

DOI: <https://doi.org/10.32782/2524-0072/2023-56-32>

UDC 339.5

**DEFINING THE ROLE OF BANK GUARANTEES
IN THE SYSTEM OF ENSURING
THE PAYMENT OF CUSTOMS DUTIES
UNDER THE COMMON TRANSIT PROCEDURE**

**ВИЗНАЧЕННЯ РОЛІ БАНКІВСЬКИХ ГАРАНТІЙ
У СИСТЕМІ ЗАБЕЗПЕЧЕННЯ СПЛАТИ
МИТНИХ ПЛАТЕЖІВ У РАМКАХ ПРОЦЕДУРИ
СПІЛЬНОГО ТРАНЗИТУ**

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The article is devoted to the topical issues of ensuring the payment of customs duties when goods are placed in the common transit regime, given that the Convention on the Common Transit Procedure will enter into force in Ukraine in 2022. The formation and development of the legislative framework for regulatory and legal regulation of ensuring the fulfilment of customs obligations are investigated. The level of interest of various stakeholder groups in the concepts of “bank guarantee” and “common transit” for 2019–2023 is determined by building trend line models for diagrams of the distribution of search queries. The most appropriate option for obtaining a guarantee service from such financial service providers as a bank, an insurer and a financial company is determined based on three criteria: the right to issue a general guarantee, the cost of the guarantee service, and the stability of functioning in the financial services market.

Keywords: customs payments, guarantor, bank guarantee, common transit, customs risks.

Стрімкий розвиток глобалізаційних та інтеграційних процесів впливає на поглиблення торгових взаємовідносин між різними країнами, збільшення обсягу закордонних фінансових інвестицій, зовнішньоекономічних проектів, наслідком чого є формування зростаючої тенденції застосування світової практики спрощення митних процедур. На цьому етапі виникає необхідність оновлення та розвитку національного інституту забезпечення сплати митних платежів, що підтверджує актуальність теми наукового дослідження. Метою роботи є моделювання процесу обґрунтування ролі гарантій, що надаються банківськими установами, у системі забезпечення сплати митних платежів у рамках процедури спільного транзиту. У ході дослідження використано загальнонаукові та спеціальні методи наукового пізнання: аналіз і синтез, індукція і дедукція, графічний метод, порівняльно-правовий метод, метод аналізу Інтернет-ресурсів, метод прогнозування, метод експертних оцінок із застосуванням системи підтримки прийняття рішень (Decision Support System (далі – DSS)) Decision Making Helper. Проаналізовано законодавчу базу забезпечення сплати митних платежів в Україні. Побудовано моделі лінії трендів для діаграм розподілу пошукових запитів різних груп стейкхолдерів за термінами «банківська гарантія» та «спільний транзит» за 2019–2023 рр. Визначено ключові фактори впливу на зміну затребуваності юридичних осіб у дослідженні питань, пов'язаних із оформленням банківських гарантій та поміщенням товарів під процедуру спільного транзиту. Проведено експертне оцінювання альтернативних варіантів послуг гарантування банків, страховиків або фінансових компаній, що внесені до реєстру гарантів Державної митної служби України (State Customs Service of Ukraine (далі – SCSU)), для забезпечення сплати суб'єктами господарювання митних платежів. Визначено пріоритетність банківських гарантій з огляду на доступність вартості

ФІНАНСИ, БАНКІВСЬКА СПРАВА ТА СТРАХУВАННЯ



їх оформлення та високий рівень стабільності функціонування банків на ринку фінансових послуг. Практичне значення одержаних результатів полягає в тому, що реалізація запропонованих рекомендацій з вжиття заходів для підвищення рівня поінформованості стейкхолдерів про ключові питання застосування процедури спільного транзиту сприятиме розвитку та поживленню міжнародної торгівлі, а розроблені пропозиції щодо вибору гаранта забезпечення сплати митних платежів можуть бути використані суб'єктами бізнесу з метою мінімізації митних ризиків та операційних витрат.

