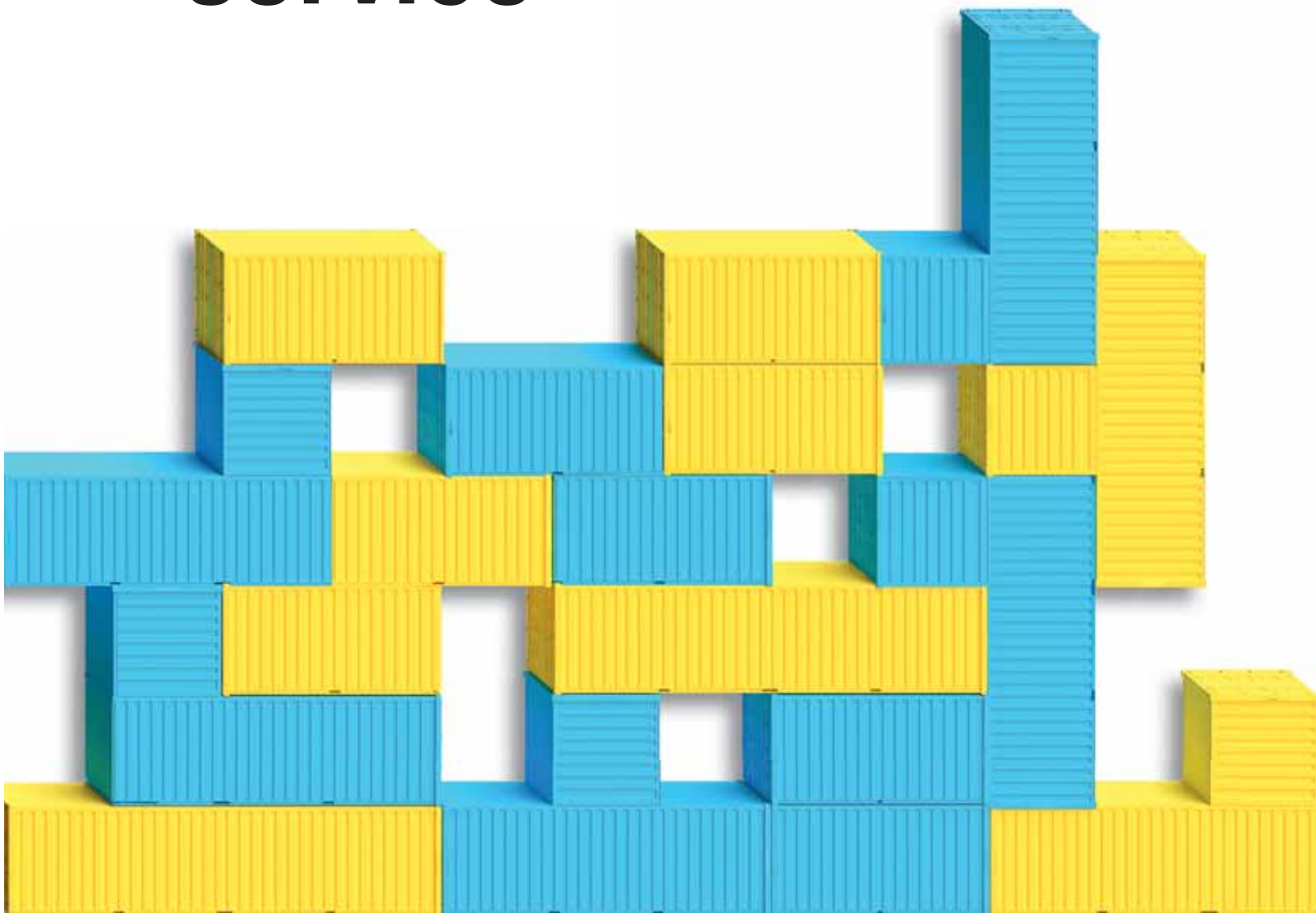


Ukraine's customs service





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Editors' Note

At borders, Ukraine a porous nation

Leaving aside the gaping eastern hole of 409 kilometers that Russia now controls, forcing Ukraine to move its border checkpoints westward along the war front, Ukraine has shaky control of its borders in all directions at many, if not all, of the 200+ border stations.

Whether north, south, east or west, smugglers know how to bring in illegal goods and take them out. The Kyiv Post went west to track smuggling of lumber, tobacco and other goods. We went south, chronicling the "walnut mafia" in Odesa and the lives of workers in Kherson Oblast who travel daily to and from their jobs in the Russian-occupied Crimean peninsula.

As usual, politicians appear to be protecting vested or corrupt interests and ignoring proven solutions, evidence that some of those in power are getting rich from illegal smuggling. Transparency, uniform customs procedures and living wages for employees of the Ukrainian Customs Service are some of the solutions that politicians stubbornly resist. In other areas, such as the illegal smuggling of cigarettes, simply raising taxes dramatically on tobacco produced in Ukraine would curb financial incentives for the bootleg trade to the European Union.

Experts say the top five illegally smuggled imports are: clothing, electronics, cars, appliances and fuel; going out illegally: cigarettes, liquor, nuts, lumber and coal.

Roman Nasirov, the director of the State Fiscal Services in Ukraine, presides over this leaky trade. The Kyiv Post was not able to schedule an interview with him by the time this edition of the Legal Quarterly went to print on Sept. 26, but look for it in the regular edition of the newspaper. In the past, he's championed himself as a reformer determined to combat the corrupt schemes, rather than the main obstructionist keeping the illegal commerce alive.

Until Ukraine curbs smuggling and gains strong control of its borders, the environmental and financial consequences of illicit smuggling -- already measured in billions of dollars annually -- will keep mounting for a poor nation that needs all the money it can get.

All of our contacts are available online at <http://www.kyivpost.com/contacts/>

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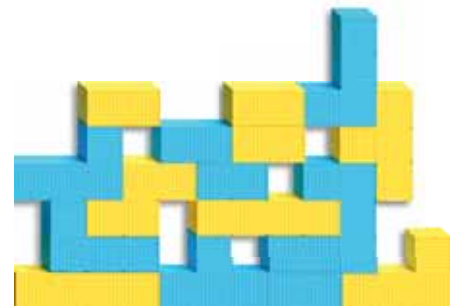
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Ukraine's Customs Service is riddled with corruption, robbing the nation's treasury of billions of dollars every year, through illegal exports and imports. Politicians are ignoring proven solutions, fueling suspicion that many in power benefit financially from the illicit trade.



Yulia Marushevskaya is the head of the Odesa Oblast customs service, regulating the traffic of goods in one of the nation's busiest and most corrupt Black Sea port cities. (Volodymyr Petrov)

Marushevskaya in standoff with bosses in Kyiv

Yulia Marushevskaya is one of Ukraine's rising stars, but sometimes it seems that she is fighting corruption in Odesa's lucrative ports all alone. She says bosses in Kyiv are her biggest obstacles to progress.

By **Isobel Koshiw**
koshiw@kyivpost.com

ODESA, Ukraine – When Yulia Marushevskaya was appointed head of the notoriously corrupt Odesa customs a year ago, there were high hopes in Ukraine and abroad that she'd soon clamp down on shady schemes at the country's biggest ports.

Marushevskaya, a former member of the team of Odesa Governor Mikheil Saakashvili, rose to prominence as an activist in the

EuroMaidan Revolution. Her face was familiar as the star of the "I am a Ukraine" video, viewed 8.7 million times. She also had a squeaky-clean reputation which, a year later, remains intact.

But hopes that she'd produce rapid results are fading.

That's not to say she hasn't made some progress: 37 countries with advanced customs procedures (mostly ones from the European

Union) have been included on a “Golden List” for expedited customs processing.

Companies importing to Ukraine from one of the Golden List countries can spend as few as 15 minutes, and no more than one hour, undergoing customs registration of their goods. Before, they’d spend up to five hours.

A new modern customs terminal, which will house one of eight departments at Odesa Port and that will be staffed entirely by new, better-paid staff, is nearing completion. And many of the criminal schemes involving private warehouses and logistics terminals surrounding the Odesa port have been sharply curtailed through carrying out full customs registration on the spot, inside the port.

However, it’s far from certain if the changes that Marushevka has pushed through, and her pilot project, which will debut in the new terminal, will survive over the long term. If anything, her team’s presence and attempts to shake up customs controls have highlighted the enduring strength and extent of corruption in the Ukrainian state.

The schemes that prey off businesses who lack connections or refuse to pay bribes, as well as dozens of bureaucratic attacks against Marushevka, lead back to the highest levels in Kyiv.

Roman Nasirov, Marushevka’s boss and head of the State Fiscal Service, has been her main bane, although many more high-ranking officials from a range of bodies have been involved in attempts to block her reforms, she says.

Nasirov has tentatively agreed to an interview with the Kyiv Post,

but it was not yet scheduled by the time this Legal Quarterly went to print.

The sheer number of interests working against her means she will probably have an even tougher year ahead, especially if the media spotlight on her work dims.

Pilot Project

It’s been one year since the pilot project began – and five months since it was due to launch.

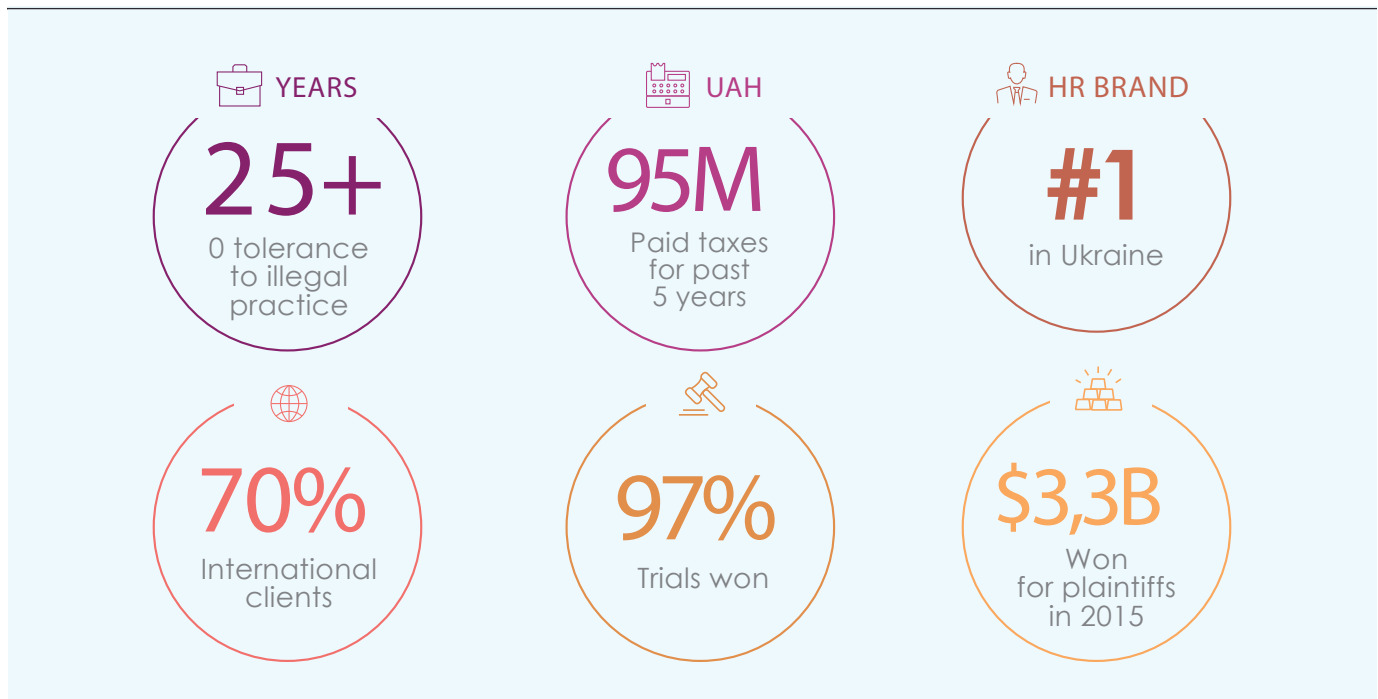
Known as the Open Customs Space, its goal is to entirely transform one department out of eight at Odesa Port, the biggest of the five ports in Odesa Oblast.

A new, almost completed, modern terminal building will house 130 new staff who have undergone special training programs, including with U.S. customs specialists. They will use the “one window” principle, by which if a company has all the necessary and correct documentation, it should have its clearance carried out by a single customs official in one place.

