



STREAMLINING EU-UKRAINE CUSTOMS PROCEDURES

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Summary

In customs procedures, there is no coherent policy in Ukraine, largely as a result of not having the Customs Service as a separate agency. This is an example of how an institutional issue not covered by the Association Agreement (AA) directly affects the pace of implementation of its provisions on regulatory approximation, in particular, complicates the passage of relevant laws in the Parliament. As a result, Ukraine has not yet fulfilled its "homework" in this area, and accordingly cannot use the prospects offered by the AA: recognition by the EU of authorised economic operators (AEO) and joining the EU Common Transit System (NCTS). In December 2018, the government decided to establish State Customs Service as a separate state body.

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THE BENEFITS OF THE ASSOCIATION AGREEMENT

Implementing the customs-related provisions of the Association Agreement between Ukraine and the European Union (AA) will play a major role in integrating Ukraine economically into the EU's internal market. The result should be considerable streamlining of customs procedures, reduced costs for companies engaged in international trade, and a gradual increase in trade turnover between Ukraine and the EU.

According to the Agreement, the EU offers Ukraine recognition of authorised economic operators (AEOs) and joining the common transit system (NCTS) that would considerably streamline customs procedures

Among others, the AA provides for:

- establishing the institution of "authorised economic operators" in Ukraine (AEOs) and their recognition by the EU (Art. 76,1 (k) and Art. 80 (i) AA);
- establishing the single administrative document (SAD) in Ukraine and its recognition by the EU, and Ukraine's joining the EU's common transit system NCTS (Art. 76, 1 (c), Art. 76, 4 (b) and Annex XV to the AA).

Establishing the AEO will help reduce the number of customs procedures and the time for going through customs clearance for reliable companies, which will increase the competitiveness of Ukrainian businesses on foreign markets. One of the key advantages will be the recognition by both Ukraine and the EU of companies that have the status of AEOs. For the private sector, this means, first of all, savings in time, money and organisational resources, the transparency and predictability of procedures, and better potential business opportunities.

Establishing the SAD means instituting customs declarations in line with EU declarations and can be used for any import or export clearance procedure as well as for the procedure of the common tran-

sit for trade in goods between Ukraine and all other signatories of the **Convention on the Common Transit System**¹ and the **Convention on the simplification of formalities in trade in goods**² regardless of the type and source of such goods.

Ukraine's participation in the EU common transit system (NCTS) will bring a series of advantages, principal among which will be a significant acceleration and reduction in the cost of the movement of goods for all participants—exporters, transporters and importers, — and the removal of the requirement to declare export goods at the EU border: for exports, this will be done in Ukraine.

UKRAINE'S HOMEWORK

AA provisions on customs cooperation in Annex XV commit Ukraine to:

- introduce best practice from EU customs legislation to Ukrainian law, including the EU Customs Code, and establish the prerequisites for mutual recognition of AEOs within three years of the AA coming into effect;
- implement the provisions of the Conventions within a year of the AA coming into effect.

AEO status, which is granted to enterprises, offers a specific list of benefits and procedural shortcuts when going through customs clearance. This is the highest level of trust on the part of Customs towards a company. To gain this status, a company needs to meet specific criteria.

Nominally, AEO status was introduced in the Customs Code of Ukraine in 2012. But it doesn't work under the current rules and is significantly out of sync with international practice. Specifically, the criteria for gaining AEO status and the streamlining that comes with the relevant certificate do not match the actual types of certificates; AEO certificates cannot be issued to some businesses, such as brokers, expeditors and freighters; there are no provisions for monitoring AEO activities either, and more. In short, in order for Ukraine to establish the institute of AEOs, it needs to adopt legislation to amend the current Customs Code.

For Ukraine to join the EU common transit system and institute the SAD, legislation needs to be passed to establish different types of customs declarations that match those used in the EU for common transit procedures. The necessary information and telecommunication system needs to also be developed and launched, based on European technology.

¹ <https://eur-lex.europa.eu/eli/convention/1987/415/2017-12-05>

² <https://eur-lex.europa.eu/eli/convention/1987/267/oj>

CURRENT PUBLIC POLICY

There is no unified customs policy in Ukraine today, both in terms of a comprehensive vision of the role and position of the Customs Service within the system of government agencies, and in terms of a systematic view of the top priority steps that are needed to simplify procedures in Ukraine.

