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REGULATORY FRAMEWORK FOR THE REGULATION OF FOREIGN ECONOMIC ACTIVITY AT UKRAINIAN ENTERPRISES

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The article analyzes the main aspects of the legal framework for regulating foreign economic activity at Ukrainian enterprises. It was found that global geopolitical risks have increased dramatically after Russia's invasion of Ukraine. Investors, market participants and policy makers expect that the war will have a dampening impact on the global economy, raising inflation, leading to a sharp increase in uncertainty and risks of serious negative consequences. Despite the significant disruption to trade logistics, the Ukrainian legislature responded promptly and amended the Customs Code of Ukraine and other regulations. Among the important changes are the exemption of certain goods from import duties and VAT, and simplification of the goods declaration procedure.

НОРМАТИВНО-ПРАВОВИЙ БАЗИС РЕГУЛЮВАННЯ ЗОВНІШНЬОЕКОНОМІЧНОЇ ДІЯЛЬНОСТІ НА ПІДПРИЄМСТВАХ УКРАЇНИ

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В статті проаналізовано основні аспекти нормативно-правового базису регулювання зовнішньоекономічної діяльності на підприємствах України. З'ясовано, що глобальні геополітичні ризики різко зросли після вторгнення Росії в Україну. Інвестори, учасники ринку та політики очікують, що війна спричинить гальмівний вплив на світову економіку, підвищуючи інфляцію, що призведе до різкого зростання невизначеності та ризиків серйозних негативних наслідків. Незважаючи на суттєві порушення торговельної логістики, законодавчі органи України відреагували оперативно та внесли зміни до Митного кодексу України та інших нормативно-правових актів. Серед важливих змін: звільнення окремих товарів від ввізного мита та ПДВ, спрощення процедури декларування товарів.

Statement of the problem in general and its connection with important scientific or practical tasks. Russia's invasion of Ukraine has had a huge impact on the economic and financial landscape of Ukraine. In addition to the terrible humanitarian crisis and geopolitical instability that the war has caused, economic activity has been severely curtailed. While the situation is rapidly evolving and short- and long-term impact projections are subject to revision, the crisis has undoubtedly changed the market environment in Ukraine

The signing of the EU-Ukraine Association Agreement in June 2014 was a key political event in Ukraine's recent history. The Association Agreement and Ukraine's commitments to the IMF and other international donors require new legislation in many different areas, among other reforms. As a result, many changes have taken place over the past few years, and further reforms are expected. The scheme of normative and legal regulation of foreign economic activity at Ukrainian enterprises was presented.

In particular, the banking market has been significantly revamped and the judicial system has been reformed, as well as changes in the legal and regulatory framework for foreign economic activity of Ukrainian enterprises.

Analysis of recent research and publications which initiated the solution to this problem and on which the author relies, and identification of previously unresolved parts of the general problem to which this article is devoted.

The issues of regulation of foreign economic activity at Ukrainian enterprises have been studied by such scholars as: O.Y. Akimenko [1], Y.G. Kozak, N.S. Logvinova, V.V. Kovalevskyi, M.A. Levytskyi, M.I. Baranovska, E.V. Kravchenko, M.A. Zaiets, H.M. Zapsha, O.M. Kovalenko, L.A. Parkhomenko, O.L. Beliaeva, N.S. Mamontenko, V.V. Baltiukevych, O.P. Solianikova, V.V. Baeva, O.O. Selezneva [2], D.A. Mishchenko, L.O. Mishchenko [2], I.O. Platonova [4], S. Skrypnyk, O. Protseviat, and O. Voronova [5], and S.O. Ishchuk, Y.V. Poliakova, O.S. Protseviat [6]. Nevertheless, the

theoretical and methodological substantiation of scholars in practice needs to be improved, since foreign economic activity in Ukraine becomes more complicated for Ukraine due to the current military action.

Formulation of the article’s objectives (statement of the problem)

To analyze the main aspects of the legal framework for regulating foreign economic activity at Ukrainian enterprises.

