

## **LINES OF DEVELOPMENT OF REGULATION OF ENTREPRENEURSHIP ACTIVITIES IN THE CUSTOMS SPHERE**

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### **INTRODUCTION**

The Constitution of Ukraine entitled the enterprises, whose activity is connected with provision of services regarding customs clearance of goods and means of transport, alongside with the citizens of Ukraine, for freedom of speech, religion and association.

Besides, customs brokers have the right to take part in public discussions of the issues of realization of customs affairs in Ukraine and international economic activities, organization conditions of public regulation of professional customs broker activity, ensuring and protection of human rights, as well as the right to create local national and international organizations, directly participate in meetings of such organizations without limitation of professional customs broker activity by reason of membership in such an organization.

Customs brokers carry out tasks and duties in the process of their professional activity in accordance with the Customs Code of Ukraine that requires independence and lack of any influence thereon associated first of all with pressure from outside.

Independent state of a customs broker contributes to strengthening of trust of subjects of international economic activity to realization of customs formalities when goods or means of transport are transported over customs border of Ukraine, solidifies the image of bodies of the State Customs Service of Ukraine. Thus, customs brokers should avoid any impingement of their own independence and should not sacrifice their principles of duty in favor of a client, the State Customs Service or other people. Efforts of the State Customs Service and Administration of State Border Service of Ukraine to regulate economic activities of customs broker is baseless, causes entrepreneurs' concern and leads to lack of protection of customs brokers from illegal, predetermined actions of officials in the Fiscal Service, hence there can be a threat of destruction of the existing institution of customs brokers and supportive environment for development of shadow economy of customs and broker services is created. Finally, this leads to considerable losses in the State Budget of Ukraine, liquidation of customs broker enterprises and material losses of enterprises that participate in international economic activities.

## **THEORETICAL BASES OF SELF-REGULATION OF ENTREPRENEUR ACTIVITY IN THE CUSTOMS SPHERE**

Means of regulation of entrepreneur activity can be sorted into three groups:

Firstly, state regulation of entrepreneur activity (assembly of methods and instruments, by means of which public authorities establish requirements to economic subjects).

Secondly, non-state public and legal regulation of entrepreneur activity. Such regulation is carried out by specific organizations that unite into professional associations of specialists (organizations of professional self-administration). The state delegates part of authoritative powers (regarding establishment of rules of professional activity that is obligatory for all members of such professional association) to such associations. Currently there is only one organization of professional self-administration in each professional activity in Ukraine.

The following are examples of such organizations:

- national association of lawyers of Ukraine. One can get access to profession in law only by entering this organization, which is supported by obligatory membership of such specialists at self-administration association;
- notarial chamber of Ukraine is a non-profit legal entity incorporating public notaries of Ukraine basing on self-administration principles. Activity of the notarial chamber of Ukraine is carried out under the Law of Ukraine “On notaries” and the Articles of association of this self-administration organization.

The difference between such regulations from self-regulation is that the grounds of activity of self-administration organization cannot be established by one basic normative legal act, i.e. general principles of activity must be established by special law of Ukraine for each professional organization. The state delegates authoritative powers regarding certain professional activity to self-administration organizations (there is only one self-administration in certain professional activity).

Thirdly, it is self-regulation. The latter consists in the following: members of non-governmental organizations establish rules that differ from the rules established by state authorities with stricter requirements to subjects of economic or professional activity. The number of self-regulatory organizations is not limited, as it is observed in self-administration organizations. Voluntary self-regulation must be additional to state regulation and public and legal regulation of entrepreneur and professional activity in Ukraine.

In our opinion, self-administration in the sphere of servicing is a significant instrument for service quality improvement, development of economic activity, increase of level of service consumers’ protection and rights, provision of effective interaction between subjects of economic activity and public

authorities, creation of institutional environment for further authorization of organizations of professional self-administration for functions of public and legal management, decrease of State Budget expenses for regulation of economic activity, more effective protection of rights of subjects of economic activity violated by state authorities.

Despite the importance of the role of state regulation of entrepreneur activity today, significance of self-regulation rises along with development of intermediary activities in customs sphere. As an enterprise is one of the types of economic activity, self-regulation at an enterprise has its principles in economy self-regulation.

