
Odessa & Illichivs'k Sea Port Study



EUROPEAN UNION BORDER ASSISTANCE MISSION
TO MOLDOVA AND UKRAINE



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Glossary of Acronyms

AA	Association Agreement
ADNS	Animal Disease Notification System
AEO	Authorized Economic Operator
AEO - F	AEO «customs simplifications/security and safety» certificate
AEO - S	AEO «security and safety» certificate
AIFFU	Association of International Freight Forwarders of Ukraine
AIRCU	Association of International Road Transport Carriers
ANPR	Automatic Number Plate Recognition
APEC	Asia-Pacific Economic Cooperation
ARAMS	Automated Risk Analysis & Management System
BCP	Border Crossing Point
BCS	State Border Control Services
B2G	Business to Government
CBRNE	Chemical, Biological, Radiation, Nuclear and Explosives agents
CC	Customs Code of Ukraine
CCC	Common Customs Code
CCIP	Implementing provisions of the Community Code
CCTV	Closed-Circuit Television
CCU	Customs Clearance Unit
CDPS	Customs declaration processing system
CIF	Carriage Insurance and Freight
CIRAM	Common Integrated Risk Analysis Model
CSI	Container Security Initiative
C-TPAT	Customs-Trade Partnership against Terrorism
CVED	Common Veterinary Entry Document
DCFTA	Deep and Comprehensive Free Trade Agreement
DTI	Direct Trader Input
EC	European Commission
EBRD	European Bank for Reconstruction and Development
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood and Partnership Instrument
ESPO	European Seaport Organization
EU	European Union
EUD	Delegation of the European Union Ukraine
EX	Export
FAL	Facilitation of International Maritime Traffic
FOB	Free on Board
FOOD	Field Office Odessa, EUBAM
FRONTEX	European Agency for the Management of Operational Co-operation at the External Borders of the Member States of the European Union
fYRoM	Former Yugoslav Republic of Macedonia

GATT	General Agreement on Tariffs and Trade
HQ	Headquarters
HR	Human Resource
HRM	Human Resource Management
ICP	Inland Customs Post
ICT	Information and Communications Technologies
ILO	International Labour Organisation
IM	Import
IMO	International Maritime Organisation
IPR	Intellectual Property Rights
ISPS	Port Community System
ISPMs	International Standards for Phyto-Sanitary Measures
IT	Information Technology
MAA	Mutual Administrative Agreement
MOU	Memorandum of Understanding
MRAs	Mutual Recognition Agreements
NCTS	New Computerized Transit System
OCSP	Odessa Commercial Sea Port
OECD countries	Organisation for Economic Co-operation and Development (OECD) member states
OIE	World Organization for Animal Health
OSCE	Organisation for Security and Co-operation in Europe
PCA	Post Clearance Audit
PPP	Plant Protection Products
RA	Risk Analysis
RASFF	Rapid Alert System for Food and Feed
RFID	Radio Frequency Identification (Technology)
RKC	Revised Kyoto Convention
RPM	Radiation Portal Monitors
SAD	Single Administrative Document
SES	Secure Export Scheme
SFS	State Fiscal Service of Ukraine
SOLAS	International Convention for the Safety of Life at Sea
SOP	Standard Operating Procedures
SPS	Sanitary & Phyto-sanitary
SW	Single Window
TAIEX	Technical Assistance Information Exchange
TBT	Technical Barriers to Trade
TEN-T	Trans-European Transport Network
TEU	Twenty-Foot Equivalent Unit – standard measurement for shipping container
TR-80	External transit
TRACES	Trade Control and Expert System
TRSTF	Time Release Study Task Force
TSP	Temporary Storage Platform
UACIS	Unified Automated Information System (declaration processing software)

UASBGS	Ukraine State Border Guard Service
UN	United Nations
UNECE	United Nations Economic Commission for Europe
USAID /LINC	United States Agency for International Development / Local Investment & National Competitiveness
WB	World Bank
WCO	World Customs Organization
WCO FoS	WCO Framework of Standards
WCO-FoS/SAFE	WCO-Framework of Standards to Secure and Facilitate Global Trade
WMD	Weapons of mass destruction

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Executive Summary

Introduction

The ports of Odessa and Illichiv'sk play a significant role in Ukraine's import and export trade. In 2013 these ports handled 60% of Ukraine's sea cargo and nearly all of its sea born container imports. Additionally, the ports handle goods in transit to and from other countries, notably the Russian Federation, and the Republic of Moldova.

Because of their importance, and also due to the ports' having a reputation for slow clearance times, congestion and corruption, they have been the subject of considerable scrutiny and reporting intended to identify the deficiencies and propose corrective measures. This report is considered to be the most comprehensive to date, by taking into account the previous findings, consulting extensively with the trade, analysing the control activities of all the agencies as well as customs, and evaluating customs activity prior to the declaration being lodged.

The potential for improvement is reflected in the World Bank 'Logistics Performance Index', which rates customs performance in the ports at sixty ninth from a total of one hundred and sixty.

The review was undertaken upon the invitation of the Ukraine State Fiscal Service, and the subsequent inclusion of the other state border control agencies operating in the ports. It was conducted during the period May – September 2014, and comprised the three components of Process Mapping, Gap and Needs Analysis, and a Customs Declaration Time Release Analysis, which compared the periods of August 2012 and 2013, and July 2014.

Whilst the review noted that some considerable progress was made in recent years in reducing port congestion, introducing electronic declarations, and ensuring greater engagement between customs and trade, there remain substantial areas requiring further improvement.

The report makes twenty nine recommendations, based upon the gaps identified, which are clustered under six strategic areas for reform.

The importance of implementing the recommendations is heightened by the recent signing of the EU – Ukraine Association Agreement, and with it the future establishment of a Deep and Comprehensive Free Trade Area. This will not only require procedural change and improvements to trade facilitation, but will also require the State Fiscal Service to have the necessary administrative capacity to deliver the change and ensure high levels of integrity throughout the service. Of particular importance, therefore, are the recommendations related to human resource management.

Background and Aims

Traffic has experienced a period of substantial growth and increased revenues during the past six years. However, concerns about operational efficiency remain. Earlier reviews on clearance control processes have identified procedural and operational obstructions encountered by business when clearing consignments, with resulting delays and chronic congestion. Furthermore, there is a widespread belief that corrupt practices are rife in the ports, particularly in the customs, but also involving other border control personnel.

Global pressure for the simplification, automation and streamlining of clearance end-to-end procedures are driven both by the needs of business to reduce the costs on the one hand, and on the other by the need to minimise the costs of border control services, within state budgets.

Within this environment, the customs administration and other border control services have somewhat conflicting responsibilities to address. They must implement international trade agreements and conventions, and continuously look for ways to simplify and streamline procedures that facilitate trade, but also achieve a balance that preserves a secure border. These requirements, including approximation to the EU Acquis are time lined in specific objectives under the DCFTA.

Thus, the aim of this review has been to assist the State Fiscal Services and other State Border Control Services to identify areas where improvements in clearance control procedures should be made, and how they should be achieved. The report not only makes recommendations for procedural change, but importantly identifies the methods to achieve greater efficiency and imbed the institutional capacity and integrity to achieve them.

Methods

In order to undertake and complete the Port Study, EUBAM and the State Fiscal Service agreed on terms of reference, which incorporated the following components:

- Mapping of Customs and other State Border Control Services clearance processes and procedures;
- A 'Gap Analysis' based on six strategic areas - Legislation and Regulatory Framework, Institutional Framework and Human Resource Management Development, Procedures, Communications and Information Exchange, Infrastructure and Equipment, and Corruption (Under each strategic area, gaps have been identified and conclusions drawn, which support the respective recommendations, totalling twenty nine¹. For the most part the recommendations relate to the responsibilities of the State Fiscal Service, but some also concern in part or in combination the State Veterinary, Sanitary and Phyto-sanitary Services.);
- Time release study, which analysed the customs' declaration processing data.

While the State Fiscal Service is the major beneficiary of the Port Study, other state stakeholders, veterinary, sanitary and phyto-sanitary services, as well as business users at the ports, were included in the review in order to assess the impact of all control procedures on the cargo clearance end-to-end process from a wider perspective

Summary of Findings

Since 2009, clearance operations at the ports have received close attention including those performed by customs and the other state border control services. The Port Study concluded that positive progress was achieved when comparison is made between the conditions prevalent in 2009 and those found in 2014². Assistance and support provided by EUBAM to partners at both ports has undoubtedly contributed to these improvements.

Improvements that addressed major causes of business frustration include the increased application of automation by the Ukrainian Sea Ports Authority, which introduced a Port Community System facilitating the submission of documents to the sanitary and phyto-sanitary services at the ports. This has effectively eliminated container congestion.

In the same context, the State Fiscal Service has increased its use of information technology by the introduction and implementation of electronic declaration, submission and registration. Although not compulsory, this is increasingly being taken up and used by more declarants and their agents. This innovation, a core element of customs control, is a major step in the creation of an environment that not only helps to lessen corruption, but also makes the whole process more transparent.

1. Annex XVIII 'Gap Matrix' refers

2. Annex X 'Administrative Barriers at Odessa Seaport in 2009 and 2014', Annex XI 'EUBAM Reviews and Port of Odessa Analysis 2009 & 2013' & Annex XII 'Systemic Reforms Proposed by USAID/LINC 2009 Report' refer.

Over time, consultations and discussions have been developing between the State Fiscal Service and business representatives at the ports regarding proposed improvements to control procedures and processes. This movement towards closer engagement with the business community is also considered to be an extremely positive step.

Nevertheless, despite some substantial progress, there remain additional areas for improvement across the whole range of strategic areas detailed in the Gap Analysis. Of particular importance is the development of Human Resource Management (HRM) policies and strategies³, in part to tackle the challenge of corruption. Additionally, with the ratification of the EU-Ukraine Association Agreement and the DCTFTA, the need for legislative alignment, the appropriate use of Risk Analysis, and the simplification of control procedures, have all become priority issues.

In relation to the State Veterinary, Sanitary and Phyto-sanitary Services, recommendations include the need to develop IT connections with EU border control agencies, and other international databases to allow information exchange in relation to animal health and food safety threats and hazards.

Overall, the Port Study noted that clearance control procedures at the ports may take longer to complete than necessary. However, the true picture concerning delays is difficult to assess due to the extensive use of the 'pre-declaring' procedure, during which these elements are evaluated in advance of the official registration of the customs declaration. Additionally, information from the trade indicates that corruption remains common amongst state officials. This has the potential to add considerably to the costs of importers, and deter growth and foreign investment.

Summary of Conclusions and the Recommendations

The detailed review of control procedures undertaken during the Port Study has produced a number of recommendations based on examples of procedural 'best practice' standards and norms⁴. The implementation of these recommendations will considerably assist the enhancement of clearance processes. Each recommendation has been assigned an identifying letter to denote a level of priority: High (**H**), Medium (**M**) and Low (**L**). The conclusions that are summarised below, are elaborated in the Gaps and Needs Analysis Section, and are individually identified by footnotes that refer to each 'Gap'.

Many of the recommendations represent tried and tested solutions implemented by EU Member States and other countries. They have the potential for reducing the time shipments spend under Customs control, thus decreasing transport and other direct costs for business. For example, the development and implementation of risk management systems will reduce the levels of inspection, examination and sampling by the use of targeted selection, which consequently reduce the expenses for storage and handling fees etc.

In order for Ukraine, and in particular the ports of Odessa and Illichiv'sk, to realise trading benefits and compete more effectively, it will be necessary to place continued emphasis on aligning legislation, streamlining procedures and fundamentally reducing the opportunities for corruption by state border control officials.

However, perhaps more critical, are the implementation of Human Resource Management policies/strategies combined with an increased use of automated clearance control procedures. Such measures should aim at eliminating, reducing or at the very least restricting the often unseen indirect costs caused by the and non-transparent imposition of arbitrary procedures or controls, which apart from causing delays and interruptions to the smooth flow of the supply-chain, offer opportunities for corruption.

3. The UASFS has already begun a process of developing a new HRM strategy and policy in agreement with EUBAM as of October 2014.

4. 'Best practice' norms and standards established and contained in the EU Customs Blueprints, EU IBM Guidelines and other compendiums, guidelines and manuals issued by the World Customs Organisation (WCO), World Bank (WB), Organisation for Security and Co-operation in Europe (OSCE) and United Nations Economic Commission for Europe (UNECE) refer.

There exists an urgent overarching need for fundamental institutional and Human Resource Management reform. This is particularly true for the Customs of the State Fiscal Service, but should also be regarded as a priority for the other border control services. Without such reform, the realisation of higher levels of integrity will be impossible to achieve.

Legal & Regulatory Framework

Conclusion 1. - As a consequence of changes envisaged for all the border control services in terms of modernisation and harmonisation of procedures with those of the EU, further rationalisation⁵, adjustment and alignment with legislation will be required⁶. This is especially the case with the veterinary, sanitary and phyto-sanitary services⁷.

- **Recommendation** - In accordance with the requirements under the DCFTA of the Association Agreement, an assessment and review of EU appropriate legislation needs to be conducted by the State Fiscal Service to include the following: EU Community Customs Code, the EU 'Acquis communautaire' and the EU Customs Blueprints as well as EC directives and the authorisation of new implementing regulations. **(H)**
- **Recommendation** - In accordance with the requirements under the DCFTA of the Association Agreement, the State Veterinary and State Phyto-sanitary Services should assess and review national legislation and regulations against EU legislation including EC Sanitary and Phyto-sanitary directives⁸ as appropriate, and the authorisation of new implementing regulations, in relation to the most important pieces of legislation listed in Annex XV. **(H)**

Conclusion 2. - It is evident that the State Fiscal Service in particular is over-burdened with many legal acts, orders, and regulations that creates additional difficulties for business in their interpretation, and as a result opens up many opportunities for corrupt practice⁹.

- Recommendation - Customs, veterinary, sanitary, and phyto-sanitary services should review existing legislation by undertaking an exercise of rationalisation that includes the cancellation of redundant decrees and orders, and where necessary make appropriate amendments to primary legislation. **(M)**

Institutional Framework, HR Development & Corruption

Conclusion 3. In the framework of continuing reform and the additional commitments and obligations to be fulfilled, all border control services, but especially Customs, need to rapidly adapt to the modern trading environment. Institutional and organisational reform including HR development is essential to strengthen administrative capacity that is adaptive to change and toughened against corruption. This need is recognised by the senior management of the State Fiscal Service and endorsed by EUBAM as a top priority¹⁰.

There is a critical need to establish stable border control services where employees can expect reasonable remuneration for their labour, and to have their skills and potential recognised and developed. Currently salaries are extremely low, and as such include significant bonus elements that are sometimes withheld. A newly appointed customs officer receives a salary that will not cover living expenses, even at the most basic level. At the same time there are by international standards very high levels of pay compression. So in salary terms alone incentives to seek promotion are low. Whilst it is

5. Intraservice, Institutional Framework, Customs, Veterinary & SPS – Gap 4: Services Engaged in Border Controls refers.

6. Intraservice, Legal & Regulatory Framework, Customs - Gap 1: Legislative Alignment with EU 'Acquis Communautaire' & International Standards refers.

7. Intraservice, Legal & Regulatory Framework, Veterinary & SPS - Gap 1: Legislative Alignment of Veterinary & SPS with EU 'Acquis Communautaire' & International Standards refers.

8. http://ec.europa.eu/food/animal/bips/legis_en.htm refers

9. Legal & Regulatory Framework, Inter-Agency, Customs, Veterinary and SPS - Gap 1: Too Many Legal Acts Regulating Border Management refers.

10. Intraservice, Institutional Framework, Customs - Gap 1: Organisational & HRM Reform refers.

not the contention that addressing the salaries issue is the single remedy to address corruption, not to pay a proper living wage means to undermine all other remedies. The situation of the newly recruited officer is critical. These are formative years, and the time when individuals establish and develop their working behaviour patterns. It would be surprising indeed if with a monthly salary approximately equivalent to sixty Euros, individual officers, however well-intentioned at the outset, did not feel the pressure to seek alternative ways to supplement their income. This breeds corruption.

Other aspects of employer/employee relationships and performance management are also important to achieving organisational stability and motivating individuals in order to maximise organisational effectiveness. In recent years the average tenure of the Head of Customs in the southern region has been barely a few months. Since June 2014 there have been four substantive or acting appointments to this position. Similar movements have been noticed in the lower management echelons, although to a lesser degree. Such changes may be symptomatic of several factors, but the result is undoubtedly the creation of high levels of uncertainty and instability. On the other side of the appointments door are the dismissals. Although no firm data is available, anecdotally numbers are significant. Frequently, reports are received of individual customs officers being dismissed for alleged corruption.

Thus from the Customs viewpoint certainly, there needs to be created a stable organisation, where matters of appointment, discipline and performance management policies are appropriately regulated and implemented. Specifically, four chapters of the EU Customs Blueprints provide clear objectives and performance indicators to realise these goals.

Other aspects of institutional reform requiring further attention by Customs and the veterinary, sanitary and phyto-sanitary services include: policies for the rotation of staff¹¹; the introduction of more flexible working hours to address the needs of business¹²; a requirement to regularly review and publish measurable time and performance standards¹³; and the continuance of the monitoring process for rationalisation of the services engaged in border controls.

- **Recommendation** - In order to effectively implement Human Resource Management reforms and improvements, the State Fiscal Service needs to adopt and apply strategies, policies and systems that fully comply with the four specific chapters in the EU Customs Blueprints related to organisational and human resource topics; related parts of the World Customs Organisation Guidelines and also from the International Chamber of Commerce Customs Guidelines Policy Statement Document No. 103-6/12 – (June 2012). Following a strategic review a time lined action plan should be completed and implemented. **(H)**
- **Recommendation** - Rotation of customs officials need to be made systematically in line with an implementation policy that seeks not only to ensure integrity, but also the effectiveness and efficiency of the organisation. **(H)**

In the case of the veterinary, sanitary and phyto-sanitary services, experienced Inspectors from both organisations need to be regularly rotated within a structured programme working and / or visiting other border crossing points throughout Ukraine in order to give support to the training of existing and newly appointed personnel. **(M)**

Recommendation - Functional workloads for all the state border control services at the ports should be reviewed and re-adjusted to take account of more flexible working hours / increased attendancebased around for example a 24/7 three - x 8 hour shift pattern where demand is sufficient **(M)**

11. Intraservice, Institutional Framework, Customs, Veterinary & SPS – Gap 1: Staff Rotation Systems refers.

12. Intraservice, Institutional Framework, Customs, Veterinary & SPS – Gap 2: More Flexible Working Hours refers.

13. Intraservice, Institutional Framework, Customs, Veterinary & SPS – Gap 3: Measurable Time and Performance Standards refers.

- **Recommendation** - Time limits for the control of persons, vehicles and goods at border crossing points in respect to all border control services have not been reviewed or amended since their introduction in 2005. There is a need therefore for all state border control services at the ports to establish, monitor and maintain specific and measurable time standards for the efficiency of border checks and including quantifiable targets. Time release exercises that measure the time needed to complete clearance procedures need to be conducted regularly and the resulting statistics published in order to increase transparency and boost trade facilitation dialogue between the state border control services and businesses engaged in the clearance of cargo. (H)
- **Recommendation** - In order to bring Ukraine's state border control services fully into line with those of the EU and other developed economies, it is necessary to consider further reductions in the number of services involved in clearance procedures at the ports. (M)

Conclusion 4. Press reports highlighting violations, offences and dubious business practices and state officials who were found in possession of large amounts of unaccountable cash reinforce the suspicion that corruption at the ports is widespread. Specifically in relation to customs control procedures, despite the introduction of automation in the clearance process, opportunities still exist for 'rent-seeking' and other more collusive corrupt¹⁴ activities to take place between Customs / State border control service officials, and the declarants or their agents. This illegal activity is particularly recurrent during the pre-declaration procedure¹⁵ at the point when accompanying documents are verified and goods are examined in order to confirm compliance with the description (information) provided, prior to submission of the final declaration.

- **Recommendation** – Subject to support from Ukrainian government senior management within the State Fiscal Service and other State Border Control Services need to demonstrate their determination to tackle the problem of corruption head-on by using a combination of 'stick and carrot' institutional reforms. These need to contain amongst other measures on the one hand increases in the basic salaries of customs officials sufficient to reduce dependency on rent-seeking activities and on the other, rigorous and thorough punishment of corrupt officials with sanctions that include dismissal and prosecution. (H)

Where missing, reforms, structures and procedures must be applied and implemented in accordance with the WCO Revised Arusha Declaration (2003). (H)

Recommendation - Further automation of the current State Fiscal Service declaration processing system needs to be implemented in order to avoid and reduce human interference and the continuance of manual checks that permit off-record negotiations between officials and declarants and their agents. (H)

To further strengthen the barrier, the State Fiscal Service needs to limit the overly-used practice of pre-declaring, firstly to regulate the levels of largely unrecorded personal contact between officials and the trade, and secondly to return the basis for selectivity, targeting and examination back to customs as a result of appropriately applied risk analysis. (H)

Procedures

Conclusion 5. In the area of simplified procedures, the concept of Authorised Economic Operator (AEO)¹⁶ has been introduced and adopted into the legislative framework, but is yet to be realised or implemented. Other simplified procedures such as those that incorporate a customs declaration 'Blue Channel' in relation to goods eligible for Post Clearance Audit (PCA), are also currently missing.

14. Intraservice, Corruption, Customs Veterinary & SPS - Gap 1: Corruption at the Ports of Odessa and Illichiv'sk & Adjacent Import Terminals refers.

15. Intraservice, Procedures, Customs - Gap 2: 'Pre-declaring' refers.

16. Intraservice, Procedures, Customs - Gap 1: Implementation of Simplified Procedures & the Authorised Economic Operators (AEO) Concept refers.

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- **Recommendation** - Customs needs to further develop and implement its Customs-to-Business Partnership Programme, a key element of which is the concept of AEO status. Intensive efforts must be made in co-operation with the Customs service of the Republic of Moldova, to agree, adopt and implement measures on the specific benefits in their mutual recognition agreement (MRA) in line with those described and recommended by EUBAM in Special Report: “Business study on mutual trade between the Republic of Moldova and Ukraine and possible benefits from introduction of AEO mutual recognition agreement for private and public sectors in both countries” disseminated to partners in September 2014. (H)

Conclusion 6. The greater use of simplified procedures supported by the application of risk based controls¹⁷, including the regular review and updating of risk profiles can further reduce the number and level of physical examinations undertaken, thereby facilitating legitimate trade. The blanket 100% weighing¹⁸ and X-ray scanning¹⁹ of import and transit containers undertaken by the State Fiscal Service during 2013 and the early part of 2014, contrary to EU and International best practice, does not indicate the appropriate or effective use of pre-arrival or other elements of risk analysis and risk profiling methodology.

- **Recommendation** - Risk profiles need to be regularly reviewed, updated and kept relevant to national, regional and local risks. Local officials must be positively encouraged to proactively take part in identifying and compiling new risk profiles in the ports or at other border crossing points. The implementation of pro-active local information/intelligence gathering also needs to be firmly supported in order to supplement and enhance centrally managed and directed targeting and selectivity. (H)

The application for ‘Free practice’ should also be more actively implemented by all the State border control services to avoid delays particularly in relation to Roll-on Roll-off ferry traffic at Illichiv’sk. (H)

- **Recommendation** – The State Fiscal Service needs to take measures that conclude an agreement in the form of a Memorandum Of Understanding with the European Sea Ports Association (ESPO), in order to accept weight certificates for containers issued by accredited shippers from ESPO ports. This would reduce the number of containers requiring weight control, costs to importers and opportunities for ‘rent-seeking’ between officials and the trade. (M)
- **Recommendation** – The State Fiscal Service must in the future correctly apply risk analysis in the use of mobile X-ray scanning equipment in order to avoid a repeat of previous 100% blanket operations, ensuring that they are used more effectively not only to detect, but also to deter. Planned operations need to ensure that the capacity of the equipment and proposed working hours are complemented with an appropriate number of skilled staff, in order to effectively and efficiently complete the required task. (M)

Conclusion 7. The use of pre-arrival information²⁰ by the State Veterinary and Sanitary and Phyto-sanitary services at the ports appears limited. It needs to be further extended by the application of risk analysis directed in advance to licences and commercial documents.

- **Recommendation** – The application and use of pre-arrival information by the Veterinary and Sanitary and Phyto-sanitary services for the purposes of applying risk analysis needs to be implemented as part of normal working practice, and also in the context of early warnings issued in line with the EU Integrated Border Management Guidelines. (H)

17. Intraservice, Procedures, Customs - Gap 3: Risk Analysis at the Ports refers.

18. Intraservice, Procedures, Customs - Gap 4: Weighing of Containers refers.

19. Intraservice, Procedures, Customs - Gap 6: Excessive Use of Mobile X-ray Equipment as Primary Examination Tools for Containers refers.

20. Intraservice, Procedures, and Veterinary & SPS –Gap 1: Pre-arrival Notification refers.

Conclusion 8. The application of GPS locks²¹ allowed the State Fiscal Service to observe transit consignments in real time. Before their suspension in June 2014, in combination with a dramatic reduction in the number of approved transits, no violations or negative consequences in transit procedures / transit securities on the Ukrainian customs territory were detected, indicating that the policy was successful.

- **Recommendation** – Despite reservations regarding cost and reliability, the policy and practice of applying Radio Frequency Identification (RFID) device technology to high risk consignments should be continued taking into account less expensive and more flexible alternatives. **(M)**

Conclusion 9. Legislation that safeguards customs valuation²² in accordance with WTO Guidelines has been introduced. However, declarations for goods originating in high-risk countries still face delays caused frequently by the need to produce additional supporting documents.

- **Recommendation** – Valuation procedures at the ports need to be developed further, kept under constant management review and administered in accordance with national provisions based primarily on transaction value and the WTO agreement. **(H)** In addition, procedures established by the State Fiscal Service must ensure that customs valuation is transparent, objective and verifiable. In the area of tariff classification and origin, Customs need to further encourage the use by the trade of the system for providing binding tariff information advance rulings. **(H)**

Communications and Information Exchange

Conclusion 10. While the movement from paper to electronic declarations²³ within the State Fiscal Service is well advanced and has been steadily increasing, a significant percentage of declarants and their agents continue to submit declarations in hard copy. The State Fiscal Service Unified Automated Computerised Information System (UACIS)²⁴ is also not yet fully automated and declarations are still to some degree manually checked. Measures are therefore required to further encourage business to wholly adopt electronic means of submitting customs declarations. The State Fiscal Service needs to continue developing existing and other forms of Information Communication Technology related to clearance control procedures.

- **Recommendation** – Customs should consider further development of the Unified Automated Computerised Information System to include complete electronic processing as well as submission of declarations. **(M)** In addition, in order to speed up the transition to a fully paperless declaration environment, a deadline by which hard copy submission will no longer be allowed should be agreed upon. **(L)**

Conclusion 11. Progress towards accession to the Convention on a Common Transit and measures aimed at preparing for the introduction of the EU transit system (NCTS)²⁵ has been limited. At the ports legislation and practices related to the transit of containers, including separate cases of local transit in the Port of Odessa need to be urgently reviewed in order to consider simplification of the existing procedures..

- **Recommendation** – The State Fiscal Service must redouble its efforts in combination with EU DG TAXUD, and through requests for TAIXEX assistance, to accelerate the process of accession to the Convention on a Common Transit and developing preparations for the introduction of NCTS. **(H)**

21. Intraservice, Procedures, Customs –Gap 5: Implementation of the WCO Framework of Standards to Secure and Facilitate Global Trade (WCO FoS) including the Use of GPS Locks refers.

22. Intraservice, Procedures, Customs –Gap 7: Valuation and Classification refers.

23. Intraservice, Communication and Information Exchange, Customs – Gap 1: E-Customs Implementation & Fully Automated Processes refers.

24. Annex II 'Automated system for customs clearance 'Inspector -2006' refers.

25. Intraservice, Communication and Information Exchange, Customs – Gap 2: Transit & New Computerised Transit System refers.

Conclusion 12. Co-operation between Customs and other state agencies is required by law. EU best practice further recommends similar connections also with business and the private sector. Mutual Administrative Agreements or Inter-Agency agreements²⁶ that set the terms and conditions for successful implementation of the regulations governing the interaction between the state authorities, require development and implementation. Memorandums of Understanding²⁷ between the border control services and business that enhance the exchange of information and develop a broader awareness of their roles, are also required.

- **Recommendation** – Mutual administrative agreements or inter-agency agreements need to be elaborated between the State Fiscal Service, and State border control services and other authorities, particularly those with interests at the ports that formalize the efficient exchange of information
- **Recommendation** – The State Fiscal Service should develop and implement a systematic process for achieving additional MOUs with the major trade and transport bodies in the private sector, in order to develop and enhance a concept of trade facilitation and compliance aligned with the co-operation guidelines set out in the EU Customs Blueprints. **(M)**

Conclusion 13. All border control services have a legal obligation to provide business and the general public with access to information., the maintenance and regular updating of state service web sites and internet portals needs more attention²⁸. A much more service-oriented approach to trade facilitation that amongst other activities solicits feedback from end-users²⁹ is still needed.

- **Recommendation** – Border controls services should adopt measures that improve the publicising, broadcasting and dissemination of information, making it more accessible to business and the general public. Campaigns that assist in obtaining public support and awareness of the work they perform and how it contributes to the overall benefit of society, need to be planned and undertaken. **(H)**
- **Recommendation** – Regular and systematic consultation with the business community at the ports needs to be conducted. Annual port user satisfaction surveys, which provide an opportunity for comment and analysis of procedures and processes, need to be introduced to encourage and develop a deeper sense of co-operation and coordination between all parties and stakeholders at the ports. **(M)**

Conclusion 14. Information communication technology links connecting border control service databases for the purpose of exchanging information, need to be established in accordance with EU best practice methodologies³⁰. The State Veterinary, Sanitary and Phyto-sanitary services lack links with EU equivalent border control agency or other international databases in relation to animal health and food safety threats and hazards³¹. The implications of the DCFTA in this area require that action be taken to rectify deficiencies.

- **Recommendation** – Develop a strategy and implement a local information system or network for the sharing and exchange of confidential information outside of the Port Community System (Sanitary and Phyto-sanitary services) based on the results of risk analysis and/or intelligence between State Border Control Services. **(M)**
- **Recommendation** – Steps must be taken for the Veterinary, Sanitary and Phyto-sanitary services at the ports to gain access to EU and/or other international databases related to their activities and responsibilities. **(H)**

26. Inter-Agency, Communication and Information Exchange, Customs – Gap 1: Development of Mutual Administrative Agreements (MAA) & Inter-Agency Agreements refers.

27. Inter-Agency, Communication and Information Exchange, Customs – Gap 2: Memorandums of Understanding (MOUs) with the Private Sector refers.

28. Inter-Agency, Communication and Information Exchange, Customs, Veterinary & SPS – Gap 1: Improved Public Information refers.

29. Inter-Agency, Communication and Information Exchange, Customs, Veterinary & SPS – Gap 2: Port & Border Control Service User Satisfaction Surveys refers.

30. Inter-Agency, Communication and Information Exchange, Customs, Veterinary & SPS – Gap 3: Inter-Agency Exchange of Information including Links between State BCSS databases refers.

31. International, Communication and Information Exchange, Veterinary & SPS – Gap 1: Information Technology refers.

Conclusion 15. At the international level, the sharing of cross-border information helps in risk analysis and trade facilitation. Mechanisms for improving the exchange of information between other connected ports with which Odessa and Illichiv's'k share regular services need to be established³².

- **Recommendation** – Memorandums of Understanding governing the exchange of information between Customs in particular, and the other State Border Control Services at the ports of Odessa and Illichiv's'k need to be negotiated and signed with corresponding State Border Control Services in neighbouring countries and/ or connected ports. **(M)**

Infrastructure and Equipment

Conclusion 16. As identified by the State Fiscal Service, reductions in the access of private commercial vehicles to the ports could be ensured through an increase in the number of service support vehicles³³ operated by the Ministry of Transport. This would avoid the potential of further congestion and reduce the control procedure and clearance times at the ports³⁴.

- **Recommendation** – The State Fiscal Service should pursue its request for amendments to the general requirements for equipping Border Crossing Points through all appropriate means. **(M)**

Conclusion 17. In order to improve risk analysis and the detection of concealed goods within containers or transport vehicles, images obtained by Customs mobile X-ray scanners should be available to all scanner teams on a national basis³⁵.

- **Recommendation** – The State Fiscal Service needs to create an integrated reference database of all images obtained from Customs vehicle mobile X-ray scanners assisting officers to make informed intelligence led risk based decisions avoiding unnecessary and potentially unwarranted examinations. **(L)**

Conclusion 18. Veterinary and Sanitary and Phyto-sanitary services Inspectors lack uniforms and other elements of protective clothing and equipment, which help to avoid harmful risks to health, prevent sample contamination, and enhance the speed with which inspections; examinations and sampling can be completed³⁶. Additionally, the absence of uniforms has negative impact on visibility and status.

- **Recommendation** – Suitable clothing and equipment, which meet international safety standards for undertaking the duties of the Veterinary, Sanitary and Phyto-sanitary services, should be provided. **(M)**

Way Forward

The challenges for the State Fiscal Service and the other Border Control Services in the coming months and years are considerable. The signing of the EU Association Agreement and the DCFTA have brought into sharp focus the need for change. Although this will create considerable pressure, the demands of EU Association should be regarded as a welcome catalyst to power the change, and provide clarity and focus for what needs to be done.

The changes necessary are both technical and in the broadest sense organisational, reflecting the overwhelming importance of people in all the state border organisations to deliver the objectives. In some ways technical change is per se easier to achieve. To garner the human resources to deliver

32. International, Communication and Information Exchange, Customs, Veterinary & SPS – Gap 1: Lack of Bilateral Agreements Regarding Cross Border Co-operation refers.

33. Intraservice, Infrastructure & Equipment, Customs – Gap 1: Use of Service Support Vehicles to Move Containers within the Ports refers.

34. Reporting Notice of the SFS Customs Affairs Department drafted in April 2014 refers.

35. Intraservice, Infrastructure & Equipment, Customs – Gap 2: National Inter-active Database for scanned Vehicle images refers.

36. Intraservice, Infrastructure & Equipment, Veterinary & SPS – Gap 2: Protective Clothing and Uniforms refers.

it may be more challenging. In considering change, it is important that the state institutions take a systematic approach. Whilst, there are many recommendations with different levels of priority and sometimes interdependence, it is important that the changes are seen first from a strategic viewpoint and that the strategy is directed into time lined action plans that reflect those inter dependencies and priorities.

The State Fiscal Service and other border control services in cooperation with business, where appropriate, may wish to develop an action plan that contains realistic but nevertheless clear timelines, in order to implement the recommendations contained in the Port Study. EUBAM stands ready to assist in the process as well as any other aspect of this undertaking in accordance with European Union and World Customs Organisation standards and norms. This would be the best way to pursue and further the close partnership between the State Fiscal Service and EUBAM that led to the successful conclusion of this study.

Background:

Seaports are the representation of border crossing points (BCPs) in a maritime environment. They are crucial to the growth and development of international trade providing vitally important gateways allowing the expansion of the economy by the creation and establishment of transport corridors. Consequently restrictions placed on the clearance and flows of goods through ports have a significant impact on a country's trading performance.

Odessa and Illichiv'sk ports are strategically located on the Black Sea benefiting from convenient access and connections to good road and rail networks and with the capacity to handle a range of goods and different types of traffic including: containers, bulk, rail & roll-on roll-off (Ro-Ro³⁷).

Following the world economic crisis the port of Odessa in particular has gradually recovered and is experiencing an upward trend in growth of container traffic approaching levels close to those achieved immediately prior to 2009. Nevertheless, both ports are looking to further develop and expand their overall trade volumes by attracting additional cargo for import, export and also transit to neighbouring countries include amongst others: Moldova and the Transnistria region³⁸, Poland and the Russian Federation.

37. Ro-Ro refers to Roll-on/roll-off vessels designed to carry wheeled cargo, such as automobiles, trucks, semi-trailer trucks, trailers, and rail cargo wagons, that are driven on and off a vessel on their own wheels or using a platform vehicle, such as a self-propelled modular transporter. Currently only Illichiv'sk port receives Ro-Ro ferry traffic at this time (2014).

38. Annex IV 'Most common types of goods transported from Moldova to Ukraine via Illichiv'sk and Odessa Ports' refers.

Table I.
Odessa Port Container Number
Statistics (2006-2012)

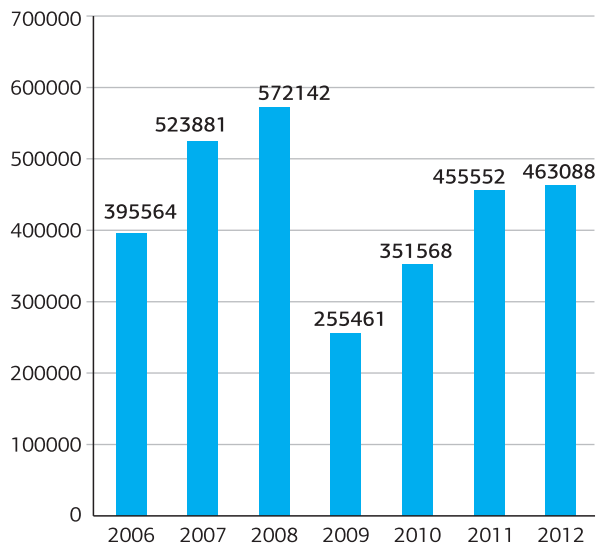
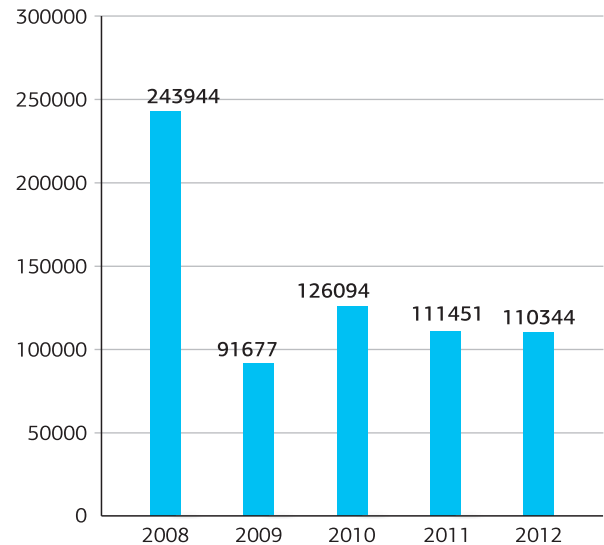


Table II.
Illichiv'sk Port Container Number
Statistics (2008-2012)



Port procedures and practices have a significant influence on logistic operations in terms of affecting the cost and speed of delivery. In a fast changing environment business is constantly searching for measures to reduce or eliminate time and operational 'bottlenecks', maintain competitiveness and ensure high levels of predictability.

When port operations and clearance procedures are found to be inefficient, time consuming, non-transparent or corrupt, lengthy and overly complicated they quickly become a major source of additional expense, delay and uncertainty.

"Enterprises operating in an environment that is not transparent need to spend more resources to obtain regulatory information. Furthermore, they will frequently have to add expenses for bribes, penalties and administrative or judicial appeals. As these additional expenses do not usually vary according to the value of the goods or the volume of sales, they serve to increase the operational costs per unit and put firms in developing countries in a weaker position than larger firms"³⁹.

A number of detailed reports commissioned over the past 6 years have investigated and evaluated the status of clearance and control procedures at the ports of Odessa and Illichiv'sk and provided proposals and recommendations for improving the efficiency and effectiveness of trade facilitation. All have identified a similar range of problems, which principally include:

- A need for modernisation/simplification in legislation, regulations & procedures;
- The inappropriate application of risk analysis producing high levels of physical examination, scanning and weighing of consignments, resulting in unnecessary delays and additional costs;
- Non-transparency in the application of legislation and lack of willingness of State BCSs to engage in regular, constructive dialogue with Business;
- A requirement to introduce and implement more information technology, automation and connectivity between port stakeholders;
- A perception that high levels of corruption exist amongst State BCS officials involving 'rent-seeking'⁴⁰ practices and other more serious activities.

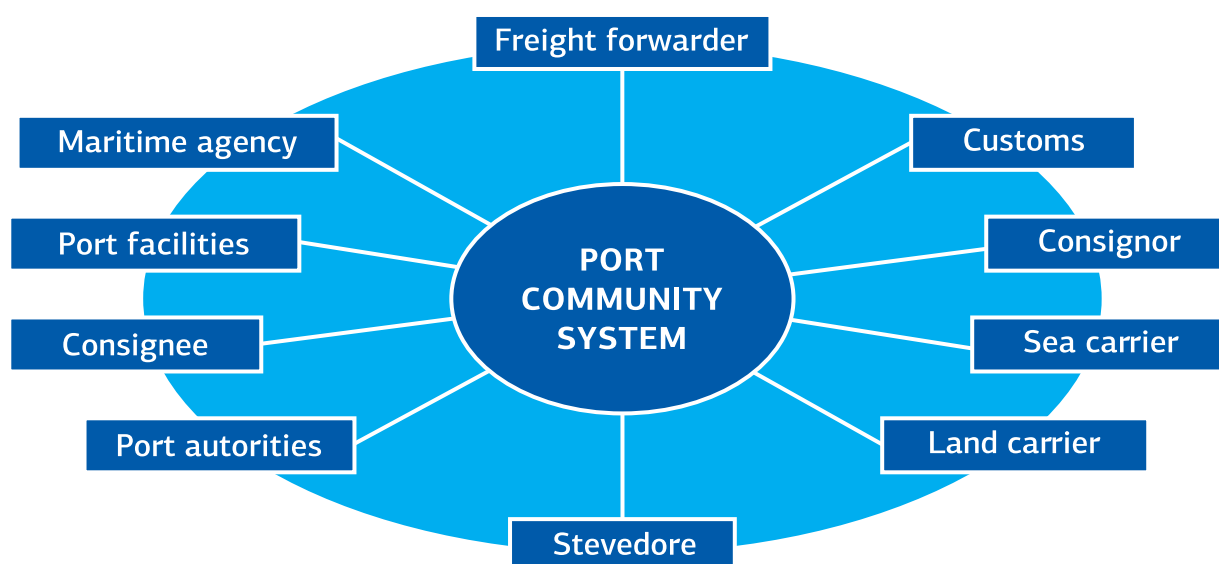
39. <http://www.uneca.org/sites/default/files/publications/atpc-wp4.pdf> refers.

40. The concept of 'rent-seeking' applies to corruption of bureaucrats in this case BCP officials who solicit and extract 'bribes' or 'rent' for applying their legal but discretionary authority for awarding legitimate or illegitimate benefits refers.

To counter balance these concerns it is necessary to mention that Customs, the State BCSs and Port Authority have taken actions to improve some areas, notably amongst them include:

- Legislation – the adoption of a new Customs Code of Ukraine in 2012;
- Information Communications Technology (ICT) – the introduction of electronic submission of Customs declarations in 2005 and implementation of the ‘Port Community System (ISPS) Single Window – Local Solution’⁴¹ in co-operation with UNECE, operated by company PJSC «PLASKE” linking the Port Authority together with: shipping lines, freight forwarders, stevedoring companies, agents, brokers, trucking companies, Ukrzaliznica (UA rail company) and the State BCSs.

Figure 1. Diagram of ISPS Odessa / Illichiv’s’k



However, despite positive progress, clearance procedures at the ports still require further simplification and greater transparency to reduce delays. More far reaching changes to Customs procedures in particular are foreseen with the introduction of AEO⁴² schemes, assimilation to the EU New Computerised Transit System and accession to the Convention on a Common Transit, the further development and implementation of PCA facilities and other simplified procedures for compliant and ‘trusted traders’.

Against this overall background a number of other obligatory measures are foreseen for the State BCSs to implement within the DCFTA, part of the bi-lateral Association Agreement (AA) between the EU and Ukraine, ratified in September 2014.

The DCFTA, together with a commitment to develop trade relations and facilitation between the EU and Ukraine, will also seek to implement reform in a number of other longer standing and unresolved areas that seek to:

- “Further align Ukrainian legislation and its implementing provisions in Customs with those developed by the EU, World Customs Organisation (in particular Revised Kyoto Convention), WTO, UN (e.g. 1982 Convention on harmonization of border controls);
- Simplify customs requirements and procedures for legitimate trade while preventing fraud;
- Implement the Harmonized System with a view to adopting the Combined Nomenclature and ensuring proper and coherent classification of goods;
- Gradually removing customs tariffs and quotas;
- Cooperate on the implementation of modern customs control techniques based in particular on selective, risk based control, simplified procedures for release of goods and post clearance controls;

41. Annex III refers.

42. An AEO can be defined as an economic operator as laid down in Article 1 (12) of the EU CC Implementing Provisions (CCIP) who is deemed reliable in the context of their customs related operations, and, therefore, is entitled to enjoy benefits throughout the EU.

- Cooperate on the further development of customs valuation procedures and practice in order to make them more transparent and efficient, including through the exchange of best practices on the implementation of WTO standards (the Agreement on the Implementation of the Article VII of the GATT 1994), in particular as regards reference prices for the determination of customs value;
- Ensure the highest standards of integrity, in particular at the border, through the application of measures reflecting the principles of the WCO Arusha Declaration. The EU Customs Ethics Blueprint may be used as a benchmark”.

For the Veterinary, Sanitary and Phyto-sanitary (SPS) services responsible for: animals, animal products, plants and plant products, the DCFTA will aim to create the conditions for simplification and better monitoring of procedures/controls and the settlement of trade problems⁴³.

Other areas for review falling within the responsibility of parties to the DCFTA include: labelling, conformity assessment, harmonisation and mutual recognition of technical standards - often the cause of disputes between State BCSs and the trade, resulting in delays to the clearance process.

Odessa and Illichiv'sk Port Study - Terms of Reference:

The ‘Port Study’ consists of 3 separate Components:

1. Component ‘1’ - To define, and ‘map’ the customs control procedures and processes at Odessa & Illichiv'sk sea ports within the Customs activities of importation & transit of commercial goods;
2. Component ‘2’ - To produce a comprehensive ‘Gap & Needs Analysis’ which makes comparison between EU and International ‘best practices⁴⁴’, the existing SFS of Ukraine system of customs control procedures and processes at the ports;
3. Component ‘3’ - To undertake a time–release ‘benchmarking’ study, which provides accurate information, in respect of the time needed to complete customs clearance procedures at Odessa & Illichiv'sk sea ports in relation specifically to declaration processing

COMPONENT ‘1’	ACTIVITIES	OUTPUT	OUTCOME
1. Procedure & Process Mapping	To define and ‘map’ - in the form of a flow chart or diagram - customs procedures and processes as well as those external procedures that impact on the clearance of commercial cargo within Odessa & Illichiv'sk Sea Ports. Drafting and dissemination of survey questionnaires to key business/trade stakeholders & associations with interests at the ports.	Clearly illustrated ‘map’ of a summary of processes and procedures undertaken by Customs and other commercial entities / agencies affecting customs clearance at Odessa & Illichiv'sk Sea Ports.	Identification of bottlenecks and redundant or unnecessary procedures within the clearance process.

43. “The Parties will seek a common understanding on animal welfare standards taking into account developments in the World Organisation for Animal Health (OIE). They will align legislation and conclude a veterinary and Phyto-sanitary chapter. The process covers: Commitment to respect the principles of the WTO/SPS Agreement; - Ukrainian commitment to align its SPS and animal welfare legislation to the EU’s; Setting up a rapid consultation mechanism to solve trade irritants in SPS related goods; Setting up a rapid alert and early warning system for veterinary and Phyto-sanitary emergencies. Under certain conditions, the relevant EU systems for early warning could also be opened to Ukraine’s participation.” http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_150981.pdf refers.

44. EU & International best practice contained in the EU Customs Blueprints and WCO standards and for integrated Border Management (IBM) the ‘IBM Guidelines for EC External Co-operation’ refer.

COMPONENT '2'	ACTIVITIES	OUTPUT	OUTCOME
2. 'Gap & needs analysis'	To make comparison between EU & international 'best practices' and the existing SFS system of customs control procedures, based on five specific indicators; Legal & Regulatory Framework; Institutional Framework; Procedures; Communication & Information Exchange; Infrastructure & Equipment.	'Gap & Needs Analysis' report + recommendations for simplifying and streamlining customs control clearance end-to-end processes.	To positively enhance the effectiveness and efficiency of SFS of UA procedures at Odessa & Illichivs'k sea ports, additionally taking into account 'best practice' in relation to IBM.
COMPONENT '3'	ACTIVITIES	OUTPUT	OUTCOME
3. 'Time-release study' of customs declaration processing	Identify Data sets; Collate & compile data; Perform analysis; Produce study report.	Complete representative time-release study providing an accurate assessment and measurement of time needed to complete customs declaration procedures.	<p>1. Identify improvements, which can simplify procedures and have a beneficial impact on reducing the time needed to complete the overall customs clearance end-to-end process.</p> <p>2. Identify other areas for improvement incl. Communication & Information Exchange mechanisms, and/or identifying deficiencies in Infrastructure & Equipment at ports</p>

Overall Objective:

Within the framework of a process of continuing review, the overall objective of the 'Port Study' is to provide predominantly the SFS with proposals and recommendations that further assist procedural reform improve overall effectiveness and efficiency leading to faster clearance of import and transit goods.