Presentation of the main research material

In response to Russia’s invasion, President Volodymyr Zelenskyi declared martial law in February 2022. New currency, tax, and customs regulations have been introduced and further changes to regulations are ongoing. In particular, these changes may affect the customs clearance of goods and the work of customs authorities. Despite the significant disruption to trade logistics, the Ukrainian legislature responded promptly and amended the Customs Code of Ukraine and other regulations.

Important changes include the exemption of certain goods from import duties and VAT, and simplification of the goods declaration procedure. Import exemptions do not apply to goods originating in or exported from Russia and other “aggressor states”. The legal and regulatory framework for foreign economic activity at Ukrainian enterprises is presented in Figure 1.

According to Article VII of the Law of Ukraine “On Foreign Economic Activity”, Ukraine’s import tariff includes three rates of import duty:

- Full rate – the full rate of import duty may be from two to ten times higher than the most favored nation rate.
- Most Favored Nation (MFN) – Upon becoming a WTO member in 2008, Ukraine applied new, lower MFN rates to all goods originating in WTO member countries in accordance with Article I of the GATT 1994.
- Preferential – Preferential rates (lower than MFN rates) are applied to imports from countries with which Ukraine has a Free Trade Agreement (FTA) or other preferential trade agreement, i. e. imports mainly from CIS countries.

