

Legal Bases of International Customs Cooperation of Ukraine: A General Overview of the Signed International Agreements in the Customs Area

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Participation in international cooperation on state customs is an essential component of Ukraine's foreign policy. Active reform of Ukraine's customs system and changes in customs law in the context of European integration processes need a current analysis of our country's customs authorities' engagement in international cooperation. As a result, the article examines the main regulations governing customs cooperation between Ukraine and the EU, as well as Ukraine's participation in major international organisations, which served as the primary impetus for its accession to international agreements on the simplification and harmonisation of national customs procedures. It is concluded that there is now a detailed regulatory framework in place that allows Ukraine's customs authorities to establish and maintain international customs relations, both with foreign customs authorities and with international organisations whose statutory activities include customs cooperation.

Keywords: international customs law, customs cooperation between Ukraine and the EU, international conventions, international organisations, international treaties, international agreements

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Introduction

The formation and development of Ukraine's international customs cooperation took place simultaneously with the formation and development of its statehood and directly depended on the emergence of its own customs system.

Cooperation between Ukraine and the EU and its Member States is carried out within the framework of the Association Agreement (Law of Ukraine No. 40, 2014), including the Deep and Comprehensive Free Trade Area (DCFTA). The political and economic provisions of the Association Agreement were signed on 21 March 2014 and 27 June 2014,

respectively. The DCFTA (Van Der Loo, 2016) between Ukraine and the European Union has been provisionally applied since 1 January 2016.

The Association Agreement establishes a Subcommittee on Customs Cooperation, which will serve as a platform for intensifying the dialogue on customs matters. This Subcommittee is responsible for overseeing the approximation of laws and procedures in accordance with DCFTA commitments. In addition, the Association Agenda includes agreed common priorities for the implementation of the Association Agreement. Customs cooperation with the EU is also based on the Framework Strategy for Customs Cooperation, adopted in May 2012.¹

The Framework Strategy sets out three inter-related priorities, namely: safe and uninterrupted trade routes, in particular the achievement of maximum simplification of trade procedures for the reliability of doing business with customs, which acts as a link in the supply chain; risk management and the fight against fraud, in particular the elimination of illicit trade, the development of sound risk management and the prior exchange of customs information; investing in the modernisation of the customs service, in particular by achieving close approximation of customs legislation and procedures in line with DCFTA reforms.

Within the framework of the EU Customs 2020 Programme, working groups have been set up to monitor the implementation of specific tasks and measures envisaged by the Framework Strategy. Medium-term customs priorities for Ukraine include: acceding to the Convention on the Procedure of General Transit and the Convention on the Simplification of Formalities in Trade in Goods, introducing a system of authorised economic operators (AEOs) and launching automatic prior exchange of customs information.

¹ Information on international instant cooperation with the EU, with international organisations, data on the practical implementation of this cooperation agreement. Retrieved from: <http://sfs.gov.ua/diyalnist-/mijnarodne-/spivrobotnistvo-mij-ukrainoyu-ta-evrop/spivrobotnistvo-z-evropeyskim-soyuzo/spivrobotnistvo-z-misieyu-evropeysko>

From 1 January 2019, the provisions of the Regional Convention on Pan-Euro-Mediterranean Preferential Rules of Origin are to be applied in bilateral trade between Ukraine and the European Union. The Pan-Euro-Med Convention is an instrument that establishes identical rules of origin applicable to free trade agreements between its contracting parties (Letter of the Ministry of Foreign Affairs, 2018).

The use of the Pan-Euro-Med will increase export opportunities for Ukrainian producers, in particular by reducing customs duties on exports to products of the parties to this Convention, made from raw materials or components imported from other countries that are parties to the Pan-Euro-Med.

International customs cooperation with the members of the international community of Ukraine is carried out on the basis of generally accepted principles and norms of international law. The development of international cooperation in the field of customs in Ukraine was attributed to the main tasks of the customs authorities of Ukraine (of regional customs and customs), which are subordinated to the specially authorised central executive body in the field of customs – the State Customs Service of Ukraine (SCSU).

During its existence, Ukraine has achieved significant results in the field of international cooperation in customs matters, which was carried out on a bilateral and multilateral basis in contractual and institutional terms (World Customs Organization, Council of Heads of Customs Services).² At the bilateral level, Ukraine has a fairly broad legal framework (about 50 agreements), formed by a number of intergovernmental and interdepartmental agreements and protocols on customs matters (for example, the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Austria on administrative assistance and cooperation cases (Resolution, 2001), the Protocol with the Customs Department of the Republic of Moldova on coordination of the form and details of information transmitted be-

² Retrieved from: <https://customs.gov.ua/mizhnarodna-spivprazia>

tween the State Customs Service of Ukraine and the Customs Department of the Republic of Moldova (Act No. 498/076, 2004)).

