



TO: Clients and Friends of the Firm
FR: Vladimir Lukovich, Esq.
RE: Ukrainian Import-Export Contracts,
Tariff and Non-Tariff Limitations

As in the old, Soviet days, today's Ukrainian import-export contracts require adherence to a special form that must contain specific requirements. If these requirements are not met, the contract may be deemed invalid. First, an import-export contract must be in writing with full disclosure of the parties, including their address. The contract should also indicate the individuals with the authority to sign on the behalf of each party, and the basis on which such representatives have obtained their authority (by power of attorney or via company's charter).

An import-export contract should contain the precise legal obligations of the parties. For example, if one party is purchasing goods, the contract cannot refer to leasing of such goods. If we have a sale-purchase agreement, then we cannot have references to exchange or barter. Of course, all of the fundamental provisions should be set forth, such as the goods/products being purchased, quantity, quality, price, time and basic delivery terms, mechanism of payment, etc. Note that the basic delivery terms should, at the very least, correspond with INCOTERMS 2000. Whereas else in the world the contracting parties have the option to incorporate them, in Ukraine the use of INCOTERMS 2000 has become part of the law itself, and is mandatory.

After the import-export agreement has been drafted and signed, the importer will face the challenge of delivering the goods to the buyer. In Ukraine, both tariff and non-tariff limitations will apply, as described immediately below.

(a) Tariff Limitations

Tariff limitations include customs duties for each type of imported good/product. Fortunately, Ukraine has complied fully with the main rule set forth by the World Trade Organization (WTO) that customs duties should not exceed 15%. In fact, after Ukraine entered the WTO, the customs

duties became even lower. For instance, in light or consumer industry, the average customs duty was around 6.5%, but now it averages 5.5% according to the Ministry of Economy.

Another tariff limitation is the customs fee, which is about 0.2% from the customs duty. Since Ukraine is now subject to WTO rules, the customs fees have been decreasing continually, and are not approaching zero. The next limitation is excise tax, which is applied only to luxury items including gold, tobacco, automobiles, etc.

Arguably, value added tax is the most controversial tax primarily because (a) it is taken not only from the customs duties, customs fees and excise tax, but also because (b) it is seldom returned (as was originally designed by laws). This is by far the most scandalous tax among the business community, both foreign and local, but nobody can do much about this pathetic situation.

(b) Non-Tariff Limitations

As in other civilized parts of the world, non-tariff limitations include licensing, quotas, anti-dumping procedures and so-called “technical limitations.” Licensing requirements and quotas are set each year for certain goods in relevant resolutions of the Cabinet of Ministers of Ukraine. With reference to import, for example, this year quotas and licensing were set for raw materials, gold and silver. Importantly, international agreements to which Ukraine is a party have a large impact on licensing and quotas. For instance, dual application (military and civilian) products may be subject to licensing and quotas, especially to countries barred from gaining access to such technologies.

In come cases, licensing and quotas apply to products that are considered to be subject to dumping (anti-dumping limitations). There may also be established special “dumping” duties imposed on certain goods. This, however, is a very long and case-specific procedure that is beyond the scope of this brief overview.

The last non-tariff limitation is the so-called “technical limitation,” which includes various certifications. For instance: veterinary, sanitary, ecological, energy savings, etc. Certification is



a state requirement, aimed at product safety and promoting product use/operation rules. Certification is usually carried out by state enterprises, which work within the UkrStandard system. An entire consignment of goods is usually certified, but production may be certified as well (for goods that are manufactured serially). If you know the customs tariff of your product, you will know the restrictions applied to importation of such product, if any, the exact documents necessary to import and use such product in Ukraine, etc.

Please note that depending on your goods you may not need an enormous range of permission documents, which are often difficult to obtain. In our experience, regular problems occur with the certification procedure in Ukraine, usually because the enterprises within the UkrStandard system are archaic and often do not have the necessary equipment for quick and efficient certification. Sometimes it takes weeks or months to obtain the necessary documents in proper form, which involves additional costs, efforts and frustrations.

In conclusion, the law governing import into Ukraine is fairly simple and straightforward. The biggest problem is the customs officials' interest to increase the customs price as much as possible. In reality, they are given a financial plan, which contains the amount of money they must contribute to the state budget, so they're just doing their job. On a more positive note, any losses are compensated by Ukraine's comparatively low customs duties.