Ключові слова: митні платежі, гарант, банківська гарантія, спільний транзит, митні ризики.

Introduction. The issue of ensuring the payment of customs duties is of particular importance in the context of the impact of destructive factors of the endogenous and exogenous environment on the economic system of Ukraine, the unfolding of conflicts at the international level and the introduction of the martial law regime. According to the statistics provided by the Ministry of Finance of Ukraine [8], in 2022–2023, the loss of assets of business entities amounted to USD 11.3 billion, and 426 large and medium-sized private enterprises and companies with a state share were damaged or destroyed. This has led to an increase in the customs risk of the State Budget of Ukraine not receiving customs payments, which makes it more important to use tools to ensure their payment. In addition, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Ukraine’s Accession to the Convention on a Common Transit Procedure” No. 2555-IX dated 30.08.2022 [13] and the full application of the New Computerised Transit System (hereinafter – NCTS) from 01.10.2022. At this time, the provisions of the Convention on a Common Transit Procedure come into force [5] and the Law of Ukraine “On Amendments to the Customs Code of Ukraine and Other Laws of Ukraine on Certain Issues of Implementation of Chapter 5 of Section IV of 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” of 15.08.2022 No. 2510-IX [11], which changes and supplements the list of guarantors and methods of ensuring the payment of customs duties.

Therefore, the problem of determining the place and role of bank guarantees in the system of ensuring payment of customs duties under the common transit procedure is relevant and is the subject of many modern studies.

Analysis of recent researches and publications. When studying the scientific literature on the topic, it was found that both Ukrainian and foreign scholars, including A. Volkivska, H. Osovska, O. Aksonova [2], Ya. Pas [10], S. Acharya, J. Koirala, P. Maharjan

[16], M. Kowalik [19] characterise bank guarantees as a financial instrument that is actively used by business entities in foreign economic operations, and Ukraine’s accession to the Convention on a Common Transit Procedure as an important step in bringing national legislation in line with European standards. It is worth paying attention to the scientific developments of N. Vnukova [1], based on the application of an innovative approach to the use of the automated DSS Decision Making Helper.

Identification of previously unresolved parts of the general problem. However, despite a large number of scientific developments, insufficient attention is paid to the consideration of bank guarantees as a promising financial instrument for ensuring payment of customs duties by foreign economic operators when placing goods under the common transit procedure.

Formulation of the article’s objectives. The purpose of the article is to model the process of substantiating the role of guarantees provided by banking institutions in the system of ensuring payment of customs duties under the common transit procedure.

Summary of the main research material. The analysis of the content of various versions of the Customs Code of Ukraine (hereinafter – the CCU) gives grounds to assert that the need to introduce certain security measures for fulfilment of customs obligations by business entities in the form of guarantees provided by banks has been enshrined in law since 1991 [6]. In the process of amending this regulatory act, the list of ways to ensure the payment of customs duties and financial institutions that can act as guarantors was expanded, and the procedure for making claims for the fulfilment of customs obligations was detailed. At the same time, the CCU did not define the concept of “financial guarantee”, and its forms included a financial guarantee issued by the guarantor and a cash pledge, which did not correspond to the essence of the categories of “guarantee” and “pledge” as set out in the Civil Code of Ukraine [15]. However, in the versions of the CCU dated 15.08.2022 and subsequent ones, these methods of ensuring the payment

of customs duties were distinguished, new ones were added and the interpretation of each of them was presented, which indicates an improvement of the legal framework governing the issue under study. According to part 1 of Article 310 of the CCU, “a guarantee is an obligation of the guarantor to pay at the request of the customs authority the funds within the amount of the guarantee and in the manner and within the time limits determined by this Code in case of failure to fulfil the obligation to pay customs payments” [7]. And part 2 of this article states that guarantees may be individual and general. Part 1 of Article 316 of the CCU provides a list of financial institutions that have the right to register as guarantors:

- 1) banks
- 2) insurers, except for insurers providing life insurance
- 3) financial companies that have the right to carry out guarantee activities (this clause comes into force on 01.01.2024).

