

THE IMPLEMENTATION OF THE EU STANDARDS TO THE UKRAINIAN CUSTOMS LEGISLATION.

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Abstract

The article contains the consideration of preconditions and stages of approximation of the Ukrainian customs legislation to the EU legislation. It describes the main legal acts and changes in legal regulation of the tariff regulation that were made toward the harmonization of the Ukrainian legislation to the European law. The main problems that obstructed this process was named indeterminate of time and level of harmonization, imperfect procedure of passing law that contains EU standards in the Parliament.

Key words

approximation, customs legislation, customs value, import/export duty.

1. Background.

The objective of this article is to discuss issues of approximation¹ of Ukrainian legislation to that of the EU. The first part of the article dealt with main conditions of this process. Analyses of each stage of the harmonization and its legal ground will be given in the second part of the article. In the final part of the article will be found out some problems of the approximation process that has occurred.

The need and necessity of harmonization of the Ukrainian law with the European law was declared at the beginning of the reconstruction of Ukrainian state. Ukraine signed the Partnership and Cooperation Agreement (PCA) with the EU in the summer of 1994. This document proclaimed a strategic goal of European integration for Ukraine, meaning full

¹ The words “approximation”, “implementation” and “harmonization” are used as synonyms in this article.

membership in the EU. Ukraine has committed to approximate its legislation in 16 key sectors. One of this sector is customs regulation.

The EU Council considers the Partnership and Cooperation Agreement to be a significant achievement. Ukraine was the first of the Newly Independent States to sign such an agreement, thus marking the EU's and Ukraine's wish to strengthen cooperation. Through macro-financial assistance, the Tacis-programme, as well as through bilateral programmes, valuable support is provided by the EU to help Ukraine in her transition and reform process².

First documents dealt with the customs regulation were based on the Soviet legislation. The Customs Code of Ukraine on 1991 was an adopted version of the Customs Code of the USSR on 1991. The adoption of the Customs Code of the USSR on 1991 was made in conditions of liberalization of the most strict administrative regulations of the economy in the USSR, in particular the foreign trade. That document and also the Customs Tariff of the USSR went into force on 01.07.1991 and declared the independence of the republics to define the customs policy of the Union by its deputies to state bodies³. Besides that the Customs Code of the USSR was approved by the WCO, it was far away from the European standards, especially in the tariff regulation.

2. The stages of approximation of the Ukrainian legislation to the EU standards.

The track record of the PCA implementation has been mixed. On the one hand, in line with its PCA commitments, the Government implemented a number of steps to liberalize its trade, especially after 1998 when PCA went into force. On the other hand, EU experts have identified a number of remaining violations of the PCA, such as quantitative limitations on exports and imports, discriminating advantages to specific local producers, excessive certification charges for imports, etc⁴. All these problems have its effects on the legislation process and the quality of the legislative adoption.

² art.4 European Council Common Strategy of 11 December 1999 on Ukraine (1999/877/CFSP), Official Journal, 331, 23.12.1999, p. 1

³ Wider: Pavlov A., Mytni organy v Ukraїni u XX st., „Visnyk Akademij mytnoj sluzhby Ukraїny”, 1999, Nr 3, p.55-63; Rysič Ĵ., Mytna sprava v istorij ukraїnskogo konstitucionalizmu., „Visnyk Akademij mytnoj sluzhby Ukraїny”, 1999, Nr 3, p. p.52.

⁴ World Bank. Ukraine Trade Policy Study (In Two Volumes) Volume II: Main Report. Report No. 29684-UA November 16, 2004, p.154

The whole period of the approximation of the national legislation to the EU legislation can be divided into some stages depending on the kind of legal norms to be approximated.

The first stage began at 1991 and lasted till 1998. This was the stage when basic rules and principles were implemented into the national customs legislation. The Customs Code was the first document dealing with the customs regulation. There was the only article that set up the obligation of paying of the customs duty on the basis of the Customs tariff. There were no document that determined the customs value of goods. The Law On Unified Customs Tariff of Ukraine was adopted on 05.02.1992 and determined definition, kinds and procedure of payment of customs duties.