If the Cabinet of Ministers signs the decree required to open the new terminal, the new customs officials will be paid Hr 10,000 a month – about \$400, or around four times the amount a current customs inspector earns.

The decree will also approve the introduction of a new information technology system in the terminal, and automatically approve its use elsewhere in Ukraine.

The system’s software, named ASYCUDA, was provided free to



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Ukraine by the United Nations, and is currently used by 80 countries. It offers more accountability and transparency than the current program, Inspector 2006, where data can be retrospectively changed from Kyiv.

The cost of introducing the software and training officers to use it is estimated to be about Hr 17 million (\$700,000) – a small amount, according to Marushevska, given that Odesa's customs sends around \$2 million to the state budget in customs revenues per day.

But getting the final go-ahead for the pilot project could be difficult.

Hostility from Nasirov

Nasirov, despite initially vowing to support Marushevska's initiatives, has since been hostile to all of the proposed changes at Odesa Port, according to Semon Kryvonos, the deputy head of Odesa customs.

Nasirov's disruption of their work has included a slew of office searches by officials from Kyiv due to alleged legal violations, Kryvonos told the Kyiv Post, saying these were attempts to have members of the new team dismissed. He described how one week, seven separate groups of investigators from the State Fiscal Service turned up to search Odesa customs' offices.

"There wasn't enough space to seat them all," said Kryvonos. "They even duplicated what they were doing. In the end, two groups filed exactly the same complaint, word for word, copy and paste."

Nasirov has so far reprimanded Marushevska four times. Prime Minister Volodymyr Groysman dismissed three during his visit to the port in May. Three reprimands are usually enough for officials to lose their job. Asked why Nasirov hadn't fired her, Marushevska told



the Kyiv Post that he is afraid to do so, because she was appointed by Saakashvili and President Petro Poroshenko.

The latest clash between the officials in Odesa and Kyiv has led Marushevska to take Nasirov to court: Nasirov refused to approve Marushevska's candidate to head the pilot project, Roman Bakhovskyy, who previously headed police reform in Lviv.

Instead, Nasirov has attempted to appoint his own people through non-transparent competitions, according to Marushevska.

Bakhovskyy is, meanwhile, working as the deputy head of the project, the highest position to which Marushevska can appoint him without Kyiv's approval. Marushevska is also claiming in court that Nasirov is blocking disciplinary proceedings against customs officials suspected of corruption. The court hearing is set for Sept. 28.

The main problem is, according to Bakhovskyy, that everything is still centralized and must be approved by Kyiv. "If you're in the middle of the vertical of power, which is where we are, it's really hard to make moves," added Marushevska.

The nut mafia

Ukraine is the fifth biggest walnut producer in the world. Exports, however, are monopolized by a small group of companies rumored to have links to officials in Kyiv. Walnut producers told investigative website Censor.net in July that they pay between \$9,000 to \$12,000 per container to have these companies export their nuts. The export monopolizers pay very little in customs duties, producers claim.

Producers who try to export nuts by themselves face huge problems. At the border they are either forced to pay thousands of dollars in bribes or have their shipments confiscated by the Ukrainian Security Services for "contamination inspections." The process of getting confiscated nuts back is near impossible without the right connections.



A worker walks past containers in the Odesa port on Aug. 29. New leadership at the port is struggling to cleanse it of corruption. (Volodymyr Petrov)

Saakashvili has staged two high-profile raids of depots holding confiscated nuts in Odesa Oblast in the last six months.

In both cases, the nuts were confiscated in Odesa on the orders of a Kyiv prosecutor by the SBU, Ukraine's security service. The deputy head of the SBU, Pavlo Demchyna, has been accused by Saakashvili of running the nut exporting scheme.

In the latest case in April, as a container was surrounded by heavily armed and masked special services men, Saakashvili told the men in front of a crowd of journalists that this was outright robbery, and successfully returned the shipments to the owners.

Groysman announced in May that he would rid the country of the nut mafia and their "tax squirreling" ways.

During his May visit, Groysman behaved like a man who could make anything happen, and showed off by embarrassing Nasirov in front of a crowd of journalists. Groysman has since made several big shows about getting rid of corruption in customs, but they've yet to amount anything concrete.

The decree on opening the new terminal has still not been signed, the nut mafia is still operating and Marushevskya's conflict with Nasirov has only gotten worse.

Change for some, not for others

Shailendra Bakshi, an Indian tea importer who has lived in Ukraine for 30 years and has been using the port since 1990, agrees that the customs clearance is now quicker – even though his company is not on the Golden List. Overall though, he doesn't believe much has changed. His main gripe is the calculation of customs duties, which he said is done very subjectively.

The current system effectively means that different customs offices can charge different prices, leading to "agreements" being reached between businesses and officials. So it can be beneficial to declare goods

in Kyiv or elsewhere, while actually transiting them through Odesa.

Marushevskya has introduced customs duties by contract for large tax payers, and this has been received positively by those affected. She reported on Sept. 1 that there was an increase in revenues of Hr 242 million (\$9.68 million) in August 2016 (to a total \$50 million) compared to August 2015, and that 650 new companies had started to use Odesa customs since the beginning of the year.

She also introduced a helpline for those doing business at the port, which they can also use to report corruption. But Bakshi says that reporting corruption only leads to being blacklisted by local customs officials, so most won't bother. He also said that many larger businesses are able to negotiate their customs duties at the top levels, which means they are able to out-compete smaller importers.

Meanwhile, the low wages paid to customs officials are still engendering corruption.

"Yes there are fewer checks," said Vadym Sedov, a senior customs official who led the Kyiv Post on a tour of Odesa port. "But you can't talk about (tackling) corruption. Would you work for \$100 a month? Until you sort out the salaries you won't solve a thing."

The 200 customs staff who currently work shifts at the port, along with others in the region, are likely to lose their jobs if momentum for change at the port builds, meaning they'll miss out on any pay increases. However, the best of them will be retained, says Marushevskya.

For now, Marushevskya says she is doing what she can.

"Of course we're just at the start of a long road to a complete change in the Odesa customs system, because we're working with existing procedures and legislation," said Marushevskya. "We're just using a force of will to change the middle management." ■

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A border guard inspects a truck with the help of a service dog along the border of the Russian-backed Transnistria area of Moldova on Aug. 30. Corruption has made the customs service one of Ukraine's least trusted institutions. (Volodymyr Petrov)

How can Ukraine fix its customs service?

By **Josh Kovensky**
kovensky@kyivpost.com

The Ukrainian customs service is decrepit and corrupt, obstructing business and sucking revenue out of the government.

Accounting for Hr 263.6 billion (\$10 billion) of income for the 2017 budget, which anticipates \$27 billion in revenue, the government estimates that corruption in customs deprives the government of nearly \$2 billion per year. The country made Hr 202.3 billion (\$7.78 billion) off of customs revenue in 2015, according to the Finance Ministry.

Ukraine's customs service does not only collect import and export tariffs – the agency, which falls under the State Fiscal Service, is also tasked with collecting value-added tax and excise payments on imported goods.

Now, with the government of Prime Minister Volodymyr Groysman settled in after 150 days in office, many are clamoring for reform in the area.

International Monetary Fund chief Christine Lagarde suggested that passing new legislation in the area would be key for the country's "medium-term sustainability," and perhaps for receiving the next installment of IMF loans – which now stand at roughly \$7 billion out of a potential \$17 billion until the start of 2019.

"The focus should be on improving tax and customs administrations," Lagarde said.

The problems

The precise amount of money that Ukraine loses in unpaid customs tariffs and taxes

due to smuggling and corruption in the tax service is impossible to estimate.

“Many goods go totally around the system, so it’s impossible to say precisely,” said Nikolai Larin, project manager at the Association of Importers and Exporters. Larin added that the amount of money the customs service submits to the state budget is only about half of the revenues that would be collected if all goods passed through customs.

Groysman said in April that the government loses up to Hr 50 billion (\$1.9 billion) due to corruption and smuggling in customs, citing unnamed experts.

Other problems in customs are similar to those that afflict the rest of the civil service. Customs officers are paid salaries as low as \$150 each month, for example.

“When your daily earnings could outstrip your monthly legal earnings, then the temptation is great,” said Tetiana Ostrikova, a Samopomich Party member of parliament on the tax and customs policy committee. Ostrikova added that one “hoof” (customs officials’ slang for money earned off the books) would regularly add up to \$150 or \$200.

Another issue stems from the ability of importers to declare their goods at any customs point they desire, and not the point at which the goods physically enter the country - a system that allows people to deal with customs officials with whom they may have developed a favorable relationship. Since regional customs offices often do not share data, it also means that customs officials will not necessarily know which goods have physically passed through their port.

Lack of information about customs pervades the government due to a quirk in Ukrainian law that restricts all customs information to within the State Fiscal Service.

Ostrikova said that even the deputy finance minister in charge of customs, Yevhen Kapinus, does not have unfettered access to customs data because of this legislation.

“This allows the customs service to keep all of this in a black box,” Ostrikova said.

Yuriy Draganchuk, an adviser to Finance Minister Oleksandr Danyliuk, confirmed that his ministry lacks access to information from the entire State Fiscal Service.

“The information we receive [from the SFS] is impersonal, we don’t receive information about concrete enterprises and people,” he said. “We plan to make a completely separate IT structure that combines information from the SFS, treasury and our ministry.”

Groysman’s government has created a system of “mobile groups” to attempt to solve corruption in the customs service where it appears, in what has been touted as an aggressive effort to halt smuggling.

There are 20 groups, whose teams are formed by employees from the National Anti-corruption Bureau of Ukraine, the National Police and the State Fiscal Service. The teams are supposed to travel from customs point to customs point, rooting out smuggling rackets.

But Ostrikova has been disappointed with the initiative’s progress so far, saying that smugglers were often informed of the group’s arrival in advance.

“They don’t wait up for the mobile groups,” she said of the smugglers.

The European way

Much of the current push to improve the customs service revolves around bringing the institution up to European Union standards, both in terms of how its employees act and in terms of the data to which they have access.

Andrew Zablotskyi, a customs attorney at law firm Sayenko Kharenko, said that Ukraine’s association agreement with the European Union-mandated certain legal changes, including introducing a requirement that importers need to declare goods at the border points at which the goods enter.

“The EU says that if you signed the EU association agreement, you need to comply with the rules... and place the state control in frontier offices,” Zablotskyi said.

He added that a serious problem with adopting this law was a lack of money in the state budget to fund the changes, and the fact that the government would need to consolidate its sanitary and health control systems at the border points, and not in the main cities, where they are currently located.

One proposal to modernize the customs service would have seen part of the institution’s functionality outsourced to British aid organization Crown Agents.


But Ostrikova said that finding the right people was not the problem. “We have the people,” Ostrikova said. “Our customs over the past 25 years turned into a means for living. Everyone wants to earn more off of customs.”

Achieving independence

Ostrikova is proposing that Ukraine run a NABU-style contest for new customs officials, by which they would be vetted as not having participated in corrupt activities.

“There should be new people,” Ostrikova said. “It should be people with a different consciousness.”

