

Report name	Issued recommendations	Execution status
Systemic report "Main problems faced by business in customs sphere"	<p>To develop a draft law on introducing amendments to the Code of Ukraine on Administrative Offenses of Ukraine by supplementing Chapter 12 of the Code of Ukraine on Administrative Offenses of Ukraine ("Administrative Offenses in the Areas of Trade, Public Catering, Services, Finance and Entrepreneurship") with an article to govern administrative liability of officers (officials) of customs authorities for violation of customs legislation, as well as to grant the power to issue protocols on such violations to the central executive authority tasked to implement the state regulatory policy, the policy on supervision (control) in the field of business activity, licensing and permit system in the field of business activity, as well as deregulation of business activity.</p> <p>Ministry of Finance Ministry of Justice</p>	In process
	<p>To develop and publish guidelines on procedures for declaring and controlling accuracy of customs value's determination, including specification of the main stages of interaction between declarant and customs authority, as well as their rights and obligations (following the model employed in the UK Notice 252). Such an interpretation should be posted on the State Fiscal Service of Ukraine website or other official public sources.</p> <p>Ministry of Finance</p>	In process
	<p>To develop and adopt an order, which would enable customs authorities and declarants to exchange documents issued in an electronic form (i.e., certified by declarants' or authorized representatives' electronic digital signature) with scanned copies of corresponding originals (if requested by customs authorities or provided by declarants' on their own initiative) attached thereto.</p> <p>Ministry of Finance</p>	Implemented
	<p>To prepare governmental draft Law of Ukraine introducing the following amendments to the Customs Code of Ukraine:</p> <p>1.1. To supplement Paragraph 7 of Article 55 of the Customs Code of Ukraine to ensure that the general rule stating that validity period of guarantees issued by guarantors pursuant to Section X of the Customs Code of Ukraine "...shall not exceed 90 calendar days as of the date of the goods' release" would not apply to financial guarantees issued in the form of a document.</p> <p>1.2. To supplement Article 312 of the Customs Code of Ukraine with the provision stating that the validity period of a financial guarantee issued in the form of a document shall not exceed 365 calendar days after release of goods, provided that within 120 calendar days, following adoption of decision on customs value's adjustment, a declarant would notify customs authority about its disagreement with such a decision.</p> <p>1.3. To amend Article 314 of the Customs Code of Ukraine in order to harmonize eligibility criteria for parties entitled to grant financial guarantees to secure payment of customs duties with the current European practices (particularly taking into account provisions of Article 27 and Article 28 of the Convention on a Common Transit Procedure EU/EFTA).</p> <p>Ministry of Finance</p>	In process
	<p>To introduce amendments to the Procedure for Refund of Advance Payments (Prepayment) and Erroneously and/or Excessively Paid Amounts of Customs Duties, approved by the Order of the Ministry of Finance of Ukraine dated July 18, 2017 No. 643, which would enable a declarant to attach to the application for refund of erroneously and/or excessively paid customs duties amounts a court decision rendering illicit or acknowledging unlawful decision or actions at the part of SFS authorities that led to (resulted in, caused) erroneous and/or excessive payment of customs duties (i.e., as an alternative to enforcement letter issued by a court and/or a court decision authorizing refund of certain amount of customs duties).</p> <p>Ministry of Finance</p>	<p>Implemented</p> <p>— comments: On 12 April 2019, the Order of the Ministry of Finance of Ukraine No.80 "On Approving Changes to the Procedure for Repayment of Prepayments (Prepayments) and Erroneous and / or Excessive Payments of Customs Payments" entered into force. The aforementioned regulatory act has finally eliminated the controversial requirement to submit to the court the application for refund of the writ of execution of the court and / or the decision of the court, which has come into force (if any), to recover the amounts of the corresponding customs payments.</p>
<p>To ensure creation of a public electronic register of decisions on classification of goods, similar to practice employed in the EU. In the Council's view, not only decisions adopted by customs authorities during customs clearance should be entered into such a registry, but also those ones adopted by the State Fiscal Service authorities during documentary inspections and (for the sake of comprehensiveness of registry information) court decisions adjudicating correctness of the classification of goods.</p> <p>Ministry of Finance State Tax Service of Ukraine</p>	In process	

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	<p>To prepare governmental Draft Law of Ukraine introducing amendments to Chapter 11 "Liability" of Section II "Administering Taxes, Duties, Payments" of the Tax Code of Ukraine and Chapter 67 "General Provisions on Customs Offence and Liability for Them" of Section XVIII "Customs Offence and Liability" of the Customs Code of Ukraine to eliminate the possibility of bringing individuals to liability if assignment of incorrect Ukrainian Classification of Goods for Foreign Economic Activity code resulted from actions conducted in good faith. Ministry of Finance</p>	Not started
