

ACADEMIC CONTRIBUTIONS

Ukrainian Customs Is Under fire. Functioning of the Territorial Bodies of the State Customs Service During the Russian Invasion

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The affairs of Ukrainian Customs during the Russian Federation's military aggression against Ukraine were heavily impacted from the first days of the declaration of martial law on the territory of Ukraine. The effect of the Russian invasion of Ukraine on the activities of the State Customs Service of Ukraine and its territorial bodies (customs offices) is examined. The advantages and disadvantages of anti-crisis measures introduced by the State Customs Service to overcome the negative consequences of ongoing armed aggression are then explored. Finally, the current organisational and competence aspects of the territorial bodies of the State Customs Service of Ukraine during the armed conflict are emphasised.

1. Introduction

The full-scale aggression launched by the Russian Federation against Ukraine on 24 February 2022 caused, among other issues, significant changes in the customs affairs of Ukraine. In conditions where a large part of the territory of Ukraine is temporarily occupied or turned into a battlefield, and the rest has experienced less severe but still traumatising shocks from military destruction, the country has lost much in economic terms and tries to adapt to a 'new normal'. The importance of the normal functioning of Customs in Ukraine is indisputable. For example, in 2021, the activities of the State Customs Service of Ukraine provided the state budget of Ukraine with 40 per cent of total revenues (The Cabinet of Ministers of Ukraine, 2020). The conflict in Ukraine is expensive and dangerous. The human and economic losses associated with the conflict are enormous and increase daily. According to the report of The National Council for the Recovery of Ukraine from the Consequences of War (2022), direct losses because of hostilities amount to at least USD100 billion as of July 2022. This highlights the critical need for

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strategic and effective customs management in Ukraine to guarantee economic stability during the conflict and the country's recovery in the post-conflict period.

In response to the military aggression of the Russian Federation, the Government of Ukraine has repeatedly resorted to innovations and anti-crisis measures regarding foreign economic activity and customs affairs during the ongoing conflict.

In this paper, we aim to investigate the functioning of customs offices as separate structural units of the State Customs Service during the armed conflict in Ukraine. To do this, we analyse the view formulated by the State Customs Service regarding the distinction between *customs offices that are operating normally* and *customs offices that are temporarily non-operational*. We evaluate the effectiveness of changes to legislation and procedures for the functioning of the State Customs Service in Ukraine during the armed conflict. The paper scrutinises part of the security, law enforcement, control and fiscal functions that were transferred by temporarily non-operational customs offices to customs offices that are operating normally.

2. Methodology

We analyse the consequences of the Russian invasion related to the State Customs Service of Ukraine and the armed conflict's impact on Ukraine's customs industry by examining relevant laws, orders, resolutions and statistics. We also examine the legal acts regulating the activities of the State Customs Service in the conditions of the ongoing armed conflict. This analysis was based on the legal acts of the Tax Code of Ukraine, the Customs Code of Ukraine, orders of the State Customs Service, normative acts of the Cabinet of Ministers of Ukraine and the Ministry of Finance of Ukraine. We critique the advantages and disadvantages of the anti-crisis measures introduced by the State Customs Service to overcome the negative consequences of the ongoing armed aggression of the Russian Federation. We also evaluate the current organisational and competence aspects of the functioning of the territorial bodies of the State Customs Service of Ukraine during the armed conflict. We compare the official statistics of the State Customs Service regarding the replenishment of the state budget at the expense of customs taxes and compare imports/exports for 2021 and 2022.

3. Background

The functioning of Ukraine's customs bodies during the Russian Federation invasion was significantly disrupted. Importantly, from 24 February 2022, significant sections of the customs border of Ukraine with neighbouring countries were closed. These were:

- the section of the border with the Russian Federation, 1,974 km by land
- the section of the border with the Republic of Belarus, 1,084 km by land

Table 1. Analysis of customs revenues in the formation of the Ukrainian State Budget in 2021 and 2022 (in millions of USD unless otherwise specified).

Source of revenue	2021	2022	Deviation	% deviation
Customs duty	1,349,20	203,29	-1,145,91	-84.90
Excise tax	2,657,47	333,93	-2,323,54	-87.43
VAT	13,937,90	2,314,97	-11,622,93	-83.39
Total	17,944,57	2,852,19	-15,092,38	-84.10

Source: Compiled by the authors from the State Customs Service of Ukraine (2022a).

