



Is it necessary to criminalize commodity smuggling?

analytical and consulting research

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About the project

Support to the civil society initiative For Fair and Transparent Customs

The project aims at enhancing the capacity of the civil society to engage in economic policymaking in Ukraine. It revolves around a Public Initiative established by the Institute for Economic Research and Policy Consulting in 2018. The Initiative is an informal network of CSOs from different regions of Ukraine that care about the improvement of the business climate. Activities of the Initiative aim at monitoring the implementation of customs reform and promoting dialogue between the authorities, business, and other stakeholders, that have interest in implementing the institutional customs reform according to the principles of good governance and free trade.

The overall objective is enhancing the capacity of the civil society to engage in economic policymaking in Ukraine through CSO networking, by promoting activities of the civil society initiative “For Fair and Transparent Customs”.

Two specific objectives are:

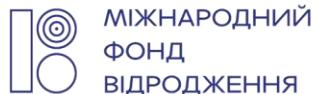
1) Strengthening civil society initiative “For Fair and Transparent Customs”

2) Facilitating policy dialogue between civil society and public authorities aimed at the implementation of customs reform.

In the long term, the project will enhance the capacity of the civil society to engage in economic policy making in Ukraine through CSOs networking, which will be confirmed by facilitated policy dialogue between CSOs and public authorities on customs reform and involvement of CSOs at all stages of the reform implementation.

The expected outcomes include strengthened Public Initiative “For Fair and Transparent Customs” (with more members, their institutional and analytical capacity strengthened, and the Initiative being considered an effective tool for policy dialogue and advocacy) as well as intensified policy dialogue between civil society and the state on customs reform (more structured and meaningful participation of CSOs in customs reform process).

This work is based on information obtained from the Fifth Annual Survey of 1000+ Exporters and Importers conducted in 2020, as well as information obtained during separate advocacy campaigns in Volyn and Kherson regions, conducted to further study the criminalization of smuggling on the example of individual regions.



Warning

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The author's views expressed in the research may not coincide with those of the Institute for Economic Research and Policy Consulting. The content of the document can in no way be interpreted as the position of the European Union, the International Renaissance Foundation, and the ATLAS Network.

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Introduction

Should a smuggler be behind bars? This is not as simple a question as it seems at first glance. Who is a smuggler? In which case should the smuggler be held criminally liable? And what exactly is this liability?

Should there be a liability for transporting a bottle of vodka and a pack of cigarettes without paying customs duties? Or for importing 10 packs of cigarettes? Or a sea container of cigarettes? Should smuggling worth \$ 100 or \$ 100,000 be criminally punished? And if this amount is \$ 99,998? Who and how will determine the amount of this smuggling? And if the import was legal, and six months later the errors in the documents had been found? Is this already smuggling? These and many other issues arise while analyzing the consequences of criminal liability for smuggling implementing¹.

In the last few years, there have been proposals in Ukraine to criminalize smuggling. In 2017-2018, several regulations were registered in the parliament, which proposed strengthening the liability for such actions. In February 2020, the Head of the State Customs Service announced an almost prepared draft law² on this issue, but as of August 1, 2020, there is no new draft legislation on Verkhovna Rada's website.

The European Union has recently strengthened liability for smuggling. On 5 July 2017, the European Union approved Directive № 2017/1371 of the European Parliament and the Council of the EU, which stipulated that by July 2019 all EU member states should establish a minimum criminal penalty for crimes against the EU's financial interests: four-year imprisonment in case of significant harm or significant gain. For certain crimes, a different penalty could be provided if the damage/benefit was less than 10 thousand euros.

Some member states have had criminal penalties for smuggling before. For example, in Poland, the Criminal Finance Code (its 1999 version) provides for a fine or imprisonment for smuggling. The threshold after which an administrative violation becomes criminal is 10,500 zlotys (about 2.37 thousand euros)³. The fine can reach 20 million zlotys (about 4.5 million euros⁴). In Germany, "illegal import, export, and transit of goods" is a tax crime. The penalty for this crime can be fine, which can range from 10,500 to 250,000 euros, or up to 5 years in prison. Large-scale smuggling organizing can cause 10 years in prison (Tax Code, 2000).