At first, the term “self-regulatory organization” was used in the USA legislation at the period of T. Roosevelt’s New Deal. At that time establishment of such organizations was stipulated by the Law “On Securities Market” (Securities Exchange Act of 1934), according to which associations of members of securities market, national stock markets, Municipal administration of market regulation of municipal securities and registered clearing agencies received the status of self-regulatory organization<sup>1</sup>. The notion of “self-regulating organization” was used in the Law “On financial services” of Great Britain (ceased to be in force). This Law determined that investment activities had to be controlled by self-regulating organizations, which in connection therewith had to establish rules obligatory for those, who were members of such organizations or subordinate to them<sup>2</sup>.

Besides, Zinchenko S. A. considers that “legislative use of the term “self-regulatory organization” in particular in the said countries is limited only to the sphere of financial services and regulation of securities market”<sup>3</sup>. However, it should be noticed that these organizations can also exist in other branches of entrepreneurship, although the mentioned term is not used by the legislation of the said countries in relation to them.

Foreign economic literature uses the term “self-regulation” for cases when a subject of economic activity imposes certain restrictions on itself without any external pressure thereto. It must be said that there is special authority – Ombudsman, which may be either unipersonal or collegial and aims at realization of this function in the countries where self-regulatory organizations have existed for a long time<sup>4</sup>.

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<sup>1</sup> Customs Code of the Customs Union (annex to the Contract on the Customs Code of the Customs Union adopted by the decision of the Interstate Council of EurAsEC at the level of heads of states as of 27.11.2009 no. 17 (edition as of 08.05.2015).

<sup>2</sup> Title of United States Code, Chapter 2B – Securities Exchanges. URL: <http://uscode.house.gov/download/pls/15C2B.txt>.

<sup>3</sup> Financial Services Act 1986. URL: [http://www.legislation.gov.uk/ukpga/1986/60/pdfs/ukpga\\_19860060\\_en.pdf](http://www.legislation.gov.uk/ukpga/1986/60/pdfs/ukpga_19860060_en.pdf).

<sup>4</sup> Zinchenko S. A., Galov V. V. (2007) Self-regulatory organizations in legislation in Russia: problems and solution.

In 2015 in Ukraine the Institute of Business-Ombudsman was founded at the expense of such authority. Discussions about implementation of the Institute of Business-Ombudsman had lasted in Ukraine since autumn of 2012. Today similar authorities exist in the USA, Russia and Georgia. The government of Ukraine and the EBRD signed Memorandum of understanding for Ukrainian anti-corruption initiative only on May 12, 2014<sup>5</sup> that preceded foundation of the Institute of Business-Ombudsman in Ukraine.

It must be added that some business circles were quite skeptic about this post, as business-ombudsman, in their opinion, would have had too few powers<sup>6</sup>, and therefore it was offered that business-ombudsman's activity had to be controlled by law<sup>7</sup>. Finally, on May 31, 2016, the draft of the Law of Ukraine on Establishment of business-ombudsman was taken as a basis, at present the draft is pending for the second reading.

Thus, business-ombudsman in Ukraine is an official that deals with protection of business interests in the face of public authorities both in the territory of the country and abroad. Business-ombudsman acts as an instrument settling conflicts and arguments between the government and business, as intermediary for the state and business-environment. His actions are aimed at contribution to transparency of activity of the state authorities, prevention of corruption acts and/or other violations of entrepreneurs' legal interests.

Thus, in Ukraine in the process of economic reformations only partially separate elements of functional economic systems were created. In the future, effective mechanisms of self-regulation have to form from them. The main problem of entrepreneurship in the sphere of customs is its state regulation. This problem concerns ways, means and stages of regulation.

Today wide networks of self-regulation mechanisms have formed in the most developed countries – those are functional economic systems (hereinafter – FES). These functional economic systems are defined as dynamic self-regulatory systems, activity of which is aimed at supporting macro-economic balance of national market and creation of optimal conditions for exchange of goods, services, technical devices, technologies, capital forms, manpower, etc.

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<sup>5</sup> Grachev Dmitriy Olegovich (2008) Legal status of self-regulatory organizations.

<sup>6</sup> Memorandum of understanding as to supporting Ukrainian anti-corruption initiative, concluded by the Cabinet of Ministers of Ukraine, European Bank for Reconstruction and Development, Organization for Economic Co-operation and Development, American Chamber of Commerce in Ukraine, European Business Association, Federation of Employers in Ukraine, Chamber of Commerce and Industry in Ukraine, Ukrainian Union of Industrialists and Entrepreneurs as of May 12, 2014.

