

## TRANSFORMATION OF PROPERTY RIGHTS OF INTERNATIONAL BUSINESS ENTITIES IN THE PROCESS OF CUSTOMS REGULATION

*The article is aimed at defining the forms and mechanisms of transformation of ownership relations in the course of foreign economic operations under the influence of customs regulation.*

*On the basis of a systematic analysis, the article analyses a set of relations related to potential and actual processes of transformation of property rights of foreign economic entities during customs procedures. The statistical analysis allowed the author to identify the potential quantitative financial significance of the role of managerial decisions on the expedient transformation of property rights in the course of customs procedures to ensure the economic interests of the State. The method of comparisons was used to characterise various forms of transformation of property rights of subjects of foreign economic activity under the influence of customs procedures.*

*The author identifies the following forms of transformation of property rights of foreign economic operators during customs procedures: free, conditionally compulsory and absolute compulsory transformation. The conditions of the free form of transformation provide for a de facto free managerial choice on the part of a business entity. The conditional-compulsory form significantly narrows the possibilities of such a management choice. The absolute and compulsory form of transformation completely deprives a foreign economic entity of the opportunity to choose and influence the process of transformation of property rights.*

*It is shown that subjects of foreign economic business activity, within the framework of certain situations arising in the course of customs procedures, may have the opportunity to choose appropriate management decisions regarding the conditions for transforming their rights to property objects. At the same time, customs managers also have a certain choice. The author shows the contradictions of interests that may arise in various forms of transformation of property rights of foreign economic operators. International business entities and customs authorities enter into certain relations in which they seek to find the most cost-effective solutions and transformations for themselves. It is advisable to take into account that the benefits of a particular transformation for the State may be manifested not only in terms of financial results. It is proved that the transformation of property rights in favour of the state at the level of "ownership" is not always economically feasible for the state and its economic interests. When making appropriate managerial decisions on the transformation of ownership rights of foreign economic operators to the objects of customs control, customs managers should choose the most effective tools and modes of transformation.*

**Key words:** property, business, management, customs procedures, transfer of ownership, foreign economic activity.

**JEL Classification:** F10, H82, K11.

### **Yurii PETRUNIA,**

*Head of the Department  
of Management foreign  
economic activity  
University of Customs and Finance,  
Doctor of Economic Sciences,  
Professor  
12ptr1212@gmail.com  
orcid.org/0000-0001-5933-4986*

### **Roman OLEKSIENKO,**

*Associate Professor at the Department  
of Management foreign  
economic activity  
University of Customs and Finance,  
Candidate of Economic Sciences,  
Associate Professor  
roman.dniepr@gmail.com  
orcid.org/0000-0003-4029-3840*

**Introduction.** Current trends in global economic life convincingly demonstrate further deepening of the dependence of national economies on foreign trade and other forms of international economic relations. A characteristic feature of the functioning of social systems in today's globalised and digitised world is the increasing interaction and interdependence of national economies and countries in general.

Property rights, their establishment and enforcement are the fundamental basis of modern economic life. At the same time, the dynamics of modern life is also high in the context of the transition of property rights. In business and the public sector, such a transition is always accompanied by the adoption of appropriate management decisions.

The system of foreign economic activity (FEA) and regulation has its own specifics. It has a certain set of problems related to the potential or actual transformation of property relations, primarily in relation to the interaction between international business entities

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**Vira PETRUNIA,**

*Associate Professor at the Department  
of Management foreign economic  
activity*

*University of Customs and Finance,  
Candidate of Economic Sciences,*

*Associate Professor*

*petrunyavera@gmail.com*

*orcid.org/0000-0003-4697-9851*

(FEA entities) and customs authorities representing the relevant interests of the state in regulating foreign economic processes. At first glance, this issue is inferior in terms of its importance and complexity to, for example, such issues as the speed and convenience of customs procedures, the correct determination of the customs value and country of origin of goods, etc. However, managerial decisions made in the processes related to the transformation of property rights of foreign economic operators also have their own value and significance - both for business and the state. The transformation of property relations in the course of foreign economic activity should be based on fair and effective «rules of the game», on the basis of correct management decisions, including maximum consideration of the interests of the state, achievement of the required level of national security.