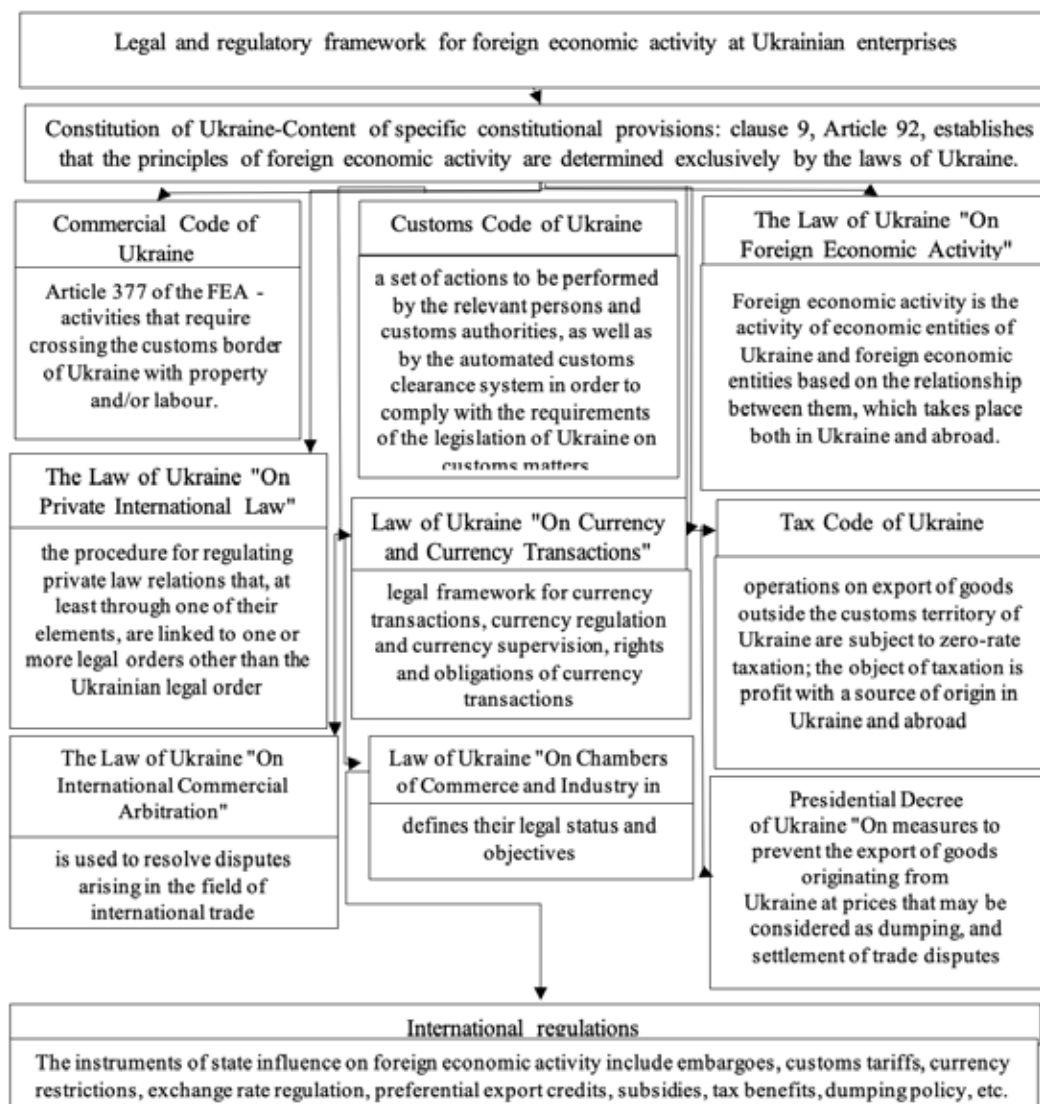


Fig. 1 – Regulatory and legal regulation of foreign economic activity at Ukrainian enterprises

Source: generalized by the author

Although Ukraine has the three import duty rates mentioned above, Ukraine has not set full duty rates, although it has equalized the preferential and MFN rates. Thus, there is only one import duty rate that applies to all trading partners. The majority of customs tariffs are levied at ad valorem rates, and only 1.5% of tariff lines are subject to special or combined rates. The average applied tariff rate dropped to 4.95% after the WTO accession and further decreased to 4.8% in 2011. The current rates of customs duties are set by two amendments to the Law of Ukraine “On Customs Tariff on Imports of Ukraine” No. 584-VII. Concerned exporters can find out the current rates of Ukrainian customs duties. To decipher the 10-digit codes, please contact the FCS Kyiv office. In addition to customs duties, according to Article 215 of the Tax Code of Ukraine, the following goods are also subject to excise tax:

- Ethyl alcohol and other distillates, alcoholic beverages, beer.
- Tobacco products, tobacco and industrial tobacco substitutes.
- Liquids used in electronic cigarettes.
- Fuel.
- Passenger cars, their car bodies, trailers, motorcycles, vehicles designed to transport 10 people or more, and freight vehicles.
- Electricity.

Excise duties are set as a percentage of the sum of the declared customs value, customs duties and fees paid upon importation of products. Excise rates are set out in Article 215 of the Tax Code of Ukraine No. 2755-VI. Payment of tariffs and excise duties is made in Ukrainian currency at the NBU exchange rate on the date of payment. The VAT rate is 20% for most goods. As VAT refunds used to be a controversial issue, with many foreign companies owing millions of dollars in VAT refunds in 2015 and 2016, the Ukrainian government has made significant changes to the VAT refund procedure. Now, refunds are made on the basis of the Register of VAT refund claims. Also, VAT refunds are made automatically in the chronological order of receipt of VAT refund applications. However, there are currently indications that VAT refunds have slowed down again as a result of the ongoing conflict. Ukraine has introduced a number of import relaxations to ensure the efficient execution of customs formalities during martial law. The key changes are set out in Law No. 2142-IX. In particular, the following exemptions apply:

- No import duty on goods imported by legal entities for free circulation (except for certain excisable goods, such as ethyl alcohol and other alcohol distillates, alcoholic beverages, and tobacco products).
- Excludes VAT, import duty and excise tax on cars and other vehicles imported by individuals.
- No VAT on goods imported by single tax payers of groups I to III, such taxpayers can declare goods under a preliminary customs declaration and customs formalities will take no more than one hour.

The Law also provides for exemption from import duties and suspension of non-tariff regulation for the listed goods during martial law, such as:

- Special personal protective equipment (helmets, tactical vests, etc.) supplied for the needs of the internal

affairs bodies, the Armed Forces and other military formations, including territorial defense units.

- Listed medicines and medical devices, including those without registration in Ukraine.