The first document dealing with the definition of the customs value and the methodology of its calculating was drawn by the supreme organs of government only in 1998⁵. It defined customs valuation system which is based primarily on the transaction value of imported goods and also on the value of identical or similar goods. There were no other methods implemented in Ukrainian legislation.

This year can be determined as the beginning of the second stage of implementation. This year went into force PCA. The liberalization of foreign trade became more active, the customs legislation became to harmonize under the control of the EU and national experts⁶.

The next step of approximation of Ukrainian customs legislation to EU one was the adopting of the Customs Code in 2002 (went into force on 01.01.2004). This legal act had norms dealing with the customs value. Those norms were based on article VII of General Agreement on Tariffs and Trade. This document mainly agreed with the European Customs Code in part of definition of customs valuation system. It has implemented all methods and principles of customs valuation of goods.

In 2004 the The Supreme Council (Verkhovna Rada) passed the Law of Ukraine "On National Programme of Approximation of the Ukrainian Legislation to the Legislation of the European Union" for fulfilment of which the Cabinet of Ministers approves annual action

⁵ Decree of the Cabinet of Ministers Nr 1598 „Porâdok vyznačennâ mytnoj vartosti tovariv ta inšyh predmetiv v razi jh peremiščennâ čerez mytnyj kordon Ukraïny” on 05.10.1998, „Oficijnyj visnyk Ukraïny”, 22.10.1998, Nr 40, p. 41

⁶ http://me.kmu.gov.ua/file/link/38848/file/WTO_galuz.doc, 27.05.2007

plans. Such plans are being adopted since 2005, each of them contains norms of customs legislation that are necessary to be changed.

One of the problematic questions dealt with the approximation of Ukrainian law to European standards was the level of customs duty protection. There was the Concept of transformation of Unified Customs Tariff of Ukraine on 2000-2005 that aimed the reducing of customs duties by some levels. The final and most important reducing of rates of import duty was in 2005 when almost 90% of import duties corresponded to Ukrainian liabilities⁷.

Nowadays the level of customs duty protection in Ukraine is close to the level of such protection in the EU. The simple average of import duty in Ukraine is 6,8% and in EU is 5,4%. The amount of non ad valorem duties in Ukraine is 3,9% and in EU is even higher - 4,8%. The negative fact is that there is a high level of world's peaks in import duties of Ukraine. The level of customs duty above 15% is 6,4% in Ukraine and 4,7% in the EU. Also it's worth to note that many experts estimate the weighed average duty on Ukrainian import goods at the level of 1,5-2% because the main part of goods gets to the country illegally⁸.

The long road of approximation of the import duties level imposed on agriculture goods has to be passed. The simple average on this category of goods in Ukraine was 22,3% and in the EU was 15,4% in 2006⁹.

The question of tariff reduction in Ukraine was also obligatory to agree before the access to the WTO. The EU recognises the fundamental role that WTO membership can play in fostering Ukraine's economic reforms¹⁰. One of the most problematic question today is export duties that are applying in Ukraine. The applying of export duties are forbidden by the The General Agreement on Tariffs and Trade (GATT) 1994.

However the Ukrainian government and the Parliament achieved positive results in

⁷ Alino J., Romanenko S., Pokryška D., Struk O., Vstup Ukraїny do SOT ta jogo naslidjy dla promyslovogo kompleksu m. Kyjeva. Analitical review.// www.niss.gov.ua/Table/28112006/andopov.htm, 27.05.07; Bereznij A., Ukraїnska ekonomika vže v osnovnomu funkcionuje v umovah členstva u SOT, <http://www.korespondent.net/main/45069>, 08.12.05

