



Foreign trade customs regulation

The Customs Code is the basis for Ukrainian legislation on customs. Apart from the Customs Code, Ukrainian customs legislation includes the following: - legislative acts on general issues connected with foreign economic activity (hereinafter referred to as FEA) and customs: the Law of Ukraine «On foreign economic activity», Decree of the Cabinet of Ministers of Ukraine «On quotation and licensing of exports of commodities, works, and services» No.6-93 dated January 12, 1993:

- legislative acts on issues connected with customs and tariff regulation of FEA: the Laws of Ukraine «On the Uniform Customs Tariff» and «On the Customs Tariff of Ukraine»; the so-called Anti-Dumping Code, which includes the Laws of Ukraine «On protection of the national commodity producer from dumping imports», «On protection of the national commodity producer from subsidized imports» and «On application of special measures on imports to Ukraine»; and Decree of the Cabinet of Ministers of Ukraine «On the Uniform Customs Tariff of Ukraine» No.4-93 dated January 11, 1993

- legislative acts on issues connected with the taxation of commodities that are moved across Ukraine's customs border: the Laws of Ukraine «On taxation system», «On excise duty on alcoholic beverages and tobacco products», «On excise duty and customs duties on tobacco products», «On excise duty and customs duties on ethyl alcohol and alcoholic beverages», «On rates of the excise duty and import customs duty on certain means of transportation and tires for them», «On rates of the excise duty and import customs duty on certain commodities (products)», «On Value-Added Tax», «On export customs duty on ferrous metal waste and scrap»; Decree of the Cabinet of Ministers of Ukraine «On the Excise Duty» No. 18-92 dated December 26, 1992;

- legislative acts on issues connected with the regulation of the FEA procedure for certain categories of business entities: the Laws of Ukraine «On protection of foreign investments in Ukraine», «On investment activities», «On general principles of establishment and functioning of special (free) economic zones», «On the foreign investment regime», «On the special regime for technological parks' investment and innovation activities», «On elimination of discrimination in

taxation of business entities, which were established with participation of property and funds of the domestic origin», «On the procedure for imports (sending) to Ukraine, customs formalities, and taxation of personal belongings, commodities, and means of transport, which are imported (sent) by citizens to Ukraine's customs territory»;

- legislative acts on issues connected with the regulation procedure for specific kinds of FEA: the Laws of Ukraine «On operations with tolling raw materials in FEA», «On regulation of commodity exchange (barter) operations in the FEA sphere»;

- legislative acts on issues connected with regulating the procedure for moving certain types of commodities across Ukraine's customs border: the Laws of Ukraine «On circulation of narcotics, psychotropic substances, their analogues, and precursors in Ukraine», «On counteraction measures against illegal circulation of narcotics, psychotropic substances, precursors, and their misuse», «On waste», «On metal scrap», «On export, import, and recovery of cultural valuables», «On withdrawal from circulation, processing, utilization, destruction, or further use of poor-quality and dangerous products», «On specific features of state regulation of business entities' activities connected with production, export, and import of discs for laser reading systems», and «On grain and grain market in Ukraine».

The Ukrainian customs legislation also includes around 20 Decrees of the President of Ukraine, over 130 Regulations of the Cabinet of Ministers of Ukraine, and 6 Regulations of the Board of the National Bank of Ukraine. The indicated list of documents is constantly widened.

Customs and tariff regulation of FEA

Customs and tariff regulations are a set of measures that set and apply customs duties (import, export, and special ones), levy of the customs duty within specific preferential regimes, control the customs value of goods, and classify commodities and the countries of their origins, in order to secure collection of customs duty in full.

The principles of the customs and tariff regulations in Ukraine are spelled out in the Laws of Ukraine «On the Uniform Customs Tariff», «On the Customs Tariff of Ukraine» and Decree of the Cabinet of Ministers of Ukraine «On the Uniform Customs Tariff of Ukraine».



These legislative acts set:

- the principles for formation of the customs tariff;
- types of customs duty rates (ad-valorem, specific,
- levels of customs duty rates;
- the procedure for levy of a customs duty;
- the list of commodities and countries falling under

The Customs Tariff of Ukraine is the main customs and tariff regulation instrument.

On July 1, 2001, the new Customs Tariff of Ukraine entered into force. This document was created on the basis of the Ukrainian Commodity Classification for Foreign Economic Activity (hereinafter referred to as UCCFEA), which corresponds to the Harmonized System for commodity description and coding (HS) of 1996 and the EU's Combined Nomenclature (CN). It includes over 10,000 tariff rates and allows code input at the level of 9 and 10 digits for possible national commodity detailing needs.

During 2001-2003, the Law of Ukraine "On the Customs Code of Ukraine" was amended 8 times. In total, 1,220 rates of import customs duties were changed for specific commodities.