The deputy went on to say that information sharing both

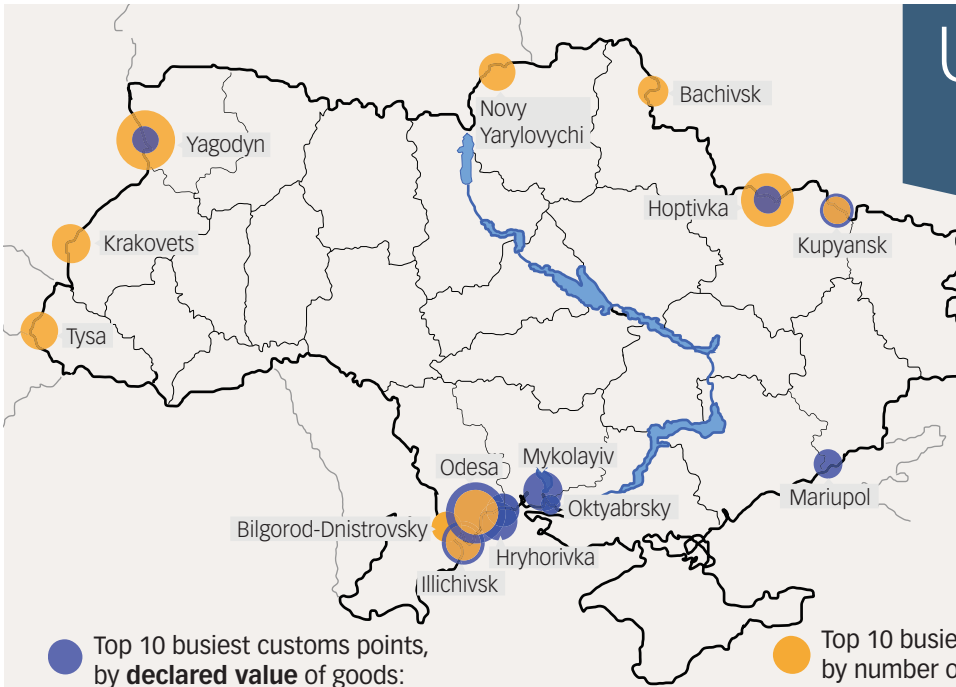


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UKRAINIAN CUSTOMS



Ukrainian export data shows that in 2015, the Odesa Seaport was the country's busiest port in terms of declared value of products that passed through Ukrainian ports (almost 1/6 of all exported goods in Ukraine went through the Odesa port). However, measuring the top 10 busiest customs by number of declarations changes the list a lot, with the Yagodyn customs point in Volynska Oblast coming out on top.

● Top 10 busiest customs points, by **declared value** of goods:

1. Odesa Seaport, "Odesa Sea Trade Port" checkpoint
2. Illichivsk, "Illichivsk Sea Trade Port" checkpoint
3. Mykolayiv, "Mykolayiv Sea Trade Port" checkpoint
4. Hryhorivka, "Vyzyrka" checkpoint
5. Kupyansk, "Topoli-Valuyki" checkpoint
6. Hryhorivka, "Yuzhny Sea Trade Port" checkpoint
7. Mariupol Port, "Mariupol Sea Trade Port" checkpoint
8. Hoptivka, "Hoptivka-Nekhoteevka" checkpoint
9. Yagodyn, "Yagodyn-Dorogusk" checkpoint
10. Oktyabrsky, "Oktyabrsk Port" checkpoint

● Top 10 busiest customs points, by number of **declarations** signed:

1. Yagodyn, "Yagodyn-Dorogusk" checkpoint
2. Hoptivka, "Hoptivka-Nekhoteyevka" checkpoint
3. Odesa Seaport, "Odesa Sea Trade Port" checkpoint
4. Krakovets, "Krakovets-Korchova" checkpoint
5. Illichivsk, "Illichivsk Sea Trade Port" checkpoint
6. Tysa, "Chop-Zakhon" checkpoint
7. Novy Yarylovychi, "Novy Yarylovychi-Nova Guta"
8. Bachivsk, "Bachivsk-Troyebortne" checkpoint
9. Bilgorod-Dnistrovsky, "Starokozache-Tudora"
10. Kupyansk, "Topoli-Valuyki" checkpoint

How goods reach Ukraine's borders

for 2015

According to our data, seaports are the busiest in terms of gross value, largely because of the sheer quantity of goods that a single ship can transport.



Ship



Automobile

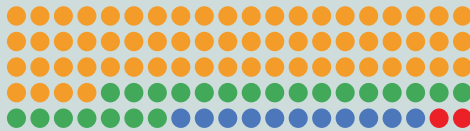


Train

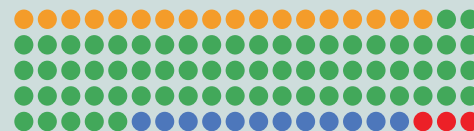


Plane

Measured by **invoice value** of goods

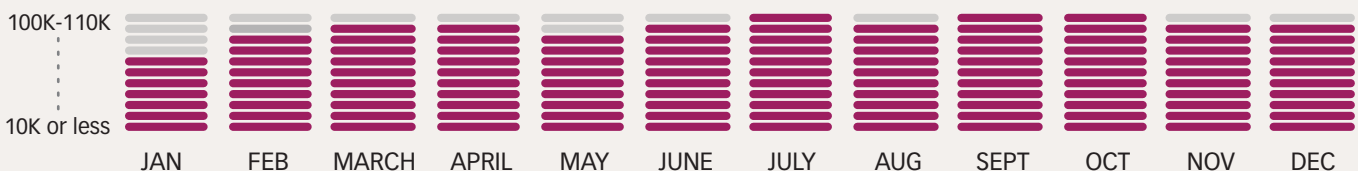


Measured by number of customs **declarations** signed



When Ukraine's customs service is busiest

for 2015, by number of customs declarations



By Stella Shablovska, Kyiv Post | SOURCE: Ukrainian customs database, purchased by the Kyiv Post

Ukraine has more than 200 customs checkpoints, but trade is wildly uneven. The southern Black Sea and Azov Sea ports are the busiest customs points by declared value of goods, while three of the busiest customs points, measured by number of declarations signed, are on the western border with Poland of the European Union.



Yuriy Draganchuk, customs advisor to Finance Minister Oleksandr Danyliuk, speaks at the Finance Ministry in Kyiv on Sept. 21. Draganchuk does not have access to data from the customs service, making it difficult to know what is going on. (Anastasia Vlasova)

internally with other branches of the government and with European authorities would help cut off the air to many schemes, which rely on customs officials being ignorant of the true value of a given good.

But Ostriukova added that European officials were wary of sharing their customs data with Ukraine because they had concerns over information security.

“We need to back up these systems according to European standards,” Ostriukova said.

Establishing an effective post-audit system would also go a long way to reducing corruption in customs. The country currently has 15 civil servants allotted to post-auditing customs, by which the government is supposed to verify that all activity at a given border point is in compliance with customs legislation.

“Our partners from the European Union and European Commission are imposing this on us,” Ostriukova said. “It’s a tool that works in the entire civilized world.”

Danyliuk’s predecessor, Natalie Jaresko, was not able to achieve customs and tax reform during her 16 months in office ending in April. But Danyliuk, at least by his public statements, has made renovating the service a priority.

Draganchuk, the Danyliuk advisor, blamed the ministry’s inability to reform so far on parliament’s failure to pass the necessary legislation. “We’re doing it, but it’s going to take a long time.”

Ostriukova said that while she sees Danyliuk’s desire to change the situation, the customs service is fighting back.

“I see rabid opposition from the tax service to give the Finance Ministry access even to these databases, to give objective information,” Ostriukova said. “They aren’t doing this independently, but because of their masters in high office.” ■



Ivan Mishchenko

attorney-at-law, managing partner Trusted Advisors

A struggling banking sector

In recent years, Ukraine has repeatedly witnessed tendencies of political polarization and instability, which have negatively affected the Ukrainian financial system and led to the depreciation of the national currency, and damage to banks and other financial institutions. The situation with the banks in Ukraine is exceptionally challenging for a number of reasons. They were unable to recover from the 2008–2009 crisis before being hit again by crisis in 2014. The deep Ukrainian recession and the plunge of the hryvnia, together with strong exposure to geopolitical tensions have tipped the banking sector again deeply into the red and created an environment of persistent uncertainty.

In addition to chronic structural shortcomings, such as weak rule of law and protection of creditor rights, or excessively high corruption and opaque ownership structures, the most significant problems that are currently plaguing the sector include high and growing credit risk and high exchange rate risk.

Any banking failure leads to the problem of returning private deposits. This procedure is far from perfect, since only 30 percent of bank depositors get their money back. This statistic prevents the future pumping of funds into the banking sector and, as a result, leads exacerbates the crisis. Therefore, it is necessary to note the dissatisfaction with the results of the work (activity) of the Deposit Guarantee Fund, which, due to poor procedures, has no opportunity to collect debts while a bank is in temporary administration.

Furthermore, the Verkhovna Rada of Ukraine came close to aggravating the crisis in banking sphere and in economic life in general by approving legislative proposals to restructure obligations on loans received in foreign currency. Fortunately, the President of Ukraine vetoed this legislative proposal.

Thus, the banks in Ukraine, as in other countries, are the most significant financial institutions in the sphere of monetary policy, payment and accounts services. It is commonly known that the banking sphere is related to high risk and the insolvency of one of the major banks, for example Delta Bank, can provoke a chain reaction or domino effect of insolvency in other large banks, and then cause a systematic financial crisis. To avoid such a situation, our state should do the utmost to prevent such an effect by using the resources and facilities of all branches of government: legislative, executive, and judicial.

Nowadays, unfortunately, the most effective activity may be noted in the “fourth estate” — the mass media. It is only using this resource that the state gets to know about problematic situations in the banking sphere.

The recognition of many banks as being insolvent provoked a huge number of disputes between debtors, creditors, guarantors and the Deposit Guarantee Fund. In such a difficult situation, litigation practice should call upon the experience of legal trends in many important issues — the mortgaging of property, the legal basis for the termination of obligations between creditors and debtors of a bank, and other issues.

Nevertheless, in practice, the judicial system is not effective for both debtors/bank depositors and banks due to the length of legal proceedings and the lack of results at the stage of enforcement. These problems are ones that have to be solved. The unsatisfactory activity of the Enforcement Service of Ukraine (the Bailiffs Service) could be corrected by a recently announced reform introducing a private enforcement system.

The majority of banks in this situation have become involved in clearly fraudulent activities. Despite the fact that the past few years have created a controversial situation for resolving the disputes related to provision of banking services, the overall resolution of disputes in this area requires legislation to achieve a balanced compromise between the interests of all the parties to the respective relations. There is also great demand for the systematizing of all the legal trends that affect the overall economic situation.



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Kalanchak checkpoint on the border in Kherson Oblast on Sept. 20, 2015. (UNIAN)

Ukrainian workers who make daily commute to Crimean peninsula

By **Natalie Vikhrov**
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PREOBRAZHENKA, Ukraine – One by one, about a dozen men pass through the last barricades at Ukraine's Kalanchak checkpoint from the border at Kherson Oblast and prepare to enter Russian-occupied Crimea.

With backpacks slung over their shoulders, they stroll towards a mini-bus waiting for them about 100 meters from the checkpoint.

The absence of heavy luggage and their tired, everyday demeanor is a giveaway – these are not returning tourists. These are employees of a chemical plant named Crimean Titan. And crossing the border is a part of their daily commute to work.

The titanium producer is the biggest

employer in Crimea's Armyansk, with around 4,800 employees from the city – which has 21,000 people – working at the plant.

Prior to Russia's illegal annexation of Crimea in 2014, the titanium producer employed around 700 workers from mainland Ukraine, primarily from small villages near the border in Kherson Oblast.

Today less than 100 workers – largely from the Kherson Oblast border settlements of Preobrazhenka (formerly known as Chervony Chaban) and Pershokostyantynivka – remain.

The largest producer of titanium in Eastern Europe, used in wide range of products from

plastics to cosmetics, the plant manufactured 101,000 tons of titanium dioxide in 2014.

Controlled by Ukrainian oligarch Dmytro Firtash's Group DF, it was re-registered as Ukrainian Chemical Products in Ukraine and Titanium Investment in Russia, following Russia's illegal annexation of Crimea.

Oleg Arestarhov, Group DF's head of corporate communications, told the Kyiv Post that the company would not comment on matters relating to the titanium plant. "From 2014 our press office hasn't been answering any requests about our Crimea assets because any comment about Crimea business will be political," he said.

A worker told the Kyiv Post that employees have also been discouraged from speaking with media. The Kyiv Post has withheld the names of all employees interviewed for this article because they fear being fired for speaking publicly.

Complex situation

Some 530 kilometers southeast of Kyiv, Kalanchak is one of three customs checkpoints on the border between Ukraine's Kherson Oblast and Russian-occupied Crimea, where pedestrians and vehicles can cross.

One longtime titanium plant employee uses both Kalanchak and Chaplynka checkpoints on his daily commute to the plant. The worker said the situation at the border has evolved since Russia's annexation of the peninsula in 2014.

"In 2014 it took us six hours to get to work. There were insane lines. Trucks stood here for months," he said.

In late September 2015, hundreds of trucks were detained at the border, including the Kalanchak checkpoint, after a group of Crimean Tatars and Ukrainian activists launched a blockade, preventing food and other goods from entering Crimea.

By the end of 2015, the Ukrainian government voted to enforce trade restrictions with the occupied peninsula, which came into effect mid-January this year.

The worker said while the situation at the border is now much calmer, there are still occasional delays.

