

# Foreign Trade and Customs Regulation

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## General

Ukrainian trade and Customs regulation has been greatly liberalised since Ukraine gained its independence in 1991. However a number of restrictions dating back to the Soviet era still create some impediments to cross-border trade and many new problems have arisen with each series of legislative reforms.

Ukraine has exclusive Customs jurisdiction over the 'unified Customs territory of Ukraine' which generally includes all territory within its state border, including artificial islands and structures created in the maritime zone of Ukraine. It is anticipated, however, that special Customs zones may be created in the future which will provide for areas within Ukraine that shall be deemed to be outside Ukraine's unified Customs territory.

The Parliament and government of Ukraine determine the general principles of Ukraine's Customs regulation. Implementation of state policy and regulation of Customs issues is carried out by the State Customs Service of Ukraine, a special governmental agency subordinated to the Cabinet of Ministers of Ukraine.

## Licensing and quotas

The importation into Ukraine, exportation from it and transiting through its territory of certain categories of goods and other articles can be prohibited or limited by Ukrainian law. Importation of some goods may also be subject to licensing, the current list primarily consisting of chemicals and pharmaceuticals. In addition to licensing, the export of goods may be subject to quantity limitations. In 1997 such goods subject to quantity limitations mainly included metal products and scrap metal, chemicals and textiles.

## **Standards and certification**

Ukrainian governmental policy on standards and certification for imported goods is defined in a number of laws, including the law 'On Protection of Consumer Rights' and the Cabinet of Ministers Decree 'On Standardisation and Certification'. The certification requirement applies to products of both domestic and foreign origin to ensure compliance of goods with Ukrainian safety standards. In July 1996, Ukraine also introduced the International Organisation for Standards (ISO) 9000 standards.

The regulation of certification is carried out by the State Committee for Standardisation, Metrology and Certification. At present, the list of goods requiring certification covers 31 categories. Among them are household and lighting devices, household electronic equipment, medical equipment, welding materials, toys, detergents and washing liquids, motor vehicles and their components, china and earthenware, goods for light industry, food products and petroleum products.

When goods subject to obligatory certification are imported, the importer must produce either a certificate confirming that the goods supplied comply with Ukrainian standards, or a certificate obtained abroad and recognised in Ukraine pursuant to international treaties signed by Ukraine with other countries. The certificate must be submitted to Customs before the goods can be cleared.

## **Sanitation, epidemiological, environmental, quarantine and veterinary standards**

Goods imported into Ukraine must meet Ukrainian national sanitation standards for products potentially dangerous to health. The approval received as a result of such control constitutes an official acknowledgement of a product's safety. The control requirements are applied equally to foreign and domestic products. Presently, the list of goods that are subject to inspection includes the following: household materials, food products, food additives and preservatives, materials that come into contact with food products or drinking water, mineral fertilisers, medical products, cosmetics and perfumes, certain polymer and synthetic materials, agricultural and industrial production waste as well as products made of such waste, transportation vehicles and machine and engineering equipment.

Veterinary control is carried out in respect to animals, birds, products of vegetable and animal origin, and medicines. Quarantine control is applied to the transfer of seeds, plants or products of vegetable origin. Environmental inspection applies both to transportation vehicles (including planes and ships) and to their cargo if containing industrial materials, production waste, chemical, toxic and other compounds that are potentially dangerous for health and the environment, fertilisers, fish, wild animals and plants and zoological and mineral collections.

The government of Ukraine has declared its intention to introduce gradually the standards of sanitation, environmental, veterinary and epidemiological control created by European Union directives.

## Importers and exporters

Goods may be imported into Ukraine by persons and entities resident in Ukraine that are duly registered with the state Customs authorities. In general, a foreign company may only import goods by entering into a contract with such a resident, who will then be able to import and clear goods through Customs in its name.

Special rules apply to representative offices of foreign companies in Ukraine. Such representative offices must be registered with the Ministry of Foreign Economic Relations and Trade of Ukraine and, in order to import products, the representative office must also be registered with the Customs authorities. Ukrainian legislation permits a representative office to import certain products 'temporarily' for its own use, exempt from payment of import duty. If such products are later disposed of, then Customs duty must be paid based on the 'customs value' of the goods declared at importation.

The procedure is less rigid for exports. In practice goods may be exported from Ukraine by any entity or individual, Ukrainian or foreign.

