



Customs and International Trade Newsletter

Contacts at Ernst & Young:

Pavlo Moroz
tel.: +380 (44) 490 3049
Pavlo.Moroz@ua.ey.com

Eduard Zlydenny
tel.: +380 (44) 490 3000
Eduard.Zlydenny@ua.ey.com

President vetoes new version of the Customs Code

On 3 November 2011 the Verkhovna Rada adopted the draft Law of Ukraine "On Amendments to the Customs Code of Ukraine and Certain Other Legislative Acts of Ukraine" (registration No. 8130-d) (the "Law"). The Law established a new version of the Customs Code.

The Law was submitted to the President for signature. However, the President vetoed the Law and sent it back with comments for reconsideration to the Verkhovna Rada.

The following reasons for the veto are worth noting:

- ▶ It violates the constitutional right to business activity on provision of customhouse broker services and limitation of competition in this sphere;
- ▶ It breaches obligations undertaken by Ukraine within the WTO framework, i.e. the customs value determination mechanism according to the Agreement on the Implementation of Article VII GATT of 1994;
- ▶ It creates the risk of tax evasion, in particular evasion of payment of special customs duties or underpayment of customs duties;
- ▶ It restricts the right to judicial review of customs authorities' decisions related to the implementation of control and check measures;
- ▶ It causes additional corruption risks and risks of infringement of constitutional guarantees of equity before the law by granting to customs officials the right to evaluate the reliability of the evidence at their discretion;
- ▶ It creates an imperfect mechanism for bringing parties to responsibility for customs rules' violation; there is a lack of balance between the responsibilities of business agents and customs bodies;
- ▶ There is a contradiction between the law and some other legal acts, including Tax Code;
- ▶ It sets additional preferences and incentives for state customs service employees; these will contribute to an unjustified increase in budget expenses.

Taking the above into account, the President returned the Law to the Verkhovna Rada for reconsideration and proposed to postpone its enforcement date till 1 January 2013.

We will continue to keep you informed of developments in customs legislation.