In addition, Sub-Component '3' 'Time Release Study' offers a sustainable methodology in line with WCO 'best practice' by which customs declaration processing as part of end-to-end procedures can continue to be measured and monitored by the SFS for the future.

Previous Reports

This is not the first report, as previously mentioned, to investigate clearance control procedures at the ports. Since 2009 a number of reports including several by EUBAM have examined in detail, clearance operations, processes and procedures with the objective of highlighting deficiencies and proposing corrective actions.

The USAID (United States Agency for International Development) /LINC (Local Investment & National Competitiveness Assessment of Import/Export Clearance Processes at Odessa Commercial Seaport (OSCP)) Ukraine 2009, undertook a thorough and comprehensive in-depth evaluation of Import, Export and Transit operations, taking into consideration the types of cargo and modes of transport, procedures of Customs and the State BCSs, documentation, fees as well as other barriers to trade encountered by Business when processing cargo at the port.

Also in 2009, published in the framework of the European Union's programme for Ukraine, the 'Support to the Integration of Ukraine into the Trans-European Transport Network (TEN-T). Cross Cutting Issues (WP7) Multimodal Transport, Logistics, Border Issues' report examined logistical problems facing multi-modal transport in Ukraine and especially at the maritime ports.

In the same year the EUBAM 'Special Report Odessa Container Port Analysis' (17/02/09) investigated the problem of congestion at the port of Odessa and dwell⁴⁵ times for containers as well as the causes behind the high levels of physical examinations performed by Customs.

In 2013 the EUBAM 'Special Report Odessa Port Analysis Action Plan Phase 9 Activity # 4.3.1' (14/03/13) revisited the findings of the previous 2009 EUBAM report to determine if conditions at the port had improved.

In 2014 two additional reports were completed by EUBAM, which investigated and reviewed port activities.

- 'Special Report: Odessa Commercial Sea Port' (30/05/14) which reviewed clearance procedures undertaken by Customs at the ports.
- 'Special Report: Customs Clearance Process within Odessa Port' 01/08/14 which provided a general overview of the structure of Odessa Customs Post, the organisation of services and activities related to the customs clearance of goods, identifying possible weaknesses and offering practical solutions.

This 'Port Study' while similar in its overall objective to many of the previously mentioned reports focused on mapping, charting and cataloguing the sequence of BCS and customs clearance procedures at two ports, Odessa and Illichiv'sk identifying areas where important 'gaps and needs' exist. Analysis of statistical data in relation to the declaration process has also provided a transparent and definitive benchmark that can be used in the future to re-assess and review progress in the customs clearance import and transit procedures.

Customs do not operate in isolation and it would be inappropriate to discuss clearance procedures without including other BCSs in an evaluation. Indeed, according to Art. 319 of the CC Customs is obliged to co-operate and coordinate activities with the other BCSs and on occasions when they may not be present at the BCP to apply controls on their behalf. Customs clearance procedures have been the major area of interest throughout however, where crosscutting activities occur they have been included in this report.

45. Dwell Time is defined as: the time commonly reckoned as the period between discharge and re-shipment / clearance while the container waits in temporary storage.

Methodology:

The 'Port Study' was undertaken following agreement between EUBAM and the SFS and in addition, was fully supported by Odessa Customs and the FOOD. Activities for the implementation and completion of the study included the following:

- Desk review⁴⁶ of documents and reports related to all aspects of clearance processes at the ports
- Drafting and dissemination of questionnaires to Customs & State BCSs: Veterinary Service, Phytosanitary Service, Plant Quarantine Service, Radiological, Ecological, Sanitary Epidemiological Service⁴⁷;
- Drafting and dissemination of survey Questionnaires to key business/trade stakeholders and associations with interests at the ports⁴⁸;
- On-the-spot observation and interviews;
- Formal meetings and interviews with customs officials, business stakeholder staff including in addition, regular communication and information exchange between EUBAM HQs and FOOD;
- Establishment of local level working group – 'Time Release Study Task Force TRSTF' - consisting of representatives from EUBAM and SFS Odessa Customs with responsibility for the processing of import and transit declarations;
- 'Time-Release Study' - obtaining historical declaration processing statistical data from the SFS⁴⁹.

Other Specific Activities:

1. Completion of procedure/process 'mapping' exercise.
2. Evaluation of customs control clearance procedures against five specific indicators: Legislation & Regulatory Framework, Institutional Framework, Procedures, Communications and Information Exchange, Infrastructure & Equipment falling under the three main IBM pillars of Intraservice, Inter-Agency and International⁵⁰;
3. Preparation of a detailed 'Gap & Needs Analysis' report, together with recommendations;
4. Elaboration and completion of 'Time-Release Study' analysis and report;
5. Identification of areas where EU IBM and International 'best practice' could be better implemented in respect of customs procedures and other BCSs processes at Odessa & Illichiv'sk sea ports.

46. Annex XVII with reference material and reports commissioned to evaluate and provide recommendations for improving the performance and efficiency of clearance procedures at the ports of Odessa and Illichiv'sk refers.

47. Association of International Freight Forwarders of Ukraine, Container Lines Association of Ukraine and Ukraine Customs Brokers Association & various individual customs broker companies refer.

48. The 'Trade Survey Questionnaire' Annex V refers.

49. August 2012, August 2013 & July 2014 refer.

50. This methodology is aligned to the EU "Guidelines for Integrated Border Management" as introduced by the EU to all candidate and pre-accession countries and in addition the Guidelines set out for the completion of EU Customs Blueprints Exercises.

Component '1' Process Mapping Exercise:

Overview of State BCSs

Time taken to process commercial cargo during clearance end-to-end activities inevitably has a substantial impact on logistical costs for business. Within these procedures and processes Customs as well as the other BCSs have a responsibility whenever possible to simplify and streamline their activities.

Nevertheless, whenever delays in clearance procedures are mentioned Customs are considered by many to be the major cause of problems. However, while Customs normally have the primary role in the clearance of goods -likewise throughout territory of Ukraine - other border law enforcement and control services present at the border have the potential to adversely influence and disrupt the process.

The list below identifies BCSs with responsibility for control at the State Border of Ukraine. BCSs numbered between I-IV maintain a permanent presence at the ports, while those listed from V-IX usually participate in controls based on information or request from other Services.

- i.** State Fiscal Service (SFS) (<http://sfs.gov.ua/en/>) ;
- ii.** State Border Guard Service (UASBGS) (<http://dpsu.gov.ua/en/>) ;
- iii.** State BCSs – State Veterinary Service, State Phyto-sanitary Service, State Plant Quarantine Service (http://www.fsvps.ru/fsvps/news/10279.html?_language=en), Radiological Ecological (<http://eng.menr.gov.ua/index.php/monitoring>), Sanitary Epidemiological Service (<http://www.dsesu.gov.ua/ua/>)
- iv.** Port Authority (USPA) (<http://www.port.odessa.ua/index.php/en/>);
- v.** State Security Services of Ukraine under the President (SBU) (<http://www.sbu.gov.ua/sbu/control/en/>);
- vi.** Department of State Services on Economic Crimes (OBEP) (<http://do.gov.ua/udo/control/>);
- vii.** Department of Combatting Organised Crime (DOCC) under the Ministry of Internal Affairs (<http://mvs.gov.ua/mvs/control/kyiv/en/publish/article/85765>);
- viii.** Drug Enforcement Department under the Ministry of Internal Affairs (<http://mvs.gov.ua/mvs/control/main/uk/publish/article/779969>);
- ix.** General Prosecutors Office (<http://gp.gov.ua/>).

The titles, roles and functions of the Ukrainian State BCSs closely mirror those of generic examples described in the table below.

Table III ⁵¹. Example of roles of border law enforcement & control services typical found at BCPs & Ports

Agency	Roles of Border Law Enforcement & BCS at BCPs & Ports
Customs	Customs officials collect or secure duties. Though the traditional role of customs of collecting duties has waned in high-and middle-income countries, it remains important in low-income countries, which rely heavily on customs revenue.
Immigration / Border Guard	Immigration authorities verify the identities of people entering or exiting the country, largely by passport and visa checks. In some countries, customs also handles immigration functions. In some countries, immigration checks are handled by a special department or by police (border police/border guards).
Quarantine	Quarantine officials ensure the health of people, animals, and plants by preventing infectious diseases and alien pests from entering the country. They disinfect vehicles, monitor health regulations, and check health carnets.

51. Trade & Transport Corridor Management Toolkit Charles Kunaka, & Robin Carruthers Page 167 refers.

Public health & agriculture	Public health agencies enforce sanitary and Phyto-sanitary requirements by obtaining documentary evidence (certificates) or testing and physically inspecting cargo
Standards / Ecological	Industrial products may be subject to verification of their conformity with international, regional, and national standards for health, safety, security, and fairness.
Security / Radiological	Security considerations worldwide were strengthened in the wake of the September 11, 2001 terrorist attacks. These considerations created the need for detectors to prevent the entry or exit of radioactive material. Atomic energy control bodies intervene when a suspicious consignment is detected.
Environment	Environmental agencies control hazardous waste, enforce recycling regulations, and regulate trade in endangered species items and protected products, such as timber.
Transport	Transport authorities weigh trucks, collect road taxes, and enforce transport permits and licensing requirements

Customs

In 2012 the duties and powers of the Customs were regulated in a revised CC of Ukraine. The Customs' structure in 2014 has recently undergone further re-organisation and now under the Ministry of Finance has been re-badged as the State Fiscal Service from the Ministry of Revenue and Duties (MoRD) incorporating Customs and Tax agencies. All necessary service units are capable of performing their assigned functions, including fulfilment of Ukraine's international commitments. The total staff compliment at present is approximately 11,300 employees.

Management of Customs' national and international activities is performed through a central Headquarters (HQ) in Kiev. Competence at the port BCPs include control and checks on the entry and exit of goods, passengers and all types of vehicles and vessels, the prevention of infringements of Intellectual Property Rights (IPR); the protection of cultural heritage and assisting other law enforcement bodies in the prevention of smuggling and terrorism.

Customs has strengthened its administrative and operational capacity by the implementation of ICT systems including the development of an electronic declaration clearance system - Unified Automated Information System (UAIS - Yedyna Automatyzovana Informatsiyna Systema) - incorporating 'Inspector 2006'⁵² a computerised registration and risk management programme accessible to all Customs units, controlled, monitored, maintained and updated by HQ in Kiev.

Risk Analysis and selection criteria are applied by the Automated Risk Analysis & Management System (ARAMS) at the national, local and regional levels to declarations at import, export and transit determining consignments for additional checks and physical examination. Legislation is already in place - CC Article 259 Paragraph 2 - setting out the need for submission of advance customs declaration specifying its use in the risk analysis process.

Furthermore, in the area of simplified procedures, although not yet implemented, the concept of 'Authorized Economic Operator' has been formally introduced into the CC Articles 12-18. Progress towards assimilation to the EU New Computerised Transit System and the Convention on a Common Transit, together with further development and implementation of PCA facilities and other simplified procedures for compliant traders is being made with the assistance of EUBAM.

52. Annex II refers.

Veterinary & SPS

Approved by the President of Ukraine, Decree № 464/2011 «On approval of the State Veterinary and Phytosanitary Service of Ukraine» State Veterinary and Phyto-sanitary Service of Ukraine is a central executive authority, the activity of which is governed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Agrarian Policy and Food of Ukraine. The service ensures implementation of the state policy in the area of veterinary medicine, food safety, plant quarantine and protection, plant varieties protection, state control and supervision for livestock breeding, assures the protection of human health and safety, determination, identification and mitigation of hazards during controls etc.

In September 2014 the State Service of Ukraine on Food Safety and Consumer Protection was established on the basis of State Veterinary and Phyto-sanitary Service of Ukraine, the State inspection of Consumer Protection and State Sanitary – Epidemiological Service were merged into the newly created agency as well.

Inspectors of the State Veterinary and Phyto-sanitary Service of Ukraine are present at both ports and adjacent ICPs during the hours of customs clearance procedures where they process documentation, inspect and examine goods and take samples for laboratory analysis.

General Characteristics Odessa & Illichiv'sk Sea Ports⁵³

Odessa Port

The Port of Odessa is one of the largest ports in the Black and Azov sea basins. Technical facilities allow the processing of more than 20 million tons of dry cargo and 25-30 million tons of bulk liquid products annually⁵⁴.

Two stevedore companies operating in the container port: HPC Ukraine, a German subsidiary company of HPC Hamburg Port Consulting GmbH, and Brooklyn-Kiev-Port Ltd. The handling capacity of the two container terminals is over 900,000 TEU⁵⁵ annually - almost double the number of containers that passed through the port in 2012 463,088 TEUs⁵⁶.

The port area contains: 15 CU warehouses, 10 temporary storages as well as eight operational transshipment lots for general cargoes, passenger, containers and oil terminals. 52 berths allow for the landing of cargo from vessels with capacity up to 100,000 gross weight tons, 300 meters long and 11.5 m deep.

The port handles; citrus fruits and nuts, cars and relevant spare parts, frozen meat and fish, footwear, garments and accessories, PVC & raw materials at import. Basic export shipments include: bulk consignments of mineral oils, petroleum, grains (wheat, barley and corn), lumber, sunflower and flax, seeds, iron and cast iron products⁵⁷.

The Custom's Post of Odessa Port is within the operational structure of SFS Odessa Customs and authorized to perform control and clearance of goods and means of transport, the collection of duties, excise and other state taxes and the implementation of state trade policy and other measures related to the state legislation. The customs posts at the port are divided into the following units:

53. Odessa and Illichiv'sk Ports Risk Assessment Special report FOOD 10/12/13 refers.

54. 20140530 OSS SR on Odessa Commercial Sea Port 30/05/14 page 2 refers.

55. TEU refers to the twenty-foot equivalent unit of cargo capacity used to describe the capacity of container ships and container terminals. It is based on the volume of a 20-foot-long (6.1 m) intermodal container, a standard-sized metal box which can be easily transferred between different modes of transportation, such as ships, trains and trucks.

56. 02.430-20131210-FOOD-SR13-P9 Odessa and Illichiv'sk ports risk assessment refers.

57. For more details of the volume and types of goods transported between the ports of Odessa/Illichiv'sk and Moldova during 2012-2013 Annex IV refers.

- Customs Clearance Unit (CCU) No.1 (hereinafter referred to as Euroterminal⁵⁸) authorized for the clearance of imported and exported goods, delivered by land means of transport (working time from 09:00 to 24:00 in shifts);
- CCU No. 2 (Liski) engaged with the clearance of shipments by rail (operating from 09:00 to 18:00);
- CCU No. 3 (Transit Terminal) functioning as BCP for entry and exit clearance of transited containers and shipments in containers declared for export (operating 24 hours a day in shifts);
- CCU No. 4 (CU Square) involved in the clearance of general cargoes in bulk and by rail (24 hours a day in shifts);
- CCU No. 5 (Passenger Terminal) dealing with the state port control of ships crews and passengers and ship supplying activities (24 hours in shifts);
- CCU No. 6 responsible for registration and control of consignments subject to CU warehousing (09:00 to 21:00 in shifts, excluding Sundays).

Approximately 180 customs officers - including managers are employed to undertake operations required to successfully accomplish the technological process of clearance within the 6 CCUs units.

Illichiv's'k Port

The commercial Port of Illichiv's'k is also a modern international highly mechanized multi-purpose cargo and transport hub, approximately 30kms South from Odessa specializing in the handling of containers, general cargoes and dry and liquid bulk cargoes. The port has links with Europe & Asia, industrially developed regions of Ukraine, Russia, Kazakhstan and shipping routes throughout the Mediterranean into the Atlantic and Indian Oceans. In 2012 the Illichiv's'k container terminal occupied second place in Ukraine processing 123,078 TEU containers.

Regular scheduled Ro-Ro ferry services operate with Poti / Batumi in Georgia, and Haydarpasa and Derince in Turkey. There are several less frequent services operating between Illichiv's'k and other Black Sea ports. Regular services carry freight directly by rail, truck, container, or as deck cargo and incorporate the movement of accompanied passenger vehicles.

Process Maps of Odessa and Illichivsk sea ports:

A summary of the processes, procedures and sequence of events finalised during the clearance of containers, bulk cargo, commercial vehicles and rail cargo wagons at the ports are contained in three Process Maps.

Each Process Map is a flow diagram that illustrates the route taken by documentation enabling various means of transport and the goods they convey to pass through the port from the point of arrival to the place of final clearance and release.

The maps illustrate key points in the clearance process at the ports and ICPs where specific border control procedures including those performed by the UASBGS, SFS, State Radiological, State Ecological, State Sanitary Epidemiological, State Veterinary and Phyto-sanitary (Plant Quarantine) services take place. Each Process Map is supplemented by a summarised textual description of the necessary procedures.

- Process Map 1: Odessa & Illichiv's'k Port, Transit & Import Clearance Processes - combines the clearance processes at both ports as the sequence follows an analogous path and order⁵⁹.

Where the ports diverge significantly with each other is in the different modes of transport they process.

58. Euroterminal LLC was established in 2005 to undertake development of Dry Port facilities in Odessa Sea Port. The project covered the construction of a logistics service centre including Customs Terminal, TIR parking facilities, internal road connecting the port with the terminal and container depot. In 2011 the new cargo terminal (Euroterminal) was opened. SFS are provided with accommodation from Euroterminal.

59. Port layouts are different and Illichiv's'k does not operate a weighbridge within the territory of the port.

In addition to container traffic, which undergoes separate clearance procedures, Illichivsk port also handles regular daily Ro-Ro ferry services. To illustrate these procedures two additional process maps are included:

- Process Map 2: Illichivsk Port Ro-Ro Clearance Processes;
- Process map 3: Illichivsk Port Locomotive and Rail Cargo Wagon Clearance Processes.

Since 2012 Importers have been free to choose in accordance with the CC Article 247 where they make final clearance. For clearance outside the port, a transit procedure is necessary and must be authorised at the respective Transit Terminals operating on a 24/7 basis within the territory of each port.

For containers arriving by sea at the ports the place of choice for clearance is frequently at the respective adjacent CCU No.1 Euroterminal (Odessa) and ZAZ/IVT (Illichivsk) Terminals.

All Ukraine's BCS activities are governed by national legislation, regulations, and decrees - issued at the level of President or Cabinet of Ministers. The legislative base is incorporated into individual, Technological Schemes⁶⁰ that are applied and implemented at each BCP (Port). The Technological Scheme sets out the roles, responsibilities, functions and actions including procedures and the sequence of controls performed by each BCS and its officials and they are, in effect, a detailed standard operating procedure (SOP). Whilst the Technological Schemes set out BCS tasks in a systematic and standardised manner with the objective of ensuring that controls are, as far as possible, uniformly applied throughout the territory of Ukraine they are also overly elaborate and not easy to understand.

In addition to the national legislative framework, dispensation is available at regional level within the SFS at least to issue supplementary orders that manage specific areas of identified risk by increasing the levels of control and physical examination as for example in the recent extension of controls at the ports in relation to compulsory weighing and scanning of containers in 2013 and 2014.

Furthermore, for controls that enable the clearance on-wheels of commercial freight vehicles, drivers, passengers and rail cargo wagons arriving from foreign at the designated Ro-Ro terminal, the Technological Scheme for the port of Illichivsk incorporates along with standard Customs, Veterinary and SPS measures a highly visible UASBGS & SFS preventive, anti-smuggling control which includes the use of 'sniffer' dogs for the detection of prohibited goods.

Process Map 1: Odessa & Illichivsk Port, Transit & Import Clearance Processes⁶¹ (see separate map enclosed)

Pre-arrival Procedures:

- i. Advance cargo information is necessary, useful and since 1st January 2011 also mandatory in the European Union as part of "Customs Security rules". For maritime cargo, the deadline to submit such information is 24 hours before loading. In Ukraine pre-arrival information⁶² submitted not less than 24hrs in advance of the arrival of a bulk carrier⁶³ or container vessel from foreign by the ship's Captain or agent allows application to the Port Authority and State BCSs through the ISPS for a procedure known as 'Free Practice'⁶⁴.

60. A Technological Scheme is a legal document that describes in detail the actions and their sequence to be performed by each of the State BCSs at the BCP. It is normally developed, elaborated and maintained by the State Border Guard Service of Ukraine on behalf of the other services.

61. At Illichivsk Port there is no weighbridge within the port area.

62. Pre-arrival information submitted in advance should include: documents related to the owner, registration, safety, security and health of the vessel crew and passengers, type of cargo, recently visited ports etc. in accordance with Art.259 paragraph 2 of the CC & International Maritime Organisation FAL Convention & the International Convention for the Safety of Life at Sea (SOLAS), an international maritime safety treaty that ensures ships flagged by signatory States comply with minimum safety standards in construction, equipment and operation. The SOLAS Convention in its successive forms is generally regarded as the most important of all international treaties concerning the safety of merchant ships. Annex XV refers.

63. A bulk carrier, bulk freighter, or bulker is a merchant ship specially designed to transport unpackaged bulk cargo, such as: grains, coal, ore, and cement in its cargo holds.

64. Free Practice is foreseen by 'Typical Technological Scheme on Admission of persons, road, water, railway and air transport means of carriers and goods moved by them across the state border' approved by the Decree of the Cabinet of Ministers of Ukraine, 21 May 2012 No 451.

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- ii. The granting of 'Free Practice' via electronic approval and accompanying e-signature allows for the immediate discharge of cargo on arrival in port, dispensing with the controls of the on-board 'Commission'⁶⁵. Advance application for 'Free Practice' in addition, provides the opportunity for the State BCSs and in particular Customs to begin a process of pre-arrival risk analysis - a key enabler for improving trade facilitation and better use of resources.

Arrival of Vessel in the Port:

- i. If 'Free Practice' is not granted in advance then the 'Commission' will board the vessel on arrival and perform a range of statutory and mandatory controls, including: preliminary documentary checks in order to determine that the vessel, crew and cargo comply with sanitary and epidemiological standards and that ship's papers and travel documentation of crew and passengers are in order.
- ii. If appropriate, based on risk, areas of the vessel may also be examined to satisfy health and safety standards and rummaged to uncover the concealment of smuggled goods.
- iii. The 'Commission's' activities at Odessa sea port are governed by Technological Schemes Order No. 886 and at Illichiv's'k by Order 883 both dated 14/11/2011 UASBGs (South Regional Directorate).
- iv. Following satisfactory performance of the 'Commission's' activities, the ship's Captain is granted permission to discharge the cargo and for the crew to pay-off if appropriate and leave the vessel.

Transfer to Temporary Storage Platform (TSP) or Dockside:

- i. Radiological examination of discharged cargo, either bulk or container, is undertaken by the State Radiological Service by movement of cargo through radiation detection equipment. Should the equipment identify radiation in the cargo above normal background level then further more detailed physical examinations are undertaken that include the progressively phased checks: Detailed, In-Depth and Complex.
- ii. Following discharge from the vessel, containers are transported to the TSPs to await clearance by the State BCSs and Customs. A period of up to 30 days temporary storage is allowed in accordance with Art.204 Paragraph 3 of the CC before a declaration must be submitted to Customs.
- iii. Goods falling within the first 24 Chapters of the Customs tariff (live animals, animal products plants and plant materials) are subject to Veterinary and Phyto-sanitary control. Containers and other means of transport conveying such goods begin the clearance process by first undergoing a preliminary documentary examination of necessary and accompanying Veterinary & SPS licences and health certificates. If physical inspection, examination or sampling⁶⁶ is not required documents are approved, electronically signed and stamped and made available for other services to view through the Odessa and Illichiv's'k ISPS. Normal practice is for all necessary Veterinary and Phyto-sanitary procedures, checks and controls including sampling to be completed prior to submission and registration of the customs transit declaration.
- iv. If on the other hand 'Extended Control'⁶⁷ including the taking of samples is necessary, as a result of Veterinary and / or SPS regulations, an Inspectors knowledge and experience, and/or suspicion or information in the form of alerts controls are conducted while the container remains in the TSP stack and can also be made at the request of the importer/ broker etc. in order to save time later in the process⁶⁸. Where it may not be possible to make satisfactory visual identification or where a more detailed intrusive physical inspection is required e.g. where goods are difficult to

65. The 'Commission' consists of representative of the following state organisations of Ukraine: Border Guard Service, Customs Service, Port Authority, Veterinary, Plant Quarantine (Phyto-sanitary), Sanitary Epidemiological and Ecological Services.

66. Phyto-sanitary sampling can normally be completed in the same day if submitted to the laboratory before 1pm.

67. 'Extended Control' is a detailed intrusive physical examination including organoleptic inspection that may result in sampling for laboratory analysis in order to test for the presence of microbiological and/or chemical hazards. Extended controls are performed at this stage of the clearance process in the case of containers either while it remains in the TSP or when presented for Customs clearance at the Transit Terminal. 'Extended Control' is regulated by the 'Provisions on establishment of the State Veterinary and Phyto-sanitary Service of Ukraine' approved by the Order of the President of Ukraine, 13 April 2011, N 464/2011 Law 'On Veterinary Medicine' 1992 & Law of Ukraine 'On Quality and Safety of Food Products', 1998.

68. In 2009 the USAID/LINC Ukraine Assessment of Import/Export Clearance Processes Odessa Commercial Seaport (OCSPP) report highlighted a number of problems related to implementation of Sanitary and Phyto-sanitary (SPS) controls, their non-alignment with WTO and other international legislation and best practice, lack of laboratory and technical facilities, excessive and recurrent inspection and /or sampling of low risk repeat consignments which were the cause of delays and additional costs and corrupt practice. Although progress has been made to alleviate some of these problems the core elements in essence still exist in terms of non-alignment with international legislation, poor technical facilities for analysis and the potential for corruption.

examine due to the way in which they have been loaded onto / into the means of transport or where facilities or conditions required to maintain satisfactory quality of goods are not available at the port consignments may be transferred to a warehouse (Customs) for off-load allowing more in-depth physical inspection/examination or indeed sampling to take place.

- v. Means of transport and goods which are intended to cross the state border must first be notified in advance to Customs under Art. 194 of the CC in the form of an advanced customs declaration or other document that can be used instead of the customs declaration in accordance with Art.94 of the UA CC.
- vi. After Customs have received prior notification from the declarant or his agent etc. of the intention to transport goods across the state border of Ukraine in the form of an advance customs declaration, and the issue of an electronic order⁶⁹ also granted by Customs within the ISPS for the collection by approved vehicle of the container, it can then be transported from the TSP to the Transit Terminal for presentation to Customs⁷⁰.

Transfer to Transit Terminal:

- i. A preliminary declaration (EE IM 40) is electronically lodged with Customs at the ICP and made available for Customs at the Transit Terminal through on-line access to 'Inspector 2006', in order to authorise and facilitate the necessary movement across the state border and internal transit procedures. Duty and taxes are deposited or guaranteed in advance of approving release for transit.
- ii. On arrival from the TSP to the Transit Terminal - having officially crossed the state border and entered the territory of Ukraine - the declarant or his agent can opt for the container to be weighed at the officially approved but privately owned and operated weighbridge adjacent to the Transit Terminal⁷¹.
- iii. Customs may also perform non-intrusive X-ray scanning and/or physical examination of containers prior to their release for transit based on risk criteria or sometimes at the request of the declarant or his agent within the procedures in accordance with Paragraph 2, Article 266 of the CC and Article 42 EC Regulation 2913/1992 establishing the Community Customs Code, which provide for a 'pre-declaring' examination to verify compliance with the description (information) specified in accompanying documents. Veterinary and SPS inspections, physical examinations and the taking of samples by all State BCSs for laboratory analysis can also be performed at the request of the declarant or his agent at this point if it is considered that time will be saved later in the process.

Transit Procedures at ICP – Euroterminal (Odessa) & ZAZ Terminal (Illichiv'sk):

- i. Shipments arriving by sea at Odessa and Illichiv'sk ports and requiring import clearance outside the port are able to use the privately owned and operated terminal facilities, situated immediately adjacent but outside the territory of the port ⁷².
- ii. Such shipments require as mentioned completion of a transit procedure (EE IM 40) which permits and authorises crossing of the state border and facilitating transport from the territory of the port to the ICP in accordance with Chapter 17 of the CC. Duties and taxes are normally guaranteed or deposited with Customs in advance to cover any irregularities that may occur during the transit operation.
- iii. In the case of both ports transit procedures are initiated at the ICP and notified electronically to the respective Transit Terminals via 'Inspector 2006' where approval for the transit movement is also electronically authorised.

69. Annex I 'Technical Specifications of Odessa& Illichiv'sk Sea port' refers.

70. Containers for import or transit clearance are presented to Customs at the time of submission of the declaration regardless of whether the goods will undergo examination controls: weighing, scanning or physical examination.

71. Pre-payment for the use of this facility and also the weighbridge in the Euroterminal parking area is required and the subject of concern by the trade who link their over-use and cost with corrupt practices.

72. In the case of Odessa Port the inland customs post/unit adjacent to the port is the 'Euroterminal CCU No.1' and for Illichiv'sk the ZAZ Terminal.

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- iv. For travel between the port and the ICP shipments are placed under Customs seal and conveyed by vehicle. In the case of transit movements between Odessa Port and the Euroterminal means of transport and containers use a specially constructed internal roadway within the territory of the port. At the northernmost extremity of the port, vehicles for the Euroterminal leave the territory of the port via a manned entry / exit e-gate⁷³, approximately 3km away from the transit terminal. The roadway between the Euroterminal and the entry/ exit e-gate to the port is fenced and enclosed without direct access to or from land-side, and is monitored along its entire length by CCTV. As a result the roadway is effectively a 'secure transport corridor', which provides an additional level of security under which the integrity of shipments can be safeguarded. An e-gate at the exit to the port leads to a specially segregated lane dedicated for traffic with a final destination of the Euroterminal, and concrete barriers funnel vehicles into a secure landside parking area, which constitutes an integral part of the Euroterminal facility. This 'secure transport corridor' ensures that transit vehicles using this route never travel on public roads. At the Euroterminal parking area consignments/containers may be subject to weight controls - if not already weighed at the port Transit Terminal - using an officially certified and approved but privately owned and operated weighbridge adjacent to the terminal.
 - v. For consignments / goods in transit under Customs seal from Illichiv'sk Port to the ZAZ Terminal, vehicles and containers exit the territory of the port via a manned entry / exit e-gate and travel on public roads some 2 kms to the ZAZ Terminal where on arrival they enter the parking space attached to the terminal facility. At the terminal consignments/containers may be subject to weight controls using an officially certified and approved but privately owned and operated weighbridge adjacent to the terminal.

Import Procedures:

- i. The declarant or his agent submits a customs import declaration (SAD) either electronically by a process known as direct trader input (DTI) from remote terminals or in hard (paper) copy. If submitted in hard copy scanned facsimiles of the declaration and accompanying documents are in addition, uploaded to 'Inspector 2006' via an electronic terminal and USB flash memory stick situated within the Customs 'long-room'⁷⁴. However, irrespective of the method of submission, validation and processing of the declaration at the ICP follows a similar sequence of actions.
- ii. Initially each SAD is assigned to an individual Officer by the Shift Leader as an anti-corruption measure designed to avoid the potential of pre-arranged collusion between the declarant or his agent and customs and receives, in the case of hard copy declarations, a local reference identifying number prior to official registration.
- iii. For hard copy declarations, Officers must manually record their actions either by official stamps and signature throughout the process including noting the time of acceptance, registration, examination, payment and clearance on an Information Notice that is attached to the hard copy declaration.
- iv. In order to begin processing of the declaration, first, all accompanying documents are manually compared and checked against the customs declaration - electronically submitted or hard copy - to ensure their accurate completion and to determine if all required licences, certificates, commercial documents etc. have been presented and where necessary certified by the appropriate authority or Border Control Service.
- v. 'Inspector 2006' performs a similar additional automated check of electronically submitted declarations, which ensures that all the required boxes in the SAD have been correctly completed. Declarations are not registered with 'Inspector 2006' until these requirements have been satisfactorily completed.
- vi. If satisfied, an automated process registers the declaration in the system, and unique reference number is issued. The 4hr period permitted for customs clearance in accordance with Art. 259 Paragraph 5 of the CC commences from this point.

73. RFID technology is applied at the e-gates to the ports to register vehicles / containers entering or exiting linked to the ISPS which administers the issue by Customs of electronic orders for the collection, movement and release of containers, gate out passes and electronically records the identity passes of personnel entering and leaving the port.

74. A Customs 'Long Room' is the location where traditionally Customs declarations are submitted and processed.

- vii.** At registration the risk analysis module ARAMS within 'Inspector 2006' is activated and a detailed risk assessment of the declaration is automatically carried out against centrally maintained and updated national and local/regional risk criteria and profiles⁷⁵.
- viii.** Following the automatic risk assessment a colour coded icon is displayed on-screen;
 - a.** Customs examination or other types of physical control are needed — Red
 - b.** Further detailed documentary examination — Yellow
 - c.** Low risk — Green
 - d.** An alert relating to specific intelligence / information — Blue
- ix.** Officers are able to over-ride the risk assessment indicated by the system in an upward direction i.e. Green to Red, based on their own local knowledge and experience, lists of risk indicators communicated to Customs houses, and/or in accordance with the terms of Decree of Cabinet of Ministers dated May 23 2012, № 467 (Annex XXII refers) and with the prior written authority of the Shift Leader. This practice is rarely undertaken. There's also a procedure foreseen for cases when types of control generated by the system were not implemented (i.e. to correct risk assessment downwards), if their execution is impossible or inexpedient (order of the Ministry of Finance of Ukraine 24.05.2012 №597).
- x.** Other checks are then performed firstly to validate and confirm that the goods are accurately classified according to the UA Customs Tariff for the purposes of calculating the correct rate of duty. 'Inspector 2006' provides officers with on-screen product description guidelines, which assist tariff classification.
- xi.** Next the values of the declared goods are assessed in line with the WTO Valuation Guidelines⁷⁶ and in accordance with the provisions of Chapter 9 Articles 57-64 of the CC. A centrally maintained reference price list is available for on-screen consultation to further assists in determining as accurately as possible, comparable prices for similar products from countries where previously declared values in the past have been found unreliable.
- xii.** Where following documentary checks suspicion or doubt exists, declarations which the system indicates as High Risk (Red) are selected for physical examination according to pre-determined scales of inspection⁷⁷, accessible to officers on-screen. Other reasons for selection include: specific information or alerts from the SFS or another law enforcement agency. Containers and their contents may also be subject to non-intrusive examination by Customs operated mobile X-ray scanning equipment.
- xiii.** Declarations that after physical examinations are found to be in error i.e. goods are misdescribed, undervalued, overweight or undeclared are dealt with in accordance with Articles 268 & 269 of the CC. If permissible the declaration is amended to reflect the results of the physical examination and where an appropriate additional duty is calculated. If amendment is not permissible then goods are detained pending further investigation and consideration is given to the possible initiation of offence and liability proceedings under Chapters 67-69 incl. of the CC.
- xiv.** If on the other hand the declaration is found satisfactory, following all the relevant documentary checks and physical examination, then the duties and taxes deposited or guaranteed are brought to account electronically from the trader's authorised account. Where instances of insufficient funds occur monies already deposited are topped up by means of cash payments directly to Customs at designated locations.
- xv.** Following acceptance and receipt of the payment by Customs, electronic confirmation is issued to the trader thus permitting official release of the goods, which may proceed to the exit of the terminal no longer under customs supervision.

75. Risk profiles created at the local and regional levels predominantly concerning the tariff classification of goods are added to the system and monitored in Kiev to ensure effectiveness and efficiency.

76. The WTO agreements basic principles stipulate 'that Customs valuation shall, except in specified circumstances, be based on the actual price of the goods to be valued which is generally shown on the invoice. This price, plus adjustments for certain elements equals the transaction value, which constitutes the first and most important method of valuation referred to in the Agreement' The Agreement lays down 6 methods to be applied in strict hierarchical order if the first method (1) Transaction Value is found to be not acceptable. The five remaining Methods are as follows: (2) Transaction Value of identical goods, (3) Transaction Value of similar goods, (4) Deductive Method, (5) Computed Value & (6) Fall back method or determined against reasonable means consistent with the principles and general provisions of the Agreement.

77. Scales of examination indicated by Inspector 2006 are normally up to 20% & full out-turn 100%.

Process Map 2: Illichiv'sk Port Ro-Ro Clearance Processes Pre-arrival Procedures: (see separate map enclosed)

- i. Ro-Ro ferry service pre-arrival procedures follow the same practices as for other vessels described in Process Map 1 above, except that while application for 'Free Practice' is permissible, it is not normally requested. Permission to discharge vehicles and cargo from Ro-Ro services is usually made following completion of the work of the on-board 'Commission'.

Arrival of Vessel in the Port:

- i. Procedures for the activities of the 'Commission' are the same as those described in Process Map 1 above and following the granting of permission vehicles, cargo and passengers are allowed to be discharged from the vessel.

Arrival of commercial vehicles at the Dockside:

- i. Radiological examination of discharged commercial vehicles and cargo is undertaken by the State Radiological Service by the movement through radiation detection equipment and checks are undertaken as previously described in Process Map 1 above, if necessary.
- ii. Goods intended to cross the state border must be notified in advance to Customs in accordance with procedures described in Process Map 1 above. However, for Ro-Ro vessels, commercial vehicles in transit, normally present and submit a TIR Carnet⁷⁸ when goods are non-Excise in nature.
- iii. In most cases Ro-Ro means of transport are normally accompanied by a commercial tractor unit, together with driver/s and on occasion additional passengers. To facilitate clearance, following discharge, commercial vehicles assemble in a parking area close to the dockside to await processing on an individual basis by the State BCSs.
- iv. At a designated control point⁷⁹ within the port territory representing the state border line of the territory of Ukraine, vehicles are called forward and driver/s undergo passport control performed by the UASBGS and Customs and with their vehicles, anti-smuggling checks. Other administrative procedures are completed including: authentication & certification of TIR Carnet documents and the collection of road transport tax.
- v. Commercial vehicles with consignments of goods falling within the first 24 Chapters of the Customs tariff (live animals, animal products plants and plant materials subject to Veterinary and Phyto-sanitary control) may undergo checks and controls by relevant authorities in accordance with the activities described above for Veterinary and SPS controls previously described in Process Map 1 -Transfer to Temporary Storage Platform or Dockside: Paragraph iii & iv.
- vi. Normal practice is for all necessary Veterinary and Phyto-sanitary procedures, checks and controls including sampling under the terms of an 'Extended Control' if required (but unusual at this stage), to be completed prior to certification of the TIR Carnet documents or for unaccompanied trailers, completion of a preliminary customs declaration (EE IM 40).
- vii. For consignments/goods in transit under customs seal from Illichiv'sk Port to the ZAZ Terminal, vehicles and containers exit the territory of the port via a manned entry/exit e-gate and travel on public roads where on arrival they enter the parking space attached to the terminal facility. At the terminal vehicles may be subject to weight controls using an officially certified and approved but privately owned and operated weighbridge adjacent to the terminal.

Customs Procedures on arrival at the Inland Clearance Post:

- i. Customs clearance of commercial vehicles at inland clearance posts (ICPs) or as is commonly the case for Illichiv'sk Port at the ZAZ Terminal follow the procedures described above in Process Map 1 after arrival at the terminal and prior to release from customs supervision.

78. Conference UN/ECE produced United Nations Economic Commission for Europe; TIR Convention of 1975, only universal Customs transit system in existence, covers road rail maritime and in land waterway, at least one part of the transport must be by road.

79. The Control Point incorporates control booths, an overhead viewing gantry and examination pits for examination of vehicles and trailers from below.

Process Map 3: Illichiv'sk Port, Locomotive & Rail Cargo Wagon Clearance Processes. (see separate map enclosed)

Pre-arrival Procedures:

- i. Ship's manifests are provided to the Port Authority and State BCSs in advance of arrival with regard to locomotives & rail cargo wagons transported by the Ro-Ro ferry services at Illichiv'sk sea port, while not so time sensitive, in this case nevertheless, pre-arrival risk analysis⁸⁰ can help to accelerate clearance procedures.
- ii. Application for 'Free Practice' again is permissible, but not normally requested in advance of the vessel's arrival in this case. Permission to discharge rail cargo wagons from Ro-Ro services is usually made following completion of the work of the on-board 'Commission'.

Arrival of Vessel in the Port:

- i. Procedures for the activities of the 'Commission' are the same as those described in Process Map 1 above and following the granting of permission the locomotive and/or rail cargo wagons are discharged from the vessel and transported to a specially designated siding where more detailed external and internal inspection and examination can be undertaken.

Transfer to Specially Designated Examination Area (siding):

- i. Radiological examination of discharged commercial locomotives and rail cargo wagons is undertaken by the State Radiological Service by the movement through radiation detection equipment and checks are undertaken as previously described in Process Map 1 above, if necessary.
- ii. Means of transport and goods intended to cross the state border must be notified in advance to Customs in accordance with procedures described in Process Map 1 above. However, in the case of rail cargo wagons arriving by Ro-Ro vessel in transit, the document required can be either an SMGS or CIM⁸¹ consignment note if the goods are non – Excise in nature.
- iii. Rail cargo wagons containing goods falling within the first 24 Chapters of the Customs tariff (live animals, animal products plants and plant materials subject to Veterinary and Phyto-sanitary control) may undergo checks and controls by relevant authorities in accordance with the activities described above for Veterinary and SPS controls previously described in Process Map 1 -Transfer to TSP or Dockside: Paragraph iii & iv. If physical inspection, examination or sampling is not required, animal and plant health and safety documents are manually approved, signed and stamped. Normal practice is for all necessary Veterinary and Phyto-sanitary procedures, checks and controls including sampling under the terms of an 'Extended Control' if required (but unusual at this stage) to be completed prior to certification of the SMGS or CIM documents.
- iv. The designated siding represents the state border of the territory of Ukraine and incorporates an overhead viewing gantry and examination pits for viewing the locomotive and rail cargo wagons from below. Officials from the UASBGS and SFS jointly perform, anti-smuggling and security controls by examining the locomotive and rail cargo wagons both externally and internally, where appropriate based on risk.

Customs Procedures on arrival at the Inland Clearance Post:

- i. Customs clearance of rail cargo wagons follow procedures described above in Process Maps 1 before granting release from customs supervision.

80. Art. 259 Paragraph No 2 of the UA CC refers.

81. SMGS / CIM rail consignment notes are documents used to simplify and accelerate rail cargo transport by defining standardised contractual specifications for international rail freight movement including the Contract of International Transport of Goods by rail. www.unece.org/fileadmin/dam/trans/doc/2009/wp5/ge2-WKSH1-CIT.pdf refers.

Conclusions: Odessa & Illichiv's'k Ports

- At present, no congestion is observed in the ports although the volumes of containers processed at container terminals are less than the technological capacities. Despite reports received in advance to the contrary it is clear that the ISPS and electronic customs declaration processing together have succeeded in establishing an order to the collection, delivery and clearance of containers for transit within both ports and to the adjacent ICPs. In combination under normal circumstances when compulsory weighing and X-ray scanning are not applied by the SFS, they have created an environment where control by the BCSs is maintained, delays are less frequent and direct costs are decreased.
- Moving import clearance outside of the port to remote adjacent terminals has also had a significant impact on the level of congestion in the port but the current practice, enshrined in legislation, of presenting all containers in transit at the Transit Terminal in the case of Odessa sea port for containers in transit to the Euroterminal when examination, X-ray scanning or weighing are not required is unnecessary and should be reviewed by the SFS in order to reduce a redundant control and reduce delays and costs to business. Containers in these circumstances should therefore be able proceed in transit direct from the container base 'stack' under seal to Euroterminal along the internally secure port access road. Annex XXIII 'Transit to Euroterminal Draft Proposal' proposes a solution to this issue.
- The application for 'Free practice' should be more actively encouraged by all the State BCS to avoid delays particularly in relation Roll-on Roll-off (Ro-Ro) ferry traffic at Illichiv's'k. Information received indicates that a decision by the 'Commission's' to discharge vehicles and cargo from ferries after docking can regularly take up to 2hrs. Application for 'Free Practice' is eligible according to legislation in advance for ferry traffic and in the case of regular services there appears to be no reason to delay discharge outside of exceptional circumstances.

Component '2': Gap & Needs Analysis

Introduction

Component '2' is a 'Gap & Needs Analysis' following a review and evaluation of customs control clearance and BCS procedures incorporating examples of EU and IBM 'best practice' providing where appropriate and as necessary, recommendations to positively assist in enhancing the effectiveness and efficiency of predominantly SFS clearance procedures at the ports.

IBM is defined by the EC Guidelines for the Western Balkans as "*National and international coordination and cooperation among the relevant authorities and agencies involved in border security and trade facilitation to establish effective, efficient and integrated border management systems, in order to reach the objective of open, but well controlled and secure borders.*" The WCO 'Coordinated Border Management'⁸², and the World Bank's 'Collaborative Border Management'⁸³ describe IBM in similar terms.

The three pillars of the EU IBM concept: Intraservice, Inter-Agency and International for the purposes of the 'Port Study' incorporate six indicators used to associate Customs and BCS standards with EU and international 'best practice' as follows:

- Legislation & Regulatory Framework;
- Institutional Framework, incorporating Human Resource Management;
- Procedures;
- Communications & Information Exchange;
- Infrastructure & Equipment;
- Corruption.

It is important to note that the SFS have also reviewed procedures and practices related to the movement of goods and vehicles transported via the seaports of the Odessa region.

Pursuant to Decree of the Ministry of Revenue and Duties of Ukraine No. 84-k dd. 21.03.2014, on 01-04 April 2014 a delegation made up of officials from the HQ Department of Customs Affairs visited Odessa and met with representatives of the Administration of Sea Ports of Ukraine, Citizens' Council under the Main Directorate of the Ministry of Revenue and Duties in Odessa region, Association of International Road Carriers of Ukraine, Odessa and Illichiv'sk Sea Commercial Ports, Yuzhniy Sea Commercial Port, container terminals, carriers and other economic operators.

Meetings and discussion within the area of responsibility of the Odessa Customs of the SFS sought to identify legislative, practical and operational issues considered by stakeholders as an impediment to the clearance and movement of goods and vehicles, with an overall objective of finding methods by which processes could be improved and foreign trade enhanced.

In the follow-up to the visit and meetings held in Odessa, the SFS made proposals aimed at speeding up Customs procedures in international BCPs including those at the ports. SFS proposals are endorsed by the 'Port Study' and include instructions to the Customs Affairs Department to:

- Take appropriate measures to align legislation and regulations regarding inter-agency procedures at sea ports;
- Work on the issues related to feasibility of an agreement on procedure for cargo transshipment and freight-forwarding processing in the sea ports in line with Ministry of Sea Fleet letter # dd. 22.07.1963.
- Prepare new orders related to the maximum time standards for control of persons, vehicles and goods at BCPs on the state border;

82. WCO 'Coordinated Border Management' (CBM) refers to a coordinated approach by border control agencies, both domestic and international, in the context of seeking greater efficiencies over managing trade and travel flows, while maintaining balance with compliance requirements.

83. Border Management Modernisation published by the World Bank outlines a Collaborative Border Management (CBM) approach for border agencies, other related stakeholders and the international community in order to work together to achieve common aims that benefit all parties. CBM features the concept of a 'virtual border' encompassing the entire transport and supply chain where goods and passengers can be assessed for admissibility and clearance in advance of arriving at the physical border.

-
- Request the provision of information from the Ministry of Transport concerning net weight losses and weight tolerances in the transport of goods in containers;

The Department of Infrastructure and the Main Operations Directorate to:

- Undertake an assessment to determine the efficacy and further utilisation of X-ray scanning equipment at BCPs (Ports) and thereafter the issue of new instructions, based on risk management techniques;

The Customs Affairs and Infrastructure Departments to:

- Draft request to the UASBGS and Ministry of Infrastructure in order to perform a re-assessment of equipment necessary to satisfactorily perform border controls at the BCPs;
- Review and assess of the effectiveness and future use of GPS locks;

The IT Development, Electronic Services & Payer Registration Department and Customs Affairs Department to:

- Review and improve where appropriate inter-connectivity of systems and applications used in the customs clearance process including 'Inspector 2006' and integration with the ISPS;

Odessa Customs to:

- Impose and maintain effective control on goods in containers in Customs Controls Zones as per Provision # 4 of the Technological Scheme approved by Resolution of the Cabinet of Ministers of Ukraine No. 451 dd. 21.05.2012 (with amendments);
- Work together with administrations of the relevant sea ports and stevedoring companies on meeting requirements of part 2, Article 188 of the CC to provide specialised equipment for statistical weighing and creating the necessary conditions in terms of Health and Safety required for officers to carry out customs control and process goods and vehicles;
- Take steps In terms of assessing the correct valuation of declared goods that ensure actions of Officers are consistently in line with legal provisions of the UA CC and WTO valuation guidelines.

