Directions for Improving the System of Prevention and Counteraction to Customs Offenses in Ukraine: Public and Government Context

The emergence of threats to national security and the task of significant losses to the national economy through the systematic commission of customs offenses is one of the most urgent problems of the Ukrainian present. Goods-subjects of a customs offense, penetrating the market, have a negative impact on the domestic economy: they create preconditions for unfair competition, destroy internal production, which naturally leads to a reduction of jobs and budget social programs, leads to a lack of adequate state budgets, statutory payments established by law, etc. Certain categories of goods moving across the customs border of Ukraine in violation of customs rules (for example, tobacco and alcohol products), along with economic ones, provoke a number of social threats. The purpose of the article is to develop areas for the improvement of the Ukrainian system of prevention and counteraction of customs offenses in the public and government context. General scientific methods of analysis and synthesis, systematization and interpretation of facts, legal analysis and elements of content analysis are used in the process of research.

Taking into account the above-mentioned problems, one can assert the urgent need to improve the functioning of the current system of prevention and counteraction of violation of customs rules, which will provide protection and realization of economic interests as a set of objective economic needs of our state. The primary finding of the reasons for the actualization of the problem of illegal movement of goods and vehicles through the customs border of Ukraine is given logical for this. We believe that the reasons for violations of customs rules to the main and characteristic of Ukrainian realities include:

– *economic* (tax evasion and non-tariff measures, unjustified reimbursement of taxes, obtaining unlawful advantages in commercial activities in order to obtain financial benefits and advantages in trade, relieving pressure from competitors [1, p. 219]; high level of unemployment, unequal tax press on business entities; the presence of a significant difference between world and domestic prices for individual product groups [2, pp. 11-12], mainly low income and poverty of the population living in the border areas, insufficient level of investment attractiveness of the border areas, underdevelopment of their financial, market, household infrastructure [3, pp. 58-59]);

– ☐ *social* (high level of corruption of officials, representatives of the law-enforcement system and society as a whole, high level of labour

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migration in the border areas [3, p. 57], inadequate level of social security, development of social services, assistance to the poor people, development of health care, accessibility and the quality of education, access of citizens to cultural values, etc. [4, pp. 98]);

- *legal* (legal nihilism and authorities and citizens; low level of general and legal culture of citizens; insecurity of physical as well as legal persons – subjects of foreign economic activity from illegal oppression, abuse, extortion by customs officials of all levels [2, p. 11-12]);
- *geographical* (geographical location of Ukraine, passing through its territory of main trunk roads connecting East and West [3, p. 57]);
- *international* (transnational character of development of criminogenic structures [3, p. 59]);
- *ideological* (low level of legal consciousness and legal culture in society, in particular, officials of the state and subjects of foreign economic activity, inadequate state of ensuring ideological pluralism in the state, efficiency and the prevalence of the "rule of law" principle over the principle of "political expediency", ensuring equality of all before the law, the inevitability of liability for the offense, the organization of legal education, the level of awareness of the population, ensuring freedom of speech [4, pp. 98]).

It is logical to assume given the wide-ranging nature of the above-mentioned causes of large-scale violations of customs rules that the solution of this problem cannot lie solely in one plane: let's say, only economic or just legal. Obviously, the solution of the problem issue of violation of customs rules requires simultaneous and concerted actions of the subjects authorized to solve the problem under study, in all possible areas – economic, social, legal and ideological, international relations, etc. Outside the influence of these subjects, let us note that, as a matter of fact, the area of geographical reasons will remain, since the geographical position of Ukraine is an objective phenomenon.

There is an objective need for an integrated approach to its solution given these considerations and taking into account the above-mentioned problems, which is the subject of this study. So, there is the need to improve the system of prevention and counteraction to customs offenses. This will ensure understanding of the problem not from the formal, technical, procedural side, but from the content, qualitative, ideological.

An integrated approach will provide consideration of various aspects of the existence of the problem in their interconnection and will help to determine the basic directions of improving the functioning of the system of prevention and counteraction to customs offenses in order to effectively use existing potential. Thus, an integrated approach should become a fundamental principle in solving the problem of improving the system of prevention and counteraction to customs offenses.

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It seems quite logical to analyze the scientific discourse on possible areas in this context for improving the system of prevention and counteraction to customs offenses, since a detailed preparation of already existing scientifically substantiated proposals aimed at solving the studied problem will enable to formulate and develop a conceptual vision of elements of a complex of processes and measures that should be aimed at improving the system of prevention and counteraction to customs offenses.