The Customs Code of Ukraine regulates imports and exports. This Code was adopted in March 2012 and last amended in August 2022. The Customs Code defines the procedure for import, export, re-export, temporary import and transit of goods for customs clearance, payment of customs duties, excise and other customs tariffs, activities of customs brokers and customs warehouses, etc. The Code, the current legislation of Ukraine on customs regulations, contains two supplements to the Law – “On the Rates of Customs Duties of Ukraine” No. 674-IX, the last update of which took place in July 2021, which defines the rates of duties. The main law governing VAT on imports and exports and VAT refunds on exports is the Tax Code of Ukraine, Chapter V.

Under Ukrainian law, both individuals and legal entities may act as official importers in connection with customs clearance of goods imported into Ukraine, but the entity must be accredited by the local customs. The procedure and the list of required documents are set out in the Procedure for Registration of Business Entities Engaged in Operations with Goods. The Ukrainian government is actively analyzing and removing unnecessary trade barriers that burden trade, working to make the business environment simpler and more transparent for local and foreign companies. While the environment is improving, many trade barriers in Ukraine remain, including unpredictable discriminatory fees and product certification procedures. Non-tariff barriers include volatile customs prices for imports, non-transparent certification requirements, cumbersome phytosanitary certification procedures, import licenses, and labeling requirements.

Although Ukraine has abolished its mandatory certification lists, its certification system remains in place. The certification system is based on the Law on Standards, Technical Requirements and Conformity Assessment Procedures, the Law on Standardization, the Law on Conformity Certification, and the Presidential Decree “Regulations on the State Inspection for Consumer Protection”. These rules provide for the following conformity documents:

- Technical regulations are public legal acts that establish mandatory requirements for products, services or production processes in order to eliminate threats to national security, protect life, health and property rights of consumers, and protect animals, plants and the environment. It may also contain requirements for terminology, labels, packaging, labeling or labeling requirements relating to a product, process or method of production. In recent years, Ukraine has adopted more than 30 technical regulations, most of which are verbatim replicas of EU safety directives.

– National (State) Standards (DSTU) – documents approved by an authorized body that contain guidelines or specifications relating to products, production processes or services, compliance with which is not mandatory. A standard may also include requirements for terminology, labels, packaging, labeling, or labeling requirements related to a product, process, or service. From the point of view of the legislator, the Standard is an auxiliary document, compliance with which will help to achieve the mandatory

safety requirements set out in the Technical Regulation. However, manufacturers are free to choose other production methods that can provide the same safety results.

In November 2010, the Ministry of Healthcare of Ukraine signed Order No. 971 approving the list of food products subject to monitoring for the content of genetically modified or genetically modified organisms (GMOs). Among the product groups subject to inspection and monitoring are soybeans, corn, tomatoes, zucchini, melons, papaya, chicory, sugar beets, rapeseed, linseed and cottonseed oils, wheat, rice, infant formula and special food products containing the above plants and their derivatives, yeast and sourdoughs, including products containing these ingredients. Currently, there are targeted customs control procedures for the import of goods into Ukraine in wartime:

For humanitarian aid (Resolution of the Cabinet of Ministers of Ukraine No. 174 dated 01.03.2022), the import of goods is carried out on a declarative basis and/or on the basis of a letter of guarantee from the end user of the goods submitted to the customs authorities in the prescribed form under the simplified customs clearance procedure;

- For the specified goods imported to Ukraine during the period of martial law, in accordance with the Resolution of the Cabinet of Ministers of Ukraine No. 236 dated 09.03.2022, which establishes the possibility of obtaining a deferred payment of customs duties for the period of martial law. Such goods include medicines, medical devices and medical supplies, foodstuffs for the established groups of goods, military goods according to the list defined by the Resolution of the Cabinet of Ministers of Ukraine No. 1807 dated November 20, 2003, critical import goods according to the list of the Resolution of the Cabinet of Ministers of Ukraine No. 153 dated February 24, 2022; Other goods are subject to customs control and clearance within the limits defined by the Customs Code of Ukraine [8].

