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**МИТНЕ ПРАВО  
ТАМОЖЕННОЕ ПРАВО  
CUSTOMS LAW**

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*Доктор Адам Дроздек  
факультет права та адміністрації  
Університет Сілезії в Катовіце*

**ОБ'ЄДНАНИЙ МИТНИЙ КОДЕКС ЯК ОСНОВА  
МИТНОГО ПРАВА (ОКРЕМІ АСПЕКТИ)**

*Dr. Adam Drozdek  
The Faculty of Law and Administration  
The University of Silesia in Katowice (Poland)*

**THE UNION CUSTOMS CODE AS BASIS  
FOR CUSTOMS LAW (SELECTED ASPECTS)**

**Introductory notes**

On 10 October 2013, Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast)<sup>1</sup> was published in the Official Journal of the European Union and became the Constitution of the Customs Union. This document is of exceptional importance not only for the European Union Member States, but also for all neighbouring and cooperating third countries, in particular, within foreign trade in goods and relevant customs law provisions. In the preamble to the Union Customs Code a principle is included in compliance with which the customs union constitutes the basis of the European Union within which Member States abolish customs duties and other tariffs in trade and establish mutual external trade policy. It justifies the purposefulness of presenting basic provisions, principles and legal institutions regulated in the customs code to a Ukrainian reader. Limited framework of the study does not allow discussing this document in details, which is exceptionally large and consists of 288 articles, but only the most important or characteristic legal provisions included therein.

The regulations of the customs code implement not only a series of amendments and modifications of hitherto binding customs law that are to result in the transparency and modernisation of the Union customs law, but it also includes (within one legal act) substantive and formal norms. It is expressed in the

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<sup>1</sup> Official Journal of the EU L No. 269 of 10.10.2013, p. 1 as amended – further: UCC.

co-existence of regulations on establishing and expiring of customs debt, liability for customs debt as well as customs control provisions. The intention of the Union legislator was to establish legal regulation that would include mutual mechanisms, legal terms and customs control principles for all types of customs procedures.

Discussed co-existence of substantive and formal regulations is confirmed with Article 1 of the UCC, in compliance with which the code is used in trade between the Union and third countries without detriment to detailed provisions stipulated in other areas. The UCC provisions together with implementing provisions constitute general rules for many sectors and types of activity within trade between the Union and third countries.

Union customs law constitutes the entirety of legal regulations, norms and instruments concerning trade in goods as well as procedures, mechanisms and institutions related with processes that refer to the Union's economic relations with third countries. The term "customs law provisions" should be understood as:

- the Union Customs Code;
- implementing provisions to the UCC<sup>1</sup>;
- the Union Customs Tariff;
- provisions establishing system of union customs exemptions;
- international contracts including customs law provisions if they apply in the

Union.

Union customs law provisions issued by the EU authorities regulate basic issues concerning trade in goods. In some cases Member States can, and in other cases – they are obliged to, stipulate domestic provisions. Stipulation of domestic provision concerns, in particular, the issues where a lack of domestic regulations could lead to the deprivation of effectiveness of union provisions. Domestic regulations within customs law are supplementary to union law and are binding when the UCC provisions and implementing provisions to the UCC do not include any particular stipulations. Thus, for example, basic Polish sources of customs law include:

- the Act of 19 March 2004 – Customs Law<sup>2</sup>;
- the Act of 19 March 2004 – Provisions implementing the Customs Law Act<sup>3</sup>;
- the Act of 24 July 1999 on Customs Service<sup>4</sup>;

<sup>1</sup> Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No. 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code, the Official Journal of the European Union L 343; Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No. 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, the Official Journal of the European Union L 343.

<sup>2</sup> Consolidated text, Journal of Laws of 2015, item 858, as amended.

<sup>3</sup> Journal of Laws No. 68, item 623, as amended.

<sup>4</sup> Consolidated text, Journal of Laws of 2015, item 990, as amended.

the Act of 29 August 1997 – Tax Ordinance<sup>1</sup>;

the Act of 14 June 1960 – the Administrative Proceedings Code<sup>2</sup>.

