in the work of customs authorities is held by activities for prevention of import to the territory of the Russian Federation of drugs and psychotropic substances or their analogs. Illicit trade of such kind of goods remains seriously threatening vital interests of Russia nowadays. Seriousness of problem with drugs is proved not only by the rapid growth of production of drugs of all types, but also we can see this from data of national law enforcement agencies. Surely, it is confirmed also by results of activities of customs authorities of Russia in 2014-2016.

So in 2015 over 1.2 tons of drugs and psychotropic substances, their precursors or analogs have been prosecuted and

thus excluded from illicit trafficking that is 2.5 times more than a similar indicator in 2014. Meanwhile in 2014 more than 465 kg of drugs and psychotropic substances have been prosecuted. That is nearly 33% more in comparison with 350 kg in 2013.

The Russian customs authorities consistently enhance system of work on preventing import of drugs and psychotropic substances to our country. It concerns increase of efficiency of customs control in check points through Frontier of the Russian Federation, and operational search activities of law-enforcement divisions of customs authorities – both independently or in interaction with the Russian and foreign law enforcement agencies.

In 2015 the Russian customs authorities have carried out procedures of customs control of persons, vehicles and freights and as a result have prosecuted around 2.1 tons of drugs, psychotropic and strong substances, including more than 332 kg of heroin, about 850 kg of cocaine, more than 912 kg of hashish, more than 120 kg of marijuana, around 210 kg of other psychoactive drugs.

Customs authorities of Russia together with the Russian and foreign law enforcement agencies in 2015 within controlled delivery have held 222 operational search events and international transactions. By such results over 319 kg of drugs have been withdrawn from illicit traffic. Comparatively, in 2014 – 123 actions have been taken and 258 kg have been withdrawn.

Evidently, guard dogs from canine divisions of customs authorities are actively used for achieving current goals in the Russian customs enforcement. In 2015 canine specialists of customs authorities of Russia during procedures of control and operational search have inspected: 870 thousand units of road transport (in 2014 – 767.5 thousand units); 26.2 thousand units of rail transport (in 2014 – 36.6 thousand units); 4.8 thousand units of water transport (in 2014 – 4.6 thousand units); 6.5 thousand units of air transport (in 2014 – 11.7 thousand units); 9 821.4 thousand units of baggage (in 2014 – 11 039.7 thousand units); 2 597,5 thousand units of containers and freights (in 2014 – 2 305.9 thousand units); 7 492 thousand units of international mailings (in

2014 – 5 841.5 thousand units). As a result of the specified actions in 2 317 cases over 865 kg of drugs, 37 units of the weapon, 1 795 units of ammunition, 126 units of pyrotechnic products, more than 54.2 thousand blocks of cigarettes and 4 732.4 kg of tobacco products and tobacco raw materials, 818 units and 7 004 kg of CITES and derivatives, cash in the amount of 138.6 thousand euro, 78.7 thousand US dollars have been revealed.

In 2015 quantity of cases of productive application of guard dogs has increased in comparison with 2014 by 1.5 times, quantity of cases of detecting weapon and ammunition has increased by 1.1 times, objects of CITES and derivatives – by 1.3 times, cash – by 4.3 times, tobacco products and raw materials – by 1.7 times. At the same time, despite decrease in quantity of cases of detentions of drugs, psychotropic and strong substances, their total amount has increased by 4.4 times.

We would like also to note positive dynamics in activities of customs authorities in identifying and controlling illicit movement of goods and resources referred by the Government of the Russian Federation to the category of strategically important. So in 2015 more than 40 criminal cases have been brought in connection with attempts to struggle against illicit movement of fuel and energy complex, 87 criminal cases – on the facts of illicit trafficking in precious metals and gems. At the same time 58 criminal cases have been brought on the facts of illicit movements of weapon, military equipment, ammunition and explosives. Lastly, 135 criminal cases have been brought on the fact of illegal export of wood.

Since 2014 for the purpose of protection of national interests of the Russian Federation customs authorities carry out work directed to non-admission of import to the Russian Federation of agricultural products, raw materials and food imported from countries which have made decision to impose economic sanctions on the Russian legal entities and (or) physical persons. In 2015 according to statistics provided by the Federal Customs Service of the Russian customs 259 supply chains by total weight more than 8

thousand tons have been prosecuted from being imported to the territory of the Russian Federation. Also have been prosecuted:

- Illegal movement through customs border of the EEU of goods for the sum more than 10.3 billion rubles;
- Evasion of customs payments for the sum of 5.2 billion rubles;
- Non-return from abroad funds of the sum about 39 billion rubles;
- Illegal movement of cash and monetary instruments of the sum more than 222 million rubles and alcoholic or tobacco products for the sum about 171 million rubles;
- Actions for identifying of facts of failure to pay, incomplete payment of the customs duties, taxes, indemnification caused by a crime have been carried out in 2016;

Last, but not least 5.7 billion rubles of customs payments have been added to the Federal budget that for 5.6% exceeds an indicator of 2015 (5.4 billion rubles). Also more than 2.5 billion rubles of earlier unpaid customs payments have been brought out of a shadow turn that is 31.6% more, than in 2015 (1.9 billion rubles).

Within implementation of the Presidential decree of the Russian Federation from July 29, 2015 No. 391 "About separate special economic measures applied for the purpose of safety of the Russian Federation" customs authorities have independently withdrawn more than 90 tons of products forbidden for import to the territory to the Russian Federation from which around 84 tons have been destroyed. Within interdepartmental interaction of customs and Ministry of Consumers and Agriculture control 650 tons of forbidden products have been revealed and destroyed in 2015. From November 2015 till June 2016 by results of work of mobile groups of the Federal Customs Service of Russia more than 6.6 thousand tons of prohibited and restricted goods have been revealed, including more than 3.5 thousand tons of goods of biological origin, 0.5 thousand tons of production and consuming goods, more than 2.6 thousand tons of goods moved with violations

of transit implementation. During specified period more than 40 thousand vehicles have been stopped and also 1.6 million tons of goods have been checked, 4600 tons of forbidden commodities have been returned to border states (Kazakhstan, Ukraine, Belarus), 2 thousand tons of forbidden goods have been destroyed. 35 mobile groups perform actions of customs control function since the end of November 2015 for the purpose of non-admission of moving prohibited goods to the Russian Federation along the Russian-Kazakhstan and the Russian-Belarusian frontier.

In general, positive dynamics in counteracting smuggling and illicit trade is noted in identification and control of offenses which objects are the most tax preferable goods and resources. In fact 54 criminal cases have been brought for illegal movement of production in fuel and energy complex that is 35% more, than in 2015 (40 cases); 138 criminal cases have been brought under facts of illicit trafficking in precious metals, stones and products that is nearly 1.6 times more than in 2015 (87 cases); 156 criminal cases have been brought for illegal export of the wood that is 15,6% more, than in 2015 (135 cases). 828,9 kg of drugs, psychotropic and strong substances, including more than 68 kg of heroin, more than 29 kg of cocaine, more than 489 kg of hashish and hash oil, more than 54 kg of marijuana, more than 56 kg of new psychoactive agents, more than 23 kg of psychotropic substances have been withdrawn from illicit trafficking in 2016 after successful measures of customs control applied to persons, vehicles and freights. Law-enforcement divisions of customs authorities have brought 470 criminal cases for smuggling of drugs, psychotropic and strong substances.

Law-enforcement divisions of the Russian Federal Customs Service together with the Russian law enforcement agencies have held 145 investigations in 2016. As a result 145,6 kg of drugs have been withdrawn from trafficking. Also 2 235 criminal cases have been brought by Russian customs authorities in 2016. It is 10% more than in 2015:

- 342 cases have been initiated for the drugs smuggling;

- 528 cases have been initiated for the smuggling of strong, poisonous, poisoning, explosive, radioactive materials, firearms or its main parts, explosive devices, ammunition, weapons of mass destruction, means of his delivery, other arms, other military equipment;

- 683 affairs have been initiated for the evasion from customs payments;

- 142 affairs have been initiated for the illegal trafficking of illicit currency.

- 2 048 criminal cases have been brought in 2016 that exceeds for 17.3% an indicator of 2015 (1 746 cases);

- 633 criminal cases have been brought under article 194 of the Criminal Code of the Russian Federation for evasion from customs payment.

Further measures of the Russian customs authorities targeted on counteracting illicit movement of goods through customs border are connected with the use of the main customs development vector – upgrading application of risk management system in case of implementation of customs control. Such directions of improving effectiveness of struggling against illicit trade as interaction and mutual administrative aid of customs authorities of states of the Eurasian economic union as development of new software for collecting and handling the preliminary information about moving goods have high potential.

Practice of developing customs affairs will consist of methods preventing or complicating illegal transportation of goods through economic border of the state. These technologies can be subdivided as: economic (are directed to decrease economic efficiency of illicit operations and reduction of profitability of illegal export-import transactions); organizational (licensing, quoting, permissions for separate kinds of activity); control and technical (by means of special marking, packing, the technical equipment, communication systems and tracking movement of commodity streams and accompanying documentation); informational (providing customs authorities and other participants of foreign economic activity with reliable and operational information about the goods moving through border); special

(actions of secret-service and operational search character, the prevention and identification of smuggling at stages of planning and direct implementation).

To sum up, the use of complex of specified methods is expected to reduce, and in some cases to completely stop smuggling. For sure, organization of customs control in a modern way is the key to success in ensuring economic security of state.

**COMPARISON OF BORDER PROTECTION OF
INTELLECTUAL PROPERTY RIGHTS BETWEEN
CHINA LEGISLATIONS
AND INTERNATIONAL STANDARDS**

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Abstract

The border protection of intellectual property rights (IPRs), known as customs enforcement of IPRs, plays an essential role in combating IPR infringements. To begin with, this paper is going to introduce international standards and China legislations related to IPRs border protection. At the international level, both the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) promulgated under the WTO framework and Anti-Counterfeiting Trade Agreement (ACTA) regarded as TRIPS-Plus announced by some developed countries are considered as international standards of progressive development. To China, those international standards about customs protection of IPRs have impacted legislations, such as Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights, and Rules of the General Administration of Customs of the People's Republic of China for Implementation of the Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights. Because of that, some comparisons and analysis between China legislations and

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international standards, TRIPS and ACTA are made. After comparing and analyzing, it is found that several points of China legislations exceed the standards requirements, including the scope of involved IPRs, the scope of border enforcement and the kinds of customs protection, and China Customs is with broader responsibilities. Lastly, based on the status quo of border protection and modern society, to perfect China legislations and Customs enforcement on IPRs protection, some suggestions are provided on the issue of intellectual property rights border protection, including encouraging intellectual property rights holders to recordation on China Customs, strengthening customs-rights holders cooperation, establishing intellectual property rights Customs Expert Group and Customs Strategy Group, and promoting training for customs officials.

Keywords: *intellectual property rights, border protection, China Customs, China legislations, international standards, TRIPS, ACTA*

1. Introduction

As time goes, Chinese intellectual property rights (IPRs) protection has experienced over 30 years' development. With the accession to WTO, China keeps on improving its legislation, administrative enforcement and justice on intellectual property rights, and especially engaging in international trade activities. At the same time, border administrative enforcement of protecting those rights is increasingly taken seriously. The party of relationship of border enforcement in China is Customs, according to Article 2 of *Customs Law of China*, Customs is "a governmental organization responsible for supervision and control over all arrivals in and departures from the Customs territory"¹ From the viewpoint, Customs empowered to protect IPRs, has a role in enforcing laws and regulations related to IPR, such as *Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights*, and *Rules of the General*

Administration of Customs of the People's Republic of China for Implementation of the Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights, expanding beyond the traditional role of supervision, revenue collection, smuggling prevention and customs statics compilation. Over 20-year history on border protection to intellectual property rights of China, it is conformed with the progressive development of international standards, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Anti-Counterfeiting Trade Agreement (ACTA). TRIPS, a multilateral agreement under the framework of WTO, providing the minimum requirements on border enforcement in China. For another, even though ACTA announced by several developed countries without binding on China, it still has impacted China Customs enforcement of IPRs protection. In this context, in order to perfect China legislations and keep pace with international development tendency of border protection of IPRs, there are comparisons between China's and those international standards in the aspects of the scope of involved IPRs, the scope of border enforcement and the kinds of customs protection. After analyzing, it is found that China legislations surpass the requirements of international standards, and China Customs holds broader responsibilities of enforcement on IPRs protection. However, due to the development of modern society, the complexity and variety of IPRs has been a challenge for Customs enforcement. In order to keep close touch with international standards and make Chinese border IPRs protection much better, some suggestions will be put forward.

1.1 The International Standards of Progressive Development Related to Border Enforcement of Intellectual Property Rights Protection

With paying attention to the importance of IPRs protection, there comes out several international standards on border enforcement for the whole world, and countries later learn from and/or follow it through enacting domestic laws and regulations.

The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Anti-Counterfeiting Trade Agreement (ACTA) are examples of international standards, and their brief introductions are in the following.

1.1.1 Introduction to TRIPS

The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights, whose abbreviation is the TRIPS Agreement, coming into effect on 1 January 1995, is Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization². It is to date the most comprehensive multilateral agreement on intellectual property (IP), as WTO official website definition.³ Due to the nature of TRIPS, it only provides minimum standards⁴, and each Member joining to WTO has to follow. Therefore, an evident characteristic of TRIPS is that the obligation forces on Member States is to introduce and adopt border measure provisions for IP protection⁵. The TRIPS is divided into seven Parts, and when it comes to border measures of protecting intellectual property, the provisions and procedures on them are contained in Section 4 in particular laying down the "special requirements related to border measures" of Part III,⁶ from Article 51 to Article 60. As required by Section 4 of the agreement, Customs is empowered legally to not only act *ex officio* to detain or seize only suspected imported goods, but also confiscate and destroy infringing goods, and hold the suspension of release of imported counterfeit goods.⁷

1.1.2 Introduction to ACTA

The Anti-Counterfeiting Trade Agreement (ACTA) announced by some developed countries in October 2010 is a multinational treaty, whose primary objective is to enhance the enforcement system of IPRs internationally.⁸ Given the new perspective on TRIPS,⁹ it is sometimes considered as TRIPS-Plus. It creates new standards by strengthening the international legal framework for combating counterfeit goods, generic medicines and copyrights infringement on the Internet. In addition to calling for strong legal frameworks, the Agreement also includes innovative provisions to deepen international cooperation and to promote strong IPRs enforcement practices and create a new governing body outside existing forums, such as the WTO, WIPO, and UN. ACTA would be one of the first international agreements designed specifically to combat counterfeiting in a harmonized and coordinated way, which is absolutely necessary to fight the highly sophisticated counterfeiting networks spanning multiple countries.¹⁰ The number of countries which are part of these negotiations is limited,¹¹ but ACTA still makes a broad influence on the field of IPRs border protection over the world.

1.2 Introduction to Implementing Laws and Regulations of Customs Protection of Intellectual Property Rights of China

As mentioned, with minimum standards of the TRIPS Agreement, Member States of the WTO are required to enact measures in their domestic legislation that adjust with TRIPS provisions¹² and China is no exception. In China, what goes hand in hand with TRIPS stipulations of Section 4 mainly are *Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights*, and *Rules of the General Administration of Customs of the People's Republic of China for Implementation of the Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights*. Although majority of provisions are adequate to the *status quo* of Chinese situations, its main points still keep great

consistence with the TRIPS agreement. To ACTA, although China is no its Member, China legislations and enforcement are still affected by its international standards on IPRs protection.

Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights was promulgated in 2003, and amended in 2010 by Order No.572 of the State Council of People's Republic of China.¹³ With six Chapters of the regulations, including general provisions, archival filling of intellectual property rights, application for and handling of detainment of suspected infringing imported and exported goods, legal liabilities and supplementary provisions,¹⁴ it regulates respectively every procedures and problems probably coming out related to customs protection.

Then the latter one, promulgated by Decree No.183 of the General Administration of Customs of China, came into effect in 2009.¹⁵ According to Article 1 of Chapter I of the Rules, the enacted function is to “effectively implementing the Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights”¹⁶. In other words, the Rules contains specific provisions on how China Customs to make border enforcement protecting legitimate holders' intellectual property rights and to dispose of confiscated infringing goods, and also on what measures an intellectual property right holder can take to maintain his or her interests.

2. Comparisons and Analysis Between China Legislations and International Standards

After introduction, it is found that both TRIPS and ACTA provide international standards of border enforcement for its Member States. To China, just bound by the TRIPS Agreement, it is still affected by both requirements. As written, “under the general notion of international IP law setting minimum standards or IP protection, countries can, and are free to, offer more extensive protection than the international standards”,¹⁷ China legislations on Customs IPRs protection exist some differences from those

standards on the basis of China present situation. To further illustrate, it is going to make comparisons and analysis between Chinese laws and regulations and international standards on intellectual property rights border protection.

2.1 The Scope of Involved Intellectual Property Rights of China is Broader than that of International Standards

2.1.1 Comparison and Analysis Between China Legislation and TRIPS

TRIPS covers requirements that national legislations of Member States must meet for IPRs protection including the rights of performers, producers of sound recordings and broadcasting organizations; geographical indications, including appellations of origin; industrial designs; integrated circuit layout designs; patents; monopolies for the developers of new plant varieties; trademarks; trade dress; and undisclosed or confidential information.¹⁸ It is worth bearing in mind that the TRIPS Agreement only provides minimum standards and asks Member States for implementing measures in their national legislations complying with TRIPS provisions.¹⁹ According to Article 51 of TRIPS, which talks about the suspension of release by customs authorities, says that there is no obligation to apply border measures to cases of infringement of intellectual property rights other than trademarks and copyright.²⁰ In other words, TRIPS provides the scope of involved IPRs of border enforcement only in cases of counterfeit and pirated goods. While, in the *Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights*, the involved intellectual property rights is much wider than TRIPS's, mainly including trademarks, copyrights and copyright-related rights, patent rights relating to import and export goods and protected by the laws and administrative regulations of China, Olympic symbols and World Exposition symbols.²¹

2.1.1 Comparison and Analysis Between China Legislation and ACTA

Unlike TRIPS only applies border measures to copyright piracy and trademark counterfeiting²², ACTA also contains patent infringement. However, the Parties agree that patents and protection of undisclosed information do not fall within the scope of this Section²³. Many people question the practicability of this provision because trademark counterfeiting is usually more obvious compared to patent infringement. The infringing nature of trademark-infringing goods is clear on the face of the goods, while patent-infringing goods, the infringement is often inside the goods and thus it imposes heavy burden on custom enforcement.²⁴ Similar to ACTA, the border measures in China include trademark, copyright as well as patent infringement, but it also covers other IPRs like Olympic symbols and World Exposition symbols²⁵.

2.2 The Scope of Border Enforcement of China Differs from International Standards

2.2.1 Comparison and Analysis Between China Legislation and TRIPS

With the respect of the goods related being imported and exported, there are some differences between Chinese laws and regulations and TRIPS Agreement. In particular, in terms of exporting, Article 51 states that TRIPS does not compel Member States to provide for seizures of infringing copies and pirated goods, but it points out that every Member States can decide whether to adopt it according to their actual situation.²⁶ Because the scope of involved IPRs ranges from countries to countries, in some cases, goods in exported country are produced legally, but when they are sold outside, they may infringe the IPR in the importing country. Actually, in China, both imported and exported goods are under protection.²⁷ In practice, there are much more cases related to tort in the process of exportation than those on importation. Here is the *Table 1* to prove.

Table 1: The condition of seizing inbound and outbound infringing good by China Customs in 2016

	Inbound infringing goods	Outbound infringing goods
Batches	667	441,421
Total volume of goods	16,828	41,616,795

Source: Authors, and the statistics are derived from China Customs 2017²⁸.

2.2.1 Comparison and Analysis Between China Legislation and ACTA

It is appeared that in China, the subjects of border measures now are mainly Business Administrator and Customs Authorities. On the other hand, the concept of right holder is expanded in ACTA, which includes IPRs holders and successors of patents. In addition to different subjects, even though the ACTA and the China legislations both include import and export²⁹, the Regulations of China does not mention the process of transit which is regulated in the ACTA³⁰. Actually, in China, it does not check suspected goods in the process of transit at present. Besides, there is no regulation about protecting infringing goods in transit.

2.3 The Kinds of Border Enforcement of China Differs from International Standards

2.3.1 Comparison and Analysis Between China Legislation and TRIPS

Mostly, China customs enforcement tends to engage in the *Ex Officio* Action (known as Protection *Ex Officio*, and initiative protection in China), and minority of it is the Applications for Action (known as Protection on Request, and passive protection in China). Article 52 permits customs, where reasonable, to require submission of proof of ownership of that right, such as relevant registration certificate by an applicant applying for a suspension of release of goods.³¹ In addition, Article 58 provides a framework for customs authorities to act upon their initiative when suspending the release of goods provide they have evidence that and intellectual

property right is being infringed³². Similarly, in China, Article 12 suggests that when an IPR holder finds any suspected infringing goods, he may submit an application to the customs³³. Also, Article 16 points out that customs shall immediately notice intellectual property right holders in writing when they find goods are suspected infringing³⁴. At present, the regulations demonstrate that customs should take action according to applicants of right holders, however, it is cautious to take action initiatively. In fact, it is not wise for customs officials to protect initiatively too much in case of being involved in civic affairs when enforcing the law. What's more, from the paragraph, initiative protection is a priority of these two methods.

2.3.2 Comparison and Analysis Between China Legislation and ACTA

Differing from TRIPS which considers Application for Action as a compulsive obligation and *Ex Officio* Action as a selective obligation for Member States, ACTA requires that *Ex Officio* Action is the treaty obligation for the Member States. According to the ARTICLE 16 of ACTA:

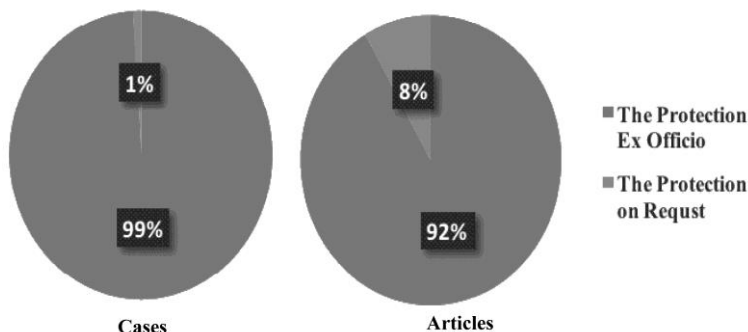
1. Each Party shall adopt or maintain procedures with respect to import and export shipments under which:

(a) its customs authorities may act upon their own initiative to suspend the release of suspect goods; and

(b) where appropriate, a right holder may request its competent authorities to suspend the release of suspect goods.

2. A Party may adopt or maintain procedures with respect to suspect in-transit goods or in other situations where the goods are under customs control under which:

Figure 2: The condition of two modes of IPRs protection by China Customs in 2016



Source: Authors, and the statistics are derived from China Customs 2017³⁵.

(a) its customs authorities may act upon their own initiative to suspend the release of, or to detain, suspect goods; and

(b) where appropriate, a right holder may request its competent authorities to suspend the release of, or to detain, suspect goods.

Therefore, ACTA requires Member States should take *Ex Officio* Action in the import and export, and Customs may also implement *Ex Officio* Action in the process of transit. As for China legislation, both *Ex Officio* Action and Applications for Action are kinds of China Customs IPRs protection measures. What's more, in China, Applications for Action depends on the right holders' application, but it is too difficult for applicants to apply for suspension to release goods because applicants ought to submit detailed information which must be so obvious that Customs believes that these infringing goods.³⁶ On the contrary, the requirement of ACTA that IPRs holders offer information are not strict. ACTA does not demand applicants to provide sufficient information, but to supply sufficient information that may reasonably recognizable by the competent authorities. Moreover, the requirement to provide sufficient information shall not unreasonably deter recourse to the procedures.³⁷ As a result, it is

easier for right holders to apply for suspending the release of goods or detaining any suspect goods.

3. Suggestions on Perfect Intellectual Property Rights Border Protection

By comparing and analyzing, Chinese implementing regulations and rules of intellectual property rights on border enforcement whose provisions exceed the TRIPS minimum standards, holds a higher level of IPRs border protection. In addition, although China legislations are similar to the requirement of ACTA, China's provisions have its own characteristics, conforming to China actual situations.

However, as the frequency of international trade activities, border protection of IPRs increasingly meets with challenges. In order to perfect laws and regulations of customs protection of intellectual property border protection of China and promote customs enforcement efficiently and effectively, some suggestions are put forward in the following.

3.1 Strengthening the Cooperation Between Customs and Intellectual Property Rights Holders

Written in the General Administration of Customs of China official website, recordation of intellectual property rights, also named registration for intellectual property rights signifies that, "the intellectual property rights ('IPR') holders...notify in writing the General Administration of Customs of the legal status of their IPRs, the conditions of relevant goods, the legal application of their IPRs and the import and export of infringing goods, in order for the Customs to proactively take measures to protect IPRs in the process of import and export supervisions."³⁸ That is to say, the recordation is a premise of getting China customs protection for intellectual property rights holders under the legal protection of China's *Trademark Law*, *Patent Law* and *Copyright Law*,³⁹ referring to the first step of the *Ex Officio* Action. Although it is helpful for customs authorities to notice and seize infringing goods and also for rights

holders to maintain their legitimate rights, the total volume of registration is relatively much smaller than that of Chinese registration of IPRs. Thus, to strengthen border enforcement of IPRs protection, it is imperative to change this situation.

For one thing, Customs ought to encourage IPRs holder to recordation through making more propagandas. It is helpful to encourage rights holders to finish recordation. Then, holding meetings frequently on the conditions of border protection is another measure. Customs can hold some workshops regularly to allow intellectual property rights holders to know the benefits and measures in combating intellectual property infringement activities. For another, IPRs holders can actively finish registration of their IPRs, provide a timely update on registration information. What's more, rights holders may invite Customs officials to learn what intellectual property characteristics and the substantial distinctions adhere to their authentic goods and how to identify in a short time. Therefore, Customs could keep in close touch with rights holders and fight against intellectual property rights violation more effectively and efficiently.

3.2 Improving the Cooperation Between Customs and other Administrative Agencies at Home and Abroad

In order to improve border enforcement, Customs is urged to unite much more administrative agencies to maintain a whole-of-government approach to strike IPRs infringement.⁴⁰ In domestic, China Customs is required to cooperate with State Administration for Industry and Commerce of the People's Republic of China (SAIC), State Intellectual Property Office, Ministry of Public Security and other administrations by sharing registered intellectual property rights information and specially patent rights detailed information, and joint enforcement, so that it is of benefit for Customs to clearly grasp rights messages that not cover on recordation and also combat infringement.⁴¹ Furthermore, it is imperative for China to establish information sharing agreements and protocols with countries around the world. For example, China

Customs has reached an agreement with United State containing that, “the Customs administrations of one Party shall, on its own initiative or request, communicate to the Customs administration of the other Party”.⁴²

3.3 Establishing Intellectual Property Rights Customs Expert Group and Strategic Group

With not enough professional and comprehensive knowledge on IPRs, Customs officials are tough to identify infringing goods in the importation and exportation when the infringement is complicated and not obvious to spot, so customs authorities may consider that establishing a special group like Intellectual Property Rights Customs Expert Group and Strategic Group consisting of experts of the field of IPRs protection, and in some degrees empowering State Administration for Industry and Commerce of the People’s Republic of China (SAIC) and/or State Intellectual Property Office to identify goods whether infringement or not as well. It probably takes Australian Customs practice for example that the Groups have been hold a standpoint to analyze criminal violations and provide supportive guidance on how to solve the negative impacts of intellectual property rights infringement.⁴³

3.4 Promoting Training for Customs Officials⁴⁴

China Customs should cultivate and train officials to be more talented in certain specially fields. In reality, although Customs officials are skillful at supervision, much of them tend to be relatively lack of the specialized knowledge to IPR. Besides, with the development of modern society, there exist increasingly complicated and various IPRs infringement situation that give much more challenge for Customs. Hence, officials ought to be trained regularly and expertized in an identified area. Then, they should draw lessons from previous experiences, which assist them to cope with the same problems efficiently and effectively next time. In addition, organizing experience exchange on their daily

work including enforcement obstacles and how to work them out among officials from different customs authorities.

Conclusions

Nowadays, Customs is not only revenue collection, and it is imperative to provide better border protection. As highlighted, “Customs is required to guard against both importation and exportation of dangerous and counterfeit products which pose serious threat not only to the economy, but also to the society in general. Such products include pharmaceuticals, CDs and DVDs, toys, clothes, food products, etc.”,⁴⁵ the challenge for Customs today is so tough.

By making comparisons and analyzing IPRs border protection between implementing Chinese laws and regulations and some international standards, it is considered that China to some extent surpassing the requirements of international standards has made strict regulations and rules to ensure border enforcement of IPRs protection, including the aspects of the scope of involved IPRs, the scope of border enforcement and the kinds of border enforcement. Chinese Customs has an essential role in enforcing China legislations related to IPRs border protection by means of taking border measures conforming to legislations.

However, it is not enough actually. For the purpose of perfecting China legislations on customs protection of intellectual property border protection and promote customs enforcement efficiently and effectively, there is still room for improvement.

Firstly, it is better to strengthen the cooperation between Customs and IPRs holders. To Customs, it can encourage IPRs holder to recordation and hold meetings frequently on the conditions of border protection. For another, rights holders can actively finish registration of their IPRs, provide a timely update on registration information, and invite Customs officials to grasp the knowledge of whether or not the goods are authentic.

Secondly, improving the cooperation between Customs and other administrative agencies at home and abroad is necessary as

well. By this cooperation, Customs is able to get comprehensible IPRs informational, so that it is much more likely to identify and seize IPR infringement effectively and efficiently.

Besides, considering about improving border enforcement of IPRs protection more professional, it is suggested to build up IPRs Customs Expert Group and Strategic Group. The Groups consisting of Customs officials and some specialists around China who are skilful at identifying intellectual property identification and border enforcement are capable of helping Customs solve problematic IPR issues.

Lastly, it is considered to promote training for Customs officials. With the development of modern society, Customs officials need much more specialized knowledge to identify and seize IPR infringement which becomes wider in variety and complexity.

All in all, China Customs has to continue to keep pace with international standards and improve Customs enforcement to combat IPRs infringement.

References

H Grosse Rusekhan 2011, 'A Trade Agreement Creating Barriers to International Trade? ACTA Border Measures and Goods in Transit', *Social Science Electronic Publishing*, No.3, pp.645-726.

Hao Jinhua 2006, *Research on TRIPS Agreement and Border Protection of Intellectual Property Rights in China*, Dalian Maritime University, Dalian.

Kimberlee G Weatherall 2010, 'ACTA April 2010-Analysis of Provisions', < works.bepress.com/kimweatherall/20/> accessed 30 April 2017.

Lolwa, A 2015, 'TRIPS and the Rise of Counterfeiting: A Comparative Examination of Trademark Protection and Border Measures in the European Union and the Gulf Cooperation Council', *Journal of Trade, Law and Development*, Vol.7, No.2, pp.388-411.

Michael, B 2012, 'Border measures', *Intellectual Property Enforcement: A Commentary on The Anti-Counterfeiting Trade Agreement (ACTA)*, Edward Elgar Publishing, Cheltenham, UK & Northampton, MA, USA.

Shashank P. Kumar 2010, 'Border Enforcement of Intellectual Property Rights against In-Transit Generic Pharmaceuticals: An Analysis of Character and Consistency', *European Intellectual Property Review*, Vol.32, Issue 10, No.4, pp.506-519.

Syed Saifuddin Hossain 2009, 'Border Enforcement of IPR Laws in Australia', *Global Trade and Customs Journal*, Vol.4, Issue 1, pp.1-14.

Xu Xin 2012, 'Border Enforcement of Intellectual Property Under Trade Facilitation Perspective – Review on Anti-Counterfeiting Trade Agreement', *World Trade Organization Focus*, Vol.19, No.5, pp.31-37.

Yicun Chen 2010, 'The Impact of ACTA on China's Intellectual Property Enforcement', <www.natlawreview.com/article/impact-acta-china-s-intellectual-prop-erty-enforcement> accessed 30 April 2017.

Notes

1. Article 2 of Customs Law of *the People's Republic of China* (2013).

2. World Trade Organization (WTO) 1994, The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights, Ministerial decision of 15 April 1994, www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm.

3. World Trade Organization (WTO), 'Overview: the TRIPS Agreement', <www.wto.org/english/tratop_e/trips_e/intel2b_e.htm#specialrequire> accessed 25 April 2017.

4. Lolwa Alfadhel 2015, p388.

5. Michael Blakeney 2012, pp165-194.

6. Shashank P. Kumar 2010, p511-512.
7. Lolwa Alfadhel 2015, pp.402-403.
8. Xu Xin 2012, p.37.
9. H Grosse Rusekhan 2011, pp.724-725.
10. European Commission (EC), Anti-Counterfeiting Trade Agreement, Ministerial decision of 2 October 2010, www.inta.org/advocacy/pages/anticounterfeitingtradeagreement.aspx
11. The negotiating parties include the United States, the European Community, Switzerland, Japan, Australia, the Republic of Korea, New Zealand, Mexico, Jordan, Morocco, Singapore, the United Arab Emirates and Canada.
12. Lolwa Alfadhel 2015, pp.396-397.
13. See *Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights* (2003) (amended in 2010).
14. *Id.*
15. See *Rules of the General Administration of Customs of the People's Republic of China for Implementation of the Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights* (2009).
16. Article 1 of *Rules of the General Administration of Customs of the People's Republic of China for Implementation of the Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights* (2009).
17. Shashank P. Kumar 2010, p.511.
18. Syed Saifuddin Hossain 2009, p.6.
19. *Id.* at 12.
20. Article 51 of *The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights* (1994).
21. Article 2 of *Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights* (2009); The General Administration of Customs of the People's Republic of China (GACC), 'About Customs Enforcement of Intellectual Property Rights', < english.customs.gov.cn/Statics/fbae0df0-52c2-

4c4e-9337-9ca811b

82318.html > accessed 28 April 2017.

22. *Id* at 20.

23. The Footnote 6 of Anti-Counterfeiting Trade Agreement (2010).

24. Kimberlee G Weatherall 2010, p.27; Yicun Chen 2010, p.2.

25. *Id* at 13.

26. Article 51 of *The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights* (1994), reads: "Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories".

27. Article 3 of *Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights* (2009), refers to "The State prohibits the import and export of goods infringing intellectual property rights".

28. The statistics are derived from General Administration of Customs of the People's Republic of China (GACC) official website, < www.customs.gov.cn/publish/portal0/ta

b49564/info846639.htm > accessed 26 April 2017.

29. Article 16 of Anti-Counterfeiting Trade Agreement (2010); Article 3 of *Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights* (2009).

30. The provision of Article 16 of Anti-Counterfeiting Trade Agreement (2010), reads: "2. A Party may adopt or maintain procedures with respect to suspect in-transit goods or in other situations where the goods are under customs control under which:

(a) Article 16, its customs authorities may act upon their own initiative to suspend the release of, or to detain, suspect goods; and

(b) where appropriate, a right holder may request its competent authorities to suspend the release of, or to detain, suspect goods."

31. Article 52 of *The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights* (1994).

32. Article 58 of *The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights* (1994).

33. Article 12 of *Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights* (2009).

34. *Id.*

35. *Id.* at 28.

36. Article 13 of *Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights* (2009).

37. Article 17 of Anti-Counterfeiting Trade Agreement (2010); Article 3 of *Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights* (2009).

38. The General Administration of Customs of the People's Republic of China (GA

CC), 'Statement on Registration for Customs Enforcement of Intellectual Property Rights', english.customs.gov.cn/Statics/fbae0df0-52c2-4c4e-9337-9ca811b82318.

html > accessed 28 April 2017.

39. *Id.*

40. Syed Saifuddin Hossain 2009, p.10.

41. *Id.* at 12.

42. Article 3 of *Agreement Between the Government of the People's Republic of China and the Government of the United State of America Regarding Mutual Assistance*, reads: "In Customs Matters the Customs administration of one Party shall, on its own initiative or on request, communicate to the Customs administration of the other Party:

a. information likely to be of assistance to their investigation and repression of an offense and particularly in connection with new means or methods of committing offenses;

b. information involving the other Party in respect of sources of smuggling goods, routes of illegal trafficking as well as methods of committing smuggling activities in relation to cases exposed by

one Party;

c. observations and findings resulting from the successful application of new enforcement aids and techniques; and

d. techniques and improved methods of processing passengers and cargo.”

43. *Id* at 28.

44. Hao Jinhua 2006, p.50.

45. Syed Saifuddin Hossain 2009, p.14.

THE USE OF CLOUD TECHNOLOGY TO MODERNIZE CUSTOMS TRANSACTIONS

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Abstract:

In this article we present how the Internet of Everything is changing the way goods and services are created, provided and delivered in domestic and international markets and the new opportunities for Customs revenue generation. The paper examines the challenges of regulating and monitoring these transfers and transactions, and the role of cloud services in modernizing aging infrastructure. We examine how investment in soft infrastructure will help agencies quickly and efficiently modernize their systems and allow for flexibility in the future. The creation of a shared information system, and smart duties enables higher international trade, stimulating the economy and boosting GDP. We additionally look at integration issues associated with adoption of new, always-connected technologies, weaknesses of existing technology, and present methodology on how to improve security in an age where everything is connected.

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The Internet of Everything (IoE) is poised to change the world just as the Silk Road revolutionized trade. This network of *people, processes, data, and things* is about reshape not just how services are provided, but more importantly, how they are regulated. Trade and monetary transactions are moving rapidly from physical space, to cyber-space. Effective regulation of the IoE requires action and historical contextualization. Digital trade is superseding traditional patterns of commerce just as railways and automobiles displaced horses as the preferred mode of transportation for goods and people. The IoE will usher in a digital revolutionary. Just like other futuristic technologies in their time, such as automobiles in the early 20th century, cutting-edge processes will first adopt existing infrastructure before purpose built pathways can be established, as one technology supplants the other. In the same way, the IoE will eventually require the creation of tailored routes and regulations as trade and supporting financial transactions increasingly move into digital space. With the

proliferation of mobile devices and the creation of decentralized networks, global trade will increasingly move into cyber-space. The IoE through inter-connected items and objects touches every facet of society. On the frontline of this ever-changing paradigm is Customs: providing these key individuals with the tools necessary to control trade and drive revenue is crucial to national stability and health.

The IoE only further decentralizes Customs regimes - whereas as a physical border exists in a defined, static space, the digital borders of the IoE are dynamic and shifting by their very nature, requiring customs procedures to be not just progressive, but future-aware as well. Governments are slow to acknowledge that the paradigm of current, and therefore future, economic growth is defined by the IoE. With fiscal growth now operating in the same domain as business, it is imperative that countries reconcile their policies with this new reality. Efficiently regulating international commerce in the digital age requires an integrated approach blending investments in both hard and soft infrastructure. This paper will first focus on increasing Customs revenue through investments in soft infrastructure, including the creation of an international Customs database, and the use of smart duties to enable the growth of developing economies. Finally, the paper will discuss the utilization of digital or ‘cloud’ technology to streamline the processing of customs duties and related paperwork along with the methods to integrate security with the IoE.

In order to boost international trade, and in doing so collect higher revenue from Customs duties, countries should begin to harness the integration of hardware and software. States traditionally have an undue focus on investing in physical or ‘hard’ infrastructure as a means to increase international trade (i.e. roads, railways, waterways, ports). A joint study by John Hopkins University, the University of Hong Kong and, the Bank of Spain found that investment in soft infrastructure is often even more important than its physical counterpart. The research concluded that for:

“developing economies which are interested in attracting more foreign capital, it seems that proceeding with market reforms as quickly as possible is more important than building more roads and railways... Lastly, soft infrastructure generates *double dividends*: since it has already been shown that economic reforms by themselves generate growth (even without inducing FDI).”⁵⁴

Without a corresponding investment in software, cloud technologies, and IoE pathways, regardless of the investment in physical infrastructure, the marginal value of trade will simply decrease over time.

The most efficient way to develop mechanisms to levy duties - to ensure compliance - among international trade partners is to establish a shared information system which allows customs services of countries sharing borders to disseminate information on the movement of goods, services and people across borders. In order to simplify the introduction and utilization of such a system, the database could be modeled on an existing platform, such as the World Customs Organization's Customs Enforcement Network Communication Platform (CENcomm). This existing inter-state database allows different Customs agencies from around the globe to communicate and coordinate in real-time.⁵⁵ Increased communication among various countries' Customs services, as will be discussed later in greater detail, leads to drastically decreased Customs processing time, avoiding costly delays. When Customs agencies work in isolated silos, they can be easily navigated around

⁵⁴ Fung, K. C., Alicia G. Herrero, H. Lizaka, and A. Siu. "Hard or Soft? Institutional Reforms And Infrastructure Spending As Determinants Of Foreign Direct Investment In China." The Banco De España. BANCO DE ESPAÑA, 2006. Web. 1 May 2017. <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=>

⁵⁵ "Welcome to the Website of the WCO." *World Customs Organization*. Web. 30 May 2017. <http://www.wcoomd.org/en/topics/enforcement-and-compliance/instruments-and-tools/cen-suite/cencomm.aspx>

and compromised. That is why ultimately the IoE will necessitate inter-state and inter-agency collaboration. Such a database would be a highly effective and easily implementable first step.

If fully realized, the proposed system would allow different Customs services to identify which individuals and what specific goods are routinely problematic, ranging from late-paid duties to potential smuggling.⁵⁶ Additionally, such a system would allow for the creation of smart duties, whereby instead of blanket taxes levied equally across a sector, the system would be able to process different rates depending on economic conditions. This would allow for a duties and tariff structure that is responsive to market forces, enabling trade to continue unabated in the case of another global recession or similar stagnation. According to a 2016 European Parliament report, the smooth facilitation of cross border trade has a net-positive impact on international commerce.⁵⁷ More importantly, the benefits from trade facilitation are at least two times more impactful than tariff liberalization, meaning that protective taxes could be placed to ensure the viability of fledgling domestic industry.⁵⁸ Smart duties would further serve to support developing economies by lowering the barriers to entry for markets, supporting start-ups and small-to-medium sized business with limited capital. An inter-state database would streamline trade

⁵⁶ "Changing Customs: Challenges and Strategies for the Reform of Customs Administration." International Monetary Fund. Web. 31 May 2017.
<http://www.imf.org/external/pubs/nft/2003/customs/>

⁵⁷ Bendini, Mariusz Maciejewski Roberto. "The Transatlantic Trade and Investment Partnership (TTIP): Challenges and Opportunities for the Internal Market and Consumer Protection in the Area of Customs and Trade Facilitation." (2015). Web. 5 May 2017.
[http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/563441/IPOL_IDA\(2015\)563441_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/563441/IPOL_IDA(2015)563441_EN.pdf)

⁵⁸ Bendini, Mariusz Maciejewski Roberto. "The Transatlantic Trade and Investment Partnership (TTIP): Challenges and Opportunities for the Internal Market and Consumer Protection in the Area of Customs and Trade Facilitation." (2015). Web. 5 May 2017.
[http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/563441/IPOL_IDA\(2015\)563441_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/563441/IPOL_IDA(2015)563441_EN.pdf)

facilitation and Customs cooperation while reducing business costs associated with the clearance of goods. Furthermore, implementing new smart duties fosters international commerce through “coupling investments in regional physical connectivity with trade and regulatory policy reforms.”⁵⁹ The creation of an international Customs database and smart duties leverages the IoE to enhance Customs revenue in the digital age.

The utilization of paper-free or ‘Cloud’ technology will modernize Customs agencies by maximizing efficiency and minimizing the amount of capital invested in IoE reforms.⁶⁰ The goal of cloud technology is to have a one-stop access point for technology. It can be specialized and modified to meet the needs of specific markets and countries, showing how technology can be an enabler of more efficient trade transactions. Relying on paper-based processes or physical transactions for Customs processes contributes to potentially devastating transportation delays and are gateways for corruption. It is worth noting that the common television and movie trope of criminals using large, overwhelmed, or poorly managed ports are an observation rather than creation; such predations are so commonplace that they become our entertainment – *The Wire* being one such notable example. The creation and utilization of a cloud based Customs system is one way to mitigate these delays while ensuring transparency. As the system is digital, implementing it comes without the costs of having to build hard infrastructure, and will cost significantly less to maintain in the long-term compared to.

This electronic system would integrate electronic risk analysis and would make electronic declaration the rule for goods.

⁵⁹ "Changing Customs: Challenges and Strategies for the Reform of Customs Administration." International Monetary Fund. Web. 31 May 2017.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4910500/>

⁶⁰"Changing Customs: Challenges and Strategies for the Reform of Customs Administration." International Monetary Fund. Web. 31 May 2017.

Overall, having a cloud system would make the Customs process less archaic. Businesses are routinely required to submit trade data numerous times to different countries and customs organizations; doing this takes time and lost time is lost income and lost tax revenue. Each customs authority has its own set of procedures, process, and levels of automation, which makes trade harder for multinational companies and slows down the economic growth of a country. For example, a benefit of a cloud system would be that the digital paperwork could be readily available in a diversity of languages. Topically, this would reduce the costs associated with printing multitudes of paper forms, yet more significantly this would eliminate errors in translation and from manual data entry, decreasing the time it takes goods to transit through borders. With cloud based systems, custom services will benefit from being able to respond to route changes during shipment and transportation modes. A digital Customs system would also enable importers to provide the customs authorities with contracts, certificates of origin, permissions from the relevant ministry or organization for the import goods, and other documents on the cloud service. The benefit of coupling a cloud based submission system for documents along with the previously discussed database is that agencies could create software routines to automatically verify the authenticity of the requisite documentation. Efficient information sharing, increase in competition between companies doing business in the modernized Customs country, reduced costs, and enhanced security for countries is desirable and attainable.

Cloud technology could potentially be used for customs declaration system of several countries to be connected with each other. According to Microsoft, developing countries will be benefiting the most from customs enhancement and globalization in the next 10 years, because these countries are experiencing boosts in exports and imports.⁶¹ However, most of these countries'

⁶¹Whiting, Geoff. "Cross-border M&As." Cross-border Mergers and Acquisitions: n. pag. Apr. 2012. Web. 27 May 2017.
<https://static1.squarespace.com/static/55071451e4b04b97e282badc/t/5516e993>

customs services are not keeping pace. This modernization of technology by cloud services comes from the demand of modernization. It isn't the technology that creates demand but the demand is created with the need to keep up with the increase in workload without increasing the workforce. Cloud technology and investment in soft infrastructure is the means to enable that. The customs services of developing countries often have limited infrastructure in place, which means that new technology solutions can be adopted in faster, flexible, tailored manner. Cloud based systems will also help small and medium sized businesses navigate the Customs process. When the import and export regime is streamlined, more businesses will be able to participate in their chosen or targeted economies.⁶² This will cut down on externalities, which will, in turn, enhance the market footprint of developing countries. Additionally, cloud services do not require a large infrastructural investment in the economy and removes the burdens from the previous paper-based system. This low-cost technology allows customs services with less than optimal operating budgets adequate time to catch up with the technology curve.⁶³ This cloud technology will connect custom services of several countries without the need to change existing IT infrastructure of any individual country, allowing them to effectively share nonclassified trade information. Applications on cloud services give customs officers the ability to track shipments in real-time, share information with other government agencies and run reports.

e4b0d571edba1e5f/1427564947856/1+--Microsoft+--Cross-Border+Cloud+Computing.pdf

⁶² Koopman, Robert B., and Sandra A. Rivera. "Trade Barriers That U.S. Small and Medium-sized Enterprises Perceive as Affecting Exports to the European Union." United States International Trade Commission, Mar. 2014. Web. 8 May 2017. <https://www.usitc.gov/publications/332/pub4455.pdf>

⁶³ Doyle, Tom. "Rethinking Customs' Procurement Practices to Deliver Improved Business Outcomes." 06.2. n. pag. World Customs Journal. Web. 01 May 2017. [http://worldcustomsjournal.org/Archives/Volume%206%2C%20Number%20%20\(Sep%202012\)/09%20Doyle.pdf](http://worldcustomsjournal.org/Archives/Volume%206%2C%20Number%20%20(Sep%202012)/09%20Doyle.pdf)

Fostering the use of a cloud system to collect duties and submit paperwork has extreme economic implications due to the drastic reduction it takes to bring the goods to market: it can lead to a significant increase in GDP. The prominence of global value chains in international trade means that transportation logistics are essential to a country's competitiveness. According to a Brookings Institute report, the "high costs of border crossings can increase the cost of final goods by 15 percent, and every additional day at the border can reduce trade by 1 percent."⁶⁴ Further extrapolated, *for the first 7 days a good is delayed, one-fifth of the value is diminished*. When put into a global context, the average time it takes goods to clear Customs for export is eight days, potentially resulting in trillions in lost trade.⁶⁵ Therefore, improving the speed of border crossings, including the ease of paying import and export taxes, is critical to trade facilitation.

The Center for International and Strategic Studies estimates that "online trade in the transatlantic market is expected to grow 10 to 14 percent annually, well above the expected overall global trade growth of 6 to 8 percent per annum" with the Asia-Pacific region seeing explosive growth as well.⁶⁶ The digital Customs revolution is key to long-term economic growth. With digital transactions utilizing debit, credit and prepaid cards "contributing an additional \$296 billion to consumption between 2011 and 2015, or a 0.1%

⁶⁴ Estevadeordal, Antoni. "Why Trade Facilities Matter Now More Than Ever." The Brookings Institution, Apr. 2017. Web. 1 May 2017.

https://www.brookings.edu/wp-content/uploads/2017/04/global_20170405_trade-facilitation.pdf

⁶⁵ "Average Time to Clear Exports through Customs (days)." Average Time to Clear Exports through Customs (days) | Data. Web. 31 May 2017.
<http://data.worldbank.org/indicator/IC.CUS.DURS.EX?end=2016&start=2016&view=map&year=2009>

⁶⁶ Suominen, Kati. Fueling the Online Trade Revolution: A New Customs Security Framework to Secure and Facilitate Small Business E-Commerce. Lanham, MD: Rowman & Littlefield, 2015. Apr. 2015. Web. 02 May 2017.
https://csis-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/150421_Suominen_FuelingOnlineTradeRev_Web.pdf

cumulative increase in global GDP during the time period,” E-Customs can further reduce transaction costs and subsequently increase commerce.⁶⁷ The introduction and popularization of electronic payment methods have eclipsed the frequency of non-physical transactions. Therefore, this is altering not just how people transact in the short-term, but modifying behavior long-term by making digital transaction just as natural and preferable as physical transactions.

Youth, particularly those in the 13-25 demographic, are widely labeled as “digital-natives,” and this familiarity applies to transacting digitally as well – for many young people, currency is only carried when absolutely required; paying with a debit or credit card, or paying a friend through a finance app, is preferred.⁶⁸ This is especially relevant for developing economies that are transitioning away from natural resource exportations. More accessible, simple to use payment transfer programs leads to more money being sent more places: when it is easier to both pay and get paid, transaction quantity inflates. iTunes was not revolutionary so much for being a digital marketplace as it was for allowing people to easily purchase music; that is, iTunes created a new paradigm of music acquisition, where in the choice had become “buy physically,” or “download digitally and illegally,” now the end user could obtain legally but just as easily. The exchange is natural, convenient, and entirely digital.

Digital financial transactions increase buying power in emerging markets via the integration of portable smart devices. Electronic payments are invalidating the historical norm that “that economic dominance and monetary-cum-financial dominance go

⁶⁷Zandi, Mark, Sophia Koropecjy, Virendra Singh, and Paul Matsiras. "The Impact of Electronic Payments on Economic Growth." Feb. 2016. Web. 17 May 2017. <https://usa.visa.com/dam/VCOM/download/visa-everywhere/global-impact/impact-of-electronic-payments-on-economic-growth.pdf>

⁶⁸ Helsper, Ellen Johanna, and Rebecca Eynon. "Digital Natives: Where Is the Evidence?" *British Educational Research Journal* 36.3 (2010): 503-20. Feb. 2016. Web. 03 May 2017. http://eprints.lse.ac.uk/27739/1/Digital_natives_%28LSERO%29.pdf

hand,” which in the past limited access to financial institutions, or made the cost of trade prohibitive.⁶⁹ This is largely due to mobile phones, a source of internet connectivity in the developing world which has exponentially increased in usage and importance. The Brookings Institute estimates that as of 2016,

“Eighty-five developing countries now have at least one mobile money service, with only 13 large (more than 10 million people) developing countries remaining without. In other words, we now have the foundational architecture—technology and policy—to connect nearly all of the world’s poor to the financial network.”⁷⁰

Internationally, cashless payments have shown to lead to a measurable increase in GDP because of the added transparency afforded by digital commerce. In one notable example, the Nigerian government in 2013 introduced a scheme promoting the adoption of widespread digital financial transactions. This led to a GDP increase of 3.9% within four years of the new policy, resulting from “increased employment savings from corruption, higher imports/domestic trade, financial sector savings from cash management, and non-financial sector substitution for cash.”⁷¹ The

⁶⁹Eichengreen, Barry. "Past, Present and Future Economic Growth in Latin America." *World Economic Performance*: 268-89. Oct. 2014. Web. 29 May 2017.<http://www.inet.econ.cam.ac.uk/our-events/EichengreenInternationalCurrenciesPastPresentandFutureTwoViewsfromEconomicHistory.pdf>

⁷⁰Faye, Michael, and Paul Niehaus. "Ending Poverty with Electronic Payments." *The Age of Sustainable Development* (2015). 2015. Web. 22 May 2017.<https://www.brookings.edu/wp-content/uploads/2016/07/FayeNiehausEndingPovertywithElectronicPayments.pdf>

⁷¹Agbaje, Opeyemi, and Kehinde Ayanbadejo. "Electronic Payments and Economic Growth in Nigeria." *Electronic Payments and Economic Growth in Nigeria*. June 2013. Web. May 2017.<https://www.proshareng.com/admin/upload/reports/RTCcashless.pdf>

transition from physical to digital transactions is not without difficulty. The most significant obstacle remains human behavior - traditional payment transactions using cash are an ingrained daily activity.⁷² This is further impacted by the belief that physical currencies, such as precious metals or minted coinage, are safer than intangible transactions.

In order to ensure healthy growth on the back of decentralized digital transactions, countries must start investing heavily in cyber-security and cooperate with businesses to ensure private sector compliance as well. The central problem is that without regulating minimum standards of cyber-security, “the incentive to invest in cyber-security is limited; organizations do not bear all the cost of failing to invest, and cannot fully benefit from having invested.”⁷³ The rise of e-commerce as a preferential platform for international transactions also corresponds to a rise in digital syndicates and criminal organizations. The Basel Committee on Banking Regulations, an advisory board for international banks argues that:

“the Internet is ubiquitous and global by nature. It is an open network accessible from anywhere in the world by unknown parties, with routing of messages through unknown locations and via fast evolving wireless devices. Therefore, it significantly magnifies the importance of security controls, customer authentication techniques, data protection, audit trail procedures, and customer privacy

⁷²World Economic Forum. "Innovation in Electronic Payment Adoption." (2016). 2016. Web. 12 May

2017.http://www3.weforum.org/docs/Innovative_Solutions_Accelerate_Adopti_on_Electronic_Payments_Merchants_report_2016.pdf

⁷³Society, Internet. Global Internet Report 2016. Geneva, Switzerland: World Health Organization, 2016. 2016. Web. 29 May 2017.https://www.internetsociety.org/globalinternetreport/2016/wp-content/uploads/2016/11/ISOC_GIR_2016-v1.pdf

standards.”⁷⁴

Digital transactions are not without risks - fraud and other illegal activities are greatly increased as decentralization and proliferation expand the total number of users. Cybercrime is not just focused on accessing personal information but, recently, have targeted service providers in addition to.⁷⁵ These actors use the digital world to conduct new types of criminal activity, such as when hackers attempted to defraud a government out of one billion dollars in 2016 through faked payment requests.⁷⁶ Concerningly, criminal networks increasingly look to cyber-space as a way to mask their existing activities. Regulating cyber-space therefore, is less about punitive laws and more about proactive threat mitigation.

That which connects the globe also exposes it. For instance, a residence, regardless of the size, is designed for ingress and egress at specific, and importantly limited, points. A front door, perhaps a back door, maybe a door to access the garage, these are generally the only points of entry to a residence unless otherwise so designed. Physical security is limiting access and reducing liability by limiting easy access, and what access there is hardened. In the home context, we install deadbolts on doors and locks on windows to limit unwanted access.

What does access security look like in an environment where every device, from a child's toy to a refrigerator to a commuter car to a centrifuge used to enrich uranium, is connected, not just to its own kind but to the network and infrastructure that

⁷⁴ Basel Committee, ed. Risk Management Principles for Electronic Banking. Basel: Bank for International Settlements, 2003. May 2001. Web. 18 May 2017. http://www.fsa.go.jp/inter/bis/bj_20010510a.pdf

⁷⁵ EUROPOL. "Eu Serious and Organized Crime Threat Assessment." SOCTA (2013): n. pag. 2013. Web. 07 May 2017. <https://www.europol.europa.eu/sites/default/files/documents/socta2013.pdf>

⁷⁶ The hackers successfully stole approximately 101 million US dollars before the faked documents were detected. <http://www.reuters.com/investigates/special-report/cyber-heist-federal/>

connects it? Conversely, what security liabilities might exist when we begin networking technology in ways that have not been done before? Recent history illustrates that we are integrating technology at the same pace in the same fashion as technology may have been introduced and integrated during the Industrial Revolution – that is to say, as a global community we are introducing technologies that we do not understand the consequences of until the consequences begin happening.

Implications, of course, abound. If devices at all levels of sophistication are vulnerable, what can be done? The answer is two-fold: security vulnerabilities exist in two dimensions; the platform, and the user. Security vulnerabilities will always exist, regardless of whether the object exists physically or digitally. The key, just as it is in physical security and security risk management, is to raise the threshold of deterrence to such a point that only the most dedicated, intelligent adversary could hope to penetrate, all the while keeping rewards for penetration as low as possible. This is done through a multitude of methods, such as end-to-end encryption, ensuring that transmitted data is only useful if it is accompanied by the correct key, as well as “air-gapping,” devices, or putting them in isolation from other networks or the internet. This ethos can be applied in a similar sense in the form of “compartmentalization,” wherein application data isn’t readable or writable to the device at large. Encrypting these compartments further frustrates and disincentivizes exploiters: if data is both fragmented and encrypted, then even if a compartment is compromised, any stolen data is still useless, as it needs many, many other pieces to form an intelligible image.

Security flaws or vulnerabilities is only factor however; the Natanz plant that Stuxnet targeted had Stuxnet introduced to it by a careless employee – the plant was air-gapped and completely sealed off from the internet at large. Someone introduced a removable media device, such as an SD card or USB thumb drive, onto the premises that a Natanz employee then inserted into a computer within the facility. An ultra-secure facility was compromised

because of poor protocol and security training. The human behavior aspect of security addresses issues such as poor or weak passwords, keeping passwords written in physically accessible places or in digitally vulnerable compartments accessible through a network, as well as interaction behaviors such as inserting a SD card or thumb drive found in the parking lot into a work terminal. If the Natanz plant had trained its employees to be more security conscious, it is possible that Stuxnet would have never been able to compromise the facility at all.

Security vulnerabilities are exactly that – vulnerability is risk, not guarantee. By building strong security protocols into our applications, programs, and devices, and by training their operators to be smart, conscious, and security-minded, even sophisticated digital threats can be mitigated or prevented.

The IoE is changing the way that global business is transacted. With commerce increasingly moving into the digital world, Customs must evolve to stay ahead of the curve. Customs has dual roles: ensuring that trade continues to flow and revenue from duties is still collected, and ensuring that the business transition to the IoE goes smoothly. The integration of cloud technology into Customs regimes benefits all nations through trade facilitation. Furthermore, reducing transportation delays stimulates international commerce, lowering the price of goods and therefore stimulating economies at the micro and macro scales. Eliminating the need to process Customs declarations and duties in hard copy will raise efficiency while subsequently broadening accountability. Lower cost and extremely effective cloud technology leverages the connectivity of the IoE to bring Customs into the next century.

CUSTOMS COMPLIANCE MANAGEMENT AT INTERNATIONAL TRADE IN GOODS COMPANIES

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Abstract

The paper presents the analysis of the Customs compliance management issues at the companies involved in international trade in goods. The international and national Customs legislation is very complicated and detailed, and creates additional workload for business. The paper focuses on XXI century Customs policy, Customs law paradigm and challenges to Customs compliance; Customs compliance importance and relevance for business; non-compliance risks for safe and secure exportation and importation of goods and Customs compliance program and planning. In addition, the possibility of optimization of Customs compliance managerial processes using the Authorized Economic Operator (AEO) and similar institutions in international trade community, is described. The Customs compliance is still open and very difficult question for small and medium enterprises (SME) wanted to act correctly on international markets of goods. One of the best solution for solving managerial problems in international trade in goods, could be the use of outsourcing offered by customs brokers with the AEO certificate.

Key words: *Customs, compliance, law, risk, Authorized Economic Operator, security*

Introduction

International trade for thousands of years has been related exclusively to the trade in goods⁷⁷. Despite the development of international trade in services, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)⁷⁸, the Agreement on Trade-Related Investment Measures (TRIMs)⁷⁹ or others, the trade in goods is still one the most important for the world market. It is accompanied with barriers of various types: tariffs and non-tariffs measurements, language problems, unknown national regulations, etc. All of these barriers present many risks connected with the compliance requirements.

During the last two centuries traders as well as governments have made attempts to make trade barriers much more clear and transparent for the international commerce community. Starting with institutionalizing in the end of XIX century the International Union for the Publication of Customs Tariffs with its International Customs Tariff Bureau (BITD)⁸⁰ trade community made many efforts to develop and introduce into practice additional trade facilitations (a. o. trade nomenclature, agreements on transit, temporary admission and many others). The very important role on this way have played international organizations like WTO/GATT⁸¹, CCC-WCO⁸², UN⁸³, OECD⁸⁴ or ICC⁸⁵. Most of the

⁷⁷ The PowerPoint version of this paper was presented during Asian Anti-Corruption and Compliance Summit in Bangkok in January 2017

⁷⁸ https://www.wto.org/english/tratop_e/trips_e/trips_e.htm#WhatAre

⁷⁹ https://www.wto.org/english/tratop_e/invest_e/trims_e.htm

⁸⁰ <http://www.bitd.org/Homepage.aspx>

⁸¹ WTO-World Trade Organization: <https://www.wto.org/> ; GATT – The General Agreement on Tariffs and Trade: https://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf

⁸² World Customs Organization-Customs Cooperation Council: <http://www.wcoomd.org/>

⁸³ United Nations: <http://www.un.org/en/index.html>

⁸⁴ OECD – Organization for Economic Cooperation and Development: <http://www.oecd.org/about/>

⁸⁵ ICC - International Chamber of Commerce : <https://iccwbo.org/about-us/>

achieved results were dedicated to the political and trade partners on a voluntary base.

For the first time in the modern history of international trade, members of WTO agreed to adopt and introduce into practice trade facilitation measures as obligatory for all of them only at the end of 2013. The final document Trade Facilitation Agreement (TFA)⁸⁶, commonly known as “Bali Package”, is the result of long trade negotiations. It contains provisions for faster and more efficient Customs procedures through effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. It also contains provisions for technical assistance and capacity building in this area. On 22 February 2017 the first multilateral deal concluded in the 21 year history of the World Trade Organization entered into force⁸⁷.

Despite the great importance of TFA for international trade in goods business, many various compliance risks still exist. There are, like in the past centuries, barriers, requirements and regulations which should be correctly fulfilled by business. In today’s very complicated world, new priorities presented in Customs paradigms can be seen. For centuries Customs paradigm was “Revenue Collection”. At the end of XX Century it was changed into “Trade in Goods Facilitation in Information and Communication Technologies (ICT) Environment”. After September 11, 2001 (World Trade Center attack in New York) – the new Customs policy and law paradigm has appeared: „Security”. However, the consecutive years showed that focusing Customs activities on the fulfillment of this requirement - instead of securing and facilitating

⁸⁶ TFA -Trade Facilitation Agreement. It was adopted as amendment to the GATT. See: Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization Decision of 27 November 2014, as the WTO TFA Convention , https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm

⁸⁷ WTO’s Trade Facilitation Agreement enters into force, In receiving four more ratifications for the Trade Facilitation Agreement (TFA), the WTO has obtained the two-thirds acceptance of the agreement from its 164 members needed to bring the TFA into force., https://www.wto.org/english/news_e/news17_e/fac_31jan17_e.htm

the international trade in goods - created new barriers, new requirements and new risks for business⁸⁸. For both partners – Customs authorities and international trade in goods business community, the new challenge has appeared – how to combine the high security requirements and facilitations for international delivery chain. As a result, the new Customs paradigm – “Security and Facilitation” was adopted by WTO members.

I. Customs Compliance in International Trade in Goods – Importance and Relevance for Business

“Security and Facilitation” was really very important new Customs paradigm for Customs compliance in international trade in goods companies. According to the Bali Package, for the first time in the Customs history, Customs laws and requirements towards business in international market should become fully understandable and accessible. How is it important and relevant for Customs compliance? Documentation requirements often lack transparency and are vastly duplicated in many places, a problem often compounded by a lack of cooperation between traders and official agencies. Despite advances in information technology, automatic data submission is still not commonplace. According to the United Nations Conference on Trade and Development estimates, the average Customs transaction involves:

- 20–30 different parties,
- 40 documents,
- 200 data elements (30 of which are repeated at least 30 times) and
- the re-keying of 60–70 percent of all data at least once.⁸⁹

In the modern ICT business environment of just-in-time production and delivery, traders need fast and predictable release of goods („Time is money”).

⁸⁸ Kunyo Mikuriya, WCO Deputy Secretary General: WCO Work for Facilitate Global Trade and Secure Supply Chain, Brussels, January 24, 2005

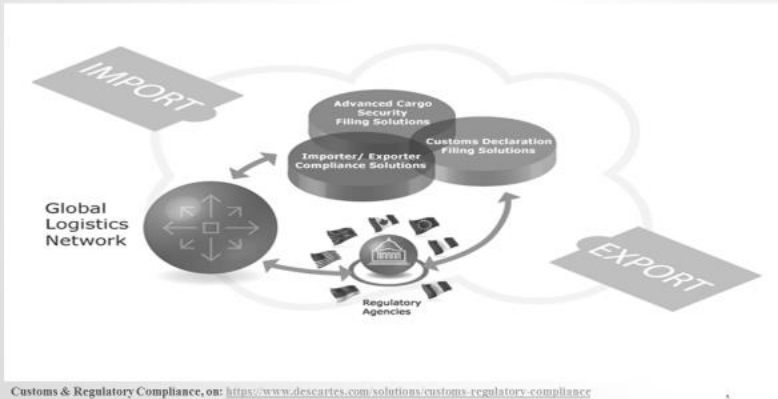
⁸⁹ Briefing note: Trade facilitation — Cutting “red tape” at the border, https://www.wto.org/english/thewto_e/minist_e/mc9_e/brief_tradfa_e.htm

The TFA contains provisions for faster and more efficient Customs procedures through effective cooperation between Customs and other appropriate authorities on trade facilitation and Customs compliance issues.

It also contains provisions for technical assistance and capacity building in this area. Diverse, evolving global trade regulations require companies to implement systems and procedures that ensure strict adherence. Trade laws and regulations are complex and constantly changing. Ultimately, each company in international trade in goods is responsible for ensuring full compliance with Customs requirements and trade regulations around the world. Whether large or small, companies should ensure they have proper updated procedures in place, and understand the key areas of compliance risk. With stiff penalties at stake—penalties that could put some organizations out of business—small companies must also take any measures on customs compliance. Companies that don't understand or follow these laws and regulations can face serious consequences. Compliance should head the priority list of every business seeking to expand into the international marketplace.⁹⁰ The simple scheme shows the Customs compliance and international delivery chain:

⁹⁰ J. Min: Customs Compliance: Small Mistakes Can Lead to Big Problems, <http://www.inboundlogistics.com/cms/article/customs-compliance-small-mistakes-can-lead-to-big-problems>

CUSTOMS COMPLIANCE AND INTERNATIONAL DELIVERY CHAIN



II. Customs Compliance Challenges and Risks for International Trade in Goods Business

Custom compliance begins with the identification and understanding of applicable laws and policies. It presents challenges to customs compliance managers who must keep current with applicable laws and policies. Trading companies have to implement appropriate internal procedures and controls. The main challenge for international trade in goods business is to minimize risk⁹¹ and future potential costs of non-compliance.

⁹¹ The meaning of the “risk” is in various ways presented. In Union Customs Code it’s “means the likelihood and the impact of an event occurring, with regard to the entry, exit, transit, movement or end-use of goods moved between the customs territory of the Union and countries or territories outside that territory and to the presence within the customs territory of the Union of non-Union goods, which would: (a) prevent the correct application of Union or national measures; (b) compromise the financial interests of the Union and its Member States; or (c) pose a threat to the security and safety of the Union and its residents, to human, animal or plant health, to the environment or to consumers”, UCC, art.5, point 7, : REGULATIONS REGULATION (EU) No 952/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 October 2013 laying down the Union Customs Code (recast), EU OJ, 10.10.2013, L269, : <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0952&rid=1> . In literature it is

Companies managers have to incorporate the risk into decision-making process and provide more timely and transparent reporting. This approach improves data management and determines data integrity and accuracy as key areas of compliance risk. Among other we have to indicate the following:

- product risk,
- customer risk,
- destination risk,
- delivery chain risk,
- correctness of delivery data and Customs declaration risk.

To understand better the essence of compliance management process in an international trade in goods company, a more detailed analysis of each above mentioned risk is necessary.

1/ Product risk

many other definitions to this question. One of the most recent monographs presenting a broad overview of the meaning of this is : A Short Guide to Risk Appetite by D. Hillson & R. Murray-Webster, NY, Routledge, 2017 , C. Truel: A Short Guide to Customs Risk (Short Guides to Business Risk), NY, ed. Routledge, 2016; as well all a whole series of similar books published in this publishing house in recent years. See also , e.g.: D. Widdowson: Intervention by Exception: A Study of the Use Risk Management by Customs Authorities in the International Trading Environment, Doctoral Thesis , University of Canberra, 2003; WCO Customs Risk Management Compendium, http://www3.wcoomd.org/valelearningoncustomsvaluation_rmc.htm; etc. In Polish literature there some books dedicated to the risk in international trade, e.g.: T.T. Kaczmarek & J.Królak – Werwinska: Handel międzynarodow. Zarządzanie ryzykiem, Warszawa, Wolters Kluwer 2008, M.Kałka: Postępowanie celne w Unijnym Kodeksie celnym. Praktyczne vademecum, Wrocław , wyd. UNIMEX, 2017; M.Chackiewicz, M.Mrówka, J.Wąsiński: Zarządzanie eksportem i importem. Ograniczenia pozataryfowe w obrocie towarowym z zagranicą – Wybrane zagadnienia, Wrocław, wyd.WSZ, "Edukacja" 2017; Wiesław Czyżowicz , Zygmunt Jańczyk , Robert Makowski: Zarządzanie ryzykiem w systemie obsługi celno-podatkowej, Warszawa, wyd.WSE, 2010.

For security and foreign policy reasons, governments – on autonomous or international legal bases - closely control the export and import of certain materials and equipment, including software and technology, that may have dual use. International traders have to understand the nature of their product related to existing regulations (*e.g.: licenses to export or to import*). Using a product's export or import Control Tariff Classification Number helps to identify these items, and the agency that can provide the necessary license.

These special regulations are used in the UE and in various other countries. Moreover, the EU customs tariff is available in the electronic version, so the business has a simple tool for quick check of this problem.

2/ Customer risk

Companies must know who is placing orders and receiving the goods in international trade. Loading to and from well-known foreign companies presents a lower risk, while fulfilling orders through freight forwarders should raise red flags, because shippers are liable for the ultimate end recipient of their products. It's necessity to verify the identities of foreign customers. The cooperation with well-known foreign companies means a lower risk

3/ Destination risk

EU companies trading with countries embargoed by the United Nations and the European Union, understand the specific restrictions. Doing business in regions such as Iran, Syria, Sudan, North Korea, EU companies get familiar with the types of shipments allowed and prohibited, along with any rules that apply. A little bit different situation is related to the Russian Federation.

4/ Delivery risk

Many national and also EU customs regulations are strict when it comes to customs violations. Illegal, undervalued or misidentified goods in shipments are treated as criminal violation,

and companies that do so may face severe penalties and delays. Strictly following delivery goods requirements and disclosures can save companies significant time and money.

III. Priority Compliance Risks at International Trade in Goods Business

The most important compliance risk factors in international trade in goods companies are associated mainly with the correct completion of Customs declaration forms. The correctness of data presented in customs declaration is one of the basic conditions for acting consistently with the Customs law and requirements at the national, regional or international level. In any case, the risks are very similar, if not identical. Therefore, it is very important to provide the accurate data, independently from the form of data collection: electronic vs paper. However, there are many traps here, associated not only with the documentation. For fiscal reasons, at the forefront of them is the proper determination of customs value.

Valuation

The custom value of goods and its documentation is very extensive and is not limited to the invoice. In this respect, the Art. VII GATT is not sufficient⁹². Also the Agreement on Implementation of Article VII GATT, though very helpful, requires complements and settlements concerning many elements that are included or excluded from the custom value⁹³. For this reason, it is necessary to use additional sources in order to determine the correct amount of the customs value declared, such as, for example, Customs Valuation Encyclopedia of US CBP⁹⁴ or EU

⁹² Article VII of The General Agreement on Tariffs and Trade, 1994, Valuation for Customs Purposes, http://dov.gov.in/newsite3/art_vii.asp

⁹³ Agreement on Implementation of Article VII of The General Agreement on Tariffs And Trade 1994 , https://www.wto.org/english/docs_e/legal_e/20-val.pdf and Technical Information on Customs Valuation , https://www.wto.org/english/tratop_e/cusval_e/cusval_info_e.htm ; the broad packet of the information of similar character can be found also on the website: <http://www.docs-engine.com/pdf/1/customs-valuation.html>

⁹⁴ Customs Valuation Encyclopedia 1980-2015, <https://www.cbp.gov/document/publications/customs-valuation-encyclopedia-1980-2015>

Compendium of Customs Valuation texts of the Customs Code Committee Customs Valuation Section⁹⁵.

Classification

Competent classification of goods is extremely important. A change of one digit in the goods nomenclature code could lead to the completely different customs tariff charge. Despite that the nomenclature, called Customs Tariff Nomenclature Classification (Harmonized System - HS)⁹⁶, is quite commonly used, in many regional economic integration groups (EU, the Andean Pact etc.) or countries, their own – although based on the Harmonized System – goods nomenclatures are used.

Origin

Probably the most serious risk is the risk connected with the correct determination of origin of goods in Customs declarations⁹⁷. Miller Thompson indicates many other elements and problems related to the tariffs and non-tariffs compliance issues risks. These are: anti-dumping and countervailing duties, preferential tariff treatment; special levies or taxes (autonomous, seasonal, etc.), certification requirements (sanitary, veterinary, technical, etc.); export and import controls - embargos, sanctions, countercharges (retortions), permits (for import or export), specific requirements in specific country.⁹⁸

⁹⁵ Compendium of Customs Valuation texts of the Customs Code Committee, Customs Valuation Section,

http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/customs_duties/declared_goods/european/valuation_compendium_en.pdf

⁹⁶ Detailed description of the Harmonized Commodity Description and Coding System as well as the Classification Decisions taken by the Harmonized System Committee in the period (2001-2010) can be found on the WCO website:

<http://harmonizedsystem.wcoomdpublishations.org/>

⁹⁷ Agreement on Rules of Origin,

https://www.wto.org/english/docs_e/legal_e/22-roo_e.htm ; see also: Rules of Origin – Handbook,

http://www.wcoomd.org/en/topics/origin/overview/~/_media/D6C8E98EE67B472FA02B06BD2209DC99.ashx ; Guidance Rules of origin for imported and exported goods, <https://www.gov.uk/guidance/rules-of-origin> , etc.

⁹⁸ , C.Sowiński: Zarządzanie pochodzeniem towarów w działalności przedsiębiorstw, Warszawa, ed. a Wolters Kluwer, 2015, Anne van de Heetkamp

From the above follows that there are many customs compliance issues that need to be considered and solved by companies and their managers. Compliance planning and programming should be inbuilt into existing business processes. Trade security programs require greater awareness of compliance obligations.

IV. Programming and Planning of Customs Compliance in International Trade in Goods Companies

To determine compliance with Custom laws and regulations, international trade in goods companies use the risk management process, which involves identification and correct assessment of risks followed by minimization or elimination of risks. This helps to achieve different aims like: to move goods across borders without disruption; reduce the risks of penalties or fines; meet a wide range of safety, security and commercial compliance mandates; effectiveness; efficiency; confidentiality; integrity; availability; ability to address all regulations and reliability.

For achieving above mentioned objectives it is important to gather data from multiple parties and integrate it for filings; store data for all filings and compliance agency responses to enable complete audit and reporting capabilities (Cargo Security Compliance; Declarations for Customs procedures and fiscal Compliance; Customs Warehouse Management, etc.) and support enablement: AEO, C-TPAT⁹⁹, EU Green Lanes¹⁰⁰, etc.

Companies are also recommended to follow the best Customs compliance practices outlines, e.g. by the US CBP.

& Ruud Tusveld : Origin Management .. Rules of Origin in Free Trade Agreements, NY, Springer , 2011; Miller Thomson LLP:_How to plan a customs compliance program, <http://www.lexology.com/library/detail.aspx?g=0d2df4e0-edd5-4c0d-936d-0b5903c5b6d7>

⁹⁹ C-TPAT: Customs-Trade Partnership Against Terrorism: <https://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism>

¹⁰⁰ EU green lanes : <http://www.greenlane.eu/>

V. The Best Customs Compliance Practices at International Trade in Goods Companies

Firstly, we will describe the main components of the internal control process: risk assessment, control environment, internal control activities; information and communication as well as monitoring.¹⁰¹ Indicating risk assessment it is necessary to take into account state compliance and cost goals. Control activities and control environment are decisive for efficient managing and control. It is necessary to develop formal policies and compliance requirements for suppliers, to have management's commitment, as well as to have access to executives for needed resources. One of the very important element of that policy is to establish record – keeping program. In the field of information and communication it is very useful to create compliance group, to establish training programs and to develop partnership with Customs and Border Guard. Monitoring can be considered as an inbuilt service to the internal control system that assesses the effectiveness of internal control system.

All indicated above should be based on the legal and organizational principles like:

1/ Creating a compliance committee involving a compliance manager and representatives for the regions or countries in which the company or group of companies does business.

2/ Understanding any country specific laws and policies that affect goods that will be imported or exported

3/ Conducting regular periodic self-audits to determine compliance levels. Compliance audits may focus on the high risk priorities.

5/ The establishment of good lines of communication with the Customs officers responsible for the administration and

¹⁰¹ US. Customs and Border Protection Best Practices Of Compliant Companies, <https://www.cbp.gov/document/forms/best-practices-compliant-companies>

enforcement of programs that apply to the business – caution - risk of corruption!¹⁰²

Fulfillment of principles mentioned above is not easy for all international trading in goods companies, especially SME might have problems with the realization of all requirements related to the good Customs compliance policy. Other proposals, theoretically also for SMEs are US CPB C-TPAT¹⁰³ and idea and program of Authorized Economic Operator (AEO).¹⁰⁴

VI. Authorized Economic Operator

The international legal base for AEO

The following international documents are relevant for AEO:

The Renewed Kyoto Convention - GA 3.32 ¹⁰⁵

Base document The WTO TFA - Article 7.7 (*Additional trade facilitation measures to Authorized Operators*)¹⁰⁶

Authorized Economic Operator - AEO (*Framework of Standards to secure and facilitate global trade - The WCO SAFE Framework*) ¹⁰⁷

Union Customs Code – AEO (*Art.38-41*)¹⁰⁸

¹⁰² <http://www.lexology.com/library/detail.aspx?g=0d2df4e0-edd5-4c0d-936d-0b5903c5b6d7>

¹⁰³ C-TPAT: Customs-Trade Partnership Against Terrorism, <https://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism> and https://www.cbp.gov/sites/default/files/documents/ctpat_brochure.pdf

¹⁰⁴ The idea of AEO was elaborated in EU and WCO as : Framework of Standards to Secure and Facilitate Global Trade , http://www.wcoomd.org/~media/wco/public/global/pdf/media/newsroom/communiqués/2005/wco_-_framework-of-standards--april-05-def.pdf ; See also: 3rd Global AEO Conference, <http://www.wcoomd.org/en/events/event-history/2016/global-aeo-conference.aspx> and also Authorised Economic Operator (AEO), https://ec.europa.eu/taxation_customs/general-information-customs/customs-security/authorised-economic-operator-aeo_en

¹⁰⁵ International Convention on The Simplification and Harmonization of Customs Procedures (Renewed Kyoto Convention – RKC) - http://www3.wcoomd.org/Kyoto_New/Content/content.html

¹⁰⁶ Trade Facilitation Measures for Authorized Operators, <http://www.tfafacility.org/article-7>

¹⁰⁷ Framework of Standards to Secure and Facilitate Global Trade, see: footnote 16

¹⁰⁸ Regulation (EU) No 952/2013 of the European Parliament and of The Council of 9 October 2013 laying down the Union Customs Code (recast), <http://eur->

Objectives and benefits from AEO status

Primary objectives and benefits of the program of AEO is related to the trade facilitation and simplification supply chain security and should give to all members of the program benefits for companies involved into international trade in goods.

Originators of the AEO program indicate the following objectives and benefits: •

- Clearance with reduced info and low rate of examination
- Deferred payment of duties/taxes
- Reduced & comprehensive guarantees
- Single declaration for a given period
- Clearance at traders' premises
- Clearance with minimum info (simplified declaration, entry in the records)
- Single declaration for a given period
- Self-assessment of duties & taxes
- Priority and reduced examination
- Green Line on borders (import EU)

Additional benefits for business can be given by national Customs authorities in some countries. Particularly, it's related to the mutual recognition of some specific documents, especially AEO Certificate or C-TPAT Certificate. The EU has concluded and implemented Mutual Recognition of AEO programs with Norway, Switzerland, Japan, Andorra, the US and China. AEO regulations include the following basic Customs compliance requirements:

- Good compliance record
- Commercial record management
- Premises security
- Employee security
- Cargo security, etc.

On the basis of Article 39 of the Union Customs Code (UCC), the AEO status can be granted to any economic operator

meeting the common criteria presented in table below as Legal Base and Compliance Requirements in European Union¹⁰⁹

Conditions and criteria	AEOC ¹¹⁰	AEOS ¹¹¹
Compliance with Customs legislation and taxation rules and absence of criminal offences related to the economic activities	X	X
Appropriate Record Keeping	X	X
Financial Solvency	X	X
Proven practical standards of competence or professional qualification	X	
Appropriate security and safety measures		X

AEO - Challenges and Hopes

AEO idea and program are very important and relevant for international trade in goods companies, despite that the real and tangible benefits (not only financial ones) are still expected. As far as AEO-S is concerned a big subject remains the identifier for the AEO traders in order to fully get access to AEO benefits in the country of destination. AEO concept is the challenge and hope for SME, but they should use outsourcing offered by customs brokers with the AEO certificate.