**Analysis of recent research and publications.** The scientific works of domestic and foreign researchers, as a rule, quite actively consider both property issues and problems of customs regulation of foreign economic activity and the functioning of customs institutions. With regard to the economic and managerial aspects of the property problem, recent publications include works on state regulation of property rights (Moskaliuk, 2020; Ivaniuta, 2019), transformation of property relations (Noginova, 2014), and intellectual property (Virchenko, Petrunia, Osetskyi, Makarenko, Sheludko, 2021). With regard to the issues of customs regulation, we can name, in particular, works on customs security (Krysovaty, 2020; Berezhniuk, 2009; Pashko, 2009), customs regulation in the context of global processes (Hrebelnyk, 2017; Petrunia, Oleksiienko, 2015).

At the same time, the analysis shows that modern scientific research on the transformation of property rights of international business entities under the influence of direct customs control procedures is hardly ever considered.

**The article is aimed at** defining the forms and mechanisms of transformation of ownership relations in the course of foreign economic operations under the influence of customs regulation.

**Summary of the main research material.** Foreign economic activity in modern conditions is very large-scale and plays a significant role. That is why the system of its regulation, the structure of institutions that influence foreign economic activity at the national (or international) level, is quite extensive. It usually includes the legislative body, the government as a whole, a specialised ministry, the state customs service, the central bank, tax authorities and some others.

The fundamental purpose of foreign economic regulation is to protect the foreign economic interests of the state. Ukraine has created and operates a system in which each of the state foreign trade regulatory authorities performs the functions delegated to it by law (10).

Regulation of foreign economic processes is a very important and systemic problem in the modern world. It must ensure the implementation of a number of basic functions: achieving a sufficient level of national security; protecting the economic interests of the state and foreign economic entities; maintaining the balance of domestic markets and the economic system as a whole; creating conditions for competition; generating state

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budget revenues, etc. Based on these goals, the state, through its own legislative and executive authorities, should ensure that all participants in foreign economic activity comply with the established norms, principles and approaches that will help achieve and maintain an optimal level of the business environment in the country.

State customs in Ukraine is carried out by the State Customs Service, which has to ensure that foreign economic operators comply with the system of provisions that act as customs rules. For this purpose, the customs authorities are, of course, granted the relevant powers. These powers include, among other things, issues related to ownership of certain objects involved in foreign economic activity.

In general, foreign economic flows represent the movement of certain groups of objects, both tangible and intangible. These flows, in particular, include the exchange of goods, services, securities, intellectual property, etc. At the same time, these same objects are the respective objects of property rights of international business participants, since in foreign economic activity the concept of property is actually identified with the concept of goods, as goods are understood to mean any products, services, works, intellectual property rights and other non-property rights intended for sale.

Property in foreign economic activity may also include, in addition to manufactured end products, means of production (including vehicles), cash, shares, other securities, and other property for consumer and industrial purposes.

The traditional understanding of property is based on the fact that the mechanism of property relations is based on the right of ownership of certain objects. Moreover, property is understood not only as belonging to a particular person and not only as the relationship of that person to them, but also as a system of social relations regulated by law regarding the possession, disposal and use of certain objects. Possession, disposal and use are three levels, three sections of the totality of the owner's rights. In real life, these levels of property rights can acquire a rather complex and dynamic actual content, based on the fact that both the right holder and the state as a regulator can change the ratio of potential and actual property rights in a certain way.