From the point of view of conducted considerations it should be noted that the customs law does not cover all types of trade between the Union and third countries, but it concerns only the trade in goods. Trade in services, including e-trade, unless goods are transferred, and trade in capital are not covered with the scope of the Union Customs Code provisions. It is a significant difference with regard to the tax law concerning VAT, which, apart from goods, imposes tax also on services. In case of distance selling of goods ordered via the Internet or by mail the customs law applies at the moment of introducing these goods into the Union customs territory.

Having summed up the above considerations, it should be stated that the UCC does not infringe the international law and international convention as well as union legislation in other areas, the Code is used in a uniform manner within whole Union customs territory. It means that the Union customs law is binding in a uniform manner within whole Union customs territory and uniform customs provisions and customs administration is applied in all 28 Member States. Customs duties arise in the same amount and on the same terms and conditions irrespectively of a state to which the goods are entered.

#### **Analysis of basic terms**

The Union Customs Code includes an amended “glossary” concerning the Community Customs Code<sup>3</sup>. Union legislator defined 41 notions for the purposes of whole customs law. They include “old” notions or the ones transferred to the UCC from other customs law acts, amended and brand new. Thus, for example, Union customs law provisions define the notion of customs authority. In compliance with the definition included in article 5, section 1 customs authorities, should be understood as the customs administrations of the Member States responsible for applying the customs legislation and any other authorities empowered under national law to apply certain customs legislation.

Customs authorities shall be primarily responsible for the supervision of the Union’s international trade, thereby contributing to fair and open trade, to the implementation of the external aspects of the internal market, of the common trade policy and of the other common Union policies having a bearing on trade, and to overall supply chain security. Customs authorities shall put in place measures aimed, in particular, at the following<sup>4</sup>: (a) protecting the financial interests of the Union and its Member States; (b) protecting the Union from unfair and illegal trade while supporting legitimate business activity; (c) ensuring the security and safety of the Union and its residents, and the protection of the environment, where

<sup>1</sup> Consolidated text, Journal of Laws of 2015, item 613, as amended.

<sup>2</sup> Consolidated text, Journal of Laws of 2013, item 267, as amended.

<sup>3</sup> Council Regulation (EEC) No. 2913/92 of 12 October 1992 establishing the Community Customs Code, the Official Journal of the European Communities L 302.

<sup>4</sup> Article 3 of the UCC.

appropriate in close cooperation with other authorities; and (d) maintaining a proper balance between customs controls and facilitation of legitimate trade.

In comparison with no longer binding Community Customs Code a notion of a Person<sup>1</sup> has been specified. It refers to a natural person, a legal person, and any association of persons which is not a legal person but which is recognised under Union or national law as having the capacity to perform legal acts.

For the first time the legislator introduced to the Union customs law a definition of an economic operator<sup>2</sup>, which means a person who, in the course of his or her business, is involved in activities covered by the customs legislation.

Another new institution on the grounds of customs law is a customs representative<sup>3</sup>. Representative can be any person appointed by another person to carry out the acts and formalities required under the customs legislation in his or her dealings with customs authorities.

One of key institutions of customs law is customs debt. In compliance with the definition included in Article 5, section 18 of the UCC, it means the obligation of a person to pay the amount of import or export duty which applies to specific goods under the customs legislation in force. Customs debt is a statutory public and legal liability (*ipso iure*). In case of a customs debt the customs duties are determined on the grounds of mutual customs tariff. It means that the customs debt depends on whether the customs tariff foresees customs with regard to given goods. Customs debt does not depend on an administrative decision, but it arises on the grounds of a normative act<sup>4</sup>.

Customs debt specifies the obligation resulting from customs law provisions to pay customs duties related with the entry or exit of goods. This obligation has an abstract character and burdens each entity that performs specific “operations” (entry or exit) in international exchange of goods. Therefore, customs debt is an institution that specifies this obligation as to the obliged entity, the amount of customs duties, the place and date of payment thereof<sup>5</sup>. This fact has, predominantly, reference in the way the customs debt arises. Customs debt arises as of occurrence of factual circumstances that are connected under customs law provisions with arising of an obligation to pay customs duties on entry or exit. As a result of such a solution, decisions concerning the customs debt always have a declaratory character, i.e. they confirm the existence of the statutory right or the obligation<sup>6</sup>.

<sup>1</sup> Article 5, section 3 of the UCC.

<sup>2</sup> Article 5, section 5 of the UCC.