Conclusions

¹⁰⁹ http://ec.europa.eu/taxation_customs/general-information-customs/customs-security/authorised-economic-operator-aeo/authorised-economic-operator-aeo_en#criteria

¹¹⁰ Economic operators authorised for customs simplification

¹¹¹ Economic operators authorised for customs security and safety

1/ Customs compliance at international trade in goods companies is fundamental for safety and secure risk management.

2/ Customs compliance risks present challenges to customs compliance managers who must keep current with applicable laws and policies. Trading companies have to implement appropriate internal procedures and controls. The main challenge for international trade in goods business is to minimize risk and future potential costs of non-compliance.

3/ According to the current Customs laws on global, regional and national levels the most effective tool for customs compliance at international trade in goods companies is AEO certificate and its mutual recognition by national Customs.

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Bibliography

M. Chackiewicz, M. Mrówka, J. Wasiński : Zarządzanie eksportem i importem. Ograniczenia pozataryfowe w obrocie towarowym z zagranicą – Wybrane zagadnienia, Wrocław, wyd. WSZ, "Edukacja" 2017;

W. Czyżowicz, Z. Jańczyk, R. Makowski: Zarządzanie ryzykiem w systemie obsługi celno-podatkowej, Warszawa, wyd. WSE, 2010.

A. Heetkamp & R. Tusveld : Origin Management . Rules of Origin in Free Trade Agreements, NY, Springer , 2011;

D. Hillson & R. Murray-Webster : A Short Guide to Risk Appetite by, NY, Routledge, 2017 ,

T.T. Kaczmarek & J. Królak – Werwinska: Handel międzynarodowy. Zarządzanie ryzykiem, Warszawa, Wolters Kluwer 2008,

M. Kałka: Postępowanie celne w Unijnym Kodeksie celnym. Praktyczne vademecum, Wrocław , wyd. UNIMEX, 2017;

Kunyo Mikuriya, WCO Deputy Secretary General: WCO Work for Facilitate Global Trade and Secure Supply Chain, Brussels, January 24, 2005

C.Sowiński: Zarządzanie pochodzeniem towarów w działalności przedsiębiorstw, Warszawa, ed. a Wolters Kluwer, 2015,

C. Truel: A Short Guide to Customs Risk (Short Guides to Business Risk), NY, ed. Routledge, 2016

D. Widdowson: Intervention by Exception: A Study of the Use Risk Management by Customs Authorities in the International Trading Environment, Doctoral Thesis , University of Canberra, 2003

Netography

3rd Global AEO Conference,

<http://www.wcoomd.org/en/events/event-history/2016/global-aeo-conference.aspx>

Agreement on Implementation of Article VII of The General Agreement on Tariffs And Trade 1994 ,
https://www.wto.org/english/docs_e/legal_e/20-val.pdf

Agreement on Rules of Origin,
https://www.wto.org/english/docs_e/legal_e/22-roo_e.htm

Article VII of The General Agreement on Tariffs and Trade, 1994, Valuation for Customs Purposes,
http://dov.gov.in/newsite3/art_vii.asp

Authorised Economic Operator (AEO),
https://ec.europa.eu/taxation_customs/general-information-customs/customs-security/authorised-economic-operator-aeo_en

Compendium of Customs Valuation texts of the Customs Code Committee, Customs Valuation Section,
http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/customs_duties/declared_goods/european/valuation_compendium_en.pdf

C-TPAT: Customs-Trade Partnership Against Terrorism,
<https://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism> and
https://www.cbp.gov/sites/default/files/documents/ctpat_brochure.pdf

C-TPAT: Customs-Trade Partnership Against Terrorism:
<https://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism>

Customs Valuation Encyclopedia 1980-2015,
<https://www.cbp.gov/document/publications/customs-valuation-encyclopedia-1980-2015>

EU green lanes : <http://www.greenlane.eu/>
Framework of Standards to Secure and Facilitate Global Trade ,
http://www.wcoomd.org/~media/wco/public/global/pdf/media/newsroom/communiqués/2005/wco-_framework-of-standards--april-05-def.pdf

Guidance Rules of origin for imported and exported goods,
<https://www.gov.uk/guidance/rules-of-origin>

Harmonized Commodity Description and Coding System as well as the Classification Decisions taken by the Harmonized System Committee in the period (2001-2010)

<http://harmonizedsystem.wcoomdpublications.org/>
http://ec.europa.eu/taxation_customs/general-information-customs/customs-security/authorised-economic-operator-aeo/authorised-economic-operator-aeo_en#criteria

International Convention on The Simplification and Harmonization of Customs Procedures (Renewed Kyoto Convention – RKC) -

http://www3.wcoomd.org/Kyoto_New/Content/content.html

J. Min: Customs Compliance: Small Mistakes Can Lead to Big Problems,
<http://www.inboundlogistics.com/cms/article/customs-compliance-small-mistakes-can-lead-to-big-problems>

Miller Thomson LLP:_How to plan a customs compliance program,
<http://www.lexology.com/library/detail.aspx?g=0d2df4e0-edd5-4c0d-936d-0b5903c5b6d7>

Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization Decision of 27 November 2014, as

the WTO TFA Convention ,

https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm

Regulation (EU) No 952/2013 of the European Parliament and of The Council of 9 October 2013 laying down the Union Customs Code (recast), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0952&rid=1>

REGULATIONS REGULATION (EU) No 952/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 October 2013 laying down the Union Customs Code (recast), EU OJ, 10.10.2013, L269, : <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0952&rid=1>

Rules of Origin – Handbook,
http://www.wcoomd.org/en/topics/origin/overview/~/_media/D6C8E98EE67B472FA02B06BD2209DC99.ashx ;

Technical Information on Customs Valuation ,
https://www.wto.org/english/tratop_e/cusval_e/cusval_info_e.htm

Trade facilitation — Cutting “red tape” at the border,
https://www.wto.org/english/thewto_e/minist_e/mc9_e/brief_tradfa_e.htm

Trade Facilitation Measures for Authorized Operators,
<http://www.tfafacility.org/article-7>

US. Customs and Border Protection Best Practices Of Compliant Companies,
<https://www.cbp.gov/document/forms/best-practices-compliant-companies>

ELECTRONIC CUSTOMS IN THE REPUBLIC OF MACEDONIA

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Abstract

The Customs Administration of the Republic of Macedonia is the authority in charge of facilitating and securing foreign trade exchange of goods of the country. Since 2007, the Customs Administration started the process of customs modernization, computerization and simplification of most of the procedures, reduction up to full elimination of import/export declarations costs, intensification of the European Integration System and modernization of the Customs, all in order to achieve trade facilitation.

The goal of this paper is to explain the main features of the established electronic customs measures: the Single Window System on issuing import, export and transit licenses and allocation of tariff quotas (EXIM), the Electronic Document Management System, the electronic application process for different customs procedures with economic impact, the TIR-Electronic Pre-Declaration, and the New Computerized Transit System.

Key word: *Customs Administration of the Republic of Macedonia, EXIM, EDMS, TIR –EPD, NCTS.*

Introduction

The Republic of Macedonia proclaimed its independence and defined its customs territory separately from the one existing in the former Yugoslav state in 1991. Since then the national authorities started to develop legal, institutional and managerial structures responsible for customs matters. On the 14th of April 1992, the Republic of Macedonia adopted the first sovereign Law on Customs Administration. According to this Law: "...The Customs Administration is a state administration authority within the Ministry of Finance with a status of a legal entity...".¹¹² It is a fundamental governmental institution responsible for control of international trade flows, collecting revenues, collecting statistical data and of providing safe and secure environment for the citizens.

In 1994 the Customs Administration of the Republic of Macedonia became a member of the World Customs Organization and started to abide by its principles on security and facilitation of international trade, including simplification and harmonization of customs procedures. The lack of financial resources made the establishment of new electronic practices almost impossible and the Customs Administration had to wait until 2007 before moving forward in this area.

The goal of this paper is to explain the electronic measures that the Customs Administration of the Republic of Macedonia has implemented with the purpose to facilitate and at the same time to secure trade. In the first section we analyze the process of customs modernization and computerization through establishing electronic customs measures. Further in the text we explain separate electronic customs measures: the establishment of the Electronic Document Management System (EDMS); the development and implementation of the Single Window for issuing import, export and transit licenses and tariff quota, known as EXIM; the

¹¹² <http://www.customs.gov.mk/en/Uploads/LawonCustomsAdministrationFINAL.pdf>
3. Accessed on 22.04.2017

establishment and later upgrading of the WEB application for procedures with economic impact; the implementation of the TIR application for Electronic Pre-Declaration (TIR-EPD) and the implementation of the New Computerized Transit System (NCTS) in Macedonia. At the end of the paper we give conclusion on the future challenges of the Customs Administration for improving the electronic customs environment in the Republic of Macedonia.

1. Electronic customs as a main development asset of the Customs Administration of the Republic of Macedonia

As information technology started to impose fast changes, developed countries started to implement new IT based customs systems and the Republic of Macedonia had to make some changes within its Customs Administration. At the same time adoption of secure and simpler environment for businesses and economic operators was necessary.

In 2007 the Customs Administration of the Republic of Macedonia (CARM) started the process of customs modernization, computerization and simplification of most of the procedures, reduction and even elimination of import/export declarations costs, intensification of the European Integration System and modernization of the Customs, all in order to achieve trade facilitation. This process, whose goal was both facilitating and modernizing, was accomplished in two stages:

- ✓ The first stage was introducing new, more effective systems for some of the processes, while
- ✓ The second stage was upgrading the current systems.

Customs modernization process is considered as a good governance practice that should help customs administrations throughout the reforming process to face new challenges in increasingly globalized environment, on one hand, and to improve

the quality of the services they provide to the business sector and other stakeholders, on the other hand.¹¹³

With the above mentioned solutions, CARM was striving to ensure paperless environment which would ultimately lead to trade simplification for both the economic operators and the Customs Administration. Nowadays we are witnesses of the positive effects that those efforts have created.

The latest “*Doing Business*” Report from 2017 ranks the Republic of Macedonia on the 27th place among a total of 189 countries in regard of the indicator *Trading across borders*, which is a considerable improvement compared to the 127th place recorded in 2007.¹¹⁴ This improvement is a result of the measures taken by the Government and the Customs Administration. The improvement of 100 places in the ranking period between 2007 and 2017 is a proof that the CARM succeeded in its efforts in trade facilitation and modernization.

2. Development and implementation of the Single Window System – EXIM

The introduction of the information technology within the Customs in Macedonia started in 2008 when the Single Window System known as EXIM was established. The full name of the Single Window System in Macedonia is "Information Processing System of Electronic Data and Electronic Signature in the Procedures of Import, Export and Transit"¹¹⁵.

It is an electronic Single Window System on issuing import, export and transit licenses and allocation of tariff quotas. With this electronic system which is free of charge, the economic operators can apply and receive about 60 different import and export licenses

¹¹³ Samuel O. Idowu, Kiymet Tunca Çaliyurt: *Corporate Governance-an International Perspective*, Berlin, 2014, p. 104

¹¹⁴ <http://www.doingbusiness.org/data/exploreeconomies/macedonia-fyr>, Accessed on 30.03.2017

¹¹⁵ Toshevska Trpchevska Katerina: *Trade facilitation- A contemporary multilateral trading system*, Selektor, Skopje, 2015, p. 239

and tariff quotas from 16 government agencies. The allocation of tariff quotas is in accordance with the principal - *first come, first served*. The application process is enabled through a special internet WEB site administrated by the Customs Administration and anyone who wants can apply by using a computer connected to the internet from anywhere in Macedonia, if they meet the requirement of having a digital certificate.¹¹⁶ With the introduction of EXIM, for the first time in the Republic of Macedonia the official authorities started to use electronic signatures for verification.

Because of the advantages provided with the EXIM, it is massively used by economic operators. With the implementation of the EXIM system the process of issuing licenses was accelerated and simplified as follows: the service is available 24 hours a day, the electronic submission of applications generates time and cost savings for the companies, the efficiency of the process of issuing licenses and tariff-rate quotas is increased, license requests and issued licenses can be tracked electronically.¹¹⁷ With a single entry point to fill in, this system allows parties involved in trade and transport to get standardized information and documents for all import, export and transit-related regulatory requirements.¹¹⁸ Every year, the CARM is working on upgrading and improving this system in order to ensure a quicker and more simplified environment for the economic operators.

¹¹⁶ <http://www.exim.gov.mk/EILWeb/startPageForExim.jsf> Accessed on 29.03.2017

¹¹⁷ <http://exim.gov.mk/EILWeb/>

¹¹⁸ Irena Kikerkova and Zlatko Veterovski, "From the WCO Revised Kyoto Convention on the Simplification and Harmonization of the Customs Procedures to the WTO Trade Facilitation Agreement", *Inaugural INCU Global Conference*, May 2014, Baku, p 149.

Table No.1-The usage of EXIM in 2016 compared to 2009

	Import, Export and Transit licenses issued	The average time for obtaining licenses	Registered users of the system
2009	28,614	7.4 hours	600
2016	88,751	3 hours	6000

Source: Customs Administration of the Republic of Macedonia, *Annual report of the Customs Administration in 2012*, Skopje, Customs Administration of the Republic of Macedonia, 2013, p. 29 and Customs Administration of the Republic of Macedonia, *Annual report of the Customs Administration in 2016*, Customs Administration of the Republic of Macedonia, Skopje, 2017. P. 16

From the data presented in Table 1 we can see that in 2009 28,614 import, export and transit licenses have been issued and in 2016 the number of issued licenses was 88,751. At the same time the number of registered users of the system increased from 600 in 2009 to 6000 in 2016. But, on the other hand, the average time for obtaining licenses was significantly reduced from 7.4 hours in 2009 to 3 hours in 2016.

To ensure a continuous improvement of the system the CARM is constantly working on upgrading EXIM with new tools. Therefore in 2012 EXIM was upgraded with a new transport licenses module in cooperation with the Ministry of Transport and Communications. This new module established a system for electronic processing of licenses for international transport of goods and passengers, which was previously done on paper. The activities to upgrade the EXIM continued in 2013 when improvements were additionally made in the application in order to

make appropriate views and tools for displaying data and special websites were created for the government agencies.¹¹⁹

3. Electronic Document Management System (EDMS)

In order to ease the information flow and obtain paperless environment in 2010 the Macedonian Customs Administration has introduced the Electronic Document Management System. Before this digitalization, electronic documentation in the Customs Administration participated with less than 3% of the total documentation. This was considered to be a problem because of the dominant usage of documents in paper form. There was not enough available space for these documents, the search of documentation was very slow and difficult and the processing of the documents lasted too long.

At the beginning of the implementation of the system there was a period when both the old system (the paper environment) and the new system (the electronic environment) were used simultaneously. It lasted until the 31st of December 2009. On the 1st of January 2010, the Integrated Information System (IIS) officially became productive and mandatory for usage within the Customs Administration.

This generation of the Integrated Information System (IIS) covers:¹²⁰

- Human Resources Management Module,
- Material and Financial Operations Module, and

¹¹⁹ Irena Kikerkova and Zlatko Veterovski, "From the WCO Revised Kyoto Convention on the Simplification and Harmonization of the Customs Procedures to the WTO Trade Facilitation Agreement", *Inaugural INCU Global Conference*, May 2014, Baku, p. 150

¹²⁰ Customs Administration of the Republic of Macedonia, *Annual report of the Customs Administration in 2011*, Customs Administration of the Republic of Macedonia, Skopje, 2012 p 13.

- Electronic Document Management System (EDMS).

EDMS encompasses storage and processing of electronic documents and electronic copies of paper documents, circulation of electronic documents and electronic signatures, electronic tracking of documents' status from the aspect of preparing, distribution, movement, storage, location, authenticity, security and history.¹²¹ EDMS consists of over 170 identified and described operational processes, confirms the maximum deadlines for termination of an operational process, identifies connections between operational processes, standard types of documents and electronic signing of documents. EDMS enables centralized acceptance of electronic and paper documents, authentic authorized copies of paper documents, centralized physical and logical archive, authorization and security of the documents at the level of a single document, organizational unit, user groups/functionalities/privileges and operational processes, electronic search and tracking of documents, scanning, classifying, marking, saving, receiving and sending incoming, outbound and internal mail, distribution of competences for the documents per executor and per organizational unit, phases of the operational processes, as well as electronic exchange of documents with external associates.¹²²

In order to facilitate the usual activities between the Customs and the business community, the Customs Administration's WEB application created a Portal for Electronic Communication (PEC) in the Electronic Document Management System (EDMS). With this portal, external users can apply or search for over 70 standard application forms such as simplified requests for temporary admission, requests for submission of incomplete declaration, requests for binding tariff information and others which are

¹²¹ Customs Administration of the Republic of Macedonia, *Annual report of the Customs Administration in 2010*, Customs Administration of the Republic of Macedonia, Skopje, 2011 p 29.

¹²² Customs Administration of the Republic of Macedonia, *Annual report of the Customs Administration in 2010*, Customs Administration of the Republic of Macedonia, Skopje, 2011 p 29.

electronically archived and processed in the Customs Administration and returned to the applicants. Via the online Portal for Electronic Communication in the EDMS, the users are offered 24/7 service access, time-saving and reduction of expenses due to the electronic submission and download of documentation and reduction of the time required to receive a reply for the requests/applications.¹²³

In 2011, the Customs Administration upgraded the Portal for Electronic Communication with option of digital signing of electronic documentation sent by the economic operators which allows full electronic exchange of electronically signed documents. This way of electronic document transfer improves efficiency of the Customs Administration and the business community in the Republic of Macedonia and saves money and time.

4. Establishment of the application for procedures with economic impact

Inward processing allows imported raw materials or intermediate products to be processed for re-export without having to pay import duties and value added tax (VAT) on goods. Inward processing happens to be an economic activity with great importance for the Republic of Macedonia. In 2010 the Customs Administration of the Republic of Macedonia introduced the first version of the WEB application for inward processing permits. By using this application, economic operators can submit their application through the internet instead in paper form which drastically reduces administration and processing time and increases transparency and traceability.

In 2012 the electronic application process for procedures with economic impact was upgraded with electronic applications and approvals for other types of customs procedures with economic

¹²³ Customs Administration of the Republic of Macedonia, *Annual report of the Customs Administration in 2012*, Customs Administration of the Republic of Macedonia, Skopje, 2013 p 30.

impact: outward processing, temporary admission, processing under customs control and customs warehousing. The electronic system on procedures with economic impact is operational since 2013 and free of charge for all economic operators.¹²⁴

The upgraded application provides the possibility for the economic operators to apply electronically for authorizations of all procedures with economic impact and for monitoring of discharging the inward processing procedure through exchange of electronic messages between the holders of authorizations and the customs authority competent in surveillance. The system provides the following benefits to economic operators:¹²⁵

- Submission of documents only in electronic form which contributes to maximum savings in time and resources,
- Automated control and verification of submitted documents and acceleration of the processing of submitted documents,
- Full transparency of the procedure as at any moment there is a complete revision of the status of the document,
- Automatic comparison of data from documents submitted with data from the customs declarations processing system.

¹²⁴ Customs Administration of the Republic of Macedonia, *Annual report of the Customs Administration in 2011*, Customs Administration of the Republic of Macedonia ,Skopje, 2012 p 60.

¹²⁵

<http://carina.mk/EN/ShowNews.aspx?ItemID=2078&mid=1099&tabId=&tabindex=0>
Accessed on 28.03.2017

Table No.2 - Customs authorizations for different procedures in 2016

2016	
Customs procedures with economic impact	5,362
Authorization for inward processing	167
Authorization for outward processing	13
Authorization for customs warehousing	82
Processing under customs surveillance	1

Source: Customs Administration of the Republic of Macedonia, *Annual report of the Customs Administration in 2016*, Customs Administration of the Republic of Macedonia , Skopje, 2017 p 17.

Data in Table 2 show that in 2016 5,362 authorizations for customs procedures with economic impact were issued, 167 authorizations for inward processing were issued, 13 authorizations for outward processing, 82 authorizations for customs warehousing and only 1 processing under customs surveillance.

The establishment of this application was a huge facilitation for the economic operators in the Republic of Macedonia. Because of the dynamics of the contemporary way of working, it often needs quick adjustment on orders from foreign partners as speed of delivery, processing and issuing of this type of licenses. This type of customs procedures is an important segment of the economy in the Republic of Macedonia, having in mind that there are a lot of companies in the country that are using this procedure.

5. Implementation of the TIR-Electronic Pre-Declaration

TIR Carnet is an internationally recognized harmonized customs transit document that accompanies the truck driver and the cargo across customs points from origin to destination and it is the easiest, safest and most reliable way to move goods across international borders, saving time and money for transport

operators and customs authorities.¹²⁶ The TIR Convention is signed by 68 countries from four continents. It provides advantages in international trade for all transport operators and for the customs administrations.

The International Road Transport Union (IRU) acts as “broker of messages” between the users of the TIR Carnets and the Customs Administrations. The advantages for the economic operators are:¹²⁷

- reduced waiting time for the transporters at the customs terminals;
- independent preparation of the TIR Carnets by the transporters;
- no need for engaging freight forwarding agency, which assures an effective money saving.

This facilitation is even more influential in Europe and some other countries because of the usage of the Single Window Application for Electronic Pre-Declaration (EPD). The application was implemented in the Republic of Macedonia in 2013. TIR-EPD is a WEB application which is free of charge, available in 18 languages that allow transport operators to send information on goods transported under TIR procedure ahead of time.¹²⁸ Data received in advance allow customs authorities to assess the risk profile of transported goods before the goods arrive at the border. Customs officials do not need to enter data manually, contributing to faster and easier processes.¹²⁹ As a result, the waiting time on the borders decreased by one hour on average making transport faster and more efficient.

TIR-EPD application made the work between the Customs Administration of the Republic of Macedonia and transport operators easier and more effective. An attractive tool was given to

¹²⁶ <https://www.iru.org/tir/using-tir> Accessed on 09.04.2017

¹²⁷ Customs Administration of the Republic of Macedonia, *Annual report of the Customs Administration in 2013*, Customs Administration of the Republic of Macedonia, Skopje, 2014 p 27.

¹²⁸ <https://www.iru.org/tir/tir-tools> Accessed on 09.04.2017

¹²⁹ <https://www.iru.org/tir/using-tir> Accessed on 09.04.2017

Macedonian transporters which saves money, simplifies and accelerates trade exchange of goods.

6. The New Computerized Transit System

As the trade between the Republic of Macedonia and the European Union increased significantly in the last 20 years, it is important to maintain good communication between different customs houses and to have the possibility to exchange fast and clear information in order to prevent illicit activities. The solution thereof was found in the New Computerized Transit System. The CARM was striving several years since 2009 to implement the New Computerized Transit System nationwide and to become a member of the Conventions on Common Transit Procedure and on the Simplification of the Formalities in Trade in Goods, all in order to get closer to the European Union's legislation and to harmonize the Customs Administration's information system with the European Union systems.

On the 1st of July 2015 the Republic of Macedonia joined the Conventions on a Common Transit Procedure and on the Simplification of the Formalities in Trade in Goods. This system is fully compatible with the transit system of the European Union. It is an agreement providing a mutual system for transit between the European Union, the EFTA countries, Turkey and Macedonia. This provides for significantly facilitated exchange with the EU, EFTA countries and Turkey that are most important trading partners of the Republic of Macedonia in trade exchange of goods.¹³⁰

The accession to the Conventions enables easier and faster movement of goods due to the realization of the transit procedure by submitting a single transit declaration in electronic form in the place of departure which is valid for the entire journey until the place of destination within the contracting parties of the

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<http://ncts-traders.customs.gov.mk:8787/apex/f?p=110009:1:3595547281744119::NO::> Accessed on 15.04.2017

Conventions.¹³¹ The transit declaration is simultaneously used as a so-called entry summary declaration which should be submitted for commodities entering any EU member state. With the implementation of the NCTS, mandatory use of Electronic Transit Declarations became required. There is an on-line application for processing transit declarations which can be used by the freight forwarders, free of charge and available 24 hours a day.

The New Computerized Transit System is an effective tool for managing and controlling the transit system which should increase the efficiency and effectiveness of transit procedures, improve the prevention and detection of fraud and accelerate transactions carried out under a transit procedure and to offer security for them.¹³² It is a system based on the usage of advanced computer technology and electronic data processing. **The NCTS is the basis for the implementation of the transit procedure by exchanging electronic messages between agents in the customs procedure and customs offices, as well as among customs offices.**

Traders benefit from the NCTS in the following ways: direct electronic data exchange with the Customs, less administrative workload, early discharge at office of departure (release of guarantee) and reduced costs. On the other hand, the Customs Administration benefits from the NCTS in the following ways: direct data exchange between administrators, better planning of human resources, elimination of fraudulent document manipulation, selective controls based on risk analysis and reduction in number of enquiry procedures.¹³³

The main goal for establishing this system in Macedonia was the aspiration to strengthen the operational capacity of the Customs Administration in accordance with the standards of the European

¹³¹ <http://www.customs.gov.mk/en/DesktopDefault.aspx?tabindex=0&tabid=419>
Accessed on 20.04.2017

¹³² <http://ncts-traders.customs.gov.mk:8787/apex/f?p=110009:1:3595547281744119::NO:::> Accessed on 15.04.2017

¹³³ <https://www.unece.org/fileadmin/DAM/trans/doc/themes/UNDAC2C/Geneva2016/Meszaros210616.pdf> Accessed on 23.05.2017

Union on customs transit control. This goal was achieved by developing a national transit application with functional specifications fully aligned with those of the New Computerized Transit System, which was implemented nationwide.

Conclusion

The Customs Administration is the responsible institution for implementing trade facilitation measures and from 2007 onward implemented several electronic systems which led to better environment for the Customs Administration and the business community.

CARM is striving to improve the work of the systems but there are still some problems. The Electronic Single Window System – EXIM has problems with the issuance of certain licenses because of the duplication of the procedure and requirements for documents in paper form.¹³⁴ Although there are problems with this system, the benefits for the business community are immense. With the Electronic Document Management System information flow in the Macedonian Customs Administration was facilitated and improved, and a paperless environment was created. The electronic application for procedures with economic impact provided electronic applications and approvals for outward processing, temporary admission, processing under customs control, inward processing and customs warehousing. This was a major facilitation for economic operators. The WEB application for Electronic Pre-Declaration is a system that allows transport operators to send information on goods transported under TIR procedure ahead of time.

With the New Computerized Transit System greatly facilitated exchange with the EU, EFTA countries and Turkey was provided, as those are the most important trading partners of the

¹³⁴ Irena Kikerkova, Katerina Toshevska-Trpcevska, Dimce Adzioski, Elena Makrevska-Disovska, Marijana Sekulovska *Time release comparative study*, Ss. Cyril and Methodius University, Faculty of Economics-Skopje, 2016, p 20.

Republic of Macedonia in the trade exchange of goods. The submission of a single transit declaration in electronic form on the place of departure is valid for the entire journey until the place of destination within the contracting parties of the Conventions. This facilitation is new and very important for the economic operators in the Republic of Macedonia.

Although there are visible positive effects from the implemented electronic measures, what the Customs Administration of the Republic of Macedonia is striving for, is implementation of a new System for Processing and Management of Customs Declaration and Excise Documents. This system should provide electronic processing of both the customs declarations and all other documents needed for all customs procedures. The CARM is actively working on replacing the old system ASYCUDA with a new, improved system. This system should be a solution for interconnection and interoperability with the systems of the European Union. The new system for processing customs declarations with qualitative and proper IT support can speed up, simplify and decrease costs of the whole customs procedure.¹³⁵

The long lasting process of computerization and modernization of the Customs Administration was fulfilled with difficulties, but the result was positive and worth the effort invested. In general, the establishment of the above mentioned measures was successful and the paperless environment made the work easier for both the Customs Administration and the economic operators. The Customs Administration should work on maintaining the established electronic customs systems but the main challenge now is the implementation of the new System for Processing and Management of Customs Declaration and Excise Documents.

¹³⁵ Irena Kikerkova, Katerina Toshevska-Trpcevska, Dimce Adzioski, Elena Makrevska-Disovska, Marijana Sekulovska *Time release comparative study*, Ss. Cyril and Methodius University, Faculty of Economics-Skopje, 2016, p 14.

References:

1. Customs Administration of the Republic of Macedonia, *Annual report of the Customs Administration in 2010*, Customs Administration of the Republic of Macedonia Skopje, 2011
2. Customs Administration of the Republic of Macedonia, *Annual report of the Customs Administration in 2011*, Customs Administration of the Republic of Macedonia ,Skopje, 2012
3. Customs Administration of the Republic of Macedonia, *Annual report of the Customs Administration in 2012*, Customs Administration of the Republic of Macedonia ,Skopje, 2013
4. Customs Administration of the Republic of Macedonia, *Annual report of the Customs Administration in 2013*, Customs Administration of the Republic of Macedonia ,Skopje, 2014
5. Customs Administration of the Republic of Macedonia, *Annual report of the Customs Administration in 2016*, Customs Administration of the Republic of Macedonia , Skopje, 2017
6. Irena Kikerkova and Zlatko Veterovski, "From the WCO Revised Kyoto Convention on the Simplification and Harmonization of the Customs Procedures to the WTO Trade Facilitation Agreement", *Inaugural INCU Global Conference*, May 2014, Baku
7. Katerina Tosevska-Trpcevska *Trade Facilitation in the Republic of Macedonia*, Selector Skopje, 2015
8. Samuel O. Idowu Kiyet Tunca Çaliyurt Editors, *Corporate Governance-an International Perspective*, Berlin, 2014
9. World Economic Forum: *Enabling Trade, Catalyzing Trade Facilitation Agreement Implementation in Brazil*, World Economic Forum, Brazil, January, 2015
10. Irena Kikerkova, Katerina Tosevska-Trpcevska, Dimce Adzioski, Elena Makrevska Disoska, Marijana Sekulovska, *Time Release Comparative Study*, Ss. Cyril and Methodius University, Faculty of Economics-Skopje, Skopje, 2016
11. Irena Kikerkova *International economy*, Ss. Cyril and Methodius University, Faculty of Economics-Skopje, Skopje, 2003

12. Irena Kikerkova *International trade*, Ss. Cyril and Methodius University, Faculty of Economics-Skopje, Skopje, 2008
13. United Nations *Key factors in establishing Single Window for handling import/export procedures and formalities: trade facilitation and the Single Window*, New York, 2011

Internet web sites:

<http://www.customs.gov.mk>

<http://www.doingbusiness.org/data/exploreeconomies/macedonia-fyr>

<http://www.exim.gov.mk>

<https://www.iru.org>

<http://ncts-traders.customs.gov.mk>

<http://www.customs.gov.mk/en/Uploads/LawonCustomsAdministrationFINAL.pdf>

https://www.unece.org/fileadmin/DAM/trans/doc/themes/UNDA_C2C/Geneva2016/Meszaros210616.pdf

E-TRADE IN THE REPUBLIC OF MACEDONIA

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Abstract

Electronic trade is a relatively new phenomenon that has influenced the everyday functioning of people, companies and the society as a whole. The appearance of electronic trade has a positive effect on the overall well-being of all economies in the world and because of that the successful functioning of electronic trade in each country is very important.

In this paper we analyze the types that electronic trade have and the advantages and disadvantages for buyers and for traders from trading online. We also pay special attention to the types of electronic contracts and the importance of the functioning of electronic signatures. At the end of the paper we explain the main features of the functioning of e-trade in the Republic of Macedonia, its growing importance and influence in everyday operations of individuals and companies.

Key Words: *e-trade, advantages, disadvantages, e-contract, e-signatures, Republic of Macedonia.*

Introduction

Electronic trade as a relatively new phenomenon in the economy has appeared in the 90s of the previous century. Electronic trade appeared as a result of the introduction of the Internet. At the beginning e-trade appeared in simplified forms, but with the changes of the modern technology its application in the economy is constantly changing. Electronic trade has expanded in all social areas, because of it easily adapts to the changes in the income and because companies, banks, customs and other institutions carry out easier their responsibilities and are closer to the wishes of the customers. Today the number of transactions made in electronic form is almost equal to the number of traditional transactions.

Electronic trade is the process of buying, selling, transferring, or exchanging products, services, and/or information via computer networks, including the Internet. Through the definition we can conclude, that electronic trade became a daily routine in all social areas of our environment. The changes in the electronic trade bring a string of benefits for consumers and for the companies through increasing the economic development, global wealth and increasing the gains for those who use e-trade in their operations.

The appearance of electronic trade has a positive effect on the overall well-being of all economies in the world and because of that the successful functioning of electronic trade in our country is an important interest for our economy. Republic of Macedonia is a small landlocked country that is still developing. Because of that, the availability to buy and sell online in our country has developed later than in the other countries. The electronic trade in the Republic of Macedonia had the highest growth from the implementation of the Law on electronic commerce which regulates the information of the society services related to electronic commerce, the responsibilities of the information society service providers, the commercial communication and the rules related to conclusion of

contracts in electronic form. Since then, the Republic of Macedonia is constantly adapting to the changes that the modern technology brings and introduces systems for expanding electronic trade.

Using the daily benefits that the electronic trade brings, in this paper we explain the definitions and the types of e-trade, the advantages and disadvantages of e-trade, the definitions and the types of electronic contract, the electronic signature. At the end we analyze the main features of electronic trade in the Republic of Macedonia.

1. Definition of e-trade and types of e-trade

Electronic trade is about doing business electronically. It is based on electronic processing and transmission of data, including text, sound and video. It encompasses many diverse activities including electronic trade of goods and services, on-line delivery of digital content, electronic fund transfers, electronic share trading, electronic bills of lading, commercial auctions, collaborative design and engineering, on-line sourcing, public procurement, direct consumer marketing and after-sales service.¹³⁶

Electronic trade is the process of buying, selling, transferring, or exchanging products, services, and/or information via computer networks, including the Internet. Electronic trade is a type of a business model or a segment of a larger business model, that enables a firm or individual to conduct business over an electronic network, typically the internet.¹³⁷

Regarding the nature of the transactions or interactions there are different classifications of electronic trade. We will mention the following:

¹³⁶ European Commission, *"A European Initiative in Electronic Commerce"* Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, 1997, COM (97) 157 p.3

¹³⁷ Organisation for Economic Co-operation and Development. Ad Hoc Group of High-level Private Sector Experts on Electronic Commerce, *"Electronic Commerce: Opportunities and Challenges for Government"*, 1997, p.11

- Business-to-Consumer (B2C) - the most commonly discussed type of e-trade is business-to-consumer (B2C), in which online businesses attempt to reach individual consumers. B2C includes purchases of retail goods, travel services and online content.

- Business-to-Business (B2B) - all participants in business-to-business (B2B) are either businesses or other organizations.

- Business-to-Business-to-Consumer (B2B2C) - electronic commerce when businesses provides a certain product or service to a client from other business. The client from the other business maintains its own customers, who may be its own employees, to whom the product or service is provided without adding any value to it.

- Consumer-to-Business (C2B) - the consumer-to-business category includes individuals who use the Internet to sell products or services to organizations and individuals who seek sellers to bid on products or services.¹³⁸

2. Advantages and disadvantages of electronic trade

Electronic trade offers unique benefits. There are so many advantages of implementation of e-trade that are received by both traders and buyers.

Advantages for traders:

- Possibility for small companies to compete with large companies - due to small expenses that are result of a virtual shop, small companies are confronting with one barrier less in penetrating the markets already dominated by large companies. Even more, due to their flexibility and perception of inovations, small companies have major

¹³⁸ Kenneth C. Laudon, Carol Guercio Traver, *E-commerce business, technology and society*, Pearson Education, New Jersey, 2004, p.20

advantage in comparison with large ones because they are dominated by bureaucracy and conservative attitude.

- Permanent contact with customers for 24 hours/7 days a week in comparison with the ordinary way of employing labor force and paying salaries, providing working time table, vacation, with a varying productivity and being subjective, a web site is offering information about the company and the products it is taking and processing orders for 24 hours of 24 and 7 days of 7 continuously with minimal costs.

- International markets penetration facilities - the world network is not limited by borders, it does not belong to anyone and the access and publication costs are extremely low. The communication with a customer positioned on the opposite pole of the world is as easy as the communication with someone in the next room. Any producer now can sell his products in any country by the means of the web site and no contacts with local companies or large investments are necessary anymore.

- Decrease of functioning costs - these costs may be drastically diminished by the automatization of the ordering processes. There is also the possibility of total automatization by integration with the administration system thus leading to increase of the general productivity of the company.¹³⁹

Advantages for buyers:

- Availability for 24 hours of 24 and 7 days of 7 - this availability independently from a certain program represents a major advantage for the clients who can purchase goods even at night when they are not busy with other urgent problems (job, household).

¹³⁹ Temjanovski Riste, *E-business*, University "Goce Delcev", Faculty of Economics, Stip, 2011, p.173

- Facilities - due to the electronic commerce there is no need to go to commercial places or to the shop next to the corner. Everybody may order from their homes sitting in front of the PC and thoroughly analyzing and comparing different products.¹⁴⁰

Besides of the many advantages that traders and buyers have from e-trade because of the rapid development of the Internet, there is also huge number of disadvantages.

Disadvantages for traders:

- Fraud - the technology of internet created new fraudulent possibilities. In lack of a direct contact a client may cheat the trader regarding his identity or his real payment possibilities.

- Security - another important problem is data security. A company that has not an access to the internet does not have too many reasons to worry on the integrity of her administration informatics systems. The connection to a public network that can be accessed by anyone more or less authorized and the access to confidential data of the local network is raising serious problems.

- Launch and integration costs - although the launching costs of a virtual shop are much lower in comparison with those of a real one they might be incorrectly estimated. A company that has not implemented an administration informatics system yet, or those where the employees do not have a minimum of technical knowledge may confront with an unexpected increase of the launching costs due to the necessity of the acquisition of training systems for the employees.¹⁴¹

¹⁴⁰ Temjanovski Riste, *E-business*, University "Goce Delcev", Faculty of Economics, Stip, 2011, p.176

¹⁴¹ Temjanovski Riste, *E-business*, University "Goce Delcev", Faculty of Economics, Stip, 2011, p.179

Disadvantages for buyers:

- Security - the most important reason because of which some persons hesitate to use the internet for purchases comes from most of the opinion polls – people are afraid to share on line information regarding their credit card. On the other hand people are giving daily the credit card number on the phone to other persons they even do not know at all when they buy from catalogues or TVs.

- Intimacy - another important problem is the attach to the personal intimacy. The potential buyers are afraid that by internet the traders or a bad will person can collect thorough information and they will not realize this at all.

- Access to technology - the access to technology refers to both the internet penetration degree and the spread of the computers and specialized knowledge.¹⁴²

3. Definition and types of electronic contracts

The traditional definition of contract cannot be applied to e-contract, because the realm of e-contract is much bigger than the realm of traditional modes of contract. E-contract can be defined with the following words: E-contract is a kind of contract created by negotiation of two or more individuals through the use of electronic means, such as e-mail, the interaction of an individual with an electronic agent, such as a computer program, or the interaction of at least two electronic agents that are programmed to recognize the existence of a contract. E-contacts are also referred as cyber-contract or digital contract or online contract.¹⁴³

There is no exhaustive definition as to e-contract and only generic definitions are available. E-contracts are also referred as ‘cyber-contracts’ or ‘digital contracts or online contracts’.

¹⁴² Temjanovski Riste, *E-business*, University "Goce Delcev", Faculty of Economics, Stip, 2011, p.178

¹⁴³ <http://definitions.uslegal.com/e/e-contract/> accessed on 10 April, 2017

E-contracts can be broadly categorized into three types: click wrap contracts, shrink wrap contracts and browse wrap contract.

1. Click-wrap contracts

A click wrap agreement is mostly found as a part of the installation process of software packages. It is also known as a “click through” agreement or click wrap licence. Clickwrap agreements allow “a buyer to manifest assent to the terms of a contract by clicking on an acceptance button that appears while the buyer obtains or installs the product.” A buyer cannot start using the software until he or she has clicked on the button accepting the terms and conditions of the agreement. Click-wrap agreements require buyer action in order to begin usage but do not guarantee cognizance of the agreement terms. Buyers can assent to the contract without even reading it in order to use the product. Buyers cannot negotiate and must, therefore, accept the terms as they are. Most courts find these agreements enforceable. Understandably, there is a concern remaining that click-wrap agreements may be accepted without users actually reading or understanding contract terms when manifesting assent.¹⁴⁴

2. Shrink-wrap contracts

Shrink wrap contracts are license agreements or other terms and conditions which can only be read and accepted by the consumers after opening the product. The term describes the shrink plastic wrapping used to coat software boxes, though these contracts are not limited to the software industry. Shrink-wrap agreements operate slightly differently. For example, they are used when one purchases off-the-shelf software. The agreement is imprinted on the software box, CD-ROM case, or other materials included inside the package. “The license begins when the purchaser reads its terms and tears open the cellophane wrapping or shrink-wrap that surrounds the package.” Buyers are supposed

¹⁴⁴ <http://lex-warrier/2012/03/click-wrap-agreements-in-indian-contract-law> accessed on 10 April, 2017

to return the software package to the retailer if they elect not to abide by the agreement. Courts are similarly concerned about buyers actually receiving notice of the sale, consciously agreeing to the sale, and conditioning the sale on acceptance of the license.¹⁴⁵

3. Browse wrap contracts

In a browse-wrap contract, the terms and conditions use a website or other downloadable products which are posted on the website, typically as a hyperlink at the bottom of the screen. Unlike a click-wrap agreement, where the user must manifest assent to the terms and conditions by clicking on the “I agree” bottom, a browse-wrap agreement does not require this type of expressed manifestation of assent. Rather, a web-site user gives his or her assent by simply using the product – such as by entering the website or downloading software. Browse-wrap agreements, like click wrap agreements, derive their name by analogy to ‘shrink wrap’ used in the licensing of tangible forms of software sold in packages.¹⁴⁶

4. Electronic signatures

An electronic signature (e-signature) refers to data in electronic form, which is logically associated with other data in electronic form and which is used by the signatory for documents’ signification. This type of signature provides the same legal standing as a handwritten signature as long as it adheres to the requirements of the specific regulation it was created under.¹⁴⁷

In order to understand electronic signatures first it is necessary to understand the medium in which they function. Electronic signatures are used in electronic communications, electronic documents and electronic transactions, which take place in channels that are not always secure, either because they are open networks to which everyone has access, like the Internet, or

¹⁴⁵ http://itlaw.wikia.com/wiki/Vault_v._Quaid accessed on 11 April, 2017

¹⁴⁶ Steve Headley, “*The law of electronic commerce and the internet in the UK and Ireland*”, Cavendish Publishing, London, 2006, p. 249

¹⁴⁷ <https://www.cryptomathic.com/news-events/blog/advanced-electronic-signatures>, accessed on 13 April, 2017

because, in the case of closed networks, unauthorized persons may gain access to them through attacks.¹⁴⁸

An electronic signature is intended to provide a secure and accurate identification method for the signatory to provide a seamless transaction. Definitions of electronic signatures vary depending on the applicable jurisdiction. A common denominator in most countries is the level of an advanced electronic signature requiring that:

1. The signatory can be uniquely identified and linked to the signature
2. The signatory must have sole control of the private key that was used to create the electronic signature
3. The signature must be capable of identifying if its accompanying data has been altered with after the message was signed
4. In an event where the accompanying data have been changed, the signature must be invalidated.¹⁴⁹

Electronic signatures may be created with increasing levels of security, with each having its own set of requirements and means of creation on various levels that prove the validity of the signature. To provide an even stronger probative value than the above described advanced electronic signature, some countries like the European Union or Switzerland introduced the qualified electronic signature. It is difficult to challenge the authorship of a statement signed with a qualified electronic signature - the statement is non-reputable.¹⁵⁰

5. Analysis of e-trade in the Republic of Macedonia

¹⁴⁸ Ferguson, Schneier, *Practical Cryptography*, Wiley Publishing, Indianapolis, 2003, pp 21-22.

¹⁴⁹ <https://www.cryptomathic.com/news-events/blog/advanced-electronic-signatures>, accessed on 13 April, 2017

¹⁵⁰ <https://www.cryptomathic.com/news-events/blog/understanding-eidas>, accessed on 13 April, 2017

The appearance of e-trade positively affects the overall well-being of all economies in the world. Therefore, the successful functioning of e-trade in the Republic of Macedonia is important for the economy. In general e-trade has a positive impact upon traders that are dealing with this type of trade, including consumers who buy online from our country or from foreign e-markets.¹⁵¹

The Republic of Macedonia adopted the Law on Electronic Commerce relatively late, in 2007. The need to adopt this law was huge, taking into consideration that back then there was already in practice e-trade on small-scale which included several Macedonian companies, banks, and also consumers whose number was increasing on a daily basis. All of them operated in an insufficiently regulated market, which could have easily led to negative consequences to those who participated in e-trade, as well as to the potential beneficiaries and to the development of e-trade in the country in general.¹⁵²

Table No.1- Enterprises with 10 or more employees
with access to the Internet

Year	Percentage of the enterprises that have connection to the Internet
2016	93,8%
2015	93,5%
2014	93%
2013	92%
2012	88%
2011	88,6%

Source: <http://www.stat.gov.mk> assessed on 15 April, 2017

From the data in the table, we can see that the percentage of enterprises with 10 or more employees, with access to the Internet, is growing up every year. In 2011, 88,6% of the enterprises used

¹⁵¹ Commission for Information Technology “*National strategy for information society development and action plan of the Republic of Macedonia*”, Government of the Republic of Macedonia, Skopje, 2005, p. 22

¹⁵² USAID, “*Analysis on the e-commerce situation in the Republic of Macedonia*”, USAID Macedonia, Skopje, 2010, p. 13

the Internet, while at the end of 2016, 93,8% of the enterprises used the Internet, which is 5,2% more users in the last 6 years.

Around 53% of the enterprises in the Republic of Macedonia had website/homepage, of which 83% provided descriptions of goods or services and price lists on their website. 59% had links or references to their social media profiles, and 20% provided online ordering or reservation or booking. Cloud computing services used over the Internet were bought by 6.9% of the enterprises.¹⁵³

During 2014, 7.7% of the enterprises with 10 or more employees had e-trade, i.e. buying or selling goods or services over computer networks (via websites or EDI-type systems), while during 2015, 11.4% of the enterprises with 10 or more employees had e-trade, which is 3, 7% more than in 2014. Moreover, in 2015, 7.4% of the enterprises had e-sales and 5.6% had e-purchases.¹⁵⁴

According to the data of the State Statistical Office, in the first quarter of 2016, 75.3% of the households had access to the Internet at home, which is six percentage points more in comparison with the same period in 2015. The participation of households with broadband connection in the total number of households increased from 69.0% in 2015 to 74.7% in 2016. Almost all (99.2%) of the households with Internet access had broadband (fixed or mobile) connection to the Internet.¹⁵⁵

Considering the number of users to have ever used the Internet, 19.3% ordered/bought goods or services over the Internet in the last 12 months, and the majority of them (55%) bought clothes or sports goods. 14% of individuals had problems with buying/ordering over the Internet.¹⁵⁶

According to the data of the National Bank of the Republic of Macedonia, until September 2016, generated values of transactions via computer in the first 3 quarters of this year, are 32% higher than the generated values in the same period last year, while

¹⁵³<http://www.stat.gov.mk/> accessed on 15 April, 2017

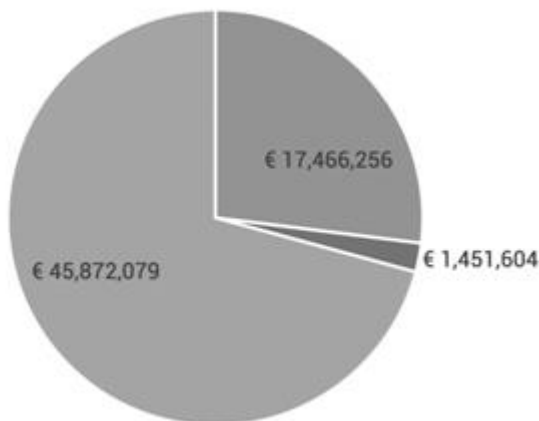
¹⁵⁴<http://ec.europa.eu/eurostat> accessed on 15 April, 2017

¹⁵⁵<http://www.stat.gov.mk/> accessed on 15 April, 2017

¹⁵⁶<http://www.stat.gov.mk/> accessed on 15 April, 2017

a significant increase of over 50% was in January, and in the summer months: June, July and August.¹⁵⁷

Figure 1: Values of transactions towards foreign and domestic traders from foreign and domestic bank cards, from January-September 2016.



Source: <http://www.nbrm.mk> assessed on 15 April, 2017

The citizens of the Republic of Macedonia spent significantly more funds for purchases online, from foreign traders, than from domestic traders. In the period from January-September 2016, from a total of 63 million euro of transactions made with cards issued by domestic banks, 72.7% of the transactions were made with domestic cards towards foreign traders or around 45.8 million euros, while 17.4 million euros were spent on purchases made towards the domestic online traders.

Financial activities which have been made via internet in 2016 in the Republic of Macedonia are in a very small percentage. 1% of the individuals have bought or sold shares, bonds, funds, or other investment services over the internet, 0% of the individuals

¹⁵⁷ <http://www.nbrm.mk> accessed on 09 May, 2017

took a loan or arranged credit from banks or other financial providers over the internet.¹⁵⁸

Conclusion

1. From the definition of electronic trade, it can be concluded that electronic trade itself occupies a huge part of people's daily activities and daily operations of the companies. In a very short time period, individuals and companies have included electronic trade in their everyday operations. All of this is done in order to improve productivity, to carry out the activities in shorter time, and to increase profit. Growing electronic trade has provided unparalleled opportunities and became a main part of the international trade arena. It has revolutionized the way businesses and consumers are selling and buying goods with wider choices, advanced shipping, payment, and delivery options. No single technology until now, in such a short time period has managed to achieve faster growth and stronger use like e-trade. Regarding the nature of the transactions, there are different types of electronic trade: business to consumer, consumer to business, business to business etc.

2. People began to accept the advantages and benefits of e-trade and began to break down the prejudices that were made at the beginning of its development. There are many advantages which e-trade offers and they are used by the buyers and the companies. A huge number of important information is transferred through electronic trade on a daily basis. Because of this fact, the security of electronic trade must be at its highest level. But unfortunately, the security is still a main disadvantage of electronic trade. Nevertheless the advantages that e-trade brings are much larger.

3. E-contracts, as a type of contract which facilitate, simplify and accelerate the communication between two or more parties are a very important segment of electronic trade. The

¹⁵⁸ <http://ec.europa.eu/eurostat> accessed on 15 April, 2017

authenticity of the electronic contracts is confirmed with the electronic signatures. The electronic signature is as much valid as the handwritten signature. Hence, verifying the electronic contracts with electronic signature facilitates the overall operations of an enterprise.

4. The Republic of Macedonia is a small country with a small number of citizens. However, during the last years a huge number of changes are introduced. These changes developed and increased the interactions of individuals and companies in certain aspects of electronic trade. From the analysis of the usage of electronic trade by individuals and companies, we can conclude that there is growth of the electronic buying and selling. Nevertheless, the trust to make financial activities in electronic form is still very small. With increasing the usage of electronic trade and with the introduction of systems that facilitate e-trade, the Republic of Macedonia will have a better position in the economy and in the global trade.

References

1. Commission for Information Technology “*National strategy for information society development and action plan of the Republic of Macedonia*”, Government of the Republic of Macedonia, Skopje, 2005

2. European Commission, “*A European Initiative in Electronic Commerce*” Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, 1997, COM (97)

3. Ferguson, Schneier, *Practical Cryptography*, Wiley Publishing, Indianapolis, 2003

4. Headley Steve, “The law of electronic commerce and the internet in the UK and Ireland”, Cavendish Publishing, London, 2006

5. Kenneth C. Laudon, Carol Guercio Traver, *E-commerce business, technology and society*, Pearson Education, New Jersey, 2004

6. Organisation for Economic Co-operation and Development. Ad Hoc Group of High-level Private Sector Experts

on Electronic Commerce, “*Electronic Commerce: Opportunities and Challenges for Government*”, 1997

7. Temjanovski Riste, *E-business*, University "Goce Delcev", Faculty of Economics, Stip, 2011

8. USAID, “*Analysis on the e-commerce situation in the Republic of Macedonia*”, USAID Macedonia, Skopje, 2010

Web pages

1. <https://www.cryptomathic.com/news-events/blog/advanced-electronic-signatures>

2. <http://definitions.uslegal.com/e/e-contract/>

3. <http://ec.europa.eu/eurostat>

4. http://itlaw.wikia.com/wiki/Vault_v._Quaid

5. <http://lex-warrier/2012/03/click-wrap-agreements-in-indian-contract-law>

6. <http://www.stat.gov.mk/>

7. <http://www.nbrm.mk>

REFORMS OF THE UKRAINIAN CUSTOMS SYSTEM IN THE CONTEXT OF EUROPEAN INTEGRATION PROCESSES

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Abstract: *The article is devoted to the analysis of changes in the structure of the customs authorities of Ukraine. The attention is focused on the period 2012–2017, when there was an association into one department of the tax and customs services. The analysis of the dynamics of the index assessment changes of the reform of the Customs Service in 2012–2017 is reviewed. It is stated the lack of a common understanding of the directions of reforming the customs need to prepare long-term projects of restructuring their operations.*

Key words: *customs, structure of the customs authorities, customs post-audit, task of customs authorities, institutionalization, governance of customs, WCO standards.*

Formulation of the problem. As a self-sustained and independent state Ukraine passed a necessary step - the formation and establishment of democratic institutions and a market economy. However, political and economic state systems do not provide the expected positive effect. The reason is the absence of a number of institutional and structural reforms that were more or less successfully implemented in other European and ex-USSR countries. By virtue of the signing and ratification of the Association Agreement between Ukraine and the European Union the process of rebuilding almost all government bodies was started. That's why the research of the process and results of the

institutional transformation of the Ukraine customs system emerges full blown. The creation of custom organizational model which is able to complete its tasks successfully has to become important.

The object of the research is the state estimation of customs system reforming in Ukraine after signing the Association Agreement between Ukraine and the European Union (herein after EU) and the analysis of the organizational and structural changes that took place in the customs system during 2012-2017 years. To achieve these objectives it is necessary to explore the legislation which has made an impact on the organization and activity of the government bodies that directly involved in the Ukraine customs, to determine the conditions of their adoption and the degree of reforms implementation. Since the quality and effectiveness of the changes are characterized not only with statistical data it should be taken into account the opinion of scientists, practitioners, politicians and business representatives.

The impact of institutions and institutional changes on the formation and activity of Ukraine Customs Service was investigated in the papers of scientists in different fields, such as lawyers, economists, political scientists, experts in the fields of public administration and public service, customs specialists. They are: I.G. Berezhnyuk, E.V. Dodin, L.M. Dorofeeva, O.V. Kolomoets, V.T. Komzyuk, T.V. Korneyeva, B.A. Kormich, P.V. Pashko, D.V. Pryimachenko, V.V. Prokopenko, A.P. Fedotov, V.V. Chentsov, I.S. Shulatova. However, rapid changes in the government bodies system, which took place over the past five years, at the time of the implementation of international standards for customs activities require actual research.

The results of the research. The history of the Ukraine customs system during the state independent is rich for reforms towards simplification the organizational structure. The Ukraine State Customs Code was in force since 1991. During 1996-2012 State Customs Service of Ukraine was a part of the government body of Ukraine authorized in customs. Due to the administrative reform in Ukraine in 2012 the customs and tax systems were united

into a single ministry - the Ministry of Revenues and Fees. Basic customs authorities of the so-called revenue and fees was the custom and customs posts as a part. Since 2014 income and fees bodies were transformed into State Fiscal Service of Ukraine under the Ministry of Finance of Ukraine. Today customs activity as a part of the State Fiscal Service is directed on "... creation favorable conditions for foreign trade development, public security, the protection of customs interests of Ukraine" [1].

International organizations, and first of all the management of the particular country, and other agencies of the government, and customs services of other countries, and participants of foreign trade activities, individuals and entities representatives of different social groups by different interests are interested in successful activity of customs [2, p. 126]. The success can be defined as the ability of a particular public body to reform object and tasks quickly, easily, cost-efficiently and effectively. Functional and structural changes in the system and organization of customs activity in Ukraine are permanent in nature. Thus scientists and experts in the field of customs consider that the customs system of Ukraine has come a long evolutionary way and each phase of reorganization changes approaches it to common European standards [3].

In general agreeing with the positive assessment of systemic change in the customs and noticing the active implementation of the recommendations of the World Customs Organization and the Council of Europe, it is important to note that since December 2012 national customs authorities have implemented reforms, which have not always improved (in terms of made better, brought to a higher level, changed in the improvement direction), but rather transformed their structure.

Based on this term semantics, the transformation is considered as a change, turning type, shape, properties of something, and synonymous are rebirth, destruction, transformation, demolition, rebuilding [4].

Returning to the chronology of the structure of the Ukraine customs system, which we were talking about before, it may be noticed that during the 1991-2012 years, changes in the structure of customs authorities, and the internal organization of activities conducted in defined clearly towards the improvement taking into account the requirements for gradually adaption to performance standards, recommended by WCO. At the same time in 2008, according to E.V. Dodin and A.P. Fedotov, the then trends of functioning of the international community made a number of new challenges to Ukraine Customs Service, which demanded the radical and final modernization of Customs Service activities [5, p. 7]. For seven years - in 2015 - the situation didn't seem so upbeat and the reorganization of customs SFS was characterized by same author as quite delayed and confusing, which looks like not their restructuring, but like their optimization multiplied by the endless rotary process slowly causing total confusion and demoralization of personal composition [6, p. 41]. In a such way, due to the merger of tax and customs systems in 2012 (The President Order "Concerning some measures of optimization the system of central bodies of executive authority" dated 24 December 2012 No726) the structure and jurisdiction of local customs have been fundamentally changed: the structural units, directly involved in customs control and clearance, were given from customs offices to the head departments of Ministry of Revenues and Fees (information technologies, statistics, customs duties, audit), the legal units were reduced by 80% and anti-corruption unit was reduced in full. Not properly thought and poorly organized reform, that was positioned as the best experience of European and international tax and customs services by Ministry of Revenues and Fees (as foreign experts noticed it was based on the combined model of the tax and customs authorities of Great Britain), has not led to a collapse in the Customs in 2013 just only because the officials transferred to the head departments of Ministry of Revenues and Fees in regions continued to work in most of the offices.

Some units (or certain officials) stayed in customs offices in terms of location and acted semi-legal. It ensured the undisturbed operation of software and satellite communications, computer hardware servicing, administering of customs duties, calculating the statistics of foreign trade. The transfer of documentary checking functions (as a form of customs control) to units of head departments in which structure departments of tax and customs audit were created, multiplied by a moratorium introduced on the business inspections, effectively destroyed the system of post-audit control, which is traditionally considered as proper counterweight to simplify and speeding up customs procedures. According to experts opinion, it led misbalance in the customs regulations as long as the simplification of customs procedures has to go side-by-side with ensuring the effective customs control during and after customs clearance because the efficiency of customs procedures is linked with the necessity of a clear concentration of related functions, such as administering of customs duties in different structure units but within a single "customs unit". The international experience of organizational structure of structures comprising both tax and customs authorities shows this [7, p. 27].

In March 2014 the government announced the liquidation of the Ministry of Revenues and Fees of Ukraine, customs officers and experts expected to restore the lost independence of customs authorities. It was forecasted the divorce of "crossed" structure. The legal act of Cabinet of Ministers of Ukraine dated 1 March 2014 No 67 not only liquidate Ministry of Revenues and Fees but stopped the execution of measures continued by the that time for the reorganization of the State Tax Service and the Customs Service, restored the activity of those services and determined that the State Customs Service returns the status of the central executive agency, which activity is directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Finance and which provides implementation of state policy in public customs [8].

Next steps of the Government confirmed the intention to refuse an failed attempt to copy foreign experience: the Executive

Order dated 5 April 2014 No 85 approved limited number of central and local authorities staff for the State Tax Service: 1,460 units - the central administration and 44,664 - regional bodies; for the Customs Service - 327 units for the central office and 12 405 - for customs [9].

On the level of local authorities officers began to prepare for the transfer of documents created during last customs departments acting, for returning customs staff, which was transferred during 2013 to Ministry of Revenues and Fees to head departments in the regions.

However unexpectedly, on May 21, 2014 the Government adopted the decision on the establishment of the State Fiscal Service as the central executive body after the reorganization of the Ministry of Incomes and Fees of Ukraine by converting with simultaneous recognition by making invalid the decision on its liquidation that had been adopted before [10].

In July, 2014, the Regulation on state fiscal service was announced and enacted, which was approved by the Government on May 21, 2014 [11], N 236. The content of which is not much different from the Regulations of the Ministry of Incomes and Fees of Ukraine and which secured the continued operation of tax and customs authorities as a part of the State Fiscal Service of Ukraine. The State Fiscal Service of Ukraine was included into the system of central executive bodies which activities are directed and coordinated by the Cabinet of Ministers of Ukraine. The authority on policy in the specific field is related to the jurisdiction of ministries. The State Fiscal Service of Ukraine only implements the state policy in the sphere of state customs, but the Ministry of Finance of Ukraine forms the state policy.

Within these powers of the Ministry of Finance of Ukraine intensified the implementation of institutional changes of the State Fiscal Service, which, according to its management, will enable the improvement of the quality of public services to citizens and businesses, focusing primarily on the fiscal component of customs.

To do this, in June 2015 the Ministry of Finance together with the IMF created the reform for the State Fiscal Service of Ukraine, which has a 2 year-long cycle, which should contribute to deepening the integration of the tax and customs authorities in the structure of State Fiscal Service. All the actions will lead to the complete elimination of customs as local authorities and legal entities and their inclusion in the structure of regional units of State Fiscal Service.

The draft law of Ukraine "On amendments to the Customs Code of Ukraine regarding the optimization of the territorial state fiscal service" 2177, of 30 June 2015 provides for the formation of a single State Fiscal Service territorial authority at the regional level, which are subordinate to customs and tax offices. This proposal is justified by the fact that this will help to optimize the territorial authorities of the State Fiscal Service and to reduce the number of employees.

However, given the proposed provision stating that "customs are created in towns, railway stations, airports, sea, river ports, and other sites located in the area of the territorial authority of the central executive body that implements state tax and customs policy where it is needed "refers to the structural unit of power, which now endowed customs posts."

This approach to reform customs authorities is critically evaluated by specialists and scientists. The former head of the State Customs Service A. Makarenko said: "Since the takeover of Customs Service by Tax Service, and it has led to this so-called 'unification' of the two services, all subsequent years, we observed the stagnation of Customs by the liquidation of the mainstream of its activities, professional staff and leveling of the idea of the Customs and customs security of the country. Since the merger of the two services, we have lost the main thing that distinguishes the customs authorities of other countries from the Ukrainian customs –a strong law enforcement component. The member of the Parliamentary Committee on Taxation and Customs Policy T.Ostrikova believes the same "model of the Ministry of income

and fees did not justify itself. She mentioned that a number of functions of customs, including export control, intellectual property protection, and customs control post-audit was lost in the result of the merger of Customs Service by Tax Service."

The chairman of the above mentioned Committee N.Yuzhanina reasons the need for an independent customs system (now the part of State Fiscal Service) saying that Customs has been neglected and it is not reformed and the reforms that were carried out in the field of information support and personnel configuration failed. Economic operators in association of the two supervisory authorities have seen no improvements and economic benefits, but the creation of a "fiscal monster" with high levels of corruption, inefficiency, and non-transparent functions and competence. Therefore, it is emphasized that the Customs should become a separate institution. [12]

V. Komzyuk says that all the countries bordering Ukraine (Romania, Hungary, Slovakia, Poland, Belarus, Russia, Moldova) and the leading countries in different continents (Australia, the USA, China, Japan, Germany, the UK, France, etc.) have customs authorities that have a system of relevant bodies that are developed, enhanced and otherwise improved by these countries as these services and state-making bodies and those that ensure the safety of society and the state as well as national interests. Ukraine thoughtlessly eliminated customs services as the only system of state bodies that, in comparison, with other government agencies, worked very effectively in the public system and mechanism [13, c. 36]. O. Kolomoets by flieves the decision to include the State Customs Service of Ukraine under the Ministry of income and fees, so that goes against the logic of institutionalization. It was implemented by the President of Ukraine Viktor Yanukovych in 2012 and supported by the Government of A.P. Yatsenyuk in 2014 when the Ministry of Income and Fees was reorganized into the State Fiscal Service of Ukraine. And, because of the specificity of their functions, he proposed to consider the system of customs authorities as an autonomous entity in the state apparatus [14, p.

173].The same opinion on the reform of Ukrainian customs is observed by a group of deputies who prepared and filed a draft Law N 3763on January 13, 2016, whose main objective was the creation of the National Customs Service of Ukraine as a central executive body, whose work is coordinated by the Cabinet of Ministers of Ukraine through the head of the office.

The main tasks of customs will become control and collection of customs duties, control the correctness of calculation, and export control. Customs will have the authority not only to use physical force and special means, but also firearms, which in fact, were removed from customs in 2013. The purpose of such a structure should be to ensure the protection of the internal market and customs security of Ukraine, regulation of foreign trade, the state budget and counteraction to customs offenses, and clearing agencies of corruption [15].

So today, it should be noted that the lack of unambiguous approaches to further reforming the customs authorities, is to do so as part of State Fiscal Service or recover (or re-create) an independent institution. Against a background of uncertainty with the strategic course of reforms, two diverse ideas have the place here: - 2013 - the union of tax and customs authorities due to the experience of the United Kingdom; - 2014 - the elimination of the Ministry of income and fees and recovery of customs autonomy varies transformation of the Ministry of the State Fiscal Service; - 2015 - the complete elimination of customs as legal entities and transfer of separate customs to outsourcing to foreign companies; - 2016 - creation of an independent National Customs Service of Ukraine and the Interdepartmental target center and mobile units to combat corruption at customs, invitation achievements reform plan Customs Service of Ukraine special mission of the US, where, unlike in Britain, the customs authorities are not combined with tax authorities and with border guards. A situation, where, instead of completing one embodiment reform (with the evaluation of its effectiveness and relevant conclusions) is, introduced a new one [16, p.12]. Because of this incompleteness of changes, neither

society nor the staff of the customs authorities, do not experience improvements and system instability leads to a shift of priorities because of the lack of prospects that certainly is a poor motivator to diligent work. This is confirmed by the dynamics of performance assessment of reforming the customs system of Ukraine during 2012-2015 years, which is shown in Table 1.

Table 1. Changes in performance assessment of reforming the customs system of Ukraine for the period 2012-2015.

№	Indexes	Period year											
		2010		2011		2012		2013		2014		2015	
		I	II	I	II	I	II	I	II	I	II	I	II
1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	The average number of days spent on customs procedures for one supplies (with 2015r.-working hours	2,4	2,0	2,5	2,8	2,5	2,7	2,8	2,0	1,9	2,2	4	n/d
2	The share of goods Customs Service of Ukraine selected for physical inspection%	55	52	26	41	22	14	18	14	12	14	16	n/d
3	The share of goods classification code under which the nomenclature was changed by Customs Service of Ukraine, %	n/d	6	8	9	9	8	10	3	3	5	2	n/d
4	The average share of goods processed by Customs Service of Ukrainen of by the first method of customs valuation, but by the total number of failures of customs authorities, %	34	38	27	33	27	24	25	14	10	21	40	n/d
5	The average number of paper documents for customs clearance of one delivery	10,8	10,9	9,8	10,6	8,0	10,2	7,3	5,8	6,6	7,3	5,0	n/d
6	The average percent age of companies that have under gone inspections after customs clearance %	n/d	22	40	23	3	4	11	7	0	6	19	n/d

Source: [17].

Conclusions. The process of reformation of the customs system of Ukraine in terms of European integration is slow. Ukraine has found it difficult to perform the obligation to build an effective functional structure of directly carrying out customs in the state mechanism, which is directly involved in customs affairs in the state, public assessment mechanism for the management of customs and their communications with business, fighting corruption at customs, harmonization of customs procedure sand automation customs affairs, mainly due to the lack or inconsistency of legislation. To implement the European integration aspirations, Ukrainians should actively work towards the implementation of the Association Agreement and establish efficient operation of a free trade zone with the EU. This requires the acceleration of market-

institutional reforms and approximation of Ukraine to EU law by the introduction of the technical regulations, sanitary, phytosanitary norms and standards of the EU. Customs should promote and ensure maximum process of European integration, not create problems to trade and investment. Prospects for further research in selected areas due to the need to developed reforms of Customs Service of Ukraine to combat smuggling and reduce queues at the borders of the EU. We believe that we should not try the experiments with the system which ensures the supply of half of the state budget. Reform of Ukrainian customs in terms of implementation of the Association Agreement with the EU requires situational or political decisions, and balanced and scientifically based approaches. We consider it necessary to develop a modern concept, over the next 10 years. A concept of reforming the customs authorities of Ukraine.

References:

1. The Verkhovna Rada of Ukraine (2012), "Customs Code of Ukraine", available at: <http://zakon5.rada.gov.ua/laws/show/449517/page> (Accessed 12 September 2016).
2. A.Chevers Definitions of customs functions in the context of economic integration and Globalization / A. Chevers. // Customs Scientific Journal . – 2013. – №2. –p. 123–134.
3. V. Chentsov, Y. Garmash Stages of the Ukrainian customs system capacity building: towards the EU standards / V. Chentsov, Y. Garmash // Customs Scientific Journal . – 2015. – №5(1). –p. 23–27. available at: ccjournals.eu/ojs/index.php/customs/article/download/498/510.
4. Encyclopaedic dictionary of economics and law [Electron resource]. - Access mode: http://dic.academic.ru/dic.nsf/dic_economic_law/16427.
5. E.V. Dodin The modern system structure and customs of Ukraine [Tutorial] (Special issue of the "Customs") / E.V. Dodin, A.P. Fedotov. - Lviv: The Customs newspaper, 2008. - 168 p.
6. Fedotov A.P. The concept of the exercise of state customs in the plane of Customs clearance on the principle of "single window" / A.P. Fedotov // Customs. - 2015. - № 3. - P. 28-44.
7. Voytseschuk A.D. The impact of institutional reforms of customs regulations on the efficiency of customs / A.D. Voytseschuk // The theoretical aspects and develop a system of evaluating the effectiveness of customs procedures: a collection of abstracts of scientific-practical conference correspondence (m. Khmelnytsky, 25 September 2014). - Khmelnytsky, 2014. - P.26-30.
8. On liquidation of the Ministry of income and fees: Legal Act of Cabinet of Ministers of Ukraine from March 1, 2014, № 67.
9. Some issues approval limit the number of staff and local offices of central authorities and other public bodies: Legal Act of Cabinet of Ministers of Ukraine dated April 5, 2014, № 85.
10. On establishment of the State Fiscal Service: Legal Act of Cabinet of Ministers of Ukraine dated 21 May 2014, № 160.

11. On the State Fiscal Service of Ukraine: Legal Act of Cabinet of Ministers of Ukraine from May 21, 2014, № 236

12. Will be independent customs [electronic resource]. - Access mode: <http://robotodavets.in.ua/2016/02/25/chy-butynezalezhnij-mytnytsi.html>.

13. Komzyuk V.T. Ways to improve legal definition of administrative and legal status of the customs / V.T. Komzyuk // Law and Security. - 2013. - № 4. - P. 33-38.

14. O.V. Kolomoets Customs system in the mechanism of the modern state / O.V. Kolomoets // Scientific Bulletin of Kherson State University. - Series of Law. - 2014 - Issue 3 - Volume 2. - P. 172-175.

15. On the National Customs Service of Ukraine . Project of Legal Act of January 13, 2016, № 3763.

16. L.M. Dorofeeva Issues reconstruction of structure of customs authorities Ukraine / L.M. Dorofeeva // Scientific Bulletin of the Uzhgorod National University. - Series LAW. - 2016.- Issue 40, Volume 2, 2016 - C.12.

17. G. O. Shamborovsky Customs Reform in Ukraine in terms of European economic integration /G.O. Shamborovsky// Economic Science. - 2016. - № 18. - P. 29.

ISSUES AND CHALLENGES FOR CUSTOMS ADMINISTRATION

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For centuries, the customs role has been one of ‘gatekeeper’, with customs authorities representing a barrier through which international trade must pass, in an effort to protect the interests of the nation. Customs has traditionally been responsible for implementing a wide range of government policies, spanning areas as diverse as revenue collection, trade compliance and facilitation, interdiction of prohibited substances, protection of cultural heritage and enforcement of intellectual property laws. This breadth of responsibility reflects the fact that customs authorities have long been entrusted with administering matters for which other government ministries and agencies have policy responsibility, such as health, agriculture, environment, trade statistics and in some cases, immigration. This is generally achieved through the implementation of a diverse range of service level agreements, with Customs having regulatory responsibility at the point of importation and exportation.

Such border management responsibilities stem from the more traditional customs role of collecting duties on internationally traded commodities, a common extension of which is the collection other forms of tax, such as Value Added Tax (VAT) and excise duties. In many least developed and developing countries including Vietnam, import duties and related taxes represent a significant proportion of national revenue. Vietnam Customs collected customs duties and taxes totaling about 272,000 billion Vietnam Dong in the financial year 2016, 3.76% higher than that in the previous year. This is about 24% of the total national tax revenue, which indicates that Vietnam Customs is working as an important revenue agency along with other relevant agencies such as the

National Tax Agency. Because of this, the main focus for the customs authority is, understandably, revenue collection. Such a role is often manifested by regulatory intervention in commercial transactions simply for the sake of intervention. Customs has the authority to do so, and no one is keen to question that authority.

In this day and age, however, social expectations no longer accept the concept of intervention for intervention's sake. The position of Customs has changed significantly in recent times, when globalization is resulting in an increasingly complex world. Nowadays, the role of customs authorities throughout the world is increasingly to respond both to the rapid change in the international trade environment and to domestic issues. They are required to respond to the promotion of economic development and to comply with regional, national and international obligations. The importance of Customs' role has become more significant, domestically and globally.

The world today is interconnected as reflected by expanded flows of goods, people, capital, information and technology. It is becoming easier to conduct business internationally. This provides countries with the opportunity to fast-track economic growth and development through increased international trade. There are considerable advantages resulting from opening up economies to world trade. Global markets offer vast commercial opportunities that in most circumstances far outweigh opportunities that exist within a domestic economy. However, this is not only beneficial to legal trade; it benefits illegal trade too and criminals are making use of more integrated markets and freer movement of people to move goods, people and money across borders.

This is in no small part due to the changing environment in which customs authorities operate. For example, the emergence of wide-bodied aircraft, shipping containers, e-commerce and the increasing complexities of international trade agreements have all impacted on the way in which regulatory authorities have fulfilled their responsibilities, and customs administrations world-wide have seen a dramatic increase in workload across all areas of activity,

fuelled by the advent of the global marketplace and the technological advances that have revolutionised trade and transport.

As economic globalisation continues to accelerate, international trade is growing substantially faster and the role of trade liberalisation is increasingly important. In an open world trading environment, the prosperity of any single country and the opportunities available to its people will be maximized by minimizing protection of its domestic markets. Trade liberalisation is widely credited for enhancing economic development amongst participating economies. The current international trade and economic climate could create the environment for a range of enhanced bilateral and regional trade agreements. Countries around the world are actively participating in WTO Doha Round negotiations, and meanwhile making their move towards forming bilateral or regional economic partnerships and cooperative agreements.

Free trade maximizes global efficiency in a distortion-free world. By reducing barriers to trade, countries in the international trading system unlock their economic potential by empowering domestic industries to access foreign markets and strive for greater productivity. Reducing restrictions that are imposed at a government level has the beneficial effect of exposing businesses to international competition and compelling domestic industry to greater innovation and efficiency. An integrated market brought about by a Free Trade Agreement (FTA) is also likely to attract foreign investment, creating employment and increasing economic welfare of member countries. Trade liberalisation sets new rules and expectations regarding how these policy choices are made and implemented. Trade agreements afford the opportunity to encourage further reform and transparency within tax and revenue systems. Given the growing proliferation of trade agreements, it is important that new agreements unlock their potential to achieve greater commitments from signatory parties to enact positive and constructive reform.

With the development of the modern trade agreements, such as the current TPP negotiations, trade negotiations and stakeholders are looking for ways to enhance their country's trade interests. The text of modern agreements provides a potential avenue for an era of expanded trade policy enhancements, with trade negotiators considering the inclusion of specific annexes that deal with specific tariff or non-tariff issues that impact the trade of goods under the terms of the agreement.

In Vietnam especially, international trading activities was begun to liberalise in the late 1980s and early 1990s from a position as one of the poorest economies in the world. The full impact of these reforms, however, was limited by the incomplete nature of the reform and by the lack of access to the US market, the traditional engine of growth for export-led economies in Asia. As a legacy of the U.S-Vietnam War, conditions in Vietnam and the timing of reforms were a decade or more behind those of its Asian neighbours. In an effort to integrate into global markets, Vietnam has promote a policy towards regional integration and in this light is committed to a number of multilateral agreements, including Trans Pacific Partnership Agreement (TPPA), ASEA Trade in Goods Agreement (ATIGA), ASEAN-Korea FTA (AKFTA), ASEAN-China FTA (ACFTA), ASEAN-Japan Comprehensive Economic Partnership (AJCEP), ASEAN-India Agreement (AIFTA), ASEAN-Australia-New Zealand Free Trade Agreement (AANXFTA), as well as many bilateral FTAs, which are Japan-Vietnam Economic Partnership Agreement (VJEPA), Vietnam-Chile Free Trade Agreement (VCFTA), trade agreement between Vietnam and Cambodia, trade agreement between Vietnam and Laos, Vietnam-Korea Free Trade Agreement (VKFTA), Vietnam-Eurasia Economic Union Free Trade Agreement (EAEU FTA). Besides, Vietnam is also negotiating a number of other trade agreements, such as agreement between ASEAN-Hongkong, Regional Comprehensive Economic Partnership (RCEP), trade agreement between Vietnam and The European Free Trade Association (EFTA).

At the macro levels, all agreements require Vietnam to make major reforms of laws and institutions relating to trade in goods and services, intellectual property rights protection, treatment of investors, business facilitation, transparency, and the right to appeal administrative decisions to the courts. They require improving the legal and judicial systems to provide effective means for resolving commercial and administrative disputes and protecting property rights. Administrative and regulatory procedures must be open; and businesses and citizens must have the right to protest government decisions through open administrative procedures—with due process, written rulings, and ultimately judicial review. At the provincial levels, since trade and foreign direct investment are believed as the major driving force of budget revenue, economic growth and poverty reduction, local governments offer various preferential policies to foreign investors to attract more foreign investment. Foreign investors force local governments to become more transparent and active to reform business environment.

Whilst the benefits of reducing the barriers to international trade are well documented, it is worth mentioning the following potentially unforeseen consequences of trade liberalisation. Firstly, not only are less duties and taxes collected under the FTA zero-tariff policies but at the same time, customs authorities require additional resources to ensure an effective and ongoing capacity to administer the policies. This includes, for example, additional costs of training customs officials, especially those field-based officials who are responsible for origin certificate and physical inspection. Appropriate infrastructure, particularly the introduction of a risk analysis and management system, is also required in order to select high-risk goods in terms of origin irregularity and to ensure that trade is facilitated under the FTA. An independent branch comprising experts in the fields of FTAs and origin rules may need to be established and funded in order to ensure competent FTA negotiation and implementation. In addition, the FTA scheme inevitably entails an uneven distribution of costs and benefits among different sectors and among different countries. When intra-

regional barriers are dismantled, industries will expand in some countries and contract in others, as industries relocate in response to differences in factor endowments. The adjustment costs resulting from such relocation of economic activity can be asymmetric, since some economies may incur higher costs, in the short run. Besides, trade liberalisation in isolation is unlikely to deliver optimal economic benefit. Greater trade facilitation alone can only unlock a limited proportion of opportunity as economic wellbeing generated primarily within an economy.

The changing expectations of the international trading community are based on the commercial realities of its own operating environment. It is looking for the simplest, quickest, cheapest and most reliable way of getting goods into and out of the country. It seeks certainty, clarity, flexibility and timeliness in its dealings with government. Driven by commercial imperatives, it is also looking for the most cost-effective ways of doing business.

And this is also reflective of the changing environment in which customs authorities operate, and the corresponding changes in government priorities. It is undeniable that customs administrations these days have been facing with ever-rising volumes of trade and, at the same time, they are obliged to add yet new layers of control. For several decades now, there has been mounting pressure from the international trading community to minimise government intervention in commercial transactions, and a growing expectation for customs authorities worldwide to place an increasing emphasis on the facilitation of trade. These developments are resulting in the growth of the range and complexity of risks that have to be managed at the border.

As international trade volumes increase and regional trade agreements add further complexities, Customs faces challenges in effectively discovering illegal activities in international trade because of the current enforcement approach of concentrating on the flow of goods. This is especially the case because, as more customs administrations have adopted risk management as their core philosophy, they need better information and intelligence to

tackle risks to the global trade environment, compensating for the discard of 100% verification. Therefore, illicit trade is growing in scope and magnitude due to increased globalisation, free movement of goods and Internet usage. It also brings about risks to economic growth and sustainable development. Illicit trade and illicit markets are providing not only a safe haven and exploitable sanctuaries for illicit forces but also illicit liquidity for corrupt officials. Consequently, illicit trade and the wide availability of illicit liquidity prevent fair and open markets from reaching their full economic potential and threaten state sovereignty. This trade also causes enormous costs, such as the corruption and destabilisation of society, harmful effects of drugs, lost productivity and other social costs, including those associated with the dumping of toxic wastes, poaching of endangered species, endangering human lives and public health as a result of counterfeit drugs flooding the market. All of these illicit trade activities have an economic effect, as they divert money and other resources from the balance sheets of legitimate businesses to those of illegitimate ones. National revenue and assets intended to finance the future are instead embezzled, impairing the ability of communities and businesses to make the investments. Customs remains a vital tool available to stimulate trade and stem the flow of illicit goods that weaken the economies, recognizing that trade contributes to national development, competitiveness, job creation, wealth creation, poverty reduction and sustainable economic growth.

The problem of corruption continues to plague customs administrations worldwide, especially in developing countries like Vietnam. Corruption can destroy the efficiency functioning of any society and diminish the ability of the Customs to accomplish its mission. The challenges and vulnerabilities faced by customs administrations are ongoing and require constant vigilance and practical strategies to address the problem in a holistic way. While in the past corruption was essentially seen as a customs problem, it is now realised that it is important to develop a positive and

effective partnership with the business community to address the problem.

The ongoing challenges posed by globalization, trade facilitation initiatives, and security concerns, to the role of Customs necessitates a renewed professional approach to the management and operations, which must balance trade facilitation with border security and control in an environment of increased trade volumes and static or even decreasing resources. The increased security threats to international trade supply chains and organized crime require new approaches to border management. At the same time, the government continues to expect their customs administrations to maintain or improve the collection of revenue, facilitation of legitimate trade, community protection and supply chain security. Industry is also making demands for improved facilitation and the integration of government systems with existing global logistics systems. This is reflected in government policies to improve the service orientation of their agencies, including customs. The combination of these factors and innovation within the supply chain puts considerable pressure on regulatory authorities to balance the competing demands on their resources and, at least, match the standard of innovation achieved by industry. This is where customs reform and the application of modern management techniques and new technology play such an important role.

