

CURRENT ISSUES OF CUSTOMS FUNCTIONING DURING WAR AND POST-WAR CONDITIONS IN FOCUS AT THE UNIVERSITY OF CUSTOMS AND FINANCE

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On May 26, 2023, the University of Customs and Finance in Dnipro, Ukraine, hosted the 5th International Scientific and Practical Conference “Ukrainian Legal Dimension: Seeking Answers to Global International Challenges”. The event was attended by representatives of government authorities, including customs officials, as well as representatives from the fields of science, business, and civil society. Participants also included representatives from higher education institutions and members of international projects and programs from Georgia, Italy, Poland, Slovakia, and the Czech Republic.

During the scientific conference, a discussion panel titled “Customs of Ukraine in the Conditions of War and Post-War Statehood” was organized, bringing together representatives from the Verkhovna Rada of Ukraine, the Supreme Court, international customs organizations, customs administrations of various countries, operational customs officers from Ukraine, researchers, and the general public. Materials from the discussion panel were subsequently prepared and published (1).

The Customs Service of Ukraine plays a key role in the practical implementation of government policy in terms of liberalizing external trade, abandoning the state’s monopoly on foreign economic activity, and increasing the entry of economic entities into the foreign market. It also plays a crucial role in protecting national security, ensuring the economic interests of the state are achieved, establishing a market economy and facilitating its integration into the global economy, promoting foreign economic relations, and ensuring the rights and legitimate interests of the country’s citizens and economic entities are protected.

However, Russia’s military aggression against Ukraine has, among other things, triggered an immense economic crisis and inflicted significant damage to industries, power infrastructure, transportation, housing, and many other aspects of the country’s economy. In these dire circumstances, the operational effectiveness of the Customs Service is critical, as the degree to which it is able to maintain security in its area of responsibility directly impacts the national security of the country.

In this context, the aim of the discussion panel was to assess the state of Ukraine’s customs authority’s activities during the period of military aggression, evaluate the effectiveness of its operations, consider the size of the task being faced by customs, and identify options for restoring customs regulatory controls in post-war conditions.

The discussion panel was officially opened by its moderator, Professor **Viktor Chentsov**, the Chairman of the Academic Council of the University of Customs and Finance. He emphasized that the main objective of this scientific event was to unite efforts in addressing the challenges and development prospects of Ukraine’s

customs in the context of war and post-war situations, fostering collaboration, and exchanging experiences. Professor Chentsov expressed his gratitude to all participants who agreed to take part in the discussion panel despite the challenging times in which it was being held. He encouraged participants to provide creative inspiration, explore productive outcomes, engage in an active exchange of ideas and experiences, and, ultimately, the translation of research findings into practical activities.

The Secretary General of the World Customs Organization (WCO), Dr. **Kunio Mikuriya**, delivered a welcome speech in which he noted that the WCO had commenced a review of its own tools for managing humanitarian aid and is working with other partners, such as the International Chamber of Commerce, to facilitate trade conditions. Additionally, the WCO had prepared an “Official Note of the Secretariat on the Role of Customs in Unstable and Conflict-Affected Situations,” which would be published in the following week.

The Secretariat’s note contains several recommendations that the Secretary General sought to emphasize. Firstly, he highlighted the need to assess the damage caused to customs infrastructure by the war and, as a first step, to identify the extent of reconstruction required. In doing so, he noted the importance of considering the needs of border regions, which may not necessarily represent main trade routes. Despite potential limitations on the flow of goods, this type of cross-border trade contributes to the relative wealth and stability to the border economy and provides significant support to the population in border regions.

Secondly, Dr. Mikuriya observed that monitoring of humanitarian aid is essential to ensure the smooth and effective border crossing of such cargo while avoiding any abuse of this assistance mechanism.

Thirdly, a recovery plan should be prepared now since a significant amount of funds may arrive for post-conflict reconstruction. However, the basis of this recovery should reflect the country’s own needs rather than donor programs. It is of utmost importance that the customs of Ukraine adhere to the principle of self-sufficiency.