"A month or two ago, we were still waiting for a long time," the worker said. "There was only one border window working, and cars as well as pedestrians were all waiting in the one line. We would get there at 6 a.m., and at 8 a.m. we would still be waiting."

In early August, Russian authorities shut down the Kalanchak checkpoint for several days, creating lengthy delays at neighboring checkpoint Chonhar in Kherson Oblast. After the checkpoint reopened, the worker said, the average commute time, from his home village of Preobrazhenka to the plant – around 15 kilometers – became an hour-and-a-half. Additional staff and an unwritten agreement with border officers on the Ukrainian side have seen the checkpoint process become faster and simpler, he said.

But, he added, on the Russian-occupied territory, the situation was more difficult. "In 2014, Russia set up stations at the checkpoints, and those who had worked there from the beginning and remembered us – we had no problems with them. But the younger ones... they don't give us too much trouble, but their checks last a long time. They ask us personal questions. They think they're in charge and they're allowed to do anything."

The next hour would show a meager handful of tourists trickling across the border.



Artem Stoyanov

Attorney-at-law, Senior partner, LCF

Pre-judicial Recovery: The Real Answer for Business?

The golden rule of business «a dollar today is worth more than a dollar tomorrow» has been worded back in 13th century, and yet since that time it did not lose the significance.

In the context of a debt repayment, generally the main war between the creditor and debtor is breaking out not in view of the question "to pay or not to pay", but in view of the question "when it should be paid and how much to pay". The victory in this war depends on who has commenced the active operations first: whether the creditor has managed to file a lawsuit in court, to block the liquid assets of the debtor and to impose a court-enforced collection on them, or whether the debtor has transferred assets out of business and commenced a controlled bankruptcy proceeding.

A civilized resolution of this issue within the legal framework on the basis of compromise between the parties is profitable both for the creditor and the debtor. Therefore, this important aspect could not remain without attention of the legislator.

Thus, in January 2013 the Law of Ukraine "On Restoring of Debtor's Solvency or Declaring its Bankruptcy» has legislatively resolved the pre-judicial recovery procedure.

And in 2016 the Ukrainian Parliament has regulated the procedure of financial restructuring for the period of 3 years. In accordance with the Law of Ukraine "On financial restructuring", it will become effective on October 19, 2016.

The new Law envisages possibility for debtors of banks and other financial institutions to restructure their debt obligations by agreement with the creditors. The procedure of the financial restructuring is carried out under the supervision of specially established bodies, composed, inter alia, of the National Bank of Ukraine and the Cabinet of Ministers of Ukraine. Participants of restructuring will have possibility to take advantage of the new procedure, specifically of the moratorium with regard to financial penalties and recovery of debts. In addition, all the bankruptcy proceedings initiated against the debtor will be suspended.

In the meantime, while we expect entrance of the new law into force, procedures envisaged by the bankruptcy law, namely the pre-judicial recovery, are already successfully used, although not so often as would be desirable. Procedure of the pre-judicial recovery enables the company to conduct activity without breach of the creditors' interests.

The pre-judicial recovery is legitimate way to suspend commencement of the bankruptcy proceeding as well as accrual of penalties, fines and in some cases interest for the period of the whole year (moratorium).

As for the pre-judicial recovery, the law has left broad discretion for the debtor and creditors. The recovery plan, which is jointly prepared by them, has to be approved by the creditors which hold more than a half of general amount of indebtedness, and by secured creditors. Then it is approved by simple majority of votes on the meeting attended by 2/3 of the creditors. After its approval by the court, the company gets a plan of operation for the whole year. Both debtors and creditors may envisage in the recovery plan the most profitable conditions of cooperation for both parties with retaining control over the enterprise.

It is also notable that in case a company's indebtedness involves significant number of creditors with different interests, it may be difficult, or even impossible to reach an agreement between them for approval of the recovery plan.

In addition, the creditors do not always have a positive attitude towards the whole procedure. As follows from practice and the law, the pre-judicial recovery first of all is favourable for the debtor. The rights of creditors with regard to the debtor are significantly limited during the period of recovery.

At the same time, the Law envisages certain tools of protection for the creditors. For example, if a debt, which may cause insolvency of the debtor, has arisen after approval of the recovery plan, the bankruptcy proceeding may be initiated before completion of the recovery procedure - based on such new demands.

In our opinion, the pre-judicial recovery procedure is still underestimated by business. Instead of insolvent company, deprived by the owners of any valuable assets and instead of a long-term, sometimes "stalemate" bankruptcy proceeding creditors will have the recovered debtor, who will fulfil his obligations in full – even if after certain period of time.



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Testing times

On Dec. 31, 2014, less than a year after Russia illegally annexed Crimea, hundreds of Ukrainians working at Armyansk's titanium factory lost their jobs temporarily.

A new law requiring all "foreign nationals" to have a "patent" - a working permit for employment in Crimea - went into effect.

The worker said colleagues were told they would be re-hired once they obtained the patent. But the process took three months.

In February 2015, workers from Preobrazhenka, 526 kilometers southeast of Kyiv, blocked the Vadym railway leading to the plant, obstructing the delivery of raw materials.

"We blockaded it during the day and through the night, and the next morning things were sorted to our advantage," the worker said.

At the end of March, the factory began drawing up documents for the patents, but the process involved a series of tests - from language and history knowledge to medical exams.

Those who finished school before Sept. 1, 1991, (i.e. those who had finished school before the breakup of the Soviet Union) were exempt from sitting the Russian language and knowledge tests.

The 60-year-old worker was among them.

He said that while didn't have to take the test, he learned about the questions asked from others.

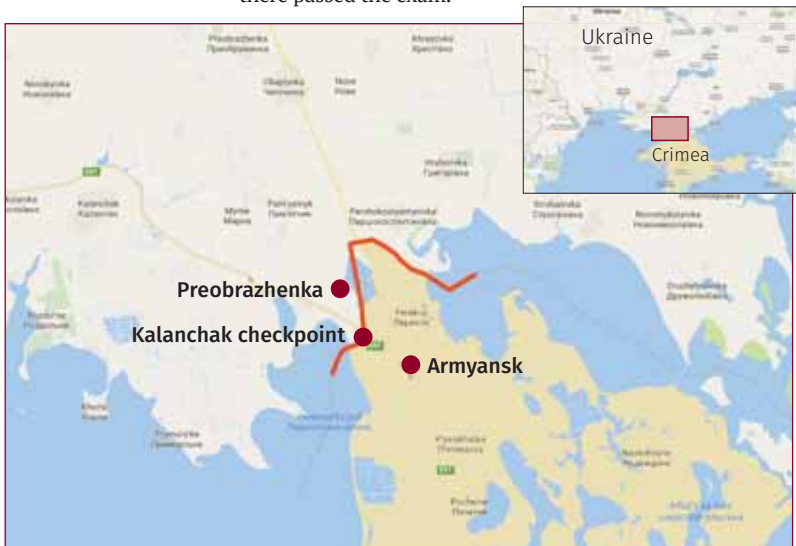
He said the younger workers applying for the patent reported that the exam included questions on the Battle of Kulikovo, and asked them to identify Russia's old coat of arms amid similar looking symbols from former Soviet countries.

"They had questions that we were supposed to know, even the though the Russians themselves didn't," he said.

"We thought they just wanted to get rid of the workers, so there would be fewer of us.

"But of course with the internet, (the workers) found the answers to the questions and... those who wanted to work there passed the exam."

The Kalanchak checkpoint in northern Crimea sees hundreds of Crimean Titan workers living in Ukraine cross daily onto the Russian-occupied peninsula every day.



Only option

Another worker is among 20 laborers who travel from Pershokostyantynivka - a town of 1,500 people, 522 kilometers southeast of Kyiv - to Armyansk. He felt it was his only option.

"Judge me or don't judge me that I work in the occupied territory. Maybe it's wrong that I work there," Pavel said. "But there's no work here and I have a big family. I have six kids. The oldest is 13, the youngest is 18 months."

Those who had the luxury of leaving have already gone.

This worker makes 15,000 rubles (around Hr 5,960 or \$231) a month, but that's before exchange-related losses and the patent eat away at his paycheck.

The patent costs workers 3,000 rubles (around Hr 1,192 or \$46.29) a month, but he said they don't pay taxes as a tradeoff.

"It'd be better if we did pay taxes though, because we'd get taxed about 2,000 rubles, but the patent is 3,000 rubles," he said.

Taking a toll

More than half of the Kherson Oblast workers that have remained at the factory live in Preobrazhenka. Today a bus picks the workers up from the village and transports them to the Kalanchak checkpoint, which they cross by foot, before another bus transports them from the other side of the border to the factory.

The head of Preobrazhenka village council, Andriy Suchok, said he has seen the toll that working at the plant has taken on its Ukrainian employees.

"Even at the beginning of this year there were 100 (workers) from Preobrazhenka. Now there's 62. People are leaving themselves," he said.

During the September 2015 blockade, activists dumped a slab of concrete and an anti-tank hedgehog on the railway line leading to the factory, effectively putting a stop to the delivery of raw materials to the plant.

Suchok said that in addition to the difficulties of sourcing raw materials through Russia, the factory was experiencing water shortages, which had resulted in a decline in production. He believes that as a result, the factory is currently working at 25 percent of its capacity.

Another worker confirmed that the factory wasn't working at its full capacity these days.

Some days it worked at 75 percent of its capacity, he said, others at 25 percent.

Like most of the workers, he refused to be identified in the story for fear of losing his job. For many, the plant feels like their only option.

"If we had work here (in Kherson Oblast), we wouldn't need the plant," a worker said.

After a day's work, the workers' bus pulls into Preobrazhenka, a touch after six in the evening. The workers file out and, after some quick goodbyes, head home.

Tomorrow, they'll do it all again. ■

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Ukraine's energy customs unit disappears, reappears

By **Isobel Koshiw**
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In March 2014, shortly after Ukraine's Euromaidan Revolution, the Finance Ministry issued an order to re-create a separate energy customs body under the State Fiscal Service. The state agency was originally created under President Viktor Yushchenko in 2005, but liquidated under President Viktor Yanukovich in 2011.

But in October 2015, the Head of State Fiscal Services, Roman Nasirov, announced his intention to liquidate the agency once again.

So what is going on?

Located far out of Kyiv's city center, Ukraine's energy customs receives little attention from the press and its existence is largely unknown to the wider public.

It's an entirely centralized and separate customs authority that works exclusively with gas and oil products. The regional outposts report directly back to the main office in Kyiv, not to the larger regional customs authorities, and the data is not shared.

The main reason for having a separate energy customs is to ensure the upmost professionalism, according to its acting head, Ihor Pikovsky: "Why train 9,000 people? It's better to train 200," he told the Kyiv Post.

25 percent of revenues

Pikovsky, who took office on Aug. 31, has been one of several temporary heads of the agency since its re-creation in 2014. When asked why there had been so many staff changes and what exactly was going on at the agency, Pikovsky told Kyiv Post that he "didn't know anything." He

couldn't even say who had last held the post, and the information is not publicly available.

Considering that the agency accounts for more than 25 percent (Hr 5.5 billion, or \$220 million) of the total customs revenues raised in the country, according to Pikovsky, the non-transparency of its operations and lack of consistent management is surprising.

Serhiy Kuyun, the director of A-95, an energy consulting group, told the Kyiv Post that when the agency was first introduced it was very popular with businesses, as it had developed a specific approach to energy products, something Ukraine used to lack. However, he says that now it's not as necessary for them to be separate.

The constant change in leadership of the energy customs, says Kuyun, is down to infighting "between officials who want to work with those goods."

Anatoliy Makarenko, the former deputy head of the State Fiscal Service from March 2015 to April 2016 and its head between 2009 to 2010, told the Kyiv Post that under Yanukovich it was liquidated and that the sphere had come under the control of the Ministry of Taxes, de facto the State Fiscal Service, to help corrupt schemes.

Makarenko alleges that between January 2013 and February 2014, 2 million tons of diesel and oil products that came through Ukrainian customs were falsely classified as being for re-export. This meant that no customs duties were paid on the products. But instead of being transited out of the country, the oil products were delivered to various destinations within Ukraine. According to Makarenko, when he took office and the energy customs was reintroduced, this practice stopped.

Kurchenko schemes

Kuyun told the Kyiv Post that the scheme was controlled by Serhiy Kurchenko, a Ukrainian gas mogul close to Yanukovich. What made it obvious, according to Kuyun, was that the figures for the consumption of fuel in Ukraine were much higher than the amount being officially imported or produced.