The review of scientific sources carried out by us provided an opportunity to create a list of the most urgent areas in the current trends for improving the system of prevention and counteraction to customs offenses. Thus, customs offenses appear in the relevant scientific sources as a subject of research.

According to the results of the analysis of the national scientific discussion such areas include: transformation of economic measures in the field of prevention and counteraction to customs offenses; improvement of the legal and regulatory framework, which is regulated by the customs sphere; structural and organizational changes in the field of implementation of the state fiscal policy; improvement of the functional load of the customs of the State Fiscal Service of Ukraine; improvement and development of cooperation between customs authorities and other state authorities authorized to facilitate the prevention and counteraction of customs offenses.

Let's expand and detail the nature and content of these events. The necessity of applying *the transformation of economic measures in the field of prevention and counteraction to customs offenses* as a direction of improvement of the system of prevention and counteraction to customs offenses is stipulated, first of all, by the fact that economic reasons for committing customs offenses are among the dominant ones. Therefore, the use of more adequate, than current, economic measures to prevent and counteract customs offenses is on time. In addition, such scientists as O.V.Diachenko, T.L. Vyshynska, S.M. Litvin noted that "the fight against customs offenses ... can be effective and efficient only if it is also carried out by measures of an economic nature" [1, p. 226-227].

The same researchers, developing the previous judgment, emphasize that the main measure of economic nature in the fight against customs offenses is to optimize the taxation of imports of goods and create appropriate tax conditions for the development of domestic producers [1, p. 226-227].

Fundamentally agreeing with this position, we cannot fail to note that the transformation of economic measures to prevent and combat customs offenses should concern not only the subjects of foreign economic activity but also ordinary citizens, especially residents of border areas, and officials SFS, which are authorized to perform the functions of the state in the customs sphere.

The fact is that residents of border areas, as has been repeatedly mentioned, mostly resort to a violation of customs rules for objective reasons

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– mass unemployment, impoverishment and lack of livelihood. It is on the elimination of these economic and largely social and economic reasons, that the state economic policy should be directed. Creating a sufficient number of jobs, on which citizens could legitimately earn a decent salary, seems to us, would in some cases reduce the scope of customs offenses

The creation of proper economic support for SFS officials authorized to carry out the functions of the state in the customs sphere (meaning proper wages and the use of additional motivational-stimulating economic instruments) would reduce the corruption risks in the work of customs, and thus significantly reduce the facts of their involvement in schemes of illegal movement of goods and vehicles through the customs border of Ukraine. However, it is more expedient to talk about the use of advanced social and economic measures in this sense, as they create more guarantees to prevent the involvement of customs officers in corruption schemes and schemes of illegal movement of customs rules across the customs border of Ukraine.

The point is that proper, decent economic provision can only temporarily play the role of a fence for SFS officials in the process of contributing to the violation of customs rules, since over time the economic law generates greater needs with greater opportunities. Active use of social security measures should be used together with the use of economic instruments, such as the introduction of social guarantees for the worker and his family, the transformation of the service in the SFS organs into the prestigious and status kind of the labor activity, etc. Only under such conditions, the officials of the SFS bodies will have more internal, mental and moral safeguards for participation in the schemes of customs offenses.

It is not possible to disagree that the change of any processes of social and public life is impossible without adequate support of normative and legal support. That is why *improvement of regulatory and legal support, which regulates the customs sphere as a whole and the sphere of prevention and counteraction to customs offenses,* appears in the national scientific discourse as one of the most priority directions of the improvement of the system of prevention and counteraction to customs offenses. At the same time, within this direction, two sub-directions can be distinguished: *1) improvement of domestic legislation by making appropriate amendments and additions to it; and 2) improvement of domestic legislation by its adaptation to the international legal and regulatory framework and EU legislation.*

Researchers who focused on finding optimal ways to improve customs legislation in terms of effectively preventing and counteracting customs offenses within the first sub-focus focus on a few of the most acute moments that we think are most relevant in the context of this study. First of all, it is a question of the need for a clear demarcation of the normative definitions of the concepts of “tax offense” and “violation of customs rules” [5].

Indeed, the present moment is relevant today, because, as practice shows, the tax component of the SFS has almost completely absorbed and

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leveled the customs component, resulting in certain inconsistencies both in the practice of customs institutions and in the theoretical and methodological provision of this activity. At an angle of normative and legal provision, this problem acquires such manifestations as the definition of a normative and legal act, according to which the person should be held liable for violation of customs or tax rules.