Fourthly, he observed that customs must play a role in ensuring security and, therefore, must have appropriate law enforcement powers, noting that areas affected by conflicts are usually more vulnerable and attract illegal trade.

Overall, the Secretary General noted that the customs service of Ukraine has a particular responsibility for managing humanitarian aid, securing borders, and contributing to the stability of the country during times of conflict and for supporting its post-conflict recovery.

He added that, during the meetings of the Policy Commission and the Council, the topic of “fragile” borders will hold a prominent place on the agenda and will be included in the Strategic Plan as a primary research theme to meet urgent and emerging needs. In this regard, the WCO Secretariat expects greater support from its members, including from countries in need such as Ukraine.

In conclusion, Dr. Mikuriya expressed hope that the discussion panel would provide significant insights and knowledge exchange to assist Ukraine’s customs service to play a crucial role in supporting the country and its people during these disturbing times.

Professor **David Widdowson**, President of the International Network of Customs Universities (INCU), presented a report on the topic “Customs in times of crisis.” He observed that customs authorities are required to respond in the most radical of ways in such times, whether the crisis is caused by natural disasters, the impact of a global pandemic, the horror of terrorist attacks, or the carnage of war.

He noted that the situation in Ukraine is not reflective of an evolutionary change to the environment in which customs is required to operate, but a profound change that has required a radical re-think of the way in which customs can contribute to the security of the state, most importantly in terms of the safety and security of its citizens. Professor Widdowson further noted that those parts of the Ukrainian border directly affected by the conflict are already impossible to control without military means. Customs’ focus has shifted towards preserving control over the remaining trade routes and safe corridors under Ukraine’s authority. He emphasized the necessity of preserving control to the greatest extent possible in the remaining border crossings, as they are essential for ensuring the lawful entry and exit of goods, vehicles, and people, and for maintaining uninterrupted trade between Ukraine and the rest of the world, including the facilitation of essential services and supplies such as military support and humanitarian aid. In closing, Professor Widdowson expressed his wish for a speedy return to peace and freedom.

In his presentation on “Conceptual Approach to the Requirements of a Modern Customs Service”, Professor **Igbal Babaev**, the Deputy Chairman of the State Customs Committee of Azerbaijan, D. Sc., shared his experience in restoring the state and, in particular, the national customs service, in the aftermath

of the Second Karabakh War. He emphasized the need for the customs administration to shift from a “control” principle to a “service” approach and to assist and cooperate with businesses rather than simply exert control over them. Professor Babaev noted the importance of creating a structure (a system of customs institutions) that fosters trust between the customs service and businesses, and in cases of deception and non-compliance by businesses, they should be held fully accountable under the law. Regarding the assessment of Ukraine’s customs service, he indicated that an assessment of the service by global customs professionals would likely conclude that there is room for improvement. This perspective is generally shared by Ukrainian customs professionals, who believe that serious reform of the Ukrainian customs service is needed.

In delivering his presentation on “Building a New Customs Administration in a Post-War Environment”, **Bahri Berisha**, the Director-General of Kosovo Customs showcased the history and evolution of Kosovo Customs, including the challenges faced during the post-war period, particularly in the context of maintaining customs control. The Director-General highlighted the importance of rebuilding the capability of the customs authority in the post-conflict environment with a particular emphasis on the need to re-establish effective its law enforcement capabilities to achieve an appropriate level of regulatory control. Director-General Berisha expressed gratitude to partners, including Ukrainian partners, for supporting Kosovo Customs in its developmental journey.

Professor **Aivars Vilnis Krastins**, former Chairman of Latvian Customs and WCO expert, D.Sc., shared his experience of working as the head of Latvian customs during the time when Latvia was negotiating its accession to the EU, noting that Ukraine was now seeking EU membership. He discussed the challenges faced while fulfilling EU requirements and the changes to the existing system, drawing on examples from Canada and Denmark. In his presentation on “Ukraine and Changes in the EU Customs Paradigm”, Professor Krastins emphasized the importance of developing customs education, noting the significant role played by INCU and specialized customs journals such as the “World Customs Journal” (Canberra, Australia), and the “Customs Scientific Journal” (Ukraine), among others. He encouraged Ukraine to consider the inclusion of the customs profession in its academic degree programs.