There is no unified customs policy in Ukraine today, largely as a result of not having the Customs Service as a separate government agency

Provisions in the AA and WTO treaty on simplifying trade procedures³ list fairly clear steps that are needed to improve customs procedures. Unfortunately, Ukraine's Government and legislature tend to operate in a chaotic and unsystematic fashion. The number of legal documents that are not aligned with each other is considerable and negatively affects how these norms are perceived and understood by those who are supposed to apply them. Draft amendments to current regulatory and normative acts are often not harmonised with each other or duplicate each other. This artificially causes delays in the making of important and much-needed decisions.

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Much of this is the result of, in effect, not having a government agency that is responsible for implementing customs policy. Right now, the Finance Ministry is responsible for coming up with customs policy, while implementation is delegated to the State Fiscal Service. The one good thing is that the regulatory and executive functions are separated. But because the SFS combines both the tax and customs components, customs issues have been diluted into fiscal ones. A significant part of the functions of Customs is simply not being carried out, and effectively there is no one to carry out customs-related tasks. This has been going on since 2013, when the Ministry of Revenues and Fees was established on the basis of the State Tax Service and the State Customs Service, and was then reorganised into the State Fiscal Service in 2014.

STAKEHOLDER ANALYSIS

Overall, the streamlining of customs procedures will have a positive impact on everyone involved in foreign trade, as bringing down the costs of the process has a knock-on effect on the entire delivery cycle, starting with the seller and ending with the buyer. According to the Ministry of Economic Development and Trade, more than 14,000 companies exported goods to EU markets in 2017.⁴ Comparatively more benefits should materialise from the general simplifications and reduction of costs of moving goods across the border, including thanks to the institution of the SAD and joining the EU Common Transit System, for small businesses, as their costs are much higher relative to volumes.

SMEs will benefit more from joining the NCTS, and in time will be also able to take advantage of AEO status

³ Ukraine joined the treaty in 2015. http://zakon.rada.gov.ua/laws/show/981_053

⁴ <https://ukr.segodnya.ua/economics/enews/ukraina-serezno-rasshirila-assortiment-svoih-tovarov-v-es-1117702.html>

From the institution of AEOs, however, more benefits will be felt by relatively larger, older companies who can meet the criteria for being granted AEO status and gain the advantages that this status brings. In time, of course, SMEs will also be able to take advantage of AEO status once they have a track record of regular, uniform trade operations.

IMPLEMENTATION DYNAMICS

In order to establish AEOs, in 2016, the Government submitted Draft Law #4777⁵ to the Verkhovna Rada. It was prepared with the participation of profile NGOs and experts, and was presented at a broad range of public hearings for public debate. Meanwhile, the Rada soundly criticised it and in March 2018 returned the draft to the authors for further work. Most likely, it was returned because there was controversy around the criteria for granting AEO status that was aggravated by specific players who have been lobbying the interests of those who will potentially be receiving this status.

For Ukraine to join the EU Common Transit System, the Cabinet of Ministers submitted Draft Law #5627⁶ to the Verkhovna Rada back at the end of December 2016. After languishing 18 months in the legislature, it failed to get the necessary votes to pass in May 2018, for inexplicable reasons.

Even before Draft Law #4777 was officially returned and Draft Law #5627 voted down, a new Government draft, #7473, was registered in the Rada in December 2017, to amend the Customs Code.⁷ This Draft Law was intended to both establish the institute of authorised economic operator (AEO) and streamline transit procedures in Ukraine. In effect, it replaced the two ill-fated earlier drafts. Draft Law #7473 is now waiting to be considered in the Verkhovna Rada.

Relative to the previous two draft laws, the content of most of the rules in Draft Law #7473 had changed little. The most visible change is the new terminology introduced for AEO: the Slavic term for “authorised” has been replaced by a Latinised one. This doesn’t change the essence at all. The transitional provisions of the new draft law do shorten the maximum number of AEO certificates that may be issued in the first three years after the law comes into effect — a restriction that was absent in the previous draft. The new draft also proposes that, for these same first three years, applications for a certificate “to streamline customs procedures” only be considered from companies that both manufacture and export/import the goods involved — a restriction that was also absent in the previous draft law. In addition to this, compared to the previous draft, the number of special short-cuts for bearers of certificates on reliability and security was reduced.