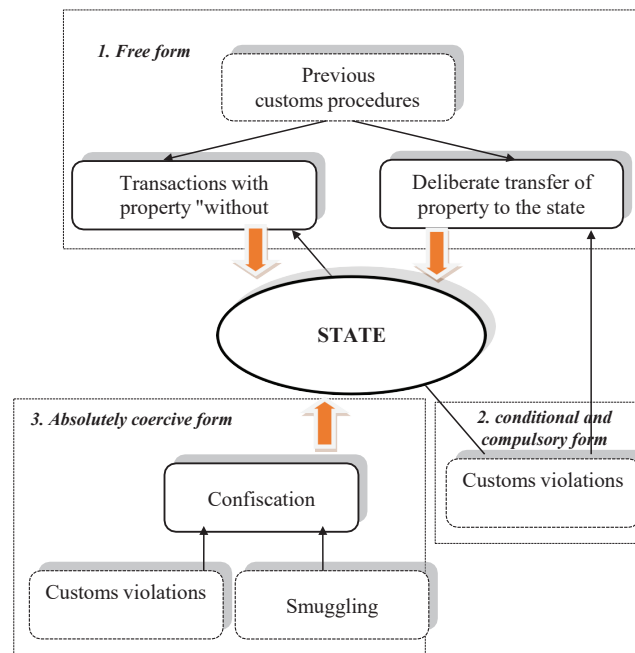
Private property is a very important component of modern social life and business organisation. It creates freedom of entrepreneurship and generates the corresponding interest of its subjects. However, in the civilised world, there are no unregulated and unlimited private property rights. This also applies to foreign economic activity. In certain cases, provided for by the regulatory «rules of the game», certain objects included in foreign economic flows may be transferred to the state free of charge or forcibly seized from the owner by a court or other competent authority as a sanction for an offence (11). In other words, in the foreign economic sphere, certain management decisions are made on an almost regular basis that directly affect property rights and may lead to their transformation.

In our opinion, it is advisable to distinguish three separate forms of the process of transformation of property rights of international business entities in the course of customs procedures and customs regulation of foreign economic activity. We are talking about free, conditionally compulsory and compulsory transformation of ownership rights to certain objects (Fig. 1).

*Free transformation.* It takes place without direct interference of customs and other state authorities in certain foreign economic processes and management actions. Forms of free transformation, i.e. the transfer of ownership rights from foreign economic operators to the state for objects crossing the customs border, include

- a) deliberate transfer of property rights to the state as a result of the application of the customs regime «waiver in favour of the state»;
- b) classification of property as «ownerless» due to certain circumstances.

With regard to the first situation, the application of the «abandonment in favour of the state» regime applies to goods under customs control in the customs territory of Ukraine, which the owner has abandoned in favour of the state without imposing any conditions in his favour. Such a situation may arise in various circumstances, in relation to different forms of foreign economic activity and respective customs regimes. These may include, for example, the unwillingness or inability of a foreign economic operator to pay all necessary taxes and duties on a particular property item that has been placed under customs control, if they are significant; or the inability to obtain the relevant permits when certain property items cross the customs border and, moreover, the high transport costs for returning these items to the country of export, etc.



**Figure 1. Forms of transformation of property rights of international business entities under customs regulation**

This transformation of ownership relations has certain contradictions with the interests of the state. Moreover, in some cases, it may not be profitable for the state to allow the use of this customs regime at all. In particular, the economic inexpediency of accepting objects under the «refusal in favour of the state» regime should be based on the inability to obtain sufficient profit from goods whose storage or use period has expired; goods requiring special storage conditions when the customs authority is unable to provide such conditions; goods whose storage and sale costs will exceed the amount of proceeds from their sale, etc. In other words, if it costs the state more money to receive, store and dispose of a «donated» foreign economic object than it can receive as a result of its sale or use, this should be considered an economically disadvantageous transformation of property rights, and the state should refuse this «offer». Therefore, it is indeed advisable that the legislation should contain appropriate prohibitions and restrictions on the inclusion of certain categories of property in this customs regime.

As for the second situation (the «ownerless» form), it is obvious that property may be considered ownerless if there is evidence of the absence of a real owner. Such a situation may arise, in particular, as a result of the death, incapacity or disappearance of a foreign economic operator - the owner of the relevant goods, property, etc. - if the heir does not claim these property objects, or the unwillingness of the operator to appear to clarify ownership of objects under customs control, etc.

At the same time, it should be noted that the customs «rules of the game», along with the possibility of free transformation of ownership rights to objects involved in foreign economic activity, also provide for the use of «forced» transformation of ownership rights to objects crossing the customs border of Ukraine - in the form of conditional and absolute forced transformation.

