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CUSTOMS PAYMENT EVASION AND THE SHADOW ECONOMY: NAVIGATING CHALLENGES IN UKRAINE'S WAR CONTEXT

УХИЛЕННЯ ВІД СПЛАТИ МИТНИХ ПЛАТЕЖІВ ТА ТІНЬОВА ЕКОНОМІКА: ПОДОЛАННЯ ВИКЛИКІВ В УМОВАХ ВІЙНИ В УКРАЇНІ

ANNOTATION

This article analyzes customs payment evasion in Ukraine amid the ongoing full-scale war and its economic implications. The shifting global financial landscape underscores the state's crucial role in shaping foreign trade policies for supply chain security. The interaction between international organizations (WTO, IMF, OECD) and national customs regulations highlights the need for harmonized legal frameworks. The war has intensified customs enforcement challenges, resulting in increased evasion and a shadow economy that undermines state revenue. This research emphasizes the negative impact of the Russian invasion on Ukraine's economic stability and the urgent need for effective tax compliance mechanisms, proposing strategies for improved enforcement and comprehensive reforms to enhance Ukraine's economic resilience.

Keywords: customs payment evasion, foreign trade policy, shadow economy, international cooperation, economic security.

АНОТАЦІЯ

У статті здійснюється аналіз викликів, пов'язаних з ухиленням від сплати митних платежів в Україні. Проблема розглядається в розрізі повномасштабної війни та її глибоких економічних наслідків для української економіки. Аналізується важлива роль держави у формуванні та реалізації зовнішньоторговельної політики, що забезпечує безпеку та відповідає вимогам учасників ланцюга постачання. Визначено взаємозв'язок між міжнародними організаціями, такими як ВТО, МВФ, Світовий банк, ЮНКТАД і ОЕСР, та національним митним регулюванням, що підкреслює необхідність гармонізації правових рамок та стандартів для полегшення торгових операцій. Встановлено, що війна в Україні поглибила труднощі, пов'язані з виконанням митних платежів, що призвело до зростання як ухилення від сплати митних платежів, так і тіньової економіки, яка підриває державні доходи. У статті підкреслюється вплив російського вторгнення на економічну стабільність України, а також те, як широкомасштабні санкції ускладнили фінансові операції, що підтверджує необхідність ефективних механізмів дотримання податкового законодавства. Зазначається важливість міжнародної співпраці у вирішенні проблеми митного ухилення, що може суттєво вплинути на економічну ситуацію в Україні. Автор акцентує на терміновості вирішення проблеми несплати податків, пропонуючи запозичення європейських найкращих практик у сфері митного регулювання. У статті досліджується мотивація ухилення від сплати митних платежів та

їх зв'язок із тіньовою економікою, а також пропонуються цільові стратегії для посилення заходів контролю. Крім того, аналізується законодавча база, що регулює митні збори та податки, та виявляються прогалини, які дозволяють ухилення, особливо в умовах війни. Вказується необхідність комплексних реформ у митній та податковій системах для зміцнення економічної стійкості України. Дослідження робить внесок у ширшу дискусію про митне регулювання та економічну безпеку, закликаючи до інноваційних рішень для протидії ухиленню від сплати митних платежів та зміцнення шляху України до відновлення і інтеграції в європейську економічну структуру.

Ключові слова: ухилення від сплати митних платежів, зовнішньоторговельна політика, тіньова економіка, міжнародне співробітництво, економічна безпека.

Formulation of the problem. In global financial research, the role of the state is crucial in shaping and executing foreign trade policies, particularly in ensuring security and meeting the evolving demands placed on supply chain participants. Various levels of customs regulation exist across the global economy, with international oversight being enforced through agreements and decisions made by key international organizations, including the World Trade Organization (WTO), the International Monetary Fund (IMF), the World Bank, the United Nations Conference on Trade and Development (UNCTAD), and the Organization for Economic Co-operation and Development (OECD). These entities, together with frameworks such as the General Agreement on Tariffs and Trade (GATT), establish the foundational principles that guide international customs regulation. As international cooperation between governments deepens, there is often a need to harmonize national legal frameworks, production standards, and customs policy implementation. The goal of international customs bodies is primarily to foster mutual understanding among countries that form trade partnerships. For instance, tariff

regulation authorities in one country must align their legislative frameworks with counterparts in other countries to ensure smooth transaction processing and identify collaborative paths for improvement.