<sup>7</sup> Panchenko Jurij (2014) Business-ombudsman: “An investor would not come where corruption interferes with work” (interview with Alhirdas Shemeta). *Yevropeys'ka Pravda*.

FES unite various elements of market infrastructure, institutional establishments, including legislative and executive authorities, state structures, associations of manufacturers, analytic and information centers, private commercial structures, etc.

Self-regulation is regarded as regulation of specific markets and spheres of business by economic agents themselves, without interference from the state. That is why western economic literature often refers to self-regulation as to independent administrative power<sup>8</sup>. Other foreign scientists consider that self-regulatory organizations (hereinafter – SRO) are an institute, which regulates interrelations of entrepreneurs, state and customers.

Legal position of international organizations of self-regulation of economic activity at global and regional levels is first of all realized by the UNO and the Council of Europe, which quite rightfully account for the importance and usefulness of self-regulation of entrepreneur and professional activity. The world is in search of an effective model (scheme) of self-regulation that would become an example for all countries. In order to find one they study practices of self-regulation based on trust among subjects and open dialog with interested organizations and establishments, adequate monitoring and responsibility of self-regulatory subjects.

Establishment of SRO will allow state authorities considerably to decrease expenses for regulation of activity in a number of branches on account of cancellation of licensing and certification, which in the end should lead to downsizing of government machine and decrease of corruption. Business-community will get the opportunity by themselves to determine effective ways to use funds accumulated in SRO and assigned for self-regulation aims<sup>9</sup>.

The following are basic aims that determine expediency of formation of SRO: de-bureaucratization, loosening administrative pressure, decrease of budget expenses, and participation of entrepreneurs in legislative process.

Self-regulation is one of the mechanisms of organization of civil society and is examined in the framework of civic liberties and initiatives. Any social organizations (social associations) are defined as self-administrative, although only a number of their specific functions allows to recognize them as self-regulatory. SRO is characterized with presence of a number of obligatory and additional functions delegated to its members<sup>10</sup>.

Art. 2 of the Model Act on self-regulatory organizations, approved by the Decree of Interparliamentary Assembly of CIS Member Nations No 29-7 as of

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<sup>8</sup> I. Mykhasyyuk, A. Mel'nyk, M. Krupka, Z. Zaloha (2000) State regulation of economy.

<sup>9</sup> Polishchuk Ye. A., Shevchenko V. P. (2014) Self-regulatory organizations as component of development concept of nonbank financial institutions/

<sup>10</sup> Zel'vynskaya A.A. (2008) Rising the competence of self-regulatory entrepreneur structures as key-factor of their development (PhD Thesis).

31.10.2007 defines self-regulation as independent and initiative activity carried out by subjects of entrepreneur or professional activity or by non-state pension funds on conditions of their association into self-regulatory organizations, consisting in elaboration and establishment of rules and standards of the stated activity, as well as control over fulfilment of requirements of the established rules and standards. Self-regulation is carried out on conditions of association of subjects of entrepreneur and professional activity into self-regulatory organizations<sup>11</sup>.

Art. 1 of the draft Law “On self-regulatory organizations” as of 11.12.2014 determines the status of a self-regulatory organization: social businesses, property of which is not subject to distribution among members and in case of liquidation is given to other social businesses that fulfil the requirements, or is enrolled to budget income, may acquire the status of self-regulatory organization<sup>12</sup>. Art. 13 of the said draft Law determines the rights of self-regulatory organizations.

A self-regulatory organization is entitled to: make offers to state authorities as to formation and implementation of state policy in respective sphere of economic and/or professional activity; take part in discussion of projects of normative legal acts that provide for regulation of relations in respective sphere of economic and/or professional activity, send offers and conclusions as to drafts of normative acts; represent interests of members of self-regulatory organization in relations with state authorities, local government bodies; delegate its representative for participation in advisory, deliberative and other additional bodies of executive power that secure implementation of state policy in respective sphere of economic and/or professional activity under order stipulated for social organizations; take part in elaboration of national standards; under order stipulated by legislation to receive information required for execution of self-regulatory organization’s tasks in state authorities and local government bodies; carry out professional training, attestation, career enhancement of members of self-regulatory organization and/or employees of members of self-regulatory organization; carry out international cooperation, enter respective international organizations.

Self-regulatory organizations are characterized with presence of respective functions: obligatory and additional ones.