*A conditionally compulsory form of property rights transformation.* It provides for the transfer of ownership of objects under customs regulation not as a result of a certain free act. In such cases, international business entities (the current owner) give up their property rights to the relevant object, which, due to certain circumstances (violation of customs rules), has led to unfavourable property obligations to the state in the form of large administrative penalties for the entity.

*The absolute compulsory form of property rights transformation* does not provide for free decisions on the part of the foreign economic operator - the owner of a certain object. In such cases, the customs regulator has no alternative but to include a compulsory mechanism for transferring ownership of the object.

In our opinion, in the context of the «compulsory» component of the transformation of ownership rights of foreign economic operators to certain objects, a number of important and rather ambiguous issues arise from an economic point of view. Basically, they all boil down to whether it is economically

feasible for the state to apply the most severe means of punishing violators of customs rules (such as confiscation) or whether it is more efficient to use administrative levers.

Assessment of the effectiveness of customs institutions in restricting the property rights of international business entities should be carried out in several main areas. One of them involves the analysis and comparison of the amount of material income from the direct acquisition of certain objects by the state as a result of regulatory activities and various state expenditures - direct and indirect.

Among the direct costs of the state, in particular, are the expected expenses of state bodies during the temporary disposal of seized and detained property (storage, protection, transportation, etc.), their return to the legal owner or their final transfer to the state.

Indirect costs of the state should be considered, for example, shortfalls in the state budget due to the introduction of certain customs restrictions for foreign economic operators. Such «lost profits» will include potential mandatory taxes, fees, and payments not received by the state in respect of property involved in foreign economic activity that became the property of the state as a result of violations of customs legislation by foreign economic operators. It is possible that such shortfalls in the state budget may reach significant amounts. For a relative quantitative benchmark, we can take the size of the average daily transfer to the budget of customs duties and other taxes and fees: in 2023, this figure was UAH 1.27 billion (it should be taken into account the monthly growth of this indicator: for example, in October 2023, it was UAH 1.56 billion) (12). Table 1 shows the scale of the problem of customs rules violations in Ukraine in 2022-2023, in particular, by the number of customs rules violations, the number of cases with seizure of offence items, and the financial weight of customs rules violations.

Table 1

**Indicators of violations of customs regulations in Ukraine**

Indicator.	2022	2023
Total number of violations of customs regulations	11098	11935
The value of the items of customs rules violations, UAH billion.	2,9	8,9
The number of cases of violations considered by the customs authorities, including the seizure of items of violations of customs regulations	9825	3493
The value of offences seized by customs authorities, UAH billion.	2250	2962
Number of cases of offences brought to court by customs	0,698	0,938
Confiscation of goods and fines imposed by courts, UAH billion.	5721	6912
	1,8	2,0

Source: compiled by the authors on the basis of (12).

It should also be borne in mind that the state's benefit from obtaining ownership of certain objects may be not only material and financial. For example, the level of benefit from eliminating the potential danger caused by the possible unimpeded illegal crossing of the customs border of Ukraine by objects owned by foreign economic operators, which may lead to direct or indirect negative economic consequences, should be taken into account.

As a result, a comparison of government expenditures and the benefits and income received from the detention of relevant property of international business entities during customs control will, of course, provide an answer to the economic feasibility of applying compulsory and conditionally compulsory forms of transformation of property rights of these entities.

**Conclusions.** Thus, until the moment when the property objects arrive at the state customs border, the ownership of these objects belongs to certain participants in foreign economic activity. However, during the passage of the customs border, the transformation of ownership may occur, and the subject positions may be adjusted. The forms of transformation of property rights of foreign economic operators are free, conditionally compulsory, and absolute compulsory. Each form of transformation involves certain

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management decisions - both on the part of foreign economic operators and customs authorities. These decisions reflect and attempt to realise certain economic and other interests. In a number of cases, the right to dispose of property is transferred to the customs authorities of the state. This means the possibility of deciding on the further fate of the relevant property in terms of allowing or prohibiting its import into the country of import. That is, at this stage, prerequisites may arise that will limit or complicate the right of the rightful owner to freely dispose of the relevant objects. In particular, this may happen if the necessary information (regarding shipping and transport documents) is incomplete or lacking for a smooth border crossing, or if the declared and actual data regarding the property crossing the border do not match. Moreover, if the violation is sufficient to warrant the detention or seizure of the relevant property, the state will transfer the right to possess and dispose of the relevant property until the situation is reviewed and a decision is made by the judicial authorities.