In the Ukrainian and foreign scientific literature [2; 10; 16; 19], there are different approaches to substantiating the essence of the concept of “bank guarantee”, but for the purposes of this research, the interpretation given in subpar. 9, par. 3 of the Resolution of the Board of the National Bank of Ukraine (hereinafter – NBU) “On Approval of the Regulation on the Procedure for Banks to Perform Operations under Guarantees in National and Foreign Currencies” of 15.12.2004, No. 639 [12]. According to it, “a guarantee is a method of ensuring the fulfilment of obligations, according to which the guarantor bank assumes a monetary obligation to the beneficiary to pay funds in the event of a guaranteed event”.

In order to determine the general trends in the level of interest of various stakeholder groups in Ukraine in the topics of bank guarantees and the common transit procedure for 2019–2023, the method of analysing Internet resources using the tools of the public web application Google Trends was used [18] (Fig. 1).

Looking at the results in Fig. 1, we can conclude that during the analysed period there is an opposite trend of interest in the issues under study.

As for the interest in the term “bank guarantee”, the dynamics of the distribution of search queries by this term is characterised by instability, but the trend line shows a gradual decrease in the demand for this information in Ukraine. It is worth noting that this banking product is considered by business entities as a development tool and is used by them as part of

their planned strategies. Therefore, the reasons for the identified trend are, firstly, the outbreak of the COVID-19 pandemic in 2020 and, secondly, the introduction of the martial law regime in Ukraine in 2022, which led to the crisis in the national economy and forced business entities to adapt to the new operating environment.

The maximum number of search queries on this topic, amounting to 846, was recorded in 2021, which was characterised by an increase in the provision of various types of guarantees by banks, in particular, 131 guarantees were issued in favour of the SCSU in the amount of UAH 5.49 billion [3]. Further, a high level of interest was observed in November 2022, when foreign economic operators had the opportunity to take advantage of the simplification of the international movement of goods under the common transit procedure.

Analysing the demand for information on the term “common transit” among different user groups, a gradual and steady increase in interest in this topic and, as a result, an increase in its relevance was revealed. The highest number of searches was recorded in 2022 – 453. This is due to the active measures taken by Ukrainian legislators to bring the rules of the common transit procedure in line with the requirements of the European Union (hereinafter – EU) and the entry into force of the Convention on the Common Transit Procedure on 01.10.2022, which granted the right to internationally transport goods with 35 other member states under one transit document.

According to the statistics of the SCSU [9], during the one-year period of Ukraine’s international application of the NCTS, i.e. from 01.10.2022 to 01.10.2023, 23,835 transit declarations were issued and 85 authorisations for the application of transit simplification were received by enterprises. Based on the above data, it can be concluded that a significant number of foreign economic operators remain unaware of the specifics of the “customs visa-free” procedure. In addition to providing individual consultations to representatives of business entities and customs officials by the Common Transit Support Service of the SCSU, it is proposed to take general measures to raise awareness of the above-mentioned persons on the application of the common transit procedure and the choice of the form of guaranteeing the payment of customs duties. Resolving these problematic aspects will further accelerate the movement of export and import flows at the border.