- the section of the border with the Transnistrian ‘segment’ of the Republic of Moldova, 452 km by land
- the maritime section of the border with the Russian Federation, 1,355 km
- 1,056 km along the Black Sea (partially valid, but only under the terms of the ‘Initiative on the Safe Transportation of Grain and Foodstuffs from Ukrainian Ports’) (The United Nations, 2022)
- 249 km along the Sea of Azov and 49 km along the Kerch Strait (The Verkhovna Rada of Ukraine, 2010).

Furthermore, the work of the state border and customs infrastructure was suspended. This involved land border checkpoints, entry-exit control points, customs registration points, transport and logistics infrastructure, cargo customs complexes, autoterminals, warehouse infrastructure with special customs status, and duty-free shops.

Therefore, to evaluate the impact of the Russian invasion of Ukraine on the formation of the state budget at the expense of customs taxes (customs duty, excise tax, value-added tax (VAT)), a comparison of these revenues for 2021 and 2022 is presented ([Table 1](#)).

According to [Table 1](#), a sharp drop (84.10%) in revenues to the Ukrainian state budget from customs taxes (duty, excise tax and VAT) occurred in 2022 compared to 2021. On the one hand, inflation and the devaluation of the Ukrainian hryvnia contributed to the growth of customs payments, but this did not affect the total amount of customs revenue.

The decrease in revenue to the state budget from customs taxes was also influenced by a reduction in import volumes by 82.33 per cent ([Table 2](#)). At the same time, we must realise that customs authorities are not regulators of foreign trade. Their task is the customs clearance of goods and the appropriate response to the international trade trends occurring in the country and the world.

Moreover, during the ongoing conflict, the Government of Ukraine introduced many benefits and exemptions (partial or total) from paying customs taxes, and for three months in 2022, removed all customs taxes. In July 2022, the Ukrainian Government cancelled all tariff preferences for various groups of goods and introduced a simplified procedure for customs clearance

Table 2. Analysis of import and export volumes in 2021 and 2022 (in millions of USD unless otherwise specified).

	2021	2022	Deviation	% deviation
Import	73,322,52	12,950,21	-60,372,31	-82.33
Export	68,237,81	12,925,33	-55,312,48	-81.05
Total	141,560,33	25,875,54	-115,684,79	-81.69

Source: Compiled by the authors from the State Customs Service of Ukraine (2022a).

of humanitarian aid. The government then introduced the legal concept of ‘critical import’. Under this concept, essential goods were identified as critical imports. Non-tariff regulation measures were not applied to commodity articles that were in the category of ‘critical import’ goods. Tariff regulation, in general, had a purely preferential regime in a formal (simplified) form.

In addition, the government’s decision to reduce the VAT rate on fuel and oil products from February to September of 2022 had a distinct impact on budget revenues from customs taxes (the VAT rate of 20% was reduced to 7%). Because of this decision, the Ukrainian budget was reduced by about USD950 million.

Exempting taxpayers from paying customs taxes for almost all goods imported into the customs territory of Ukraine is entirely inappropriate. According to Article 67 of the Constitution of Ukraine (The Verkhovna Rada of Ukraine, 1996), everyone must pay taxes and fees in accordance with the terms and in the amounts established by law. It should be recalled that in 2015, after the beginning of the ‘hybrid war’ in Eastern Ukraine, the Ukrainian Parliament did not cancel customs payments for the import of goods. All such payments were paid in full for imported goods to the customs territory of Ukraine, except so-called ‘vitaly important’ goods. Moreover, a tax was adopted – an ‘additional import duty’ of up to 10 per cent – for all goods except vitaly important ones. This tax was introduced for one year and was a specific type of customs duty. However, in 2016, with the stabilisation of the balance of payments in Ukraine, this tax was cancelled (The Verkhovna Rada of Ukraine, 2014). All these deprivations damaged the implementation of the financial indicators by the State Customs Service during the reporting year, which are created every month by the Ukrainian Government to replenish the State Budget of Ukraine. The State Customs Service fulfilled the financial plan for 2022 by only 56.9 per cent, that is, the State Budget of Ukraine fell short by USD8.48 billion. As a result, 43 per cent of the funds were not obtained from the financial plan. According to the financial plan, approximately USD1.64 billion per month of customs payments were planned to be administered by State Customs Service. Nevertheless, this was not achieved at all during the year.