Trade Facilitation

Irrespective of the role that other State Border Control Services perform in the clearance process, Customs is the principle organisation required by Ukraine Law to control and process commercial cargo. It has an obligation to facilitate trade through the implementation of national legislation (Customs Code of Ukraine), various international agreements & conventions⁸⁴ and latterly of increasing importance, to apply internationally accepted 'best practice' and standards⁸⁵ as a practical demonstration of this commitment.

The Revised Kyoto Convention (RKC) is the international blueprint for the implementation of modern and efficient customs procedures. The Convention helps to establish a customs environment that is predictable and supports equality of treatment: *"The RKC supports the international trading system by creating predictability, efficiency and a level playing field. Trade facilitation is one of the key factors for economic development of nations and in international trade Customs plays a critical role not only in providing expedited clearing processes but also in implementing effective controls that secure revenue, ensure compliance with national laws, and ensure security and protection of society"*.

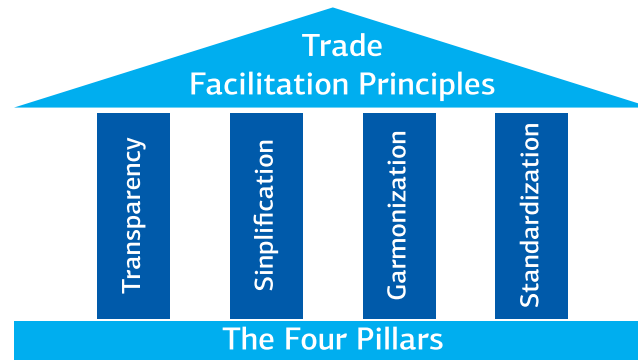
When attempting to understand Customs' role in assisting the facilitation of trade, it is important to recognise that Customs occupies the primary position because of its dual responsibility to not only provide accelerated clearance but also to ensure that effective border controls are in place. Ultimately for trade facilitation to be effective Customs need to make procedures and processes for clearance easier and less costly and at the same time successfully balance efficiency with security and control. Customs administrations can assist trade facilitation in the following ways by:

84. Revised Kyoto Convention, International Convention on the Simplification and Harmonisation of Customs Procedures , TIR Convention, Convention on a Common Transit refer.

85. As referred to in the Revised Kyoto Convention, EU Customs Blueprints, World Customs Organisation and various World Bank Guidelines.

- Introducing simplified procedures;
- Automating processes using information technology solutions to electronically process declarations and accept payment;
- Harmonising and standardising procedures both at the national and international level;
- Initiating and implementing transparent measures that include the regular review of clearance procedures and processes;
- Joint performance of physical examinations and inspections⁸⁶ to avoid duplication.

Figure 2 'Four pillars of Trade facilitation'



Source: National Board of Trade Sweden

Veterinary & SPS controls performed during the clearance process while important in assuring the protection of human health and safety can further support the effort towards greater trade facilitation by also implementing more effective and efficient inspection, physical examination and sampling of imported products avoiding repeated or unnecessary controls that add to unexpected delay and to direct costs for importers.

EU & International 'best practice' in the area of risk management and risk assessment has been widely implemented by Customs in many countries and forms the cornerstone of trade facilitation activities. The increased use of risk management tools by Ukraine's Veterinary and SPS services to assist in the determination, identification and mitigation of hazards during controls is an essential element of this combined and evolving process.

86. Joint physical examination and inspection which avoid duplication, is a feature of trade facilitated controls by the State Border Control Services to be commended at Odessa and Illichiv'sk sea ports by the State SBSs.

Legal & Regulatory Framework

Introduction

Customs

Ukraine is a member of:

- The World Customs Organization and World Trade Organization;
- The European Neighbourhood and Partnership Instrument (ENPI) between Ukraine and the EU defines the following aim in the area of customs: *“to harmonize Ukrainian legislation and procedures according to the ‘Acquis communautaire’ and to develop the operational capacity of customs administration in order to facilitate legitimate business”*;
- The International Convention on the Simplification and Harmonization of Customs Procedures (RKC) entered into force in Ukraine on 15 September 2011.

In October 2010, SFS introduced the Concept of the customs administration reform called “Facing the people” and implementation plan for its practical application. The main goal of the Concept was to define appropriate organisational structure of the Customs Service of Ukraine aimed at increased efficiency, reliability and stability of its operations; to outline the main tasks of reformation and modernization; to determine landmarks and measures to achieve strategic goals and expected results of implementation of this Concept.

More recently in April 2014 in the context of continuing reforms and following an internal review of customs control and clearance procedures within the Odessa region⁸⁷ measures were taken to remove inconsistencies⁸⁸ between the norms of the Provision on BCPs and check points in line with requirements of the Ukrainian Law “On Ukrainian Sea Ports” and the Regulation on state border crossing points and check points, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 751 dd. 18.08.2010 (with amendments)⁸⁹.

In September 2014 Ukraine ratified, as part of the Association Agreement with the EU, the Deep and Comprehensive Free Trade Area which commits both parties to an expansion in trade and to develop and enhance trade facilitation including the further alignment of legislative and regulatory frameworks in Customs, Veterinary, Sanitary and Phyto-sanitary controls.

As a part of the process of these reforms in Ukraine, SFS has undertaken significant legislative and administrative transformation, making strenuous efforts to further align customs legislation and practices with international standards and to meet its respective commitments within the framework of association with the EU.

Intraservice

In 2014, Customs roles and responsibilities are sufficiently defined in the present Customs Law. The legislative and regulatory framework is also for the most part appropriate given the complexity of controlling import, export and transit of goods.

Between 2009 and 2014 substantial changes and amendments have been made to Customs legislation and regulations. In 2012 a new and revised CC was adopted which had a positive effect, introducing and adopting procedures regarding preliminary customs declarations, advanced cargo information,

87. Pursuant to Decree of the Ministry of Revenue and Duties of Ukraine No. 84-k dd. 21.03.2014 refers.

88. Inconsistencies refer to the boundaries of the territory of the crossing point “Odessa Sea Commercial Port” which make it currently impossible to include territories, in which the goods subject to customs control are located, or the activity, which should be controlled by customs authorities, is carried out (OJSC “Eximnaftoproduct”, LLC “Ukrloudsystem”, OJSC “Odesanaftoproduct”, OJSC “Synthesis Oil”, LLC “Euroterminal”).

89. Reporting Notice of the SFS Customs Affairs Department drafted in April 2014 refers.

AEO⁹⁰, the Single Window, “One-Stop-Shop”, a reduction in the number of documents required for customs declarations, and setting strict time limits within which customs clearance must normally be completed (4hrs). Other important developments included allowing the electronic submission of declarations, the right of operators to choose customs entry points and reversal in the burden of proof as regards customs valuation.

Gap 1: Legislative Alignment with EU ‘Acquis Communautaire’ & International Standards

Amongst other areas of planned modernisation and harmonisation, in the future Customs will accede to the Convention on a Common Transit and implement the NCTS, practically implement and apply the AEO scheme, introduce simplified procedures for customs clearance at trader’s premises, and fully implement the electronic customs environment, including the electronic processing of declarations and e-payment - without the need for hard copy documents.

According to the ENP-Ukraine Progress Report of 2013, legislation relating to the status of authorised consignee and authorised consignor was not compliant with the EU Community CC. Implementing provisions on AEOs are not in force and only limited progress had been achieved on accession to the Convention on a Common Transit procedure. It is not possible to report any significant advancement in these key areas since the 2013 report was published.

Changes however, will require further adjustments and alignments to legislation in order to achieve full EU compliance and also to ensure future obligations are met in terms of maintaining international agreements and conventions.

The implementation of the Association Agreement between the European Union and Ukraine as part of DCFTA will seek to address these and other outstanding issues related to the application of Veterinary and SPS controls by the State BCSs at ports and border crossing points throughout Ukraine.

Need 1:

Despite some clear progress already made by the SFS there is a continuing need to undertake regular reviews of legislation and regulations in order to remain up-to-date and harmonise with current EU legislative amendments, strengthening administrative and operational capacity specifically with regard to legislation and implementing provisions concerning: Transit, e-Customs, authorised consignor and authorised consignee, AEO, PCA, One-Stop-Shop control & Single Window⁹¹, IPR and relevant international conventions. The implementation of the DCFTA and its emphasis on trade expansion and trade facilitation will create further opportunities for amendment in these areas.

Therefore it is recommended that an assessment and review of EU legislation in the case of Customs needs to include the following: EU Community CC, the EU ‘Acquis communautaire’ and EU Customs Blueprints as well as EC directives and the authorisation of new implementing regulations, where appropriate, in relation to the following:

- Amendments regarding simplified procedures in line with Council Regulation (EEC) 2913/92, Commission Regulations (EC) 1192/2008, (EC) 215/2006, (EC) 1875/2006, (EEC) 2454/1993, (EC) 444/2002 and Articles 76 (1) a, 76 (4) and 97 of the EU CC;
- Rules on Authorised Economic Operators (AEO) in line with Council Regulations (EC) 648/2005, (EEC) 2913/92 and Commission Regulations (EU) 197/2010 and (EEC) 2454/93;
- Legal provisions for the introduction of NCTS in line with Council Decisions 87/415/EEC and 477/2009, and accession to the Convention on Common Transit;
- Amended provisions on free zones and duty-free shops in line with Council Directives 91/680/EEC, 92/12/EEC, Council Regulation (EEC) 2913/92 and Commission Regulation (EEC) 2454/93;

90. One of the main elements of the security amendment of the Community CC (Regulation (EC) 648/2005) is the creation of the AEO concept - AEO status either allows easier access to Customs simplifications or to be in a more favourable position to comply with the new security requirements - the AEO concept is one of the main building blocks within the WCO SAFE Framework of Standards (SAFE).

91. Economic Commission for Europe - United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) – Recommendations and Guidelines on establishing a Single Window – to enhance the efficient exchange of information between trade and government- recommendation.

- Laws and practices in the field of Intellectual Property Rights (IPR) in line with Council Directive 2004/48/EC, Council Regulation (EC) 1383/2003 and Commission Regulation (EC) 1891/2004;
- Amendments to the Customs Law on cultural heritage in line with Council Regulation (EC) 116/2009;
- Amendments to improve enforcement of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), in line with Council Regulation (EC) 338/1997, Commission Regulation (EU) 709/2010 and Commission Recommendation 2007/425/EC.
- Rules concerning the Dual-use with Council Regulations (EEC) 2603/69 and (EC) 428/2009.

Veterinary, Sanitary & Phyto-sanitary Services (SPS)

Introduction

The State Veterinary and Phyto-sanitary Services also have a full and clear mandate to undertake border control duties, and although customs reforms are critical to improve border efficiency, border controls undertaken by the services also have an important role to play. Excessive controls attributed to the Veterinary & SPS services at the Port of Odessa & Illichiv's'k, which require sampling and laboratory testing and analysis can cause unnecessary delays and higher costs for trade.

Legislation⁹² in Ukraine relevant to the clearance process for food, agricultural goods and animal welfare has in the past not been sufficiently aligned with EU and international standards despite commitments from the Government and SPS services to bring it more into line.

In 2009⁹³ at the port of Odessa systematic reforms concerning the application of Veterinary & SPS controls and Technical Barriers to Trade (TBT) were identified aimed at aligning legislation with EU and international standards. A series of actions were proposed (Table IV below) to be accomplished over a 2-year period between 2010-2011, designed to assist with modernisation and revision of Veterinary & SPS practices and lead to better implementation of control measures.

Table IV. USAID/LINC Proposals for Systematic Reform of SPS Legislation

<p>Actions Needed to More Fully Implement Border SPS & TBT related legislation - 2010-2011</p>	<ul style="list-style-type: none"> • Modernise/revise risk assessment methods for SPS clearance; • Evaluate list of goods subject to phyto-sanitary control to eliminate low risk goods and bring into line with intl. practices; • Evaluate list of goods subject to veterinary control to eliminate low risk goods and bring into line with intl. practices; • Evaluate list of goods subject to sanitary-epidemiological control to eliminate low risk goods & bring into line with intl. practices; • Eliminate any overlaps between the 3 aforementioned lists; • Eliminate conformity certification requirements related to food safety; • Implement Article 6 of the WTO TBT agreement to recognise results of conformity assessment procedures of other WTO members; • Implement Article 4 of the SPS agreement to accept SPS measures of other WTO members or equivalent.
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92. Annex VIII 'Questionnaire' State BCSs refers.

93. USAID /LINC USAID/LINC 2009 Ukraine (Local Investment & National Competitiveness Assessment of Import/Export Clearance Processes Odessa Commercial Seaport (OCSP).

In June 2012, the Government of Ukraine approved an Institutional Reform Plan⁹⁴ in preparation for implementation of the DCFTA, drafting a detailed Action Plan⁹⁵ with EU support that included a food safety strategy and list of Veterinary & SPS legislation to be approximated with EU standards. In 2013 the European National Policy (ENP) Country Progress Report for Ukraine indicated some progress in the preparation of laws on food safety, official controls, veterinary checks, novel food⁹⁶, hygienic production and animal feed.

Intraservice

Gap 1: Legislative Alignment of Veterinary & SPS with the EU 'Acquis Communautaire' & International Standards

Over time many references have been made by the European Union and other sources to the non-alignment of Ukraine's Veterinary & SPS legislation with the EU 'Acquis communautaire' and international standards. Chapter 12 of the 'EU Programme for the Acquis communautaire' refers to detailed regulations in the areas of food safety, veterinary and phyto-sanitary measures. In the veterinary field the 'Acquis Communautaire' establishes procedures, which are essential for safeguarding animal health, animal welfare and safety of food of animal origin. In the area of Phyto-sanitary EU rules address the enforcement of standards related to the quality of seed, plant protection material, harmful organisms and animal nutrition.

Currently Veterinary and Phyto-sanitary procedures do not appear to be standardised in accordance with the EU Guidelines. Inspectors from both services were not observed to be using SOPs or updated Inspection Manuals (Vademecums). In addition, internationally recognised documents used in the transportation of plants and animals e.g. Passport Plant and Common Veterinary Entry Document (CVED) are currently according to information received not in use.

Chapter 4, Articles 55 & 59 of the Association Agreement, which forms part of the DCFTA underline that despite previous initiatives for change, progress has been limited and legislation and procedures still require further alignment to the EU 'Acquis communautaire' to ensure full transparency, recognition of equivalence and conformity and the establishment of mechanisms for trade facilitation.

Furthermore, both the Veterinary and SPS services should consider the application of greater levels of risk analysis and should establish an information network which provides access to the Customs database, at least for the shipments of cargo within the first 24 Chapters of Harmonized Tariff System.

Need 1:

Although an SPS Sub-committee set up as part of the DCFTA will monitor progress, provide recommendations, develop procedures, and provide a forum for addressing SPS problems in the harmonisation and approximation of relevant EC Veterinary & SPS directives, standards, regulations of the World Organization for Animal Health (OIE), it is nevertheless recommended that the State Veterinary and Phyto-sanitary Service need to undertake regular reviews of legislative and regulatory framework in order to remain up-to-date with current EU legislative amendments, strengthening administrative and operational capacity at the ports.

There is a need to develop harmonized Veterinary and Phyto-sanitary procedures aligned to EU 'Acquis communautaire' requirements and International Standards on Phyto-sanitary Measures (ISPMs), including the use of standardized EU and international forms (e.g. Passport Plant and CVED) and manuals, as well as to improve the level of risk analysis applied. In addition, the SPS Services do not currently have access to the Customs IT system, in order to access information on the first 24 Chapters of Harmonized Tariff System.

94. EU European National Policy (ENP) Progress Report for Ukraine 2012 refers.

95. EU-Ukraine Association Agreement: Guideline for Reforms Page 28 refers.

96. Novel foods or novel food ingredients have no history of «significant» consumption in the European Union prior to 15 May 1997. Any food or food ingredient that falls within this definition must be authorised according to the Novel Food legislation, Regulation (EC) No 258/97 of the European Parliament and of the Council EC Regulation 259/97 refers.

For the State Veterinary Service it is recommended to assess and review national legislation and regulations against EU legislation including EC directives⁹⁷ and the authorisation of new implementing regulations, where appropriate, in relation to the most important pieces of legislation listed in Annex XV.

Similarly in the case of the State Phyto-sanitary Service it is also recommended to assess and review national legislation against EU SPS directives to ensure that they are completely in line with the Plant Health Directive and directives on Plant Protection Products (PPP⁹⁸), pesticide residues and biocides, and especially with all 12 directives on Seeds and Plant Propagation Materials (S&PM). The assessment and review should consider the following EC SPS directives and include the authorisation of new implementing regulations where appropriate:

- Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ L 169 of 10 July 2000).
- Phyto-sanitary certification from 3rd countries in line with Council Directive 2000/29/EC, Commission Directive 2004/105/EC and Commission Regulation (EC) 1756/2004;
- Maximum levels of pesticide residues in line with Council Directive 91/414/EEC and Council Regulation (EC) 396/2005;
- Plant protection products in line with Council Directives 79/117/EEC, 91/414/EEC and Council Regulation (EC) 1107/2009;
- Seeds and propagating materials in line Council Directives 66/401/EEC, 66/402/EEC, 2002/53/EC, 2002/54/EC, 2002/55/EC, 2002/56/EC, 2002/57/EC, 68/193/EC, 1998/56/EC, 92/33/EEC and 92/34/EEC;
- Forest reproductive material in line with Council Directive 1999/105/EC;
- Council Directive 93/85/EEC of 4 October 1993 on the control of potato ring rot, as last amended by Council Directive 2006/56/EC of 12 June 2006;
- Council Directive 74/647/EEC of 9 December 1974 on control of carnation leaf-rollers;
- Council Directive 2006/91/EC of 7 November 2006 on control of San José Scale;
- Council Directive 98/57/EC of 20 July 1998 on the control of *Ralstonia solanacearum* (Smith) Yabuuchi et al, as last amended by Directive 2006/63/CE of 14 July 2006;
- Council Directive 2007/33/EC of 11 June 2007 on the control of potato cyst nematodes and repealing Directive 69/465/EEC;
- Council Directive of 15 July 1991 concerning the placing of plant protection products on the market, as last amended by Council Implementing Directive 2011/60/EU

Inter-Agency

Customs, Veterinary & SPS

Gap 1: Too Many Legal Acts Regulating Border Management

In general the State BCSs at the ports operate against an excessive background of legislation⁹⁹, particularly in relation to clearance processes. This is represented in the form of decrees, supplementary regulations, and locally issued orders and is in addition to the primary legislation at the core of administering clearance procedures.

In Customs there are recorded instances where decrees continue to be applied in direct contradiction to the CC and appear to have gone unnoticed without cancellation. This situation may have occurred simply because of the overwhelming volume of legislation within which the organisation has to operate. In other situations, decrees and orders have been issued appearing to neutralise the use of risk analysis principles as determined by Articles 361-363 of the CC, by implementing high levels of physical examination including for consignments of excise goods in transit or 100% scanning and

97. http://ec.europa.eu/food/animal/bips/legis_en.htm refers

98. Regulation (EC) of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC 1107/2009 (OJ L 309 of 24 November 2009) refers.

99. List of extant legal acts for each of the State BCSs Annex XVI refers.

weighing of containers, adding to delays and costs literally overnight. It is understandable in these or similar circumstances that not only do the State BCSs find difficulty in applying the legislative framework correctly but also that businesses are equally challenged in their efforts to comply.

In addition, not unrelated to the volume of legislation, business stakeholders complain that legislation and regulations can at times be difficult to understand and as a result lead to further inconsistencies in their application. Modern BCS operations are based on the concept of 'informed compliance' which requires that business is adequately and regularly informed about requirements and their obligations.

Stakeholders have also criticized a lack of transparency and consultation in their dealings with the BCSs, as well as inferior and inadequate access to current or updated information through formal centralised publication of the legislation in printed format or via the internet, including regulations or official translations¹⁰⁰.

Need 1:

Experience gained from other countries indicates that the existence of too many legal acts, secondary legislation and orders issued on an 'ad-hoc' basis has the potential to create confusion and uncertainty in the application of legal powers. It is therefore recommended that Customs and Veterinary & SPS need to review existing legislation by undertaking an exercise of rationalisation that includes the cancellation of redundant decrees and orders and where necessary making appropriate amendments to primary legislation.

Table V. Summary of Legislation & Regulatory Gaps & Needs.

	Border Agency	Gap
Intraservice	Customs	Gap 1: Legislative Alignment with the EU 'Acquis communautaire' & International Standards
	Veterinary & SPS	Gap 1: Legislative Alignment of Veterinary & SPS with the EU 'Acquis communautaire' & International Standards
Inter-Agency	Customs, Veterinary & SPS	Gap 1: Too many Legal Acts regulating Border Management

100. 'Trade Survey Questionnaire' Annex V refers.

Institutional Framework & Human Resource Management (HRM) Development

Introduction

Customs

During 2014 Customs, have undergone significant reorganisation converting from the Ministry of Revenue and Duties to the State Fiscal Service under the Ministry of Finance. This reorganisation has involved restructuring of the services' activities resulting in some important functions normally accepted as falling within the area the responsibility of Customs now assumed by other parts of the organisation, particularly in regard to PCA.

Intraservice

Gap 1: Organisational & HRM Reform

In the past the focus, with regard to the institutional development of Customs has been on functionality and the methods by which Customs operates. Organisational reforms including the use of strategic planning, management assurance systems, change management and HR development in order to improve administrative capacity have to a large extent been overlooked. The requirement to deliver on all its goals, objectives, commitments and obligations particularly at this time in order to implement the EU Association Agreement and DCFTA and other international agreements and conventions will require the SFS to rapidly adjust and adapt to a new and challenging customs and trade environment.

Personnel that make up the workforce are Customs' most valuable asset and fundamental to its evolution. They must therefore be sufficiently skilled, motivated and capable of performing effectively at the highest level in order to meet all future challenges. In addition, the organisation through its personnel must commit to a culture of professionalism, discipline, integrity and ethical behaviour.

Reforms should therefore be focused on:

- Personnel and HRM improvements;
- Integrity with the aim of producing a service-oriented, professional and efficient organisation that is adaptive to change and toughened against corruption.

The MoRD Strategic Development Plan 2013-2018 in its accompanying Action Plan sets out twenty seven (27) separate strategic business objectives of which four (4) are directly related to organisational and HR development. Professionalism and trust are cited as key work principles incorporating the development and implementation of anti-corruption measures¹⁰¹ as an important element. Additionally, other areas of organisational development and HR capacity building are included:

- Establishment of an effective staff management system;
- Provision of high quality services to the public and trade;
- Regular reviews and elaboration of the business strategy;
- Improvements to internal and external communications;
- Enhancements to the process of staff recruiting, training, reporting and motivation and the introduction of internal audit procedures.

The ICC Customs Guidelines Policy Statement Document No. 103-6/12 – (June 2012) refers to a number of strategic areas which are mirrored in the MoRD Strategy Document and Action Plan but which help to further support the development of internal reforms:

¹⁰¹. Proposals for Anti-corruption measures are consistent with those described in the Arusha Declaration 1993.

“Workforce and structure

- *Employs a highly professional workforce, which is recruited competitively, well-trained, adequately paid and screened for enforcement risks, with written, standardised job descriptions and objectives, supporting transparent career development and promotion policies;*
- *Establishes an independent internal security unit, or is subject to an equivalent external body, to deal with issues of employee integrity. These arrangements should be known to the trade community, which should be given information enabling them to contact the appropriate security agency as and when necessary;*
- *Trains officers in customs conventions, laws and process and to investigate complex frauds, and recommend appropriate action;*

Transparency of Administration and Regulation

- *Publishes all customs regulations and makes them available to the public through the most modern and practical media, while ensuring that existing and new regulations and legislation are simple in form, content and presentation;*
- *Consults the trade community systematically, to obtain views on proposed new regulations and procedures, or amendments to existing requirements, and gives them timely notice of any changes;*
- *Adopts a Memorandum of Understanding programme, to improve and promote co-operation with the trade community in the areas of trade compliance, security, and effective interdiction of customs fraud, drug trafficking, infringements of intellectual property rights and threats to endangered species;*
- *Establishes an ombudsman, specialised in customs matters, as a medium for approaching the administration and a general information or office or section to deal with queries from the trading community;*

Corruption

- *Criminalizes the disclosure of proprietary trader information.*
- *Publishes and enforces internal anti-bribery policies.”*

Supported and fully recognised by the EU & WCO, the application and implementation of a HRM strategy that contributes to the overall organization's Strategic Management or Business Plan (Strategy), is now regarded as an essential element for the development of a modern customs administration and an integral part of the organisational change management process.

The EU Customs Blueprints in particular assign four (4) individual chapters to organisational and HR topics, Organisation and Management, Human Resource Management, Customs Ethics and Training, setting out a series of strategic objectives and key indicators that can be used to assist customs administrations engaged in undertaking reform, reorganisation or regional integration i.e. EU candidate countries or customs unions.

Need 1:

The growth of international trade and globalization has fundamentally altered the traditional relationship between the trading community, public and border management authorities. For many Customs administrations across the world this change has led to a comprehensive review of existing HRM policies, resulting in attention being given to improving performance in a number of key areas, including: training, professionalism, service-focus and embedding a framework of core values¹⁰² and behaviours, built on the foundation of integrity and zero-tolerance for corrupt practices.

In order to effectively implement HRM improvements the State Fiscal Service need to adopt and apply strategies, policies and systems that fully comply and are in line with the EU Customs Blueprints four (4) individual chapters related to organisational and HR topics, World Customs Organisation HRM Guidelines and the International Chamber of Commerce Customs Guidelines Policy Statement Document No. 103-6/12 – (June 2012) which mirror a number of strategic areas in the MoRD Strategy

102. Core Values are described by the WCO include the following; Professionalism, Integrity, Transparency, Reliability, Accountability, Operational Effectiveness and Efficiency, Client Orientation, Partnership with state authorities, business community, other customs administrations and organisations and Innovation.

Document and Action Plan. Measures must be sufficient to be able to attract, retain and develop staff at all levels, recognise and reward performance and innovation, identify and grow leaders and deliver an ethical culture that combats corruption amongst its employees.

Customs, Veterinary & SPS

Gap 1: Staff Rotation Systems

Policies for the systematic rotation of staff are an important element in personnel career development and are also an integral part of an effective anti-corruption strategy (EU standards and the WCO Code of Ethics and Conduct Model refer). However, it is important that any rotation system is balanced, with Officers remaining in post for long-enough periods to enable assimilation to their work area, to effectively execute their duties and to acquire the incentive to be fully committed to their place of work.

The SFS operate what appears to be an informal unregulated staff rotation system within the regional ports but there has been a disproportionately high turn-over of senior managers, particularly at Head/ Acting Head of Office level as well as Customs clearance units in the ports since April 2014¹⁰³, which if continued would be incompatible with maintaining a stable organisational platform for the medium and long term future.

In addition, Inspectors from the Veterinary & Phyto-sanitary services at the ports should also be regularly rotated with Inspectors from other locations outside of the ports to increase the potential benefits of sharing experience and expertise with others in the service.

Need 1:

Whilst rotation of customs officials is to be commended and in keeping with an effective anti-corruption strategy it is recommended that replacements need to be made systematically in-line with a developed implementation policy that seeks not only to ensure integrity but also the effectiveness and efficiency of the organisation.

In the case of the Veterinary and Phyto-sanitary Services there is a need for experienced Inspectors from both organisations to be regularly rotated within a structured programme working and / or visiting other BCPs throughout Ukraine in order to give support to the training of existing and newly appointed personnel. A policy of systematic rotation of staff, which is an effective element in personal career development, should be considered and implemented.

Gap 2: More Flexible Working Hours

Container traffic is particularly sensitive to time. Both ports have ambitions to increase their capacity and improve their worldwide reputation in comparison with other major EU Container Ports¹⁰⁴ that similarly handle and customs clear containers on a continuous 24/7, 365 day / year basis.

In 2009 Customs at the port of Odessa were reportedly working in shifts from 0900-2100hrs not including weekends. Currently the Transit Terminal works on a 24/7 basis compensating for the rise in container volumes and permitted by the significant increase in capacity that the use of automated processes and information and communications technology allow. However, the Euroterminal which, it is understood is outside the boundary of the port, is without night coverage although directly connected with and predominantly fed by container traffic from the port. In response to a direct question¹⁰⁵ concerning the need for flexibility in working hours, business considered that it was necessary particularly for the clearance of cargo at weekends.

103. 4 x appointed Heads / Acting Heads of South Customs House since: 4th June, 7th July, 19th, August and October 15th.

104. Szczecin in Poland, Antwerp in Belgium, Felixstowe in UK, Rotterdam in Netherlands and Hamburg in Germany.

105. Annex V 'Trade Response Questionnaire' refers.

Need 2:

Functional workloads for all the State BCSs at the ports should be reviewed and re-adjusted accordingly to take account of increased attendance based around a 24/7 three x 8-hour shift pattern where demand is sufficient.

The SPS services should also re-evaluate and calculate their staffing requirements in line with new competencies and practices set out by the EU and where necessary seek to further coordinate working times and attendance with other BCSs if weekend and night working were to be introduced.

A move to increase the operating working time of Customs for the clearance of cargo at the Euroterminal and ZAZ Terminals adopting on a regular and scheduled basis three shifts of 8 hours including weekends, permissible under Art. 574 of the CC, would assist in dispersing the workload more evenly across a longer period, and help to further reduce delays and bottlenecks at current peak times. Night and weekend work needs to include a supplementary compensation, in line with the EU and International Labour Organisation (ILO) standards regarding work hours.

Gap 3: Measurable Time & Performance Standards

The Standard Technological Scheme on admittance of persons, road, water, rail and air transport of carriers and goods transported by them across the state border, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 451 dd. 21.05.2012, determines maximum time constraints for the application and completion of all types of control at BCPs, which normally should not be exceeded by officials performing those controls.

Table VI. Measurable Time & Performance Standards

Type of control	Physical person	Vehicle	Cargo
Border Control	Up to 2 min	Up to 1 hour (up to 2 hours for deep examination)	Up to 1 hour (up to 2 hours for deep examination)
Customs Control	Up to 3 min	Up to 1 hour (up to 2 hours for deep examination)	Up to 2 hours
Sanitary-Epidemiological Control	If needed up to 30 min	If needed up to 30 min	If needed up to 30 min
Phyto-sanitary Control		Up to 2 hours	up to 2 hours
Veterinary Control		Up to 2 hours	up to 2 hours
Ecological / radiological Control		Up to 30 min (alongside customs and other border control bodies)	If needed up to 30 min

Times are approved by the Order of the State Customs Service of Ukraine, Administration of the UASBGS, Ministry of Transport and Communications of Ukraine, Ministry of Healthcare of Ukraine, Ministry of Agrarian Policy of Ukraine, Ministry of Environmental Protection of Ukraine, Ministry of Culture & Tourism of Ukraine, State Service of Ukraine for Aviation Safety No. 1167/886/824/643/655/424/858/900 dd. 28.11.2005, but have not been reviewed since their introduction.

Measurable time standards applied by the SFS for the customs clearance process are also in accordance with Article 255 of the CC which specifies that formalities normally including: documentary checks, weighing, X-ray (scanning) and physical examination, must all be completed within 4hrs following registration of the Customs declaration. Maintenance of the Customs time standard is centrally administered at Kiev HQ and strictly enforced by monitoring of all customs declarations submitted through the declaration processing system ‘Inspector 2006’ in order to ensure that the 4hr limitation is rigorously observed.

A number of exemptions exist for when the time standard may be exceeded¹⁰⁶ however, when it is exceeded enquiries are instigated from the central level to establish the reason(s) behind the contravention. Table VI below provides comparative data of the average times required for the processing of registered declarations in 2012 and 2013. In 2013 data provided by the SFS to the FOOD revealed that the 4hr time limit was exceeded in 1518 cases.

Table VII. Average time of CU clearance 2012 & 2013¹⁰⁷

Year	IMPORT	Quantity of registered declarations	TR-80 (External Transit)	Quantity of registered declarations	EXPORT	Quantity of registered declarations
2012	103 min	23357	30 min	2023	31 min	6220
2013	168 min	32174	60 min	2961	98 min	16295

Nevertheless, whilst the introduction of time standards /constraints are considered a positive step and fully in line with EU standards and ‘best practice’, factually as administered by Customs they currently do not represent a fully transparent picture. Article 42 of EC Regulation 2913/1992 establishing the Community Customs Code and Article 266 (2) of the CC allows for physical examination of the goods and the taking of samples on the declarant’s initiative in advance of registering the declaration – ‘pre-declaring’ – on occasions when information is insufficient or absent. The procedure is based on the principle that prior to registration the declarant or his agent should be in possession of sufficient information regarding the cargo to accurately and truthfully complete the declaration.

The State BCSs are governed by Decree #1167/886/824/643/655/424/858/900 of 28.11.2005 in relation to the time needed to complete relevant processes with the SFS automatically recording declaration processing times and keeping statistical information regarding the number of inspections, examinations and sampling undertaken. As for the others the State Sanitary Epidemiological Service was the only service amongst all the other BCSs able to provide information in relation to the number of inspections performed during control operations at the ports.

Border control is not only an enforcement tool but also a state service, and business in the modern clearance environment expects that BCS measures will be conducted efficiently and transparently. This places a responsibility on all border control organisations to monitor and publish information concerning their performance. Important enablers for improving trade facilitation include regulating the time needed to complete such processes and keeping statistical data that records BCS activities.

Need 3:

All State BCSs at the ports should be encouraged, where absent, to establish, monitor and maintain specific and measurable time standards for the efficiency of border checks and including quantifiable targets. Time release exercises that measure the time needed to complete clearance procedures at the ports need to be regularly conducted and the resulting statistics should be published in order to increase transparency and boost trade facilitation dialogue between the State BCSs and businesses engaged in the clearance of cargo.

106. FOOD SR on Customs Clearance Process within Odessa Port 070814 refers. Sub-Component ‘1’ Overview of BCSs refers.

107. FOOD SR on Customs Clearance Process within Odessa Port 070814 refers.

Whilst it may not always be possible to avoid the need for some consignments to undergo a 'pre-declaring' procedure, it is nevertheless difficult to accurately calculate and register the time taken in this phase. What is clear is that 'pre-declaring' forms an integral part of the process and at present is not accounted for in the recorded timings.

In order to obtain more accuracy in determining the time required to complete clearance procedures and also as part of an effective risk management and compliance strategy, which reduces the involvement of customs in determining in advance the contents of the declaration, there is a need to discourage all parties from over using the practice. The State BCSs and particularly Customs should normally perform examination of goods based on risk analysis and the application of risk criteria following registration of the declaration thus avoiding abuse of the 'pre-declaring' procedure.

In addition, as time limits for the control of persons, vehicles and goods at BCPs in respect to all BCSs have not been reviewed or amended since their introduction in 2005, the preparation of proposals in the form of drafting an order of the Ministry of Finance of Ukraine «On approval of maximum time standards for control of persons, vehicles and goods at BCPs on the state border of Ukraine» by the SFS is considered necessary, appropriate and fully supported.

Furthermore, Article 63 of EC regulation 2913/92 (Community Customs Code) stipulates that the customs authorities shall accept declarations immediately, provided that the goods to which they refer are presented to customs. In order for SFS procedures to be more closely aligned with EU legislation and practices and avoid contravening the current rules related to the 4 hour time frame, the list of permissible reasons for delay may need to be reviewed, revised and where appropriate extended. Customs officers should be able to note reasons for delays in the electronic declaration.

Gap 4: Services Engaged in Border Controls

In many EU ports and in other developed economies such as Singapore (often quoted as one of the world's most efficient ports) the number of State BCSs and law enforcement agencies involved in the control and management of the state border, with a permanent presence at the border, has been in decline. This is as a result of the adoption of new initiatives such as the 'Single Window' and the introduction of IBM techniques and practices where co-operation and coordination between the border services/agencies has been enhanced to facilitate trade.

In Ukraine initiatives to reduce the number of organisation's primarily involved in border controls have been implemented, with positive effect, however, the number of agencies needed to participate /complete import and export clearance is still relatively high compared with other economies¹⁰⁸ (Table VII refers).

Table VIII. Numbers of Services Engaged in Border Controls

Number of agencies -	UA	NL	DE	UK	PL	ES	Singapore
Exports	6	1	3	2	1	2	1
Imports	5	2	3	2	2	3	1

Source: World Bank Logistics Performance Index

The problem can be summarized as follows: More border organisations = more complex border clearance procedures = delays obtaining all signatures and stamps = additional costs¹⁰⁹.

108. Sub-Component '1' Overview of BCSs refers.

109. Support to the Integration of Ukraine in the Trans-European Transport Network TEN-T Cross Cutting Issues (WP7) Multimodal Transport, Logistics, Border Issues EU Programme for Integration of Ukraine Dec 2009 report Corporate Solutions UK Page 6 refers.

Need 4:

In order to bring Ukraine's State BCSs more fully into line with those of the EU and other developed economies there is a need for further reductions in the number of Services involved in clearance procedures at the ports¹¹⁰. It is recommended that the process of integration and rationalisation continue in order to further simplify clearance processes.

To support this recommendation, surveys in the past¹¹¹ have confirmed that major delays to clearance can often be attributed to the time needed to collect and submit supporting documents¹¹² rather than the physical processing of declarations. For the trade in Ukraine, there remains, from the past, a strong suspicion that the 'goal posts' are still moving due to what some businesses view as unnecessary additional technical and physical barriers that include documentary demands often requested at short notice, particularly in relation to the need for contracts, import licences and other financial documents. In the case of sea freight, this can frequently mean requests to obtain commercial documents after the goods and vessel have already begun their journey - particularly difficult to achieve since goods imported under the terms of either Free on Board (FOB) or Carriage Insurance and Freight (CIF) have already been purchased and there is little economic incentive for the shipper to provide new or additional documents.

For Business, this resembles negotiating a procedural 'obstacle course' consisting of numerous and ever changing challenges, resulting only in frustration, delay and additional costs. Complexities may also serve to conceal corrupt practices since a variety of different law enforcement, technical and border inspection agencies are involved in the clearance of goods especially when speed of delivery is of the essence.

From open source press reporting and anecdotal evidence, it is possible that clearance procedures at the ports are able to provide state officials from all the Border Law Enforcement and Control Services but particularly Customs - who have the most direct involvement with the goods - abundant 'rent-seeking' opportunities that come from applying time pressures to the clearance process and on a larger and more serious scale, permit the collusion in revenue evasion, commercial fraud and smuggling.

"The key facilitation problem is not the danger to effective controls posed by practices in which irregular payments can move goods through the strictest regulatory systems, or the extra unofficial charges levied on innocent as well as fraudulent traders, but rather the logical obligation to maintain unnecessary complexities and foster endemic delays for consignments so as to justify bribes for "exceptional simplifications"¹¹³

In terms of the numbers of documents¹¹⁴ required by Customs and other State BCSs at the ports, Ukraine has been able to reduce the average number required for import clearance by 50% since 2010 which compares favourably with the average number requested by more progressive OECD countries¹¹⁵.

110. It is understood that as of September 2014 the State Veterinary, Phyto-sanitary, Sanitary, Epidemiological Services were merged into the State Service on Security of Foodstuffs and Consumer Protection http://www.liga.net/infografica/201849_upolovinili-kakie-kontroliruyushchie-gosorgany-likvidiruet-kabmin.htm.

111. 'Support to the Integration of Ukraine in the Trans-European Transport Network TEN-T Cross Cutting Issues (WP7) Multimodal Transport, Logistics, Border Issues EU Programme for Integration of Ukraine Dec 2009' - Corporate Solutions UK page 65, Table 4, refers (Source World Bank 'Doing Business' 2010).

112. Supporting documents are those trade, transport and official documents that either support specific statements made in the goods declaration, such as the commercial invoice (e.g. for the invoice amount, seller and buyer), the transport document (e.g. for the consignor, consignee, means and mode of transport) or the certificate of origin, or that have to be submitted as proof of specific import/export conditions being met (e.g. import/export permits, health certificates and certificates of conformity with technical standards) - <http://tfig.unece.org/contents/supporting-documents.htm> - refers.

113. <http://www.ukessays.com/essays/economics/policy-and-natural-barriers-to-trade-economics-essay.php> refers.

114. As stipulated by Standard 3.16 and Transitional Standard 3.18 of the Revised Kyoto Convention (RKC), Customs shall limit the documents required to that necessary for Customs control and compliance purposes, and shall allow the lodgment of these documents by electronic means. Standard 3.19 of the RKC requires that translations shall not be required, unless necessary for processing the goods declaration - <http://tfig.unece.org/contents/supporting-documents.htm> refers.

115. OECD – Organisation for Economic Cooperation and Development. List of member countries can be found by accessing the following website: <http://www.oecd.org/about/membersandpartners/list-oecd-member-countries.htm>.

Table IX. Documents Required, Time and Cost for Import / Export of Containers countries

	OECD 2010	OECD 2013	E. Europe & Central Asia 2010	Ukraine 2010	Ukraine 2012	Ukraine 2013
Number of Documents to export	4.3	4	6.5	6	8	6
Time to export (days)	10.5	11	26.8	31		29
Cost to export (US\$ / container)	1089.7	1070	1581.8	1230		1930
Number of Documents to import	4.9	4	7.8	10	7	5
Time to import (days)	11.0	10	28.4	36		28
Cost to import (US\$ / container)	1145.9	1090	1773.5	1430		2585

Source World Bank Trading Across Borders

However, where perhaps a greater problem exists is in the significant rise in costs for the processing of each container, particularly at import in Ukraine. The increase in costs illustrated should be viewed against a background of reductions in the number of organisations needed to perform clearance procedures, the volume of documents required, and the decreasing levels of physical examinations and dwell times¹¹⁶ in the port. These rises are particularly significant and eye-catching when seen in comparison with costs in OECD countries.

Table X. Summary of Institutional Framework & HRM Development Gaps & Needs.

Intraservice	Border Agency	Gap
Institutional Framework & HRM Development	Customs	Gap 1: Organisational and HRM Reform
	Customs, Veterinary & SPS	Gap 1: Staff Rotation Systems
		Gap 2: More Flexible Working Hours
		Gap 3: Measurable Time & Performance Standards
		Gap 4: Services Engaged in Border Controls

Procedures

Introduction

In port operations border control clearance procedures and practices are used to maintain standards and an effective balance between border security needs and the facilitation of trade. At the same time, business expects to receive a predictable, consistent and transparent approach in the manner in which controls are performed, and to avoid whenever possible, duplicative and unnecessary practices, which cause unwarranted delay and raise logistic costs.

116. According to data obtained from both container terminals at Odessa sea port the average dwell time of containers at Odessa port was 8.54 days at Brooklyn-Kiev Port and 9.04 at HPC Ukraina (January-September 2012). When comparing current average dwell time of containers at Odessa port with the data mentioned in 2009 SR, it is noticeable that although dwell time decreased significantly in comparison to average dwell time in 2008 (13.83 days), it is still quite high – 8.79 days according to Odessa Port authority's data, the av. rate of customs examination of containers under transit regime between January-September 2012 was 6.29 %. For "internal transit" – 3.05 %, while for "internal transit" to Euroterminal - 0.53 %. According to data received from the SFS covering the same period the av. rate was slightly higher at - 8.4% in transit, falling from 25% in April. Where problems appear to exist are in relation to the rates of examination for goods at import where the average rate for the same period was 30.7% with a peak in March of 52.9%. These figures do not take into account periods when compulsory 100% X-ray scanning – non- intrusive examinations - and /or compulsory 100% weighing of containers were also introduced during 2012 -2014. SR 20130314 AOSU AC SR on Odessa Port refers.

Customs

Taking SFS separately, while there are areas where improvements are still necessary; the SFS is continuing to demonstrate an on-going commitment to align legislation and practices with EU and international norms and standards. Clearance procedures built around modern automated and electronic techniques with the application of risk-analysis and selectivity are at the core of its controls.

This is confirmed for example by the introduction and implementation of the new CC of Ukraine which since June 2012 has had a direct and positive effect in reducing the levels of physical examination particularly for consignments in transit. The CC limits the grounds under which examination of goods and vehicles are undertaken and establishes the provision that examination should be based on results obtained from the application of a risk management system and risk analysis¹¹⁷. Such results are welcomed, however containers / goods for import still tend to be examined more frequently than those at European ports with which Odessa and Illichiv's'k would like to be compared¹¹⁸.

Co-operation and coordination with other State BCSs and business to enhance trade facilitation are other important aspects of border control and border management activities that should be further developed in compliance with EU Customs Blueprints and EU IBM Guidelines. For the future, new approaches to organisational development and HRM will also assist in cementing these elements firmly into the foundations of the administration.

Customs, Veterinary & SPS

When considering the SFS, the other State BCSs and the Port Authority together considerable progress has also been achieved. The World Bank in its Guidelines¹¹⁹ for the modernisation of border controls sets out conditions and prerequisites for long-term change in border services if they are to adapt to the modern environment and become more efficient and effective. (Table XI)

Table XI. WB Long-Term Vision of Border Management

1. A paperless trading environment in which 90–100% of documentary requirements and approvals are transmitted to regulatory agencies electronically, where agencies share information and rationalize processes to eliminate duplication and overlapping mandates, and using a system compliant with all regionally and internationally agreed standards.
2. A clear, concise, transparent legal framework in which traders know their rights and obligations and have appropriate administrative and legal means to challenge decisions.
3. A single window system, allowing traders to discharge all regulatory requirements through one central contact point, adopted in tandem with a review and rationalization of all existing border management agency requirements and mandates.
4. A comprehensive risk management and compliance improvement approach, leading to more focused targeting of high-risk shipments and to a radically reduced need for routine physical cargo inspections.
5. A close cooperation and partnership between government agencies and the private sector in matters related to border management.
6. A single, World Trade Organization-compliant service fee, replacing the range of fees previously required by regulatory authorities.
7. Organizational structures and human resource management approaches that rationalize and streamline operations and that ensure officials are well trained, and appropriately compensated.

117. Art. 338 of UA CC Paragraph 2 and the Decree of Cabinet of Ministries of Ukraine No. 467 dated 23 May 2012 established an exhaustive list of reasonable grounds for performing examination (re-examination) of goods and commercial vehicles by customs authorities of Ukraine.

118. 2009 Percentage of containers examined at Szczecin- 10%, Hamburg - 8.51%, Rotterdam 2.6%, Antwerp-2%, Felixstowe - 0.1%. Odessa 35.9% (2009) & 30.7% 2012 (Sept)

119. The World Bank publication 'Border Management Modernisation' refers.

In comparison with the WB Guidelines it is clear that already adaptation and innovation are taking place at Ukraine's ports. Movement within all the services is well under way towards a paperless environment¹²⁰. The legislative and regulatory framework though still difficult to navigate is nonetheless more aligned with EU and international norms and standards. The implementation of a fully functioning 'Single Window' at both ports is gradually taking place through the development of the ISPS¹²¹. A comprehensive risk management system -certainly by Customs – is also nationally implemented; other services require more assistance to introduce similar systems. Co-operation and coordination is functioning between the State BCSs, which helps to avoid duplication of controls although relations with the private sector require further expansion. Improvement is also needed in the area of HR management systems; nevertheless, all State BCSs have organisational structures in place that administer and monitor workflows and day –to-day operations.

Nonetheless, at the ports of Odessa and Illichiv'sk clearance procedures have often been in the 'spotlight' since despite improvements a perception exists and reports frequently would appear to endorse that clearance of containers can be lengthy, subject to unnecessary delays and perhaps more disturbingly is allegedly subject to corrupt practices by state officials.

In 2009 the USAID ¹²² highlighted a number of administrative barriers¹²³ considered instrumental in increasing clearance times. For Customs the key issues centred on:

- Obtaining and determining accurate values and definitive tariff classifications;
- Ability by declarants to choose the place of clearance;
- High levels of physical examination and re-examination of containers by other border law enforcement services e.g. state security, tax.

For the Veterinary and SPS services the main concerns were in relation to:

- Duplication of inspections both at the port and inland;
- Difficulties in obtaining the required stamps to enable customs clearance to begin;
- Double movement of containers when presented for clearance;
- Disparity within the same service of fees.

In addition to the administrative barriers mentioned, USAID in its 2009 report also recognised that several fundamental systemic issues were in need of further development over the period 2010-2012. Such reforms were considered necessary in order to simplify Customs and BCS clearance procedures and bring them more into line with EU and international best practice. To support their concerns proposals were made in relation to:

- Modernisation of the CC;
- Risk assessment and Post Clearance Audit;
- Authorised Economic Operators;
- Pre-arrival and periodic declarations;
- E- Customs;
- Proper implementation of border aspects of SPS &TBT related legislation.

Furthermore, two EUBAM Special Reports (previously mentioned) reviewed customs clearance operations and procedures at Odessa Port. The first in 2009¹²⁴ considered questions regarding port congestion, infrastructure, the high levels of physical examination, weighing and scanning of containers - particularly in transit, and the level and intensity of Inter-Agency consultation. The second in 2013¹²⁵, reviewed and compared the findings of the 2009 report¹²⁶.