Reform efforts typically focus on the introduction of contemporary risk-based approaches to cargo processing and include the reengineering of systems and procedures to simplify and remove points which are vulnerable to corruption, the introduction or expansion of automated systems to limit opportunities for face-to-face interaction between officials and traders, and on improving transparency and accountability mechanisms including by publishing the criteria upon which officials are entitled to exercise official delegations. These reforms all reduce the opportunities available for corrupt officials and traders to engage in inappropriate activities and all contribute to improving customs effectiveness. In addition, customs reform and

modernization programs typically address institutional weaknesses including human resource management issues such as recruitment, promotion, mobility, remuneration, recognition, and competency gaps. They typically also focus on improving formal consultative mechanisms between officials and the trading community. In recent years, reform and modernization programs have frequently been extended to include other government agencies involved in the processing and clearance of goods. New initiatives such as national single window systems and one-stop border posts based on collaborative border management models have expanded the scope and coverage of reform efforts and acknowledge that corruption and inefficiency at the border are not customs problems alone.

The automation of customs procedures has been a key component of customs reform and modernisation initiatives. Over the several decades, customs administrations have witnessed an evolution in the processing of imports and exports through the automation of customs processes, which utilize of the Internet and technology. Automation is one of the most important tools for achieving this balance without huge increases in human resources. In the context of the regulation of international trade, it has been most evident with respect to customs administration. Automation has increased the speed with which cargo is cleared, for example, by enabling the required data to be sent in advance of the arrival of the shipment, and not necessarily in office hours. The widespread adoption of the Internet as the preferred communications medium for many commercial transactions has highlighted the need for government to examine web-based options for the delivery of services, and the fulfillment of regulatory obligations.

Automation, in particular, was seen as a major reform facilitator as it was expected to reduce face-to-face contact and the negotiations that were then a central feature of the Customs-Business relationship. It also increased both transparency and national consistency as traders couldn't simply go to the border station that offered the best deal thus avoiding the 'port shopping' practice that was also common. When the automated system's

centralised targeting was overruled by an official at a border post an audit trail would be created that could be monitored and appropriate action taken. Role clarification amongst agencies also reduced somewhat the opportunity for various agencies to apply controls that should normally be managed by Customs.

Another method by which Customs can strengthen compliance and regulatory frameworks is through enforcement harmonisation. Cooperation of customs staff, taxpayers and coordination with other tax agencies are critical for effective customs reform. Cooperation is also of importance and should be enhanced with businesses and other market actors to enable targeted interventions on both the supply and demand sides of illicit trade. Customs officials, policymakers, other border agencies, researchers and the private sector need to work closely together. Greater cooperation between regional and international organisations could also make a difference. To optimise tax collection, governments need to be able to exercise effective control over the production and importation of products, especially over excisable goods with the aim to capture undeclared markets, leading to increases in tax collection. While non-declaration and misdeclaration lead to revenue loss, effectively combating such practices would lead to other benefits such as the elimination of unfair competition brought about by untaxed goods which flood the market.

In conclusion, in the last several decades, changes in the global trading environment have resulted in a greater emphasis on security and government intervention in customs administration. Trade liberalisation is a necessary condition for improving its position on the international trade scene and realising higher rates of economic growth, especially for Vietnam, a developing, open and import-dependent economy. However, while trade facilitation is a key to economic development and growth, it is undeniable that Customs remains the main thrust in this endeavor. The challenges therefore lies in how to maximise competitiveness while complying with the mandate of society for effective control. A more

appropriate approach is suggested that would ensure control and underpin the success of globalisation. It is considered that customs reform and modernisation programs can add certainty and stability to the economy and facilitate trade.

AEO IN EU CUSTOMS REGULATIONS AS THE TRADE FACILITATION

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Abstract:

This paper presents the analysis of the Authorized Economic Operator institution. After 9/11 and other terrorist attacks the WCO made “Safe Framework of Standards to secure and facilitate global trade” in which are included the recommendations thanks to which a concept of creating an Authorized Economic Operator (AEO) was done. The institution of AEO was the European Union answer for the USA’s C-TPAT. Criteria’s and requirements which should be fulfilled to gain an AEO Status were specified in Art. 39 UKC and assume. Before obtaining an AEO certificate, customs authority makes a detailed audit. After a positive decision, each owner of an AEO certificate benefit from series of facilitations. The institution of AEO in light of the Union Customs Code does not go under many changes. The assumptions of the European Commission on the main purpose – security – were not relevant. It was because most of the entrepreneurs need Safety and Security plus Customs Simplifications, that is, mixed certificates – AEOF. A difference between amount of AEO Certificates and C-TPAT is about 3600 for American’s disadvantage, which place the AEO Certificate on top of this kind of customs solutions. European Union and other partners realise together a lot of other important actions and projects which are focused on fighting the Customs crimes. The AEO is respected in USA, China, Japan, Norway and Switzerland. The EU with AEO is on the top of global customs security institutions but in today’s world the terrorism is changing briefly and customs services should be as flexible as terrorists are.

Key words: AEO, AEOC, AEOS, AEOF, Authorized Economic Operator, Customs, C-TPAT, Terrorism, Trade.

Introduction

For centuries, policy of foreign trade concentrated on cargo turnover. Facilitation and simplification were in use, both in creating possibilities and help in a sphere of concrete country or given region but also often in the area of international organisations (GATT, WTO, WCO). In the EU, at the end of the 80s, a lot of possibilities were introduced to facilitate and improve control, circulation and amount of necessary documents. This process brought to a halt after 9/11 attacks on WTC in New York. These and further terrorist attacks (London, Spain, Russia, etc.) were the reasons to declare a national war with terrorism. In the context of those events, an international trade politics prepare itself to create an unique security barrier. American Customs Service (Customs and Border Protection – CBP) introduced sharp control procedures (Container Security Initiative- CSI, Customs- Trade Partnership Against Terrorism C-TPAT) which aim is to protect a whole chain of deliveries. The same thing was made by other communities prospering in the sphere of trade, both these from the regional or international range. Unfortunately, those decisions were very expensive and time-consuming for the international trade community and customs administration. A new solution had to be found, to connect an effective control on traded goods and facilitate a custom clearance. In 2005 World Customs Organization introduce a declaration called “WCO Safe Framework of Standards to secure and facilitate global trade” in which are included the recommendations thanks to which a concept of creating an Authorized Economic Operator (AEO)¹⁵⁹ was done.

I History of AEO

¹⁵⁹ Wiesław Czyżowicz, *Customs policy and customs law in contemporary world trade Methodological Approach*, “Polityka Celna Ekonomia, Prawo, Praktyka” (red.) Ewa Gwardzińska, Aleksander Werner, Jarosław Wierzbicki, s. 17-20, Szczecin 2014.

The institution of Authorized Economic Operator was the European Union answer for the USA's C-TPAT CUSTOMS TRADE PARTNERSHIP AGAINST TERRORISM, which was launched in November 2001. Today in C-TPAT there are more than 11,400 Trusted Traders. The partners include U.S. importers/exporters, U.S./Canada highway carriers; U.S./Mexico highway carriers; rail and sea carriers; licensed U.S. Customs brokers; U.S. marine port authority/terminal operators; U.S. freight consolidators; ocean transportation intermediaries and non-operating common carriers; Mexican and Canadian manufacturers; and Mexican long-haul carriers, all of whom account for over 52 percent (by value) of cargo imported into the U.S.

During the idea that, C-TPAT members are considered to be of low risk, and are therefore less likely to be examined at a U.S. port of entry. Partners are able to better identify their own security vulnerabilities and take corrective actions to mitigate risks

The benefits of being C-TPAT member:

- ✓ Reduced number of CBP examinations
- ✓ Front of the line inspections
- ✓ Possible exemption from Stratified Exams
- ✓ Shorter wait times at the border
- ✓ Assignment of a Supply Chain Security Specialist to the company
- ✓ Access to the Free and Secure Trade (FAST) Lanes at the land borders
- ✓ Access to the C-TPAT web-based Portal system and a library of training materials
- ✓ Possibility of enjoying additional benefits by being recognized as a trusted trade Partner by foreign Customs administrations that have signed Mutual Recognition with the United States
- ✓ Eligibility for other U.S. Government pilot programs, such as the Food and Drug Administration's Secure Supply Chain program

- ✓ Business resumption priority following a natural disaster or terrorist attack
- ✓ Importer eligibility to participate in the Importer Self-Assessment Program (ISA)
- ✓ Priority consideration at CBP's industry-focused Centers of Excellence and Expertise¹⁶⁰

The US's C-TPAT is a similar to EU's AEO program. Authorized Economic Operator is an institution of Custom Law which was launched by a decision¹⁶¹ of European Commission due to recommendations of the World Trade Organization made as an answer for 9/11 attacks. In April 2005 the European commission made a decision to regulate and protect custom market by setting up an institution of Authorized Economic Operator. In the July of 2005 WCO agenda was shown a package of suggestions which was created to increase security in trade and protect citizens from terrorist attacks. „Safe Framework of Standard” made a positive feedback from WTO members.¹⁶²

AEO Status is given in the European Union by customs authorities of the membership countries and it is valid on the territory of EU, no matter where it was issued.¹⁶³ The Concept of AEO as reliable entrepreneur for customs administration was introduced in so called Security Amendment, precisely WE council regulation no. 648/2005 of European Parliament and Council, which changed the council regulation (EWG) no. 2913/92 passing Community Customs Code (CCC)¹⁶⁴ Committee Decree no. 1875/2006 of 18th December 2006 which changes the amendment of EWG no. 254/93 passing rules in purpose of executing the council regulation no.

¹⁶⁰ <https://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism>

¹⁶¹ REGULATION (EC) No 648/2005 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 April 2005 amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code

¹⁶² Tadeusz Senda, *Instytucja AEO w polityce celnej UE wobec państw azjatyckich*, Monitor Prawa Celnego i Podatkowego, nr 10 (2016), s. 392-395

¹⁶³ Ibidem

¹⁶⁴ COMMISSION REGULATION (EC) No 1875/2006 of 18 December 2006

2913/92 introducing the Community Customs Code^{165 166}. The AEO System was introduced by regulations of Modernized Customs Code which was then amended in UCC. The AEO Institution issued three kinds of certificates: Customs Simplifications (AEOC), Security and Protection (AEOS) and Customs Simplifications plus Security and Protection (AEOF). European Commission by introducing such institution intends to ensure the harmony on the customs brokerage market and security for international delivery chain.¹⁶⁷

For the AEO status can solicit a entrepreneurs who has a headquarters on a territory of EU and who fulfil demanding criteria and conditions specified by the legal rules, among other things:

- ✓ following the Customs requirements
- ✓ possessing the proper system of managing the stock records
- ✓ and, if there will be necessity, also transport records to enable proper custom clearance.
- ✓ Additional, documented solvency and preserving proper security and protection standards are required¹⁶⁸

Criteria's and requirements which should be fulfilled to gain an AEO Status were specified in Art. 39 UKC and assume:

- a) follow rules of the law – lack of a serious infringement or repeated infringements of customs rules and tax laws, including the lack of a conviction for serious criminal offence, connected with a professional activities of the applicant
- b) proper system of managing – applicant's demonstration, that he has a high level of control of his operations and movement of goods provided by commercial records

¹⁶⁵ Ibidem.

¹⁶⁶ Tadeusz Senda, *Instytucja AEO w polityce celnej UE wobec państw azjatyckich*, „Polityka Celną Ekonomia, Prawo, Praktyka” (red.) Ewa Gwardzińska, Aleksander Werner, Jarosław Wierzbicki, s. 345. SZCZECIN 2014

¹⁶⁷ Ewa Gwardzińska, *Agecnje Celne a system AEO*, Monitor Prawa Celnego i Podatkowego, nr 5 (2011), s. 188-191

¹⁶⁸ Tadeusz Senda, *Instytucja AEO w polityce celnej UE wobec państw azjatyckich*, Monitor Prawa Celnego i Podatkowego, nr 10 (2016), s. 392-395

- management system and – where appropriate – transport records, to enable proper custom clearance
- c) financial solvency – solvency which is deemed to be proven, when the applicant has got a good financial position which allows him to fulfil the obligations, according to the type of economic activity.
 - d) Standards of competence or professional qualifications - in relation to the authorisation referred to in article 38 paragraph 2a) – referees to AEOS - for the fulfilment of the standards of practical competence or professional qualifications directly related to the business; and
 - e) Security and protection standards – in respect to the permission from the art. 38 p. b). - refers to AEOS – proper security and protection standards, which are deemed to be proven, when an applicant will show that he keeps appropriate means which aim is to guarantee safety and protection of the international delivery chain, including sphere of physical integrity and access control, logistics processes, processes connected to conduct with specific kind of goods, in the sphere of staff and identification of a business partner.¹⁶⁹

Before obtaining an AEO certificate, customs authority makes a detailed audit. After a positive decision, each owner of an AEO certificate benefit from series of facilitations, e.g.:

- ✓ priority treatment in customs and border service
- ✓ at the request of the AEO entrepreneur it is possible to conduct a control in other place than the Customs Service
- ✓ also in a coincidence of being selected to the control, it is conducted in a priority way

¹⁶⁹ <http://www.finance.mf.gov.pl/documents/766655/582683f9-5996-413e-b9cd-dcc16aef846b>

- ✓ and bearing in mind, that one has got an AEO status, physical and documentation controls are carried out less frequently.¹⁷⁰

Polish Customs Service intended to introduce series of organisational facilities, like:

- ✓ priority service of customs requests (when both, proposer and his/her representant have got an AEO status)
- ✓ priority service of all kinds of applications
- ✓ special AEO service place (if only an infrastructure using AEO logo allows that)
- ✓ distinct traffic lane (like above, with use of AEO logo)
- ✓ Newsletters for AEO business society (concerning e.g. Changes in regulations, instructions) and at the end, probably something which is the most important thing for businessman:
- ✓ do not request a security submission (if under the regulations it is a facultative protection).¹⁷¹

In the opinion of businessman's, having an AEO certificate is associated to¹⁷²:

- ✓ prestige
- ✓ better position on a market
- ✓ confirmation that the company fulfil the requirements of the international environment
- ✓ guarantee to obtain a permission to use a facilitate procedure
- ✓ opportunity to use various kinds of facilitation
- ✓ positive responsibility
- ✓ conducting interests in an easy way
- ✓ better cooperation with contractors

¹⁷⁰ Tadeusz Senda, *Instytucja AEO w polityce celnej UE wobec państw azjatyckich*, Monitor Prawa Celnego i Podatkowego, nr 10 (2016), s. 392-395

¹⁷¹ Ibidem

¹⁷² Jarosław Marciniak prezentacja Służby Celnej pt. *Instytucja AEO w Polsce i na świecie – dlaczego warto dołączyć do elity*.

Changes in AEO:

The institution of Authorized Economic Operator in light of the Union Customs Code does not go under many changes. The most important one, from the point of view of businessman, is adding new criteria for AEOC applicant – competence standards or professional qualifications. Criteria of obeying the law rules changed because of adding tax regulation rule and lack of conviction for serious criminal offence connected to applicant's business activity. Other AEO criteria's went under some small modifications. This change involves a necessity of renewed assessment of admitted AEO Statuses.¹⁷³ Existing AEO certificates issued before 1st May 2017 have to undergo renewed assessment, which has to be conducted before 1st May 2019, but they are valid till that day. A renewed assessment of existing certificates will be conducted successively, about what the AEO owner will be informed by relevant Customs Chamber.¹⁷⁴ Coming into force, the UKC gives a series of new simplifications, like custom self-service (customs authority upon the motion of AEO may permit the entrepreneur to fix some customs formalities alone) and centralised briefing (it will enable the AEO businessman to make a customs declaration in the customs office applicable for the place of headquarters, when the goods will be shown in the other one).¹⁷⁵

II AEO in global and EU point of view

The assumptions of the European Commission on the main purpose – security – were not relevant. It was because most of the businessmen need Safety and Security plus Customs Simplifications, that is, mixed certificates – AEOF. This was due

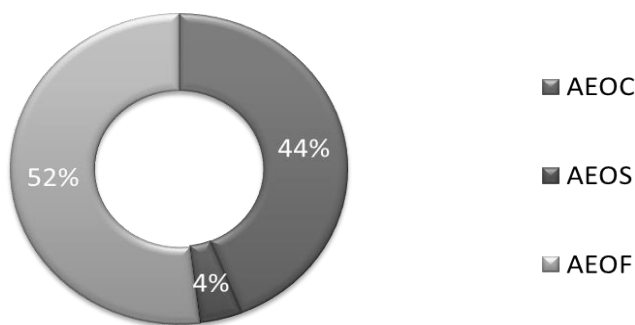
¹⁷³ <http://www.finance.mf.gov.pl/clo/informacje-dla-przedsiębiorcow/aeo-i-uproszczenia-celne/aeo>

¹⁷⁴ <http://www.finance.mf.gov.pl/documents/766655/582683f9-5996-413e-b9cd-dce16aef846b>

¹⁷⁵ <http://www.podatki.abc.com.pl/czytaj/-/artykul/od-1-maja-stosujemy-unijny-kodeks-celny>

to a very simple premise, which is probably motivates every entrepreneur in the international turnover on a large scale – cost of slow customs clearance can be up to 4-5% of the total cost of trade transactions, which is almost the same as the average duty rate on trade in industrial goods.¹⁷⁶ To support this thesis, we can look at the chart below, which clearly shows in which types of certificates are the entrepreneurs interested.

AEO by type 05.2017



According to state from 18th May 2017 over half – 52% - were the mixed certificates, 44% of entrepreneurs determined the role of a Certificate as one to serve the customs simplifications. Only 4%, so 612 from 15030 were the AEOS Certificates. With situation in which no even one businessman want to have only AEOS Certificate one can meet in such countries like Denmark, Cyprus, Croatia and Bulgaria. The biggest amount of the certificates is in Germany (6056) the Netherlands (1519) France (1488) and the least has got Malta (14) probably because of small amount of residents.¹⁷⁷ A difference between amount of AEO Certificates and

¹⁷⁶ Ewa Gwardzińska, *Agencje Celne a system AEO*, Monitor Prawa Celnego i Podatkowego, nr 5 (2011), s. 188-191

¹⁷⁷ http://ec.europa.eu/taxation_customs/general-information-customs/customs-security/authorised-economic-operator-aeo/aeo-legislation-management-instruments_en#guidelines

C-TPAT is about 3600 for American's disadvantage, which place the AEO Certificate on top of this kind of customs solutions. To imagery the difference, let's take only Germany, the Netherlands, France, Italy, Spain and Great Britain under consideration from the whole EU, so a territory where the AEO Certificate is granted – an amount of business entities from these countries would be higher than the amount of business entities authorized by C-TPAT.

Mutual acknowledge ability

It's impossible to forget, that next to the AEO Institution, an European Union and Asia realise together a lot of other important actions and projects which are focused on fighting the Customs crimes. e.g. project "Safe and Secure Trade Line SSTL", also actions concern with counterfeit goods by the Action Plan program, which concerns the cooperation with China and a lot of different, so-called Mutual Custom Operations – customs undervalue, cigarette smuggling, or even rubbish transport, e.g. Snake, JCO Diabolo etc. Through mutual recognition for trade partnership programmes, the governments and organisations which use them (and accept) contribute to increase the security of entire supply chain and improvement and trade facilitation. On the international level, these activities unify conceptions established by the safety package of World Custom Organisation (WCO), which has to protect, but also facilitate trade. From the risk assessment's point of view, businessman who cooperates within the AEO Certificate or Permission or other identical institution would be treated by the customs authorities as more reliable – it would allow to conduct controls in more accurate and effective way and to focus on goods and companies which are burdened with higher risk. The owner of another credibility certificate of authorized operator undergo fewer amount of physical and documentation controls than other entrepreneur who do not belong to this business elite. That's why avoiding duplicating the safety and compatibility controls highly affects on simplification and acceleration of the legal trade – it is profitable. As an example, one can mention a first agreement

between EU and Japan about the AEO mutual esteem, on basis of Art. 21 Agreement between the European Community and Government of Japan.¹⁷⁸ The choice was a result of customs authorities' modern approach and candour for such operations. Agreement with the USA and New Zealand had got an influence on it. An Agreement with Japan came into force on 24th May 2011. Flow of data between EU and Japan was the biggest challenge and problem¹⁷⁹. Currently, bilateral agreements of AEO mutual respect and cooperation within its range, are signed not only with Japan, but also with China (2014), where „Measures on Classified Management of Enterprises”¹⁸⁰ are realised, the USA (2012), Norway (2009) and Switzerland (2009).¹⁸¹

Conclusions

AEO companies (Authorised Economic Operator) which work in the EU since 2009, significantly expand their position in the international commodity trading, not only on the European market, but more often on the international market. Opponents of the AEO considered that it would be an unrealistic enterprise which additionally could be also a kind of gate with obstacles in the sphere of relocating the cargo, without any real benefit. On the first place, on the imperfections of the AEO System the extreme restrictions have got an impact, which only few privilege companies may face. Another downside is a lack of additional tangible benefits, which comes from belonging to the system. To make matters worse, there is still a question of mutual transatlantic accreditation. A complete

¹⁷⁸ DECISION No 1/2010 OF THE JOINT CUSTOMS COOPERATION COMMITTEE of 24 June 2010

¹⁷⁹ Tadeusz Senda, *Instytucja AEO w polityce celnej UE wobec państw azjatyckich*, „Polityka Celna Ekonomia, Prawo, Praktyka” (red.) Ewa Gwardzińska, Aleksander Werner, Jarosław Wierzbicki, s. 347-350. Szczecin 2014.

¹⁸⁰ On May 16th, 2014, the People's Republic of China and the European Union (EU) signed a decision on the mutual recognition of their respective trade partnership programmes, namely the Measures on Classified Management of Enterprises (MCME) Programme in China and the Authorised Economic Operator (AEO) programme in the EU.

¹⁸¹ http://ec.europa.eu/taxation_customs/general-information-customs/customs-security/authorised-economic-operator-aeo/authorised-economic-operator-aeo_en#cooperation

AEO registration and identification is not clear and has got no alliances INCOTERMS supply conditions¹⁸². For EU, both an AEO status and implementation of the Safe Framework of Standard package and concluding agreement of AEO MRA mutual acceptance are key instruments in watching the trade safety, according to the terrorists' attacks.¹⁸³ It is a fact, that the AEO Institution is getting a special rank in the EU's international relations. It is a key issue in the EU's customs policy. As one of the authors wrote: *"EU and its 28 member states is in the world's avant-garde of countries which use modern customs solutions"*¹⁸⁴

Expectations vs. realities

It is impossible not to refer to the idea, which was mainly a reason to create an AEO. As we remember, the key moment was an attack on the WTC in New York in 2001. A first question arises in here – was the weapon smuggled then, or were there just the airplanes? Is it that, the European country with a larger number of Authorized Economic Operators significantly affects security and lower amount of terrorist attacks? It is easy to overthrow on a basis of Germany – a leader in the amount of issued AEO certificates or France, which is on the first place, when one will focus only at the AEOS. Both of these countries struggle with repeated terrorist attacks – of course, goods smuggled to the EU have got only a small impact on it, but it shows, that the AEO Institution is not enough powerful to protect the citizens from the terrorism. Although, one cannot say, that this institution is redundant, because of it, an exchange for the "honest" partners is quicker and easier and services can focus on higher risk transports. However, one cannot to be forget, that institutions such as the AEO or T-CPAT are just small bricks in many pillars of our security umbrella.

Bibliography:

¹⁸² Ewa Gwardzińska, *Agencje Celne a system AEO*, Monitor Prawa Celnego i Podatkowego, nr 5 (2011), s. 188-191

¹⁸³ Tadeusz Senda, *Instytucja AEO w polityce celnej UE wobec państw azjatyckich*, Monitor Prawa Celnego i Podatkowego, nr 10 (2016), s. 392-395

¹⁸⁴ Ibidem

- Ewa Gwardzińska, *Agencje Celne a system AEO*, Monitor Prawa Celnego i Podatkowego, nr 5 (2011)
- Wiesław Czyżowicz, *Customs policy and customs law in contemporary world trade Methodological Approach*, „Polityka Celna Ekonomia, Prawo, Praktyka” (red.) Ewa Gwardzińska, Aleksander Werner, Jarosław Wierzbicki, Szczecin 2014.
- Tadeusz Senda, *Instytucja AEO w polityce celnej UE wobec państw azjatyckich*, Monitor Prawa Celnego i Podatkowego, nr 10 (2016)
- Tadeusz Senda, *Instytucja AEO w polityce celnej UE wobec państw azjatyckich*, „Polityka Celna Ekonomia, Prawo, Praktyka” (red.) Ewa Gwardzińska, Aleksander Werner, Jarosław Wierzbicki, Szczecin 2014

Law sources:

- REGULATION (EC) No 648/2005 OF THE EUROPEAN PARLAMENT AND OF THE COUNCIL of 13 April 2005 amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code
- COMMISSION REGULATION (EC) No 1875/2006 of 18 December 2006
- DECISION No 1/2010 OF THE JOINT CUSTOMS COOPERATION COMMITTEE of 24 June 2010

Internet sources:

- <https://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism> 18.05.2017.
- http://ec.europa.eu/taxation_customs/general-information-customs/customs-security/authorised-economic-operator-aeo/aeo-legislation-management-instruments_en#guidelines 18.05.2017.
- http://ec.europa.eu/taxation_customs/general-information-customs/customs-security/authorised-economic-operator-aeo/authorised-economic-operator-aeo_en#cooperation 19.05.2017.

- <http://www.finanse.mf.gov.pl/clo/informacje-dla-przedsiębiorców/aeo-i-uproszczenia-celne/aeo> 19.05.2017.
- <http://www.finanse.mf.gov.pl/documents/766655/582683f9-5996-413e-b9cd-dcc16aef846b> 20.05.2017.
- <http://www.podatki.abc.com.pl/czytaj/-/artykul/od-1-maja-stosujemy-unijny-kodeks-celny> 20.05.2017.

Others:

- Presentation of Polish Customs Service “*Instytucja AEO w Polsce i na świecie – dlaczego warto dołączyć do elity*”

THE ROLE OF GVCs IN THE CONTEMPORARY CUSTOMS TO BUSINESS DEVELOPMENTS

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Abstract

Global Value Chains (GVCs) are taking swing within the international economy following rapid changes of global trade. This trend creates a whole set of new requirements for the Customs Administrations worldwide. Both Customs and business need to cooperate with each other in order to accelerate trade exchange of goods and ensure safety, transparency and integrity of the supply chain process.

This paper focuses on the importance of trade facilitation for the development and satisfactory performance of GVC. The importance of the Customs in trade facilitation can be observed in terms of saving time, reduced number of required documents and simplified customs procedures that increase productivity, reduce costs and boost trade. Furthermore, the paper presents the effort on changing the legislation and providing reforms for full implementation of the new Trade Facilitation Agreement of the WTO as an important precondition for catching up and becoming an integral part of the GVC system in the case of the Republic of Macedonia.

Keywords

Republic of Macedonia, Customs to business partnership, Customs Administration, Global Value Chains, trade facilitation

Introduction

The process of globalization of production is continuously modifying international trade. This implicates changes for the Customs administrations worldwide. Without proper functioning of the Customs, manufacturing production will have difficulties in being competitive having on mind permanently shifting standards and expectations imposed by Global Value Chains (GVC). In the past century, the production process was often completed within one single national economy, and the final product was sold into another, preferably geographically very close country. Nowadays, the process of production is no longer completed within a single country, since a single leading firm is unlikely to own every single process of the production. On the contrary, the products are made worldwide, assembled from intermediate goods and services sourced from many different countries.¹⁸⁵ More than half of the world's imports are inputs in the process of production (primary goods, parts, components and semi-final products). Another fact is that more than 70% of world imports of services are intermediate services.¹⁸⁶ With other words, today the majority of the world trade in goods takes place within GVC. Trade in intermediate goods and services today counts more than two-thirds of the global trade¹⁸⁷ which creates challenges for the government policies especially in Customs matters area.

A guarantee for a successful GVC participation cannot be provided by any policy or initiative. The profound impact of GVC on the economic policy requires individual assessment of each country. Traditionally, the Customs has been focused on elimination of tariffs and non-tariff barriers to trade. Nowadays, modern Customs is challenged to restructure and adjust border

¹⁸⁵ <http://www.nytimes.com/2012/01/29/opinion/sunday/friedman-made-in-the-world.html>. Accessed on 14.04.2017

¹⁸⁶ K. D. Backer & Sebastien Miroudot, *Mapping Global Value Chains*, OECD, Paris, 2013, p 5

¹⁸⁷ <http://www.imf.org/external/np/pp/eng/2013/082613.pdf>, introduction. Accessed on 13.04.2017

processes in order to ensure fast movement of goods, services, people and capital. That will make a country more competitive and would increase its participation in the GVC. If Customs administration aligns the working methods oriented towards trade facilitation to a larger extent, there will be a greater and more beneficial consistency along the global value chains.¹⁸⁸ Nevertheless, there is no unique solution prescribed for all the countries in the world.

This paper consists of three sections. The first one explains the concept of Global Value Chains and the benefits that countries can achieve from supporting domestic firms to actively participate in them. The second part focuses on the measures that can be undertaken by the Customs towards the trade facilitation process which will enable participation of companies from a certain national economy into GVC. The third part, discusses how the Customs Administration in the Republic of Macedonia supports the process of integration of the economy within the new trading system imposed by the increasing role of GVC by implementation of trade facilitation measures.

1. Global Value Chains

A value chain comprises a full range of activities that firms and workers perform to bring a product from idea to its full realization.¹⁸⁹ Global value chains represent different processes in different parts of the world. Each different process adds value to a final good or a service.¹⁹⁰ The term GVC can vary as an idiom, such as: networks of global suppliers and buyers; specialization; production segmentation; trading in tasks; off shoring; outsourcing

¹⁸⁸ Kikerkova, I. et.al: *Time Release Comparative Study*, Ss, Cyril and Methodius University, Faculty of Economics in Skopje and the Customs Administration of the Republic of Macedonia, Skopje, 2016, p 7

¹⁸⁹ http://www.cggc.duke.edu/pdfs/2011-05-31_GVC_analysis_a_primer.pdf. Accessed on 28.04.2017

¹⁹⁰ <http://www.oecd.org/sti/ind/global-value-chains.htm>. Accessed on 04.05.2017

etc.¹⁹¹ The whole range of activities for production and manufacturing describe the value chain. The GVC takes into account the added value that comes from design, production, marketing, brand, distribution, final consumers support, etc.¹⁹²

The global value chains incorporate actions at local, international, regional and global level. Many supporting activities are needed for the accomplishment of the whole value chain process: transportation (ships, planes, tracks etc.), shipping, forwarding, as well as the functioning of the Customs administration and its ability to implement trade facilitation measures, as an especially important factor. Circulation of trade flows is effectuated throughout a network of affiliates of the transnational companies everywhere around the world, established with the help of foreign direct investments, joint ventures or any kind of collaboration they could establish with their long term partners. The phrase “made-here-sold-there” does not apply anymore and now it’s replaced with “made-everywhere-sold-everywhere”.¹⁹³ Today the production process and trade in general are gradually influenced from the concept of GVC. They have an impact on all kinds of firms, either large (leading firms) or small firms and on countries – developed, economies in transition and developing countries. The impact can be seen in regards to income improvement, employment increment and productivity boost. No matter what kind of production it is (for example car or airplane production), the final goal of the transnational company is to minimize the total costs and maximize profits. The actual contribution of international trade to an economy, the interconnection of national economies within the global value

¹⁹¹ Banga Rashmi, “Global value chains, transparency and commodity-based development” in

Measuring value in global value chains, *Global Commodities Forum 2014*
http://unctad.org/meetings/en/Presentation/SUC_GCF2014_070414_BANGA.pdf

¹⁹² <https://globalvaluechains.org/concept-tools>. Accessed on 28.04.2017

¹⁹³ Richard Baldwin, *Multilateralizing 21st Century Regionalism*, OECD Conference Centre, Paris, 2014, p 5

chains,¹⁹⁴ simply convey the idea, “create more” rather than “trade more”.¹⁹⁵

When there is an affiliation of the TNC, the benefits for the hosting country are expected to be high. If the country attracts foreign direct investments, they bring new technologies, new brands and methods.¹⁹⁶ Thus GVC have a positive impact upon the whole economy. Developing countries which are creating small portion of the chain should not be underestimated. Creating more value in their production processes can be beneficial to the local small and medium sized enterprises. The whole production process would be impossible without the support of small and medium sized enterprises or companies with local origin. Small and medium sized enterprises or companies with local origin can achieve success through providing an essential value in the global chain. Their goal of increasing the share in the global value chains can be achieved by using trade facilitation measures. The capacities that transnational companies are building as local subsidiaries and affiliates in developing countries or countries in transition may help them achieve positive effects for their well-being.¹⁹⁷

However, there are risks and costs associated with participating in the GVC. These risks include getting locked into particular segments, therefore firms and countries can be locked in low value added activities relying on static competitive advantages in terms of low production (often labor) costs without long lasting benefits for learning and development. The pressures to reduce costs can lead to poor environmental, occupational safety and health standards, fluctuating or unstable demand for labor reinforced

¹⁹⁴ https://www.wto.org/english/res_e/statis_e/miwi_e/countryprofiles_e.htm. Accessed on 28.04.2017

¹⁹⁵ http://unctad.org/meetings/en/Presentation/SUC_GCF2014_070414_BANGA.pdf. Accessed on 28.04.2017

¹⁹⁶ https://www.wto.org/english/res_e/booksp_e/aid4tradeglobalvalue13_e.pdf, p 88. Accessed on 28.04.2017

¹⁹⁷ <https://www.oecd.org/trade/OECD-WBG-g20-gvc-report-2015.pdf>, p 20. Accessed on 11.05.2017

along value chains, and a race to the bottom of regulations and taxation policies.¹⁹⁸

Moreover, most of the challenges are related to administrative procedures which commonly occur in the land-locked countries and appear to have higher trade costs than countries that have access to nearby ports or are located close to large and dynamic economic areas. Large share of the observed trade costs that reflect on policies or factors can also be affected by other policy that can influence a country decision to get engaged in a GVC. Examples are border clearance procedures, and the quality of domestic transport and communications infrastructure. World experience confirmed that for obtaining benefits from participating in the GVC system, there are more key points for policymakers in designing trade facilitation programs that they need to implement.¹⁹⁹ Only undertaking traditional measures such as elimination of tariffs is not enough. Trade facilitation as one of these key points supports the process of economic integration through trade, which can, under appropriate circumstances, lead to rising of national incomes, acceleration of productivity growth, and poverty reduction.²⁰⁰

2. Global Value Chains and their influence upon the changing multilateral trading system

The immense impact of globalization observed from supply chains perspective demands setting down new rules and better conditions for trade facilitation. The role of the Customs administration is significant in this area.²⁰¹ When goods (intermediate inputs, parts etc.) are moving through the GVC, they cross borders multiple times. Goods traded multiple times along the value chain are subject on tariff barriers, transportation costs and

¹⁹⁸ https://www.oecd.org/tad/gvc_report_g20_july_2014.pdf. Accessed on 10.05.2017

¹⁹⁹

http://www.ictsd.org/sites/default/files/research/trade_facilitation_and_global_value_chains_0.pdf. Accessed on 08.05.2017

²⁰⁰ http://sasec.asia/uploads/publications/RSCAS_2013_49.pdf. Accessed on 01.05.2017

²⁰¹ <http://www.oecd.org/tad/trade-policy-implications-gvc.pdf>. Accessed on 02.05.2017

costs associated with border procedures. The cumulative effects can significantly raise costs and prices by the time finished goods reach final consumers at all stages within a global value chain.

Additional costs of lengthy customs procedures disable companies to engage in *just-in-time* production or to react quickly to demand shifts when components travel through multiple countries. Just-In-Time (JIT) is a very simple idea but one that is essential in the modern supply chain management. The basic premise of JIT is to have just the right amount of inventory, whether raw materials or finished goods, available to meet the needs of a production process and the demands of the final product consumers. In an era of outsourcing and just-in-time production techniques, efficient cargo infrastructure, fast transport of inputs and finished goods through Customs controls and simplified transactions procedures are a necessity. A delay can disrupt the whole transport chain and may result in losing profits for all concerned parties.²⁰²

Businesses look for ways of having their goods moved quickly through border crossings at reduced costs and with maximum profits. Customs administrations are required to enforce their responsibilities and increase security without making any compromise while retaining their efficiency and speed as well as making minimum physical intervention. In order to achieve this, both parties - the Customs administrations and the business partners need to collaborate with each other and face the dynamically changing environment together.

The framework of the Customs to business partnership was reviewed in 1999 with the Revised Kyoto Convention and after a decade the Framework of Standards to Secure and Facilitate Global Trade (the SAFE Framework) was adopted in 2007. The series of events resulted in creating the policy document – Customs in the 21st Century in 2008.²⁰³

²⁰² http://www.kommers.se/upload/SWEPRO/SWEPRO_English/Trade_Facilitation_-_Impact_and_Potential_Gains.pdf, Accessed on 12.05.2017

²⁰³ <http://www.wcoomd.org/~media/wco/public/global/pdf/media/wco-news->

In September 2014, 95 countries signed the Revised Kyoto Convention, out of a total of 178 World Customs Organization (WCO) member-countries. The Revised Kyoto Convention defined the modern challenges for the Customs, with an accent on trade simplification and responsibilities that derive thereof.²⁰⁴ The Revised Kyoto Convention aims at facilitating trade by harmonizing and simplifying Customs procedures and practices. The Convention provides standards and recommended practices for modern Customs procedures and techniques. After years of discussions, the WCO brought the idea of making partnership between the business and the Customs, whereby customs operators will work on behalf of the Customs as a reliable and trustworthy synergy onward and backwards with the businesses. The revision was specialized with the strongest attitude related with the aspect mentioned above, a detailed guidance of the authorized economic operator (AEO) status as an integrated part of their long term strategy. The AEO basic goal to secure trade and trade facilitation may be achieved only by adopting integrated supply chain management and control.²⁰⁵ In the SAFE framework AEO is defined as a party involved in the international movement of goods in any function that has been approved by or on behalf of a national Customs administration as complying with the WCO or an equivalent supply chain security. When all of the measures are implemented together, they result in the wanted effect, rather than being enforced separately. Therefore, incorporation of customs and business partnership as an integral part of modern Customs will

[magazines/wco_news_57.pdf](#). Accessed on 30.04.2017

²⁰⁴ WCO, *Revised Kyoto Convention*, WCO, Brussels, 2006. At the convention were answered many concerning questions and discussed present trends that challenge the maximum efficiency of the collaboration between the customs and the businesses. The highlighted subjects have been “standardization and simplification of goods declaration and supporting documents”, “maximum use of IT”, “minimum necessary Customs control to ensure compliance with regulations” and “simplified procedures for authorized persons”.

²⁰⁵ <http://www.str.ulg.ac.be/wp-content/uploads/2016/10/Authorized-Economic-Operators-Costs-and-Benefits-of-Certified-Supply-Chain-Safety-and-Security.pdf>. Accessed on 30.04.2017

indicate that building and sustaining partnerships has gone beyond the operational or technical aspects of customs administration. Effective external cooperation and partnership with stakeholders (mainly the business sector) is a symbol of the modern Customs.

The concept of partnership between Customs administration and businesses encompasses many more factors than just border clearance procedures. To enable firms from and in developing countries to become more integrated in the international trade i.e. take participation in GVC, policymakers must be aware of the general business environment which can encourage or discourage the integration of firms into GVC, and ultimately, the motivation to expand production or to internationalize processes originates from within the firms. It is necessary to create a favorable environment by addressing policy issues, infrastructures and quality of services in a holistic and integrated manner.²⁰⁶ In terms to achieve this, producers must rely on coordinated movements of goods and services across a number of countries.²⁰⁷ Governments can help businesses to meet these challenges under the umbrella of “trade facilitation.”²⁰⁸ As in the Asia-Pacific Economic Cooperation definition, trade facilitation can be understood as the set of policies designed to reduce trade costs. As such, trade facilitation is the lifeblood of GVC. At the WTO, trade facilitation refers primarily to the reform of border management processes so as to make import and export transactions more transparent, predictable and efficient.

The trade facilitation agreement (TFA) was introduced in December 2013. Thus it became the biggest global trade pact as an outcome of the “Bali Package” at the 2013 Ministerial Conference in Bali and it was the first multilateral trade agreement concluded since the establishment of the WTO in 1995. The TFA entered into

²⁰⁶ Ibid. Accessed on 30.04.2017

²⁰⁷ <https://www.brookings.edu/research/supporting-the-internet-as-a-platform-for-international-trade/>. Accessed on 15.05.201

²⁰⁸ http://sasec.asia/uploads/publications/RSCAS_2013_49.pdf, p 1. Accessed on 01.05.2017

force in February 2017 with ratification of two-thirds of the WTO membership.²⁰⁹

The TFA allows WTO members to customize implementation of the agreement according to their capacities and technical assistance needs. This means that for the first time in the WTO history countries according to their own capacity are allowed to complete the requirements for implementing the agreement. Implementation is divided into three categories: Category A - provisions that will be applied unconditionally upon entry into force of the TFA (or after one year in case of a LDC); Category B - provisions that will apply after a transition period that will be determined by each country itself; and Category C - provisions that will apply after an indicative transition period and acquisition of the necessary implementation capacity through assistance and capacity-building.²¹⁰

A set of trade facilitation indicators from the Organization for Economic Co-operation and Development (OECD) shows that simplifying administrative procedures can reduce trade costs by 10% in OECD countries.²¹¹ The most effective steps are simplification of procedures through single windows, pre-arrival processing and advance rulings on goods classification and applicable duties. Altogether, the possibility to reduce trade costs is around 15% for low-income countries, 16% for lower-middle-income countries, 13% for upper-middle-income countries and 10% in OECD countries.²¹²

Implementing trade facilitation reform programs certainly has a cost, and facilitation measures need to be prioritized in order to maximize benefits. Every extra day required for preparing goods

²⁰⁹ https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm. Accessed on 11.05.2017

²¹⁰ https://www.wto.org/english/thewto_e/minist_e/mc9_e/desci36_e.htm. Accessed on 15.05.2017

²¹¹ <https://www.oecd.org/sti/ind/interconnected-economies-GVCs-synthesis.pdf>. Accessed on 09.05.2017

²¹² https://www.oecd.org/tad/gvc_report_g20_july_2014.pdf, p 45. Accessed on 10.05.2017

for import or export decreases trade by around 4.5 percent.²¹³ However, there are many opportunities for gaining benefits. Estimates show that full implementation of the TFA could reduce trade costs by an average of 14.3% and boost global trade by up to 1 trillion American dollars per year, with the biggest gains to accumulate the poorest countries. The time needed to import goods would be reduced by over a day and a half, and to export goods by almost two days.²¹⁴ The OECD estimates that developing countries will achieve 2/3 of the total anticipated gains from the TFA.

3. Implementing trade facilitation in the Republic of Macedonia and keeping pace with GVCs

The Republic of Macedonia is a small landlocked country. Thus it is challenged to become competitive in a world where GVC dominate the world trade. Experience around the world confirmed that for obtaining benefits from participating in the GVC system, there are more key points for policymakers in designing trade facilitation programs that they need to implement.²¹⁵ Trade facilitation as one of these key points, supports the process of economic integration through trade, which can, under appropriate circumstances, lead to rising national incomes, accelerate productivity growth and poverty reduction.²¹⁶ The benefits are presented in different analyses, as for example in the World Bank's Doing Business database and the World's Bank Logistic Performance Indicators by using different measures of trade facilitation.²¹⁷

²¹³ http://www.keepeek.com/Digital-Asset-Management/oecd/trade/overcoming-border-bottlenecks_9789264056954-en#.WRTYKWiGPIU#page9. Accessed on 28.04.2017

²¹⁴ https://www.wto.org/english/res_e/booksp_e/wtr15-2d_e.pdf. Accessed on 28.04.2017

²¹⁵

http://www.ictsd.org/sites/default/files/research/trade_facilitation_and_global_value_chains_0.pdf. Accessed on 08.05.2017

²¹⁶ http://sasec.asia/uploads/publications/RSCAS_2013_49.pdf. Accessed on 01.05.2017

²¹⁷ Ibid. Accessed on 01.05.2017

On the fifth meeting of trade ministers of landlocked developing countries in 2016 in Geneva, main subject regarding the Republic of Macedonia was how can small and land locked developing countries improve their participation in GVCs by reducing trade costs. Moreover, it was discussed what had been done so far and what more was there on the agenda related to the trade policy.

Implementing the TFA increases the opportunity for developing countries to integrate into GVC. GVC have played an important role in expansion of trade in a large number of developing countries and this suggests that the circle of beneficiary countries will continue to expand in the future. Republic of Macedonia has ratified the TFA on 19th of October. Since then the trade policy has been in the focus of the country and takes an important role as a competitive asset.²¹⁸ Regarding the opportunity provided for developing and least-developed countries to set their own timetables for implementing the TFA depending on their capacities to do so, the Republic of Macedonia will apply the TFA provisions designated as “Category A” commitments.²¹⁹ Non-compliant performance is only left at the enquiry points and the pre-arrival processing leaving 2.5% to achieve complete compliance.²²⁰ Regarding this, the Republic of Macedonia has a great opportunity to proactively implement the trade facilitation measures and aim towards progressive GVC participation. In terms of “technical barriers to trade” and implementation of “trade facilitation measures” some key points were highlighted, such as:

- *Number of documents in terms of documents required for Customs clearance* – In Table 1 is given a detailed summary of the time and costs related with the logistical process of exporting and importing of goods in the Republic of

²¹⁸ <http://reports.weforum.org/global-enabling-trade-report-2016/economy-profiles/#economy=MKD>. Accessed on 28.04.2017

²¹⁹ https://www.wto.org/english/news_e/news17_e/fac_31jan17_e.htm. Accessed on 12.05.2017

²²⁰ <https://www.tfadatabase.org/members/the-former-yugoslav-republic-of-macedonia>. Accessed on 13.05.2017

Macedonia. This measurement conducted with the help of *Doing Business Indicators* measures the time and costs (excluding tariffs) related to three sets of procedures—documentary compliance, border compliance and domestic transport within the overall process of exporting or importing a shipment of goods. The Republic of Macedonia kept the rank gained in 2015 - the 27th place. Considering the fact that in 2007 the country was ranked on the 127th position, achieving and maintaining this high position is a success. Particularly important is that Macedonia is a land-locked country, and this rank is due to the realization of several projects and measures by the Customs Administration of the Republic of Macedonia and implementation of trade and transport facilitation measures.²²¹

Table 1. Measuring Business Regulations in the Republic of Macedonia

Economy	Time to Export (hours)		Cost to export (USD)		Time to Import (hours)		Cost to Import (USD)	
	Border compliance	Document. compliance	Border compliance	Document. compliance	Border compliance	Document. compliance	Border compliance	Documentary compliance
MKD	9	2	103	45	8	3	150	50

Source <http://www.doingbusiness.org/data/exploretopics/trading-across-borders>

At the meeting, the World Bank's "Doing Business" indicators were mentioned. As to compare, the trend of the Republic of Macedonia was correlated with the South-East European (SEE) economies - "SEE economies are making permanent progress from 2009 to 2015 in reduction of the number of required documents for import/export, as well in reducing of the time and costs of import/export". The

²²¹ Customs Administration Republic of Macedonia *Annual report*, Customs Administration Republic of Macedonia, Ministry of Finance, Skopje, 2016, p.4

Republic of Macedonia was highlighted as the best performer regarding this indicator, having on mind the EU average Customs procedures/release of goods at border stations.

- *Simplified Customs procedures* - In 2014 the Customs Administration of the Republic of Macedonia published the AEO Manual, which meant that from that moment on this program comes into force. This program is in accordance with the WCO SAFE framework by granting various benefits for the AEO and promoting facilitation and safety of trade.²²²
- *Establishment of the electronic One-Stop-Shop system for issuing import and export licenses – EXIM* - The establishment of the EXIM represents a substantial progress in customs operation in terms of costs savings through reducing the waiting time, faster customs clearance and release of the goods, predictable application and understanding of legal provisions, more effective and efficient resource allocation and increased transparency of the trading operation, overall eased movement of goods.²²³
- *Costs usually reflected as transport or freight costs, availability and quality of transport infrastructure and services* - The transportation connectivity has been represented as a challenge and as a main future focus in the trade policy of the Republic of Macedonia. The potential benefit of reducing costs of connectivity should connect the Republic of Macedonia in the region and save by up to 1 percent combined to GDP. In order to achieve this, high quality transport infrastructure system is needed which will give support to the free movement of goods and increase competitiveness of the country.

²²² Katerina Tosevska-Trpcevska, “Effects of the implementation of single window and simplified customs procedures in the Republic of Macedonia”, World Customs Journal, Volume 8, Number 1, International Network of Customs Universities, Canberra, 2014, p 234

²²³ Ibid, p 238

- *New Computerized Transit System (NCTS)* – The NCTS is a system that uses advanced technologies and electronic data in order to exchange electronic messages between economic operators and customs offices related to transit procedures. The aim of this system is to strengthen the operational capacities of CARM in accordance to EU standards on customs transit control and to achieve full interconnectivity with the EU systems.²²⁴ As an advantage the NCTS offers quicker control and release of goods leading to earlier discharge of the transit procedure; reduced time and costs associated with the paper based procedures for declaring goods (in a large paperless environment for transit) and finally less time waiting at Customs.²²⁵
- *The risk management system (RMS) and customs controls* – The RMS represents a change in the traditional approach of import customs clearance procedures. Instead of checking every single delivery that passes through the Customs controls, new modernized system was introduced by the CARM.²²⁶ Customs replaced its gatekeeper's role, with the new modernized, complex and very sophisticated risk management approach. As for example is that the approach towards economic operators is to look at them as clients, rather than entities which need to be regulated. The main characteristic of customs risk management approach is determining which persons, goods and means of transport should be examined and to what extent. High-risk persons, goods and means of transport are subject of high-level controls and interventions (the red channel); despite of low-risk ones that receive high-level trade facilitation (green

²²⁴ <http://www.customs.gov.mk/index.php/en/e-carina-2/ncts-mk>. Accessed on 13.05.2017

²²⁵ <http://ncts-traders.customs.gov.mk:8787/apex/f?p=110009:1:6209488331422900::NO>. Accessed on 13.05.2017

²²⁶ Customs Administration of the Republic of Macedonia, Annual report of the Customs Administration 2015, Skopje, p. 24

channel) which means no control at all whereas the goods can be released immediately without any examination. The yellow channel implies on documentary control. The blue channel applies that a post clearance control will be executed.²²⁷ CARM has improved its RMS as a facilitation tool for legal trade while having control mechanism towards legal issues. The benefits that occurred in the Macedonian Customs administration towards trade facilitation with implementing RMS can be seen in terms of rise in the number of processed customs declarations, the number of processed declarations by employee and the number of detected customs frauds, as well as reduction in time delays.²²⁸

Another important step concluded by the Republic of Macedonia within its open trade policy for supporting the involvement for the companies into GVC is eliminating non-tariff barriers and other procedures. According to the last Doing Business report, the Republic of Macedonia reduced the time for exporting and importing by rationalizing the customs fee schedule and license structure, improving the risk-based inspection system, simplifying customs procedures and eliminating documents previously required.²²⁹

Conclusion

²²⁷https://www.researchgate.net/profile/Aleksandar_Trajkov2/publication/257716160_Risk_Management_and_Customs_Performance_Improvements_The_Case_of_the_Republic_of_Macedonia/links/564f161e08aefe619b119d94/Risk-Management-and-Customs-Performance-Improvements-The-Case-of-the-Republic-of-Macedonia.pdf. Accessed on 13.05.2017

²²⁸https://www.researchgate.net/profile/Aleksandar_Trajkov2/publication/257716160_Risk_Management_and_Customs_Performance_Improvements_The_Case_of_the_Republic_of_Macedonia/links/564f161e08aefe619b119d94/Risk-Management-and-Customs-Performance-Improvements-The-Case-of-the-Republic-of-Macedonia.pdf. Accessed on 13.05.2017

²²⁹<http://www.doingbusiness.org/data/exploretopics/trading-across-borders>. Accessed on 12.05.2017

Global Value Chains are a result of the international fragmentation of production and services. GVCs are spreading rapidly, and almost all the economies in the world are involved in their functioning in a certain way. This has challenged the conventional perceptions of trade and the policy of customs administrations around the world. In the 21st century the relation between customs and businesses has changed and plays an important role for effective and efficient customs administrations. Still the key challenge remains to be the contribution to implement facilitating measures which would be beneficial to both customs and businesses.

Trade facilitation can enhance GVC operations and can potentially bring benefits to the participants. How simple, fast and easy administrative procedures can be in one country, depends on the work of the Customs administration and trade policies design. The following measures are of great importance for increasing the benefits of participation in GVCs:

First, the ability of companies and economies get integrated in the GVC system the efficiency of border and customs procedures are essential;

Second, improvement of logistics performance and infrastructure quality has immense impact on transaction costs by minimization of time for transportation among affiliations within the GVC.

Third, just-in-time is an important element to eliminate all forms in the production process and supply chain that does not add value. Supported by trade facilitation measures, the just-in-time principle would open further opportunities for companies from different national economies to take part in the GVC system;

Forth, the benefits of TFA to all members of WTO are expected to be significantly higher than the costs for its implementation. Nowadays taking part in GVC is unprecedented fact, a must do policy if the countries and companies want to be competitive on the global market. GVC are not attracted in an

environment with weak trade facilitation performance because it disables the movement of goods or intermediary parts and components across borders quickly, reliably, and at a reasonable cost. The key way in which countries can engage within GVC is through full implementation of trade facilitation measures;

Finally, better trade facilitation is a key step in improving countries' performance and mitigating the disadvantages of a high-cost economy. A small but integral part of this strategy is implementing the TFA to streamline trade, imply minimum delays on the customs borders thus reducing the costs of conducting business. This strategy can be of great importance to the Customs Administration of the Republic of Macedonia along with the development of the AEO program, maintaining the EXIM system, and the NCTS. Therefore safe grounds toward collaborations with the EU Customs Administrations will be provided and new opportunities for consuming the benefits of GVCs will arise.

References:

1. Banga Rashmi, *Global value chains, transparency and commodity-based development* in *Measuring value in global value chains*, *Global Commodities Forum 2014*, OECD, 2014
2. Ben, Shepherd, *Trade Facilitation and Global Value Chains: Opportunities For Sustainable Development*, International Centre for Trade and Sustainable Development (ICTSD) International Environment House 2, Geneva, 2016
3. Bernard M. Hoekman, Ben Shepherd, *Who Profits From Trade Facilitation Initiatives?*, European University Institute, Robert Schuman Centre for Advanced Studies, Global Governance Program, 2013
4. Customs Administration of the Republic of Macedonia, *Annual report of the Customs Administration in 2016*, Ministry of Finance of the Republic of Macedonia, Skopje, 2017

5. Deborah K. Elms, Patrick Low, *Global Value Chains in a Changing World*, WTO, Geneva, 2013
6. Fifth meeting of trade ministers of landlocked developing countries, *Harnessing the trade potential of the landlock developing countries (LLDCs) to implement the Vienna programme of action for LLDCs and 2030 agenda for sustainable development*, WTO, Geneva, 2016
7. Gary Gereffi & Karina Fernandez-Stark, *Global Value Chain Analysis: A primer*, Center on Globalisation, Governance & Competitiveness (CGGC) Duke University, Durham, May 2011
8. Gary Gereffi, O. Cattaneo, S. Miroudot, D. Taglioni, *Joining, Upgrading and Being Competitive in Global Value Chains*, The World Bank Policy Research Working Paper 6406, 2013
9. Irena Kikerkova, Katerina Tosevska-Trpcevska, Dimce Adzioski, Elena Makrevska-Disovska, Marijana Sekulovska, *Time Release Comparative Study*, ss. Cyril and Methodius University, Faculty of Economics-Skopje, 2016
10. Jovanka Biljana, Aleksandar Trajkov, *Risk Management and Customs Performance Improvements: The Case of the Republic of Macedonia*, Elsevier Ltd. Selection and/or peer-review under responsibility of Faculty of Tourism and Hospitality, Ohrid, 2012
11. Katerina Tosevska-Trpcevska, *Trade Facilitation in the Republic of Macedonia*, Selectorm Skopje, 2015
12. Lena Johansson, *Global Value Chains and Developing Countries*, National Board of Trade, Stockholm, 2013
13. OECD, the World Bank Group, *Inclusive Global Value Chains. Policy Options in Trade and Complementary Areas for GVC Integration by Small and Medium Enterprises and Low-Income Developing Countries*. OECD, Turkey, 2015
14. OECD, *Interconnected Economies: Benefiting from Global Value Chains – Synthesis Report*, OECD, Paris, 2013

15. OECD, WTO, the World Bank Group, *Global Value Chains: Challenges, Opportunities, and Implications for Policy*, OECD, 2014
16. Rosa Rosanelli, *Authorized Economic Operators: Costs and Benefits of Certified Supply Chain, Safety and Security*, Strategic Trade Review, 2016

Web sites:

www.brookings.edu
www.customs.gov.mk
www.doingbusiness.org
www.ec.europa.eu
www.globalvaluechains.org
www.goaeo.com
www.ictsd.org
www.imf.org
www.keepek.com
www.nytimes.com
www.oecd.org
www.tfadatabase.org
www.unctad.org
www.weforum.org
www.wto.org

MECHANISM OF ATTRACTING INVESTMENTS FOR THE DEVELOPMENT OF CUSTOMS INFRASTRUCTURE

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Abstract

This article has been examined the attraction of investments in the customs infrastructure of Ukraine. Particular attention has been paid to the development of the International Transport Corridors and the "One Belt, One Road" initiative.

The restructuring of the structures of customs administrations at the end of the 20th and the beginning of the 21st century is caused by radical changes in the socioeconomic systems of countries as a whole and associates with deepening the processes of Globalization, new economic relations between subjects of foreign economic activity, and the development of knowledge, based on innovative technologies, not only in the sphere of digitalization of the working processes. Under the new conditions, it is possible to achieve high and sustained rates of development of the country's economy on the basis of improving the system of investment and innovative provision of customs infrastructure that would be correspond to new realities. Modern economic, social, technical, technological, innovative transformations have been forming a new paradigm of the era of infrastructure development and its investment. At the same time, the improvement of the objects of the customs infrastructure according to the rapid changes in general is of decisive importance.

It is necessary pint out that, creating a new, improving and modifying the existing infrastructure is impossible without enhance the investment processes of infrastructure development, finding

sources of investment by investing them into real projects and efficient development.

The problems of property and investment affected in the work are devoted to the works of N. Navrotskaya, A. Ivashina, B Alekhin, L Valinurova, A Zritskiy, A Yegorov, V Serov, S Glaz'yev, D L'vov, B Miller, A. Porshnev, A. Radygin, 3. Rumyantseva etc.; and well-known works of foreign scientists, among them the Nobel Prize Winners D. Gelbraith, M. Friedman, N. Markovitsa and others.

In our opinion, in the works of these scientists and in the current practice, some of the problems outlined are solved to some extent. The main ideas are correlated with the works of these scientists. However, researching of that reveal content issues, the dynamics of the development of modern economic systems, theoretical and methodological aspects of investment support for the development of innovation economy infrastructure are open.

By its own geographical location, Ukraine is in a favorable position: being on the transport route connecting the European part of the continent with Asia in the land area. Therefore, the development of international transport corridors passing through Ukraine in the current conditions of the globalization of the world's economy and the increase in the volume of commodity exchange between countries and regions becomes a priority direction of the state's transport strategy aimed at accelerating commodity circulation, reducing specific transport costs, and eliminating regional disparities in the transport system. It will provide realization of Ukraine's potential as a transit country, increase of competitiveness of domestic carriers, growth of volumes and diversification of export of transport services.

International Transport Corridor (ITC) - it is a complex of land and sea transport highways with appropriate infrastructure in a particular direction, including auxiliary facilities, access roads, border crossings, points of services, cargo and passenger terminals, equipment for managing traffic, organizational and technical measures, legislative and normative acts, that provide goods and

passengers at a level corresponding to the requirements of the European Community[1].

At the same time, the formation and effective functioning of the ITC contributes to resolving the urgent problems not only in the transport sphere. For example, In the US to overcome the negative trends in the economy F.D. Roosevelt proposed a "new course" for its intensification in the 30s of the 20th century through the outstripping development of key infrastructure sectors - energetics and transports.

The improvement of the Ukrainian transport system should be directly aimed at realizing of social, economic and geopolitical priorities of the state. The macroeconomic effects of ITC activity are connected with the growth of incomes of the state and other investors from increasing the volumes of transit traffic and increasing the use of the production potential of the transport infrastructure of the regions of Ukraine, development of interregional connection; with an increase in employment of the country's population in related sectors of the economy, growth of social stability, general improvement of the social and economic situation.

The particular importance for the development of the ITC in Ukraine can be by increasing of the efficiency of the functioning of the customs infrastructure on the basis of improving its information and organizational factors through public investment and attracting investment from the international community.

The introduction of electronic means of information exchange also allows obtaining regular contacts with customs and other organizations of foreign countries - partners in the operation of the ITC. The expansion of the international range of objects of comparative analysis of foreign trade statistics will help to identify cases of inauthentic declaring of goods. At the same time, in order to ensure international comparability of the data obtained, it is necessary to improve the Ukrainian technologies for the formation of an information database of customs statistics on the basis of international standards. Due to international standards, the

information and analytical support of law enforcement, including operational-search activities of customs authorities, its management and regulatory regulation will improve qualitatively. The functioning of such an information network gives an additional impetus to the adjacent border territories for intensive economic exchange in the information and telecommunications industries, since it allows, even with a noticeable information stratification, to overcome information asymmetry in a shorter time and with greater efficiency than between more remote "central" regions. The effectiveness of the development of the economic systems of the border regions is largely ensured through information exchange between economic entities entering FEA relations and depends on the characteristics and conditions of the distribution of information flows in the information space of the border area. In the process of foreign economic exchange, there is an increase in information due to cross-interactions of the information factor of participants in foreign trade activities, which is a consequence of the irreversible nature of the increase in information as a condition and result of the evolution of economic systems at all.

The problem of attracting investments in the customs structure is one of the most important and complex. A reasonable capital investment strategy can facilitate structural reorganization of the economy by reducing the time spent on checking documentation and increasing the capacity of checkpoints at the state border.

Investments in the development of the customs infrastructure can consist of combined sources: budgets, funds of extra-budgetary funds, borrowed and private funds of private operators. The mechanism for ensuring the attraction of private investment is formed by a number of instruments (table 1):

- State investment risk guarantees;
- Direct budgetary, extrabudgetary financial resources;
- Own and borrowed financial resources of private investors;
- International investment in customs infrastructure.

Table 1

The Mechanism For Ensuring the Attraction of Private Investment

Sources of Attraction	Mechanism for Ensuring
GOVERNMENT SOURCES	
State budget funds	Guarantees, Subsidizing interest rates on targeted loans. Direct investments
Means of off-budget funds	Direct investments
PRIVATE SOURCES	
Own means of private Investors	Direct investments
Credit resources	Bank loans. Bonds and bills.

The implementation of a long-term investment program for a private investor is important to have a long-term tariff perspective and the possibility of concluding long-term contracts with resource suppliers with a fixed price formula. The borrowed investment funds will inevitably have to be covered from own sources. And own means are fixed capital and profit. Repayment of payment of bank interest on borrowed capital provides budgetary subsidies for interest rates on targeted investment loans and amounts of funds included in investor services to repay interest on loans. With a low profitability of business at checkpoints, repayment of the principal amount of the loan itself can be provided only through budgetary guarantees and / or repurchase of fixed assets upon termination of the lease. Not understanding the mechanism of repayment of borrowed funds, no bank will not give you money for a loan. To lay their own fixed assets for investment loans for public, infrastructure projects will not risk any private person.

The payback period of the project is expedient to be determined on the basis of the forecasted level of commodity prices, analysis of the current share of expenditures of citizens from

their income level and the forecast of a change in this share for the future, inflation forecast, anticipated economic growth. At a time when the country needs massive investments in virtually every moral renewal of fixed capital ITC infrastructure, it is advisable to weaken the policy of attracting investments in the state sector to make the initiative of private capital. To do this, we could use the method of investor regulation, already tested in the conditions of market economy, based on the return on invested capital (ROIC).

Coefficient of return on invested capital (Return On Invested Capital, ROIC).

This ratio characterizes the return on capital drawn from external sources. In general, the formula for calculating the indicator is as follows:

$$ROIC = \frac{NOPLAT}{Invested\ capital} * 100\%$$

where: NOPLAT - Net operating profit, net of adjusted taxes;

Invested capital is a capital, which invested in basic activity;

In general, invested capital can be calculated as the amount of working capital in the core business, net fixed assets and net other assets (net of interest-free liabilities). Another option of calculation - invested means the amount of equity and long-term liabilities. Details of determining the amount of invested capital will depend on the specifics of accounting. The main condition that must be achieved at the same time is that the analysis must take into account the one and only capital that is used to generate the profit included in the calculation.

The regulated base of invested capital is established before the beginning of the long-term period of regulation for each year of the long-term regulatory period and is based on an analysis of the investor's controlled and uncontrolled expenses, taking into account the agreed and approved investment program. Controllable costs are expenses, the amount of which depends on the effectiveness of the activity of the regulated organization, uncontrolled expenses are independent of the effectiveness of the organization. The period of

return of the initial and new invested capital is established and the return of invested capital is calculated.

During the period of building the market model of the economy, we have been convinced that in the conditions of Ukraine it is very bad when the business does not understand the intentions of the authorities, and the authorities do not understand the mood of business. Therefore, it is advisable to strengthen public-private partnership and restore the institution of socio-economic forecasting of the development of territories on the basis of information exchange and coordination of power and business plans.

Investment projects in the customs infrastructure and infrastructure of the ITC should be tied to the approved programs for integrated development of the territory. In this regard, it is necessary to establish the procedure for considering and approving programs for the integrated development of territories and border crossing points. The choice of the financing scheme for the implementation of investment decisions is expedient to be carried out on the basis of the Program for the integrated development of the territory and to link it with the solvent demand of consumers, the state of regional and municipal budgets and other macroeconomic factors.

The country has not yet fully manifested the conditions for the emergence of many growth centers that ensure a uniform rate of development of living conditions in the territories. A bad factor for Ukraine is the conduct of the Antiterrorist operation in the territory of Donetsk and Lugansk regions, since most of the money that could be allocated for the development of infrastructure is spent on solving this issue. Therefore, it is necessary to clearly define the zones of priority, strategic, state interests for targeted budget reinforcement of the implementation of specifically designed investment programs for improving the living conditions and people's activities there, given this factor.

In addition to attracting private investment from entities within the country, the infrastructure of customs authorities also needs to be invested by the international community.

The most active investors in the public sector of the Ukrainian economy are the countries of the European Union, the International Monetary Fund and the United States.

When analyzing private foreign investment, we can observe this trend: according to the statistics provided below, we can see that the level of foreign direct investment has been decreasing since April 2014 and fluctuates at \$ 45 billions [2].



Considering the above schedule, we see an increase in the flow of direct investment into the economy of Ukraine, but, unfortunately, in the long term, investment can not reach the level of April 2014[3].

Analyzing investment activity around the world, it is necessary to pay special attention to the investment policy of the Chinese People's Republic.

The proposal was first put forward by the Chairman of the People's Republic of China Xi Jinping during his visits to the countries of Central Asia and to Indonesia in the fall of 2013[4]. The essence of this Chinese initiative is to find, formulate and promote a new model of international cooperation and development by strengthening existing regional bilateral and multilateral mechanisms and structures of interaction involving China. Based

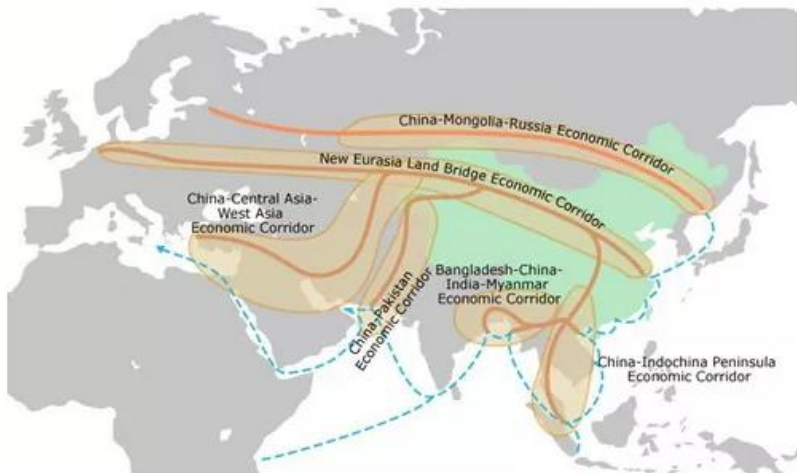
on the continuation and development of the spirit of the ancient Silk Road, "One Belt, One Road" calls for the development of new mechanisms for regional economic partnership, stimulation of economic prosperity of the countries involved, strengthening of cultural exchanges and links in all areas between different civilizations, as well as promoting peace and sustainable development [6]. According to official Chinese data, "Belt and Road" covers most of Eurasia, connecting developing countries, including "new economies", and developed countries. The territory of the megaproject contains rich resources of resources, 63% of the world's population live, and the estimated economic scale is 21 trillion US dollars.

Chinese investments are also huge. Only two examples. About \$ 12.5 billion China invests in the creation of a transport hub based on the port of Gwadar in Pakistan and linking this port with rail and road routes with northeast China.

Beijing needs "shares" in regional political projects, participation in solving international security problems and leverage on the political situation in the partner countries. Without guarantees of consistency of the policy of the latter, China will not risk billions of dollars.

Already now, throughout the space "One Belt, One Road", China creates new or strengthens existing mechanisms of political dialogue: with ASEAN, with Russia, Turkey, Kazakhstan, Mongolia, Vietnam, Hungary and others [7].

The Belt and Road Initiative: Six Economic Corridors Spanning Asia, Europe and Africa



Map of the supposed development of transport and economic ways [7]

An urgent problem for Ukraine is the inadequacy of financial resources for the construction of the state border along its entire length, the technical equipping of border road, railway and other checkpoints, as well as the logistics of border customs and customs posts in accordance with modern requirements. The underdevelopment or lack of a border infrastructure is also a serious problem. In a number of cases (for example, on the border with Belarus, Poland, Hungary), the border regions are peripheral, remote from the center, with a low standard of living, and an undeveloped infrastructure in general: especially in the Carpathian Mountains. In connection with this topical tasks are: - improving the arrangement of frontier customs posts, including the design of their appearance, and achieving their compliance with international standards;

- Increasing the level of material, technical and information support for the activities of frontier customs authorities;
- increase in the capacity of border points by building and commissioning new, reconstruction and modernization of existing

automobile checkpoints and other objects of the customs infrastructure and their effective operation;

- deployment of a network of stationary and mobile inspection and inspection complexes for customs control of heavy vehicles and containers following the routes of the ITC; - creation of modern warehousing customs and logistics terminals.

Practical implementation of the abovementioned areas of development of information and organizational factors of the functioning of the customs infrastructure of Ukraine will contribute to the improvement of customs administration and customs control, the qualitative improvement of customs management, and, thereby, the effective functioning of the ITC in the territory of Ukraine.

In its turn, the systemic development of international and national transport corridors will allow preserving and developing the unified political and economic space of Ukraine, to solve a complex of geostrategic tasks, strengthening the country's position as a transport bridge between Europe, Asia and America; achieve concentration and save resources by building multi-purpose facilities, stimulate the integrated development of promising raw materials bases, promote equalization of socio-economic development of regions, localize and minimize the environmental damage associated with transport activities.

The main condition for determining the formation of an investment strategy is the predictability of economic development. In the current unstable and unpredictable development of the country's economy, this period can not be long. The country needs a forecast and investment strategy for at least 30 years, within the overall economic strategy of the country. It includes the development of strategic areas of investment. In the process of development, tasks are gradually solved to determine the ratio of various forms of investment at certain stages of the long-term period, to determine the national orientation of investment activity, to determine the sectoral orientation of investment activity, and to determine the regional orientation of investment activity.

The extent of the regulatory impact of public administration in Ukraine regarding the planning of the necessary amount of resources for the creation of an adapted public national infrastructure is due to the prevailing economic situation in the economy of owning resources and their limitations. The crisis situation in the economy predetermines the mobilization and concentration of investments and financial resources for pursuing financial policies aimed at halting the decline in production and stimulating production, developing infrastructure sectors, creating the infrastructure of "locomotive industries" (nuclear, aerospace, light, food, production of certain weapons, a number of types of software, biotechnical, microelectronics), the creation of cluster industries, high-tech industries, special economic zones, science cities, where high technologies will be developed on the basis of information breakthroughs.

State regulation of investment activity may take the form of public investment programs, the direct management of public investments, tax policy, providing financial assistance for infrastructure development of individual territories, industries, financial, credit, depreciation policy, privatization of state property, the control of compliance with regulations and standards.

It creates a need to improve the existing system of investment and the search for additional sources of investment. At the same time restructuring the economy requires capital regulation. Structural changes are manifested in the high growth rate of fixed assets, growth performance upgrade provided the advanced development of infrastructure sectors, priorities and the effective use of invested capital into it.

The development of the state investment policy and infrastructure development strategy is particularly in demand in the mixed economy. In the presence of two forms of ownership and "incomplete markets," investment policy acts as part of the state's economic policy and expresses, first and foremost, large-scale coordination of investment flows, including their part on infrastructure development. The basis for the development of

investment policy is the presence of problems associated with limited investment resources, imperfect current investment system, the needs of the interim economy in improving the existing infrastructure development of Ukraine. Infrastructure development in Ukraine is due to the search for sources of its investment support, implementation of a large-scale national and international target program. In the current practice, there is a system of public investment of large national infrastructure projects. This model is effective within certain limits of the demand for investment resources. Therefore, it is necessary to intensify the efforts of the state to participate in the China One Belt One Road project. A vivid example of active participation can be noted the creation of a special economic zone in Belarus called "The Great Stone".

The Great Stone (until July 1, 2014, the Sino-Belarusian Industrial Park) is a special economic zone in Belarus, created in accordance with the intergovernmental agreement between the People's Republic of China and the Republic of Belarus. The industrial park is created on the territory of Smolevichi district of the Minsk region near the National airport "Minsk".

The infrastructure of the park will include industrial, transportation facilities, residential development areas, including social facilities, office and shopping and entertainment complexes, financial and research centers. On the territory, it is planned to create separate sub-parks of Harbin and Guangdong.

To create the infrastructure of the Park, Belarus plans to allocate more than \$ 0.5 billion, the State Development Bank of China - 1.5 billion dollars. The estimated amount of direct investment in the project will be about \$ 2 billion, and according to the forecasts of the Chinese embassy, it can be increased to \$ 5.5 billion. The project also attracts Russian and Singaporean investors.

In the long term, the project can receive up to \$ 30 billion in investments.

According to the speech of The President of Belorussia Alexander Lukashenko, the implementation of this project will allow us to receive an additional \$ 50 billion annually from exports.

The creation of free economic zones, which should be carried out exclusively under the control of the state, can be considered as one of the ways out of the economic crisis. Experts came to this opinion during the round table on the topic: "Opportunities and Prospects of Ukraine in Overcoming the Economic Crisis. Free Economic Zones as an Alternative Tool for Investment and Regional Policy. "

Let's note, since 1990, in Ukraine there was created one and a half ten SEZ. The most successful of them were "Porto-Franco" in Odessa, "Slavutich", "Yavorov", "Transcarpathia", Donetsk, Azov in Mariupol, "Polesie" in the Volyn region, but in the last decade there has been a reduction in the number of enterprises due to the lack of a development strategy [8].

Unfortunately, the issue of the development of FEZ in Ukraine is in a passive stage, turning into a liquidation one. Therefore, the only correct solution is to restructure the previously created zones into technoparks, thereby creating an excellent base for attracting investments in these projects. Especially actual reorganization will be the improvement of the infrastructure of free economic zones near the customs border of Ukraine such as "Porto-Franco" in Odessa, "Transcarpathia" in Zakarpatya region and "Polesie" in Volyn region. With the proper infrastructure transformation of these zones, Ukraine will be able to become a participant in the transnational investment program of the People's Republic of China. It is the advancement in the development of relations with China in the project "One Belt, One Road" that will become the starting point of an exit from the permanent economic crisis and will become the "eastern wind of change".

Bibliography

1. Belova A. O razvitii infrastruktury, Portere i stereotipakh // Profil'. 2005. 13 iyunya(№ 22). С. 48.

2. Ministerstvo infrastruktury Ukrainy. Set' mezhdunarodnykh transportnykh koridorov na territorii Ukrainy // [Electronic resource].

3. Pryamyie inostrannyye investitsii v Ukraine Struktura i dinamika PII Ukrainy // <https://insiders.com.ua/spravochnik/inostrannye-investitsii> // [Electronic resource].

4. 习近平提战略构想：“一带一路”打开“筑梦空间” (Si TSzin'pin: «Odin poyas i odin put'» otkroyet novyye gorizonty mechty).

5. 多部委编制“一带一路”规划 欲缩小区域差距 / China Economic net. 11 of June 2014

6. 建设“一带一路”，走向和平发展共赢的通途 / China Economic net. 03 of September 2014

7. V. Konstantinov Kitay menyayet vneshnyuyu strategiyu: chto izmenit proyekt "Odin poyas, odin put'" // <http://www.eurointegration.com.ua/rus/articles/2017/05/19/7065874/> // [Electronic resource].

8. Svobodnyye ekonomicheskiye zony mogut pomoch' vvyti Ukraine iz krizisa, - eksperty // <https://112.ua/ekonomika/svobodnye-ekonomicheskije-zony-mogut-pomoch-vvyti-ukraine-iz-krizisa-eksperty-308173.html> // [Electronic resource].

INTERNATIONAL TRADE IN COUNTERFEIT GOODS – LEGAL AND ECONOMIC CONSEQUENCES

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Abstract

The purpose of this paper is to present the economic and legal importance of counterfeiting, which is a rising international threat and a challenge in global economy as the impact of counterfeiting is becoming more severe every year. The purpose of this paper is to present the problem of counterfeit goods for international trade, including customs compliance and economic and legal consequences related to trade in counterfeit goods. The first part introduce the definition of counterfeiting and counterfeit goods based on international context. Afterwards, the statistics provide information about scale and origin of counterfeit goods as well as practice of combating counterfeiting by international organizations, what is a prelude to relevant international regulations over the years concerning fair competition and copying the external form of the product. This leads to comments regarding economic, social and legal consequences of counterfeiting globally.

Keywords: *counterfeit goods, intellectual property, trademarks, customs compliance, international trade law, fair competition.*

Introduction

From time immemorial, people wants to be surrounded by luxuries. We value brands for the quality and prestige they offer. The brand of goods, shown in the form of the mark on the product, is currently one of the most important determinants of the value of this product. The brand is treated as a type of certificate through

which the manufacturer ensures the quality of the product. In addition, the brand recognized and valued by the consumer, represents significant value and quality to the manufacturer. Because of the high costs involved in the branding process, many manufactures, in violation of the law, try to imitate and counterfeit branded products using their reputation. Only such products are "attractive" to the counterfeiting manufacturers. With that in mind, it is obvious that an entrepreneur benefits from the protection afforded by exclusive intellectual property rights. This means that counterfeiting is a term to describe illicit activities related to Intellectual Property Rights Infringement. Counterfeit goods infringe trademarks, design rights and patents. This is in contraposition of trading according to Customs Compliance and Customs enforcement, which have the role to effectively protect the society and combat this kind of cross-border crimes that have an impact on global trade competition. The role of Customs in combating counterfeiting is very important as they stay in first line to prevent entering the market of fake goods.

I. Counterfeit goods legal definitions

Trade in counterfeit goods is a challenge in global economy as their impact is becoming more severe every year, what is caused by gaining popularity and easier access to them. Counterfeit goods originate from all economies, especially emerging ones. Counterfeiting is a widespread problem, as evidenced by the ever-present information on replica deliveries discovered by customs offices. It is a relatively easy and lucrative business for unlawful entrepreneurs and manufactures that is difficult to curb and protect fair competition in global market.

According to World Trade Organization's definition, counterfeit is "unauthorized representation of a registered trademark carried on goods identical or similar to goods for which the trademark is registered, with a view to deceiving the purchaser into believing that he/she is buying the original goods"²³⁰.

²³⁰ World Trade Organisation Glossary, term: "counterfeit", in: https://www.wto.org/english/thewto_e/glossary_e/counterfeit_e.htm (access:

More precise and detailed definition of counterfeit brings Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003, where it is said, that ‘counterfeit goods’ means:

(a) goods which are the subject of an act infringing a trade mark in the Member State where they are found and bear without authorisation a sign which is identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark;

(b) goods which are the subject of an act infringing a geographical indication in the Member State where they are found and, bear or are described by, a name or term protected in respect of that geographical indication;

(c) any packaging, label, sticker, brochure, operating instructions, warranty document or other similar item, even if presented separately, which is the subject of an act infringing a trade mark or a geographical indication, which includes a sign, name or term which is identical to a validly registered trade mark or protected geographical indication, or which cannot be distinguished in its essential aspects from such a trade mark or geographical indication, and which can be used for the same type of goods as that for which the trade mark or geographical indication has been registered”²³¹.

II. Trade in counterfeit goods

Definitions above show how large scale counterfeit represents internationally. Moreover, statistical data of recent years show a steady increase of customs holdings of counterfeit goods. A prominent example for this increase is reflected in the OECD’s studies on global counterfeiting. In its first study from 2008 - *The Economic Impact of Counterfeiting and Piracy* - the OECD estimated that global trade of counterfeit goods accounted for 1.9%

25.05.2017).

²³¹ Official Journal of the European Union L 181 of 29.6.2013, p. 15.

of world trade in 2007²³², after few years, in its recently published study of 2016 - *Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact* - the OECD estimated that global trade-related counterfeiting accounts for 2.5% of world trade and in the EU context, counterfeit and pirated goods amounted 5% of imports²³³.

The continuous growth of the global counterfeit industry is a major challenge for international trade. Easier access to Internet and the rise of e-commerce in global trade as well as the development of production around global value chains, has an impact on physical counterfeiting and simplifying manufacturing and trade of counterfeit goods.

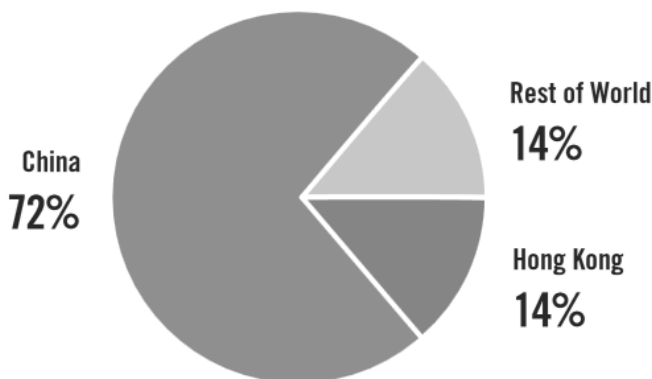
Counterfeit come from many economies, with China in front line as the largest producing market. According to Global Intellectual Property Center and its report - *Measuring the Magnitude of Global Counterfeiting: Creation of a Contemporary Global Measure of Physical Counterfeiting* (2016), which combines data from U.S., EU, and Japanese customs authorities from 2010 to 2014, China physical counterfeiting accounts for the equivalent of 12.5% of its exports of goods and over 1.5% of its GDP. China and Honk Kong are together responsible for some 86% of the import of counterfeit goods into the world's three largest markets²³⁴.