Thus, in the Customs Code of Ukraine, namely in the first paragraph of Article 458 states that, since violation of customs rules is an administrative offense, in the event that cases brought in cases of violation of customs rules arise issues that are not regulated by the Customs Code of Ukraine, the Codex of Ukraine on administrative violations should be guided. In accordance with the second paragraph of Article 458 of the Customs Code of Ukraine, administrative liability for the offense occurs if these violations by their nature are not prosecuted in accordance with the current legislation on criminal liability.

It is worth focusing on the need to harmonize the terminology of the normative legal acts regulating such activities in accordance with the theoretically determined unified approach in defining the prospects for solving the problems of counteracting the violation of tax and customs rules. Also, on the agenda has long been the issue of improving the legislation on administrative liability for offenses in the tax and customs fields and its coordination with the provisions of the Tax Code of Ukraine and the Customs Code of Ukraine with a view to clearly differentiating the grounds and procedures for bringing a person to financial and administrative liability [5].

Increasingly, researchers, searching for ways to improve the system of prevention and counteraction to customs offenses, suggest the expediency of improving legislation in terms of implementation of preventive measures. Among other issues is the improvement of regulatory and legal regulation of administrative and legal measures for the prevention of offenses by developing and adopting a single normative act that would regulate all preventive activities in the country – the Law of Ukraine "On the Prevention of Offenses in Ukraine". This law should regulate the tasks and basic principles of preventive activities, the rights and responsibilities of all actors for the prevention of offenses, its main levels and areas, legally significant forms, administrative and legal measures and means of preventing offenses and other issues [6, p. 155-156].

Today, the issue of returning of the operational and investigative powers to the customs within the framework of law-enforcement activity is the most acute, given the scale of offenses at the customs border of Ukraine and the actual failure of the bodies of the State fiscal service in the customs sphere to fully deal with this state of affairs due to lack of authority.

In the context of improving the legal and regulatory framework for preventing and counteracting a customs offense, resolving this problem is

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seen in the introduction of a separate rule in the Customs Code of Ukraine in the following wording:

"Operational and search activity is carried out with the purpose of identifying persons who prepare, commit or committed an unlawful act, the responsibility for which is provided for in the Criminal Code of Ukraine, as well as at the request of the competent authorities of foreign states in accordance with international treaties of Ukraine on customs issues" [7, p. 128]. In addition, the relevant changes should also be made to Article 5 of the Law of Ukraine "On Operational and Search Activity".

Scientists whose researches reveal the essence of possible ways to improve national legislation within the second sub-direction of improving the domestic legal and regulatory framework for preventing and counteracting customs offenses, emphasize that the adaptation of Ukrainian legislation to EU legislation will enable: 1) to increase the effectiveness of national customs policy in the field providing urgent response to external threats; 2) to counteract the possible negative consequences of such threats; 3) to ensure the economic interests of the state; 4) use as much as possible international rules and requirements in the national regulatory system [8, p. 220].

Consequently, the improvement of the legal and regulatory framework as a direction of improvement of the system of prevention and counteraction to customs offenses involves two already mentioned sub-destinations. It should be noted that their delineation is rather arbitrary because internal state processes to improve the national legal framework in the current conditions of globalization cannot fail to take into account international tendencies and standards, especially since the official course of further state-building Ukraine has chosen the Euro-integration direction.

The same cannot be said about the adaptation of domestic legislation to the legal and regulatory framework of the EU without a thorough analysis of national realities and interests, since any international legal and regulatory act, as a rule, always contains a provision that the norms contained in it, none cannot be against the national interests of the participating States.

The next direction is the improvement of the system for prevention and counteraction to the illegal movement of tobacco products through the customs border of Ukraine, which is focused not only by scientists but also, in the light of current political and state-management processes, *there are structural and organizational changes in the area of implementation of the state fiscal politics*. The necessity and importance of the implementation of such changes is conditioned by the fact that the formation of the structure of the State fiscal service of Ukraine is currently carried out in accordance with the principle of the inferiority of the customs component. This is evidence of ignoring other than the filling of the State Budget, tasks [9], in particular, the law enforcement function.

Such a set of priorities in practice led to the structural absorption of the customs component of the State Tax Service's fiscal service, as already noted

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above. Such state of affairs has caused a number of negative consequences in the customs sphere, in particular, in the area of prevention and counteraction to customs offenses. The following negative consequences can be attributed to:

– persistent tendencies in the growth of corruption risks in the customs sphere, caused by the dominant human factor in the processes of customs control and customs clearance, as automation and informatization of these processes did not take place within the limits of positive dynamics;

– unreasonable classification of secondary key and classical functions of customs bodies, with corresponding insufficient and limited organizational and personnel support on the residual principle: functions of control of the application of non-tariff regulation measures, functions of organization and control of transit transportation, functions of export control, functions of protection of intellectual property and etc.;

