

Customs always right

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Business is hardly to profit from the new Customs Code recently adopted with such a pomp by deputies; the customs, however, is in a lucrative position again.

Importers who placed out their hopes that the Code will ease their burden of customs procedures and limit customs officers' authority are surely to be disappointed. Large importers – that had beaten their path to customs officers' hearts – will preserve their privileged position whereas smaller business is to stay in the crowd of powerless participants of foreign-economic activity (FEA).

Lawmakers planned to issue a direct action law, the one that could confine the power of the State Customs Committee (SCC) and the government to enforce subordinate legislation acts impeding FEA activities. The new Code was assumed to leave SCC responsible only for developing new customs rules and forms of documents. Expectedly, more than a hundred of Code's articles require adoption of narrower orders and SCC's instructions. The Code not being in force yet is sure to be complicated with numerous instructions and acts.

We hold the view that the weakest point of subordinate legislation acts for small importers is the procedure of customs clearance. On the one hand, the Code contains a complete list of documents customs officers are empowered to require from a customs applicant. On the other, the data in the outlined documents is defined by the customs – thus, the procedure of customs clearance may be radically prolonged and get entangled. More so importantly, some Code's articles contradict each other in this issue. For example, it is the customs that sets the list of documents and the requirements to them with the purpose to improve customs procedures (article 63 of Customs Code) – which basically contradicts the principle of direct action law and creates prolific conditions for uncontrolled complication of customs clearance.

The Code preserves the full right of customs bodies to define customs goods cost. The Code misses a chapter dedicated to possible methods of customs cost fixing and articles determining the notion of interrelated persons towards which more complicated methods of customs cost fixing can be applied. It endows customs officers' with the right not only to disagree with the declared cost of goods but also to impose any of existing cost fixing principles. If a customs applicant does not agree with a customs estimate, to complete the customs clearing procedure he is still obliged to transfer extra funds to the customs' account which practically means higher customs payments. Moreover, the new Code does not outlaw customs' use of minimum customs cost rule very popular today that actually contradicts WTO's norms. Consequently, the new Customs Code leaves customs officers free to make decisions defining importer's customs-related expenditure – what is hardly to bring down 'bribe-component' of customs clearing procedures.

The law makers frequently declared that the new Code would shorten customs registration of goods up to three days. However, the law is drawn up in the way to envisage a case when an importer and customs officer do not concur on the customs value of the goods or the customs is not satisfied with the documents provided by the importer, the goods may undergo the customs clearance for uncertain period of time, up till the moment the parties settle the dispute in court or till the moment the importer pays additionally required customs payments. Also, the customs have a right to indefinitely extend the

customs procedures if the goods to be cleared are not sorted out by kinds or items of goods. In all these cases the Code lays down conditions that will force even the most conscientious importer to 'stimulate' the customs officers in order to avoid downtime in customs zone.

Another shortcoming of the Code is that it legitimates presently existing inequality of importers stipulated in by-laws. The Code entitles a customs officer to apply to certain physical entities a simplified customs procedure and customs clearance before submission of customs declarations. However, the Code does not clearly set the criterion that a foreign economic activity participant should meet to be eligible to simplified procedure rule. This rule put in force is highly probable to make advantage of large importers over small and medium importers even more obvious -- resulting in decrease of small importers' competitiveness and increase of markets' monopolization.

Finally, the customs is allotted with not peculiar to it functions, as outlined in the Code, namely, law-enforcement and fiscal control. It contradicts both common sense and the requirements of the WTO. After products' customs clearance its circulation will be monitored not only by taxation authorities but by the customs as well. Pursuing this aim, the State Customs Committee will be entitled to request and receive commercial documents, accounting reports and any other related information as well as to inspect importer's premises. Also, the State Customs Committee will hold the right to carry out customs revisions – general inspection of companies' activities that participate in foreign economic activity. The inspections empower customs officials to enter importers' territory with resistance suppression and open closed rooms. Office of public prosecutor is to be notified of such law acts post factum. Thus, additionally to taxation authorities and law-enforcement bodies, the law being effective creates a new law-enforcement and inspecting body.