
GEPLAC ACTIVITIES

Draft Customs Code

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1. Background

In 1996, Georgia and the European Communities concluded a Partnership and Co-operation Agreement (PCA), which entered into force in 1999. According to Article 43 of the PCA, Georgia assumed an obligation to approximate its legislation with that of the EU. For its part, the EU has taken an obligation to provide Georgia with technical assistance in the process of alignment of legislation.

Article 43 of the PCA defines the areas in which the approximation of legislation should take place. One of these areas is the customs law. Thus, the EUROCUSTOMS is providing Georgia with assistance to harmonise Georgian legislation to that of the EU. In October 2002 the EU launched a Tacis project "Implementation of Procedure and Study of the Georgian Customs Service" (IPSGCS), which aims at approximation of Georgian customs legislation to international standards and the development of a management strategy. The particular task assigned to the project is the elaboration of a new Customs Code.

The Georgian-European Policy and Legal Advice Centre (GEPLAC) was established in 1997 in the framework of the EU Tacis Programme in order to support economic and legal reforms in Georgia, in particular the implementation of the Partnership and Co-operation Agreement. GEPLAC elaborated the Strategy of Harmonisation of the Georgian Legislation with that of the EU, which was approved by Presidential Enactment No.613 of 14 June 2001. At the same time the Governmental Commission established under the Presidential Ordinance No.317 of 24 July 2000 on the Promotion of the Implementation of PCA was assigned to make the next step towards the alignment of the legislation – the elaboration of the National Programme of the Harmonisation of the Georgian Legislation with that of the EU (National Programme). The Governmental Commission and GEPLAC identified jointly the sectors in which the harmonisation and thus the elaboration of National Programme would take place. As customs legislation is one of the priority fields identified, GEPLAC together with a working group established by the Governmental Commission elaborated respective recommendations for the further reforms in the field.

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Proceeding from the above, in June 2003 there was established a special Working Group comprising of the External Experts of the IPSCS and GEPLAC experts, which has assessed a draft Customs Code prepared by the IPSCS European Experts and representatives of the Customs Department of the Ministry of Finance.

2. General Historical Overview

The first steps to establish a legislative framework for customs were initiated in Georgia in the early 90's. At that time Georgia had neither a legislative framework nor practical experience of regulating a customs system. In the Soviet Union customs issues were under the competence of the federal authorities. Therefore local customs bodies of the republics had very limited functions to identify goods according to type and quantity indicated in the permit. Additionally, Georgia inherited from the Soviet Union ports and airports with outdated equipment and closed (Turkey) or uncontrolled (Armenia, Azerbaijan and Russia) land frontiers.

Thus after the collapse of the Soviet Union and restoration of independence in 1991, Georgia faced the necessity to establish its own customs system, which was accompanied by serious economic difficulties and political problems. In particular due to civil war and a lack of political control in some border regions, there was no possibility to establish a functioning customs system throughout the country. Nevertheless there was created a legislative framework for the development of customs, which is still in early stages of its development.

The first national legislative instrument regulating customs was the Customs Code of Georgia, adopted in 1992 by the Georgian State Council. The Code comprised of 6 chapters and 137 Articles and was in force until 1998. The Code created a legal basis for such notions as customs territory, customs border, customs authorities, and customs clearance. Notwithstanding its shortcomings and deficiencies, this Code played an important role, as it provided a legal basis for the national customs policy and the activities of the national customs service - the Customs Department of Georgia.

During 1992-1995 in addition to the Customs Code, some special legislative instruments like decrees of the State Council, decisions of the Cabinet of Ministers and orders of the Customs Department provided rules concerning different issues related to the customs system.

However, the Code did not keep pace with the requirements of dynamic changes in the country. A new (second) Customs Code was adopted in November 1997 and is still in force.

3. Customs Code in Force

The Customs Code is the primary legal instrument in the field of customs, under which the Customs Department operates. It defines the legal, economic and organisational principles of the administration of the customs.

The Customs Code regulates the crossing of the customs frontiers of Georgia with goods and means of transport, customs procedures (Section II), customs duties and taxes (Section III), customs clearance (Section IV), customs control (Section V), customs offences, delivery subject to control (Section VI), customs statistics of foreign trade and commodities of foreign economic activity (Section VII), informing and consulting (Section VIII), organisation of customs activities (Section IX) and civil servants of customs bodies of Georgia (Section X).

The main objectives of customs policy, as defined in the Customs Code, are the following: the protection of economic sovereignty and economic security; the stimulation of economic development and domestic market protection (Article 1 II). According to the Code the customs policy has to be developed in the direction of harmonisation with universally acknowledged international legal norms and practice (Article 1 V).

The Customs Code defines the customs territory and customs frontiers of Georgia (Article 2). The customs territory comprises land area, territorial and inner waterways, and air space. The customs territory also comprises the areas of man-made islands, installations and structures, created in a special marine economic zone, to which special jurisdiction extends. The customs territory may also include free customs zones and warehouses regarded as being outside the customs territory of Georgia. To such free customs zones and warehouses a special customs procedure is applied. The boundaries of the customs territory, as well as the perimeters of free customs zones and free warehouses, constitute the customs frontier.

The Code regulates 15 types of customs procedure. These are: release for free circulation (import), re-import, transit, customs warehousing of goods, free trade, inward processing, processing under customs control, temporary importation and/or exportation, placement and/or use of goods in a free warehouse, placement and/or use of goods in free customs zone, outwards processing, export, re-export, destruction, refusal in favour of the state.