Ukraine also actively cooperates with Hungary. The SCSU's efforts are aimed at strengthening bilateral cooperation in law enforcement and the fight against smuggling. The result of the LCA is the signing of an agreement between the government of Ukraine and the government of Hungary on mutual assistance between customs administrations, which creates opportunities for the exchange of information on verification of legality of foreign operations and detection of violations of customs legislation (Sydor, Marynychak, Zelin-ska, 2021).

Literature review

Issues related to Ukraine's international cooperation in the customs sphere are becoming relevant in different periods of the country's customs policy. They were primarily related to Ukraine's integration into the international environment, accession to international customs conventions or international organisations (World Trade Organization, World Customs Organization, etc.). The implementation of the provisions of the Association Agreement between Ukraine and the EU, in particular those regulated by Chapter 4 "Trade and Trade-Related Issues" and Chapter 5 "Customs Issues and Trade Facilitation", is a priority at the current stage of internationalisation of customs policy.

Various aspects of customs policy, customs regulation, and customs law are studied in detail in scientific publications of domestic scientists. Thus, the system of customs regulation is considered in the works of Babyuk (2021) and Kostyshyn (2020), customs regulation of foreign economic activity is the subject of scientific research by Kovalev and Garmash (2021). Denisenko (2020) and Voichenko (2021) study international legal standards. Godyak, Ilyushik, and Pavlovich-Seneta (2019) study the formation and principles of customs law (2019). Customs policy in the con-

text of globalisation is covered by Kolodiy (2021) and economic aspects of customs policy by Egorov (2007). However, at the present stage, the analysis of priorities and directions of approximation of Ukraine's customs policy to the world's needs additional attention, which is due to the intensification of globalisation and integration processes.

Methods

The research is based on a set of normative legal and other acts regulating customs cooperation between Ukraine and the EU. These include international customs legislation developed under the auspices of the WTO (e.g., the General Agreement on Tariffs and Trade), the World Customs Organization (e.g., the Kyoto Convention), the United Nations, and international multilateral treaties between Ukraine and the EU regulating customs cooperation (for example, the Agreement on Cooperation and Mutual Assistance in Customs Affairs), joint action programmes, 'road maps' and other documents. In addition, what should be noted are the founding acts of the EU, regulations and other acts of EU institutions, including the conclusion of the EU Council, the European Commission, the EU strategy for Ukraine and prospects for the development of the Customs Union of Ukraine, as well as treaties.

Research results and their evaluation

Ukraine's accession to international agreements in the field of international customs cooperation intensified with the accession to the WTO (Act No. 250-VI). This became possible after our state acceded to the Convention on the Establishment of the Customs Cooperation Council of 15 December 1950 (further referred to as the Convention on the Establishment of the 1950 RMS).

Carrying out international customs cooperation within the WTO as well as within the UN Economic Commission for Europe (internation-

al organisations), under the auspices of which the development and adoption of most international agreements on customs issues takes place, Ukraine has become a party to international customs conventions.

Cargo transportation system simplifying the registration procedures for crossing borders

One of the first international conventions on customs issues to which Ukraine acceded, was the Customs Convention on the International Carriage of Goods by Road with the Use of the Book of International Road Transport of 14 November 1975.

The TIR Convention has 66 member states and since its entry into force has repealed and replaced in the relations between the contracting parties a similar but regional (European) TIR Convention of 1959. Ukraine has been a party to this convention since July 15 July 1994 (Act No. 117/94-VR). The 1975 TIR Convention is an international treaty open to accession, consisting of 7 chapters containing 64 articles and 9 annexes.

This Convention remains one of the most effective international transport conventions and in fact the only global customs transit system. The Convention deals with the carriage of goods without their intermediate transshipment in road vehicles, warehouses or containers, crossing one or more borders from the customs office of the departure of one of the contracting parties to the Convention to the customs office of destination of the other contracting party to the Convention, provided that a certain part of the TIR operation, between its beginning and end, is carried out by road. Goods transported in accordance with the TIR procedure shall be exempt from payment or deposit of import or export duties and taxes at intermediate customs offices.

Goods carried in accordance with the TIR procedure in sealed road vehicles, sealed warehouses or sealed containers are generally exempt from customs clearance at intermediate customs offices. However, in order to prevent abuse, the customs authorities may, in exceptional cases and,

in particular, in the event of suspected violations, carry out cargo inspections at these customs offices. Each contracting party to the Convention shall designate guaranteeing associations, which shall have the right to issue, directly or through intermediary associations which are their correspondents, TIR Carnets and to provide guarantees.

