

***ADAPTATION OF NATIONAL
LEGISLATION IN THE FIELD OF DUTY
FREE SHOPS ACTIVITY TO NORMS OF
EUROPEAN UNION***

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Abstract

Purpose of this paper. Find the appropriate ways for adapting national legislation on Duty Free Shops activity to European Union norms. Methodology of research. Such methods as analysis and synthesis, legal analysis and elements of content analysis, comparative analysis are used. There are three main ways of development of the adaptation

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process: to leave opened the issue of adaptation of the national legislation regulating on the Duty Free Shops activities; to adapt the national Customs legislation to the legal system of one or several of the most relevant Ukrainian realities of the European Union member states; the refusal of the Duty Free Shops. Possible changes of the national customs legislation on Duty Free Trade suggested. The findings can be used by the relevant authorities to improve Duty Free Trade in Ukraine.

Keywords: adaptation of national legislation, duty free trade, duty free shops, European Union, customs legislation.

INTRODUCTION

Scientific, Practical Problems.

Europe-oriented vector of development of Ukraine includes such priority component as adaptation of Ukrainian legislation to the norms and standards of European Union. Ukraine has finally recognized the need for its further movement towards the European community at the late 90's of XX century; and in this context, also identified Customs regulation and business activity as a priority socio-economic development area.³⁰⁵ Activity of Duty Free Shops is at the intersection of fields are mentioned above, and this is the reason to suppose that the

³⁰⁵ On the Concept of Adaptation of Ukrainian Legislation to the Legislation of the European Union. Decree of the Cabinet of Ministers of Ukraine, dated August 16, 1999, No. 1496. Retrieved from: <https://zakon.rada.gov.ua/laws/show/1496-99-%D0%BF>

adaptation of national legislation in the field of Duty Free Shops activity to norms of European Union is one of the most urgent directions of integration of Ukraine into European space. We confirm the statement above in the Law of Ukraine on National program of adaptation of Ukrainian legislation to the legislation of the European Union No. 1629 of March 18 2004; it proclaims that Customs Law is one of the priority fields of adaptation of national legislation to norms of European Union.³⁰⁶

The issues of functioning of the field of Duty Free Trade are reflected in researches of economic, law, governmental characters. For instance S.A. Danileyan,³⁰⁷ V.V. Karpova, O.V. Kostyana³⁰⁸ research Duty Free Trade at the border between Tax and Customs fields. Research by Yu. S. Remyga, V.E. Marchuk, Yu.O. Gradyskyi is dedicated to the issue of digitalization of Duty Free Trade in Ukrainian airports.³⁰⁹

³⁰⁶ On National Program of Adaptation of Ukrainian Legislation to the Legislation of the European Union. Law of Ukraine No. 1629-IV. Retrieved from: <http://www.singlewindow.org/docs/64?lang=ukr>

³⁰⁷ Danileyan, S.A. (2013). Taxation of Duty-free shops' activity, *Finansove pravo*, 3, 169-173 Retrieved from <http://dspace.nlu.edu.ua/bitstream/123456789/5141/1/Danieljan.pdf>

³⁰⁸ Remyga, Yu.S., Marchuk, V.E., Gradyskyi, Yu.O. (2016). Virtual Duty-free shop: is it possible in Ukrainian airports? *Visnyk KhNTUA*, 167, 73-80. Retrieved from <http://journals.uran.ua/index.php/wissn021/article/viewFile/109018/103951>

³⁰⁹ Karpova, V.V., Kostyana, O.V. (2018). *Problem aspects of taxation and law regulation of Duty-free shops in Ukraine*, Economic development and heritage of Semen Kuznets. Kharkiv, Ukraine. Retrieved from

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Nevertheless, wide volume of researches, the issue of adaptation of National Legislation regulating the field of Duty Free Trade and the Duty Free Shops activity to norms of European Union is remained unaddressed by scientists. This problem is delighted by Melnyk M.V. in his Candidate Dissertation particularly only.³¹⁰

Purpose of the Study.

The purpose of the article is finding of potential directions of adaptation of national legislation in the field of Duty Free Shops activity to norms of European Union.

Research Methods and Techniques.