We do not assess the extent and impact of smuggling on the state's economy in this paper. We assume that the fight against this phenomenon is one of the state priorities, and focus on analyzing one of the proposed tools for such a fight. Namely, proposals to criminalize such acts as movement across the customs border of Ukraine outside customs control or with concealment from customs control of commercial goods (commodity smuggling).

This research has several goals:

- to draw public attention to the idea to criminalize commodity smuggling;
- to find out the main stakeholders' attitude to the idea to criminalize commodity smuggling;
- to analyze the main ways to strengthen the liability for such actions and their possible consequences;
- to identify the main recommendations for the decision-making process on this issue.

¹ In this paper, the concept of goods smuggling means moving across the customs border of Ukraine out of customs control or with concealment from customs control of goods that are not covered by Articles 201-201¹ of the Criminal Code of Ukraine.

² Interview for "[Dzerkalo Tyzhnya](#)"

³ Calculation at the NBU exchange rate as of June 24, 2020.

⁴ Calculation at the NBU exchange rate as of June 24, 2020.

In this research, we studied the main preconditions for the emergence of the idea to criminalize smuggling, the history of the issue, and major stakeholders' position as well as analyzed the expediency or inexpediency of such a step at the current stage of development of Ukraine.

This work is based on information obtained from the Fifth Annual Survey of 1000+ Exporters and Importers conducted in 2020, as well as information obtained during separate advocacy campaigns in Volyn and Kherson regions, conducted to further study the criminalization of smuggling on the example of individual regions.

1. History of the issue

Until 2012, large-scale smuggling in Ukraine entailed criminal liability.

The Criminal Code of Ukraine (CCU), as amended on April 5, 2001⁵, contained Article 201 on Smuggling. According to it, smuggling was considered “*large-scale movement of goods across the customs border of Ukraine outside customs control or with concealment from customs control, as well as the illegal movement of historical and cultural values, poisonous and potent substances, explosives, radioactive materials, weapons, and ammunition (except for smooth-bore hunting weapons and ammunition for it), special technical means for covert information receiving, as well as smuggling strategically important raw materials, in respect of which the legislation establishes the relevant rules for export outside Ukraine*” . According to the note to this article, the large-scale smuggling of goods was considered if their value overtops the tax-free minimum income of citizens a thousand times or more.

In 2011, an active campaign was launched to promote the idea to partially decriminalize this crime. Among other things it was proposed to exclude from the disposition of part one of this article such corpus delicti as “large-scale movement of goods across the customs border of Ukraine outside customs control or with concealment from customs control” and “smuggling strategically important raw materials in respect of which the legislation establishes the relevant rules for export outside Ukraine”. The sanction for such acts was imprisonment for a term of three to seven years with confiscation of contraband, and in case of repeated acts or acts by prior conspiracy by a group of people the term was from five to twelve years with contraband and property confiscation. Thus, it was proposed to leave only criminal liability for illegal movement of objects whose free circulation is restricted or prohibited across the customs border of Ukraine (historical and cultural values, poisonous, potent, explosive and radioactive materials, weapons and ammunition (except smooth-bore hunting weapons and ammunition), and special technical means for covert information receiving).

In 2011, the idea of inexpediency and inhumanity of criminal punishment for smuggling and some other financial crimes was actively discussed in public. It was proposed to replace criminal liability for these crimes with an administrative offense with a simultaneous strengthening of financial liability for such actions.

Among the arguments put forward by supporters of these changes were the following:

- the need for general humanization of penalties for economic crimes;
- overestimated level of criminalization of offenses in economic activity in Ukraine;
- abuse by law enforcement agencies while bringing entrepreneurs to justice and its negative impact on economic entities the activities;
- as a positive consequence of the relevant changes, an argument was made regarding additional revenues to the state budget through the simplification of the procedure for bringing perpetrators to justice and more prompt offense objects confiscation into state revenue.

The explanatory note to the relevant draft law also contained a reference to European practice, according to which the liability for this type of crime had to be humanized.