"They started to bring fuel in as contraband, more and more, so the indicators – because there was a separate structure – started to dramatically decrease," Kuyun explains. "It was becoming too obvious, so they moved it to the general ministry, and the losses were spread out. It was liquidated to hide the scheme. And so that's why it was re-created in 2014, to control it again. Because back then tens of billions of hryvnias were being stolen."

However, it seems that infighting between the different groups didn't stop in 2014.

ON THE MOVE

ADVERTISEMENT



Ivanna Dorichenko

IVANNA DORICHENKO FCIARB JOINS INTEGRITES AS THE HEAD OF TRADE & COMMODITIES PRACTICE AND A MANAGING PARTNER OF THE FIRM'S LONDON OFFICE.

Previously she has been working with several law firms in London for over seven years, most recently with Clyde & Co.

Ms. Dorichenko specialises in the resolution of international commercial disputes and multi-jurisdictional claims, she often assists in drafting and negotiation of international commercial contracts, and regularly advises commodity traders and cargo interests at all stages of contract execution in various jurisdictions.

She was among the very first local lawyers involved in GAFTA and FOSFA work in the CIS. She holds an LLM in International Commercial Law from Northumbria University and GAFTA Trade Diploma; she is also called to the bar of England and Wales.



Igor Pikovskiy is the acting head of Ukraine's Energy Customs, a separate customs body for gas and oil products. Pikovskiy was appointed to the position on Aug. 31 to analyze the work of the unit that has gone in and out of business. (Volodymyr Petrov)

A group in parliament that Makarenko supports is lobbying for customs to become a separate state agency from the State Fiscal Service. The law, No. 3763 on the national customs services of Ukraine, which was submitted in January, has yet to be voted on.

Even if a separate customs service were to be created, Makarenko believes the energy customs should also remain separate until corruption in the country decreases.

At the moment, he says, the energy customs is coming under attack from the State Fiscal Service. Many of those whom he considers to be top professionals in the body have been dismissed or left.

Herman Taslytskyy, a lawyer and the head of the public committee for customs under the Ministry of Finance, has specialized in customs for his entire career, says that while there is an aspect of professionalism to the separate body, he has doubts that it's being created with a good intention.

"There were rumors that the customs was created for the benefit of one person, to make it possible to control in one place all the energy resources coming into Ukraine... For many specialists in the field, the creation of the energy customs was not connected to the reducing custom clearance time or the simplification of the process. It was rather connected to some sort of corrupt scheme."

According to Taslytskyy, the creation of the energy customs, like much of the corruption in the customs service during the Yushchenko period, was designed to achieve greater control over certain products.

Flowers, for instance, were only cleared at one specific Kyiv region customs point. Taslytskyy says the energy customs was liquidated in 2011 because of an internal battle over flows of money – a battle that had been started by the then customs head, Ihor Kalyetnyk, appointed in 2010. It was then that the Fiscal Service was also liquidated, and the infamous Ministry of Tax and Duties created.

On its re-creation in 2014, Taslytskyy said that there was now no obvious economic benefit to having an energy customs. Although it was true that it created a specialization among customs officers, Ukraine should be trying to automate all its customs processes, he said.

And according to Kuyun, the energy customs is again in the process of liquidation. The mystery continues. ■



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Four letters that could spell trouble for your company

What is the GDPR?

- Stricter European **data protection law** that replaces the EU Directive
- Companies have **less than two (2) years** to make the necessary changes to be in compliance
- Effective on 24 May 2016; **enforceable on 25 May 2018**

Which businesses must comply?

- Applies to *any* company that markets goods or services (whether free or not) to EU residents regardless of whether the company is located or uses equipment in the EU
- Applies directly to data processors, such as cloud providers

Why should companies care?

- **Maximum fines** allowed will be the **greater of €20 million or 4% of worldwide revenue**
- Permits a **private right of action** for damages against the data controller or processor
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People walk along the border between Ukraine and Poland at the Shehyni-Medyka checkpoint. The border is rife with smuggling from Ukraine to the European Union. (Kostyantyn Chernichkin)

Lviv Oblast's border with Poland is clogged daily with opportunistic small traders

By **Yuliana Romanyshyn**
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SHEHYNI, Ukraine – There are lots of road signs in the city of Lviv and the surrounding oblast pointing to Shehyni, a village of 1,000 people straddling the M-11 highway.

The village, 630 kilometers west of Kyiv, is unremarkable but for one thing – at its western end is one of Ukraine's largest border checkpoints with Poland. Most importantly, it's the only one of the region's six border checkpoints that allows people to cross the Ukrainian-Polish frontier on foot.

This has spawned a lively, small-scale smuggling industry in the village, which supplements the locals' meager incomes and raises money for the Polish budget. But it also gives trouble to local business and the customs authorities.

Four-dollar trade

After the Soviet Union collapsed in 1991, the local collective farm in Shehyni closed down, throwing the whole village out of work. The few remaining jobs were at the local school, health clinic, hotels, restaurant and stores, and at the border checkpoint.

The villagers quickly started to exploit the border trade as an additional source of income, playing on the price differences for cigarettes and vodka in Ukraine and Poland.

Once across the border, the value of a pack of Ukrainian-made cigarettes of well-known brands almost triples. Immediately after crossing, Ukrainians hawk their products to the Polish customers at an informal market.

Lyubov Patsan, a pensioner from Shehyni in her mid-50s, is one of perhaps hundreds of locals who is active in this shady cross-border trade.

“I’m doing business – two packs (of cigarettes) and half a liter (of vodka),” says Patsan, naming the maximum amount of cigarettes and alcohol a person can take across the border per day.

Any more than that, and a person may be forbidden entry to Poland, adds the head of the village council, Ihor Kryveiko.

Patsan says it takes up to three-and-a-half hours to cross the border by foot with her goods. If she sticks within the permitted amounts of products, she can make up to Hr 100 (\$4) a day. However, some traders risk taking more, hoping the border guards won’t be too thorough in their checks. Another way is to hide larger amounts in a car, as only about one in 20 vehicles are searched.

Every day, a crowd of illegal traders stand in lines to cross the border.

In Poland, brand-name cigarettes made in Ukrainian factories can sell for almost triple the price in Ukraine.

“Go and try it – you could have your ribs broken (in the crush of people) there,” Hanna, an elderly retiree, said.

Another illegal trader, she doesn’t want to give her full name. She has just returned from the pedestrian border crossing, carrying a plastic bag filled with pasta from Biedronk, a Polish supermarket.

Hanna gets a monthly pension of Hr 1,200 (\$48), and the illegal trade gives her much needed additional income. Every pack of cigarettes she buys for Hr 15 (60 cents) in Ukraine, she sells for around 6.5 zloty (Hr 45, or \$1.80) in Poland.

“Life is so good that we just want to die,” she said sarcastically about the life in her village.

And it’s not just pensioners who are in on the trade: teachers, store workers, and other people with regular jobs are also “doing business.”

Kryveiko won’t say exactly how many villagers are involved in illegal trading, only that there are “a lot of them.” Besides the locals in Shehyni, which sits practically on the border, people from other villages in the area arrive at the checkpoint by bus each day to take cheap goods into Poland.

No visa needed

Villagers who live in the 30-kilometer-wide border zone don’t need a visa to get into Poland. Around 300,000 people now have permits to cross the border without a visa after Ukraine struck the deal on local border traffic with Poland in 2009.

The bilateral agreement allows locals to travel 30 kilometers into the territory of Poland for “cultural interchange and regional cooperation,” according to the Ministry of Foreign Affairs. But that rule could easily be flouted, as the border service doesn’t check if people stay within the zone.



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Intellectual property protection during the movement of goods across the customs border of Ukraine

Customs control takes on enormous importance in ensuring there is an appropriate investment environment in Ukraine. In this regard, the Customs Code of Ukraine provides for the comprehensive set of measures and rules governing the movement of goods, including the ones containing objects of intellectual property rights across the customs border. In the act of performing customs operations, some problems related to customs clearance of goods containing objects of intellectual property rights might arise. Due to this and in view of the territorial principle of intellectual property protection, importers and exporters may encounter difficulties during import and export operations in Ukraine. What should overseas investors and entities engaged in foreign economic activities know about customs measures and procedures of intellectual property protection?

Customs authorities supervise the execution of intellectual property protection on the basis of the customs register of intellectual property objects. Any rights holder who has reason to believe that during the movement of goods across the customs border of Ukraine their intellectual property rights are being, or may be infringed, has the right to submit to the customs authorities an application for the promotion of intellectual property rights protection by way of entering related information to the customs register of legally protected intellectual property objects.

Rights holders who have registered their intellectual property rights in Ukraine, in particular, in the customs register of intellectual property objects, is entitled to control by means of the customs authority of all import and export operations regarding their intellectual property rights, including import and export prohibitions on goods containing intellectual property objects.

Abeyance of customs clearance of goods

On the basis of the aforesaid register, customs authorities shall take measures to prevent counterfeit goods from being moved across the customs border of Ukraine. The most typical measure carried out by customs authorities is the suspension of the customs clearance of goods. This procedure stipulates the following:

Provided that, with reference to the customs register of intellectual property objects, customs authorities detect characteristic features of intellectual property infringement with respect to goods presented for customs supervision and customs clearance, their customs clearance shall be suspended and the goods shall be placed in the warehouse of such authorities. The suspension period shall be from 10 to 20 days (though in some cases three days). Following the decision of suspension, the customs authorities shall notify the rights holder of the presentation of goods to customs clearance and the declarant of the reasons for the suspension of customs clearance, and indicate the name and address of the rights holder to the declarant. Hence, the rights holder shall either apply to court with an intellectual property infringement petition and inform customs authorities about this action, or file a motion for the extension of the customs clearance suspension period with the customs authorities. Otherwise, in the absence of any indication of customs offense, the relevant goods shall be subject to customs clearance as applicable.

Avoiding adverse effects

Not only bona fide rights holders but also unfair rights holders, referred to as “patent trolls”, can use legal resources in order to block import and export operations. The latter abuse their intellectual property rights in an attempt to make manufacturers who haven’t registered in Ukraine intellectual property rights in respect of goods they either import or export thereto, “obtain” an intellectual property license from “patent trolls” who neither manufacture products nor supply services based upon the intellectual property rights in question.

Therefore, overseas investors and entities engaged in foreign economic activities, who intend to conduct import and export transactions in Ukraine, should first register all of their intellectual property rights prior to doing business in Ukraine. In addition to this, every concerned party should realize that with due legal support, all legal issues can be solved in an amicable manner.



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The agreement is supposed to work the same for both countries, but Ukrainians benefit the most, as Poles already have the right to spend up to 90 days in Ukraine without a visa.

In July, Poland suspended its local border traffic with Ukraine and Russia as a security measure while it hosted the NATO Summit in Warsaw and the World Youth Days in Krakow, which was attended by Pope Francis. Although local border traffic with Ukraine resumed in August, the suspension triggered a protest rally by local citizens with border permits, who blocked off the roads leading to the border checkpoint.

Local border traffic between Poland and Russia remains suspended for security reasons.

Border opportunities

The border gives the villagers other opportunities to make money besides selling cigarettes and vodka.

Once across the border and having sold their goods, a villager may be picked up by a trader transporting Polish products to Ukraine, Kryveiko said. Such traders look for people to share the car ride as, according to customs rules, the maximum amount of goods for personal usage cannot exceed 50 kilograms per person or be worth more than €500. With an additional person in a car, a trader can avoid paying customs duty, while the villager gets Hr 50-70 (\$2-3) for the ride.

Some 100 meters from the checkpoint an old, white, Soviet-era Volga car is parked with 10-kilogram plastic tubs of honey on its hood. A ragged cardboard sign reads “Honey. Hr 50”

But that’s not the price of the honey – it’s how much a person will be

paid for taking a tub of honey across the border and delivering it to a honey trader in Poland.

Locals make money from the illegal trade in Poland, but they spend money there as well. According to Polish Main Statistical Office, Ukrainians who crossed into the local border zone spent around \$180 million in the first quarter of 2016.

Locals buy cars in Poland, where they are cheaper, and don’t bother to re-register them with the Ukrainian authorities. Registering a car in Poland costs half the amount it does in Ukraine, and as long as the car owner crosses the border at least once every five days, they can keep their Polish plates.