Thus, the leadership of the State Customs Service faced the following questions: how to escape the crisis that has developed around the activities and functioning of the State Customs Service in matters of accounting and administration of customs taxes and how to stabilise and optimise the work of territorial bodies of the State Customs Service. In the following two sections,

we consider the changes introduced by the State Customs Service to the activities of territorial bodies (customs offices) during the armed conflict in Ukraine.

4. Organisation of the functioning of the State Customs Service territorial bodies during the armed conflict

According to the Tax Code of Ukraine (The Verkhovna Rada of Ukraine, 2010), customs bodies are controlling bodies consisting of the Administration of the State Customs Service (the central executive body implementing the state customs policy), customs offices and customs posts. Customs bodies control the process of taxation with customs duty, excise tax, and VAT, which under the legislation are carried out in connection with the import and export of goods to/from the customs territory of Ukraine or the territory of the free customs zone (The Verkhovna Rada of Ukraine, 2012).

The State Customs Service ensures the implementation of the state customs policy, protects the customs interests of Ukraine, creates favourable conditions for the development of foreign economic activity, and maintains the necessary balance between control and simplification of customs procedures and customs formalities. The State Customs Service of Ukraine functions as a single legal entity, and its territorial bodies — customs offices — work as separate structural units. The State Customs Service effectively administers customs taxes and has traditionally provided a significant part of revenues to the state budget of Ukraine. Accordingly, ensuring the uninterrupted functioning of territorial bodies, as separate structural units of the State Customs Service, during the armed conflict on Ukrainian territory is extremely important in light of the complex and fast-moving conditions of the Armed Forces of Ukraine's military operations with the Russian Federation.

According to Order No. 460 (The State Customs Service of Ukraine, 2020), 26 customs offices (territorial bodies, as separate divisions of the State Customs Service) operate in the customs territory of Ukraine: Cherkasy, Chernivtsi, Chernihiv, Dnipro, Donetsk, Energy, Ivano-Frankivsk, Kharkiv, Kherson (including the Kherson region, the Autonomous Republic of Crimea and the city of Sevastopol), Khmelnytsky, Kyiv, Kropyvnytsk, Luhansk, Lviv, Mykolaiv, Odesa, Poltava, Rivne, Sumy, Ternopil, Vinnytsia, Volhynia, Zhytomyr, Zakarpattia, Zaporizhzhya, and the Coordination and Monitoring customs office (the headquarters of the Customs Service of Ukraine).

With the beginning of military aggression by the Russian Federation against Ukraine, part of the territory of the Donetsk, Luhansk, Kherson, Mykolaiv, Zaporizhzhya and Kharkiv regions were (and continue to be) under temporary occupation at various times, or hostilities were (and continue to be) taking place in specific territories of these regions. According to Order No. 188 (The Cabinet of Ministers of Ukraine, 2022), the Government of Ukraine temporarily closed some customs checkpoints across the state border of Ukraine. As a result, the State Customs Service adopted Order No. 113, which suspended the work of some customs offices and their structural subdivisions: Donetsk, Luhansk, Kharkiv and Mykolaiv customs offices and the Customs

Office in the Kherson region. Suspension is a stoppage of work caused by the lack of organisational or technical conditions necessary for work performance, force majeure, or other circumstances (The Verkhovna Rada of Ukraine, 1971).

To ensure the performance of certain functions of customs control and customs clearance in customs offices that are temporarily non-operational until such customs offices are operating normally, the State Customs Service adopted Order No. 328, which determined that:

- Ternopil Customs office performs the functions of customs control and customs clearance of Donetsk customs office
- Khmelnytsky Customs office performs the functions of customs control and customs clearance of Luhansk Customs office
- Dnipro Customs office performs the functions of customs control and customs clearance of Kharkiv Customs office
- Cherkasy Customs office performs the functions of customs control and customs clearance of the Customs office in the Kherson region, the Autonomous Republic of Crimea and the city of Sevastopol
- Poltava Customs office performs the functions of customs control and customs clearance of Mykolaiv Customs.