Theoretical base for research consists of international normative and law acts and scientific researches on issues of Duty Free Trade and Duty Free Shops. Such methods of scientific research as law analysis and elements of content analysis (to analyze international normative and legal acts with the help of which the field of Duty Free Trade is regulated), comparative analysis (to compare particular statements of normative and legal acts of European Union and Ukraine) are used to achieve the purpose of the research.

Scientific value of research includes such items as establishing the plane of possible changes of the national Customs Legislation on the

http://repository.hneu.edu.ua/bitstream/123456789/19278/1/тези_Карпова_Костяна%20%281%29%20Пробл.%20аспекти.pdf

³¹⁰ Melnyk, M.V. (2016). *Institution of Customs Regimes in Customs Law of Ukraine*. (Candidate dissertation). Retrieved from :https://kneu.edu.ua/userfiles/d-26.006.09/2016/Melnyk_dis.PDF

Duty Free Trade in the context of its adaptation to European Union norms; and suggesting of tree ways for the following development of adaptation of normative and law provisions of Duty Free Shops activity.

The issue is urgent both for Ukraine and other states that are involved in integration into European Union as experience of Ukraine could be useful to avoid typical mistakes in the process of adaptation of legislation to the norms of European Union. Moreover, the issue is actually for the appropriate European Union Institutions as it is important for them to understand which partner is working with them.

Research hypothesis states that necessity of finding out of alternative ways of adaptation of Ukrainian legislation on Duty Free Shops to norms of European Union exists and it is caused by objective impossibility to compare normative and law provisions of European Union and National Customs Legislation on Duty Free Shops, as European Union has refused of Duty Free Trade.

RESULTS AND DISCUSSION

Taking in account the above-mentioned, we can note, that the adaptation of national legislation in general and Customs Legislation in particular to norms of *acquis communautaire* of European Union is urgent task for Ukraine. Nevertheless, domestic scientists and Customs specialists face a number of obstacles and find themselves at a dead end in their searches of adaptation the part of Customs Legislation on Duty Free Shops activity. The reason of such current set-up is a lack of a basic legal act with the help of which Duty Free Shops' activity is

regulated. This lack is caused by the European Union's policy of phasing out Duty Free Shops and transforming their activity into temporary transitional mode.³¹¹

THE FIRST TOPIC

PREREQUISITES FOR THE DILEMMA

Until 1999, persons traveling within the European Union were able to purchase goods, VAT and excise duties free on board of ferries and aircraft, as well as at airports. Establishing of Single Market caused elimination of tax borders for Members-States. The Council proclaimed the Transition Mode until June 30, 1999 to assistance to certain industries to adjust to the Single Market rules. The Transit Mode allowed Duty Free Shops to set fixed and controlled seller surcharges on the price of goods. Goods could be sold duty-free in a certain amount and goods that cost more than 90 euros could not be sold duty-free at all, in the frame of the Transition Mode.

However, as practice demonstrated, business entities in the field of Duty Free Trade expanded their activity instead to prepare to abolish of the Transit Mode, since Transit Mode was stated. The fact of creation of 140.000 job places in the field of Duty Free Trade including

³¹¹ EUR-Lex. (1999). Tax- and duty-free sales. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A131042>

100.000 job places related to the field of Duty Free Trade directly in the borders of European Union.³¹²

That is why at the Vienna European Council on 11-12 December 1998, the Commission and the Council (Ecofin) were invited to consider before March 1999 the problems that may arise from the abolition of Duty Free Trade. The Duty Free Trade sector, outlining a number of indicators, has formulated theses on the problematic issues that may arise from the abolition of Duty Free Trade:

- 1) Decreasing of sale volumes and declining profits in the retail Duty Free sector;**
- 2) Increasing of logistic expenses;**
- 3) Decrease in demand for goods presented in the Duty Free Shops;**
- 4) Reducing the number of jobs.**

However, the Commission and the Council appealed on these issues, stating that job cuts in Duty Free Shops were offset by a corresponding increase in jobs in regular stores. As a rule, both “status” goods (for example, brand perfumes) and “habit” goods (for instance, tobacco goods) are represented in Duty Free Shops; so, consumers are attracted by price of goods on the one hand, and goods as such, on the other hand. That is a reason that finally demand of consumers will be removed to regular stores without increasing of demand in general. The Commission and the Council suggested sacrificing Duty Free Trade

³¹² *ibid.*

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services at short international ways, like between Germany and Denmark, to solve the issue of increasing of logistic expenses.