The obligatory functions that determine the difference of self-regulatory organizations from other organizations include:

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<sup>11</sup> Lyapin D. V. (2012) Peculiarities of using self-regulation mechanisms in state regulation policy Strategy priorities: scientific and analytical quarterly publication, no. 4 (25).

<sup>12</sup> Interparliamentary Assembly of CIS Member Nations (2007) Model act on self-regulatory organization: Decree of Interparliamentary Assembly of CIS Member Nations no. 29-7 as of 31.10.2007.

- elaboration of standards and rules of professional activity;
- elaboration of sanctions for violation of standards and rules of professional activity;
- control over fulfilment of the established standards and rules;
- bringing to responsibility in case of failure to fulfil the established standards and rules;

Additional functions that are not mandatory and that determine efficiency of self-regulatory organization include:

- examination of complaints and arguments arising within self-regulatory organization;
- compensation of expenses caused by unlawful activity of members of self-regulatory organization.

Two types of self-regulation can be singled out according to the criterion of the nature of interaction of self-regulation and state regulation: voluntary and delegated self-regulation. The former type is a form of self-regulation of subjects of entrepreneur or professional activity, which is market-oriented in its essence and does not require special interference from the state. Delegated self-regulation provides that the state passes certain functions of state regulation to SRO, at that putting forward certain demands to SRO and respectively entitling them<sup>13</sup>.

Basing on this SRO may be classified as follows:

- voluntary self-regulation – self-regulatory organizations with regulatory functions considered additional to state regulations;
- delegated self-regulation – self-regulatory organizations with mandatory membership and unchangeable level of state regulation.

Generalizing the experience of foreign countries one may say that self-regulation functions well if:

- there is branch association involving the majority of subjects of entrepreneur activity;
- there is common interest to compliance with certain norms in social interests;
- subjects of entrepreneur activity have similar interests and abilities;
- presence of competition at high level in order to let subjects of entrepreneur activity that entered the self-regulatory organization implement self-regulation of competitive advantages. Thus, the more enterprises enter self-regulatory organization, the harder it is for them to agree. The scheme of acquiring competitive advantages may also turn out ineffective<sup>14</sup>.

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<sup>13</sup> Zel'vynskaya A.A. (2008) Rising the competence of self-regulatory entrepreneur structures as key-factor of their development (PhD Thesis).

<sup>14</sup> Verkhovna Rada of Ukraine (2014) Draft Law on self-regulatory organizations no. 1444 as of 11.12.2014, session 1, calling VIII. URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=52919](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=52919).

Strong points of state regulation consist in: legislatively established rules, legitimacy and democracy; the same legislation for all subjects of entrepreneur activity supported by the state and socially convincing and acceptable to the extent that seems trustworthy from the point of view of the state capacity.

The following are strong points of self-regulation: flexibility and efficiency in problem solution; establishment of quality standards; legal competence of members and high quality control of activity; quick realization of regulation; ability to pay compensation to a consumer faster and with less expenses than during usual civil claims; funds required to control regulation are spent directly by members of self-regulatory organizations.

Weak points of state regulation are: spending time and effort of the government machine for regulation; legislative setting of limitations; excessive potential of state pressure; modern ways of business are not subject to legislative regulation.

The following are weak points of self-regulation: it involves only those, who on their own free will agree to take part in it, other companies remain out of control; elements of public enforcement (for example, mandatory membership) rather threaten anti-corruption behavior in a serious way, which may lead to cartelization. In addition, formally self-regulation is not subject to action of Antimonopoly legislation, and so respective rules and actions may not be appealed against in Antimonopoly committee or in court.

### **PRIORITIZED IMPROVEMENT LINES FOR ORGANIZATIONAL AND ECONOMIC REGULATION CONDITIONS OF CUSTOMS BROKER ACTIVITY**

Taking into account the above said we consider it expedient to elaborate an effective model of business self-regulation in order to improve legislation and adopt respective normative and legal acts on self-regulatory organizations.

Frameworks for foundation and functioning of such organizations should be set in the Law of Ukraine on self-regulatory organizations. One of the basic functions of SRO is elaboration of rules and standards of activity, securing control of their fulfilment by SRO members and use of respective sanctions for violation of these standards, which will secure improvement of quality of manufactured goods and services provided in economic turnover.

It should be noticed that no mechanism regulating business responsibility has been elaborated by now in Ukraine. This means that an effective model of self-regulation needs to be set in the Law on self-regulatory organizations. Such model will contribute into development of market economy in Ukraine.

