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**LEGAL ASPECTS OF ENSURING THE COMPETITIVENESS OF  
THE SHIPPING COMPANIES IN UKRAINE  
ПРАВОВЫЕ АСПЕКТЫ ОБЕСПЕЧЕНИЯ  
КОНКУРЕНТОСПОСОБНОСТИ СУДОХОДНЫХ КОМПАНИЙ  
УКРАИНЫ**

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*The article deals with the normative base of the maritime traffic, including the national legislation, international contracts and Merchant marine code of Ukraine that is the necessary element of insuring the competitiveness of the shipping companies in Ukraine.*

**Introduction.** Transport plays a structural role in the world economics. Creating of the dynamically developed, sustainable, and balanced national transport system is an important orientation of the state policy of Ukraine [2].

Competitiveness is an integral condition of the market economy. The international character of tonnage market makes the shipping companies involved into the sphere of competitive relations. The successive realization of the aims of a company depends on the level of its competitiveness.

The legal regulation of maritime traffic has some specifics that distinguishes it from the legal regulation of the transportation process, carried out by types of transport. The peculiarity of marine transport is the highest degree of unification of legal roles in comparison with other branches. It is caused by the fact that the most part of transportation process is carried out via sea routes which are not subject to the jurisdiction of a certain state, i.e. beyond the limits of any national legal system. All this requires the development and adopting of multilateral international agreements that should regulate the questions of the status of marine space, maritime security, people security on the sea, environment protection etc.

The state transport policy of Ukraine is closely connected with the norms of international transport right. There is a set of normative documents in Ukraine aimed at the development of maritime industry: PNBO decision from May 16, 2008 “On measures for the development of Ukraine as a maritime state”, The maritime doctrine of Ukraine, Strategy of development of sea port in the period up to 2015, there was passed a law, though rather ambiguous “On sea ports of Ukraine”. There is no essential notion – the state maritime policy [11].

**Target setting.** Thereby the aim of the article is the examination of the existing normative base that regulates maritime traffic consisting of the national legislation, international contracts and the Merchant marine code of Ukraine that is necessary for the maintaining of competitiveness of shipping companies in Ukraine.

**Results.** In the sphere of the legal support of the management of enterprise competitiveness, including shipping companies, works the law “About economic competitiveness”, which determines the legal foundation of the support and protection of economic competitiveness, restriction of monopolism in economic activity and is

aimed to support effective functioning of economics in Ukraine on the basis of the development of competitive relations.

The legal regulation of the shipping companies' activity has a number of differences from the regulation activity of other enterprises. The normative base that regulates the sphere of functioning of shipping companies consists of the national legislation, including Merchant marine code, international contracts etc. The specialists note that Merchant marine code doesn't in full satisfy the current situation in Ukraine and international standards.

The acquirement of the right of flying the state flag of Ukraine is determined by the article 33 of Merchant marine code which says that the right of flying the state flag of Ukraine a vessel gets from the moment of its registration in the State Register of Ships of Ukraine or in the Ship register book of Ukraine or if there is the flag certificate. The national identity of a vessel is determined by the state in which it was registered. The safety of the merchant shipping within the inland territorial waters as well as in high seas is confirmed by the UN Convention on conditions for registration of ships (1986), which determines fundamentally important regulations connected with the right of ownership of a vessel and its crew designation.

There is the notion "Ukrainian vessel" in the Merchant marine code of Ukraine that determines the national identity of a vessel to which is applied the jurisdiction of Ukraine. I. e. the vessel, registered in Ukraine in the Merchant marine code has the right of flying the state flag of Ukraine.

At the present time there are effective two main conventions that regulates the issues of the marine cargo traffic. The first is the Convention on the Unification of Certain Rules relating to Bills of Lading of 1924 (the Hague Rules) which cover such issues as: the order of drawing up of the bill of lading and its details, the order of presentation of the claims to the maritime carrier, the responsibility of the maritime carrier for the cargo owner's losses; with the Protocol on the changes of 1968 (the Visby Rules). The second one is the Convention on the maritime cargo traffic of 1978 (the Hamburg Rules). For a long time all the functions of the legal regulation of international maritime traffic according to the bill of lading were carried out by the Hague Rules but from November 1, 1992 the Hamburg Rules entered into force fundamentally.