States-Members researched relations between abolishment of Transit Mode of Duty Free Trade and fluctuations in employment in the Duty Free sector. The results of this research proved that abolishment of Transit Mode of Duty Free Trade are likely to have only a specific, local nature, such as, for example, in the maritime sector; as well people voyaging for voyage, not for certain demand, most often use maritime transport, as absence of Duty Free Shops in the maritime sector will be most noticeable. Other types of transport are used by travelers who remove across the Customs Borders according to the specific purpose and to the objective demand.

The Commission and the Council considered all mentioned problems and appealed with the main counter-argument in favor of the need to end the transitional Duty Free Regime – they accounted that continuing of Duty Free Trade can cost for States-Members approximate 2 billion of EUR per year. This money could be used by States-Members for strengthening public finances in the case of abolishment of transitional Duty Free Regime. Nevertheless, taking into account all characterized above risks relating with abolishment of transitional Duty Free Regime, the Commission and the Council forecasted few forms of continuation of transitional Duty Free Regime after June 30, 1999. These forms are continuation for a limited period, continuation for a limited period and limiting by specific sectors of removing across the Customs borders (for example, ferries), and the gradual introduction of excise duties on

alcohol and tobacco and the immediate application of VAT on these goods.

At the same time, the Commission stressed that these forms of continuation of transitional Duty Free Regime could have temporary character only, until effectiveness mechanism of resolving of the problem of unemployment in the Duty Free Trade sector. Moreover, temporary character of forms suggested are caused by potential discrimination of another than vessels types of vehicles operating across national and Customs borders of the European Union Member States.³¹³

That's it, issues of establishing, licensing and activity of Duty Free Shops in the *acquis communautaire* law system of European Union are regulated by national legislations of European Union Members.

Thus, the Ukrainian lawmaker faces a dilemma: either to leave open the question of adaptation of the national legislation governing the Customs field in the part of the activity of Duty Free Shops, since the "template" Union legal act is absent, or to try to implement the process of adaptation of the national legislation on mentioned issues to legal system of one or few European Union Members with the most relevant circumstances to Ukrainian realities? Both ways of resolving the problem are appropriate hypothetically. However, the first version of development of events forecasts that a whole block of legal rules regulating Duty Free Shops field will remain unprocessed and uncorrelated with norms of European Union. In such case, part of

³¹³ *Ibid.*

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requirements on integration of Ukraine into European space will not implement and the process of integration of Ukraine into European Community will back off. In the case of changing of the second version of resolving the dilemma, the urgent necessity of additional legal, economic, sociological, historical, political etc. researches of substantiation of the feasibility of electing as an example an EU Member State or a group of such states will appear. These researches would need to involve significant intellectual, financial, temporary extra resources and could have a prolonged nature. Furthermore, In the case of changing of the second way, a question about the expediency of such work could arise, whereas the full refusing of Duty Free Trade is the final aim of European Union.

THE SECOND TOPIC

CURRENT STATE OF THE NATIONAL CUSTOMS LEGISLATION IN THE PART OF DUTY FREE TRADE

Despite the above-mentioned consideration, some Ukrainian scientists are making singular attempts to find appropriate and adequate to current realities ways of adaptation of National Customs Legislation on Duty Free Trade and Duty Free Shops' activity to the norms of European Union. First of all, researchers pay their attention on comparative analysis of statements of Regulation (EU) No 952/2013 (Customs Code of European Union), some other normative and law acts

of European Union and Customs Code of Ukraine No 4495-VI of March 13, 2012³¹⁴ regarding to regulation of Duty Free Trade.

The results of this analysis testify that a row of differences between statements of Regulation (EU) No 952/2013 and Customs Code of Ukraine No 4495-VI of March 13, 2012, and between statements of additional normative and law acts of European Union and Customs Code of Ukraine on Duty Free Shops, exists. These differences the most generally are related to the following points:

1) Different understanding of the concept of “Customs Regime” in general in European Union and in Ukraine. That is a reason of substitution of concepts in the National Customs Legislation in the context of interpretation of the concept of “Duty Free Trade”;

2) Differentiation of Customs Formalities for goods that are supplied and sold in the Duty Free Shops, and supplies.³¹⁵

Let's consider the contradictions that arise within these points.