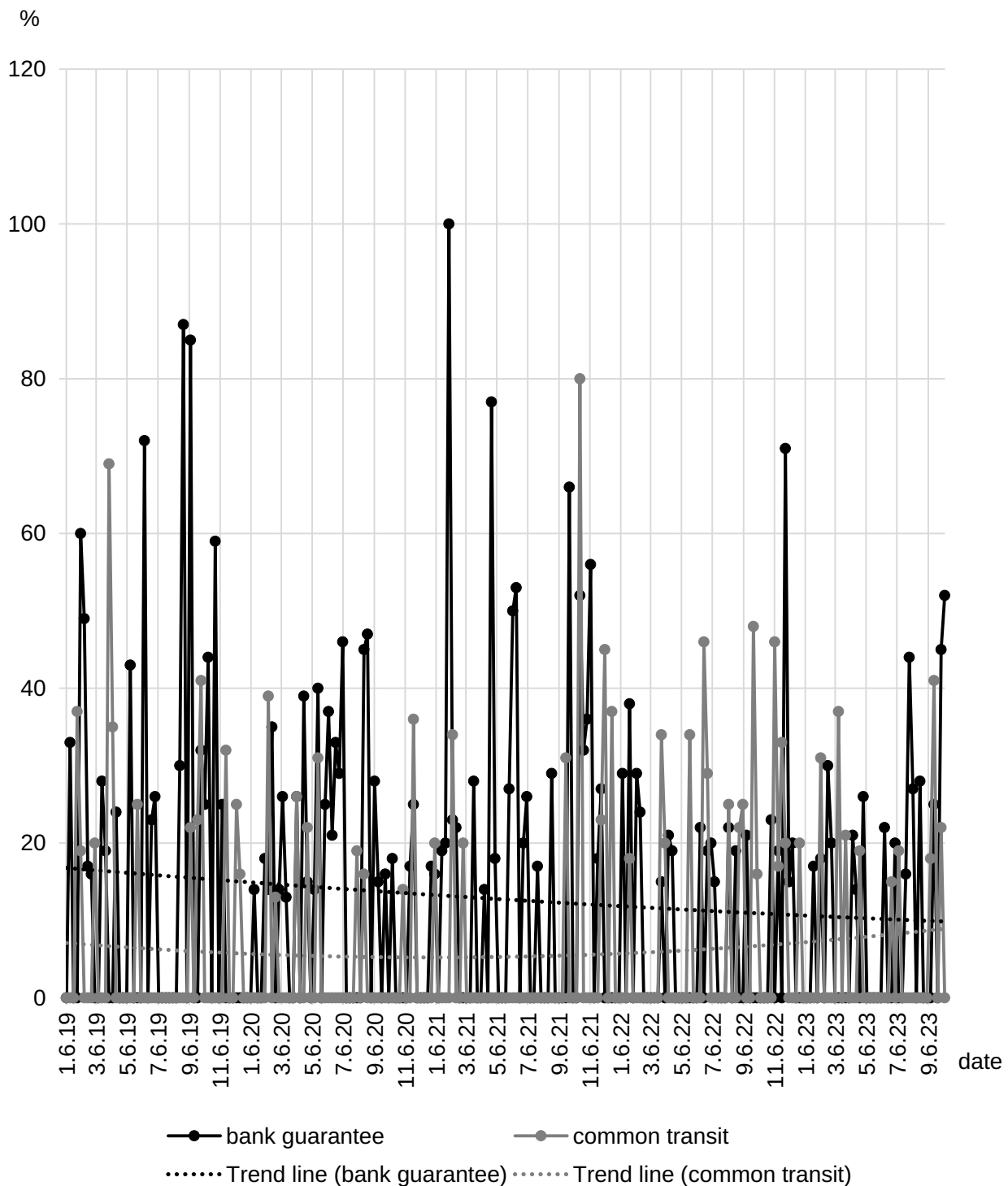


Figure 1. Diagram of the distribution of search queries “bank guarantee” and “common transit” in Ukraine for 2019–2023 and trend lines of data points in each row (as of 15.10.2023)

Source: Google Trends data based on [18]

As can be seen from Fig. 1, the trend lines for the number of searches for the terms “bank guarantee” and “common transit” tend to the same value in October 2023, which may indicate that the same level of interest in these topics has been reached. This is due to the fact that prior to the entry into force of the

Convention on a Common Transit Procedure in Ukraine, companies had to guarantee the payment of customs duties on imports or transit of only certain categories of goods, but after the entry into force of the provisions of this legal act, all products, subject to certain exceptions, imported into and transited through

the customs territory of Ukraine, are subject to guarantee.

