

# 3

## General customs regulations and trade finance

The Ukrainian customs regulation gradually transforms into a body of law, which complies with and absorbs most of the best international practices in the Customs Code of Ukraine. This process began in 2008 following accession of Ukraine to the World Trade Organization. Some major changes and incentives were implemented when the EU-Ukraine Association Agreement was signed, which resulted in establishment of the EU-Ukraine Free Trade Zone and the necessity to harmonize the applicable Ukrainian law with the EU regulatory acts.

### 3.1. Customs control

The Ukrainian customs authorities exercise customs control in order to ensure that the goods imported to or exported from Ukraine comply with the required standards. As the customs authorities are authorized to conduct various types of control, such as sanitary, veterinary, phytosanitary, radiological, ecological, etc., this process used to be conducted with a significant delay and no clear timeframe.

However, on 1 August 2016, the Cabinet of Ministers of Ukraine implemented the system of the 'single window' for customs, which resulted in all kinds of control being exercised simultaneously. Introducing this unified electronic system significantly facilitates timeframe for customs control, increases quality of service at customs posts and minimizes corruption and violations during customs control. The 'single window' electronic system unifies all controlling authorities and is mandatory for use. Such a system allows the controlling authorities to exchange data on goods which will ensure their coordinated actions and processing speed.

Furthermore, under the simplified control system, if there is no decision made on completion of customs control within four hours following submission of required documents, the system will automatically issue a document on successful completion of customs control and registration of goods.

## 3.2. Required documents

Any goods imported to the territory of Ukraine shall undergo registration with the customs authorities. Usually such a registration is conducted by the importer or a licensed customs broker on behalf of the importer. Failure to provide any of the documents listed below may result in a significant delay of registration.

Generally, the following import documents are required for import shipments of goods to Ukraine:

- 1) an import-export (cross-border) contract;
- 2) an invoice and a waybill;
- 3) an import customs declaration;
- 4) a declaration of customs value;
- 5) a compliance certificate;
- 6) a certificate of origin;
- 7) evidence of customs duty and tax payment.

Furthermore, the customs authorities may require any additional documents not listed above.

## 3.3. Customs regimes

A customs regime consists of the interrelated legal rules that determine customs-approved treatment or use to be assigned to the goods, their legal status, terms of taxation in accordance with the declared purposes following their crossing the customs border of Ukraine, as well as their post-clearance use.

As provided in the Customs Code of Ukraine, the following customs regimes are used on the territory of Ukraine:

- 1) import (release for free circulation);
- 2) re-import;
- 3) export (final leave);
- 4) re-export;
- 5) transit;
- 6) temporary import;

- 7) temporary export;
- 8) customs warehousing;
- 9) a free customs zone;
- 10) a duty-free trade;
- 11) inward processing;
- 12) outward processing;
- 13) destruction or elimination;
- 14) abandonment to the State.

The Customs Code of Ukraine contains a detailed explanation and features of each of the regimes. The most commonly used regimes are mentioned in 1) – 5) above.

### 3.4. Applicable taxes and duties

VAT is applied to transactions on supply of goods and services to the customs territory of Ukraine, as well as to transactions related to import and export of goods in Ukraine. The VAT rate is 20%. For pharmaceutical products, the VAT rate is 7%. It should be noted that 0% VAT rate is applied to export of goods in the customs regime from the territory of Ukraine.

The excise tax applies to excise goods imported to the customs territory of Ukraine. The excise tax is levied upon excise goods, which include:

- 1) ethyl alcohol and other distillates, alcohol drinks, beer;
- 2) tobacco products, tobacco and manufactured tobacco substitutes;
- 3) fuel;
- 4) cars, trailers and semi-trailers, motorcycles, vehicles for transportation of 10 persons or more, vehicles for goods transportation.

The excise tax rates are specified in the Tax Code of Ukraine for each type of excise goods.

The importers shall pay the import duty. The import duty is calculated based on the type of goods, their origin and CIF value (the sum of the value of the imported goods and the cost of shipping and insurance). The amount of the import duty varies accordingly between 0% for some preferential goods or under certain international agreements to 60% with an average rate of 10%.

It is also worth mentioning that any imported goods with the product value of less than EUR 150 are exempt from the import duty and VAT.

