

C. Sowinski, Customs Regulatory Affairs
Manager Europe DHL Express

THE ANALYSIS OF CUSTOMS PROCEDURES IN UKRAINE IN THE CONTEXT OF SIMPLIFYING TRADE TERMS

Проведено аналіз сучасного стану справ в Україні щодо організації митних процедур у контексті спрощення умов світової торгівлі, реалізації прийнятих Україною зобов'язань. Розроблено такий підхід, який можна використати як рекомендації для порівняння наявних в Україні проблем щодо спрощення митних процедур.

Ключові слова: митні процедури; торгівля; бізнес; Світова організація торгівлі; Всесвітня митна організація.

In this article the author analyses the current state of organizing customs procedures in the context of simplifying world trade terms and implementing liabilities taken by Ukraine. The author developed the approach that can be used as guidance to compare problems which exist in Ukraine as for simplifying customs procedures.

Key words: customs procedures; trade; business; World Trade Organization; World Customs Organization.

Problem formulation. On August 1, 2014, Ukraine has notified the World Trade Organisation's (further as 'WTO') Preparatory Committee on Trade Facilitation established under the General Council on its commitments under the WTO Agreement on Trade Facilitation (further as 'the ATF' or 'the Agreement') [1]. The notification stated that the following provisions will be implemented in Ukraine upon entry into force of the Agreement: Art. 1.1 'Publication'; Art. 1.2 'Information Available Through Internet'; Art. 7.1 'Pre-arrival Processing'; Art. 7.4 'Risk Management' (except for Art. 7.4.1, Art. 7.4.2, Art. 7.4.3); Art. 7.7 'Trade Facilitation Measures for Authorized Operators'; Art. 7.8 'Expedited Shipments'; Art. 7.9 'Perishable Goods' (except for Art. 7.9.1, Art. 7.9.2); Art. 8 'Border Agency Cooperation'; Art. 9 'Movement of Goods under Customs Control Intended for Import'; Art. 10.8 'Rejected Goods' (except for Art. 10.8.2); Art. 10.9 'Temporary Admission of Goods/Inward and Outward Processing'; Art. 11 'Freedom of Transit' (except for Art. 11.3, Art. 11.4, Art. 11.5, Art. 11.6, Art. 11.7, Art. 11.8, Art. 11.10).

Through the notification, Ukraine committed itself to the basic trade facilitation principles, namely: enhance the movement and clearance of goods through borders and to improve the efficiency in which goods are cleared by Customs. Till their inclusion in the ATF, such principles have been expressed by means of the WCO Guidelines for the Immediate Release of Consignments by Customs (further as 'WCO Guidelines' or 'the Guidelines') [2]. Adopted in 2003 and revised in 2007, the Guidelines reflect the fundamental principles regarding immediate release of imported goods, repeated in Article 7.3.1. of the ATF, that the goods should be released once Customs is satisfied that they are in compliance with basic requirements and that final determination of duties, taxes and charges can be done afterwards. This process greatly facilitates customs control, release and subsequent onward movement of the goods.

© C. Sowinski, 2014

Through this, the Guidelines are considered by DHL Express as a very important trade facilitating tool, greatly increasing speed of customs clearance through streamlining customs procedures. As such their implementation may greatly contribute to lower costs of trade and thus overall welfare (the OECD estimates that for every one percent of reduction in global trade costs, worldwide income goes up by USD 40 billion of which 65 % would accrue to developing countries; the potential cost reduction of trade facilitation reform is almost 14,5 % for low income countries, 15,5 % for lower middle income countries and 13,2 % for upper middle income countries) [3].

The ATF, adopted 11 years later in 2014, generally repeats the idea that formed the Guidelines in the above respect (see for instance Article 7.1 of the ATF). During these 11 years, many countries have been working on actual implementation of the principles of the Guidelines, Ukraine among them [4].