According to the Article 5 of Regulation (EU) No 952/2013, the concept of “Customs Regime” is not applied in European Union. Instead of it, the concept of “Customs Procedures” is applied, and three types of Customs Procedures are separated. They are:

³¹⁴ Customs Code of Ukraine No. 4495-VI. Retrieved from: <https://zakon.rada.gov.ua/laws/show/4495-17>

³¹⁵ Melnyk, M.V. (2016). Institution of Customs Regimes in Customs Law of Ukraine. (Candidate dissertation). Retrieved from: https://kneu.edu.ua/userfiles/d-26.006.09/2016/Melnyk_dis.PDF

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1) release for free circulation;

2) special procedures (transit, which shall comprise external and internal transit; storage, which shall comprise customs warehousing and free zones; specific use, which shall comprise temporary admission and end-use; processing, which shall comprise inward and outward processing);

3) export.³¹⁶

The Customs Procedure is treated as a complex of methods and mechanisms of Customs Law Process. This complex consists of documental exchange between Customs Administrations and Applicants, internal management and administrative documents, and legislative and regulative acts with the help of which Customs Field is regulated.³¹⁷

Simultaneously, the Customs Code of Ukraine includes such definition of the concept of “Customs Regime” as “...a complex of interconnected legal rules that identify Customs Procedure for the goods that are moving across the Customs Border of Ukraine, legal status of these goods, taxing conditions, and causes realizing of these goods after Customs Clearance, according to the goal of the movement

³¹⁶ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0952&rid=1>

³¹⁷ The Free Dictionary by Farlex. Retrieved from: <https://legal-dictionary.thefreedictionary.com/procedures>

of goods across the Customs Border of Ukraine”.³¹⁸ The Article 70 of the Customs Code of Ukraine declares fourteen types of Customs Regimes. They are: 1) import (release for free circulation); 2) re-import; 3) export (final export); 4) re-export; 5) transit; 6) temporary import; 7) temporary export; 8) Customs Warehousing; 9) Free Customs Zone; 10) Duty Free Trade; 11) processing in the Customs Territory; 12) processing outside of the Customs Territory; 13) destruction and demolition; 14) refusal in favor of the state.³¹⁹

We have to take into account two practically axiomatic statements in the process of comparing of two above-mentioned definitions. These axiomatic statements are:

1) The essence of Legal Customs Regime is a prediction of the system of strict rules that apply to all subjects of legal relations, but not to objects, according to the public needs;

2) The Customs Procedure is aimed to transform objective rights of declarant into subjective and to provide enforcing of these rights.³²⁰

Moreover, it is necessary to pay attention on particular Articles of Customs Code of Ukraine, for example Item 22 of the Article 4, Articles

³¹⁸ Customs Code of Ukraine, No. 4495-VI. Retrieved from: <https://zakon.rada.gov.ua/laws/show/4495-17>

³¹⁹ *Ibid.*

³²⁰ Tsarenko, V.I., Khoma, V.O. (2014). Customs procedures: signs and concept, *Porivnyalno-analitychne parvo*, 3, 149-153.

71, and 140-146).³²¹

As a result, we can see that Customs Code of Ukraine consists of statements regarding to criteria of legal signs, aim, purpose, and algorithm of action of the subjects of legal relationships of Customs Procedure, not Customs Regime.

M. Melnyk suggests using the goal of applying of Customs Regime Institution as criteria of differentiation of Customs Procedure and Customs Regime. In the scientist's opinion, Customs Regime Institution is aimed to providing of financial interests of the state in the Customs Field, to improving of domestic industry, and to supporting of international economic relations. The researcher proves that the "...re-import, re-export, duty free trade, destruction and demolition, refusal in favor of the state are characterized as procedural operations and, as a result, they do not correlate with the main aim of Customs Regime",³²² on the base of the criteria above and scientific method of law comparative analysis.