## Customs procedures

Customs procedures are generally similar for imports and exports. In order to clear imported goods through Customs the receiver of such goods, a Ukrainian resident, must apply to the Customs office with which it is registered, either directly or through a Customs broker, with a written request for the clearance. This request should be accompanied by a package of documents that may include:

- a Customs declaration with supporting documents (these as a rule include invoices, contracts, transport documents etc.);
- an import license (if required);
- a certificate that ensures compliance of the goods being imported with Ukrainian safety standards;
- expert conclusions of the environmental, veterinary, sanitation and/or epidemiological services;
- the conclusion of the Expert Technical Commission of the Cabinet of Ministers (for goods the importation of which is prohibited or goods that have certain dual uses, eg civil and military);

- documents confirming payment of all Customs fees and duties, as well as VAT and any applicable excise tax. The importer can also decide not to pay VAT before the clearance and instead issue a promissory note for the unpaid sum and redeem it later. When goods are exported, a promissory note can be issued in respect of any Customs duty that might apply. In general duty is charged on relatively few exports.

Imported goods are usually cleared at the Customs division (office) where the importer is registered. Arrangements can be made, however, to have the goods cleared by a different Customs office. Goods can also be cleared by a Customs officer outside of a Customs office, for example, where the importer is located. Goods that have not been cleared through Customs may be stored in bonded consignment warehouses, which are considered to be outside the Customs territory of Ukraine.

It must be appreciated that Ukraine applies its import control regulations and its requirements for certification and expert conclusion extremely rigorously. Because of the complicated procedures for Customs clearance and the numerous formalities in the work of Customs offices, most substantial importation operations of goods are carried out with the assistance of professional brokers.

### ***'Give and take' raw materials operations***

There are special rules, including a full exemption from Customs duty, for the importation of raw materials that are used in the production of goods where the finished goods are then exported under conditions specified in the Law of Ukraine of 15 September 1995, 'On Operations with Give and Take Raw Materials'. Products imported on this basis may be taken through Customs without any immediate assessment of the duties and import VAT that would otherwise apply. This is conditional on the importer depositing a guarantee of payment for duties and VAT that could be due.

Finished goods produced out of these imported raw materials may then be exported within a defined time limit (usually 90 days from completion of production), and the payment guarantee will be cancelled. In such cases, only minor Customs fees (described below) need to be paid. However, if the finished products are not re-exported as required, then the initial import will be considered to have cleared Customs and the payment under the guarantee becomes due for both Customs duties and import VAT.

### **Customs fees and duties**

Goods passing through Ukraine's Customs border are subject to Customs fees as well as duties. Customs fees are charged for the services provided by the Customs office, including documentation of goods. The rate of the Cus-

toms fee for most transactions is 0.2 per cent of the total value of the goods, as declared by the importer (provided for certain goods that this is not below the average price established by Customs). To determine the Customs duty value, the currency of the contract is converted into the national currency of Ukraine (the hryvnia), at the National Bank of Ukraine exchange rate in effect on the day of submission of the Customs declaration.

Customs duties are paid in accordance with the Common Customs Tariff of Ukraine, which is a list of Customs duty rates applicable to goods imported into or exported from Ukraine. The Law of Ukraine of 5 February 1992, 'On the Common Customs Tariff of Ukraine', specifies the procedure for the formation and application of the common Customs tariff of Ukraine to the importation and exportation of goods. Duty is payable in Hryvnia. Customs duty rates are established and modified by Parliament and the Cabinet of Ministers.

The following types of Customs duty exist in Ukraine:

- *ad valorem*, assessed as a percentage of the Customs value of goods which are subject to Customs duty;
- specific, assessed as a specified monetary amount for each unit of goods subject to such duty; and
- combined, which combines these two types of duty.

The Common Customs Tariff that establishes these duties differentiates between import duty and export duty.

### ***Import duty***

Goods imported into Ukraine are subject to Customs duties in accordance with the General Customs Tariff of Ukraine. There are three types of Customs duty rates imposed under the tariff - preferential, privileged, and full.

- Preferential rates, including complete exemptions, apply to goods originating from countries which form Customs unions or special Customs zones with Ukraine, as well as where a special preferred Customs regime is established according to international agreements with Ukraine.
- Special privileges apply to goods originating from countries or economic unions which benefit from most favoured nation status. Currently trade and economic agreements providing for most favoured nation status have been signed with more than 50 countries.

