



TO: Clients and Friends of the Firm
FR: Frishberg & Partners
RE: Import-Export Legislation

I. Introduction

Since declaring its independence in August of 1991, the Ukrainian government has struggled to establish a legal system to accommodate its entrance into the global commercial economy. For instance, commercial structures are addressed in such legislative acts as the Civil and Economic Codes and the Law “On Economic Associations.” In the case of joint stock companies, the Law “On Securities and the Stock Exchange” and relevant Ministry of Finance instructions will also apply.

Foreign investment is also governed by the Laws “On the Protection of Foreign Investments in Ukraine,” “On the Foreign Investment Regime,” “On Foreign Economic Activities,” “On Privatization of State-Owned Property,” “On Restoration of the Solvency of a Debtor or Recognition of a Debtor as Bankrupt,” and “On Secured Transactions,” as well as the Ukrainian Land Code. In the case of privatization, additional SPF instructions must be analyzed. Other laws also impact foreign investment, such as taxation, currency and import-export regulations, and intellectual property laws.

Therefore, it is incorrect to say that Ukraine’s legislation is not functional. Admittedly, some provisions in Ukrainian legislation are ambiguous, and sometimes contradictory, while others are plainly unenforceable. Nevertheless, a jigsaw puzzle-like legislative system exists and, as dysfunctional as it may be, deserves the analysis contained herein.

By way of introduction to the peculiarities of Ukrainian commercial law, we begin with an overview of foreign economic activities and, specifically, import-export under Ukrainian legislation.

II. The Law “On Foreign Economic Activities”

Virtually any activity contemplating foreign participation is designated as “foreign economic activity” and is therefore subject to a specific legislative regime described in the 1991 Law “On Foreign Economic Activities,” No. 0959. Unfortunately, this law is clearly and undeniably outdated. Drafted and enacted in the nostalgic pre-hyper-inflationary Soviet economic era, when the ruble zone provided Ukraine with necessary economic support, much of this antique law has

been supplemented or amended, either legislatively or in practice. The unaffected remainder does not reflect the substantial changes in commercial legislation that have occurred since Ukraine's independence. Nevertheless, it is still technically effective and, therefore, deserves at least a superficial review.

In its heyday, this law encompassed all types of "foreign economic activities," including the import and export of goods, works, services and capital; servicing of foreign businesses; scientific activity and training of personnel; international financial operations and securities trading; credit and financial operations and the creation of corresponding institutions; joint entrepreneurial activity; wholesale, retail and consignment trading of foreign currency; leasing operations; currency trade and sale through currency auctions, currency exchanges and inter-bank currency markets; contracts between Ukrainian citizens and foreign legal entities; employment of foreigners in Ukraine, etc.

Regardless of the self-proclaimed breadth of its jurisdiction over all transactions involving foreign entities, in reality the law "On Foreign Economic Activities" primarily serves as a basis for effectuating import-export operations. Immediately below, we summarize the various facets of Ukrainian import-export legislation, as reflected by the supporting laws which accomplish what the law "On Foreign Economic Activities" never could: namely, provide a functional structure for standard import-export transactions.

III. Import-Export Contracts

According to the antique Law "On Foreign Economic Activities," the single most important rule is that a foreign economic (or "international") contract must be in written form. Order No. 201 "On Approval of the Regulation on the Form of Foreign Economic Agreements (Contracts)," issued by the Ministry of Economy and European Integration on September 6, 2001, provides the guidelines regarding the material terms and conditions of foreign economic contracts, taking into consideration the relevant provisions of international agreements to which Ukraine is a party. Also, under the Ukrainian Civil Code, there must also be an agreement between the parties as to the material terms in a contract, such as quantity, price, etc.

Until the end of October 1999, it was well-settled that one of the key requirements for the execution of agreements with Ukrainian companies was the appearance of two signatures on the behalf of the Ukrainian party to such agreements. This requirement was repeatedly stated in the Law of Ukraine "On Foreign Economic Activities," as well as the above-mentioned Regulations. However, on October 21, 1999, the Parliament adopted the Law "On Amendments to Article 6 of the Law of Ukraine 'On Foreign Economic Activities,'" No. 1182-XIV, which specifically excluded the dual signature requirement for foreign economic agreements.

No additional permissions or registrations of foreign contracts are usually required by the state

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