It should be emphasised that, in addition to the customs offices mentioned above, structural units of other customs offices of the State Customs Service became temporarily non-operational under Order No. 522 (The State Customs Service of Ukraine, 2022c), for example:

- customs posts ‘Velika Pysarivka’, ‘Bachivsk’, ‘Druzhba’, ‘Katerynivka’, ‘Yunakivka’, and ‘Bilopilla’ of the Sumy Customs office
- customs posts ‘Novi Yarolovichi’, ‘Slavutich’, ‘Senkivka’, ‘Novgorod-Siverskyi’, and ‘Snovsk’ of the Chernihiv customs office
- customs post ‘Yampil’ of Vinnytsia Customs office
- customs posts ‘Dolsk’, ‘Domanove’, ‘Pishcha’, ‘Kovel’, and ‘Zabolottia-Khotyaslav’ of Volhynia Customs office
- customs clearance department No. 1 of the customs post ‘Specialised’ of the Dnipro Customs office
- customs clearance department ‘Kupyansk’ of the Energy Customs office
- customs post ‘Korosten’, ‘Ovruch’, ‘Olevsk’, and ‘Vystupovichi-automobile’ of Zhytomyr Customs office

- customs posts ‘Melitopol’, ‘Berdyansk’, and ‘Zaporizhia-Airport’ of the Zaporizhia Customs office
- customs posts ‘Kyiv Airport (Zhulyani)’, ‘Boryspil’, ‘Vilcha’, ‘Vyshneve’ customs clearance department No. 2 of the ‘Kyiv-central’ customs post of the Kyiv Customs office
- customs post ‘Lviv Airport’ of Lviv Customs office
- customs posts ‘Udrytsk’, ‘Prykladniki’, and ‘Horodishche’, customs clearance department No. 2 of the customs post ‘Sarna’ of Rivne Customs office.

We would like to highlight that because of hostilities, the situation of ensuring the uninterrupted functioning of territorial bodies as separate structural divisions of the State Customs Service is constantly and rapidly changing. After the offensive actions of the armed forces of Ukraine in the autumn of 2022, a significant part of the Ukrainian territories was liberated from the Russian army. This allowed some customs offices to be unsuspending ensuring their normal operation.

From 5 December 2022, the suspension of the work of Odesa International Airport, ‘Kuchurgan’ and ‘Podilsk’ of the Odesa Customs office was terminated. The suspension of the Kharkiv Customs office was also terminated from 1 December 2022, which allowed the Kharkiv Customs office to resume the functions of customs control and customs clearance, which were previously transferred to the Dnipro Customs office (The State Customs Service of Ukraine, 2022d).

Furthermore, the systemic processes mentioned above have contributed to constant changes in the organisational and staff structure of the State Customs Service. For example, Decree No. 372 (The Ministry of Finance of Ukraine, 2022) provides for the implementation of not only optimisation actions according to the structure of subdivisions of customs offices but also the relocation of personnel of the State Customs Service. For example, officials from Customs that are temporarily non-operational are transferred to customs offices that are operating normally. Part of the security, law enforcement, control, and fiscal functions are also being redistributed (temporarily) between customs offices (these functions are released from the competence of customs offices that are temporarily non-operational to designated customs offices that are operating normally).

5. Competences of territorial bodies of the State Customs Service during the armed conflict in Ukraine

As described in the previous section, due to the armed conflict, the State Customs Service was forced to change the organisation of its territorial bodies’ activities by dividing them into temporarily non-operational customs offices, and customs offices that continue to operate normally. Therefore, the State

Customs Service transferred most of the security, law enforcement, control and fiscal functions from customs offices that are temporarily non-operational to customs offices that are operating normally.