Ukraine is lagging behind its homework schedule because of difficulties with passing the much-needed laws in the parliament

⁵ Draft Law #4777 “On amending the Customs Code of Ukraine regarding authorised economic operators and streamlining customs formalities,” dated June 3, 2016. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59320

⁶ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60887

⁷ Draft Law #7473 “On amending the Customs Code of Ukraine (regarding several issues of excusion in Sec. IV, Ch. 5 of the Association Agreement between Ukraine, on the one side, and the European Union, the European Atomic Energy Community and their member countries, on the other side)” dated 29 December 2017. <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4>:

Given the difficulty with passing the much-needed laws, individual changes to establish SADs in Ukraine were added to a completely different draft law, intended to improve the functioning of the “single-window” mechanism at Customs. The Rada adopted this law on 6 September 2018.⁸ These changes⁹ make it possible for Ukraine to use customs declarations that are in line with the Convention on the common transit system before the Convention itself comes into effect for Ukraine. At the same time, the practical implementation of the necessary information and telecommunication system and the actual use of these kinds of customs declarations remain up in the air.

In short, over the last three years, there has been little to no progress with implementing provisions regarding AEOs, the single administrative document, or joining Ukraine to the Common Transit System. Much of this stalling is because of the lack of a common vision in the Cabinet and the Rada, of what the role and position of a customs service within the system of state agencies should be. The AA itself does not require an independent customs agency in Ukraine, while EU practice varies. This is an example how an institutional issue that is not covered by the AA directly affects how quickly the implementation of its provisions on regulatory harmonisation takes place.

This stalling was caused largely by the lack of the customs service as a separate agency. The issue is not covered by the AA but directly affects its implementation

Finally, in December 2018, the government decided to create a separate State Customs Service. Now the main question is to provide efficient institutional mechanisms for government and civic control over the activities of the new agency.

On 18 December 2018, the Cabinet of Ministers of Ukraine adopted a decision on the reorganisation of the State Fiscal Service of Ukraine and the creation of the State Tax Service and the State Customs Service.¹⁰ These services are formed as separate central executive agencies, whose activities will be directed and coordinated by the Cabinet of Ministers through the Minister of Finance of Ukraine. The competitive selection of directors of these services is to be held within three months after the adoption of this resolution. The Government also decided to establish an inter-agency working group on reforming the system of bodies implementing the state tax and customs policy.

⁸ Law of Ukraine #2530 "On amending the Customs Code of Ukraine and other legislation to institute the mechanism of a "one-stop shop" and streamlining control procedures while moving goods across the customs border of Ukraine, dated 6 September 2018. <http://zakon.rada.gov.ua/laws/show/2530-19>

⁹ New Point 73 of the concluding and transitional provisions of the Customs Code of Ukraine, introduced by Point 40 of Law №2530.

¹⁰ Resolution of the Cabinet of Ministers of Ukraine dated 18.12.2018 No. 1200 'On the Establishment of the State Tax Service of Ukraine and the State Customs Service of Ukraine' <https://www.kmu.gov.ua/ua/npas/pro-utvorennya-derzhavnogo-podatkovoyi-sluzhbi-ukrayini-ta-derzhavnogo-mitnoyi-sluzhbi-ukrayini>

RECOMMENDATIONS

For Ukraine

1. Amend the Customs Code to establish the institute of authorised economic operators (AEOs) and streamline transit procedures in Ukraine by passing Draft Law #7473, which is currently under consideration in the Verkhovna Rada.

2. Systematise efforts aimed at implementing the customs-related provisions of the Association Agreement and simplifying trade procedures. Such efforts, moreover, should be joined with civil society institutions such as business associations that can really assist in making changes happen.

3. Provide for systemic mechanisms for government and public oversight over the activities of the new agency - State Customs Service.

For the EU

1. Activate the provision of technical, organisational and methodological support in reforming customs service and customs procedures in Ukraine.

2. Provide political impulse of readiness for connecting Ukraine into the EU's Common Transit System and recognizing AEOs once Ukraine's procedures match EU rules and regulations.



The International Renaissance Foundation's mission is to foster an open, participatory, pluralist society based on democratic values in Ukraine. IRF is part of the Open Society Foundations network established by investor and philanthropist George Soros. More: www.irf.ua/en



The 'Civic Synergy' project aims at strengthening civic participation in implementation of European integration reforms in Ukraine through development of the Ukrainian Side of the EU-Ukraine Civil Society Platform and the Ukrainian National Platform of the Eastern Partnership Civil Society Forum. The project is funded by the European Union, co-funded and implemented by the International Renaissance Foundation. More: www.civic-synergy.org.ua/en



The Ukrainian Side of the EU-Ukraine Civil Society Platform is part of the bilateral Civil Society Platform established in accordance with the Articles 469-470 of the EU-Ukraine Association Agreement. It is set to exchange views and make recommendations to the Association Council, Association Committee and Parliamentary Association Committee on how to attain the objectives of this Agreement. More: www.eu-ua-csp.org.ua/en