120. The SFS nationally consider that between 70-80% of all declarations are submitted electronically and at the ports the figures are growing but currently are around 60-70%.

121. Annex III 'Port Community System & Single Window' refers.

122. USAID/LINC 2009 Ukraine (Local Investment & National Competitiveness Assessment of Import/Export Clearance Processes Odessa Commercial Seaport (OCSP) refers.

123. Annex X 'Administrative Barriers at Odessa Seaport in 2009 and 2014' refers.

124. EUBAM SR 170209 Odessa Container Port Analysis refers.

125. EUBAM SR 20130314 AOSU AC Odessa Port Analysis Action Plan refers.

126. Annex XI refers.

When comparison is made between the status of Customs and BCS procedures in 2009 and 2013/2014 progress can be described as heterogeneous.

On the positive side container congestion at the ports has been reduced due to the major contribution of the ISPS, which assists all stakeholders including the State BCSs in controlling and monitoring the collection, dispatch and movement of containers within the port. De-congestion results from the transfer to an electronic environment whereby orders, passes and documents including those relating to the arrival of vessels – granting of Free Practice - as well as Veterinary and SPS licences and certificates, can be digitally managed. Developments are continuing rapidly in this area¹²⁷.

The introduction of a modernised new CC has brought closer alignment with EU legislation including amongst other improvements the introduction of the requirement to provide pre-arrival information¹²⁸, provisions for the application, granting / suspending / withdrawing and registering of AEO status¹²⁹ and international conventions e.g. the Revised Kyoto Convention, reform of procedures based on WCO, WTO¹³⁰ and EU standards and norms e.g. EU Customs Blueprints with the further development and implementation of risk management principles has also had, as was mentioned, positive effects.

Determined efforts have been made, at the central level, to reduce the overall rates of physical examinations evident in 2009. Reductions while relatively minor for import consignments have been brought about by a combination of factors that include: the publicising of findings such as those contained in the USAID/Linc report, external pressure from business, trade bodies and associations and not least through the enhanced use and application of risk analysis.

Customs have also continued to develop the concept and encourage the submission of electronic declarations and e-signatures and e-payments, part of an automation process that not only speeds up clearance but also targets corruption.

On the opposite side, the implementations of some specific simplified customs procedures whilst on the agenda for a number of years have yet to be fully realised. Examples include:

- Introduction of a separate clearance channel in addition to the currently operated 'Red, Yellow and Green', normally coloured coded 'Blue' for 'trusted trader' status declarants or specific tariff sector declarations within a PCA scheme. Selection for the customs declaration 'Blue Channel' would ensure a significantly reduced scale of physical examinations of goods at the port and more detailed audit of records and stock at the traders premises;
- Release of goods direct to 'trusted traders' premises as opposed to via an ICP;
- Implementation of the AEO scheme;
- Introduction of duty deferment.

All the reports indicate that Customs in particular encounter and continue to face problems with obtaining and determining accurate values and definitive tariff classifications, despite the application of WTO valuation rules.

Risk analysis though applied to customs declarations does not seem to have been similarly applied during extended periods scanning and weighing of containers for transit and import where levels were at 100%¹³¹.

For the Veterinary and SPS services the implementation of the greater use of risk analysis applied to repeat and regular consignments from countries/consignors/producers outside the EU where risks are established as low would be a significant step in reducing the duplication of controls at the ports and inland.

127. <http://singlewindow.org/publications/26?lang=en> refers.

128. Art.259 paragraph 2 of the UA CC refers.

129. Arts. 12-18 CC refers.

130. Valuation methods in line with WTO 6 step methods Arts.57-64 of CC refer.

131. For example: In April 2012 100% of containers for import regime were subject to weighing as a form of customs control on the instruction of the Management of the South Customs; the regulation aimed at preventing customs violations in relation to goods with high rate of tax and branded goods and preventing the illegal inflow of counterfeit goods.

Intraservice

Customs

Gap 1: Implementation of Simplified Procedures & the Authorised Economic Operators (AEO) Concept

Since the events of 9/11 the threat to the security of nations by goods carried in containers has been a major concern throughout the world and the threat has not diminished. One of the main elements of the security amendment of the Community CC (Regulation (EC) 648/2005) is the creation of the AEO concept.

An AEO is defined as: “a party involved in the international movement of goods in whatever function that has been approved by or on behalf of a national Customs Administration, as complying with WCO or equivalent ‘supply chain security standards’. AEOs include inter alia manufacturers, importers, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses and distributors”. An AEO Certificate (F¹³²) or (S¹³³) is issued to any economic operator established in the EU that meets the criteria of customs compliance, appropriate record-keeping standards and financial solvency. The AEO concept is also one of the main building blocks within the WCO SAFE Framework of Standards (SAFE¹³⁴).

The essence of the AEO concept can be found in the Customs-to-Business partnerships. Operators are accredited by Customs as AEOs when they prove to have high quality internal processes that will prevent goods in international transport being tampered with and when they can:

1. Ensure the integrity and accuracy of the information, i.e. what is said to be in a container, really is in the container and nothing else, more, or less;
2. Ensure the integrity of its employees, that they will not put goods in the container that should not be there;
3. Secure access to premises, to prevent unauthorised persons placing goods in the container.

As a result, Customs are able to trust operators performing fewer or in some instances no physical examinations at all on goods imported or exported by or via those accredited to the scheme. Benefits for the mover of the goods include: quicker availability and lower transport costs. Customs benefits as scarce resources can be better targeted at higher risk and potentially less secure operators¹³⁵. AEO or similar programmes have been introduced in:

- The United States, under the name of C-TPAT (Customs-Trade Partnership against Terrorism);
- Some member states of the European Union¹³⁶, e.g. the UK, Sweden and the Netherlands;
- APEC¹³⁷;
- New Zealand, under the name of Secure Export Scheme (SES);
- Singapore, under the name of Secure Trade Partnership (STP).

Another important aspect of the AEO concept is the objective of attaining coordinated and similar mutually recognised national programmes in order that AEO accreditation is accepted by other Customs administrations. The result being that security is established along the entire supply chain from origin (place of stuffing of the container) to destination (place of unpacking of the container), albeit under different AEO programmes.

132. An AEO status in the form of AEO-F is envisaged for economic operators established in the Community who would like to benefit from the various simplifications specifically provided for under the customs legislation and from particular facilitations related to customs controls on security and safety.

133. An AEO status in the form of AEO-S is envisaged for economic operators established in the Community who would like to benefit from particular facilitations related to customs controls relating to security and safety when the goods enter or leave the customs territory of the Community.

134. SAFE is part of the future international Customs model set out to support secure trade. SAFE sets out a range of standards to guide international Customs Administrations towards a harmonised approach based on Customs to Customs cooperation and Customs to Business partnership.

135. WCO SAFE Framework En 2007 refers.

136. The European AEO programme incorporates customs simplified procedures.

137. <http://www.apec.org/> refers.

In Ukraine the concept of AEO has been introduced and adopted into the legislative framework of the CC Article 12-18. An increase in trade between Ukraine and Moldova was originally foreseen as providing the impetus for this process but now the ratification of the DCFTA has brought closer trading links with the EU, which means that an EU compatible AEO scheme has the potential to enhance trading capacity even further.

However, the AEO scheme is yet to be realised with implementing provisions not yet in force and more work needed in the development of mutual recognition agreements (MRAs) to avoid duplication of security and compliance controls between first of all, the Customs service of the Republic of Moldova and after on a bilateral basis, with other trading partners.

Notwithstanding the steps already taken by Customs, greater use of simplified procedures and risk-based controls should be applied, in order to reduce even further the number of physical examinations and to enhance the facilitation of legitimate trade.

Need 1:

Customs need to further develop their Customs-to-Business Partnership Programme (taking into consideration the longer-term introduction of AEOs and pre-determined security best practices¹³⁸) to strengthen Customs / Business Co-operation.

AEO status is a key element needed to reinforce and assist the security of the supply chain and to increase benefits for traders, as well as advance and expedite cooperation between respective Customs authorities, particularly between Ukraine and the Republic of Moldova. This is especially expedient for the ports of Odessa and Illichiv'sk since significant volumes of trade between the two countries passes through these gateways.

The SFS therefore needs to intensify its efforts in co-operation with the Customs service of the Republic of Moldova to engage in measures that: recognise the AEO authorisation issued under the AEO programme in the partner country and agree to provide substantial, comparable and, where possible, reciprocal benefits / facilitations to the mutually recognised AEO's.

Customs needs to further develop and implement its Customs-to-Business Partnership Programme, a key element of which is the concept of AEO status. Intensive efforts must be made in co-operation with the Customs service of the Republic of Moldova, to agree, adopt and implement measures on the specific benefits in their mutual recognition agreement (MRA) in line with those described in the EUBAM Special Report "Business study on mutual trade between the Republic of Moldova and Ukraine and possible benefits from introduction of AEO mutual recognition agreement for private and public sectors in both countries" specifically related to this issue disseminated to partners in September 2014.

Both countries need to agree on the specific benefits in their mutual recognition agreement (MRA), but in general the benefit of fewer physical and documented based controls could be considered. In addition, further efforts to improve the implementation of 'Simplified Procedures' in order to effectively apply enhanced freight facilitation and the clearance of goods needs to be considered e.g.:

- Release of goods direct to traders premises;
- Implementation of a custom declaration 'Blue' PCA channel conferring lower levels of examination for certain commodities or specific traders;
- The introduction of a duty deferment scheme;
- Increases in the use of periodic declarations.

138. Reference EU Guidelines on Standards & Criteria for Trade Security & Facilitation Measures, EU Customs Security Programme & the WCO-Framework of Standards to Secure and Facilitate Global Trade (WCO-FoS) (e.g. Transit, Simplified Procedures, Customs-to-Customs Network, Security Assessment & Measures) - EU-Customs Blueprints Supply Chain Security.

Best Practice: EU (the Netherlands, UK & China), the Netherlands, Sweden, Australia, New Zealand, Singapore & EU / US

In 2005 the EU and China concluded an agreement on Customs co-operation and mutual Customs assistance, named the Smart and Secure Trade Lane Pilot Project. The goal is to create smart and secure trade routes, which initially include the ports of Rotterdam in the Netherlands; Felixstowe in the UK and Shenzhen in China, in order to combat counterfeited and pirated goods, as well as terrorism.

The Dutch Customs has a programme that assesses the reliability of companies and their level of compliance based on risk analysis. Dutch Customs has chosen to use solutions adapted to the ways in which companies and sectors themselves handle their risks.

Swedish Customs, use a quality assurance programme for companies by encouraging compliance with rules and offering facilitations. At the same time, this work has also been a part of a European development project, together with the Netherlands.

Australia's pilot AEO programme for security in the supply chain is based on voluntary co-operation between the customs administration and companies, and its main focus is on the exchange of information.

New Zealand also has a voluntary-based programme of co-operation with a standard procedure for companies that choose to participate. The companies undertake security measures together with the New Zealand government, which is based on a security plan that complies with the Customs Service's security principles. The aim is to minimise bureaucracy and costs for trade.

The Customs Administration in Singapore has a voluntary certification programme which, in common with corresponding initiatives in Australia and New Zealand, is intended to encourage companies to introduce security measures in their operations, which are consistent with the WCO's SAFE Framework.

The EU and US have an agreement on co-operation in security standards and on the mutual recognition of accreditation programmes, including amongst others, the Container Security Initiative (CSI).

Gap 2: 'Pre-declaration' Procedure

In accordance with Paragraph 2, Article 266 of the CC and Article 42 of EC Regulation 2913/1992 establishing the Community Customs Code, the declarant or his agent is able to request 'pre-declaration' examination of goods in order to verify compliance with the description (information) specified in accompanying documents. Veterinary and SPS inspections, physical examinations and the taking of samples by the State BCSs for laboratory analysis may also be performed at the request of the declarant or his agent at this point if it is considered that time will be saved later in the process.

In addition to the inaccuracy of measurable time standards (**Inter-Agency, Institutional Framework & HRM Development, Customs Veterinary & SPS -Gap 4: Measurable Time & Performance Standards refers**), it is alleged that this procedure provides an opportunity for dishonesty between officials and the declarant, broker etc. by not only clarifying information but also to negotiate, establish and fix satisfactory agreements to the mutual benefit of both parties with regard to other aspects of the declaration e.g. value, tariff classification and origin of the goods. The negotiation also helps to ensure that at submission and later registration the declaration will pass smoothly through the clearance process without delays not exceeding the 4hr period for processing. Permission to perform a pre-declaration examination following the weighing of cargo during which discrepancies indicating an excess of weight in cargo have been ascertained can also lead to opportunities for corrupt practice. Discrepancies between commercial documents and the cargo uncovered at this stage are simply amended on the unregistered declaration and new commercial documents that fit the re-evaluated cargo are submitted to Customs.

In addition, information provided suggests that there is a strong tendency on behalf of declarants and their agents (freight –forwarders) to over-use this facility¹³⁹ since although Customs should normally ensure release within 4 hrs, in reality clearance can be completed much quicker if and when all obstacles are ironed-out in advance. Predictability of the process is key for importers and additional indirect costs incurred by delays later in the process are not easy to calculate or necessarily absorb.

It is important to note that in accordance with Article 337 (4) of the CC, whether documentary, physical, x-ray (scanning), weighing or in combination, controls should be based on intelligence led risk-based analysis. ‘Pre-declaration’ examinations should in the main therefore be used in exceptional circumstances and not as part of a routine.

Need 2:

Controls undertaken in the ‘pre-declaration’ phase are not primarily based on risk analysis from the perspective of Customs but rather at the request of the declarant or his agent allowing potentially dishonest importers the opportunity to avoid offence action and allow room for corruption to flourish. To ensure that controls are effective whether applied separately or in combination they need to be undertaken after the submission of the declaration and accompanying documents and registration of the customs regime.

While the procedure may enhance revenue, the effects of achieving ‘informed trader compliance’ through the application of a strong and robust customs enforcement regime and accurate risk profiling are as a result weakened. The introduction of automated procedures, electronic submission of declarations, centrally operated risk management systems etc. are designed to limit personal contact and the opportunity for corruption. The excessive over use of this practice would appear to be contrary to such intent.

There is a need as a consequence for the SFS to consider adopting procedures that limit this practice first to regulate the levels of largely unrecorded personal contact that it generates between officials and the trade at what is a sensitive time in the process and thereby reducing the opportunity for dishonesty, rent-seeking and bribery to take place.

Secondly by limiting the extent to which requests for pre-declaration examinations are approved more responsibility can be placed on the trade (consignor/consignee/ importer/declarant etc.) to ensure that the information provided in the declaration is accurate and reliable. Better use of risk analysis, selectivity and targeting that not only enforces customs rules but also deters declarants etc. from jeopardising their cargo to delays not as a result of non-negotiation with officials but rather due to the imposition of fines or seizures is more in line with EU and international ‘best practice’.

“Establishment of a harmonised model of risk management to target commercial traffic for customs control and test the effectiveness of the risk analysis undertaken, in accordance with international standards, with the aim of ensuring compliance with the laws and regulations that customs are responsible for enforcing”¹⁴⁰.

Gap 3: Risk Analysis at the Ports

The purpose of risk analysis is to apply selective but effective controls on international movements where the greatest risks have been identified. In 2012, the Customs Code of Ukraine was amended and new provisions were taken into the account for the implementation of a risk management system¹⁴¹.

Undertaking pre-arrival risk analysis is an important tool for ensuring the efficient use of customs resources and for the effective targeting and profiling of goods and vehicles (Ro-Ro) regarded as either suspect or of high risk. Customs are able to receive manifests and other commercial documents related to the cargo in advance in order to complete substantive pre-arrival checks.

139. At the ZAZ Terminal adjacent to Illichivsk Port approx. 80% of consignments are ‘pre-declared’ and examined in addition to the 30% of consignments selected by Inspector 2006.

140. EU Customs Blueprints refers.

141. Article 259 CC refers.

Within the electronic declaration processing system 'Inspector 2006' the SFS have developed and introduced their own risk management system (ARAMS - Automated Risk Analysis and Management System) centrally administered and maintained in Kiev HQ. National risk profiles are complimented by the addition of local risk profiles compiled using standardised templates submitted via the regional centre (Odessa Customs) to HQ in Kiev. To record movement of containers in and out of the ports of Odessa and Illichivsk a local independent 'track -trace' software programme 'Red Container' is applied utilising advance information received from sea / container line agents.

In addition to the information above, other forms of pre-arrival information are received at the central level from various container lines, which are used by the Department of Risk Analysis to update national and local risk profiles within ARAMs. However, as informed, the content and nature of this information is totally reliant on the supplier since Customs do not have access to the IT systems or logistic databases of the commercial companies. **(Inter-Agency, Communication and Information Exchange, Customs - Gap 2: Memoranda of Understanding (MOUs) with the Private Sector & Customs & SPS: Gap 1: Inter-agency Exchange of Information including Links between State BCSs Databases refer).**

At registration ARAMs automatically compares risk parameters and risk profiles against the entered details contained in the declaration and Officials assigned to process the declaration are alerted of the assessed risk on-screen by colour-coded icons. Field Office Odessa experts have observed that officials rely on the system to direct them rather than applying their own local knowledge and experience where it may be more appropriate.

Furthermore, although risk analysis and the risk management system was systematically applied against all customs declarations with regard to the non-intrusive examination of containers i.e. for X-ray scanning and weighing, during 2013 and the first half of 2014 for an extended period the use of risk analysis was largely ignored as the scale of examinations alternated between either zero or 100%.

Need 3:

The SFS needs to ensure that risk profiles are regularly reviewed, updated and remain relevant not only for national but also regional and local risks. This is particularly important in the case of the ports since the volumes of trade are greatest here and goods are shipped direct from countries that pose the highest risk. The application of accurate and targeted risk profiles is advantageous for trade facilitation and increasing the speed of overall clearance times.

Local officials need to be positively encouraged as part of their functional responsibilities to proactively use their knowledge and experience to additionally risk assess declarations and consignments where existing system risk profiles indicate that examinations are not necessary or required.

In addition, officials need to be further influenced to fully participate in the updating and compiling of new risk profiles that may be relevant to colleagues in the ports or at other BCPs.

The implementation of pro-active local information/intelligence gathering also needs to be enthusiastically supported in order to supplement and enhance centrally directed targeting and selectivity. Local station risk profiles, traffic pattern studies and structured risk testing need to be further developed and incorporated into the centrally managed overall schemes of control.

The lack of inter-connectivity between Customs IT systems and databases has already been identified by the SFS¹⁴² and measures are proposed to address these issues but combined with this issue is the inability at present to directly connect to external systems and databases such as the ISPS and those operated by shipping agents and container lines to gather increased pre-arrival information for the purposes of augmenting risk analysis.

142. Reporting Notice of the SFS Customs Affairs Department drafted in April 2014 refers.

The use of risk analysis also needs to be more effectively applied in the future when non-intrusive methods of physical examination of containers are considered e.g. X-ray scanning and weighing. The application of 100% control is not in line with international norms and standards, causes severe disruption to port operations and business activities, and increases costs¹⁴³. The SFS, in fairness have accepted that performing such actions was less effective than anticipated, costly and caused unnecessary delays and have taken steps to review the future use and application of X-ray scanning equipment¹⁴⁴.

In order to further develop the use, application and implementation of the risk management system at the ports continued support and assistance is needed in drafting local risk profiles and updating risk indicators upgrading skills in the selectivity and targeting of high risk consignments where valuations, origin and classification of goods are of high risk and the use of open source databases.

Gap 4: Weighing of Containers

For extended periods between April 2012 – April 2014 after which it was finally revoked, a regime triggered by instruction issued by the Management of the Odessa Customs made it mandatory for all (100%) containers at Odessa Port to undergo weight control as part of the customs control process.

Five weighbridges located within Odessa Port at HPC Ukraine Terminal, Metalsukraine, Odariya Terminal, Zernoexport Terminal, Brooklyn Kiev Terminal and one outside of Odessa port at the Euroterminal were used for the purpose, which resulted in severe difficulties and additional costs¹⁴⁵ for importers¹⁴⁶. The regime was originally implemented to prevent customs violations in relation to goods with high rate of tax, branded goods, and the illegal flow of counterfeit goods. Since revocation of the instruction weighing of containers is now based on the results of risk analysis or performed at the request of the declarant or his agent as part of the 'pre-declaring' procedure when doubts and suspicions are evident about the true weight of the container. **(Intraservice, Procedures, Customs - Gap 2: 'Pre-declaration' Procedure refers)**

Containers transported from Odessa port for import clearance at the Euroterminal can be weighed using the facilities private owned and operated weighbridge which although more expensive to use is newer and provides a more accurate result¹⁴⁷ than the equipment at the Transit Terminal. While Customs are of course pre-occupied with the weight of containers from the perspective of smuggling and under-declaration of goods concerns have also been echoed by the International Maritime Organisation (IMO) in regard to the safety aspects of mis-declared weights.

At its 93rd session in May 2014, the IMO approved amendments to SOLAS Regulation VI-2 regarding 'Mandatory Weighing of Gross Mass of Containers before loading onto ships'. The committee also adopted relevant guidelines regarding the verified gross mass of a container carrying cargo. The amended rule requires shippers to submit documented information in advance in order that it can be used in the preparation of the ship stowage plan. Without the document, relevant export containers will not be loaded onto ships. The amendment and its guidelines will be effective by July 2016, subject of final adoption by MSC 94th session in November 2014.

The European Sea Ports Association (ESPO) - of which Ukraine is not a member but from whose ports Odessa and Illichiv'sk receive container traffic - welcomed this decision in which the shipper has been given the responsibility to submit the verified gross weight of containers before loading onto the ships. This regulation and procedure plays an important role in enhancing safety in maritime transport but also throughout the whole supply chain by in effect providing the receiving port and therefore state authorities with reliable weight certificates.

143. The Odessa regional trade union of forwarders claimed that despite having the capacity to process an average of 500 containers of imported goods per day the EUROTERMINAL only processed 200 per day. This led to long queues and increasing waiting times. Carriers and importers said that they were incurring daily losses of about 250,000 UAH.

144. Reporting Notice of the SFS Customs Affairs Department drafted in April 2014 refers.

145. 170,000 containers were weighed in 2013 at a cost of between \$10 - \$15 each = \$2,550,000 (Max).

146. If weighed once in the port the container would not be weighed again at the Euroterminal.

147. The cost of weighing varies from 80 UAH to 120 UAH; a document is issued certifying that the procedure of weighing is completed (the document is submitted to Customs during customs clearance). The owner of the cargo covers the cost. There is also weighing equipment located at the territory of Euroterminal. Price to weigh a container is 260 UAH.

ESPO hopes that the implementation of this new amendment to the SOLAS Regulation in EU and/or national legislation, which further clarifies the shippers' responsibility, will avoid transferring this responsibility to ports and terminal operators. The weighing should take place before entering the port area, and preferably by the shippers at the place of origin.

"We do recognise the importance of knowing the exact weight of containers not only for maritime transport but throughout the whole transport chain. We should look for the most practical solution for all players in the transport chain. But we should at all times avoid that this weighing operation burdens the handling activities in the port and increases the congestion in the port. This could happen if mis-declared container weights are only being detected at a late stage, in the port or port terminal area" ESPO's Secretary General, Isabelle Ryckbost.

Weighing of all containers at Odessa was clearly an excessive measure especially when no risk analysis was applied to the selection of containers or that since all are in transit and the majority are for transport to ICPs where necessary customs control procedures (including weighing) could be applied again. Cargoes representing a low level of risk and following a documentary control could be released in these circumstances add to congestion at weighbridges and furthermore force compliant and reputable companies to pay additional unnecessary fees for measuring the weight of their container. In these circumstances legitimate trade should be identified and facilitated as far as possible.

Since April 2014 however it has been observed that the pendulum has swung in the opposite direction and almost no containers are being weighed at the transit terminal.

Need 4:

The SFS is to be congratulated in revoking the weighing instruction, conversely, invoking the provisions of Article 259 of CC with regard to the use of risk management for the examination of containers and at the same time, requesting clarification from the Ministry of Infrastructure of Ukraine to provide guidance with regard to natural weight loss and tolerances¹⁴⁸ in transport.

However, it should be emphasised that notwithstanding security, revenue or other considerations weighing of containers at levels approaching 100% is not in accordance with EU or international standards. Not performing any weight control is also not a satisfactory response. The SFS needs to find an appropriate balance and use weight controls after assessing other risk indicators as an enforcement tool to confirm and punish the under-declaration of goods.

In line with the newly amended SOLAS regulation the SFS need to investigate the feasibility and if appropriate taking measures to conclude agreement (MOU) with the ESPO to accept weight certificates for containers issued by accredited shippers from ESPO ports. Acceptance would have considerable impact in terms of assurance and reliability of weight certificates, further reductions in the numbers of containers requiring weight control at the port (in transit) and inland terminals (import) and significant reductions in costs to importers. An additional benefit would be, as Customs have accepted, a lessening of opportunities for 'rent-seeking', collusion and other corrupt practices between officials and the trade.

Gap 5: Implementation of the WCO Framework of Standards to Secure and Facilitate Global Trade (WCO FoS) including the Use of GPS locks

To implement letter of the Ukrainian Ministry of Revenue and Duties #10233/7/99-99-03-04-01-17 dd. 03.07.2013 and decree of the Ukrainian Ministry of Revenue and Duties #319-p dd.20.09.2014, starting from 04.07.2013 the Odessa Customs of the Ministry of Revenue and Duties has been using GPS-GSM electronic locks as a method of identification during movement of goods in containers under

148. 'The acceptable weight discrepancy makes up about 0.5% = 100 kg (the scope of acceptable errors in the weigh bridge) of the declared gross weight which is not considered to make a difference and the consignments are released without any amendments in the electronic declaration and carnet TIR. If a higher discrepancy is observed, the relevant report will be drafted and containers will be released after the data is corrected in the customs database "Inspector 2006" (it refers to a higher gross weight discrepancy; if the actual weight is lower than the one recorded in the transport documents and declared by the forwarding agent, the data remains unchanged), SR on Customs Clearance Process Odessa Port 01082014 refers.

outward transit procedure and during movement of goods by road transport under internal transit procedure to Kiev Interregional Customs and Kiev Customs of the Ministry of Revenue and Duties.

The GPS locks provide SFS with the opportunity to observe transit consignments in real time and according to official information provided from the beginning of their use, the volume of transited goods fell by 86%. This information leads to an assumption that pseudo-transits were previously taking place, where vehicles and goods declared in transit procedure with duties unpaid, were actually unloaded in the territory of Ukraine and not exported. This could not have been possible without the collusion of Customs officials.

However, despite the decrease in the numbers of approved transits, no violations, negative consequences of transit procedures or transit security on the Ukrainian customs territory were detected. Since June 2014 this procedure has been suspended due to cost and unreliability of the batteries in the GPS locks.

The SFS within the framework of its responsibility to further develop security and facilitation measures in conformity with the WCO Framework of Standards to Secure and Facilitate Global Trade (WCO-FoS)¹⁴⁹ and the EU Customs Security Programme¹⁵⁰ should continue to develop and implement strategies, which assist in securing the international trade supply chain, while facilitating the flow of legitimate trade and implementing their national requirements.

The application of GPS-GSM technologies to assist Customs activities in the monitoring of transit operations is considered an important tool against potential losses of revenue when goods are diverted to home use.

Need 5:

The SFS is to be commended for introducing GPS-GSM electronic locks on high-risk transit consignments. The fact that no violations or negative impacts were detected is a validation of their use. The SFS is also correct on the basis of the information received to consider an analysis of the areas of use of GPS-GSM electronic locks, their effectiveness and future application.

The use of electronic visibility and security systems, allowing Customs to be aware of the exact location of a container/cargo/vehicle and at the same time be immediately alerted if an intrusion event occurs, is increasingly seen as international “best practice”. For the SFS cost has undoubtedly been a factor in curtailing their use however, technological solutions are constantly being developed and cheaper more flexible options to the problem are becoming available. With this in mind consideration needs to be given to utilizing other solutions such as RFID technology (electronic seals - e-seals)¹⁵¹ to secure the supply chain, particularly with regard to transit consignments¹⁵².

Potential advantages of e-seals & RFIDs for Customs:

- Measurable and quantifiable reductions in the levels of smuggling.

Potential advantages of e-seals & RFIDs for Trade:

- Trade facilitation without compromising security control.
- Reduced waiting times for transit clearance.
- Accelerated truck movements.
- Potential reductions in the cost of transit guarantees due to improved cargo visibility and security.
- Potential reductions in the levels of physical inspections (containers and seals).

149. In 2003, the WCO adopted a series of measures that will provide a solid framework of international best practices and standards, the WCO FoS, to be used by its Members in securing the international trade supply chain, while facilitating the flow of legitimate trade and implementing their national requirements.

150. EU Customs Security Programme – the EC has, based on the basic concepts from the WCO FoS, established a series of measures which, together, form a new security-management model for the EU's external borders. The security management framework is not only related to the fight against terror but is globally related to the Customs objective of protection of the community and citizens in regard to health, safety and economy (smuggling of excise goods, narcotics, drugs, goods infringing intellectual property rights etc.)

151. RFID is a reusable electronic seal that can be fitted by Customs officers to a vehicle or container, or even to a warehouse door, to protect the security of goods - particularly those in transit. It contains a microchip to store details of the goods being carried and which records any attempt to tamper with the device.

152. Appendix I refers.

- Overall reductions in the level of transport costs.
- Reduced congestion at ports and BCPs.
- Increases to the general volume of trade.
- Faster transit times.

Potential disadvantages of e-seals & RFIDs for Customs:

- Cost of investment in technological infrastructure and computer software/ communications centre required to manage a fully integrated RFID e-seal GPS/GPRS system¹⁵³.
- Requirement to administer the system.

Gap 6: Excessive Use of Mobile X-ray Equipment as Primary Examination Tools for Containers

One of the most important tools used by Customs for the detection of security threats and violations related to smuggling is the mobile X-ray scanner. Use of this type of non-intrusive examination equipment assists greatly in facilitating the process of customs clearance, saving time and business costs when compared with the potential disruption and delays caused by conventional intrusive physical examination. With the help of scanners it is possible to detect surplus cargo, non-declared goods and concealments in various means of transport (trucks, trailers, containers, cargo wagons, various packages etc.).

As a result of trade volumes particularly transported in containers Customs not only in Ukraine but in other countries too, have come to rely heavily on the use of mobile X-ray scanning equipment to assist their controls.

Under the Order of the Ministry of Revenue and Duties of Ukraine No. 309 “On Maintenance of Mobile Scanning Systems in the Customs Houses of the Ministry of Revenue and Duties” dd. 29.07.2013 and the Order of the Ministry of Revenue and Duties of Ukraine No. 212-p dd. 02.08.2013, which approved the Regulation for Operational Procedures at BCPs, at the state border of Ukraine from August 2013 the structural units of the Ministry of Revenue and Duties, in particular the Main Operations Directorate of the Ministry of Revenue and Duties, Operations Directorate and Internal Security Directorate of the MRD Main Directorate in Odessa region and officers of MRD Customs Houses carried out operational procedures with the use of mobile X-ray scanning equipment in the sea ports of Odessa region at the level of 100% for goods in containers and vehicles transported via Odessa and Illichivsk Sea Ports. This exercise lasted until it was officially cancelled on 29/04/14.

During this extended period of blanket container scanning, operators were additionally re-deployed from other regions but were observed by FOOD experts to lack the required levels of skill necessary for the satisfactory interpretation of scanned container and vehicle images¹⁵⁴. Not only were significant delays and costs incurred for the trade as a result of this prolonged scanning exercise¹⁵⁵ but also due to the need for additional personnel required to sustain the operation 24/7 the deployment of poorly trained operators resulted in many consignments being further selected for physical examination because operators were not able to competently evaluate the images¹⁵⁶.

Need 6:

As with the previously described regime of weighing 100% of containers, so similar concerns are raised in relation to the blanket scanning of containers, since equally this practice fails to comply with EU and international norms and standards, particularly in regard to use or lack of, risk assessment.

153. Truck X-ray integration can be another element to include in the system to further secure transit movements by scanning vehicles both at the beginning and end of each movement to identify any undetectable violations of container integrity.

154. Lack of skills in the interpretation of X-ray inspection pictures and low level of technical state of X-ray inspection scanners (devices). EUBAM Special Report FOOD Risk Assessment, Odessa & Illichivsk Sea Ports 10/12/13 refers.

155. The capacity of each scanner is only up to 100 containers per day (24hrs). The port releases 400-500 containers per day for clearance. This mismatch in capacities must inevitably causes delays, back-logs and bottle-necks.

156. FOOD experts considered it necessary to assist and support partners by providing 5 pieces of advice and 3 training events to 8 officers.

The SFS albeit rather belatedly, cancelled this long-running exercise following a lack of significant results, constant pressure from the trade and not least because of the high direct costs incurred whilst running and maintaining the long-term operation for both equipment and human resources. Possibly as a result of this sustained and concentrated use eight mobile scanners now (October 2014) are parked within the Euroterminal complex, effectively, albeit temporarily, out of use.

To their credit the SFS has issued instructions to the Department of Infrastructure and the Main Operations Directorate to analyse the effectiveness of the future use and deployment of mobile X-ray systems in the area of responsibility of the Odessa Customs Post.

However, the use of X-ray scanning equipment in this manner, which creates such severe disruption and delays to trade, is in reality, unacceptable. The SFS needs to correctly apply risk analysis and the risk management system and avoid 100% blanket operations over any period, in the future. This will ensure that mobile X-ray scanning equipment is used most effectively not only to detect but also to deter.

In addition, the operation of mobile X-ray scanning equipment requires specialised and highly skilled staff able to interpret scanned images competently and avoid the unwarranted selection for further physical examination of containers or vehicles. Planned operations using mobile x-ray scanning equipment in the future need to also ensure that the capacity of the equipment and proposed working hours are sufficiently complemented with an appropriate number of suitably skilled staff in order to effectively and efficiently complete the required task.

Gap 7: Valuation & Classification

The correct determination of value for goods at the ports has been an area of concern for both Customs and trade for some time. Goods originating in particular from China and the Far East as well as the Indian sub-continent pose the greatest challenge in terms of ensuring accuracy and reliability of value. Suspicions of undervaluation can also prove difficult to confirm at source for these goods.

A meeting between Customs and the Business community in Odessa, April 2014 focused on clearance procedures at the ports during which declarants and their authorized agents questioned the need for Officers of South Customs to frequently require additional documents in order to substantiate declared values and the apparent routine imposition of increased customs value based on reference price lists¹⁵⁷. While legislation that safeguards customs valuation in accordance with WTO Guidelines¹⁵⁸ has been introduced in the CC Articles 57-64, since April 2012, Customs officials are not surprisingly reluctant to accept declarations of value for consignments originating from these high-risk countries at face value.

Delays resulting from the non-acceptance of value and the need to produce additional supporting documents¹⁵⁹ e.g. export declaration from the authorities of the country of departure, bank SWIFTs witnessing the disbursement, letter of confirmation from the manufacturer or trader etc. are from experience too frequent.

During the first two quarters of 2013 statistical data provided by SFS in Table XII below, supported by observations on the ground by experts from FOOD, revealed that the application of the so called WTO 'Fall Back Method 6' i.e. referral to a reference price list/database of previously compiled similar commodity values was being overly used as the most preferred means of establishing value for goods at import, after Method 1 (Methods 4 & 5 not appearing to be used at all). Based on these statistics Customs do not fully consider valuation rules as stipulated in the CC, particularly with regard to Art. 57 (3), under which when Customs values cannot be determined on the basis of submitted commercial documents (invoice and sales contract - Method 1) each following valuation method must be used in consecutive order when the previous one is not applicable.

157. Reference price lists are updated every 3 months by UASCS in Kiev, with all customs unit having access to the data.

158. Footnote 43 refers.

159. Footnote 81 refers.

Table XII. Statistics on methods applied for determination of customs value¹⁶⁰

Total number of declarations cleared	Methods in use					
	Method No 1		Method No 2 and 3		Method No 6	
	Quantity	%	Quantity	%	Quantity	%
8857	6200	70	44	0.5	2600	29.5

The EU-Ukraine Association Agreement highlighted the need for further development of customs valuation procedures in order to make them more transparent and efficient, including through the exchange of best practices on the implementation of WTO standards (the Agreement on the Implementation of the Article VII of the GATT 1994), in particular as regards reference prices for the determination of customs value.

The ENP 2012 progress Report noted that tariff classification control also remained an area of concern as 'customs have a tendency to amend the classification of imported goods to a higher duty category'.

However data provided by SFS would appear to point to a more positive development since then as during 2013 only 38 decisions were officially made to amend tariff classifications. Nonetheless, the figures only refer to amendments made after the declaration has been registered and do not take account of any changes that may have been brought to light as a result of the 'pre-declaration' process previously discussed. **(Procedures, Intraservice, Customs - Gap 2: 'Pre-declaration' Procedure refers)**

Need 7:

Valuation procedures at the ports need to be further developed and kept under constant review. The EU Customs Blueprints require that valuation controls need to be implemented in accordance with national provisions based on transaction value and the WTO agreement.

Procedures established by the SFS need to ensure that customs valuation is transparent, objective and verifiable. Following the April 2014 meeting between Customs and Business in the Odessa region Customs agreed to look more closely at the practice of officers requiring additional documentation to support value ensuring that actions are legitimate and lawful (letter #7420/7/99-99-24-02-04-17 of the Ministry of revenue and Duties of Ukraine dd. 31.03.2014).

In order to ensure that Officers correctly apply the WTO Valuation rules and Guidelines as well as CC provisions in the strict order stipulated i.e. Method 1 moving progressively and in sequence through to Method 6, enabling a reduced reliance on reference price lists as the alternate method for determining customs value, consideration needs to be given to the elaboration and establishment of management assurance programmes that monitor Officers actions during valuation procedures.

'Customs valuation requires that the application of risk assessment and risk management mechanisms must be selective and targeted. It is therefore not appropriate to apply simple statistical or price indicators to all imports on a comprehensive basis, as a means to measure potential risk with regard to the truth or accuracy of Customs value. The development and use of a valuation database must consequently take account of the above mentioned risk assessment and management procedures'¹⁶¹.

In the area of tariff classification and origin Customs need to further encourage the use by the trade of the system for providing binding tariff information advance rulings. Advance binding rulings afford importers a legal 'guarantee' regarding the treatment of their goods and the amount of duty and tax payable at the time of importation. The system provides predictability, avoids disputes and reduces costs. At the same time, by quickly processing already pre-assessed transactions, customs can pay more attention to consignments with higher risk.

160. Table XII (from FOOD SR No 17/2013) shows WTO Valuation methods applied at the Euroterminal for the first two quarters of 2013.

161. WCO - Guidelines on National Valuation Databases refers.

Although the current CC Article 23 and related legislation allows for advance decision regarding classification of goods and rules of origin, in the past such decisions were not extensively applied or taken advantage of by the private sector. The length of time Customs took to respond to a ruling request was considered to be a discouraging factor: the legislation allows Customs up to 30 days. Previously, it has been indicated that Customs would not issue rulings until the full 30 days had expired – plus extensions where needed when Customs requested additional information/documents from applicants. It was also reported that Customs officials refused to accept rulings unless they physically examined the imported goods to verify that they were the same as that covered by the ruling. Customs need to adopt risk-based controls whereby rulings are accepted without physical examination of the goods unless there is a particular reason to suspect fraud, avoiding disputes and the potential for corruption.

In 2009, the utilization by importers of advance rulings in relation to goods classification was very limited in Ukraine. Around only 5% of importers at that time had applied and received advance decisions on classification. Nevertheless according to Customs, the number of disputes with importers having advance rulings was much smaller than those without advance rulings.¹⁶²

Veterinary & SPS

Gap 1: Pre-arrival Information

The use of pre-arrival information by the Veterinary and SPS Services at the ports appears to be limited. Clearance times, particularly important for perishable cargoes and live animals, could be further improved by the application of risk analysis applied in advance to licences and commercial documents.

Need 1:

Greater use of pre-arrival information by the Veterinary and SPS services for the purposes of applying risk analysis needs to be made. For the Veterinary Service, care should be taken to ensure pre-arrival notification is compliant with EC regulation on the Advance Notification of Cargo for livestock and veterinary controls (282/2004/EC) and Veterinary Inspection (136/2004/EC)

The application and use of pre-arrival information by the Veterinary and Sanitary and Phyto-sanitary services for the purposes of applying risk analysis needs to be implemented as part of normal working practices and also in the context of the receipt of early warnings in line with EU Integrated Border Management Guidelines.

Table XIII. Summary of Procedures Gaps & Need.

Intraservice	Border Agency	Gap
Procedures	Customs	Gap 1: Implementation of Simplified Procedures & the Authorised Economic Operators (AEO) Concept
		Gap 2: 'Pre-declaration' Procedure
		Gap 3: Risk Analysis at the Ports
		Gap 4: Weighing of Containers
		Gap 5: Implementation of the WCO-Framework of Standards to Secure and Facilitate Global Trade (WCO-FoS) including the Use of GPS locks
		Gap 6: Excessive Use of Mobile X-ray Equipment as Primary Examination Tools for Containers
		Gap 7: Valuation & Classification
	Veterinary & SPS	Gap 1: Pre-arrival Notification

162. USAID/LINC 2009 Assessment of Import & Export Clearance Processes at Odessa Port refers.

Communication & Information Exchange

The need to establish Inter-Agency and International co-operation and the benefits that derive from such collaboration lies at the heart of trade facilitation and the EU IBM concept. The development of a comprehensive, sustainable framework of Inter-Agency and International agreements and MOUs, including with the private sector at the ports of Odessa and Illichiv'sk requires further strengthening.

Additionally, the use of inter-connected Information Technology at Inter-Agency level to share and exchange information complimentary to the ISPS is another area where the BCSs appear to have fallen behind.

SFS have identified problems regarding a lack of connectivity between their own information and software systems IAIS, 'Inspector-2006', "Red container" and the Port Control System, and instructed IT Development, Electronic Services and Payer Register Department and the Customs Affairs Department to improve 'Inspector-2006' in the part relating to integration of data which are processed by customs officers in the Port Community System prior to information systems of revenue and duties authorities¹⁶³.

European practices show a wide variety of flexible instruments, any of which could feasibly be adopted in Ukraine. It is important that in order to remove any rivalry or suspicion amongst BCSs efforts should be made to further encourage and build trust.

Each Service has a unique set of expertise and resources to contribute and the resulting co-operation, obtained through MOUs and Inter-Agency agreements, is the key that can unlock and develop deeper collaboration and assist trade facilitation.

Intraservice

Customs

Gap 1: E-Customs Implementation & Fully Automated Processes

In the EU the widespread introduction of Information Communication and Technology systems has assisted in the simplification and harmonisation of border procedures. This makes compliance more achievable for the trade and allows the border services to become more consistent in their application of controls.

One of the key strategic directions for the development of the Customs Administrations worldwide and especially in the European Union is the irreversible movement from paper to electronic documents, signatures and overall processing of all customs functions. This reform is also a key enabler to a number of other strategic initiatives, such as pre-arrival cargo information, simplified procedures including the AEO concept and the Single Window.

Nationally the SFS has implemented an in-house computerised electronic declaration system Unified Automated Computerised Information System (UACIS)¹⁶⁴ which has been in operation since 2008 and is used to perform clearance of goods at Odessa and Illichiv'sk sea ports.

The use of automation in customs clearance procedures has undoubtedly made a positive impact both in terms of the speed in which declarations are processed and also in reducing opportunities for corruption. However according to some business sources this development has not delivered significantly discernible improvements in overall release times as delays and illegal practices in effect now take place in advance of the electronic submission of the declaration at 'pre-declaring'.

¹⁶³. Reporting Notice of the SFS Customs Affairs Department drafted in April 2014 refers.

¹⁶⁴. Annex II 'Automated system for customs clearance 'Inspector -2006' refers.

Hard copy declarations are still accepted and scanned accompanying documents can be electronically uploaded into the UACIS system / lodged by flash memory USB sticks at terminals located in the Customs Houses. The USB terminals also undertake virus checks to ensure that documents uploaded are not contaminated and provide receipt of submission which tracks the length of time the declaration has been in the system.

Customs declarations and supporting documents incorporating e-signatures since the first quarter of 2013, can be electronically submitted directly into the UACIS from remote terminals using an e-key by authorised operators e.g. by brokers, importers, freight forwarders etc. like other systems e.g. ASYCUDA. Electronic payment of customs duties, VAT, Excise are debited directly from trader's accounts and also from customs deposit accounts electronically as duties are assessed and held in advance and later brought to account at the appropriate time.

The UACIS ensures centralised storage of declarations and is used to control movement and deliveries of goods (transit, import and export procedures, including also calculation of customs duties and other payments).

Access to the system is controlled and authorised by system administrators. Other state agencies including UASBGS, Police, Tax Inspection and SBU (State Security Service) are allowed view only status to their AoR. The above-mentioned Services have to provide valid reasons why they need access to the central database. Each request for access must obtain approval from Kiev.

The implementation of E-customs can undoubtedly have positive effects by reducing administrative barriers to trade and decreasing the opportunities for 'rent-seeking' behaviour after registration. In addition, it can assist to increase the flow and volume of information exchanged with foreign customs administrations and law enforcement agencies.

The advantages of submitting e-declarations have been communicated by Customs to the trade and include:

- Decrease in time of customs declaration processing;
- Reductions to the congestion of forwarding agents at customs registration desks;
- A shift away from paper document turnover;
- Introduction of new technologies in the customs clearance process;
- Possibility of electronic submission of declarations 24 hours a day;
- Distant informing of declarants about different forms of required customs control or about release of goods for free circulation.

In 2013, 275 economic operators submitted declarations electronically. 25,991 electronically submitted declarations make up 35.7% of the total quantity which is almost 300% increase compared to 2012: 96 registered operators submitted 4,028 CU declarations electronically (5.65% of all submitted declarations). However the trends of electronic declaring are not yet positive enough, as according to the forecasts in 2017 just 70% of declarations are expected to be submitted via electronic terminals.

Table XIV. Electronic Declarations Submitted

	Electronic Declarations	Percentage of all Submitted Declarations
2012	4,028	5.65
2013	25,991	35.70

Need 1:

Whilst it is acknowledged that significant progress has been achieved in IT development, one qualification is that UACIS is not as yet a full 'processing system'. Customs need to consider further development of the system to include complete electronic processing as well as submission. Currently declarations and supporting documents despite being electronically submitted continue to undergo manual comparison and checking, including of arithmetical calculations of duty and taxes. Declarations are not fully automatically processed and officers must authorise progression of the declaration through the system to final release.

A review of legal, organizational and procedural rules and practices needs to be undertaken to ensure compliance with the EU e-Customs legislation, in particular with the **Decision 70/2008/EC on the paperless environment for customs and trade, also referred to as the "Electronic Customs Decision" (OJ L 23 of 26 January 2008) and the Electronic Signature Directive – Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (OJ L 13 of 19 January 2000).**

Furthermore, in order to speed up the transition to a fully paperless declaration environment Customs needs to consider publishing a notice to the trading community and the general public that customs declarations after a certain deadline will only be processed electronically. To the extent that current laws and implementing provisions allow practical implementation of electronic procedures, they should be put into practice.

Connectivity between customs systems and the ISPS as well as allowing and obtaining access to other databases and systems both state and private sector are additional areas that Customs need to further develop (**Procedures, Intraservice, Customs Gap 3: Risk Analysis at the Ports & Communications and Information Exchange-Inter-agency Customs & SPS: Gap 1: Inter-agency Exchange of Information including Links between State BCSs Databases refer**).

Gap 2: Transit & New Computerised Transit System

In accordance with the Article 194 Paragraph 1 of the CC for shipments requiring an internal transit, including transit to either of the adjacent import terminals outside but close to the ports, a preliminary notification procedure EE IM 40 is used. For goods in external transit the preliminary notification procedure is TR 80. Preliminary notifications are submitted by declarants or their agents to Customs in advance at the place of destination e.g. at the Euroterminal as a formal notice of intent to bring cargo into or from the customs territory of Ukraine. Both types of preliminary notifications can be submitted in electronic format (Article 194 Paragraph 4) and are made available to transit authorizing officials at the ports in the Transit Terminals via the Customs electronic declaration system 'Inspector 2006'.

Current practice in accordance with the legislation stipulates that containers crossing the border are presented for clearance at respective Transit Terminals where they may undergo physical examination or as in the past weighing and X-ray scanning at rates of 100%. The EE IM 40 and TR 80 declarations must contain all information sufficient for importation and release of goods and in addition, perhaps more importantly, are duty and tax assessed with monies being placed on 'deposit' or otherwise available before shipments are able to leave the territory of the port for their place of destination.

The SFS is eager to accede to the Convention on a Common Transit however the most recent EU Progress Report 2013 Section 4. Trade-Related Issues, Market and Regulatory Reform noted limited progress had in fact been made. Similarly measures aimed at preparing for the introductions of the EU transit system (NCTS) have also not moved forward at the anticipated pace.