In our opinion, business self-regulation is a required element in the mechanism of market economy regulation. All the developed countries already have mechanisms based on self-regulation, and the world has approached this system by evolutionary way.

For today 20 organizations officially recognized as self-regulatory operate in Ukraine in five types of activity. Generally, the funding of SRO is allowed in 15 types of activity. 39 normative and legal acts of various legal affect make up the normative base. However, it is obvious that SRO may be founded not only in those spheres, legislation of which directly contains provisions on possibility of founding SRO, but also in other spheres of entrepreneur activity, which can be particularly conditioned with demand for such regulation form from subjects of economic activity themselves.

Thus, there is no unified approach to legislative definition of self-regulation and legal regulation of activity of SRO for now. This causes impossibility of self-regulation in most types of activity; there are cases when foundation of SRO is permitted by special law, but there are no any normative and legal acts whatsoever that prescribe the order of foundation and activity of SRO; approaches to procedures of self-regulation vary in different types of activities; there are gaps in current legislation that make full-scale functioning of SRO impossible; some organizations in Ukraine have key features of SRO, although legislation does not provide for their capacity to acquire the respective status.

Analyzing normative and legal acts of Ukraine that regulate activities we found information about ten SRO in five types of activity that had officially acquired the status of SRO objects: valuation activity; court-appointed management activity; architectural activity, professional activity on the securities market. However, there are professional organizations in certain types of professional activity that can be attributed to self-regulatory ones on the ground of their features, although provision of respective status to them is not stipulated by legislation.

The first step in changing the mechanism of regulation of customs intermediary activity is adoption of the Law of Ukraine “On self-regulatory organizations” and Decree “On self-regulatory organizations of professional participants of the market of customs broker services”<sup>15</sup>.

We offer to identify subjects of regulation within the mechanism of regulation of customs broker activity (on the basis of self-regulation): the State Fiscal Service of Ukraine and self-regulatory organizations, and at the same time to exclude the State Border Service of Ukraine from subjects of regulation of customs broker activity.

Besides basic aims of regulation of customs broker activity associated with securing consistent development of national economy, at the same time securing economic safety and integration of national economy, we offer to start

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<sup>15</sup> World Bank. 2016. Doing Business: Understanding Regulations for Small and Medium-Size Enterprises. Washington, DC / World Bank Group.82. URL: <http://lpi.worldbank.org/>

realization of improvement of quality of customs broker services. Solution of the problem of provision of high quality customs broker services will be greatly facilitated with implementation of quality standards for customs broker activity. Self-regulatory organizations should have competence to elaborate and implement such standards of customs broker activity with enhanced mechanism.

The above said determines economic expediency of distribution of regulatory functions among state authorities and professional associations of customs brokers self-regulatory in their activity by means of acquiring by the latter of indirect regulatory functions in customs broker activity (establishment of standards of customs broker activity, implementation of customs broker register, etc.) along with securing coverage of payments of compensation of losses inflicted by members of customs broker professional association to consumers and securing receipt of customs funds by the State Budget of Ukraine by means of establishing compensation funds of customs broker associations self-regulatory in their activity.

Legal method of regulation of customs broker activity is used in order to create legal environment for functioning of customs broker associations, which are self-regulatory in their activity, through drafting normative and legal acts in the sphere of customs, their realization and control over execution.

Economic method of regulation of customs broker activity consists in creation of conditions for securing national interests of the state, on one hand, and customs broker associations self-regulatory in their activity, on the other hand. The following are the instruments therefore: imposition of tax on entrepreneur activity of customs brokers, establishing amount of fines for violation of customs rules, establishing sum of registration fee for recording customs broker association data in single state register of self-regulatory organizations.

In our opinion, organizational method of regulation of customs broker activity (instructions, provisions that permit, forbid, restrict, normalize customs broker activity), unlike the currently operating regulation mechanism, needs to be delegated to professional associations of customs brokers, which are self-regulatory in their activity.

Instruments of organizational method are the established rules and standards of activity of customs broker association (rules of professional activity of customs brokers – members of association, provisions regarding specialized bodies of customs broker association, provisions regarding refund of losses on account of compensation fund of customs broker association).