	<p>To prepare and conduct educational training programs for the personnel of the State Fiscal Service of Ukraine on reasoning decisions on classification of goods by using examples from the practice of the European Court of Justice. Such trainings should be public (to the extent possible) to disseminate a uniform understanding of issues pertaining to classification of goods. Ministry of Finance State Tax Service of Ukraine</p>	In process
	<p>To prepare text of the governmental Draft Law of Ukraine on introducing amendments to Sections XVIII "Customs Offences and Liability" and XIX "Customs Offence Proceedings" of the CCU (or setting forth these sections in the new wording) aimed at ensuring balance, commensurability and fairness of liability for customs infringements, taking into account best practices employed in the EU, in particular, Proposal for a Directive No. 2013/0432/COD (draft). In particular, such Draft Law should provide for/contain:</p> <ul style="list-style-type: none"> a) financial liability for legal entities that infringed customs rules during their business activity, - to be introduced as an alternative to administrative liability of their officials (or with a significant softening of the latter); b) reference to a specific form of guilt (intention or negligence) as a mandatory element of each administrative offence; c) sufficiently specified list of aggravating and attenuating circumstances (including, inter alia, status of Empowered economic operator; level of cooperation with the customs authority demonstrated in course of customs infringement's investigation, etc.); d) lower and upper liability thresholds (in the form of the amounts of fines) for each article to make it possible to vary amount of fines depending on the circumstances of the case; e) amounts of fines for infringing customs rules (which are established depending on the value of goods) to be brought in line with the indicative figures, specified in the Proposal for a Directive No. 2013/0432/COD (draft). <p>Ministry of Finance State Tax Service of Ukraine</p>	Not started
	<p>To develop and approve the mechanism for implementing the Resolution of the Cabinet of Ministers of Ukraine No. 479 "On Realization of Experimental Project Aimed at Creating Conditions Making It Impossible to Avoid Paying Customs Duties and Fees", dated June 20, 2018 to ensure compliance with (1) Articles 338 and 558 of the Customs Code of Ukraine; (2) the Resolution of the Cabinet of Ministers of Ukraine No.467, dated May 23, 2012 "On Approval of the Exhaustive List of Grounds, Whose Existence is Required to Carry Out Examination (Re-Examination) of Goods, Commercial Transportation Vehicles by Fiscal Authorities of Ukraine"; as well as (3) the Order of the Ministry of Finance of Ukraine No.1316, dated December 12, 2012 "On Approval of the Procedure of Carrying Out Examination and Re-Examination of Goods, Commercial Transportation Vehicles". Ministry of Finance</p>	Recommendation is no longer relevant
	<p>In order to (1) place actions substantially similar to search outside the scope of customs examination procedure; and (2) narrow down powers of the law enforcers to demand from customs authorities carrying out such actions, - prepare governmental draft law on introducing amendments to Paragraph 2 Article 325 of the Customs Code of Ukraine to explicitly state that law enforcement authorities are not entitled to demand from persons that are transferring goods, commercial transportation vehicles through customs border of Ukraine carrying out operations, foreseen in paragraph one of this article (i.e., loading, unloading, reloading, fixing damaged packaging, unpacking, packing, re-packing, weighting along with the determination of other substantial characteristics of goods subjected to customs clearance, including taking samples of such goods, replacement of identification signs or marks on such goods or packaging thereto, commercial transportation vehicles as well as replacement of commercial transportation vehicles). Yet, such powers of the fiscal authorities shall remain in the effective wording of this article Ministry of Finance Ministry of Justice</p>	In process

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	<p>To prepare amendments to the existing Draft Law of Ukraine No.4614 dated 06.05.2016 “On Introducing Amendments to the Customs Code of Ukraine to Ensure Protection of Intellectual Property Rights While Moving Goods Across Customs Border of Ukraine” No.4614 dated 06.05.2016; or to introduce an alternative draft law to ensure implementation in Ukraine of the requirements set forth in (i) Regulation (EC) No 608/2013 of the European Parliament and of the Council regarding customs enforcement of intellectual property rights; as well as (ii) Commission Implementing Regulation (EU) No. 1352/2013 establishing the forms provided for in Regulation (EU) No 608/2013, in particular:1.1.To bring the concept "goods infringing Intellectual Property Rights" in line with EU requirements, including exclusion of goods that are objects of so-called "parallel trade" from the substantial scope of this concept (in accordance with Clauses 3-5 of Article 1 of Regulation No. 608/2013);1.2.To set forth