

Sieriebriak S.*Doctor of Law,**Associate Professor of the Department of Public and Private Law,**Volodymyr Dahl East Ukrainian National University**ORCID ID: 0000-0001-7207-594X*

TRADING ACTIVITIES DURING THE MARTIAL LAW REGIME: MECHANISM OF LEGAL SUPPORT

У статті розглянуто особливості провадження торговельної діяльності в умовах дії правового режиму воєнного стану. Автором проаналізовано норми сучасного законодавства у сфері здійснення господарської діяльності, вказано недоліки та переваги сучасного стану правового регулювання. Наведено позиції науковців та здійснено теоретико-правовий аналіз їх підходів.

У дослідженні акцентовано увагу на специфіці зовнішньої та внутрішньої торгівлі. Виявлено ключові складові механізму здійснення торгівлі в умовах правового режиму воєнного стану, а також ті фактори, які негативно впливають на здійснення господарсько-торговельної діяльності.

Проаналізовано основні торговельні угоди України, а також основні механізми здійснення торгівлі в умовах війни. Сформульовано основні правові засоби, спрямовані на забезпечення економічної стабільності та захисту національних інтересів. Визначено та охарактеризовано сутність кожного з них. Автором визначені основні напрямки удосконалення законодавства у сфері господарсько-торговельної діяльності. Автором наголошено, що основними перспективами розвитку законодавства у цій сфері є створення спеціальних режимів для здійснення господарсько-торговельної діяльності, її лібералізація, скасування мит, квот тощо. Перспективним напрямком є також Інтернет-торгівля.

Це дослідження сприятиме виробленню ефективного механізму здійснення господарсько-торговельної діяльності в умовах дії особливих режимів, ускладнених ризиками та негативними чинниками для її розвитку. Воно має не тільки ґрунтовний теоретичний характер, але містить в собі практичні рекомендації для законодавця щодо стимулювання здійснення торгівлі в умовах порушення транспортно-логістичних зв'язків та переорієнтації економічної системи у цілому.

Ключові слова: *торгівля, міжнародна торгівля, торговельна діяльність, воєнний стан, правове регулювання, механізм правового регулювання, правовий режим.*

The article deals with the peculiarities of trading activities under the martial law regime. The author analyzes the provisions of modern legislation in the field of economic activity, and points out the disadvantages and advantages of the current state of legal regulation. The author presents the positions of scholars and provides a theoretical and legal analysis of their approaches.

The study focuses on the specifics of foreign and domestic trade. The author identifies the key components of the mechanism of trade under the legal regime of martial law, as well as the factors that negatively affect the implementation of economic and trade activities.

The author analyzes the main trade agreements of Ukraine, as well as the main mechanisms

of trade in wartime. The main legal means aimed at ensuring economic stability and protecting national interests are formulated. The essence of each of them is defined and characterized. The author identifies the main areas for improvement of legislation in the field of economic and trade activities. The author emphasizes that the main prospects for the development of legislation in this area are the creation of special regimes for economic and trade activities, their liberalization, abolition of duties, quotas, etc. Internet commerce is also a promising area.

This study will contribute to the development of an effective mechanism for conducting economic and trade activities under special regimes complicated by risks and negative factors for its development. The study has not only a thorough theoretical character, but also contains practical recommendations for the legislator to stimulate trade in the context of disruption of transport and logistics links and reorientation of the economic system as a whole.

Keywords: *trade, international trade, trade activity, martial law, legal regulation, legal regulation mechanism, legal regime.*

Problem statement. The full-scale Russian-Ukrainian war has divided the lives of Ukrainians into “before” and “after”. Today, not only ordinary Ukrainians, but also businesses are suffering from the consequences of this war and potential threats.

All sectors of the country's economy have been affected in one way or another. The priority is to ensure the territorial integrity of the state. However, the defense of the state requires the efficient operation of the economic system, and today it is practically impossible due to the threat to the lives of employees of enterprises, organizations, and institutions.

The so-called “economic front” takes on a completely new meaning: ensuring the smooth operation of all sectors of the economy in these extremely difficult conditions. The main goal is to establish domestic and foreign trade activities. The problem of establishing economic and trade activities directly affects the circulation of funds and the necessary resources for military operations and the restoration of infrastructure after their completion.

That is why it is important to create an effective mechanism for legal regulation of trade in wartime. This makes the subject matter of the study extremely relevant. The Ukrainian state has never faced such problems before, so coordinated work is needed not only by scholars but also by legislators.