In the context of the ongoing full-scale war in Ukraine, the enforcement of customs payments has become significantly more challenging. The situation has led to a surge in customs payment evasion, making it a critical issue that demands thorough investigation. As economic pressures increase, the shadow economy grows, with customs payment evasion being a key driver of revenue loss for the state.

Analysis of recent research and publications. The Russian invasion of Ukraine in February 2022 significantly affected international relations and domestic economic stability, prompting widespread sanctions from the European Union and the United States. These measures target key individuals, including oligarchs, and impose restrictions on weapons and dual-use goods. G. Corain emphasizes the complexities of these sanctions, questioning whether they can effectively undermine Russian military capabilities without collateral damage to the Russian and European economies [1]. The sanctions regime necessitates Counter Terrorism Financing (CTF) supervision, involving banks and financial intermediaries. G. Corain notes that the exclusion of Russian banks from the SWIFT system complicates transactions, often requiring triangulation through CTF-compliant states, raising concerns about the sanctions' efficacy and potential counterproductive outcomes in international trade.

Amid these external pressures, addressing internal economic challenges is critical for Ukraine. V. Halunko et al. stress the urgency of combating tax non-payment and studying best practices for preventing tax offenses [2]. Effective tax compliance mechanisms are essential for enhancing fiscal stability and public funding amid ongoing conflict.

Dniprov et al. highlight the need for administrative liability for customs violations to reinforce Ukraine's customs security [3]. The stagnation of the customs system demands comprehensive reforms to enhance trade efficiency and financial security. The authors advocate adopting European best practices, implementing risk management systems, and developing new software to improve the electronic declaration process.

T. Kolomoiets et al. analyze tax evasion schemes and their detrimental macroeconomic impacts, including reduced fiscal flows, capital outflow, exchange rate pressure, and corruption, which contribute to significant budget shortfalls [4]. As Ukraine integrates into European markets, addressing tax evasion is crucial for its development strategy. A comprehensive approach to detecting and preventing shadow financial transactions,

along with developing effective tools to counter tax evasion, is necessary to enhance financial security and boost economic competitiveness.

V. G. Shcherbak et al. discuss customs regulation within Ukraine's logistics networks, emphasizing the need for a supportive regulatory framework to enhance competitiveness amid global integration [5]. Effective customs regulations require collaboration between customs authorities and business partners to optimize supply chains. The study identifies three customs regulation scenarios based on economic integration: absence of integration, free trade zones, and common customs spaces, which can simplify procedures and mitigate logistics risks.

The relationship between customs policy and the shadow economy is crucial in Ukraine [6; 7]. The shadow economy, encompassing illicit trade and tax evasion, significantly impacts Ukrainian enterprises. Understanding customs policy dynamics and their effects on shadow activities is vital for formulating effective strategies. An analysis of data on imports, excise taxes, and specific markets (tobacco, fuel, vehicles) reveals trends and correlations, demonstrating customs policy's influence on the external economic environment while addressing the challenges posed by the shadow economy.

These studies reveal the complex challenges Ukraine faces post-invasion and highlight the urgent need for reforms in customs and taxation to strengthen economic stability amid geopolitical tensions. The interplay of economic sanctions, customs violations, tax evasion, and the pressing need for tax compliance are critical factors in Ukraine's pursuit of economic security and development.

Formulation of the purposes of the article. This article aims to analyze the complexities of customs payment evasion within the context of Ukraine's ongoing full-scale war and its implications for the economy. It seeks to investigate the challenges posed by the evolving landscape of foreign economic activity, focusing on the role of state institutions in enforcing customs regulations. The research will explore the interplay between legislative frameworks and the shadow economy, emphasizing the need for a forensic methodology to effectively address customs-related crimes. Additionally, the article will evaluate the motivations behind customs payment evasion and propose strategies for enhancing enforcement measures to safeguard state revenue and promote economic recovery amidst the current geopolitical challenges.