clear procedural terms, unified with European Union requirements, applicable within the procedure for suspending customs clearance of goods suspected of infringing IPR (as stipulated by Articles 3, 7, 9, 11-12, 17-18, 23, 26 of the Regulation No.608/2013);1.3.To improve the regulation of the procedure for destruction of goods, whose customs clearance has been suspended on suspicion of violating IPR, including laying down the "tacit consent" principle for their destruction in the absence of objections from a declarant or owner of goods; establishing a simplified procedure for the destruction of goods containing in small consignments (according to Articles 25 – 26 of Regulation No. 608/2013);1.4.To approve unified IPR protection measures related forms in accordance with European Union standards (as prescribed by Regulation No.1352/2013).</p> <p>Ministry of Finance State Tax Service of Ukraine</p>	Implemented
	<p>To implement Clauses 15.3 - 15.9 of the European Union Customs Blueprints, - in particular, to create a central IPR unit as a center of operational expertise under the State Fiscal Service of Ukraine.</p> <p>Ministry of Finance State Tax Service of Ukraine</p>	In process
	<p>To adopt a secondary legislative act (in the form of an order), which would establish the possibility and necessity (at least for the first two or three years while Authorized Economic Operator mechanism is being put into operation) to engage foreign specialists to train local personnel and actually conduct audits, required for granting Authorized Economic Operator status.</p> <p>Ministry of Finance</p>	In process
	<p>To ensure openness of data about average time required for release of goods, taking into account methodology contained in the "Time Release Study" document of the World Customs Organization. The relevant data can be regularly published at the official website of the SFS of Ukraine. Along with the publication of this data, an interactive survey of companies should be carried out in terms of such data’s authenticity/acknowledgement.</p> <p>Ministry of Finance State Tax Service of Ukraine</p>	In process
	<p>To introduce a transparent system for evaluating the effectiveness of post-clearance audit of companies; based on which risk criteria for operations and/or enterprises should be continuously updated. The relevant statistics should be disclosed and provided on a regular basis (on quarterly and annual basis), according to the following indicators:i.the number of carried out audits; ii.total amounts of additionally imposed charges with a separate indication of the amount of so-called “agreed obligations”;iii.percentage correlation between the total number of inspections and audits where an additional charge was imposed in the amount exceeding certain indicator (this indicator may be set as a fixed UAH amount or as a percentage of the total amount of operations of the company that became the subject of an audit). The introduction of the relevant indicator will enable systemic assessment of post-clearance audit effectiveness, preventing small amounts from distorting overall figures;iv.percentage of audits (amongst the total number of inspections) where customs declarations were checked without physical examination of goods and/or seeking disclosure of additional documents and/or issuing decisions on classification of goods and/or adjustments of customs value;v.percentage of customs declarations whose clearance involved employing customs control measures in the form of physical inspection of goods and/or request for additional documents, making decisions regarding classification of goods and/or adjustments of customs value;vi.financial indicators demonstrating outcomes of customs control measures in the form of physical inspection of goods and/or request for additional documents, making decisions regarding classification of goods and/or adjustment of the customs value;vii.the number of cases launched for infringing customs rules;viii.the total amount of sanctions imposed to customs rules infringers following consideration of cases on infringement of customs rules;ix.percentage correlation between the total number of cases on customs rules infringement and cases where sanctions were imposed on infringers.</p> <p>Ministry of Finance State Tax Service of Ukraine</p>	In process
	<p>In order to control the declared customs value, ensure functioning of the system of interaction between fiscal authority and a declarant, where all information exchange will be carried out in electronic form. It appears it might be achieved by introducing changes to the respective software of the State Fiscal Service of Ukraine.</p> <p>Ministry of Finance State Tax Service of Ukraine</p>	In process

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	<p>To ensure a gradual switch of customs value control from customs clearance to post-clearance audit stage, save when fiscal authority has reasonable doubts (to be justified by the respective criteria) about ability to collect amounts of additionally imposed charges in the future. For instance, use of risk-oriented system based on score-ranking method is advisable vis-à-vis entities incorporated shortly before customs clearance, where managers/owners have changed or have been brought to criminal or administrative liability. It appears that initially such a switch of control could be determined in methodological recommendations (letters) issued by the State Fiscal Service of Ukraine and/or the Ministry of Finance of Ukraine followed by introducing respective amendments to the Customs Code of Ukraine.</p> <p>Ministry of Finance State Tax Service of Ukraine</p>	<p>In process</p>