## 3.5. Methods of payment for goods

In Ukraine, it is possible to use various methods of payment for transactions on sale and purchase of goods and services under a cross-border contract. These include prepayment, letters of credit, documentary collections, payment orders, and other methods used under the conventional business practice.

## 3.6. Prepayment

The most common way of monetary settlements in Ukraine for shipment of goods and rendering services is prepayment. This is predominantly due to the fact of frequent currency exchange rate fluctuations of UAH and peculiar legislation regulating settlements in foreign currency, introduced by the National Bank of Ukraine.

Thus, Ukrainian exporters selling goods abroad in foreign currency must receive payment within 120 days from the date of the goods customs clearance. In addition, Ukrainian importers, paying for goods on conditions of deferred delivery, must receive such goods within 120 days or obtain the approval of the Ministry of Economy of Ukraine, if the period between the prepayment for goods and their delivery exceeds 120 days.

Failure to comply with the abovementioned requirements results in imposition of a penalty for each day of delay in the amount of 0.3% of non-received proceeds in foreign currency (value of non-delivered goods) calculated in UAH at the date of indebtedness occurrence (the amount of penalty shall not exceed the sum of non-delivered goods). Moreover, the Ministry of Economy of Ukraine will sanction Ukrainian and foreign companies, parties to the relevant transaction, by way of imposing a special individual licensing regime. The individual licensing regime means that both the Ukrainian company and the foreign company shall be obliged to apply to the Ministry of Economy of Ukraine for its approval for each trade transaction on the territory of Ukraine. The Ministry of Economy of Ukraine will individually license each foreign economic transaction of such companies. Such consequences of currency regulations breach lead to an unfavourable position of Ukrainian importers and their foreign counterparties as they significantly complicate the economic activity.

Of course, there are certain goods which cannot be produced and delivered within the specified 120-days period. In these cases, it is possible to file an application to the Ministry of Economy of Ukraine for extension of the settlements term. The Ministry then issues a special document allowing the parties to avoid any penalties and imposition of the individual licensing regime.

## 3.7. Letter of credit

The regulation of letters of credit in Ukraine consists of general provisions of the Civil Code of Ukraine and some regulatory acts of the National Bank of Ukraine. In addition, Ukraine recognizes the Uniform Customs and Practice for Documentary Credits 600 and International Standby Practices 98, which are often used in the international trade.

However, it is worth mentioning that any provisions, contradicting the mandatory require-

ments of the Ukrainian law, shall be deemed as invalid. Thus, the Civil Code of Ukraine provides that the letter of credit shall be closed in the following cases:

- 1) expiration of the letter of credit;
- 2) refusal of the funds recipient to use the letter of credit before it expires in case this is specified in the provisions of the letter of credit;
- 3) full or partial revocation of the letter of credit by the payer in case such a revocation is specified in the provisions of the letter of credit.

Therefore, it is not clear whether the Ukrainian law recognizes exclusively these three cases of closing the letter of credit, or also includes grounds specified in the Uniform Customs and Practice for Documentary Credits 600 and International Standby Practices 98 and other international trade finance best practices.

Both revocable and irrevocable letters of credit are used in Ukraine. Additionally, letters of credit are compulsory in any trade transactions the amount of which exceeds USD 1 million.

### 3.8. Documentary collection

There are a couple of general provisions regarding regulation of documentary collections in Ukraine included in the Civil Code of Ukraine. Additionally, ICC Uniform Rules for Collections 522 are recognized in Ukraine. However, documentary collections are quite rarely used as means of payment for goods and services in Ukraine in comparison to other methods of payment.

### 3.9. Currency regulations

For the purposes of stabilizing the currency market of Ukraine, the National Bank of Ukraine from time to time introduces certain restrictions, which shall be taken into consideration when doing business with foreign counterparties. Thus, there is a mandatory requirement for legal entities, private entrepreneurs and representative offices (except for official representative offices) to sell 65% of the foreign currency proceeds received from abroad. Gradually, the percentage rate for mandatory sell of currency proceeds is being decreased.

Furthermore, the National Bank of Ukraine exercises certain control over foreign currency purchase for the purposes of dividends repatriation to foreign investors abroad, as well as foreign currency purchase for the purposes of repatriation of proceeds received by foreign investors from the sale of corporate rights, other than shares, of legal entities, decrease in the authorized capital of legal entities, withdrawal from a legal entity.