This is the reason of conclusion of M. Melnyk about inappropriate inclusion of re-import, re-export, duty free trade, destruction and demolition, refusal in favor of the state into the field of the legal institute of Customs Regimes of Customs Law of Ukraine. Thus, he

³²¹ Customs Code of Ukraine No. 4495-VI. Retrieved from:

<https://zakon.rada.gov.ua/laws/show/4495-17>

³²² Melnyk, M.V. (2016). *Institution of Customs Regimes in Customs Law of Ukraine*.

(Candidate dissertation). Retrieved from: https://kneu.edu.ua/userfiles/d-26.006.09/2016/Melnyk_dis.PDF

appoints to declare within the Article 70 Types of Customs Regimes of Customs Code of Ukraine the following list of Customs Regime: 1) import (release for free circulation); 2) export (final export); 3) transit; 4) temporary import; 5) temporary export; 6) Customs Warehousing; 7) Free Customs Zone; 8) processing in the Customs Territory; 9) processing outside of the Customs Territory.³²³ These changes are aimed to facilitation and transparency of applying of Customs Regimes and Special Customs Procedures, to integration of Ukrainian Legislation into European Legal Acts in the Customs Field.

We agree in general with the point of view of Melnyk M. Nevertheless, we would like to stress on the approach to differentiation of Customs Procedure and Customs Regime by Tsarenko V. and Khoma V. They conclude that Customs Warehousing is not a type of Customs Regime as the Customs Procedure is selected in the way of declaration, not Customs Regime.³²⁴

THE THIRD TOPIC

HOW TO RESOLVE THE DILEMMA?

Thereby, we suggest amending Article 70 of Customs Code of Ukraine to achieve the most effective adaptation of National Customs Legislation regarding to Duty Free Trade to the European Union norms, and set out it in the following version:

³²³ *Ibid.*

³²⁴ Tsarenko, V.I., Khoma, V.O. (2014). Customs procedures: signs and concept. *Porivnyalno-analitychne parvo*, 3, 149-153

“Article 70 Types of Customs Regime

1. The following Customs Regimes are introduced in the order to apply the legislation of Ukraine on the issues of State Customs Affair:

- 1) Import (release for free circulation);**
- 2) Export (final export);**
- 3) Transit;**
- 4) Temporary import;**
- 5) Temporary export;**
- 6) Free Customs Zone;**
- 7) Processing in the Customs Territory;**
- 8) Processing outside of the Customs Territory.**

2. The Customs Regimes are introduced exclusively by this Code”.

Delimitation of Customs Formalities for goods that are shipped to and sold in the Duty Free Shops and for supplies is the item which is logically related to the issues of identification of Customs Regimes. The logic of this interrelation is identified by the Customs Code of Ukraine in which procedures of Customs Formalities for supplies are declared only, whereas procedures of Customs Formalities for Duty Free Trade as for one of the Customs Regimes are too comprehensive.³²⁵

³²⁵ Melnyk, M.V. (2016). *Institution of Customs Regimes in Customs Law of Ukraine*. (Candidate dissertation). Retrieved from: https://kneu.edu.ua/userfiles/d-26.006.09/2016/Melnyk_dis.PDF

Taking into account that goods that are delivered to and sold in the Duty Free Shops, and supplies have a number of common features (for instance, the essence of the goods (the Item 48 of the Article 4), measures (Articles 224-226), conditional exemption from customs duties (the Item 1 of the Article 223)³²⁶), and that supplies are determined as “goods delivered to aircraft and watercraft at airports or ports and intended for on-board consumption (passengers and crew) are once on board, exempted from VAT (for offshore vessels) and excise duty (for aircraft in accordance with national legislation) and are not intended for import”,³²⁷ we agree with the suggestion to exclude from the Section V “Customs Regimes” of the Customs Code of Ukraine the Chapter 22 “Duty Free Trade” and to add the appropriate Chapter “Customs Formalities for the goods that are delivered and sold in Duty Free Shops” to the Section XV of the Customs Code of Ukraine.³²⁸

Herewith, the following structure of the Chapter “Customs Formalities for the goods that are delivered and sold in Duty Free Shops” is suggested:

³²⁶ Customs Code No. 4495-VI. Retrieved from:

<https://zakon.rada.gov.ua/laws/show/4495-17>

³²⁷ Annex 3 Guidelines on export and exit (Applicable from 1-1-2001). Specific Rules for Aircraft and Ship Supplies. Retrieved from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:037:0001:0011:EN:PDF>