Ukraine is a major transit country and significant user of the ‘Transports Internationaux Routiers’ (TIR) Convention, which in the EU is being replaced by NCTS¹⁶⁵. This demonstrates the potential for simplifying transit procedures and transferring to a fully electronic environment.

Need 2:

As revenue is protected in both instances for EE IM 40 and TR 80 procedures and since April 2014 the level of weighing and scanning as well as physical examination for containers in transit has been significantly reduced, in most cases to zero with containers undergoing no such control, there is a need to review the practice of requiring all containers to be presented for customs clearance at the ports Transit Terminals.

Relaxation of this control, unless necessary and required as a result of risk analysis - particularly at Odessa Port for containers transported to the Euroterminal would save vehicle and driver waiting time, reduce handling costs and avoid congestion at peak periods in and around the vicinity of the Transit Terminal (**Infrastructure & Equipment, Intraservice, Customs - Gap1: Use of service support vehicles to move containers within the ports refers**).

Following documentary checks and authorisation at the Transit Terminal, containers could be allowed to travel directly from the container base stacking area across the state border to the ICP. Arrangements with regard to sealing of containers would also need to be reviewed but could possibly involve the acceptance of commercial seals or disposable electronic seals issued and controlled by container base operators or customs officials re-located at the exits to the stacking areas¹⁶⁶.

The SFS has already taken steps to try to accelerate the process of accession to the Convention on a Common Transit and developing preparations for the introduction of NCTS. This is being achieved by contact directly with DG TAXUD and through requests for TAIEX assistance in the provision of experienced short-term expert(s) from newly accessed EU Member States to share expertise and deliver recommendations on a practical approach to these issues and practical functionality based study visits to understand first-hand solutions for implementation.

The application of NCTS will have a significant impact on the efficient and effective facilitation of trade at the ports. Introduction of the NCTS will need new regulations, major adjustments of the Customs and traders’ IT systems and a transitional period to ensure the new procedures are accepted and secure. As an interim and transitional measure before full implementation of NCTS, the SFS could consider using the ‘Transport International de la Merchandises par la Route’ (TIR) Convention using SafeTIR¹⁶⁷.

Inter-Agency

Customs

Gap 1: Development of Mutual Administrative Assistance (MAA) & Inter-Agency Agreements

CC Article 6 describes interaction between Customs and other agencies including; public authorities that perform controls at the time the goods cross the customs border of Ukraine (Article.319), law enforcement (Article 558), financial (Article 559), local government (Article 560), executive authorities (Article 561) and economic entities (Article 562). Interaction in the form of co-operation and coordination is acknowledged as being in accordance with EU Customs Blueprint ‘best practice’.

However, MAAs or Inter-Agency agreements that set the conditions for successful implementation of the regulations governing the interaction between the State BCSs at the ports signed at both the central and local levels appear to be either missing or requiring of further development.

165. TIR carnets issued by the Association of International Road Carriers of Ukraine: in Ukraine: 2013 - 366785, 2014 - 148680 (as on 1.10.2014); only members of the Association in Odessa region: in Ukraine: 2013 - 25747, 2014 - 11368 (as on 1.10.2014);

166. Annex XXIII ‘Transit to Euroterminal Draft Proposal’ refers.

167. The SafeTIR System allows actors worldwide to verify the status and validity of each TIR Carnet at any moment in real time. In addition, the system allows Customs authorities, the issuing Associations and the insurers of the TIR system to evaluate any risk and take measures to minimise them.

Need 1:

While legislation exists, there is still a need to elaborate, further develop introduce and implement MAAs or Inter-Agency agreements between all the State BCSs at the ports in order to formalise at the central and local levels procedures necessary for the efficient exchange of information, joint inspections, examinations and the taking of samples as well as other operations and activities where co-operation, coordination and interaction is required.

MAAs or Inter-Agency agreements need to be elaborated between the State Fiscal Service and State Border Control Services and other authorities particularly those with interests at the ports. Agreements need to establish: rules, roles and responsibilities for the further development of joint inspections, examinations and the taking of samples, formalise the efficient exchange of information, as well as identifying other operations and activities where co-operation, coordination and interaction are required.

MAAs / Inter-Agency agreements need to also include provisions for harmonising working practices and the need to establish regular meetings that enhance collaboration between different governmental authorities involved in international trade.

Gap 2: Memoranda of Understanding with the Private Sector

In 2010, the MoRD strengthened cooperation with areas of the private sector by further enhancing the exchange of information and by developing a broader awareness of the role of the modern Customs service and the risks presented by cross-border crime setting up regular meetings and signing MOUs with Ukraine trade associations and manufacturers including:

- Association of Household Appliances and Electronics Enterprises;
- UA Association of Manufacturers and Traders;
- Owners of Means of Water Transport.¹⁶⁸

While the process may have begun in Customs, there is an absence of local agreements and MOUs between businesses that have interests at the ports; major trade representatives, economic operators, shipping companies, container lines, freight forwarding companies and other related organisations etc. and the other State BCSs particularly with regard to the purpose of exchanging information that enhances cross-border trade facilitation and the development of risk analysis to accelerate and enhance selectivity during controls.

Need 2:

As the major state BCS with responsibility for the clearance of cargo at the ports of Odessa and Illichiv'sk the SFS needs to implement a systematic process of developing and signing additional MOUs with the major trade and transport bodies in the private sector in order to develop and enhance the concept of trade facilitation and compliance aligned with the co-operation guidelines set out in the EU Customs Blueprints.

Other important aspects of this co-operation include the need to: 1) actively involve private sector companies in the Customs regulatory process, on a permanent and institutionalised basis; 2) ensure timely distribution and availability of Customs regulations and public notices, including their English and regional language translations.

The establishment of an independent regional ombudsman as a medium for approaching the administration to deal with queries from the trading community specifically responsibility for the Ports in Odessa region, specialised in customs matters, could be considered as a 'best practice' initiative.

Co-operation needs to extend to and also include direct access to private sector computer systems, for the purpose of viewing and gathering information that would enable and enhance pre-arrival risk

¹⁶⁸. Study for an EaP IBM Flagship Initiative Project 2010 p.56 refers.

analysis and targeting including: access to on-line cargo and passenger manifests, loading lists and other commercial shipping documents.

Customs, Veterinary & SPS

Gap 1: Improved Public Information

The SFS have a legal obligation under CC Article 19 to provide information concerning customs legislation to the public. Customs and the Veterinary & SPS services, have each introduced free-phone / 'open-lines' services as a means of receiving information on illegal activities and corruption. In addition, all border controls services operate and maintain Internet portals where information and news concerning their organisations are posted.

However, despite good progress State BCS websites are irregularly updated and contain in varying degrees, longstanding information. In addition, not all pages are in English or another neighbouring country foreign language.

High profile public information strategies have been successfully adopted by State BCSs in EU Member States, Western Balkan countries and the US, which offer information to the general public on the activities of all the Border Agencies and additionally provide their contact details allowing for questions to be posted to the competent authority.

Need 1:

All BCSs but particularly Customs need to take measures to improve the publicising, broadcasting, display and dissemination of public information¹⁶⁹.

Business, in response to an EUBAM survey¹⁷⁰ expressed a clear view that there is need for the State BCSs to make the publication of information via all media outlets but particularly through governmental websites and internet portals more easily accessible, timely and current, less confusing and less overloaded with instructions, regulations and orders which were considered difficult for traders to understand. State BCSs therefore need to ensure that the provision of information for the trade and public is a priority and is regularly updated.

In addition, all the State BCSs need to consider initiating and participating in campaigns that assist in obtaining public support and awareness of the work they perform and how it contributes to the overall benefit of society, whether in terms of general food health and safety, the generation of revenue, the protection of society from the harmful effects of drug smuggling, IPR goods or terrorism in the detection of arms, ammunition and WMD.

State Border Controls Services need also to consider reviewing and where appropriate applying examples of the type of campaigns organised in other countries, which have proved positive in enhancing public reputation and increasing levels of transparency.

- Launching of 'Stop' e.g. Human Trafficking, Drug Smuggling, Counterfeiting, Piracy and Intellectual Property Crime, and other similar campaigns, including Anti-corruption;
- Publishing Public Notices in relation to international border related issues, examples: notices on prohibited goods, instructions on the import and export of goods, as well as valuation, tariff classification and origin¹⁷¹ etc. in simple form, content and presentation;
- Further development of websites with the provision for allowing questions to be posted on-line to the competent authority.

169. It is noted that the SFS in October 2014 formed the Public Council consisting of over 150 representatives from civil society institutions to oversee the activities of the SFS and to create channels of communication with the public.

170. 'Trade Survey Questionnaire' Annex V refers.

171. http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ShowContent&id=HMCE_CL_000191&propertyType=document Examples of the type and range of subject covered by public notices issued by HMRC in the UK refers

Best Practice: UK, fYRoM¹⁷² & US

The UK Border Agency has a comprehensive website which provides extensive information concerning the management and functioning of the Agency. In addition to providing details of powers and procedures, it allows the general public and the trade an inter-active e-portal¹⁷³.

The Customs Administration in fYRoM has developed a user friendly website which includes: recent detections, the submission of questions and comments, free-phone line information, procedures, documentation, passengers' allowances, training, anti-corruption measures, etc. The website is also in Albanian and English¹⁷⁴.

In the US the Customs and Border Protection Office of Public Affairs provides practical and relevant information¹⁷⁵ at its website¹⁷⁶.

Gap 2: Port & Border Control Service User Satisfaction Surveys

A service-oriented methodology is considered by the EU and many other countries as the appropriate track for Customs and other State BCSs to follow in regard to the implementation of trade facilitation.

This approach moves the State services and the business community to a position where co-operation, collaboration and the exchange of information not only benefits and facilitates trade, but at the same time helps to protect society and create safe and secure borders.

Whilst Customs and the other State BCSs are frequently obliged to make changes in procedures due to amendments in legislation and policy, it is business and the trading community that are directly affected.

Within the framework of professionalism and partnership the State BCSs should endeavour, where and whenever possible, to meet regularly and consult with the trade - preferably in advance of any significantly proposed amendments but nevertheless also to communicate – regarding legislative and procedural changes - in a timely manner. Regrettably these responsibilities together with a requirement to adapt and develop changes in organisational attitudes and behaviour were not detected at grass-root level or from senior managers by businesses as expressed in the 'Port Study' survey¹⁷⁷ or that the needs of the business community with regard to activities at the ports are being seriously taken into account by the State BCSs (**Intraservice, Procedure, Customs - Gap 1: Implementation of Simplified Procedures & the Authorised Economic Operators (AEO) Concept refers**).

The State Border Controls Services and Port Authority have not - as far as is known - undertaken user satisfaction surveys in order to fine-tune their operations based on constructive feedback and the end-user opinions from their clients.

Need 2:

The Port Authority and State BCSs need to take more account of business opinions, concerns and considerations and become even more focused on the development and implementation of trade facilitation at the ports of Odessa and Illichiv'sk.

Regular and systematic consultation with the business community at the ports needs to be conducted in order to obtain views on proposed new regulations and procedures, or amendments to existing requirements and providing timely notice of any changes: in the areas of trade compliance, security and effective interdiction of customs fraud, drug trafficking, infringements of intellectual property rights and threats to endangered species.

172. Former Yugoslav Republic of Macedonia (fYRoM).

173. <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/> refers.

174. <http://www.customs.gov.mk/en/DesktopDefault.aspx?tabindex=0&tabid=1> refers.

175. Examples of such information include: border waiting times, travel advisories (e.g. what can be brought into country, which travel documents are acceptable or not), information concerning how to pose a question, suggestion, complaint or provide information on suspected activities/persons (multiple channels are provided, including free-phones with easily recognizable numbers – 1 800-BE-ALERT – e-mail addresses, etc.), information on Trusted Traveller Programme and the link to apply; and information for the media (press releases, speeches, news items, magazine and many other multimedia products).

176. www.cbp.gov refers.

177. 'Trade Survey Questionnaire' Annex V refers.

Annual port user satisfaction surveys, which provide an opportunity for comment and analysis of procedures and processes, need to be introduced to encourage and develop a deeper sense of co-operation and coordination between all parties and stakeholders at the ports.

Gap 3: Inter-agency Exchange of Information including Links between State BCSs Databases

In 2009 the State BCSs IT networks and communications systems were described by the European Commission Support to the Integration of Ukraine in the Trans-European Transport Network TEN-T report as being: *“limited in many cases by connectivity and utility problems, which potentially restricts the introduction of more advanced techniques such as risk management, single window etc”*.

In addition it noted that *“More importantly most IT applications are transaction recording rather than processing systems, thus there is duplication between the automated and manual approaches. Each border organisation has its own isolated system making interconnectivity difficult. Indeed, most border related data is considered “secret” and the concept of sharing data is not fully supported by the respective organisations. The emphasis in border operations is principally concentrated on authoritarian control and revenue generation, rather than trade facilitation as promoted by international conventions. This approach limits the scope for effective consultation with stakeholders and merely reinforces current negative attitudes towards the border authorities, not all of which is fully justified. Stakeholders, being the users of borders, are not yet perceived as full ‘partners’ by the authorities in the progression towards more user-friendly and efficient border operations”*

Some aspects of this criticism have been addressed with Customs implementing a satisfactory risk management system. Measures have been taken through the introduction of the ISPS to move Customs and the other State BCSs towards a Single-Window environment¹⁷⁸. However, Customs declaration processing within ‘Inspector 2006’ is not fully automated with many checks still manually completed including arithmetical checks to calculate duty. Inter-connectivity between the different information systems of the State BCSs is not currently feasible, and border related data while maybe no longer regarded as ‘secret’ is still very closely protected by some of the Services. Much more also needs to be accomplished in bringing stakeholders together with the State BCSs in a spirit of true partnership.

Accordingly, there are no established information technologies & communication (ITC) links connecting the databases of SFS with the information systems of the Veterinary or Phyto-sanitary services. As a result information gathered and intelligence generated as well as the record of checks carried out are not shared between the State BCSs - this lack of information exchange is not in line with EU ‘best practice’ as highlighted in the Customs Blueprints and EU IBM Guidelines. Information is therefore only exchanged on an ad-hoc basis without a systematic structure.

Need 3:

There is a need given the legislative and operational requirements for interaction between the State BCSs at the ports to develop a strategy for sharing and exchange of confidential information based on the results of risk analysis and/or intelligence.

A local information system or network needs to be created, specifically designed for exclusive use of the State BCSs, outside of the ISPS where computer databases and information systems of individual border services at the ports are connected in order for each to increase the efficiency of required checks. Alternatively, the first step could be achieved through formalized exchange of information and direct mutual access to each other services databases, as appropriate.

The system could provide at the very least, restricted and regulated access for the Veterinary and Phyto-sanitary services to the customs database for shipments within the first 24 Chapters of Harmonized Tariff System. This would assist the Veterinary and SPS services to improve their methods of risk analysis.

¹⁷⁸. Customs access ISPS through a stand-alone connection.

International

Customs, Veterinary & SPS

Gap 1: Lack of Bilateral Agreements Regarding Cross Border Co-Operation

The development of international co-operation is an essential element of border management with international, bilateral and multilateral treaties regulating procedures. Seaports in general should seek to establish and/or improve mechanisms for enhancing the exchange of information on a regular basis with other connected ports with which they share regular services, and whose Security Level¹⁷⁹ shows increased risks. This sharing of information on a cross-border, international basis can assist in improving risk analysis and enhance trade facilitation.

International co-operation at seaports should be conducted by formalising co-operation in writing, to avoid misunderstandings and to reinforce the concept of regular, orderly and mandatory co-operation.

Need 1:

Memorandums of Understanding governing the exchange of information between Customs in particular, and the other State BCSs at the ports of Odessa and Illichiv'sk need to be negotiated and signed with corresponding State BCSs in neighbouring countries e.g. Turkey, Georgia, Bulgaria, Moldova and Romania where there are primarily direct regular connections to Ukraine's international seaports and for the longer term with more distant locations based on risk. MOUs should include within their provisions the nominations of contact and liaison officers for each organisation.

EU Best Practice: Finland, Lithuania & Croatia.

Lithuania regulates co-operation, both Inter-Agency and with the private sector using an extensive network of bilateral and multilateral MOUs. It has well developed international co-operation on bilateral and multilateral levels.

Croatia bases its Inter-Agency co-operation on the MOU signed between the Ministries of the Internal Affairs, Finance, Agriculture and Health and the State Inspectorate. In addition, the law¹⁸⁰ regulates that Customs can perform complete border control at certain BCPs.

EU Current Practice – Blue Way

“The European Commission identified that ‘the complexity of administrative procedures was identified as one of the key bottlenecks for the development of maritime transport’ in the Commission Communication and action plan with a view to establishing a European maritime transport space without barriers. In particular the action amongst a number of short and medium term measures an recommendations to the Member States it spelt out in the area of Customs the need for the simplification of formalities for vessels sailing between EU ports carrying goods in free circulation as well as a facilitation for vessels making a call in a port located in a third country or free zone.¹⁸¹

As part of the action plan, the Commission adopted Regulation (EU) No 177/2010[7] introducing streamlined procedures for the so-called «regular shipping services» (RSS) performed by authorised companies. Another part of the action plan, is the e-Maritime initiative, which aims to foster the use of advanced information technologies for the maritime transport sector by promoting interoperability and facilitating the electronic communication between the different actors involved in maritime transport. A first step to implement the e-Maritime initiative is Directive 2010/65/EU [8] according to which ship reporting formalities shall be transmitted and exchanged electronically via National Single Windows (NSW).

179. ISPS – International Ship and Port Facility Security Code 2004 refers.

180. Law on Border Control (Official Gazette 173/03), Article 4 (3) refers.

181. Communication From The Commission Blue Belt, a Single Transport Area for shipping /* COM/2013/0510 final */ refers.

In the European Union a further simplification for the application procedure of the ‘regular shipping service’, a customs facilitation scheme for vessels, carrying mainly EU goods, sailing to the same European ports on a regular basis, is a first part of the package. However, a vast majority of containerized traffic has mixed cargo, i.e. both Union and non-Union goods that transit regularly via non-EU ports (e.g. in the Baltic, Mediterranean or Black sea), to which the concept of ‘regular shipping service’ cannot be applied. Therefore, an additional new tool, the so-called eManifest, a harmonised electronic cargo manifest based on the existing FAL forms, will be introduced. This will allow for proving the EU or non-EU status of goods, even when the goods have left the EU customs territory. This facilitation answers to long-standing expectations of maritime trade to have an EU harmonised manifest and will allow complying with the requirements as well as facilitating and speeding up of customs procedures for EU cargo at the same time”¹⁸².

Veterinary & SPS

Gap 1: Information Technology

Currently at the ports of Odessa and Illichiv’sk the Veterinary and Phyto-sanitary services are not connected to any EU equivalent border control agency or other international databases which allow the exchange of information between EU member states and third countries, in relation to animal health and food safety threats and hazards.

The EU operate four database systems used to monitor and exchange information between members states and a number of third countries with regard to the control of Veterinary and Phyto-sanitary goods and products at import, export and transit, which include:

- The Sanitary and Phyto-sanitary (SPS) Export Database¹⁸³ - provides a fast exchange of information between Member States, and a coordinated response to sanitary and Phyto-sanitary threats across the EU;
- Rapid Alert System for Food and Feed (RASFF) – provides a fast exchange of information between Member States, and a coordinated response to food or feed safety threats across the EU;
- Trade Control and Expert System (TRACES) - an integrated web-based veterinary system for facilitating traceability of live animals;
- Animal Disease Notification System (ADNS) – ensures rapid exchange of information between the national authorities responsible for animal health and the Commission on outbreaks of infectious animal diseases, including registration and documentation of those diseases¹⁸⁴.

The anticipated expansion in trade between Ukraine and the EU envisaged by the Association Agreement and DCFTA has the potential to develop the transport of live animals, animal food products, plants and plant material, fruits and vegetables through the ports in all types and modes of transport; all requiring further detailed Veterinary and SPS control.

Need 1:

Now that Ukraine is in a DCFTA with the EU, the Veterinary and SPS services at the ports, need to be able to gain access to EU and/or other international databases related to their activities - SPS Export Database, RASFF, TRACES and ADNS which can dramatically assist in the clearance of consignments and goods within their areas of responsibility and competence across the border. In the case specifically of the Veterinary Service training already provided under the TAIEX instrument for 2014 needs to be fully applied and implemented

182. EC Blue Belt: Commission eases customs formalities for ships 08/07/2013 refers.

183. www.madb.europa.eu/madb/indexPubli.htm refers.

184. <http://www.epractice.eu> e-Government in the European Commission December 2010 refers.

Table XV. Summary Communications & Information Gaps & Needs.

	Border Agency	Gap
Intraservice	Customs	Gap 1: E-Customs Implementation & fully automated processes
		Gap 2: Transit & New Computerised Transit System (NCTS)
Inter-Agency	Customs	Gap 1: Development of Mutual Administrative Assistance (MAA) & Inter-Agency Agreements
		Gap 2: Memoranda of Understanding (MOUs) with the Private Sector
	Customs, Veterinary & SPS	Gap 1: Improved Public Information
		Gap 2: Port & Border Control Service User Satisfaction Surveys
		Gap 3: Inter-agency Exchange of Information including Links between State BCSs Databases
International	Customs, Veterinary & SPS	Gap 1: Lack of Bilateral Agreements Regarding Cross Border Co-Operation
	Veterinary & SPS	Gap 1: Information Technology

Infrastructure and Equipment

Introduction

In general, Ukraine has been able to establish a number of high quality international seaports of which Odessa and Illichiv'sk are two of the best and most important. A programme of systematic and sustained development of port facilities has taken place in recent years, in order to increase capacity sufficient to handle most cargo flows. Several studies including 'The Port Policy Reform and Action Plan' and the 'EC Ukraine Port Development Feasibility Study (2009)' considered the developmental needs and requirements of the Odessa-Illichiv'sk-Yuzhnyi port concentration.

As a result of infrastructure investments both state and privately sponsored, a significant number of trade barriers have either been reduced or eliminated¹⁸⁵ resulting in lower instances of congestion at the ports currently aided by the processing of lower container volumes in relation to their technological capacity.

While there are still some infrastructure and equipment issues outstanding, the key factor that affected delays in the immediate past were control measures and activities applied by the SFS¹⁸⁶ during the clearance of containers, especially the high rates of weighing, X-ray scanning and physical examination / inspection.

Customs

'The Law of Ukraine "On Sea Ports of Ukraine" No. 4709-VI dd. 17.05.2012 (as amended) regulates the relations in the area of port activity and particularly sets out the principles of state regulation of activity in seaports, procedure for construction, opening, enlargement and closure of sea ports in Ukraine, procedure for carrying out economic operations in their territory, including provision of services, defines the legal regime of port infrastructure facilities. Apart from these areas, this Law also regulates the activity of the Administration of seaports of Ukraine, owners of sea terminals, stevedoring companies, other economic operators operating in the seaport, as well as their customers (goods, works).

¹⁸⁵.Annex X 'Administrative Barriers at Odessa Seaport in 2009 and 2014' refers.

¹⁸⁶.Procedures: Customs - Footnote 85 refers.

From 01 June, 2012, the CC No. 4495-VI dd. 13.03.2012 came into force, which introduced significant changes into the principles of carrying out customs formalities related to commercial goods and vehicles moving across the customs border of Ukraine, as well as stipulates the provision of the SFS with necessary equipment and proper working conditions free of charge by the administrations of seaports or other appointed places in the area of which the border crossing points of Ukraine operate.

At the same time the general requirements on arrangement of the state border crossing points were approved by the Resolution of the Cabinet of Ministers of Ukraine No. 1142, dd. 17.08. 2002, the latest amendments were introduced in February 2009¹⁸⁷.

Intraservice

Customs

Gap1: Use of Service Support Vehicles to Move Containers within the Ports

The Ministry of Transport and Communications of Ukraine were instructed by Order of the Ministry of Transport and Communications of Ukraine, State Customs Service of Ukraine No. 834/741 dd. 09.07.2008 “On Customs Clearance of Cargo in Odessa and Illichivsk Sea Commercial Ports” to ensure by 01 November 2008 in Odessa and Illichivsk sea ports the work of service support vehicles as well as other conditions for customs control and clearance of cargo in containers. The use of such service support vehicles for the transport of containers on trailers within the port complex would significantly reduce the levels and volume of privately owned commercial vehicles currently requiring access to the port to perform these functions (1 x container = 1 x truck) and as a result further limit congestion at peak times.

However as of April 2014 when this matter was again mentioned during discussions between Customs, trade and the port authorities at a meeting of stakeholders in the Odessa region¹⁸⁸, neither of the seaports had managed to ensure procurement and use of service support vehicles for the end-to-end process of vessel discharge through to exit from the port. It cannot be coincidental that the port has procrastinated since it takes a fee of approximately \$26.00 for every commercial vehicle/tractor unit that enters the port¹⁸⁹.

Need 1:

There is a clear and urgent need to reduce the use of private commercial vehicles which currently are used to transport containers within the ports and increase the number of service support vehicles procured and operated by the Ministry of Transport in order to avoid congestion and reduce overall control procedure and clearance times in the ports¹⁹⁰.

Customs need to ensure that a prompt reply and positive outcome is received in response to the draft letter delivered to the Administration of the UASBGS, the Ministry of Infrastructure of Ukraine on necessity to amend general requirements for equipping BCPs on the state border.

If not already addressed efforts should be made by the Administration of the UASBGS and Ministry of Infrastructure of Ukraine to provide an appropriate positive response in respect of the request from the SFS on the need to amend general requirements for equipping BCPs at the state border.

In addition, in terms of the provision of other special infrastructure and equipment, Customs needs to continue to work with administrations of the relevant seaports and stevedoring companies on meeting requirements of part 2, Article 188 “Assistance to officers of the revenue and duties authorities in fulfilling customs formalities” of the CC in particular, in respect of providing customs with equipment for statistical weighing, creating work conditions required for officers to carry out customs control and process goods and vehicles.

187. Reporting Notice of the SFS Customs Affairs Department drafted in April 2014 refers.

188. Reporting Notice of the SFS Customs Affairs Department drafted in April 2014 refers.

189. Annex XXVII ‘Port Fees’ refers.

190. Reporting Notice of the SFS Customs Affairs Department drafted in April 2014 refers.

Gap 2: National Inter-Active Database for Scanned Vehicle Images

As far as is known there is no nationally integrated inter-active reference database of available vehicle images obtained by Customs mobile X-ray scanners. An integrated system needs be established linking all mobile X-ray scanning equipment, with the capability to electronically transfer images to a central database.

Need 2:

An integrated reference database of all images obtained from Customs vehicle mobile X-ray scanners needs to be created and made available to Officers engaged on scanning duties at the ports and other BCPs. Images can be transferred electronically from mobile X –ray scanners to a central database at Customs HQ. Creation of an on-line archive would assist officers in making informed intelligence led risk based decisions avoiding unnecessary and potentially unwarranted examinations.

Best Practice –Italy

Customs have created MATRIX¹⁹¹, a grid within their IT network at the national level, which receives and stores X-ray scanner results and images from 28 separate Customs locations. The system allows scanner operators across Italy to share information and make visual online comparisons with other compatible images from different Customs districts, and assists risk analysis and the targeting of container traffic (Poland has a similar system).

Veterinary & SPS

Gap 1: Protective Clothing and Uniforms

The use of protective clothing (e.g. laboratory coats, rubber aprons, heavy rubber gloves, and dedicated footwear) that can prevent sample contamination and protect persons from harmful Phyto-sanitary risks is essential and when used appropriately can enhance the speed with which inspections, examinations and sampling can be completed. From observations at the ports the BCSs officials from the Veterinary and SPS services appeared to be lacking in such protective clothing, uniforms and equipment.

Need 1:

Suitable and appropriate clothing, which meets international safety standards for undertaking the duties of the Veterinary and Phyto-sanitary Inspectors, should be provided to inspectors engaged at the ports.

Some candidate/pre-accession countries have introduced an official, insignia-inscribed uniform, which clearly identifies Inspectors of each service. A number of immediate benefits could be gained by providing Phyto-sanitary and Veterinary Inspectors working at the BCPs with a distinctive working uniform, badges, This would add to the standing of these very important and professional services, ensuring an improved level of respect and recognition and aligning them more closely with the other two main border agencies.

Sufficiently available suitable and appropriate clothing, which meets international safety standards for undertaking the duties of Veterinary and Phyto-sanitary Inspectors, needs to be provided.

Table XVI. Summary of Infrastructure & Equipment Gaps & Needs

Intraservice	Border Agency	Gap
Infrastructure & Equipment	Customs	Gap1: Use of service support vehicles to move containers within the ports
		Gap 2: National Inter-Active Database for Scanned Vehicle Images
	Veterinary & SPS	Gap 1: Protective Clothing & Uniforms

191. Monitoring Activities Targeting Risk Intelligence X-ray. refers

Corruption

Intraservice

Customs, Veterinary & SPS

Gap 1: Corruption at the Ports of Odessa and Illichiv'sk & Adjacent Import Terminals

Evidence from well-respected international corruption indices and surveys published annually considers that corruption is endemic and a widespread problem in Ukraine society. If surveys are to be believed, State BCSs are not immune from corruption and are unable to avoid contamination. The SFS particularly and the other BCSs too work in areas seen as providing ample opportunity for corruption. The SFS accept that corruption is a major problem that needs to be confronted.

Transparency International, ranked Ukraine 144th out of the 176 countries investigated in 2012 (tied with Bangladesh, Cameroon, the Central African Republic and Syria) with the most common areas in which corruption encountered being business, licensing, taxation and customs. According to the survey public officials also viewed corrupt practices as low risk behaviour, and had grown accustomed to supplementing modest salaries with illegal payments.

It is true that there have been a number of high profile corruption cases publicized in Odessa involving Customs Officials at the ports, nonetheless it's important to remain objective and not paint all Customs Officers as corrupt or criminals or indeed assume that in the area of border control Customs is always the perpetrator or most corrupt service.

Nevertheless, to reinforce the fight against corruption on the 12th May 2014 the European Bank for Reconstruction (EBRD) formerly introduced a high profile anti-corruption initiative in Kiev fully endorsed by Ukraine's President. At the launch of the initiative Sir. Suma Chakrabarti, President of the EBRD stated that:

"The Anti-Corruption Initiative is an integral part of better governance, more effective institutions and an improved investment climate. All of these are fundamental to Ukraine achieving its economic potential. As we know, the economic backdrop is serious and restoring economic growth is a major challenge. If foreign and domestic businesses are to have the confidence to invest – a vital condition for building the economy – then corruption must be cut out of the system. If Ukraine is to re-energise its transition to a modern economy and society, then it has to tackle the endemic level of corruption. I have lost count of the number of times that EBRD clients in Ukraine have complained about the levels of corruption on both a grand and petty scale. This problem is one of the most serious impediments to Ukraine's progress. The first sign of serious intent to tackle this scourge is when political leaders begin to recognise the problem publicly and demonstrate commitment to overcoming it."

Often information relating to corrupt behaviour and people's perceptions or experience of it is difficult to corroborate. By its very nature corruption lives and thrives in the shadows and accurate illustrations of corrupt practices at the ports have also been difficult to obtain, as accounts are frequently second-hand or anecdotal. It must be emphasised that as such most of the information contained in this section are only allegations or hearsay, however, corruption is perceived to be a problem largely untackled at the ports and some customs practices are viewed as the primary cause when controls are considered to be arbitrarily applied for the purpose of causing delays in order to apply pressure and to extract additional unlawful payments.

From a combination of on-the-spot observations, conversations, survey results, published articles and reports it has been possible to gain an impression of where the opportunities might present themselves and to provide an impartial view of the problem.

Customs

The SFS adopted an anti-corruption code of conduct in 2009¹⁹² adherence with the Revised Arusha Declaration (2003)¹⁹³, trains personnel in the recognition of corruption and non-ethical behaviour, application of impartiality, the cultural behaviour of the organisation, lifestyle and work place values as well as strictly enforcing a Code of Ethics.

Customs activities at the ports and adjacent import terminals are vulnerable to different types of corrupt behaviours from the payment of informal facilitation fees to large-scale fraud and other serious criminal activities¹⁹⁴. Officials, even at lower levels possess considerable discretionary powers and automation in the declaration processing system designed in part to limit personal interaction between declarants and officials does not present a sufficient barrier to communications between the parties specifically during 'pre-declaring' procedures that take place outside and in advance of the submission and registration of declarations.

"There are few public agencies in which the classic pre-conditions for institutional corruption are so conveniently presented as in a Customs administration. The potent mixture of administrative monopoly coupled with the exercise of wide discretion, particularly in a work environment that may lack proper systems of control and accountability, can easily lead to corruption" ¹⁹⁵.

SFS officials at the ports remain on relatively low salaries¹⁹⁶. This combined with a perceived low expectation of getting caught or indeed being punished, makes the temptation to illegally supplement incomes potentially high. In addition, corrupt transactions often take place in parallel with honest connections and are conducted between parties that frequently interact and work in close proximity as well as being part of extended informal social and business networks. Research also indicates that pressures to meet ever increasing revenue targets produce corresponding rises in the opportunities to adopt and implement corrupt practices.

As mentioned, most functions performed by Customs are susceptible to corruption including the assessment of origin, value and classification; cargo examination; the administration of concessions, suspense, exemption and drawback schemes; post clearance audit; transit operations; passenger processing; the issuing of various licences and approvals; and in recent times, access to authorised or preferred trader schemes which confer special privileges to selected traders. Table XVII below provides a description of Customs functions and examples of integrity violations and in what circumstances they could occur.

Table XVII. Customs Function and Their Vulnerability to Corrupt Practices¹⁹⁷

Selected Customs Functions	Examples of Integrity Violations
Processing of import, export, and transit declarations	Soliciting or accepting payment to: <ul style="list-style-type: none"> • Accelerate the processing of documents; • Ignore the fact that some cargo listed on the manifest was not declared; • Certify the exportation of fictitious exports or provide for a wrong HS classification; • Permit goods in transit to be released for domestic consumption.

192. Order of the State Customs Service of Ukraine No 1097 dd. 16.11.2009 'On approval of Code of conduct rules for officials of the State Customs Service of Ukraine'.

193. Annex XXI 'Arusha Declaration' refers.

194. Annex XX 'Types of Corruption in Customs' refers.

195. Corruption in Customs Gerard McLinden and Amer Zafar Durrani WCO Journal Vol. 7 No 2 2011 refers.

196. Annex XXVI 'Extract from the Decree of the Cabinet of Ministers of Ukraine № 597 dd. 7.08.2013 "Some issues of compensation of employees of the Ministry of Revenue and Duties and its territorial bodies" refers.

197. The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level' edited by J. Edgardo Campos, Sanjay Pradhan Table 11.1 refers.

Assessment of origin, value, and classification of goods	Soliciting or accepting payments to: <ul style="list-style-type: none"> • Permit under-invoicing of goods; • Not challenge the declaration of goods under a different HS that attracts a lower tariff rate; • Accept false country of origin declaration, permitting importer to benefit from a preferential tariff regime.
Physical inspection, examination, and release of cargo	Soliciting or accepting staff who would: <ul style="list-style-type: none"> • Ensure that an inspecting officer is chosen who will take an accommodating approach to the inspection; • Skip the inspection; • Influence the findings of the inspection; • Simply speed up the inspection.
Administration of concessions, suspense and exemption schemes, and drawback schemes	Soliciting or accepting payment to: <ul style="list-style-type: none"> • Permit traders to release, for domestic consumption and without paying the required import duties, goods that entered under suspense regimes or goods made with inputs that entered under such regimes; • Obtain a release of the bond that is to protect customs revenues in cases of temporary admission of imports without adequate documentation; • Permit traders to claim excessive input coefficients for exports produced with inputs that benefited from the suspense regimes; • Permit traders to claim drawbacks for fictitious exports; • Permit importers to transfer imports that benefited from duty relief to non-authorized users or for non-intended purposes, or permitting them to import such goods in excess of the amounts agreed to.
Conduct of post-clearance audits	Soliciting or accepting payments to influence the outcome of the audit findings.
Issuing of import licenses, warehouse approvals, and authorized trader status approvals	Soliciting or accepting payments to obtain these licenses and certificates without proper justification.
Processing of urgent consignments	Soliciting or accepting payments to obtain preferential treatment or speedy clearance.

In terms of the types of unethical and illegal activities alleged at the ports it appears that opportunities for 'rent-seeking' still exist, are prevalent and viewed by business operators as a serious and continuing problem. 'Rent-seeking' in this context relies on the creation of an atmosphere of unpredictability using artificial and unnecessary delays. The multiplying effect that this can place on business operations in terms of a potential to significantly increase indirect costs through the imposition of additional unexpected or unanticipated delays such as those recently caused by the compulsory blanket weighing of containers for transit, is a case in point.

Other alleged collusive practices that force the reassessment and adjustment of values and tariff classification - not in accordance with WTO guidelines and without which declarations may possibly not pass smoothly through the system - are also of serious concern. In the past a high percentage of payments were made through offshore banking systems or invoicing via 'brass plate' companies particularly using countries such as Cyprus that implied that goods when declared were being undervalued hence attracting Customs attention. Large numbers of clearing and forwarding agents handling small volumes of shipments each month suggested that profits were considerable and it was alleged that in the case of these consignments 'fixers' were used to negotiate and deal with Customs. Now, goods coming from China are considered

to be the highest risk and experience has shown that values and tariff classification are frequently to be distrusted. Opportunities therefore allegedly proliferate for negotiations between brokers and officials to collude in the agreement of unofficial values or more favourable tariff classifications, which ultimately lead to a less interrupted, more predictable and faster clearance.

As a result whilst it is by no means certain or corroborated one conclusion to be drawn from the reported high number of consignments presented for 'pre-declaration'¹⁹⁸ would appear to validate a scenario where declarants and their agents are reluctantly required to take one of the following two options (always remembering that unpredictability for Business is their biggest fear, as delays inevitably add cost) i.e.

1. Either use the 'pre-declaring' option as previously described, allegedly pay a smaller 'unofficial fee' but in doing so ensure that following examination of goods - with Customs Officials in attendance - an agreement is reached in advance of submission of the declaration with regard to the value, classification, origin, quantity and weight which will safeguard that even if the declaration is selected later by 'Inspector 2006', no problems will ensue;
2. Or take a more calculated risk that in not electing to perform a 'pre-declaration' examination, a declaration may allegedly be arbitrarily delayed, goods examined and 'specious' errors detected, resulting in a possible raised assessment of duty and tax and the payment of a higher 'unofficial' fee in order to facilitate and expedite clearance due to time pressures exerted.

The continued background threat of high levels of officially generated risk based physical examinations, which, remain at approximately 30%, constitutes, in this context considered a 'win-win' for officials. As the 'pre-declaring' process is understood not to be officially recorded and is therefore not officially accountable in terms of the time stipulated for the completion of clearance procedures, then Officials are able to also ensure that in the majority of cases declarations /goods are released within 4hrs of being registered.

It is important to note that for an illicit transaction to take place it requires two parties. There is little doubt that whilst the coercive fraud ('rent-seeking') may allegedly be difficult to avoid in order to provide a prompt and uninterrupted release of goods, anecdotal evidence also suggests that clearing agents may be content to allow such practices to continue as profits can also be generated for them as a result. Since customers anticipate that payments have to be made and there are no receipts for such payments issued, agents are at liberty to invoice their clients for amounts in excess of those actually made. Given this situation, it may not be surprising that in some quarters there is little appetite for change as unscrupulous brokers / agents etc. can benefit directly and generously from a continued lack of transparency.

There is considerable anecdotal evidence to suggest that so called 'fashionable brokers' who can arrange for clearance of consignments for a 'fee' that will avoid interruptions, examinations, delays etc. are available and that despite their supposed demise following the political upheavals at the beginning of 2014 are once again beginning to flourish and thrive.

GPS locks

GPS-GSM seals/locks are applied to consignments during transit. The locks provide the SFS with the opportunity to observe consignments in real time. According to official information provided by SFS officials¹⁹⁹, following their initiation of the operation and their application the volume of transited goods has fallen by 7 times. This information leads to the conclusion that before the use of GPS-GSM seals /locks pseudo-transits²⁰⁰ were taking place. This practice is considered impossible without the complicit involvement of customs officers necessary to ensure that transit declarations are falsely stamped as showing export from the customs territory of Ukraine.

198. At the ZAZ Import Terminal Illichiv'sk, it was stated by Customs Officials that approx. 80% of consignments undergo 'pre-declaring' examinations.

199. <http://www.ivs.kharkov.ua/qdpro/news.php?idnews=151>.

200. Pseudo-transit refers to goods declared as in transit but which are never exported and are diverted to domestic use in Ukraine without payment of duty and tax.

Veterinary & SPS

Though the Port Study uncovered no hard evidence or serious allegations to suggest that at the ports the Veterinary and Phyto-sanitary services are engaged in major corrupt activities it is nevertheless worth noting that in other countries ‘rent-seeking’ at ports and BCPs is not solely confined to Customs.

‘Where public funding for inspection services and laboratories is low, the focus for officials in these services can often turn to regulatory inspections rather than food safety risks. Unofficial policies encourage agencies to undertake more inspections, sampling and laboratory testing than are necessary. Inspections are predisposed toward selecting business operators, from which a ‘fee’ can be collected and not toward selecting high risk producers. Some countries require health certificates for all exports (even if the importing countries do not require such certificates) and collect samples to test food safety. Some countries also test imports extensively. Even when such problems are absent and administrative processing is efficient, inspectors prefer to deal with goods owners or their agents in person to allow for the collection of informal payments. In sum, existing incentives in many countries tend to drive inspectors away from risk-based inspection and toward practices that increase transaction costs - both contrary to the SPS and TBT principles of the WTO’²⁰¹.

Given the not unsubstantial potential risks to public health from this type of practice, the greater use of risk analysis by the Veterinary and Phyto-sanitary services mentioned earlier in the report is an area where further development is considered important and necessary (**Legislation and Regulatory Framework, Intraservice - Gap 1: Legislative Alignment of Veterinary & SPS with the EU ‘Acquis Communautaire’ & International Standards refers**).

Movement against corruption

Although not directly connected to any alleged corrupt behaviour on the part of the Border Controls Services the establishment of private monopolies that control the movement of vehicles and the clearance of containers through the ports by the use of the Odessa and Illichiv’sk ISPS, and that limit the choice available for clearance of import containers to facilities adjacent to the ports and practices that make it compulsory to use weighbridges for the weighing of vehicles and containers within the boundaries of the port or at the import terminals, are viewed by the trade as supplementary methods of extracting regular, unavoidable and over the course of time and by way of volume, excessive payment.

In 2011 around 200 forwarding agent companies (in 2014 membership stands at approximately 400) from the Odessa region launched an anti-corruption campaign “No to corruption on transport” targeted against state border and law enforcement services at the seaports and including social media on ‘Facebook’²⁰². The pressure group is made up of members from the Association of International Road Transport Carriers (AIRC), Association of International Freight Forwarders of Ukraine (AIFFU, a leading organization) and trade unions. One of campaigns key aims is the protection of rights and legitimate interests of transportation and freight forwarding companies in Ukraine demanding that Customs in particular take appropriate measures to desist from unlawful actions against legitimate rights and interests of companies that work in this area.

In 2011 the group visited the regional Customs administration seven times providing to the authority a list of unofficial ‘fees’ for facilitation of container traffic in the ports. In May 2014 an open letter was sent to the Acting General Prosecutor of Ukraine and published on the pressure groups ‘Facebook’ page, which brought to public attention the groups issues with what they consider to be illegal procedures, corrupt practices and the imposition without consultation with end-users, of the ISPS at the ports.

201. World Bank Border Modernisation Handbook Chapter 16 refers.

202. <https://www.facebook.com/aiffu?ref=ts> refers.

In July 2014, another formal open letter was delivered to the Acting Head of Odessa Customs²⁰³ from the Primary Trade Union Organization of Freight Forwarders of Odessa Region, which contained information concerning the rates and demands for alleged illegal payments made during Customs clearance procedures at Odessa and Illichivsk ports. In addition, other areas of concern have focused as mentioned on the introduction of the ISPS and electronic order (EO) at the seaports of Odessa region administered by officials of the government-owned enterprise Administration of the Sea Ports of Ukraine (AMPU), UASBGS and SFS.

Customs, Veterinary & SPS

Need 1:

The SFS is aware of and has accepted that corrupt practices both coercive and collusive exist at the ports of Odessa and Illichivsk. From all the evidence produced in terms of actual events, alleged practices and payments etc. it is evident that the SFS and also the other State BCSs at the ports need to be more open, improve their transparency and engage more positively with the private sector and society in general, in order to improve their public image and standing.

The image that State BCSs convey is important and has a significant impact on Ukraine's investment climate. There is a strong and current need for all the BCSs to demonstrate fairness, integrity and honesty in all their relations with business and public. They also need to develop organisational, institutional and HRM reforms aimed at addressing not only the image and ethical culture of the organisation but also the behavioural attitudes of officials.

Reforms, structures and procedures where currently missing need to be established and incorporate: pay that is consistent with a professional position of honour and trust and that will attract high quality personnel, career structures that provide stability, the creation of internal controls and audit systems to prevent breaches of integrity and to identify and uncover violations, strengthening the capacity to investigate and prosecute breaches of integrity, publishing time release and quality standards for cargo clearance, the development of a code of conduct, core values and tough disciplinary measures that address integrity at all levels of the organization.

*'It is highly unlikely that officials will wholeheartedly support any major reforms that remove opportunities for 'rent-seeking' and improve transparency unless they are combined with meaningful improvements in their conditions of employment.'*²⁰⁴

The 'pre-declaring' procedure (**Intraservice, Procedures, Custom - Gap 2: 'Pre-declaration' Procedure refers**) has the potential to be wide open to the proliferation of corrupt practices due to the opportunity for increased interaction between officials and interested parties at a sensitive time in the clearance process.

Examinations of goods need to be based primarily on risk analysis after the declaration has been submitted, accepted and registered. Declarants and their agents need to be discouraged and dissuaded from what in Illichivsk amount to automatically requesting the procedure in order to avoid 'unexpected' delays. In any event the procedure needs to be policed and managed more responsibly by senior managers to ensure that nefarious activities don't take place in the shadows.

*'The adoption of procedures that provide little discretion to customs staff and that have built-in accountability mechanisms reduces both the opportunity and incentive for corruption. The first line of defence against corruption consists of implementing modern procedures that reduce face-to-face contact between traders and customs officials and that reduce the discretionary powers of customs officials'*²⁰⁵.

203. Annex XXVIII 'Open Letter to Odessa Customs from Primary Trade Union of Freight Forwarders of Odessa Region' refers.

204. Corruption in Customs Gerard McLinden and Amer Zafar Durrani WCO Journal Vol. 7 No 2 2011 refers.

205. World Bank Customs Modernisation Handbook Overview XIX refers.

Further automation of the current SFS declaration processing system also needs to be considered to avoid and reduce additional human interference and the continuance of manual checks that reinforce the existing weak barrier between officials and declarants and their agents (**Communications & Information Exchange, Intraservice, Customs: Gap 1: E-Customs Implementation & fully automated processes refers**).

For Customs in particular practical strategies need to be applied and implemented in accordance with the WCO Revised Arusha Declaration (2003) – a document developed by customs officials and representatives of the business community that acknowledges corruption and proposes solutions to deal with the challenges faced by customs administrations and their susceptibility to unethical practices.

*‘In looking to implement the key elements of the Revised Arusha Declaration, experience suggests that a good starting point is to conduct a comprehensive assessment of the situation to identify the shortcomings that present opportunities for corruption and to establish realistic priorities, as well as practical objectives and activities, all leading to an integrity plan that should be a part of all comprehensive customs reform efforts’.*²⁰⁶

Table XVIII Summary of Corruption Gap & Need

Intraservice	Border Agency	Gap
Corruption	Customs, Veterinary & SPS	Gap 1: Corruption at the Ports of Odessa and Illichiv’sk & adjacent Import Terminals

Conclusions

Odessa and Illichiv’sk seaports are major gateways for world trade. The volume of cargo is recovering to previous levels and is planned for continued expansion. The role of the border control services is that of ‘Gatekeepers of Ukraine’s Borders’, responsible for collecting duties and taxes; preventing illegal migration, human trafficking, smuggling of revenue goods, narcotics, arms, weapons of mass destruction (WMD) and other illegal and/or prohibited goods; protecting public health, the environment and cultural heritage; fighting against organised and cross-border crime; and protecting the country against international terrorism. Nevertheless the challenge for all State BCSs is to manage effectively and facilitate trade and transport while preserving border security. The realisation of this goal requires a modern flexible approach and the ability to adapt and adjust rapidly to new and developing risks and hazards.

In order to comply with requirements of the DCTFTA, Ukraine is committed to review, develop and simplify clearance procedures and processes within its border management system, taking into account EU and International best comparative practices. Ukraine’s State BCSs have all made progress in the implementation of these practices. Some of the reforms in Customs based on the Revised Kyoto Convention, World Customs Organisation WCO and EU Customs Blueprint guidelines have already been implemented or are in the process of being elaborated and developed. Sub Component ‘2’ identified twenty nine (29) separate ‘Gaps and Needs’ across six (6) strategic areas all of which can have an impact on the effectiveness and efficiency of clearance procedures at the ports.