Purpose of the article. This paper aims to present the current state of application of the Guidelines in Ukraine with a view to providing for an initial step into the trade facilitation mapping exercise as defined in the UNECE Trade Facilitation Implementation Guide, which may be useful for the country looking to implement the provisions of the ATF in the future [5].

In this respect, information presented below bases on recent DHL Express research aimed at revision of the state of application of the WCO Immediate Release Guidelines in the world [6]. This research led to the establishment of an index called 'DHL Express Immediate Release Index', which rates 160 countries and territories of the world with the same approach against 'Ideal WCO Member' (i. e. a target country that has fully implemented all provisions of the WCO Immediate Release Guidelines thus scoring 100 % in the Index). In such a way, it shows how far the given country or territory deviates from the target Member and how much – in terms of trade facilitation – is still to be achieved there.

Given the above, it is possible to provide for a gap analysis between the current state of affairs in Ukraine and its ATF commitments. By doing so, one would be enabled to point out which of the areas of the ATF are in fact already applied in practice as well as to elaborate which of them can be implemented without major investment in customs capacity. Thus, for the needs of this particular research, an approach is adopted whereby the WCO Immediate Release Guidelines are used as a reference for comparison of trade facilitation measures existing in Ukraine. It allows for stock taking of topics, which are crucial for the assessment of Ukraine's alignment with WCO Guidelines. This leads to a comprehensive and detailed view, still, however, limited to the scope of activities related to customs law which are performed by DHL Express on the territory of the country.

Main material. State of WCO Guidelines application in Ukraine. The current state of WCO Guidelines application in Ukraine, assessed by DHL Express based on its practice, shows that the Guidelines are applied in Ukraine to a limited extent: the overall score comparing to the 'Ideal WCO Member' is only 55 % on average.

Score of the country as a percentage of the 'Ideal WCO Member' score in relation to all questions put forward in the DHL Immediate Release Index is depicted below. Results are shown as a percentage of the 'Ideal WCO Member' score (100 %) in each of the Domain of the Guidelines. Consequently, the closest to the middle of the graph (fig. 1), the lower the level of implementation of the Guidelines' application in the field covered by given question.

Discussed in the context of the ATF, the WTO Members commitments provided for under the Agreement, are virtually pointing towards the same as the Guidelines: "slash red tape and corruption at sea ports and cargo airports and thereby dramatically reduce the time and expense for merchandise to enter or leave a country [7]. Their purpose is to increase Customs efficiency and effective collection of revenue through measures like transparency in customs practices, reduction of documentary requirements, and processing of documents before goods arrive [8].