Rules of professional customs broker activity may contain in particular: procedures of examination for compliance of services with the established standards; order of examination of applications from consumers of customs broker services; actions aiming at prevention of conflict of interests in

consumers of such services; conditions of insurance of property interests of customs broker enterprises for members of association regarding obligation to compensate damage inflicted on the third parties during provision of customs broker services (losses, shortage or property damage (goods, means of transport) as a result of unintentional failures of customs broker during execution of customs formalities, omission of payment terms of customs fees, confiscation of goods, means of transport, documents or other objects, arrest thereof as a result of unintentional violation of customs rules by customs broker, wrong calculation of customs fees, etc.).

Thus, we consider it reasonable to pass the following to the competence of customs broker associations: maintaining the register of customs brokers – participants of SRO; issuing certificates confirming entry of customs broker professional association into the register; additional training and attestation of association members; elaboration of standards and rules of execution of professional customs broker activity and control over compliance therewith, elaboration of insurance conditions of responsibility borne by members of self-regulatory organization in the face of consumers and other parties (amount of minimal insurance sum according to insurance agreement, insurance events, etc.); elaboration and use of sanctions for violation of rules established by customs broker association.

Effective activity of customs brokers on the ground of self-regulation is impossible without resource allocation, so the need to create compensation fund that will cover payments for refunding of losses inflicted by members of self-regulatory professional association appears.

Compensation fund covers payments for refunding of losses inflicted by members of professional association of customs brokers, which are self-regulatory in their activity, to consumers and other subjects of customs broker activity.

Mechanism of regulation of customs broker activity, taking into account the authors' ideas, is represented as a system of interaction of organizational, economic and legal methods, principles and instruments in the sphere of state regulation and self-regulation of customs broker activity.

The losses inflicted by members of professional association of customs brokers, activity of which is self-regulatory, to consumers and other subjects of customs broker activity first of all include reduction of income to the State Budget of Ukraine as a result of failure to pay fines in case if an enterprise-customs broker is brought to administrative liability for violation of customs rules (only upon effective court decision). Coverage of expenses, associated with functioning of professional association of customs brokers and regulation of customs broker activity, is to be carried out from the established compensation fund.

Compensation fund of customs broker association, which is self-regulatory in its activity, is formed in cash on account of contributions of members of such an organization. A bank that has license for carrying out professional activity on securities market – depository activity of custodian – may manage the compensation fund of a self-regulatory organization. Custodian expenses are paid on account of income from utilization of property of compensation fund passed to the management.

For effective achievement of the set aims as to regulation of customs broker activity we offer a system of principles of its regulation, which consists in securing the interest balance of all its members and reflect collective economic interest of both state and economic subjects according to the requirements of the WTO and the EU:

- principle of deregulation of state influence on customs services market, which consists in legislative normalization of passing the respective indirect functions to customs broker association;
- principle of creation of equal abilities for all members of customs broker services market, which consists in securing equality of customs brokers under the law and besides – under internal rules of customs broker association, self-regulatory in its activity;
- principle of financial responsibility of customs brokers in the face of consumers of customs broker services (through formation of compensation funds);
- principle of systematic functioning of the regulation mechanism of customs broker activity, which provides customs security of the country and at the same time would promote maximal alignment of priorities of states with interests of customs intermediaries;
- principle of state promotion of establishment and activity of customs broker associations, which consists in promotion of founding new structures, widening the existing ones;
- prevention of limitation of economic competition on the market of customs broker services;
- prevention of discriminating requirements, which deprive customs broker associations of the right to acquire status of a self-regulatory organization.

The state should secure the entity of economic environment and administration of law in its territory. Hence, customs broker associations, which are self-regulatory in their activity, in their turn, have to secure equality of their members under law and internal rules. In addition, the state itself may act as consumer. Hence, the principle of equality of members may be discussed.

The state has to secure its own capacity to monitor execution of functions regarding control of members of self-regulatory customs broker association by

such an association. The state has to establish requirements as to public (or other) disclosure of certain type of information. Hence, customs broker organization of any kind has to comply with the principle of transparency.

Self-regulation provides for members' ability to achieve certain (desirable by them) results on their own. Such an achievement may be done either with direct efforts of a certain member, or collectively, through corporate bodies of the association. Consequently, these corporate bodies have to be subordinate to the members. One of the basic elements of subordination is the ability to influence the corporate bodies by their electiveness. Thus, each professional organization has to comply with the principle of electiveness of its corporate bodies.

