

LEGISLATIVE SUPPORT FOR EXPORT-IMPORT ACTIVITIES OF ENTERPRISES UNDER MARTIAL LAW

According to official data of the Ministry of Economy of Ukraine, in connection with Russia's aggression, only in March 2022, the export of Ukrainian goods halved, and the import more than tripled, compared to the data for February 2022.

Since the situation is changing dynamically, we make a caveat that the review is an objective state as of April 8, 2022, and also, taking into account the specifics of the relevant aspects, it does not cover the issue of public procurement, transactions with goods for military purposes or goods that contain information constituting state secret [1].

First of all, we note that the Basic Law of Ukraine «On the Legal Regime of Martial Law» does not contain any universal rules or mandatory prohibitions that should apply to imports or exports during the period of martial law. In particular, the law does not require the introduction of an embargo on trade with an aggressor country or even an occupying country.

In accordance with the provisions of Art. 9 of the Law of Ukraine «On Foreign Economic Activity» The Verkhovna Rada of Ukraine (VRU) is the highest body that carries out state regulation of foreign economic activity, and it is its authority to make decisions on the application of measures in response to discriminatory and/or unfriendly actions of other states by establishing a full/partial embargo for trade or preferential special regime. At the same time, Art. 29 of the Law of Ukraine «On Foreign Economic Activity» also provides that in the event that discriminatory and/or unfriendly actions against Ukraine are applied by a state recognized by the VRU as an aggressor state and/or an occupying state, retaliatory measures may be applied by decision of the Cabinet of Ministers of Ukraine (CMU) under a simplified procedure [2].

On February 24, immediately after the Russian attack, the State Customs Service of Ukraine published a summary of the closure of certain customs checkpoints on the border with Russia and Belarus. Subsequently, CMU Order No. 188-r of February 26, 2022 was published, according to which a number of state border crossing points and control points were officially temporarily closed (mainly those located on the border with Russia and Belarus, or in the immediate vicinity of areas where active hostilities are taking place). Therefore, customs clearance of goods from Russia and Belarus has actually been stopped [3].

Already now, the rules introduced by the Government regarding the simplified procedure for customs clearance, which will be discussed below, do not apply to the import of goods from Russia. As for

Belarus, this exclusion for Belarusian goods does not currently apply, since the VRU did not recognize Belarus as an aggressor state. In addition, on April 7, 2022, the Prime Minister of Ukraine announced an embargo on trade in goods from the Russian Federation introduced by Ukraine (it will obviously be a complete ban on the import of Russian goods, since a partial embargo has already been introduced by Ukraine) [2].

According to clause 25 of Art. 7 of the Law of Ukraine «On Licensing of Types of Economic Activity», the list of types of economic activity that are subject to licensing includes the licensing of economic activities, which is carried out by the Ministry of Economy in accordance with Art. 16 of the Law of Ukraine «On Foreign Economic Activity».

By Resolution No. 314 dated 18.03.2022 «Some issues of ensuring the conduct of economic activity in the conditions of martial law», the CMU significantly simplified the procedure for economic entities to obtain the right to conduct certain types of economic activity, allowing not to obtain permit documents, but to be limited only to submitting a declaration to the authorized body on the conduct of economic activity according to the established form. An exception is the types of economic activity defined in accordance with Appendix 2 to the aforementioned resolution, and foreign economic activity is mentioned among such exceptions. In other words, foreign economic activity that is subject to licensing cannot be carried out in the conditions of martial law solely on the basis of a declaration submitted to the Ministry of Economy - licenses must be obtained in the future when necessary [1].

The provisions of Art. 16 of the Law of Ukraine «On Foreign Economic Activity» provides for deadlines for the Ministry of Economy to issue relevant licenses, namely - 10 working days for the automatic mode, and 30 or 60 working days for the non-automatic licensing mode.

Shortly after the start of the war, the CMU adopted Resolution No. 165 of February 28, 2022 «Some issues of the realization of the rights, freedoms and legitimate interests of individuals and legal entities», according to which it was decided to suspend not only the terms of providing administrative services, but also the issuance of permission documents for a time martial law [2].

In the future, the Government further simplified the process of obtaining licenses from the Ministry of Economy. Thus, according to Resolution No. 241 of March 10, 2022 of the CMU, amendments were made to Resolution of the CMU No. 362 of May 18, 2005, according to which, in particular, it was established

that until the termination or cancellation of martial law in Ukraine, the fee for issuing an export license (import) of goods could not be handled.