What are the functions of the customs offices operating normally compared to the customs offices that are temporarily non-operational? The functions are listed in Order No. 328 and include:

1. investigation of the circumstances of non-delivery of goods
2. carrying out work in the implementation of transit procedures
3. organisation of money collection in case of non-fulfilment of customs tax obligations secured by guarantees, interaction with guarantors on such issues
4. ensuring the implementation of measures directed to the carrier, in case of loss or release of goods by them without the permission of the customs body, the obligation to pay customs payments established by law for the import of such goods
5. preparation of reports on the total number of deliveries and non-delivery of shipments of goods at the destination customs
6. deciding to extend the terms in cases defined by Chapter V 'Customs regimes' and Chapter VII 'Storage of goods, commercial vehicles in warehouses of customs bodies and at their disposal of the Customs Code of Ukraine, fulfilment of customs formalities related to the application of customs modes
7. fulfilment of customs formalities related to making changes to completed customs declarations, declaring customs declarations invalid, and issuing additional customs declarations (The State Customs Service of Ukraine, 2022e).

The more critical functions involved with the organisation of customs control and customs clearance are numbers 6 and 7 in the list above.

It should be noted that work undertaken in relation to customs declaration is the most crucial component of these two functions (6 and 7 above), since the declaration is the primary document for the calculation and subsequent payment of customs revenue for imports and the emergence of a tax liability for VAT when exporting goods. The customs declaration forms the basis of determining a VAT 'tax credit'. The right to a VAT 'tax credit' when importing goods arises on the date of payment of the VAT tax liability.

A customs declaration is also the official document in which a person specifies the customs procedure to be applied to the goods, as well as the information provided by law about the goods, the conditions and methods of their movement across the customs border of Ukraine, and the procedure regarding the calculation of customs taxes necessary for the application of this procedure.

If, at the request of declarants, customs offices that are operating normally perform functions 6 and 7 on behalf of customs offices that are temporarily non-operational, they will also ensure compliance with the associated customs requirements (The State Customs Service of Ukraine, 2022b).

Regarding the availability of specific technical capabilities, we note the following. Due to Russian missile attacks, Ukraine is constantly rebuilding its energy infrastructure and capacity. As a result, it is not always possible to undertake customs formalities in cases where such activities rely on automated procedures (The Ministry of Finance of Ukraine, 2012).

In relation to the execution of customs formalities during martial law, we can make the following observations regarding the operation of customs offices that are functioning normally, in place of those that are temporarily non-operational. Goods for export can be cleared by any customs body upon presentation to that body. Depending on the decision of the customs body, customs clearance and release of goods for export may be carried out without the need for the goods to be presented to the customs body where a customs declaration has been submitted in the usual manner. The customs body makes a decision on the release of goods based on a risk analysis within four working hours of receiving the customs declaration.

It is important to note that goods for export are only delivered to the relevant customs control zone if the customs body has made the decision to present them to that body. The customs control zone is determined based on the location of the goods specified in the customs declaration, and only if the customs body has made the corresponding decision.

The presentation of goods to the customs body is carried out upon the declarant's receipt of a notice from the customs body requesting a such presentation, based on the results of risk analysis and/or regulatory legal requirements for customs formalities for export goods.

It is also worth noting that the establishment of customs control zones, including temporary ones, for the performance of customs formalities is solely within the competence of customs bodies (The Ministry of Finance of Ukraine, 2020).

6. Conclusion

The situation in the customs sector of Ukraine in general, and in particular in the territorial bodies of the State Customs Service, has undergone significant changes since the beginning of the full-scale Russian invasion.

The activities of the State Customs Service and its territorial bodies are governed exclusively by the current legislation. However, the relevant powers and functions fail to meet the challenges of today, due to the peculiarities of the armed conflict on the territory of Ukraine, which began on 24 February 2022.

The armed conflict in Ukraine requires the leadership of the State Customs Service to be flexible and prompt in making administrative decisions to minimise damage to the customs affairs and the state as a whole. During the last 12 months of the conflict, the State Customs Service of Ukraine attempted to take anti-crisis measures, such as making changes to the organisation and

scope of the competencies of territorial bodies of the State Customs Service. However, unfortunately, the temporary cancellation of customs duties by the Ukraine Government had a more significant impact on the drop in customs revenues to the budget than the stabilisation measures introduced by the State Customs Service. Therefore, the issue of customs organisation during the military conflict in Ukraine, even under the conditions of the steps already implemented, remains relevant.

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