In addition, free trade agreements with specific countries may provide for different rates of or complete exemptions from Customs duty, depending on the origin of the items involved. For example, a full

exemption from Customs duties exists under free trade agreements with some of the former Soviet Union countries. However, if the requirements of these agreements are not met (for example, the goods originate from a country different from the one with which the free trade agreement was concluded), or if the free trade agreement does not apply to the goods, then the otherwise applicable rates apply.

- Full rates apply to all other goods.

For most imported goods, the preferential and privileged rates of import Customs duty range from 5-10 per cent, whereas the full rates range from 10-20 per cent. For some goods, mainly chemical products and some raw materials, the rate of Customs duty is 0 per cent. A few goods are subject to Customs duty at much higher rates (cigarettes, for instance, have preferential and privileged rates of up to 30 per cent and full rates of 50 per cent).

Import duty rates, established by the Common Customs Tariff, may be altered by the Ukrainian Parliament. Presently, the Cabinet of Ministers is temporarily authorised by Parliament to modify Customs duty rates with respect to all goods, except those goods subject to excise tax.

### ***Export duty***

Export duty is assessed on the export of certain categories of goods by specific governmental resolutions. The rates usually range from 5-30 per cent, but presently only apply to a few items. All goods (as well as services) exported within export quota limits, and all commodities manufactured out of imported raw materials, are exempt from export duty.

Export of goods (and services) is not subject to export Customs duty, if made to repay indebtedness on foreign loans provided under guarantees of the Cabinet of Ministers or on foreign credits received under individual licences of the National Bank of Ukraine.

### ***Seasonal duties***

Seasonal import and export duty may apply to some goods for a period not exceeding four months. Although provided for in the Common Customs Tariff, seasonal import and export duty is rarely used in Ukraine.

### ***Specific duties***

Specific types of Customs duty may apply on the import or export of goods. These duties are only due upon an examination conducted at the initiative of the Ukrainian Customs Tariff Board or of interested Ukrainian or foreign entities, by the Ministry of Foreign Economic Relations and Trade, in order to establish grounds for their imposition. Special Customs

duty may be used to protect domestic producers, to prevent violations of state interests, to prevent unfair competition, and as reciprocal action taken in response to discrimination against Ukrainian exporters abroad.

Anti-dumping duty applies in cases of:

- importation into Ukraine of goods at substantially less than their competitive price in their country of origin at the moment of their export to Ukraine, if such imports cause or threaten to cause damage to domestic manufacturers producing similar or competing goods; or
- exportation from Ukraine of goods at substantially lower prices than those of other Ukrainian exporters of similar or competing goods, if such export causes or threatens to cause damage to the state interests. Compensatory duty applies in the event of importation of subsidised goods into Ukraine, provided that the specific duty rate does not exceed the amount of the subsidy.

### **Exemptions**

Customs laws provide some exemptions from Customs duty. A complete list of import duty exemptions is provided by the 'Instruction for the procedure of import duty payment', approved by the Ukrainian State Customs Service on 23 July 1997.

In particular, Customs duty is not payable to import the following:

- property contributed by a foreign investor to the statutory fund of an enterprise with foreign investment;
- humanitarian and technical aid, as determined by the Cabinet of Ministers of Ukraine;
- property for investment purposes on the basis of investment agreements;
- goods acquired for the state Hard Currency Fund, or for the Republic of Crimea or local hard currency funds, or foreign credits guaranteed by the Cabinet of Ministers;
- goods relating to plant and animal protection, or potash and phosphate fertilisers;
- goods imported into Ukraine for official and individual use, or which are exported from Ukraine, by organisations and individuals with the right, pursuant to international agreements of Ukraine, to be exempt from paying import and export duty, including diplomatic and consular representations of foreign states.
- Ukrainian currency (where permitted), foreign currency and securities.

If international agreements of Ukraine establish rules that differ from those of the Customs laws of Ukraine, then the rules of the international agreements apply.

### **Import VAT and excise tax**

Import VAT is payable, currently at a rate of 20 per cent, on all imported goods as well as imported services. Import VAT on goods is paid to Customs together with Customs duty and fees and any excise tax due, whereas any import VAT on services is payable by the importing taxpayer with its quarterly VAT return.

In addition to Customs duties and VAT, many luxury goods are subject to excise tax when imported into Ukraine.

[For further information on import VAT and excise tax, see Chapter 32.]