Customs and the other State BCSs must continue with reforms and adopt EU and International ‘best practice’, standards and norms in order to meet international obligations regarding implementation of agreements and conventions and in doing so can further facilitate trade, decrease costs for business and importantly for the image and investment climate of the country additionally reduce corruption.

206. Ibid.

Component '3': Time Release Study (TRS)

Introduction

In co-operation with the SFS South Customs region at the ports of Odessa and Illichiv'sk a time release 'benchmarking' study (TRS) was planned and executed.

At the outset of the assignment the TRS was intended to provide a detailed analysis of the time needed to complete the end-to-end Customs clearance procedure at the seaports including from the point of discharge through gate-out, however it became clear that this task was too extensive with the limited resources available. As a result the ToR for the TRS were re-evaluated and revised with the focus being transferred instead to the time required for processing of customs declarations. In order to achieve this new objective information and data was obtained and analysed for the month of July to include the current year 2014 and the two previous years: 2013 & 2012.

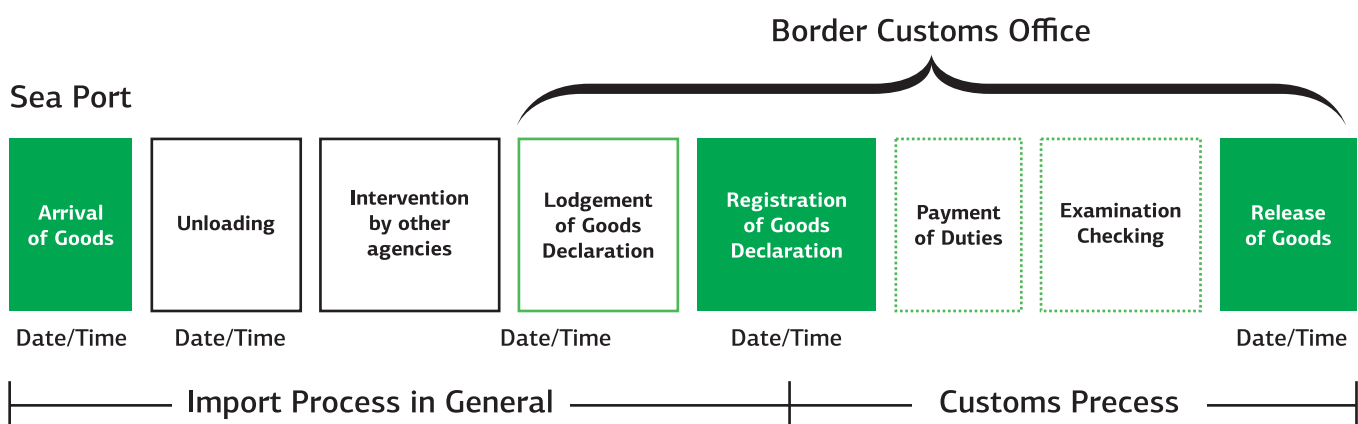
It should be noted that although assistance was provided by the SFS in all aspects of the TRS, as previously mentioned in Sub-Component '2', it was unfortunate that regular changes to nominated personnel at both ports placed further limitations on the gathering and accessibility of data needed to complete the TRS. As a result it was only possible to obtain and analyse data from customs in relation to transactions at Odessa Port and the Euroterminal.

In addition, it was also not possible for EUBAM to obtain permission from the WCO to gain access to the dedicated TRS analytical software promoted in the TRS Guidelines, despite the existence of an MOU 24/09/09 between the two organisations to provide mutual assistance. Consequently analysis of data obtained from the SFS was undertaken using off-the-shelf software in the form of 'Microsoft Excel'.

Objectives

The Time release study (TRS) measures the time taken for the Customs declaration to be processed from registration either electronically or manually, through until the point of release based on the methodology detailed by the WCO Guidelines 'To Measure the Time Required for the Release of Goods v2' 2011 as illustrated in Figure 3 below.

Figure 3. Flow diagram describing declaration processing procedure²⁰⁷.



The SFS utilises an automated declaration processing system Unified Automated Customs Information System (UACIS) - albeit with a number of manual elements still included which time stamp declarations at strategic points along their route. Analysis of data obtained allowed not only the determination of the average time needed to complete the declaration process but also to provide a comparative

²⁰⁷ Source: WCO TRS Guidelines.

analysis of the times taken for each process and between processes in the chain across all the selected periods. From the TRS the SFS may be able to identify weaknesses in the release process (including at each individual activities in the process); constraints that affect release and propose measures that might improve the time required for the release of goods.

Ultimately it is hoped that by undertaking this and similar TRSs in the future the SFS will like other modernised customs administration around the world e.g. Australia, Singapore and Japan be able to more transparently demonstrate real, validated and verifiable improvements to their customs clearance procedures.

Scope

The TRS utilised data obtained from the SFS automatic declaration processing system which provides greater accuracy of information and involved significantly less disturbance to local staff engaged in the actual clearance process.

The data is taken from the processing of import declarations submitted and registered at the EuroTerminal authorized for the clearance of imported and exported goods, delivered by land means of transport and relates to goods imported normally by sea transported in containers transited from the adjacent port. No other Border Control Service data was used.

Sub –Component ‘3’	Activities	Output	Outcome	Time
3. Time-release study of commercial cargo	<ol style="list-style-type: none"> 1. Identify Data sets; 2. Collate & compile data; 3. Perform analysis; 4. Produce study report. 5. Publish Results 	Time-release study providing an accurate assessment and measurement of time needed to complete Customs and other external procedures with an have an impact on the Customs clearance end-to-end process.	<ol style="list-style-type: none"> 1. Implement improvements, which simplify procedures and have a beneficial impact on reducing the time needed to affect the overall Customs clearance end –to-end process. 2. Implement improvements to functional workflows incl; Communication & Information Exchange mechanisms, and/or identifying deficiencies in Infrastructure & Equipment at the port. 	12 Weeks

Methodology

The methodology for the TRS closely followed the 2011 WCO Guidelines.

1. Preparation of the Study

A small task force was established with representatives from EUBAM and nominated Customs officials from each of the ports²⁰⁸ and an initial meeting was convened at EUBAM HQ on 30th July 2014.

2. Determination of the Scope of the Study

At the first meeting to establish the TRS Task Force from the ToRs were discussed as well as tasks being assigned. The following agreements regarding implementation of the TRS were reached between members of the Task Force;

208. As the TRS was limited to the analysis of the time needed to process customs declarations there was no need to include other BCs, agencies or authorities.

- Proposals for timetable to implement TRS
- Duration of the TRS - includes current and retrospective dates of July 2014, 2013 & 2012;
- Methodology of the TRS in terms of the selection & collection of data – declaration processing data to be gathered and collected by SFS TRS Task Force representatives from respective ports and analysed by EUBAM. The study should identify from the data the time taken to perform different processes in the customs clearance process;
- How best to obtain WCO on line TRS software + nominate responsible person – but determined to be not available;
- Completion of the TRS final report and publication in line with WCO TRS Guidelines.

Table XIX. TRS Implementation Timetable²⁰⁹

TRS Activity	Activity undertaken	Progress Report
Preparation	Week 1 August	TRSTF Meeting 07/08/14
Gathering and collection of data	Week 2 & 3 August	TRSTF Meeting 14 & 21/08/14
Analysis of Data	Week 4 & Week 1 September	TRSTF Meeting 28 & 04/09/14

3. Analysis

In the course of several meetings of the Task Force on the Time-release Port Study it was decided that the actual time measurements would cover the following calendar periods:

- August 2012
- August 2013
- July 2014

Odessa Port

The following analysis of time measurements is based on information provided by the Odessa Port Customs Post only. No data was received from relevant Illichiv's'k Port Customs officials.

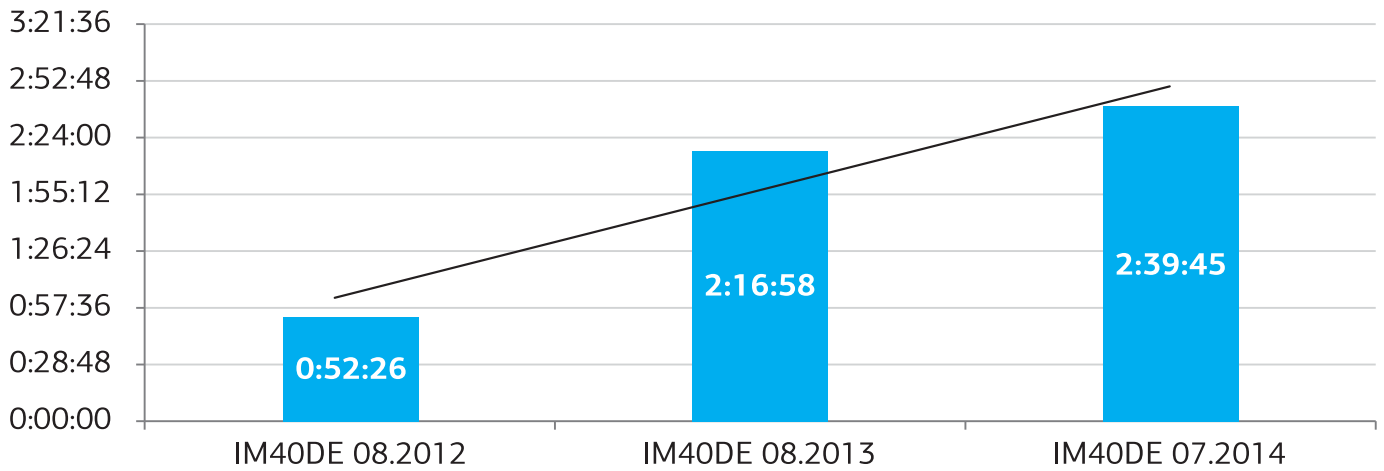
Datasets provided by the Odessa Port Customs officials cover approximately 2.000 thousand cases of import clearances per each month analysed and approximately 180 cases of transit clearances respectively. The validity check as to the computation of total duration of import clearances identified a 4.5% discrepancy between computations (as per data from August 2013) performed by Odessa Port Customs officials and EUBAM, and which is considered statistically negligible.

Analysis of the available datasets shows that based on the abovementioned calendar periods the total average duration of the end-to-end customs declaration clearance procedure at Odessa sea port demonstrates a stable tendency to grow. This growth is especially evident if August 2012 and August 2013 are compared (161.2%). The growth in July 2014 against August 2013 is not as nearly as significant, being only 16.63%.

209. While a proposed TRS timetable was proposed it was never fully implemented.

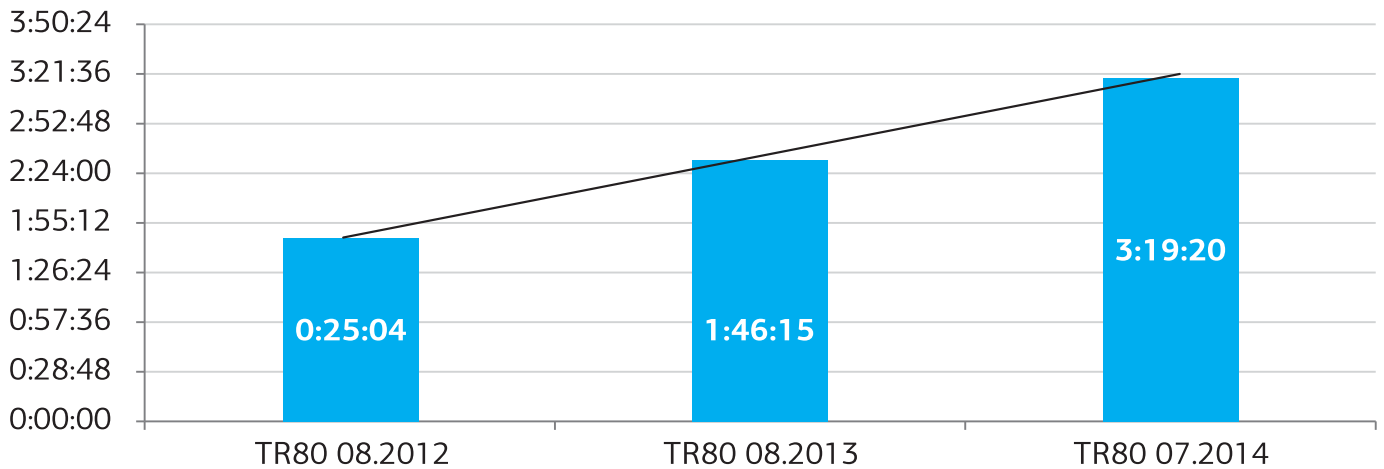
The average duration of the end-to-end customs declaration clearance of imports at Odessa port calculated based on the abovementioned calendar periods constitutes 1 hr 56 min.

Average Duration of Clearance of Imports



Analysis of the available datasets shows that based on the abovementioned calendar periods the total average duration of a transit clearance procedure at the Odessa port also demonstrates a stable tendency to grow. This growth is substantial in both cases: August 2012 against August 2013 and August 2013 against July 2014, hence amounting to 323.87% and 87.61% respectively. The average duration of a transit clearance procedure at Odessa sea port calculated based on the abovementioned calendar periods constitutes 1 hr 50 min.

Average Duration of Clearance of Transit

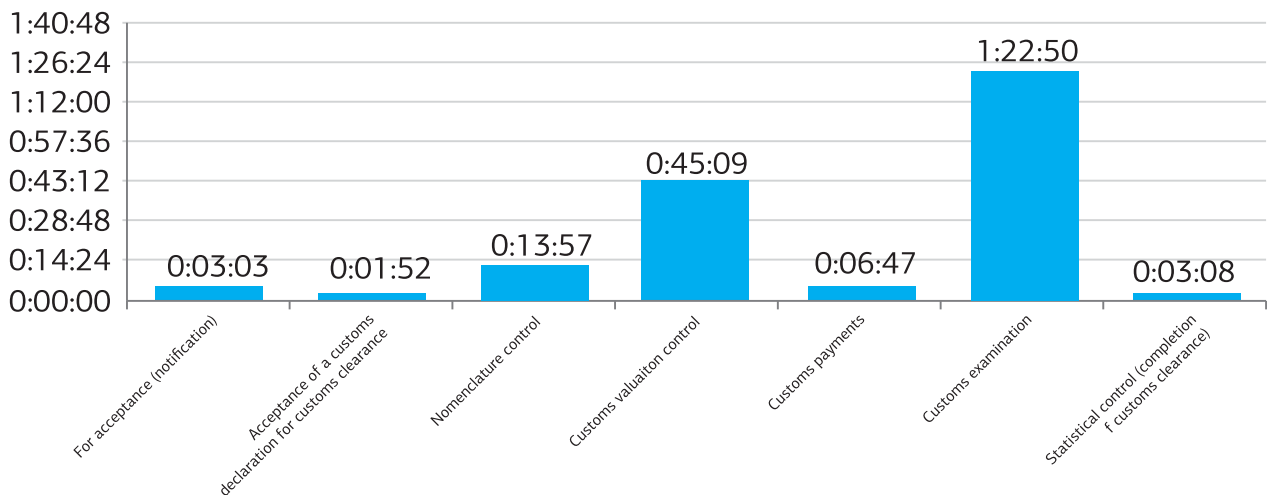


Datasets provided by Customs officials of the Odessa Port also contain data as to the durations of individual stages of the customs clearance process for imports and transit. The available statistical time measurements divide the import and transit clearance procedures into seven individual stages:

1. "For acceptance" notification
2. Acceptance of the customs declaration for clearance
3. Nomenclature control
4. Customs valuation control
5. Customs payments
6. Customs examination
7. Statistical control (completion of customs clearance procedure)

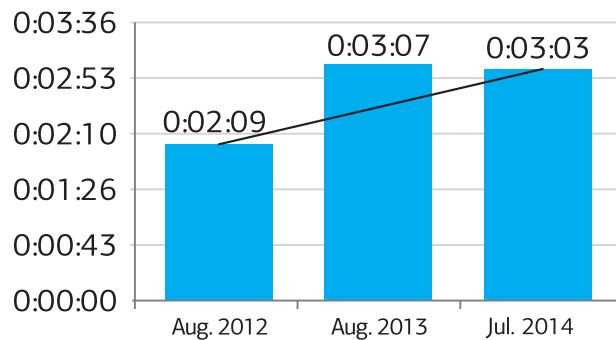
According to the data collected in July 2014 the longest stage of the import clearance procedure is the 'Customs examination' (1 hr 22 min) and the shortest one is the 'Acceptance of the customs declaration for clearance' (1 min 52 sec).

Duration of each stage of customs clearance of imports (July 2014)



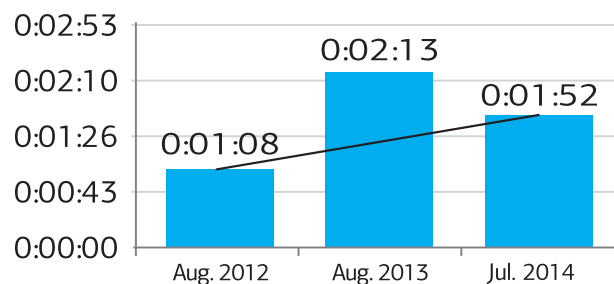
Analysis of available statistical data as to the first stage of import clearance procedure (“For acceptance” notification) shows that in August 2013 there was a 44.96% growth against August 2012. Although in July 2014, there was a slight decrease (2.14%) against August 2013. The average duration of this stage of import clearance procedure, computed based on the selected calendar periods, amounts to 2 min 46 sec.

“For Acceptance” Notification



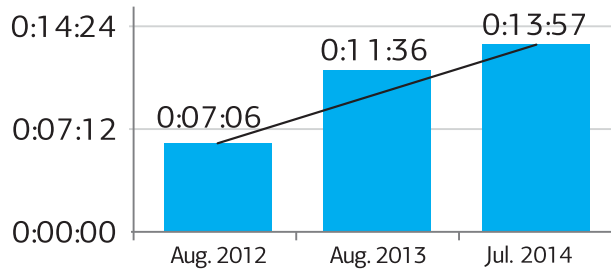
The second stage of the customs clearance procedure (Acceptance of a customs declaration for customs clearance) demonstrated a 58.04% duration increase in August 2013 compared with August 2012, whilst in July 2014 there was a 15.79% reduction of duration against August 2013. The average duration of this stage of import clearance procedure, computed based on the selected calendar periods, amounts to 1 min 44 sec.

Acceptance of a Customs Declaration for Customs Clearance



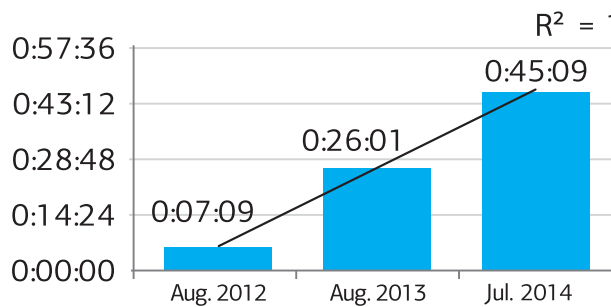
The ‘Nomenclature control’ stage demonstrated stable increase in both cases: in August 2013 it was 63.38% and in July 2014 it was 20.26%. The average duration of this stage of import clearance procedure constitutes 10 min 53 sec.

Nomenclature Control



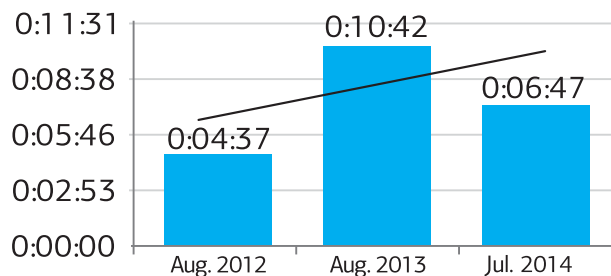
The fourth stage (Customs valuation control) has demonstrated one of the most sustainable ascending trends out of all six stages. In August 2013 the growth constituted 63.38% and in July 2014 — 73.54%. The average duration of customs valuation control within the import clearance procedure is 26 min 06 sec.

Custom Valuation Control



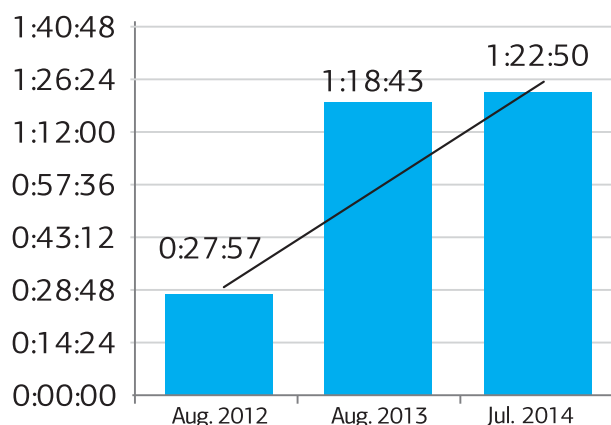
The fifth stage of customs clearance procedure (Customs payments) demonstrated two contradictory trends: an ascending trend in August 2013 and a descending trend in July 2014, amounting to 131.77% and -36.60% respectively. The average duration of this stage constitutes 07 min 22 sec.

Custom Payments



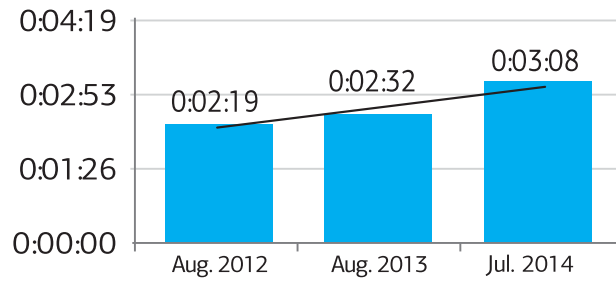
'Customs examination' being the longest stage of import clearance procedure demonstrated significant growth in August 2013 (181.63%) and almost no growth in July 2014 (5.23%) with average duration being 1 hr 03 min.

Custom Examination



The last stage of customs clearance procedure (statistical control) showed a 9.35% growth in August 2013 and a 23.68% growth in July 2014 with an average duration of the stage being 02 min 40 sec.

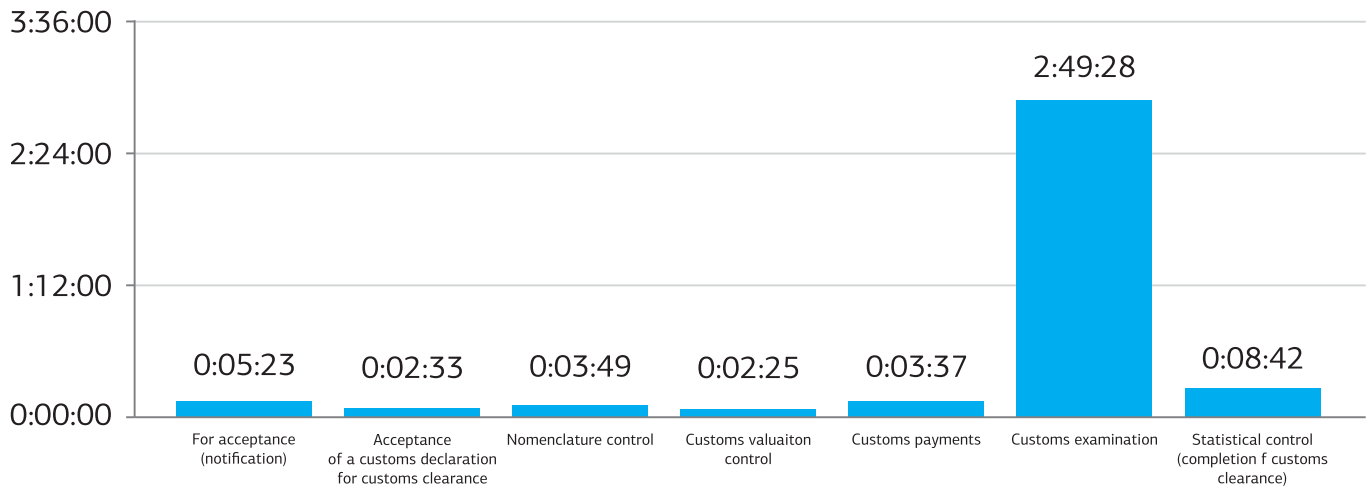
**Statistical Control
(Completion of Customs Clearance)**



Transit

As regards clearance of transit the longest stage is 'Customs examination' with all the others being incomparably shorter. Unlike import clearance the customs valuation control duration is insignificant, being 01 min 33 sec on average against 26 min 06 sec at imports.

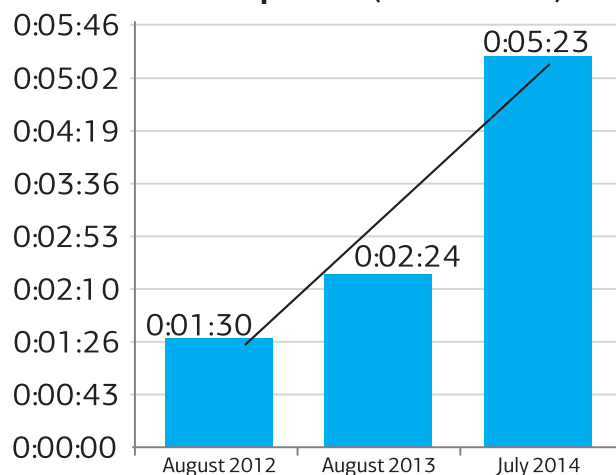
Duration of each stage of customs clearance of transit (July 2014)



Hence the average durations of the researched stages are as follows:

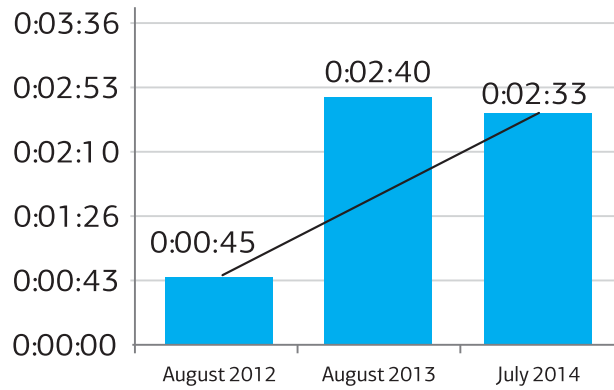
1. 'For acceptance (notification) — 03 min 06 sec

For Acceptance (notification)



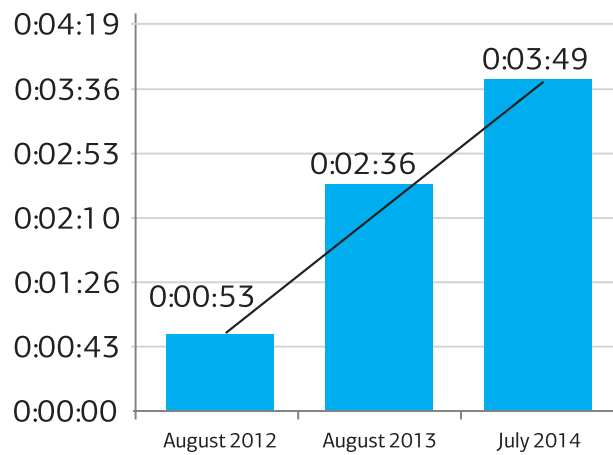
2. 'Acceptance of a customs declaration for clearance' — 01 min 59 sec

Acceptance of a customs declaration for customs clearance



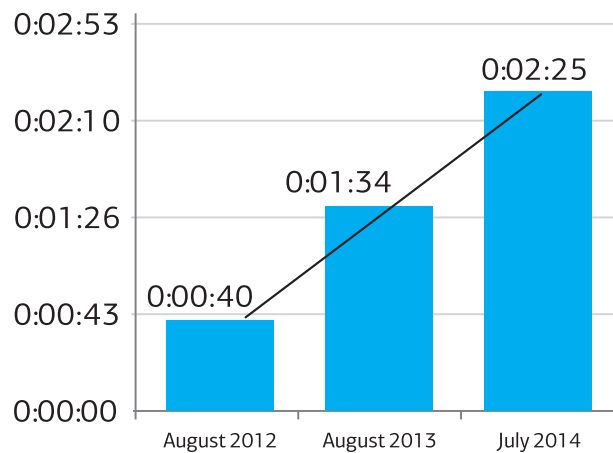
3. 'Nomenclature control' — 02 min 26 sec

Nomenclature control

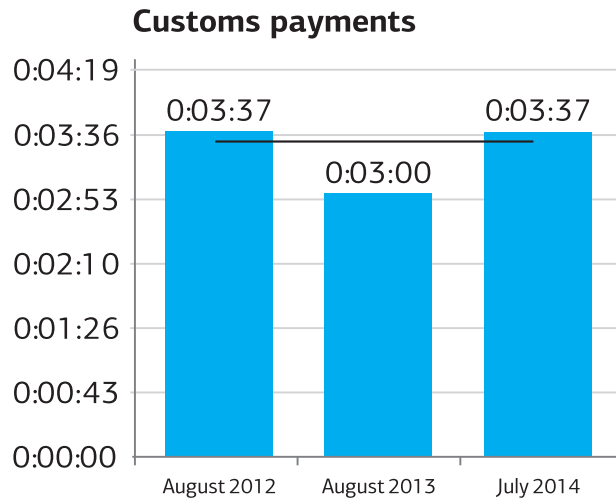


4. 'Customs valuation control' — 01 min 33 sec

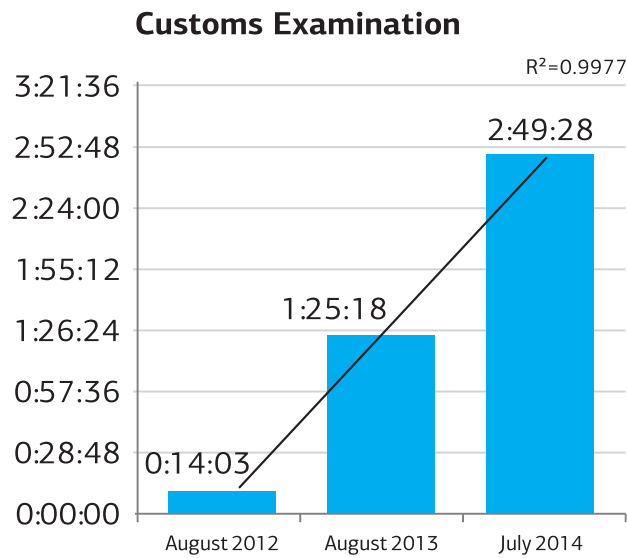
Customs valuation control



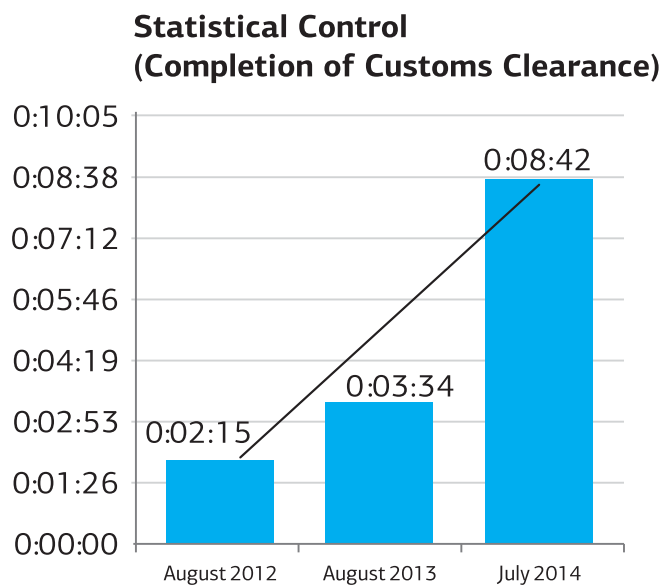
5. Customs payments' — 03 min 25 sec



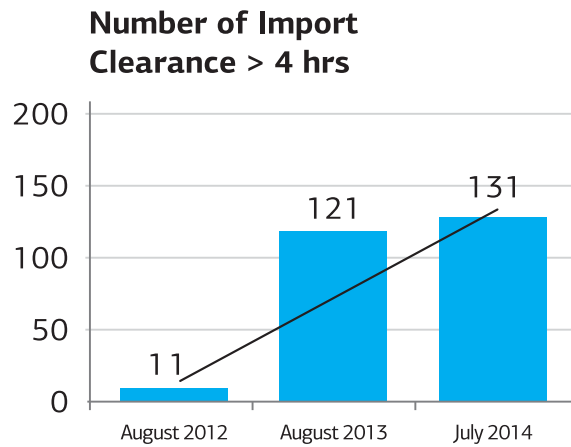
6. Customs examination' — 1 hr 29 min



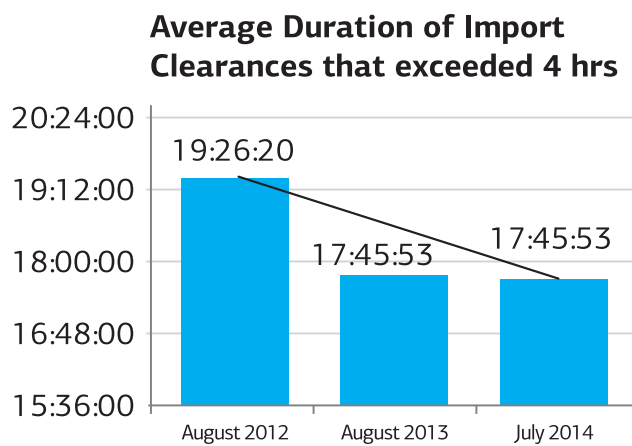
7. 'Statistical control' — 04 min 50 sec



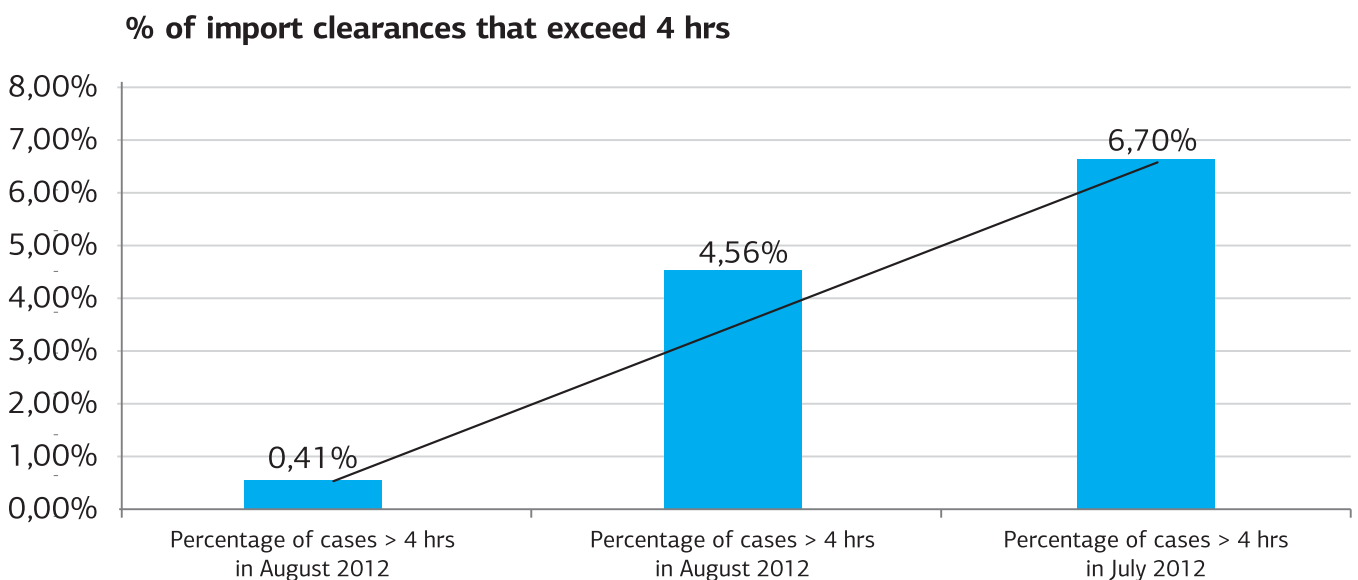
8. 'Import Clearance that exceed 4hr limit



9. Average duration of Import Clearances that Exceed 4hr limit



10. Clearances that exceed the 4hr limit expressed as percentage of total number of declarations



Conclusions:

Analysis of statistical data on clearance of import declarations by Customs officials at the Odessa Port indicates that there is an upward trend concerning both the average duration of the complete cycle of the import clearance procedure and also at individual stages. As regards individual stages the ascending trends vary. The steepest upward trend amongst the seven stages of import clearance is in 'Customs Valuation Control'²¹⁰ and 'Customs Examination'. Increases in the time taken in these areas are not unexpected as issues regarding valuation and examination of consignments are both highlighted in Sub-Component '2' - Gaps and Needs²¹¹. All the other stages, being significantly shorter, demonstrate a much flatter uptrend.

As regards clearance of transit there is a distinct ascending trend concerning both the average duration of end-to-end clearance of transit and the longest stage (Customs examination)²¹². The stable growth of this particular stage of the transit clearance is contrary to expectations as it is generally accepted that transit traffic should only be subject to customs examinations when there is a serious suspicion of fraud. The time taken for examinations of consignments in transit are considered an area for further review as they restrict legitimate trade flows and increase costs. The duration of other stages (compared with 'Customs examination of transit') may be considered as statistically negligible; therefore analysis of their trend lines is unnecessary.

Illichiv'sk Port

Statistical data submitted in relation to the clearance of declarations in Illichiv'sk seaport gives no overview of the current situation and restricts a comprehensive analysis of the respective time stages held under TRS.

Table XX. Customs declarations clearance at Illichiv'sk sea port

Year	Month	Number of declarations	Time spent for clearance process (IM 40)
2012	August	2009	58
2013	August	1716	76
2014	July	1159	219

Year	Month	Number of declarations	Time spent for clearance process (TR 80)
2012	August	1335	73
2013	August	655	33
2014	July	527	260

210. R2=1 and 0.81 respectively <http://mathbits.com/MathBits/TISection/Statistics2/correlation.htm>

211. Procedures, Intraservice, Customs – Gap:3 Risk Analysis at the Ports & Gap:7 Valuation and Classification refer

212. R2=0.9977 ibid

Annex I. Technical Specifications of Odessa²¹³ & Illichivsk²¹⁴ Sea port.

Odessa Port

Terminal storage capacity amounts to 13,500 TEU. Reefer Yard consists of 400 fixed reefer plugs and 180 mobile plugs. Handling capacity of the container terminal is approximately 750,000 TEU per year.

The Container Terminal Information System installed at the terminal comprises all the elements of modern container terminal management: loading and discharging operations, vessels service, operations with railway wagons and trucks. The system also provides Internet access for agents and forwarders to trace the information regarding their cargo.⁵

Brooklyn-Kiev Port Ltd. operates at berths No. 42, 43. Berth No. 42 is equipped with 2 gantry cranes with loading capacity of 50 tonnes. Initially 80,000 TEU were planned to be handled. At present handling capacity of the terminal is around 140,000 TEU per year. In the period January- August 2012 the terminal handled 91,351 TEU, which is 5% more than in 2011.

HPC Ukraina has four berths. The main berth No 2 is equipped with 3 gantry cranes of capacity up to 57 tonnes. There are also feeder berths No 3, 4 and 7 equipped with cranes of capacity up to 50, 40 and 45 tonnes. "HPC Ukraina" at Odessa Port is the leading container terminal with 209,823 TEU processed from January till August 2012 (2% rise). Illichivsk container terminal occupies the second place – 123,078 TEU of processed containers. «Brooklyn-Kiev Port» terminal handled 5% TEU more than during the same period in 2011 – 91,351 TEU. Container terminal "TIS" at Yuzhnyi port handled 18,172 TEU. Illichivsk fish port has temporarily ceased processing containers since June 2012.

Container vessels arrive at Odessa Port from all around the world with a broad variety of goods, while the volume of trade from China appears to be the largest. The majority of goods are further transported within Ukraine and to Russia.

From January to August 2012 Odessa Port remained the leader among Ukrainian ports and handled the greatest number of containers - 301,174 TEU, i.e. 2.9% more than in 2011 (January-August). Illichivsk port lost, previously observed, monthly rate of positive dynamics, processing 12% TEU less in August than in July 2012. After 8 months, container throughput at the port of Illichivsk was 145,756 TEU, marking a decrease of 17% compared to the same period in 2011.

In 2009, «TIS» put into operation the first stage of container terminal with the capacity of 430,000 TEU per year and the storage capacity 14,000 TEU. The ultimate capacity of a new container terminal could reach 3 million TEU per year. The complex is equipped with three quay container cranes manufactured by ZPMC with lifting capacity of 60 tonnes.

Processes related to customs clearance of containers

Processing of containers at Odessa Port, starting from arrival of a container at the port on board a ship to the moment it is exiting the port after completion of all formalities, has not changed significantly in comparison to procedures laid out in the 2009 report. The overall process of container processing is similar; however, there are several changes which are connected with the development of infrastructure at Odessa Port. At present, when a container ship arrives, there are two container terminals at Odessa Port available for use.

213. Special Report EUBAM Report 2013 refers.

214. http://www.worldportsource.com/ports/commerce/UKR_Port_of_Illychevsk_1565.php refers.

Previously, Odaria terminal dealt with import containers but starting from October 2011 it has been processing transit and export containers – Customs Clearance unit No. 2 (Transit Terminal) of Odessa Customs post responsible for customs control of transit and export containers is located there.

All import containers are now processed at Customs Cargo Terminal LLC “Euroterminal” (hereinafter - CCT) situated near the boundary of Odessa Port. CCT is connected with Odessa Port by an overpass with checkpoint at its boundary. CCT Euroterminal was established to reduce excessive accumulation of sea containers in BCP of Odessa Port and increase handling capacities of the BCP. CCT was built on the territory of former disposal fields where 50 hectares of land had been drained. It was implemented in the framework of agreement on cooperation between the State Enterprise “Odessa Commercial Sea Port” (hereinafter - SE Odessa Port) and LLC “Euroterminal”.

Since 2009 Odessa Port has elaborated and successfully implemented several steps with a view to increase cargo traffic of containers and reduce dwell time at the port. In 2010 the so called scheme of “preliminary clearance” was elaborated and implemented; the scheme introduces clearance of containers by controlling authorities prior to actual entry of means of transport to the port and loading at the terminal. As a result, average dwell time of means of transport at the port does not exceed 1.5 hours. The number of vehicles cleared under the “preliminary clearance” scheme is constantly increasing, which attracts additional cargo flow and increases clearance effectiveness (see Annex 1 Table 2).

In 2010 “Electronic document turnover system” was implemented at Odessa Port with a view to interconnect controlling services and perform clearance of containers by means of Single Information Port System (SIPS). At the moment, the following stages of the system are implemented:

- “Electronic pass” launched in 2010, which allows recording precise time of entry/exit of means of transport at/from Odessa Port;
- “Electronic planning of entry” launched in 2011, which helped to avoid the accumulation of containers during the day and to distribute the processing of containers in advance.

Plan on implementation of “Electronic order” system at Odessa Port was drafted and agreed on with SFS. The plan is focused on elimination of queue awaiting “visa-documentary check” and decreasing total time necessary for the clearance of a container. As a result of the above-mentioned measures, taken jointly by Odessa Port and controlling agencies operating at the port, the number of containers subject to physical examination significantly decreased.

Illichiv'sk Port²¹⁵

The Port of Illichiv'sk operates many multi-purpose cargo-handling complexes. The Port of Illichiv'sk's Container Terminal is located at Berths 5 and 6, which are a total of 336 meters long with alongside depth of 13 meters. The Container Terminal has storage areas with capacity for more than 12.2 thousand TEUs of cargo, including 400 reefer outlets for refrigerated containers. The terminal is equipped with a state-of-the-art computer control system that will significantly increase turnaround time for container vessels.

Plans to expand the Port of Illichiv'sk's Container terminal include adding new berths and warehouse capacity. Berths 3 and 4 will be reconstructed to accommodate the largest container vessels, a new warehouse for stuffing containers will be added, and heavy-lift cargo-handling equipment will be acquired to bring capacity to 850 thousand TEUs per year. Later, Berth 2 will also be reconstructed and Berth 1 will be refitted for containers to bring total container throughput to 1.5 million TEUs per year.

215. Source: http://www.worldportsource.com/ports/commerce/UKR_Port_of_Illichevsk_1565.php refers.

The Port of Illichiv'sk container-stuffing complex, behind Berth 4, specializes in large-capacity containers with cargoes that include rolled metal, slabs, equipment, motor vehicles, glass, and bulk cargoes. The Container Freight Station at the Port of Illichiv'sk, which has authority for customs container control, operates 24 hours a day, releasing about a thousand containers each day. The Container Freight Station contains two storehouses covering seven thousand square meters.

The Port of Illichiv'sk's Multi-modal Complex specializes in operations with rail roll-on/roll-off vessels. Berths 26 and 27 are each 210 meters long with alongside depth of 9.7 meters, and Berth 28 is 270 meters long with alongside depth of 9.6 meters.

The Multi-modal Complex has capacity for 4.5 million tons of cargo per year for operations with wagons, 260 thousand tons of cargo per year for operations with containers and motor vehicles, and 70 thousand tons per year for general cargoes and citrus plants. The Port of Illichiv'sk can handle two rail-ferries and two roll-on/roll-off vessels (or motor vehicle ferries) can simultaneously. The Multi-modal Complex contains storage for about 7000 vehicles, including a storage yard for 450 containers and 30 trucks with trailers. Complex facilities allow the Port of Illichiv'sk to handle 130 thousand motor vehicles per year.

Two railway-ferry lines operate from the Port of Illichiv'sk on the Black Sea: Illichiv'sk-Varna (Bulgaria) - Poti/Batumi (Georgia) and Port of Illichiv'sk-Derindge (Turkey). Four Ro-Ro ferries operate from the Port of Illichiv'sk, each with capacity for 108 rail wagons or heavy trucks. One ferry operates between Illichiv'sk and Poti, can handle 50 wagons and 50 motor vehicles. Travel time for the ferries is 18 hours for Varna, 44 hours for Poti, 46 hours for Batumi, and 27 hours for Derindge.

The Grain Handling Complex at the Port of Illichiv'sk is located at Berths 16 and 17, and it has capacity to handle 6.2 million tons of cargo per year. Each berth is 200 meters long with alongside depth of 11.5 meters. The grain complex includes 38 silo towers, each with capacity for five thousand tons, allowing simultaneous storage of 190 thousand tons of grain. The grain complex has capacity to load two ships and a total of 1600 tons per hour. It also has capacity to unload 250 wagons or 20 thousand tons of grain per day. The grain complex can accommodate two Panamax vessels up to 70 thousand DWT at the same time.

The Port of Illichiv'sk complex for handling and storing bulk cargoes is located at Berth 10, which has a depth of 11.5 meters. The bulk complex handles imports of non-ferrous metals and other bulk cargoes. The storehouse has capacity for up to 120 tons of cargo, and the complex's output is 2.1 million tons per year.

The Port of Illichiv'sk has a specialized complex for handling chemicals and other bulk cargo exports. Berth 19 is 220 meters long, and Berth 20 is 200 meters long. Part of the complex is fitted for handling bulk cargoes of granulated sulfur. The complex has two sheltered stations for discharging wagons that can handle 1.2 million tons of sulfur and dry bulk fertilizers per year. The warehouses can store up to 75 thousand tons.

Located at Berth 25, the Port of Illichiv'sk Fuel Terminal has capacity to handle 3.23 million tons of fuel oil products per year. Berth 25 is 290 meters long with alongside depth of 12 meters. The terminal can receive oil products by rail and store them in onshore reservoirs with capacity for over 72 thousand cubic meters before loading to tankers. Separate pipelines and pumps are provided for oil, black oil, and light oil products.

The Port of Illichiv'sk is home to several processing plants. The Illichiv'sk Oil and Fats Industrial Complex is located behind the port and connected to Berth 21. Vegetable oils for export and tropical oils for import are carried by pipeline between the plant and berth. The pour oils station and coastal tanks have capacity for 36 thousand cubic meters of sunflower and tropical oils. The annual capacity for the complex is one million tons of cargo. Plans for the complex include a new factory for processing tropical oils, elevators for soya beans and soya bean meal, and a factory for processing soya beans.

Also behind the port and near the Bulk Vegetable Oil Complex is the Port of Illichiv'sk's Oil Extraction Plant. The plant processes sunflower seeds for export of vegetable oils. The plant produces an additional 300 thousand tons of cargo traffic for the Port of Illichiv'sk each year.

Near the Grain Handling Complex is the Port of Illichiv'sk's agricultural product processing plant with tanks for storage of sunflower seeds and vegetable oils and equipment for loading the oil on vessels and for transporting soya bean meal to the warehouse. The covered warehouse for soya bean meal is behind Berth 17 and adds 1.1 million tons of cargo to the Port of Illichiv'sk's freight traffic each year.