– lack of adequate analytical work, a significant reduction in the effectiveness of counteracting customs offenses and manifestations of smuggling, including interactions at the international level;

– loss of positive dynamics of the exchange of information at the international level with the customs authorities of other countries, both internationally and nationally, with carriers and other bodies and institutions, whose activities are directly related to the operation of goods under customs control;

– loss of positive dynamics for development of international contacts and contacts in the field of customs and international customs cooperation;

– total loss of dynamics and initiative in the field of improving the legal and regulatory framework for customs;

– staff instability and a sense of impunity and temporality of being in office and performing official duties and functions;

– absence of a systematic approach to the use of technical means of customs control as one of the effective tools for minimizing the influence of the human factor on the results of customs control;

– artificial division of procedures and powers within the framework of the implementation of one key function for customs authorities between different departments at both central and regional levels (between customs and main departments), which led to a significant reduction in efficiency, effectiveness, organizational level and controllability (for example: control of customs value, collection of customs payments, and so on);

– lack of due attention to the implementation of material and technical support for the activities of the customs authorities, taking into account the specifics of the performance of functions at checkpoints at the state border [9].

It is necessary to displace the current priorities of the state fiscal policy to overcome the tax component to ensure equality and balance between the tax

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and customs components in order to eliminate these negative effects. It is possible to achieve such a shift of priorities in favour of the customs component only in one way: creation of the National Customs Service of Ukraine, an executive body that will provide protection of customs interests and customs security of Ukraine, regulation of foreign trade, protection of the domestic market, development of the Ukrainian economy and its integration into the world economy, filling of the state budget, counteraction to customs offenses [9].

Such approach will ensure the possibility of renovating and activating the law enforcement function of the customs, which in turn will lead to the expansion of their powers and practical capabilities in the area of prevention and counteraction to customs offenses.

However, structural and organizational changes are a long process that requires significant time and material, technical, financial, human, etc. resources. Therefore, this way for improving the system of prevention and counteraction to customs offenses should be considered only as a perspective. At the same time, the problem of violation of customs rules requires urgent solution. Therefore, an alternative preliminary direction of improvement of the system of prevention and counteraction to customs offenses may be considered *improvement of the functional load of customs*.

Within this direction, first of all, it is necessary to emphasize the obvious practical need to reorient the activities of customs from the fiscal function as the main one for law enforcement. We have already articulated some of the arguments in this regard in our study, but we consider it appropriate to develop and detail them. Therefore, we support O.V. Komarov's position that the fiscal component of the activities of the customs should be a logical consequence of the law-enforcement rather than the main objective of the customs authorities, which determines the priorities of the customs policy of the state [10, p. 65]. Only such a prioritization will ensure non-conflict and balance of tasks and functions of the customs authorities.

Implementation of the prevailing law-enforcement function over fiscal will create the preconditions for the return of customs authorities to carry out operative and search activities. Such powers today are more than ever, because:

– both physical and legal persons during the movement of goods across the customs border of Ukraine can perform actions containing signs of criminal acts. Therefore, there is a need for operatively-search information concerning physical and legal persons. A legal entity is always a specific individual, which must be established when there are reasons to believe that there are signs of an offense in its actions;

– the bodies of the State fiscal service need operatively-search information both in relation to criminal (smuggling, etc.) and administrative (customs) offenses. This is explained by the fact that within the framework of

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the case on violation of customs rules criminal offenses committed by a concrete person can be discovered;

– customs of SFS have a powerful, virtually inaccessible, intelligence-analytical potential associated with the functioning of the automated system of analysis and risk management [7, p. 128-129];

– there is a certain array of imperative experience regarding the effective and successful execution of operational and investigative functions by the customs authorities of foreign countries. As a rule, customs authorities are one of the main law enforcement agencies involved in countering the illegal movement of tobacco through the customs border and illegal trade in tobacco products in the EU countries. Most customs authorities can investigate any customs offenses related to the illicit trade in tobacco products [11, p. 323].

Today, the need for informative, operational, transparent, timely analytics that objectively reflects the processes of prevention and counteraction to customs offenses, as well as the dynamics of these processes and the correlation links between them, seems to be quite relevant in the context of improving the functional load of customs. It is possible to provide such an analytical array only with the help of customs statistics, which today, unfortunately, exists only formally.