Thus, in order to gradually meet the commitments within the Textile Agreement between Ukraine and the EU and establishment of favorable conditions for promotion and strengthening of domestic textile and ready-made garments on the European market, rates of the import customs duty for textile and textile items (commodity positions in groups 51- 63) were reduced respectively to the level effective in EU countries.

The Law of Ukraine "On changes to a number of Laws of Ukraine", which was enacted on May 15, 2003, set ad- valorem duty rates for floral products.

The Laws of Ukraine N0.271S-IV dated June 23, 2005 and N0.2775-IV dated July 7, 2005, reduced the tariff load by almost 90% of all tariff positions. In addition to that, the indicated legislative acts leveled the privileged and full rates of the customs tariff.

Starting January 1, 2008, pursuant to the Law of Ukraine "On amendments to the Law of Ukraine "On Customs tariff of Ukraine" dated May 31, 2007 No.1109-V, the new Customs tariff of Ukraine has come into effect (the Law of Ukraine "On Customs tariff of Ukraine dated April 5, 2001 No.2371-111). The new Customs tariff of Ukraine is based on HS of 2002 version. The mentioned Law was published in the Official herald of Ukraine No.49 of July 16, 2007.

To fulfill provisions of article 312 of the Customs Code of Ukraine in the part, which regards ensuring of identical interpretation and implementation of the Ukrainian UCCFEA, decree of the Cabinet of Ministers of Ukraine dated December 12, 2002 No. 1863 "On approval of the Order of introducing the Ukrainian commodity classification for Foreign Economic Activity" and due to numerous changes in the UCCFEA related to commodity close elaboration at the national level, the State Customs Committee of Ukraine issued the decree of September 21, 2007 No.793 "On approval of the new edition of transition tables from UCCFEA 1996 to UCCFEA 2002". This decree was also meant to update transition tables provided by the decree dated December 31, 2004, No.938.

The relevance of review and necessity to study the Customs tariff of Ukraine are reasoned by the fact that the Code serves a cornerstone for establishing a number of other important Laws of Ukraine and decrees of the Cabinet of Ministers of Ukraine, which apply UCCFEA (commodity codes and descriptions) - commodity range of the Customs tariff of Ukraine.

Besides, the need to draw attention to this Law is caused by an 18.3% contribution of import duty within gross volume collected by the customs office over 2007. The customs duty ranks the second among other customs taxes and fees and demands proper attitude to secure its administering.

Accession to the WTO foresees liberalization in the duty levying. Reduction of the average import duty should be reimbursed by the steps aimed to eliminate smuggling and remove "grey" (half-legal) schemes for commodity imports.

The Customs tariff of Ukraine is a UCCFEA-alike systemized list of import duty rates applied to goods imported to the customs territory of Ukraine.

Currently, the Customs tariff of Ukraine contains 11,061 rates of import duty including:

- ad-valorem rates - 10,209 rates, (92.0 %);
- specific rates - 656 rates, (6%);
- combined rates - 196 rates, (2.0 %).

Commodity range of the current Customs tariff of Ukraine is UCCFEA based on HS version of 2002.

Current Customs tariff of Ukraine significantly varies from previous customs tariff. More than 400 commodity codes have been changed at the only level of commodity sub-positions (that is, 6 digits).



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Transition from the customs tariff of 1996 version towards customs tariff of 2002 version was not an easy mechanical change at the commodity range level. Not only commodity codes were changed, but also import duty rates. For example, the leveled rates for second-hand articles are preferential and full 5.3% (6309). The rates for frozen chicken meat (0207 14 10 00 - 0207 14 60 00) are preferential and full at 10%, but no less than EUR 0.4 per kg.

Upon the initiative of the State Customs Service, the new provision has been introduced, which regards authenticity of translation for HS and CC of the EU:

Upon finding inaccuracies in UCCFEA with regards to its international parts - HS and CC, which resulted from improper translation of the original language text into Ukrainian, in particular - names of positions, sub-positions, as well as notes to chapters, groups, positions, sub-positions, and additional notes, then original texts of official editions of HS of the World Customs Organization and EU CC should be deemed as the basis. However, the new customs tariff does not include provisions of the previous Customs tariff on peculiarities of specific import duty rates' application, in particular - when estimating import duties levied upon specific rates, which were set in financial terms per kilogram of the commodity weight or by combined rates with specific component in financial size per kilogram of the commodity weight, - as a rental value, one should use commodity weight considering primary container (package) of the commodity, which is integral part with commodity before its consumption and in which commodity is supplied for retail sale.

Current Customs tariff of Ukraine contains codes of commodities itemized at the national level. There were 1,550 such codes as of February 2008. National level itemization was conducted for goods, which are used for industrial composition of transportation vehicles (cars) and others. Commodity code itemized at the national level has 10 digits, looks as follows 1516 20 98 13, and differs from other by lack of zero at 9 and 10 digits of the commodity code.