<sup>3</sup> Article 5, section 6 of the UCC.

<sup>4</sup> A. Reiwer-Kaliszewska, *Dług celny (Customs Debt)*, (in:) A. Drwiłło, D. Maśniak (ed.), *Leksykon prawa finansowego. 100 podstawowych pojęć (Financial law glossary. 100 basic terms)*, Warsaw 2009, p. 74.

<sup>5</sup> K. Sawicka, *Dług celny (Customs debt)*, (in:) R. Mastalski, E. Fojcik-Mastalska (ed.), *Prawo finansowe (Financial Law)*, Warsaw 2011, p. 363-364.

<sup>6</sup> W. Czyżowicz, *Procedury celne i zabezpieczenie długu celnego (Customs procedures and customs debt guarantee)*, <http://akson.sgh.waw.pl/~wczyzo/publicystyka.php> red on: 06.01.2011.

The above allows to conclude that customs should be determined as a legal obligation, since the legal relationship occurring within customs debt is a contractual relationship<sup>1</sup>.

In Article 5, point 19, the UCC defines an entity named customs debtor. It refers to each person liable for customs debt. This definition covers each person (natural or legal) and an association that are obliged to pay the amount of customs debt. The Union Customs Code uses the phrase “a debtor refers to” by enumerating features of an entity that should be classified as a customs debtor. Such an entity refers to, among others:

1) a declaring party (Article 77, section 3 of the UCC, 81, section 3 of the UCC);

2) a person to the benefit of whom the customs declaration is submitted – in case of indirect representation (Article 77, section 3 of the UCC, Article 78, section 3 of the CCC, Article 79, section 3, letter b, Article 81, section 3 of the CCC, Article 82, section 3, letter b of the UCC);

3) each person obliged to fulfil given obligations (Article 79, section 3, letter a in relation to Article 79, section 1, letter a and b of the UCC, Article 82, section 3, point a in relation to Article 82, section 1, letter a of the UCC);

4) each person who knew or should have known about non-fulfilment of the obligation resulting from customs law provisions and who acted to the benefit of a person obliged to fulfil an obligation or who took part in an activity that led to non-fulfilment of the obligation (Article 79, section 3, letter b in relation to Article 79, section 1, letter a and b of the UCC, Article 82, section 3, letter b of the UCC);

5) each person who purchased or has goods and who at the moment of purchasing them or entering into possession thereof knew or should have known that the obligation resulting from customs law provisions had not been fulfilled (Article 79, section 3, letter c in relation to z Article 79, section 1, letter a and b of the UCC);

6) a person obliged to fulfil terms and conditions required to cover goods with customs procedure or to make customs declaration with regard to given goods covered with this customs procedure or to grant customs exemption or reduced rate of entry customs duty due to final destination of goods (Article 79, section 3, indention 1 of the UCC);

7) a person, who provided information required to make customs declaration and who knew or should have known that these data are not true (Article 79, section 3, indention 2 of the UCC);

8) a person participating in the activity that lead to non-performance of the obligation and who knew or should have known that customs declaration had not been made despite the obligation to do so (Article 82, section 3, letter c of the UCC);

9) a person obliged to fulfil terms and conditions required for transporting goods outside the Union customs territory with full or partial exemption from exit customs duties (Article 82, section 4 of the UCC).

<sup>1</sup> A. Drwiłło, *Identyfikacja ceł (Customs identification)*, (in:) J. Jura (ed.), *Podstawy celnictwa (Customs basics)*, Warsaw 2008, p. 36.

Taking the aforementioned into consideration it should be stated that the Union Customs Code includes not only a standardisation of a catalogue of customs debtors, but also a wider catalogue than the one provided for by the Community Customs Code. A debtor is a person who provided data required to make a declaration and who knew or should have known that these data are not true and the person can be considered a debtor only when it is compliant with domestic customs law provisions of a Member State. Furthermore, a debtor can be a person, who provided data required to make a declaration and who knew or should have known that these data are not true. A debtor is not only a person obliged to meet given obligations (e.g. a holder of a permit to apply inward-processing procedure), but also persons who acted on behalf of this person (e.g. a forwarder or a carrier) and a person who participated in the activity that led to non-performance of the obligation (e.g. a driver who did not submit goods or a person who incited the driver to do so).