Presentation of the main research material. Despite the legislative framework in place, which comprehensively governs the calculation and collection of customs duties, the current war conditions complicate enforcement. Article 297 of the Customs Code stipulates specific deadlines for customs payments, requiring that all fees be paid within a designated timeframe [8].

To ensure compliance, carriers are mandated to follow the payment structures outlined in Article 298, including options for prepayment or advance payment [8]. However, not all goods entering or leaving Ukraine are subject to customs duties. As of October 1, 2022, the government of Ukraine has established a range of goods that are exempt from customs duties.

Exemptions from customs duties, including conditional exemptions, are governed by this Code, the Tax Code of Ukraine [9], other laws, and international agreements ratified by the Verkhovna Rada. The central executive authority responsible for state financial policy defines the procedure for submitting documents to confirm eligibility for customs duty exemptions.

While these exemptions are designed to ease the burden on carriers and traders, especially in light of the economic strain caused by the war, they also present opportunities for abuse. A lack of adequate oversight can inadvertently fuel the shadow economy, as entities may exploit these exemptions to avoid payment obligations. Therefore, the legislative framework must strike a balance between offering necessary relief and maintaining stringent control over customs operations. Addressing customs payment evasion is not only essential for Ukraine's economic recovery but also for preventing the further expansion of the shadow economy under war conditions.

The issue of combating crime in foreign economic activity remains highly relevant, especially as Ukraine deepens its economic integration with neighboring countries within the framework of the European Union (EU). As part of Ukraine's bid for EU membership, it is critical for the country to align with unified customs regulations. These regulations govern the movement of goods across the EU's customs border, their use within or outside the customs territory, and a variety of customs operations such as the arrival, departure, temporary storage, declaration, and release of goods. Additionally, the regulations cover customs duties and other legal obligations in this domain.

The integration of nations into a unified economic space follows global trends in the globalization of the world economy. However, economic crime has proven to be highly adaptable to changing socio-economic conditions, and criminal activity in the realm of foreign economic operations is no exception. This necessitates continuous research and the development of comprehensive forensic methodologies to investigate such crimes, particularly in the context of global efforts aimed at ensuring economic security.

Our research underscores the need for a forensic methodology specifically tailored to investigating crimes in the foreign economic sector. This methodology is based on theoretical, methodological, and practical considerations, and relies on a forensic classification of crimes in this

sector. Such a classification systematizes criminal activities according to established forensic criteria, primarily by identifying patterns in the mechanisms of criminal acts in foreign economic operations.

Building on this approach, we have paid particular attention to the forensic elements outlined in the Customs Code of Ukraine, which defines penalties for evading customs payments by organizations and legal entities [8]. According to our forensic classification, these criminal acts fall under crimes related to customs control when goods or valuables cross the customs border.

We concur with most Ukrainian scholars who classify customs payment evasion by organizations or legal entities as a crime within the realm of foreign economic activity. However, there is debate on this issue: some researchers argue that these acts should be categorized as tax crimes. While we do not delve into this debate here, it is important to highlight the multifaceted nature of the legal relations protected by this provision, which intertwines both tax and customs aspects. Furthermore, customs payment evasion typically occurs within the broader context of foreign economic activity, making it integral to our forensic focus.

Our analysis of criminal cases related to customs payment evasion reveals that these offenses are often accompanied by attempts to conceal the foreign economic activity itself. This reinforces the need for a comprehensive forensic methodology that can address the complexity of such crimes.

To understand the implications of customs payment evasion, it is essential to first outline the framework governing customs duties and taxes. In our study, we observed that goods crossing the customs border with EU countries are subject to customs duties and taxes. According to Article 295, customs payments include import duties; export duties; value-added tax (VAT), collected upon the import of goods into the customs territory [8]. The calculation of these payments depends on the customs value of the goods and the tax regulations of EU member states. From a criminal law perspective, significant customs payment evasion is recognized when the total sum of unpaid duties for goods crossing the customs border exceeds 150 euros. In such cases, the goods are subject to customs duties and VAT.