According to the register of guarantors of the SCSU as of 01.09.2023 [14], 9 banks, 6 financial companies and 8 insurers are registered in it. To make a decision on which financial institutions offer the best conditions for ensuring that a business entity fulfils its customs obligations under the common transit procedure and to determine the role of bank guarantees in this process, the DSS Decision Making Helper [17] was used. This software product is available to users of Internet resources and is automated in terms of calculations that use the expert ranking method to determine the weighting coefficients of the selected criteria and alternatives, as well as a pairwise comparison of expert opinions, which significantly reduces the subjectivity of their views [1].

In the course of the study, a group of 10 experts was formed, who are managers of JSC "A-BANK", JSC "PRAVEX BANK" and PJSC "Insurance company "TAS", and an anonymous individual survey was conducted among them by e-mail on 25.09.2023.

Fig. 2 shows the results of determining the level of importance of the criteria (availability of the right to issue a general guarantee, cost of the guarantee service, and stability of operation in the financial services market) when choosing

a financial institution from the current register of the SCSU guarantors (bank, insurer, financial company) to ensure the payment of customs duties by enterprises.

Based on the data presented in Fig. 2, the DSS Decision Making Helper provides the final results for making a decision on the selection of a financial institution from the current register of the SCSU guarantors, whose conditions for guaranteeing the payment of customs duties and activities best meet the needs of business entities (Figs. 3–4).

Based on the analysis of the results in Figs. 3–4, the most appropriate alternative for a foreign trade entity to choose a financial institution to secure the payment of customs duties from the current register of guarantors of the SCSU is a bank.

Firstly, compared to other guarantors, banking institutions offer the most affordable tariff rates for the guarantee service, which are in the range of 0.2–1%. This criterion plays an important role in determining the cost of an export transaction, affecting the profitability and competitiveness of Ukrainian producers. Financial institutions include factors of inflation, exchange rate changes and transaction risk in the cost of providing a guarantee to ensure payment of customs duties.

Secondly, according to the NBU Financial Stability Report published in June 2023 [4],

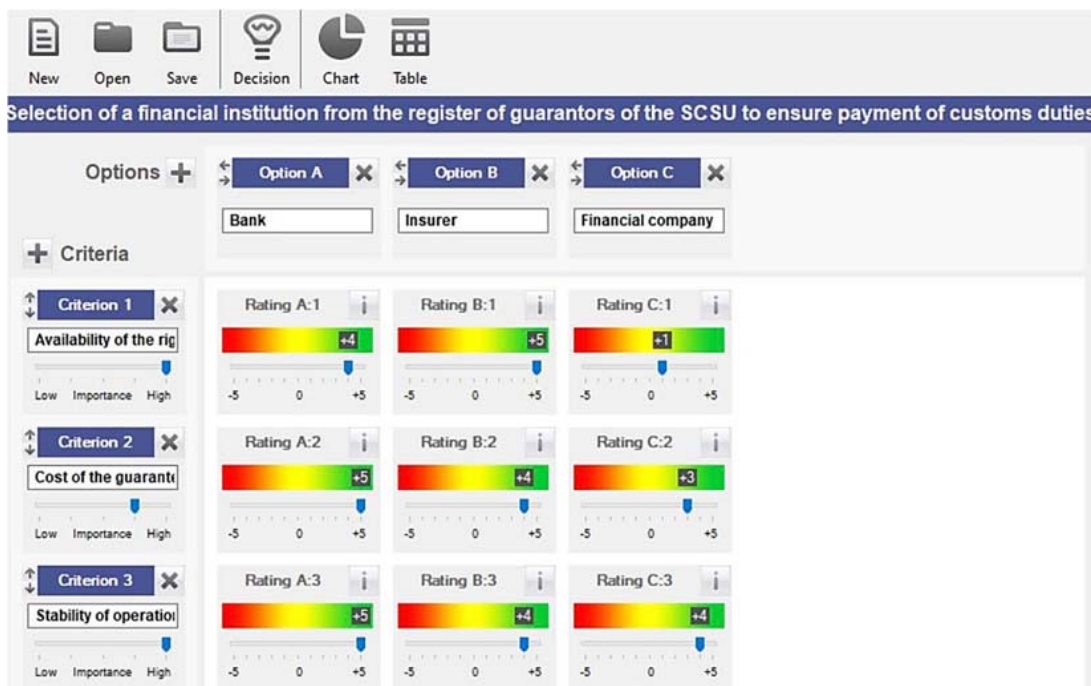


Figure 2. The DSS Decision Making Helper dialogue window with assessments of existing customs payment security guarantors