It should be noted that these arguments continue to be relevant today, and none of them has lost its significance.

⁵ Criminal Code of Ukraine, (Vidomosti Verkhovnoi Rady Ukrayny (VVR), 2001, № 25-26, p.131), link to the Verkhovna Rada website <https://zakon.rada.gov.ua/laws/show/2341-14#Text>

Taking into account the arguments above, on November 15, 2011, the Verkhovna Rada agreed to decriminalize the relevant acts by adopting the Law of Ukraine № 4025 "On Amending Certain Legislative Acts of Ukraine on Humanization of Liability for Economic Offenses", which, among other things, amended Article 201 of the CCU⁶.

According to these amendments, today "*smuggling is considered to be moving across the customs border of Ukraine outside customs control or with concealment from customs control of the cultural property, poisonous, potent, explosive and radioactive materials, weapons or ammunition (except smooth-bore hunting weapons or ammunition), parts of firearms, as well as special technical means for covert information, receiving*".

Therefore, from a legal point of view, **the illegal movement of other goods** not listed in this article **is not smuggling**. But in conversations and mass media, the illegal movement of any goods and products across the state border continues to be called smuggling. In this research, we will also use the term "smuggling" to describe the phenomenon of illegal movement of any goods across the border.

Later article 201-1 "On criminal liability for moving across the customs border of Ukraine outside customs control or with concealment from customs control of timber or lumber of valuable and rare species of trees, unprocessed timber, as well as other timber prohibited for export outside Ukraine's customs territory" was added to the CCU. Articles 482, 483, 485 of the Customs Code of Ukraine were also amended to clarify the rules on moving or actions aimed at moving goods across the customs border of Ukraine outside customs control or with concealment from customs control. The sanctions of the relevant articles include different amounts of fines and confiscation of the respective goods.

Thus, since 2012, the movement of goods across the customs border of Ukraine outside customs control or with concealment from customs control is not smuggling and is not considered a criminal offense.

Since then, discussions about the correctness of such a step have not stopped. Taking into account the negative impact of smuggling on Ukraine's economy⁷, there are calls to resume criminal liability for such acts. And in the last few years, such discussions have not only intensified but also had a concrete formalized manifestation in the relevant draft laws.

For example, on October 7, 2015, a draft law "On Amending to the Criminal Code of Ukraine on Criminalization of Alcoholic Beverages and Tobacco Products Smuggling" (registration number 3254) was submitted to the Verkhovna Rada, but it was not supported by the parliament.

A few years later, in July 2018, the draft Law of Ukraine (registration number 8543) "On Amending the Criminal and Criminal Procedure Codes of Ukraine on Criminalization of Goods Smuggling" was registered in the Verkhovna Rada. It proposed to amend the first part of Article 201 of the CCU and to establish criminal liability for sizeable goods movement across the customs border of Ukraine outside customs control or with concealment from customs control, and to supplement such elements of the offense as recidivating or large-scale moving of such goods.

⁶ Verkhovna Rada of Ukraine website <https://bit.ly/31xmtM2>

⁷ Research of the Ukrainian Institute for the Future «Kontrabanda» <https://bit.ly/3hrF95c>

Article "Customs wars: how smuggling affects legal business", author: Hryhoriy Kuukuruza, an economist at «Ukraine Economic Outlook» September 18, 2019 <https://bit.ly/3aYI56P>

Smuggling was proposed to be considered sizeable if its value overtakes the non-taxable minimum income of citizens 500 times or more, large-scaled - if its value overtakes the non-taxable minimum income 2000 times or more, and especially large-scaled - if its value overtakes the non-taxable minimum income of citizens 5000 times or more. It was proposed to entrust the pre-trial investigation of these crimes to the investigative bodies of the National Police or to the investigative bodies supervising the observance of tax legislation, which initiated the pre-trial investigation. But on August 20, 2019, due to the completion of the Verkhovna Rada of the VIII convocation, this project was withdrawn.