²³² OECD, *Magnitude of Counterfeiting and Piracy of Tangible Products: An Update*, OECD Publishing, Paris 2009, <https://www.oecd.org/sti/ind/44088872.pdf> p. 1, (access: 25.05.2017).

²³³ OECD/EUIPO, *Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact*, OECD Publishing, Paris 2016, <http://dx.doi.org/10.1787/9789264252653-en>, p. 5, (access: 25.05.2017).

²³⁴ Global Intellectual Property Center, *Measuring the Magnitude of Global Counterfeiting: Creation of a Contemporary Global Measure of Physical Counterfeiting*, http://www.theglobalipcenter.com/wp-content/themes/gipc/map-index/assets/pdf/2016/GlobalCounterfeiting_Report.pdf, p. 16, 25, (access: 30.05.2017).

China and Hong Kong's aggregated share (%) of seized counterfeit goods by U.S., EU, and Japanese customs authorities, 2010–2014 ³



Sources: U.S. Customs and Border Protection; European Commission Taxation and Customs Union; Japanese customs; analysis: Pugatch Consilium

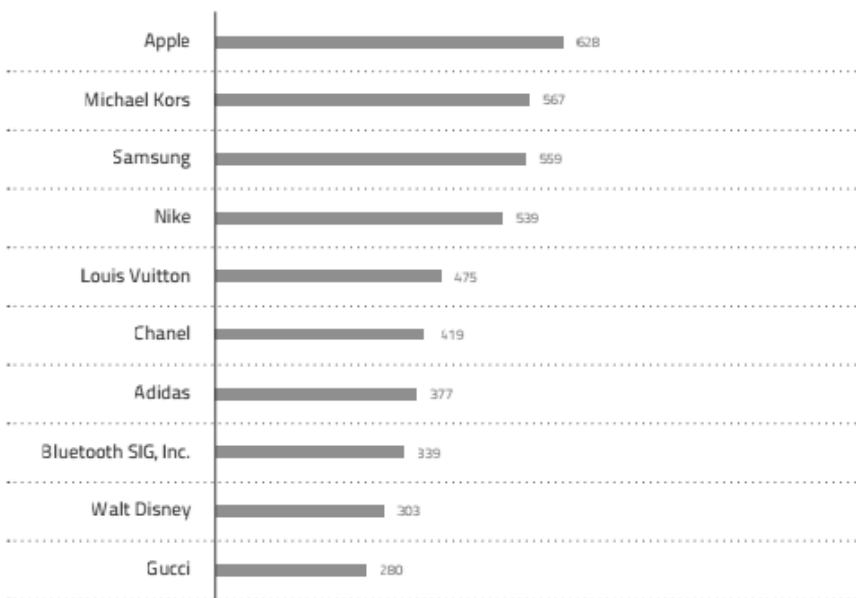
According to *Illicit Trade Report 2015* prepared by World Customs Organization, the number of customs holdings of counterfeit goods is also steadily increasing, but counterfeiting still needs to be curbed by any means. A new serious trend in last years is worryingly growing number of counterfeit medical and pharmaceutical products, food and toys, what means a serious threat for the health and safety of consumers²³⁵.

Regarding brands which are the most popular for counterfeit manufactures, they are primarily registered in OECD and EU member countries. Apple is a leader when it comes to top counterfeit trademarks by number of cases. The products with Apple trademark include e.g. computers and computer accessories, mobile phones and media players, mobile phone cases, chargers,

²³⁵ World Customs Organization, *Illicit Trade Report 2015*, <http://www.wcoomd.org/~media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/illicit-trade-report/itr-2015-en.pdf?db=web>, p. 75, (access: 30.05.2017).

headsets and even clothing. In the ranking Apple is followed by Michael Kors and Samsung²³⁶.

Top counterfeit brands by number of cases (2015)



After counterfeit goods enter the market, limiting their further distribution is much more difficult. Customs authorities are on the front line in the fight against counterfeiting and account for 70% of seizures in the world²³⁷. Customs holdings are the most effective way of preventing entry counterfeit goods on the market. However, although customs officers every day prevent counterfeit goods from entering the market, their successes is just a fraction on the global scale. The value of counterfeit goods seized and reported by customs authorities represents only 1.2% of the estimate of

²³⁶ Ibidem, p. 78.

²³⁷ Interface Public Members (IPM) brochure, *The WCO tool in the fight against counterfeiting*, <http://www.wcoipm.org/>, (access: 20.05.2017).

global physical counterfeiting²³⁸. That shows how serious problem it is and requires solid legal background for their further activities.

III. Legal regulations against counterfeiting in international trade in goods

For decades, international legal attempts have been made to reduce the scale of counterfeiting. It should be mentioned, which treats and laws curb counterfeit in accordance with relevant regulations.

The first important step for the regulation concerning the protection of fair competition and the protection of the trade mark as the first value of the goods is Paris Convention for the Protection of Industrial Property of March 20, 1883²³⁹, revised many times, lately at Stockholm on July 14, 1967, and amended on September 28, 1979. According to Article 10bis the countries of the Union are obliged to protect against unfair competition understood as “Any act of competition contrary to honest practices in industrial or commercial matters”²⁴⁰. Moreover, in article 1 section 2 it is mentioned what is the subject of industrial property that requires protection: “The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition”²⁴¹.

The provisions of the Convention indicate that the objective of combating unfair competition is to protect the potential purchaser from confusion of features, quality or origin of the goods and to counteract activities which violate the principles of free market economy and healthy competition, what can be risen to problem of counterfeiting²⁴².

²³⁸ Global Intellectual Property Center, *op. cit.*, p. 25.

²³⁹ World Intellectual Property Organization Administered Treaties, *Paris Convention for the Protection of Industrial Property*, http://www.wipo.int/treaties/en/text.jsp?file_id=288514#P210_34746.

²⁴⁰ Ibidem.

²⁴¹ Ibidem.

²⁴² D. Milewicz-Bednarska, *Odpowiedzialność karna za przestępstwo kopiowania*

Among other international legal acts that protect the external form of the product and control unfair competition would be Convention Establishing the World Intellectual Property Organization (as amended on September 28, 1979). Its aim is to “to promote the protection of intellectual property throughout the world”²⁴³. In article 2, section 8 there is implemented a definition for “intellectual property” which includes the rights relating to e.g. trademarks, service marks, commercial names and designations and protection against unfair competition²⁴⁴.

Relevant to the subject of protecting the external form of the product as well as control unfair competition is also Madrid Agreement Concerning the International Registration of Marks, concluded in 1891, as well as the Protocol Relating to the Madrid Agreement (1989). It was a legal basis for the Madrid System, which facilities for the registration and managing trademarks worldwide²⁴⁵.

However, the most relevant international regulations concerning counterfeit in international law and EU legislation aimed at effective protection against unfair competition are so far:

- Trade Related Aspects of Intellectual Property Rights (commonly known as the TRIPS Agreement or simply TRIPS), which is the Annex to the Agreement establishing the World Trade Organization. The TRIPS Agreement was the first international treaty, which consisted of detailed rules on the enforcement of intellectual property rights. The TRIPS Agreement introduced intellectual property law into the international trading system for the first time and remains the most comprehensive international legal

zewnętrznej postaci produktu, C.H. Beck, Warsaw 2016, p. 17-18.

²⁴³ World Intellectual Property Organization Administered Treaties, *Convention Establishing the World Intellectual Property Organization*, http://www.wipo.int/treaties/en/text.jsp?file_id=288514#P210_34746.

²⁴⁴ Ibidem.

²⁴⁵ World Intellectual Property Organization Administered Treaties, *Madrid Agreement Concerning the International Registration of Marks*, http://www.wipo.int/wipolex/en/wipo_treaties/text.jsp?file_id=283530

agreement on intellectual property to date, administered by the World Intellectual Property Organization (WIPO)²⁴⁶.

TRIPS establishes the minimum standards that apply to the protection of intellectual property in WTO Member States (including copyright). Moreover, TRIPS Agreement incorporates provisions intended to address the problem of counterfeit goods in international trade. Especially, when it comes to protecting the external form of the product, provisions of Part II, are relevant, concerning the protection of geographical indications and trademarks, which are particularly important for the protection of fair competition²⁴⁷. Sections 1 to 5, of Part III entitled "Enforcement of Intellectual Property Rights" elaborates the enforcement procedures, including: "general obligations (Article 41), civil and administrative procedures and remedies (Articles 42 to 49), provisional measures (Article 50), special requirements related to border measures (Articles 51 to 60) and criminal procedures (Article 61)"²⁴⁸.

- Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003²⁴⁹. This is the most important EU customs regulation concerning the marketing of goods infringing intellectual property rights, including counterfeit goods. Its measures taken on the basis of the regulation are primarily aimed at importers of counterfeit goods which, after crossing the EU border, are processed into free circulation in EU²⁵⁰. The scope of regulation

²⁴⁶ Ch. Wadlow, "'Including trade in counterfeit goods': The origins of TRIPs as a GATT anti-counterfeiting code", in: *Intellectual Property Quarterly*, Iss. 3 (2007), p. 2.

²⁴⁷ D. Milewicz-Bednarska, *op. cit.*, p. 18.

²⁴⁸ World Trade Organization, Module VII of TRIPS Agreement, https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/modules7_e.pdf, p. 1.

²⁴⁹ Official Journal of the European Union L 181 of 29.6.2013, p. 15.

²⁵⁰ A. Drzewiecki, „Tranzyt przez terytorium Unii Europejskiej towarów, które mogą naruszać skutecznie w Unii prawa własności intelektualnej”, in: T. Nowak, P. Stanisławiszyn (ed.), *Prawo celne i podatek akcyzowy: Kierunki przeobrażeń i zmian*,

involves and distinguish three groups of goods: counterfeit goods, pirated goods, goods suspected of infringing intellectual property right and engage in the issue of trademark and geographical indications infringement. The regulation emphasizes damage that marketing of such goods does to union market and eagerness to deal with such unfair and unlawful marketing without impeding legitimate trade.

What also should be mentioned as an important agreement in international cooperation against goods infringing intellectual property rights is a multinational Anti-Counterfeiting Trade Agreement (ACTA), with the final text published in May 2011. This multinational treaty aimed at improving the enforcement of intellectual property right (IPR) laws and establish international standards as to how to act against large-scale infringements of IPR and strengthen the international legal framework for effectively combating counterfeiting and piracy²⁵¹. However, following ACTA's failure to pass in the European Parliament and the European Commission's withdrawal of its request for a second vote in 2012, the ACTA would probably not enter into force²⁵².

What is relevant to say is the consequences of trade in counterfeit goods, which is a serious problem for everyone and affects multidimensionally. In legal context, some estimates put the counterfeit business at well in excess of \$250 billion a year²⁵³. Potential profit attracts to trade in counterfeit goods, despite possible penalties. For cases with withful trademark counterfeiting on a commercial scale there are criminal procedures and penalties. Remedies may include not only imprisonment and/or monetary

Wolters Kluwer, Warsaw 2014, s. 263.

²⁵¹ Office of the United States Trade Representative, *Anti-Counterfeiting Trade Agreement (ACTA)*, <https://ustr.gov/acta>, (access: 26.05.2017).

²⁵² TheJournal.ie, *ACTA Is Dead: EU Abandons Referral to Top Court for Ruling*, <http://www.thejournal.ie/european-commission-abandons-acta-724119-Dec2012/>, (access: 22.05.2017).

²⁵³ United Nations Office on Drugs and Crime brochure, *Focus on The Illicit Trafficking of Counterfeit Goods and Transnational Organized Crime*, http://www.unodc.org/documents/counterfeit/FocusSheet/Counterfeit_focussheet_EN_HIRES.pdf, (access: 28.05.2017), p. 2.

finer, but also the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence”²⁵⁴. Trading of counterfeit goods is a transnational crime, that has consequences at many levels, from exploited illegal labour to manufacture counterfeits, through to the harmful and potentially dangerous low-standard substances attached to these goods, and the links in potentially funding cross-border criminal and organized crime activities. It also results in the infringement of other criminal and administrative laws such as tax and customs evasion as well as fraud²⁵⁵.

Counterfeit products result in detrimental effects on economies due to decreased innovation, the lower demand for legitimate goods and services resulting from illicit trade reduces business revenues and taxation. This leads to higher employment rate. The effects of trade in counterfeit goods causes, in a broader perspective, job losses and reduction of Gross Domestic Product or GDP. Fake goods trade have negative effect on the sales and profits of affected producers, which incur additional costs for conducting investigations and litigation to protect their IPR against infringement²⁵⁶.

What is more, many counterfeit products expose the public to serious health and safety risks. Currently, customs holdings include not only goods that are associated with counterfeit goods such as clothing or footwear but also medicinal products, pharmaceuticals, food and toys, which are often produced without due regard to the health and safety standards, making them unusable, ineffective and also harmful for consumer health and

²⁵⁴ Official Journal of the European Communities L 336 of 23.12.1994, p. 214.

²⁵⁵ Taxation and Customs Union, *Counterfeit, piracy and other IPR violations. A serious problem for everyone*, http://ec.europa.eu/taxation_customs/business/customs-controls/counterfeit-piracy-other-ipr-violations/a-serious-problem-everyone_en, (access: 30.05.2017).

²⁵⁶ Global Intellectual Property Center, *op. cit.*, p. 2.

safety.²⁵⁷ They also pollute environment in the case of goods containing dangerous substances for the environment²⁵⁸.

Conclusions

All things considered, counterfeit trade is still a serious problem for everyone and therefore dealing with it is the responsibility of everyone. The manufacturing and then the marketing of counterfeit goods causes considerable damage to law-abiding manufactures and traders and the right holders producers. Manufacturers counterfeit goods without exclusive right and infringe intellectual property rights deliberately for commercial gain. They also reproduce authorized trademarks with the intention to export goods as genuine product of the trademark owner with fake country of origin. The range of counterfeit industry is wide across international commerce. It includes e.g. clothing, textiles, foodstuff, spare parts and components for machines and appliances. It also includes dangerous for buyers products like counterfeit toys, food, medicines which enter the market without any tests and certificates can be dangerous for buyers (for example, counterfeit toys, food, medicines). Attempts to import counterfeit goods of this type raise serious concerns about the health and safety of them. Counterfeit goods affect and mislead consumers, destroying fair competition in international market. Potential repercussions for counterfeit goods manufactures go far beyond only protection of right-holders and IPR assets. They assure consumer safety and health, retaining employment in all life cycle of authorized products. They also protect revenues to the budget from taxes and customs as well as protect fair competition in international trade. Counterfeit goods should be prevented from being entered into the market and legal measures should be adopted to effectively deal with unlawful activities without impeding to freedom of trade at international level. Effective measures to prevent the circulation of counterfeit products can help to protect original products and right-holders and increase consumer confidence in the products being

²⁵⁷ Taxation and Customs Union, *op.cit.*

²⁵⁸ A. Drzewiecki, *op. cit.*, p. 263.

purchased. The aim is to combat unfair competition and commercial fraud, to protect the potential purchaser from confusion of quality, features or origin of the goods and to counteract activities which violate the principles of free market economy and healthy competition. Curbing the process of counterfeiting goods and infringing IPR is a way for combating organized crime and the conditions for foreign direct investment.

Bibliography

1. Drzewiecki, A., "Tranzyt przez terytorium Unii Europejskiej towarów, które mogą naruszać w Unii prawa własności intelektualnej", in: T. Nowak, P. Stanisławiszyn (ed.), *Prawo celne i podatek akcyzowy: Kierunki przeobrażeń i zmian*, Wolters Kluwer, Warsaw 2014.
2. Milewicz-Bednarska, D., *Odpowiedzialność karna za przestępstwo kopiowania zewnętrznej postaci produktu*, C.H. Beck, Warsaw 2016.
3. Official Journal of the European Communities L 336 of 23.12.1994
4. Official Journal of the European Union L 181 of 29.6.2013
5. Wadlow, Ch., "'Including trade in counterfeit goods': The origins of TRIPs as a GATT anti-counterfeiting code", in: *Intellectual Property Quarterly*, Iss. 3 (2007).
6. World Intellectual Property Organization Administered Treaties, *Convention Establishing the World Intellectual Property Organization*, http://www.wipo.int/treaties/en/text.jsp?file_id=288514#P210_34746.
7. World Intellectual Property Organization Administered Treaties, *Madrid Agreement Concerning the International Registration of Marks*, http://www.wipo.int/wipolex/en/wipo_treaties/text.jsp?file_id=283530.
8. World Intellectual Property Organization Administered Treaties, *Paris Convention for the Protection of Industrial*

- Property, http://www.wipo.int/treaties/en/text.jsp?file_id=288514#P210_34746.
9. World Trade Organization, Module VII of TRIPS Agreement, https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/modules7_e.pdf.

Online sources:

1. Global Intellectual Property Center, *Measuring the Magnitude of Global Counterfeiting: Creation of a Contemporary Global Measure of Physical Counterfeiting*, http://www.theglobalipcenter.com/wp-content/themes/gipc/map-index/assets/pdf/2016/GlobalCounterfeiting_Report.pdf (access: 30.05.2017).
2. Interface Public Members (IPM) brochure, *The WCO tool in the fight against counterfeiting*, <http://www.wcoipm.org/>, (access: 20.05.2017).
3. OECD/EUIPO, *Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact*, OECD Publishing, Paris 2016, <http://dx.doi.org/10.1787/9789264252653-en>, (access: 25.05.2017).
4. OECD, *Magnitude of Counterfeiting and Piracy of Tangible Products: An Update*, OECD Publishing, Paris 2009, <https://www.oecd.org/sti/ind/44088872.pdf>, (access: 25.05.2017).
5. Office of the United States Trade Representative, *Anti-Counterfeiting Trade Agreement (ACTA)*, <https://ustr.gov/acta>, (access: 26.05.2017).
6. Taxation and Customs Union, *Counterfeit, piracy and other IPR violations. A serious problem for everyone*, http://ec.europa.eu/taxation_customs/business/customs-controls/counterfeit-piracy-other-ipr-violations/a-serious-problem-everyone_en, (access: 30.05.2017).

7. TheJournal.ie, *ACTA Is Dead: EU Abandons Referral to Top Court for Ruling*, <http://www.thejournal.ie/european-commission-abandons-acta-724119-Dec2012/>, (access: 22.05.2017).
8. World Trade Organisation Glossary, term: “counterfeit”, in: https://www.wto.org/english/thewto_e/glossary_e/counterfeit_e.htm, (access: 25.05.2017).
9. World Customs Organization, *Illicit Trade Report 2015*, <http://www.wcoomd.org/~media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/illicit-trade-report/itr-2015-en.pdf?db=web>, (access: 30.05.2017).

MODERNIZATION OF THE EU TRADE DEFENCE INSTRUMENTS

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Abstract:

The EU has developed a sophisticated and quite efficient system of trade defense measures including the safeguard measures under GATT, the safeguard and surveillance measure concerning imports from certain third countries outside WTO, and the anti-subsidies and anti-dumping measures. Due to different reasons, which are examined in the article, the first two of the mentioned measures are used by the European Commission very rarely. The Commission is mainly focused on the anti-subsidies and anti-dumping measures. Although the EU legislation in this area is based on the internationally recognised WTO anti-dumping and anti-subsidies and countervailing agreements, it also has its own specifics. The goal of the Commission is to modernise the trade defence regulations in order to reflect modern trends in global trade. Thus the Commission has proposed some important changes to the existing anti-dumping and anti-subsidy rules. Firstly, the proposal includes amendments which target dumped imports from countries with significant market distortions and with unacceptable government impact on the economy. Another important aim is to amend the anti-subsidies and anti-import duties taking into account the interests of the community and the material injury to the domestic industry.

Key words: *EU, Trade Defence Instruments, Anti-dumping measures, Anti-subsidy measures, Duties*

Introduction

Nowadays, we observe a decrease in the role of duties in international trade. 30-40 years ago average duties on imports of manufactured goods were in the range between 10 and 15 % and today average size of duties imposed on the industrial goods is merely 4-5%. This is a result of the liberalization of international trade. Since the Uruguay Rounds from 1994 and the agreements made within the General Agreement on Tariffs and Trade (GATT 1994) the role of classical trade tariffs and quotas is declining worldwide. More than 60 % of world trade is being made under preferential custom regimes, in which the level of duties is almost 0 %.²⁵⁹

Despite the global process of liberalization some other trade defence instruments are gaining importance – safeguards, anti-subsidies and anti-dumping measures and duties. This comes as a result of the need to protect local industries from dumped or subsidized imports from third countries. Therefore, custom unions and countries themselves need to modernize their trade defence instruments in order to ensure the competitiveness of local industries. The EU trade defence instruments modernization is an illustration of the patterns and role of duties, and the way they are imposed in modern international trade.

Safeguard Measure and Surveillance

Safeguards are intended for situations in which an EU industry is affected by an unforeseen, sharp and sudden increase of imports. The Safeguard measure is regulated by Article XIX of the General Agreement for Tariffs and Trade (GATT 1994) which allows GATT members to take a “safeguard” action to protect a specific domestic industry from an unforeseen increase in imports, of any product which is causing, or which is likely to cause, serious injury to the local industry. Formerly the safeguard measure in the EU was regulated by Council Regulation 260/2009 of 26 February

²⁵⁹ Hadjinikolov D., European economy, UNWE Publishing house, Sofia, 2016, p.70

2009 on the common rules of imports²⁶⁰. Now the safeguard measure is under the Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules of imports.²⁶¹

The objective of the safeguard measure is to provide the local industry with time to make necessary adjustments – safeguards always come with an obligation to restructure. Due to the fact that the safeguards measure does not focus on whether trade is fair or not (unlike anti-dumping and anti-subsidy measures), the possibilities to impose them are more limited.

Safeguard measures under GATT have to follow certain rules:

- Firstly, before introducing any restriction an investigation must be carried out
- Secondly, the restriction should be applied irrespective of the source of imports, which is called *erga omnes* rule.
- Generally, the duration of a measure should not exceed four years
- Where quantitative restrictions are imposed (quotas), they should not reduce the quantities of imports below the annual average for the last three representative years, unless a different level is necessary to prevent or remedy serious injury.
- Safeguard measures would not be applicable to a product from a developing country, if the share of the developing country in the imports of the product concerned does not exceed 3%, provided that developing country members of the WTO with less than a 3% import share collectively account for not more than 9% of total Union imports of the product concerned.

²⁶⁰ Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports, Official Journal of the European Union, Brussels, 31.3.2009, L 84/1.

²⁶¹ Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules of imports, Official Journal of the European Union, Brussels, 27.3.2015, L 83/16.

- Where imports of a product have already been subject to a safeguard measure, no further measure should be applied to that product until a period equal to the duration of the previous measure has elapsed. Such period shall not be less than 2 years

In fact, the EU has been using the GATT safeguard measure sparingly. This is due to several reasons. On the one hand, initiation of investigation and implementation of sanctions requires too much time. On the other hand, by not being a selective procedure in nature, it leads to imposing a safeguard measure on too many countries. In many cases, it is necessary to compensate the affected countries. Another issue is that there are often many disputes on the meaning of “serious injury to the local industry”. Last but not least is the fact that the EU is considered to be one of the most developed economies, so the implementation of a safeguard measure towards emerging economies is considered inappropriate to its status and is unfair. Imports may also be subject to surveillance, if the trend of imports of a product threatens to cause injury to EU producers. Surveillance does not restrict imports – it is an import licensing system over a limited time – either retrospectively or in advance. The process of issuing licenses is fully automatic. However, the procedure to initiate surveillance is too complex and the licensing is too expensive.

Trade defence statistics of the EU show us that in the period 2012 – 2017 not a single safeguard investigation was initiated. During the observed period only one surveillance measure has been in force – in 2012, which was the last year of surveillance on steel products.²⁶² Since the signing of the GATT 1994, in the period of 1 January 1995 – 30 June 2016 the EU used only 3 times the safeguard measure. In fact, safeguard measures have been rarely implemented by all WTO member states. This is supported by the statistical data,

²⁶² European Commission, Trade Defence Statistics covering the full year of 2012, Brussels, 13.03.2013, p.81

where for the whole period of functioning of GATT 1994 the total number of safeguard measures is only 154, while anti-subsidy and anti dumping measures amount to 225 and 3316, respectively.²⁶³

There is also another regulation of the EU, which applies safeguard measures and surveillance - one that concerns imports only from certain third countries.²⁶⁴ During the Cold War years, these certain third countries were called “State-trading countries”. EEC has introduced quantitative restrictions (quotas) on the imports of various goods from these countries, in particular on the imports of textiles, clothing, steel products, fertilizers, etc. Today this special arrangement is explained by the increased risk of dumping imports from those countries. Formerly, in the list were included almost all former European socialist countries, the Soviet republics, Nord Korea and Vietnam²⁶⁵. Since some of the above-mentioned countries became members of the World Trade Organization (WTO) the list has become considerably shorter.²⁶⁶ In the figure below we can see the trend of new investigations initiated in the EU for the last 5 years.

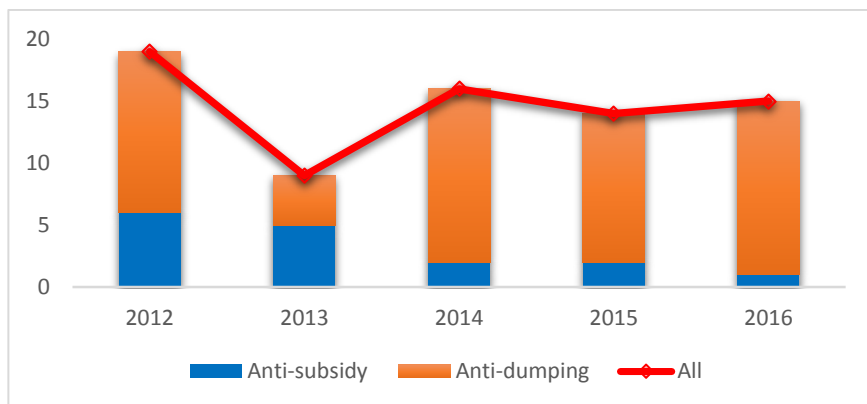
²⁶³ World Trade Organization, Trade Topics, Accessed on 28 May 2017.

²⁶⁴ REGULATION (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries, Official Journal of the European Union, Brussels, 19.5.2015, L 123/33.

²⁶⁵ COUNCIL REGULATION (EC) No 625/2009 of 7 July 2009 on common rules for imports from certain third countries, Official Journal of the European Union, Brussels, 17.7.2009, L 185/9.

²⁶⁶ REGULATION (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries, Official Journal of the European Union, 19.5.2015, L 123/43

Graph 1. 2012-2016 EU new investigations by type



Source: European Commission, Trade Defence Statistics (<http://trade.ec.europa.eu/>)

Anti-subsidy Measure

The EU anti-subsidy rules define a subsidy as “a financial contribution made by (or on behalf of) a government or public body which confers a benefit to the recipient”. Anti-subsidy measures are being applied only if the subsidy is limited to a specific firm, industry or group of firms or industries. In order the benefit of a subsidy to be neutralized a countervailing duty is imposed on the import goods. Export subsidies and subsidies contingent on the use of domestic over imported goods are deemed to be specific as well.

A subsidy may take different forms:

- a direct or potential transfer of funds (grants, equity injections, guarantees);
- government revenues (which are otherwise due) foregone or not collected (e.g. tax credits);
- government provision of goods and services (other than general infrastructure);
- government purchase of goods without tender, etc.

Nonetheless, the issue with subsidies is not quite clear. In WTO terminology, subsidies are in general identified by boxes, named after the colours of traffic lights: red (prohibited subsidies), amber (neither prohibited nor permitted) and green (permitted subsidies). Under prohibited subsidies any kind of a subsidy aimed at increasing exports by reducing costs and increasing competitiveness (so-called Export subsidies). In this number are included also any specific subsidies limited to a certain enterprise or group of enterprises of an industry. There is no “red box” in the Agriculture Agreement of WTO, while there exists a “blue box” for subsidies, which are meant to reduce or limit production

A green box (Authorized subsidies) covers any kind of assistance for research activities. It is allowed to subsidize up to 75% in science and 50% in development, it is forbidden to subsidize marketing and compensation of employees. Another allowed type of subsidy is assistance to disadvantaged regions, where GDP per capita is below 85% of the average GDP per capita or the unemployment rate must be at least 110% of the average. As authorized subsidies are considered also some subsidies for support of SMEs, for environmental protection and agricultural enterprises. The EU is one of the few members of WTO that have used the blue box. In fact, the EU is a supporter of maintenance of the “green” and “blue” box concepts, unlike Canada and other members of WTO. The “Amber box” of WTO includes subsidies that are neither explicitly prohibited nor explicitly authorized, i.e. state aid for the shipbuilding industry or for the car industry. These are non-specific subsidies to support sectors in transition or in crisis.

If an investigation of the European Commission proves that:

- a. the imports benefit from a subsidy,
- b. there is an injury for the EU industry,
- c. there is a casual link between the injury and the subsidized export, and
- d. the imposition of measures is not against the Union interest, then the Commission may impose provisional countervailing measures.

Then the Commission has to impose a countervailing duty. Such duties are usually imposed for a period of 5 years. The rate of the countervailing duty should be in accordance with the “lesser-duty rule”. This means the rate of duty imposed should be equal to the level of injury caused to the local industry and must not exceed the amount of subsidy. With regard to countervailing duties, the EU may choose to impose one or more of three basic forms:

- ad valorem duty – a percentage of the net, free-at-EU frontier (CIF) price. This is the most common form of duty;
- specific duty – a fixed value for a certain amount of goods, e.g. €100 per quantity of a good;
- variable duty – a minimum import price (MIP) of a product. Importers in the EU do not pay a countervailing duty if the foreign exporter’s export price to the EU is higher than the MIP. It is usually the case of an undertaking agreement.

Exporters can also seek out a price undertaking agreement with the Commission – this would mean to sell the product under investigation above a minimum price. In return, no duty is imposed. The exporting country may also agree to limit or remove the subsidy.²⁶⁷ During the time of anti-subsidy measure EU member states, importers, exporters, producers and authorities of the exporting country may request an interim review. Also in the final year of the anti-subsidy measure, EU producers may ask the Commission to conduct an expiry review to determine whether the expiry of the measures would be likely to lead to a continuation or recurrence of subsidization and injury. If this is the case, the anti-subsidy measures may be continued for another 5 years. Importers can also request a refund of the duties paid when they consider that the amount of the subsidy has been minimized or eliminated.

A significant step in modernization of anti-subsidy measures came with the Nairobi Ministerial Conference in 2015. As a result,

²⁶⁷ GD “Trade”, European Commission, 2013, http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151028.pdf, Accessed 20 May 2017.

the “Nairobi Package” was adopted. The key consequence of this package is the decision for agricultural export subsidies to be eliminated. Following this decision, developed countries, including the EU, decided to eliminate their export subsidies immediately, while developing countries were granted a longer period to do so.²⁶⁸

In order to ensure that EU trade defence instruments remain effective in dealing with significant market distortions the European Commission has made a proposal for amendments on the main regulations concerning protection of dumped and subsidized imports. The Commission has proposed a strengthening of the EU anti-subsidy legislation so that in future cases, any new subsidies revealed in the course of an investigation can also be investigated and included in the final duties imposed. This amendment to the Basic Anti-Subsidy Regulation²⁶⁹ should enable it to use its full effectiveness. The arguments for this amendment are due to the fact that the actual magnitude of subsidization is not always evident before and at the beginning of an investigation. Also often it appears exporters benefit from subsidies, whose existence could not have been known before carrying out the investigation. In these cases, the Commission will send to the country of origin and/or export a summary of the main elements concerning these other subsidies to ensure meaningful consultations.²⁷⁰ Having adopted this proposal, a new subparagraph is being added to Article 10 (2) of Regulation (EU) 2016/1037.

²⁶⁸ World Trade Organization, Tenth WTO Ministerial Conference, Nairobi, 2015. https://www.wto.org/english/thewto_e/minist_e/mc10_e/mc10_e.htm , Accessed 22 May 2017.

²⁶⁹ REGULATION (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union, Official Journal of the European Union, Brussels, 30.6.2016, L 176/55.

²⁷⁰ European Commission, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union, Brussels, 9.11.2016, COM (2016) 721 final.

Table 1 Definitive ADM (anti-dumping measures), ASM (anti-subsidy measures) and Undertakings in force on 30 April 2017

Country	ADM	ASM	Undertakings
Argentina	1		
Belarus	1		
India	5	5	
Indonesia	4		
Japan	1		
Republic of Korea	2		
Malaysia	2		
P.R. China	85	7	2
Russian Federation	8		
South Africa	1		
Taiwan	2		
Thailand	2		
Turkey	1	1	
Ukraine	3		
USA	4	2	
TOTAL	122	15	2

Source: Trade Defence Statistics covering the first 3 months of 2017, (<http://trade.ec.europa.eu>)

Basic EU anti-dumping rule

EU anti-dumping policy is based on Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community.²⁷¹ The EU

²⁷¹ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European

anti-dumping legislation uses the well-known definition that dumping happens when a company is exporting a product to the EU at prices lower than the normal value of the product (the domestic prices of the product or the cost of production) on its own domestic market. The European Commission is responsible for investigating allegations of dumping by an exporting producer in non-EU countries. An anti-dumping investigation is when the Commission tries to determine whether goods being imported into the EU are being sold at below the price in the producer country, i.e. being 'dumped'. The Commission is obliged to launch an anti-dumping investigation if it receives a valid complaint from an EU industry providing sufficient evidence that exporting producers from one or more countries are dumping a particular product onto the EU market and causing injury to the EU industry. In accordance with EU law, the Commission launches the investigation within 45 days. It publishes a Notice of Initiation in the EU's Official Journal, specifying the product under investigation, the country/countries to be investigated, the rights and obligations of interested parties to the proceeding, and the deadlines, which will be applied. The investigation examines whether:

- dumping is taking place from the country/countries concerned;
- material injury has been suffered by the EU industry;
- it is the dumping that is causing the injury;
- it would be against the economic interests of the EU to impose measures (which are usually in the form of an anti-dumping duty).

On the date the Notice of Initiation is published, the Commission sends questionnaires to the interested parties: exporters in the countries concerned; producers in the EU and importers and users in the EU. Exporters from economies in transition may also fill specific claim forms to show that they are

Community, Official Journal of the European Union, Brussels, 22.12.2009, L 343/51.

operating under market economy principles. The Notice of Initiation also indicates the deadlines for replies to questionnaires and claim forms. Cooperation is strongly encouraged because non-cooperation may lead to the imposition of measures which are higher than for parties which have cooperated. Case officers verify the data submitted in the questionnaires. The Commission then makes provisional findings and it may:

- Impose provisional countervailing duties
- Continue the investigation without imposing duties
- Terminate the investigation

At this point, the parties can comment on the provisional findings and receive disclosure of the essential facts and considerations. The definitive findings are also disclosed to interested parties and comments requested. Finally, the Commission either imposes definitive measures or terminates the case without measures.

Normal value

A product is considered as being dumped if its export price to the EU is less than its normal value. The normal value is usually the market price for the product in the exporting country. If there are no sales or there is a low volume of sales or if sales are made at a loss, the normal value of the product is usually based on the cost of production in the exporting country plus a reasonable amount for selling, general and administrative costs, and profit.²⁷² The export price is the sales price to the EU market. The dumping margin established after a fair comparison between the export price and the normal value. Adjustments may have to be made to ensure that normal value and export price are on a comparable basis. To start proceedings for investigation the estimated dumping margin (M)

²⁷² GD "Trade", European Commission, 2013, http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151016.pdf Accessed on 20 May 2017.

has to be greater than 2%. The margin is calculated by the following formula:

$M = \frac{V-P}{P}$, where V is the normal value and P is the export price.

Determining the normal value is very important. If the investigated companies do not cooperate for the determination of the normal value, then the Commission determines the normal value by analogy. If the domestic price cannot be used as a normal value, the staff of the European Commission should estimate the normal value by using statistical data collected from similar enterprises. The formula is as follows:

$V = C_v + \frac{C_f}{n} + P_n$, where C_v are the variable costs per unit of output, C_f are the fixed costs for all units produced, n is the number of units produced, and P_n is the average profit per unit (normal profit).

Material injury and community interest

Leading role in the investigation has the determination of the material injury to the EU industry. An examination of the volume and prices of dumped imports and their consequent impact on the Community industry is required. Then, the Commission verifies whether there has been a significant increase in dumped imports in absolute quantities or in terms of market share. An important consideration in determining the effect on prices is the extent to which the import price undercuts the Community producers' price. Determining the impact on the Community producers requires analysis of various typical economic factors: market share, output, profits, productivity, return on investment, ability to raise capital, growth, magnitude of dumping, etc. The EU law emphasizes the fact that anti-dumping measures cannot be against the Community interest. Although the WTO rules do not require this test, it ensures that the overall economic interests in the EU are considered – including the domestic industry producing the product concerned,

importers, Community industries that use the imported product and will ultimately pay a higher price and, where relevant, the end consumer of the product.

Modernization of the EU anti-dumping legislation

In November 2016, the European Commission proposed changes to the EU's anti-dumping and anti-subsidy legislation. The proposal covers targeted amendments to Regulation (EU) 2016/1036 on protection against dumped imports from countries that are not members of the European Union (the Basic Anti-Dumping Regulation).²⁷³ The proposal introduces a new method for calculating dumping on imports from countries where there are significant market distortions, or where the state has a pervasive influence on the economy. The legal basis for this proposal is Article 207 (2) of the Treaty on the Functioning of the European Union.

The amendments to the Basic Anti-Dumping Regulation project changes to the determination of normal value in the presence of market distortions and a transition period from the current system to the new one. The Commission's Impact Assessment demonstrates that the new methodology will result in a broadly equivalent level of anti-dumping duties as is currently the case. Under current rules, dumping is calculated by comparing the export price of a product to the EU with the domestic prices or costs of the product in the exporting country. For WTO members, the normal value is determined on the basis of the domestic prices of the like product or on the basis of a constructed normal value.²⁷⁴ However, when prices or costs are not determined by free market forces, but by government intervention, then it would not be

²⁷³ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not member of the European Union, Official Journal of the European Union, Brussels, 9.11.2016, COM (2016) 721 final.

²⁷⁴ Ibid.

appropriate to use domestic prices and costs to determine the normal value (the value at which the like product should be normally sold). In such circumstances, a new provision (Article 2 (6)a) stipulates that the normal value would be constructed on the basis of costs of production and sale reflecting undistorted prices or benchmarks, or corresponding costs of production and sale in an appropriate representative country with a similar level of economic development as the exporting country.

The proposal also includes a transition period during which all anti-dumping measures currently in place as well as ongoing investigations would remain subject to the existing legislation. The new system would only apply to cases initiated after the new provisions are amended. Reviews of existing measures should be conducted only when and if the factual circumstances of the exporters have changed to an extent that the current level of measures is no longer appropriate. Furthermore, if the factual circumstances that have justified the application of a given methodology remain the same, the normal value and dumping margin will be established on the basis of the same methodology that led to the imposition of the measure subject to review. In case a review is initiated, the current methodology could still be conducted if the specific circumstances have not changed. Having adopted this proposal, a new paragraph 6a is inserted in Article 2 of the Regulation (EU) 2016/1036. The new paragraph specifies the construction of the normal value in the case of significant distortions. Significant distortions exist when the reported prices or costs are not the result of the free market forces but a result of government intervention or public policies or measures discriminating in favour of domestic suppliers.

Commission Regulation (EU) 2017/141

When China joined the World Trade Organization (WTO) in 2001, other WTO members argued that its economy and markets remained distorted by state intervention and unreliable accounting

practices. Under Section 15 of the Chinese WTO Accession Protocol, China can be treated as a non-market economy (NME) in anti-dumping proceedings if Chinese firms cannot prove that they operate under market economy conditions. This provision of the agreement shall expire 15 years after the date of accession.

Practically, what this non-market economy status means is that when WTO members, such as the EU, conduct investigations into whether Chinese firms are exporting goods below their true cost of production, they may use a methodology that is not based on a strict comparison with domestic prices or costs in China. Instead, they might use data from other sources and other “analogue” countries. Once the EU has granted a country “Market Economy Status” (MES), they must cease using data from other sources. However, the correct interpretation of Section 15(d) of the Chinese WTO Accession Protocol has come under debate, as well as whether the latter section stipulates automatic granting of Market Economy Status to China after December 2016 ²⁷⁵. China has argued that according to Section 15(d), they shall be granted MES automatically. Several countries have granted earlier recognition of MES to China, as a condition for negotiating free trade agreements with China. The US and EU hold a legal presumption that China is an NME and must follow set criteria in order to grant MES.

The European Commission’s reaction to this debate was to put forward the above-mentioned proposal for a new anti-dumping methodology. The proposal suggests deleting references to market and non-market economies in the EU law altogether. Instead, it proposes a methodology that would apply to imports of any WTO country where significant market distortions are observed.

Table 2 Criteria to be used, inter alia, to identify market distortions

²⁷⁵ Puccio, Laura. European Parliamentary Research Service, November 2015- PE 571.352.

Reported prices or costs, including the costs of raw materials, are not the result of free market forces as they are affected by government intervention.
State presence in firms allowing the state to interfere with respect to prices or costs.
Public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces.
Access to finance granted by institutions implementing public policy objectives.

Source: European Parliamentary Research Service,
(<http://www.europarl.europa.eu>)

Where such features are found, the proposal argues that the EU investigators should be able to discard price data from the exporting country's market and instead resort to using international prices or costs, or even data from a "representative" country. On 29 October 2015, the Commission announced by a notice (Notice of Initiation) published in the Official Journal of the European Union, the initiation of an anti-dumping proceeding with regard to imports into the European Union of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China ('PRC') and Taiwan ('the countries concerned').²⁷⁶ On 14 September 2015, the Defence Committee of the Stainless Steel Butt-welding Fittings Industry of the European Union ('the complainant'), on behalf of producers representing between 37% and 48% of the total Union production, lodged a complaint after which the proceeding was initiated. The interested parties questioned the basis for the complaint, because the complaint shall be considered to have been made by, or on behalf of, the Union industry if it is supported by those Union producers whose collective output constituted more than 50% of the total

²⁷⁶ Commission regulation (EU) 2017/141 of 26 January 2017, Official Journal of the European Union, Brussels, 27.1.2017, L 22/14.

production of the like product. However, the Commission rejected the claim, as once the investigation is opened, it is not necessary that the conditions for standing are met throughout the entire investigation.

The Commission officially informed all parties concerned by the proceeding. Since, based on Article 2 (7)(a) of Regulation (EC) No 1225/2009, in the case of imports from non-market economy countries, the normal value shall be determined on the basis of the price or constructed value in a market economy third country, the commission also contacted producers in Brazil, India, Malaysia, Korea and the USA as possible analogue countries for the purpose of establishing a normal value for the People's Republic of China (PRC). All interested parties who showed reasons to be heard, were granted a hearing. In accordance with Article 17 of Regulation (EU) No 1225/2009, the Commission sampled the Union producers, importers, exporting producers in Taiwan and PR of China. None of the cooperating exporting producers in the PR of China claimed market economy treatment.

The Commission did not impose provisional anti-dumping measures at the provisional stage of the Investigation. The reason was the ongoing search for an appropriate analogue country on the basis of which normal value would be established for the Chinese exporting producers. In the absence of a dumping margin determination for the PRC, also the level of cumulated dumped imports from both countries concerned could not be established. While the data with regard to the Union industry was available for the purposes of the analysis of the various injury indicators, the volume and prices of the dumped imports are an indispensable element in the determination of injury in accordance with Article 3 of the basic Regulation. Therefore, no determination of injury, and consequently of the causal link between injury and dumped imports, was made at the provisional stage of the investigation.

The provisional disclosure was ready in 13 July 2016. The interested parties received the final disclosure document on 27 October 2016. The investigation of dumping covered the period

from 1 October 2014 to 30 September 2015. On January 2017, the Commission decided to impose definitive anti-dumping measures on two steels products origination in China and Taiwan. The Commission's investigation confirmed that Chinese and Taiwanese stainless steel tube and pipe butt-welding fittings had been sold in Europe at dumped prices. Chinese exports will have been taxed with anti-dumping duties ranging from 30.7% to 64.9%. Taiwanese exports face anti-dumping duties ranging from 5.1% to 12.1%.

Conclusions

Currently, the role of Safeguards and Surveillance measures under GATT is insignificant in the EU trade defence policy. The number of EU anti-subsidy and anti-dumping inquiries and measures in force are also at a historical low although both these instruments have retained their importance. The European Commission has made a proposal to improve the efficiency of the EU trade defence regulations in order to better suit the current reality of international trade. Most of all the modernisation concerns the anti-dumping investigation and the determination of the normal value as the most important aspect. The Commission Implementing Regulation (EU) 2017/141 shows the direction of the changes, which will certainly be followed by more similar measures.

CONSTRUCTION OF CHINESE SINGLE WINDOW: THE EXPERIENCE AND ENLIGHTENMENT OF AMERICAN SINGLE WINDOW

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Abstract:

With the rapid development of the world, the Single Window of international trade has become the key focus of national customs

projects and many countries have learned from experience from each other. Since the beginning of the last century, the United States has begun the initial construction of the Single Window and become the forefront of the world, which sets a good example for other countries. This paper first summarizes and analyzes the construction process, implementation situation and construction characteristics of the Single Window in the United States, and then reviews the situation of Chinese Single Window construction and draws lessons from the American experience to give a proposal in the aspects of management system, cooperation concept, data standard and business model.

Key Words: *America Customs; international trade "Single Window"; E-Port*

1. Introduction

The Recommendation No. 33 of The Recommendation and Guide Of Building a Single Window, published in 2005 by United Nations Centre for Trade Facilitation and Electronic Business (UN / CEFAC) defines "Single Window" as a facility that allows participants in trade and transit to submit standardized information and documents through a single portal in order to meet all regulatory requirements related to import, export and re-export.

The complexity of the supply chain has led to the complexity of the document and data, so that enterprises and the government have to bear the high cost. For instance, in the 1980s, the average cost of dealing with an export transaction document before the establishment of an international trade information system was about \$ 375, accounting for 7% of total exports. And the imports were \$ 320, accounting for 1% to 2%. The APEC Business Information Committee (1996) says that in order to meet international trade rules and regulations, a transaction needs an average of 40 documents which involves about 200 data elements and about 60% -70% of the documents need to be repeated, of which 15% still need to repeat at least 30 times. According to a study by the European Commission, the cost of meeting these

requirements accounts for 3.5% -7% of the total value of the goods (OECD, 2002). If there is a wrong figure in the document, this ratio can reach 10% -15% (UNCTAD, 1994). At the same time, procedural delays can lead to higher additional costs. It also gives a great burden to the government and enterprises when repeating to submit large amounts of data to a large number of departments.

It is believed that efficient sharing and exchange of information in the Single Window environment can greatly reduce trade costs, improve efficiency, facilitate the declaration and share trade-related regulatory data so as to enable the governments and traders to achieve a win-win situation. In today's international trade situation, it is imperative to build a Single Window both for the government and enterprises.

According to the United Nations Recommendation No. 4²⁷⁷, 56 countries and territories have established a Single Window of national trade (see Table 1). Among them, Singapore, the United States, Japan and other 29 developed countries, accounting for 57% of the total, walk in the forefront of the world on the construction of the Single Window. This shows that the Single Window construction in the developed countries is developing rapidly. The Single Window of the United States has already begun since the end of the last century and is constantly expanding and enriching. Since the beginning of the construction, it has achieved good results and built a Single Window learning model for the world.

Table 1 Regional and national distribution

Continent	Country or Region	Continent	Country or Region
Asia	India, Israel, Japan, Korea, Russian Federation, Thailand, Brunei	Europe	Austria, the United Kingdom, the Czech Republic, Denmark, France,

²⁷⁷ National Trade Facilitation Bodies Recommendation No.4 (UN/CEFACT)

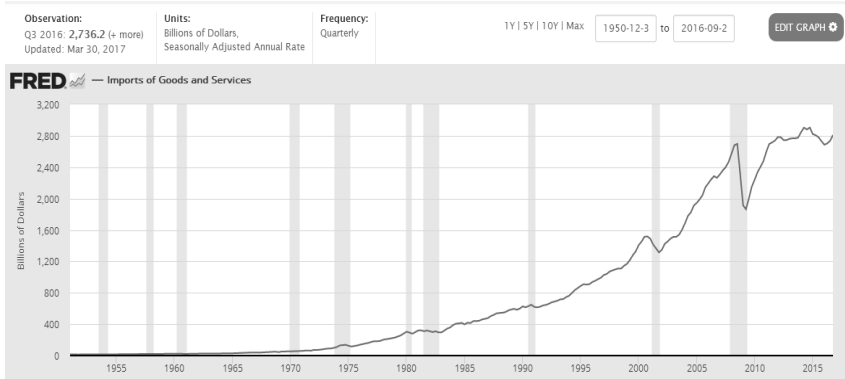
	Darussalam, Chinese Taipei, Hong Kong, China, Indonesia, Malaysia, Mongolia, People's Republic of China, Philippines, Singapore, Bangladesh, Sri Lanka		Germany, Finland, Hungary, Iceland, Ireland, Italy, the Netherlands, Norway, Poland, Spain, Sweden, Switzerland, Turkey, Belgium, Bulgaria, Estonia, Macedonia, Slovenia
North America	America ,Canada	South America	Brazil, Peru, Colombia, Guatemala
Oceania	Australia New Zealand	Africa	South Africa, Mauritius, Kenya, Nigeria, Senegal, Tanzania, Zambia, Gabon

2. The construction of the Single Window in the international trade of the United States

Serving as the world's largest economy, the United States plays a pivotal role on import and export trade for the development of international trade. From 1950 to 2016, the total value of imports of the United States increased from \$ 577 million to \$ 220 billion; the total value of exports increased from \$ 772 million to \$ 1.8 trillion. In addition to the strong impact of the international financial crisis in 2008, there has been a significant decline, but the remaining volume of trade has continued to grow as a whole. The

sharp increase in trade also means a surge in the volume of goods. The United States owns a total of about 328 ports. In 2013, Customs and Border Protection (CBP) dealt with about 25 million imported containers, of which only the infringement of intellectual property cases are nearly 24,000. In addition, 90% of the data involved in the documents submitted to the customs is redundant and the relevant agencies have their own electronic systems, but they are not interlinked, and in some cases, traders are required to provide paper documents. Therefore, in the face of the contradiction between trade speed, security and customs resources, the national "goalkeeper" customs must take a series of modern measures to meet different needs. And the Single Window of international trade is one of those important initiatives.

The "Single Window" refers to the parties involved in international trade and transport that meets the relevant legal and management requirements through a single platform to submit standardized information and documents. And the core of American Single Window is the Automated Commercial Environment (ACE). It is the trade processing system through which CBP and its partner government agencies are implementing the Single Window for processing imports and exports.²⁷⁸



²⁷⁸ ACEopedia December 2016

Figure 1 Import of goods and service of America (1950-2016)

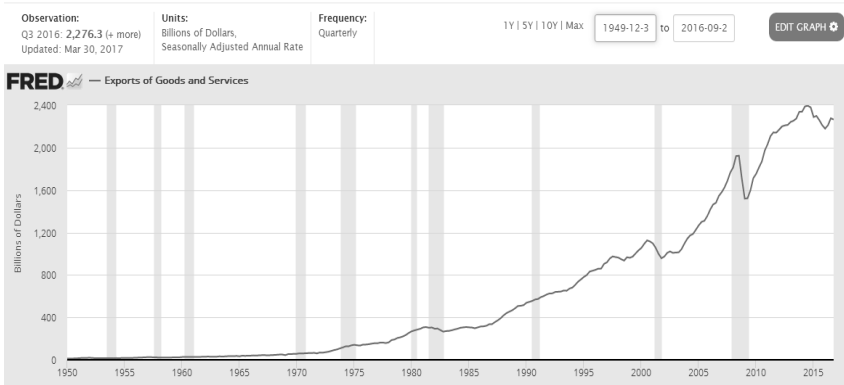


Figure 2 Export of good and service of America (1950-2016)

2.1 The development of the Single Window

2.1.1 Infrastructure period

The International Trade Data System (ITDS) is a project that helps the government agencies assist in the identification, documentation and uses the ACE implementing agencies to improve business activities and deepen institutional tasks.

In 1993, the Customs appointed the Future Automated Commercial Environment Team (FACET) to give advice on the rebuilding of commercial processing systems from the perspective of government and business. *The future Automated Commercial Environment Team report*²⁷⁹ puts forward the ideas that the governmental disposal of trade should be based on the original business data; the import and export requirements should be standardized and unified; the government regulation of international trade should be integrated. In June 1994, a national performance review report *National Performance Review—Creating a Government That Works Better and Costs Less*

²⁷⁹ Also known as *FACET report*

presented 13 IT initiatives and proposed the implementation of ITDS.

In September 1995, *Vice President Albert Gore Memorandum IT-06*²⁸⁰ approved the establishment of the ITDS project office in the Ministry of Finance, supervising the construction of the federal government and implementing a unified information system ITDS. The memorandum also approved the establishment of the ITDS Board of Directors (ITDS BoD), which was primarily responsible for ITDS construction with federal agencies involved in government development, planning and management activities.

In 1998, the ITDS Board of Directors began ITDS pilot work called the North American Trade Automation Prototype (NATAP), which not only emphasized the coordination and sharing of information at the domestic level, but also the coordination of information at the international level with Canada and Mexico. The start of the pilot work proved that ITDS can bring significant benefits to different federal agencies, especially the US Customs. Thus, in November 1999, the ITDS project studio was transferred from the Ministry of Finance to the US Customs.

The proposal of ITDS and infrastructure are the initial practice of Single Window and they lay the solid foundation for fully implementing the concept of a Single Window as well as for the follow-up construction of ACE.

2.1.2 Steady progress period

As early as August 2001, in order to further promote modern trade automation, improve efficiency and reduce the costs, the US Customs led the design to develop an automated business environment called Automated Commercial Environment (ACE). ACE is a business transaction processing program that automates border services, improves border security and promotes international economic security. It is a part of the phased deployment of CBP's long-term modernization efforts. Eventually, ACE will replace the CBP import processing system - the Automated Commercial System (ACS). With ITDS connecting

²⁸⁰ Vice President's Memorandum. Vice President Gore - Washington, D.C. 09/15/1995

with ACE, ITDS provides users with the functionality they need in ACE so that they can provide all relevant legal compliant information electronically. In 2003, with the establishment of the US Customs and Border Protection Agency, the ITDS Project Office was classified as the US Department of Homeland Security. The ITDS Project Office works with the Department of Homeland Security to help the government agencies make full use of ACE to safeguard the security of the border, national and international environment. The prospect of ITDS has also been achieved when the relevant government agencies are integrated into the ACE.

In October 2006, the Congress affirmed the value of ITDS in reducing redundant information, effectively managing trade and implementing international trade-related laws and regulations in the *2006 Port Security and Accountability Act*. The bill requires the Finance Minister to play the role of supervision and build the "single entry system" which is the so-called ITDS operated by the US Customs. The Act enforces that unless it is exempted by the US Office of Management and Budget (OMB), the implementation of ITDS must precede the full implementation of ACE and all agencies that require customs clearance and documentation of import and export goods must join the ITDS program.

The 2006 Port Security and Accountability Act requires an annual ITDS report on ITDS operations, hindrances, recommendations and so on. Among them, the annual report will give recommendations on ITDS and ACE and report the solution next year. In this phase, a series of problems in the construction of the Single Window can be resolved, such as data standardization, ACE entry optimization and functional improvement. Single Window is developing steadily in the process of gradual optimization and revision.

2.1.3 Comprehensive development period

On February 19th 2014, US President Barack Obama signed *The Executive Order on Streamlining the Export/Import Process for America's Businesses*. The presidential decree requires that federal agencies should complete the electronic Single Window

development by December 2016. At this stage, ACE is constantly updated and is gradually becoming a mandatory electronic tool.

In May 2016, the ACS was further out of service. Part of the customs procedures and entry declaration must be archived by the ACE and can no longer achieve through the ACS. On June 15th, ACE will become the only electronic entry and immigration reporting EDI system authorized by CBP for part of the entry declaration. On July 23th, the content mentioned above in the entry declaration project has been further expanded. ACE has gradually become a Single Window system for business reporting on import and export information.

2.2 The implementation of American Single Window

2.2.1 Leadership and operations

The ITDS project is managed by an ITDS Board of Directors whose members are involved in 48 departments participating in the ITDS project and it is chaired by Mr. Tim Skud, Deputy Assistant Minister of Finance. The board of directors leads the project, guides the development direction and work with government agency participants to address all issues related to ACE integration including policy making, planning and management.

The US government established the Border Interagency Executive Council at the request of *the Presidential Decree to Simplify US Business Entry / Export Procedures*. It serves as an interdepartmental working group, chaired by the Secretary of Homeland Security. BIEC is responsible for making development policies that are aimed at improving the coordination between dozens of departments on import and export requirements as well as coordinating relevant sectors with relevant stakeholders in order to optimize supply chain procedures and find illegal outbound transport. The BIEC Committee provides a platform for the expertise of the various departments to give advice for BIEC in order to promote its specific function and propose feasible development recommendations. There are now three BIEC committees: risk management, procedural coordination and external consultation.

2.2.2 Implementation function

The long-term goal of the US Single Window is to provide an electronic interface where the business community can submit information that all government agencies' requests. This objective involves a variety of procedures including previous monitoring and control, cargo release and follow-up reporting procedures. ACE function mainly involves six aspects: pre-arrival, reaching, follow-up release, export, PGA integration and technical services. CBP is deployed through the Agile development when implementing ACE. That is to say, ACE is divided into several stages, starting from a small aspect and gradually increasing to achieve the ultimate overall function.

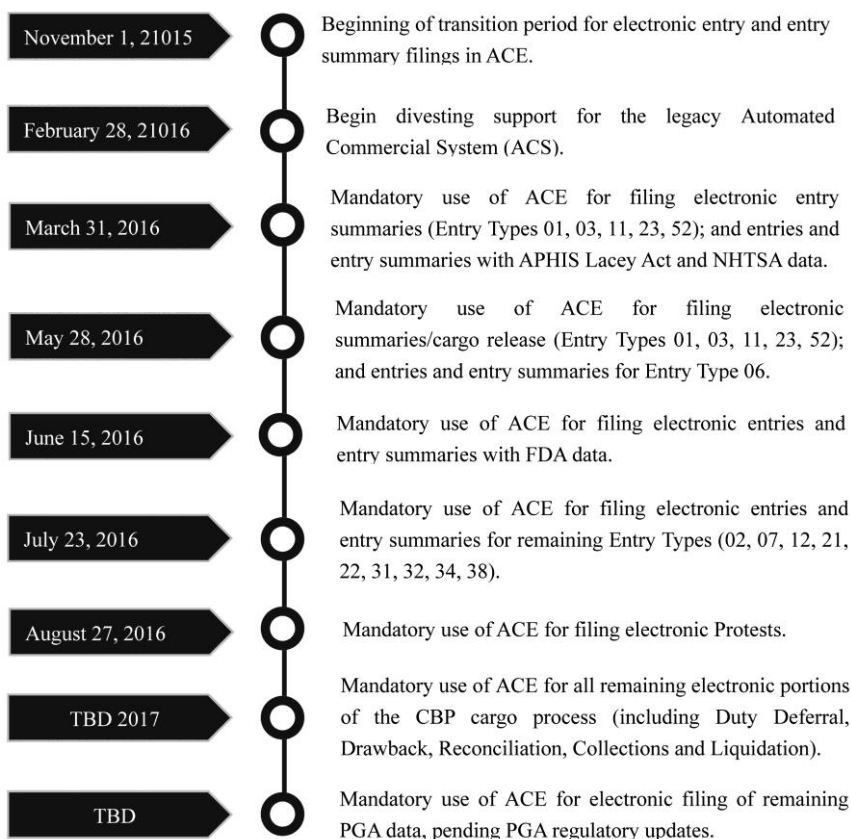


Figure 3 ACE development and deployment²⁸¹

2.2.3 Business model

A Single Window serves both the business and the government at the same time. In addition to CBP, participants of government agencies (PGA) in the United States has been widely known, involving agriculture, finance, transportation and other 10 departments, a total of 47 related institutions (See Table 2). In addition to the federal trade regulator, the participants also include exporters, carriers, importers, customs brokers, freight forwarders and other commercial establishments.

The funds of the Single Window construction are mainly from the CBP automatic modernization project. Sometimes, if there is an

²⁸¹ TBD: To be determined

agreement between other institutions involved in ITDS and CBP, the funds will be transferred from other departments to CBP. In addition, many organizations involved in ITDS projects will also self-support their own automation systems, which are connected to ACE / ITDS. In 2013, ITDS projects use \$ 4.8 million totally, of which 2.8 million for PGA data sets, document image systems and interactive web services. And about 2 million for the improvement of ACE.

2.2.4 Implementation effect

According to *ACE fluency monthly report* published by CBP in June 2008, several core functions of ACE have been fully deployed and applied. Manifest and export functions are 100%, 95% for cargo release, 82% for mail, and 87% for Single Window integration. The ratio of ACE information submitters and the total amount of submission have a sustainable growth over a period of eight months. Among them, from October 2015 to June 2016, the submission rate of the declaration of entry increased from 30% to 93%, the total increased from 67.3% to 98.4%; the rate of submission of the goods increased from 60% to 98%, the total from 10.2% to 89.8%. In June, a total of 75, 3720 cargo clearance reports were transferred through the PGA dataset, an increase of 78% compared to May. Inherent availability (AI) ²⁸²remained above 96% and unplanned downtime totaled 3624 minutes.

Previously, the US business community had to provide the same information to multiple departments many times which a large part of it is paper and they need the manual processing. In the future, the use of ACE will completely change the situation. The implementation of the Single Window have brought significant gains for the government and enterprises. For the government, it is because the agency does not need to develop and maintain their own systems, the government as a whole can reduce the costs for the system development and maintenance. A declaration not only reduces the cost, but also relieves the burden of reporting. At the same time, a Single Window makes the standardized and unified data between different agencies to reduce the error rate, improve data accuracy and improve efficiency. For enterprises, a declaration of electronic data to pass all the data can greatly improve the efficiency, save manpower, material and financial resources and reduce costs, which is conducive to improving the competitiveness of enterprises.

²⁸² Inherent availability refers to the time except planned operation and maintenance period can be used.

Table 2 CBP and 49 federal agencies are working together to implement the Single Window

DEPARTMENT OF AGRICULTURE	DEPARTMENT OF JUSTICE
AMS Agricultural Marketing Service APHIS Animal and Plant Health Inspection Service FAS Foreign Agricultural Service FSIS Food Safety and Inspection Service GIPSA Grain Inspection, Packers & Stockyards Administration	ATF Bureau of Alcohol, Tobacco, Firearms and Explosives DEA Drug Enforcement Administration
	DEPARTMENT OF LABOR
	BLS Bureau of Labor Statistics
DEPARTMENT OF COMMERCE	DEPARTMENT OF STATE
BIS Bureau of Industry and Security FTZB Foreign Trade Zones Board E&C Enforcement and Compliance OTEXA Office of Textiles and Apparel NMFS National Marine Fisheries Service	A/LM Bureau of Administration, Office of Logistics Management DDTC Directorate of Defense Trade Controls OES Bureau of Ocean and International Scientific Affairs OFM Office of Foreign Missions
DEPARTMENT OF DEFENSE	DEPARTMENT OF TRANSPORTATION
USACE Army Corps of Engineers DCMA Defense Contracts Management Agency	BTS Bureau of Transportation Statistics FAA Federal Aviation Administration FHA Federal Highway Administration FMCSA Federal Motor Carrier Safety Administration
DEPARTMENT OF ENERGY	
OFE Office of Fossil Energy EIA Energy Information Administration	

OGC Office of General Counsel	FRA Federal Railroad Administration
DEPARTMENT OF HEALTH AND HUMAN SERVICES	MARAD Maritime Administration
CDEC Centers for Disease Control and Prevention	NHTSA National Highway Traffic Safety Administration
FDA Food and Drug Administration	PHMSA Pipeline Hazardous Materials Safety Administration
DEPARTMENT OF HOMENLAND SECURITY	INDEPENDNT AGENCIES
USCG United States Coast Guard	CPSC Consumer Product Safety Commission
CBP Customs Board Protection	EPA Environmental Protection Agency
TSA Transportation Security Administration	EXIM Export Import Bank
DEPARTMENT OF THE INERIOR	FCC Federal Communication Commission
FWS Fish and Wildlife Service	FMC Federal Maritime Commission
DEPARTMENT OF TREASURY	ITC International Trade Commission
IRS Internal Revenue Service	NRC Nuclear Regulatory Commission
OFAC Office of Foreign Assets Control	USAID U.S. Age for International Development
TTB Alcohol and Tobacco Enforcement Network	USTR Office of the United States Trade Representative

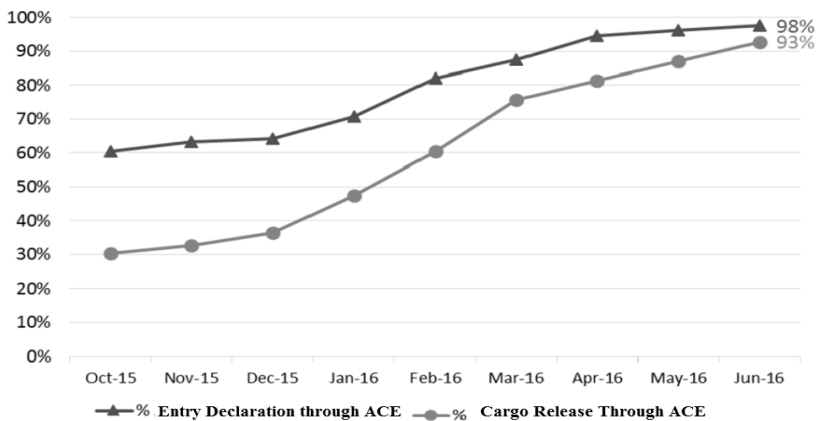


Figure 4 Statistics of information Submitters ratio through ACE

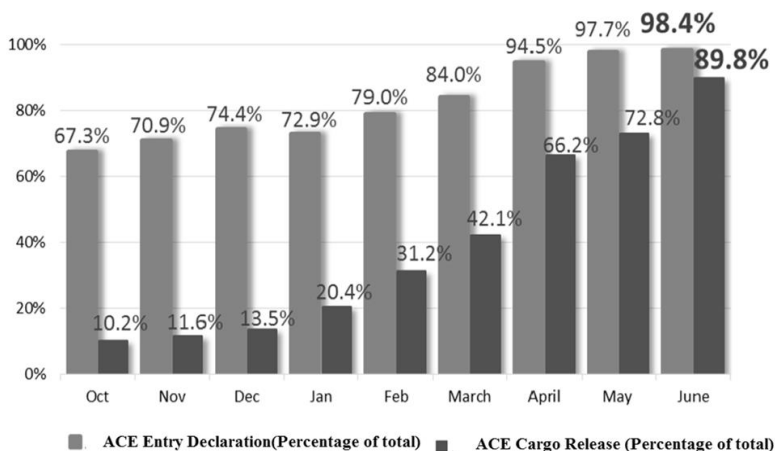


Figure 5 Statistics of information Submitters ratio through ACE

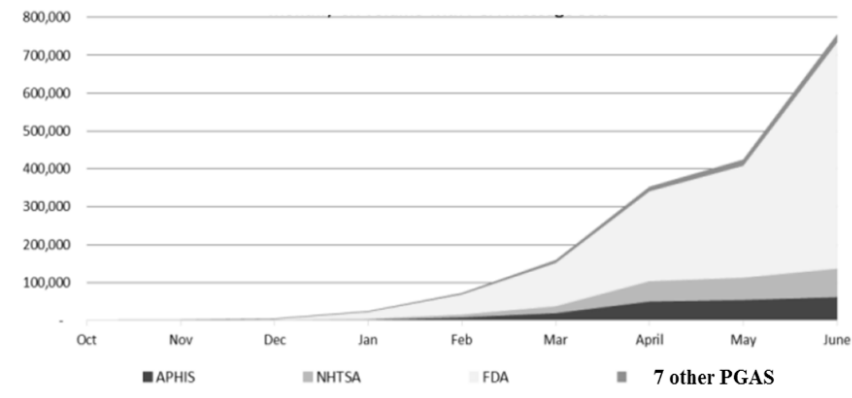


Figure 6 Statistics on the number of customs clearance of goods transferred through the PGA dataset

2.3 Construction features

2.3.1 Strong leadership

As the most obvious benefit of a Single Window project, CBP naturally takes on the leadership work of the Single Window construction. Since the establishment of the Customs Border Protection Agency in 2001, ITDS has been under construction under the leadership of CBP. The 2006 SAFE Port Act assigns part of the responsibility for the construction and operation of the ACE project to the CBP, which provides a legal basis for the CBP's leadership. During the construction of the Single Window, CBP has always played a leading role in dominating the design and deployment of the Single Window and made a great contribution to coordinate inter-departmental needs and promote inter-departmental communication and cooperation.

2.3.2 Full cooperation concept

The Single Window of The United States involves a wide range of 13 departments a total of 48 government agencies. And it is essential to achieve the coordination between many departments with good cooperation attitude and concept. Many organizations involved in ITDS projects have developed their own set of plans, describing how they implement ITDS and how they work with other agencies on issues related to import and export trade. And these plans need to be fully agreed upon by CBP and the relevant authorities before implementation. In addition,

the agencies have issued a memorandum of information exchange. By the end of November 2013, a total of 12 cooperation memorandum have been signed, 10 have been submitted to the CBP and 15 in the draft. Good cooperation between agencies effectively solves the inter-agency conflict disputes and ensure a steady progress in the construction of the Single Window.

2.3.3 Clear development plan

Since 2002, CBP has a series of development plans every year and will publish it on the website. In 2013, in the ACE deployment, CBP released a comprehensive plan to achieve the full application of all trade processing functions by the end of 2016. The program has seven main functions. It was divided into 12 stages and each function of each stage has a specific increase in business. In addition, CBP also announced a number of different time nodes to force the implementation of different functions of ACE and to ensure the gradual expansion of the expansion of the ACE.

2.3.4 Internationalized Data Standards

The SAFE Port Act requires the ITDS board to ensure that the data requirements of the ITDS system are consistent with the WCO data model. In order to align the ITDS standard dataset with the WCO data standard, CBP works with WCO to review the fit between ITDS data requirements and the WCO data model. The international standards can help the customs share information, identify risks in advance and effectively expand the customs enforcement boundaries.

3. The situation of the construction of Chinese Single Window

Chinese Single Window is based on "electronic port" construction. In 2003, the Third Plenary Session of the Eighteenth Central Committee put forward the requirement of "three mutual". Since then, under the support and guidance of the General Administration of Customs, the General Administration of Quality Supervision, the Ministry of Public Security, the Ministry of Transport and the relevant ministries, local governments have relied on the electronic port platform to promote the construction of Single Window, and achieved remarkable results. At present, the coastal areas have basically established the single local window while inland provinces have begun a pilot work.

3.1. The process of construction and the current situation

"Electronic port" has gradually developed in order to combat smuggling, fraudulent activities of the actual struggle needs and emergency preparation since the Asian financial crisis in 1998. It relies on modern information technology to centralize the data of customs, foreign trade, foreign exchange, taxation, industry and commerce, quality inspection, transportation and other involved in port administration and law enforcement departments with the help of national telecommunications public network, which enables the administrative and law enforcement departments to have cross-sectoral data exchange, networking verification, as well as provide online customs declaration, inspection, foreign exchange sales, export tax rebate and other procedures for the enterprises. It is not only an administrative law enforcement services, but also a relevant business services information system.

The development of electronic port has mainly experienced three stages: the central and local parallel construction stage, the overall further upgrade stage and crossing to the Single Window stage.²⁸³ In 2013, the Third Plenary Session of the Eighteenth Central Committee of the Party put forward the "three mutual" and called for the promotion of inland cooperation with coastal border on customs clearance and strengthening the relevant departments of port management. Under the guidance of this concept, the state and local began to promote a Single Window construction through relying on the electronic port platform in order to implement the national requirements. Its goal is to build the electronic port as a sharing platform for port management on the base of the unified document format, the coordination and simplification of the data, so as to achieve a one-time declaration for applicant through the Single Window. The port management of the relevant departments give law enforcement feedback to declarant through the electronic port platform to share information data and implement the functional management.

The "Single Window" and Electronic Port have much in common. The basic principles and basic objectives are consistent, which are both based on the convenience of enterprises, optimal management, win-win cooperation and the principle of overall progress to increase management efficiency, improve trade efficiency and reduce trade costs. But there is still a gap between the electronic port and the Single Window, such as the limited declaration of involving departments, the lack of awareness of

²⁸³ Reference: "Cross-strait single window construction comparison and its institutional revelation", Zhu Qiuyuan.

cooperation between departments, decentralization and so on. It can be said that the electronic port is the initial practice of Chinese Single Window at this stage. It is the initial form of the Single Window with Chinese characteristics.

The construction of Shanghai Single Window piloted first in February 2014. Following Shanghai, Tianjin, Fujian, Guangzhou, Liaoning, Shandong, Zhejiang, Jiangsu and other coastal areas also carried out a different degree of Single Window construction work and the overall progress is smooth. Take Shanghai for example, currently Shanghai Single Window is in the implementation of the 2.0 version. And by the end of October 2015, there are 17 enterprises participating in the construction, including customs and other three port inspection units and the Shanghai Municipal Development and Reform Commission and other 12 new units. It has already achieved six functional sections of import and export of goods, transport, import and export licensing, payment and settlement, enterprise qualification and information query. The future of the Shanghai Single Window platform will integrate the banking, foreign exchange, port, business and other aspects of the data and even have port-related systems docking with other countries and regions in trade data exchange and sharing. Other areas of the Single Window platform has basically realized the information sharing on declaration of goods and the release, ship import and export network release, manifest declaration and cross-sectoral sharing and customs clearance status query. At the end of 2016, the places of Single Window construction changed from the coastal areas to the central and western regions with the establishment of a standard system. At present, the first batch of pilot provinces are Chongqing, Shaanxi, Jiangxi, Ningxia, Inner Mongolia and Guizhou. According to the principle "joint construction and the operation of the entity can be achieved under the leading of customs and government", all regions have established the local special working group to actively promote Single Window construction.

3.2 The problems

Although Chinese Single Window construction has made remarkable achievements, but our current Single Window still exists many problems.

3.2.1 Inter-agency cooperation concept remained to be strengthened

According to a senior scholar studying trade management assesses that China's import and export trade involve up to more than 70 departments and sometimes the same documents need to be issued to a dozen departments. Thus, it is important to strengthen the inter-sectoral cooperation. However, for a long time, the departments have their own interests and do things in their own ways, so the enthusiasm of cooperation is not high. It is still very difficult for them to jump out of interest and consider the situation as a whole.

3.2.2 The management system remained to be straightened out

China has many port windows, so the original port management system cannot meet the requirements of the development of current situation. Port management agencies enforce the law separately. The port regulatory authorities are decentralized. Their own power range and scope of responsibility is not clear enough.

3.2.3 The data standards remained to be unified

China has many ways and forms of trade as well as many involved departments. Therefore, data requirements of each departments are different resulting in data exchange difficulties. At present, the degree of data sharing is still low and the most basic "one declaration" principle is not fully realized.

3.2.4 Difficulties in the implementation of construction and maintenance funds

Currently, China still take the free of charge mode on pilot platform and its operation and maintenance mechanism is not clear. The regulatory authorities have their own electronic systems, enterprises still need to pay the relevant costs through the original channels and the charging mechanism and the interests pattern needed to be re-coordinated.

The construction of Chinese Single Window still need to be improved in many aspects. There is a long way to go. To strengthen the development mode of the Single Window and the study of construction mode, it is important to fully learn from the international advanced experience to improve the Single Window.

4 Some recommendations on further deepening Chinese Single Window construction

Although the United States and China's basic national conditions are different, through the analysis of the US Single Window construction process, we can find that the key elements of the construction of the Single Window are the same and they both are faced with similar problems, such as leadership, cooperation, data standards, operation and maintenance mode and so on. Therefore, drawing on the advanced experience of the construction of the Single Window in the United States and taking its advantage has practical significance in deepening our own Single Window construction road to promote the construction of today's customs and trade development.

4.1 Straighten out the Single Window management system

In the process of building the Single Window in the United States, CBP has played a leading position and it is legally authorized and recognized. At the same time, the law and departmental agreements also ensure the responsibilities and authority of the various departments and an effective Single Window management system. Under the existing management system, the guiding ideology of various departments on the construction of electronic ports is not unified and there is a great misunderstanding about the role and status of each other in the construction and development of electronic ports. Some departments think that the electronic port construction is GACC's affairs and do not have much influence on their business, so they lack subjective initiative to join the electronic port, which directly affects the long-term sustainable and stable development of electronic ports. Like the United States has set up two specialized cross-sectoral committees at ACE / ITDS, China can also provide an inter-agency organization to guarantee the transition from electronic port to the Single Window development. Chinese Single Window construction should strive to establish a strong leadership and management system at the local level and at international level, unify the thinking and break the scope of the interests of various departments while strengthening the top design, getting rid of the existing inefficient and complicated management mechanism, the interests of the sector as well as rebuilding the process of trade import and export supervision.

4.2 Strengthen the concept of intergovernmental, political and business cooperation

Single Window construction is an important part of border coordination and management, involving cooperation between departments as well as the communication between departments and business. In the United States, through the signing of a memorandum of cooperation, the establishment of a common leadership group and holding various meetings to achieve communication and coordination with other departments, the organization has a good concept of cooperation. In addition, the government agencies know the needs of enterprises through the network feedback, meetings and other forms, and put their needs into a Single Window construction so that a Single Window can better serve the government and enterprises. The fact shows that for an inter-departmental management agency with the decision-making power and not just the right of the recommendation, it is essential to give it the appropriate political support, legal authorization, manpower and financial titles to maintain a large cross-agency project.

Nowadays, Chinese Single Window involves more than a dozen departments, but the departments still lay too much emphasis on their own interests and think that their relationship with the Single Window construction is irrelevant. Besides, they can only provide advice rather than a substantive decision and the degree of data sharing has yet to be improved. Therefore, China should strengthen intergovernmental as well as government and business communication with the full use of cross-sectoral joint meeting mechanism to listen to the needs of all parties to address the needs of them.

4.3 Unified local data standards and use international common data element to remove the departmentalization

The American Single Window attaches great importance to data standards. Security port bill clearly requires the consistence of ITDS data requirements and WCO data model, so they developed a US National Standard Data Set (SDS) consisting of less than 200 data elements. Since then, CBP and other relevant departments has been committed to the docking and unity of the data standards and developed a related plan. The unified standard system is the key to improving the degree of information association and sharing information between departments, which enables a system of data to be read directly in another system so that the trade sector free themselves from the difficulties in exchanging information with a number of government agencies. It achieves the goal of removing departmentalization of the bottom data. It is the guarantee of local and national Single Window docking. It is the basis of communication

between China and international Single Window in the future. China should learn from the United States and other countries in study of international standards and tools, unified data standards as soon as possible and try to use international common data sources to speed up the Single Window construction as well as improve efficiency, easy integration and convergence.

4.4 Explore a reasonable business model to ensure the source of funds

In the construction process of US ITDS / ACE, the funds are from the financial allocation without the user fees. The annual amount of funding has a clear budget, announces to the public and it is in strict accordance with the budget implementation. Enterprises can obtain services at low prices coupled with government investment to ensure the smooth progress of the Single Window construction. At present, the funds of Chinese Single Window is afforded by the government and China do not receive the application fee from import and export enterprises. But in some areas, although the investment plan is assessed by the exports in NDRC, the funding has been unable to implement correctly. Therefore, China can develop a clear budget, strengthen the implementation and ensure the source of funds be under the premise of nonprofit purpose of the Government to guarantee the smooth push of the Single Window. For example, China can make the Periodic Monthly Statement (PMS) to simplify payments, tax collection and the facilitation of account-based operations of allowing monthly payments. Or China can allow a reasonable period of time to pay after the release of cargo so that trade customers can have more cash flow.

5 Conclusion

The paper presents the development process, the ongoing and finalized projects of American Single Window. And then, through comparing the development of Single Window in China, the author analyses the problem and gives the suggestions.

The development of the Single Window Platform appears to be a very complex task for China. It will need a strong political will along with adequate planning and funding. Furthermore, China has to set a clear and consistent framework towards those targets according to our own national conditions. A constant political and economical determination will be needed to put together to reach the ultimate goal of a single efficient, transparent, digital Single Windows without barriers in the near future.

References

[1] Report to Congress on the International Trade Data System
2013

[EB/OL].http://www.itds.gov/linkhandler/itds/news/2013_itds_report.ctt/2013_itds_report.pdf

[2] Executive Order -- Streamlining the Export/Import Process
for America's Businesses [EB/OL].
<https://www.whitehouse.gov/the-press-office/2014/02/19/executive-order-streamlining-exportimport-process-america-s-businesses>

[3] ACE Development and Deployment - June 2016 [EB/OL].
https://www.cbp.gov/sites/default/files/assets/documents/2016-Jun/ACE%20Development%20and%20Deployment%20-%20June%202016_0.pdf

[4] External Adoption Rate Monthly Report
[EB/OL].https://www.cbp.gov/sites/default/files/assets/documents/2016-Jul/External_June_ACE%20Adoption%20Rate_Final_0.pdf

[5] Word Public Sector Report 2003 e-Government at the Crossroads.
<http://unpanl.un.org/intradoc/guoups/public/documents/un/unpan012733.pdf> .

[6] Establishing a Single Window for international trade. 《国际贸易便利化与电子业务中心 (UN/CEFACT)33 号建议书》 .
2005

[7]朱秋沅.两岸单一窗口构建比较及其制度性启示[J].亚太经济,2015(3):136-143.

[8]殷飞,冯贇.新加坡国际贸易“单一窗口”制度经验及启示[J].中国经贸导刊,2015(12):27-29.

[9]梁丹虹.国际贸易单一窗口数据元集的建立与应用研究[J].海关与经贸研究,2014(6).

[10]蒙嘉.我国单一窗口发展国际经验借鉴及路径选择[D].天津财经大学,2015.

[11]高震泽.“单一窗口”与口岸部门合作研究[D].复旦大学,2012.

[12]张荫芬,胡涵景.国际贸易单一窗口实施指南[M].北京:电子工业出版社,2015

[13]孟朱明.联合国国际贸易单一窗口教程[M].北京:中国商务出版社,2012

THE AUTHORISED ECONOMIC OPERATOR UNDER THE NEW UNION CUSTOMS CODE: CHANGES, CHALLENGES AND IMPACTS ON PRACTICE

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Abstract

The Authorised Economic Operator (AEO) is an important concept contributing to a better and close customs to business partnership. In the European Union the AEO status can be applied for since the 1st January 2008. The AEO regulations were originally implemented to the former Customs Code (CC)²⁸⁴ in Art. 5a CC and complemented with Art. 14a -14x of the Implementation Provisions (CCIP)²⁸⁵ in 2005. With Regulation (EU) No 952/2013 the Union Customs Code (UCC)²⁸⁶ entered into force on the 30th October 2013. The UCC was complemented by the Commission Delegated Regulation (UCC-DA)²⁸⁷ and the Commission Implementing Regulation (UCC-IA)²⁸⁸ in December 2015. Since the 1st May 2016 the UCC is officially applied and obligatory for

²⁸⁴ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (CC).