The latest Resolution of the Cabinet of Ministers of October 10, 2020 introduced a new procedure for interaction between declarants and customs authorities regarding the movement of goods and vehicles across the customs border of Ukraine under the “single window” mechanism. According to these procedures, the interaction between declarants and customs authorities is recorded electronically during official control measures and preliminary documentary customs control. The record contains information from companies, regulatory authorities, customs authorities and the automated customs clearance system. It also includes documents and information used to carry out official control and preliminary documentary control measures,

In 2016, a new agency was established – the State Service of Ukraine on Food Safety and Consumer Protection (SSUFSCP). The State Veterinary and Phytosanitary Service of Ukraine and the State Inspection of Ukraine for Consumer Protection are responsible for state control over compliance with legislation in the following areas: state supervision in the field of tourism and resorts; consumer protection of products made of precious metals and precious stones; control over compliance by legal entities with the rights to plant varieties in seed and plant production. The SSUPS is an authorized body of Ukraine and is subordinated to the Cabinet of Ministers.

Every year, the Ukrainian government compiles a list of goods subject to import and export licensing. The current list of such goods can be found in the Resolution of the Cabinet of Ministers of Ukraine No. 1329 “On Approval of the List of Goods Subject to Import and Export Licensing and the Relevant Quotas for 2022” dated 29.12.2021. In 2022, the list includes: medicines, paints and varnishes, dyes, hygiene products, cosmetics, pedicure and manicure products, shaving sprays and deodorants; lubricants, waxes, shoe polish, insecticides, solvents, silicone, fire extinguishers and chemicals used to fill fire extinguishers; refrigerators and freezers, air conditioners, humidifiers and other selected industrial chemical products; fungicides, herbicides, plant growth regulators and other products. Most import licenses are issued through the Ministry of Economy, regional and Kyiv city administrations. Other import licenses or approvals are issued by other agencies, including:

- The Ministry of Internal Affairs – sporting weapons and self-defense items.

- National Commission for the State Regulation of Communications and Informatization (NCCIR) – radio electronic equipment and radiators.

- State Service of Ukraine on Medicines and Drugs Control – medicines and drugs.

- Ministry of Agriculture and Food Industry – agrochemicals, seeds, veterinary products.

- Ministry of Health – pharmaceuticals, cosmetics and hygiene products.

- Ministry of Ecology and Natural Resources of Ukraine – ozone-depleting chemicals, including propellants, paint solvents, fire extinguishers and refills, oil sprays, air conditioners and refrigeration equipment, refrigerated vending machines; agricultural chemicals contained in sprays; and pharmaceutical products, cosmetics and hygiene products contained in sprays [4].

In August 2022, the Verkhovna Rada of Ukraine adopted a law on customs “visa-free travel” with the EU. This law provides for Ukraine’s accession to the Convention on a Common Transit Procedure and the new NCTS computerized transit system. The amendments provide for the introduction of a European complaint mechanism and further digitalization of customs, which will speed up customs clearance and reduce corruption risks. A certificate of origin is required when applying preferential rates of customs duties, when applying certain quantitative restrictions on the movement of goods across the customs border of Ukraine, and if it is provided for by Ukrainian legislation or international agreements. Pursuant to Article 49 of the Customs Code, the customs value of goods is defined as the value of goods used for customs purposes based on the price actually paid or payable for the goods, which generally includes the cost of goods, the cost of insurance and the cost of transportation. Under certain conditions, it may be necessary to include other costs, such as royalties or license fees, in the customs value of goods. The Customs Code establishes one main and several additional methods for determining the customs value of imported goods. The main method for determining the customs value of goods imported into Ukraine under Article 57 is the contract price (transaction value of the