Risks of using the mechanism of self-regulation in customs broker activity should also be mentioned. The first reason is associated with limitation of number of members of self-regulatory organization and expressing of monopoly on the market of customs broker services.

Thus, removal of negative consequences of functioning of monopolies on the market of customs broker services should be attributed to obligatory functions of state regulation, which consists in:

- stimulation of competition development;
- use of regulation methods that are capable to restrict monopoly state of enterprises-customs brokers;

So, the offered mechanism of regulation of customs broker activity will promote:

1. Increase of number of enterprises-customs brokers, owing to stimulation of activity of enterprises, securing financial protection, formation of normal competitive environment;

2. Increase of income from customs payments through securing and provision of guarantees of payment of fines for customs rules violation and securing customs dues in insurance events.

3. Improvement of quality of customs broker services and level of compliance of customs broker activity with international standards through establishing standards and rules of activity and control over their execution that, in its turn, will considerably increase the level of competitiveness of the country in international ratings and will boost foreign trade cargo deliveries.

Thus, organizational problems of customs broker activity were solved by means of removal of administrative pressure on enterprises-customs brokers from the bodies of the State Customs Service and instead – provision of financial support to customs brokers. With such activity organization, illegal components in intermediary activity of customs brokers will considerably decrease; social problems will be resolved by means of employment to posts of customs clearance agents. According to the offered regulation mechanism of customs broker activity, professional associations of customs brokers are

authorized to hold qualification examinations and issue qualification certificates of customs agents. This allows to increase the number of work places and consequently to receive additional income to the State Budget of Ukraine; economic problems are resolved by means of minimization of risks of shortage in customs payments to the State Budget of Ukraine in cases of violation of customs legislation and if an enterprise – customs broker is brought to administrative liability, full or partial failure to pay customs dues regarding goods entered for customs clearing by customs broker.

So, with resolving administrative, social and economic problems of customs broker activity, the risk of shortage of payments to the State Budget of Ukraine is reduced, and consequently the risk of causing damage to national economy is reduced, too.

Taking into account the undertaken study, at the present stage of development of customs broker activity it is reasonable to implement the mechanism of regulation of customs broker activity, capable of minimization of negative effects taking place in the customs sphere.

## **CONCLUSIONS**

Future development and improvement of organization conditions of customs broker activity in Ukraine will allow utilizing the regulation mechanism of customs broker activity more effectively. This will contribute into considerable reduction of number of employed officials in the bodies of the State Customs Service and reduction of number of officials for resolving more significant and future-oriented tasks, and removal of corruption load on business in foreign trading. The need to implement foreign experience in regulation of customs broker activity has been grounded, particularly with regard to its reformation in the direction of approaching world standards of regulation of customs broker activity on the ground of model of customs broker activity regulation, adjusted by the author in accordance with the national requirements (resolving all issues associated with customs representation on the grounds and principles of self-regulation).

The study has proved economic expedience of distribution of regulation functions among state bodies and association of customs brokers, which are self-regulatory in their activity, by means of passing indirect functions of regulation of customs broker activity (establishing standards of customs broker activity, starting register of customs brokers, etc.), securing coverage of payments for compensation of losses imposed by members of customs broker association, which is self-regulatory in its activity, on consumers of customs services and securing customs payments to the State Budget of Ukraine by means of establishing compensation funds.

The mechanism of regulation of customs broker activity as a system of interaction of organizational, economic and legal methods, principles and

instruments in the sphere of state regulation and self-regulation of customs broker activity has been refined by means of innovations offered in the thesis, which regard forms, methods, structure of regulation of customs broker activity, etc.

### **SUMMARY**

The study has grounded the expedience of distribution of regulation functions of customs broker activity among the State Customs bodies and professional associations of customs brokers, by means of passing them indirect regulation functions of customs broker activity. The need to establish compensation fund for compensation payments to consumers of customs broker services has been proved. The following principles of customs broker activity regulation have been grounded: principle of deregulation of the state influence on the customs services market; principle of creation of equal abilities for all participants on the market of customs broker services; principle of financial liability of customs brokers towards consumers of customs broker services; principle of systematic functioning of the regulation mechanism of customs broker activity; principle of the state promotion of establishment and activity of customs broker associations; prevention of discriminating requirements. New definition of the regulation mechanism of the entrepreneur activity in the customs sphere has been offered: a system of interaction of organizational, economic and legal methods, principles and instruments in the sphere of state regulation and self-regulation of customs broker activity.

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