Such guaranteeing association undertakes to pay the appropriate import or export duties and taxes, as well as any interest in arrears which may be due in accordance with the customs laws and regulations of the country in which the infringement is detected in connection with the TIR operation.

Development of cooperation between customs administrations for counteracting violations of customs legislation

In order to develop Ukraine's international cooperation in the field of customs and increase the level of effectiveness in combating violations of customs legislation, on 23 May 2000 our country acceded (Act No. 699/2000) to the International Convention on Mutual Administrative Assistance in Preventing, Investigating, and Ending Violations of Customs Law of 9 June 1977 (Nairobi Convention).

The Nairobi Convention entered into force on 21 May 1980 and, as of 1 July 2006, had 50 participating states. Any state which is a member of the ICC and any state which is a member of the United Nations or its specialised agencies may become a contracting party to this Convention.

The Nairobi Convention consists of the main text – a preamble and 23 articles, as well as 11 annexes, and aims to develop cooperation between customs administrations in combating violations of customs legislation.

In this regard, the Preamble to the Convention states that violations of customs legislation pose a threat to the economic, social, and fiscal interests of states and the legitimate interests of trade. According to Art. 1 of the Convention, the provisions of which deal with the definition of its ba-

sic terms, 'violation of customs legislation' should be understood as any violation or attempted violation of customs legislation.

In particular, 'customs legislation' should mean all constituent and regulatory provisions applied or controlled by customs administrations in connection with the import, export or transit of goods.

In addition to these terms, this article also defines the following terms: 'customs fraud', 'smuggling', 'import and export duties and taxes', etc.

Any annex or annexes to the Nairobi Convention adopted by a contracting party to the Convention shall be deemed to be an integral part thereof. In addition, as in other multilateral treaties in the field of international customs relations, each annex to the Convention is considered a separate Convention. Therefore, in accordance with the provisions of the Nairobi Convention, it is mandatory to adopt at least one of its annexes.

The contracting parties which have accepted one or more annexes to this Convention agree that their customs administrations shall provide mutual assistance for the purpose of preventing, investigating, and terminating violations of customs legislation.

The Customs Administration of a contracting party may request mutual assistance for any investigation or in connection with judicial or administrative proceedings conducted by that contracting party. If such consideration is not carried out directly by the customs administration, it may request mutual assistance only within its competence in this consideration. Accordingly, if the examination is carried out in the state of the requested administration, the latter shall render assistance on request within the limits of its competence in that examination.

Mutual assistance shall not extend to requests for the arrest of persons or the return of duties, taxes, charges, levies or any other funds to the other contracting party. If a contracting party considers that the provision of assistance on request may jeopardise its sovereignty, security, and other important national interests or may prejudice the legitimate commercial interests of any enterprise, public or private, it may refuse or provide assis-

tance. depending on the fulfillment of certain conditions or requirements.

If the Customs Administration of a contracting party makes a request for assistance which it would not be able to fulfil in the event of such a request from the other contracting party, it shall draw attention to this fact in its request. Such a request shall be executed by the decision of the requested contracting party. All costs of experts and witnesses under the Nairobi Convention shall be borne by the requesting contracting party. The provisions of this Convention shall not prevent the contracting parties from providing more mutual assistance or from committing themselves to providing such assistance in the future.

Temporary importation of vehicles under the simplified procedure

Another international customs convention to which Ukraine has acceded is the Convention on Temporary Admission (Act No. 995/472). Accession to the text of the convention and all its annexes took place on March 24, 2004. This Convention entered into force on 27 November 1993 and, as of 1 July 2006, had 50 states parties. In addition to the preamble and 34 articles of the main text, the Istanbul Convention also contains 13 annexes, which form an integral part of it. Subject to accession to the text of the Convention and all its annexes, it repeals and replaces, in whole or in part, the provisions of fifteen international agreements relating to the temporary admission procedure. According to the provisions of the Convention, 'temporary import' should be understood as a customs regime that allows the admission into the customs territory of certain goods (including vehicles), conditionally exempt from import duties and taxes, without prohibitions or economic restrictions on imports; such goods (including vehicles) must be imported for the specified purpose and intended for further export within the prescribed period and are not subject to change, except for the normal reduction of their value (depreciation) due to their use. Temporary admis-

Table 1. Important international conventions in the customs area signed by Ukraine