	<p>To update software employed for communication between the State and declarants. Based on successful examples of other countries – to ensure functioning of a single, up-to-date online system that would maximize automation of relevant iterations, simplify declaring procedures and ensure transparency.</p> <p>Ministry of Finance State Tax Service of Ukraine</p>	<p>In process</p>
<p>Systemic report "Challenges for government and business in dealing with local government"</p>	<p>To regulate the issue of transferring the responsibilities and functions of the State Environmental Protection Administration in the procedure provided for in CMU Resolution No.1074 "On approving a Procedure for taking steps related to setting up, reorganizing or liquidating ministries and other central executive bodies," dated 20 October 2011.</p> <p>Ministry of Finance Ministry for Development of Economy, Trade and Agriculture of Ukraine Ministry of Justice Ministry of Environment and Natural Resources</p>	<p>Implemented — comments: In the case of executive authorities liquidation, including territorial ones, their rights and obligations in accordance with the CMU Resolution No.1074 dated 10 October 2011, shall be transferred to another executive authority.</p>
<p>Systemic report "Reducing the risk of corruption and attracting investment to the construction industry"</p>	<p>To draw up and submit a draft law to amend the Budget Code of Ukraine and other related regulatory acts, including: establishing clear deadlines, until which payments for procurement contracts must be made, typically not more than 30 working days, instituting penalties for past due payments.</p> <p>Ministry of Finance</p>	<p>Implemented — comments: Compromise implementation: There appeared a long-awaited feature of checking payment under the contract in ProZorro public procurement electronic system. As a consequence of efforts from the Ministry of Economic Development, ProZorro team, the Ministry of Finance, the E-Data system and .007 project, now everyone is able not only to familiarize oneself with the text of a contract signed with a tender winner, but also to find out if payment was made thereunder.</p>
<p>Systemic report "Problems with administering business taxes in Ukraine"</p>	<p>To ensure stability of respective laws and regulations, once the deficiencies in the VAT electronic administration functioning are eliminated, so that they will remain unchanged (or significantly unchanged) for a significant time. If the sense of predictability is achieved, it would enable the taxpayers to plan their activities accordingly and significantly decrease administrative expenses covering the cost of adjustment to the new rules and regulations.</p> <p>Ministry of Finance State Tax Service of Ukraine</p>	<p>Implemented</p>
	<p>To amend the Tax Code to set out a clear procedure for calculation and payment of penalties imposed for late VAT refund. It shall be clearly stated in the Tax Code that the amount of penalty shall be paid to the taxpayer irrespective of the fact of its' receipt of reconciled VAT refund.</p> <p>Ministry of Finance State Tax Service of Ukraine</p>	<p>Recommendation is no longer relevant — comments: The relevant amendments were proposed by the BOC during the discussion of amendments to the Tax Code of Ukraine in October-December 2016. However, the proposals were not approved by the working group at the Ministry of Finance.</p>
	<p>To amend the Tax Code to provide for personal disciplinary, administrative and financial liability of the officials of the tax authorities for unlawful delays with processing VAT refunds.</p> <p>Ministry of Finance</p>	<p>In process</p>

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	<p>The State Budget of Ukraine shall reflect consolidated VAT amount (i.e., the difference between the income from VAT and expenses for VAT refund). For this purpose the Budget Code of Ukraine shall be respectively amended. In our view, if implemented, such an approach would allow overthrowing traditional argumentation of the tax authorities that VAT refund is effectively limited by the limits foreseen in the State Budget.</p> <p>Ministry of Finance</p>	<p>Implemented — comments: In the state budget, starting from 2016, planned VAT receipts from goods (works, services) produced in Ukraine are reflected as a balance between tax collection and reimbursement. The same principle is envisaged in the approved budget for 2019.</p>
	<p>It could be expedient to officially recognize the VAT refund amounts due to businesses as internal state debt. Such state debt shall be subject to restructuring according to mechanisms amicably agreed in negotiations between the tax authorities and businesses. The selection of the mechanisms should be flexible enough to allow restructuring with the account of specifics of particular case and business.</p> <p>Ministry of Finance State Tax Service of Ukraine</p>	<p>Recommendation is no longer relevant — comments: The launch of the automated registry of VAT refund is foreseen by the Law No.1797 dated 21 December 2016. On 17 January 2018, the CMU adopted a draft law governing VAT refund to tax payers that filed their refund applications prior to 1 February 2016, though failed to be refunded from the state budget. Additionally, the draft law governs the issue of the VAT refund claimed for recovery before February 1, 2016, but denied by the SFS as of 1 January 2017 (the taxpayers were not entitled for budget refund) and in respect of which the court decision to grant budgetary refund to the tax payer has become effective. Thus, the draft law will ensure fair conditions for the tax payers during the period of referring to the provisions of the Tax Code on the matters of VAT refund from the state budget according to applications registered within the Temporary Registry and on applications in terms of which the administrative and court proceedings have been completed.</p>