One of the main aims of these conventions is the exclusion of the possibility of monopolism in world marine transport business.

There are also a set of conventions that indirectly refer to maritime traffic. This is the Convention on the limitation of liabilities on maritime requirements, the Convention on the Code of conduct for liner conferences etc.

In the process of functioning of the marine transport of Ukraine there should be taken into account the international standards and the state standards of Ukraine, departmental normative documents of marine transport of Ukraine that should be approved by the Ministry of transport and communications of Ukraine and the State department of marine and inland water transport of Ukraine.

The supervision and registration-licensing functions are carried out by the State fleet inspection of Ukraine, the Register of Ukraine, the State Registrar of the fleet, the State enterprise of certification and registration of crew personnel [8].

Within the borders of any state or on the territory of transportation of cargoes and passengers the stated norms are maintained in accordance with the

existing legislation of the exact state therefore the legal conflicts arise at the crossing of cargoes and passengers of the other states' borders. The legal conflicts arise because the participants of the cargo traffic can lodge their complaints to the courts of other countries. The legal conflicts arise even despite of the existing directions in the Merchant marine code for the sphere of the general principles of the legislation of Ukraine not regulated by the Code.

In Ukraine there was founded the Maritime arbitration commission under the Chamber of Commerce and Industry of Ukraine. Its competence covers practically all relations in the settlement of controversies that arise in merchant shipping. The competence of the Marine arbitration commission cover the regulation of argues that arise on the score of the relations of:

- chartering of vessels, maritime cargo traffic;
- marine insurance (reinsurance);
- dealing with technical maintenance, loans and purchase and sale of vessels;
- the marine work on vessel towing;
- using of vessels for scientific researches;
- the works connected the raising of vessels which have sunk in the sea;
- collision of sea-doing vessels.

But creation of the Maritime arbitration commission in Ukraine is not an indication of the appropriate level of the development of the institutional maritime arbitration. The institutional or the permanent arbitration is usually created under the national chambers of trade, of commerce and industry, exchanges, associations, unions, societies and any other organizations including those that are functionally international. They are often called arbitration centers.

There is the hope that Ukraine will take a worthy place among the states where institutional maritime arbitration is developed as a factor of the development of the national merchant shipping.

In the most part of the cases the conventions become necessary for shipowners and shippers in one of the following ways. That is they may be formally included to the legislation of the state that accepted the convention that became the law of this state. They may be also included in the list of conditions for the entry into voluntary organizations (the agreement on navigation, the agreement on cargo traffic).

For the legal protection of rights of shipowners and shippers there was stated the complex of general principles of the navigation policy – declaration that was signed in 1993 between the members of the Committee on marine transport, Organization of economic cooperation and development and representatives of the countries of Central and Eastern Europe and new independent states. The International marine organization makes a considerable contribution into the regulation of the issues of the international trade in the sphere of maritime traffic, the establishment of the international legal norms of the safety of navigation which could influence greatly the state of the Ukrainian state market. It is also important to mention that the functioning of the international navigation is determined by the international organization – Baltic international Maritime Council which is aimed at the joining together the efforts of shipowners, connected with the merchant navigation and aimed at the increase of its effectiveness, informing of freight owners

on the cases of enforcement of unfair fees and requirements, speculative freight transactions and other unacceptable practice.

Ukraine is not ready for the signing of the most part of normative acts that regulate the work of navigation and that's why confines itself to use international agreement and conventions:

- International convention on the load mark;
- International convention on tonnage measurement of ships;
  - International safety container convention;
- International convention on maritime search and rescue;
- International convention on safety of life at sea;
- Convention on the international organization of satellite marine communication;
- Convention on the suppression of the unlawful acts against the safety of maritime navigation;
  - the International regulations for preventing collisions at sea;
  - International convention on the prevention of pollution from ships;
- Convention on a code of conduct for liner conferences;
- Convention regarding the regime of navigation on the Danube.
- Memorandum of understanding "On the development of the Pan-European corridors (Danube)";
  - the European agreement concerning the international carriage of dangerous goods by inland waterways;
  - Budapest convention on the contract for the carriage of goods by inland waterway;
  - other conventions and agreements.