Another key institutions of Union customs law are: “import duty”<sup>1</sup> and “export duty”<sup>2</sup>. They mean customs duty payable on the import of goods or customs duty payable on the export of goods, respectively. Customs constitute a basic and historically the oldest form of customs duties<sup>3</sup>. As justly noted by K. Sawicka<sup>4</sup>, customs is collected with regard to the import (export) of goods into the customs territory of a state or a group of states constituting customs union, related with the fact of having non-union goods, on the grounds of customs rates included in the customs tariff. It is a public levy collected due to admission to free trade of goods entered into the market of a given state or customs union. This is a benefit characterised with commonness, monetarism, dutifulness, gratuitousness, and non-refundability<sup>5</sup>. Thus, for example:

**commonness of customs** means that it arises with regard to the event in a form of importing goods into the customs territory or exporting the goods from a given customs territory by a particular category of persons. All entities importing into a given customs territory or exporting from a given customs territory the same goods in the same quantities and at the same time are obliged to apply the same amount of customs rates and are charged with customs in the same amount within the same customs procedures.

**monetarism of customs** comprises in<sup>6</sup> the fact that it is calculated and collected in money being the only legal means of payment in the territory of the state in which customs are collected. For example, the currency is euro – for the

<sup>1</sup> Article 5, section 20 of the UCC.

<sup>2</sup> Article 5, section 21 of the UCC.

<sup>3</sup> Drwiłło A., *Cł a i należności celne (Customs and customs duties)*, (in:) Etel L. (ed.), *System prawa finansowego. Tom III. Prawo daninowe (Financial Law system. Volume 3. Levy law)*, Warsaw 2010, p. 417.

<sup>4</sup> K. Sawicka, *Cł o jako danina publiczna (Customs as public levy)*, (in:) R. Mastalski, E. Fojcik-Mastalska (ed.), *Prawo finansowe (Financial Law)*, Warsaw 2011, p. 345.

<sup>5</sup> K. Piech, *Wprowadzenie towarów na obszar celny unii europejskiej (Introducing goods in customs territory of the European Union)*, Warsaw 2012, p. 78.

<sup>6</sup> A. Drwiłło, *Cł a i należności celne (Customs and customs duties)*, (in:) L. Etel (ed.), *System prawa finansowego. Tom III. Prawo daninowe (Financial Law system. Volume 3. Levy law)*, Warsaw 2010, p. 873.

European Union Member States associated in so-called euro zone – and in Polish zloty in case of Poland. Customs does not have a material form and thus, in current legal state, collection of customs with regard to goods transgressing customs border is not allowed despite the fact that in the past it was applied.

**compulsoriness (coerciveness) of customs** means that in cases stipulated under law customs law provisions stipulate rights and obligations of persons entering and exiting goods from the territory of a state (Union). One of the basic obligations is the obligation to pay due customs<sup>1</sup>. The entity is implicitly obliged to pay customs on the grounds of a particular customs law provision or on the grounds of an administrative decision of a relevant customs authority.

**gratuitousness of customs** is manifested in a lack of mutual benefit on the part of the public-legal entity for the entity obliged to pay the customs. Payment of the customs does not constitute grounds for demanding by the entity trading in goods abroad to provide services by the state.

**non-refundability of customs** comprises in the fact that in compliance with the law payment of customs to the benefit of a public-legal authority does not result in the obligation of the latter to refund this amount in full or in part. Customs that has already been paid does not return in any form to the person obliged to make payment<sup>2</sup>. This shift is of a definite and final character to the benefit of public-legal authority<sup>3</sup>.

In Article 5, section 23 and 24, the UCC introduces a division into Union and non-Union goods and this division is of dichotomous character. „Union goods” mean goods which fall into any of the following categories: (a) goods wholly obtained in the customs territory of the Union and not incorporating goods imported from countries or territories outside the customs territory of the Union; (b) goods brought into the customs territory of the Union from countries or territories outside that territory and released for free circulation; (c) goods obtained or produced in the customs territory of the Union, either solely from goods referred to in point (b) or from goods referred to in points (a) and (b). Whereas, “non-Union goods” mean goods other than the ones that have been enumerated in Article 5, section 23 of the UCC, or the ones that lost the Union customs status.