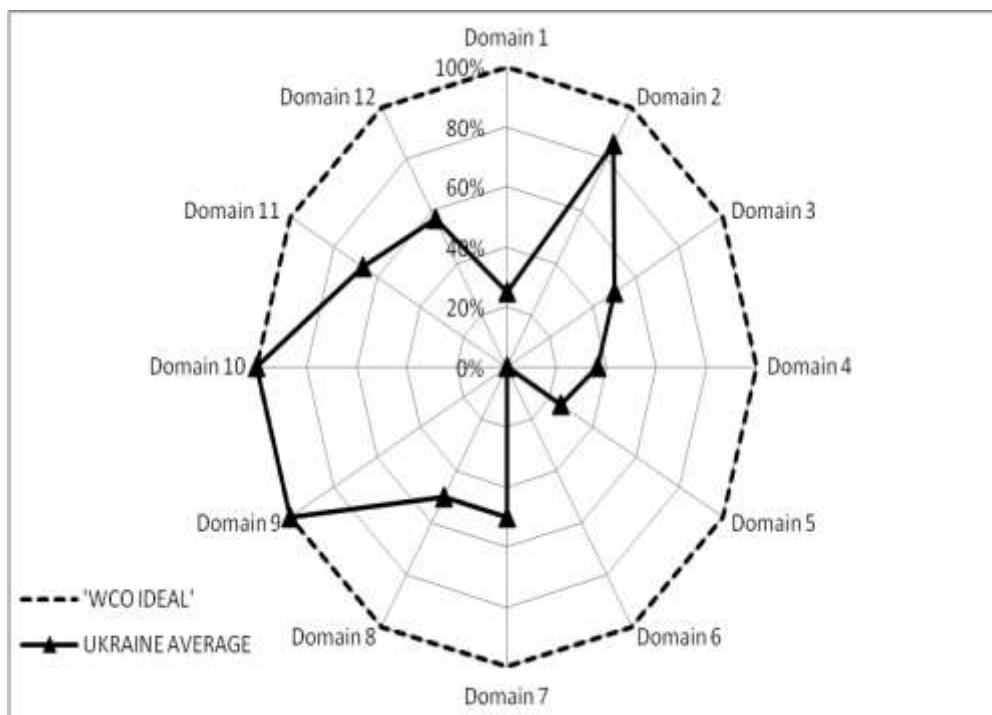


Fig. 1. Application of the WCO Guidelines as % of 'Ideal WCO Member' in Ukraine (by Domain)
[source: own calculations]

In this regard, areas (Domains) with the lowest scores in Ukraine are related to:

- a) customs clearance of WCO Guidelines Category 1 shipments ('Correspondence and documents');
- b) provisions of the Guidelines regarding 'Information and documentation requirements to facilitate and expedite immediate release/clearance of consignments', i. e. pre-advise information submitted to Customs in order to begin processing prior to the arrival of the goods with a view to expediting the release of goods upon arrival.

In relation to point a) above, it seems that – although correspondence and documents are free of duty and taxes on import to Ukraine – they are still subject to regular customs control, which may be contrary to the Guidelines' provisions. In relation to point b) above, no data on imports is currently accepted (and processed) by Customs in Ukraine in advance of actual arrival of consignments, what is not in line with the Guidelines' intentions expressed by the basic idea (repeated in Article 7.1.1 of the ATF), that there should be "procedures allowing for the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival". In practical terms this assumes that an advance notice of intention of release of goods is granted after the pre-arrival data submitted by the trader is reviewed by Customs, i. e. after the Customs administration have carried out their risk assessment on the consignment. This process greatly facilitates customs controls, followed by release and subsequent onward movement of the goods.

Other low scoring areas (Domains) in Ukraine cover:

- customs clearance of WCO Guidelines' Category 3 and Category 4 shipments (i. e. shipments of goods above deminimis level), which in general are the bulk of import flow to Ukraine, thus of a high impact on trade facilitation;
- the Guidelines' provisions under the theme 'Sorting and transshipment' (fig. 2).

The fields, where Ukraine scores highest (100 %) are Domains 2, 9 and 10 representing the Guidelines' areas related to Customs treatment of low value consignments, Customs inspections and places of release/clearance of consignments. The high scores in these areas mean that the Guidelines' principles about Customs inspections, mentioned above, are in fact followed (non-necessarily however being extended to imported duty-and-tax-exempted correspondence and documents, which do not yield any revenue to Customs but generate costs and drag resources away from other tasks), that Customs inspect and release goods at the operator's premises during working hours adapted to commercial needs, and that the principles for clearance of low value consignments are applied in practice.

Ukraine compared. Comparing the above results of Ukraine with the world's result shows the following.