The Port of Illichiv'sk has ambitious management. In addition to the achievements it has made in the last 50 years, the Port of Illichiv'sk has plans for further expansion and improvements. The planning program extends to 2015 and includes increasing port capacity to 54.1 million tons by reshaping and reconstructing terminals and building new cargo complexes to meet market needs.

The Port of Illichiv'sk will focus on developing international container and inter-modal transport facilities, improving facilities to more effectively handle bulk cargo imports, making it easier to export metal products to support this Ukrainian sector, and rebuilding existing and developing new automobile entrances.

Annex II. Automated system for customs clearance ‘Inspector -2006’.

National SFS has implemented its own in-house computerised electronic declaration processing system, Unified Automated Computerised Information System (UACIS) which has been in operation since 2005 and is used to perform clearance of goods throughout the country and at the seaports of Odessa and Illichiv'sk.

Customs declarations and supporting documents incorporating e-signatures can be electronically submitted directly into the UACIS from remote terminals using an electronic-key authorised operators e.g. by brokers, importers, freight forwarders etc. similar to other systems in use around the world e.g. ASYCUDA.

Hard copy declarations may still be accepted and scanned accompanying documents can be electronically uploaded into the UACIS system submitted by flash memory USB sticks at terminals located in the Custom Houses. The USB terminals also undertake virus checks to ensure that document upload are not contaminated. Electronic receipt of submission and document tracking enable declarants or their authorised agents to monitor declarations within the system. Electronic payment of customs duties, VAT, Excise is also possible directly from traders accounts.

The Automated Clearance System (ACS) ‘Inspector-2006’ was developed in 1996-2007 and designed for automated customs clearance in the structural units of the customs agency, engaged in the process of customs clearance. The program provides Customs with the opportunity to perform the following tasks:

- automatic support to customs clearance technique adopted by the customs agency and regulations;
- entry and format-based logical control of electronic copies of documents required for customs clearance and inspection of cargo customs declaration (CCD) according to risk criteria;
- maintaining a database of the customs agency - the main storage of information on customs clearance (electronic copies of CCD and other documents involved in the clearance process, data on completion of technological stages of customs clearance, etc.);
- exchange of information with other departments of the customs agency using cryptographic protection of information;
- formatting information for the purpose of its further entry to the central database of the Unified Automated Information System of the SFS.

Inspector 2006 was designed as a client - server architecture under Microsoft Windows 98/ME/2000/XP/2003.

UACIS incorporates additional software, an in-house developed programme ‘Inspector 2006’ – an automated registration and risk management programme controlled, monitored, maintained and updated by Customs HQ in Kiev, accessible to all CU units linked to the UACIS. ‘Inspector 2006’ applies risk assessment criteria compiled at the national and local/regional levels to goods at import, export and transit using selectivity criteria against cargo customs declarations and other documents compiled by declarants, customs brokers etc. in order to determine consignments for additional checks and physical examination.

The SFS risk analysis concept has been in force since 2005 when the Department of Risk Analysis and Audit was created. The concept corresponds to the recommendations of the risk management guide of the WCO as well as the standardized framework for risk management in the EUMS. Since the beginning of 2008 the automated system of customs clearance ‘Inspector 2006’, which incorporates a module on risk analysis and risk management, has been operational. The personnel in the risk analysis department are well trained, with a deep knowledge of risk analysis and risk management²¹⁶.

216. Study for an EaP IBM Flagship Initiative Project 2010 refers.

'Inspector 2006' comes with a set of standard user profiles: Inspector of statistics department, Inspector of payments department, Inspector of tariffs department, Inspector of cargo department, Supervisory Director. Administrator has a right to change, retrieve and create new profiles.

The SFS Unified Automatic Information System ('Inspector 2006') enables the staff of the customs bodies as well as HQ to be provided with regulated access to all the data of central and local levels they might need to perform their duties²¹⁷.

Access to the system is controlled and authorised by system administrators. Other Services including: Border Guard, National Police, Tax and SBU are also able to view information on the system that relates to their area of responsibility but not directly input or edit information. Valid reasons must be provided by other services to obtain access to the Customs central database. Each case is approved by Customs HQ in Kiev. However, Services may request that specific alerts or intelligence are indicated or 'flagged' for Officers attention on the system.

217. EUBAM, NARR review 2009 refers.

Annex III. ISPS & Single Window.

At the seaports of Odessa and Illichiv'sk automated electronic procedures, which facilitate international trade and transport for containerized cargo and rail transport based on the Single Window concept for import and export are implemented through the Port Community System (ISPS). This follows the adoption of the Law "On Sea Ports of Ukraine" on 17 May 2012 by the Verkhovna Rada of Ukraine and other amendments to the relevant legislation²¹⁸, designed to simplify transport and customs procedures at the ports. The implementation of the ISPS comes after the launch in 2011 Odessa sea port of the Single Window – Local Solution. The ISPS is implemented in Ukraine with the support of the Cabinet of Ministers. The port innovation was created by the recommendations of UN experts and on the basis of experience taken from the largest world ports of Rotterdam and Yokohama. Local introduction of the ISPS could potentially serve as a foundation for the consequential national introduction of the full-fledged "Single Window" Concept.

The ISPS was designed to integrate all participants to the cargo-carrying and cargo-processing operations under the umbrella of a single IT system. This system is intended to provide access to information used in the technological processes in the port and protected by the government-approved means of data protection. In general terms, the ISPS is a system aimed at providing control agencies with means to utilize (store, check, process and transfer) information and documents in electronic form for the purposes of border, customs and other types of control, clearance of goods and vehicles. The ISPS is a business-to-business and business-to-government solution, based on an E&T (extraction and transformation) communication hub. The unit of information in the ISPS is a document. A document is an information-carrying container based on the PCS#7 standards.

The ISPS is a neutral and open-end system providing for an intellectual and safe exchange of information between public control agencies and traders aimed at increasing competitiveness and effectiveness of all users of port services. The system is designed to optimize, manage and computerize the port-based logistical processes through the uniform lodgement of data and linking various elements of cargo-carrying and logistical processing.

This system is an advanced method of exchanging information in the port or within a group of ports and relevant entities. It is built upon an agreement between the participants to submit trade-related data in a single place, to develop the IT infrastructure, technical cooperation and favourable legal base, to avoid duplication of data in the documents. Thus the ISPS creates a precisely purposed integrated environment to cover processing of exports, imports, transit traffic, consolidation, hazardous consignments and statistical reporting on international maritime shipping. The system includes control agencies (like Customs and Border Guards), Administration of the port, stevedore companies, agents, freight forwarders, Public Railroad Company and others.

In December 2013 Illichiv'sk Port followed Odessa in becoming the second port in Ukraine to operate, the integrated information system, which is expected to be, implemented in the future at all other Ukrainian container ports.

As of June 2nd 2014 at both Odesa and Illichiv'sk ports lodgement of the electronic order via the ISPS is obligatory (at Illichiv'sk Port it is duplicated by a paper copy). Consequently, clearance and release of containers and consignments is impossible without a properly lodged and visaed order via ISPS; issuance of a release pass for a freighted import container to exit the territory of the ports is performed with an obligatory indication of the registration number of the electronic order assigned by ISPS. This requires clients of the port to sign a contract to obtain access to the ISPS, install respective software, buy a standardised digital signature and be ready to pay a service fee of 48 UAH per container.

218. Legislation that supports the introduction of the Port Community System is contained in: Ministry of Infrastructure as of 18.10.2012 No 622, giving the legal status to electronic shipping documents. CMU Decree as of 07.03.2013 No 553 "On Amending the Resolution of the Cabinet of Ministers as of May 21, 2012 No 451" making commercial operation possible and connection with other ports of Ukraine to the ISPS

The ISPS is continuously developed and adjusted. Hence, in August 2014 a new module was introduced. This module codifies reasons for a certain type of customs control (weighing, scanning or examination) that are linked to respective regulations; in other words the ISPS shows which regulatory act was chosen by a customs officer when assigning a certain type of control. Port authorities claim that introduction of this module led to the decrease in the amount of cases of applying the abovementioned control measures and therefore to the decrease in the stay period of trucks in the port²¹⁹.

While Customs accept electronic declarations they cannot at this time be submitted through the ISPS because of restrictions placed on the exchange of information between the Government and non-Government entities, as the ISPS is privately owned.

According to international expert opinion the transfer to an electronic information base will enable a substantial reduction in time required to process cargo for clearance and raise the ports efficiency to the level of other world leading ports.

Customs was the first organisation to support the initiative of the Ministry of Infrastructure and the Port of Odessa on the implementation of the electronic manifest. One of the main advantages of electronic manifest for customs is the ability to pre-monitor possible risks, which corresponds to the new CC.

Single Window²²⁰

The Global Facilitation Partnership for Transport and Trade (GFPT) a World Bank partner is promoting the use of the single window for cross-border crossings, particularly, but not exclusively, road crossings. Their single window definition states:

“A Single Window is a facility that allows parties involved in international trade and transport to lodge standardized information and documents with a single entry point to fulfil all import, export, and transit-related regulatory requirements. If information is electronic, then individual data elements should only be submitted once.”

The UK Customs defines the single window as:

“A platform to allow traders to submit international trade-import, export or transit-data required by government departments or agencies once only through a single electronic interface thereby fulfilling all the regulatory requirements in respect of each transaction.”

A key feature in the movement and clearance of goods across borders is the speed by which information can be efficiently exchanged. Border control agencies in order to complete their approved functions frequently require the submission of a plethora of documents resulting in those businesses involved in international trade having to lodge them in a variety of different methods, often using disparate unconnected systems (automated or paper based) and/or at different times and separate distant locations. All these variations create a significant barrier to trade facilitation by not only increasing the time needed to complete clearance but also costs. The smooth flow of information thus becomes a major issue to overcome as global economies and trade become ever more connected and inter-linked.

To address such difficulties the single window concept aims to simplify the flow and exchange of information and provide *“a system that allows traders to lodge information with a single body to fulfil all import or export related regulatory requirements”*²²¹ that enhances the efficient exchange of information between trade and governments.

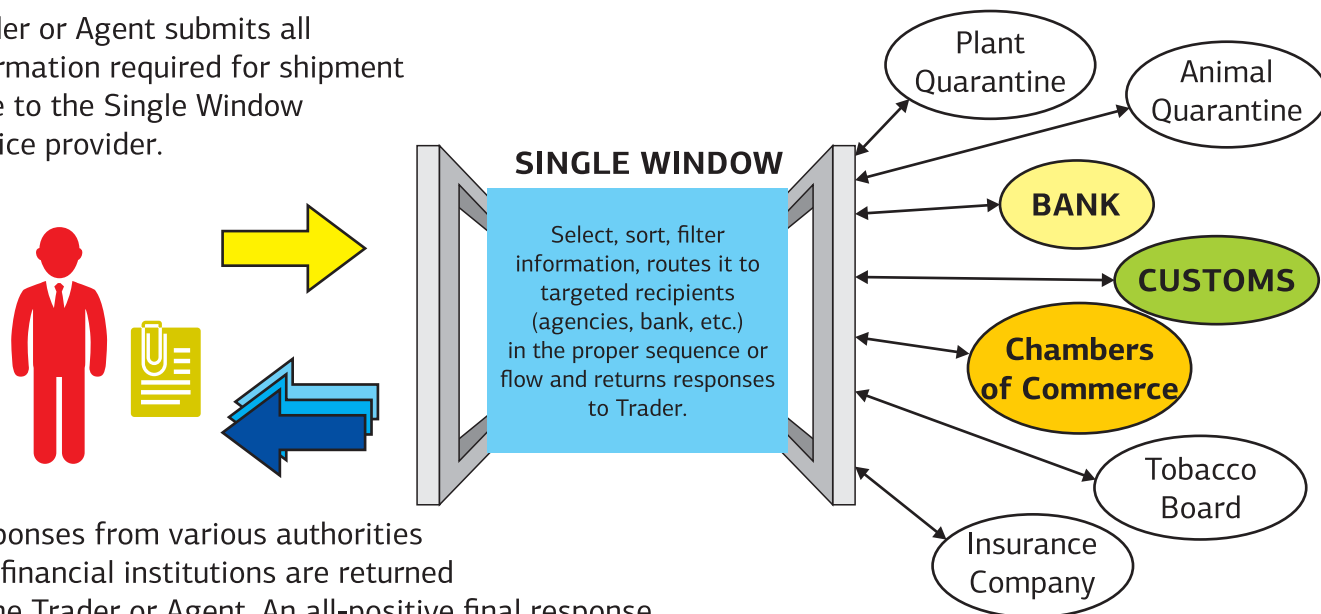
219. <http://www.port.odessa.ua/index.php/ru/press-tsentr/novosti/otrasl/14011-srednij-pokazatel-oformleniya-avtokontejnerovozov-v-odesskom-portu-snizhen-do-rekordno-nizkogo-urovnya>.

220. Trade Facilitation and The Single Window-Key Factors in Establishing Single Windows for Handling Import/Export Procedures and Formalities: United Nations Economic and Social Commission for Western Asia (ESCWA) 10/11/11 refers.

221. United Nations Economic Commission for Europe – The Single Window Concept refers.

The introduction of the single window inevitably requires Government via the border control agencies to undertake considerable rationalization and simplification, as well as greater harmonisation and standardisation of processes, data and documentation. In addition, Government must commit to and adopt e-commerce/e-customs strategies and policies and be prepared in partnership together with business in determining the way forward in a spirit of co-operation and coordination particularly in regard to the interconnection and compatibility of systems.

Trader or Agent submits all information required for shipment once to the Single Window service provider.



Responses from various authorities and financial institutions are returned to the Trader or Agent. An all-positive final response denotes cargo clearance.

Single Windows facilitating trade generally have two functions to fulfil: the first is usually to automate the process of electronically lodging documents in respect of the application for trade licensing, certification and/or approvals normally on behalf of the Technical Inspection Agencies (TIAs) such as: Veterinary, Phyto-sanitary, Sanitary, Ecological, Radiological services etc. The second is to automatically transfer the approved data into the relevant, electronically lodged customs declarations for import, export, transit, trans-shipment or re-export.

These objectives might be achieved by integrating processes or by separate means as each single window can be different ranging from specifically designed and complex end-user computer software systems allowing remote access to example of completing and lodging downloaded forms from a trade website. Nevertheless the single window in both cases connects border control agencies systems to the lodged data and processes it for approval, rejection or further information requests.

In many advanced trading economies, such as the EU, the US and China, the National Single Window concept has not been implemented. Instead, other forms of Single Windows, in particular Port Community Systems and Customs Single Windows are being successfully used to enhance a high-performing logistics sector. However, linking these different platforms into a national or regional network remains a challenge²²².

‘The ultimate national single window includes all of the information exchanged by traders; Government departments (including customs); maritime, air, road, rail and inland waterway transport systems; port and terminal operators; and a range of other participants in the trade process, including freight forwarders, customs brokers, shipping agents, banks and insurance companies.’²²³

222. United Nations Global Trade Facilitation Conference 2011 Connecting International Trade, Single Windows and Supply Chains in the Next Decade, Ten Years of Single Window Implementation Lessons Learned for the Future Discussion Paper Author Jonathan Koh Tat Tsen refers.

223. Trade Facilitation and The Single Window-Key Factors in Establishing Single Windows for Handling Import/Export Procedures and Formalities: United Nations Economic and Social Commission For Western Asia (ESCWA) 10/11/11 refers.

Where they have been implemented they have simplified and automated business procedures, introduced change and brought about collaboration between government agencies and the private sector providing the opportunity for them to improve their trade-facilitation indicators, as illustrated in surveys such as the World Bank's Doing Business - Trading Across Borders, and the World Bank Logistics Performance Index.

Examples of International Best Practice in the application of the Single Window²²⁴

Some examples that demonstrate the importance of careful planning, top-level sponsorship, adequate funding and good governance include Felixstowe, in the **United Kingdom**, for an integrated "provincial" version of a national single window; similar examples exist in **Germany, France, the Netherlands, and Scandinavia**. In virtually every case, maritime ports led the initiative, collaborating with customs authorities.

There are several examples in Asia. **Singapore** is well known. Japan, Korea and Taiwan are in the forefront. Generally, Asian single windows have been led by customs and OGA (Other Government Agencies) before some sort of port and logistics integration. Singapore and Hong Kong started the movement since both had the benefits of open ports, minimum customs intervention and a single trade approvals authority, which demonstrates the advantage of a non-stop shop as a starting point.

There are a number of later starters in Asia. **China** has concentrated on port developments; hence it exhibits "islands" of best port practices. The ASEAN countries are almost all participating in individual single window developments, starting with customs automation, and a single administration document (SAD), both national and ASEAN-wide. There is a long way to go although many ASEAN countries have been working on customs automation for more than ten years and on a local variety of single windows for as many as five years.

Except **Singapore, Indonesia** is leading the pack in the development of a full national single window although they have adopted a strategy of providing full single window facilities to only a small number (just over 100) of authorized economic operators (AEO).

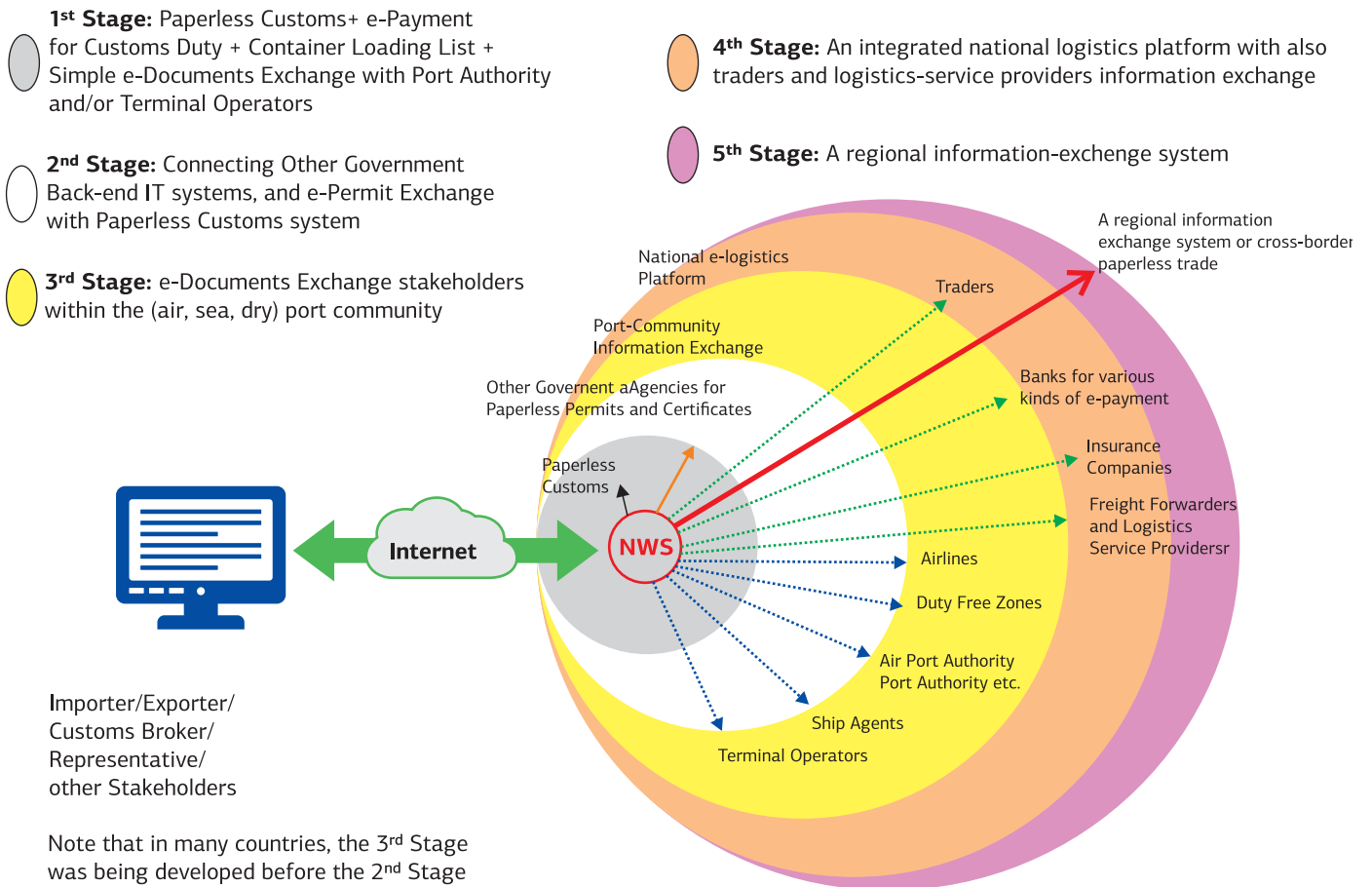
Australia and New Zealand both have mature single windows, integrating customs and OGA. However, port single windows are at an earlier stage of development and full integration with formalities single windows is still some time away.

Good examples of smaller countries single windows are typified by **Mauritius** who has a version of a national single window in operation, as does **Tunisia**.

Some West African countries have opted for a port-based single window as their first priority. With the exception of Ghana, who is the most advanced in the region, all of these port single windows are at a very early, as yet unproven, stage. It also remains to be seen what sort of reactions the local customs authorities might take in response.

224. Ibid.

Figure 4. Roadmap of Single Window²²⁵



Port Community System²²⁶

Most major ports have systems for the exchange of information between clients and national Customs and other authorities. Port Community Systems are a form of **Single Windows for Trade**, and are similar to **Airport Community Systems**.

The European Port Community Systems Association (**EPCSA**) defines a Port Community System as a neutral and open electronic platform enabling intelligent and secure information exchange between public and private stakeholders in order to improve the competitive position of the seaport communities. A Port Community System optimizes, manages and automates logistics-efficient processes through a single submission of data, connecting transport and logistics chains.

225. http://www.unece.org/fileadmin/DAM/trade/Trade_Facilitation_Forum/BkgrdDocs/TenYearsSingleWindow.pdf

226. <http://tfig.unece.org/contents/port-community-systems.htm> refers.

Role of the system

A Port Community System handles electronic communication in ports between the private transport operators (shipping lines, agents, freight forwarders, stevedores, terminals, depots), the private hinterland (pre- and on-carriage by road, rail and inland waterways), the importers and exporters, the port authorities, Customs and other authorities.

Typical services of a Port Community System are:

- information exchange between transport operators in the port and for hinterland connections, the port users, Customs, port and other authorities,
- electronic exchange of Customs declarations and Customs responses, and cargo releases between private parties and Customs,
- electronic handling of all information regarding import and export of containerized, general and bulk cargo for the port community,
- status information and control, tracking and tracing goods through the whole logistics chain,
- processing declarations of dangerous goods with the responsible authorities.

One of the most useful functions of a Port Community System is to automatically derive, from information exchanges between the private port operators, that information needed by Customs, such as the Customs manifest. This information can then be sent to Customs without further manual intervention. Most Port Community Systems have their own internal standards but communicate with other Port Community Systems or Trade Communities using international standards, in particular those developed by **UNECE-UN/CEFACT**. The European Port Community Systems Association (**EPCSA**) has also published a white paper **EPCSA White Paper - Issue Date 15th June 2011-2**, on national maritime Single Windows, which need to be established in the EU, and which follow the IMO recommendations on maritime Single Windows.

The Single Window – Local Solution at the ports of Odessa and Illichiv'sk is a generic logistics single window basis of experience of the modern times largest ports, those of Rotterdam and Yokohama often implemented in port environments involving the sharing of information communication technology systems (ICT) between logistics gateways and terminals. Such systems normally operate in two functional work areas: shipping services and cargo movement.

- Shipping services - a port system handling vessel arrival and departure operations including pilotage, berth allocation, arrival/voyage booking and billing, and the various certificates and ship papers relating to the vessel and crew
- Cargo movement- refers to bulk, general cargo and container handling, labour (stevedores), container storage, physical inspection facilities of BCSs and customs, where necessary, gate management, transport booking and road/rail onwards transport.

When these systems are connected together in a Port Community System, it then becomes possible for all legitimate businesses which move and clear goods within the ports to track and trace their cargo from arrival to departure and vice versa.

Customs, because of its central role is most frequently considered to be the appropriate border agency to receive and coordinate the flow of information through a single entry point particularly concerning the regulatory requirements of other State BCSs.

Figure 5. Single Window Benefits

1. Single Window benefits for the Policymaker

- To raise regional and national awareness of the potential of automated trade facilitation and the single window, and to help facilitate regional collaboration, integration and exchange of regional trade information.

2. Single Window benefits for State BCSs

- More efficient and productive use of resources;
- Enhanced collections of fees, duties and penalties;
- More comprehensive, streamlined and automated business compliance to Government legislative and regulatory requirements, including the terms of international trade treaties;
- Enhanced risk analysis and management and improved security;
- Reductions in corruption and illegal trade activities, enhanced transparency and accountability.

3. Single Window benefits for traders

- Cost reductions through minimized clerical efforts, time taken to reduce and to eliminate delays, and more predictable, reliable and authoritative decisions;
- Faster goods clearance, exception handling and dispute resolution, leading to reduced inventory holding costs;
- Predictable and reliable consignment clearance and availability of advanced goods release information;
- Reduction in face-to-face meetings, greater transparency and reduced opportunities for 'rent-seeking' and corruption.

4. Single Window benefits for the logistics operator

- Faster movement of goods through formalities and trade junctions, leading to better and more productive utilisation of resources;
- Reliable information on timing of goods movement, allowing accurate scheduling, allocation of resources and improved accuracy of information provided to clients;
- More productive and flexible use of human resources;
- The ability to accurately schedule goods collection and discharge times and locations;
- Better end-to-end audits of operation.

Annex IV. Most common types of goods exported from Moldova via Illichiv'sk and Odessa Ports (2012-2013).²²⁷

Tariff chapter	Goods description
08	Nuts; fruits
22	Wine; other fermented beverages; Non-denatured ethyl alcohol of spirits strength less than 80 % vol.; spirits, liqueurs and other alcoholic beverages
23	Residues of starch manufacture and similar residues
24	Various tobacco products
29	Carboxylic acids
45	Articles of natural cork
70	Glass packages
73	Various reservoirs and tanks

Most common types of goods transported from Ukraine to Moldova via Illichiv'sk and Odessa Ports²²⁸ (2012-2013)

Tariff chapter	Goods description
07	Onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled; Dried leguminous vegetables, shelled, whether or not skinned or split
08	Other nuts, fresh or dried, whether or not shelled or peeled
16	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs, Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved
21	Extracts, essences and concentrates, of coffee, tea or maté and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof.
24	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
35	Prepared glues and other prepared adhesives, not elsewhere specified or included; products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg
36	Ferro-cerium and other pyrophoric alloys in all forms; articles of combustible materials
38	Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulphur-treated bands, wicks and candles, and fly-papers)
39	Plastics and articles thereof
40	Rubber and articles thereof
42	Raw hides and skins, leather, fur skins and articles thereof; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silkworm gut)
44	Wood and articles of wood; wood charcoal
46	Plaits and similar products of plaiting materials
48	Paper articles

227. Information provided by Odessa and Illichiv'sk CU Post FOOD Odessa and Illichiv'sk Ports Risk Assessment report 10/12/13 refers.

228. Ibid.

49	Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans
61	Articles of apparel and clothing accessories, knitted or crocheted
62	Articles of apparel and clothing accessories, not knitted or crocheted
63	Other made-up textile articles; sets; worn clothing and worn textile articles; rags
64	Footwear, gaiters and the like; parts of such articles
70	Glass and glassware
73	Articles of iron or steel
82	Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal
83	Miscellaneous articles of base metal
84	Boilers, machinery and mechanical appliances; parts thereof
85	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles
90	Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof
94	Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like; prefabricated buildings
95	Toys, games and sports requisites; parts and accessories thereof
96	Miscellaneous manufactured articles

Annex V. Trade Survey and Responses.

Trade responses were provided in reply to questions posed by a specially drafted EUBAM survey below, designed to elicit an overall impression of the Port and State BCSs roles, responsibilities, functions and operations, viewed from the perspective of the business end-user.

The Association of International Freight Forwarders of Ukraine (AIFFU) FIATA Association Member and the Container Line Association of Ukraine undertook to approach their members and also placed the survey on-line. Responses in the survey are a representative sample of the opinions expressed by members of the trade associations that took part and are not those of EUBAM.

Port Clearance Procedures.	Trade Responses
<p>1. Based on your experience, could you please provide an overall description of the ease or difficulty encountered when clearing consignments at the Port in respect of; Import, Transit and Export consignments?</p> <p>e.g. Where do delays occur and what do you consider to be the main reasons? In relation to Customs what do you perceive to be the are major issues that cause delay?</p> <p>e.g. Is it problems related to; Valuation, Classification, Origin, Import/ Export or Transit Regimes, Processing of Carnets, excessive physical examination etc. or maybe a lack of simplified procedures?</p>	<ol style="list-style-type: none"> 1. Delays are caused by the so-called “endorsement procedure”, i.e. when an operator is granted permission, issued by Customs, to enter the port. 2. Delays caused by the performance by Customs of additional procedures: weighing, physical examination & scanning. The majority of additional procedures are assigned unlawfully; they are a part of corruption schemes existing at the ports. 3. Excessive overregulation of the admission process that makes the admission of cargo across the border more difficult than its release for free circulation. 4. Lack of coordination between services and duplication of functions. 5. Corruption - pressure by posing a threat of conducting cost-based (both in terms of value and time) control procedures. 6. Absence of actual control over time and order in customs clearance.
<p>2. Do you regularly experience delays at the port in relation to the duplication of procedures undertaken by State BCSs including: Customs, Border Guard, Veterinary, Phyto-sanitary, Sanitary-Epidemiological & Ecological?</p> <p>If so please explain?</p>	<ol style="list-style-type: none"> 1. On a regular basis, in many cases when cargo scanning procedure for customs purposes is completed, additional physical examinations are assigned. 2. Duplication of procedures is the main cause of delays. Complicated clearance process. Services have adopted the role of “the watchman” by undertaking total control.

<p>3. Do you regularly experience delays at the port in relation to the organization of work flows? e.g. Repeated requests for the movements of containers to and from the stack by different border services?</p> <p>Or</p> <p>The need to submit documents in different remote locations?</p>	<p>1. Yes, on a regular basis particularly during weight controls the freight forwarder should:</p> <ol style="list-style-type: none"> 1. submit a request for weighing; 2. obtain the results of the weight control 3. once the control has been completed; 4. obtain the invoice issued in relation to weight control; 5. submit stamped receipts confirming weight control has been completed to the terminal where clearance is carried out. <p>2. The main problem with the BCPs operating 24/7 is the absence of a possibility to conduct the full documentary clearance procedure. i.e. to process documents outside conditioned working hours 8-17 (20); it is also impossible to start clearance process on Saturday/Sunday.</p>
<p>4. Do you regularly experience delays at the port in relation to a lack of facilities, infrastructure or equipment? (see also separate question later).</p> <p>e.g. lack of / or non-functioning of non-intrusive physical examination equipment (Scanners) used by Customs?</p>	<p>1. Yes on a regular basis. It is impossible for Customs to conduct the scanning procedures when 100% of all containers are selected since the capacity of each scanner is only up to 100 containers per day, The port releases 400-500 containers per day for clearance. This causes a large backlog and bottle-neck.</p> <p>2. Terminals are well-equipped; however, Radiological controls should be conducted automatically which would make a significant improvement to the time needed.</p>
<p>5. Do you regularly experience delays at the port in relation to the methods employed by the Port Authority, Customs, and State BCSs for the payment of duties and fees?</p>	<p>Yes, problems are caused by the need to make pre-payment for the use of infrastructure i.e. weighbridge at Odessa Port & Euroterminal. The clearance process is blocked until a prepayment has been received.</p>
<p>6. Do you regularly experience delays at the port in relation to the routine or repeated re-weighing of vehicles / goods / containers?</p>	<p>Yes, regularly.</p>
<p>7. Is it your opinion that clearance procedures have become more transparent and predictable in the last 3 years?</p> <p>Please elaborate?</p>	<ol style="list-style-type: none"> 1. No, procedures have not become more transparent. 2. Yes, a new CC has brought positive changes.
<p>8. Are you aware of any discernible differences in procedures with negative impact carried out by the State BCSs at the ports?</p>	<ol style="list-style-type: none"> 1. No, excessive weighing has had a negative impact, despite the fact that no procedure or instructions exist, Customs insist on weighting consignments. 2. Excessive controls without any result in the form of detected violations! Delays are often due to discrepancies found in documents verbally communicated by Customs, without processing of official documents and without justifiable cause.

<p>9. Has the submission of preliminary notification /declarations PN/PD resulted in any differences in the needed for Customs clearance procedures for goods in transit?</p>	<p>No.</p>
<p>10. What effect if any have the introduction of simplified procedures had on Customs clearance procedures? Please elaborate?</p> <p>What is general feeling of the trade towards the implementation of simplified procedures (SPs) and the application process needed to obtain authorization?</p> <p>Do you fully understand what the requirements are? Do you feel that the benefits in the longer term are worth the effort and resources necessary to apply?</p>	<p>No noticeable effect or simplification. Efforts are aimed in the direction opposite to improvements.</p> <p>No simplified procedures are in operation.</p>
<p>11. Is it your opinion that the submission of electronic declarations has speeded-up the clearance process? Why? What improvements to the current system would you like to see implemented?</p> <p>Pre-arrival clearance, Summary Declarations or the introduction of a Post Clearance Audit 'Blue' Channel that allows immediate release but checking by Customs at importers premises later of commercial documents and accounts?</p>	<p>Yes, the submission of electronic declarations has made the process quicker, but it is not related to ports and doesn't influence the admission procedure. Post-clearance audit is not functioning, 'Blue' Channel doesn't exist, and AEO status is not implemented.</p>
<p>12. Are there any changes that would you suggest to the current method of paying Customs duties or other port /border agency fees in order to speed up the clearance process?</p> <p>Please elaborate current system and changes you would like to see made?</p>	<p>1. Minimum uniform tariff for a customs payment should be introduced despite the value of cargo in containers. E.g., 40-foot high container – not less than 5 thousand USD, 20-foot high container- 3 thousand USD. The possibility to undergo cargo clearance in line with the simplified procedure is needed. The state should only monitor the number of containers; than it is possible to plan income which you receive from import in containers transported by sea.</p> <p>2. Single tax should be either abolished or levied on line agents during the vessel dockage. To review all the charges/services at the ports and to abolish the major part of them. The value of additional "infrastructure" fees is similar to the value of services in handling terminals.</p>

<p>13. Do you maintain any time keeping records which provide a benchmark with which to monitor the time it takes to clear your consignments through the port?</p> <p>Regardless of any record keeping, have you noticed any improvements or deterioration in these times over the last 3 years?</p> <p>To what would you attribute these changes? Please elaborate?</p>	<p>There hasn't been any noticeable improvement. Timing depends on the control procedures which are obligatory. There are improvements but they are connected with the decrease in the general levels of cargo through the ports.</p>
<p>14. Do you participate in any client satisfaction surveys or other methods of providing feedback conducted by Customs or other State BCSs in terms of evaluating their effectiveness and efficiency or overall performance at the Port?</p> <p>Would you welcome this type of initiative in order to voice your opinions and concerns?</p>	<p>Neither the port authority or Customs are interested in such activity. Surveys are not conducted. They should be conducted on a regular basis.</p> <p>Yes.</p>
<p>15. Are you aware of any strategy of co-operation on the part of the Border Services that aim to avoid duplication and facilitate trade?</p>	<p>Yes, this is related to the introduction of the ISPS. Unfortunately, this innovation has the possibility for corruption as it fully depends on the private company PPL-33-35 Results are not so good thus far.</p>
<p>Out-Reach Programmes</p>	
<p>1. Are you aware of any Out-Reach programs to the Trade by Customs or other State BCSs which seek to encourage co-operation and coordination in the form of Trade Partnerships? Please describe.</p>	<p>No. Not aware.</p> <p>Business associations (European Business Association, American Chamber of Commerce in the Kyrgyz Republic (AmCham), Association of International Freight Forwarders), Public Council etc.</p>
<p>2. Do you or other members of the Trading community meet regularly with Customs or other State BCSs or Port Authority at the Central, Regional and /or Local levels in order to discuss national transport and logistics problems related to clearance of consignments at the Port?</p> <p>Please elaborate?</p>	<p>Yes, on a regular basis. Meetings are not productive. Customs just tell us "fairy tales" about their hard work and provide excuses rather than solutions.</p>

<p>3. Are you aware of the establishment of any local Port working groups which include regular operators or users of the Port and the State BCSs where common issues are discussed? e.g. Working hours and workflows, which seek to avoid bottlenecks and delays?</p> <p>Would this be an initiative that you would support?</p>	<p>Yes, and we support.</p> <p>Yes</p>
<p>4. A service oriented approach is viewed by the EU and many other countries as the path to be take by Customs and other State BCSs in respect of trade facilitation. It moves the State services and the business community to a place where co-operation, collaboration and the exchange of information not only benefits and facilitates trade, but at the same time helps to protect society and create safe and secure borders.</p> <p>Do you detect any such attitudinal changes on behalf of the Customs or the other agencies in your dealings with them at the Port? Please elaborate?</p>	<p>This approach is only verbally declared at the highest level (Minister/deputies). Not carried out at the local level.</p>
<p>Information and Communication</p>	
<p>1.Do you find it easy to access relevant Trade information published by Customs and related to changes in legislation, policy & procedures that have the potential to impact on the efficiency and effectiveness of your business?</p> <p>When Customs publish this type of information is it normally, from your experience, in advance of the changes being implemented or does it lag behind? Please elaborate?</p>	<p>It's difficult to obtain access. Customs websites are confusing, not always timely updated, overloaded with instructions, regulations and information which is simply impossible for business to understand.</p>
<p>2. Do you as a company or as a business / association / community consider that Customs consult sufficiently with you when changes to legislation, policy or procedures are being proposed?</p> <p>To what extent do you consider that your business needs are taken into account by Customs?</p>	<p>We don't think so. Our business needs aren't taken into account at all.</p> <p>Only at the highest level. Local Customs is not able to provide a qualitative consultation. There is lack of will and responsibility for decision making in order to introduce changes.</p>
<p>3.Do you fear Customs reprisals if you voice concerns or opinions about the quality of clearance procedures or standards implemented at the Port?</p>	<p>We are not afraid anymore. Experienced it in the past.</p>

Supply Chain Security Initiatives	
<p>1. Do you have any clients who are accredited members of the Ukrainian AEO scheme? Do they, in your experience, gain any benefit from their AEO status?</p> <p>Are their consignments still subjected to regular / excessive intrusive physical examination methods?</p>	<p>No. AEO has not yet been implemented. There are no companies in Ukraine which are granted AEO status.</p>
Infrastructure & Equipment	
<p>1. Do you consider that any of the delays that you experience at the border are caused by the lack of suitable infrastructure and equipment? e.g.</p> <ul style="list-style-type: none"> • Lack of adequate temperature controlled storage facilities for perishable goods? • Clean and dry warehousing space for unloading of consignments? • Areas for the safe keeping and humane treatment of animals subject to sampling or examination? • Quarantine facilities? • Secure and safe ramps / gantries to enable the tallying of live animals in 2-3 tier trucks? • Lack of basic examination tools and equipment by the Border Agencies? • Any other I&E issues? 	<p>No, only the Radiological control.</p>
<p>2. What are the advantages to your business of the implementation of the Single Window incorporating all State BCSs and the business community? Please describe?</p>	<p>It became more expensive and a bit faster. This project hasn't been implemented yet.</p>
<p>3. Do you believe that a lack of IT equipment and compatibility issues affecting the ability of the State BCSs to rapidly share information with their respective HQs, between each other and where appropriate, internationally or cross border, significantly adds time to clearance procedures at the port?</p>	<p>Yes, we believe so. Program module of the port community system is owned by a private company and I think that a state has no right to provide all the information about container cargoes, types of control to a private company! Substantial impact.</p>

Annex VI. Customs clearance control procedures Transited goods (external or inland) SFS Response.

Actions / Events of the Customs Clearance Procedure

1. *Goods in Transit – for clearance in-land or for transit through the territory of Ukraine to a country outside the territory of Ukraine.*

Can you please provide a full description of the procedures and sequence of events that enable goods in transit (either for internal or external transit) to be processed at the port?

Steps in this process should include procedures that incorporate the submission and processing of preliminary notifications / preliminary declarations through to the release of the consignment from Customs control at the port.

Please describe any additional procedures that may apply or are implemented for goods that present an increased risk in Transit?

Comments

At the Illichivsk Customs Post customs control and clearance are performed under transit procedure among others (pass-through or internal), performed according to current legislation in the area of customs after the declarant, freight forwarder or carrier has lodged a customs declaration (or TIR carnet) supplemented by necessary accompanying documents and also after having presented goods for customs control.

Allowing goods to the territory of Ukraine under transit procedure requires customs officers to apply provisions of the CC, Law of Ukraine on Transit dated 20.10.1999 № 1172-XIV, Decree of the Ministry of Finance dated 09.10.2012 № 1066 on Approving the Procedure of customs formalities performance for transit movements and other provisions.

When designating the list of customs procedures and types of control toward goods that cross the border, in particular, the need for customs inspection, according to p. 5 art. 338 of the CC of Ukraine, p. 14 of the Exhaustive list of grounds for inspection (pre-inspection) of goods, vehicles of commercial use, to be performed by Customs of Ukraine, adopted by a Decree of the Cabinet of Ministers dated 23.05.2012 № 467, as regards joint customs inspections public officials should consider leads and addresses from law-enforcement agencies.

As to weighing and scanning of goods at customs control we would like to communicate the following. Part one of art. 318 of the CC of Ukraine № 4495-VI dated 13.03.2012 (hereafter — CCU) stipulates that all goods and vehicles of commercial use that cross the customs border of Ukraine should be subjected to customs control.

Art. 336 of the CCU stipulates that one of the types of customs control is a document check, as well as a check of information that according to art. 335 of the current Code, is presented to State Fiscal Service when goods and vehicles of commercial use are moved across the customs border of Ukraine, thereat art. 335 of the CCU stipulate presentation to State Fiscal Service of information on the weight of goods. Hence weighing of goods (incl. containerized goods) for the purposes of checking of information and documents on the weight of goods moved across the customs border of Ukraine is in exact accordance with the abovementioned provision of the CCU.

This apart, according to art. 324 of the CCU in order to curtail time of customs control and increase its effectiveness State Fiscal Service may resort to technical and special means. Therefore, when performing customs control and in order to ascertain the factual weight of goods and vehicles moved across the customs border of Ukraine, such technical means as weighing scales may be applied.

Weighing may be performed during the customs inspection as well. Part one of art. 338 of the CCU stipulates that inspection of goods and vehicles of commercial use presented to customs (for purposes including recalculation and weighing) is performed in the shortest time after a respective decision has been taken.

In accordance with art. 138 of the “Customs Blueprints” of the CIS countries adopted by the Council of CIS on 10.02.1995: at the request of a customs officer, a person that moves goods across the customs border, a carrier, a warehouse owner and (or) other person with powers towards the goods and vehicles, are obliged to perform transportation, weighing or other quantity-establishing action, uploading, offloading, reloading, correction of the damaged packaging, unpacking, packing or repacking of goods and vehicles that are subject to customs clearance, as well as opening of premises and containers where such goods and vehicles may be located.

Summing it all up, briefly the stages of customs control and customs clearance of goods under the transit procedure at the Illichivsk customs post are the following after the ship with the goods has entered the port and goods were offloaded to the warehouses, could be described as follows:

- Presenting by a freight-forwarding company to the Customs at the Illichivsk port of the order supplemented by a set if necessary documents;
- Identifying necessary types of customs control after checking availability of leads or alerts from the risk analysis system;
- Endorsing the order after having checked the presented documents;
- Performance of customs control — weighing, scanning, sampling, customs inspection — if necessary;
- Granting crossing the customs border of Ukraine: check and completion of paperwork, input of data to the customs software database “Inspector-2006”, check and levy a customs guarantee.

Actions / Events of the Customs Clearance Procedure

2. *Is it standard practice during the Custom clearance process for the BCSs to regularly / routinely make inspections, physical examinations and/or take samples?*

If yes, are these procedures normally jointly conducted with Customs?

Please indicate at which point in the Customs clearance procedure these inspections/ physical examinations and /or sampling normally take place?

Comments

Since after entering the port and offloading to the warehouses the goods are under customs control — any formality with goods must be performed subject to agreement and in the presence of customs officers.

On the necessity of performing customs inspections: in accordance with par. 5 art. 338 of the CCU, p. 14 of the Exhaustive list of grounds for inspection (re-inspection) of goods, vehicles of commercial use by Ukrainian Customs, adopted by a Decree of the Cabinet of Ministers dated 23.05.2012 № 467, as regards joint customs inspections public officials should consider leads and addresses from law-enforcement agencies.

Customs inspections and sampling (if necessary) are performed after the declarant, freight forwarder and carrier have lodged a customs declaration (or TIR carnet) supplemented by relevant accompanying documents to the Customs, and after the goods themselves were presented for inspection.

Annex VII. Customs Clearance Control Processes Goods for Free Circulation SFS Responses.

Actions / Events of the Customs Clearance Procedure

1. Goods for Free Circulation and under Customs.

Can you please provide a full description of the procedures and sequence of events that take place after the point at which the Customs declaration is submitted?

As an example this might include such steps as:

- electronic submission/registration of the declaration,
- registration and submission of hard copy documents,
- detailed documentary checks (Yellow Channel),
- additional checks to confirm, value, origin, tariff classification etc.,
- additional processes that may apply to the implementation of simplified procedures or customs regimes e.g. Inward Processing, Temporary Importation, Processing under Customs Control, release for warehousing etc,
- documentary checks carried out on behalf of other state organisations e.g. Certificates of Conformity,
- selection of goods /declaration for physical examination, scanning and/or weighing (Red Channel),
- examination procedures and processes,
- the point at which declarations are re-routed from the Green lane to the Yellow or Red lanes and,
- payment of duties (either manually or electronically)
- release of the goods from Customs control at the port.

Customs

In order to determine the sequence of actions during customs control and customs clearance of goods to be admitted into the customs territory in containers at the international marine border crossing point "Odessa sea trade port", officials of the Customs post "Odessa-port" act in accordance with the Customs Code of Ukraine (UACC), Law of Ukraine dd.20.10.99 № 1172-XIV "On transit of goods", Resolution of the Cabinet of Ministers of Ukraine dd. 05.10.11 № 1030 "Some issues of preliminary documentary control at the checkpoints across the state border of Ukraine", Resolution of the Cabinet of Ministers of Ukraine dd. 24.10.02 №1569 "On approval of the procedure of collection of single fee at border check points", Typical technological scheme of admission of road, water, rail and air transport means of carriers and goods, moved by them, and the Resolution of the Cabinet of Ministers of Ukraine dd. 21.05.12 №451 "Issues of admission of persons, road, water, rail and air transport means of carriers and goods moved by them", the procedure of goods movement at the checkpoints across the state border (BCP) that are situated on the territory of sea ports of Ukraine, during container transportation by direct-mixed communication, approved by the Resolution of the Cabinet of Ministers of Ukraine dd. 02.04.09 №320, Instructions on organization of customs control and customs clearance of vessels and goods moved by them, approved by the Order of the UASCS as of 17.09.04 №678, registered in the Ministry of Justice of Ukraine on 08.10.04 №1286/9885 with amendments and additions (hereinafter - Instruction №678), Order of the Ministry of Finance dd.09.10.2012 № 1066 "On approval of the Procedure for accomplishment of customs formalities when implementing transit movements", Order of the Ministry of Finance from 03.12.2012 № 1266 "On Approval of Procedure for Use of Electronic Locks with GPS-GSM Tracking Function" and other regulatory acts.

According to p. 2 of the aforementioned Resolution of the Cabinet of Ministers of Ukraine from 02.04.09 №320, a captain of a ship (a representative of the ship owner, a marine agent) addresses in advance the SES and port authorities, using available communication means, and submits respective information. The information is submitted to border surveillance units, customs authorities and

other control agencies. Based on the decision of these agencies “free practice” is applied to a vessel. Preliminary analysis of the information and documents required to apply “free practice” to a vessel, its transfer and exchange with control agencies, port authorities, shipping agency (marine agent) can be carried out by means of electronic communication in compliance with the legislation on electronic document flow. In this case a paper-based system is not used. A list of documents for goods and vehicles to be submitted to control agencies in electronic form shall be determined in accordance with the Convention on facilitation of international maritime traffic as of 1965 and other relevant legislation. In case of remarks of supervisory bodies on the application of free practice, a control of a vessel is performed by a respective commission according to the standard procedure.

The aforementioned information is submitted to the Customs and other control agencies in electronic form in compliance with the legislation on electronic document flow by a shipping agency (a shipping agent) not later than 1 day (or at the moment of vessel’s departure from a nearest port if the sea passage lasts less than one day) prior to the arrival of the vessel at the port of destination at the customs territory of Ukraine.

Customs clearance of goods at the sea trade port starts prior to the arrival of a vehicle meant for transportation of such goods and without submission of data on the specified vehicle to the Customs. Types of controls are determined by the customs authorities according to the legislation.