The general rule for estimating customs duty rates in customs tariffs of different countries is the following: low rates of customs duty are set for raw stock, medium ones - for semi-finished products, and high rates are applied to end products. The mentioned principle has been stated for most commodities in the Customs tariff

of Ukraine as well. The exception from the rule is applying high rates for "sensitive" commodities. For example, high (forbidden) level of import duty has been set for sugar (raw stock for food processing industry).

A typical feature of the Customs tariff of Ukraine is availability of sizable group of goods, which have end use (infant, medical, pharmaceutical, for industrial composition of car, civil aircraft as well).

Updated Customs tariff of Ukraine is available at www.customs.gov.ua.

At the same time, the list of laws of Ukraine, which will be adopted during ratification of the protocol on accession of Ukraine to the WTO, added draft Law of Ukraine "On amendments to the Law of Ukraine "On Customs tariff of Ukraine".

This draft law has been elaborated in order to accord provisions of the Customs tariff of Ukraine with international commitments of Ukraine on import duty rates, which the country entered in the course of negotiations on WTO accession as of January 1, 2008. The mentioned draft law foresees reduction of import duty and replacement of specific rates of import duty with ad-valorem rates for 2.5 ths. commodities.

Control over correctness of the goods' country of origin

Control over correctness of the goods' country of origin is exercised with the purpose of fulfilling legislation in respect to granting of free trade preferences and adhering to agreements with the EU during exports from Ukraine within the Generalized Preference System.

Control over the determination of preferential origin of goods from CIS member states is exercised by customs authorities, according to the Rules for determining the country of origin for CIS countries dated November 30, 2000, and for the goods originating in Macedonia - according to the effective free trade agreement.

Customs value

The need to bring Ukrainian legal norms for determining the customs value into compliance with the international customs valuation system, pursuant to the Agreement on application of WTO article VII, was mirrored in regulations of part XI of the Customs Code of Ukraine, which is titled "Goods' customs value. Methods for determination of the goods' customs value".



Three chapters of the Customs Code have to do with determining the customs value:

- Chapter 46 "General provisions";
- Chapter 47 "Methods for determining the customs value of goods that are imported to Ukraine and the procedure for their application"; and
- Chapter 48 "Customs value of the goods that are exported from Ukraine".

According to article 259 of the Customs Code of Ukraine, the customs value of the goods is the value of goods, which are moved across the customs border of Ukraine. This value should be paid in fact or has to be paid and is calculated in compliance with provisions of the Customs Code of Ukraine.

Thus, the customs value is a calculated value, which enables authorities to levy the same tax from a unit of the goods supplied from the same producer, however different the commercial conditions of purchase, payment, and delivery of such goods to Ukraine. This is achieved through the calculation of the goods' value on the same basis, which includes the value of the goods, the cost of their delivery to the entry port to the customs territory and the cost of these goods' insurance. The customs value of the goods that are imported to Ukraine's customs territory is determined through application of the following six methods:

- the imported goods' contract price;
- contract prices for identical goods;
- contract prices for similar (analogue) goods;
- the value deduction;
- the value addition;
- the reserve method.

According to provisions of the Customs Code of Ukraine (method 1), the primary basis for determining the customs value is the price, which has actually been paid or is subject to be paid for the goods, taking into account specific elements that form a portion of the value for customs purposes. For example, one of such elements could be expenditures on transportation of goods to the port of entry, when these expenditures were in place and were not included in the value subject to payment.

If the customs value cannot be determined based on method 1, it should be determined based on one of the five subsequent methods, which are to be applied consecutively.

The goods' customs value stated by the customs applicant and the submitted information about determination of this value has to be based on reliable information in the quantitative expression, which should be confirmed by documents.

The procedure for declaring the customs value of goods that are moved across Ukraine's customs border is approved by the Order of the Cabinet of Ministers of Ukraine "On approval of the Procedure for declaration of the customs value of the goods moved across Ukraine's customs border" No. 1766 dated December 20, 2006.

According to the indicated regulation of the Cabinet of Ministers of Ukraine when goods are moved across the customs border with a contract value exceeding EUR 5,000 and these goods are subject to taxes and duties (mandatory payments), in order to declare the goods' customs value, the importer has to submit a customs value declaration, in addition to the cargo customs declaration.

The indicated regulation of the Cabinet of Ministers of Ukraine sets three customs value declaration forms, the application of which depends on the selected method of the goods' determined customs value and the customs regime.

During the export of goods, a customs value declaration is to be submitted during completion of customs formalities only for goods subject to imposing an export, anti-dumping, compensatory, or special customs duty (oilseeds, metal scrap, live cattle, and hides).

The procedure for filling out the customs value declaration is approved by the Order of the Customs Service of Ukraine No.828 dated December 2, 2003 (with amendments and modifications)