Analysis of recent research and publications. Economic and commercial activity and the peculiarities of its legal regulation is a topic that attracts considerable attention of researchers. This issue has already been studied in the works of such scholars as B. Danylyshyn, M. Keenan, O. Kolyada, A. Kornyliuk and R. Kornyliuk, I. Kravets, V. Lisitsa, V. Misiukevych, O. Mykhailenko, Y. Petrunenko, A. Raicheva, V. Reznikova, V. Ustymenko, K. Kharchenko, K. Khrimli, R. Shostak. However, the issue of creating effective mechanisms for legal regulation of trade activities under the legal regime of martial law in Ukraine has been studied in a fragmentary manner and insufficiently. The war is still ongoing, so it is also necessary to establish legal procedures for restoring both the economic system and the trade system in particular after the war.

Formulation of the article's objectives (statement of the task). The main purpose of this article is to determine the peculiarities of legal support for economic and commercial activities under the legal regime of martial law, and also to provide proposals for creating effective mechanisms for legal regulation of trade in the context of constant threats from the Russian Federation.

To achieve this goal, the following objectives were set:

- to reveal the legal nature of the concept of trade activity by identifying its features;
- to determine the optimal legal means for stimulating trade activity in Ukraine under the legal regime of martial law.

Summary of the main material. Domestic and foreign trade are important for a country's economy. Domestic trade plays a key role in ensuring the sustainable functioning of the domestic market. It not only helps to meet the needs of the population for various goods and services, but also stimulates domestic production and entrepreneurial activity. Increased domestic trade promotes investment, creates new jobs, and improves the development of local communities [1].

Foreign trade opens up opportunities for the country to export its goods and services abroad, which is a key source of income and growth of foreign exchange reserves. It allows expanding international markets and attracting foreign investment. Foreign trade also facilitates the exchange of technology and knowledge, which increases the country's innovation potential and competitiveness in the global market [2].

Thus, economic and trade activities play an important role in creating favorable conditions for sustainable economic growth of the country. Its effective functioning under martial law becomes even more significant, as it determines the ability of the state to meet its needs, maintain economic stability and begin the process of recovery after the war. The legal regulation of economic and commercial activities in such difficult conditions has certain peculiarities, the understanding of which is critical for ensuring economic stability and further development of the country.

Ukraine's obtaining the status of an EU candidate country stipulates that the necessary conditions for integration into the EU internal market must be created to ensure freedom of movement of goods, as well as further approximation of domestic legislation to the requirements of EU legislation. According to the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, Ukraine has undertaken to implement a set of measures to facilitate trade [3]. In particular, these are the following obligations: to improve trade legislation, ensure its transparency, predictability, non-discrimination and uniformity, efficiency of its provisions and procedures, as well as to reduce costs and increase its predictability for business entities, in particular for small and medium-sized enterprises (Article 76); to ensure coherence of trade policy and to take measures to facilitate and promote trade for sustainable development (Article 293).

Trade is one of the most important sectors of the national economy, which plays a significant role in shaping Ukraine's economic potential and ensuring that consumers' needs for goods and services are met.

To ensure uninterrupted trade activities and create the best conditions for foreign trade, Ukraine has concluded a number of agreements with other countries. Thus, the current regional trade agreements of Ukraine are as follows: Free Trade Agreement between the Cabinet of Ministers of Ukraine and the Government of the State of Israel, Free Trade Agreement between Ukraine and Canada, Free Trade Agreement between Ukraine and the Republic of North Macedonia, Free Trade Agreement between Ukraine and EFTA States, Free Trade Agreement between the Government of Ukraine and the Government of Montenegro, Free Trade Agreement between the Government of Ukraine and the Government of the Republic of Turkey.

The US Generalized System of Preferences (GSP) - the preferences of the GSP program allow importing goods of Ukrainian origin into the United States under more than 3,500 tariff lines of the Harmonized Tariff Schedule of the United States without paying import duties. The GSP

was established on January 1, 1976 in accordance with the US Trade Act of 1974 and is valid until December 31, 2020.

Japan's Generalized System of Preferences - Japan's GSP provides that imports of more than 3,600 types of goods from Ukraine and other developing countries are free of import duties or with a duty below the general level. It was established on August 1, 1971 and is valid until March 31, 2031.

A number of other trade agreements are currently being negotiated: Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), Free Trade Agreement between the Government of Ukraine and the Government of the United Arab Emirates, Free Trade Agreement between the Government of Ukraine and the Government of the Republic of Tunisia. [4].

An important step towards further deepening economic cooperation with the European Union (which is now becoming the main destination for Ukrainian exports and transit) is the adoption of Regulation (EU) No. 2022/870 of the European Parliament and of the Council of 30 May 2022 on temporary trade liberalization measures supplementing trade preferences applicable to Ukrainian goods [5]. According to the Regulation, duties and quotas on exports from Ukraine were temporarily (until 05.06.2023) abolished.

The legal framework for the organization and implementation of economic and trade activities is determined by the Commercial Code of Ukraine [6], according to Part 1 of Article 263 of which such activities are carried out by business entities in the field of commodity circulation, aimed at selling products of industrial and technical purpose and consumer goods, and also includes auxiliary activities that ensure their implementation by providing relevant services.