³²⁸ Melnyk, M.V. (2016). *Institution of Customs Regimes in Customs Law of Ukraine*. (Candidate dissertation). Retrieved from: https://kneu.edu.ua/userfiles/d-26.006.09/2016/Melnyk_dis.PDF

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Articles on general rules of moving of the goods that are delivered and sold in Duty Free Shops across the Customs Border of Ukraine;

Articles on prohibitions and restrictions on the movement (transfer) of certain types of goods into Duty Free Shops;

Articles on declaration of goods that are moving across the Customs Border of Ukraine for delivering into Duty Free Shops;

Articles on peculiarities of implementing of Customs Control of goods that are delivered into Duty Free Shops on boards of aircrafts, vessels or railway vehicles of commercial purpose that are operating international flights, for sale to passengers of these flights.

It should be noted the key features of goods that are delivered into Duty Free Shops and are sold by them across the Customs Border of Ukraine in frames of general rules of moving such goods. These features are: 1) not intended for free circulation in the customs territory of Ukraine; 2) Delivery and sale for export outside the Customs Territory of Ukraine under Customs Control at checkpoints (control points) across the state border of Ukraine are opened to international traffic, and on aircraft, water or railway commercial vehicles operating international flights; 3) exemption from customs duties; 4) measures of non-tariff regulation of foreign economic activity are not applied.

Moreover, statements on origin of goods that could be delivered and sold into Duty Free Shops, on the period of possible stay of such goods in the Duty Free Shops (equivalent to their shelf life or consumption), on the orders of applying of Customs Control to these goods, its'

moving between Duty Free Shops and applying of one of the appropriate Customs Regimes, on conditions of applying of Destruction Customs Procedure, are suggested to include into Chapter “Customs Formalities for the goods that are delivered and sold in Duty Free Shops”.

The Article on prohibitions and restrictions for moving of certain types of Duty Free Trade has include statements on groups of allowed and prohibited goods to be delivered to the Duty Free Trade and, on the order of fulfillment of the duty to pay Customs duties.

The subject of declaration (holder of Duty Free Shop, declarant or the person authorized by him) of goods are moved across the Customs Border of Ukraine to be delivered into Duty Free Shops and the order of declaring these goods have to be claimed in the updated Chapter of Customs Code of Ukraine.³²⁹

Thereby, the field of Duty Free Trade would be excluded from the Customs Regimes Legal Fields and Customs Formalities for the goods that are delivered and sold in Duty Free Trade Shops would be agreed with the Customs Formalities for the supplies, in the case of implementation of above-mentioned suggestions into practice of Customs Affair.

At the same time as Ukrainian scientists research the most adequate and optimal way of adaptation of National Customs Legislation in the field of Duty Free Trade to the norms of European Union, the appropriate Institutions of European Union authorized at producing of

³²⁹ *Ibid.*

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recommendations for accelerating the process of integration into the European space for the candidate countries of Eastern Europe also represent the vision of development of Duty Free Trade in noted states.

This vision could be formulated as few basic recommendations:

1) Readiness of states striving to European Union membership to full implementation of Single Market Conception in their territories. Adopting and adhering to the so-called initial Single Market principle is the indicator of this readiness. The initial Single Market principle provides that tax benefits for insignificant quantity of citizens can exist on the national levels until the Candidate-State is territorially neutral;

2) Readiness to biased lobbying campaigns and related political discussions and potential social unrest regarding to possible consequences of abolishment of Duty Free Trade in Candidate-States. This readiness has to be aimed to formulating of the set of distinct, logical and reasonable arguments of economic character. European Union has used macroeconomic indicators and calculations as such arguments. These macroeconomic indicators and calculations proved that abolishment of Duty Free Trade within the European Union had insignificant economic influence to Gross Domestic Product, private consuming and general export, although Duty Free Trade is in close connection with these indicators. Moreover, this tendency was characteristic of both European Union and Ireland and Great Britain, although traditionally considered that its' economies have significant economic benefits from Duty Free Trade;