²⁸⁵ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (CCIP).

²⁸⁶ Regulation (EU) No 952/2013 of 9 October 2013 laying down the Union Customs Code (UCC).

²⁸⁷ Commission Delegated Regulation (EU) No 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (UCC-DA).

²⁸⁸ Commission Implementing Regulation (EU) No 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (UCC-IA).

all economic operators within the customs territory of the Union. In addition to the basic legal acts, there is the Transitional Delegated Act (UCC-TDA)²⁸⁹ that contains transitional rules for certain provisions of the UCC where the relevant electronic systems are not yet operational.²⁹⁰ With the UCC and its complementing legal acts there have been i.a. some considerable changes in the AEO legislation. These changes also have impacts on economic operators, customs authorities and their customs practice. Which changes, challenges and impacts the new legislation entails in detail and how customs practices may be adjusted in this field, is going to be analyzed and examined in the following paper.

Concept and Idea

The AEO programme aims at two fundamental goals: facilitating legal trade and increasing security issues in the international supply chain. If an economic operator wants to profit from the advantages of an AEO status, the customs authorities review his trustworthiness and reliability with regard to certain legally specified criteria. If this control is positive the customs authorities will grant the status of an AEO which is subject to permanent monitoring (cf. Art. 38 (1) UCC). By this, a closer and stronger customs to business partnership is supposed to be built up. The concept itself has its origin in the Framework of Standards to Secure and Facilitate Global Trade (SAFE)²⁹¹ of the World

²⁸⁹ Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational and amending Delegated Regulation (EU) 2015/2446 (UCC-TDA).

²⁹⁰ cf. Art. 5 and 55 UCC-TDA that allow, despite the principle of Art. 6 UCC, to use means other than electronic data-processing for applications and decisions relating to AEO issues until the electronic procedures are upgraded and operational.

²⁹¹ Resolution of the Customs Co-Operation Council on the Framework of Standards to secure and facilitate global Trade (SAFE-Framework); the text of the skeleton agreement is electronically available under: <http://www.wcoomd.org/en/about-us/legal-instruments/resolutions.aspx>.

Customs Organization (WCO). This framework was created due to new safety requirements in the global trade and defines criteria for a modern risk management. However, beside the SAFE-Framework, there are also other international conventions, like the Revised Kyoto Convention²⁹² (Art. 3.3.2. RKC) or the Trade Facilitation Agreement²⁹³ (Art. 7 TFA), that imply such a type of trusted trader. Today there are many different realizations of the AEO concept around the world.²⁹⁴ This trend goes still upward since there are many countries that are already initializing or planning such customs to business partnerships similar or comparable to the AEO.²⁹⁵

Types of an AEO

As the CC, the UCC still differentiates between three different types of an AEO (Art. 38 (2), (3) UCC): There is the AEO for Customs Simplifications (AEO-C) that enables the holder to benefit from certain simplifications in accordance with the customs legislation (Art. 38 (2) (a) UCC). The second type is the AEO for Security and Safety (AEO-S) entitling the holder to facilitations relating to security and safety (Art. 38 (2) (b) UCC). Finally, there is the status of an AEO Full (AEO-F) which combines the simplifications und benefits of an AEO-C with those of an AEO-S (Art. 38 (3) UCC).

Requirements under the UCC

Compared to the former CC, the UCC gives more space to the AEO regulations. Regulations can be found in Art. 38 - 41 UCC,

²⁹² International Convention on the Simplification and Harmonization of Customs of 1973 (Kyoto Convention), in the version of the „revised Kyoto Convention“ of 1999; the original text of the Revised Kyoto Convention is available under: http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx.

²⁹³ The original text of the Trade Facilitation Agreement (TFA) and background information are electronically available under: http://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm.

²⁹⁴ For example in Australia, China, Canada, New Zealand, Singapore or in the USA.

²⁹⁵ For example Chile, Ecuador, Indonesia or Morocco.

in Art. 23 - 30 UCC-DA and in Art. 24 - 35 UCC-IA. It can be stated that certain regulations have been transferred from the former CCIP to the UCC, which gives them a more prominent place and thus more significance. The decisive regulation in this context is Art. 39 UCC. This provision defines the material criteria for the different types of an AEO.

In general, all types of an AEO have in common the following four requirements:

(1) Establishment in the customs territory of the Union (Art. 38 (1) UCC)

(2) Absence of infringements and criminal offences (Art. 39 (a) UCC)

(3) Demonstration of control of operations and of the flow of goods (Art. 39 (b) UCC)

(4) Financial solvency (Art. 39 (c) UCC)

Depending on the intended AEO status the UCC has more requirements:

(5) Additionally for an AEO-C: Proof of practical standards of competence or professional qualifications (Art. 39 (d) UCC)

(6) Additionally for an AEO-S: Appropriate security and safety standards (Art. 39 (e) UCC)

For the AEO-F status all six mentioned requirements have to be fulfilled.

(1) Establishment in the customs territory of the Union

According to Art. 38 (1) UCC, the applicant has to be an economic operator that is established in the customs territory of the Union. Economic operator means a person, who in the course of his business, is involved in activities covered by the customs legislation (Art. 5 (5) UCC). In addition to this, a person under the UCC means a natural person, a legal person, and any association of persons which is not a legal person but which is recognized under Union or national law as having the capacity to perform legal acts (Art. 5 (4) UCC). Moreover, the economic operator has to be

established in the customs territory of the Union. This means that he has to have his habitual residence (Art. 5 (31) (a) UCC) respectively his registered office, central headquarters or a permanent business (Art. 5 (31) (b) UCC) or a permanent business establishment as defined by Art. 5 (32) UCC inside the customs territory. However, the UCC also allows economic operators that are established outside the customs territory of the Union to benefit from the advantages of an AEO status as far as there is a reciprocal recognition in an agreement between the EU and a third country (cf. Art. 38 (7) UCC).²⁹⁶

(2) Absence of infringements and criminal offences

The UCC demands as a second material requirement that the applicant has not committed any serious infringement or repeated infringements of customs legislation and taxation rules, including no record of serious criminal offences relating to the economic activity of the applicant (Art. 39 (a) UCC). This requirement ensures the applicant's fidelity and allows a future prospects to what extent the applicant is going to comply with customs legislation and taxation rules. A definition of "customs legislation" can be found in Art. 5 (2) UCC. The phrase "relating to the economic activity of the applicant" only refers to the criterion of serious criminal offences, which can be derived from the origin of the provision in the former Art. 14f CCIP.²⁹⁷ Therefore, with this requirement the UCC seems to intensify his former standard by extending the economic operator's compliance even to the applicant's private tax infringements. However, it remains to be seen how strict the customs authorities are going to apply this basic principle and which concrete infringements according to tax law will be included. From the AEO Guidelines²⁹⁸ it can be reasoned that, on the one hand, the Commission is generally going to pursue a wide range of

²⁹⁶ cf. also Recital No. 23 of Regulation (EU) No 952/2013.

²⁹⁷ *Witte/Henke* in: Witte/Henke/Kammerzell: Der UZK, p. 66; Witte, Der AEO im UZK, Teil 2, AW-Prax 2016, 122 (124).

²⁹⁸ Authorised Economic Operators Guideline, approved by the CCC-GEN (AEO subsection) on 11 March 2016, TAXUD/B2/047/2011 – Rev. 6.

tax infringements. On the other hand, however, the understanding of taxation rules is intended to be limited so that only those infringements are followed up that have a direct relation to the applicant's economic activities.²⁹⁹

Where the applicant is a natural person, compliance with the requirements of Art. 39 (a) UCC is proven if the applicant and, where applicable, the employee in charge of the applicant's customs matters have not committed any of the mentioned infringements or criminal offences (Art. 24 (1) UCC-IA). If the applicant is not a natural person, the UCC demands compliance of a bigger group of people. In this case the applicant himself, the person in charge of the applicant or exercising control over its management as well as the employee in charge of the applicant's customs matters have to fulfil the criteria of Art. 39 (a) UCC (Art. 24 (1) (a) - (c) UCC-IA). For taking a decision regarding the fulfilment of the criteria, the customs authorities consider the size of the economic operator and his related operations in relation to the importance and the number of the infringements (Art. 24 (2) UCC-IA). Depending on the complexity of the processes in a business, minor infringements may not necessarily lead to a denial of an application. That is why the Commission has listed in its AEO Guidelines various criteria and cases according to which minor, repeated or serious infringements can be classified and rated.³⁰⁰

According to Art. 24 (1) UCC-IA, the customs authorities take their decisions regarding compliance in retrospect of the past three years. Where the applicant has been established for less than three years, the customs authorities shall assess the fulfilment of the criterion on the basis of the records and information that are already available (Art. 24 (4) UCC-IA).

²⁹⁹ cf. TAXUD/B2/047/2011 – Rev. 6, p. 31.

³⁰⁰ cf. TAXUD/B2/047/2011 – Rev. 6, p. 31-35.

(3) Demonstration of control of operations and of the flow of goods

The third requirement for the applicant is codified in Art. 39 (b) UCC. It demands a demonstration by the applicant of a high level of control of his operations and of the flow of goods, by means of a satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls. As in the CC, the intention behind this requirement is still to enable the customs authorities to a subsequent control of business processes. Moreover, a proper and clearly laid out accounting system avoids mistakes and thus has a preventative character.

According to Art. 25 (1) (a) UCC-IA, the satisfactory accounting system has to be consistent with the generally accepted national accounting principles in the Member State where the accounts are held. Records kept by the applicant for customs purposes are to be integrated in the accounting system or cross checks to the system have to be allowed (Art. 25 (1) (b) UCC-IA). Besides, the customs authorities have to be allowed physical or electronic access to the accounting systems or, where applicable, to the commercial and transport records (Art. 25 (1) (c), (d) UCC-IA). More requirements concerning the satisfactory accounting system are laid down in Art. 25 (1) (e) - (k) UCC-IA. They include i.a. that the applicant has to have a logistical system which identifies goods as Union or non-Union goods, an administrative organisation suitable for the management of the flow of goods and satisfactory procedures for handling licences and authorisations. New and remarkable in this context is, that the economic operator, according to his obligation laid down in Art. 23 (2) UCC, has to ensure that relevant employees are instructed to inform the customs authorities whenever compliance difficulties are discovered and that he has to establish suitable procedures for informing (Art. 25 (1) (i) UCC-IA).

(4) Financial solvency

Financial solvency is the fourth material criterion to become an AEO. It shall be deemed to be proven where the applicant has good financial standing, which enables him to fulfil his commitments, with due regard to the characteristics of the type of business activity concerned (Art. 39 (c) UCC). With this provision the legislator wants to secure the economic operator's capacity to pay for his customs procedures and customs debts. With regards to contents, Art. 26 (1) (a) - (c) UCC-IA defines under which circumstances Art. 39 (c) UCC is considered to be fulfilled: Firstly, the applicant is not subject to bankruptcy proceedings. Secondly, during the last three years preceding the submission of the application the applicant has fulfilled his financial obligations regarding payments of customs duties and all other duties, taxes or charges which are collected on or in connection with the import or export of goods. Thirdly, the applicant demonstrates on the basis of the records and information available that he has sufficient financial standing to meet his obligations and fulfil his commitments having regard to the type and volume of the business activity.

(5) Proof of practical standards of competence or professional qualifications

In addition to the four mentioned requirements, an applicant that wants to be granted the status of an AEO-C or an AEO-F has to prove practical standards of competence or professional qualifications directly related to the activity carried out (Art. 39 (d) UCC). This criterion has been newly introduced to the UCC and has no equivalent in the former CC. With the introduction of this requirement the legislator stresses his intention to secure the applicant's customs competency and to protect and preserve certain quality standards. From the wording of the provision it becomes clear that theoretical knowledge is not appropriate to fulfil the requirement since the competence refers to practical standards or professional qualifications.

Again the UCC-IA with its Art. 27 specifies the basis legal act. In general, the proof of competence has to be provided by the applicant himself, by the person in charge of the applicant's customs matters or, if applicable, by a contracted person (cf. Art. 27 (1), (2) UCC). Practical standards of competence can be proven by a practical experience of a minimum of three years in customs matters or by complying with a quality standard concerning customs matters adopted by a European Standardisation body (Art. 27 (1) (a) UCC-IA). Professional qualifications can alternatively be proven by a successfully completed training covering customs legislation consistent with and relevant to the extent of the respective person's involvement in customs related activities (Art. 27 (1) (b) UCC-IA). Institutions that are able to provide such a training and to certify the professional qualifications are the customs authorities of a Member State as well as educational establishments and professional or trade associations recognized by the customs authorities or accredited for the purpose of providing such qualifications (Art. 27 (1) (b) (i) - (iii) UCC-IA).³⁰¹

(6) Appropriate security and safety standards

For the grant of the status of an AEO-S or an AEO-F the applicant has to fulfil appropriate security and safety standards concerning the international supply chain (Art. 39 (e) UCC). Art. 28 (1) UCC-IA establishes a listing of security and safety standards that have to be satisfied. The standards i.a. refer to the areas of physical integrity and access controls, logistical processes and the handling of goods as well as to the personnel and the business partners of the economic operator. For the examination on-the-spot verifications are carried out at all relevant premises of the applicant (cf. Art. 28, 29 (1) UCC). As far as the applicant is already holder of a comparable security and safety certificate issued on the basis of an international convention or of another standardisation body,

³⁰¹ Fundamental values and competencies that shall be trained and communicated in this context can be found in the EU Customs Competency Framework for the Private Sector: http://ec.europa.eu/taxation_customs/common/eu_training/competency/index_en.htm

these certificates shall be taken into account when checking compliance (Art. 28 (2) UCC-IA).

Concerning the security and safety standards that are generally checked, the applicant has to provide protection against unlawful entry or intrusion and he has to prevent unauthorised access to his areas (Art. 28 (1) (a), (b) UCC-IA). Regarding the handling of goods, the applicant has to establish secure processes (Art. 28 (1) (c) UCC-IA). In addition to this, he has to take measures allowing to clearly identify his business partners and to ensure that those partners ensure the security for their part of the international supply chain (Art. 28 (1) (d) UCC-IA). This means that from now on the UCC regulation also includes producers and exporters as parts of the international supply chain that were formerly not included. Art. 28 (1) (e) and (g) UCC-IA prescribe that the applicant conducts in so far as national law permits, security screenings on prospective and current employees working in security sensitive positions, carries out background checks and ensures that his staff regularly participate in programmes to raise their awareness of security issues. Additionally, Art. 28 (1) (f) and (h) UCC-IA demand appropriate security procedures for external service providers and, in contrast to the CC, an appointed contact person for safety and security related questions.

General and Exclusive Advantages

The status of an AEO is recognized by all customs authorities in all Member States of the EU (Art. 38 (4) UCC). This guarantees the holders within the EU a unitary treatment and a harmonized exercise and implementation of the various advantages. The UCC allocates different simplifications and advantages to the AEO types. Depending on the type of an AEO, one has to differentiate between the different advantages (Art. 38 (5), (6) UCC). New in this context is in particular that for the first time the UCC introduces advantages that are exclusively reserved for an AEO and that cannot be made demands on by unauthorised operators.

Advantages for an AEO-C/F

Holders of an AEO-C or an AEO-F status benefit from certain simplifications in accordance with the customs legislation. Pursuant to Art. 38 (2) (a) UCC the AEO-C and the AEO-F benefit from the following advantages: More favourable treatment regarding risk assessment and customs controls, prior notification of physical controls, the qualified or simplified authorisations for simplified processes and exclusive advantages.

According to Art. 38 (6) UCC in conjunction with Art. 24 (1) UCC-DA, an AEO shall be subject to fewer physical and document-based controls than other economic operators. Exemptions from this favourable treatment are laid down in Art. 25 UCC-DA. They apply if the customs controls relate to specific elevated threat levels or control obligations set out in other Union legislation. Controls concerning the consignments declared by an AEO shall be carried out as a matter of priority. On request the controls may be carried out at a place other than the place where the goods have to be presented to customs (Art. 24 (4) UCC-DA).

The AEO shall be notified of the fact that his consignment has been selected for such a control as far as this notification does not jeopardise the results or findings (Art. 24 (3) UCC-DA). This predictability of controls makes it easier for an AEO to adapt to certain situations and to plan and structure his business processes. The AEO-C and the AEO-F can benefit from the advantage of prior notification if they lodge a temporary storage declaration or a customs declaration in accordance with Art. 171 UCC (Art. 24 (3) UCC-DA). The notification shall take place before the presentation of the goods to customs, but a control after presentation of the goods is still possible without prior notification (Art. 24 (3), (5) UCC-DA).

Regarding the advantage of qualified or simplified authorisations for simplified processes, the UCC contains a number of examples. On the one hand, there are some qualified authorisations that demand the applicant to fulfil at least partially the requirements of an AEO-C according to Art. 39 (a) - (c) UCC.

The respective provisions then refer to the relevant AEO criteria.³⁰² The UCC-DA also knows such conditioned grants.³⁰³ On the other hand, there are so-called simplified authorisations. In such cases the holder of an AEO-C status benefits from reduced controls regarding the fulfilment of the criteria that have already been checked in the context of the AEO application. Which requirement for the respective authorisations will not be checked again is laid down in the different provisions.³⁰⁴ These are often the criteria of personal reliability or the existence of appropriate records.

Only an AEO-C and of course an AEO-F can make use of the exclusive advantages³⁰⁵ that the UCC introduces for the first time. Economic operators that do not hold the appropriate status are consequently excluded from these benefits.

Advantages for an AEO-S/F

Holders of an AEO-S or an AEO-F status benefit from the following advantages: More favourable treatment regarding risk assessment and customs controls, prior notification of physical controls, facilitations regarding pre-departure declarations and advantages because of the mutual recognition of AEO programmes.

As the AEO-C, the AEO-S benefits from simplifications regarding risk assessment and customs controls. They are subject to lesser controls that are carried out with priority (Art. 24, 25 UCC-

³⁰² cf. for instance the customs representative within the EU (Art. 18 (3) UCC), the comprehensive guarantee (Art. 95 (1) UCC) or the comprehensive guarantee with a reduced amount (Art. 95 (2) UCC).

³⁰³ cf. for instance the authorisations to establish regular shipping services (Art. 120 UCC-DA) or the authorisations to the status of authorised consignee for TIR operations (Art. 187 UCC-DA). For more examples see *Witte*, Der AEO im UZK, Teil 1, AW-Prax, 2016, 75 (77f.).

³⁰⁴ cf. for instance Art. 148 (2) (b) UCC for the operation of temporary storage facilities, Art. 211 (3) UCC for special procedures or Art. 223 (2) UCC for the use of equivalent goods.

³⁰⁵ cf. for instance the authorisation for a comprehensive guarantee with a reduced amount (Art. 95 (3) UCC), the movements of goods during the temporary storage (Art. 148 (5) (c) UZK, Art. 118 UCC-DA), the centralised clearance (Art. 179 (2) UCC), the waiver of the obligation for the goods to be presented in the context of the entry in the declarant's records (Art. 182 (3) (a) UCC) or the self-assessment (Art. 185 (2) UCC).

DA). According to the specific status of the AEO-S, the simplifications relate to security and safety controls (cf. Art. 38 (2) (b) UCC).

Prior notification of physical controls is another advantage of the AEO-S (Art. 23, 24 (2) UCC-DA). However this prior notification only refers to an entry summary declaration or to the cases laid down in Art. 130 UCC. The notification shall take place before the arrival of the goods in the customs territory of the Union (Art. 24 (2) UCC-DA). Art. 24 (5) UCC-DA is applicable.

In addition to this, the AEO-S has the possibility to transmit a reduced data set when lodging a pre-departure declaration according to Art. 263 UCC (Art. 23 (1) UCC-DA). This simplification is also available in cases where an AEO-S lodges on behalf of another AEO-S such a declaration (Art. 23 (2) UCC-DA).

Moreover, the AEO-S profits from advantages that result from the mutual recognition of the AEO programmes with other countries in the world (cf. arg. e contrario Art. 38 (7) UCC). Thus, privileges that the AEO-S holds in the EU have to be accepted and granted in other contracting countries, too. Such a mutual recognition is normally based on an international bilateral convention.³⁰⁶

Impacts and Consequences

Along with the different changes and introductions to the AEO legislation under the UCC there arise certain impacts and consequences for both, the economic operators and the customs authorities. Some of the changes under the UCC will have more or less strong effects on practice and on the different customs processes.

Firstly, the tightened requirements especially in Art. 39 UCC and in the UCC-IA will lead to stricter and more intensified controls in this area. Beside the fact that the applicants will have to comply with a number of increased requirements, they have to be aware of

³⁰⁶ At the moment the EU has several bilateral conventions regarding the mutual recognition of AEO programmes, among them Canada, Japan, Switzerland and the USA.

the fact that many persons in their business are potentially to be screened by the customs authorities. This goes along with a higher workload for the customs authorities und requires their consequent action.

According to Art. 251 (1) (b) UCC-DA, all AEO authorisations that are still valid on 1st May 2016 shall remain valid until they are reassessed in accordance with Art. 250 UCC-DA. Such a reassessment is to be carried out by the customs authorities within three years until 1st May 2019 (Art. 345 (1) UCC-IA). Art. 254 UCC-DA in conjunction with Annex 90 UCC-DA rule that even the already existing authorisations have to fulfil the criteria and principles laid down in the UCC and in the UCC-IA until their reassessment. This might especially be important with regard to Art. 39 UCC so that an AEO that does not satisfy the requirements could even lose his status before his reassessment (Art. 251 (2) UCC-DA).

With regard to Art. 39 (d) UCC it can be stated that this newly introduced requirement will presumably have the most considerable consequences. The education and training of big groups of people in businesses will become more important in practice. Since the UCC explicitly demands a proof of practical standard or professional qualification, many employers and employees in businesses will have to train for an appropriate certificate on a regularly basis. By this, one can expect an increasing of quality standards and competency in the field of customs. Thus, mistakes and negligence are expected to be avoided. This might also go along with a better collaboration between the customs authorities and the economic operators so that in the long term both parties will profit. On the other hand, the demanded training cannot be carried out by an arbitrary educational establishment or trade association. The training schools themselves are legally obliged to be recognized by the customs authorities. Consequently, the customs authorities have the chance to establish new quality standards and can contribute to a unification of teaching. Probably there will also be a bigger competition between

the different established educational institutions and the newly founded ones since a new market for the rendering of services is expected to be formed.

In general, compliant and trustworthy economic operators should benefit from certain advantages. This is still the case under the UCC and one can notice that AEO holders will benefit from more simplifications and advantages than under the CC. By this, the legislator has responded to the critique regarding the former advantages under the CC that were comparably unimportant. In this context, one can see a trend that the legislator expects economic operators to hold an AEO status since there are many simplifications that indirectly require the fulfilment of criteria that are also needed to be granted an AEO status. Some advantages are even limited to AEO-C and AEO-F holders so that they show an exclusive character even though these are not yet indispensable competitive advantages.

All this illustrates that the legislator wants to establish the AEO as an inevitable standard in practice because many benefits and privileges under the UCC are at least (indirectly) demanding the status of an AEO-C. By this, the UCC attaches more importance to the AEO concept. It is therefore expected that both, the AEO-C status and, due to more international convention of mutual recognition, the AEO-S status are going to become more significant in the future.

Conclusions

To sum up, one can conclude that the AEO is an important and worldwide successful concept balancing both, the interests of customs authorities and economic operators. States benefit from higher security standards and financial profit. In contrast to this, compliant and trustworthy AEOs benefit to a greater or lesser extent from different legal and economic advantages.³⁰⁷

Under the UCC the AEO and its regulations have been subject to various changes. With regard to contents and structure,

³⁰⁷ cf. for this issue: *Schramm*, Who benefits most from AEO certification? An Austrian perspective, *World Customs Journal* 2015, Vol. 9, No. 1, 59 ff.

the regulations have been reorganized and tightened. Concerning the requirements of an application, one can conclude that already existing material criteria have been tightened and intensified. Moreover, the UCC introduces the new requirement of practical standards of competence or professional qualifications for the AEO-C and the AEO-F in Art. 39 (d) UCC, which will have strong impacts on practice.

Simplifications and advantages for an AEO have been extended under the UCC. For the first time the legislator even equips the AEO-C with exclusive advantages, which shows the importance he attributes to this concept. At the same time there is a trend that more and more simplifications require even from an unauthorised economic operator at least partial fulfilment of criteria being also mandatory for an AEO. In addition to this, it becomes apparent that also the AEO-S will become more important in the future. All this will lead to the effect that sooner or later the holding of an AEO status is almost obligatory for a forward-looking and profitably thinking economic operator.

ROLE OF CUSTOMS ADMINISTRATION IN THE FIGHT AGAINST NARCOTIC SUBSTANCES

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Summary

Priority of the Bulgarian customs administration after the accession of Bulgaria to the European Union is the implementation of the European customs legislation, procedures and instruments for customs control of the EU in different areas of customs law. The problem of drug demand, supply and use has been extremely serious in recent years, more overdose deaths and the use of children and young people have been reported. One of the main tasks of the Customs Agency is the modernization of the national regulations and customs procedures as well as the extension of the use of customs information systems in the fight against the illegal trade of narcotic substances. All this is about facilitating the work, interacting with customs, reducing administrative burdens and ensuring safe, safe and anti-narcotics trade in order to ensure the security and safety of EU citizens.

Keywords: *customs administration, narcotic substances, customs control*

Introduction

The accession of Bulgaria to the EU and its commitments as an external border of the Community set specific requirements for the Bulgarian customs administration to carry out effective border control, protection of intellectual and industrial property. In 2016 with the introduction and implementation of the new Customs Code

of the Union³⁰⁸ important changes occurred in the activities and responsibilities of customs administration. The main tasks for the customs administration are: modernization of national regulations and customs procedures; extending the scope of customs information systems [5].

Recent years have raised new drug challenges - increasing the dynamics of the emergence of new psychoactive substances, chemicals for their production, new ways of trafficking and innovative distribution channels. Bulgaria is a transit country for all types of drugs. The intensity of drug trafficking across the country is related to the supply and demand of illegal markets in Europe and the Middle East, and is also dependent on effective counter-enforcement of law enforcement [1, 2, 7].

Bulgaria recognizes the serious danger of drug trafficking in and around the country. A large number of organized criminal groups engaged in illegal drug activities are also engaged in other types of cross-border crime - commodity smuggling, economic crime, money laundering and others. They often change the trends and ways of using our country's territory for the temporary storage and transit of illicit drugs and precursors. In recent years, there has been a steady tendency for ever more active participation of Bulgarian citizens, including at high levels, in networks of criminal drug gangs operating on a global scale [7].

In 2016, the customs authorities, in exercising their control functions and implementing the administrative penal responsibility, have compiled: 5454 acts for establishing administrative violations (which are 5% more than the previous 2015); 5702 penal decrees. More frequent detentions of narcotic substances for the Bulgarian and foreign markets have been identified. During the past year the borders were often in the focus of public attention. All socio-political cases have demonstrated the key role of the customs administration and Bulgarian customs in terms of the security and safety of citizens, economic operators, the state and the EU [8].

³⁰⁸ Regulation (EU) № 952/2013 of the European Parliament and of the Council of 9 October 2013 establishing a Union Customs Code

The aim of the study is to present and analyze the challenges facing the customs administration in the fight against drugs in order to ensure the security and safety of EU citizens.

1. Role of customs administration's in in the fight against drug

The customs authorities organize and carry out the activity to prevent and detect illicit trafficking in narcotic substances and precursors. The Center for Drugs, Weapons and Precursors has been set up centrally at the Agency. At the territorial level in the country, specialized units for border/operational control and fight against drug trafficking operate. The Central Customs Laboratory of the Central Customs Administration is certified to carry out expert investigations into drug-retained drugs [6, 10].

In the field of customs intelligence and investigation, the effectiveness of control actions has been increased. Every year the Bulgarian customs administration continues: to improve the procedures for control and servicing of the economic operators. Adapts to the changing regulatory, administrative and business world and develops new models for efficient work that will lead to even better results. This is proof of this being the first prize of the Customs Agency in the competition "Light Economics" of the Association of Industrial Capital in Bulgaria, in the category "For a normative act or administrative practice, which lead to curbing the gray economy and improving the business environment". Due to the reported record high collection rates and the achieved successes in the fight against customs and tax frauds, with the smuggling of narcotic substances.

The role of the customs administration in Bulgaria and the EU in the fight against narcotic substances is directly related to and is guided by: the Narcotic Substances Control Act; Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors; Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Community and

third countries in the field of precursors; Commission Regulation (EC) No 1277/2005 laying down rules for the implementation of Regulation (EC) No 273/2004 and Regulation (EC) No 111/2005.

In 2016, the main priority for the customs administration is the prevention of tax fraud with excise duty, excise diversion and the fight against narcotics and smuggling of tobacco products. Priority for Bulgarian customs remains the joint work with the General Directorate for Combating Organized Crime at the Ministry of Interior and the participation of the two departments in international operations to counteract the international trafficking of narcotic substances [6, 11, 12, 13].

The new challenge in an effective fight against drugs is *a global network and information exchange and spread via the Internet*. At present, sites that offer different narcotic drugs exist, and drug traffickers use modern communication methods to facilitate and conceal their activities [7, 14].

2. Nature and types of narcotic substances

Narcotics (drugs) are a group of pharmacological substances that act primarily on the central nervous system, and when injected into the body, they produce stupor, which may feel like sedation or narcotic sleep. The term narcotic is believed to come from the Greek physician Galen and refers to substances that: dull senses and sensations and/or produce a state of numbness, stiffness or mild paralysis; change the functioning of the brain and thus affect the psychic, emotional and physical state of the individual (psychoactive substance).

In Bulgarian legislation, substances that are drug-related are divided into three groups:

- plants and substances with a high degree of risk to public health from the harmful effects of misuse prohibited for use in human and veterinary medicine. ;
- substances with a high degree of risk is used in human and veterinary medicine. ;
- Risk substances.

The European Monitoring Center for Drugs and Drug Addiction (EMCDDA) provides the EU and its Member States with factual, objective, reliable and comparable information at European level on drugs, drug addictions and their consequences. The Center's goal is to provide data to help policy-makers and lead drug-related initiatives [4]. According to the EMCDDA, the European drug market remains resilient, focusing on higher-risk products for health, the continuing emergence of new substances and changing patterns of drug use. There is a serious problem related to the increase in deaths due to overdose and the threats posed by drug markets on the Internet. The causes of the increase in fatal cases are most often related to a number of factors: increased accessibility of heroin; increasing its purity; increasing the age of drug users. In conclusion, it can be summarized that while some of the problems from the past still exist, new threats continue to emerge, in particular the development of the synthetic drug market [3].

The main types of narcotic drugs most often subject to illegal trade are:

- Cannabis - the often confiscated drug. Cannabis - grass (marijuana) and Cannabis - resin (hash) are the two basic products from cannabis, which are offered on the European market. ;
- Cocaine – the often used illegal narcotic from the group of stimulants. ;
- Amphetamines – Together with the Methamphetamine are related synthetic stimulants. Amphetamine is wider distributed in Europe. Use on amphetamine remains more intensive compared to this one on methamphetamine.;
- MDMA³⁰⁹ – is the main ingredient in the tablets of ecstasy and it is used in products in form of powder and crystal. ;

³⁰⁹ MDMA (3,4-methylene-dioxy-meta-amphetamine), the most popular under the name ecstasy. MDMA is a synthetic entactogen from the family of phenethylamines (these include mescaline, 2C-I, amphetamine).

- Opioids – heroin is most often offered opioid on European market. There are two forms of the imported heroin - *brown heroin* and *white heroin* with an origin from Southeast Asia Afghanistan.;
- New psychoactive substances – a wide spectrum of new psychoactive substances are found through the latter years. The number of the new ones narcotic drugs substances is growing to more than 560, from which 380 are discovered through the latter five years.

In recent years there has been some dynamics in the main indicators of drug use in Bulgaria, which is in line with the general trends in the European Union. Based on survey data from 2010-2012, a total of 560-570,000 Bulgarian citizens aged from 15 to 64 have used a narcotic substance at least once in their life. From this point of view, there is an increase in the number of people with at least one use of any of the substances. A survey among the general population (15-64) shows that by the end of 2012, 8,4% of the population is in this group.

The structure of use by substance type remains broadly unchanged over the last five years. The most commonly used drug is *marijuana*. *Heroin* is still most strongly associated with problem drug use, but with an increasing tendency to decrease the expense of stimulants. Growing use of *synthetic drugs* - *amphetamines* and *substances such as ecstasy*. When *cocaine* use also tended to increase.

Young people aged between 15 and 34 represent about 80-83% of all people aged 15-64 who have used a drug at least once in their life. Between 36 and 39% of students and pupils from 9th to 12th grade have tried at least once in their life a drug [6, 9].

In this connection first in Varna, then on the whole country Sofia, Ruse and others cities regularly are hold meetings and trainings of students on *Drug Risk Prevention* organized by the Bulgarian Customs Agency. The aim of the program is to acquaint

as many students as possible with the types of narcotic substances, their influence and long-term impact on the body and life in general, how to keep the drugs, how to determine by field test what substance is, what to do when a dealer or someone offers them drugs, there has also been evidence of the detection of drugs hidden in hand baggage by a trained customs dog [14].

Established a new trend is the use of *new psychoactive substances* known as "*designer drugs*." Huge challenge for the new global trends are the emergence of new chemicals used to manufacture *synthetic drugs* replacing placed under international control precursors.

For the first time in Bulgaria, in 2011 and 2012, several cases of imports from China of chemicals such as formamide (17 tonnes) and α -phenylacetone nitrile - APAAN (940 kg), which are precursor raw materials (pre-precursors) for the production of Amphetamine. These quantities can serve to produce illegal stimulants worth tens of millions of euros. The total amount of drug retained increases with respect to the previous year, both in retained quantities (three times) and in the number of cases (10%). In the past year, marijuana is the most commonly detained drug at the country's borders. 21 attempted illegal marijuana trafficking have been prevented. Numerous detention has heroin in cars. For the first time in the past ten years, a courier carrying heroin in a double-bottom suitcase was detained at Sofia Airport. The Customs Agency kept a record 181 pounds for Bulgaria in the direction of Turkey. Ecstasy coming from the Netherlands. A new moment is the capture of significant quantities of cocaine carried by road freight transport (Figure 1).

During the past year in the customs laboratory - Central Customs Laboratory Directorate have identified three new drug designers for the country, which are proposed to be included in the Ordinance on the Order for Classification of Plants and Substances as Narcotic Drugs [5, 6, 9].

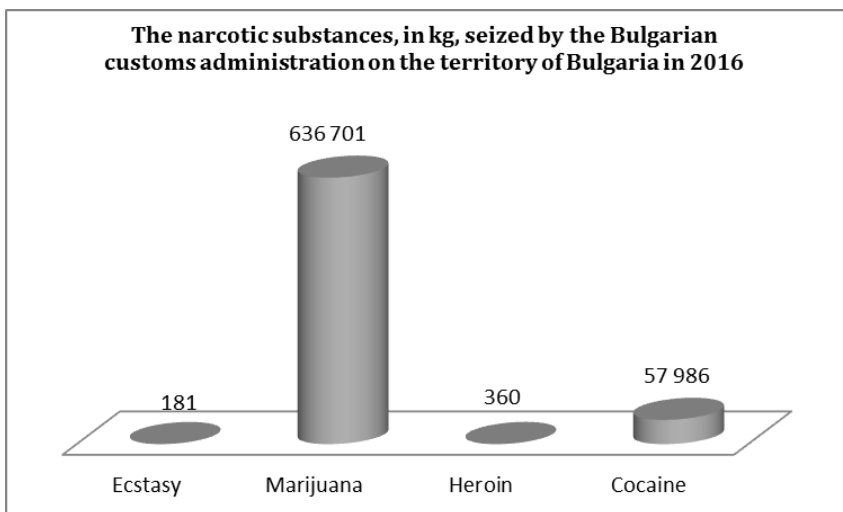


Figure 1. The narcotic substances, in kg, seized by the Bulgarian customs administration on the territory of Bulgaria in 2016

From the 20-20 April 2017, 861 kilos of narcotic substances (479 kilograms of marijuana, 209 kilos of heroin, 54 kilos of ecstasy, 107 kilos of amphetamines, 1 kilogram of cocaine and 11 kilos of other drugs) were destroyed over a total of 890 criminal proceedings. The total value of the destroyed drugs at “black market” prices is about BGN 68 million. Only those quantities of narcotic substances for which convictions have been enforced or for which the prosecution has been issued are destroyed. Narcotic substances on the territory of the Republic of Bulgaria are detained by the law enforcement agencies - the Customs Agency and the Ministry of Interior. For seventeen years, the Customs Agency has organized and carried out 56 procedures for the destruction of narcotic substances with a total quantity of more than 37.9 tones [15].

3. Results of the activities of the Bulgarian customs administration in the fight against narcotic substances on the territory of the EU

The Customs Agency effectively develops the customs intelligence activity in the field of the fight against drug trafficking. A specialized information system for the exchange of operational data in real time between specialized units for counteracting illegal drug trafficking at the Central Customs Administration and in the customs in the country was introduced. The Agency regularly exchanges information with interested international organizations, with similar customs and police services in a number of countries with which it has established effective cooperation for many years. Specialized anti-drug trafficking units at the Customs Agency are involved in international operations to counteract illegal drug trafficking and precursors, organized by EU working bodies, the World Customs Organization, the Center for Law Enforcement in South-Eastern Europe, and Bucharest. [5, 6, 7, 10].

Table 1

**Major types of narcotic substances captured in Bulgaria
in the period 2009-2012**

Type of The drug Substance, in kg			2009	2010	2011	2012	Total Quantit y
1 .	Heroin		1183. 33	330.0 1	383.6 6	198.10	2 095,10
2 .	Opium		0	10.22	12.08	0.81	23.11
3 .	Cocaine		238.8 9	29.53	2.13	80.77	351.32
4 .	Marijuana		9925, 77	2208. 46	461.1 9	2352,7 3	14948,1 5
5 .	Hashish		44.51	0.1	16.84	15967, 24	16028.6 9
6 .	Syntheti c and Designer Drugs	kg	275.9 9	198.2 0	297.5 5	54.46	826.20
		tabe ts	8640	4822	8345	6,472	86 567
		liter s	0.00	2.60	106.0 0	65.04	173.64
7 .	Precurso rs	kg	0	0	0	600	600
		tabe ts	0	4 252	40	53 660	57 952
		liter s	0	13 100	0	0.10	13,100. 10

Traditionally most trafficked drug in the territory of Bulgaria is *heroin*. In recent years, however, there has been a decline in both retained quantities and the number of catches found at the borders of our country (Table 1). In 2013, one of the main reasons for this trend is an increase in the retained quantities of crude opium and heroin in Afghanistan and Iran. According to the

report of the United Nations Office on Drugs and Crime (UNODC) by 2009 in Iran retain about 25% of the total amount of heroin in the world. Turkey also reported repeated increase in the quantity of heroin seized by its law enforcement agencies in recent years, after the 2008 Turkish customs started to capture significant amounts of opium and heroin at Turkish - Iranian border. All this leads to a decrease in capture of heroin not only in Bulgaria but also in other countries in Central and Western Europe [6, 9].

In recent years, are reported enhancing transit traffic of *ecstasy* through the territory of Bulgaria. In recorded cases it is found that party providers of narcotic substance are the Netherlands and Belgium, the narcotic substance is intended for countries in the Middle East and Turkey. The territory of the country is used for storage and subsequent trafficking of drugs to Central and Western Europe for the production of *drugs (methamphetamine)* (Table 1).

There is a tendency organized crime groups involved in the distribution of drugs, in particular *cannabis* to organize itself cultivation of drugs in specially designed for this type sites "glasshouse" even at home (Table 1). Because of the small investment and quick return of funds to create conditions more criminal formations focus its activities precisely to growing cannabis indoors for subsequent disposal on the internal market.

In 2010, law enforcement authorities for the first time faced with the problem of "*designer drugs*". Designer drugs are an attempt to avoid legal control by changing the chemical composition of the known synthetic drug (Table 1). Addiction is the same as "traditional" or even increases, which attract drug abusers [5, 6].

International trade with new synthetic drugs is developing very intensively through Internet marketing. This method provides easy access to the substances and anonymity and safety for participants in trading. With regard to the control of these substances there is no single directly applicable European legislation. Given the emerging trends and market traffic of these substances in 2011 are adopted amendments to the Law on Control

of Narcotic Substances and Precursors and are created a new Ordinance of the Council of Ministers for the classification of substances such as drugs that regulate the most flexible control on emerging drugs. Thus at present within the EU Bulgaria has one of the most effective control mechanism on such substances [5].

Control over the operators of drug precursors is accomplished through measures under national and European legislation on precursors and is supported by a number of tools provided by the International Council for Drug Control. Bulgaria is one of the 136 countries, registered and using the system of prior notification for the export of precursors (Pen-Online). The system allows real-time communication between countries and reduce opportunities for diversion of precursors for illegal purposes of legitimate international trade.

In response to the rapidly changing trends for new *substances substituent precursors*, it has been developed and is in effect a system for reporting on the capture of precursors and other substances (PICS), which establishes that they are used in illegal manufacture of drugs. The competent national authorities have the ability to a secure access and exchange information in real time through the system, and the ability to initiate bilateral and regional investigations of cases of seizure and diversion of precursors and other controlled substituting substances [6].

The customs bodies investigate criminal proceedings in respect of offenses related to the smuggling of drugs and precursors, which is an additional guarantee of results. In order to work effectively, efforts should be directed towards more sophisticated methods and tools in combating, trafficking and distribution of narcotics and interaction between competent institutions and international police cooperation. Reducing the amount offered illicit drugs and precursors should be achieved through:

- increasing the efficiency of law enforcement and supervisory authorities to step up preventive action against

crimes related to drugs and effective cooperation within the joint and coordinated approach.;

- update the risk profiles according to new trends and methods used for drug trafficking, written in the last reports of leading police headquarters (DEA ³¹⁰, Europol ³¹¹), and adapting towards them the applied checkpoint method “Risk Analysis”.

Conclusion

Drug trafficking is a problem of national and international importance, and the fight against it must be fought globally. In this respect, a coordinated action at EU level play an important role. The EU Strategy for Combating Drugs general and objective framework for countering drug phenomenon within the EU and beyond. By providing a framework for joint and complementary action and guarantee that investments in this direction resources are used effectively and efficiently.

New challenges in recent years are: growing trend toward the simultaneously use of several substances, use of non-opioid substances, and the emergence and spread of new psychoactive substances; the continuing EU high number of deaths related to drug use; market dynamics of illicit drugs, including changes in the routes of drug traffic, transnational organized crime and the use of new communication technologies as a facilitator for the distribution of illicit drugs and new psychoactive substances.

Reducing the supply of drugs include prevent, deter and dismantle the drug-related crime, in particular organized through cooperation in the judicial and law enforcement field, bans,

³¹⁰ The Drug Enforcement Administration (DEA) is a United States federal law enforcement agency under the U.S. Department of Justice, tasked with combating drug smuggling and use within the United States.

³¹¹ The European Union Agency for Law Enforcement Cooperation (commonly abbreviated Europol), formerly known as the European Police Office, is the law enforcement agency of the European Union (EU) that handles criminal intelligence and combating serious international organised crime by means of cooperation between the relevant authorities of the member states, including those tasked with customs, immigration services, border and financial police etc.

confiscation of proceeds of crime assets investigations and border management.

The main objective in the fight against drugs for the period 2013 - 2020 was to contribute to reducing the supply of illicit drugs by thwarting illegal trafficking, dismantle organized criminal groups engaged in the manufacture and drug trafficking, efficient use of the criminal justice system, effective action by law enforcement authorities taken on the basis of operational information, as well as increased sharing of working/operational information.

At EU level, the emphasis should be focused on large-scale, cross-border and organized crime connected with drugs. In the framework of the EU Drugs purpose of coordination is twofold, namely to ensure unity, communication and efficient exchange of information and opinions in support of policy objectives, while promoting political dialogue and analysis of trends and challenges in the field of drugs at EU and international level. On the one hand coordination is necessary both within the EU institutions, Member States, other relevant European authorities and civil society, and between them, on the other hand - between the EU, international bodies and third countries.

References

1. Velikov, C. 2000. Customs territory and customs border, S: IK Trakiia-M, pp. 144.
2. Vulkova, S., S. Alichkova L. Tsvetkov, P. Penkova, L. Penev. 2009, History Bulgarian meters itnitsi from 1879 to 2008. "Education and Science", Second edition, pp. 92.
3. European Report on drugs in 2016, "Customs Chronicle Journal", 2016, No. 3, pp. 19-21.
4. European Monitoring Center for Drugs and Drug Addiction (EMCDDA) , https://europa.eu/european-union/about-eu/agencies/emcdda_bg
5. Customs, Excise and Monetary Control and Prevention, "Customs Chronicle Journal", 2017, No. 1, pp. 7 -14.

6. National Strategy on Drugs 2014 - 2018.
7. Pashova, S. 2012. Changes in customs administration after the accession of Bulgaria to the European Union. Annualbook of Economic Academy
 "D. Tsenov" - Svishtov, Academic Publishing House "D. Tsenov" - Svishtov, Volume CXV, pp. 131-179.
8. Radneva K., "Customs Chronicle Jornal", 2016, No 5, pp. 9.
9. EU Strategy on Drugs (2013 - 2020), [http://eur-lex.europa.eu/legal-content/BG/TXT/?uri=celex:52012XG1229\(01\)](http://eur-lex.europa.eu/legal-content/BG/TXT/?uri=celex:52012XG1229(01))
10. Tomeva, M., H. Gancheva, M. Antonov. 2016. Monetary And Customs Control, V.Tarnovo: Publishing "Faber", pp. 335.
11. Regulation (EC) № 273/2004 of the European Parliament and of the Council on drug precursors.
12. Regulation (EC) № 111/2005 laying down rules for the monitoring of trade between the Community and third countries in drug precursors.
13. Regulation (EC) № 1277/2005 laying down the rules for implementing Regulation (EC) № 273/2004 and Regulation (EC) № 111/2005.
14. 500 Russe students took part in training under prevention on use of Drugs, Customs Chronicle Journal", 2016, No 5, pp. 9.
15. 861 kg drugs were destroyed, Official Site of Customs Agency, 2017-04-21, <http://customs.bg/bg/pubs/7197>.

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- Head of the Quality Education Centre, University of Economics, Varna, Bulgaria 2011-2016;
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THE CUSTOMS MODERNIZATION & TARIFF ACT OF 2016 A LEGISLATIVE APPROACH IN MODERNIZING CUSTOMS ADMINISTRATION IN THE PHILIPPINES

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Brief biography:

The presenter is a Customs Broker by profession and the Chief Learning Officer of the Academy of Developmental Logistics which is involved in professional training and development of customs professionals in the Philippines.

Currently, he is the Vice President for International Affairs of the Chamber of Customs Brokers, Inc. (the national organization of Customs Brokers in the Philippines). He is also a member of the Commission on Higher Education's Technical Panel for Customs Education which is tasked to review and align the curriculum for customs studies and logistics with the K to 12 programs.

In a previous capacity, he serves as the Chief of Staff of Customs Commissioner Alberto Lina in 2015 to 2016.

He graduated Cum Laude with a B.S. degree in Customs Administration from Lyceum of the Philippines University and holds a Master degree in Educational Management from the University of the Philippines. As a training professional, he was conferred a Diplomate in Workplace Learning & Performance (DWLP) by the Philippine Society of Training and Development (PSTD).

He is a regular member of the International Network of Customs Universities, an associated member of the International Federation of Customs Brokers Association, and a Researcher on Trade and Border for CICS, San Diego State University. He is a regular participant in the annual World Customs Organization-Partnership in Customs Academic Research and Development

(WCO-PICARD) conferences where he presented his research papers in 2011 at the UN Office in Geneva, Switzerland and in the 2014 INCU Inaugural Conference in Baku, Azerbaijan.

Title of Presentation: The Customs Modernization and Tariff Act of 2016, A Legislative Approach in Modernizing Customs Administration in the Philippines

Introduction:

Throughout the years, trade transactions all over the world have considerably changed due to developments brought about by globalization, regional trading cooperation, international trade commitments, and the innovation and modernization in logistics, transport networks and information technology. And with nations adapting to this change and moving towards simplification and harmonization of their rules and procedures, government regulators and border control agencies (Customs administration for this matter) have to catch up and be at the forefront of these drivers for change.

The traditional role that customs administration play in the international trade flows have considerably evolved from a mere state “gatekeepers” and tax collectors. Other than to ensure security at border crossings and ports, the main function of many customs jurisdiction is to protect the financial and fiscal interest of the state by ensuring the collection of taxes on both imports and exports. Along this combination of lines and flows in the value chain, we should take note that customs take a great deal of responsibility in implementing and following laws and regulations that inherently belongs to other regulatory agencies but connects and intersects with trade and border protection.

Hence, the modern customs role has evolved into a three-corner dimension that spans trade facilitation, safety and security, and economic security. This evolution has put Customs role very much challenging, specially in developing economies, like the Philippines, where the traditional role of revenue generation is still given a much bigger weight in measuring performance.

Evolution of the Philippines Customs Regulatory Framework

The first piece of tariff legislation was passed by the United States Congress for the Philippines during the American regime - The Philippine Tariff Act of 1909 which primarily focused on the imposition of tariff on goods coming from foreign countries and entering the Philippines.

On 01 July 1957, Republic No. 1937 took effect, superseding the 48-year colonial regime of the Philippine Tariff Act of 1909. The Philippine Congress heralded RA 1937 as the first Tariff and Customs Code of the Philippines (TCCP) that codified customs laws for the country.

During the Martial Law era, the Chief Executive exercised the powers of Congress, and various presidential decrees were issued to update certain provisions of the TCCP that eventually became obsolete. In 1972, former President Ferdinand Marcos issued Presidential Decree (PD) No. 34 to consolidate into one Code all amendments that were previously made.

To strengthen the punitive force of the TCCP against smuggling and other forms of customs fraud, Republic Act 1464 (revising PD No. 34) was signed into law on 11 June 1978.

In the ensuing year, the Philippines become one of the signatories of the General Agreements on Tariff and Trade (GATT), on 27 December 1979.

As the WTO replaced GATT on 01 January 1995, the Philippines also became one of the “GATT contracting parties” and officially became a WTO member. And to address the myriad of changes in global and regional trade policies, as well as the development and evolution in rules and processes, legislative amendment to TCCP and administrative issuances were released, though on a piecemeal basis (Tabulation will be presented).

RKC and Customs Modernization Efforts in the Philippines

On 25 May 2010, the Philippines deposited its instruments of accession to the International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention) with the World Customs Organization. The RKC, having entered into force on 3 February 2006, is recognized as a major trade facilitation instruments with key elements that include the application of simplified customs procedures, the utilization of information technology, the adoption of risk management tools, the establishment of appeals mechanism, among others.

An earlier version of the Customs Modernization Bill was filed in Congress in 2008 and reflects majority of the best practices, standards and procedures found in the RKC. With the new government in 2010, several versions of the modernization bill have been significantly filed by legislators in their respective chambers (two in the lower House and another two in the Senate). Though, these proposed bill never got off the ground until 2013, these versions form part of a consolidated bill that finally went through several cycles of drafting, hearings and conferences, and passed by both houses (although individually).

The confluence of events and pressing concerns (port congestion, OFW balikbayan box issues, trade security, smuggling and customs frauds) influenced both houses of Congress to reconcile their differences and the Customs Modernization and Tariff Act (CMTA) was finally signed into law in May 2016 as Republic Act 10863.

The CMTA is an exhaustive set of rules defining the Philippines' legal framework for international trade. It consists of 18 titles, 43 chapters, and 1,705 sections.

The CMTA emphasizes “the policy of the State to protect and enhance government revenue, institute fair and transparent customs and tariff management that will efficiently facilitate international trade, protect and enhance government revenue, prevent and curtail any form of customs fraud and illegal acts, and modernize customs and tariff administration.”³¹²

³¹² Sec. 101, Declaration of Policy, CMTA

As it seeks to transform the Bureau of Customs into a modern and efficient border organization that is at par with the global standards, the framers of the CMTA take into consideration the mandatory standards of the RKC, international agreements, inputs from the business sectors and industry groups and some of the best practices in customs administration, among others. As a diagram, the CMTA, while formidably lengthy, actually reflects an underlying flow chart of goods movement as it enters Philippines commerce and complete all trade and clearance formalities.

The CMTA and TFA

As a preparatory measure, the Philippines submitted in July 2014 its “Category A” notification which indicated provisions of the TFA it intends to implement upon entry into force of the agreement. The Philippine Permanent Mission to the WTO in Geneva deposited the Instrument of Acceptance to the WTO TFA last October 28, 2016.

Finally, the WTO TFA entered into force on February 22, 2016 after 110 countries out of 164 member- economies of the WTO submitted their Instrument of Acceptance.

The TFA contains provisions for expediting the movement, release and clearance of goods, including goods in transit. It also sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. It further contains provisions for technical assistance and capacity building in this area. The Agreement will help improve transparency, increase possibilities to participate in global value chains, and reduce the scope for corruption. The TFA was the first Agreement concluded at the WTO by all of its Members.³¹³

While Congress passed the CMTA into law prior to the Philippines government ratification of the WTO TFA, many of the provisions of the TFA were already considered during the deliberations on the bill. The provisions of the RKC and TFA are

³¹³ <http://www.tfafacility.org/trade-facilitation-agreement-facility>

harmonized and incorporated into the CMTA such as: the use of ICT, advance rulings and appeals, risk management, post clearance audit, customs brokers, publication of information, and many others. (Matrix of Standards vis-à-vis CMTA provisions will be presented).

Conclusions

While the CMTA was signed into law in May 2016, it would take a longer period of time to finalize the implementing rules and regulations (IRR). The Bureau of Customs is exerting time and effort now to publicize the law, encourage consultations with all parties, call for submission of position papers and recommendations, in order to set the various provisions of the law into associated administrative orders and other rules of behavior (e.g. Customs Administrative Order, Customs Memorandum Order, Customs Memorandum Circular).

The CMTA is not an end by itself as it needs active participation and cooperation not only by Customs officials but as well as the trade community to become a real operative machinery of the law. The strong legislative leadership that paved the way for the passage of this landmark law must be complemented by a committed bureaucracy to ensure sustained efforts in delivering result and meet the objectives set forth in the law.

AUTHORIZED ECONOMIC OPERATOR AS A FORM OF PARTNERSHIP BETWEEN CUSTOMS AND BUSINESS IN UKRAINE

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Biography

Vira Nemchenko born in 1995, is the excellent student of University of Customs and Finance from 2016 to 2017. She is currently studying masters on the faculty of finance on a specialty « Finance, banking and insurance ». She has over 35 publications in various journals and collections. She was exchange student of University of Lodz during the winter semester 2015/2016. Vira is a diligent, responsive, versatile student.

Abstract

Modern state of the interaction of the majority of domestic public administration and regulatory bodies with business entities, which operate on the territory of Ukraine, is characterized by the presence of a significant number of problems and contradictions. This primarily relates to the tax and customs policy, as well as a significant number of bureaucratic procedures.

A quantitative example shows the real development of the Institute of authorized economic operator in the European Union, USA and Ukraine. Described current problems and shortcomings on the part of the legislation that hamper the implementation of this form of partnership between customs and business.

Conclusions describe the implementation of important steps for the practical implementation of this institution, which is required for cooperation between customs and business entities.

Keywords: *Customs, customs policy, authorized economic operator, partnership, cooperation, customs reform, certificate.*

Report

Today in terms of European integration there remains the question of interaction of customs and business entities of foreign economic activity. First of all it concerns the procedures of customs clearance and calculation of customs duties that has a significant number of problems and contradictions.

Today there are a number of global problems in the interaction of customs agencies and entities that threatens the economic security of such entities.

The current situation leads to a deterioration of the investment climate of the country, the significant shortfall of revenues to the state budget and the decrease in the level of economic security of individual enterprises, therefore, it is necessary to develop effective measures of counteraction to negative phenomena, and the objectification of the main problems of interaction of customs and business entities.

Actual domestic business is the issue of smuggling of goods as its growing volume puts on the brink of extinction whole industries (eg, light industry Ukraine). That is a problem of insufficient efficiency of the customs authorities and customs control.

The current stage of development of foreign economic relations led to the introduction in activity of customs administrations of the world new principles of interaction with other participants in customs relations.

Recently was introduced a number of progressive provisions in the field of state customs Affairs. One of them is the introduction of the new subject of customs relations – authorized economic operator. The concept of authorised economic operator is a novelty of the customs legislation of Ukraine and requires concentration of attention of scientists and practitioners.

Note that the efficiency of the customs authorities depends not only on the quality of the organization of their work. This

process is influenced by various political factors, the state foreign policy and macroeconomic factors of nature.

To ensure the effectiveness of customs controls necessary to carry out a sufficient number of procedures to verify information on goods transported through the customs border, which in turn provides fraud prevention.

Is also a productive position on the need for simultaneous changes in customs procedures and business practices.

Only active interaction of customs authorities and economic operators may provide significant economic benefit for the state and for its individual entities.

The main problematic aspects of interaction of customs bodies and business entities presented in figure 1.

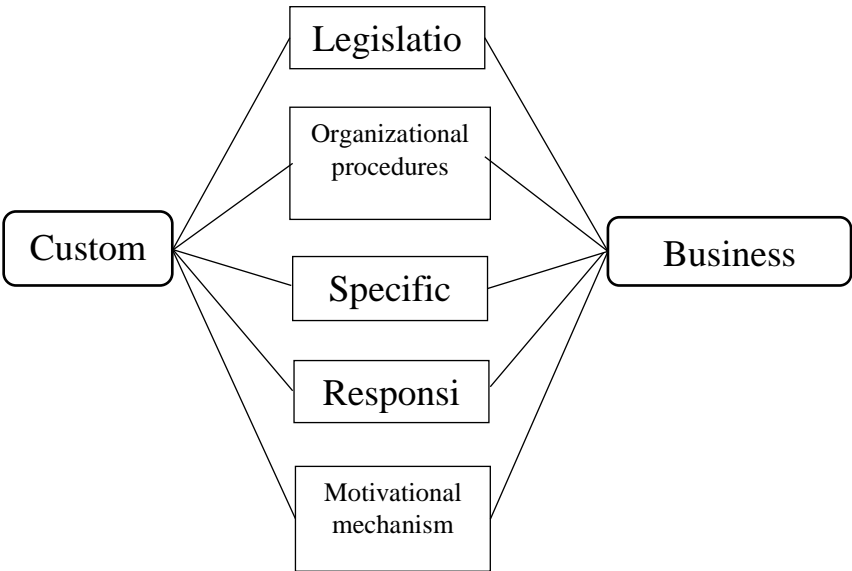


Figure 1. Areas of occurrence of the main problems in the interaction between customs authorities and business entities

At the legislative level, several ignored the importance of participation of representatives of business entities in the development of key regulatory documents and existing domestic

norms insufficiently correlated with international norms and standards.

Problems arising in the organizational realm, often due to the duration of the execution of the various instruments and imperfect technical equipment the customs authorities.

The specific customs procedures that cause misunderstandings between customs officials and businessmen, include the determination of the customs value of the goods and of the various customs tariffs.

Regarding the liability for violation of the a priori impression that in most cases perpetrators are entrepreneurs, for which he paid fines, but the responsibility on the other hand very rarely seen in the compensation of losses and moral harm and the prosecution of officials.

Motivational mechanism involves establishing "fair rules of the game" that would encourage entrepreneurs to increase their activities without breaking the law and at the same time would ensure the proper level of remuneration of customs officers.

Customs reform - it is not only the optimization of staff, a new feature custom control structures and a new paradigm of interaction with business. It is this paradigm in many countries successfully implementing UEO.

The introduction of the institution of authorized economic operator (AEO) in the Ukrainian customs practice is an important stage in the development of the system of interaction of customs and participants of foreign trade activities. This Novella customs legislation based on international law. International Convention of 18 may 1973, "On the simplification and harmonization of customs procedures" provides for special procedures for authorized persons, conforming to the customs service criteria, including having a proper dossier of conformity of the customs service and satisfactory system of commercial documentation¹.

Under the Convention, the customs service provides for release of goods on presentation of minimum information necessary for identification of goods and is sufficient for the

subsequent completion of the final goods Declaration; clearance of goods at the facilities of the declarant or at such other place as permitted by the customs service, and in addition, the implementation of other special procedures.

CC Ukraine 2012 introduced the institution of the Commissioner economic operator, however, since its entry into force up to the present time is the absence of the practice of its implementation².

1. International Convention on the simplification and harmonization of customs

procedures (Kyoto Convention) Customs Cooperation Council; Convention, Regulations, Rules [...] from 18.05.1973 – Mode of access: http://zakon4.rada.gov.ua/laws/show/995_643.

2. Customs code of Ukraine: Law of Ukraine No. 4495-VI dated 13.03.2012, [Electronic resource] //Voice of Ukraine. – 2012, April 21 – No. 73. – Mode of access: <http://zakon3.rada.gov.ua/laws/show/4495-17>.

Positive developments and further improvement of state customs Affairs, which was expected to make fundamental changes in the subject composition customs relationships were reflected only on paper, the process of their implementation require further make urgent changes in customs legislation of Ukraine. The lack of a comprehensive theoretical study, which was devoted to the legal regulation of the procedure for obtaining the legal status of authorized economic operator in Ukraine also negatively affects the perception companies of the advantages of obtaining the status of authorised economic operator. In addition, legal regulation of procedural relations of public administration with private persons is one of the most controversial issues of democratization of public administration in Ukraine.

Institute UEO does attract customs minimal and usually remote, allows declarative principle agreement to inspect documents after release of the goods, ie post-customs control, which significantly reduces the need to increase customs staff in the conditions of growing trade flows.

The most effective solution is the introduction in Ukraine of the Institute of authorized economic operators(AEO)(Figure 2).

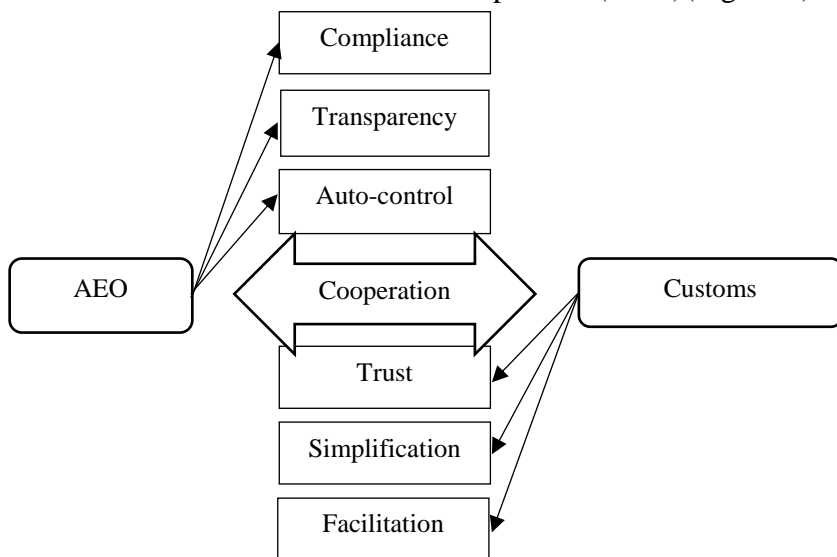


Figure 2. The main characteristics of the interaction between AEO and customs

The essence of creating Institute of authorized economic operator in Ukraine, is to provide certain categories of persons enjoying confidence of customs authorities, opportunities to use special simplifications. Status of an authorized operator of economic activities is the subject of foreign economic activities of specially authorized Central body of Executive power in the field of customs by issuing a certificate of an authorized operator of economic activities on inclusion in the Unified register of authorised economic operators ' activities and the types of permission which is granted:

- ✓ on simplification of customs procedures;
- ✓ on simplification of customs control in terms of reliability and security;
- ✓ on simplification of customs procedures and customs control in terms of reliability and security.

It is the world practice of interaction between business and government that has proved its effectiveness in the process of development of a competitive environment and to create a climate of trust between business and government.

This is a specialized audit conducted by customs authorities in relation to a separate business entity. The audit, which provides business accreditation reliable operator in international trade shows degree of trust from the government regulator.

Moreover, it confirmed the confidence of the government to a business entity in one country gives him the green light in other countries that joined the AEO cooperation and agreed on mutual accreditation.

This practice has existed since 2005, when a number of the leading economic players in the world signed an agreement on the Framework of standards to secure and facilitate global trade WTO(World Trade Organization). Under this agreement, and introduced the concept of AEO.

Intensification of foreign economic activities of Ukrainian business, the growth of the participation of Ukrainian carriers in the cross-border supply chain sooner or later forced the Ukrainian customs to resort to radical modernization.

According to Art. 14 of CC of Ukraine, an authorized economic operator could be an enterprise which:

- At the time of applying to customs authority have been performing FEA for three years (otherwise, it must give customs authorities a written consent for an unscheduled inspections within six months from certificate obtaining);
- Does not have defaults on payment of customs duties and penalties at the time of applying to customs;
- Has no tax arrears;
- In the last three years has no fact to make accountable company's officials with administrative responsibility for violation of customs regulations;
- Has a system of goods' accounting to compare documents and information to be provided by customs authorities during

customs control and customs clearance with documents and information about its business activities;

- Has no outstanding liabilities for customs duties according to customs authority at the time of documentary checkouts.

At the same time, we should draw attention to the fact that, in accordance with CC of Ukraine, an individual entrepreneur can not be an authorized economic operator.

In order to obtain the status of authorised economic operator must obtain a certificate. According to Art. 12 of CC of Ukraine, status of company being an authorized economic operator can be confirmed by one of three certificates:

- A certificate of safety and security;
- Certificate for simplification of customs procedures;
- The so-called combined certificate (it combines safety and security certificate and a certificate for simplification of customs procedures). Privileges given to company-holder of certificate are listed in the following table 1.

Table 1. Privilege of certification UEO

Certificate name	Privilege
Certificate of safety and security	<ul style="list-style-type: none">- Reduced amount of information to be provided to customs upon arrival or departure from territory of Ukraine for goods and vehicles for commercial use- Temporary storage under customs control of goods and vehicles for commercial purposes in premises, on public and private areas of economic operator- Removal of customs security without customs authorization- Sending goods from premises, open and covered areas of economic operators, without presenting to customs authorities

Table continuation

Certificate for simplification of customs procedures	<ul style="list-style-type: none"> - Implementation of customs control in matter of priority - Placing of goods in temporary storage of closed type without permission from customs authorities - Guarantee waiver for internal customs transit of goods (except for excisable goods), if goods are declared by economic operator - Customs clearance of goods at the economic operator facilities - Provision of single customs declaration, if over a period of time goods are imported / exported repeatedly by one person according to single foreign trade contract
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Holder of "combined" certificate obtains all of the above benefits. In turn, the order to use of these benefits for economic operators is approved by Ordinance of the Cabinet of Ministers of Ukraine № 447 from 21.05.2012

Given privileges are related to economic operators who declare goods themselves or entrust it to do on their own behalf by third parties. Also, having certificate and under exercising their rights, economic operators can open and operate a bonded warehouse, temporary bonded warehouse or a customs cargo complex.

Period to issue certificate is long enough and can range from 90 to 120 days (ie, 3-4 months). During this time, customs authority shall verify information from documents filed by company, as well as coordinate possibility of granting status of economic operator with the State Fiscal Service.

There are a few points which prevent to obtain the AEO status, according to content of art. 13 of CC of Ukraine, application form should have answers for at least 20 questions relating to

various activity areas of company. But it's unclear yet in which form it needs to be done: in narrative or affirmative (ie, "yes" / "no"). In addition, yet there is no explanation about some answers content in application. For example, to obtain status of authorized economic operator, company is required to have a system of goods accounting. But nowhere is mentioned in which form should be such system (in paper or electronic form, using special software, etc.).

In the United States after the terrorist attack of September 11, 2001 was adopted the first program of authorized economic operator customs – trade partnership against terrorism, C-TPAT.

Purpose and feature of the cost is ensuring effective control over supply chain concentration and controls on traders, whose activity is not certified, and therefore unreliable. In addition, there are such programs of authorized economic operator, as the free and secure trade (FAST) and Partners in Protection (PIP). The attention is focused on the implementation of the mechanism of mutual recognition programs to ensure the security of the supply chain and integrated management of the US and the EU. The customs service controls the US program C-TPAT, which is recognized as equivalent to the EU Authorised economic operator.

Today AEO operate in all 28 EU countries, USA, Switzerland, Norway, Japan, USA, China and some other countries that are members of the world customs organization. That is, these countries have a similar legal regulation of VEO and may conclude between themselves agreements on mutual recognition of AEO.

In the Ukrainian legislation the concept of AEO since 2012 – from the moment of adoption of the current Customs code.

However, none of the authorized economic operator in Ukraine, has still not appeared due to the lack of the necessary regulations.

For example, 14,000 companies in the EU have certified AEO, about 21,000 in the EU have the status of authorized sender / recipient 75% of the declarations are made with the use of special simplifications³.

11400 companies in the United States to obtain a certificate Customs-Trade Partnership Against Terrorism (C-TPAT) (similar to AEO)³.

So, AEO may use the authorization to use a General guarantee to release the goods in the warehouse and then to carry out customs payments. AEO is also not limited to the use of simplifications to transactions with goods, which is of non-tariff regulation.

3. European truth. – Mode of access:
<http://www.eurointegration.com.ua/experts/2016/11/29/7058013/>

For the actual implementation of the AEO Institute should:

- regulate the legal basis to create really favorable conditions for interaction between customs and AEO;

- to interact with enterprises in the stage of introduction of the AEO, and on the stage of development of the privileges, responsibilities, etc.,

- pay attention to the international experience of countries where the AEO status is prestigious and provides guarantees for profitable and transparent partnership of customs and business entities.

Because in the Verkhovna Rada are under consideration two bills on amendments to the Customs and Tax codes (registration numbers 4777, 4776), developed by an expert group with representatives from DFS, Ministry of Finance and the business on the basis of the EU customs legislation and international recommendations. The adoption of these bills proposed changes will allow Ukraine to introduce the institution of AEO and simplify customs procedures for law-abiding Ukrainian business.

However, the prospects for adoption of these bills are yet unclear. Despite the fact that in September, Ukraine has undertaken before the IMF to introduce AEOs this year, confidence that these bills will be voted on successfully, still there. Time for performance of international obligations of Ukraine on implementation of AEO

were not so much. The state should support the business, including customs.

All States neighbouring with Ukraine, have already introduced their programs for AEOs, and this has provided significant support to their exporters. Given that Ukraine is actively signing free trade agreements with countries in which AEO already exists, the absence of such an institution is not the best way affects the competitiveness of Ukrainian enterprises on the global markets.

Therefore, further delay in the legal regulation of AEO in no way in the interests of the state and business. And for that, the AEO program finally earned in practice, it is necessary not only to pass the bill, but to ensure its efficient implementation taking into account domestic realities. Otherwise, you can get a situation where we are forced to recognize others ' AEOs, instead of to grant this status to Ukrainian enterprises.

So the growth of international trade leads to active cooperation and intensive communication between customs and participants of foreign trade, it is of great importance for complementary efforts to implement the parties ' goals and commitments. Because the customs service is an important element in the international trading system, it is necessary that customs used modern methods and seeks to maximize the facilitation of foreign trade. Introducing and using the program risk management system, customs can determine which goods and which participants of foreign trade are characterized by satisfactory compliance with customs law and thus pose a low risk for the purposes of customs control. For such participants of foreign trade may be approved for special or expedited procedures that provide for a slight interference by customs authorities in the issuing and clearance of goods. International Convention on the simplification and harmonization of customs procedures provide for the application of special procedures for authorized persons.

Improving the efficiency of foreign trade activities of enterprise structures is directly related to the introduction of a special simplified procedures, which reduce the terms and

conditions of customs clearance in the customs territory of Ukraine. The implementation of reliable process chains and delivery channels is a prerequisite for the competitiveness of subjects of international and global market. The role of authorised economic operator is to reduce the maintenance costs of the supply chain and the security of trade. Specified is achieved by standardization and certification of business processes FEA, use of modern technologies of logistics and supply chain management. Improving the efficiency of foreign trade connected with the study of business models of participants of foreign trade activities, finding and using available sources of efficiency, study of foreign experience.

The use of special procedures is beneficial both for customs and participants of foreign trade. They facilitate the movement of goods, create interest in compliance with the rules of customs clearance and allow more efficient use of resources of the customs service. Special procedures have also contributed to the introduction of the modern concept of partnership between customs authorities with participants of foreign trade and third parties in the field of international trade.

In addition, the embodiment of the national legal field, the basic legal norms and principles of international instruments, in particular, of the WCO Framework, to create a secure international supply chain of goods and simplification of customs procedures and controls with respect to the participants in the chain, is an integral part of the process of adaptation of legislation of Ukraine on customs matters with the EU law, the enforcement of the requirements and rules of the domestic legal acts to the requirements and regulations of international agreements and conventions to which Ukraine in accordance with legislation joined.

For Ukraine the system of AEO is one of the effective steps of European integration direction. So to start partnership relations between customs and business is needed to harmonize legislation and to actively motivate the company to obtain the status of authorized economic operator.

ROLE OF CUSTOMS MANAGEMENT IN TRADE FACILITATION

Trần Phú Quý

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Customs is an authority or agency in a country responsible for collecting tariffs and for controlling the flow of goods, including animals, transports, personal effects, and hazardous items, into and out of a country. The movement of people into and out of a country is normally monitored by immigration authorities, under a variety of names and arrangements. The immigration authorities normally check for appropriate documentation, verify that a person is entitled to enter the country, apprehend people wanted by domestic or international arrest warrants, and impede the entry of people deemed dangerous to the country. In most countries, customs are attained through government agreements and international laws. A customs duty is a tariff or tax on the importation (usually) or exportation (unusually) of goods. Commercial goods not yet cleared through customs are held in a customs area, often called a bonded store, until processed. All authorized ports are recognized customs areas. Customs, in its traditional role of trade facilitation such as: **fiscal mission, economic mission, social mission**. Over the years, the role of customs management in trade facilitation has been changing. That's a **primary focus on revenue collection to one of trade facilitation**, by enabling successful balance between effective control measures and facilitation of trade. Customs and excise, taxes on goods, are one of the world's oldest sources of revenue. Besides customs have a **part in development of a nation through promotion of trade and investment**.

Trade facilitation is defined as: The **simplification, harmonization, standardization and modernization** of international trade procedures. So customs are bound by win roles

as both trade facilitator and guardian of the community. They have to find the proper balance between these parameters, and in the new globalised economy, they have to find new ways to discharge their duties. Electronic commerce, cybercrimes, fraud, and transnational crimes are the few of the new challenges that impact on their work today.

All goods, including means of transport, which enter or leave the customs territory, shall be subject to customs control. However, the business expects customs to help them achieve “just in time” deliveries so that there will no longer be stock accumulation, prolonged warehousing and outdated models. So, the application of customs control, the customs use risk management.

Customs administrations around the world are responsible for managing a broad range of risks as they seek to fulfil their responsibilities in areas such as revenue collection, the administration of trade policies and border controls, community protection and the facilitation of trade. Customs organisations are also generally required to manage risks on behalf of other government departments and agencies with policy responsibility for areas such as health, immigration, agriculture, trade, environment and trade statistics. This is usually achieved through the implementation of a diverse range of agreed control regimes, with customs having responsibility for the administration and enforcement of relevant regulatory requirements at the point of importation and exportation. These ‘border control’ responsibilities stem from the more traditional customs role of collecting duties on internationally traded commodities at the point of importation and exportation.

It has been suggested that import and export duties were first introduced by the Romans and no doubt the ‘customs officials’ of the day had a responsibility to ensure that the right amount of duties were collected and that would-be smugglers were brought to account. It would be a fair assumption that a few officials also sought to collect a little extra for their own pockets. On the other side of the counter would have been many honest traders who

would render to Caesar that which was Caesar's and some not so honest traders who would seek to render as little as possible. It is therefore probable that the Romans faced the same types of challenges that are being faced by customs administrations around the world today - customs officials seeking to ensure that the law is upheld; traders seeking uninhibited passage of their cargoes; and honest traders seeking recognition of their good track record of compliance.

What has changed, and changed dramatically, is the trading environment – the manner in which goods are carried and traded, the speed of such transactions and the sheer volume of goods that are traded around the globe. In the past few decades there have been a number of significant changes in global trading practices and customs administrations around the world have been required to continually adapt their methods of operation in an effort to maintain their effectiveness and relevance. For example, the emergence of widebodied aircraft, shipping containers, e-commerce and the increasing complexities of international trade agreements have all impacted on the way in which customs administrations have fulfilled their responsibilities, and customs administrations worldwide have seen a dramatic increase in workload across all areas of activity, fuelled by the technological advances that have revolutionised trade and transport. Nevertheless, the basic elements of customs administration remain essentially the same - government officials are seeking to enforce the law and traders are seeking to minimise government intervention. When examining the issues of trade facilitation and regulatory control, it is therefore important to recognise these differing needs and expectations of customs and the business community. On the one hand, traders are looking for the simplest, quickest, cheapest and most reliable way of getting goods into and out of the country. They are looking for certainty, clarity, flexibility and timeliness in their dealings with customs. They are also looking for the most cost-effective ways of doing business. Customs authorities, on the other hand, are seeking to prevent smuggling, detect contraband and ensure compliance

with revenue, licensing and other legal requirements; and they too are looking for the most cost-effective ways of doing business. Consequently, traders are driven by commercial imperatives, while customs organisations are primarily driven by the law. What customs administrations are now seeking to achieve is an appropriate balance between trade facilitation and regulatory control.

Achieving such a balance can provide significant flow-on benefits for national economies, and the issue of trade facilitation has consequently been added to the WTO agenda, with many countries now re-assessing their legislative and administrative approach to the regulation of international trade. Specifically, the Singapore Ministerial Declaration directed the Council for Trade in Goods to “undertake exploratory and analytical work, drawing on the work of other relevant international organizations, on the simplification of trade procedures in order to assess the scope for WTO rules in this area”.

The concerns identified by the WTO serve to highlight a number of potential weaknesses in the way in which governments, and more specifically customs administrations, approach the task of monitoring and regulating international trade. According to the WTO, the costs of import tariffs are often exceeded by the losses incurred by the international trading community as a result of slow clearance procedures, opaque and unnecessary documentary requirements and lack of automated procedural requirements.⁵ The nature of the issues identified by the WTO may be considered to fall into a number of broad categories, including statutory requirements (e.g. government requirements, transparent regulatory provisions, clearly specified import and export requirements); administrative requirements (e.g. documentation requirements, clear administrative procedures, audit-based controls and administrative cooperation); technological capabilities (e.g. automation and use of information technology); and risk management practices (e.g. audit-based controls and risk assessment techniques).

Risk management (RM)

The concept of RM in Customs procedures can be considered under Article VIII of GATT 1994 (Fees and Formalities connected with Importation and Exportation). Through the provisions of the revised Kyoto Convention, the World Customs organization (WCO) is essentially attempting to achieve a general adoption of a risk-managed style of regulatory compliance. A risk-managed approach, on the other hand, is characterized by the identification of potentially high-risk areas, with resources being directed towards such areas and minimal intervention in similarly identified low-risk areas. Such regimes adopt strategies that break the nexus between physical control over goods and a trader's revenue liability, and permit customs clearance to be granted prior to the arrival of cargo. The various elements of each style of compliance management can be broadly grouped into four main categories, comprising a country's legislative framework, the administrative framework of a country's Customs organisation, the type of risk management framework adopted by a country's Customs organisation and the available technological framework. Collectively, the four categories represent key determinants of the manner in which the movement of cargo may be expedited across a country's borders, and the way in which Customs control may be exercised over such cargo.

The customs shall use risk analysis to determine with persons and which goods, including means of transport, should be examined and extent of the examination. Because customs services find themselves increasingly under pressure from national governments and international organizations to facilitate the clearance of legitimate passengers and cargo while also responding to increase in transactional crime and terrorism these competing interest mean that it is necessary to find a balance between facilitation and control. Customs controls should ensure that the movement of vessels, vehicles, aircraft, goods and persons across customs territory within framework of laws, regulations and procedures that comprise the customs clearance process. So

customs must be determined identification risk such as: what, who, when, where, why and how and to what extend.

Risk analysis and risk assessment are analytical processes which risk are the most serious and should have priority for being treated or having corrective action taken. Inspection selectivity programs make use of risk profiles. That is description of any set of risks, including a predetermined combination of risk indicators, based on information which has been gathered, analyzed and categorized. The means by which Customs puts risk assessment into practice. Risk profiles encompass various indicators, such as: type of good, know trader, value of goods and applicable duties, destination and origin countries, mode of transport and routes and are built based on characteristics displayed by unlawful consignments (or offending passengers).

The development of profiles relies heavily on the gathering, charting and analysis of intelligence and the World Customs organization (WCO) has developed various tools to assist its member countries in the establishment of profiles and the management of intelligence collection. The WCO Customs Enforcement Network (CEN) database can, for example, provide useful intelligence for the establishment of risk profiles.

These profiles then drive inspection selectivity programs, through which data declared will be analyzed on the basis of the identified risk parameters and consignments, and depending on the selected risk level, goods and persons are routed through different channels of Customs control.

Post- clearance audit

A post-clearance audit is a structured examination of a trader's relevant commercial systems and processes, financial and non-financial records, physical stock and other assets, as a means to measure and improve compliance.

It is conducted after the release of the goods from Customs control. It can take place at the traders' premises or at Customs' premises, and may take into account specific transactions, or cover imports and/or exports undertaken over a certain period of time.

Customs can be used Post- clearance audit which control performed subsequent to the release of the cargo from Customs custody. The purpose of such audits is to verify the accuracy and authenticity of declarations and covers the control of trader's commercial data, business systems, records, books. Such an audit can take place at the premises of the trader, and may take into account individual transactions, so called " transaction based" audit, or cover imports and/ or exports undertaken over a certain period of time, so called" company based " audit.

Post- clearance audits can be conducted on a case by case basis focusing on targeted operators, selected on the grounds of risk analysis of the commodity and the trader, or in a planned, regular way, set out in an annual audit program. Furthermore the audit could also be used as criteria to offer special treatment to certain economic operators.

Goal of Customs

Goal 1 - Promote the security and facilitation of international trade, including simplification and harmonization of Customs procedures = Economic Competitiveness Package

The WCO is working with its Members to ensure growth by securing and promoting economic competitiveness. Trade security and facilitation is one of the key factors for economic development of nations and is closely tied into national agendas on social wellbeing, poverty reduction and economic development of countries and their citizens. Likewise, the WCO provides a forum for the development of instruments and tools to simplify and harmonize Customs procedures.