On the score of absence of the state support navigation companies should on general term compete for freight traffic that belong to the state and foreign cargo owners. The considerable age of vessels, imperfect equipment of the transport fleet, irrational use of industrial potential and marketing activity led to the deterioration of the results of work of the domestic navigation.

The loss of the national industrial potential of the merchant fleet of Ukraine is determined by mistakes of transformation of the state property as well as haste in creating of the separate shipping companies. I. E. the creation of different forms of joint stock companies made it possible for the competitors actually to eliminate the competitive part of the national merchant fleet with the help of various non-commercial actions.

The effective form of attraction of the shipowner under the national flag is the creation of international and parallel registers that provide the preferential mode of taxation which makes shipowners free from taxes and fees. For shipowner there are established payments in the form of registration and annual tonnage duties [1].

**Resume.** The analysis of the legislative base of Ukraine shows that it doesn't facilitate the work of shipping companies. Moreover this kind of business is a capital-intensive one and as a result financial risk is inherent to it, nevertheless it is maritime traffic that is the perspective sphere of the economic activity. Besides against the background of the loss of the fleet by Ukrainian shipping companies there is developing the process of founding and developing. Also the complexity of the solution of this problem is worsening by the absence of scientifically based strategy

of actions of native shipping companies, adopted to the conditions of the work in the competitive sphere. For functioning under competitiveness there should be some vehicle for defining the positions of the shipping company on the market that would be the basis for the developing of the strategy of its conduct.

The native taxation system remains one of the most complex, the rate of cumulative taxation of navigation activity is the highest in the world. The results are obvious – the share of marine transport in GDP of Ukraine is constantly decreasing and at the present moment according to different opinions makes from 1.5 to 2 %, while according to the opinion of scientists, upon condition of using the potential gained at the beginning of the independence it could make 15% within marine transport and 10% concerning shipbuilding and ship-repairing. All this in complex means short-received millions and billions of dollars. And one more thing. While during the last 7 years the volume of export of transport services, given to the Ukrainian entities, reduced almost by a quarter, the import of such services increased almost in 1.5 time. This partly affects the negative balance of payments. For Ukraine merchant fleet can become one of the factors that can change the situation for the better [11].

Therefore an active participation of Ukraine in the international maritime trade is possible only on the basis of inseparable unity of economic legal acts and merchant navigation.

The transport policy of Ukraine should gradually integrate the basic principles of a steady development of transport, according to which the solution of tasks of meeting the transport needs doesn't contradict with the priorities of the environmental protection and public health [6].

The further development of the international maritime transport policy should be carried out with the help of the world increasing influence of international institutions, international maritime organizations, using of the world practice of registration of the fleet and the account of the national peculiarities, and the main directions of development should become:

1. The desire to create the single international registry of vessels with the uniform rules and requirements.
2. The developing of the standards of responsibility of the coastal states on the safety of navigation, including the devices of practical realization of these standards.

The effectively developing international division of labor and the increasing of the role of maritime business require the elaboration of perspective conception of the economic development and regulation of the transport systems to ensure the sustainability of the global and regional transport-economical relations.

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#### *Аннотация*

Конкуренция является неотъемлемым условием рыночной экономики. Интернациональный характер фрахтового рынка способствует вовлечению судоходных компаний в сферу конкурентных отношений. Успешная реализация поставленных компанией целей зависит от уровня ее конкурентоспособности.

Правовое регулирование морских перевозок, имеет специфику, отличающую его от правового регулирования перевозочного процесса, осуществляемого другими видами транспорта. Особенностью морского права является наиболее высокая по сравнению с другими отраслями степень международной унификации правовых норм. Это связано с тем, что большая часть процесса транспортировки происходит морскими путями, которые не подчинены юрисдикции определенного государства, т.е. вне предела какой-либо национальной правовой системы. Все это требует разработки и принятия многосторонних международных соглашений, которые бы регулировали вопросы статуса морских пространств, безопасность мореплавания, охрану человеческой жизни на море, окружающей среды и т.д.