3) Candidate-States have to be ready to start adaptation and installation processes of abolishment of Duty Free Trade immediately instead of looking for an extra transition period. As experience of European Union proves, transition period in the field of Duty Free Trade were implemented on the national levels Member-States in accordance with forecasting of Duty Free Trade Operators on the occurrence of a number of negative consequences of such decision. However, from all forecasted negative consequences of abolishment of Duty Free Trade, particularly decreasing of volumes of sales, reduction of job places etc., decreasing of volumes of sales of tobacco and alcohol products had place only. Yet, this “consequence” was leveled off by increasing of volumes of different, not tobacco and alcohol, goods in another shops and malls, by transforming of Duty Free Shops in airports and ports into comfortable malls, and by social effect, in particular improving public health. Potential loss of jobs was forecasted on the level of 140.000 persons in the case of abolishment of Duty Free Trade within the European Union. But, it was significant exaggerating, and the issue has eliminated in the way of full using of such advantages as low labor cost, high quality infrastructure, great location and creation of new goods, services and markets;

4) Readiness to harmonize indirect taxes across the European Union. Abolishment Duty Free Trade across the European Union means that goods represented in Duty Free Shops earlier with tax benefits are taxed in full volume at the moment. Obviously, that VAT and excise duties rates of Member-States are different. This fact could have a positive impact on “substitute” of Duty Free Shops activity as the same

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goods item can has different cost in different country in accordance with the rate of indirect tax. Eventually, it would provide increasing of volume of consumers for trade subjects that offer lower prices;

5) Termination of concentration on current advantages of Duty Free Trade by East European Candidate-States and to attempt to achieve to additional tax advantages providing by competition within the Single Market. Today Duty Free Trade in the Candidate States provides certain purchasing opportunities, but for insignificant part of citizens who use one or other kind of vehicles to move across the Customs Border only. At the same time, existing of this type of business activity inflicts far greater economic losses for retail and social losses for society (in the way of selling of tobacco and alcohol products).³³⁰

CONCLUSIONS AND SUGGESTIONS

Consequently, current state of adaptation of National Customs Legislation in the field of Duty Free Trade to norms of European Union is the following:

1) Objective impossibility to carry out a full legal comparative analysis of the regulatory of European Union and National Customs Legislation on the Duty Free Trade as European Union refused of Duty Free Trade;

2) Statements of Customs Code of Ukraine on Customs Regimes are only possible points that could be align with European legislation. In

³³⁰ Andrea Gebauer, Chang Woon Nam, Rudiger Parshe (2002). Lessons of the 1999 Abolition of Intra-EU Duty Free Sales for Eastern European EU Candidates. *Cesifo Working Paper, Category 1: Public Finance*, 828, 29.

particular, these statements are the statements on Customs Regime of Duty Free Trade and regarding to harmonization of Customs Formalities for goods that are delivered and sold in Duty Free Shops and supplies.

Taking into account the above-mentioned, we suppose that the following scientific and practical research of the most appropriate and optimal ways of adaptation of National Legal System in the part of Duty Free Shops activity to norms of European Union, has to transform into permanent process.

However, taking into account the view of European Union on integration into the Single Market of the Eastern European Candidate-States, in particular, as regards the regulation of the Duty Free Trade field, national scientists and practitioners should inevitably take into account that, in addition to the above mentioned possible ways of this process – 1) to leave the issue of adaptation of the National Legislation governing the Customs field in the part of the activity of the Duty Free Shops open, or 2) to attempt to implement the process of adaptation of the domestic legislation on pointed issues to the legal system of one or more of the most relevant to the Ukrainian context of European Union Member States – there is the third: the refusal of the Duty Free Shops at all.

In the case of adopting of version proposed by European Union, the work for preparing to refusal of the Duty Free Shops has to be started immediately in Ukraine. An objective and accurate assessment of the advantages and disadvantages of the Duty Free Shops activity has to be carried out, public opinion, opinion of the Duty Free Trade Operators and of the other entrepreneurs, and view of State Authorities have to be

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researched, the State Strategy of the refusal of Duty Free Shops has to be worked out, drafts of relevant regulatory acts have to be prepared in the frame of this work. Indeed, in the case of immutability of the State Strategic Course of Ukraine to European Union, the demand of adopting of the “European” version of adaptation of national legal system in the field of Duty Free Shops activity.

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