imported goods). The Customs Code requires an exhaustive list of documents to be submitted to determine the customs value of goods. Because the list of documents required to be submitted to the customs authorities changes frequently and because the Customs Code may require the official importer to submit additional documents as defined by applicable law, U.S. exporters are advised to conduct customs clearance in Ukraine as a contractual obligation of the Ukrainian trading partner or end user. The Ukrainian government strictly controls and restricts the transit, import and export of arms, drugs, chemicals and hazardous substances, as well as certain pharmaceutical and communications products. The licensing of prohibited and restricted imports is governed by the Law of Ukraine “On State Control over International Transfers of Military and Dual-Use Goods” No. 549-IV, last amended on 5 April 2022, which sets out the terms and conditions of licensing; names the transit control authorities; and establishes criteria for the transit, import and export of military or dual-use goods. Approval of the transit, import or export of military or dual-use goods may take up to 90 days from the date of application and receipt of the required supporting documentation. These documents must be submitted to the State Export Control Service of Ukraine. Companies or relevant Ukrainian trading partners of end-user goods wishing to import these goods should contact the State Export Control Service of Ukraine in advance before any prohibited or restricted goods are shipped to Ukraine. Recent amendments to this law provide that the Cabinet of Ministers of Ukraine may establish a list of goods that are not subject to this law during the period of martial law in Ukraine.

In addition, Resolution of the Cabinet of Ministers of Ukraine No. 960 dated 24 October 2018, as last amended on 26 June 2020, established restrictions on the cross-border movement of certain groups of goods, including experimental plant varieties and products subject to certification. These include food products, military and dual-use products, goods subject to conformity assessment with technical regulations, seeds and planting material, electronic equipment and special-purpose radiators. The State Inspectorate for Food Safety and Consumer Protection controls the quality of products and their compliance with national standards. In Ukraine, certification is a paid service. This certification service is provided by about 100 accredited certification agencies listed with the National Accreditation Agency of Ukraine.

An importer or its Ukrainian trading partner has the right to choose one of the accredited certification agencies and order product certification necessary for the sale or manufacture of products in Ukraine. Depending on the type of product, tests and applicable certification scheme, the certification process can take up to 30 days. Conformity assessment – In September 2017, the Cabinet of Ministers of Ukraine amended the Law of Ukraine on Standardisation, cancelling the mandatory application of national standards. The voluntary application of standards is in line with the requirements of the World Trade Organisation’s Agreement on Technical Barriers to Trade and European standardisation principles. Certification is also no longer mandatory following the cancellation of the procedure in force in March 2018.

Under Article 15 of the Commercial Code of Ukraine, as amended on 17 August 2022, standardisation is mandatory for the development, manufacture or supply of products referring to certain standards if the manufacturer or supplier of the product has made a declaration of conformity with certain standards or has indicated the standard on its label, as well as in certain other cases where the application of standards or codes of practice is regulated by law. Importers may request certification of a foreign enterprise for compliance with Ukrainian technical regulations. This option usually involves a costly inspection visit by Ukrainian government officials to the facility. If approved, the supplier receives a certificate of conformity valid for 2 to 5 years and avoids the need to certify each batch and mandatory laboratory testing of the goods upon arrival in Ukraine.

According to the CMU Resolution No. 1067 “Technical Regulations for Low-Voltage Electrical Equipment” and No. 139 “On Approval of the Technical Regulations on Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment”, a declaration of conformity is required for certain goods during customs clearance and for release to the Ukrainian market. A Ukrainian official certification centre can issue a Declaration of Conformity. Contact details of official certification centres can be found on the official website of the National Accreditation Agency of Ukraine (NAAU). Importers can choose which type of technical standard certificates they wish to apply for [6]:

- certificate for one consignment of goods
- a certificate valid for up to one year, which is valid for all imported goods during that year with one or two additional sample tests
- a certificate valid for up to two years, which requires an inspection of production facilities.

The certification and approval processes are lengthy, duplicative and expensive, and politics and corruption are still often behind the arbitrary application of rules. Depending on its market strategy and market prospects, a US exporter may consider applying for certification of its products in Ukraine. Since all documents to be submitted to the Ukrainian certification agency must be in Ukrainian and in person, a U.S. exporter is advised to hire an attorney from a local or international law firm to handle product certification in Ukraine.

