

The Verkhovna Rada of Ukraine adopted the new Customs Code

15 November 2011

On 3 November 2011, at the second reading Verkhovna Rada of Ukraine adopted new Customs Code of Ukraine as a whole. The Law is intended to bring the current Customs Code in line with International Convention on the Simplification and Harmonization of Customs Procedures and Customs Convention on Temporary Importation, as well as to implement World Customs Organization's Framework of Standards in national legislation and introduce reforms in Ukrainian Customs Service.

Since lack of direct application provisions is a major weakness of the current Customs Code, the new Customs Code has minimum references to other regulations. In addition, the new version of the Code introduces the following innovations:

- exhaustive list of documents required for customs clearance;
- e-declaration option;
- possibility to amend customs bills upon completion of customs clearance procedures;
- time limit for customs clearance procedures (no more than 4 business hours);
- declaration of goods at any customs office;
- customs office's right to carry out customs check upon completion of customs clearance procedures (i.e. post-audit control).

KPMG specialists believe that the adoption of the new Customs Code of Ukraine is a great advance in solving long-standing issues in Ukrainian customs regulations. However, it should be noted that this document is complicated and requires in-depth study of all provisions to ensure smooth transfer of goods across the customs border.

The New Customs Code of Ukraine: Opportunities and Challenges for Businesses

Ukraine is changing its customs legislation to harmonize it with international customs rules.

On November 3, 2011, Verkhovna Rada (the Parliament) of Ukraine adopted the Law of Ukraine "On Amendments to the Customs Code of Ukraine and Other Legislative Acts of Ukraine" (hereinafter – the "Code") which, upon signing by the President of Ukraine, is scheduled to come into force on January 1, 2012.

The Code is designed to, inter alia, harmonize the customs legislation of Ukraine with the International Convention on the Simplification and Harmonization of Customs Procedures, the Convention on Temporary Admission, as well as to implement the World Customs Organization SAFE Framework for Standards to Secure and Facilitate Global Trade into the national legislation.

This alert presents a short overview of the most significant amendments the Code introduces into the applicable customs legislation.

Customs Clearance

- § Customs clearance of goods will not exceed 4 business hours from presentation of goods and submission of a full set of documents (including the customs declaration) to the customs authorities.
- § State control functions, in particular, sanitary and epidemiologic, veterinary and sanitary, phyto-sanitary and ecologic control, which are currently performed by various state authorities, will be delegated to the customs authorities and be performed according to the "single window" principle in the form of preliminary documentary control.
- § Customs clearance of goods can be carried out at any customs office regardless of the place of registration of the importer of record.

Customs Audits

- § The Code introduces post-clearance procedures for: (i) on-site documentary audits (scheduled and unscheduled); and (ii) off-site documentary audits. Documentary audits are not to take longer than 30 business days. Scheduled documentary on-site audits will not be conducted more often than once a year and certain importers of record, e.g. Authorized Economic Operators, may be audited only once every 2.5 years.

Authorized Economic Operator

- § The Code introduces the concept of a so-called "Authorized Economic Operator". An Authorized Economic Operator is entitled to: (i) use the simplified customs clearance procedures, (ii) automatic application of the general method for determining the customs value of goods (the contract price method) and (iii) carry out specific types of activity, like customs broker activity, opening and operating a duty free shop, bonded customs warehouse, free customs area, temporary storage warehouse, customs cargo warehouse.

Preliminary Decisions and Declarations

- § Under the Code, all importers of record can apply for and obtain preliminary rulings of the customs authorities regarding: (i) the classification of goods; (ii) the confirmation of goods' country of origin; (iii) approval for declaring goods under various customs regimes. Preliminary decisions are valid for up to three years.
- § Importers of record can declare goods before the goods reach the customs territory of Ukraine or before the goods are delivered to the customs clearance office by means of submitting a preliminary customs declaration.

Customs Value

- § The Code provides an exhaustive list of documents to be filed to determine the customs value of goods and the customs authorities cannot request documents that are not on the list. The Code also establishes an exhaustive list of cases when the customs value may be viewed as incorrect: (i) the customs value is computed

improperly, (ii) not all documents, required under the list, are filed, or (iii) a customs audit establishes violations in determination of the customs value.

IP Protection

§ The Code abolishes financial guarantees (security) for the reimbursement of expenses related to the protection of IP rights incurred by the customs authorities.

Import and Mailing of Goods by Individuals

§ The Code increases the limits for duty free import of goods (i) by individuals in accompanied luggage – to EUR1,000, (ii) via international post deliveries and unaccompanied luggage – to EUR300. Goods in excess of these amounts but below EUR10,000 will be subject to import duty of 10% and import VAT of 20%. Goods in excess of the EUR10,000 limit will be subject to general import procedures (customs clearance).

Responsibility

§ The Code establishes criminal, administrative and/or disciplinary sanctions for unlawful decisions, unlawful actions or unlawful failure to act by customs authorities and provides for compensation of the importer of record, among others, for damage caused by such actions or failure to act.

§ The Code decriminalizes the smuggling of goods, except for smuggling cultural valuables, weapons, poisons, narcotics and explosives etc.

§ The Code introduces a procedure for amicable agreement (compromise) between the customs authorities and importers of record in disputes related to alleged violations of the customs procedures, which if successful results in no administrative charges for importers of record.

§ Importers of record are exempt from administrative liability for unintentional mistakes not resulting in unlawful exemption from, or reduction of, customs duties and taxes or non-application of non-tariff regulations.