Professor **Wieslaw Czyzowicz**, former head of Polish Customs and, Doctor of Science, delivered a presentation on “The Role of Customs in Protecting Ukraine’s National Interests”. He shared his reflections on the role and functions of Ukrainian customs during the war, and in particular in the post-war period. In his address, he emphasized the important role that would be played by Ukrainian Customs following resolution of the conflict, and the need to re-establish border controls as soon as possible, while recognising that the transition to post-war cross-border stability would take time. Professor Czyzowicz expressed his wish for a swift cessation of hostilities and an end to Russia’s barbaric aggression, hoping for peace. He expressed his desire for a free, democratic, prosperous, and happy Ukraine, with its customs service supporting the country’s reconstruction and dynamic development.

Igor Dankov, the customs advisor at the Mission of Ukraine to the EU and representative of the State Customs Service of Ukraine in Brussels, addressed the role played by customs attachés in negotiating and establishing customs policies and procedures in times of conflict. In his report titled “The Role of Customs Attachés in Times of War and Post-War Development”, he emphasised the imperative for a country’s customs service to be given the authority to coordinate government activities at the border, with the necessary powers to ensure border security.

Anatoliy Makarenko, a distinguished economist of Ukraine and Vice-President of the NGO “Association of Ukrainian Taxpayers” for Customs Policy, presented his report on “Ukraine’s Customs Before and After the War”. In his address, he opined that the war and subsequent victory should be seen as an opportunity for the State Customs Service of Ukraine to receive a new lease on life. However, he emphasized that all reforms and organizational improvements should be progressed and achieved through lawful, clear, and coherent vertical management of the State Customs Service of Ukraine.

Vitaliy Naumenko, former Deputy Minister of Revenues and Duties of Ukraine, who had ministerial responsibility for customs, addressed the challenges facing the customs service in this time of war and ways to overcome them. He highlighted the lack of consistency and systematic approach in attempts to reform the national customs service. He believed that the constant changes have led to the loss of momentum in customs’ development, the destruction of the previously established management decision-making mechanisms, and the interruption of international customs cooperation. He emphasized that the customs service is not just about taxes; primarily, it is a reliable state body involved in ensuring national

security. It requires strengthening of personnel capacity, substantial technical assistance, and significant international investments. He concluded, however, that despite the problems of the past, he was confident that the customs service would successfully reform and appropriately meet its regulatory responsibilities.

Professor **Ivan Bereznyuk**, assistant-consultant of the Subcommittee on Customs Affairs of the Verkhovna Rada of Ukraine, D.E.Sc., outlined priority steps for restoring an effective customs service.

Deputy Chairman of the State Customs Service of Ukraine, **Vladislav Suvorov**, in his report on the priority directions of the international activities of the Ukrainian Customs Service amid Russia's armed aggression, proposed recommendations to achieve economic security, operational resilience of customs controls, the security mandate of the Ukrainian customs, and the development of a strategy for the Customs Service's post-war period.

He emphasized that the state's financial policy cannot remain static, but should be adjusted in response to changes in external and internal factors of the national economy. In this context, tax and customs policies can and should be similarly adjusted by determining and adapting modern taxation priorities in line with the overarching financial policies, which are designed to protect Ukraine's national interests. This was also discussed in the report "New Customs Interests of the Country and Building a System for Their Provision" presented by Professor **Pavlo Pashko**, former Deputy Chairman of the State Customs Service of Ukraine, D.E.Sc.

In her presentation on "Current Changes in Customs Legislation: Necessity of Adoption in the Conditions of Martial Law and Implementation Challenges", Professor **Liliya Dorofeeva**, the head of the Legal Department of the Zakarpattia Customs, D.E.Sc., emphasized that the realities of war required urgent transformation of the country's economy to address the new and emerging conditions. She argued that the state should promptly introduce amendments to external economic and trade policies. This necessitated the urgent adoption of legislative and regulatory reforms to enhance the effectiveness of the customs regulatory mechanism in the context of Russia's military aggression.