Source: used by Decision Making Helper based on [17]

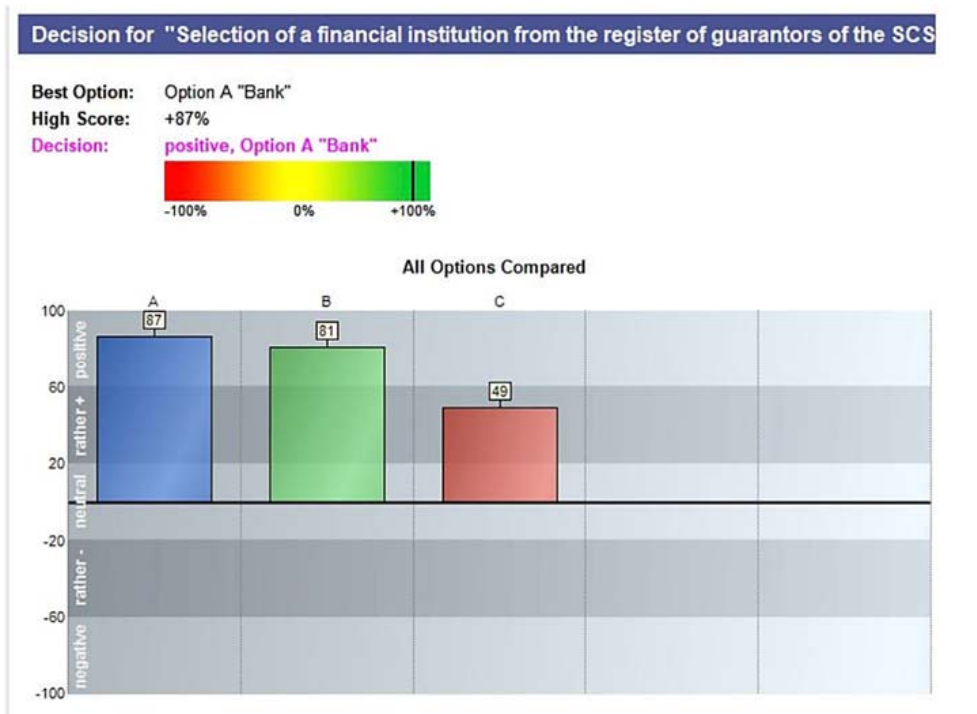


Figure 3. The DSS Decision Making Helper dialogue window with results on the current guarantors of customs payments (graphical method)

Source: used by Decision Making Helper based on [17]

Radar Chart for "Selection of a financial institution from the register of guarantors of the SCSU to ensure"