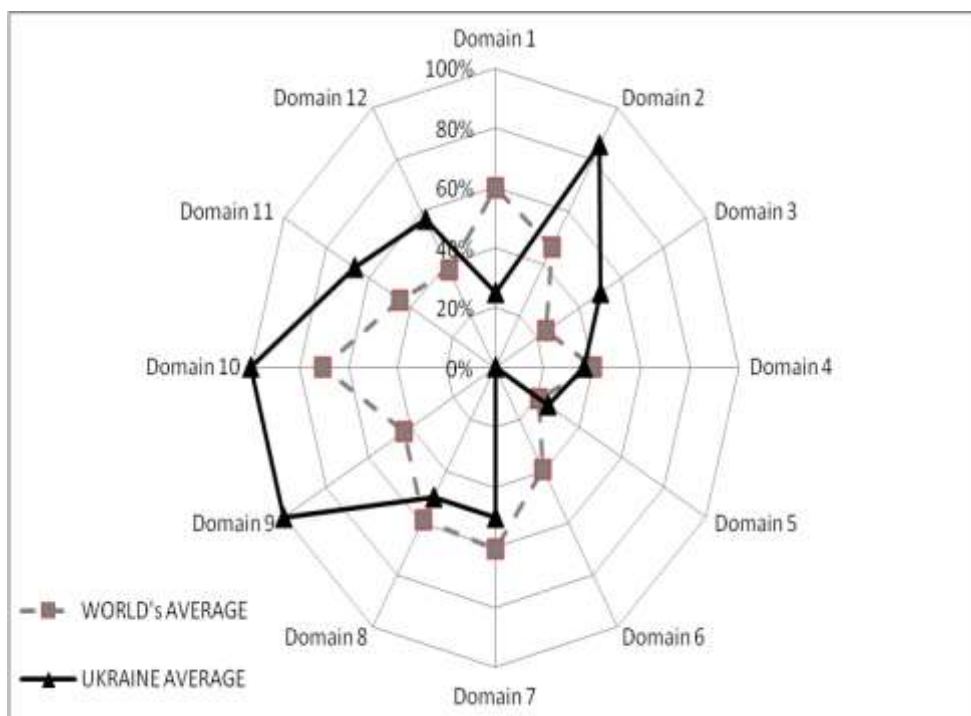


Fig. 2. Application of the WCO Guidelines – the World and Ukraine compared
[source: own calculations]

Given the above, with its score at 55 %, Ukraine is slightly above the world's average score of 47 % of the 'WCO Ideal Member'. More detailed analysis indicates however that by increasing its scores in the two lowest scoring areas discussed above, Ukraine can place itself way above the world's average, as it already exceeds it in 7 out of 12 Domains.

Taking into consideration that Ukraine is developing its economic and trade ties with the European Union (further as ‘the EU’), it seems to be worth to compare the state of application of the WCO Immediate Release Guidelines in Ukraine with results of the EU Member States (the EU Member States are not recognised by their name but are randomly identified as the purpose of this paper aims at presenting the level of WCO Guidelines’ application in the Ukraine, not the EU). Below table provides for this comparison (fig. 3).



Fig. 3. Application of the WCO Guidelines – the EU and Ukraine compared
[source: own calculations]

This comparison places Ukraine in the lower band, together with another 8 EU Member States scoring below 60 %, with an EU average at 65 %. In this respect it is worth mentioning that the highest scoring Member States (2AM7 and 2AM28) are 13 pp above the EU customs union average, while the lowest scoring Member States (2AM5 and 2AM12) are 21 pp and 23 pp below the EU customs union average respectively. The gap between Ukraine and the highest EU Member states is then 23 pp, which means that, in order for Ukraine to align with the EU average, it will have to improve by at least 10 to 15 pp. Reaching a level comparable with the highest scoring EU Member States would constitute a considerable effort situated at a range of 20 to 25 pp. This gap can be rather easily, i. e. without significant investment into Customs capacity, closed by a) introducing less stringent rules for clearance of correspondence and documents, like for example their clearance based on consolidated declaration in oral form of in written form of manifest, together with withdrawal from their regular inspections, b) amending the Customs approach to clearance by allowing for advance lodgment of data relating to shipments coming to the country, so it can be screened for risk purposes earlier enabling release of goods upon their arrival at the latest. Increasing Ukraine’s scores only in these two areas would enable it to score 63 % on average, reaching the EU average.