The topic of "Authorized Economic Operator (AEO) Status and Criteria Analysis" was addressed by **Tetiana Ostriukova**, an expert from the Public Council at the State Customs Service of Ukraine. She highlighted that obtaining AEO status has become crucial for many businesses due to the numerous benefits it provides, significantly reducing administrative burdens related to customs procedures. However, meeting the strict criteria for AEO status is not an easy task. She emphasized that compliance with these criteria should be ongoing and that failure to do so may lead to the loss of AEO authorization at any time.

Galyna Vdovina, the head of the NGO "All-Ukrainian Customs Forum", presented her paper titled "The Role and Perspectives of Customs Audit". She considered audit, as a tool of customs control, to be one of the priority areas for reforming the Ukrainian customs and a key aspect of its future architecture. In her address, she analysed the prerequisites for introducing this specific form of customs control, presented statistical data on its results, identified the challenges of its implementation, and proposed ways to address them.

Professor **Viktor Chentsov's** presentation on "Personnel Training for Ukrainian Customs Authorities: Reflections on Necessary Changes" addressed the increasing need for professional training, retraining, and qualification improvement for customs officials in the context of radical changes to the activities and functioning of the customs system, which historically characterizes Ukraine. After analysing the advantages and disadvantages of various forms of training for customs officials, Professor Chentsov argued that specialized educational institutions are well placed to provide targeted and state-ordered personnel preparation. He also highlighted the need to improve the contractual mechanisms between the State Customs Service of Ukraine and educational institutions for training customs officials at undergraduate- and postgraduate-level of education without the need to use state funds (for example, through funding provided by legal entities or individuals).

The presentation by Professor **Dmytro Prymachenko**, Vice-Rector for Research at the Ukrainian Customs Academy, D.E.Sc., focused on analysing the state and prospects of implementing the Common Transit Regime in Ukraine. He outlined the main advantages of the NCTS (New Computerized Transit System), which include the use of a single customs declaration for moving goods from the country of dispatch to the country of destination through third countries under uniform rules within the framework of the Convention on the Common Transit Regime and the Convention on the Simplification of Formalities in Trade in Goods. Other advantages include: reducing the transit clearance time for goods; providing transit simplifications to economic operators not registered as violators in the information database; determining the form of customs control before the goods cross the national border; increasing opportunities for

analysing customs risks and minimizing them; and more. The presentation emphasized that Ukraine's accession to these conventions will promote interaction between economic operators and customs authorities, create a positive image for the state, and develop international trade.

Other themes addressed at the conference included the social and economic changes that have taken place in Ukraine in recent years, which have necessitated a reevaluation of the established paradigm of administrative penalties, such as confiscation. One of the conceptual problems of the current model of imposing administrative penalties in the form of confiscation is the lack of compliance with the principle of proportionality between the damage caused and the protected rights, freedoms, and legitimate interests of individuals or legal entities and the sanctions set forth in the law establishing administrative liability. In this context, Associate Professor **Anatoliy Mazur**, from the Department of Public and Private Law at the University of Customs and Finance, analysed citizens' constitutional complaints to the Constitutional Court of Ukraine and its decisions in his presentation on "Confiscation in the Customs Code of Ukraine: The Principle of Proportionality of Administrative Penalty and Committed Offense in the Interpretation of the Constitutional Court of Ukraine".

Other problematic issues regarding the imposition of administrative liability on legal entities were addressed by Professor **Vladyslav Lipinskiy**, Dr.Sc., Director of the Institute of Law and International Legal Relations at the University of Customs and Finance. Professor Lipinskiy adopted the position that the optimal way to improve the administrative-offense provisions in customs legislation is to hold legal entities responsible for violating customs rules. This, he argued, will ensure the application of proportionate administrative-legal consequences for customs rule violations.