Goal 2 - Promote fair, efficient, and effective Revenue collection = Revenue Package

Collection of revenue remains a top priority for many Customs administrations, particularly in economies where a substantial portion of government revenue is derived from Customs duties. A modern Customs administration needs to apply the relevant tools and instruments - developed by the WCO

and other international bodies - in a consistent manner in order to achieve fair, efficient, and effective revenue collection.

Goal 3 - Protect society, public health and safety = Compliance and Enforcement Package

The efficiency and effectiveness of Customs border compliance is a determining factor in ensuring goods, people and means of transport comply with laws and regulations, the attainment of safe and secure communities, the economic competitiveness of nations, the growth of international trade and the development of the global marketplace.

The WCO will continue to develop and maintain standards and guidelines with respect to the goal of protecting society. The exchange of Customs enforcement information and Intelligence is crucial to the WCO's Enforcement Strategy. To this end, the WCO will coordinate and implement Customs law enforcement initiatives and operational activities with assistance from key stakeholders.

Goal 4 - Strengthen Capacity Building = Organizational Development Package

Effective and efficient Customs administrations are vital for the economic, social and security development of States. The WCO, as the global centre of Customs excellence, plays a central role in development, promotion and support for the implementation of modern Customs standards, procedures and systems and has positioned itself as a global leader in Capacity Building delivery.

The development of Capacity Building tools is linked to three enablers that were emphasized by the Capacity Building Committee as essential for sustainable development and modernization : Political Will, People and Partnerships.

Goal 5 - Promote information exchange between all stakeholders

The WCO provides a forum for international cooperation to promote greater connectivity and more harmonious interaction, including the exchange of information and

experience and the identification of best practices, between Member administrations, other government agencies, international organizations, the private sector and other relevant stakeholders.

Goal 6 - Raise the performance and profile of Customs

The WCO and the international Customs community promote their strategic priorities, roles and contributions through cooperation, communication and partnership with governments, other international and regional organizations, donors and the private sector.

Goal 7 - Conduct Research and Analysis

The WCO conducts research and analysis on a wide range of Customs and international trade topics using various methods in order to promote a professional, knowledge-based service culture, and to benefit the WCO membership and external stakeholders.

International Customs Blueprint

In recent years these issues have been high on the agenda of the WCO, an independent intergovernmental organization based in Brussels, which is the recognized international policy-setting organization on customs issues. At the time of writing, membership of the WCO comprised the customs administrations of 164 countries, with responsibility for processing in excess of 95 per cent of world trade. In June 1999 the Council of the WCO approved the revised International Convention on the Simplification and Harmonization of Customs Procedures - the revised Kyoto Convention. The revised Kyoto Convention has been developed in the face of mounting pressure from the international trading community to minimize the level of customs intervention in cargo movements and to maximise the level of trade facilitation. Since the time of its inception, of course, international events have placed further pressures on security aspects of the international supply chain.

Conclusion

Achievement of the international trade facilitation agenda is heavily dependent upon the ability of customs administrations to reduce the regulatory impost on the international trading community, whilst achieving and maintaining appropriate levels of control. While there is no doubt that any reform process will require a significant amount of international assistance and support, of equal importance is the need to ensure that potential implementation difficulties are firstly identified within the context and timeframes of the negotiations. This in itself will in many cases require a considerable degree of support from the international community, particularly for developing and least developed countries.

Customs are the 21st century facilitator. They are emerging prominently as a business partner to industry players. They are fully committed to building a strategic partnership with the industry, and helping to maintain the competitive edge of the local industry.

The WCO provides a broad vision for Customs in the 21st century, which is to support international development, security and peace by securing and facilitating international trade. In the rapidly changing globalised world, increased connectedness between all agencies/parties involved in international trade and travel supply chains is essential. As two important bodies in trade facilitation, both Customs and Port Authorities have an obligation to better serve the trading community. Capacity enhancement and development of a service mentality are two main avenues by which to extend support to trade. Reorientation of customs authorities from a revenue collection to a trade facilitation focus would immensely benefit the country by promoting increased trade, investment and growth. As an 'agent' of other government departments at the border with a charter to oversee proper implementation of state regulations relating to prohibitions and restrictions on imports/exports, border security, and revenue protection, Customs is uniquely placed to facilitate trade. In doing so, the main challenge for Customs is to strike a balance between apparently conflicting objectives, that is, quick clearance for trade

facilitation, and enforcement of control measures to protect public health, the economy and community security.

To function effectively, Customs administrations can no longer remain isolated entities, away from the societal context. They need to build bridges with other agencies and business partners. They need to strengthen themselves through organizational reforms, through the proper use of information technology, and through strategic alliances with their counterparts around the world and with the business sector in achieving optimal win – win solution.

INTERPRETING THE CUSTOMS-BUSINESS COOPERATION OF AEO SYSTEM OF CHINA CUSTOMS FROM CERTIFICATION STANDARDS

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Abstract:

Since 2014, China Customs has implemented a new corporate credit management approach in line with international rules. In accordance with the principle of compliance facilitation and dishonesty punishment, China customs has applied different management measures to different credit rating enterprises. This kind of new management and cooperation between customs and enterprises come from the international safety certification system—AEO system. This paper will sort out the advanced certification standards of AEO system in China, analyze the cooperation cost of customs and enterprise under certification work, and then put forward the realistic way of cooperation between customs and enterprises from the point of view of AEO certification cost minimization and cooperation benefit maximization.

Key words: *AEO system; certification standard; customs - business cooperation*

1. Introduction to the AEO system

As we all know, legitimate international trade is an important driving force for economic prosperity. In international trade, enterprises are often subject to unnecessary or excessive data and document requirements, the lack of transparency in government policy, long cargo clearance time, inadequate cooperation between customs and other inspection and quarantine departments and inappropriate regulatory policy. The World Customs Organization (WCO) believes it is necessary to adopt a strategy to ensure that the flow of global trade is not hindered but promoted. Thus, in order to

strengthen and transcend existing programs and practices, WCO members have developed a system to enhance the security and facilitation of international trade. At the annual meeting of the Council at its 105/106th Session in June 2005, Trade Safety and Facilitation Standards Framework ", which provides a conceptual and concrete implementation framework for the promotion of global trade facilitation, was approved by WCO. The Standard Framework is designed to strengthen capacity building through simplification and coordination of national import and export procedures as well as customs procedures, making international trade easier, faster and transitionally cheaper.

SAFE Framework³¹⁴ advocates three aspects of cooperation: Customs-to-Customs cooperation , Customs-to-Business cooperation and Customs-to-other Government Agencies cooperation.. In the part of the Customs-to-Business cooperation, SAFE Framework presents the concept of Authorized Economic Operator (AEO). Under AEO system , each Customs administration will establish a partnership with the private sector in order to involve it in ensuring the safety and security of the international trade supply chain. The main focus of this kind of cooperation is the creation of an international system for identifying private businesses that offer a high degree of security guarantees in respect of their role in the supply chain. These business partners should receive tangible benefits in such partnerships in the form of expedited processing and other measures. The requirements and standards used by different countries of the Customs to certify enterprises are different, but they basically based on the localized "framework" .

Under the WCO's SAFE Framework Customs administrations are encouraged to develop partnerships with business and between each other to secure and facilitate trade. Further, it calls upon

³¹⁴ SAFE Framework of Standards to Secure and Facilitate Global Trade - 2015 edition. <http://www.wcoomd.org/->

[/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/safe2015_e_final.pdf?la=en](http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/safe2015_e_final.pdf?la=en)

Customs administrations to work with each other to develop mechanisms for mutual recognition of Authorized Economic Operator (AEO) validations and authorizations, mutual recognition of Customs security control standards and control results and other mechanisms that may be needed to eliminate or reduce redundant or duplicated efforts.

The objective of Mutual Recognition of AEOs is that one Customs administration recognizes the validation findings and AEO authorizations by the other Customs administration issued under the other programs and agrees to provide substantial, comparable and - where possible - reciprocal benefits/facilitation to the mutually recognized AEOs. This recognition is generally premised on the existence (or creation) of both relevant legislation (where applicable) and operational compatibility of both or more programmes. To further support implementation, the WCO SAFE Working Group and other WCO bodies, along with the Private Sector Consultative Group (PSCG), have developed a number of instruments and guidelines.

In order to bring together this important body of material in one convenient place, the WCO compiled a SAFE Package which incorporates all these instruments and guidelines.

As of July 2016, 69 countries and regions have established AEO project, signed 34 AEO mutual recognition³¹⁵ arrangements. AEO regional integration and regional multilateral mutual recognition become a new development trend, the East African Five Countries Customs Union (EAC) regional AEO mutual agreement has been reached, "Pacific Union" (Peru, Costa Rica, Chile, Colombia) action plan has been signed, the United States , Canada, Mexico AEO regional mutual recognition agreement has also been basically reached.

2. Specific analysis of AEO certification standards

³¹⁵ [MutualRecognitionArrangement/AgreementGuidelines.http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/safe_package_xi.pdf?la=en](http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/safe_package_xi.pdf?la=en)

In the late 1980s, China's customs authorities introduced a classification system for import/export enterprises based on their compliance records. The system has evolved in line with changes in the domestic economy and the needs of businesses. Revised rules that became effective on 1 December 2014 (GAC Order No. 225)³¹⁶ conformed China's practices to international standards and categorized enterprises into three types: Certified enterprises (including ACEs and General Certified Enterprises (GCEs)); General Credit Enterprises; and Discredited Enterprises.

Each of the above enterprises is subject to different customs administrative measures that are designed to promote compliance. In particular, ACEs can be recognized as Authorized Economic Operators (AEOs) by jurisdictions that have concluded an agreement with China to grant reciprocal preferential customs treatment (e.g. expedited customs clearance with fewer inspections) to AEOs.

Only Certified enterprises can enjoy expedited customs treatment by countries participating in the AEO programs. Therefore, the AEO certification standards in this article refers to the advanced certification standards.

2.1 AEO certification standards (Advanced certification standards)

China Customs AEO advanced certification standards are divided into internal control, financial condition, compliance standards, trade and additional safety standards, a total of five major categories. Which the first four categories as the basis for the standard, Category 5 as an additional standard, the specific certification standards in Table 1.

³¹⁶ Interim Measures on Credit Management of Customs Enterprises of the People's Republic of China (Decree No. 225 of the General Administration of Customs).

Table 1 Customs certification enterprise standards (advanced certification)

Internal control standards	Organizational control	1. internal organizational structure	Financial condition	Financial condition	12. Accounting information
		2. Customs business training			13. solvency
	Import and export business control	3. Document control			14. Profitability
		4. Document custody			15. Tax ability
		5. Import and export activities	Compliance standards	Comply with laws and regulations	16. Personnel illegal
	Internal Audit Control	6. Internal audit system			17. Enterprise illegal
		7. accountability		Import and export business norms	18. Registration information
		8. Improve the mechanism			19. Import and export records
		Information System Control			9. Information systems

		10. Data managem ent			specificatio n
		11. Informatio n security			21. Tax payment
					22. Manageme nt requirement s
					23.External credit
Trade safety standar ds		24. Safety of premises	Additiona l standards	Extra points	32.Plus points
		25. entrance security			
		26. Personnel safety			
		27. Business partners safety			
		28. Cargo safety			
		29. Container safety			
		30. Transport safety			
		31. Crisis manageme nt			

2.2 Analysis on the Difficulty of Execution of AEO Certification

China Customs AEO senior certification standards are scoring system, as shown in Table 1³¹⁷, a total of 32 sub-options (including a bonus item), sub-options are divided into two, one is "standard", "not compliance", corresponding "0", "- 2"; the second is "compliance", "part of the standard", "not compliance", the corresponding score of "0", "-1", "-2". To become China's AEO senior certification enterprises need to meet the two necessary conditions: First, all the sub-projects are not up to standard (-2 points) situation, the second is the total score of 95 points (including the number) or more.

Under the internal control standards, financial standards and trade safety standards, the sub-projects are divided into "compliance", "part of the standard" and "non-compliance", when the certified enterprises do not fully meet the relevant refinement of the standard requirements, customs officers need to determine whether such a situation should be determined as "part of the standard" or "not compliance", if the decision is "not compliance" then the enterprise can't become a Certified enterprise, if judged as "part" (Except for the 12,13,14,15,17,22,23 items that do not allow improvement), the enterprise may also have the opportunity to obtain advanced certification by qualifying the improvement within the prescribed time limit. It can be seen, there two aspects of specific difficulty when implementing AEO certification standards, one is that there is no rigid discretion of the control, the second is that only the items under compliance standard requirements of the project can be verified through customs internal system or "customs cooperation platform ", other subordinate projects ask customs officers own a certain degree of financial audit

³¹⁷ "Customs Certification Enterprise Standard" (General Administration of Customs Notice No. 82 of 2014).

knowledge, logistics management knowledge and supply chain security knowledge .

2.3 AEO certification standards' method analysis

The AEO system is designed based on the concept of "SAFE Framework". By studying the AEO Advanced Certification Standards, the 31 sub-projects contribute a comprehensive inspection of an enterprise's safety management and compliance..

China's AEO advanced certification standards on the application of standardized changes in addition to the certification standards are to exclude NO.12,13,14,15,17,22,23 items, other items which are not up to standard or part of the standard belong to the situation allowing enterprises to make standard improvement to meet the requirements. Of which 12, 13, 14 and 15 are for the financial situation of the enterprise, 22 and 23 are for the enterprise credit customs of credit and other relevant government departments. It can be seen that enterprises having the normal ability to operate and the basic credit could own the opportunity to become Certified enterprises. under the internal control and trade security standards, setting aside a large space for the cooperation between customs and business.

In this paper, the actual certification methods to determine whether the company is consistent with the AEO standards are divided into four categories: the file access class, the system query category, field visits and professional judgments, according to the certification instruments and access to information resources. Document access class refers to the way to check the company's written paper and electronic documents to verify whether it is in accordance with the provisions of the establishment of relevant procedures and systems, the system query class refers to the query by customs system, company internal systems, other government agencies and credit management System, etc. to determine whether the business is in line with compliance, field inspection class refers to the enterprise through field visits to determine whether the venue to achieve safety standards, professional judgment is to establish a certification team with relevant professional knowledge or

cooperate with a professional third party Institutions to determine whether the relevant projects is up to the requirements.

Table 2 AEO advanced certification methods

Method classificati on	Item number	information resource
File access class	1、2、3、4、5、6、7、8、10、11、 12、13、14、15、24、25、26、27、 28、29、30、31	Enterprise paper, electronic documents, financial reports, audit reports
System query class	9、10、11、16、17、18、19、20、21 、22、23	Enterprise internal management system, customs H2010 customs clearance system, integrated management platform system, JC2006 inspection system, enterprise import and export credit management system
Field study class	4、5、24、25、26	Inquiry, inquiry, system login
Professiona ljudgment class	12、13、14、15	Data analysis, third party organization assistance

3. cost analysis of customs-business cooperation under AEO system

3.1The necessity of considering the cost of customs-business cooperation

The exponential increase in global trade and the changing dynamics of the international supply chain have created new demands and perspectives on the role of Customs administrations. While businesses seek to move goods faster in the supply chain at reduced costs, Customs administrations are required to process increasing volumes of cargo with lesser reliance on physical intervention and with greater efficiency and speed, without compromising on its security, revenue collection and enforcement responsibilities. In order to accomplish this, there is an increasing need for Customs administrations and businesses to collaborate with each other and with other stakeholders to ensure regulations, policies and programs effectively respond to an ever changing environment. A dynamic partnership is essential to drive innovation and economic growth opportunities and, at the same time, create a more cost-effective, efficient and responsive Customs administration.

In October 2016, authorities from 40 different government departments, including the National Development and Reform Commission (NDRC), the People's Bank of China (PBOC), the General Administration of Customs (GAC), jointly signed a Memorandum of Understanding (MOU) on implementing joint incentives for customs advance certified enterprises (ACEs). The MOU signals the enhancement of China's compliance promotion in the import/export sector, and ACEs will enjoy more preferential treatment offered by various government authorities. Enterprises planning to maximize their benefits need to pay close attention to their own credit rating in the relevant departments, and continuously improve the comprehensive credit.

table 3 comprehensive credit management lists

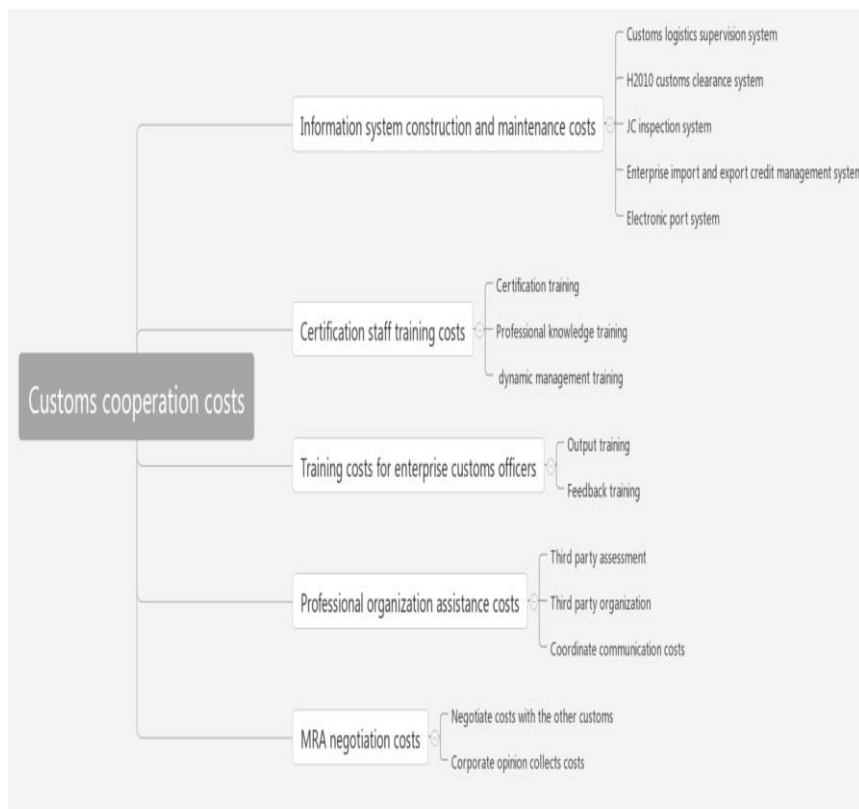
	Customs	Inspection and Quarantine	SAT (general tax)	SAT (export activities)	SAFE	SAIC
Most business friendly administration approach	ACEs	AA	A	I	A	A
Business friendly administration approach	GCEs	A		II		
General administration approach	General Credit Enterprises	B	B	III	B	B
More stringent administration approach	Discredited Enterprises	C	C	IV	C	C
		D	D			D

At the same time we should also notice that accompanied by the establishment and improvement of AEO system in developing countries, customs and enterprises need to pay a certain degree of reform and cooperation costs in order to achieve good results. The cost in this paper includes two levels: there should be sufficient support at the technical level, it should not weaken the normal management of the customs or affect the normal operation of the enterprise; at the economic level, the implementation cost can not be too high, it also should not be divorced from a country's level of economic development and the economic situation of the enterprise itself. Only when the implementation cost of the AEO system is lower than the benefits obtained by the customs and the enterprises can the AEO certification work be done smoothly and the subsequent dynamic management work achieve the expected progress continuously.

3.2 The cost of customs cooperation

Based on Table 2, the classification of the certification method, when undertaking AEO advanced certification work, customs need to consult the enterprise system documents, need to be familiar with all kinds of related information system applications, need to go to the business site for field inspection, need to cooperate with the third party institutions to conduct business financial report audit if necessary, need implement dynamic management measures on qualified enterprises. Considering that certification work is mainly undertaken by the audit department staff in China Customs, and AEO mutual recognition of the larger then the attraction of the greater customs cooperation costs include inspection staff training costs, system construction and Maintenance costs, professional organization assistance costs, MRA (mutual agreement) negotiation costs. In short, border authorities, including the Chinese customs, are only able to demonstrate that the safety of their goods is able to meet world-class standards then they have the potential to cooperate with other countries for border cooperation and international trade facilitation cooperation.

Figure 1 Customs cooperation costs under the AEO system



3.3 The cost of business cooperation

Since China has reciprocal recognition of AEOs for ACEs with the EU, Hong Kong, Korea and Singapore, it is expected that the inspection rates in these jurisdictions will reduce by more than 50% for goods from Chinese ACEs, and the time spent in customs clearance should drop by more than 30% on average. As a result, an ACE will benefit from preferential customs policies, as will a global supply chain involving the ACE. By one by one analysis of AEO advanced certification standards, the enterprise side should bear the cooperation cost shown in Figure 2.

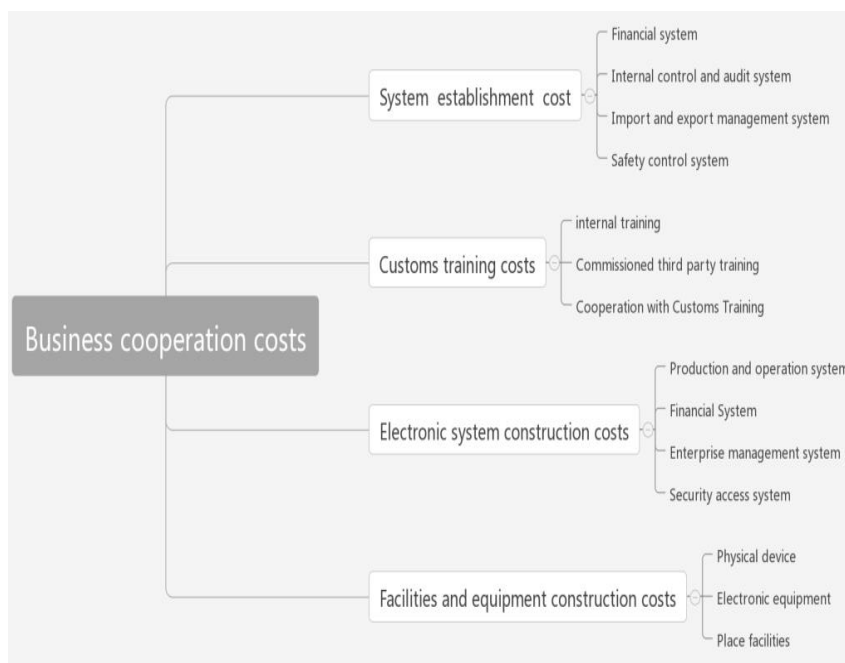


Figure 2 Enterprise cooperation costs under the AEO system

4. The cooperation path of customs and enterprises under AEO system

Customs-Business regular consultation and partnership will lead to a mutually beneficial situation. It encourages a climate of shared responsibility and ownership towards developing sustainable goals, policies and programs. It helps to develop consensus on reform priorities, to anticipate and manage emerging issues and to improve decision-making and operational performance by allowing Customs to align its management plan and actions with the expectations, needs and demands of business. As the relationship deepens, new opportunities for cooperation will emerge, leading to increased mutual benefits for all. This eventually helps international trade to flourish and compliant and legitimate trade can move faster in the global arena. Efforts to develop strong

partnership can result in learning, innovation and enhanced performance that will not only benefit Customs and business but society and economy as a whole, in terms of economic wealth and competitiveness.

The cooperation between customs and enterprises is a big strategy. The construction of AEO system is only one part. The purpose of cooperation between customs and enterprises is to minimize the cost of cooperation and maximize the benefits of cooperation. This paper discusses the cooperation path between AEO and customs based on two different positions.

4.1 Customs position

4.1.1 the establishment of normalized training mechanism, expanding training methods

In order to allow enterprises to better understand the specific requirements of the AEO certification standards, customs department should establish a normalized training mechanism for enterprises, the inland customs- enterprises training can be one-on-one or small-scale mode, the coastal customs can offer concentrated training for sub-regional enterprises.

Training is not limited to face-to-face training, customs can make policies and regulations pushed by WeChat, encourage similar business consulting and so on. Customs department with adequate human resources can also set up a special online consultation position and District authorized advisory platform, which aim to integrate recourses of various departments to answer business puzzles.

4.1.2 Issued a guidance manual to help enterprises to apply for certification by a clear unified rules

Today's AEO advanced certification standards have a total of 32 sub-projects, sub-projects have a corresponding scoring criteria, and these standards are largely not specific. For example, in the internal control standard which referred to "import and export business management process set reasonable, complete, involved in the flow of goods, documents flow, information flow can be effectively controlled, the spot checks, found no compliance with

customs regulations" The specific requirements of reasonable management process is fuzzy, this blur will increase the cost of communication when customs officers undertaking certification work after the enterprises submit relevant documents, similar to this ambiguity in the certification standards there are many, customs can refer to the world Customs practice in the implementation of the AEO system, publishing guidance manuals ³¹⁸ without mandatory in each year, helping customs and enterprises to clear the specific requirements of the standards and reduce communication costs, which will also provide focus for AEO training content of sides. Through the previous analysis, if enterprises want to pass AEO senior certification, the electronic system is a very critical condition, issuing a guidance manual, can provide clear guidance for the enterprise to reduce or avoid unnecessary system improvement costs.

4.1.3 Strengthen database share between customs system and enterprise system selectively

At present, the customs business system related to AEO certification mainly includes H2010 system, JC auditing system and logistics monitoring system. Some background database of the system can selectively allow enterprises to connect without affecting the normal supervision of the customs The company's customs error rate, standardized reporting rate and tax payment conditions are required in the certification standards, according to business needs ,customs departments could selectively open part of the data query, which helps companies understand their own import and export business norms to complete timely adjustment. Of course, to do this kind of customs and enterprise system database selective sharing, need customs to strengthen the system of information and intelligent construction, and improve the and information exchange security. between customs and enterprises.

4.2Business Position

³¹⁸ Notice of the General Administration of Customs on Carrying out the Pilot Work of the Customs and Excise Service Coordinator (No. 10 [2013]).

4.2.1 Improve internal control systems and apply for recognition as an ACE

Affected companies should consider applying for ACE status in order to benefit from the preferential policies offer by various government departments. To qualify, a series of conditions as set out in Order 225 must be fulfilled in relation to internal controls, financial status, compliance records and trade security.

4.2.2 Conduct regular self-assessments

Even when a company is recognized as an ACE, it still should conduct regular self-assessments to be sure that it remains in compliance. A company will be downgraded if certain noncompliance factors are identified, and that information will be publicly available for five years. An ACE must be recertified every three years and a GCE will be subject to a recertification on a random basis.

4.2.3 Take remedial measures where necessary

When a company is downgraded to general credit enterprise or discredited enterprise status, it should conduct a thorough analysis to develop a remedial action plan and communicate with the relevant authorities to demonstrate its willingness and capability to recover its compliance rating.

4.2.4 Leverage information technology to improve efficiency of the internal control system

Affected businesses should consider using information technology to monitor their financial and business performance, identify any weaknesses in the existing system and control the risk of noncompliance. A sound information system to enable a company to effectively track the business and import/export activities is a prerequisite for a company to be recognized as an ACE.

4.2.5 Seek assistance from professionals firms

According to Order 225, Customs or the applicant can engage a qualified professional firm to conduct an assessment on whether

the applicant qualifies for ACE status. The assessment report issued by the firm may be taken into account when customs determines the classification of the applicant.

5.Conclusion

with the development of AEO system, China Customs has took some aspects of a useful exploration: First, the establishment of "customs business coordinator" system to build a closer customs partnership; the second is to carry out innovative enterprise certification staff training , to ensure the quality of certification; third is to carry out a wide range of international AEO mutual recognition, and strive to build AEO mutual recognition upgrade and achieved remarkable results; four is to actively expand enterprise convenience measures and conduct benefit research; five is to actively participate in and promote the joint government departments Incentives and joint disciplines; six is actively advocating "along the way", China and Japan, China and ASEAN and other regional AEO cooperation mechanism.

AEO certification system will be adjusted with the economic development, the further promotion of AEO system need close cooperation between customs and enterprises , customs is the subject of AEO system certification, and enterprises are AEO system beneficiaries, the two sides should build mutual help cooperation, on the one hand it will help the customs officer undertake AEO certification work smoothly and reduce the cost of enterprise certification, on the other hand it will make AEO international mutual agreement arrangements more in line with customs supervision and corporate interests demands, to create a win-win situation.

references:

- [1] Interim Measures on Credit Management of Customs Enterprises of the People's Republic of China (Decree No. 225 of the General Administration of Customs).
- [2] Measures for the Administration of Classification of Customs Enterprises of the People 's Republic of China (No. 197 Decree of the General Administration of Customs).
- [3] Announcement on the Implementation of the Interim Measures for the Administration of Credit Management of Customs Enterprises of the People 's Republic of China (General Administration of Customs Circular No. 81 of 2014).
- [4] "Customs Certification Enterprise Standard" (General Administration of Customs Notice No. 82 of 2014).
- [5] Notice of the General Administration of Customs on Carrying out the Pilot Work of the Customs and Excise Service Coordinator (No. 10 [2013]).
- [6] "Audit Division on the implementation of corporate credit management system related matters notice" (inspection letter [2015] No. 44)
- [7] MengYang. Promote mutual recognition of AEO Customs and enterprises to promotewin-wincooperation[EB/OL].<http://fangtan.customs.gov.cn/tabid/322/Infoid/1287/frtid/323/Default.aspx>,2015-06-02..
- [8]ModelAEOAppealProcedures.http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/safe_package_v.pdf?la=en
- [9]SAFE Framework of Standards to Secure and Facilitate Global Trade - 2015 edition. http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/safe2015_e_final.pdf?la=en
- [10]AEOCompendium2016edition.[http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/aeo-compendium-en--2016-\(1\).pdf?la=en](http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/aeo-compendium-en--2016-(1).pdf?la=en)
- [11]AEO Benefits: Contribution from the WCO Private Sector Consultative Group. <http://www.wcoomd.org/>

/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/safe_package_vi.pdf?la=en
[12]MutualRecognitionArrangement/AgreementGuidelines.http://www.wcoomd.org/-
/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/safe_package_xi.pdf?la=en

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In 2015,under the background of implementing the rules of AEO, Zhao passed the examination of Enterprise Certification Specialist of General Administration of Customs, and was qualified as a junior Enterprise Certification Specialist.

THE CONTROL OF MOVEMENT OF WEAPONS AND AMMUNITION ACROSS THE BORDER: THE EXPERIENCE OF UKRAINE

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***Annotation:** Problems of improving the legal regulation of trafficking in arms and ammunition, their transportation across the customs border with the aim of preventing and combating smuggling are wide-spread at present. This is due to their connection with the problems of combating illicit arms trafficking, security of citizens, protection of their life and health, personal integrity, which is one of the main directions of social policy of Ukraine.*

In law science, these issues are addressed simultaneously at two levels: administrative law (customs) and the criminal law.

The questions of improvement of the functioning of customs control were studied by such scientists as the Grebelnik, Berezhnyuk, Turzhansky, Tereshchenko and others.

***Keywords:** weapons, ammunition, transportation, small arms, dual-use goods, export, import.*

Legislation of Ukraine provides a special procedure for the movement of weapons and ammunition across the customs border of Ukraine, entitled "licensing system", which was introduced in 1992.

Licensing system is a special order of transportation of defined items, which needs a permission from authorized bodies. Such system was developed to protect the interests of the state and society. In other words, this means that in order to move across the customs border of Ukraine certain goods, special permission from the competent bodies is required [1].

Permission for the weapons and ammunition is issued in order determined by the Ministry of the Interior.

Analyzing certain aspects of this system it should be mentioned the responsibility of those who violate the order of transportation of these goods. According to item 15 of the Regulation "On licensing system," who does not follow that regulations, are liable under the laws of Ukraine. For example, if the person during the customs control selects green corridor (which provides a simplified procedure) and by the customs officers will be detected transported goods that are prohibited for import or export, such goods should be confiscated and the guilty person will be fined.

It should be noted that in comparison with the edition of Customs Code of 2002, the current Customs Code of 2012 secured a more severe punishment for violation of the movement of goods, choosing green corridor. Thus, the earlier (before the enactment of the Customs Code of Ukraine, 2012) provided for the act envisaged punishment or as confiscation or a fine that ranges from 50 to 100 non-taxable minimum incomes [2].

In addition, weapons and ammunition of foreign origin are included in the group of products that, according to the Ukrainian legislation, must be destructed - it happens at the request of the owner of the goods or his representative and on the basis of permission of customs officer.

Moreover it should be remembered that the movement of arms and ammunition across the customs border outside the customs control - is not just a violation of customs rules, but the crime commission which entails criminal liability. It is regulated by

the Criminal Code of Ukraine and punished with imprisonment of three to seven years.

Revealing this issue, in our opinion, it should be mentioned about such type of weapons like chemical weapons. According to the legislation of Ukraine it is not included in the list of items that are listed in the licensing system, but the question of its transportation across the customs border of Ukraine governed by the Convention on the Prohibition of the Development, Production, Stockpiling, Use of Chemical Weapons and on their Destruction. Each State Party has the right, subject to the provisions of this Convention, to develop, produce, otherwise acquire, retain, transfer and use toxic chemicals and their precursors for purposes not prohibited under this Convention. In accordance with the provisions of this international instrument Ukraine has the right to transfer this type of weapon only to the state which acceded to this Convention, and only in clearly defined goals, which the Convention refers research, medical, pharmaceutical or protective purposes. Not later than 30 days after this Convention enters into force for it, each State Party shall make an initial declaration on relevant chemicals and facilities in accordance with the Verification Annex. Each State Party shall make annual declarations regarding the relevant chemicals and facilities in accordance with the Verification Annex [3].

It should be noted that products that are not weapons, but which can be used to create it, are also characterized by a special procedure for their movement across the customs border of Ukraine. These items called dual-use goods and they can be used for different types of weapons (chemical, nuclear and biological weapons as well as military or special equipment, etc.). In accordance with Ukrainian legislation the control of the movement of such goods is taken by the State Service of export control.

Not allowed export of certain goods to countries for which the UN Security Council set an embargo on their exports, and in the case when the results of the examination in the state export control shows that they are intended for the manufacture of weapons of

mass destruction Growth of terrorist purposes, use in activities related to the creation, manufacture, use different weapons and so on.

The weapon (namely - firearms of all types and ammunition, knives of all types) is included in a list of items that are prohibited for sending international mail. In addition, we can send in postal items permits for the right to bear arms.

Particular attention should be given to transportation through the customs border of weapons that have artistic, historical, ethnographic and scientific value. Such weapons include cultural values subject to protection and security in accordance with the laws of Ukraine.

During the importation of arms, which is the cultural value of the territory of Ukraine shall be submitted to customs authorities a certificate for the right to import it if required by state law, where cultural values are imported. In the absence of such a certificate imported weapons, relating to cultural property shall be detained by customs authorities of Ukraine to establish its ownership and receipt of orders for further movement or use of these values. This order must be confirmed by diplomatic or consular office of the country of which is the owner of the weapon.

While exporting weapons of cultural value, its expertise is necessarily required. If a person claiming transportation of such weapons, refuses to make it, it is considered as a waiver of its removal.

After the examination the Ministry of Culture of Ukraine shall decide on the possibility of export of such weapons, as in the month notified the owner or person who has made an application on the export of arms. If the decision on the possibility of export of weapons has historic, artistic, scientific and ethnographic value, the owner is issued a certificate for the right of disposal, which serves as the basis for the removal of weapons from the customs territory of Ukraine. If there is no certificate, export of such weapons by the current legislation is not allowed.

Restrictions and prohibitions on export or import arms, ammunition and special means through customs border of Ukraine is a non-tariff regulation of foreign economic activity, which goal is to maintain public order, security of state and society, and protection of national, cultural and historical heritage.

Customs control of weapons, ammunition and special facilities is conducted in accordance with the Customs Code of Ukraine from 13. 03. 2012. As it is the basic act regulating related issues that are, of course, connected not only with the control procedures on the movement of goods across the customs border of Ukraine, the Ukrainian Customs Code contains just common provisions on customs control of transportation of items, including weapons, ammunition and special means. However, it is not the only act that regulates the control procedures for their movement. For example, the rules on the control of arms having cultural value are contained in the Law of Ukraine "On export, import and return of cultural property" from 21. 09. 1999, and provisions on the control of dual-use goods can be found in the Resolution of the Cabinet of Ministers " On approval of state control over international transfers of dual-use goods "from 28. 01. 2004, and the Law of Ukraine" On state control over international transfers of military and dual-use goods" of 20. 02. 2003 and so on.

Talking about problems or disadvantages in Ukrainian legislation about this issue, it should be said that there are two interrelated scientific and practical problems that need scientifically-based solutions:

1. There is no legal basis in the form of a special law governing the control of movement of weapons and ammunition across customs border of Ukraine, including in the event of emergency circumstances (for example, "hybrid war" or a full-scale armed aggression).

2. There is a lack of legal mechanisms and procedures for the movement of weapons and the occurrence of such circumstances.

The decision of the first problem is possible only in case of a public consensus on the issues of the circulation of arms and ammunition and adoption of a Law of Ukraine "On Civil weapons and ammunition", which will highlight the control procedures to be carried out by specially authorized bodies in moving such items across the customs border of Ukraine.

One of the solution of the second problem is to improve procedures across the customs border of Ukraine of weapons or ammunition (which are included in the list of dual-use goods) undertaken by State Service of export control of Ukraine.

Regarding cooperation of customs service of Ukraine and customs services of foreign countries, it should be said that there are many international treaties. For example, the Protocol between the State Customs Service of Ukraine and the Customs Department of the Republic of Moldova on cooperation in combating illegal trafficking in weapons, ammunition, explosives, psychotropic substances and precursors, which was signed on 15. 05. 2003. According to the Protocol, the Parties shall exchange information on methods of combating illegal transfer of arms and ammunition, the principles for the organization of customs control over the movement of weapons and new methods to detect and to change the prices of weapons or ammunition. Article 2 of that Protocol regulates that training to combat illegal transportation of arms Contracting Parties may exchange customs officers. In our view, the practice of such cooperation is very useful for both sides, because it not only serves by the exchange of knowledge, skills and experience on the measures and methods to combat the illegal transfer of arms and ammunition, but also contributes to the further development of relations of two states on state customs.

On making the effective control has a great influence the exchange of information between contracting parties of people (who are known to the customs officers or that they only suspected) related to the illegal transfer of arms or ammunition, as well as vehicles, by means of which such transfer. This information is relevant party at its request or its own initiative, and an answer must

contain complete and accurate information that allows most accurately define and identify persons or vehicles that are used in the illegal movement of weapons or ammunition across the border of the State.

To other international document that contains information of control procedures of the movement of weapons or ammunition can be attributed Agreement between the Government of Ukraine and the Government of Turkmenistan on cooperation and mutual assistance in customs matters, under which any party in the event of offenses or the possibility of their implementation, concerning the illegal transfer of arms and ammunition should inform about it another Party.

Transmission of this information can be carried out both at the request of an interested party or without it. Regardless of whether the information transmitted on request or without, the contracting party shall provide all information available to it information on the implementation of such a breach, and such information should be sent as soon as possible after detection or assumption of the offense for the purpose of timely and effective control.

As another example is the agreement between the Government of Ukraine and the Government of the People's Republic on mutual assistance in customs matters on 22. 12. 1997, in which also states that as Ukraine and the Republic of China should be required to notify the other party of the offense (or the possibility of such an exercise) in the movement of weapons, ammunition etc.

Similar agreements were concluded by the Government of Ukraine and other states such as the Republic of Finland, Azerbaijan, Moldovan Republic, Georgia and others.

Another important international document, that made a great contribution to the development and regulation of the control procedures of such goods is Protocol against the Illicit Manufacturing of and Trafficking in Firearms, its parts Components and Ammunition, supplementing the United Nations

Convention against Transnational Organized Crime. According to this document, the control procedures have specified name – tracing. “Tracing” shall mean the systematic tracking of firearms and, where possible, their parts and components and ammunition from manufacturer to purchaser for the purpose of assisting the competent authorities of States Parties in detecting, investigating and analysing illicit manufacturing and illicit trafficking [4].

Each State Party shall ensure the maintenance, for not less than ten years, of information in relation to firearms and, where appropriate and feasible, their parts and components and ammunition that is necessary to trace and identify those firearms and, where appropriate and feasible, their parts and components and ammunition which are illicitly manufactured or trafficked and to prevent and detect such activities. Such information shall include: the appropriate markings required by article 8 of this Protocol; in cases involving international transactions in firearms, their parts and components and ammunition, the issuance and expiration dates of the appropriate licences or authorizations, the country of export, the country of import, the transit countries, where appropriate, and the final recipient and the description and quantity of the articles.

For the purpose of identifying and tracing each firearm, States Parties shall: at the time of manufacture of each firearm, either require unique marking providing the name of the manufacturer, the country or place of manufacture and the serial number, or maintain any alternative unique userfriendly marking with simple geometric symbols in combination with a numeric and/or alphanumeric code, permitting ready identification by all States of the country of manufacture; require appropriate simple marking on each imported firearm, permitting identification of the country of import and, where possible, the year of import and enabling the competent authorities of that country to trace the firearm, and a unique marking, if the firearm does not bear such a marking. The requirements of this subparagraph need not be applied to temporary imports of firearms for verifiable lawful purposes; ensure, at the time of transfer of a firearm from

government stocks to permanent civilian use, the appropriate unique marking permitting identification by all States Parties of the transferring country.

Update report on Small arms also contains a lot of issues that refers to the control procedures of movement of weapons and ammunition. Interopl has developed its global police communications system, which provide law enforcement authorities in its member countries with instant access to the organization's databases. It also enables national authorities to access each others' national databases through designated officials, while always remaining in control of their own national criminal data. Queries of these databases by national police may bring to light linkages to other criminal records, for instance records related to international organized crime, terrorism and money-laundering, which could help in combating the illicit trade and brokering in small arms.

In 2002, the World Customs Organization (WCO) recommended that States and customs authorities "consider designating specific offices/sites for the processing of legitimate firearms shipments in order to enhance control over their trans-border movement" and "promote the conclusion of Memoranda of Understanding between customs and legitimate traders, such as manufacturers, dealers, importers, exporters, brokers and commercial carriers of firearms to strengthen controls and to increase accountability".

Furthermore, WCO has set up a comprehensive approach to customs capacitybuilding with its programme to assist member countries with implementation of the WCO Framework of Standards to Secure and Facilitate Global Trade and with broad modernization. This programme will be important for enhancing the capacity of relevant national authorities to prevent, combat and eradicate illicit trade and brokering in small arms [5].

In addition, the International Civil Aviation Organization and the International Maritime Organization, as well as non-governmental industry associations such as the International Air

Transport Association, have set out and regularly updated standards for the conduct of their members and for the transport of dangerous cargoes, including consignments of ammunition and explosives. The enforcement of such standards may be important for the prevention and suppression of illicit trade and brokering in small arms.

As the Council knows, building sustainable peace requires much more than addressing security — it calls for tackling longer-term challenges. This is central to the Peacebuilding Commission's mission of averting a relapse into conflict, but it should equally apply to broader United Nations efforts to stop violence from breaking out in the first place, for instance through the Security Council. The issue of small arms is directly relevant to the work of the Peacebuilding Commission, especially since levels of small arms circulating in post-conflict areas may be higher than before the conflict ended. The Commission has generated trust among Member States and forged a new spirit of partnership in the international community.

Basing on analysis of the communications taking place in the media (television, radio, Internet, etc.) and reports of law enforcement and other government agencies, we can conclude that there is a steady trend of unlawful use of firearms on the part of not only people who are entitled to possession of such items, but also by people who do not have the appropriate rights. Thus, the use of weapons by illegal armed groups takes place in certain areas of the Donetsk and Lugansk regions, which are the site of the anti-terrorist operation in 2014.

To sum everything up it should be said that because of the mass facts of illegal use of firearms and other weapons, a great social danger of such acts, we consider to provide for criminal responsibility for the illegal use of firearms.

In addition to these facts export control system should be improved with the elimination of differences of states approaches to this area, when the national exporters of some countries have minimum difficulties in exporting dual-use goods, as exporters of

other face extremely tough export restrictions, which is one of the causes of the smuggling of weapons of growth and ammunition.

As it was said before, one of the solution of this problem is adoption of a Law of Ukraine "On Civil weapons and ammunition", which will define the control procedures, that should be carried out by specially authorized bodies in moving such goods across the customs border of Ukraine.

In our opinion, one of the most effective ways to eliminate these challenges includes the implementation of a common approach by export controls service to the risk assessment, the increase in frequency and information exchange volumes of permits issued and the suspicious transfers of goods, the development of a joint approach to a comprehensive control, improved access of customs administrations to relevant information, as well as consistent enforcement.

Bibliography:

1. Decree of the Cabinet of Ministers of Ukraine "On licensing system» №576 from 12.10.1992 [electronic resource]. - Access: <http://zakon0.rada.gov.ua/laws/show/576-92-%D0%BF>.
2. Customs Code of Ukraine № 4495-VI of 13.03.2012 [electronic resource]. - Access: <http://zakon0.rada.gov.ua/laws/show/4495-17?test=XX7MfyrCSgkydTQIZiow0IZkHI4cQs80msh8Ie6>.
3. . The Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons on Their Destruction on 01/13/1993 [electronic resource]. - Access: http://zakon3.rada.gov.ua/laws/show/995_182.
4. Protocol against the Illicit Manufacturing of and Trafficking in Firearms, its parts Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime on 31.05.2001 [electronic resource]. - Access: http://zakon2.rada.gov.ua/laws/show/995_792.

5. Update report “On Small arms” of 17.04.2008 [electronic resource]. - Access: http://zakon2.rada.gov.ua/laws/show/995_k44.

THE ROLE OF ELECTRONIC CUSTOMS IN FACILITATING THE CUSTOMS AFFAIRS PROCESS (A CASE STUDY OF THE ISLAMIC REPUBLIC OF IRAN CUSTOMS ADMINISTRATIONS)

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Abstract

The emergences of digital economy, globalization and the changes having occurred in the international system have revolutionized the role of customs duty so that the traditional duties and missions of Customs can no longer meet the national development goals. The Islamic Republic of Iran Customs Administration, with regard to its great importance in the country's economic system, has done its best to contribute to achieving the social - economic development goals, by eliminating the bureaucracy, improving the quality of customs services and generally enhancing the efficiency of the customs system using new information technologies and intelligent electronic systems. This article examines the role of electronic customs in facilitating the

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Islamic Republic of Iran's Customs. The results indicate that the establishment of electronic customs has more transparency and can facilitate the Customs affairs process as it makes the daily activities of the Customs be done electronically, makes electronic documentation in Customs affairs using a common structure and makes the internet connection between the regulatory agencies.

Keywords: *electronic customs, e-commerce, Customs affairs*

1. Introduction

International trade in the world makes no sense without the use of the Customs Services. Customs, as an important and integral part of the foreign trade of each country, is the place where the trade agents communicate their information. It also executes the laws and regulations and instructions issued in the area of exports, imports and other customs procedures. Customs is so important that its speed and efficiency is sometimes used as a measure to evaluate the foreign trade activities in countries or even their macro economy. Moreover, the most important role of customs is to improve the efficiency of import and export process and provide and analyze the figures and information related to foreign trade (Jahangiri, 2011). That's why it is nowadays believed that automation of customs is an integral part of any trade facilitation program.

Due to the high volume of trade and the increasing speed of business transactions, Customs also have to be transformed, because the clients expect to have their commodities released from Customs as fast as they purchase and carry them. In addition, due to the emergence of electronic commerce, the business community nowadays expects that the Customs procedures become transparent and predictable and the goods be released quickly. On the other hand, the government expects to collect revenue and apply the export and import laws and regulations effectively. In order to meet these expectations, many customs administrations take measures to use e-commerce to support their operations. In fact, today's customs procedures are considered a major obstacle for the international trade without the

use of ICT. Therefore, attempts will be made in this article to highlight the role of technological progress in the process of customs, and thus persuade the economic and customs officials of countries to make use of these advances in their work process. This is because it is believed that electronic Customs plays an important role in reducing the transaction costs, speeding up the transfers, Improving the communications, and providing easier participation of commercial partners and greater transparency (Aqajani, et al, 2010) and the use of ICT and electronic customs will help us perform all operations, calculations and Customs monitoring easily and accurately, which will help facilitate the Customs affairs process and leave no problem called inaccuracy or work postponement.

2. E-commerce and its relationship with Customs

The European Union believes that e-commerce means doing business electronically so that the parties interact with each other electronically instead of the physical exchanges or direct physical contact. (Jahangiri, 2011) also define e-commerce as the paperless commercial exchange where the electronic exchange of data is used as a tool along with e-mail, electronic bulletin boards, the Web, and other network-based technologies. In other words, the electronic exchange of data acts as the backbone of e-commerce (Kakhaki, 2011). Therefore, e-commerce consists of the process of buying, selling, transferring or exchanging the goods, services and information via computer networks such as the internet.

The expansion of electronic commerce at the international level has occurred so fast and the benefits associated with it have become so transparent and abundant that developing countries have increasingly become persuaded to use and each one has selected specific plans to start, institutionalize, expand and develop e-commerce. The benefits associated with the use of e-commerce in each area can include costs reduction, efficiency and productivity improvement, competitive markets, fast and easy access to the required information, reduction and elimination of restrictions, the

increased number of suppliers of goods, and consumers' wide choice. Now, considering the fact that e-commerce in Customs helps improve the efficiency and leads to the optimal use of the resources and facilities in the organization, Figure 1 shows the advantages of e-commerce in customs associated with merchants, the national economy and Customs.

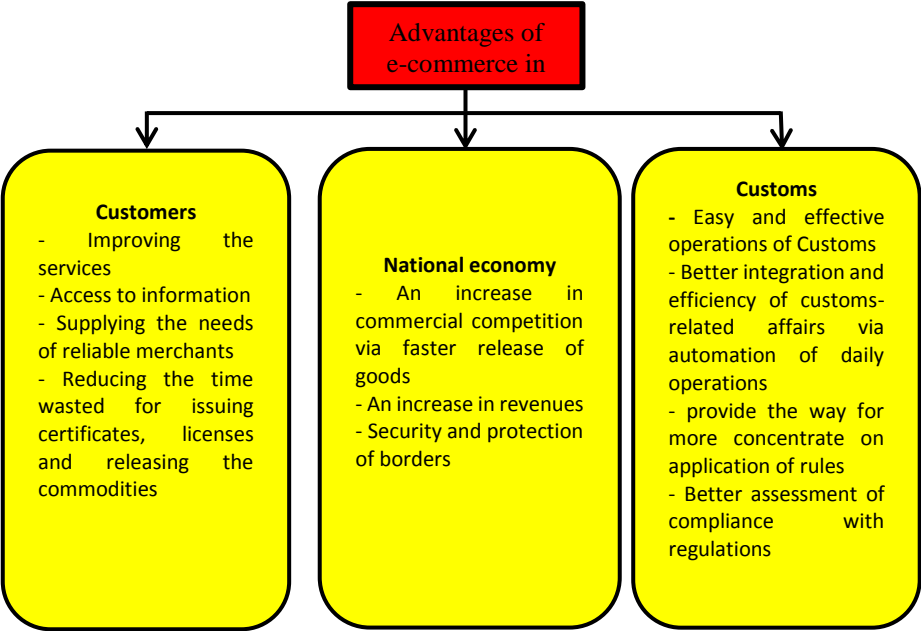


Figure 1- Benefits of e-commerce in Customs

Customs as the first and most important executor of foreign trade regulations, along with other factors in international trade including bank, insurance, and transport institutions, is affected by the conditions prevailing in the international trade chain (Memarnejad, et al, 2013). The factors and trends affecting the performance of Customs, the space where Customs work, and finally the way Customs interacts with these factors and conditions are issues to be examined in the operating environment. In

examining the operating environment, the changing conditions of the world in the international arena and the challenges arising from them are used to support and coordinate the views, objectives, priorities and the work programs of the World Customs Organization and its Member States. So, Customs is a necessary institute for all countries because it provides income, facilitates business and safeguards society. As well, this organization manages product and travellers affairs in international level. Governments require efficient and effective customs in order to implement financial, economic and social programs appropriately. As Today, IRI customs organization has many important duties beyond income provision and supporting internal production and industries and it embraces a wide range of national and international requirements. IRI customs provides services by understanding right expectation of beneficiaries like government, consumers, producers and businessmen in order to facilitate and develop commerce, bring predicted incomes, implement external business policies and supporting consumers and producers (Memarnejad, et al, 2013). As a result, due to the emergence of electronic commerce, the business community nowadays expects that the Customs procedures become transparent and predictable and the goods be released quickly. On the other hand, the government expects to collect revenue and apply the export and import laws and regulations effectively. In order to meet these expectations, many customs administrations take measures to use e-commerce to support their operations.

3. Problems and limitations of traditional Customs in Customs affairs process

Delay at the borders is the most obvious of obstacle in international trade. The main reasons for the delays include the old procedures of customs clearance, excessive bureaucracy and paperwork, lack of transparent rules and regulations of Customs and slow procedures of risk assessment (Ramazanipour, et al,

2014). An important source of delay is those businessmen have to send almost similar information in different documentary forms to multiple departments before their commodities are released. In the traditional customs, the goods themselves had to be inspected in every respect. The maritime transport of goods, which had monopolized international trade till a few decades ago, provided enough time for Customs to visit and inspect both the exported and the imported goods. In addition, the customs procedures were concentrated at one point in the traditional Customs. Export and import declaration forms for customs procedures require multiple forms, and it is impossible to follow these steps without presenting a paper form via the assertive or his representative at the time and place designated by the customs.

The increased volume of world trade over the past few decades has had a significant impact on the volume of customs operations regarding goods clearance. It should be noted the increased volume of goods has caused a change in the scope of goods that customs used to control, so that each commodity creates numerous problems for customs officials depending on its composition and Tariff. In this relation, delay in clearance will leave ports, airports and warehouses with massive amounts of unreleased, abandoned or deposited goods, which will increase the capital sleep loss. If Customs are not able to release goods quickly, they will face problems. The use of ICT can reduce these problems and pave the way for the good performance of the organization. (Karbasiyan, 2005)

According to the studies and the documents available in the Customs throughout the country, we see that the customs affairs related to the exports and imports of goods and the related administrative affairs are done slowly and impose high costs on Customs and waste their time due to the abundant volumes of the cases and piles of documents (Salarzayee, and Jamshidi, 2014). The fact is that due to today's competitive world and the upward trend in trade, traditional customs are not able to efficiently allocate the resources they need. Nowadays, electronic Customs has replaced

the traditional Customs as a new way of speeding up the formalities relating to export and import of goods and other of customs procedures.

4. Electronic Customs

Customs is an organization that pursues two goals in performing its duties. First, facilitating the international trade and, secondly, applying rules and regulations (Memarnejad, et al, 2013). Achieving these two goals simultaneously is one of the major challenges facing customs. The use of information technology will certainly help Customs to achieve these goals. IT can revolutionize Customs and their services and eliminate many of the traditional formalities procedures and replace them with modern procedures. In Iran, several measures have been taken to equip Customs with the information and communication of modern technologies, as in an article titled "The benefits of electronic customs in customs, (Aqajani, et al. 2010) concluded that electronic customs is one of the main sectors of e-government or e-commerce where customs plays a significant role. Electronic customs includes new technologies, especially information technology and uses them in the customs formalities and clearance. The use of the integrated systems of customs (including the integrated hardware and software), the use of electronic documents, exchange of electronic data between partner and neighboring organizations, and the use of new technologies such as two-dimensional barcode and RFID on paper documents and smart cards are an integral part of modern Customs (Jahangiri, 2011). Thus, the implementation of electronic customs requires software, systems and human infrastructures.

Since the use of the modern electronic technologies both makes it possible to enter into the arena of e-commerce and paves the way for e-government, thus due to the growth of technology and the use of new technologies such as RFID to provide services, some strategies have been provided for the realization of electronic customs, supervision of customs formalities, and acceleration of the customs procedures and also for the Customs' more effective

communication with the neighboring organizations and companies, which can help accelerate and facilitate the process of serving clients in customs and boost the export and import of goods on the one hand, and increase the efficiency of the personnel and the administrative health level. Effective use of these technologies depends on the use of this technology as the most effective tool that can actualize the potential talents, help achieve the determined goals using the shortest way possible and pave the way for the effectiveness and efficiency in global trade and compliance with international rules and regulations for better support of society and collection of customs revenue; it can also facilitate customs formalities and increase client satisfaction.

The use of the web can have numerous benefits. For example, a useful and valuable customs clearance process can minimize the costs and increase customer satisfaction. However, despite the many benefits of electronic customs, there is an important issue in electronic Customs which is security considerations (Alipour, et al 2013). Espionage, sabotage, and criminal attacks occur every day for information systems in modern societies. Development of the Web has increased the electronic exchanges and at the same time, there occur more opportunities for system failures. Therefore, some security systems need to be developed and used for data security during the transfer and clearance of goods. Automation helps accelerate the import and export of goods and maintain the security of commodities. However, there need to be certain facilities in Customs concerning control and inspection. Customs need to create a balance between inspection and facilitation, so that the two may progress simultaneously.

4.1 The data transfer models in electronic Customs

There are different ways of transferring data in the chains and the traditional method or the paper-based system is the first

method which can no longer respond the needs of the chain due to reasons such as delay in time, individual mistakes and high costs. Therefore, the chain managers have no alternative but to turn to information technology in order to be able to meet the chain's customers and the stakeholders. The types of models that are available for transfer of information are provided in the following. Models that can be used to share information in each chain include three types, as described in the following (Hau, 1998).

- ❖ The simple model of data transfer: This model is presented in Figure 2. In this type of data transmission, each sector sends the information just to its upper sector, which has a database and makes use of it in the decisions that it makes. The EDI-Based system uses this model.

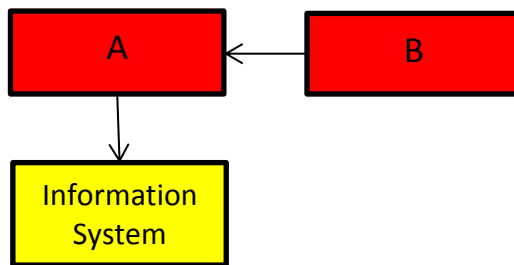


Figure 2- The simple model of data transfer
(Saei, and Nakhei, 2006)

- ❖ Third-party model: In this model, a third party information stores the information in a database for members of the chain. The third party may also perform services for the members of the chain, such as Instill Company which operated between the distributors and consumers of foodstuffs and does electronic communication services besides storing the data. Figure 3 shows this model.

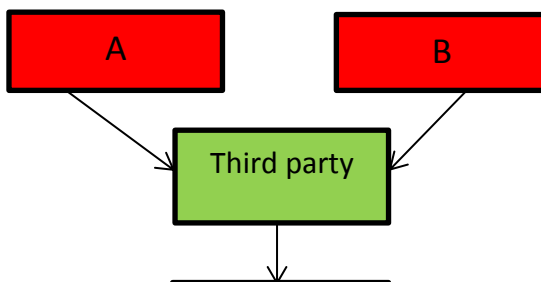


Figure 3- Third Party Model (Saei, and Nakhei, 2006)

- ❖ The Data Hub Model (the model used in electronic customs): This model is similar to the second model with the difference that a computer system works instead of a third party. This model can be seen in Figure 4:

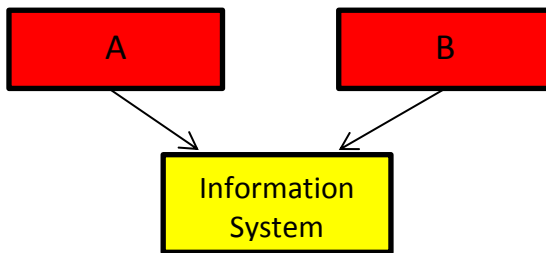


Figure 4- Data Hub Model (Saei, and Nakhei, 2006)

As it is clear, the Data Hub Model is used in e electronic Customs for data transmission.

4.2 The capabilities of electronic Customs in Customs procedures

A review of the performance of window system of the cross-border trade unit and the customs comprehensive system in each of the customs procedures gives us a better picture of the work done in the Islamic Republic of Iran's Customs. This lets us know the tools and facilities that Iran's customs has used so far to become a mechanized and digital Customs. On this basis and consistent

with global developments, certain activities have been performed in Iranian Customs in order to make the Customs affairs be done electronically. As the ASYCUDA system developed, the following systems were gradually implemented in the Islamic Republic of Iran's Customs.

- The CODING System to achieve the correct identity information of natural and legal persons.
- The transit routes system which was designed and installed in order to select the transit routes.
- The system of international transportation companies to address the performance and monitor the activities of these companies in order to improve their performance. This system, aiming to monitor the companies and making it possible for executive Customs to have quick access to electronic records, eliminates paperwork at the process of requesting for the company's activities.
- The ASYCUDA System: The new web-based version of ASYCUDA was designed and implemented based on the modern technology of the world by UNCTAD. This system allows you to carry out the operations of customs clearance of goods through the Internet with full support of WCO DATA MODEL and a design based on multi-tier architecture.
- Manifest System: This system is capable of registering and clearing the manifestos and bill of lading mechanically, reporting the exact number of manifestos and programs in specified dates, controlling the information provided in the declaration and comparing it with the program information, preventing the re-declaration of the goods, specifying end of the moratorium for the goods in the warehouse, removing all of the large notebooks prepared manually and speeding up the registration and unloading of the goods.
- The centralized value system: The value system has been designed with the capability to run on the Internet and intranet, and it is connected to the Internet whenever it is

required to exchange information, and information (computer forms of values along with appended pictures and reference information along with images) is exchanged via the internet and intranet.

- The Information Integration System: Using this system, we can provide analytical and management reports as an example of the smart application of business in the area of customs performance management.
- The Review System: This system has been designed for mechanization of the manual system of General Administration of Iran's Customs Review and has mechanized the operational workflow of the system including distribution and selection of experts, the selection of transcripts, controlling the distribution sector, inspection of declaration, the Chairman's view and so on.
- The judicial system: In addition to all of the information related to the cases, it is possible to extract the information related to the incoming and outgoing goods to the judiciary warehouse.
- The bank guarantee system: the system has been designed and operationalized in order to record the information about the identity of the natural or legal persons providing bank guarantees regarding the clearance of imported goods and to pursue the settlement of those guarantees.
- The Commercial Information System: This system has been designed to facilitate and accelerate access to the foreign trade (exports and imports) information since 1992 by the intra-organizational and inter-organizational users and based on all statistical fields contained in the declaration (depending on the user's access level) and we can extract information from this system in Excel and PDF formats.
- The Remote Declaration System: Using this system, the owners of the goods or their legal representatives can communicate with the Customs via DIAL UP at their workplace and can enter the Customs network environment

using the BRK module and a PASSWORD, and thus complete the declaration form with different options including definite export, definite import, and temporary login.

- The Management Information System: The Management Information Systems has been designed from several sub-systems in order to insert and include all rules and regulations related to foreign trade and carry out the necessary controls in order to avoid any deviation in implementing the regulations. This system includes sub-systems including Dyspans Deduction Information, received deduction, risk management, determining the declaration route and timing. This system makes it possible to manage all of the regulations and risk indicators related to natural and legal persons on the moment and for all executive customs.
- The Vehicle Certification System: The system creates a database of imported vehicles, and makes it possible to exchange information electronically with other organizations such as the General Directorate of Police Numbering.
- The electronic system to receive warehouse receipts and manage it: Controlling and monitoring the warehouses is one of the duties of Customs. Therefore, with the implementation of the comprehensive system of Customs, the Customs can communicate directly with the Warehouse Receipt and its information becomes electronically available to the Customs. This system can manage and issue the receipts and make the intelligent Customs monitoring and control possible. Other capabilities of this system include facilitating and speeding up the issuance of Warehouse Receipts and preventing the entry of the available information, accelerating the assessment and determining the exact location of the goods, monitoring and controlling the loading and unloading of goods and so on.

- The electronic debt control system: the customs' debts which are determined according to Article 7 of the Customs Affairs Law. The system not only shows the debts automatically, but also prevents the debtor from doing any operation throughout the country.
- The authentication system: By implementing the comprehensive system of customs affairs, the system performs all these steps automatically and receives the needed inquiries from the neighboring organizations directly.
- The system to receive the necessary permits electronically: The comprehensive system of customs affairs receives certain permits from the neighboring organizations directly and this will have a great impact on the customs clearance process.
- The Electronic Licensing Green Card) System: With the implementation of the comprehensive system of customs, the license (green card) is issued electronically and is regulated based on the actual amount of goods output.
- The electronic seal system: With the implementation of the comprehensive system of customs and installing electronic plumps on transit shipments and connecting them directly to the system, the location of any cargo transit can be observed online. Besides, warnings will be automatically sent to managers in case the system is turned on or delayed.
- Intelligent system for insurance: With the launch of this system, insurance offices are connected to the electronic network of the system so that the co-insurance activities can be controlled electronically in order to save time and money, and prevent the occurrence of potential violations.
- The Digital document archiving system: The Digital Archive system has been installed at the executive Customs. This system receives the scanned documents, link them to the information included in the declaration to be viewed by the officials. Preventing from any changes in the documents

and from their missing is among the capabilities of this system.

4.3 The benefits and advantages of using electronic Customs in Customs affairs

Electronic Customs is the result of the link between business and IT and the rapidly spreading phenomena. In this connection, electronic customs, as one of the important components of e-commerce, can reduce the Customs bottleneck in different ways or even eliminate it in some cases (Shirsavar, and Shirinpour, 2016). The first way is the electronic clearance. A distinctive feature of electronic commerce is that it creates opportunities for borderless trade. The Internet eliminates the Customs clearance stages in international business transactions for some goods and services by allowing the online delivery of orders. In trading the goods that require physical delivery, by sending the electronic data related to the transport documents and the declarations to customs, it is possible for the Customs to analyze the data related to the goods before the cargo is discharged, which will result in immediate clearance of the cargo.

E-business allows the Customs offices to supply the needs of stakeholders in international trade and transport in a better way. As electronic customs has advantages for merchants such as reducing the time wasted for issuing certificates and licenses and clearance of goods, electronic customs will reduce the transaction costs, speed up the transmission, improve the communication, provide easier participation of the parties to the transaction in the exchange process, and increase mutual confidence (Aqajani, et al 2010).

The major effects of electronic customs are shown in Table 1. Electronic customs facilitates the Customs affairs process by eliminating the customs procedures in the exchange of services and products, facilitating the movement and transfer of physical goods, reducing the necessity for physical inspection of cargo, better

physical inspection better, less delay for trusted merchants and immediate clearance of shipments. Besides, the online customs rules and regulations which are available at any time and place significantly increase the transparency in customs affairs.

Table1- The benefits and effects of electronic Customs (Kovacs (2005); Asia-Europe Meeting (2006); Lambert-mogliansky, et al. (2007)).

Sources	Benefits and effects of electronic Customs
Asycuda,2000 HMCustoms and Excise, 2002; United Nations, 2003; The Islamic Republic of Iran Customs Administration (IRICA), Beheshtian, 2000	Automation of the daily Customs processes
Unescope,2000	Electronic documentation using a common structure
Unescope,2000; Commission of European Community,2003; Stpronews,2001	Establishing Internet communications between the regulatory agencies
Kuik,1998; United Nations,2003; IBM Consulting Services,2003	providing information for fast and reliable track of the shipment
Unescope,2000	Making the Customs rules and regulations available online
Kuik,1998	Allowing access to different forms related to different countries
The Islamic Republic of Iran Customs Administration (IRICA),2004	Reducing the Customs violations

HM Customs and Excise,2002	Improving the Customs services
Unescope,2000; Strpronews,2001; Commission of European Communities,2003; The Islamic Republic of Iran Customs Administration (IRICA),2004	Increasingly transparency in Customs affairs
Robert and Polanski,2002; Commission of European Community,2003; The Islamic Republic of Iran Customs Administration (IRICA),2004; Tan et al.,2006	Performing the Customs affairs with less cost (besides reducing the custom duties)
Unescope,2000 HM Customs and Excise,2002; The Islamic Republic of Iran Customs Administration (IRICA),2004;	Improving the Customs' accuracy and assessment of risk
Kyoto Convention, Chapter7; The Islamic Republic of Iran Customs Administration (IRICA),1999; United Nations,2003 Commission of European Community,2003; The Islamic Republic of Iran Customs Administration (IRICA),2004	Applying the Customs regulations in the same way and preventing personal tastes
Unescope,2000	Better sampling of goods for inspection
Unescope,2000	Better physical inspection
Sources (continue)	Benefits and effects of electronic Customs

Unescope,2000 Matto and Schunkenct,2000; HM Customs and Excise,2002; Robert and Polanski,2002; Commission of European Community,2003; United Nations,2003; IBM Consulting Services,2003; UNCTAD,2006; Machine Service Office, 1999; The Islamic Republic of Iran Customs Administration (IRICA),1999; Beheshtian,2000; Karbasian,2004; The Islamic Republic of Iran Customs Administration (IRICA),2004	Immediate clearance of goods
Asycuda,2000	Increasing the merchants' inventory and property turnover speed
Unescope,2000	Allowing borderless trade
Machine Service Office, 1999-2004; Zang-2002	Facilitating the Customs affairs and accelerating the Customs procedures

5. Conclusion

One of the main sectors of e-government is e-commerce, and electronic Customs naturally has one of the main roles in this regard. Due to the growing volume of current tasks and operations in different industries and occupations, and lack of time, it is inevitable to use IT and ICT systems, so that different tasks will be faced with serious problems without the use of technologies. The implementation of electronic customs facilitates the execution of the rules and regulations and collection of government's rights including customs rights and interests and the customs' practices

and procedures will become more transparent. By providing the remote declaration for cargo owners, it becomes possible to have unattended evaluation for them. In other words, carrying out customs procedures electronically will result in the reduced time of doing customs formalities in import and export and other customs procedures. If we move towards the electronic system, the government's regulations, rules and policies will be implemented as quickly as possible; for example, the prohibition of banned goods will be announced in the shortest time possible and will not enter any customs. However, it will take long in the traditional system to issue a regulation and notify it to customs around the country, and some banned goods may enter the country during this interval. Therefore, the electronic customs facilitates business and the rapid implementation of the rules and regulations. In general, electronic customs is a win-win game, as both the Customs Administration wins, as it can execute its laws and regulations and takes the government's rights, and entrepreneurs and owners of goods win, because they can do their work within the shortest time possible.

We may conclude that the World Customs Organization is one of the successful international organizations and has been able to identify positions on the international stage and do its heavy responsibilities properly perform and guide the organization's members. As the Iranian Customs is also a member of this organization, it has to improve and promote its executive mechanisms in this environment in order to transform its performance structure, and electronic Customs must fulfill and implement these prospects.

Acknowledgment

I would like to state my appreciation to the Islamic Republic of Iran's Customs and Islamic Azad University of Iran, Sardasht branch, which afforded me the opportunity to expand academic as well as dealing prospect.

References

- Alipour S, H. R, Mahdi, M. S, Varkaroud, K, Khandani, H., and Hosseini, M. 2013. Practical implementation of electronic customs to increase efficiency and administrative health using RFID technology, quality support and engineering management. *In Paper on RFID technology at a glance*, pp. 1–12.
- Asia-Europe Meeting., 2006. The 9th ASEM Procedures Working Group Meeting, Warsaw 19-20. 09. 2006, Wiadomosci Celne, Special Edition, December.
- Aqajani, H. A, Gul, M, Anne, H. M, and Rahmanqoli0, 2010. The advantage of e- commerce implementation of customs. In Ministry of Economic Affairs and Finance, *Conference for World Customs Day*, pp. 1–11.
- Hau L.Lee, Seungjin, W., 1998, "Information Sharing in a Supply Chain ", *Research Paper Series*, No. 1549.
- Jahangiri, S., 2011. Investigation of the role of electronic Customs in facilitation of exports from exporters and experts' viewpoints in western Azarbaijan Province. *Master degree thesis, business management, Sanandaj Islamic Azad University*.
- Kakhki, H., 2011. The Instances and Goals of Customs, Iranian Customs Weekly, 14th year, Issue 592.
- Karbasian, M., 2005. Customs and Information Technology, *Proceedings of the International Conference of Customs and Information Technology*=
- Kovacs, L., 2005. A new customs environment to face Globalization Challenges, *Press Conference by Commissioner for Taxation and Customs, Brussels*, 30 November.
- Lambert-mogliansky, Ariane, Mkulmajumdar, and Roy Radner., 2007. Strategic Analysis of Petty Corruption: Entrepreneurs and Bureaucrats, *Journal of development Economics*, 83, pp. 351-367.
- Memarnejad, A, Shiri, B, and Kakhaki, H., 2013. Customs system and needs for changing it: fundamentals, plans and

conducted measures. *Quarterly of financial and economic policies*, 1(2), pp. 121-142.

- Ramazanipour, D, Beroshd, A. H, and Ramazanipour, M. B., 2014. The impact of e-commerce on exports development. *First national conference on innovation in computer engineering and information technology (2014)*.
- Saei, A, and Nakhei, E., 2006, the role of electronic customs will help increase the efficiency of international supply chain using mechanisms for information sharing. *2nd logistics and supply chain Conference, Tehran, Iran Logistics Society*, [Http://Www.civilica.com /Paper-NCLSC02-NCLSC02_095.html](http://www.civilica.com/Paper-NCLSC02-NCLSC02_095.html)
- Salarzayee, A. H, and Jamshidi., 2014. Risk management and new customs in Khorramshahr. *First national conference on futures studies, management and development*.
- Shirsavar, H.A, and Shirinpour, M., 2016. The effect of electronic customs administration on facilitating the export activities of export companies based in Gilan, Iran. *Intellectual Economics*, 10(2), pp.114-121.

THE PRACTICE OF IMPROVING THE CUSTOMS LEGISLATION OF THE EAEU.

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Annotation

In article is mentioned history of creation of the Eurasian Economic Union (EEU), value of legal base in EEU and its main components. Development of the new Customs Code of the Customs Union (CCCU) and relevance of integration of CCCU and customs authorities is analyzed. In the long term new CCCU has to improve all mechanisms of customs procedures.

Key words: *Eurasian economic union, customs regulation, foreign trade activity, integration.*

Nowadays globalization and integration are widely known to be the main tendencies in the world trade. The single market which the integration is aimed on can only function properly when there is a common application of common rules at its external borders.

The most familiar example of integrational process are the creation and extension of the Eurasian economic union (EAEU). A treaty aiming for the establishment of the EAEU was signed on 29 May 2014 by the leaders of Belarus, Kazakhstan and Russia, and came into force on 1 January 2015.

The common rules for all these countries go beyond the Customs Union as such - with its common tariff and extend to all aspects of trade policy, such as preferential trade, health and

environmental controls, the common agricultural and fisheries policies, the protection of our economic interests by non-tariff instruments and external relations policy measures.

The economic transformations taking place all over the world, the processes of globalization, integration, and activation of world economic ties make the countries seek and establish their own, national rules of customs regulation. Their unification with generally accepted international norms and principles becomes inevitable.

A clearly defined trend of unification and harmonization of the national customs legislation leads to significant changes in the concept of customs regulation in general:

1. Customs legislation is increasingly becoming supranational. In recent decades, the customs legislation of most countries has become "internationalized".

The customs codes of most foreign countries are based on a common legal framework - the provisions of the International Convention on the Simplification and Harmonization of Customs Procedures (the 1973 Kyoto Convention), the framework standards of the World Customs Organization, and a number of multilateral international treaties.

2. A new philosophy of customs regulation is being formed. Customs regulation, aimed at the implementation of exclusively police functions, gives way to the fiscal model of customs regulation. Today we can say with full confidence about the emergence of a fundamentally new approach to customs regulation that takes into account the entrepreneurial interests of participants in foreign economic activity.

The formation of free customs zones at one time became the basis for the economic revival of entire regions and even the emergence of new states.

3. Almost all countries have taken a course on the codification of customs legislation. At the basis of the system of sources of customs law is a systematized act of customs legislation - the Customs Code.

The customs code as the main source of customs law is made to regulate customs relations, that is, relations arising in connection with the movement of goods and vehicles across the customs border. The task of the legislator is to determine in the customs code the legal status of both sides of customs legal relations - customs authorities and their officials, on the one hand, and participants in foreign trade activities acting as declarants, customs brokers, etc., on the other hand.

4. Modern customs regulation is developing in the context of customs integration - the emergence and development of free trade zones, customs unions.

5. Another important feature that distinguishes modern customs legislation is an integrated approach to the regulation of customs relations. The modern customs code includes not only sections on customs clearance, customs control, customs payments, but also on those lines of activity of the customs authorities that characterize them as law enforcement agencies, such as: operative-search activity, inquiry, the use of physical force and weapons .

6. Customs legislation is increasingly acquiring the features of tax legislation. In the Russian Federation at present, every third ruble entering the revenue part of the federal budget has the nature of customs payments.

In 2009, the Heads of States and Government have ratified about 40 international treaties that formed the basis of the Customs Union. Since January 1, 2010, the common customs space has begun its existence, and by July the new Customs Code had been written, so the Russian Federation`s Code has lost its power.

The customs code of the customs union underwent amendments and changes, but in connection with the expansion of the Eurasian Economic Union, it was decided to unify all customs legislation and create a single customs code that takes into account the nuances of local laws and is oriented to the world market.

The new Customs Code of the Customs Union consists of a general and a special part. In 373 articles the legislator has laid down all norms of regulation of customs relations:

Part I includes general concepts, terms and provisions relating to the regulation of customs relations. It includes 21 chapters or 149 articles. They determine the order of mutual cooperation of customs authorities with others, the procedure for registration of customs statistics, information on documents of customs control, the procedure for determining customs duties and taxes, the rules for the implementation of customs control, etc. ;

Part II reveals all the nuances of specific customs legal relations operating within the union. It defines the procedure for the provision of goods to the customs, their storage, destruction, declaration, all customs procedures. This means that the Customs Code of 2017 is a document defining the procedure for passing the customs and the work of the entire customs system as a whole, which controls the relevant processes within certain territorial boundaries.

The active economic development of countries, the growth of foreign economic relations, the continued integration of our country into the world economy and the globalization of the world`s market inevitably lead to an increase in goods, freight, passenger turnover and the number of vehicles crossing the customs border of the Customs Union. In this regard, modernization and improvement of the work of customs authorities in the field of customs clearance and customs control of goods and vehicles is necessary. This is achieved by planning and gradual implementation of legislative improvements in practice. In conclusion, I would like to note that new trends in the development of foreign trade regulation and customs legislation are actively studied and analyzed by scientists and practitioners both at the national level and at the level of integration entities. Using the results of such studies will inevitably lead to the maximum possible harmonization of national customs systems.

INVESTIGATING THE IMPACT OF THE ESTABLISHMENT OF CROSS-BORDER TRADE SINGLE-WINDOW ON THE PERFORMANCE OF THE ISLAMIC REPUBLIC OF IRAN CUSTOMS ADMINISTRATIONS (FROM THE PERSPECTIVE OF VIRTUAL EXPERTS IN THE ISLAMIC REPUBLIC OF IRAN CUSTOMS)

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Abstract

This paper aims to investigate the impact of the cross-border trade single-window on the performance of the Islamic Republic of Iran Customs Administrations (from the perspective of virtual experts in the Islamic Republic of Iran Customs). This is a descriptive - survey study in terms of method and an applied research in terms of goal. The study population includes all virtual experts in the Islamic Republic of Iran Customs in the first half of 2017 and the sample size was selected as 181 experts based on Morgan table. The data were collected using a 5-point Likert type questionnaire, the validity of which was confirmed by experts and scholars and the reliability of which was calculated as 0.85 using Cronbach's alpha coefficient with the help of SPSS software, which indicates high reliability of the research tool. Bivariate regression analysis has been used in this study to investigate the impact of

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establishment of the cross-border trade single-window on the Islamic Republic of Iran Customs Administration performance. The results of the regression analysis show the establishment of the cross-border trade single-window in ports and Customs helps improve the Customs' performance and the foreign trade by taking advantage of the capacities and potentials available in the country and coordinating the actions of the authorities in the process of foreign trade (exports and imports) at the points of entry and establishing communication between these authorities and Customs administrations.

Keywords: *establishment of the Single- Window System, performance of the Islamic Republic of Iran Customs Administration.*

1. Introduction

Ports and customs have long been open to ships as the main carriers of international trade, and thus have had an important role in the local and national economy. Ports, considered as the key link in the supply chain, are always affected by Customs performance. Customs, as bottlenecks in ports and custodians of the Navy documents, can make important contributions to the national economy and facilitate the global trade by streamlining the supply chain and facilitating the maritime transport (Ghanaatzadeh et al., 2015).

As the main custodian of goods clearance in the country, customs administrations can have significant impact on the export and import of goods in the country. Executive customs offices in the ports consist of four main parts including load counting, evaluation, expertise of affairs and management. Each of these sectors can affect the process of export and import of goods and the formation of deposits of goods in ports (Kazemi et al., 2011). As the economic border guards of the country, customs administrations play an important role in economic development, welfare and protection of society. Governments need an effective and efficient customs organization in order to implement their

financial, economic and social programs and policies properly (Tabatabai and Sabeti, 2010). In today's competitive environment, successful countries will be those which can make the commercial space faster and less costly by using new tools. One of these tools is the Single- Window System, which makes it possible for merchants refer just to a single unit instead of referring to various units involved in export and import of goods, and thus import and export goods faster and less expensively by completing similar forms, as a result of which the cost of finished products will decrease and the competitiveness of domestic firms will in the face of their rivals will increase (Sadeghi and Javadpur, 2016).

In today's highly accelerating and developing world, speed plays a significant role in the communications, exchange of documents and information, reduction of the duration of Customs formalities and consequently the Success of international trade. Since the import and export processes often involve the exchange of information and documents among several different entities, each of them in turn having its own special procedures and forms, the absence of facilitating mechanisms acts as an obstacle in the path of international business development, and excludes enormous opportunities from the access of the business sector of the country (Golmohammadi & Karami, 2009).

One of the key parts of facilitating the international trade is the process of simplifying and assimilating the exchange of information between businesses and government agencies. Therefore, one of the first measures to be taken by the government to standardize and improve the business processes is facilitating the information flow. The traditional operations and the administrative cycles currently used for the exchange of information imposes abundant time and costs on businessmen and government agencies. Hence, simplifying this part of the business processes which results in saving time and money should be the first priority for today's organizations. In order to solve this problem and remove the obstacles to the development of international trade, CEFAC recommended to the government and managers the establishment

of the Single- Window System for the first time in 2005 in Recommendation No. 33. The International Maritime Organization has also sought to remove the barriers to the development of international trade within the framework of maritime traffic facilitation convention since 1968. One of the key measures proposed by this organization is its compilation of nine-fold forms to reduce bureaucracy or administrative formalities. The Single-Window System has also been proposed as a single physical or electronic system in ports (Agancy, 2008).

Today, the popular and active ports of the world are using the cross-border trade single-window in order to facilitate their documentation process, increase their clients' satisfaction and create a good image to attract investment. The Single- Window System is a necessity to enter the gates of international trade. The establishment of the cross-border trade single-window system can lead to further and effective integration of the information exchange systems. This important feature and capability of the Single-window system will reduce the time of import and export of goods, the documentation processes and the costs of commercial documentation. Considering the above-mentioned points, the aim of this study is to evaluate the impact of the cross-border trade single-window on the performance of The Islamic Republic of Iran Customs Administration (from the viewpoint of virtual experts in the Islamic Republic of Iran Customs) raised in the main question of the research as follows:

Does the establishment of the cross-border trade single-window have significant impact on the performance of the Islamic Republic of Iran Customs Administration?