Some of these procedures are regulated by the regulations of the Customs Department. These provisions are based on the Code and consist of additional information on rules and procedures to be applied. Other issues of particular importance are regulated by laws on Customs Tariff and Duty and on Customs Fees.

After the abolition of the Ministry of State Revenues, the Ministry of Finance took over the function to control, observe and guarantee fulfilment of tax and customs legislation throughout the whole territory of Georgia. According to its Statute approved by Ministry of Finance on 29 August of 2002, the Customs Department is a state body under the Ministry of Finance with the status of a law enforcement agency, which acts in the name of the state. It ensures economic security of Georgia within the limits of its competence and provides the organisation of state customs activities.

4. Draft Customs Code

The draft Customs Code follows the basic principles of EU legislation. It is designed to ensure the predictability of customs procedures. According to widely acknowledged practice it begins with General Provisions that provide the scope of application of the Code and the basic principles applicable for customs activities.

4.1 Definitions

It includes definitions of the terms used, which contribute to a better understanding of the relevant legal concepts and customs procedures. The draft Customs Code defines 32 terms (Article 5), while the Code in force contains only 10 definitions.

Among the new definitions introduced by the draft Code are: decision, customs debt, control by the customs authorities, customs-approved treatment or use of goods, declaration, presentation of goods to customs, release of goods, holder of the procedure, holder of the authorisation.

4.2 Rights and Duties of the Parties Involved in Customs Procedures

The draft Customs Code provides comprehensive regulation of rights and duties of parties e.g. it deals in detail with the issue of representation while applying customs procedures (Articles 6-7), with decisions related to the application of customs rules (Article 8), with enforcement, annulment, revocation and amendment (Articles 9-11) of a decision.

4.3 Origin of Goods

The draft Code introduces rules for determination of non-preferential and preferential origin of goods (Articles 19-23). Determination of non-preferential origin of goods is provided for the following purposes:

- Applying the Customs Tariff with the exception of preferential tariff measures;
- Applying measures other than tariff measures established by provisions governing specific fields relating to trade in goods;
- The issue of non-preferential certificates of origin.

Particular importance shall be granted to provision of special rules on the determination of origin in Article 20.

4.4 Value of Goods for Customs Purposes

In contrast to the Law of Georgia on Customs Tariff and Duty that provides only calculation upon the transaction value, transportation and insurance, the draft Code provides comprehensive regulation of value of goods for customs purposes (Articles 24-36). In particular it extends the regulation by applying also the following additional criteria such as rules

on identical and similar goods (Article 26) and those provided in other auxiliary rules for determining the customs value (Article 27). Special attention shall be granted to Article 28 on Other Applicable Rules and Restrictions for the Determination of the Customs Value, which provides that:

“Where the customs value of imported goods cannot be determined under Articles 25, 26 or 27, it shall be determined, on the basis of available data, using reasonable means consistent with the principles and general provisions of:

- The Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994;
- Article VII of the General Agreement on Tariffs and Trade 1994; and
- The provisions of this chapter”.

4.5 Customs-Approved Treatment or Use

Also in contrast to the Customs Code in force, the draft Code assigns a special Title to the issues of Customs-Approved Treatment or Use (Articles 57-78), which provides for detailed regulation of:

- Obligation of lodging a customs declaration, consequences;
- Time and place of customs clearance;
- Form of customs declaration;
- Place of Declaration;
- Receipt and acceptance of the customs declaration and the relevant date;
- Amendment of particulars of the customs declaration;
- Invalidation of customs declarations;
- Verification of declarations;
- Examination of goods and other measures taken by customs authorities for the purposes of verifying the declaration;
- Release of goods;
- Measures to be taken by other authorities in connection with customs goods.

4.6 Types of Customs Procedures with Economic Impact

In contrast to the Code in force, which roughly regulates customs procedures with economic impact, the draft Code provides detailed and comprehensive rules (Articles 85-89) on:

- Customs warehousing;
- Inward processing;
- Processing under customs control;
- Temporary importation;
- Outward processing.

There are also additional provisions dealing with the issuance of authorisation for the above listed relevant procedures.

4.7 Free Zones and Free Warehouses

The draft Code envisages the regulation of Free Zones and Free Warehouses (Articles 158-175). In particular it deals with:

- Definitions (Article 158);
- Enclosurement of free zones, entry and exit points and spatial interventions (Article 161);
- Customs control and Checking of goods (Articles 162-163);
- Placing of goods in a free zone or free warehouse (Article 165);
- Activities in a free zone or free warehouse (Article 167);
- Permitted and other handling of customs goods in a free zone or free warehouse (Articles 168-169);
- Removal of goods from free zones or free warehouses (Article 172).

4.8 Customs Debt

The regulation of customs debt is introduced in the draft Code (Article 185-217) dealing in particular with:

- Cases of providing security (Articles 185-186);
- Types of security (Article 189);
- Acceptance (Article 193) and Release of security (Article 195);
- Incurrence of a customs debt (Articles 197-209);
- Recovery of the amount of the customs debt (Articles 210-216);
- Extinction of customs debt (Article 217).

5. Conclusions

All the customs procedures envisaged in the draft Customs Code are provided in an exhaustive way and leave nothing open or questionable. This is of particular importance for the implementation of the Code in Georgia taking into consideration its current stage of development. By the end of October the assessment of the draft by IPSGCS and GEPLAC experts will be finalised and will be provided to the Ministry of Finance for further consideration.