As the list of documents issued outside of Ukraine confirming the conformity of products is frequently changing, companies should contact one of the accredited certification centres. Ukraine has concluded trade agreements with Armenia, Azerbaijan, Belarus, Canada, Georgia, Iceland, Kazakhstan, Kyrgyzstan, Liechtenstein, Macedonia, Moldova, Montenegro, Norway, Russia, Switzerland, Turkmenistan, Tajikistan, and Uzbekistan. These agreements provide for reciprocal most favoured nation (MFN) status in trade with the signatory countries. As in the case of the PCA, under these agreements Ukraine benefits from tariff concessions made by its WTO partner countries without binding its own tariffs. The FTA with Israel, ratified by the Ukrainian parliament in July 2019, entered into force on 1 January 2021. In 2020, Ukraine also signed an FTA with the UK, which entered into force on January 1, 2021. The FTA with Turkey was signed on January 1, 2021. February 3, 2022.

Other important agreements between the United States and Ukraine include the signing of an intergovernmental agreement on February 7, 2017, on the implementation of the Foreign Account Tax Compliance Act (FATCA), under which Ukraine agrees to centrally exchange information on US accounts with the IRS on a non-reciprocal basis. On October 29, 2019, the Verkhovna Rada of Ukraine ratified the FATCA Agreement, which entered into force on November 18, 2019. On March 23, 2017, Ukraine became the 47th country to accede to the OECD Declaration on International Investment and Multinational Enterprises. The Declaration obliges Ukraine to provide an open and transparent environment for international investment and to encourage the positive contribution of foreign investment to economic and social progress [7].

There are currently a number of restrictions on doing business with Russia. They were imposed after the economic sanctions imposed by the US and EU in response to Russia's illegal annexation of Crimea and military aggression in eastern Ukraine. The 2014 Sanctions Law provides for a list of such restrictions, including asset freezes and restrictions on trade or transit. Initially, these restrictions were introduced for one year at the end of 2015, but were later extended and prolonged. The lists of sanctioned persons, both individuals and legal entities, are approved by the President based on decisions of the National Security and Defense Council of Ukraine (the last update of these lists was made on June 21, 2018).

Ukraine may also impose sanctions against foreign states or sectoral sanctions (e. g., sanctions against an unspecified number of persons engaged in certain activities), which are, however, subject to a more complex approval procedure. Although the currency control regime in Ukraine is restrictive (as a result of temporary measures introduced by the National Bank of Ukraine in mid-2014), most restrictions have been either eased or abolished. The most notable restrictions that remain include [9]:

- Ukrainian companies, except for commercial banks, must sell 50% of their foreign currency revenue.

Dividends for 2017 or previous periods repatriated abroad cannot exceed USD7 million per month.

- Early repayment of a cross-border loan by a Ukrainian borrower is generally prohibited, although the number of possible exceptions has been significantly expanded.

- In addition, in 2018, the Verkhovna Rada adopted the Law on Currency and Currency Transactions, which will enter into force in February 2019. The Law “On Currency and Currency Transactions” creates a new legislative framework for currency control and is aimed at liberalizing state policy in this area. respect (in particular, with respect to cross-border transactions).

Imports and exports of goods and services are subject to VAT in Ukraine. The standard VAT rate of 20% applies to domestic supplies and imported goods. A reduced rate of 7% applies to pharmaceuticals and healthcare products. A 0% rate applies to exported goods and goods sold in duty-free shops. In addition, Ukraine imposes customs duties on imports and exports of a wide range of goods. Specific rates are set as percentages or fixed amounts depending on the types of goods crossing the Ukrainian border.

Conclusions and prospects for further research in this area. Despite some procedural improvements made by Ukraine, companies exporting goods to Ukraine should continue to face a slow bureaucracy and a lot of paperwork with the State Customs Service of Ukraine. Because of this, many firms choose to use customs brokers to navigate the frequently changing and seemingly inconsistent customs clearance procedures.

Ukraine has amended and supplemented many of its foreign trade regulations in an effort to facilitate and support businesses engaged in foreign trade. However, in the future, a national strategy to support foreign trade under martial law should be developed. This strategy should be adaptive and changeable to the conditions of war. Further research will include the development of such a strategy at the level of foreign trade enterprises and the state level.

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