No.	The name of the contract	Date of signing, approval, accession	Date of entry into force for Ukraine	Validity	Notes
1	Customs Convention on Containers, 1982.	Accession of Ukraine in accordance with the Decree of the President of Ukraine of July 4, 2002 No. 616/2002 on the Accession of Ukraine to the International Convention on the Harmonization of Frontier Controls of Goods	12 December 2003	If the number of contracting parties becomes less than five during any 12-month period, the Convention shall cease to have effect after the end of such twelve-month period.	The Convention is concluded under the auspices of the UNECE, and administered by the WTO.
2	International Convention on the Harmonized Commodity Description and Coding System, 1986.	Accession of Ukraine in accordance with the Decree of the President of Ukraine of 17 May, 2002 No. 466	1 January 2004	indefinite validity period	The Convention was concluded under the auspices of the WTO; administered by the WTO.
3	Agreement on cooperation and mutual assistance in customs matters	Date of signing: April 15, 1994. Ratified in accordance with the Law of Ukraine of 15 December 1999 No. 1301-XIV on Ratification of the Agreement on Cooperation and Mutual Assistance in Customs Matters	It entered into force for Ukraine on 31 January 2000	The agreement is concluded for five years with automatic extension for the next five years	International agreement concluded within the CIS.

Source: <https://customs.gov.ua/mizhnarodna-spivprazia>

sion should be based on a temporary admission document – an international customs document, which is accepted as a customs declaration and allows the identification of goods (including vehicles) and contains a valid international guarantee to cover import duties and taxes.

Control of the international guarantee system is exercised by the International Chamber of Commerce, which, in turn, may have the power to confirm the necessary guarantees and issue the above carnets to the national chambers of commerce.

Due to this, the temporary export of the main categories of goods not intended for sale in the country of temporary importation in international trade can be carried out without duty. An Administrative Committee is hereby established in accordance with the provisions of the Istanbul Convention, with a view to its application and to the consideration of measures designed to ensure its uniform interpretation and application, as well as any proposed amendments thereto.

The list of other main multilateral international agreements of Ukraine on cooperation in the customs area is given in Table 1.

In general, international agreements of Ukraine, concluded in the manner prescribed by law, play an important role in the legal regulation of its international customs cooperation.

Ukraine is taking quite active and targeted measures to bring national customs law in line with international legal standards by entering into international conventions governing customs activities, concluding international legal agreements that define the basic and most general provisions of customs law regulation, information exchange and implementation of joint measures to implement the customs policy of states. In addition, given that today Ukraine is a party to a large number of international agreements and treaties, it primarily encourages the legislature and the executive to reform the customs system, introduce the latest forms and methods of legal activity.

According to the Customs Code of Ukraine, the state participates in international cooperation in customs matters. In customs affairs, Ukraine adheres to internationally recognised systems of classification and coding of goods, customs regimes, customs statistics, other generally accepted norms and standards in world customs relations, as well as ensures the implementation of its international agreements on customs concluded in accordance with law (Kormych, 2018).

The most developed and promising area of Ukraine's cooperation with the EU is trade. Today, Ukraine has positive dynamics of bilateral trade with the European Union. Gradually, the dynamics of this cooperation is gaining momentum, so it is expected that the EU together with the new members of the European Union will soon become the largest trading partners of our country. Cooperation in this area is facilitated by the fact that Ukraine has become a full member of the World Trade Organization, an international organisation whose goal is to develop a system of legal norms of international trade and monitor compliance (Manzhar, Perkumienė, Beriozovas, 2021).

The main goals of the WTO are to ensure the long-term and stable functioning of the system of international trade relations, liberalisation of international trade, gradual abolition of customs and trade restrictions, ensuring transparency of trade procedures. The organisation formulates international rules that member countries must abide by when conducting trade relations, as well as provides the conditions for multilateral negotiations aimed at global trade liberalisation. In order to implement the European integration strategy, Ukraine must ensure high rates of economic growth.

Only under such conditions will its economy be able to move towards the harmonisation of national economic indicators with the corresponding indicators of the European Union's. Ukraine's accession to the WTO has opened up prospects for the development of the national economy.