⁸ Lytveniuk O., Perspektyvy 2007 roku vpyrautsa v SOT: Vitčyzniane mašynobuduvannia možut „zavaljty” inozemnymy propozyciâmy.// www.ria.ua, 24.01.2007

⁹ WTO, World trade profiles 2006, 2007, http://www.wto.org/english/tratop_e/tariffs_e/tariff_profiles_2006_e/tariff_profiles_2006_e.pdf, 26.09.2007

¹⁰ http://ec.europa.eu/trade/issues/bilateral/countries/ukraine/index_en.htm, 10.10.2007

preparation of the Ukrainian membership in the WTO. By the end of 2006 the Ukrainian government signed all bilateral protocols on mutual access of goods and services (apart from Kyrgyz Republic) with members of the WTO working group on accession of Ukraine. It means that the Ukrainian government agreed 98% of national consolidated tariff nomenclature with other countries – WTO members. Besides tariff reductions, the Parliament adopted a package of laws, which allowed the liberalization of other branches in 5 years time after accession into the WTO. Although some experts say that Ukrainian accession to WTO is delayed because of political aspect¹¹.

The third stage of the approximation has began in 2006. There were implemented some additional obligations (the base of customs tariff regulation – the customs value and customs tariff were established earlier). Next steps were done toward the approximation of the procedures of customs valuation, examination of goods for customs purposes and also improving system of appealing of customs decisions. Last changes were done in Ukrainian Customs Tariff that provided to implementation of Harmonized Commodity Description and Coding System 2002 to the national law in 2007.¹²

3. The problems of approximation.

The PCA express intentions rather than explicit obligations. There is no time barriers or the level of the harmonization of the nation legislation with the EU legislation established. Practically this makes all process of harmonization dependent on the interests of politicians in it success.

The second problem is that Ukraine is not able to watch all changes in the EU legislation constantly. The EU law is mobile and is developed according to the requirements of the European realities. The EU institutions are not obliged to inform Ukraine of amendments in Community law. Indetermined level and time of approximation determine the endlessness of such process without any consequences for both sides. The inexact translation can deep that problem. That will provide to the differences in implementaion some legal norms.

¹¹ SGPE: Economic Transformation in Eastern Europe (2006-7), March 2007: Trade Policy and FDI in Transition Economies Professor Paul G. Hare, www.sml.hw.ac.uk/ecopgh

¹² <http://www.customs.gov.ua/article.jsp?cataloguerid=6093&contentobjectid=10075>, 10.10.2007

The other problem of harmonization is in Ukrainian procedure of passing the legal acts. The institutions that are involved in the process of harmonization include the Supreme Council, the Cabinet of Ministers, the Ministry of Justice, the Ministries and other central bodies of the executive power, the Coordination Council for the Adaptation of Ukrainian legislation the EU, the European Integration Committee of the Parliament. The existing procedure of adopting laws does not specify the competence of the European Integration Committee in the Parliament. The opinion of this body is obligatory only up to the moment of consideration of the draft in the first reading. There is no mechanism for analysis of compliance of draft laws with *acquis communautaire* at the second and the third reading in the Parliament. And there is no mechanism, which would prevent adoption of a law by the Parliament, which would contradict the EU legislation¹³.

4. Conclusion.

There were three stages of the implementation. The first (1991-1998) can be named the introduction time for implementation. This period the basic norms and main definitions were introduced to the Ukrainian customs legislation. Ukraine had no its own experience in customs regulation and had to work up the legislation in this branch. The second stage (1999-2005) is characterized by the implementation of the typical rules and methods that are used in the EU. The definition of customs value, its elements and methods of customs valuation were included to the national legislation in accordance with the EU standards. The last stage (2006-now) is dedicated to the implementation of new rules concerning the classification and methods of valuation that are applied in the EU and other countries.

There are some unresolved problems concerning time frames, level of harmonization and the procedure of passing law that contains EU standards in approximation process. The negotiation and establishment of detailed information dealt with time frames and legal norms that are necessary to be approximated would raise the responsibility of its executing.

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