Kryveiko points to a line of cars with the European Union license plates: “They are all from our village.”

Border guards’ burden

The crowds crossing from into Poland and back every day complicates the work of customs and border officers. Lines frequently build up, sometimes with 300-400 cars waiting at the vehicle checkpoint, and dozens of people at the pedestrian crossing point.

Levko Prokipchuk, the ex-head of Lviv customs, who is temporarily serving as a head of Ivano-Frankivsk Oblast customs, said that around 60-70 percent of the people crossing the border into Poland are Ukrainian citizens with local border traffic permits. He said that after Poland temporarily suspended the special border-crossing regime in July, the lines reduced significantly.

“We have a situation in which the salary they (the residents of the 30-kilometer border zone) can earn officially... is smaller than the amount of money they can earn by trading across the border,” Prokipchuk said.

Since the beginning of 2016, Lviv customs has seized around 200,000 packs of cigarettes from smugglers, Prokipchuk said.

According to him, bringing the price of cigarettes in Ukraine to the same level as in Poland would greatly reduce the problems. Prokipchuk also advocates reducing the amount of goods a Ukrainian is allowed to carry across the border. Today it’s 50 kilograms per day.

“Once we resolve these two questions, the local border traffic won’t play any role,” he said.

Obstacles to business

The lines on the border also disrupt the business of European companies that have chosen to work in Lviv Oblast specifically for its location close to EU territory.

Maryana Lutsyshyn, the head of the western Ukrainian branch of the European Business Association, said that a person may have to wait for eight hours to cross the border. This is a big obstruction for businesspeople who work with companies on both sides of the border, and who cross the frontier regularly.

Lutsyshyn also noted that the lines at the border controls vanished after Poland’s temporary suspension of the local border traffic regime, but appeared again when Poland lifted the restriction.

The business community is meeting with the customs authorities, the border service and local administrations to try to resolve the problems. Lutsyshyn said setting up separate lines for people with permits as a potential solution to the issue of overcrowding at the border.

“We need to find common ground, which would allow investors to work, and let them (local border traders) earn a living,” she said. ■

UKRAINE’S BORDER WITH POLAND

One of the eight checkpoints on Polish border located in Shehyni village, some 630 kilometers from Kyiv.



By Ira Movchan, Kyiv Post

Low taxes on tobacco products give green light to Ukraine's smugglers

By **Yuliana Romanyshyn**
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With cigarettes being so cheap in Ukraine, there's a wide margin for smugglers to make a good profit. Moreover, the low cost of smoking takes a toll on the nation's health, with high rates of smoking-related diseases and deaths.

Yet parliament is in no hurry to increase taxes on tobacco. In defiance of calls by anti-smoking activists to raise tobacco taxes to combat smuggling and improve the nation's health, the Rada's tax and customs committee has been protecting the interests of the tobacco industry, as well as blocking laws to restrict cigarette advertising.

Add to that the rapid fall in the value of the hryvnia, the currency having lost two-thirds of its value over the last two years, the illicit cross-border trade in cigarettes has continued apace. In 2016, even high-level diplomats have been caught illegally transporting cigarettes to Hungary.

Tobacco lobby

After parliament's summer break, the long-running battle resumed

between the tobacco lobby and anti-smoking activists over the issue of tobacco taxes.

In 2015, a proposal for a 40 percent increase in the tax on tobacco met stiff resistance from parliament's tax and customs committee, which supported a rise of only 20 percent. Eventually, the former Finance Minister Natalie Jaresko managed to push the increase through the Rada, bringing the budget an additional Hr 6 billion (\$240 million) in tobacco taxes in 2016.

The tax lobby hasn't given up though, activists say. Plans are afoot to block anti-tobacco laws and reduce the rates of increase of taxes on tobacco, says Andriy Skipalskyi, the president of Center for Tobacco Control.

Skipalskyi said that the head of the Rada's tax committee, Nina Yuzhanina, a member of the pro-presidential Bloc of Petro Poroshenko faction in parliament, is on good terms with the tobacco industry. And Head of State Fiscal Services Roman Nasirov, who was head of the tax committee before Yuzhanina, is also a supporter of the industry.

"Whoever happens to be the head of the tax committee, he or she actively defends the interests of the tobacco companies," Skipalskyi said.



White Collar Crime

www.vbpartners.ua



A border officer checks cigarettes, seized from a Ukrainian citizen in Zakarpattia Oblast in April. (State Border Guard Service)

Yuzhanina and Nasirov had not responded to requests for comment by the time of publication.

At a news conference of the Center for Tobacco Control on Sept. 20, anti-smoking activists said that besides fighting to keep tobacco taxes and cigarette prices down, the committee has blocked draft law banning the advertising of cigarettes on the internet and the placement of pictures of the effects of smoking-related disease on cigarette packs. This law, which is supported by the Cabinet of Ministers, would bring Ukrainian law into line with European Union legislation. According to World Health Organization data, 6 million people die prematurely each year from the consequences of smoking-related diseases. There are around 63,000 smoking-related deaths in Ukraine every year, according to Ukraine's Health Ministry.

"There is a conflict of interest between the tobacco industry and public health, so none of the activities of the industry would ever be aimed at reducing tobacco use," Petro Korol, a lawyer of the Centre for Democracy and Rule of Law, said at the news conference.

Activists say the price of a pack of cigarettes in Ukraine should be the same as in the rest of Europe, which would eliminate profits from smuggling, raise more money for the budget, and decrease the number of smokers. They suggest rising the tobacco tax to 50 percent in 2016, bringing the price of a pack of cigarettes to an average of €3 (the current price in the Baltic states) by 2025.

But many in parliament don't agree.

Samopomich lawmaker Andriy Zhurzhiy, the deputy head of tax committee, said he supports a 30 percent rise in the tobacco tax this year, which he said would signal to the industry that the tax rate is only going to rise in future. He said a gradual increase in the tax should reduce the number of smokers, while "not killing the industry."

And the government has an interest in keeping the industry alive: Zhurzhiy said tobacco taxes bring in the second biggest share of revenues to the budget after taxes on oil. The tobacco companies paid taxes at a rate of Hr 300 per 1,000 cigarettes in 2015, which raised Hr 10 billion (\$400 million) for the budget.

However, Zhurzhiy said raising tobacco taxes wouldn't

resolve the problem of smuggling; to do that, corruption at the border would have to be stamped out, he said.

Smugglers' choice

With the steep currency devaluation and low taxes, Ukrainian cigarettes remain some of the cheapest and lowest-taxed in Europe. In neighboring European Union countries a pack costs six times more: some of the top brands sell for Hr 15-17 (60 cents) a pack in Ukraine, while the same brand in Poland costs \$4.

That price difference is a boon for smugglers. In the *Illicit Trade Report 2014*, published by the World Customs Organization, Ukraine was named as the top country of origin of seized contraband cigarettes. According to the report, 354 cases of smuggling cigarettes were discovered in 2014. In 2016, auditors KPMG issued a report naming Ukraine the second biggest supplier of illegal cigarettes to the EU after Belarus.

Lawmaker Tetiana Ostriukova, also a member of the Committee on Taxation and Customs Policy, says tobacco is the main type of product smuggled from Ukraine. However, nobody knows exactly how many cigarettes leave the country illegally every year.

But evidence of the size of the problem can be found at the country's border checkpoints and ports. In August, Odesa customs detained nine containers of contraband cigarettes with an estimated value of more than Hr 100 million (\$4 million).

Production and consumption figures also give an indication: in 2015, the official figure for tobacco consumption in Ukraine was 73 billion cigarettes. However, the approximately 10 million smokers in the country would have actually consumed, at most, 62 billion, according to the Center for Tobacco Control's Skipalskyi.

"That leads to a question— where did those 11 billion (cigarettes) go?" he asks. The answer is Poland and other EU countries, Israel, Egypt, and Turkey, the activists said.

Diplomatic smuggler

Smugglers evade customs (in most cases) by hiding tobacco products among other goods, like lumber, using specially designed hidden compartment inside cars and trucks, and by submitting customs documents with false data, *Illicit Trade Report* says.

In a more brazen case in May, Serhiy Lishchyshyn, the husband of a Ukrainian diplomat working in Slovakia, attempted to smuggle 60,000 cigarettes into Hungary, using a diplomatic passport. A court punished Lishchyshyn with a fine and seized his car.

His wife Oksana Lishchyshyn, who had signed a letter confirming that the car was transporting a diplomatic cargo, didn't lose her job in the diplomatic corps, although she was subsequently transferred from the Ukrainian Embassy in Slovakia.

"Now, the Foreign Ministry does take care of its employees, but what a disgrace! These are diplomats, the elite, respected people!" Hennadiy Moskal, the governor of Zakarpattia

Oblast, wrote about the incident on his Facebook page. "In Zakarpattia, cigarettes turn even the elite into bootleggers, plain smugglers.

According to a report by the Ukrainska Pravda news website on Sept. 26, Oksana Lishchyshyn has now been fired from the Foreign Ministry for violating her oath of service.

Paying everyone

Meanwhile, the debate continues between anti-smoking activists and the tobacco lobby about how to reduce smuggling. The tobacco industry's supporters in parliament say the solution lies in reforming customs, putting more staff on checkpoints, installing more scanners, and introducing more automated customs procedures to cut down on corruption.

Activists insist the increasing taxes is the key, and they say the numbers back them up.

In 2008, cigarette sales in Ukraine stood at 125 billion, while by 2015 that had almost halved, to 73 billion. Over that period the tax on cigarettes has increased by almost 10 times – from Hr 29 per 1,000 cigarettes to Hr 300.

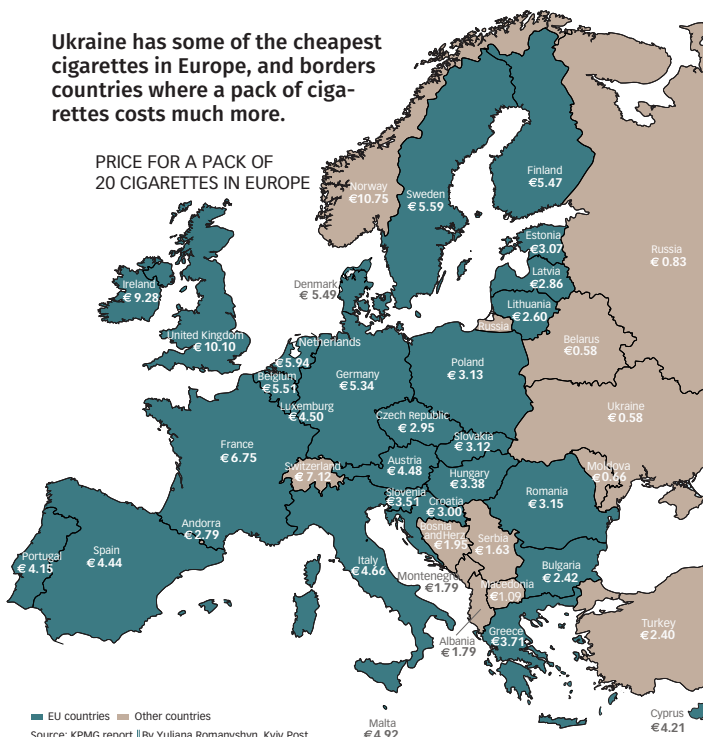
Industry expert and Ministry of Health employee Kostyantyn Krasovsky said the halving of sales of cigarettes had also halved the level of smuggling. "Naturally, the Ukrainian experience proves that smuggling from Ukraine has decreased, and the only reason for that is the tax increase," he said.

Krasovsky said the tobacco tax should be increased by at least 50 percent. That would increase cigarette prices and cut sales, which would in turn reduce smuggling, smoking rates, and health problems.

Meanwhile, with a profit margin of between 500 and 600 percent per pack of contraband cigarettes, smuggling is still a lucrative activity, Skipalskyi said.

"They can pay everyone," he said about the smugglers. "So the price of cigarettes matters." ■

Ukraine has some of the cheapest cigarettes in Europe, and borders countries where a pack of cigarettes costs much more.





Lumber being loaded onto trucks in Tyachevskiy region of Zakarpattia Oblast. Many logs are unmarked, allowing traders to classify them at lower prices and different species of wood. (Oleksandr Zobin)

Corruption fuels illegal logging, destroying Ukraine's forestland

By **Josh Kovensky**
kovensky@kyivpost.com

CHERNIVTSI, Ukraine – Ukraine's forests are rapidly disappearing as foreign corporations import thousands of tons of illegally cut timber through the nation's western borders.