Taking into account the results of the discussion panel "Ukrainian Customs in the Context of War and Post-War Conditions" and with the aim of identifying issues for further consideration, the following recommendations were approved:

1. In order to implement the provisions of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community, and their Member States, on the other, it is proposed to accelerate the procedures for adapting national customs legislation to the EU Customs Code. Specifically, the following actions are proposed:

- 1.1. Create a working group to prepare a new version of the Customs Code of Ukraine. The new version of the codified act should closely reflect the provisions of the Union Customs Code, the Implementing Regulations and the Delegated Regulations of the European Union. The working group should include experts from the State Customs Service of Ukraine and other relevant government bodies, representatives of entities engaged in foreign economic activities, and members of the academic community, including the University of Customs and Finance (UCF).

- 1.2. Prepare and submit to the Verkhovna Rada of Ukraine a new version of the Ukrainian Customs Tariff. The new version should be based on the updated Ukrainian Classification of Goods for Foreign Economic Activity (UCGFEA), constructed on the basis of the Harmonized Commodity Description and Coding System 2017 (HS-2017) at the six digit level and the Combined Nomenclature of the European Union (CNEU) at the seven and eight digit level, taking into account the obligations within the framework of the World Trade Organization (WTO).

- 1.3. Complete the "Conformance Testing" procedure, as required by the Directorate-General for Taxation and Customs Union of the European Commission (DG TAXUD), as stipulated in the mechanism for implementing the provisions of the Convention on a Common Transit Procedure and the Convention on the Simplification of Formalities in Trade in Goods. This will help to initiate the procedure for Ukraine's accession to these Conventions and implementation of the new computerized transit system NCTS.

- 1.4. To enhance the institution of customs attachés and introduce positions of customs advisors in Missions of Ukraine to international organizations and other diplomatic missions.

2. It is proposed to establish a working group to develop a Strategy for the development of the Customs Service of Ukraine in the post-war period (hereinafter referred to as the "Strategy"). The Strategy should define the optimal model for the customs service, its goals and objectives, priority areas of focus and ways to achieve them. It was agreed that implementation of the Strategy should result in the creation of an institutional mechanism that will appropriately address the rights and legitimate interests of individuals and legal entities in the field of state customs affairs; create conditions for the development of the national economy and international trade; provide relevant services to citizens and businesses; improve the efficiency of customs revenue administration, and ultimately, ensure efficient revenue generation for the state budget.

3. Develop and submit to the Verkhovna Rada of Ukraine a draft law “On the National Customs Service of Ukraine”, which will define the legal framework for the organization and activities of the National Customs Service of Ukraine, as well as the procedure for serving in the customs authority. According to the draft law, the National Customs Service of Ukraine should be an executive body responsible for protecting the customs interests and customs security of Ukraine, regulating foreign trade, protecting the domestic market, promoting the development of the Ukrainian economy and its integration into the global economy, contributing to the state budget, and countering customs violations.

Additionally, to improve certain aspects of the activities of the State Customs Service of Ukraine, the following measures are proposed:

1. Enhance the capacity of customs personnel by:
 - Developing a mechanism for interaction between the client (the State Customs Service of Ukraine) and the executor (specialized higher education institution) through contractual relations.
 - Strengthening the State Customs Service of Ukraine’s role in the process of preparing higher education applicants in higher education institutions that prepare candidates for the customs service through competitive admissions.
2. Develop and implement quality standards for the planning and conduct of customs audits that will ensure the validity of the process and increase the accountability of officials who conduct such audits.
3. Improve the mechanism for obtaining Authorized Economic Operator (AEO) status, which will improve relations between the government and businesses, streamline customs procedures, and reduce bureaucracy at customs for companies that comply with the legislation.
4. Ensure customs infrastructure is fit for purpose by:
 - Identifying the appropriate location of customs facilities based on modern, post-conflict needs.
 - Equipping such facilities with advanced technology to enable efficient implementation of state customs affairs and facilitate the movement of goods and vehicles across the Ukrainian customs border.
 - Creating opportunities for conducting joint customs operations with neighbouring customs administrations at the customs border.

References:

1. “Customs in the Context of War and Post-War Conditions: Materials of the Discussion Platform”. Dnipro:University of Customs and Finance, 2023. 61 p.