Discussions on various options for criminalizing acts of illegal movement of goods across the border are still ongoing. The choice concerns the following important issues: to criminalize smuggling or increase administrative liability, and if to criminalize it then for all goods or only for certain categories, for all amounts or only for significant amounts (i.e. set a minimum threshold) and with which sanctions: imprisonment or criminal liability without imprisonment. The three main options for such criminalization are most actively discussed:

1. **To criminalize the sizeable illegal moving of any goods across the customs border by establishing a minimum amount of such smuggling, excess of which cause criminal liability.** The sanction for these acts is imprisonment of the liable person (persons) and may additionally provide for a fine, confiscation of smuggling objects or all property, etc.

Critics of this position believe that the establishment of certain minimum amounts of smuggling will contribute to the abuse of law enforcement agencies in assessing such amounts, increase bribes at all stages of such cases investigations, and fragmentation of shipment by potential smugglers to avoid punishment. Proponents, on the other hand, believe that implementing criminal liability should help to reduce the number of such crimes and will have an educational impact on the perpetrators. According to them, strengthening liability will help to reduce smuggling, and offenders will be punished fairly for their illegal actions.

2. **To criminalize the illegal moving of only excisable goods (tobacco and alcohol products, fuel) and establish minimum amounts, excess of which causes criminal liability.**

The position of this idea supporters coincides with the previous one, but the peculiarity is that they recognize the greater social danger of smuggling excisable goods both in terms of the number of payments to the budget and the specifics of excisable products. Apart from supporters, this idea has opponents who consider such actions only a partial solution to the problem. Because the definition of smuggling, in this case, does not include other popular goods, such as household appliances, electronics, perfumes, and clothing, the illegal moving of which across the border is common in Ukraine. In their view, criminalizing the illegal movement of only excisable goods will reduce the effectiveness of the fight against smuggling.

3. **To criminalize the sizeable illegal moving of goods across the customs border and establish criminal liability in the form of financial sanctions and other types of a punishment without imprisonment.** Such sanctions, in addition to fines and seizure of the smuggled objects, may imply the seizure of a vehicle used for smuggling, confiscation of property, etc. Alternative punishments for this crime may include community service, house arrest, and even a travel ban. The latter type of punishment can be a significant restriction for many and at the same time not as severe as imprisonment. Especially when

it is relevant to the main professional activity. At the same time, some of these sanctions can be applied to minor crimes that fall under criminal punishment.

In all these cases, the arguments for the need to criminalize smuggling include the examples of Poland and Germany, which provide for penalties for smuggling in the form of fines or imprisonment, depending on the volume of such smuggling. In any case, any criminal punishment will result in a person's criminal record, which is a very negative consequence in itself.

There is another option - **to leave everything as it is**. This option also has important advantages. On the one hand, the financial liability for smuggling remains and can be strengthened. On the other hand, it will also be more consistent concerning to criminal liability implementing and will preserve the general vector for the humanization of penalties for the offenses system in Ukraine. At the same time, it is obvious that the situation with the negative impact of smuggling on the economy of Ukraine requires a reaction from the state. Its effectiveness depends on what this reaction will be.

2. Stakeholders position

Stakeholders in the issue of criminalization of commodity smuggling include a fairly wide range of people. In a broad sense, this is all Ukrainian society and state institutions. Smuggling directly or indirectly affects all social groups, but this impact is different. The main groups of stakeholders include:

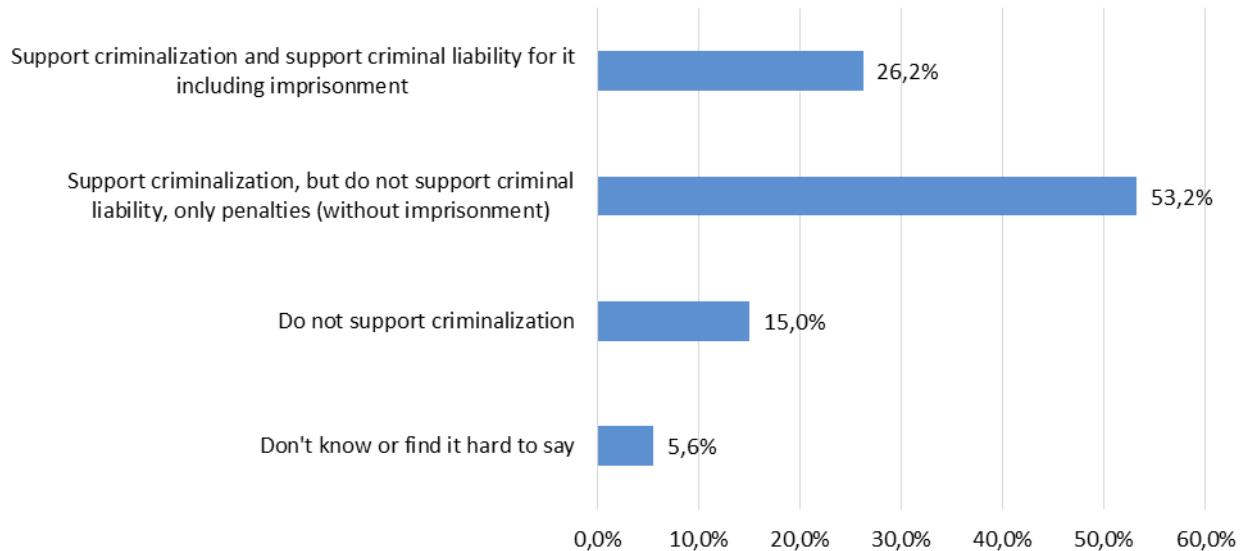
- the state represented by the State Customs Service and the State Tax Service, the Ministry of Finance and law enforcement agencies;
- entities engaged in foreign economic activities (exporters and importers) and their associations;
- consumers of relevant products.

All-Ukrainian survey results⁸

In the Fifth Annual Survey of 1000+ exporters and importers, respondents were asked about their attitude to the implementation (restoration) of criminal liability for moving across the customs border of Ukraine outside customs control or with concealment from customs control of goods not covered by Articles 201 -201¹ of the Criminal Code of Ukraine (commodity smuggling). 53.2% of respondents believe that criminal liability for commodity smuggling should be introduced, but without imprisonment, i.e. limited to the imposition of fines. 26.2% of respondents support the criminalization of commodity smuggling, including imprisonment for such actions. 15% of respondents oppose criminalization, and 5.6% could not express their opinion on this issue.

Criminalization of commercial contraband

Figure 1. Support for criminalization of commercial goods contraband, the % of the respondents



Source: Results of the Fifth Annual Survey of 1000+ exporters and importers, conducted in 2020

⁸This section uses information and data from the Fifth Annual Survey of 1000+ exporters and importers in 2020.

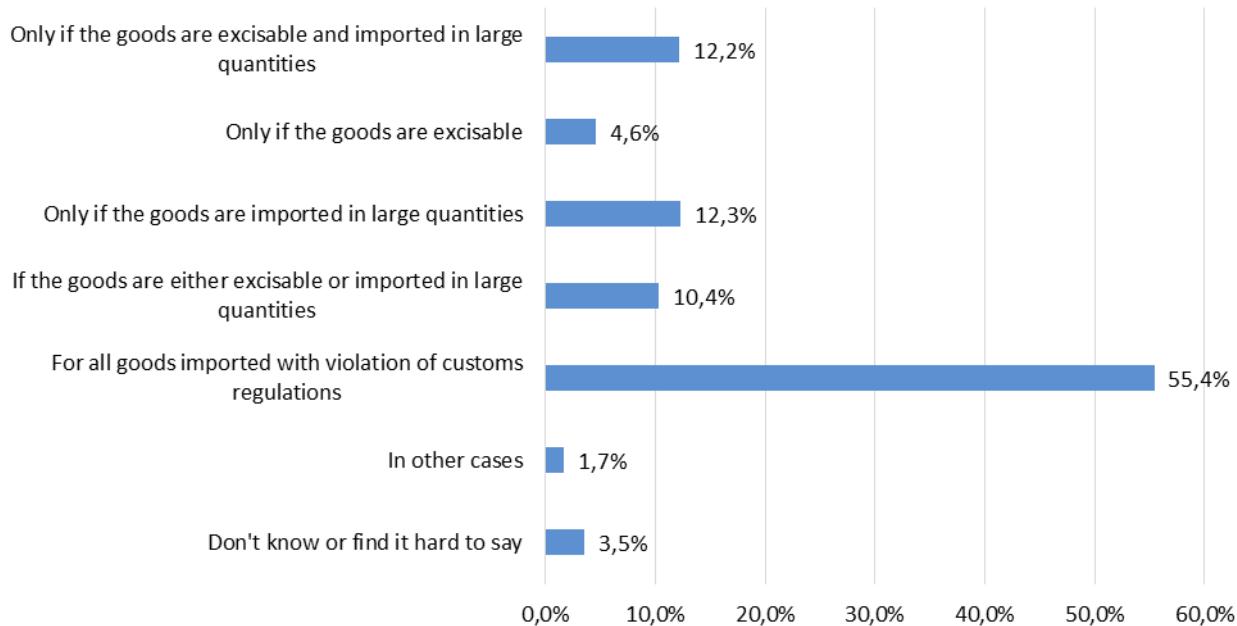
Thus, the majority of interviewed representatives of exporters and importers in Ukraine believe that the illegal moving of goods across the border should be criminalized, but the sanctions should be financial.