On March 10, 2022, the Ministry of Economy issued Order No. 393-22 «On approval of the Temporary procedure for licensing the export of certain goods specified in Appendix 5 to the Resolution of the Cabinet of Ministers of Ukraine dated December 29, 2021 No. 1424», according to which the registration of licenses or the preparation of a letter of refusal it must be issued within two days. So far, this order has not yet been published in an official publication. At the same time, according to public information, the department is currently continuing work on issuing licenses and accepting documents via electronic means [2].

Since the beginning of the war, the list of goods, the export of which is subject to licensing by the Ministry of Economy in accordance with Resolution of the CMU No. 1424 of December 29, 2021, has been changed by the CMU several times.

Thus, in accordance with Resolution No. 207 of March 5, 2022 and Resolution No. 259 of March 12, 2022, the CMU included in the list of goods whose export is subject to quotas and licensing, cattle meat under separate headings, rye, oats, buckwheat, millet, sugar, salt, as well as mineral fertilizers (nitrogen, phosphorus, potassium and complex). Quotas in the amount of 0 tons were introduced for all such commodity items by the resolutions of March 5 and 12, that is, in fact, the export of such goods from Ukraine was temporarily prohibited. The need for licensing the export of wheat, chicken meat and eggs, corn and sunflower oil was also introduced. Regarding the last two positions, such measures were, however, quickly canceled by Resolution No. 352 of March 24, 2022 [3].

By Resolution No. 353 of March 24, 2022, export restrictions on fertilizers were eased, in particular, the list of commodity items for nitrogen fertilizers was detailed at the level of 10 characters (instead of 4), and the volume of quotas was increased from 0 to 210,000 tons. The consideration of applications for obtaining licenses for the export of such goods is carried out in accordance with the procedure established by the Ministry of Economy, and the issuance of licenses for the export of these goods is carried out on the basis of an application within the quota of 70,000 tons per month.

On March 20, 2022, the Government adopted Resolution No. 330 «Some issues of customs control and customs clearance of goods, in particular vehicles, under martial law conditions», according to which it is possible to import most goods in a simplified way based on the submission of a preliminary customs declaration without customs clearance payments (including VAT, excise tax, import duty), without customs inspection, phytosanitary control, as well as non-tariff regulation measures [3].

Resolution No. 330 was the Government's next step towards the liberalization of customs regulations and replaced Resolution No. 180 of March 1, 2022 and Resolution No. 236 of March 9, 2022, according to which the CMU initially allowed a temporary postponement of customs payments for the import of

food and other essential goods and canceled the measures of non-tariff regulation, and later - allowed to carry out customs clearance of imports by submitting a preliminary declaration and expanded the list of goods for which deferred payment of customs payments is allowed.

The entry into force of Resolution No. 330, in accordance with its paragraph 7, is made dependent on the entry into force of the law, which provides, in particular, the implementation of customs control and customs clearance under martial law conditions without making customs payments, including VAT and excise tax. Article 13 of the Law of Ukraine «On Currency and Currency Operations» provides for the right of the National Bank of Ukraine (NBU) to establish settlement deadlines for export and import operations. Thus, on February 24, 2022, the Board of the NBU issued Resolution No. 18 «On the operation of the banking system during the introduction of martial law» (the last amendment was made on April 4, 2022) [1-3].

Such changes from April 4, 2022 provided for a change in the settlement deadlines for operations on the export and import of goods. Therefore, starting from April 5, 2022, for all export-import transactions, the maximum settlement terms of 90 calendar days will be applied. This is a significant shortening of the terms, compared to the peacetime rules, when they were 365 calendar days, and aims to ensure the stability of the system, to prevent the withdrawal of capital abroad and prevent the emergence of macroeconomic imbalances.

CMU Resolution No. 153 of February 24, 2022 «On the List of Critically Imported Goods» became the second resolution published by the CMU on its web portal on the first day of the war, confirming its importance for the economy. After that, changes to the list were made 15 times (the last time, as of the date of this analysis - March 26, 2022) [2].

Separately, the business should remember the possibility of applying special rules for the period of martial law to the goods it deals with in its foreign economic activity in addition to those already mentioned above. As practice shows, regulation of foreign economic activity is currently carried out quite dynamically in order to ensure joint victory.

References

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