Environmental and anti-corruption activists allege that companies operating sawmills near Ukraine's border with Romania, Poland and Hungary are processing the illegally cut wood, in violation of Ukrainian forestry and customs law, as well as a recent moratorium on log exports.

World Wildlife Fund Ukraine coordinator

Bohdan Prots said the customs service is largely to blame.

"Without the customs, none of this would be possible," Prots said. "The state is losing tens of millions of hryvnias."

Illegal logging inflicts massive budgetary losses on the Ukrainian state through tax revenue lost to smuggling. But the sheer quantity of the logging is fast destroying the Carpathian forests: flooding and landslides have increased in the area as trees which would have normally sucked up water and

prevented erosion are no more, while mud dragged into local rivers pollutes the water supply.

The destruction of the forest places many rural communities in danger. According to Prots, water that the trees would otherwise soak up is allowed to flow more freely.

“It’s a very serious situation, but nobody is thinking about it seriously,” Prots said. “We have situations where there was rain for four days, but the river water is still dirty because there were no trees to filter it.”

Contract data obtained by the Kyiv Post shows that Austrian firm Holzindustrie Schweighofer concluded agreements with 129 separate state-owned forestry enterprises in Ukraine for the export of lumber. Schweighofer operates a number of sawmills in Romania along the border with Ukraine. One of these, according to company statistics, located in the Romanian city of Radauti, imported 95 percent of the company’s Ukrainian supply in 2015, at 940,000 cubic meters.

Illegal logging is fast destroying the Carpathian forests, placing many rural communities in danger.

State Fiscal Service statistics say that 1,239,545 cubic meters of logs were exported from Ukraine to Romania in 2015, meaning that around 75 percent of all Ukrainian wood exports to Romania went to Schweighofer.

However, the state-owned forestry enterprises that supply Schweighofer’s wood regularly violate the law in their logging.

A World Bank-funded forestry project estimated that 15.9 million cubic meters of wood were cut in 2015, while the creation of new forests dropped by 20,000 hectares to 2,400 in the same year, even though Ukrainian law mandates that foresters replant cut areas within two years.

Schweighofer would not make any of its employees available for an interview. When a company spokesman was informed of the story, he suggested that the Kyiv Post choose a more “interesting and dynamic” topic than the rape of the country’s forests. A later request led to Schweighofer saying, “We respect the laws of the countries where we are present.”

The regional customs office in Chernivtsi, a city of 255,000 people located 527 kilometers southwest of Kyiv, did not reply to repeated requests for comment.

Lumbering schemes

Ukraine’s government owns around 74 percent of the country’s forests through the State Forest Agency. But according to Volodymyr Boreyko, the director of the Kyiv Ecological-Cultural Center, illegal logging is occurring “across the entire territory of Ukraine.”

Those who run the logging schemes tend to be connected with state-owned forestry enterprises, 307 of which exist in Ukraine.

Andis Priendieks, a Latvian businessman working in the



Ivan Shynkarenko

Partner, Ph.D. in Economics, “KM Partners”

Is the state willing to prevent tax-free import using the scheme of splitting the dispatches at last?

Amidst falling real incomes of consumers, caused by drastic devaluation of Hryvna and economic slow-down, the business of importers of consumer goods is fragile. However, not only economic reality resulted in diminishing of the market. Many importers report that their business is damaged by unprecedented proliferation of schemes of tax-free import of goods without customs control.

The situation with baby diapers is good illustration. Usual leaders in the market see their consumers flee to less well-known brands whose principal advantage is the price. The main source of this advantage is import without paying the taxes at the border and often internally. The goods are sold in the open markets or from vans without normal taxation and reporting. Import VAT alone thus accounts for 20% of the import price advantage.

Reportedly, one of the private brands of the Polish low cost supermarket network occupies up to 10% of the baby diapers’ market. According to the State Fiscal Service of Ukraine (SFS), such diapers have never undergone customs clearance for entry to Ukraine except for solitary recent occurrences.

According to the estimates of SFS, losses of the budget in taxes not paid at the border due to such schemes amount to billions of hryvna.

This problem is not limited to fiscal interests of the state, distorted competition and lost profit of importers. Besides fiscal function, the customs is also in charge for protection of internal market of Ukraine.

Under the schemes of tax-free import, the goods enter internal market without customs control. In effect, even basic check of the origin of such goods could not be done. In other words, nobody checks where the person that brings the goods have obtained them. It may well appear to be the work of some underground producer without any requirements to safety, to which a “businessman”, wishing to raise the margin, would eventually shift from a well-known brand.

One of the most widely spread (specifically, at the western border) schemes of tax-free import is splitting the dispatches. It exploits the loophole in the law, created by the rule on tax-free import to Ukraine of the goods with the value below EUR 500 and/or weight below 50 kilo (for entry points other than by air) carried by citizens. A van with six passengers may carry goods with the value up to EUR 3’000 without paying any taxes. In case of 100 travels by a van per year, the value of potential tax-free import would reach remarkable EUR 300’000 annually.

Reportedly, this scheme often employs complex logistics, where large dispatches of goods are carried to the border of Ukraine by trucks. Then the goods are reloaded to vans, which enter Ukraine, and then are loaded to trucks for carrying within Ukraine.

Until recently, this situation appeared to trouble only law-abiding business that unified efforts to bring it to attention of respective state authorities. Yet, state authorities have not showed much initiative in this respect.

This situation seems to change. The government and the SFS started to take real steps to fight it. Thus, fiscal service takes immediate actions such as bringing to liability of citizens, engaged in such schemes, for example stricter control of the weight of goods carried. Moreover, the SFS is also working on closing exiting loopholes in the legislation. Thus, SFS has supported amendments to the Customs Code of Ukraine, suggested by business community. These amendments introduce extra conditions for tax-free import - a citizen may apply the relief once per week and on condition of absence in Ukraine at least 48 hours before entry. SFS has sent respective draft law to the Cabinet of Ministers for submission to Verkhovna Rada.

If finally adopted, such amendments would be a powerful step towards prevention of the tax-free import using the scheme of splitting the dispatches. Let us wait and see!

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A lumberjack cuts down a tree in Zakarpattia Oblast. (Oleksandr Zobin)

Vinnytsia forest industry, told the Kyiv Post he was shot at after exposing a scheme under which a local state forestry enterprise was selling off its forests by marking down the exports as firewood.

Much of the logging is concentrated in the historic region of Bukovyna, where the forests had until recently remained almost untouched. Activists with the Patriotic Community of Bukovyna now say that up to 60 percent of Bukovyna’s forests have been destroyed in the past few years.

In the center of the area, among the foothills of the Carpathian Mountains, sits the State Forestry Enterprise of Berehomet.

Mykola Petichenko, an activist with the Patriotic Community of Bukovyna who has the dangerous hobby of driving around the Chernivtsi countryside, chasing and exposing smugglers, said that Berehomet is a regional center for illegally cut wood. The Berehomet state enterprise is located next to a railway line that leads to Romania.

Evidence of the illegal business is not hard to find. While out on an expedition with the Kyiv Post, Petichenko came across a truck on a forest road with a full load of wood, its engine idling, around a mile downhill from the logging site.

None of the wood was tagged, and all of it was of different qualities, with a large, rotten log sitting at the center, known as a “balance” in Ukrainian.

Petichenko said that the lack of tagging was illegal. He added that in such cases, the entire load would be labeled as cheap, low-quality, rotting wood to be used as fuel. In reality, Petichenko said, the shipment’s recipient would get a load that was mostly composed of quality wood, while on customs documents it would be marked as wood of the lowest quality in order to lower the tariff amounts.

The truck driver, who declined to provide his name, said that the load of wood was headed for Berehomet.

Springtime for Schweighofer

Ukrainian law stipulates that loggers must mark the quality of the wood at the place at which it was cut down, so as to prevent fraud. But the Berehomet log supply was without any markings.

According to contract information obtained by the Kyiv Post, Berehomet concluded a contract with Schweighofer that saw the state-owned enterprise sell roughly \$700,000 in lumber in 2015.

When presented with the number, Schweighofer said that it had not received any logs from Berehomet since the moratorium was in place. While the Kyiv Post was at Berehomet, a postal worker walked in saying he was carrying mail from Schweighofer.

“If they receive a certificate confirming the origin of the goods, (customs) have no right not to block the export,” said Andrew Zablotskyi, a partner at Sayenko Kharenko who focuses on customs law.

Petichenko, along with Valeriy Airiniy, another Bukovyna



While specific figures are hard to come by, experts familiar with Ukraine's illicit cross-border trade say that the top five illegally smuggled imports are clothing, electronics, cars, appliances and fuel. The top illegal exports: cigarettes, liquor, nuts, lumber and coal.

activist, claims that Schweighofer would be unable to import the wood without bribing customs officials.

Alina Semeniuk, the editor of Weche, an independent Chernivtsi website, said that the company was notoriously “careful” when it came to dealing with the customs service, but that it would be difficult to complete the exports without some sort of approval from the institution.

The customs service’s obligation to verify the wood, combined with the mass fraud which allows the export trade to occur, means that Schweighofer must be implicated in the violation, the activists claim.

In 2013, Schweighofer was at the center of controversy after Romanian journalists revealed that the company was illegally cutting wood in their country, and is under criminal investigation over the allegations.

Schweighofer said that it complies with all local legislation.

Moratorium

Ukraine instituted a moratorium on the export of logs, apart from pine wood, in a July 2015 law passed with the intention of stimulating domestic wood production.

Although Fiscal Service statistics suggest that the law has succeeded in stimulating 15 percent growth in lumber processing centers since it went into effect, a closer look reveals that the law has in fact created an entirely new smuggling market, making reams of otherwise legal wood contraband.

“Part of the forest is still being cut down,” said Herman Taslitsky, the head of the customs committee at the Ministry of Finance. “For us, it couldn’t be any other way. It’s forbidden, but for some people (logging) is still possible.”

Prots, the World Wildlife Fund coordinator, said that “holes in the law” mean that the moratorium is not being observed.

“The easiest hole is presenting any kind of lumber as firewood on paper, when in reality its high-quality wood,” Prots said.

Since pine is the only species of tree permitted under the moratorium (it too will be banned from 2017), many exporters mark their loads as pine trees. In Bukovyna, very little pine grows, even though most of the lumber exports from the region are marked as being of that type.

Schemes and consequences

For the villagers who perform the actual tree cutting, the work can be profitable.

“Part of the money earned from export stays at the state enterprise,” said Semeniuk, the Chernivtsi journalist. Semeniuk added that villagers could earn up to Hr 10,000 (\$400) a month from the schemes.

“For a villager, that’s good money,” Semeniuk said.

Storozhynets General Prosecutor Dmytro Ilka, an appointee of former Prosecutor General Viktor Shokin, whose area of responsibility encompasses Berehomet, said that his office had not yet opened any investigations into the state forestry enterprises. When confronted with the fact that the Kyiv Post was able to see direct violations on a day trip, he demurred, saying that the prosecutor’s office had not seen any evidence.

“But we’ve opened investigations into private forest enterprises for illegal logging,” he said.

Semeniuk said that a clean customs service plus the state divesting from its forestry enterprises could solve the problem.

“For the state, it’s a business,” said Semeniuk. “The whole system needs to be changed.” ■



Cut-down trees in Verkovyna region of Ivano-Frankivsk Oblast in 2016. The ecological consequences of deforestation include massive landslides and flooding. (Yurko Dyachyshyn)


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A man looks at smartphones through the window of a shop in an underpass in Kyiv's downtown on Sept. 23. Despite the fact that Apple hasn't yet officially launched the distribution of its newest iPhone 7 in Ukraine, lots of non-authorized shops are already selling them. (Volodymyr Petrov)

Ukrainians smuggle Apple devices from abroad to save money

By Denys Krasnikov
krasnikov@kyivpost.com

Despite average salaries of only \$2,000 per year, many Ukrainians still long to possess an iPhone.

But while U.S. customers can buy a new iPhone 6S for \$549, Ukrainians have to pay \$730 for the same model at an official distributor's store. So many Ukrainians opt for cheaper, smuggled Apple gadgets.

Hand-held electronics are easy to transport and pound-for-pound are more profitable than other goods. As a result, devices such as Apple smartphones, tablets and watches are popular with Ukrainian smugglers.