Goods on the grounds of customs law refer to a physical (material) object subject to trade and entered through the customs border and the value thereof can be expressed in means of payment, that is, money<sup>4</sup>. Goods on the grounds of customs law mean goods entered from outside the customs territory, exited outside the border of customs territory or transported through the customs territory only when there is

<sup>1</sup> G. Mosiej, *Polityka celna polski w okresie transformacji systemowej (Polish customs policy during system transformation)*, Toruń 2004, p. 58.

<sup>2</sup> A. Drwiłło, *Prawo celne (Customs Law)*, Gdańsk 2001, p. 20; A. Drwiłło, *Cł a i należności celne (Customs and customs duties)*, (in:) C. Kosikowski, E. Ruśkowski (ed.), *Finanse publiczne i prawo finansowe (Public finances and financial law)*, Warsaw 2008, p. 603.

<sup>3</sup> K. Włodkowski, *Zasada powszechności cła i jej ograniczenia w Polsce, Unii Europejskiej oraz w wybranych krajach Europy Wschodniej (The principle of universality of customs and its limitation in Poland, European Union and in selected countries in the Western Europe)*, Toruń 2009, p. 37.

<sup>4</sup> P. Sawczuk, *Wartość celna jako element kalkulacyjny należności celnych (Customs value as an element of customs duties' calculation)*, Lublin 2011, p. 60.

the obligation to submit them to customs control conducted by customs administrative authority respectively authorised. After conducted customs clearance and payment of all customs duties required under law, goods lose the status of “customs goods” and become Union goods, therefore, they cease to be “customs goods”.

### **Ways in which customs debts can expire**

A wide catalogue of cases, when a customs debt expires was presented in Article 124 of the UCC. The most frequent case leading to an expiry of a customs debt is paying the amount of customs due by the person obliged (debtor). In other cases a customs debt expires as a result of a customs authority undertaking particular activities, e.g. as a result of remission of the amount of customs, in case of nullification of the customs declaration with regard to goods declared for the customs procedure imposing the obligation to pay customs in case goods subjected to customs have been subjected to forfeiture or have been seized and at the same time, or at later time, are subject to forfeiture; if the goods subject to customs have been destroyed under customs supervision or have become the subject of waiver to the benefit of the treasury. The customs obligation also expires upon the lapse of the period of time to notify the debtor about the customs debt. The period begins as of the moment of accounting the amount of the customs debt. It means that the period of limitation is in a way summed up with the period for accounting. Whereas, the period of accounting depends on the customs authority acquiring the knowledge on the arising of customs debt and is, in fact, “strictly” stipulated.

### **Liability for customs debt**

Union customs law provisions stipulate the principle of joint and several liability of debtors, pursuant to which if several debtors are obliged to pay the amount of entry or exit customs duties relating to the same customs debt, they are jointly and severally liable for paying this amount<sup>1</sup>. As a result, a customs creditor can demand from each debtor to pay customs due. Payment of the debt by one of them releases the rest of the debtors.

### **Control in customs**

The basic task of customs authorities comprises in customs controls defined in Article 5, section 3, which means specific acts performed by the customs authorities in order to ensure compliance with the customs legislation and other legislation governing the entry, exit, transit, movement, storage and end-use of goods moved between the customs territory of the Union and countries or territories outside that territory, and the presence and movement within the customs territory of the Union of non-Union goods and goods placed under the end-use procedure.

The scope of the notion “customs control” is very wide and covers a series of activities distant from the moment of introducing goods into the Union customs territory in time aspect as well as distant in literal meaning from the borders of this territory.

Customs authorities can conduct any activities of customs control they consider necessary. Customs controls can, in particular, comprise in verifying the

<sup>1</sup> Article 84 of the UCC.



correctness and completeness of the information given in customs declaration, declaration for temporary storage, entry summary declaration, exit summary declaration, re-export declaration or notification of re-export as well as verification of existence, authenticity, correctness and validity of all attached documents. Customs controls can also concern control of the accountancy of the declaring party and remaining documentation regarding operations in goods or previous or later trade operations related with these goods after release thereof. These authorities can also review such goods or take samples, if there is still such a possibility. Such controls can be conducted at the holder of goods or their representative, at any other person directly or indirectly engaged with regard to these operations in trade character or any person at a disposal of these documents and data for trade purposes. Customs control also comprises in conducting investigations in judicial-administrative proceedings.