	<p>To revise the Procedure of Taxpayers' Record Keeping to significantly narrow down the scope of discretionary power currently vested with the tax authorities. In particular, the following amendments are worth being considered: the grounds for launching verification of the tax payers' location by the tax authorities shall be limited to include only limited and specific number of instances to be directly envisaged in the legislation (for instance, during a tax audit of a taxpayer deemed to be in violation of its duties); if the information on the taxpayer's location is properly confirmed through the State Registrar, this should be regarded as the sufficient proof for tax authorities; moreover, in this case tax authorities shall not be entitled to carry out such verification for certain reasonable period of time (for instance, one year).</p> <p>Ministry of Finance State Tax Service of Ukraine</p>	<p>Implemented — comments: Commencing March 2016, the fiscal authorities are no longer entitled to issue the form 18-OPP (notice on the absence of legal entity at its location). Respective provisions have been excluded from the Procedure for Taxpayer Registration pursuant to the Order of the Ministry of Finance No.375 dated 18 March 2016.</p>
	<p>The administrative appeal procedures available to the taxpayers willing to challenge the results of the tax audits shall be effective and time-efficient, rather than formalistic as it often appears to be (please see Section "Administrative appeal" for details). While appointing and performing the tax audit, the tax authorities shall strictly comply with the procedures prescribed by the law, and the supervising authorities shall ensure such compliance in an effective manner. The Tax Code shall be amended to specify particular sanctions to be imposed on the officials of the tax authorities for procedural and other violations during appointment and performance of the tax audit. Such sanctions shall be personalized and variable (from reprimand to dismissal and fine) depending on the degree of violation by the particular official.</p> <p>Ministry of Finance State Tax Service of Ukraine</p>	<p>In process — comments: Although this recommendation has been discussed repeatedly, the extent of its' practical implementation remains quite limited.</p>
	<p>To forbid the tax authorities to initiate criminal proceedings against the taxpayer's officials based on the results of the tax audit until the taxpayer's tax obligation is duly acknowledged (i.e., until the administrative appeal and / or consideration in a court are finished). If the results of the tax audit are successfully challenged by the taxpayer in court, the criminal proceedings initiated merely based on results thereof, shall be immediately ceased.</p> <p>Ministry of Finance</p>	<p>In process — comments: Article 56.22. of the Tax Code of Ukraine provides as follows: "If a taxpayer challenges a decision of a control authority to the court or through the appropriate administrative procedure, such taxpayer cannot be accused of tax evasion exclusively on the ground of such decision of the control authority until the proceedings have been ultimately settled by the court or through the appropriate administrative procedure."</p>

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	<p>To reflect in the Tax Code and enforce in practice the approach evidenced by a widespread judicial practice, whereby minor mistakes or deficiencies in primary documents cannot be used as a ground for charging additional tax liabilities, penalties and fines on the taxpayer. Ministry of Finance</p>	<p>In process — comments: The Supreme Court in its decisions specifies that the facts of the occurrence of errors in executed primary documents or the absence of individual ones, shall not, as such, constitute the ground for the conclusions on the absence of the actual business transaction, - provided that the other data or evidence prove otherwise. The implementation of this recommendation requires preparation of a special explanation of the SFS with concrete examples of such errors.</p>
	<p>To increase the timing for administrative appeal by the taxpayer, while the timing available to the tax authority for providing feedback to the appeal shall be decreased. This timing could be fixed at traditional 30 calendar days for both parties. Ministry of Finance State Tax Service of Ukraine</p>	<p>Recommendation is no longer relevant</p>
	<p>To amend the Tax Code to foresee personal administrative and financial liability of the officials of the tax authorities for instances of malpractice and nonprofessional behaviour. Ministry of Finance</p>	<p>In process — comments: The respective amendments to the legislation are being approved by the Ministry of Finance together with the relevant regulatory authorities.</p>