Under martial law, the legal regulation of economic and commercial activities in Ukraine has specific features aimed at ensuring economic stability and protecting national interests. They include: 1) deregulation of economic activity; 2) tariff regulation; 3) licensing and quotas for foreign economic activity; 4) currency control; 5) technical regulation; 6) digital transformation of the economy; 6) trade agreements.

Thus, the Government took a number of measures to improve the trade situation during the war. First, the Cabinet of Ministers adopted Resolution No. 314 of March 18, 2022 “Some Issues of Ensuring the Conduct of Economic Activity under Martial Law”, which provided for the possibility of acquiring the right to conduct economic activity by business entities under a simplified procedure without obtaining permits. In addition, it was established that the validity of fixed-term licenses and permits is automatically extended for the period of martial law, which allows enterprises to continue their activities without additional formalities in emergency conditions [7, p. 277].

Secondly, in March 2022, a new Law of Ukraine “On Customs Tariff” was adopted, which repeals the previous law and introduces the international customs classification of goods. This simplifies customs clearance and adapts the system to international standards [8].

Thirdly, the Government has accelerated the process of obtaining licenses, which allows businesses to obtain permits quickly, within 1-2 days, even without a physical visit to the Ministry of Economy [7, p. 277].

Fourth, under martial law, the National Bank of Ukraine (NBU) changed the deadlines for settlements for export and import operations. Now, all export and import transactions are subject to a 90-calendar-day settlement deadline, which is a significant reduction compared to peacetime, when the deadline was 365 days [9].

In 2023, the Government of Ukraine focused its efforts on the digital transformation of the economy. It is worth noting the adoption of draft laws on the development of the digital economy, the adoption of important provisions on domain name registration and cloud service management, as well as the approval of requirements for electronic trust service providers. An important achievement was Ukraine's accession to the EU4Digital National Pavilion Account pilot project aimed at developing cross-border e-commerce and supporting small and medium-sized enterprises [10, 11].

To further develop economic and commercial activity under martial law in Ukraine, it is necessary to continue to improve legal regulation aimed at ensuring economic stability and protecting national interests. Particular attention should be paid to the following aspects:

1. Business support. Continuation of programs to support and stimulate business, in particular, by maintaining access to loans on preferential terms, simplifying licensing and registration procedures for enterprises.

2. Creation of a favorable investment climate. Development of the investment environment by attracting investors who would be interested in developing the economy under martial law.

3. Expansion of trade relations. Continuing to conclude and expand trade agreements with other countries to provide new markets for Ukrainian goods and services.

4. Supporting exports. Implementation of measures aimed at supporting the export of Ukrainian goods and services to international markets, in particular by simplifying customs procedures and export of goods.

5. Development of the domestic market. Increasing the production and consumption of domestic goods and services by supporting domestic production and promoting demand for Ukrainian products. In general, for the further development of economic and trade activities under martial law, it is important to continue to take effective measures aimed at supporting the economy and protecting national interests.

However, the conduct of economic and commercial activities is complicated by the absence of a special law that would integrate provisions on various forms of such activities, the conditions for their conduct; the specifics of organizing certain types of trade, etc. In addition, it is worth noting that there are different regimes for conducting trade activities: the so-called “ordinary” and special regimes. The normal trade regime means that economic laws, laws of competition, supply and demand, etc. are in force and there are no “non-standard” challenges and threats to trade. A special trade regime is established when significant restrictions are imposed on trade in general or on certain types of trade, areas, etc. For example, when this happens in the context of a pandemic, natural disasters, martial law, when production cannot operate at full capacity, and transportation and logistics chains undergo significant changes.

It is during such special periods that trade requires legislative support. It is very important to create conditions under which the economy as a whole, and the trade sector in particular, can operate as efficiently as possible. It is imperative to create “artificial” legislative obstacles to curb the impact of negative factors on trade development during a special period.

Conclusions. The Russian-Ukrainian war has significantly changed the structure of Ukraine's economy, negatively affected the ability to deliver goods, worsened overall economic performance (increased inflation, decreased GDP), etc.

In addition, the main task today is to finally change the vectors of international trade: from the predominance of exports to Russia to more active trade with the EU and other countries. Logistics for the delivery of goods under foreign trade agreements is highly complicated: there is

no air service, and sea transportation is extremely difficult and risky. This leaves delivery by rail and road, which is quite expensive and sometimes inconvenient compared to sea transportation, for example.

At the same time, the main prospects for the development of legislation in this area are the creation of special regimes for economic and trade activities, their liberalization, the abolition of duties, quotas, etc. Internet commerce, which is actively developing today, is also a promising area.

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