In connection with the optimization of the staffing of the customs and the apparatus of the State Fiscal Service of Ukraine, statistical accounting and analytical work in the customs field went back to the background. However, if we take into account that customs statistics as a science contains three divisions, one of which is the statistics of customs offenses, it can be assumed that customs statistics can become a powerful tool for preventing and counteracting customs offenses. It is possible not only to objectively and impartially estimate the real state of affairs with regard to the number of detected customs offenses with this tool, but also to predict the trends of their development, to determine the causal relationships between customs offenses and factors of different nature.

However, today, if the first two types of customs statistics are enshrined in the national legislation (in the Customs Code of Ukraine and a number of subordinate legal acts) then statistics of customs offenses is not mentioned there in general. This is somewhat weird because of the fact that according to this particular sub-area of customs statistics, you can get the most complete picture of the state of crime and criminalization when crossing the customs border, draw up a criminological picture of the commission of offenses and crimes and, as a result, develop certain proposals for combating and preventing them. The main purpose of the special customs statistics on customs offenses is to provide the management of the customs authority and the higher customs authorities with data on the state of law-enforcement activity for making decisions on improving its organizational and legal basis [12, p. 15-16].

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The latest in the above list, but not the last in importance, in the direction of improving the system of prevention and counteraction to illegal movement across the customs border of Ukraine *is the improvement and development of cooperation of customs bodies with other state authorities authorized to facilitate the prevention and counteraction of customs offenses*.

This direction, as well as the normative and legal direction for improvement of the system of prevention and counteraction to customs offenses, the subject of which there are tobacco products, can be divided into two sub-targets: 1) improvement of interagency cooperation of customs bodies within Ukraine; 2) improvement of cooperation of domestic customs institutions with customs authorities of foreign countries.

I.I. Khlebnikova presented one of the possible variants for the implementation of the model of the first sub-direction in the scientific work. The scientist proved the possibility, efficiency and expediency of establishing inter-governmental interagency cooperation in the customs sphere on the example of Lithuania. The researcher noted that "...there is a high level government commission on economic and financial control and coordination of interaction between law enforcement bodies in Lithuania. At the same time, the main responsibilities for combating illegal trade are assigned to the Customs Department of the Ministry of Finance" [11, p. 323-324].

In 2011, the Police Department, the Customs Department and the State Border Guard Service of Lithuania signed a memorandum of understanding regulating the cooperation of these structures in the field of combating customs offenses. Seven permanent working groups have been set up to coordinate the actions of these agencies in regions bordering non-member countries of the European Union according to this document. A joint investigation team has been set up from among the employees of the Criminal Service of the Customs Department, the Operational Department of the State Border Protection Service, the Financial Crime Investigation Service, the Bureau of Criminal Police and the Department of State Security to stop the activities of identified organized criminal gangs.

Consequently, foreign experience demonstrates possible scenarios for establishing cooperation between different bodies for the prevention and counteraction of customs offenses and confirms the practical possibility of such cooperation. However, it should be noted that such cooperation is based on the understanding of its subjects of the common goal – to overcome such a negative phenomenon as customs offenses, which leads to a number of negative social and economic consequences, and therefore – poses a certain social danger.

In addition, in our opinion, a prerequisite for such interagency cooperation should be strong political will. Unfortunately, there are significant mental differences in Ukraine today in the perception of officials of the law enforcement and customs authorities of the prospects of interagency cooperation. There is unhealthy competition between state authorities, the

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desire to capture the leading positions in one area or another is dominated by common sense and the sense of expediency of joint actions. Moreover, obviously, there is no political will in our country to solve the problem of illegal movement of tobacco products across the customs border.

Therefore, interdepartmental cooperation between customs authorities and other law enforcement agencies, although it is a potentially powerful area for improving the system of prevention and counteraction to customs offenses, in practice continues to remain only a declarative tool in solving the problem under investigation.

The second sub-direction – improvement of cooperation of domestic customs institutions with customs authorities of foreign countries – in scientific studies is represented as one of the most important components in the direction of effective elimination of channels of illegal movement of goods and vehicles through the customs border of Ukraine [13, p. 63]. Particular emphasis is placed on the need for cooperation with the customs and law enforcement agencies of the Republic of Belarus, Moldova and Poland.

Thus, the five main areas for improvement of the system of prevention and counteraction to customs offenses were formulated based on the analysis of the most common reasons for the commission of customs offenses in Ukraine.

These areas include: improving economic activities; improvement of regulatory and legal framework of the customs sphere covering two sub-targets – improvement of domestic legislation by introducing appropriate changes and improvement of domestic legislation by its adaptation to the norms of international and European legal and regulatory provision; structural and organizational changes in the sphere of implementation of the state fiscal policy; improvement of functional load of customs; improvement and development of cooperation between customs authorities and other bodies of state power both at the national and international levels.

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