Despite this legal framework, practical challenges arise in its implementation. However, legal interpretations regarding the components of this crime vary, and interested parties (such as declarants and others involved in foreign economic operations) often attempt to conceal their activities. This creates significant challenges in proving criminal intent and complicates the process of establishing a strong evidentiary base.

The concealment of customs-related crimes and the active resistance to criminal prosecution further complicate investigative and judicial

efforts. Case materials indicate that, in addition to those who are criminally liable, other accomplices often play a role in committing these offenses but remain outside the scope of criminal proceedings. These concealment tactics create further complications in law enforcement. This underscores the need for enhanced investigative techniques and more comprehensive forensic methodologies to combat the growing challenge of customs-related crimes, particularly in the context of Ukraine’s economic integration with the EU.

It is important to note that the Customs Code of Ukraine does not explicitly detail the methods by which offenses are committed, only addressing the evasion of customs payments by organizations or individuals. Evasion can occur through passive non-compliance with customs and tax legislation (i.e., inaction) or by actively refusing – regardless of motivation – to pay mandatory fees. This also includes submitting documents that the involved parties claim exempt them from the obligation to pay customs duties. Among the most complex and intellectually challenging forms of socially dangerous actions are those involving the concealment of foreign economic activity to evade customs payments, often referred to in the literature as shadow foreign economic activity [7; 10]. In such cases, individuals engaged in business activities may establish organizations or register as individual entrepreneurs, falsely representing products acquired from foreign partners as if they were obtained from domestic suppliers. Similarly, equipment such as transportation vehicles procured abroad may be misrepresented as being used domestically for services within commercial activities.

To illustrate the extent of the shadow economy in Ukraine, an integrated indicator of its level has been researched. The implications of these findings extend beyond mere statistics. The significant increase in shadow business activity

is unsurprising, as restrictive measures aimed at protecting society from various biological threats led to a sharp decline in business activity – both within Ukraine and beyond its borders – resulting in substantial economic losses.

Given these circumstances, businesses have primarily sought to mitigate the risks of resource loss, a natural response in the current climate. The next phase of our research focused on isolating data on the dynamics of the shadow economy through various methods. Figure 1 presents the dynamics of shadow economy levels across different approaches. The data confirms the atypical situation during the epidemiological crisis, indicating that the dynamics of the shadow economy, calculated using various methods, exhibit a diverse structure, including sector-specific features that emerged during the widespread COVID-19 crisis.

Building upon our discussion of customs payment evasion, it is crucial to examine its relationship with the shadow economy. In analyzing customs payment evasion within the framework of shadow foreign economic activity, it is evident that such evasion often involves fictitious organizations. These are typically registered under nominal leaders and misrepresented by suspects or defendants as domestic suppliers of products or other business partners in various illegal schemes.

The development of criminal schemes to conceal these offenses often includes a defense strategy claiming a lack of intent to commit criminal acts, with defendants asserting errors regarding the origin of material goods. The term “evasion” inherently implies direct intent, indicating a conscious action by the perpetrators aimed at achieving illegal goals. Consequently, unintentional non-payment of customs duties typically excludes criminal liability, a nuance that suspects and defendants often seek to exploit (Figure 2).