But even though the smuggling gives Ukrainians the possibility to buy a device they would probably put off buying due to its high price, it's the consumer who ends up without any guarantee of the gadget's proper functioning in the future.

Most devices are 'gray'

The volume of smuggling of Apple devices is vast. Just in the last seven months, from January to July, the State Fiscal Service recorded 41 cases of violations of customs procedures while such devices were brought into the country. Over this period it confiscated 435 smartphones worth Hr 2.5 million (\$100,000) - and all of them were Apple devices.

Back in 2014, the State Fiscal Service seized 7,506 units of various makes of smartphones worth Hr 15 million (\$600,000). Over 1,300 units worth Hr 14 million (\$560,000) were confiscated in 2015. And over the last year, the authorities have searched at least six different shops and arrested Apple gadgets worth over Hr 10 million (\$400,000).

However, experts say the scale of the illegal trade is even larger than that.

Viktor Sholoshenko, the marketing director at Citrus, a Ukrainian chain of electronics shops, claims that most internet retailers in the country sell "gray" gadgets, and those produced by Apple are in high demand.

While it has in-country operations in Ukraine's neighbors, Russia and Poland, Apple does not work directly with Ukraine. Instead, the tech company has certified two firms to distribute the company's devices to local vendors. These are ERC and ASBIS.

But Sholoshenko says roughly 85 shops out of 95 probed on the internet offer iPhones that are not authorized by the official distributors. It's the same story with offline sales.

"Apple and official distributors would never certify the numerous stalls that sell iPhones in open markets or inside underground metro passages," he said.

Sholoshenko added that only Apple can know the real picture of illegal sales of its gadgets in Ukraine, as it knows how many devices it has sold to a particular country and how many of them have been activated there.

Apple Inc. did not reply to a voice message and three e-mails seeking comment.

Corruption is involved

Yulia Marushevka, the head of Odesa Oblast's customs service, believes that a huge amount of illegal Apple gadgets are available on the Ukrainian electronics market. She knows at least two ways of importing commodities into Ukraine dodging taxes: simple contraband, and bringing in goods in violation of intellectual property rights.

But both options, according to her, definitely involve corruption.

"Nobody would smuggle in just 100 phones. They bring in batches - thousands," Marushevka told the Kyiv Post. "That can't go unnoticed. It is clear that there must be some agreements."

Marushevka said that the solution would be to ensure the proper work of Ukraine's border service and internal authorities.

"(This means) stopping contraband at the border and, at the same time, continual punishment inside the country - seizing this product from the market and shutting down small shops," she said.

A Kyiv Post source, whose company works with official distributors but who wished to stay anonymous because of fears that authorities would search his company, said that "more than 60 percent of Apple products are shady" and that most of the devices "get in Ukraine through kickbacks" on the border.

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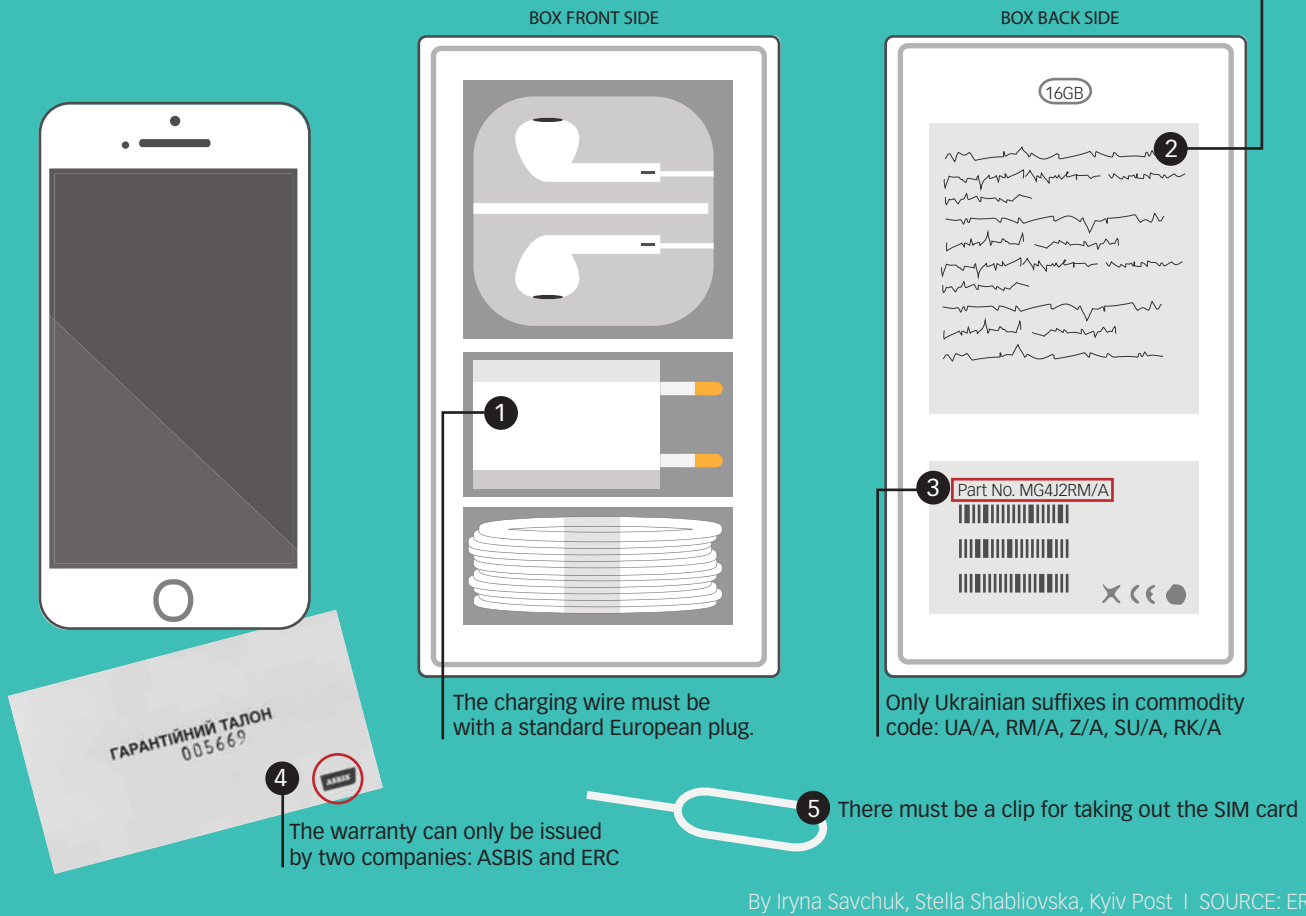
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5 TELL-TALE SIGNS THAT AN IPHONE BOUGHT IN UKRAINE IS AUTHORIZED

The sticker must only be in Ukrainian



By Iryna Savchuk, Stella Shabliovska, Kyiv Post | SOURCE: ERC

There are several ways to distinguish a legally imported and distributed Apple iPhone from an unauthorized device.

“The volume of smuggling is so huge... (that) we are being forced to leave the market,” the company owner said.

According to him, it’s almost impossible to resell officially imported Apple gadgets. “We sell legal electronics, pay all the taxes, and are being criticized by customers for our prices, because people have got used to the prices of smuggled products.”

Fiscal Service Head Roman Nasirov didn’t respond to requests for comment, but in the answer to questions from the Kyiv Post the Fiscal Service denied there were any customs bribery schemes, and said that there were plenty of other semi-legal ways to bring non-authorized electronics into the country.

For instance, citizens can bring in goods worth less than €1,000 and less than 50 kilograms in weight, although, the law says these goods mustn’t be for commercial purposes. According to the Fiscal Service, this loophole is used widely. And in another shady maneuver, electronics are hidden among goods that have lower customs tariffs, like food.

According to the Fiscal Service, more scanning devices are needed on the border to stop such smuggled consignments of electronics.

A different perspective

However, some think that the problem lies not with the current laws or corruption, or the lack of modern scanners on the border, but in the monopolization of this business by just two companies.

Volodymyr Kolodiuk, the president of the Unitrade Group Holding, and the brother of the famous Ukrainian venture capitalist Andrey Kolodiuk, said that today plenty of companies are ready to import electronics of the same quality to Ukraine, but charging much less than the official distributors do.

“As a result, the devices cost significantly more than on the U.S. and European markets. The official distributors earn excess profits due to such a monopoly,” Kolodiuk, whose shop City.com has admitted selling “gray” gadgets, told the Kyiv Post. “In the civilized world this is called parallel importing (when one buys goods in one country cheaply, and sells them more expensively in another country).”

“It’s not business that suffers from this situation,” he went on. “It’s ordinary people, who have to pay too much for desirable goods.”

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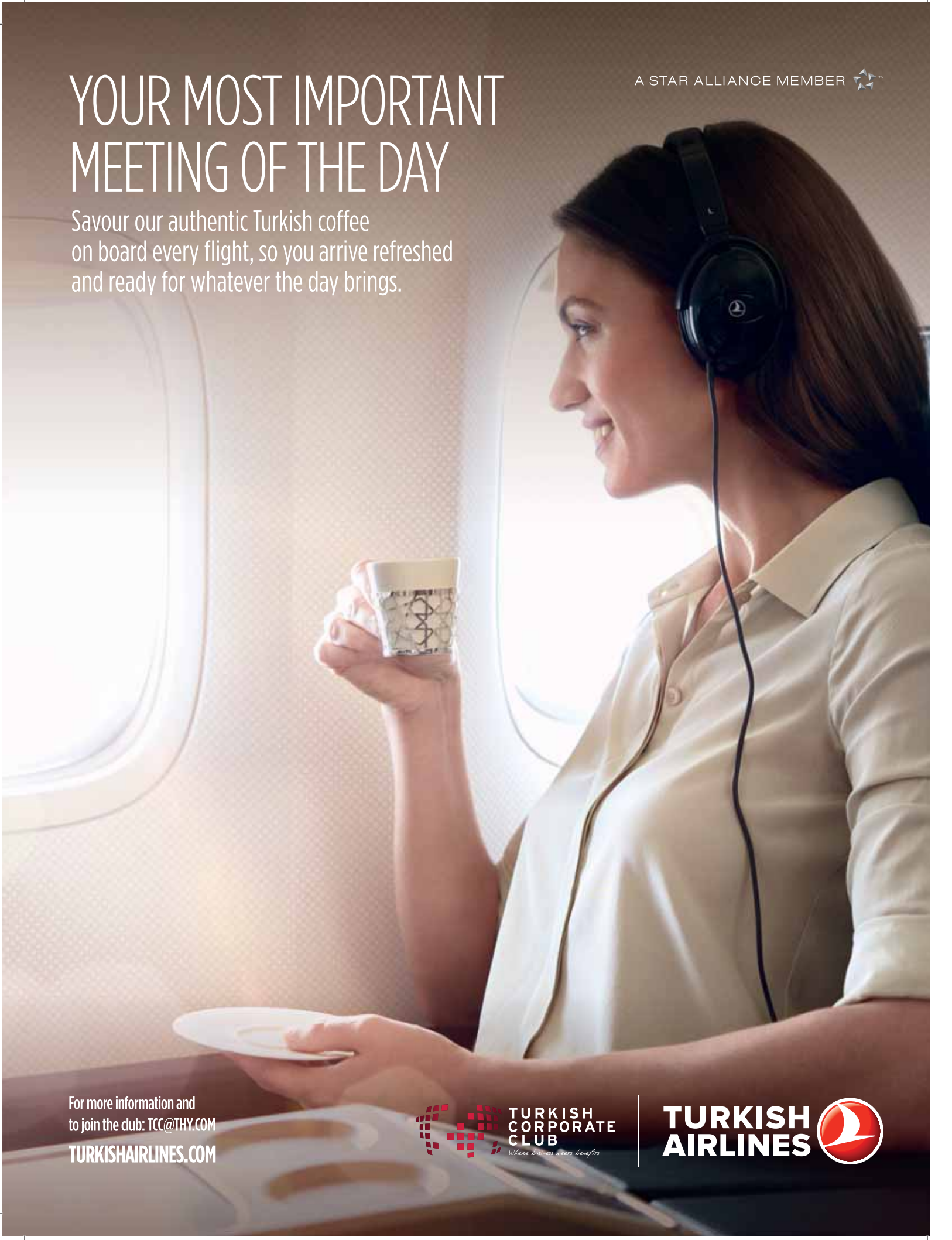
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