2. Theoretical Framework

2.1 The concept of The Single- Window System

The Single - Window System refers to the facilities provided by the Customs for traders, investors and companies involved in the transportation and transit of the cargo, which make it possible to provide the required information in the Standard

formats of the World Customs Organization and receive all the permits and legal issues related to their activities at the same point. If the System is automated (electronic), the information should be exchanged only once. In other words, the concept of The Single-Window System refers to facilities which help the parties involved in a trade to exchange the Standardized information and documents via a single entry point and thus complete all legal requirements related to the export, import and transfer rules. From a practical perspective, The Single - Window System provides a physical or electronic system to present and preserve all the data. This system is managed by a unit which transfers it to all other units after it receives the information (UN, CEFACT, 2005).

The Single- Window System is a system which makes it possible for the commercial partners and stakeholders in the transport to provide all of the ports, customs administrations and banks with the standardized information and documents relating to the import, export and transit of goods in the form of electronic forms with only one entry. As a facilitating measure in commercial activities, stakeholders can be said to have a very good potential in facilitating trade at the national, regional and international levels (Shirouzhan, 2013).

The goal of the Single- Window System environment is streamlining the flow of information between customs and businessmen and providing significant interests for all traders. In theoretical plan, The Single- Window System can be defined as follows: a system that allows the exchange of information between traders and Customs in order to meet the legitimate needs of imports and exports. In practical terms, the Single-Window environment provides a physical (or electronic) channel for the sending and processing of all data and documents related to international transactions. This point is managed by the Customs Administration which informs the relevant organizations and controls them as necessary (United Nations Economic Commission for Europe=UNECE).

2.2. Economic benefits of The Single- Window System

To export and import their goods, businessmen have to get license and permit from several institutions and organizations such as customs, the Ministry of Health, and the police, which would prolong the process of import and export and thereby increase the risk of losing international markets and lead to high costs for traders. Moreover, the process of obtaining permits has no consistency with one of the modern principles of international trade which is speed. Thus, the existence of an entity to receive different licenses for traders and facilitate this process is very helpful. The Single- Window System is an entity that has taken over the above tasks, acting as a single entry point from which the commercial information and documents are provided.

Therefore, it can improve the information processing capabilities, facilitate and accelerate the exchange of information between traders and governments and lead to sharing of the data in governmental systems. Its benefits for those working in the international trade arena include optimal use of the resources and the reduced costs of the government and businessmen. Another benefit of using this method is reforming and modifying the Sources of income, improving the commercial complaints system, allowing the use of an efficient system for risk management, and releasing the goods in no time. The Single - Window System facilitates access to information on the one hand, and creates harmony and coordination among the entire system, which is beneficial to all units related to foreign trade (Sadeghi and Javadpour, 2016).

2.3. The Cross-border Single- Window System in Iran

The transit, import and export processes used to take long time in our country in the past and filling the repetitively submitted documents to Customs in various forms of the agencies in charge such as the Ministry of Commerce, ports and maritime, shipping, the Standard Institute, border terminals and railways not only took

a lot of time, but also imposed a lot of cost on the economy and trade of the country.

These problems led to establishment of the Cross-border Single - Window System in Customs as one of the best approaches possible to solve these problems by providing the relevant commercial information or documents only once via a single system and establishing the electronic communication between the parties engaged in business through this system.

This is in accordance with the rules specified in paragraph (c) of Article (38) of the law relating to removing the barriers to competitive production and improving the country's financial system (approved in 2015) and Article (7) of the law relating to continuous improvement of business environment enacted in February 5, 2012 and was implemented by the Islamic Republic of Iran's Customs.

Although it was not easily possible to implement the Single - Window System project completely due to problems such as lack of coordination among different public institutions, the large number of Customs, lack of communication and positive interaction among the agencies, lack of adequate training of the executive agents, lack of communication and electronic infrastructure in some border ports and multiplicity of the license giving agencies which influenced the process of clearance. However, using a smart system and communicating the decree of the Council of Ministers, the Islamic Republic of Iran's Customs, cooperated by the concerned executive agencies, attempted to finalize and establish the Cross-border Single- Window System in Customs for one year. Making use of the capacities and potentials available in ports, border terminals, and special economic free zones, and considering the possibility of combining all these institutions and organizations involved in the transit, import and export processes and establishing communication among them, the Single- Window System project was implemented throughout the country after a pilot stage, so that the traders (cargo owners, commission workers, declarers) can currently use this system to

communicate with more than 80% of the offices and organizations involved in the areas of Customs and trade.

To this aim, The Islamic Republic of Iran Customs Administration made use of the Successful experience of countries such as Germany and Singapore in implementation of the Single-Window System project. However, it should be noted that although many business and commercial activities are common at the international level, our country, like other countries, has its local and unique set of requirements and conditions that need to be taken into account and paid particular attention to.

3. Methodology

This is an applied research in terms of goal, as it can evaluate the relationship between the establishment of the cross-border trade single-window and the performance of The Islamic Republic of Iran Customs Administration (from the perspective of the virtual experts in the Islamic Republic of Iran Customs) and thus identify the strengths and weaknesses in these areas and help the authorities to solve the relevant problems. This is a descriptive-survey research in terms of data collection method, as it describes the Status quo from the perspective of the virtual experts in the Islamic Republic of Iran Customs using a questionnaire. This is a cross-sectional type of study since the data have been collected during a certain period of time. The Study population includes all virtual experts in the Islamic Republic of Iran Customs in the first half of 2007, among whom 140 experts were selected as the Sample size using Morgan table and convenient sampling method. The data collection tool used in this study is a 5-point Likert type questionnaire, the validity of which was confirmed by and experts in the field and the reliability of which was calculated as 0.85 using the Cronbach's alpha coefficient and by help of SPSS software and after distribution of 30 questionnaires among the Sample, which indicates high reliability of the research tool. To investigate the impact of the cross-border trade single-window on the performance of The Islamic Republic of Iran Customs Administration (from the

perspective of the virtual experts in the Islamic Republic of Iran Customs), we have used bivariate regression analysis.

4. Research hypotheses

4.1. Main Hypothesis:

The establishment of the cross-border trade single-window significantly affects the Islamic Republic of Iran Customs Administration performance.

4.2.Sub-hypotheses

The establishment of the cross-border trade single-window significantly affects the Islamic Republic of Iran Customs Administration efficiency.

The establishment of the cross-border trade single-window significantly affects the Services provided to customers in the Islamic Republic of Iran Customs Administration.

The establishment of the cross-border trade single-window significantly affects the import and export development by the Islamic Republic of Iran Customs Administration.

5. Empirical results of the research

5.1.Testing data normality

If the data are not normally distributed, they should be analyzed by use of nonparametric tests (such as Spearman, Friedman and Cochran, and non-parametric tests equivalent to ANOVA). If the data are normally distributed, parametric tests (such as regression analysis, Pearson correlation coefficient, etc.) should be used. At this stage, we analyze the results of Kolmogorov - Smirnov test for each variable based on which we will select the appropriate tests to be used to verify the hypothesis.

H_0 : The variable's data are normally distributed.

H_1 : The variable's data are not normally distributed.

Since the significance level is greater than the level of error $P - \text{Value} = 0.05$, as shown in Table 1, we can say that the data are

normally distributed and parametric tests should thus be used for their analysis.

Table 1- Results of the normality test for the variables

variable	Level of significance	Hypothesis confirmation	result
Establishment of The Single-Window System	0.071	H1	normal
efficiency	0.086	H1	normal
Providing services to customers	0.129	H1	normal
Import and export development	0.118	H1	normal

Source: research findings

5.2. Testing the research hypotheses

5.2.1. The establishment of the cross-border trade single-window significantly affects the Islamic Republic of Iran Customs Administration performance.

We have used the regression analysis test in order to understand the impact of the cross-border trade single-window on the Islamic Republic of Iran Customs Administration performance. As shown in Table 2, sig = 0.001, and since this value is smaller than 0.05, we can say that the establishment of The Single- Window System has a significant impact on The Islamic Republic of Iran Customs Administration performance at the confidence level of 99%. As the B-value of this test is 0.145, there is 0.145 unit increase in the dependent variable (The Islamic Republic of Iran Customs Administration performance) as a result of a one unit increase in the independent variable (establishment of The Single- Window System). Therefore, based on these results, H0 is rejected and the main hypothesis is confirmed.

Table 2- Results of the linear regression of the main hypothesis

Dependent variable	R	R ²	B coefficient	Beta coefficient	t-value	Sig t
The Islamic Republic of Iran Customs Administration performance	0.253	0.064	0.145	0.253	4.962	0.001

5.2.2. Sub-hypotheses

First sub-hypothesis: The establishment of the cross-border trade single-window significantly affects the Islamic Republic of Iran Customs Administration efficiency.

Second sub-hypothesis: The establishment of the cross-border trade single-window significantly affects the Services provided to customers in the Islamic Republic of Iran Customs Administration.

Third sub-hypothesis: The establishment of the cross-border trade single-window significantly affects the import and export development by the Islamic Republic of Iran Customs Administration.

We have used the regression analysis test in order to understand the impact of the cross-border trade single-window on the Islamic Republic of Iran Customs Administration performance dimensions. As shown in Table 3, sig = 0.001, and since this value is smaller than 0.05, we can say that the establishment of the cross-border trade single-window has a significant impact on The Islamic Republic of Iran Customs Administration performance dimensions at the confidence level of 99%. As the B-values of this test are 0.382, 0.429, and 0.496 for efficiency, providing services to customers, and import and export development respectively, there is 0.382, 0.429, and 0.496 unit increase in the dependent variables (efficiency, providing services to customers, and import and export development) as a result of a one unit increase in the independent variable (establishment of The Single- Window System). Therefore, based on these results, the sub-hypotheses are confirmed.

Table 3- Results of linear regression of the Sub-hypotheses

variable	R	R2	B coefficient	Beta coefficient	t- value	Sig t
efficiency	0.238	0.057	0.382	0.238	4.660	0.001
Providing services to customers	0.274	0.075	0.429	0.274	5.421	0.001
Import and export development	0.163	0.027	0.496	0.163	3.149	0.001

6. Conclusion and Suggestions

The results of the regression analysis indicated that the establishment of the cross-border trade single-window has had a significant impact on the dimensions of Iran's Customs performance. Therefore, the results of this study can be summarized as follows:

The establishment of the cross-border trade single-window helps improve the inspection processes and the management of Customs and port affairs, and the conclusion of trade agreements and preferential trade helps reduce the time, speed up Customs procedures, reduce the costs, facilitate the trade, and improve the business environment. As a result, it will reduce the fixed prices of the exported and imported goods considerably and lead to competitiveness and productivity in the economy.

Development of electronic Customs and establishment of the Single- Window System systems creates facilities for traders and improves the import-export operations by providing services in the area of Customs affairs round the clock and making the rules and regulations of the Customs available online.

The establishment of the Single - Window System allows the Customs administrations to meet the needs of business stakeholders in a better way. The benefits of the cross-border trade single-window for customers include reducing the costs, reducing the formalities for obtaining various licenses, improving the Services provided, provided access to information and meeting the trusted merchants' needs.

In general, the establishment of the Single - Window System in ports and Customs can help improve the performance of Customs administrations and improve the foreign trade by taking advantage of the capacities and potentials of the country and coordinating the actions of the organizations in charge of the foreign trade (exports and imports) process at the entry points and by establishing communication between those organizations and the Customs administrations.

Considering the results of this study, we suggest that the Single- Window System be developed in the ports and Customs so that it can help improve the efficiency, services provided to customers, the performance of Customs and the country's foreign trade.

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References

- Agency, C.B. OGD the Single - Window System interface. Retrieved 1 30.2008, from Canada Border service Agency: <http://www.cbsa-asfc.gc.ca/eservices/ogd-amg/menu-eng.html>, 2008
- Ghanaatzadeh, S, Emad, G, and Saybani, M., 2015, The Justifying Plan of Implementation of the Commercial The Single- Window System in Iranian Ports and Customs. *Seventeenth Conference of the Maritime Industries*.
- Golmohammadi, H, and Karami, M., 2009, The Single- Window System, the Need to Enter the World Trade Gates. *Journal of Tadbir*, Issue 211.
- Kazemi A, Saeidi, S.N, and Nooramin, A.S, 2011, An analysis of the factors affecting the discharge of containers at Iranian ports. *Oceanography*, 2nd year, Issue 8.

- Shirauzhan, M, 2013, A study on the implementation of The Single- Window System (The Single- Window System) in commercial ports with a Business Process Reengineering (BPR) view. *Quarterly Journal of Didgah*, summer.
- Sadeghi, M, and Javadpour, N., 2016, A comparative study of legal aspects of electronic trade the Single- Window System. *Quarterly Journal of Business Research*, Issue 78.
- Tabatabaei, A, Sabeti, A., 2010, The World Customs Organization with the approach of investigating the obstacles facing the Islamic Republic of Iran Customs Administration. *Journal of International Relations*, Article 5, Volume 3, Issue 13.
- UN/CEFACT RECOMMENDATION 33, Establishing the Single- Window System to Enhance the Efficient Exchange of Information between Trade and Government, UN ECE, April 2005.

E-COMMERCE CUSTOMS REGULATION: INTERNATIONAL EXPERIENCE AND PROSPECTS OF ITS IMPLEMENTATION IN UKRAINE

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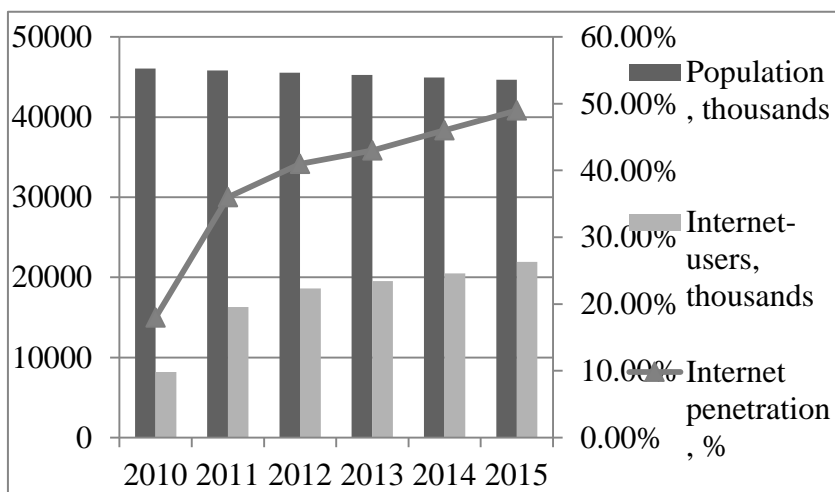
Abstract:

E-commerce is evolving at a rapid pace as a result of information technology development. At the same time, for the state, on the one hand, e-commerce becomes a factor of economic growth. On the other hand, the lack of instruments of state regulation corresponding to this level of development, including Customs, leads to shortfall in the state budget. And the output of such activities from under the control of the state to the “shadow” threatens the economic security of the country. There are two main problems of electronic commerce: firstly, most of the national electronic economy functions in an environment outside of tariff and taxation as well as administrative regulation; secondly, that part of it that is in the sphere of taxation functions on the same basis as a “traditional business”, that is, the specifics of conducting electronic business are not taken into consideration while creating tax mechanisms. So, businesses have an opportunity to evade tax payments, especially import duties and other Customs payments. The study found out that countries face similar problems in the field of Customs regulation of e-commerce. One of the main challenges of public administrations is maintaining a balance between the given level of protection of a country's Customs interests, minimizing risks and keeping high speed and simplicity of Customs clearance.

Keywords: *e-commerce, international mail, e-commerce Customs regulation, Customs administrations, Ukraine*

The processes of globalization and informatization of modern societies are transforming traditional and helping to establish new forms of business. An important task of the state in these cases is to ensure transparent rules of “fair play”, which implies not only legalization of the latter, but also their legitimization. This is especially true for the field of e-commerce, the future tax revenue from which can become one of the main sources of filling the state budget. The novelty of e-commerce and the complexity of the problems it generates determine the need for direct state participation and regulation.

From the perspective of growth prospects, Ukraine is the largest consumer market of Eastern Europe with the size of more than 44.9 billion people. According to GfK Ukraine, in 2013 the country was one of the three fastest growing e-commerce markets in Europe. This can be indirectly estimated by the necessary part of e-commerce – the degree of Internet penetration (Fig. 1) calculated by Ernst & Young. In particular, it is almost a threefold increase in Internet penetration during 2010-2015 period³²⁵.



³²⁵ Ernst & Young, (2014) “Rynek jelektronnojj komercii Ukrainy”, available at: [http://www.ey.com/Publication/vwLUAssets/ey-ukrainian-e-commerce/\\$FILE/ey-ukrainian-e-commerce.pdf](http://www.ey.com/Publication/vwLUAssets/ey-ukrainian-e-commerce/$FILE/ey-ukrainian-e-commerce.pdf)

Fig. 1. Ukraine's population and Internet penetration, thsd., %

Monetary indicators also show that the e-commerce market of Ukraine is at the stage of development and has a significant potential for growth. According to the most optimistic estimates, the volume of the e-commerce market in Ukraine amounted to about \$ 2 billion in 2014, which is 8.8 times less than in Russia and 4.6 times less than in Poland inferior to Ukraine in terms of population. Leaders in this field are China and the US, whose e-commerce markets are estimated at \$ 426.3 billion and \$ 305.7 billion, respectively³²⁶.

Ukrainian e-business experts predicted that the volume of e-commerce in Ukraine would increase to 400% and amount to \$ 10 billion in 2018³²⁷.

The data in Table 1 show that during 2007-2014 the greatest growth in e-commerce in Ukraine could be observed in 2011 – volume increased by 51% comparing to 2010. In 2012, volume increased by 44% comparing to 2011. In 2013 the growth rate slowed slightly comparing to 2012, but the volume was \$ 2 billion, which is bigger by 26% than in the previous year. In 2014 there was a significant decline in the domestic turnover of e-commerce by 30% comparing to 2013. The reasons for this were military operations in the Donbas, devaluation of hryvnia, a decrease in the purchasing power of citizens.

³²⁶ Ibid

³²⁷ “Rost na 400 %, do \$10 mlrd. – prognoz razvitija ukrainskogo e-commerce”, available at: <http://c2cb2c.com.ua/news/1743/>

Table 1

**The volume of e-commerce and traditional retail in
Ukraine, 2007-2014 years³²⁸**

Indicator	2007	2008	2009	2010	2011	2012	2013	2014
The amount of Internet commerce in Ukraine, billions	0,4	0,6	0,55	0,73	1,1	1,59	2,37	3,24
The growth rate of the previous year, %	-	150	91,67	132,73	150,68	144,55	149,06	136,71
The volume of retail trade in Ukraine, \$ billions	63,2	85,2	56,9	66,8	84,7	99,5	105,5	111,8
The growth rate of the previous year, %	-	134,81	66,78	117,4	126,8	117,47	106,03	105,94
The share of Internet commerce in retail sales of Ukraine, %	0,63	0,70	0,97	1,09	1,30	1,60	2,25	2,90

The problems of electronic commerce include the following two: first, most of the national electronic economy functions in an environment outside of tariff and taxation as well as administrative

³²⁸ Malovychko, S. V., (2015), “Analiz suchasnykh tendentsiy ta dynamiky rozvytku elektronnoyi torhivli na pidpryyemstvakh Ukrayiny”, *Problemy ekonomiky*, 2015, No 2, pp. 71 – 77, available at: http://nbuv.gov.ua/UJRN/Pekon_2015_2_11

regulation. Secondly, that part of it that is in the sphere of taxation functions on the same bases as a “traditional business”, that is, the specifics of conducting electronic business are not taken into consideration while creating tax mechanisms. Thus, businesses have an opportunity to evade tax payments, in particular, they do not pass state registration of entrepreneurial activities or do not declare their incomes in tax returns³²⁹.

The shadow sector of the Ukrainian economy is estimated at between 40 and 60% of GDP, according to various experts. At the same time, electronic commerce, in particular, cross-border, is only partially in the field of state control. Fiscal underpayments are associated with limited possibilities of state control, inability to monitor transactions within networks and movement of electronic money. Moreover, bitcoins, which usage is so rapidly expanding and which receive the status of an official form of payment were called a “money surrogate” used in “financial pyramids”³³⁰ by the National Bank of Ukraine in its explanatory letter.

Ignoring the specifics of e-commerce in Ukraine results in underpayment of Customs duties due to the fact that nowadays “digital import” replaces physical trade and movement of goods across national borders. Ukraine is a small open economy that exports low-value-added goods and imports consumer goods and goods with a high percentage of added value. For this type of economy import duties are a weighty part of the state budget revenues (Fig. 2), and “departure” of this type of activity “into shadow” outside of state regulation results in the loss of the taxable item. Moreover, since Customs payments are not levied on goods purchased in this way, they receive a price advantage by

³²⁹ Malinina, N. M., (2016), “Opodatkuvannya elektronnoho biznesu v Ukraini: suchasni realiyi ta perspektyvy”, *Visnyk Odes'kogo nacional'nogo universytetu. Seriya : Ekonomika*, 2016, No 7 (1), Volume 1, pp. 152 – 155, available at: [http://nbuv.gov.ua/UJRN/Vonu_econ_2016_21_7\(1\)_35](http://nbuv.gov.ua/UJRN/Vonu_econ_2016_21_7(1)_35)

³³⁰ National Bank of Ukraine, (2014), “Shchodo vidnesennya operatsiy z "virtual'noyu valyutoyu/kryptovalyutoyu Bitcoin do operatsiy z torhivli inozemnoyu valyutoyu, a takozh nayavnosti pidstav dlya zarakhuvannya na potochnyy rakhunok v inozemniy valyuti fizychnoyi osoby inozemnoyi valyuty, otrymanoyi vid prodazhu Bitcoin”, available at: <http://zakon2.rada.gov.ua/laws/show/v2889500-14>

discriminating the goods of national producers and goods imported in a “traditional” way, creating conditions for unfair competition.

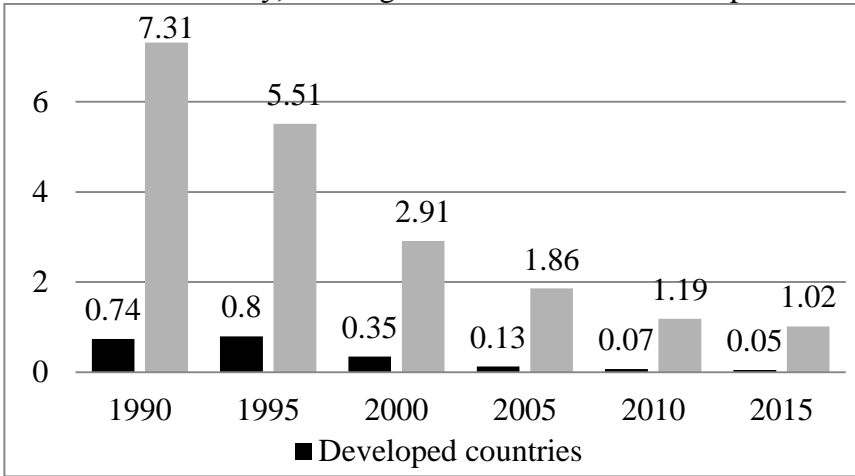


Fig. 2. Government Financial Statistics, Revenue: Customs & other import duties, simple average, % of GDP³³¹

The other side of the issue of Customs regulation of electronic commerce is the definition of the role of Customs authorities. The Customs Code of Ukraine establishes that “the state Customs policy is a system of principles and directions of the state activity in the field of protecting Customs interests and ensuring Customs security (the state of protection of Customs interests)”³³², so the determining role of Customs authorities in Ukraine at this stage is still fiscal control. The same opinion is confirmed by the research of national scientists in the sphere of public administration. So, for example, the main functions identified are tariff-regulating, financial-economic, protective, control-accessible, while a service function is secondary,

³³¹ IMF “Government Finance Statistics”, available at: <https://data.imf.org/?sk=a0867067-d23c-4ebc-ad23-d3b015045405&sid=1393552803658&ss=1496067042470>

³³² Customs Code of Ukraine, (2012), available at: <http://zakon2.rada.gov.ua/laws/show/4495-17/paran416#n416>

“latent”³³³. However, the international trends towards the creation of “service Customs” – Customs for participants in foreign economic activity, built on the principle of control service and international information exchange³³⁴ -determine the need and declare “new standards” of functioning of national Customs administrations³³⁵. So, for example in the Russian Federation the Customs regulation of e-commerce, according to A. Gladkov, must fulfill 3 tasks: control of compliance with prohibitions and restrictions, determination of the destination of a parcel (commercial, for individual use) and control of compliance with the shipment limits (by value and by quantity) with private purposes³³⁶.

International experience shows that countries face similar problems in the field of Customs regulation of e-commerce. One of the main challenges of public administration is maintaining a balance between the given level of protection of a country's Customs interests, minimizing risks and keeping high speed and simplicity of Customs clearance (Fig. 3).

³³³ Kveliashvili, I., (2015), “Dyversyfikatsiya funktsional'noho navantazhennya orhaniv dokhodiv i zboriv, na yaki pokladayet'sya zdiysnennya mytnoyi spravy v Ukraini”, *Publichne administruvannja: teorija ta praktyka*, 2015, No 2, available at: http://nbuv.gov.ua/UJRN/Patp_2015_2_11

³³⁴ Kveliashvili, I., (2016), “Harmonizatsiya natsional'noyi mytnoyi polityky z mizhnarodnymy normamy i standartamy v mytniy sferi”, *Derzhavne upravlinnja ta misceve samovrjaduvannja*, 2016, No 1, pp. 74 – 80, available at: http://nbuv.gov.ua/UJRN/dums_2016_1_12

³³⁵ “Novi standarty na mytnytsi”, available at: <http://sfs.gov.ua/media-tsentr/zmi/print-255461.html>

³³⁶ Gladkov, A. R., (2013), “Internet-torgovlja kak perspektivnoe napravlenie tamozhennogo regulirovanija”, *V Nauchnaja konferencija “Antikrizisnoe regulirovanie v sovremennyh uslovijah”*, 2013, available at: http://www.rssu.ru/archive/spa.msu.2013/2359/3967_e608.pdf

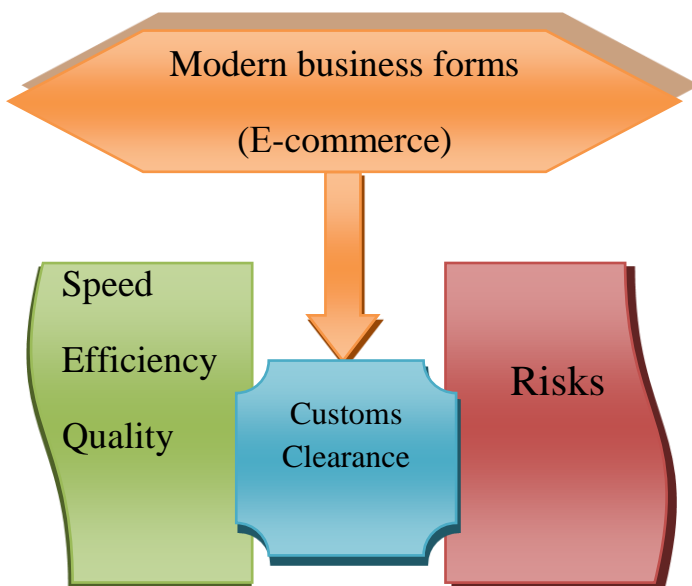


Fig. 3. Quality Balance Challenges

For example, EU member states require a preliminary exchange of information to ensure the effective clearance of shipments. While the experience of some countries in North and Latin America shows that their current practice includes the submission by messengers electronic express-manifest on shipments, which is later followed by a physical inspection; if the value of the cargo is below the minimum, it is skipped without any delay. Besides, the countries of the European region have specified that the new requirement about the simplified statement involves introduction of the new procedure of automatic exchange of information about each party, such as the unique identifier, information on the recipient, cost, weight etc.³³⁷.

³³⁷ World Customs Organization, (2017), *WCO Study Report on Cross-Border E-Commerce*, 2017, 6 p., available at: http://www.wcoomd.org/~media/wco/public/global/pdf/topics/facilitation/activities-and-programmes/ecommerce/wco-study-report-on-e_commerce.pdf?la=en

So Australian Department of Immigration and Border Protection (DIBP) determined the main problems and the prospects of regulation of electronic trading, in connection with features of processing of cross-border transactions, and also character of participants of these relations, which included the following³³⁸:

- potential fraud;
- increased occurrence of illicit transactions;
- new routings;
- new actors: growth of e-commerce has influenced on the appearance and increase in the number of private mail forwarding and consolidation companies;
- new operating models: suppliers can be located anywhere, including in Australia and at the same time do not physically have the goods, because they use warehousing services in the recipient's country;
- poor information: large carrier companies being often one of the parties to electronic commerce agreements usually make a deal with a supplier, but not an importer, and thus do not come into contact with the import. In addition, product descriptions provided by suppliers are often insufficient to identify and assess the risks related to such an operation.

In China, one of the largest e-commerce markets, since 2016 new tax measures have been applied to goods from other countries, which are included in the list of allowed goods for cross-border import B2C transactions, if the following criteria are met³³⁹:

- e-commerce transactions, arising from the use of the e-commerce network that have a network connection with Customs and provide a complete set of information about purchasing, payment and logistics;

³³⁸ Australian Department of Immigration and Border Protection, (2015), “Australia’s tax reforms and e-commerce: a country perspective”, *WCO news*, 2015, No 78, available at: <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/activities-and-programmes/e-commerce/wco-news/australias-tax-reforms-and-e-commerce-a-country-perspective-wco-news-78-october-2106.pdf>

³³⁹ “Trade Alert on China – What is next for Cross-border E-commerce (B2C) Business in China?”, 2016, 3 p., available at: <https://www.pwchk.com/en/migration/pdf/cn-customs-news-apr2016.pdf>

- transactions organized through an e-commerce platform without any interaction with Customs, but an express delivery company or a courier service can provide a complete set of information about purchasing, payment and logistics and undertakes to take responsibility for goods imported through a cross-border e-commerce channel.

According to these changes, goods exceeding the published tax threshold (Fig. 4) will be subject to duties, import VAT in accordance with the requirements of the General Trade.

Impact under the New Rules	Postal Tax Policies	New Postal Tax Policies	New Cross-border E-Commerce Tax Measures
Threshold for tax collection	Single order: RMB 800 (goods coming from HK, Macao and Taiwan); RMB 1,000 (goods coming from other overseas countries) Annual order/person: RMB 20,000 (but waived for many pilot platforms, e.g. KJT) The parcel tax rate will still apply if the above threshold is exceeded but the parcel contains only one single inseparable item, and the item is for personal use.		Single order: RMB 2,000 Annual order/person: RMB 20,000
Exemptions	Import tax exempted when less than RMB 50		No exemption available
What tax rate applies?	Parcels tax rate (10%, 20%, 30% or 50%)	Parcels tax rate (15%, 30% or 60%)	Duty: Exempted Import VAT /Consumption Tax: 70% of the regular amount payable
Tax rules for goods exceeding the threshold	Subject to General Trade duty/import VAT rates		
Tax refund for goods return	Subject to local practices		Tax refund applicable for goods returned within 30 days of goods release by Customs

Fig. 4. Tax collection rules

Source: “Trade Alert on China – What is next for Cross-border E-commerce (B2C) Business in China?”, 2016, 3 p., available at: <https://www.pwchk.com/en/migration/pdf/cn-customs-news-apr2016.pdf>

Taking into consideration the international experience of taxation of international postal items, it is necessary to focus on the provisions that are valid in Ukraine. According to Article 186 of the Customs Code of Ukraine³⁴⁰, depending on the presence of the carrier, the consignor, the consignee, as well as the transportation contract, the following methods of goods movement are defined:

- cargo shipments;
- accompanied baggage;
- unaccompanied baggage;
- hand baggage;
- international mail;
- international express shipments.

When regulating the sphere of Internet trading, attention is focused on two methods: international mail and international express shipments that have their defining differences.

So, international mail means letters, postcards, parcels, special sacks bearing the “M” mark, small packages, insured mail items, packages, consolidated postal deliveries bearing the “Consignation” mark, and EMS international express mail packed and drawn up in accordance with the requirements of the Universal Postal Union and the Rules for Postal Services, which are accepted to be sent outside the territory of Ukraine, delivered to Ukraine or transited by postal operators across the territory of Ukraine³⁴¹.

At the same time international express shipments mean duly packed international shipments with enclosed documents or goods that are accepted, processed, carried by any means of transport under cover of an international transport document for the purpose of expedited delivery to an addressee within the established time limit³⁴².

Comparison of the methods of moving goods is necessary from the point of view of carrying out Customs clearance and the

³⁴⁰ Customs Code of Ukraine, (2012), available at: <http://zakon2.rada.gov.ua/laws/show/4495-17/paran416#n416>

³⁴¹ Ibid

³⁴² Ibid

corresponding requirements for documents and administration of Customs payments (Table 2).

Table 2

Comparison of ways to move goods in international mail and international express deliveries³⁴³

Criteria	Indicators	
The way of moving	International mail	International express shipments
Normative regulation	The Customs Code, The Universal Postal Convention, The regulations for written correspondence, The rules of postal parcels, The law on postal communication, Rules for the provision of postal services, approved by Resolution № 270	The Customs Code
Carrier	Postal operator	Express-carrier
Place of Customs procedures	In places of international exchange points or at the location (residence) of the recipient or sender	In the central sorting station (RSS) or at the location (residence) of the recipient or sender
Shipping documents for each consignment	The use of all documents without exception when moving postal mails and international mail is	An international transport document issued by the sender - the air waybill is

³⁴³ Moshynska O., (2014), “Opodatkuvannya tovariv, shcho peremishchuyut'sya (peresylayut'sya) u mizhnarodnykh poshtovykh ta ekspres-vidpravlennnyakh”, *Visnyk. Pravo znaty vse pro podatky i zbory*, 2014, available at: <http://www.visnuk.com.ua/ua/pubs/id/7281?issue=177>

	established by acts of the Universal Postal Union. Usually the Customs declaration CN 23, CN 22, filled in by the sender	usually used (Air Waybill)
Declaration	Orally: by the postal operator on the basis of shipping documents. And also a written declaration: Customs declaration CN 23, CN 22 or Customs declaration in the form of a single administrative document	Orally: by express carrier on the basis of shipping documents, as well as written declarations: M-16 Customs declaration or Customs declaration on the form of a single administrative document or a written statement

It also should be noted that there is a difference in taxation between goods sent to individuals and legal entities. Customs formalities during Customs clearance of goods moved by the international mail and international express shipments to legal entities (sent by legal entities) are carried out in the same manner as in other ways of moving goods. Thus, the limit of duty-free importation of postal items to Ukraine is 150 euros (Fig. 4). Accordingly, VAT is not paid. However, the excise on excisable goods is charged regardless of the cost.

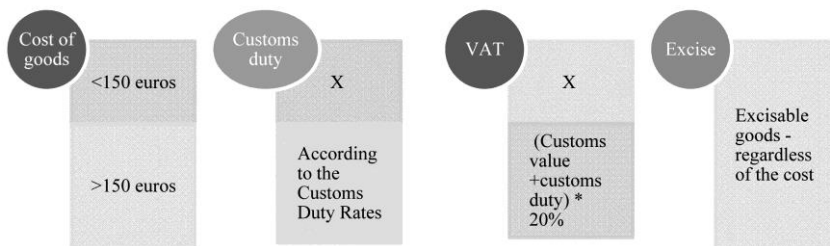


Fig. 4. Customs taxation of goods delivered to the address of individuals

As for individuals, the rates for calculating Customs payments are the same for international mails and international express shipments (Fig. 5). The difference lies in the documents required for the declaration. Thus, with the total invoice value (TIV) of both the international mails and the international express shipments of up to 150 euros the declaring is carried out verbally on the basis of shipping documents. If the TIV ranges from 150 to 10 000 euros, Customs authorities will receive CN 23 Customs declaration or CN 22 Customs declaration for the international mail and Customs declaration M-16 for the international express shipments. In case of TIV exceeding the level of 10 000 euros, a Customs declaration is provided for the enterprises for both ways of moving.

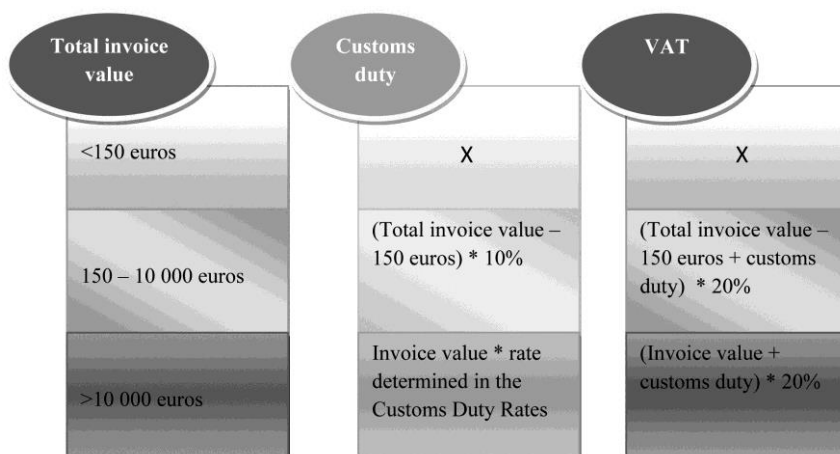


Fig. 5. Customs taxation of goods delivered to the address of legal entities

Thus, taking into consideration the importance of tracking the movement of postal and express mail for tax purposes, an important task is a cooperation of the Customs bodies of Ukraine with postal services, as well as the exchange of information with e-commerce operators.

The Universal Postal Union put forward its recommendations for Customs authorities.³⁴⁴ They include:

- advance electronic information for airlines, Customs administrations and border security using the UPU's ITMATT and EMSEVT V3 standard messages. These data enable authorities and partners to identify high-risk dispatches and increase security and efficiency;
- priority lanes for e-commerce parcels when data is available and shared between Customs and Posts through joint

³⁴⁴ Universal Postal Union, (2015), "Boosting e-commerce: a how-to guide for postal operators", 2015, available at: http://www.upu.int/uploads/tx_sbdownloader/boostingECommerceAHowToGuideForPostalOperatorsEn.pdf

WCO–UPU message standards (CUSITM and CUSRSP) and the UPU Customs Declaration System;

- prioritization of advance Customs information;
- reduced bureaucracy during impor/export through trade facilitation models such as Exporta Facil and Importa Facil, designed in particular to help MSMEs sell their products in other countries.

In 2012, the former Customs Administration of the Republic of Slovenia (now: the Financial Administration of the Republic of Slovenia) and the Post of Slovenia launched a joint project that was completed two years later and completely changed the working methods. A completely automated system of Customs clearance and delivery of mail items was created, which shortened the delivery time from several weeks or days to several hours. The system supports the entire process, including electronic risk analysis, the detection and elimination of dangerous goods and allows conducting transactions in a fully electronic form³⁴⁵. In addition, it allows recipients to track their shipments. So, after the arrival of parcels based on the description of CN 22/23 and other risk criteria, the sorting is done by postal personnel. The Customs authorities do not participate in the mail process during the entire time, as it was in the past. Nevertheless, the Customs administration can continuously monitor the whole process by means of control points. Manual recording of documents has been eliminated, and data from CN 23 are captured electronically and directly fall into the mail IT system. Risk analysis is also constantly performed by postal personnel, beginning from sorting to entering data and other related processes.

The experience of Slovenia needs to be adapted by Ukraine, as it became one of the first countries in Europe and the world to respond quickly to the increase in the volume of online goods

³⁴⁵ “E-Commerce Conference: the Slovenian method of treating e-consignments can serve as an example at EU level”, 2017, available at: http://www.fu.gov.si/en/customs/work_with_us/e_customs/?tx_news_pi1%5Bnews%5D=5859&tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=3d09dcb07f22986406bb80698d7a7a25

arriving in Slovenia through the national postal operator and on the basis of this a specialized information system was created.

Cooperation with the postal service is also a priority for Australian Customs authorities. So, as the processes of identification and risk assessment for international postal items are performed in real time on the border, besides they are not automated and resource-intensive, this approach is unsustainable, given the increase in the volume of mail. As a result, postal operators offer advanced e-tracking options for certain types of mail, especially for EMS. As part of the DIBP reform program, a team was established in November 2013 to investigate the possible border intervention that electronic information can provide. The focus during the group's work was made on the ability to use information at the electronic level. The group studied operations in the context of a future international mail environment that took into account electronic reporting in the mail flow, conducting a more effective risk assessment, both for e-mail and for “traditional, manual” messages, using technologies that allow the tracing of goods and enable the DIBP to link individual items to electronic information³⁴⁶.

For Ukraine, it is useful and important to adopt the experience of developing a tracking and tracing system, since it allows the identification by the Customs authorities of suspicious cargoes that should be removed from traffic for further inspection.

In Malaysia, if a registered GDT (good and services tax) person sells goods via Internet at the domestic market and they are physically supplied to a customer in Malaysia, such a supply is liable to the taxation of goods and services. The principle governing the collection of tax for e-commerce transactions is the same as for traditional trading. At the same time, if the goods are sold via Internet and are physically delivered to customers overseas, sales

³⁴⁶ Australian Department of Immigration and Border Protection, (2016), “Australia’s tax reforms and e-commerce: a country perspective”, *WCO news*, 2015, No 78, available at: <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/activities-and-programmes/ecommerce/wco-news/australias-tax-reforms-and-ecommerce-a-country-perspective-wco-news-78-october-2106.pdf>

can be with zero tax rate. Therefore, it is important to prove that the goods were exported. Further, this tax is levied on the value of the goods (the total amount of the declared price, including transport, freight and insurance plus any tax payable) when the goods are imported into Malaysia. Being registered in this system of taxation, a subject can qualify for an entrance tax credit³⁴⁷.

It was important for the Republic of Korea to maintain the level of trade facilitation and trade security. In the face of a continuous increase in e-commerce transactions, the Customs authorities increase the level of monitoring and risk management to prevent the entry of illegal goods into the country. Thus, 100% X-ray inspection of express cargo and international mail was implemented. Postal operators and carriers are obliged to send the requested information for registration in electronic form in order to obtain a permit for preliminary inspection and possible preliminary Customs clearance. To this end, postal operators use electronic versions of CN 22 and CN 23. All information about cargo/parcels selected for inspection, such as the X-ray image and data contained in the form used for clearance is downloaded to the computer screen of the Customs officer conducting the inspection. Fines were also imposed for presenting false data. In 2014, a special measure was introduced that obliges delivery service operators to inform the Customs authorities about the actual designation of express freight at the end of the delivery. The aim is to prevent the abuse of the established *de minimis* by separating sellers for the purpose of deliberately using a tax exemption system and simplified procedures for low value goods³⁴⁸.

³⁴⁷ Royal Malaysian Customs, (2015), "Guide on E-Commerce Services", 2015, available at:

http://gst.customs.gov.my/en/rg/SiteAssets/industry_guides_pdf/GUIDE%20ON%20E-COMMERCE%2018122015.pdf

³⁴⁸ Tae-kon Sung, Yeon-Soo Choi, (2015), "Supporting e-commerce: Korea Customs Service's strategy", *WCO news*, 2015, No 78, available at: <http://www.wcoomd.org/~media/wco/public/global/pdf/topics/facilitation/activities-and-programmes/ecommerce/wco-news/supporting-ecommerce-korea-customs-services-strategy-wco-news-78-october-2106.pdf>

Another promising experience that should be considered is the provision of continuous (24/7) Customs clearance at border crossings where possible and when required by the business³⁴⁹.

E-commerce is a fundamentally new for Ukraine and promising type of economic activity. The national economy in general and market players are the direct beneficiaries of the rapid development of e-commerce. However, on the other hand, the state in the role of executive bodies, in particular, Customs, faces a number of problems:

1. A significant part of the national economy is in the “shadow”. At the same time, electronic commerce, in particular, cross-border is only partially in the field of state control.

2. Transformation of traditional “physical” trade channels into the Internet sphere. This leads to an increase in “digital imports” and, as a result, to fiscal underpayment.

3. The growth rate of e-commerce is much bigger than the speed of state response to this development. This means limited state control, the inability to monitor transactions on the network and the movement of electronic money.

4. Since the main methods of e-commerce goods delivery are international mail and international express shipments, the problem is a lack of information, an increase in the number of illegal transactions and fraud.

For the solution we propose to take into consideration international experience. For example, the Customs and Postal authorities of Slovenia have created a joint project, as a result of which a fully automated system of Customs clearance and delivery of mail items was created. It shortened the delivery time from several weeks or days to several hours. One of the tools of this project is the postal system IT. That is, it is necessary to develop a

³⁴⁹ Global Express Association, (2015), “Let cross-border e-commerce be an engine for growth”, *WCO news*, 2015, No 78, available at: <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/activities-and-programmes/ecommerce/wco-news/let-crossborder-ecommerce-be-an-engine-for-growth-wco-news-78-october-2016.pdf>

specialized information system that will allow for an instant exchange of information between Postal and Customs authorities.

Cooperation with the postal service is also a priority for Australian Customs authorities. So, as the processes of identification and risk assessment for international postal items are performed in real time on the border, are not automated and resource-intensive. For Ukraine, it is useful and important to adopt the experience of Australia in the development of a tracking and tracing system, since they allow the identification suspicious cargo that should be removed from traffic for further inspection by Customs authorities.

The experience of some countries in the AMS region shows that their current practice includes the presentation by couriers in electronic form of express manifest on shipments, which is later followed by a manual check; if the value of the cargo is below the minimum, it is skipped without delay.

Another promising experience that should be considered is the provision of continuous (24/7) Customs clearance at border crossings where possible and when required by the business.

Thus, the rapidly growing international e-commerce market opens up opportunities for business entities of the world to expand their activities in the global dimension. Ultimately, traders form new logistics models that provide consumers with a global choice, minimizing costs, improving quality and the ability to conveniently receive goods. Obviously, such activities will continue to stimulate sales growth not only at domestic markets, but through other important trade corridors. This determines the need for Customs authorities to comply with trends and the speed of development of fast developing forms of business.

References

1. Australian Department of Immigration and Border Protection, (2016), “Australia’s tax reforms and e-commerce: a country perspective”, WCO news, 2015, No 78, available at: <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/activities-and-programmes/ecommerce/wco-news/australias-tax-reforms-and-ecommerce-a-country-perspective-wco-news-78-october-2106.pdf>.
2. Customs Code of Ukraine, (2012), available at: <http://zakon2.rada.gov.ua/laws/show/4495-17/paran416#n416>.
3. “E-Commerce Conference: the Slovenian method of treating e-consignments can serve as an example at EU level”, 2017, available at: http://www.fu.gov.si/en/customs/work_with_us/e_customs/?tx_news_pi1%5Bnews%5D=5859&tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=3d09dcb07f22986406bb80698d7a7a25.
4. Ernst & Young, (2014) “Rynek elektronicznej handlu w Ukrainie”, available at: [http://www.ey.com/Publication/vwLUAssets/ey-ukrainian-e-commerce/\\$FILE/ey-ukrainian-e-commerce.pdf](http://www.ey.com/Publication/vwLUAssets/ey-ukrainian-e-commerce/$FILE/ey-ukrainian-e-commerce.pdf).
5. Gladkov, A. R., (2013), “Internet-torgovlja kak perspektivnoe napravlenie tamozhennogo regulirovanija”, V Nauchnaja konferencija “Antikrizisnoe regulirovanie v sovremennyh uslovijah”, 2013, available at: http://www.rssso.su/archive/spa.msu.2013/2359/3967_e608.pdf.
6. Global Express Association, (2015), “Let cross-border e-commerce be an engine for growth”, WCO news, 2015, No 78, available at: <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/activities-and-programmes/ecommerce/wco-news/let-crossborder-ecommerce-be-an-engine-for-growth-wco-news-78-october-2016.pdf>.

7. IMF “Government Finance Statistics”, available at: <https://data.imf.org/?sk=a0867067-d23c-4ebc-ad23-d3b015045405&sid=1393552803658&ss=1496067042470>.

8. Kveliashvili, I., (2015), “Dyversyfikatsiya funktsional'noho navantazhennya orhaniv dokhodiv i zboriv, na yaki pokladayet'sya zdiysnennya mytnoyi spravy v Ukrayini”, Publichne administruvannja: teorija ta praktyka, 2015, No 2, available at: http://nbuv.gov.ua/UJRN/Patp_2015_2_11

9. Kveliashvili, I., (2016), “Harmonizatsiya natsional'noyi mytnoyi polityky z mizhnarodnymy normamy i standartamy v mytniy sferi”, Derzhavne upravlinnja ta misceve samovrjaduvannja, 2016, No 1, pp. 74 – 80, available at: http://nbuv.gov.ua/UJRN/dums_2016_1_12

10. Malinina, N. M., (2016), “Opodatkuvannya elektronnoho biznesu v Ukrayini: suchasni realiyi ta perspektyvy”, Visnyk Odes'kogo nacional'nogo universytetu. Serija : Ekonomika, 2016, No 7 (1), Volume 1, pp. 152 – 155, available at: [http://nbuv.gov.ua/UJRN/Vonu_econ_2016_21_7\(1\)_35](http://nbuv.gov.ua/UJRN/Vonu_econ_2016_21_7(1)_35).

11. Malovychko, S. V., (2015), “Analiz suchasnykh tendentsiy ta dynamiky rozvytku elektronnoyi torhivli na pidpryemstvakh Ukrayiny”, Problemy ekonomiky, 2015, No 2, pp. 71 – 77, available at: http://nbuv.gov.ua/UJRN/Pekon_2015_2_11.

12. Moshynska O., (2014), “Opodatkuvannya tovariv, shcho peremishchuyut'sya (peresylayut'sya) u mizhnarodnykh poshtovykh ta ekspres-vidpravlenniyakh”, Visnyk. Pravo znaty vse pro podatky i zbory, 2014, available at: <http://www.visnuk.com.ua/ua/pubs/id/7281?issue=177>.

13. National Bank of Ukraine, (2014), “Shchodo vidnesennya operatsiy z "virtual'noyu valyutoyu/kryptovalyutoyu Bitcoin do operatsiy z torhivli inozemnoyu valyutoyu, a takozh nayavnosti pidstav dlya zarakhuvannya na potochnyy rakhunok v inozemniy valyuti fizychnoyi osoby inozemnoyi valyuty, otrymanoyi vid prodazhu Bitcoin”, available at: <http://zakon2.rada.gov.ua/laws/show/v2889500-14>.

14. “Novi standardy na mytnytsi”, available at: <http://sfs.gov.ua/media-tsentrl/zmi/print-255461.html>.

15. “Rost na 400 %, do \$10 mlrd. – prognoz razvitiya ukrainskogo e-commerce”, available at: <http://c2cb2c.com.ua/news/1743/>.

16. Royal Malaysian Customs, (2015), “Guide on E-Commerce Services”, 2015, available at: http://gst.customs.gov.my/en/rg/SiteAssets/industry_guides_pdf/GUIDE%20ON%20E-COMMERCE%2018122015.pdf.

17. Tae-kon Sung, Yeon-Soo Choi, (2015), “Supporting e-commerce: Korea Customs Service’s strategy”, WCO news, 2015, No 78, available at: <http://www.wcoomd.org/~media/wco/public/global/pdf/topics/facilitation/activities-and-programmes/ecommerce/wco-news/supporting-ecommerce-korea-customs-services-strategy-wco-news-78-october-2106.pdf>.

18. “Trade Alert on China – What is next for Cross-border E-commerce (B2C) Business in China?”, 2016, 3 p., available at: <https://www.pwchhk.com/en/migration/pdf/cn-customs-news-apr2016.pdf>.

19. Universal Postal Union, (2015), “Boosting e-commerce: a how-to guide for postal operators”, 2015, available at: http://www.upu.int/uploads/tx_sbdownloader/boostingECommerceAHowToGuideForPostalOperatorsEn.pdf.

20. World Customs Organization, (2017), WCO Study Report on Cross-Border E-Commerce, 2017, 6 p., available at: http://www.wcoomd.org/~media/wco/public/global/pdf/topics/facilitation/activities-and-programmes/ecommerce/wco-study-report-on-e_commerce.pdf?la=en.

COOPERATION BETWEEN CUSTOMS ADMINISTRATION AND BUSINESS COMMUNITY IN COMMODITY TRADE FACILITATION. BEST PRACTICES IN POLAND

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Abstract

Cooperation between the customs administration and entrepreneurs is a very important and interesting issue. This casus demonstrates the high development of administrative body in a given country. The tax administration should not only fulfill the fiscal function but also take care of business interests. At last, entrepreneurs are responsible for the international trade of goods, and consequently for the welfare and development of society. There

are still stereotypes about fiscal administration in many countries. Tax administration is associated with bureaucracy, difficulties for entrepreneurs, and barriers to starting a business. Nowadays, the tax authorities, including the customs administration, should be seen in a different way. Entrepreneurs and other citizens should be supported by the customs administration and what is extremely important to see an ally and not the opponent in customs administration. This study describes steps and actions taken by the tax administration in Poland (especially the customs administration) to support business interests while at the same time influencing on budget and security of the state. The article presents the information systems introduced by the Polish customs authorities. Help in the form of an efficient information system makes life much easier for entrepreneurs. It is also currently the biggest challenge facing the customs authorities. Apart from solutions in the field of new technologies, the article describes the changes in Polish law, especially the last reform of the National Tax Administration. In this way, best practices of cooperation between customs administration and business community in Poland will be presented.

Keyword: *Customs Administration, Customs IT Systems, Poland*

1. INTRODUCTION

We live in times of dynamic changes. This can be clearly seen on the example of international trade. The economy and trade are fueled by the IT revolution. Increasing computing power and increasingly intelligent management systems make it possible to manage business on an unprecedented scale. The complexity of supply chains is increasing; entrepreneurs expect higher volumes and speed in their supply chain. Thus, the demand and requirements of the customs service are growing. Customs services must receive and handle with more and more customs declarations in ever shorter time. Customs Services need to use modern IT systems to make this possible. Therefore, improved cooperation between customs

administration and entrepreneurs come down to ensure a well-functioning customers service system and process of customs procedures and customs inspections in the shortest possible time.

Discussing on the facilitation between customs administration and entrepreneurs, should start with presenting the customs administration in Poland. The customs administration in Poland has nearly 100 years of history. The date of establishment is November 1919, one year after Poland regained its independence after the First World War. The history of Poland in the last century was very turbulent. Due to the Second World War and the transformation of the economic system, large changes have also occurred in the customs administration. The changes concerned its function, its importance, but also the people responsible for the management of customs administration in Poland. The phase of distinguishable changes reached the peak after the Second World War when the fiscal function lost its importance, and inspection function was clearly visible. At that time, the management positions of the customs administration were taken over by the officers of the military institutions. In the 1980s customs service in Poland has been militarized.

The 1990s was a decade of economic and political changes. A new law, that enabled new Polish business entities go international, has been introduced. It was quite a novelty. In addition, the customs tariff has been reformed. The changes concerned not only tariff rates but also nomenclature. The combined nomenclature – CN was introduced. At that time, Poland began the integration process with various European groups. Poland in the 1990s stepped up efforts to become a member of the European Union. Large changes have also occurred in the technologies used by the customs service. Digitalization started to hot up. Customs officers began using modern X-ray machines to scan checked luggage. The Polish Customs Administration has started preparatory work on the first IT systems for customs around the year 2000.

Polish Customs Administration implemented the ZEFIR and CELINA IT Systems in 2002 and 2003. These are the systems that are still functioning today. They are extremely important for the Polish Customs Administration and will be further described later on in the study. In the following years, the Polish Customs Administration introduced further IT systems.

In 1997 Polish Customs Code has been introduced based on the Customs Code of European Union. National customs law was more and more aligned with the European Community law to speed up the process of integration. An important year for Polish Customs Administration is 1999. In this period of time, a new law that established a tax administration agency called Customs Service, came into force. Customs Service existed until this year and for less than 20 years was the only organ of customs administration in Poland. After 2000, the Customs Service went through numerous organizational and functional changes. For example, since 2003 the Customs Service has taken over the task of supervision and collection of excise duty. It is worth noting that the Customs Service was almost entirely responsible for the implementation of the existing IT systems.

A very important year for Poland was 2004, when Poland gained access to the European Union and once again the country went through a transformation in the field of customs law. Customs policy ceased to be a national policy. From that moment, the European Union started to be responsible for customs policy in Poland. Probably the most far-reaching and visible change that took place was the resettlement of customs officials. A large part of customs borders has been eliminated. About a thousand of customs officers from the west moved to the East of the country. This caused a lot of conflicts in the customs administration in Poland. Looking from a completely different perspective, it can be seen that Poland has a serious duty to operate and protect the Eastern customs border of the European Union. This year there was also a long-awaited reorganization of the Polish tax administration. The Customs Service was liquidated and the National Fiscal Administration took

over the responsibilities of the Service. The National Fiscal Administration is currently the sole Governing Body of the whole tax administration in Poland.

With these enormous changes and problems that the customs administration had to cope with, the construction of a stable and well-functioning customs system was very difficult in Poland. Nevertheless, the Polish Customs Administration has taken and continues to take many effective actions to ensure the best possible conditions for international commodity trade. The next part of the study will present some of the best practices of the Polish Customs Administration.

2. INFORMATION SYSTEMS

CELINA SYSTEM

One of the most important information systems of the Polish Customs Administration is the CELINA system. CELINA is a national customs administration system for registering and processing data from customs declarations and other customs documents for goods imported into the customs territory of the European Union. Until 2004 the implementation of this system was a necessary condition for the membership in the European Union. The CELINA system was implemented in all customs administration units in the summer of 2003. It is not linked to the European Union's information systems and is not the part of the EU system. CELINA's primarily proceeds the following customs declarations: customs clearance, inward processing, customs warehousing and temporary admission, as well as short-term declarations for the temporary storage.

Currently, import customs declarations can be submitted in the form of an electronic message signed with a secure data transmission key or in the form of customs declaration in the SAD form (paper form only). In addition to handling customs declarations, CELINA is used to register and process data originating from INTRASTAT electronic declarations.

Communication is provided through CELINA WEB-CEL web pages (for standard procedures) and the CELINA OPUS website (for simplified procedures). These two sites form “the customs gateway”.

The benefits and advantages of using the CELINA system are the following: CELINA has an open interface and its functionality can be easily expanded. Using the CELINA system entrepreneurs can control the status of submitted documents online. The usage of the system significantly speeds up the handling of customs declarations in customs offices. The undoubted advantage of the system is also the ability to control formal customs declarations based on the quick access to data. The owner of the system is currently the Ministry of Finance of the Republic of Poland. The CELINA system greatly simplifies customs procedures and accelerates all customs processes, which is extremely important for business.

ISZTAR SYSTEM

The ISZTAR System is an IT system that maintains a duty tariff base. The owner of the system is the Ministry of Finance of the Republic of Poland. The ISZTAR is the data source for the CELINA system that provides visualization of tariff data and the variant calculation of customs duties through the Tariff Viewer. It is fully compatible with the EU TARIC System and is updated daily with data from this system. The first version of the system was introduced in 2001. Currently, there is the fourth version of the system and is called ISZTAR4. ISZTAR is one of the basic systems of the Polish Customs Administration. It provides data to CELINA and other systems and is crucial for the integration of Polish customs systems. The basic aim of implementing the Integrated Customs Tariff System was to have a tariff base that would be compatible with TARIC.

The ISZTAR system includes such data as: tariff nomenclature, tariff rates, tariff restrictions, tariff quotas, tariff ceilings, tariff suspensions, VAT, excise duties, legal notes for sections and list of excise band. The benefits of the ISZTAR system

are primarily the possession of a single, reliable and up-to-date tariff base with historical data. It also helps with the classification of goods and the calculation of customs and taxation. ISZTAR also provides the free access to tariff information for all users interested in the foreign trade. What is important, external users can also use the ISZTAR system, e.g. businesses, customs brokers, carriers, shippers, travelers and other people interested in the international commodity trade.

E-CUSTOMS PROJECT

The last fourth ISZTAR version was brought into being through the "E-Custom" project. E-Customs is a comprehensive package of legislative, organizational, financial and technical operations that is used to achieve the goals of implemented electronic customs services. The e-Customs program is a response to the EU initiatives. The European Commission's e-Customs Initiative, introduced in 2004, did not have a concrete frame of reference in Poland until the launch of the Feasibility Study for the e-Customs Program in late 2008 and early 2009. Together with a group of customs experts the external contractor has proposed the division of this project into several dozen projects and activities under the united e-Customs program. Design teams prepare and implement further projects. Financial resources are largely derived from the EU funds, which are contributing to the computerization and innovation of the Polish economy.

The most distinctive and significant project realized by the Polish E-Custom program is the construction of one portal that will be a universal access point to all e-services of the National Fiscal Administration called The Platform of Electronic Tax and Customs Services (Polish abbreviation: PUESC). This portal is already working and another e-services are systematically added to it. This is a significant facilitation for entrepreneurs. So far, customs systems have been located in various network locations under different domains and addresses. This made difficult for entrepreneurs to communicate with customs administration.

To see how PUESC work, can use the ZEFIR system for example, which allows you to submit electronic declarations and documents on excise duties, game taxes and other taxes levied by the National Fiscal Administration. It is enough to visit <https://puecs.gov.pl/> and select “e-Zefir” from appropriate bookmark. This is similar for other systems. Integrating services into a single access point will greatly simplify communication with the customs administration systems but will also have positive impact on the business.

"PORTS 24" PROJECT

Another very interesting project conducted by the Polish customs administration is the "PORTS24", which greatly accelerated the customs clearance of the goods transported by sea. Started in 2015 the project aims to facilitate the process of customs controls in Polish ports to such an extent that it would be completed within one day, unless there are legal grounds for detailed inspection.

The “PORTS24 “ project assumed the co-operation and coordination of several control bodies. Until then, goods such as food were subjected to numerous inspections carried out by the Customs Service, the Veterinary Inspection, the National Sanitary Inspection. Checks often repeated and the control of a single consignment took place several times. The “PORTS24” program eliminated this and he proved to be a success. After a few months the project achievements were analyzed. The average customs inspection time amounted to approximately 9 hours.

In order for the project to succeed the Customs Service had to use appropriate tools. First of all, these were new legal act which regulated the activities of the project. In addition The Customs Service used modern IT solutions above all, the Coordination Control System (SKK) which allowed to exchanged information between The Customs Service and other services, inspection and handlers. The concept of the system and detailed solution were all worked out by Officers of the Customs Chamber in Gdynia. SKK functionality is still expanding. Other important system for the

“PORTS24” Program was a PHICS System (Polish Harbors Information and Control System). PHICS is an information system for Polish ports, managed by the Maritime Office. One of its tasks is the forwarding of information on goods imported into the ports.

The “PORTS24” implemented in Polish ports shortened and simplified a cargo control. In Polish ports were also carried out other projects and facilities. For example implemented in 2012 Regular Shipping Service which is an electronic regular navigation system (RSS). RSS allows to operate regular shipping lines in a completely electronic way. It eliminates paper documents and significantly shortens the time required for formalities.

Other facilitations related for example to the VAT. Legal changes introduced the possibility of delayed VAT settlement on similar terms as in German Ports. This option can be used by entities using simplified procedures and holders of AEO certificates. Thus, maritime customs are working very hard to improve the commodity trade and build facilities for entrepreneurs.

3. CHANGES IN THE POLISH CUSTOMS ADMINISTRATION AND LAW

In Poland for several years was discussion on the reorganization of the tax administration. Finally, under the Act, the fiscal administration in Poland was reformed and the new body was created in March 2017. To understand what the changes were about should to start with the pre-reform state. Until March 2017 the tax administration in Poland was divided. There were three distinct divisions: the Tax Administration, the Customs Service, and the Fiscal Control. This has led to the dispersion and duplication of certain tasks related to the collection of taxes and duties. In addition, the functioning law differently regulated the controls and inspections. This status of administration was in force for less than 30 years and required changes and adaptation to the current economic environment. Such dispersion hindered the work of the authorities as well as the functioning of the controlled entrepreneur.

The former Customs Service consisted of 16 customs chambers in 16 Polish cities. Each Customs Chamber supervised Customs Offices. There were 45 Customs Offices throughout Poland. Customs offices supervised customs units. There were 143 customs units in Poland, including 53 serving border crossing points. Customs units had operated in the fields of railway, air, road, rail, river and sea.

In the present order, these three divisions were merged into one authority, creating the Polish Fiscal Administration. The Customs Service was removed and its officers were incorporated into the Polish Fiscal Administration (called: KAS). New customs offices and units have remained where they have been and they do the same tasks as before. On the other hand based on customs chambers, customs offices and tax control offices were established the part of the KAS called the Customs and Fiscal Offices with their delegations. The Customs and Fiscal Offices are entities mainly specialized in the detection of offenses committed on a large scale to the detriment of the Treasury of Poland and the prosecution of their perpetrators. The new units will thus perform a control function, while duties and tasks related to the collection of customs and excise taxes have been taken over by another KAS's units.

The changes in the organizational structure of the tax administration like any big change are certainly controversial, but by analyzing in depth the purpose and benefits they will bring in the long term significant improvement the work of the tax authorities.

Finally, one more change in Polish law is worth mentioning. The Ministry of Finance has drafted a project of Act called "Entrepreneurs' Law". This Law is currently on the formal path and with a large probability this Act will be adopted. It will replace the current Act on Business Freedom. The new law is primarily intended to lift the legal barriers currently restricting entrepreneurs.

All administrative offices will need to consider the following when dealing with business matters: what is not prohibited is allowed, which means that the trader can conduct business freely if it does not break clear prohibitions or restrictions. The next rule is

the presumption of the entrepreneur's honesty (an entrepreneur does not have to prove his or her integrity, doubts about the circumstances of a particular case will be settled in favor of the entrepreneur. Doubts about the circumstances of a particular case will be settled in favor of the trader. Furthermore, legal regulations should be understandable and business friendly. One of the most important points of the new law is the principle of proportionality, which means in practice that the office cannot impose undue burdens on the entrepreneur, for example offices cannot demand documents from entrepreneur which they already have.

Changes for entrepreneurs will be much further. New and small businesses will not have to be registered. The legal explanations given to entrepreneurs should to be written in simple and understandable language. The new law requires also the implementation of other Acts.

Conclusions

Looking at the actions of the customs administration in Poland, which are intended to facilitate international commodity trade and improve cooperation with entrepreneurs, these actions should be assessed highly. Certainly, changes in the structure of customs control are a temporary impediment to cooperation with business. However, these changes are necessary and should bring good results in the long perspective.

Information systems used in Polish customs services are functioning efficiently and without objections. What is more, new specialized applications are being introduced that make customs procedures easier to handle. Single access point improves communication with entrepreneurs. Many of the important and functioning IT systems have not been mentioned in the study. Often these are information systems related to European-wide systems. It should be added that such a rapid development of the digitization of the Polish customs administration would not have been possible without the EU financial support and “e-customs initiative”, which

recommended the development and digitization of customs administrations in EU.

Law changes in Poland also have one very important goal. They want to change the image of the fiscal administration. This administration is to serve the entrepreneur and not an entrepreneur to serve the administration. Obviously, we are faced with an issue of the interest of the Polish State which is increase of budget revenues from taxes and fees. Therefore changing the image of fiscal administration is a big challenge. The customs administration in Poland undertakes and will create further facilities for the functioning of the business.

BIBLIOGRAPHY

Naruszewicz S., Masłowska M., *Informatyzacja Procedur Celnych*, Wydawnictwo Difin, Warszawa 2010, ISBN 978-83-7641-161-3

Internet sources:

<http://www.pracujwlogistyce.pl/11-tydzien-1/4526-porty-24-pierwsze-podsumowanie-ulatwien-granicznych-w-portach-morskich> [access: 31.05.2017]

<https://puesc.gov.pl/web/puesc/isztar4>, [access: 31-05-2017]

<http://mf-arch.mf.gov.pl/documents/764034/4004672/RaportPorty24.pdf> [access: 31-05-2017]

<http://www.mf.gov.pl/uk/sluzba-celna/sluzba-celna/struktura-organizacyjna/struktura> [access: 28-05-2017]

<http://www.kis.gov.pl/documents/6609173/6751991/broszura+KAS.pdf> [access: 27-05-2017]

<https://legislacja.rcl.gov.pl/projekt/12295217> [access: 26-05-2017]

[http://orka.sejm.gov.pl/opinie8.nsf/nazwa/826_u/\\$file/826_u.pdf](http://orka.sejm.gov.pl/opinie8.nsf/nazwa/826_u/$file/826_u.pdf) [access: 23-05-2017]

<http://mf-arch.mf.gov.pl/sluzba-celna/dzialalnosc/e-administracja> [access: 23-05-2017]

http://www3.weforum.org/docs/GETR/2012/GETR_Chapter1.7.pdf [access: 28-05-2017]

<http://www.wcoomd.org/en/media/newsroom/2015/july/~media/E2B8A58843F44C55AD21BBE9BA2672B3.ashx> [access: 26-05-2017]

THE PRACTICE OF IMPROVING THE CUSTOMS LEGISLATION OF THE EAEU.

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Аннотация: В статье упоминается, история создания Евразийского Экономического Союза (ЕАЭС), о значении правовой базы в ЕАЭС и её основных составляющих. Анализируется развитие нового Таможенного кодекса Таможенного Союза (ТК ТС) и актуальность интеграции ТКТС и таможенных органов. В перспективе новый ТК ТС должен усовершенствовать все механизмы таможенных процедур.

Ключевые слова: евразийский экономический союз, таможенное регулирование, внешнеторговая деятельность, интеграция.

Annotation: In article history of creation of the Eurasian Economic Union (EEU), is mentioned value of legal base in EEU and its main components. Development of the new Customs Code of the Customs Union (CCCU) and relevance of integration of TKTS and customs authorities are analyzed. In the long term of new TKTS has to improve all mechanisms of customs procedures.

Key words: *Eurasian economic union, customs regulation, foreign trade activity, integration.*

It is widely known that nowadays globalization and integration are main tendencies in the world market. The term 'globalization' that has actively entered word stock is accepted to be understood as a strengthening of global openness and mutual influence of countries, cities and communities. It plays a significant part in the process of current economic development trends. Globalization appears in various spheres: economics, politics, ecology, culture. The shorter definition of globalization is creating international investment environment and integrating markets of states. Interchangeable term is 'integration' that originates from Latin words *integratio* and *integer* which are translated as 'fulfillment' and 'universal' as apt. The definition of integration is phrased as uniting economics of two or more countries that way to make those more effective and bringing more profit to national economics. However, both of those definitions require creating a jural foundation on which basis they will interact. First of all that's creating a unified market, this is a common goal of integration, since it can function only when there is use of mutual rules on its external borders.

Nowadays there are more than 100 integrational groups that act on all continents except for Antarctica. The biggest economic and politic influence among those have European Union (EU), North American Free Trade Agreement (NAFTA), Association of Southeast Asian Nations (ASEAN), Commonwealth of Independent States (CIS), Mercado Comu'n del ConoSur (Mercosur). Also need to be mentioned The Economic Community of West African States (ECOWAS) and Asia-Pacific Economic Cooperation (APEC), that unites more than 20 states from all around the world.

One of successful integration projects is Eurasian Economic Union (EAEU) that represents a model of a powerful international association capable of becoming one of the modern world's poles.

Let's take a look at analysis of integration history of creating and enlarging of Eurasian Economic Union (EAEU). Eurasian Economic Union (EAEU) – is an international integrated economic association. Within the union there has been created Convention of establishing Eurasian Economic Community customs union, according to which customs union was modified into international economic organization. That happened in October 2000 in Astana.

The modern agreement between Belarus, Kazakhstan and Russia about creating a unified customs territories and forming a custom union has been signed in Dyushambe on October 6th 2007. The official date of unifying Republic of Belarus, Republic of Kazakhstan and Russian Federation is considered to be January 1st 2010. Since that moment there were happening some custom reorganization.

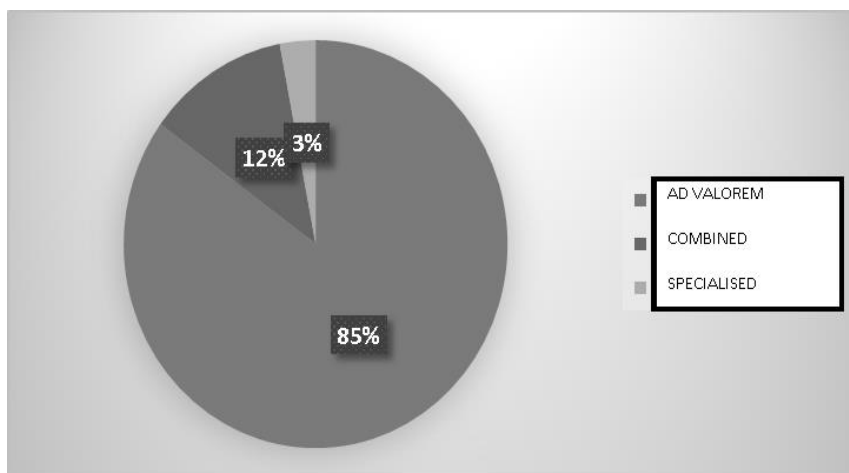
According to this new form of economic interaction since January 1st 2011 actualization of customs processing of goods and vehicles is exercised with using unified document forms in the customs of a country-member, whose resident is a participant of external economic activity. And on July 1st 2011 there has been a full abolishment of customs registration and customs supervision on internal borders of Customs union. Since January 1st 2012 there has been activated a set of 17 basics agreements, forming a Unified economic expanse. And in February 2012 Eurasian Economic Commission has altered Customs union commission.

All transformations and changes were successfully fulfilled and therefore on May 29th 2014 in Astana by leaders of Republic of Belarus, Republic of Kazakhstan and Russian Federation there was signed a Convention on establishing Eurasian Economic Union. And since January 1st 2015 there started functioning Eurasian Economic Union. That year quantity of states-members has increased. Two more countries became members of EAEU – first Armenia and then Kyrgyzstan.

After talking about history let's move to juristic aspects, on which basis EAEU is functioning, and also what has happened with suppositions to establishing statutory conditions.

Legislation of EAEU consists of customs code, legislations of states-members of EAEU and unified customs nomenclature.

Unified customs nomenclature is a systemized according to Unified commodity nomenclature code of customs duty bids towards goods imported to the territory of EAEU from third-world countries. There are several kinds of applicable import taxes: ad valorem, specialized and combined. Lately corrected tariff mostly consists of ad valorem bids of imported customs taxes in amount of 9863m which makes 85% from the whole tariff combined bids – 1447 (12%), specialized – 330 (3%).



Forming current customs legalization began in 1999, when national customs Committee of Russian Federation with Ministry of Trade come forward with an initiative to establish ten-character Goods Nomenclature for Foreign Economic Activities of the Russian Federation. The decision on that matter was made in the beginning of 2000 and it foreseen also reconstructing of import customs tariff.

Further provision of customs system efficiency is directly linked with enactment of the Law of Russian Federation ‘Customs nomenclature Act’ and Customs code of Russian Federation in 1993. The second amendment was developed in 2003 by State Duma, that admitted a whole number of provisions of the previous code to be invalid, but surprisingly did not abolish it completely. Therefore, in Russia there has simultaneously been two Customs codes (of 1993 and of 2003). This is conditional upon provisions of both codes completing one another. There were created Russian legislation frames for adaptation customs politics and customs in new conditions. Those jural acts guarantied priority of financial, economic functions of supervision, law enforcement and customs agencies protective functions. They were granted the status of law-enforcement authorities. Now they got empowerment of control of currency. From its first steps Russian customs service actively participated in international collaboration on politics of market tariff and customs aspects.

Both the old and the new customs codes of Russian Federation were enabled on October 1st 2011 with enactment the Customs Code of the Customs Union. Why the decision to enact a new customs code was made?

Firstly, the urge of government to bring Russian legislation closer to formatted in customs international standards. Significant differences between national legislation and international customs law in one way or another slow down integration of the country into world economic relations.

Secondly, a great deal meant significant changes, that happened in contiguous departments of Russian legislation. Here can be counted the Constitution of Russian Federation and also the Russian Tax Code accepted during Customs code of 1993 action period, Fiscal Code of the Russian Federation, Administrative Violations Code. All that raised a serious concern on the need of updating the legislative frame of customs regulations.

In 2009 leaders of countries and government ratified approximately 40 international agreements that formed jural basis

of Customs Union. Since January 1st 2010 the united customs space has begun its existence and in Russian Federation has lost its power.

Customs code of Customs union is a statutory and regulatory enactment that regulates interactions on the account of transporting goods through the customs border of Customs union. It took place of all customs codes of states-members of the union (Republic of Belarus, Republic of Kazakhstan and Russian Federation).

Customs code of Customs union has the status of international convention and is a part of a Contract on establishing Customs code of Customs union. This document was enacted by the decision Interstate Council of the Eurasian Economic Community and became operative since June 6th 2010. Customs code of Customs union contains a significant amount of changes and innovations with comparison to the previous document presenting customs law. Unions, except for changes in conceptual framework, Customs code of Customs union provides principally new way of regulating set of legal arrangements in customs.

Customs code of Customs union underwent amendments and changes, but due to enlarging of Eurasian Economic Union it was settled to unite all the customs legislations and establish a unified customs code, that takes nuances of local legislations into account and orients on global market.

For usual customs processes their law nature and meaning are altering, which demands reorganization of customs agencies activity. Significant change in order of actualization of customs supervision according to Customs code of Customs union is increasing of the checking period, which is connected to increasing the time of customs control after release of goods.

Besides, it was Customs code of Customs union that first mentions the institution of Approved Economic Operator. Now this category of participant of external economic activity is a new subject of customs legal arrangements, which are understood as a legal body allowed to use special simplified customs clearance procedures.

Customs code of Customs union foresees two forms of customs check: in-house tax audit and field tax audit. It need to be said that the approach to understanding the way and character of processing department control by customs agencies.

The new Customs code of EAEU was signed on April 12th 2017 and will be enacted on July 2017. It consists of a general and 373 parts.

First part includes common concepts, conditions and conditions of regulation customs relations. This contains in 21 chapters or 149 articles. They regulate the order of collaboration of customs agencies, procedure of registration customs statistics, information on customs control documents, procedure of calculation of customs duties and taxes, rules of regulating customs control etc.

Second part describes nuances of law juristic relations, on which basis the union functions. This defines the procedure of provision goods to customs agencies, their preservation, abolishment customs entries.

The institution of Approved Economic Operator (AEO) got its development in Customs code of EAEU. From now on each new member of external economic activity is given licenses of several types instead of one, as was stated in Customs code of Customs union, and also AEO is provided with widened spectrum of special simplified customs clearance procedures.

According to Customs code of EAEU granting the status of AEO becomes stable in giving characteristics of three types. Each characteristic distinguish a certain condition of its appropriation. Conditions of appropriation the status AEO with a license of the first type:

- 1) Exercising activity in customs affairs or warehousing by legal body for no less than 3 years, during which: there were not less than 10 customs entries per year filed by legal bodies of states-members or/and integrated value of goods transported through customs border of the union is not less than 500 thousands euros per year; there were filed not less than 1000

customs entries per year by bodies performing activity in custom affairs as a customs representative or customs carrier or/and integrated value stated by those in customs entries is not less than 500 thousands euro per year; performing warehousing for the value not less than 500 thousands euro per year by bodies, actualizing warehousing activity, including activity in customs code as owners of warehouse for temporary storage and customs warehouses;

2) Provision security for the payment of customs duties and taxes;

3) Absence of unexecuted in time customs tax payment responsibility by the date of resort to customs agency;

4) Absence of indebtedness in accordance with tax legislation of states-members;

5) Absence of imposition of administrative sanctions in states-member for administrative offence, sanctions to which are stated by legislations of states-members, during 1 year before resort to customs agency;

6) Absence of imposition of criminal sanctions to individual citizens, who are stockowners, holding more than 10% of share, establishers, main accountants or chiefs in states-member for offences, sanctions to which are stated by criminal legislations of states-members;

7) Availability of goods accounting system that meets requirements by Committee, allowing comparing data, provided to customs agencies while performing customs operations, with data on realization business transactions and allowing access (including remote) of customs agencies to that information.

Conditions of appropriation the status AEO with a license of the second type:

1) Conditions stated in points 1, 3-7;

2) Financial sustainability of legal body;

3) Possessing, economic controlling, operative management, leasing buildings, spaces and outdoor areas by AEO, predestinated for temporary warehousing. If buildings, spaces and outdoor areas are on lease, leasing contract on those buildings,

spaces and outdoor areas should be sealed for no less than 1 year by the date of submission of an application to include on the register of AEO;

4) Compliance with the requirements set up by Committee to buildings, spaces and outdoor areas, vehicles, workers, trading partners of AEO;

Conditions of appropriation the status AEO with a license of the third type:

1) Conditions of including legal body on the register of AEO, required for appropriation the status AEO with a license of the second type;

2) Availability of legal body on the register of AEO with appropriation the status AEO with a license of the first or/and the second type no less than 1 year before applying to customs agency for appropriation the status AEO with a license of the third type.

Besides the new project of Customs code of EAEU foresees availability special simplified customs clearance procedures for AEO.

Simplified customs clearance procedures for the first type:

1) Performing customs formalities prior to others;

2) Placing goods through customs procedure of customs transit, warehousing, declarant to whose is AEO, without provision security for the payment of customs duties;

3) Releasing goods before submitting declaration on goods;

4) Prior participation in pilot projects, performed by customs agencies, aimed to decrease and optimize actualizing customs formalities.

Simplified customs clearance procedures for the second type:

1) Temporary warehousing of goods in buildings, spaces and outdoor areas and other territories belonging to AEO;

2) Delivery goods to customs control zone, established in buildings (their parts), spaces or/and outdoor areas belonging to AEO;

3) Performing customs formalities and actualizing customs supervision in buildings, spaces and outdoor areas and other territories belonging to AEO, including finishing customs procedure of customs transit and releasing goods;

4) Remoted release of goods;

5) Admitting identification facilities used by AEO as identification facilities by customs agencies.

The license of the third type foresees to include array of simplified customs clearance procedures for the first and the second types.

Bodies laying a claim to be granted with the status of AEO.

According to Customs code of Customs union a declarant of goods lays a claim to be granted with the status of AEO. And now not only a declarant of goods can do that, but also bodies performing activity in customs affairs, bodies actualizing activity in warehousing.

If the statue of AEO was claimed on the territory of state-member of Customs union, providing that status, in the new code the status is admitted in the whole territory of the Union taking into account the principle of residency.

The code includes all the information on any sort of goods and its trespassing through customs control. That means that Customs Code 2017 is a document declaring procedure of customs clearance and operation of the whole customs system in general, which manages according processes in certain territorial borders.

Another significant advantage of the new Customs code of Customs union is conversion to modern information technologies, due to that disappears the need in paper declarations and therefore a set of accompanied documentation will not be necessary. Only in special occasions there will be necessity to submit customs entries in a written form. Also it minimizes physical contact of participants of external economic activity with public officials of customs

agencies. Documents that are used for declaring goods now only needed if risk management system comes into action. This system is currently operating in all customs agencies of EAEU, while specialists are working on its modernization. Technological base of customs agencies of states-members EAEU is all ready to convert to a new operation mode.