It is worth noting the close cooperation of our state with its neighbour – the Republic of Poland. A number of agreements on the exchange of certain information have already been signed be-

tween the State Customs Service of Ukraine and the Customs Service of the Republic of Poland. In order to expand cooperation between the customs authorities of both states, in particular between adjacent border customs authorities, recognising the need to increase the effectiveness of customs control of goods moving across the Ukrainian-Polish state border, it is necessary to improve international law. Ukraine supports joint border and customs control on the Ukrainian-Polish border, arguing that Ukraine and Poland have already agreed on appropriate actions.³

Another outstanding representative of proper international cooperation is Hungary. The customs agencies of Ukraine and Hungary work closely together in many areas. The agreements reached at the last meetings were a continuation of the agreements reached during the visit to Budapest in July 2011.⁴ In particular, the documents signed today provide for the operation of an early warning system for emergencies on the Ukrainian-Hungarian border. The algorithm of information stages has been determined: from the senior change at the checkpoint to the heads of customs services of Ukraine and Hungary. It also determines the optimal number of vehicles that the parties agree to accept for a certain period. This will help prevent queues and increase the turnover and volume of transportation of foreign economic goods through checkpoints on the Ukrainian-Hungarian border. In the future, Ukrainian and Hungarian customs agencies will cooperate in the field of training and research. Areas and opportunities to improve cooperation with the Hungarian customs authorities in the field of combating customs offences and to define formats for the exchange of informa-

³ The Ministry of Finance of Ukraine. *Ukraine and Poland resume active cooperation at customs border to combat smuggling*. Retrieved from: <https://www.kmu.gov.ua/en/news/minfin-ukrayina-i-polshcha-vidnovlyuyut-aktivne-spivrobitnictvo-na-mitnomu-kordoni-zadlya-protidiiy-kontrabandi>

⁴ *Ukraine, Hungary agree to continue exchange of information on goods and transport vehicles crossing customs border*. Retrieved from: <http://www.huskroua-cbc.net/en/large-scale-projects>.

tion to increase effective cooperation, in particular the exchange of prior information, are important. The value of crimes detected in cooperation with Hungarian counterparts is already one of the best in the customs system. Of particular interest to the Ukrainian customs authorities is the establishment of operational contact with representatives of the Hungarian customs authorities on the exchange of information on significant seizures of narcotic drugs, psychotropic substances and precursors, as well as on excisable goods, including tobacco products.

Hungary is interested in further deepening relations between the European Union and Ukraine, as Ukraine is Hungary's largest neighbour and at the same time an economic partner of particular importance. The main purpose of such a cooperation is to maintain a favourable atmosphere that characterises bilateral cooperation, and the states are interested in further developing multifaceted cooperation.

During the presentation in Brussels, the State Customs Service of Ukraine announced its intentions to create a multifunctional, competitive, effectively managed customs service, equated to the most modern models of customs in the world. The transformation of customs is based on the concept of customs legislation harmonised with the legislation of the European Community. This approach during the transition of Ukraine to the open market economy ensures the application in customs practice of concepts and rules adopted in the global customs environment, and will promote the interest of the European Commission in practical assistance to the Ukrainian customs service in its modernisation.

Ukraine's aspiration to join the European Union is providing an extra significant spur to socio-economic developments, in the implementation of which the Customs Service of Ukraine and its international cooperation in the sphere of customs play an essential role. Ukraine's European option, made during the early stages of laying the groundwork for its foreign policy, was a logical result of the country's independence. It represents Ukraine's essential interests, crystallised from the

Ukrainian people's whole past history, mindset, and profound democratic traditions, and is founded on the reasonable aspiration of Ukrainian citizens to perceive their state as an integral part of a united Europe.

Conclusion

Cooperation in the fight against smuggling and violations of customs laws is one of the primary areas of bilateral cooperation. Cooperation on these issues is accomplished primarily by sending inquiries from Ukraine's customs authorities to the customs services of other countries in order to obtain the necessary information or assistance in investigating cases of violation of customs rules, or by informing these services about possible offenses in the respective states. The European Community recognises the impact of Ukraine's customs policy on the development of trade and economic processes in the European Union. This element influences the European Union's objective interest in customs cooperation with Ukraine.

Today, Ukraine supports its intentions to create a multifunctional, competitive, efficient customs service, equated to the most modern models of customs in the world. The transformation of customs is based on the concept of customs legislation harmonised with the legislation of the European Union. This approach will ensure the implementation in the customs practice of Ukraine of the concepts and rules adopted by the world customs community, and will be an impetus for the European Union to provide practical assistance to the customs authorities of Ukraine in their modernisation.

Further development of Ukraine's customs service in the context of global community transformations will be based on a significant increase in the volume of goods moving across the border as a result of trade globalisation, widespread adoption of computer information technology, the growing role of customs as a tool for regulating trade and economic relations, as well as the need for new approaches to customs. Customs authori-

ties' work is focused on the goal of supporting the growth of international commerce and establishing favourable circumstances for foreign economic activity. The interaction of customs services has

a long history; since our country's independence there has been an active process of signing appropriate agreements, many of which need to be updated and altered to today.

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