Respondents who answered that criminal liability should be implemented for commodity smuggling were asked to determine the type and amount of smuggling to be criminalized. The following options were proposed:

- when smuggling large quantities of excisable goods;
- when smuggling only excisable goods;
- when smuggling large quantities of any goods;
- when smuggling excisable goods and/or large quantities of goods;
- when smuggling any goods, regardless of quantities.

More than half of the respondents (55.4%) consider it necessary to introduce criminal liability for the smuggling of any goods, regardless of quantity. Significantly fewer respondents (from 10.4% to 12.2%) support one of the following three options: only if these goods are excisable and imported in large quantities, only if these goods are imported in large quantities, and if these goods are either excisable or imported in large quantities. And only 4.6% of respondents consider it necessary to criminally punish the smuggling of only excisable goods.

Figure 2. Opinions regarding the cases for criminalization of smuggling of commercial goods, % of the respondents among those who supported criminalization



Source: Results of the Fifth Annual Survey of 1000+ exporters and importers, conducted in 2020

Thus, the respondents spoke quite clearly. **The majority of respondents were in favor of criminal liability for goods smuggling, regardless of the quantity and type of goods**, without distinguishing between the so-called excisable group of goods and ordinary household products.

This correlates with the respondents' views on what exactly the responsibility of liable persons should be. It is a question of a ratio of an insignificant quantity of the goods smuggling and liability for it. In the case of imprisonment for the illegal movement of several cigarette packs, the disproportion between punishment and crime is traced. In the case of the possibility to apply an alternative punishment (fine or ban on travel abroad), such liability may be interpreted as adequate to the damage caused to the state.

The results of in-depth regional research

During April-June 2020, two regional advocacy campaigns were conducted in the Volyn and Kherson regions, dedicated to the issue of criminalization of goods smuggling. Surveys were conducted in each region and four discussions were held: two in each region, using online tools, and involving major stakeholder groups. The following issues were discussed:

- current anti-smuggling tools and their efficiency;
- consequences for business from illegal import of imported products;
- the need to criminalize commodity smuggling;
- expected results from criminal liability for smuggling implementation;
- social aspects of the fight against smuggling.

The representatives of government and municipal authorities, business associations, experts, and entrepreneurs took part in the action. Despite the differences between the regions, the participants of the discussions reached common conclusions on the expediency and format of possible commodity smuggling criminalization. The main thesis that sounded in the speeches: "We need to make smuggling too expensive."

