



TO: Clients and Friends of the Firm
FR: Frishberg & Partners
RE: Customs Bonded Warehouses

I. Introduction

All countries try to monitor and control import-export flows that pass through their borders. While some European countries have significant experience in these activities, contemporary Ukraine is continually developing its customs control systems (and supporting legislation).

As elsewhere, the Customs Service of Ukraine (“Customs Service”) plays the key function in monitoring goods during their voyage through the Ukrainian borders. Due to the importance of controlling the flow of goods into and out of the country, Ukrainian legislators drafted provisions governing Customs Warehouses, and included these provisions in the Customs Code (dated July 11, 2002 effective January 1, 2004). A new Customs Code was widely anticipated but the practical application of its provisions is still a thorn in the side of Ukrainian customs officials.

Importantly, the Customs Code distinguishes between ordinary customs warehouses and so-called “*Customs Bonded Warehouses*.” Ordinary customs warehouses are defined as specially-equipped buildings for the storage of goods and other items, which are owned and used by the Ukrainian Customs authorities.

The following are subject to mandatory storage in ordinary customs warehouses:

1. Goods which are prohibited from passage into Ukraine due to established bans or restrictions on their importation into Ukraine or transit through Ukrainian territory, provided that such goods will not be exported from Ukraine on the same day of import;
2. Goods which are subject to duties and customs fees during importation into Ukraine, provided that the said duties and customs fees have not been paid and the importer has no documents evidencing deferred or installment payments thereof;

3. Goods which before the expiration their term of temporary storage by an enterprise were not declared by the owner or its authorized person/body in accordance with a customs regime;
4. Goods which were declared in a regime of abandonment in favor of the state.

The Customs Code also allows any subject of entrepreneurial activity to own a so-called “customs bonded warehouse,” provided such entity complies with the requirements of Ukrainian legislation, receives the proper license to open and operate a customs bonded warehouse, and complies with the Regulations on Opening and Operating Customs Bonded Warehouses.

Below, we focus on the peculiarities of customs bonded warehouses in Ukraine.

II. Discussion

Regulation No. 592, aptly entitled “On Approval of the Regulation for Opening and Operating Customs Bonded Warehouses” (as lastly amended on July 21, 2005), subjects a customs bonded warehouse to a special customs regime, whereby goods imported into Ukraine are kept under customs control without imposing any customs duties and other taxes thereon. Further, non-tariff regulations and other restrictions are not imposed during the storage of such goods. If the goods are to be exported from Ukraine, such goods are kept under customs control from the beginning of their clearance until their actual exportation from the territory of Ukraine.

Ukrainian legislation provides for the following two (2) types of customs bonded warehouses:

1. open customs bonded warehouses, which are used for the storage of goods by any person, and
2. closed customs bonded warehouses, which are used for the storage of goods that belong strictly to the owner of such warehouse.

The Cabinet of Ministers of Ukraine establishes the state fee for a license to open and operate a customs bonded warehouse. Currently, those entities who wish to receive such a license must pay two thousand five hundred US Dollars (\$2,500.00) in Ukrainian Hryvnias at the exchange rate of the National Bank of Ukraine as of the date of filing the relevant documents with the Customs Service of Ukraine.

III. Technical Requirements of a Customs Bonded Warehouse

Any duly equipped buildings or other premises designated for storage within the customs warehouse regime can serve as a customs bonded warehouse. Notably, the territory of a customs bonded warehouse must be fenced in, and the following facilities must be available:

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