Conclusions and further researches directions. The DHL Express research on WCO Immediate Release Guidelines revealed that the Guidelines are applied throughout the world to a limited extend. This holds true also for Ukraine, which scored 55% on average comparing to the ‘Ideal WCO Member’. In general, this is above the world’s average score but below the EU average score. Nonetheless, it also shows that many areas of the WCO Guidelines have not yet been implemented in Ukraine in practice. They specifically refer to the following:

- customs clearance of WCO Guidelines Category 1 shipments (‘Correspondence and documents’);
- provisions of the Guidelines regarding pre-advise information submitted to Customs in order to begin processing prior to the arrival of the goods with a view to expediting the release of goods upon arrival;

-
- customs clearance of WCO Guidelines' Category 3 and Category 4 shipments (i. e. simplifications for clearance of shipments of goods above de minimis level);
 - the Guidelines' provisions under the theme '*Sorting and transshipment*'.

These areas are broadly resembled by the obligations that Ukraine has committed to the WTO under its 'Notification of Category A Commitments under the Agreement on Trade Facilitation'. As mentioned, these obligations are referring to the ATF provisions that Ukraine plans to implement upon entry into force of the Agreement. Obligations under Article 7.1 ('Pre-arrival Processing') and Article 7.8 ('Expedited Shipments') are a step into a good direction, as the pre-advise measures should be considered together with possibilities to use trade facilitating measures such as simplified clearance of expedited shipments. That seems to be the purpose of the latter – to balance the need to increase international trade security (executed by earlier identification of high-risk shipments) with a need to facilitate clearance of low-risk shipments (facilitating tools must be created that allow for expediting release and clearance of legitimate consignments). Therefore it is appreciated that the attempt to introduce pre-advise obligations in Ukraine is linked with changes to the next steps of the clearance process. Such approach would have positive consequences for trade facilitation. However, notification that only Article 7.4.4 from the whole Article 7.4 ('Risk management') would be implemented upon entry into force of the Agreement, puts application of both Article 7.1 ('Pre-arrival Processing') and 7.8 ('Expedited Shipments') into question. Reason for such assessment has also been mentioned – the basic purpose for pre-advising Customs about the expected arrival of the goods and supplying them with data related to these goods is to allow them to perform risk management procedures before the arrival of the goods, thus enabling faster clearance and release of goods at their arrival at the latest. Therefore, pre-arrival processing without proper risk tools applied at this stage of the customs clearance process may negatively impede the foreseen trade facilitative measures.

References:

1. WTO Agreement on Trade Facilitation, World Trade Organisation, WT/L/931, 15 July 2014.
2. WCO, Guidelines for the Immediate Release of Consignments by Customs, Brussels, July 2007 [Electronic resource]. – Mode of acces : http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/pf_tools_imm_release_guide.aspx
3. OECD Trade and Agriculture Directorate, The WTO Trade Facilitation Agreement – Potential Impact on Trade Costs, February 2014, p 2 [Electronic resource]. – Mode of acces : http://www.oecd.org/tad/traddev/OECD_TAD_WTO_trade_facilitation_agreement_potential_impact_trade_costs_february_2014.pdf
4. Ukraine has been WCO Member since June 26, 1992, WTO Member since May 16, 2008, and RKC signatory since June 15, 2011.
5. <http://www.tfig.unece.org>
6. Sowiński, C., WCO Immediate Release Guidelines – State of Application in the Eve of the ATF Adoption, DHL Express Working Paper, presented at WCO PICARD Conference, Puebla, Mexico, 2014, publication in Journal of World Trade forthcoming in 2015.
7. Hufbauer, G., C. and Schott, J. J., Putting the Trade Facilitation Agreement Back on Track after India's Obstruction, The Peterson Institute for International Economics, RealTime Economic Issues Watch, August 5, 2014 [Electronic resource]. – Mode of acces : <http://www.blogs.piie.com/realtime/?p=4441>, access on 19-08-2014
8. <http://www.ustr.gov/about-us/press-office/fact-sheets/2013/December/WTO-Trade-Facilitation-Agreement>