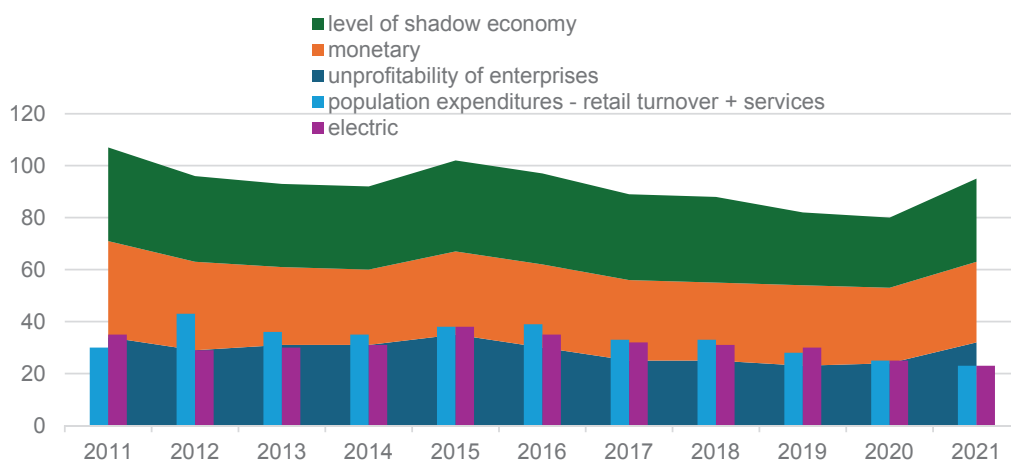


Figure 1. Dynamics of the level of the shadow economy by selected methods

Source: [12]

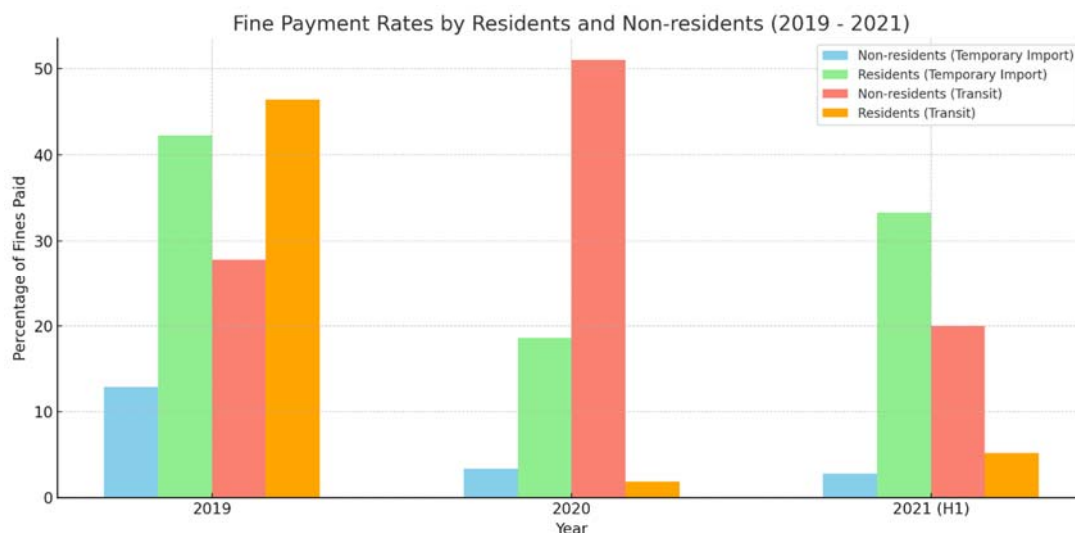


Figure 2. Fine payment rates by residents and non-residents (2019–2021)

Source: analyzed and compiled by the author based on [13]

An analysis of data from the State Customs Service regarding violations committed by both residents and non-residents between 2019 and the first half of 2021, particularly concerning the movement of vehicles through Ukraine's customs border under transit and temporary import regimes, revealed a low rate of fine payments. For violations of the temporary import regime by non-residents, the rates of fines paid were 12.9% in 2019, 3.4% in 2020, and 2.8% in the first half of 2021. For residents, the corresponding figures were 42.2%, 18.6%, and 33.3%. In the case of violations of the transit regime by non-residents, the rates were 27.8% in 2019, 51.0% in 2020, and 20.0% in the first half of 2021, while residents paid 46.4%, 1.9%, and 5.2%, respectively.

As a result of the State Customs Service's inability to enforce proper control over fine payments imposed for violations by residents and non-residents concerning vehicle movement through Ukraine's customs border under transit and temporary import regimes, the state budget incurred a loss of 464.5 mln UAH. In the ongoing examination of customs payment evasion, an analysis of empirical materials reveals a common defense strategy. Representatives of the defense frequently submit various statements, motions, and complaints aimed at demonstrating the absence of guilt on the part of the suspect or defendant. While they do not contest the fact of non-payment of customs duties, these parties attempt to persuade investigative bodies and the court that the suspect or defendant lacked criminal intent, portraying them as good-faith buyers misled by the unlawful actions of others who sold them foreign goods that had not undergone the necessary customs procedures.