In general, the participants made the following conclusions:

1. Today, the state does not have enough tools to overcome commodity smuggling.
2. Accordingly, the introduction of criminal liability for smuggling is necessary.
3. It is important to be able to apply alternative to imprisonment criminal liability for commodity smuggling (fines, seizure of contraband, and other sanctions), but in the framework of criminal proceedings with all the relevant consequences.
4. The approach to solving the problem of smuggling should be comprehensive and include the following components:
 - not only the perpetrators' liability but also other smuggling accomplices' liability, including the organizers;
 - organizing information exchange with other countries;
 - implementing a full-fledged post-customs audit;
 - improving customs technical equipment;
 - automating processes and improving the risk-oriented approach;
 - increase in salaries for customs officers;
 - implementing other measures.

Concerning "other measures", it was noted that the commodity smuggling criminalization alone could not be the only tool to combat this phenomenon. It should operate in conjunction with other mechanisms. An effective fight against smuggling is impossible without effective law enforcement and the judicial system. Therefore, it should be a set of measures.

Thus, the survey and in-depth research showed that representatives of business and the state support the criminalization of illegal goods transportation across the border, but subject to applying sanctions alternative to imprisonment for this offense. It was also stressed the need for an integrated approach to combating smuggling, which includes not only its criminalization but also establishing an effective law enforcement system.

3. The punishment effectiveness

The majority of respondents to the Fifth Annual Survey of 1000+ exporters and importers, as well as business and government representatives who participated in regional advocacy campaigns, generally support the commodity smuggling criminalization. In this case, a logical question arises: would such a tool be effective if it is implemented.

The effectiveness of punishment directly depends on the conditions stated in the regulations, and the actual practice to apply these rules by law enforcement agencies and courts. The combination of options formulated by the legislator in normative acts and the practice to enforce these norms by law enforcement agencies and courts, together form the relevant tool and its effectiveness.

CASE Ukraine expert Andriy Savarets cited statistics in the article "Criminally unpunished smuggling"⁹, which indicates the inefficiency of the criminal penalties system for all groups of goods smuggling, which was in force until 2012, and the dubious effectiveness of criminal penalties after 2012. According to Andriy Savarets, "*before the abolition of criminal liability for goods smuggling in 2011, only three people received real terms of imprisonment for smuggling goods. Eight people serve probation, and 12 people were commuted to lesser sentences, including fines (10 people) and arrest (2 people).*" A similar situation is observed with the investigation of criminal proceedings on smuggling and bringing the perpetrators to justice in 2018. Thus, in the already mentioned article, Mr. Savarets provides an information analysis for 2018: "*According to statistics from Ukraine's Prosecutor General Office official website in 2018, 125 criminal proceedings for smuggling of weapons and cultural property and 212 criminal proceedings for drug smuggling were registered. What is the future of these cases? Only half of the opened criminal proceedings were heard in court, and even fewer sentences were handed down. However, another interesting question is: what are these sentences? Usually, real terms are seldom awarded, and judges are satisfied with fines and suspended sentences*".

This clarifies that **the presence of more severe punishment for a crime does not always ensure its effective application. Consequently, punishment ceases to perform its function.**

The article by Naidenko O. Ye. "Counteracting the Smuggling as One of the Ensuring Methods of the Customs Security of the State"¹⁰ provides the main indicators of offenses in customs for 2013 – 2018, based on the State Fiscal Service data. According to these data, in 2018 the total number of cases on customs rules violation amounted to 48,877, which is 47.6% more than in 2013, and the amount for offenses committed increased 4.3 times. According to the author of the study, "the activities of customs authorities contributed to the positive dynamics in preventing and combating violations of customs rules in both relative and absolute indicators." At the same time, although statistics show an intensification of customs activities in combating customs rules violations, unfortunately, it is difficult to agree with the conclusion on the success in combating this phenomenon. As can be seen from Table 1, (a) the number of cases is constantly increasing, which hardly indicates the success of the smuggling prevention, (b) the ratio of fines imposed and collected remains extremely low. Assuming that last year's fines are levied every following year, this ratio was 25% in 2018, which

⁹ <https://cost.ua/news/762-kryminalno-nekarana-kontrabanda/>

¹⁰ Naidenko O. Ye., Ph. D. in Economics, Associate Professor, Simon Kuznets Kharkiv National University of Economics, "Counteracting the Smuggling as One of the Ensuring Methods of the Customs Security of the State", The Electronic Scientific Edition on Economics «Modern Economics», №17 (2019), 172-176 <https://modecon.mnau.edu.ua> | ISSN 2521-6392

is comparable to 23% in 2014. If to assume that the fines imposed during the year are collected within the same calendar year, the situation is even worse - in 2018 the number of fines collected was 1% of those imposed; (c) the number of cases referred to the court remains consistently much higher than the number of closed cases, i.e. most opened cases have been pending in court for years. And this list of inconsistencies can be extended. Therefore, the current system to combat customs regulations violations, including smuggling, is also not effective.