Decision in customs-related cases

Decision – pursuant to Article 5, section 39 of the UCC – means any act by the customs authorities pertaining to the customs legislation giving a ruling on a particular case, and having legal effects on the person or persons concerned.

Legal definition of a decision included in the UCC is very important, since Polish legal provisions have not yet defined a decision *expressis verbis*.

Definition of a decision has been based on several elements. Decision has an individual character. It means that a given act constitutes a decision when it refers to a certain person or, possibly, to a specific group of persons in an individual case. Thus, the purpose of a decision is not to provide a general regulation of legal situation of a person, but to refer to a relevant authority for a specific case of an individual character. Persons at whom the decision is directed must be stipulated in its content. As a rule, these persons should be indicated with their full name or company name. Furthermore, a given act can be considered to be a decision, when an addressee has been indicated therein not by giving a full name or a company name, if such an indication can be deemed as an individual indication. Decision is an authoritative act of applying law. On the grounds of the above notes, it is justified to conclude that the legislator refers to customs law provisions within the meaning of Article 1 of the UCC.

Having in consideration the Polish customs law provisions, and in particular Article 73 of the Act of 19 March 2004 – Customs Law, under which it has been stipulated that provisions of chapter 4 of the Act of 29 August 1997 – Tax Ordinance shall apply in customs cases and decision referred to in Article 5, section 39 of the UCC shall be an administrative decision.

Continuing considerations, it is worth noting that any person shall have the right to appeal against any decision taken by the customs authorities relating to the application of the customs legislation which concerns him or her directly and individually. Any person who has applied to the customs authorities for a decision and has not obtained a decision on that application within the time-limit of 120 days since the day of accepting the application<sup>1</sup>.

<sup>1</sup> Article 43 of the UCC.

The right of appeal may be exercised in at least two steps: (a) initially, before the customs authorities or a judicial authority or other body designated for that purpose by the Member States; (b) subsequently, before a higher independent body, which may be a judicial authority or an equivalent specialised body, according to the provisions in force in the Member States. The appeal shall be lodged in the Member State where the decision was taken or was applied for<sup>1</sup>.

The submission of an appeal shall not cause implementation of the disputed decision to be suspended. The customs authorities shall, however, suspend implementation of such a decision in whole or in part where they have good reason to believe that the disputed decision is inconsistent with the customs legislation or that irreparable damage is to be feared for the person concerned<sup>2</sup>.

### Summary

The Union customs code shall replace the **Community Customs Code that has been binding for almost 20 years, hitherto separate Union resolutions regulating** the principles of controlling luggage of persons taking an intra-community flight or luggage of persons crossing the sea within the Union as well as regulations including procedures facilitating issuing or drawing up preference origin evidences in the Union. The scope of the Union customs code shall also include principles of trade in goods with so-called special territories. Entering into force of the Union Customs Code does not mean simultaneous revocation of hitherto provisions.

The Resolution of the European Parliament and of the Council establishing the CCC amends the form of the Union customs law in a significant manner. Despite many discrepancies, **the Community Customs Code**, the new customs law regulation shall cover with its scope not only the exchange of goods between the Union and third countries, but also trade in goods between so-called special territories and the remaining part of the Union customs territory.

### Адам Дроздек. Об'єднаний Митний кодекс як основа митного права (окремі аспекти)

*У статті проаналізовано Митний кодекс як основа митного права. Автором розкриваються поняття, які включає Об'єднаний Митний кодекс.*

**Ключові слова:** митниця, митне право, Митний кодекс, норми права, галузь права.

### Адам Дроздек. Объединенный Таможенный кодекс как основа таможенного права (отдельные аспекты)

*В статье анализируется Таможенный кодекс как основа таможенного права. Автором раскрываются понятия, которые включает Объединенный Таможенный кодекс.*

**Ключевые слова:** таможня, таможенное право, Таможенный кодекс, нормы права, отрасль права.

Стаття надійшла до редакції 07.12.2015.

<sup>1</sup> Article 44 of the UCC.

<sup>2</sup> Article 45 of the UCC.