Sources of common economic rules are *jus gentium* and regulation outside of Customs union borders *per se*. Therefore, customs nomenclature is enlarged upon all aspects of trade policies, such as advantageous trading, health and environmental conditions, common agricultural and policies in fishing industry, protection of our economic interests with non-tariff tools and political measures of external relations.

Economical transformations, happening in the whole world, globalization processes, integration and activation of global economic connections forces countries to search and establish their own national rules of customs regulations. Their unification with generally accepted international norms and principles become inevitable.

In conclusion, the current development level there is a clear tendency of unification and harmonization of national customs legalization lead to significant transformations in understanding of customs regulations in general:

- 1) Customs legislation becomes more and more supranational. In the last decades customs legislation of the majority of states turned into ‘internationalized’.

Customs codes of most foreign countries are based on the same legislation norms – conditions of International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention 1973), standards of World Customs Organization and lots of various international agreements. As a result customs business in those countries has similar organization and legislation basis, though it has its own specifics conditioned by unprincipled differences in national legislations.

2) A new philosophy of customs regulation is being formed. Conception mainly oriented on customs supervision on passengers' luggage is long gone. Customs regulation aiming on implantation policing role exclusively gives way to a finance model of customs regulation. Nowadays with full confidence we can speak of a principally new approach towards customs regulation that takes into account business interests of international economic activity participants. In modern ideology of customs regulation methods of economic nature become more evident. Customs legislation incorporates more and more with economical law.

Development of customs legislation is now based not only on fiscal motives, but also on realization of how effectively it can be exploited as a tool of support and promotion of entrepreneurship.

«Economic customs law» encourages energization of economic activity in the country, providing new working spots, forming new fiscal revenue sources. Forming independent customs zones once became a basis for economic restitution of all regions and even incipience of new countries.

3) Almost all states has taken course on codification of customs legislation. System of customs law sources has a systematized act of customs legislation in its basis – the Customs code.

The Customs code as a main source of customs legislation is capable of regulating customs relations, meaning relationships emerging on grounds of trespassing goods and vehicles through customs border. To regulate customs relations means to define rights, duties and responsibilities of customs participants via juristic connections. The goal of legislator is to state in customs code legal nature of both sides of customs agencies and bureaucrats on one side and foreign trade activity participants, acting as claimants, customs agents etc. on the other.

4) Current customs regulation develops in context of customs integration – appearing and developing free-trade zones, customs unions.

5) Another important peculiarity that differentiates current modern customs legislation is combined approach to regulating customs relations. Customs law becomes a complicated section of legal code or in other words a sector of industry, regulating various aspects (spheres) of connections with society, directly or implicitly linked to subject of legal regulation – trespassing goods and vehicles through customs border. Current customs code does not only include subdivisions of customs clearance, customs control, customs payments, but also such branches of customs agencies' activity that characterize them as law-enforcement authorities: work of active research, inquiry, usage of physical force and weapons. The complicated nature of customs and legal regulation presuppose defining the status of customs bodies as elements of currency follow-up mechanism etc.

6) Customs legislation acquires more and more characteristics of tax legislation. Currently in Russian Federation each third ruble that is included into profit of the federal budget has an identity of customs payment.

Therefore, active economic development of countries, increase of external economic relations, long-term integration of Russian Federation into the global economics and markets globalization in the world inevitably leads to increasing number of goods, freight, passenger commodity circulation and quantity of vehicles trespassing customs border of EAEU. In that respect modernization and improvement of customs agencies' performance in the area of customs clearance and customs control of goods and vehicles is necessary. This is achieved by planning and continuous implementation of legislation improvements in action.

To sum up, I would like to point out that new tendencies in development of regulating external trade and customs legislation are actively researched and analyzed by scientists and skilled practitioners in its functions as on supranational level. Using results of such researches will inevitably lead to supreme possible harmonization of national customs systems, whereas national customs codes will be adapted to perception of a foreign participant

of external trade activity and will be crystal clear for a domestic enterpriser.

References

1. Federal Law No. 311-FZ of November 27, 2010 on customs regulation in the Russian Federation (with the amendments and additions of June 27, July 11, December 6, 2011)
2. Customs Code of Customs Union (Appendix to the Treaty on the Customs Code of the Customs Union Adopted by Resolution No. 17 of November 27, 2009 of the Interstate Council of the Eurasia Economic Community)
3. The Customs Code of the Eurasian Economic Union (not in force)
4. Scientific article by A.K Morozova, E.A Chikina "Improving the system of customs and tariff regulation in the EAE based on foreign experience"
5. Scientific article of Professor, Doctor of science A.Kozyrin, «New Standards of Customs Legislation»
6. The official site of the Federal Customs Service.

AUGMENTED REALITY GLASSES FOR INTERNATIONAL SERVICE BUSINESS

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Abstract

This report deals with the involvement of technical devices in the service sector which should facilitate service businesses in the international market. Innovation and modernization are one of the most stimulating factors in the growing competitiveness in industrial markets. The combination of these components with service and maintenance conceivably give companies a strategic advantage for their future development. In general the service sector is emerging³⁵⁰ - therefore adding value to the basic product is of major importance for succeeding in the business. A successful method of adding value is the implementation of technical devices in order to ease the usage and administration of the core product handling. This report will particularly focus on the implementation of augmented reality glasses and their decisive advantages and challenges they deliver for international service businesses. As an example the collaboration work between the Upper-Austrian company KVT Fastening and the University of Applied Sciences Upper-Austria will be taken in order to show a real life case with its challenges and benefits which resulted out of the company project work.

Company Description

As the internationally leading specialist for industrial

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Organisational restructuring and emerging service value chains: implications for work and employment Jörg Flecker, Pamela Meil. Published January 6, 2011

<http://journals.saaepub.com/doi/abs/10.1177/0950017010380635>

fastening technology the KVT-Fastening offers sophisticated, high-quality individual components and customer-specific solutions for applications in a variety of industries and sectors. The company belongs to the Bossard Group as a globally leading provider of intelligent solutions for industrial fastening technology.³⁵¹

Next to the broad product portfolio KVT also provides tailored and customized solutions together with their customers for a higher differentiation.

KVT has a centralized organisation besides local sales representatives where one is serving the market in each country. This structure is also used for linguistic support of the field service. The service team consists out of two members - one serves customers rather in-house via telecommunication tools while the other team member is responsible for service appointments.³⁵²

The innovation opportunities for the fastening machines of KVT are comparatively limited - therefore the need for an additional gadget arises to compete in the market.

Aim of Collaboration Work

KVT provides extensive services for their customer in their region. In order to reduce travelling time KVT will evaluate if augmented reality (video glasses) could help to support the customer even better and reduce service costs. Easy maintenance tasks should be done by the customer (video glasses) with the support of a KVT engineer based in Austria. Furthermore the technology might be used for internal training purposes.³⁵³

³⁵¹Homepage
Description KVT
Fastening

<https://www.kvt-fastening.at/en/kvt-fastening/about-us/>

³⁵²Guideline Brochure KVT Fastening
<https://www.kvt-fastening.at/media/ca512454-f33f-20f9-79ce-60edb978538a/kvt-produktfolder-4-seiter-1504b.pdf>

³⁵³Service Page

Most important the differentiating technology should be an added value to differentiate the products against competition and increase the excitement of the customers. In the finalization of the work a general concept should be prepared which can be handed over to KVT as well as to their end customer to explain the gadget and its major benefits.

Major Challenges

The following seven steps illustrate the main tasks during the collaboration work. Those steps are necessary in order to fulfill the work target and to add a value. Due to their importance the whole collaboration was based on those seven milestones which are the key-factors for a successful implementation of AR-Glasses.

1. Hard- & Software Evaluation
2. Buying-Center Identification
3. Marketing Strategy
4. Sales Arguments
5. Pricing Model
6. Identification of leads
7. Trial period - basis for future development of the concept

Evaluation of Hard- & Software

In order to find the optimal solution, it is necessary to find a Hardware that is not really dependent on any kind of software which subsequently would make our example company dependent on another software company and would at the same time decrease their competitiveness. Moreover the price-quality ration should be beneficial since the glasses should be an add-on for the customer

rather than an extra product.³⁵⁴

Concerning the choice of available AR-Glasses in the market it has to be said that the market is still not very developed and that the choice is rather very small. However, important criteria to consider before purchasing Augmented Reality Glasses for industrial purposes are battery life, resilience (as it is important that they are not sensitive to rough environment), connectivity, camera, storage possibility, audio, price, warranty & user interface which helps to use the glasses even with gloves on (as it should be customized for our industrial purposes).³⁵⁵

Buying Center Identification

After figuring out which Hard- and Software should be used as an add-on for customer satisfaction it is important to find out who should be targeted with the chosen glasses.³⁵⁶ In the case of our collaboration work example four different roles of employees appeared which would most probably be interested and involved in the decision-making process if the AR-Glasses will be taken for its individual service purposes or not. These four roles are:

Initiator

The initiator usually is the person suggesting the purchase of a new product or service. In the case of selling machines the

³⁵⁴ 10 Steps For Successfully Launching A New Product Or Service David Lavenda. Published January 24, 2013
<https://www.fastcompany.com/3004920/10-steps-successfully-launching-new-product-or-service>

³⁵⁵ The best smartglasses 2017: Snap, Vuzix, ODG, Sony & more Paul Lamkin and Sophie Charara. Published May 18, 2017
<https://www.wareable.com/headgear/the-best-smartglasses-google-glass-and-the-rest>

³⁵⁶ The Buying Center: Structure and Interaction Patterns Wesley J. Johnston and Thomas V. Bonoma. Published August 17, 2011
http://www.jstor.org/stable/1251549?seq=1#page_scan_tab_contents

initiators in the buying centre are most likely people in charge of product management or even research and development who are searching for new customized solutions. As the example company offers a huge product portfolio customers are able to choose out of this wide variety. If no suitable product can be found, the company focuses on the use of solution-driven know-how to create customer satisfaction. These tailored solutions might be a decisive factor for possible customers when suggesting the purchase of a machine for their company. Other than that, also maintenance or the engineering department might consider a purchase for example due to technical changes/reasons.³⁵⁷

Buyer

This is the role in a buying centre, usually responsible for negotiation of contract terms, with a certain degree of formal authority. Often the buyers are selecting a supplier.

The purchase of a machine can cause, that the buyer is similar to the end-user. Often in small firms without huge purchasing departments, who offer an expertise in focusing on all aspects of a purchase. Besides this the selection of a supplier can be very important for the end-user in particular, as the end-user might have certain preferences on which machines are considered as user-friendly by them.³⁵⁸

Influencer or End-user

The end-user is defined as the actual user of a product or service. This is the person who will be using or working with the goods or services at hand. When introducing a new product to a user, one must consider the user's needs and how he or she will accept it (Investopedia, LLC., 2017). Often it is evident that the

³⁵⁷B2B Marketing: How to identify members of the buying center
StratoServe. Published March 14, 2014
<http://www.stratoserve.com/2014/03/b2b-marketing-how-to-identify-members-of-the-buying-center.html>

³⁵⁸ B2B Marketing: How to identify members of the buying center
StratoServe. Published March 14, 2014
<http://www.stratoserve.com/2014/03/b2b-marketing-how-to-identify-members-of-the-buying-center.htm>

workers who are manning the fastening machines are the end-users. Although for this particular project it was pointed out that the role of the end-user seeps into an influencer role. Influencers draw specifications to a product. These people already know the ins and outs of a certain product. They can evaluate with their expertise of a new product that is being introduced to a company is really needed or not. The end-user has the ability to impact to sway the final decision. Often their service technicians are acknowledging the idea of moving forward with this particular innovative decision, regarding that they can repair units in an interactive way which saves them time and effort.³⁵⁹

Sales

Sales people are always in charge of negotiations. They help contribute to the decision if a new venture in the business side is worth going into or not. They have experience in pitfalls of investment and they can potentially see in precedence if a new product is needed or not.³⁶⁰

Decider

Deciders are responsible to make actual purchase decisions. They have enough weight within the buying team to decide if a service/product will be purchased and ultimately determines any part of or the entire buying decision. Usually the roles of deciders involve the CEO, head of production management and/or purchaser. Sometimes the CEO just plays a minor role in the decision making process. Considering the large company structure, the firm has enough financial resources (investments) to let the head of production management taking over the decision process. When it comes to agreeing on a new business venture, criteria like the

³⁵⁹ B2B Marketing: How to identify members of the buying center
StratoServe. Published March 14, 2014
<http://www.stratoserve.com/2014/03/b2b-marketing-how-to-identify-members-of-the-buying-center.html>

³⁶⁰ B2B Marketing: How to identify members of the buying center
StratoServe. Published March 14, 2014
<http://www.stratoserve.com/2014/03/b2b-marketing-how-to-identify-members-of-the-buying-center.html>

lifetime of a product and the TCO (Total cost of ownership) are influencing the decisions.³⁶¹

Marketing Strategy

For a successful implementation of the product a market strategy has to be developed in order to create a decisive basement for future decisions.³⁶² This marketing strategy is completely based on sales arguments in the case of our collaboration work.

Sales Arguments

It boils down to competition, putting the company's product out in the market spells out the fact that it will be neck and neck with other similar products. With this in mind how could a product rise above the rest?

Setting a company apart from the market nowadays could be one of the most challenging hurdles that a company could be faced with. A move that could be plausible would be spicing up what is already there. A company already has a product that works, but what could make things a little more interesting but at the same time contribute to the existing product.

Reliability, Efficiency, and Innovation rolled into one product could be the extra factor that would separate a machine from its competitors. The proponents of this research have deduced that the Augmented Reality glasses could offer these main three points to the customers.³⁶³

³⁶¹ B2B Marketing: How to identify members of the buying center StratoServe. Published March 14, 2014, Link above

³⁶² Marketing Strategies and Tactics State Government of Victoria. Published January 9, 2017 <http://www.business.vic.gov.au/marketing-sales-and-online/increasing-sales-through-marketing/marketing-mix-strategies-and-tactics>

³⁶³ You no longer 'close' the sale; you have to 'earn' it Jeffrey

Reliability

The anxiety of having to wait for 3 or 5 days just to get a machine checked up, could spell reevaluation on the customer's point of view whether or not they should continue availing of the same product. The assurance of having dependable customer service is music to any customers' ears.³⁶⁴ When something goes awry having an on-call service that would cater to their needs or concern could be key to make them stay. An improved complaint handling could also be perceived when using the Augmented Reality glasses.

Efficiency

How can a company both the supplier and customer, become more efficient in a partnership? Efficiency constitutes fast service and cost effectiveness. The less time that is lost the more money could be gained.

Downtime could be one of the main problems when a machine breaks down. Productivity is cut and profits are threatened. With the assistance of the glasses customers are sure that there will be progress made to getting the machine fixed and evaluated. The on-call service of the glasses, provided that it will be on the hours of work, will cater to answering all queries in line with the machine. Not having to line-up to get machines checked could also be seen as one of the main points that one would consider to more into this path of customer service.³⁶⁵

Gitomer. Published July, 2014

<http://connection.ebscohost.com/c/opinions/97215493/you-no-longer-close-sale-you-have-earn-it>

³⁶⁴ Pro Tips for Closing Sales

Thomas Phelps. Published

March 02, 2017

[https://www.thebalance.co](https://www.thebalance.com)

[m/tips-for-closing-sale-](https://www.thebalance.com)

[2918606](https://www.thebalance.com)

³⁶⁵ 38 Sales Efficiency Experts Reveal the #1 Way to Improve the Performance and Productivity of Your Sales Cobhan Phillipson.

Published October 17, 2016

<http://www.docurated.com/all-things-productivity/34-sales-management->

Referring to the pricing model of the study, one can infer that having the Augmented Reality glasses could potentially lead to saving cost both for KVT and the customers. It could be suggested that making use of the Augmented Reality glasses could spell out a more cost-effective way of doing business. Without having to leave the office, the technician could easily examine the machine and not bother on having to drive for hours just to see what is wrong with a machine. In this light, faster shipment of spare parts is also thought of in the process.

With all these advantages from adding an innovative extra item, it could really be said that the companies would be positioned to a more advanced spot than their competitors. The Augmented Reality glasses therefore certainly provide an added value to customers.

Innovation

It is the innovation aspect of the business that tries to convey through acquiring these Augmented Reality glasses. Customer value is generated by innovation, through solutions that meet new needs. Quicker changing technologies drives people for to have faster solutions, this is what the glasses bring as well as they are a new and trendy item which add value to the customer. Increased motivation of the workforce directly operating with machines could be caused by giving them the chance to use highly innovative gadgets. Besides this customer's perception of the company might be influenced positively, as innovation always needs people being eager to achieve better.³⁶⁶

Sales argument about future development

With having pre-recorded video instructions, one could refer to it whenever there seems to be a generic concern with one of the

experts-reveal-1-way-improve-efficiency-sales-team

³⁶⁶ The Top Sales Trends to Know About in 2017

Carolyn Betts. Published February 17, 2017

<https://blog.hubspot.com/sales/sales-trends-2017#sm.0011ymnte17ylcvjw8c1uw7ktnkyy>

machines. With this point, reduction in idle time is also something to consider. That being said efficiency is also a point to be deliberated. Additionally, with the help of mobile phone apps in the future, the ease of accessing such content would definitely be given.

Pricing strategy

Since it is important to have some possible strategies on how to implement the pricing model of the service contracts, the team came up with two different pricing model approaches in our case. Those two blueprints focus on two different aspects. The first one would be the so called "Cost-Strategy", where the focus lays on first and foremost the costs, so all expenditures are covered.

The second approach to a successful implementation is the "Long-term-efficiency-Strategy", here the most important aspect is to focus on the long term efficiency of the service contracts and the glasses. Moreover it is also an important factor to reduce costs in the long-term run.

ABC-Analysis

The ABC customer analysis helps a company to divide it in A, B and C customers, in order to see how much are they contributing to the company's turnover. This structure is based on margin contribution and sales volume of each customer. The most valuable customers in term of revenue fall into the category A, the weakest customers in term of revenue in the category C. The goal of the ABC analysis for KVT is to determine the customer's value and potential in order to see which service contract fits best to the customer. The focus should be on intensive care of A-customers to achieve more profit in the long term.³⁶⁷

A-customers are the most valuable customers. These customers bring in a lot of revenue and make up a significant

³⁶⁷ BusinessDictionary.
Published January, 2017
<http://www.businessdictionary.com/definition/ABC-analysis.html>

portion of the contribution margin. These customers have the most potential.

- Austria (Fronius)
- Bulgaria (AQ Electric, Fox Laser Advertising Ltd., Stil Metal)
- Czech Republic (Amtek Foxconn CZ)
- Poland (Belma)
- Slovenia (Intec MKD, Nissens)

B-customers: These customers are loyal customers and they spend a good amount of money on a regular basis. However, these customers will not be spending as much as they could be.

- Austria
- Hungary (potential to become A-customer)
- Romania
- Slovakia
- Bosnia & Herzegovina, Croatia, Serbia (emerging markets)

C-customers includes people who make a purchase now and then, spend money but won't contribute very much to overall sales and profit and also tend not to have much potential.

- Estonia
- Italy
- Lithuania

Summary

A project-cooperation between the company KVT-Fastening and the University of Applied Sciences Upper Austria started in March 2017. The target outcome of the project was to create an additional service for the customers of KVT-Fastening. Augmented Reality Glasses were the tools which were chosen to help KVT in order to increase their customer-service quality. With the help of AR-Glasses KVT will in future be able to deliver a new attractive item for their customers which will facilitate and help to support its customer when they have a complaint or when they require a maintenance check.

The main key-learnings of the project were based on small

failures and hiccups which happened during the project duration. One main key learning outcome was that the project-team in cooperation with the company supervisors decided to implement AR-Glasses which were simply over advertised and could not keep their promises. This led to the fact that the project-team faced a software-problem which seemed to be an unsolvable task for the remaining amount of time which was left from the project-duration.

The suggested solution in order to solve the software-problem was to replace the chosen AR-Glasses by another and far more developed type of AR-Glasses which were also already including the wished software-compatibility and the quality-standards. This decision also included a third party which had to be involved in order to fulfill the wished project-outcome requirements. An additional company had to be implemented into the project so that the initial goal of delivering AR-Glasses to the customers of KVT could be suffused.

Finally it can be said that the cooperation work between KVT-Fastening and the University of Applied Sciences Upper Austria ended with a successful outcome which was initially wished by all involved parties. The Project-Team is therefore glad to over give the final result to KVT-Fastening which will surely be able to gain customer-awareness by the given results of the project-work.

PROCESS AND ORGANIZATION DESIGN: A SAMPLE PROJECT CURRENTLY BEING APPLIED BY TURKISH CUSTOMS ADMINISTRATION

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Abstract

In this paper, business process modelling is discussed as an important tool for Customs Administrations to increase efficiency in procedures in such a globalized international trade environment and increased security threats. As a case study, the project which is currently being applied by the Turkish Customs Administration will be explained in detail and the needs for implementing such a project will be searched. The triggering reasons for Turkey to conduct such a project were detected as firstly the Customs Union with Turkey and the EU and the newly adopted Union Customs Code in EU and secondly the reorganization of Turkish Customs Administration in 2011 and the expanding mission alongside.

1- Introduction

In a world of globalization, it is obvious that the role of Customs are broadened and new tasks are added to traditional responsibilities of Customs which were shortly to secure the state's interests, to safeguard revenue collection and to facilitate legitimate trade. In addition to these roles, Customs are mostly entrusted with the administrating matters of the other government agencies such as health, environment and agriculture which definitely bring further burden on customs services.

While the private sector is poised to benefit from the technological developments for more economic interest,

governments are expected to keep abreast with the latest innovations and to facilitate the trade within their capacity. Customs authorities are under a great pressure because in such a competitive world, even a minute may cost large amounts of money. While the Customs attempt to set the legal basis for the benefit of traders by means of economic integration models, they also stride steps to follow up the technological developments and implement them in daily life customs operations in order not to fall behind the private sector.

On the other hand, while the organizations always seek for more and better supplies, information and communication technologies (ICT) and employees to make their work more efficient, the first and benchmark action to reach the effectiveness which is to revise the business processes is mostly overlooked. There are numerous benefits of revising workflows not only for private sector but also for public sector, including Customs such as preventing overlapping works, streamlining the implementation and revealing the ICT requirements.

Taking this need as a triggering point, Turkish Customs Administration has started a project in 2015 that aims to analyze the business processes of the Ministry of Customs and Trade. The project is very much ambitious in its expected results but the implementation is still continuing. As a result of the project, it is planned to have an answer to the following questions such as how many workflows the Administration has, whether they are efficient or not and whether is there any need for an organizational change to work at the best efficiency level. Moreover, there will also be other positive effects of the process workflow mapping activity such as in calculating optimum post for each department, drawing an ICT roadmap and in developing corporate performance management system.

Taking all these information into consideration, the principle objective of this paper is to present an example project currently being conducted by Turkish Customs Administration with the name “Organizational Restructuring and Human Resources

Management Service Project.”

2- Business Process and Organization Design

Daily business processes within an organization resembles to blood carrying arteries in a human body. The history of the business process modelling dates to 1920s when industrial engineer Gilbreth introduced flow process chart.³⁶⁸ If the related definitions are stated consecutively, *business process* means a “set of logically related tasks performed to achieve a defined business outcome.”³⁶⁹ The definition reveals that the tasks are the smallest processes and there is a dependence among these tasks which needs to be moderated.³⁷⁰ The term *workflow*, which takes place in the previous definition, means the movement of tasks through a business process. In addition to these concepts, an *organizational structure* means “the sum total of the ways in which an organization divides its labor into distinct tasks and then achieves coordination among them.”³⁷¹ Therefore, it is obvious that business processes and organizational structures are related in terms of their subdivision and coordination of unit work. Lastly, *business process mapping* is to detail the steps that a business takes to complete a process. They show who, what, when, where and how for these steps, and help to analyze the why.

Main purpose of this mapping activity is to gain a detailed understanding of the process, inputs, controls and outputs. Then, if there is need, the study aims to simplify, to streamline, to make it more efficient and to improve the process results. The mapping study requires time and discipline, but the consequences can be

³⁶⁸ “All About Business Process Mapping, Flowcharts and Diagrams,” *Lucidchart*, accessed May 29, 2017, <https://www.lucidchart.com/pages/business-process-mapping>.

³⁶⁹ Thomas H. Davenport and James H. Short, “The new industrial engineering: information technology and business process redesign,” *Sloan Management Review* 31:4 (1990): 11-27.

³⁷⁰ Will van der Aalst and Kees van Hee, *Workflow Management: Models, Methods, and Systems*, (MIT Press: Cambridge, 2002).

³⁷¹ Henry Mintzberg, *The Structuring of Organizations*, (London: Pearson, 1979).

significant. Over the past decades, not only private but also public sector pay attention to these concepts. When the mentioned subject is a government body, numerous administrative processes and tasks appear which need to be revised and documented.

When Customs are specifically taken into consideration, the World Customs Organization (WCO) paper mentions about external drivers on global trade landscape in the 21st century such as increased volumes and complexities of international trade, new business models and requirements and increased security threats and organized crime.³⁷² In order to be able to cope with these challenges, new strategic direction is drawn by the same paper which includes globally networked Customs, better coordinated border management, intelligence driven risk management, customs-trade partnership, enabling technology and tools, a professional knowledge based service culture, capacity building and lastly implementation of modern working methods and procedures.³⁷³ On the other hand, it can be argued that the cure for Customs cannot always be found at the outer measures and Customs can cope with the complex international trade in the globalized world firstly via revising and documenting the business processes and making a new organizational design, if necessary.

The benefits of business process mapping are numerous and show alteration for private and public sector. If the advantages for government bodies are taken into consideration, the first benefit can be stated as detecting whether is there any overlapping business process within an organization which can reduce efficiency, consume more time and cost more budget. Second advantage is to have a document at the end of the exercise showing the newcomers how their task should be done. Most personnel have a general or high level understanding of certain business process flows whereas a few people may know specific details of a couple of business processes. However, most of the personnel don't have a consistent

³⁷² “Customs in the 21st Century,” World Customs Organization (2008), p.

3.

³⁷³ “Customs in the 21st Century,” pp. 6-8.

understanding about how a specific process drives the affected parts of the organization. Therefore, mapping study will locate where one process fits in the broader picture. Thirdly, the exercise allows the organization to detect which works are being conducted manually and which of them should be carried in an automated way to increase the efficiency. Namely, as a result of business process mapping exercise, the ICT requirements will come to light automatically. Lastly, similar to technology part, the exercise will result to understand the optimum post numbers for each department for the future recruitment for a most effectively working system.

Apart from the benefits of this study, there will obviously be costs and challenges of this exercise. For example, defining complex procedures can take too much time and energy. Organizations may encounter with the resistance of employees to the newly created workflows, if any. The loss of flexibility in a conducted work as a result of step by step defined workflow can also feed the resistance of employees. Additionally, technical implementation costs can occur at the end of the exercise such as the need to obtain a software or additional work after the end of the exercise can be added to the organization's agenda.

There are suggested steps to follow while conducting the study and the first one is to identify the processes. Here, what will be mapped should be made clear. Second main step is to collect information about the processes which necessitates digging the processes and breaking down into several sub processes. The following step is to interview with the workers and stakeholders to understand their roles in the process. This stage is important in terms of uncovering the inefficiencies and miscommunication in the processes. Last step is the documentation of what has been studied and drawing of the maps.

3- Triggering Needs for Turkish Customs Administration to Conduct a Project about Business Process and Organization Design

There are two triggering reasons that forced the Turkish Customs Administration to prepare a project about business processes and organization design. The main reason is the adoption of a new customs code in the EU with which Turkey has Customs Union. As the second reason, reorganization of the Administration in 2011, the size of the Administration and distinctness of the neighboring countries and so the processes can be shown.

If the first reason is analyzed deeply, the topic should start with the start of the modernization efforts. The studies for the modernization of Turkish Customs Administration has been initiated systematically with the Customs Union (CU) established on January 1, 1996 between Turkey and the EU as a result of the relevant decision of the Association Council. The CU was the product of a long-lasting process which started with Turkey's application for membership to the European Economic Community (EEC) in 1959 and the signing of Ankara Agreement in 1963 between Turkey and the EU. Especially in economic terms, close relations with the EU was an effort for being integrated with the world market, in line with the outward oriented economic policies implemented after 1980s.

Under the established CU, Turkey is obliged to harmonize customs legislation and implementation with that of the EU. To achieve this, in addition to numerous projects funded by the national budget, Turkish Customs Administration implemented several EU funded projects in modernization process under EU-Turkey Instrument for Pre-Accession (IPA) mechanism and continues to produce new ones to achieve the harmonization needed for the effective implementation of the CU. Therefore, the mentioned "Organizational Restructuring and Human Resources Management Service Project" is also an EU funded project offered under the IPA 2012 programing year, started to be implemented in December, 2015 and will be completed in 2018.

On May 1st, 2016, new code of the EU came into force and the aim of Union Customs Code is summarized as to enhance the competitiveness of European businesses and thereby advance the main goals of the EU strategy for growth and jobs. The Code has given European countries a time limit until 2020 to move towards simplified and full-digitalized customs procedures for a “paperless Customs Administration”. That is why, nowadays the EU is working hard on several IT projects for achieving their target on time.

Change in the EU necessitates adaptation in the Turkish Customs Administration, as well. This requirement for the harmonization with the Union Customs Code has been reflected in the Terms of Reference as the overall objective of the project is “to modernize customs legislation and practice in line with EU standards for proper and effective implementation of the Union Customs Code (UCC).” The first part of the objective is not covered by the project which is the alignment of Turkey’s current customs legislation to the newly introduced Union Customs Code (UCC) because this study has already been conducted by the Ministry before the project. What is mainly aimed with the project is the second part of the objective. Namely, project aims for the restructuring of the organization to improve work-flow systems for a harmonized Ministry structure and organize the Ministry’s human resources strategy, IT strategy and performance systems accordingly in order to increase customs and trade activities’ efficiency and prepare the organization and the IT Strategy for new electronic systems and techniques required by UCC, other related legislation, different strategy and action papers published by the Government and for other needs and expectations of the Ministry.

If the second need is analyzed in detail, it will be beneficial to start with the restructuring of Turkish Undersecretariat of Customs in year 2011 as Ministry of Customs and Trade. Following this change, the Administration’s population doubled and turning into a Ministry brought several additional administrative processes. In the new organization, the Ministry has 19 Central Units, 19

Regional Directorates of Customs and Trade, 81 Provincial Directorates of Trade, 163 Customs Offices working under Regional Directorates, 30 Anti-Smuggling and Intelligence Directorates, 23 Directorates of Liquidation, 6 Directorates of Laboratories and total number of the personnel is around 16.500. Furthermore, Turkey has 8 neighboring countries range from EU countries such as Bulgaria and Greece to Middle East countries such as Syria and Iraq. Lastly, Turkey has 2949 km land border and 8333 km sea border. Therefore, it can be seen from the numbers that the service being provided by Customs is a complex one and mapping the business processes is definitely required to revise the whole administration.

4- Project Scope

“Organizational Restructuring and Human Resource Management Service Project” consists of six major tasks that cover departments of the MoCT at all levels. These tasks are as follows: including analysis and redesign of business processes together with the establishment of infrastructure for a business tracking system and a performance management system, redesigning of central and provincial organizational structures and the identification of departments’ roles and responsibilities, definition of job titles, responsibilities, competencies and training needs of human resources together with the identification of staff amounts for each position through optimum staffing analysis, development of IT Strategy with a view to align the Ministry with the UCC, increase in the capacity of customs to implement UCC that “will make procedures simpler, more efficient and better fitted to modern trade needs” through various site visits, workshops and training sessions.

The first activity in the project is “Process and Organization Design” and the purpose of this activity is to review overall existing processes and organization structure to define improvement areas and corresponding short, medium and long term projects. By this means, the Ministry’s present customs procedures, processes workflows and organizational structure are expected to be able to

be dealt with the wide range of both customs and trade functions and responsibilities effectively, efficiently and in line with the UCC. This activity has been divided into three sub-activities which are “As-Is Prognostic Analysis”, “Process Design”, “Organizational Design and Development of the Roadmap.”

Under “As-Is Prognostic Analysis” sub-activity, more than 185 meetings were held with the central and provincial units, 27 volumes of reports were prepared and more than 1250 participants answered the survey on satisfaction and complaints. Under second sub-activity “Process Design” was carried out by using the outputs of “As-Is Prognostic Analysis” and examining the best practices, reference and binding documents. At this stage, in total 1003 improved and new main and sub-processes were designed, business flowcharts were prepared and operational risks namely control points were identified and controls shown on business flowcharts and mapped. The “Organizational Design and Development of the Roadmap” step is still a continuing one. It is known that the organization wide changes requires high level commitment and that is why the last sub-activity is a kind of presentation of the results achieved in the previous two steps and a collection of the feedback from the high level decision makers on proposed organizational changes.

Second main activity of the project is “Human Resources Modelling” which is intended for the reorganization of the Ministry to enable it to be managed most effectively in line with designed process and organizational details equipped with well-defined job title structure, job definitions and well identified staffing requirements and training needs. The purpose of the activity is to provide human resources model identified and designed in compliance with the UCC to improve the Ministry’s human resources capabilities. By this means newly designed process and organizational structure will be put into practice effectively and efficiently. The activity will start after the completion of the first activity.

Third activity of the project is “Corporate IT Strategy”

under which Corporate Information Technologies Strategy will be developed in line with the MoCT's vision and strategy. This activity consists of three main sub-activities which cover the execution of prognostic analysis, development of information technology strategy and drawing up the roadmap for improving IT governance structure. The purpose of the Corporate Information Technology Strategy is to align IT strategy with the corporate strategy. Upon the understanding of corporate strategy and vision, IT strategy will be developed and a roadmap will be provided to comply with the IT strategy. By this means, IT will be aligned with business and satisfy the business needs in a structured way.

And last activity of the project is "Corporate Performance Management" under which Performance Management System, a strategic management tool used to measure the performance of corporation, will be implemented in line with the MoCT's vision and strategy. This activity consists of two main sub-activities which are covering the development of performance management structure and identification of functional & technical requirements of corporate performance management tool. The purpose of the Corporate Performance Management System is to review strategic plan and define corporate performance indicators to provide better monitoring on the performance of the Ministry, units and sub-units. By this means, the Ministry strategy execution and UCC alignment will be better performed as performance is monitored regularly in a structured way.

5- Conclusion

When such competing and complex international trade environment and the increasing security threats in the last decade are taken into consideration, the responsibilities of Customs are definitely expanded. There can be several ways for Customs to cope with these global challenges but the most interior solution has always been overlooked which is the revision of business processes.

Business process modelling has been an important tool for

private sector since 1920s but entered into public sphere recently. On the other hand, the efficiency level of government bodies are important not for the state's interest but also for the private sector as well. Therefore, especially in Customs services if the administrations start their modernization efforts by firstly defining clearly the processes and sub-processes, this will definitely facilitate legal trade. Such a study will not only improve their efficiency but also will bring to light the IT needs automatically, will help to make calculations for optimum cost and will contribute to performance management system.

The need to conduct such a study occurred in Turkish Customs Administration due to two reasons. The first one is related to Customs Union established among EU and Turkey. The EU adopted new Union Customs Code in 2015 and due to Customs Union Turkey should also harmonize its legislation and implementation with the EU. Second need is mainly the experienced reorganization in Turkish Customs Administration in 2011 and the increase in the responsibilities.

At the end of the project, all business workflows will be documented and a new organization design proposal will be presented. Furthermore, the Administration will have an enhanced corporate performance management system, a new Corporate IT strategy and an enhanced human resources management system.

Bibliography

Davenport, Thomas H and James H. Short. "The new industrial engineering: information technology and business process redesign." *Sloan Management Review* 31:4 (1990):

11-27.

Lucidchart. "All About Business Process Mapping, Flowcharts and Diagrams." Accessed May 29, 2017. <https://www.lucidchart.com/pages/business-process-mapping>.

Mintzberg, Henry. *The Structuring of Organizations*. London: Pearson, 1979.

Van der Aalst, Wil and Kees van Hee. *Workflow*

Management: Models, Methods, and Systems. MIT Press: Cambridge, 2002.

World Customs Organization, “Customs in the 21st Century.” (2008): 1-10.

IRON SILK ROAD: THE CASE OF BAKU - TBILISI - KARS NEW RAILWAY LINE FROM CUSTOMS PERSPECTIVE

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Abstract

In this paper, the ongoing Baku - Tbilisi - Kars Railway Line Project, prospective cooperation areas on mentioned Project and the positive impact of the project on Silk Road are discussed. Baku - Tbilisi - Kars Railway Line Project is chosen as a great sample for the development of the region. In this regard, the main finding of the Article is that providing the effective operation of BTK Railway should be one of the most important aims of Turkey, Azerbaijan and Georgia. In order to provide smooth, effective and efficient operation of the Baku - Tbilisi - Kars railway, the close cooperation is necessary among all related administrations of the three countries specifically on establishing a mechanism for data exchange on the basis of the "Harmonization Convention". In this regard, the joint works on signing an Agreement regarding the facilitation of border crossing procedures for international rail freight between Turkey, Azerbaijan and Georgia is regarded as significant in order to provide a basis for the close cooperation efforts in future. It will definitely contribute to deepen cooperation among the countries in the Silk Road Region. In addition to that it profoundly facilitates the trade by eliminating obstacles on international trade and the supply chain.

In a globalizing world, international trade and customs management are directly related to each other. The effective management of customs plays an important role in increasing international trade. Besides, the harmonization of frontier controls is one of the key elements of improving the international movement of goods. In order to achieve this aim, countries are willing to

cooperate and sign bilateral and multilateral agreements.

In this study, Baku - Tbilisi - Kars Railway Line, a phase of the railway line so-called Iron Silk Road, is examined from the Customs perspective. In this regard, The United Nations Economic Commission for Europe (UNECE) International Convention on the Harmonization of Frontier Controls of Goods, generally known as the “Harmonization Convention” is chosen as a framework and binding agreement. The aim of the agreement is “reducing the requirements for completing formalities as well as the number and duration of controls, in particular by national and international co-ordination of control procedures and of their methods of application”.³⁷⁴ There are 58 Contracting Parties to the Convention.³⁷⁵ The Convention contains nine annexes, which defines customs control precisely. Since this article aims to summarize the ongoing Baku

- Tbilisi - Kars (BTK) Railway Line Project and its effect on Silk Road, the 9th annex of the Convention is directly related to the scope of this article. “The annex 9, which came into force in November 2011, deals with rail transport and the facilitation of rail border crossings and controls of goods through the reduction, harmonization and co-ordination of procedures and paperwork.”³⁷⁶

After this theoretical framework, Baku - Tbilisi - Kars Railway Line Project and Silk Road are going to be explained respectively.

Within this context, the definition of Silk Road is considerably important. Originally, German Baron Ferdinand von Richthofen invented the term of “Silk Road” in the 1870s to describe the dynamic trade connections in the region. It was more than just a single route.³⁷⁷ It means trade routes from east to west through Central Asia. These trade routes originate from the Han Period in China and the Roman Empire in the West, approximately

³⁷⁴ <https://treaties.un.org/doc/Treaties/1985/10/19851015%2002-26%20AM/CH-xi-a-17.pdf>

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<https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsgno=XI-A-17&chapter=11 &clang=en#1>

³⁷⁶ <http://www.osce.org/eea/88238?download=true>, pp.23.

³⁷⁷ UNCTAD, “Investment Guide To The Silk Road”, 2014, pp. 1

200 years before Christ (BC).³⁷⁸ For over 2000 years, the historical Silk Road enabled people to transport goods, served as a channel for the spread of knowledge, ideas, and cultures between east and west.

In this region, there are three main transport corridors namely the “North Corridor”, the “South Corridor” and the “Middle Corridor”. The North Corridor uses the territory of Russian Federation, while the South Corridor passes through Iran. It is claimed that the Middle Corridor includes the China - Kazakhstan - Azerbaijan - Georgia - Turkey - Bulgaria - Europe networks and this line will be operational following the completion of the BTK Railway Project.³⁷⁹

Turkey, Azerbaijan and Georgia are both located on Caucasus region, which is historically placed on the most important trade and transit route between Asia and Europe, the ancient Silk Road. Indeed, as it was mentioned above Silk Road was not a single route and it has three different routes: North, Middle and South. Caucasus region was the host for the middle route of the Silk Road. However, this ancient trade has lost its importance with the development of new sea trade routes all around the world, which connected Asia and Europe in a cheaper way. Centuries passed and with the negative effect of the Cold War on international trade and travels, this ancient trade route was abandoned.

Nevertheless, after the collapse of the Soviet Union and the formation of new states at the beginning of 1990’s gave impetus for inter-regional and intra-regional trade and the rise of the economies of East Asia countries, especially Chinese economy supported this development, which resulted with a bloom of trade volumes and travels.³⁸⁰

The increasing world population and the needs of them require the diversification of the resources and the way to reach the

³⁷⁸ Daniel Schwarz, Schnee in Samarkand - ein Reisebericht aus 3000 Jahren (Snow on Samarkand - a travel report from 3000 years“) P. 33 ff., P. 358 ff

³⁷⁹ Segil Özyanik, “TRACECA: Restoration of Silk Road”, Journal of Caspian Affairs, Vol. I, No. 2, (Summer, 2015), pp. 1-12

³⁸⁰ “Fact Sheet on Muratli - Maradidi Border Crossing Point” dated March 2014 by the Directorate General for EU and External Relations, Ministry of Customs and Trade

resources. One of the negative effects of the overpopulation is imbalance between supply and demand. In this imbalance, the energy is one of the main issues. It creates the need for diversification of energy routes. In other words, due to the growth in energy demand, the new energy routes have emerged recently. The new energy routes have led to an increase in international trade, as well. Given this background, The Silk Road region with its rich energy resources has appeared as a powerful candidate in order to regain its historical function which gradually declined due to the speed of the sea transportation and its relative cheapness starting with the end of 15th century. In addition to that, the Silk Road is not only an energy corridor or a trade route, but it also consists of cultural and historical values which might be an advantage for international investors. However, the logistic capacity and performance of the countries are one of the main decisive factors of effective international trade. In this regard, simplification of the procedures in customs and reduction of tariff will speed up the logistics operations in the global scale.³⁸¹

Having regard to the need for improving the customs practices in an effort to contribute to trade facilitation in the Silk Road region, Turkish Customs Administration has launched Silk Road Customs Initiative among the Silk Road Customs Administrations. This initiative was introduced at the “First International Forum on the Role of Customs Administration on Facilitating and Promoting Trade among Silk Road Countries”, which was held on 25 October 2008 in Antalya, Turkey. Following, “*Strategy Paper for Silk Road Countries’ Customs Administrations to Facilitate and Simplify Border Crossings*” adopted in Baku (2009), incorporates the general principles of Project Caravanserai, which is the project of the Silk Road Initiative. Three main objectives of the Project can be summarized as follows: creating modern border crossing points, simplifying and facilitating border crossing procedures, providing secure and transparent trade. The framework of the project included regional studies, field visits,

³⁸¹ A. Zafer Acar, Zbigniew Bentyn, Batuhan Kocaoglu, “Turkey as a Regional Logistic Hub in Promotion of Reviving Ancient Silk Route Between Europe And Asia”, Journal of Management, Marketing and Logistics, Vol. 2 Issue 2, 2015, pp. 101

reporting, and consultation activities etc. which are beyond the scope of this study.

The main purpose of the initiative was to revitalize ancient Silk Road, turn it into a preferable trade route and to increase the trade and transportation volume on this route through harmonization, facilitation and acceleration of border crossing procedures among Silk Road

Countries.³⁸² Reinforcing regional transportation infrastructures and improving intra-regional logistic links are the prerequisites for the reemerging of the Silk Road.³⁸³

In order to revitalize ancient Silk Road, various efforts have been made by different countries. For instance, recently, People's Republic of China has initiated a project called "The Belt and Road Initiative". Firstly, it was launched in 2013 as "one belt, one road", it involves China underwriting billions of dollars of infrastructure investment in countries along the old Silk Road linking it with Europe.³⁸⁴ Considering the rapid development of Chinese economy and its policies on establishing systemic approach to the Silk Road region, China has emerged as a significant actor.

In this context, inclusion of Customs Administration of China in the Project Caravanserai could be regarded as substantial, when the Belt and Road Initiative of China is taken into account. In this regard, Turkey's Caravanserai Project and The Belt and Road Initiative aims the same target and integration of the both projects will eventually result better. Therefore, Turkey's active participation in China's The Belt and Road Initiative is at crucial importance.³⁸⁵

In this regard, BTK Railway Line Project is one of the great examples of regional cooperation among Silk Road Countries. In

³⁸² "Fact Sheet on Silk Road Customs Cooperation Initiative Caravanserai Project" dated March 2017 by the Directorate General for EU and External Relations, Ministry of Customs and Trade

³⁸³ Selguk Qolakoglu and Emre Tung Sakaoglu, 'Iron Silk Road': Dream Or Reality? - Euriasia Review, May 27, 2015

³⁸⁴ <http://www.economist.com/blogs/economist-explains/2017/05/economist-explains-11>

³⁸⁵ "Fact Sheet on Silk Road Customs Cooperation Initiative Caravanserai Project" dated March 2017 by the Directorate General for EU and External Relations, Ministry of Customs and Trade

this particular, detailed information and some statistical data regarding the above mentioned Project are going to be shared out in order to comprehend the significance of it.

The project of a railroad between Azerbaijan and Turkey through Georgia was first discussed in July 1993. During the inauguration of the Baku - Tbilisi - Ceyhan (BTC) pipeline on May 2005, the Presidents of Azerbaijan, of Georgia and of Turkey evoked once again the possibility of building a railroad between the three countries. 2007 was a crucial year in the implementation of this project: on February in Tbilisi, Azerbaijan, Georgia and Turkey signed a trilateral agreement to launch the construction of the railroad in 2007. It finally started in Marabda in

November 2007 for the Georgian part and in Kars in July 2008 for the Turkish part.³⁸⁶ The railroad is expected to open in late 2017. The total length of the line is 829 km, the length of the line in the Turkish part, Georgian part and Azerbaijan part are respectively 79 km, 246 km and 504 km.³⁸⁷

The project will provide the shortest available link to Europe, Middle East and Mediterranean Sea from the Central Asia, the Far East and South Asia.³⁸⁸ Upon completion, the first year expects to see one million passengers and 6.5 million tons of freight. In the medium term, it is anticipated that three million passengers and 18 million tons of freight will be transported. By 2035, a 30 million ton capacity increase is foreseen, with the participation of China and Russia. In addition, Kazakhstan has promised a 10 million ton capacity increase yearly via maritime transport from Aktau Port to Baku Port on the Caspian Sea.³⁸⁹ Once the railroad is put into exploitation, it is expected that mutual trade between Azerbaijan,

³⁸⁶ Samuel Lussac, "The Baku-Tbilisi-Kars Railroad And Its Geopolitical Implications For The South Caucasus", *Caucasian Review of International Affairs* vol. 2 (4) - Autumn 2008, p. 213

³⁸⁷ "Fact Sheet on Baku - Tbilisi - Kars Railway Line Project" dated April 2017 by Ministry of Transport, Maritime Affairs and Communications

³⁸⁸ Seçil Ozyanik, "TRACECA: Restoration of Silk Road", *Journal of Caspian Affairs*, Vol. I, No. 2, (Summer, 2015), pp. 1-12

³⁸⁹ Hasan Kanbolat, "Kars-Tiflis-Bakü Demiryolu Projesi Kafkasya'da Demir ipekyolu", *Stratejik Analiz*, Ankara, 2007, pp.63-70-83.

Georgian and Turkey will increase to ten billion dollars per year.³⁹⁰ The trade turnover between the three countries currently amounts to \$4.2 billion.³⁹¹

In this regard, the BTK project is undeniably crucial for the economic development of the region. It will also deeply strengthen the relations between the countries it passes by. “The BTK railroad is likely to have an important geopolitical impact on the South Caucasian region. Along with the East - West energy corridor, it will contribute to the further integration of the Azerbaijan - Georgia - Turkey region.”³⁹²

“The BTK railway project is providing economical, secure, shortcut access from West to East revitalizing the historical Silk Road and making the project more significant in terms of regional cooperation in transportation between the West-East Corridor. This Project will also bring more mobility for commodity and service transportation as well as labor mobility, rather than specifically cooperation in the field of oil transportation. The unity of railway connections between the countries is even shown as movements towards economic partnership and integration.”³⁹³

Bearing in mind the importance of BTK Railway Line Project, the efforts of the Ministry of Customs and Trade are going to be highlighted.

Before anything else, *“the Agreement between the Government of the Republic of Turkey and the Government of Georgia on the Facilitation of the Construction of the Planned Railway Tunnel on “Kars-Akhalkalaki” Section of the “Baku - Tbilisi - Kars” New Railroad Line in Georgia”* deserves to be mentioned firstly. The border between Turkey and Georgia on the Baku - Tbilisi - Kars Railway line project is crossed through the

³⁹⁰ Vladimir Voronov, “Baku - Tbilisi - Kars: A Railroad of Strategic Importance”, 12 November 2016, Meydan TV

³⁹¹ <https://www.azernews.az/business/109044.html>

³⁹² Samuel Lussac, “The Baku-Tbilisi-Kars Railroad And Its Geopolitical Implications For The South Caucasus”, *Caucasian Review of International Affairs* vol. 2 (4) - Autumn 2008 p. 223

³⁹³ Ayhan GÜNEY, Selim ÖZDEMİR, “Is The Regional Economic Cooperation In South Caucasus Myth Or Reality?”, *Suleyman Demirel University The Journal of Faculty of Economics and Administrative Sciences* Y.2011, Vol.16, No.1 pp.140

Tunnel which is a reason for being of this Agreement. The tunnel is about 5 km long, which means that the approximate half of the tunnel is in Turkey and the other half in the territory of Georgia. During the construction of the planned railway tunnel in Georgia, an agreement was needed to facilitate the crossing of people, transport vehicles and construction materials. Since, the Turkish contractor company has undertaken the construction activities in both Sides along the Tunnel. The Agreement was signed on 03 September 2012 in Istanbul and subsequently entered into force in both Sides. Thanks to this Agreement, special customs regime has applied to the goods and the equipment which are subject to the construction of Railway Tunnel. In other words, a new temporary customs regime was imposed, allowing passage of goods and vehicles from a de facto closed border crossing point during the construction of border tunnel.

The object and the scope of the Agreement can be summarized as follows: The Parties have agreed to facilitate the movement and crossings through Turkey - Georgia border of persons, means of transport and goods related with the construction, during the construction of the planned railway tunnel on “Kars - Akhalkalaki” section of the “Baku - Tbilisi - Kars” new railroad line in Georgia.³⁹⁴ In accordance with the Agreement, the goods which are subject to the Agreement are exempt from any duties, which means any taxes, duties, levies, charges, fees and etc., collected on importation and/or exportation. In order to reach the objectives of this Agreement, the competent authorities established a “Joint Commission” composed of their assigned representatives, who are in charge for the implementation of this Agreement.³⁹⁵ Some of the responsibilities of the Joint Commission can be summarized as follows: The Joint Commission has a responsibility to define the entry and exit procedures required for the tunnel construction. Besides, the Joint Commission has a duty to define “Border Crossing Certificate” that is to be used by the specialists, workers, and other persons who enter/exit the territory of Georgia.

During this process, relevant government agencies met regularly in order to facilitate the construction. In this regard, the

³⁹⁴ Article 2 of the mentioned Agreement

³⁹⁵ Article 7 of the mentioned Agreement

First Meeting on the Turkey-Georgia Joint Commission was held on 16 April 2013 in Tbilisi. As a result of this meeting, temporary border crossing cards, which contain the signatures and stamps of the local border authorities, photo of the card holder, personal identification information, ID card number and passport number purpose and validity of the card were developed in order to enter and exit the territory of Georgia.³⁹⁶

Following, the second meeting of the Joint Commission convened on November 07, 2013 in Kars. In this meeting, the Parties agreed to use of Cildir/Aktas BCP of Turkey in coordination with Kartsakhi BCP of Georgia, by the Construction firm in case of seasonal inconvenience in order to accelerate the pace of the construction process.³⁹⁷

By virtue of all these efforts made by the Parties, the construction activities have been initiated and almost finished by %94 on both sides of the border.

The construction of BTK Railway Line is unconditionally prerequisite for the realization of the project. However, it is not regarded as sufficient and adequate by itself without supports by effective operation once the railway is completed. In this regard, the joint efforts made by the relevant Authorities of the three countries are on the agenda. The Customs Administration of the countries have undertaken important roles in this process. The high level and expert level meetings are being organized on a regular basis. Within this period, two important meetings were held among the three countries. The first visit was the site visit to Kapikule Railway BCP of Turkey with the participation of the Customs Administration of Azerbaijan, Georgia and Turkey. The customs procedures in railway were examined at mentioned BCP. One of the important results of the meeting was deciding to organize comprehensive expert meeting with the participation of the

³⁹⁶“Agreed minutes of the First Meeting of the Turkey-Georgia Joint Commission for the Facilitation of the Construction of the Planned Railway Tunnel on the "Akhalkalaki-Kars" Section of the "Baku-Tbilisi-Kars" New Railroad Line”, signed by both parties on April, 16 2013.

³⁹⁷Agreed minutes of the Second Meeting of the Turkey- Georgia Joint Commission for the Facilitation of the Construction of the Planned Railway Tunnel on the "Akhalkalaki-Kars" Section of the "Baku-Tbilisi-Kars" New Railroad Line”, signed by both parties on November, 07 2013.

customs, railway and passport control Authorities of the Respective countries. Within this direction, the tripartite technical meeting between the relevant government agencies on the issues related to customs and border crossing procedures with regards to BTK railway line held in Baku/Azerbaijan on April 03 - 04, 2017. Customs, Railway and Passport Control Authorities from the three countries were the participant institutions.

One of the main aims of the meeting was enhancing cooperation between the respective authorities of the Parties for supporting trade facilitation, transit capacity and regional economic integration. In particular, the joint works to be done for the facilitation and simplification of border crossing procedures for international rail freight in BTK Railway line were on the agenda and discussed by the Representatives in detail. The first things that strings to mind was establishing a mechanism of data exchange between the countries. This approach is in compliance with the core set of commitments of the “Harmonization Convention”, which puts forward the exchange of information as a requirement for controls to be effective. In this regard, the Parties discussed the possibility of exchanging customs related railway data in order to accelerate customs and border crossing procedures in BTK Line. It is stated that the data that will be provided by the railway authorities will be used for the acceleration of customs procedures by the Customs Authorities. In addition to that, establishing a mechanism for sharing x-ray images and sharing the samples of seals that they use in railway procedures, designating contact points and establishing e-mail groups for the purposes of coordination on customs, railway and passport control issues were discussed and agreed by the Parties.³⁹⁸

Following this important meeting, the works continues in order to realize the High Level Ministerial Meeting on July, 18 - 19 2017 in Baku with the participation of the Ministers from the three countries. In this high level meeting, first of all the “Joint Declaration on the Enhancement of Trilateral Comprehensive Cooperative Partnership in Customs Matters among the Republic

³⁹⁸Agreed Minutes of the Technical Group Meeting between the Respective Representatives of the Republic of Azerbaijan, Georgia and the Republic of Turkey, signed by the three parties on April, 03 2017

of Azerbaijan, Georgia and the Republic of Turkey” is expected to be announced.

Secondly, the agreement on the basis of the annex 9 of the Harmonization Convention is expected to be signed, if the negotiation is finalized by the three countries which will underlie the continuing close cooperation

Conclusion:

The aim of the article is summarizing the ongoing Baku - Tbilisi - Kars (BTK) Railway Line Project, prospective cooperation areas on mentioned Project and the positive impact of the project on Silk Road. To serve this purpose, Silk Road and BTK Railway Line Project were defined in detail. After the historical perspective of Silk Road, the new Silk Road which regarded as a hope was explained by mentioning that the Silk Road region with its rich energy resources has appeared as a powerful candidate in order to regain its historical function. In addition to that, the Silk Road is not only an energy corridor or a trade route, but it also consists of cultural and historical values, which might be an advantage for international investors.

Simplification and harmonization of customs procedures along the Silk Road route, facilitating trade in the region and thus making the Silk Road a center of attraction for foreign tradesman was the main of the Silk Road Initiative that was launched by Turkey in 2008. In this regard, BTK Railway Line Project, the shortest available link to Europe, Middle East and Mediterranean Sea from the Central Asia., is one of the great examples of regional cooperation among Silk Road Countries with its high economic potential. As mentioned in detail above, upon completion, the first year expects to see one million passengers and 6.5 million tons of freight. By 2035, a 30 million ton capacity increase is foreseen, with the participation of China and Russia.

Considering this high potential, providing the effective operation of BTK Railway emerges gradually as the most important issue. In order to provide smooth, effective and efficient operation of the BTK railway, the close cooperation is necessary among all related administrations of the three countries specifically on establishing a mechanism for data exchange etc. This approach is in compliance with the core set of commitments of the “Harmonization Convention” which puts forward the exchange of

information as a requirement for controls to be effective. In this regard, the joint works on signing an Agreement regarding the facilitation of border crossing procedures for international rail freight between the three countries is regarded as significant in order to provide a basis for the close cooperation efforts in future. It will definitely contribute to deepen cooperation among the countries in the Silk Road Region.

Bibliography

Agreed minutes of the First Meeting of the Turkey-Georgia Joint Commission for the Facilitation of the Construction of the Planned Railway Tunnel on the "Akhalkalaki-Kars" Section of the "Baku-Tbilisi-Kars" New Railroad Line", signed by both parties on April, 16 2013.

Agreed minutes of the Second Meeting of the Turkey-Georgia Joint Commission for the Facilitation of the Construction of the Planned Railway Tunnel on the "Akhalkalaki-Kars" Section of the "Baku-Tbilisi-Kars" New Railroad Line", signed by both parties on November, 07 2013.

Agreed Minutes of the Technical Group Meeting between the Respective Representatives of the Republic of Azerbaijan, Georgia and the Republic of Turkey, signed by the three parties on April, 03 2017

Ayhan GUNEY, Selim OZDEMİR, "Is The Regional Economic Cooperation In South Caucasus Myth Or Reality?", Suleyman Demirel University The Journal of Faculty of Economics and Administrative Sciences Y.2011, Vol.16, No.1

"Fact Sheet on Baku - Tbilisi - Kars Railway Line Project" dated April 2017 by Ministry of Transport, Maritime Affairs and Communications

"Fact Sheet on Muratli - Maradidi Border Crossing Point" dated March 2014 by the Directorate General for EU and External Relations, Ministry of Customs and Trade

"Fact Sheet on Silk Road Customs Cooperation Initiative Caravanserai Project" dated March 2017 by the Directorate General for EU and External Relations, Ministry of Customs and Trade

Daniel Schwarz, Schnee in Samarkand - ein Reisebericht aus 3000 Jahren (Snow on Samarkand

- a travel report from 3000 years")

Hasan Kanbolat, "Kars-Tiflis-Bakü Demiryolu Projesi

Kafkasya'da Demir ipekyolu", Stratejik Analiz, Ankara, 2007, pp.63-70-83.

<http://www.economist.com/blogs/economist-explains/2017/05/economist-explains-11>

<http://www.osce.org/eea/88238?download=true>

<https://treaties.un.org/doc/Treaties/1985/10/19851015%2002-26%20AM/CH-xi-a-17.pdf>

<https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidsg no=XI-A- 17&chapter=11&clang= en#1>

<https://www.azernews.az/business/109044.html>

Samuel Lussac, "The Baku-Tbilisi-Kars Railroad And Its Geopolitical Implications For The South Caucasus", Caucasian Review of International Affairs vol. 2 (4) - Autumn 2008

Seçil Ozyanik, "TRACECA: Restoration of Silk Road", Journal of Caspian Affairs, Vol. I, No. 2, (Summer, 2015), pp. 1-12

Selçuk Çolakoglu and Emre Tunç Sakaoglu, 'Iron Silk Road': Dream Or Reality? - Euriasia Review, May 27, 2015

UNCTAD, "Investment Guide To The Silk Road", 2014,

Vladimir Voronov, "Baku - Tbilisi - Kars: A Railroad of Strategic Importance", 12 November 2016, Meydan TV

MARKET DEVELOPMENT AND ITS ASSOCIATED RISKS IN THE AGRICULTURAL MACHINERY BUSINESS

Considerations when exploiting new market potential illustrated through an Austrian agricultural machinery producer striving to enter Sweden

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Abstract

This paper examines the development of new geographical markets and respective decisions which need to be taken until being able to conduct export operations. In addition, the necessity of handling additional certain risks when leaving one's own domestic market is emphasized. It is highlighted that thorough analyses are the basis for the choice of promising markets to enter as well as to determine an appropriate entry strategy and effective risk hedging methods. By combining theoretical inputs gained through a bibliographical research with practical inputs provided by an Austrian agricultural machinery producer, who aspires to develop the Swedish market, essential steps when entering a new market are illustrated.

Introduction

Various strategic directions are available to boost a company's growth. In case a market development strategy is pursued, companies are confronted with a vast number of choices which need to be evaluated. The ultimate goal of this paper is to provide an overview of decisions and steps which have to be taken when developing a new market. It should serve as a guideline, especially for small or medium sized agricultural machinery producers and companies planning to enter Sweden. Above all these target groups benefit from the author's elaborations as the provided inputs are utilized and put into practice by investigating the Swedish market development of an Austrian agricultural

machinery producer.

The paper comprises of two parts - the clarification of relevant theoretical background and its execution from a practical perspective. At the beginning, the Ansoff Matrix is elucidated to demonstrate different strategic approaches that are available to companies. This is followed by parameters which need to be taken into consideration when selecting a market and a summary of various market entry modes. The next point describes significant risks that apply to export operations. After provision of these theoretical insights, the content is illustrated by the example of an Austrian agricultural machinery producer. As the decision was taken to tap the potential of the Swedish market, relevant data of the country is analyzed, in particular its agricultural sector. The last point describes measures which the Austrian manufacturer should adopt to reduce the additional export risks.

This examination is based on data from international journals and books focusing on export management. Moreover, an extensive web research was conducted to assess the Swedish business environment and to provide a guide for important parameters for agricultural machinery producers.

Ansoff Matrix

In 1957, Harry Igor Ansoff invented a tool which aims at providing guidance for an organization's strategic directions. Despite its historical roots, Ansoff's Matrix is still a valuable framework to apply an appropriate strategy based on the prevalent product-market settings. A combination of existing and new products as well as existing and new markets reveals different approaches to exploit possible growth potentials.³⁹⁹

	Existing Products	New Products
Existing Markets	Market Penetration	Product Development
New Markets	Market Development	Diversification

*Figure 1: Ansoff Matrix*²

³⁹⁹ Richardson, Mark, and Carl Evans. "Strategy in Action: Applying Ansoff's Matrix." *British Journal of Administrative Management* 59 (2007): 1 - 3.

Market penetration

In this case, a company strives for increasing its current market share by use of already existing products. In order to effectively pursue this strategy, existing customers need to be convinced to invest more which may be achieved by specific loyalty or reward programs. Furthermore, new customers need to be attracted by an emphasis on competitive pricing or other distinctive characteristics. An efficient use of the various marketing mix tools can help to gain a competitive advantage and to capture the competition's market share. In general, this strategy is the least risky alternative, however, once the market is fully saturated another strategy must be pursued.⁴⁰⁰

Market development

Market development involves the identification of new market segments for an already existing product range. The basic assumption is that the current market segments are already fully exploited and thus the venture to new markets is needed. Such new segments may refer to for instance tapping new countries or using new distribution channels.⁴⁰¹ It is crucial to wisely select a sustainable segment, therefore a comprehensive market research needs to be executed. Generally speaking, a market development strategy is associated with higher risk than a penetration strategy.⁴⁰²

Product development

Through this strategy, a current market segment will be stimulated by introducing new products. Companies which do have a well-established market for their current products may seek to nurture those segments with product developments.⁴⁰³ New

⁴⁰⁰ Richardson and Evans. "Strategy in Action: Applying Ansoff's Matrix." 2; V. Samantha, and Garrie Rotem. "Evaluational study of the models and theories of strategic management." *Scholedge International Journal of Business Policy & Governance* 2 (2015): 1-5

⁴⁰¹ "What is the Ansoff Matrix?" Ansoff Matrix Guide & Analysis. <http://www.ansoffmatrix.com/> (accessed June 12, 2017).

⁴⁰² Richardson and Evans. "Strategy in Action: Applying Ansoff's Matrix." 2.

⁴⁰³ "What is the Ansoff Matrix?" <http://www.ansoffmatrix.com/> (accessed

products in this sense do not necessarily solely involve innovations but can also entail product differentiations or an extension of the current product line. In contrast to strategies which are making use of the existing product range, such new product developments are associated with higher risks.⁴⁰⁴

Diversification

The riskiest of those approaches is the diversification which deals with entering new markets by developing new products, hence leaves the area of a company's core competencies.⁴⁰⁵ This quadrant is sometimes referred to as the "suicide cell", nonetheless an underlying comprehensive risk assessment and the prospect of high profits may relativize the riskiness.⁴⁰⁶

This paper focuses on developing new geographical markets by introducing existing products.

Market selection

The choice of a promising new country to enter should be based on an extensive market research. Influential factors need to be examined to identify the potential of the market.⁴⁰⁷ Analyzing a country's political, economic, social, technological, legal and environmental aspects, which is known as PESTLE analysis, is crucial to assess its attractiveness and estimate future developments.⁴⁰⁸ Moreover, a clear marketing strategy which comprises of identifying market segments, selecting target markets, and positioning oneself as well as having clear marketing objectives is mandatory.⁴⁰⁹

June 12, 2017).

⁴⁰⁴ Richardson and Evans. "Strategy in Action: Applying Ansoff's Matrix." 2.

⁴⁰⁵ Ibid.

⁴⁰⁶ V. and Rotem. "Evaluational study of the models and theories of strategic management." 2.

⁴⁰⁷ Hutt, Michael D., and Thomas W. Speh. *Business marketing management: B2B*. Mason, OH: SouthWestern Thomson, 2007.

⁴⁰⁸ "PESTLE Analysis." CIPD.

<https://www.cipd.co.uk/knowledge/strategy/organisational-development/pestle-analysis-factsheet> (accessed June 10, 2017)

⁴⁰⁹ Hutt and Speh. *Business marketing management: B2B*. 190.

Market Entry Modes

After selecting the respective market which shall be entered, selecting the right market entry mode is of great importance. Various factors need to be taken into consideration to successfully tap the potential of a new market and many different possibilities are available.⁴¹⁰ Depending on the location of the production base, a distinction between channels where the production is in the company's home country or overseas can be made.⁴¹¹

Home country production

In case a company opts for a production which is based in its home country, direct or indirect export possibilities exist. The latter indicates that the manufacturing firm does not take direct care of exporting the goods, but hires another domestic company which conducts these export activities. This indirect export can be realized for instance with the help of home country based agents or home country based merchants. In contrast, direct export refers to manufacturing companies being in direct contact with the first intermediary in the foreign market or handling the entire exporting procedures by themselves. That implies that direct export does not necessarily signify direct selling but only a direct goods transfer to the buyer, as it may also refer to a direct interaction with a foreign importer. Different practices are available to implement such a direct exporting strategy: storage facilities overseas, overseas sales branches, overseas sales subsidiaries, overseas travelling sales staff or overseas based distributors or agents.⁴¹²

Overseas production

⁴¹⁰ Ahi et al. "International Market Entry: How Do Small and Medium-Sized Enterprises Make Decisions?" *Journal of International Marketing* 25 (2017): 1-21.

⁴¹¹ Cook, Thomas., Rennie Alston, and Kelly Raia. *Mastering Import & Export Management*. New York: AMACOM Div American Mgmt Assn (2012); Albaum, Gerald, Edwin Duerr, and Alexander Josiassen. *International Marketing and Export Management*. London: Pearson United Kingdom (2016).

⁴¹² Cook, Alston and Raia. *Mastering Import & Export Management*; Albaum, Duerr and Josiassen. *International Marketing and Export Management*.

Locating the entire or part of the production overseas is another possible channel. Besides focusing solely on the manufacturing or solely on the assembly, strategic alliances are another frequently used way to enter new markets. Licensing, Franchising, Joint Venture, Management Contracting or Contract Manufacturing are examples of such alliances.⁴¹³

If the company strives for using a third party to develop a new country, the selection of the most appropriate partner is decisive. Analyzing several criteria should provide a good basis for taking a profound decision, for instance the potential partner's size, financial strength, reputation, market coverage, experience, after sales service capability, business connection, sales organization or motivation level.⁴¹⁴

Companies need to keep in mind that their own business model as well as the interests and preferences of possible importers and the ultimate customers are of great significance. A successful alignment of these different business models is a crucial step to successfully conduct export operations.⁴¹⁵

Export Risks

Introducing products into foreign markets relates to additional risks which are not applicable to national business operations. Before thoroughly examining these obstacles, a general definition of risks needs to be clarified. However, in literature various explanations among different disciplines can be observed, some even date back to year 1711.⁴¹⁶ As a universally applicable, succinct meaning of risk is non-existent,⁴¹⁷ a definition elaborated

⁴¹³ Ibid.

⁴¹⁴ Jandaghi, Gholamreza, Kamran Shahanaghi, and Hamid Reza Irani. "A Framework for Selection of Intermediary in Marketing Channel". *Broad Research in Accounting, Negotiation, and Distribution* 2 (2011): 10-21.

⁴¹⁵ Albaum, Duerr and Josiassen. *International Marketing and Export Management*; Cook, Alston and Raia. *Mastering Import & Export Management*.

⁴¹⁶ Andretta, Massimo. "Some Considerations on the Definition of Risk Based on Concepts of Systems Theory and Probability". *Risk Analysis* 34 (2014): 1184-95

⁴¹⁷ Haimes, Y.Y. *Risk Modeling, Assessment, and Management*. Hoboken, NJ: John Wiley & Sons, 2009.

by Lowrance in 1976 is most appropriate for this paper. He elucidated that "Risk is a measure of the probability and severity of adverse effects."⁴¹⁸ The denotations "probability" and "adverse effects" still can be interpreted in different ways.⁴¹⁹ Nonetheless, for the purpose of analyzing potential export barriers, risk shall be associated with the likelihood of the occurrence of unfavorable effects.⁴²⁰

Supplemental hazards companies face when engaging in export activities can be roughly classified into commercial risks, country risks, currency risks, transport risks and logistics risks.⁴²¹

Commercial risks

Despite of having the goods delivered as promised, customers may refuse to accept the shipment. This non-acceptance may be on grounds of an unannounced decrease in demand or upcoming financial troubles which may end in insolvency. Even in case importers accept the delivery, exporters are still faced with further commercial risks. Customers may delay payment and thus disrespect the agreed payment terms. A delay of payment can have severe consequences for the exporters as they may not be able to fulfill their payment obligations towards suppliers. In general, it needs to be taken into consideration that money loses value over time and therefore receiving payment as soon as possible is crucial in business. In even more fatal cases, payments are not only delayed, but not met at all. Disregarding the contractual obligations after receiving the goods can be described as credit risk for the exporter. Payments may be refused by an importer due to a shortage of money or any other reason which leads to unexpected losses for the exporter.⁴²²

⁴¹⁸Lowrance WW. *Of Acceptable Risk*. Los Altos, CA: William Kaufmann, 1976.

⁴¹⁹ Haimes, Y.Y. Risk Modeling, Assessment, and Management.

⁴²⁰Haimes, Y.Y. „On the definition of vulnerabilities in measuring risks to infrastructures ". *Risk Analysis* 26 (2006): 296-96; Haimes, Y.Y. "Modeling complex systems of with phantom system models". *Systems Engineering* 15 (2012): 333-46.

⁴²¹Cook, Alston and Raia. Mastering Import & Export Management; Albaum, Duerr and Josiassen. International Marketing and Export Management

⁴²² Ibid.

Country risks

Before opening up a new export market, extensive market research needs to be conducted in order to be able to assess the specific country-associated risks. The beforehand checking of the security and safety level of a foreign country is indispensable. Political changes or instabilities might pose a threat to the successful completion of a contract. This political risk can become an insurmountable hurdle. Furthermore, fund transfers may temporarily be impossible if capital is being frozen by government or local authorities. In addition, changed regulations by national banks or other authorities may result in a devaluation of foreign exchange contracts. Despite of comprehensively and profoundly analyzing relevant data, several circumstances are beyond the span of control of both parties. For instance, natural disasters, wars or riots cannot be anticipated but wreak havoc.⁴²³

Currency risks

As soon as companies trade foreign currencies or list assets in their balance sheets that are not in their domestic monetary unit translation risk occurs. Moreover, fluctuation of currency exchange rates which arise between conclusion and execution of a contract may have a bad impact on the exporter's financial statements. This might also involve the devaluation of a currency. Anyway, the liquidity of the company can be directly endangered through such transactions in foreign currencies.⁴²⁴

Transport and logistics risks

The Council of Logistics Management provided in year 1992 following definition of logistics: "Logistics is the process of planning, implementing and controlling the efficient, cost-effective flow and storage of raw materials, in-process inventory, finished goods and related information from point of origin to point of consumption for the purpose of conforming to customer needs."⁴²⁵

⁴²³ Ibid.

⁴²⁴ Ibid.

⁴²⁵

Blanchard, B. *Logistics Engineering and Management*. Englewood Cliffs, NJ: Prentice-Hall, 1992. 3.

During this material flow, goods face many hazards, for instance getting stolen, being damaged or probably do not arrive at all. In addition, unforeseen tariffs or checks if local rules and regulations are complied with can make international operations burdensome.⁴²⁶ In general, efficient customs clearance processes can considerably facilitate trading.⁴²⁷

All these risks can be managed in different ways which is expounded in the last section of this paper.

Practical application

As an illustration of the previously presented theoretical inputs, the following case study should emphasize the importance of a profound market research, well-conceived entry mode and risk analysis.

Background information

This case study is based on an Austrian family-owned producer of agricultural machinery. Their product range embraces machines which facilitate feeding or handling activities of small and medium sized farms. More precisely, they take care of distributing, cutting, grabbing and extracting the silage. Moreover, machines which perform feed refreshing or feed mixing tasks and gadgets which support the easy transportation of round- bales are part of their assortment. The company sells and distributes their products to many European countries and, in addition, exports to North America and Australia. To expedite the company's growth, a new geographical market with their existing product range shall be entered.

Market decision

As explained in previous sections, a tough decision is the choice of a new market. The company has already successfully entered the Finnish market and therefore pursued entering a country in its surrounding. After analyzing a vast number of parameters, the

⁴²⁶Albaum, Duerr and Josiassen. International Marketing and Export Management; Cook, Alston and Raia. Mastering Import & Export Management.

⁴²⁷Gani, A. "The Efficiency of Customs Clearance Processes Can Matter for Trade". *International Advances in Economic Research*, 22 (2015): 109-110

decision was made to put effort into developing the Swedish market. The following section provides an extract of analyzed data.

With its 450,000 km² Sweden is one of the biggest Western European countries.³¹ Its modern infrastructure³² appears to be well-developed enough to build up a sweeping logistics network. Moreover, the temperate climate provides a good basis for general field cropping.³³ In addition, the country's business environment ranking is a useful indicator as it measures the attractiveness of the business environment of 82 countries by assessing them in ten different categories and using quantitative and qualitative indicators. Sweden ranked sixth which shows that it is a comparatively easy country to do business with.³⁴ Nonetheless, besides evaluating this business ranking, concluding an extensive PESTLE analysis is essential to be able to assess the country properly. Sweden is characterized by its educated and skilled workforce, its English competencies and its willingness to engage in partnerships with internationals. Moreover, the country reaches high scores in rankings covering the freedom of press and freedom of expression and it is known for its high prioritization of human rights.³⁵ The Global Gender Gap Report 2016 shows that Sweden is among the world's leading countries regarding gender equality.³⁶

When analyzing the country's economic factors, it becomes clear that Sweden has a stable and well-developed economy. The Economist Intelligence Unit estimated a real GDP growth of 2.3% in 2017 and mentioned that "krona has weakened and will push up inflation, but the central bank will maintain its easing bias in 2017".³⁷ Furthermore, the "Foreign &

Commonwealth Office" stated that the unemployment is currently below 7% and that the country's "consolidated government debt in 2016 was comparatively low at 42.1%".⁴²⁸

For a company that aims to export agricultural machinery, it is not sufficient to only look at such general factors. The Swedish agricultural sector must be examined in detail to know if this market is appropriate for the company as they strive for serving small and medium-sized farms. Relevant indicators may be the following

⁴²⁸ GOV UK. "Overseas Business Risk - Sweden"

<https://www.gov.uk/government/publications/overseas-business-risk-sweden/overseas-business-risk-sweden> (accessed June 10, 2017).

whereas UUA expresses the utilized agricultural area and LSU is the livestock expressed in livestock units which are calculated for cattle, goats, sheep, pigs, poultry, equidae and rabbits.⁴²⁹

Table 1: Farm structure, key indicators 2010 ⁴⁰

	Sweden	Austria
Number of holdings	71,090	150,170
Total UUA (ha)	3,066,320	2,878,170
Livestock (LSU)	1,751,890	2,517,170
Average area per holding	43.1	19.2
UAA per inhabitant (ha/person)	0.33	0.34

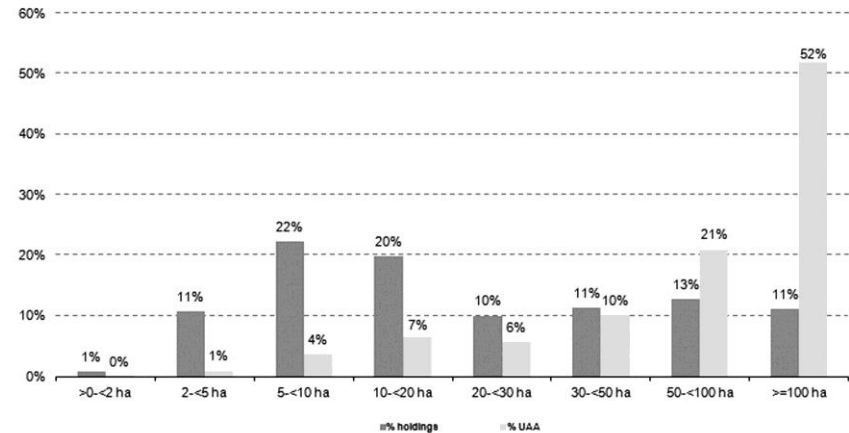


Figure 2: Number of holdings and utilised agriculture area 2010 ⁴³⁰

By assessing these statistics, it can be concluded that although Sweden has a larger area per holding compared to Austria it does

⁴²⁹ Eurostat. "Glossary:Holding with livestock.". http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Holding_with_livestock (accessed June 10, 2017)

⁴³⁰ Eurostat."Agricultural census in Sweden - Statistics Explained. http://ec.europa.eu/eurostat/statistics-explained/index.php/Agricultural_census_in_Sweden (accessed June 10, 2017)

have many holdings in the company's target group as their focus is on small and medium sized farms.

Swedish Market entry mode

To better identify the most suitable market entry mode, the determination of important criteria is necessary. The company argued that investing only a little amount of money to develop the market and thus lowering the risk is essential. In addition, maintaining a close relation to their ultimate customers, the farmers, as well as making use of local market knowledge and expertise are further parameters. Moreover, the market shall be quickly developed with the aim of harvesting long term relationships with potential business partners and ultimate customers.

Despite of considering the company's criteria, the interests and preferences of the ultimate customer are of tremendous importance. This information can be gained by for instance surveying current loyal customers which revealed that a farmer's main areas of interest is obtaining high quality products for a reasonable price, making use of supplier's expertise and being able to provide feedback. Furthermore, fast services, repairs and claim handling as well as direct support by locals are vital factors.

When taking the company's and the final customers' inclinations into consideration, above all franchising seems to be a proper entry mode. Franchising is defined by Curran and Stanworth (1983) as "A business form essentially consisting of an organization (the franchisor) with a market-tested business package centered on a product or service, entering into a continuing contractual relationship with franchisees, typically self-financed and independently owner-managed small firms, operating under the franchisor's trade name to produce and/or market goods or services according to a format specified by the franchisor."⁴³¹ The main motives of franchisers are to make use of reliable products and an existing brand and company image and thereby lower potential risks which is perfectly compatible with the interests of the

⁴³¹ Curran, J. and J. Stanworth. "Franchising in the modern economy - towards a theoretical understanding". *International Small Business Journal* 2 (1983): 11.

Austrian agricultural machinery manufacturer.⁴³²

Risks

To overcome the risk of a delay or default in payment, a careful assessment of the importer's creditworthiness by obtaining credit ratings from financial institutions or evaluations from other trustworthy sources is crucial. Moreover, this risk can be hedged by requiring a bank guarantee, which assures the payment by means of a financial institution. In general, requesting an advanced payment is an advantageous way to contain commercial risks and, in addition, country and currency risks. The latter requires careful attention of the Austrian producer as their home currency euros varies to their importer's currency which is the Swedish kronor. Consulting with financial experts is indispensable to avoid any losses. Fixing the euro as contractual currency is one option which lowers the risk level as no translation risk occurs. In addition to that, agreeing on a stable third, independent currency after thorough analyses could be beneficial either. Taking out a loan in the same amount and currency of the concluded contract supports to prevent the effect of unfavorable currency fluctuations. Furthermore, it could be agreed to fix the exchange rate at the date of the contract. In any case, the export needs to have a very strong position to be able to negotiate such a deal as he evades being volatile to exchange rate fluctuations. The conclusion of a private insurance as well as practicing factoring also diminishes several risks, however, they are not considered as an alternative for the Austrian manufacturer due to their 44 expensiveness.

The reduction of transport and logistics risks is practiced through the agreement on Incoterms. These internationally recognized, standardized rules were issued by the International Chamber of Commerce (ICC) and facilitate international trade as they interpret the most common commercial terms.⁴³³ They stipulate the responsibilities of the signatories for bearing transportation costs, risks and undertaking customs formalities in

⁴³² Lewandowska, Lucyna. "Franchising As A Way Of Creating Entrepreneurship And Innovation". *Comparative Economic Research* 17 (2014): 163-181

⁴³³ "Incoterms® rules." ICC - International Chamber of Commerce. <https://iccwbo.org/resources-for-business/incoterms-rules/> (accessed June 10, 2017).

international shipping operations and thus help to avoid legal uncertainty.⁴³⁴ To make sure that the most appropriate Incoterm is used, it is suggested that the Austrian company consults with an expert to fully understand their financial responsibilities and the associated risks outlined in Incoterms.

Conclusion

This paper concludes that irrespective of the industry or the concrete country, developing a new market is associated with many decisions and steps that need to be taken. Despite of deciding which market to enter, the choice of an appropriate market entry mode is crucial. Both decisions shall be accompanied by an extensive research to take a profound decision. As the example of the Austrian agricultural machinery producer shows, the interests and preferences of all parties involved in the export operation must be analyzed and their business models aligned to increase the chance of succeeding. Moreover, exporting involves several risks which require the application of risk hedging methods to avoid vulnerability. These investigations reveal only some essential considerations when entering a new geographical market and should serve as a guideline. There may be further aspects which require deep examination, especially in case of huge cultural and legal differences between the exporting and importing country.

⁴³⁴ Hien, Nicolas, Gilbert Laporte, and Jacques Roy. "Business Environment Factors, Incoterms Selection and Export Performance." *Operations & Supply Chain Management* 2 (2009): 63-78