



TO: Clients and Friends of the Firm
FR: Alex Frishberg, Esq.
RE: Import-Export in Ukraine: Law and Practice

A. The Basics of Ukrainian Import-Export Transactions

As any importer knows by now, in Ukraine import-export is an uneven combination of law and practice. From a legal viewpoint, it's a simple concept: just sign a profitable contract with your Ukrainian partner, arrange to ship your goods to Ukraine, and get paid for it. But there are risks all along, which mercilessly eat away at your profits, so a wise businessman often chooses to "go slow."

The whole trick in import-export transactions is not to get ripped off, because debt collection can be a real pain without bringing forth any results. So going slow is always a good idea if you don't know the market very well you, yet you want to make sure you'll get paid for your goods or services. First of all, you should do a background research on your partner, which will tell you if they have cheated anyone in the past, whether they have debt collection problems, who they really are, what contacts do they have, etc. Second, instead of signing one big contract, enter into several contracts for lesser value, allowing your Ukrainian partner to prove its reliability and trustworthiness.

Soon enough your business may become so wildly profitable that you will need to hire several people, registered in Ukraine as subject of entrepreneurial activity (you can hire them directly as "agents" from abroad and legally effectuate wire transfers into their Ukrainian accounts). Alternatively, you may decide to register a representative office because the volume of transactions requires a much larger presence in Ukraine. If you register a rep. office, you will need to hire an accountant, obtain a legal address (which requires signing a lease agreement) and hire staff (at least one person to head the office). As a rule, there are two types of staff: full time and sub-contractors. Most employers prefer to hire sub-contractors because they will not have to withhold social insurance benefits on the salary.

The above rosy scenario does not address such painful details as customs duties, value added tax (VAT), excise taxes, certification problems, among other issues related to the customs service. The big question for an importing company is how to find solutions if you run into trouble, how to find the right persons, and what arguments you can make in order to persuade customs that you are correct in your pricing. There are no general solutions that work in all cases; there are only particular approaches applicable to specific situations.

B. Estimated Import Price and the Dreaded Tariff Department

The Ukrainian customs is the only authority which decides how much you should pay in customs duties. At the same time, the Ukrainian customs authorities, on the whole, are not interested in their clients. As a rule, they do not want to work with you because they really, truly do not care and have little reason to pretend otherwise. At the same time, Ukrainian law does not speed up the customs because it is also not on the side of importers and exporters. For all these reasons, it is better to foresee and prevent any problems rather than face them unexpectedly, when you are at the customs terminal, forced to pay penalties to the trucking company because the goods cannot be moved to the storage, and more penalties to your customers.

The most painful topic for any importer is how the import price is estimated at customs. Importantly, there are no guaranteed minimum prices in the customs database, and there are no guaranteed medium prices. The customs database is split into regional databases and databases of each customs terminal. In all databases, customs independently makes checks and they remove the low values. The customs database will analyze your price by taking the range based on the HS code (Harmonized Commodity Description and Coding System) in your declaration from the minimum to the maximum, and it discards the minimum and maximum positions. By default, the customs will always apply the medium value.

If your actual price is higher than the middle value, you will not have any problems at the customs terminal. If your price falls between medium and minimum value under the database, it is still in the discretion of the customs inspector to question your price, but you will need to

make sure that price is supportable. If, however, the price comes in lower, then the customs official can refer it to the Tariff Department, which is a special department that can define the customs price.

The bad news is that the Tariff Department is not going to make your life easier because the efficiency of their work is measured in the percentage of the customs declarations they increase. The good news is that if you are still within the customs database range, the Tariff Department may well confirm you price. They have a wider range of measures than the customs inspectors and may look for similar roots with other such items (e.g., Department inspector may compare prices under the Tariff Code and the country of origin; thus, if you have an origin in China, the Department inspector could compare prices with India or Malaysia). The big question is: how do you persuade them?

Importantly, the customs database is separate for each customs terminal. So if you are registered in Kiev at customs terminal number one, then the customs inspector will check your price under that terminal by product HS code, by the country of origin, by price per kilo. They will only analyze by price per item under a few product codes. In contrast, the Tariff Department looks into the customs database for the region. In other words, it will analyze the price for Kiev and Kiev regional price, but they will not rely on Odessa shipments, Dnepropetrovsk shipments, etc.

Note that there are all kinds of “additional documents” that can assist in proving the customs price. The main issue is that any list of these so-called “additional documents” is not final, and you can submit a list of other documents that will prove the price (invoice from your supplier with an export declaration together with a calculation of the price, confirmation of from the Ukrainian Chamber of Commerce, etc.) Officially, the Tariff Department has ten (10) days to evaluate your documents.

If you decide to officially fight against the Tariff Department, you may request a list of documents that they are demanding from you. This does not give you a guarantee, but it brings you one step closer to escalating the problem to a more senior authority. You may start with the terminal Tariff Department, then proceed to the Regional Tariff Department, and finally to the



State Tariff Department. And the more documents you have from the customs, the better are your chances of succeeding.

The more you appeal to higher customs authorities, the more it is likely that you will get an answer. But do not stop there. There are opportunities to be a member of an association like European Business Agency, to use your Embassies, to use any other public organization that will support you before the customs. Take with you foreigners who speak English, because on the territory of the former Soviet Union people who speak a foreign language get more respect from the customs. And the message should be the same: your company is transparent, it's constantly increasing its volumes so that customs has a possibility to gain more revenue.

C. Choosing "Poor" Terminals

When you have consistent trouble at your customs terminal, you need to find a solution. First, you need to understand the reason for your trouble. Maybe this customs terminal is "overfed" with customs duties, and does not want anymore clients? If so, you may wish to choose a "poorer" terminal.

For this reason, some importers move to other customs posts. If you are registered in Kiev, you can move to another customs post. For example, in Kiev clients are moving around to different customs terminals because one day customs terminal number three is good for you, but another day customs terminal seven is better for you. If you find that you cannot go through a particular customs terminal, then you may turn to another customs terminal. Try to find a terminal which will listen to you and ask them to help you change your customs accreditation card.

For your information, in Kiev there are two customs posts: Kiev Regional and Kiev District Regional. Moving to another customs terminal entails agreeing with the terminal to which you will move. The one reason which still works is that you need to enter into an agreement with a customs bonded warehouse in the area of the customs terminal where you want to move. Remember, however, that this is only a partial solution because sometimes you cannot do anything.



Today, some importers have discounts (either because due to exceeding of volumes or due to global crisis) which is a problem because their price is lower than their own price was one month ago. If your situation is similar, and you know that in one month you will have a discount, please write a letter to the customs, explaining why you have it and naming all the benefits for customs in collaborating with your company. The letter should state that you are a very reliable import company and you do not have any problems (protocols) with the customs before.

In conclusion, there are no wrong shipments, only wrong documents. If there are mistakes in the documents, or if one shipment does not correspond with the documents, your company will face a risk of paying too much money. You should always have proper documents, know your shipments, know how and why the price is set, etc. If your documents are clear and your price is reasonable and well-substantiated in advance, you will have a minimum risk of interfacing with the dreaded Tariff Department. And don't rely on the system; you should rely more on the people who run it.