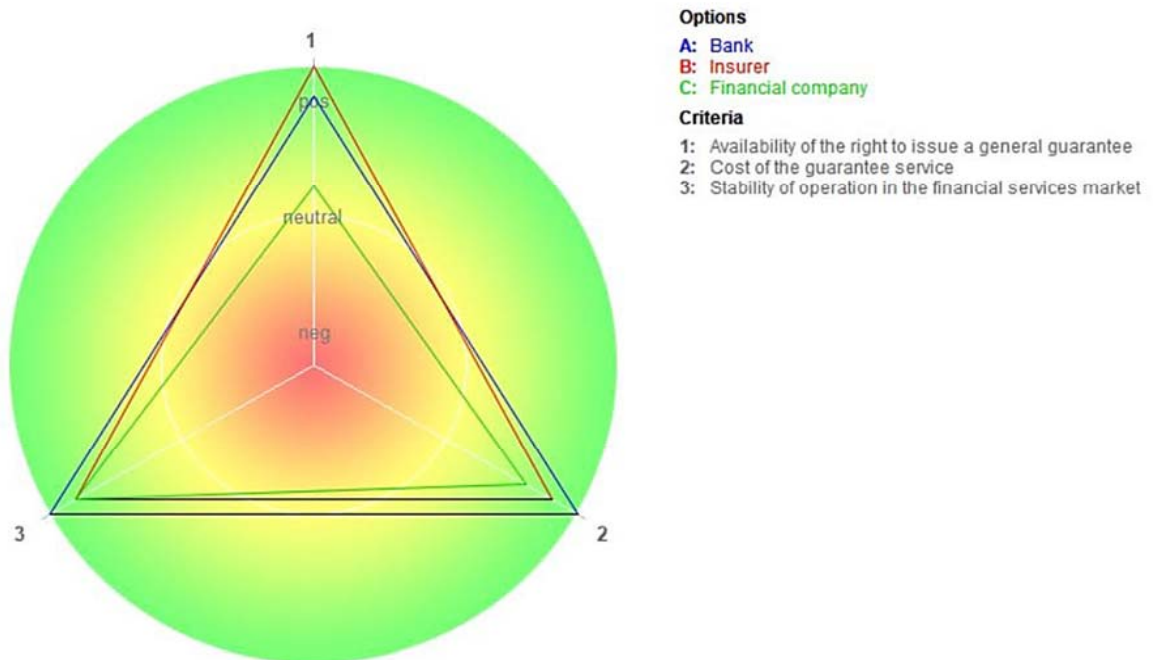


Figure 4. The DSS Decision Making Helper dialogue window with results on the current guarantors of customs payments (radar method)

Source: used by Decision Making Helper based on [17]

banks demonstrate adaptability to work in difficult conditions of destructive factors of the internal and external environment, as well as high liquidity, solvency and profitability. Given that in 2022, the SCSU collected UAH 300.8 billion in customs duties [9], i.e. approximately UAH 0.82 billion daily, the key characteristic for each of the guarantors is the stability of its operation in the financial services market.

However, it should be noted that not all banks in the current register of guarantors of the SCSU, unlike insurance companies, are entitled to provide general guarantees, which is also a very important criterion for businesses. According to the results of the SCSU's monitoring of the application of the common transit procedure in July 2023 [9], the most common problem of business entities is "insufficient amount to reserve potential debt when placing goods under the common transit procedure in case of an individual guarantee". That is why the SCSU recommends that companies obtain authorisation to use the "general guarantee" simplification as the most appropriate way to guarantee the fulfilment of customs obligations, as its reference amount simultaneously covers several separate transit operations.

Conclusions. Thus, the use of bank guarantees by foreign economic operators in Ukraine to ensure the payment of customs duties when placing goods under the common

transit procedure is beneficial for both parties to the guarantee agreement and plays an important role in minimising customs risks of taxpayer insolvency, the State Budget of Ukraine not receiving customs duties, companies evading customs duties, etc.

The analysis conducted using the Google Trends search tool shows that the level of awareness of various stakeholder groups on the topics of bank guarantees and the common transit procedure is insufficient and approximately the same in 2023. This indicates the need to raise awareness of business entities, customs officials and customs specialists about the specifics of the common procedure and the mechanism for guaranteeing the fulfilment of customs obligations, as well as conducting a certain information policy on updating the provisions of the Convention on the Common Transit Procedure and the CCU in terms of ensuring the payment of customs duties.

Using the DSS Decision Making Helper, it was determined that the most optimal for foreign economic operators is to choose banks from the current register of the SCSU guarantors to ensure the payment of customs duties, since, unlike other financial institutions, they offer the most affordable guarantee service, demonstrate a high level of stability in the financial services market, and 7 out of 9 banks are entitled to provide a general guarantee.

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