Table 1. The main indicators of offenses in customs for 2013 - 2018

Main indicators	2013	2014	2015	2016	2017	2018
Instituted cases on the customs rules violation	23299	15108	17808	23235	32282	48877
in the amount of UAH million	796,15	704,22	1814,22	2093,79	1596,4	3444,67
Heard cases on the customs rules violation	6947	5292	7004	12839	21652	39191
Fines imposed, UAH million	54,90	67,36	615,63	555,87	503,28	9822,75
Fines collected, UAH million	14,67	12,48	20,38	31,32	59,28	124,61
Cases on customs rules violation submitted to the courts	15228	9944	9771	8833	7791	6239
in the amount of UAH million	698,86	610,62	1773	1906,29	1472,61	2530,17
Seizure applied, UAH million	195,04	182,17	898,48	354,42	432,22	268,5
Terminated cases on customs rules violation	1406	963	798	748	1061	916
in the amount of UAH million	399,67	291,12	465,5	539,11	822,84	784,38

Source: The research paper by Naidenko O. Ye. "Counteracting the Smuggling as One of the Ensuring Methods of the Customs Security of the State"

Proponents of the smuggling criminalization believe that increasing the responsibility for such actions will reduce the number of rules violations while moving goods across the customs border of Ukraine, create conditions for greater receipt of relevant customs payments to the state budget, and positively affect the national economy. However, the question on the effectiveness of law enforcement of tougher (criminal) sanctions in Ukraine remains open, as a successful fight against smuggling is impossible without effective law enforcement and judicial system. As long as the general justice system does not perform its function, strengthening sanctions is more likely to increase corruption rather than reduce crime.

4. Conclusions and recommendations

Conclusions

Despite some contradictions inherent in the positions of different stakeholders, several main conclusions can be made:

1. Currently, the state does not have effective tools to combat commodity smuggling.
2. There is a high level of support among business and government officials for increasing the need to strengthen liability for smuggling by implementing criminal liability for such acts.
3. There is a widespread opinion among stakeholders that criminal liability should not be introduced in the form of imprisonment. Instead, it is proposed to apply other types of sanctions in terms of criminal liability.
4. An effective fight against smuggling is impossible without effective law enforcement and judicial system, and the use of the full range of customs instruments.
5. A real fight against smuggling is possible only due to a systematic approach and implementation of a set of different measures. The introduction of criminal liability for goods smuggling in itself, without implementing other instruments in the customs will not solve the problem.

Recommendations

- ✓ Before making decisions on the criminal liability for goods smuggling, it is necessary to hold a broad public discussion on this issue with the involvement of all stakeholders to avoid making ill-considered decisions.
- ✓ When working out a decision on the commodity smuggling criminalization, attention should be paid to sanctions alternative to imprisonment for such an offense. Such sanctions may include: the imposition of significant fines, the confiscation of not only contraband objects but also contraband means, including cars, the seizure of all property, a ban on travel abroad, and so on.
- ✓ This approach will ensure both the potentially high effectiveness of the sanction and its humanity to the offender compared to imprisonment. This approach is also a compromise option, which can combine the positions of supporters of strengthening liability for smuggling and opponents of its re-criminalization.
- ✓ In any case, the authorities should avoid hasty decisions and analyze the various options and their consequences. Amidst the imperfection of the law enforcement system and the existing problems in the judicial system of Ukraine, hasty criminalization may not only not solve the existing problem, but also contribute to additional corruption of export-import activities and increase the risks of law enforcement interference in business activities.



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