В сфере правового обеспечения управления конкурентоспособностью предприятий, в том числе судоходных компаний, действует Закон Украины «О защите экономической конкуренции», который определяет правовые основы поддержки и защиты экономической конкуренции, ограничения монополизма в

хозяйственной деятельности и направлен на обеспечение эффективного функционирования экономики Украины на основе развития конкурентных отношений.

Правовое регулирование деятельности судоходных компаний имеет ряд отличий по сравнению с регулированием деятельности других предприятий. Нормативная база, регулирующая сферу функционирования судоходных компаний, состоит из национального законодательства, в том числе Кодекса торгового мореплавания (КТМУ), международных договоров и т.д. Специалисты отмечают, что Кодекс торгового мореплавания не в полной мере соответствует современной ситуации в Украине и международным стандартам.

В связи с отсутствием государственной поддержки украинские судоходные компании должны на общих условиях конкурировать за грузопотоки, принадлежащие отечественным и иностранным грузовладельцам. Значительный возраст судов, несовершенная оснащенность транспортного флота, нерациональное использование производственного потенциала и маркетинговой деятельности привели к ухудшению результатов работы отечественного судоходства.

Эффективной формой привлечения судовладельцев под национальный флаг является создание международных или параллельных реестров, предполагающих льготных режим налогообложения, т.е. освобождение судовладельцев, эксплуатирующих суда, от уплаты налогов и сборов. Для судовладельцев устанавливаются платежи в виде регистрационного и ежегодного потонажного сборов.

Анализ законодательной базы Украины показывает, что она не способствует эффективной работе судоходных компаний. Кроме того, данный вид бизнеса является капиталоемким, и как следствие ему присущ высокий финансовый риск, однако именно морские перевозки являются перспективной сферой экономической деятельности. Кроме того, на фоне утраты флота государственными судоходными компаниями идет процесс создания и развития частных судоходных компаний. Также, сложность решения данной проблемы усугубляется отсутствием научно обоснованной стратегии поведения отечественных судоходных компаний, адаптированной к условиям работы в конкурентной среде. Для функционирования в условиях конкуренции необходим определенный инструментарий для определения позиций судоходной компании на рынке, что будет основой для разработки ее стратегии поведения.

Отечественная налоговая система страны остается одной из наиболее сложных, размер совокупного налогообложения судоходной деятельности является самым большим в мире. Последствия очевидны — доля морского транспорта в ВВП Украины постоянно уменьшается и сегодня, по разным оценкам, составляет от 1,5 до 2%, в то время как, по мнению ученых, при условии использования потенциала, полученного в начале независимости, она могла бы составлять до 15% по морскому транспорту и до 10% — по судостроению и судоремонту. Все это в совокупности — недополученные миллионы и миллиарды долларов. И еще об одном. Если за последние семь лет предоставленный украинскими субъектами объем экспорта транспортных услуг по грузовым перевозкам сократился почти на четверть, то импорт таких услуг

увеличился почти в 1,5 раза. Это отчасти влияет и на негативное сальдо платежного баланса. Для Украины торговый флот может стать одним из факторов, способных изменить ситуацию к лучшему.

Таким образом, широкое участие Украины в международной морской торговле возможно только на основе неразрывного единства экономических и правовых аспектов торгового мореплавания.

Транспортная политика Украины должна поэтапно интегрировать базовые принципы устойчивого развития транспорта, согласно которым решение задач удовлетворения транспортных потребностей не вступает в противоречие с приоритетами охраны окружающей среды и здоровья граждан.

Дальнейшее развитие международной морской транспортной политики должно осуществляться с помощью всемирного усиления влияния интернациональных институтов, международных морских организаций, использование мировой практики регистрации флота и учет национальных особенностей, а основными направлениями развития, должно стать:

1. Стремление в будущем к созданию единого международного реестра судов с едиными правилами и требованиями.

2. Разработка стандартов ответственности прибрежных государств по безопасности мореплавания, включая механизмы практической реализации этих стандартов.

Эффективно развивающееся международное разделение труда и повышение роли морского бизнеса требует для обеспечения устойчивости мировых и региональных транспортно-экономических связей разработки перспективной концепции экономического развития и регулирования транспортных систем.