The determination of the conscious nature of customs payment evasion is intricately linked to identifying the motives behind the activities of

suspects and defendants. Ukrainian criminal law adopts a neutral position regarding the motivations of subjects involved in tax-related crimes under the Tax Code. However, establishing criminal motivation is crucial as part of the burden of proof.

Regrettably, in investigative and judicial practice, the establishment of criminal motives is often insufficiently addressed, particularly when such motivation impacts the qualification of actions within the framework of the crime's composition. This is especially relevant to the formation of the evidentiary base in criminal cases. Criminal motivation may be overlooked entirely or superficially analyzed, based on the notion that individuals who consciously evade customs duties do so purely out of selfish motives. Yet, specialized literature accurately asserts that the motivations of criminal subjects are more complex, multifaceted, and often not fully understood, even by the individuals themselves. This underscores the necessity for deeper research into the causes of criminal behavior.

Understanding the underlying motivations for these actions is paramount. Several potential motivations for actions driven by self-interest can be identified: Financial Gain: the desire to achieve financial benefits by circumventing customs procedures or serving as a profit-driven intermediary; Antisocial Attitude: a subjective rejection of the obligation to pay fees, which is characteristic of frustrated individuals exhibiting psychological resistance against public institutions; Self-Assertion and Realization: the need for self-assertion and self-realization through the development and execution of criminal schemes that enable individuals to bypass customs procedures while avoiding detection; Economic Necessity: the desire to save money – sometimes through dubious means – due

to various challenging life circumstances; Material Aspirations: the pursuit of specific goals requiring investments or the desire to attain a certain level of material well-being, perceived as comfortable or prestigious, often reflected in the possession of corresponding material goods; Misguided Solidarity: a misguided sense of solidarity stemming from kinship, friendship, or other socially significant relationships.

Conclusions from the research. The analysis conducted in this article highlights the pressing challenges related to customs payment evasion in Ukraine, particularly in the context of the ongoing full-scale war. The research illustrates a complex interaction between the legislative framework, the shadow economy, and the evolving nature of foreign economic activity. Although the Customs Code establishes a structured approach to enforcing customs payments, the disruptions caused by the war have significantly impacted compliance and oversight, leading to increased instances of evasion and subsequent revenue losses for the state.

The need for substantial state involvement in formulating and implementing foreign trade policies has become increasingly clear, especially as Ukraine seeks to align itself with the European Union's economic frameworks. As international cooperation strengthens, the harmonization of customs regulations emerges as a critical requirement. This alignment is not only essential for improving compliance but also for fostering mutual understanding and trust among trading partners. Nonetheless, existing exemptions and conditional relief measures, intended to alleviate economic pressures, create vulnerabilities that can be exploited by entities seeking to evade customs duties.

Furthermore, this article emphasizes the necessity of developing a comprehensive forensic methodology designed specifically to address the intricacies of customs-related offenses. Such a methodology is crucial for uncovering patterns of evasion, comprehending the motivations behind such behavior, and enhancing enforcement strategies. The multifaceted nature of customs payment evasion – often intertwined with tax-related offenses – demands a nuanced approach that recognizes the psychological and social factors that drive criminal behavior.

The motivations for customs payment evasion are varied, encompassing financial incentives and broader socio-economic dynamics. Understanding these motivations is essential for devising effective strategies to combat evasion and mitigate the growth of the shadow economy. Policymakers must strive to balance the need for regulatory relief with the imperative for rigorous oversight to prevent potential abuses.

Given the complexities highlighted throughout this analysis, it is evident that addressing customs payment evasion is critical for Ukraine's economic recovery amidst ongoing challenges

and is vital for the country's aspirations to join the European Union. As Ukraine navigates this complex landscape, a concerted effort to strengthen customs regulation, enhance forensic methodologies, and promote international cooperation will be pivotal for safeguarding state revenues and fostering economic stability.

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