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## ТРАНСФОРМАЦІЯ ПРАВ ВЛАСНОСТІ СУБ'ЄКТІВ МІЖНАРОДНОГО БІЗНЕСУ В ПРОЦЕСІ МИТНОГО РЕГУЛЮВАННЯ

**Юрій ПЕТРУНЯ,**

*завідувач кафедри менеджменту зовнішньоекономічної діяльності  
Університету митної справи та фінансів,  
доктор економічних наук, професор  
12ptr1212@gmail.com  
orcid.org/0000-0001-5933-4986*

**Роман ОЛЕКСІЧКО,**

*доцент кафедри менеджменту зовнішньоекономічної діяльності  
Університету митної справи та фінансів,  
кандидат економічних наук, доцент  
roman.dniepr@gmail.com  
orcid.org/0000-0003-4029-3840*

---

**Віра ПЕТРУНЯ,**  
доцент кафедри менеджменту зовнішньоекономічної діяльності  
Університету митної справи та фінансів,  
кандидат економічних наук, доцент  
petrunyavera@gmail.com  
orcid.org/0000-0003-4697-9851

***Метою статті** є визначення форм та механізмів трансформації відносин власності в процесі здійснення зовнішньоекономічних операцій під впливом митного регулювання.*

*На основі системного аналізу проаналізовано сукупність відносин, пов'язаних з потенційними та реальними процесами трансформації прав власності суб'єктів зовнішньоекономічної діяльності під час проведення митних процедур. Статистичний аналіз дозволив виявити потенційне кількісне фінансове значення ролі управлінських рішень щодо доцільної трансформації прав власності при здійсненні митних процедур для забезпечення економічних інтересів держави. Метод порівнянь було використано при характеристиці різних форм трансформації прав власності суб'єктів зовнішньоекономічної діяльності під впливом здійснення митних процедур.*

*Визначено такі форми трансформації прав власності суб'єктів зовнішньоекономічної діяльності під час проведення митних процедур, як вільна, умовно-примусова та абсолютно-примусова трансформації. Умови вільної форми трансформації передбачають фактично вільний управлінський вибір з боку суб'єкту бізнесу. Умовно-примусова форма суттєво звужує можливості такого управлінського вибору. Абсолютно-примусова форма трансформації повністю позбавляє суб'єкта зовнішньоекономічної діяльності можливостей вибору та впливу на процес трансформації прав власності.*

*Показано, що у суб'єктів зовнішньоекономічної бізнес-діяльності в рамках певних ситуацій, які виникають при проведенні митних процедур, може з'являтися можливість вибору відповідних управлінських рішень щодо умов трансформації їх прав на об'єкти власності. Одночасно певний вибір формується й у митних управлінців. Показані суперечності інтересів, які можуть виникати в різних формах трансформації прав власності суб'єктів зовнішньоекономічної діяльності. Суб'єкти міжнародного бізнесу та митні органи вступають у певні відносини, в яких прагнуть відшукати найбільш економічно вигідні варіанти рішень та трансформацій для себе. Доцільно враховувати, що зиск тої чи іншої трансформації для держави може виявлятися не лише як фінансові результати. Доведено, що трансформація прав власності на користь держави на рівні «володіння» є не завжди економічно доцільною для держави, для її економічних інтересів. Митні менеджери при прийнятті відповідних управлінських рішень щодо трансформації прав власності суб'єктів зовнішньоекономічної діяльності на об'єкти митного контролю мають правильно обирати найбільш ефективні інструменти та режими трансформації.*

**Ключові слова:** власність, бізнес, управління, митні процедури, перехід прав власності, зовнішньоекономічна діяльність.