If goods are moved in transit through the territory of Ukraine, at the border crossing points which are located at the territory of sea trade ports, minimum number of customs procedures, needed to ensure proper control over delivery of transit goods envisaged by the legislation, is performed.

In case of transit goods (excluding excisable ones), which arrive and are unloaded by the sea or river transport, and are stored within one BCP or customs control zone at the territory of the sea trade port, a cargo customs declaration (CCD) is not produced. In this case measures which guarantee the delivery are not applied in regard to goods under customs control.

Customs procedures in relation to goods (examination, weighing) are carried out once at the initiative of a control agency on the basis of information from the risk analysis and management automated system during customs control and customs clearance of goods, using the CCD.

According to the Order of the Ministry of Finance dd. 09.10.2012 № 1066 “On approval of the Procedure for accomplishment of customs formalities when implementing transit movings” a document on goods movement control (DGMC) is used in paper or electronic form to perform control over movement of goods, transport means for commercial use brought into the customs territory of Ukraine (including for transit purposes) by legal or natural entities, irrespective of the mode of transport. The document on goods movement control in paper form is accompanied by its electronic copy.

Submission of the DGMC is not obligatory if the release of goods brought into the customs territory of Ukraine to be placed under respective customs regime will be made directly at the checkpoint across the state border of Ukraine.

After processing of the document on goods movement control at the Customs, its electronic copy is automatically placed under control within the informational software package of the Unified automated information system (UAIS) since its input.

In order to prevent delays of commercial vehicles at the checkpoint across the state border of Ukraine, a declarant or his authorized person who submitted DGMC for clearance, can inform a carrier of these goods in advance on a number and date, when the DGMC has been cleared, which are indicated in the right bottom corner on one of the consignment notes on goods moved.

When moving goods, transport means for commercial use across the customs border of Ukraine a declarant, a person authorized by him or a carrier submits documents and information envisaged by Article 335 of the UACC to the official of the Customs office of departure at the BCP.

Movement of goods, transport means for commercial use across the customs border of Ukraine is carried out after the official of the customs post has checked the availability of DGMC electronic copy in the UAIS. The verification is performed by sending a request to the UAIS, indicating a reference number of the DGMC, and checking whether the information corresponds to the one contained in submitted shipping documents (consignment notes), data declared in the DGMC electronic copy.

Having verified the DGMC electronic copy, available in the UAIS, an official of the customs post enters the following data into the UAIS in relation to:

- transport mean for commercial use (a name and/or a registration number is indicated according to the vehicle registration documents);
- carrier (name, address) and information about a person which accepts the goods declared for transportation (surname and initials, passport series and number, citizenship). In case of railway transportation the name of the railway which accepts goods for transportation is indicated);
- goods moved (quantity of goods which are actually transported in this consignment, indicated in base units of measurement);
- particulars of the consignment note and (if available) invoice or other document in which the value of moved goods is indicated;
- identification features of customs security tools, devices and / or other means of identification that are used by the customs authority of departure;
- page number, TIR Carnet series and reference number in case of transportation under conditions of the Customs Convention on International Transport of Goods Under Cover of TIR Carnets (TIR Convention), 1975 (hereinafter - TIR Convention);
- in case of goods movement under TIR Convention – an identification number of the TIR carnet holder, which is assigned to the holder by the guaranteeing association in accordance with the TIR Convention and is indicated in box 3 of the TIR carnet cover page and box 4 of the detached sheets;
- personal number of customs security tools of the customs post official who performed customs control of these goods, means of transport for commercial use.
- Upon completion of the customs control procedures and verification of the entered data indicated in p. 3.7 of this Chapter, an official of the customs post immediately proceeds as follows:
- enters data on admission into UAIS (date and time of the border crossing);
- prints out 3 copies of DGMC on the basis of entered information, using capacities of UAIS informational software packages.

In case of railway transportation an official of the border transfer station puts a date stamp of the dispatching station on shipping documents and each paper copy of the extract from the DGMC electronic copy, proving joint obligations of the railway to deliver goods (cargoes) to the customs of destination and compliance with the customs regulations.

Completion of customs formalities at the customs post is carried out by affixing individual seals of customs security tools on copies of submitted shipping documents (consignment notes) and all the copies of the extracts from the DGMC electronic copy.

One copy of the extract from the DGMC electronic copy (a copy of the customs office of departure) and a paper copy of the consignment note, if available, an invoice or other document which specifies the value of goods or their copies are retained by the structural unit of the customs office of departure for maintaining records.

Two other copies of the extract from the DGMC electronic copy (copies of the carrier and customs office of departure) and consignment notes (shipping documents) are given to the carrier to be delivered together with the goods to the customs of destination.

Dully processed order and disbursement voucher with necessary marks are the basis for bringing goods outside the port territory. However, the following peculiarities among others of undergoing customs control and customs clearance procedures of admitting goods in containers to the customs territory of Ukraine in Odessa sea trade port should be noted. On the 3rd of April 2013 Odessa branch of the State Enterprise Ukrainian Sea Ports Authority» in cooperation with the South Customs of the Ministry of Revenue and Duties started the implementation of the Pilot Project “Single Window-Local Solution” at “Odessa sea trade port” BCP thus introducing the use of the Port community system which operated in testing mode till 02.09.2013. Thus, an electronic order, which combines all the operators involved in the customs clearance of goods in containers moved across the customs border of Ukraine at “Odessa sea trade port” BCP, was submitted to the customs clearance unit within the system along with the hard copy of this order.

Upon entering the information into the port community system by a freight forwarding agency, it becomes available for the official of the customs clearance unit, and officials of the South Customs of the Ministry of Revenue and Duties of Ukraine perform risk assessment control procedure without submission of documents in paper form.

Since 02.09.2013 according to the Temporary procedure the clearance of loaded containers for exit by road from the territory of Odessa sea trade port by means of port community system is carried out only on the basis of the electronic order and in line with the established electronic queuing system.

Since 04.07.2013 the use of electronic locks with GPS - GSM navigation function were introduced – reusable information and telecommunication devices, which are used to ensure the identification of goods during their movement on the customs territory of Ukraine according to the provisions of Article 326 of the UACC and constitute an integral part of the transit movings protection system.

According to the Procedure of use of electronic locks with GPS - GSM navigation function, approved by the Order of the Ministry of Finance of Ukraine from 03.12.2012 № 1266, registered in the Ministry of Justice of Ukraine on 13.12.2012 № 2110/22422, the implementation of procedures of customs control and customs clearance aimed at admission of cargos in customs regime “transit” to the customs territory of Ukraine requires additional actions of the customs officials. To fulfil the requirements of p.2 of the Order of the UAMoRD dd. 20.09.2013 № 319-p “On return of electronic locks” from 24.09.2013 the use of electronic locks with GPS - GSM navigation function is ensured during the customs clearance of all the transit movements of goods as well as during the internal transit movements of goods destined to UAMoRD Kiev interregional customs and UAMoRD Kiev Customs that begin in the South Customs AoR and is carried out by road, according to the provisions of the Procedure on use of electronic locks with GPS - GSM navigation function, approved by the Order of the Ministry of Finance of Ukraine from 03.12.2012 №1266.

In line with the requirements of the Order of the UAMoRD dd. 02.08.2013 № 212-p “On implementation of operational measures” aimed at ensuring compliance with the legislation on national customs practice, strengthening control over the movement of goods through the sea trade ports with the use of technical means of customs control, detection and elimination of illegal schemes of goods delivery to Ukraine, regarding cargos moved across the customs border of Ukraine in the area of responsibility of “Odessa Sea Trade Port” BCP and “Euroterminal” freight customs terminal, such type of control as “the use of X-ray equipment”, using mobile scanning systems and other technical means, is envisaged.

Customs examination of transport means with the use of mobile scanning x-ray systems «Rapiscan Eagle M4507» is carried out in accordance with “Procedure of customs examination of goods and means of transport with the use of mobile scanning x-ray system Eagle M4507 at the checkpoints across the state border”, approved by the Order of the UASCS dd. 27.07.09 №692 and registered in the Ministry of Justice on 28.08.09 №809/16825.

Actions / Events of the Customs Clearance Procedure

2. *Is it common practice during the Customs clearance process for the border control services to regularly/ routinely make inspections, physical examinations and/or take samples?*

If yes, are these procedures normally jointly conducted with Customs?

Please indicate at which point in the Customs clearance procedure these inspections/ physical examinations and/or sampling normally take place?

Customs

On the basis of Articles 203, 325 of the UACC upon written request of the holder of goods or a person authorized by him, with the authorization of the revenue and duties authority, loading, unloading, reloading, removal of damaged packaging, unpacking, packing, repacking, weighing and identification of other significant features of goods under customs control, sampling and probing of such goods, a change of identification signs or markings on those goods or their packaging, means of transport for commercial use and replacement of transport means for commercial use can be carried out. Such operations shall be carried out at the expense of the owner of goods moved across the customs border of Ukraine or his authorized person. In case of refusal to grant permission to perform these operations the revenue and duties authority shall immediately notify in writing the requesting person of the reasons and grounds for refusal.

According to Article 356 of the UACC probing (sampling) of goods under customs supervision in the area of “Odessa sea trade port” BCP, by officials of other public authorities as well as by declarants or persons authorized by them shall be carried out jointly with the relevant officials of the customs post. Such procedures are conducted in line with the current legal requirements, depending on the type of goods, notifications available etc., in relation to cargo under customs supervision at any stage while it stays in the BCP area.

Annex VIII. Questionnaire to State Border Control Services (BCSs) & BCS Responses.

1. *Is it common practice that all documentary checks, inspection, physical examination and /or sampling controls are normally completed prior to the submission of the Customs declaration?*

Sanitary-Epidemiological Service (SES). All the procedures related to documentary and visual inspection (within the framework of standard sanitary-epidemiological control), are completed prior to the submission of the Customs declaration.

Veterinary Service (VS). In accordance with the p. 8 of Article 319 of the CC of Ukraine, customs supervision and customs clearance of goods that are moved across the customs border of Ukraine shall end only upon completion of controls, established by the laws of Ukraine for each item.

Phyto-sanitary Service (PS). No.

Ecological Service (ES). No.

2. *After documentary checks have been completed could you please describe the method by which goods selected for inspection, physical examination and/or sampling are presented to your Service and the location/s where these procedures normally take place in the port?*

Also please specify if it is common practice to conduct physical examination and sampling procedures jointly with other State BCSs e.g. Customs?

Sanitary-Epidemiological Service (SES). Sampling is conducted by SES specialists by applying the “envelope” method, samples are taken from different layers and package. Selected samples form an average sample which is sent for exam. Sampling is conducted at the territory of «HPC Ukraina» and “Brooklyn-Kiev port” container terminals, in rooms of Odessa port cold-storage warehouse, at the territory of Customs clearance unit №3 (Odariia) Visual physical examination and sampling is only conducted in the presence of representatives of other control agencies and Customs.

Veterinary Service (VS). The order of implementing these procedures is regulated by Article 87 of the Law of Ukraine “On Veterinary Medicine”, Article 44 of the Law of Ukraine “On Quality and Safety of Food Products“, Regulation of the Cabinet of Ministers of Ukraine №833 dd. 14.06.2002. Place of conduction – terminals, ramps, port physical examination sites, customs licensed warehouses and port cold-storage warehouses. Physical examination of cargo subjected to control and sampling of products are always carried out with the participation of Customs service representatives because cargos are under customs control.

Phyto-sanitary Service (PS). Sampling of goods which are subject to control is carried out according to a method and in quantity envisaged by the National Standards of Ukraine 3355-96 “Vegetable agricultural products. Sampling methods applied during the quarantine inspection and expertise” and in line with the Procedure of conducting a check, physical examination, analysis, fumigation (disinfection) and inspection (issuance of Phyto-sanitary and quarantine certificates) of goods which to be subjected to plant quarantine control, approved by the Decree of the Cabinet of Ministers of Ukraine as of 12.05.2007 #705 “On some issues of implementing the Law of Ukraine “On Plant Quarantine” and “Phyto-sanitary rules on delivery from abroad, transportation within the state, transit, export and the procedure of processing and realization of materials subject to quarantine”, approved by the Order of the Ministry of Agrarian Policy of Ukraine dd. 23.08.2005 #414. A state Phyto-sanitary inspector carries out a physical examination and sampling directly at places of storage (placement) of such materials (port storage facilities - warehouses, silos, customs terminals, export or import parking lots, barges etc.). Samples are delivered to Odessa Regional Phyto-sanitary Laboratory. Inspection of import cargoes, which contain goods, subject to Phyto-sanitary control, is

only conducted in the presence of a cargo owner representative and a customs officer, and, in most cases, in the presence of other control agencies. Export cargoes which contain goods, subject to Phyto-sanitary control, are mainly inspected in the presence of a cargo owner representative only.

Ecological Service (ES). When needed, in line with the procedure established by the customs authorities.

3. Is it common practice to regularly/routinely inspect, physically examine and/or sample goods in transit to perform controls?

If yes, please explain the reasons for doing so and the sequence of actions and events that enable these procedures to take place?

Sanitary-Epidemiological Service (SES). SES specialists do not conduct sanitary-epidemiological control of goods in transit.

Veterinary Service (VS). Only documentary veterinary-sanitary control of transit cargo is carried out.

Phyto-sanitary Service (PS). P. 8 of the Procedure of conducting preliminary documentary control at BCPs across the state border of Ukraine (approved by the Decree of the Cabinet of Ministers of Ukraine dd. October 5, 2011 № 1030) stipulates the following: "Admission of transit goods at the BCP across the state border of Ukraine, a point of export outside the customs territory of Ukraine, which have undergone preliminary documentary control at the BCP - a point of importation into the customs territory of Ukraine, is carried out by customs officials on the basis of results of preliminary documentary control carried out at the point of importation into the customs territory of Ukraine without involvement of control agencies' officials. A list of goods which are subject to state control (including preliminary documentary control), in case of their movement across the customs border of Ukraine (in accordance with the Annex to the Decree of the Cabinet of Ministers of Ukraine dd. 5.11.2011 #1031 (amended by the Decree of the Cabinet of Ministers of Ukraine as of 21.05.2012 # 452) stipulates that all goods in transit with products to be subjected to plant quarantine control at the BCP across the customs border of Ukraine shall undergo Phyto-sanitary control in the form of preliminary documentary control, apart from goods of the nomenclature group codes 0601, 0602 and 0603, if an article is not placed in hermetic, insulated, isolated vehicles or containers. Phyto-sanitary control of the aforementioned goods at the BCP across the customs border of Ukraine is carried out by Phyto-sanitary state inspectors.

Ecological Service (ES). No.

4. Are you able to provide any statistical information in respect of the number of:

a). Standard Inspections and

b). Extended inspections undertaken as part of border control procedures performed by your Service at the port?

Sanitary-Epidemiological Service (SES)

As of 01.07.2014 such number of consignments was cleared at Odessa and Illichivsk Sea Ports:

a) 12031 consignments (within the framework of standard inspections)

b) 420 consignments (within the framework of extended inspections)*

* In accordance with the requirements of the state sanitary-epidemiological sampling' conclusions and possessing an application from a consignee or his representative.

Veterinary Service (VS)

Standard veterinary-sanitary control is carried out in relation to all items subjected to control. Extended veterinary-sanitary control is carried out in cases stipulated by the effective legislation of Ukraine.

Phyto-sanitary Service (PS). Phyto-sanitary control of certain articles which are subject to control and are imported into the customs territory of Ukraine (including for transit), is implemented by the officials of revenue and duties authorities in the form of preliminary documentary control.

Cargoes included in the List of articles to be subjected to plant quarantine control have to undergo Phyto-sanitary control (according to the Decree of the Cabinet of Ministers of Ukraine dd. 12.05.2007 № 705 «On some issues of implementation of the Law of Ukraine» On Plant Quarantine). We are not able to provide statistical information in respect of the number of Phyto-sanitary checks performed in relation to cargoes.

Ecological Service (ES). Inspections, physical examinations and/or sampling of cargoes were not undertaken as part of ES controls within the 1st half-year period in 2014

5. Are you able to provide an indication of the average time needed to complete:

a). Standard and

b). Extended border control procedures performed by your Service at the port?

Sanitary-Epidemiological Service (SES). Standard sanitary-epidemiological control – up to 1 hour. Extended sanitary-epidemiological control – from 2 hours and more (depending on the type and nature of laboratory and instrumental methods of physical examination).

Veterinary Service (VS). Time standards of completing control operations by state inspectors of veterinary medicine are approved by the Decree #1167/886/824/643/655/424/858/900 dated 28.11.2005.

Phyto-sanitary Service (PS). Time required to complete Phyto-sanitary control depends on many factors, including a Phyto-sanitary sampling, which may be part of the control; It also depends on the efficiency and coherence of actions of cargo owners (or their representatives): 1. 30 minutes (Phyto-sanitary control in the form of preliminary documentary control) 2. Up to 8 hours. Excluding time for Phyto-sanitary expertise.

Ecological Service (ES). Time needed to complete ecological control is determined by the Decree #1167/886/824/643/655/424/858/900 dated 28.11.2005 “On approval of time standards related to control operations carried out by officials who perform control of persons, goods and transport means at the BCPs across the state border of Ukraine”.

6. Have there been any recent significant amendments which have significantly changed the way in which your procedures are carried out?

Sanitary-Epidemiological Service (SES). Yes.in accordance with the Decrees of the Cabinet of Ministers of Ukraine № 1030, 1031, 449 a decision making on the need to conduct SE control by SES specialists is assigned to the customs officers who independently decide on the type of state control and the form of its conduction (a preliminary documentary control to be performed by customs officials or state control to be performed by officials of the relevant control bodies). Since 20.12.2011 and up till now there were no single request to the State SES on water transport from customs authorities regarding possible violation of requirements of Art 44 of the Law of Ukraine “On safety and quality of food products”, posing a risk that poor-quality (substandard) goods (including goods which are dangerous to health of people) may enter the territory of Ukraine, because SES specialists identified repeated (!) non-compliance with the regulatory requirements in relation to products produced for different purposes. It was identified in the course of sanitary-epidemiological control of imported goods within the aforementioned period.

Veterinary Service (VS). Decree of the Ministry of Agrarian Policy and Food of Ukraine №118 dd. 01.04.2014.

Phyto-sanitary Service (PS). Due to amendments introduced into the customs legislation, the majority of goods at the BCPs across the customs border of Ukraine are subject to Phyto-sanitary control in the form of preliminary documentary control, which is carried out by customs authority officials, who are not actually Phyto-sanitary experts.

Ecological Service (ES). Decree of the Cabinet of Ministers of Ukraine #1030 dd. 5.10.2011 "Some issues on implementation of the preliminary documentary control at the BCPs across the state border of Ukraine", the Decree of the Cabinet of Ministers of Ukraine # 1031 dd.5.10.2011 "Some issues of state control of goods which are moved across the customs border of Ukraine".

7. Is there, to your knowledge, any continued overlap of responsibility between your Service and other State BCSs with regard to sampling and testing of products?

Veterinary Service (VS). State veterinary-sanitary control at the state border and transport is carried out at the port solely by the state inspectors of Odessa Regional service of state veterinary and sanitary control and supervision at the state border and transport.

Phyto-sanitary Service (PS). No information on such cases.

8. Is it current practice that a 'standard' inspection of all shipments - for goods subject to veterinary control - is completed irrespective of where the goods will be finally cleared?

Veterinary Service (VS). In line with the requirements of Article 87 of the Law of Ukraine "On Veterinary Medicine", Article 44 of the Law of Ukraine "On Quality and Safety of Food Products"

9. Is it frequent practice in your opinion for containers to be re-presented for physical examination and sampling by either the same or other State BCSs?

Phyto-sanitary Service (PS). We have no information on re-physical examination of cargoes by other control agencies.

10. Could you please explain the current situation regarding the acceptance of Certificates of Conformity issued by foreign countries, particularly in relation to those countries with which Ukraine has mutual recognition of certificates?

Ecological Service (ES). In accordance with the p.5.3 of the Provisions on ecological control at BCPs across the state border and in the area of competence of Regional Customs and Customs offices, approved by the Decree of the Ministry for Environmental Protection and Nuclear Safety of Ukraine dd.08.09.2009 #204, those documents are subjected to physical examination during ecological control of cargoes, the availability of which is foreseen by the respective Decrees of the Cabinet of Ministers of Ukraine and international agreements in relation to transportation by any type of transport, including a Certificate of Conformity (in case of import). A duplicate of the Certificate of Conformity should be authorized in line with the procedure.

Annex IX. FAL Convention²²⁹.

Members of the International Maritime Organization (IMO) – Ukraine is a member since 1994 - adopted in 1965 the Convention of Facilitation of International Maritime Traffic, the so-called FAL Convention. The convention entered into force on 5 March 1967 and has been amended in 2002 and 2005. As of 31 December 2010, 115 of the currently 173 members of the IMO have acceded to the FAL Convention. With this convention members aimed at facilitating maritime transport by simplifying and minimizing the formalities, data requirements and procedures associated with arrival, stay and departure of ships engaged in international voyage. To this end the Convention contains standards and recommended practices. Its main contribution lies with the acceptance of a set of models for standardized facilitation forms for ships to fulfill certain reporting formalities when they arrive in or depart from a port. These standardized forms include, inter alia, the IMO General Declaration, the Cargo Declaration, and the Crew and Passenger Lists, and Dangerous Goods Declaration.

Port/Airport Control

Port/Airport control regulates and monitors the arrival, stay and departure of conveyances (ships/ aircraft) as well as access to the port/airport area(s).

The IMO as well as the ICAO have developed relevant international conventions (IMO FAL Convention and ICAO Chicago Convention Annex 9) that have set international standards for important facilitation documents. The forms are often tailored to national circumstances and combined or integrated with other information and forms, especially for customs purposes.

The forms as defined by IMO for maritime and ICAO for air traffic include:

- General Declaration (Arrival and departure declarations)
- Cargo Declaration
- Ship's Stores Declaration
- Crew's Effects Declaration
- Crew List
- Passenger List
- Dangerous Goods Manifest
- Maritime Declaration of Health
- The document required under the Universal Postal Convention for mail

Most implementations of the IMO FAL documents do not use paper documents, but electronic versions which are communicated to all relevant authorities including Customs either directly or through the services of a Port Community System or Airport Community System.

²²⁹. <http://tfig.unece.org/contents/FAL-convention.htm> refers.

Annex X. Administrative Barriers at Odessa Seaport in 2009 and 2014.

The table below lists border control specific areas which the USAID / LINC Ukraine (Local Investment & National Competitiveness Assessment of Import/Export Clearance Processes Odessa Commercial Seaport (Odessa Port) report identified as problematic and makes comparison between those areas 2009 and their current status in 2014.

Items marked in 'Red' remain largely unresolved since 2009, while those marked in 'Green' have to a greater extent been settled.

Table 1. Administrative Barriers at Odessa Seaport in 2009 and 2014

2009	2014
Determination of Tariff Classification	Yes.
Determination of Customs Valuation	Yes.
Importers not granted the right to select clearance location	No.
High rates of physical cargo physical examinations	No. Rates have been significantly reduced
Commission inspections of vessel arrivals	No. Container vessels granted free practice via Port Community System
Excessive and unjustifiable re-inspections by security, tax and other law enforcement agencies	Yes Decree of the Cabinet No 467. 23 May 2012 allows opportunity for re-physical examination of goods
Extended Phyto-sanitary control is conducted on all imports subject to Phyto-sanitary control?	Yes.
Standard control by Veterinary Service (VS) is conducted twice for goods subject to veterinary control to be cleared at the local level?	Yes.
Standard control by Plant Quarantine (PQS) Service is conducted twice for goods subject to Phyto-sanitary control to be cleared at the local level?	Yes.
Standard control by Sanitary-Epidemiological Service (SES) is conducted twice for goods subject to sanitary control to be cleared at the local level?	No – only when goods are cleared at Euroterminal. For other in land transits the control is conducted once at the point of inland clearance.
Inefficient and expensive process for making containers available for inspection/physical examination by control services	Yes

Duplication of Radiological Control between Ecological Service and other Control Services (SES & VS)	No.
Duplication in checking of technical control documents for goods clearing at the Port and destined for clearance inland	Yes particularly with regard to EE IM 40 for Euroterminal
Customs inspection related to conformity certificates?	No.
Inefficient processes for obtaining stamps by controls services	No. ISPS has overcome this time consuming practice.
Excessive requests for proof of origin?	No.
Differences in fees charged by the same control services for the same service?	No.
Freight Forwarders subject consignments to unnecessary controls and approvals?	Yes. Consignments undergo 'pre-declaring' physical examination to determine weight, value and tariff classification.

Annex XI. EUBAM Reviews and Port of Odessa Analysis 2009 & 2013.

The table below describes specific border control issues identified by EUBAM in reports completed in 2009 and 2013²³⁰ and compares their status. Items marked in 'Red' remain largely unresolved since 2009, while those marked in 'Green' have to a greater extent been settled.

Table 1. Border Control Issues

2009	2013
1. 1.Congestion and overcrowding – Due to problems regarding organisation of functional workflows i.e. loading, unloading, stacking & transport of containers within the port area.	Measures introduced by State BCSs reduced dwell times including the introduction of new legislation by Customs (New UA CC 2012, Orders and Decrees).
2. Infrastructure - Outmoded infrastructure.	From 2009 onwards various IT systems have been introduced; <ol style="list-style-type: none"> 1. Container Terminal Information System (allows agents and forwarders to track trace information regarding cargo), 2. Container Terminal Operating System (Brooklyn-Kiev Port Ltd) 3. Electronic document turnover system, 4. Electronic Pass, 5. Electronic planning of entry to port, 6. Electronic Order, 7. ISPS, 8. Development of Single Window.
3. Physical examinations – High levels of physical examination by Customs resulting from the lack of risk analysis.	Risk Analysis implemented. Levels of physical examination are still high in comparison with EU2 equivalent ports at 30.7% for import and 8.4 % for transit.
4. 4.Working Groups – Lack of any Inter-Agency consultation or working groups.	Inter-agency working group initiated Only at the central level. Local consultations limited.
5. Transit – Frequent use by central administration of operational considerations to justify the weighing of 100% of containers for internal transit.	Rates of weighing vary (100% weighing of containers for import since 18 April 2012 revoked in April 2014).
6. Scanning – 100% scanning regularly undertaken	Rates of scanning vary.

230. EUBAM SR 170209 Odessa Container Port Analysis & EUBAM SR 20130314 AOSU AC Odessa Port Analysis Action Plan refers.

Annex XII. Systemic Reforms Proposed by USAID/LINC 2009 Report.

The table below describes systematic reforms proposed by USAID for implementation between 2009-2012. Items marked in 'Red' remain unresolved, while those marked in 'Green' have to a greater extent been settled.

Table 1. Systematic Reforms & Actions proposed.

Area	Implementation Timeframe	Action
1. Modernisation of CC	2009 -2010	Comply with relevant WTO agreements Implement Revised Kyoto Convention (RKC) procedures. Comply with European Union's Community Custom Code.
2. Risk Assessment & Post Clearance Audit	2009-2010	Bring into line with RKC.
3. Authorised Economic Operators	2010	Amend draft CC to include provisions for granting, suspending and revoking AEO status <ul style="list-style-type: none"> • Elaborate implementing regulations • Establish appropriate mechanisms and procedures including AEO registration and identification system
4. Advance rulings	2009-2010	Improve current mechanisms for classification and origin.
5. Pre-arrival and period electronic declaration	2010	Provide legal authority in new CC. Establish appropriate mechanisms and procedures.
6. E-Customs	2010-2012	Assess E-Customs needs and requirements and develop a multi-year detailed plan for implementation in 2010 Implementation plan for 2010-2012.
7. Proper implementation of border aspects of SPS &TBT related legislation	2010-2011	Modernise/revise risk assessment methods for SPS clearance. From the list below unable to review: Evaluate the list of goods subject to Phyto-sanitary control to eliminate low risk goods and bring into line with intl. practices Evaluate the list of goods subject to veterinary control to eliminate low risk goods and bring into line with intl. practices Evaluate the list of goods subject to sanitary-epidemiological control to eliminate low risk goods and bring into line with intl. practices Eliminate any overlaps between the 3 aforementioned lists Eliminate conformity certification requirements related to food safety Implement Article 6 of the WTO TBT agreement to recognise results of conformity assessment procedures of other WTO members. Implement Article 4 of the SPS agreement to accept SPS measures of other WTO members or equivalent

Annex XIII. Odessa & Illichivsk Port Study Quick Checklist.

Odessa & Illichivsk Port Study Quick Checklist		
CHECKLIST		
	QUESTION	ANSWER
Institutional Framework		
1	Is staffing requirements covered adequately based on the workload at the Ports?	Indications from the trade suggest that in fact there are times when controls & physical examinations are delayed due to a lack of or unavailability of HR and equipment.
2	Is there a clear division of tasks between State BCSs?	Technological Scheme (TS) differentiate and elaborate a clear division of tasks, however TSs are complicated / complex incorporating too many laws decrees and orders which make duplication possible.
3	Do the State BCSs have clearly defined Areas of Responsibility (AoR)?	All State BCSs have clearly defined areas of responsibility.
4	Is the internal structure of the State BCSs at the Ports and the chain of command clearly defined?	Yes for all.
5	Do all Officers / Inspectors working at the Ports have sufficient authority to properly perform their assigned tasks?	For Customs this is true. UA CC provides Officers at the Ports with full powers to perform their duties. Other Border control legislation is sufficient but particularly with regard to Vet & SPS needs considerable alignment with EU legislation and the Acquis Commaunitaire.
Procedures		
1	Do the State BCSs possess Standard Operational Procedures (SOPs) or similar internal instructions describing work procedures, work flow, etc.? (Are SOPs available to all staff & in what form (paper, online)?	The State BCSs operate to national legislation, regulations, decrees and local orders. At the Ports and BCPs these are combined and incorporated into a Technological Scheme, which act in effect as an SOP. However technological schemes for the ports are difficult to understand and overly complicated. Instruction manuals as such were not seen but this does not mean that they don't exist.
2	Are Port workflows synchronized with other border agencies?	Yes. The ISPS is operated at both ports on behalf of the Port Authority and aims to synchronise the movement of containers and thereby the activities of the State BCSs in the ports.
3	Are existing workflows documented and regularly evaluated?	Limited statistical data is available from the State BCSs, but Customs are able to provide more statistical activities in relation to the clearance of goods, however regular reviews and evaluations are less commonly undertaken.
4	Are joint controls performed by the State BCSs at the Ports e.g. 'One-Stop-Shop', Single Window and joint inland control?	Yes, joint controls and inspections are undertaken by the State BCSs and implementation of 'One-Stop-Shop' controls particularly in the case of Ro-Ro traffic and rail cargo wagons takes place. Single Window is being further developed.
5	Do joint expert/specialist units exist?	Yes in Customs and Border Guard.
6	Are joint operations conducted at the Ports	Yes with all border agencies including SBU, Border Guard and Tax authorities

7	Do the State BCSs use a system of risk analysis including profiling / selectivity and targeting?	Yes UACIS have ARAMS (risk module) within 'Inspector 2006' an electronic customs declaration processing system (CDPS). Risk analysis is nationally coordinated and updated with local risk profiles. Vet & SPS do not possess such a system and rely only on centrally produced lists of commodities and pre-determined sampling rates for their risk analysis.
8	Are Customs Risk Analysis (RA) results shared with other State BCSs?	RA results are not shared between State BCSs and no joint risk profiling is undertaken.
9	Do the State BCSs at the Ports have their own Risk Profiles? How and by whom is it developed and reviewed? How frequently is it updated? Is it accessible to all parties working at the Ports?	Yes. Customs risk profiles are developed at the regional level and feed into the system centrally. Updating is on a regular basis. Risk profiles are automatically run within the 'Inspector 2006' software when the declaration is registered. Risk profiles are not available to other State BCSs.
10	Are random checks conducted or are checks based on Risk Profile or both? (Percentage?)	Both. For Customs the levels of physical examination, which, included scanning, have fallen from previously high levels. Ad-hoc longer-term exercises requiring 100% scanning and weighing of all containers are sometimes introduced through local and national orders.
11	Are joint controls undertaken with other State BCSs e.g. general border controls, searches, forensic examination, surveillance, operations etc.?	Yes. Joint controls and inspections are undertaken between Customs and the other State BCSs e.g. on-board Commission with regard to vessels arriving from foreign, Vet & SPS inspection and sampling measures, and also with the State Border Guard for the control of commercial vehicles and rail cargo wagons in Ro-Ro traffic.
Human Resources (HR)		
1	Do BCS officials at the Ports follow a code of conduct (and ethics)?	Yes. For Customs recently introduced throughout the service Not known if the other BCS have a similar code?
2	Is the HR Policy (recruitment, training, deployment, career path, performance evaluation, promotion, discipline) known and properly applied the Ports?	HR management system is in need of review and modernisation.
3	Are there detailed job descriptions available to all staff?	Not seen.
4	Is there a regular rotation of staff & secondment undertaken at a regional level? Is there excessive rotation and turnover that result in loss of trained personnel expertise?	Rotation of staff in Customs takes place but this has recently been excessive particularly at the Head of Office level.
5	Do BCS staff with specialist skills (e.g. IT, languages, document advisor, heavy lorry expert, etc.)? Do you exchange specialists with other BCPs, within the agency (vertically), or with other agencies?	Customs have specialist Ant-smuggling teams but exchanges of staff to increase and develop knowledge is not a concept that is regularly adopted by any of the State BCSs.

Communication and Information Exchange		
1	At the Ports do the State BCSs possess operational instructions on information management, including the flow & exchange of information?	Not seen.
2	Are standardized forms and templates for the exchange of information used at the BCP? Is there a document Management System for "within agency information flow"?	Customs use standardised templates for the updating and creation of new risk profiles. For other State BCSs not enough known.
3	Do all users have real-time access to information on relevant border activities according to a predefined level of access?	Yes, Customs through 'Inspector 2006' and other IT systems. Vet & SPS are not connected to any other BCS or international databases. The ISPS is being developed as a Single Window Solution for both ports but it isn't at that stage yet.
4	Is there is regular vertical communication: reporting up and instructions and information down the chain of command?	Yes
5	Are regular horizontal communications i.e. Intra-service news bulletins etc. sent to other agencies at the Ports and/or other BCPs nationwide?	Not seen. Communication between the BCS services is however at an early stage and all services work in a compartmentalised manner.
6	Is information regularly exchanged with: 1) Other State BCSs? 2) Internationally? How often, on what basis and at what level (informal, MOUs)?	No MOUs exist between any of the State BCSs and no communication takes place between State BCSs at the ports and other ports outside of Ukraine with which there are regular scheduled services.
7	Are regular scheduled meetings between representatives of other border agencies (inter-agency/cross-border) held at the BCP?	Shift briefings take place between Customs and Border Guard but regular scheduled minuted meetings that include all the State BCSs are not a regular feature of a communications strategy/policy between the State BCSs.
8	At the Ports, is there a contact person(s) for information exchange with the other border agencies (inter-agency or cross-border)?	Customs have a liaison officer position but at the local port level it is doubtful that such contact pints exist between the State BCSs.
9	Is non-routine / ad hoc information exchanged promptly with the relevant border agencies (inter-agency/cross-border)?	No.
10	Do the State BCSs share databases with other border agencies?	No, there is no sharing of databases or information directly between State BCSs databases.
11	Are the BCS IT systems compatible with the IT systems of other State BCSs)?	No.

12	Do you operate a shared risk analysis/ risk indicators system with other agencies? Do you share intelligence with other agencies?	No Customs share with other LEAs.
13	Is information related to BCS activities easily accessible?	Trade view was that it is not although all State BCSs have internet portals and open-lines. Information is overly complicated and not regularly updated.
Infrastructure and Equipment		
1	Do all BCS staff have the required personal equipment to effectively undertake their duties?	Yes in the case of Customs it would appear so. For the other State BCSs in particular Vet & SPS specialist equipment and health and safety clothing was not seen.
2	Is there special equipment available for - the recognition of e.g.: forged documents, smuggling of human beings and/or goods (drugs, explosives, weapons) stolen goods (software like EUFID), - checking heavy goods lorries e.g. technical inspection of hazard waste, checks digital /electronic Tachograph. Is there a sufficient number of staff trained to operate this equipment?	In general yes. However for some types of equipment e.g. X-ray scanners equipment is not available for use due to budgetary and staffing (sufficient training) constraints. Other areas such as: interpretations of vehicle tachographs, hazardous waste and the identification of CBRNe material it's doubtful.
3	Is private and commercial traffic separated at the ports?	Yes.
4	Are there search and examination bays? Are there deep search inspection facilities with appropriate equipment for search of persons and vehicles? Are there facilities & equipment for off-loading commercial vehicles? Are there cold storage facilities? Is there suitable equipment to perform detailed searches?	Yes. Yes. Yes. Yes.
5	Is equipment shared with other agencies?	When joint controls are performed yes, otherwise no.

Annex XIV. European Commission MEMO.

Brussels, 8 July 2013

Blue Belt: Commission eases customs formalities for ships

What is the problem?

The EU is highly dependent on maritime transport for its trade with the rest of the world and within the internal market. Nevertheless, inside the EU shipping is not used to its full potential mainly due to considerable administrative requirements. Indeed, even though administrative simplified procedures for maritime transport have already been introduced by EU legislation, vessels travelling between EU ports still encounter a significant number of complex procedures. These procedures involve costs and delays that can make maritime transport less attractive for the transport of goods in the EU internal market.

Cutting red tape has been considered a major element for promoting the greater use of short sea shipping and seaborne trade between EU ports. Additionally, reducing the number of cargo checks - especially of cargos which would not be checked would they travel on land - would allow authorities to focus on higher risk areas.

What are the current rules?

Territorial waters are considered as the EU's external borders. So technically, vessels travelling between EU ports are leaving the EU Customs Territory. As a result, customs clearance is required when the vessel leaves the port of departure and again when the vessel arrives at the port of destination (unless the vessel is travelling under a Regular Shipping Service (RSS) scheme). All goods carried on board are considered to be non-Union goods and need to pass through customs controls. This means they have to be identified as Union goods and be placed back in the Internal Market or as real non-Union goods and be subject to the normal customs formalities.

What are we proposing?

The Commission will propose a Blue Belt package with two main measures reducing unnecessary administrative burden for the maritime industry and extending further the benefits of the Single Market to maritime transport, while at the same time continuing to guarantee the safe and secure transport of goods to, from and within the EU.

A further simplification for the application procedure of the 'regular shipping service', a customs facilitation scheme for vessels, carrying mainly EU goods, sailing to the same European ports on a regular basis, is a first part of the package.

However, a vast majority of containerized traffic has mixed cargo, i.e. both Union and non-Union goods that transit regularly via non-EU ports (e.g. in the Baltic, Mediterranean or Black sea), to which the concept of 'regular shipping service' cannot be applied. Therefore, an additional new tool, the so-called eManifest, a harmonised electronic cargo manifest based on the existing FAL forms, will be introduced. This will allow for proving the EU or non-EU status of goods, even when the goods have left the EU customs territory. This facilitation answers to long-standing expectations of maritime trade to have an EU harmonised manifest and will allow complying with the requirements as well as facilitating and speeding up of customs procedures for EU cargo at the same time.

What are the benefits?

With these initiatives, the Blue Belt will become reality and stimulate real Blue growth. The main aims are to:

- i.** improve the sector's competitiveness through the reduction of administrative burden and costs,
- ii.** improve the attractiveness of maritime transport,
- iii.** stimulate employment,
- iv.** reduce the environmental impact of maritime transport.

This benefits both the industry and ultimately the consumer, which will be able to benefit from more efficient and cheaper maritime transport as well as the ports and maritime transport industries which will become more attractive. It also benefits customs authorities through a harmonised procedure throughout the EU and an improvement of the quality of data received.

How will Blue Belt work in practice? Practical examples

1. Easing customs formalities for intra-EU shipping

Let's say that I'm a UK operator, wanting to offer a regular shipping service between Felixstowe in the UK, Rotterdam in the Netherlands and Copenhagen in Denmark and in the future perhaps to Gdansk in Poland. What do I need to do?

v. I contact the UK customs authorities to ask for the authorisation.

vi. I indicate that this service would run between Felixstowe, Rotterdam and Copenhagen.

vii. I also indicate that I might add Gdansk in the future.

viii. The UK contacts all relevant Member States, i.e. the Netherlands, Denmark and Poland to ask for their permission. Member States will have up to 15 days (instead of the current 45 days!) to answer.

ix. After positive replies, the UK grants the final authorisation. This means that for any Union goods on board, they do not need customs supervision.

Result: I will be able to offer the service at a relatively short notice. Later on, if I wish to modify the service to include the port of Gdansk, I can do that in a very smooth way, without having to launch a new authorisation procedure again.

2. Easing customs formalities for ships that call in third country ports

Today, a vessel travelling from Antwerp to Rotterdam is considered to have left the EU customs territory. Consequently, upon arrival in Rotterdam, all goods on board are considered to be non-Union goods, having to go through all necessary customs procedures. With the eManifest, operators will be able to prove the Union status of the goods on board, even if the vessel has left the EU customs territory to move from one EU port to another or if the vessel has called at a third country port in between.

Imagine the following vessel voyage: Shanghai (China) – Antwerp (Belgium) – Marseilles (France) – Tangiers (Morocco) – Limassol (Cyprus)

With the Blue Belt facilitation the following scenario would be possible:

A ship sailing from Shanghai arrives in Antwerp. 100% of the goods on board arrive from outside the EU and are mentioned as non-Union goods on the eManifest. Upon arrival in Antwerp, all goods are subject to the necessary customs risk assessment. A part of the cargo is unloaded in Antwerp and cleared by customs for entry and free circulation into the EU customs territory. The ship then loads additional EU cargo, destined for Marseilles and Limassol respectively. In the eManifest it is stated that the ship now carries $x\%$ of Union goods (loaded in Antwerp) and $y\%$ of non-Union goods (coming from China).

The ship then sails to France. Upon arrival in Marseilles, Union goods destined for Marseilles can be quickly released by customs, based upon their status indicated in the eManifest. Only all non-Union goods will go through the appropriate customs procedures.

The ship continues its voyage. On its way to Limassol, it makes a stop in Tangiers to load additional goods. The eManifest is updated. All goods initially coming from China and additional goods loaded in Tangiers are considered to be non-Union goods. The goods destined for Limassol are still mentioned as Union goods. When the ship arrives in Limassol, the Union goods, initially loaded in Antwerp, can be quickly released by customs, based upon their continued Union status indicated in the eManifest. Again, only the non-Union goods are subject to customs controls.

Facts and figures

x. In the EU, 1 job aboard a vessel means 9 jobs on land.

xi. An increase of 1 million tonnes passing through a port will lead to 300 more jobs.

xii. By 2030 there will be 15% more jobs in ports sector.

xiii. 74% of the goods imported and exported by the Union transit through seaports.

xiv. 37% of the exchanges within the Union transit through seaports.

xv. The EU has three ports among the 15 biggest ports in the world: Rotterdam is 11th, Hamburg is 14th, and Antwerp is 15th.

xvi. In 20 years, the number of containers in the world has more than quadrupled.

More key facts and figures here:

http://ec.europa.eu/transport/modes/maritime/infographics_en.htm

More information:

Infographics on EU ports:

http://ec.europa.eu/transport/modes/maritime/infographics_en.htm

European Maritime Safety Agency (EMSA) – www.emsa.europa.eu

Annex XV. EU Live Animal and Animal Products Veterinary Legislation, Directives, Regulations and Decisions.

- **Commission Implementing Decision 2012/31/EU** of 21 December 2011 amending Annex I to Decision 2007/275/EC concerning the lists of animals and products to be subject to controls at border inspection posts under Council Directives 91/496/EEC and 97/78/EC
- **Commission Regulation (EU) No 28/2012** of 11 January 2012 laying down requirements for the certification for imports into and transit through the Union of certain composite products and amending Decision 2007/275/EC and Regulation (EC) No 1162/2009
- **Commission Implementing Regulation (EU) No 809/2011** of 11 August 2011 amending Regulation (EC) No 2074/2005 as regards documentation accompanying imports of frozen fishery products directly from a freezer vessel
- **Commission Implementing Decision 2011/215/EU** of 4 April 2011 implementing Council Directive 97/78/EC as regards transshipment at the border inspection post of introduction of consignments intended for import into the EU or for third countries
- **Commission Regulation (EU) No 142/2011** of 25 February 2011 implementing Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive.
- **Commission Regulation (EU) 206/2010** of 12 March 2010 laying down lists of third countries, territories or parts thereof authorised for the introduction into the European Union of certain animals and fresh meat and the veterinary certification requirements;
- **Regulation (EC) No 1069/2009** of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation).
- **Commission Decision 2009/821/EC** of 28 September 2009 drawing up a list of approved border inspection posts, laying down certain rules on the inspections carried out by Commission veterinary experts and laying down the veterinary units in Traces. Checks and inspections, in line with Council Directives 89/662/EEC, 90/425/EEC
- **Commission Regulation (EC) No 206/2009** of 5 March 2009 on the introduction into the Community of personal consignments of products of animal origin and amending Regulation (EC) No 136/2004
- **Commission Decision 2007/275/EC** of 17 April 2007 concerning lists of animals and products to be subject to controls at border inspection posts under Council Directives 91/496/EEC and 97/78
- Council Directive 2006/88/EC of 24 October 2006 on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals;
- **Commission Decision 2007/240/07** of 16 April 2007 laying down new veterinary certificates for importing live animals, semen, embryos, ova and products of animal origin into the Community pursuant to Decisions 79/542/EEC, 92/260/EEC, 93/195/EEC, 93/196/EEC, 93/197/EEC, 95/328/EC, 96/333/EC, 96/539/EC, 96/540/EC, 2000/572/EC, 2000/585/EC, 2000/666/EC, 2002/613/EC, 2003/56/EC, 2003/779/EC, 2003/804/EC, 2003/858/EC, 2003/863/EC, 2003/881/EC, 2004/407/EC, 2004/438/EC, 2004/595/EC, 2004/639/EC and 2006/168/EC;
- **Commission Decision 2005/34/EC** laying down harmonized standards for the testing for certain residues in products of animal origin imported from third countries
- **Council Regulation (EC) No 1/2005** of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97
- **Regulation (EC) No 882/2004** of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.

- **Council Directive 2004/68/EC** of 26 April 2004 laying down animal health rules for the importation into and transit through the Community of certain live ungulate animals, amending Directives 90/426/EEC and 92/65/EEC and repealing Directive 72/462/EEC
- **Commission Regulation (EC) No 282/2004** of 18 February 2004 introducing a document for declaration of, and veterinary checks on, animals from third countries entering to the Community
- **Commission Regulation (EC) No 136/2004** of 22 January 2004 laying down procedures for veterinary checks at Community border inspection posts on products imported from third countries
- **Regulation (EC) No 998/2003** of the European Parliament and of the Council of 26 May 2003 on the animal health requirements applicable to the non-commercial movement of pet animals and amending Council Directive 92/65/EEC
- **Commission Decision** of 31 October 2003 laying down animal health requirements and the veterinary certification for the import of animal casings from third countries;
- **Regulation (EC) 999/2001** of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies;
- **Commission Decision 2002/657/EC** of 12 August 2002 implementing Council Directive 96/23/EC concerning the performance of analytical methods and the interpretation of results;
- Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing production, processing, distribution and introduction of products of animal origin for human consumption
- **Commission Decision 2001/812** of 21 November 2001 laying down the requirements for the approval of border inspection posts responsible for veterinary checks on products introduced into the Community from third countries
- **Council Directive 97/78/EC** of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries
- **Council Directive 95/70/EC** of 22 December 1995 introducing minimum Community measures for the control of certain diseases affecting bivalve molluscs
- **Commission Decision 94/360/EEC** of 20 May 1994 on the reduced frequency of physical checks of consignments of certain products to be implemented from third countries, under Council Directive 90/675
- **Commission Decision 93/352/EEC** of 1 June 1993 laying down derogations from the conditions of approval for border inspection posts located in ports where fish is landed;
- **Council Directive 92/65/EEC** of 13 July 1992 laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A (I) to Directive 92/425/EEC
- **Council Directive 91/496/EEC** of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries

Annex XVI. Laws, Cabinet Decrees, Regulations and Orders for the Clearance of Vessels, Cargo, Vehicles and Persons at the Ports of Ukraine contained in Technological Schemes for Odessa and Illichivsk Ports.

Border Guard

- Law Ukraine “On Border Control”, ratified by the Ukrainian Cabinet’s Decree № 751 of 18.08.2010.
- specifying the general procedure of organizing and performing all types of control established by the Ukrainian Law at the border crossing point for international maritime traffic “Odessa Commercial Sea Port”, sets out principles of cooperation, sequence and performance of the relevant duties by Border Guard (BG) Department of Odessa BG Detachment, by Customs Clearance Subdivision of Odessa Customs and by other control agencies during border crossing by persons, means of transport and cargoes (goods) transported by them at the arrival/departure of foreign-going ships in/from the port.
- Law of Ukraine “On the State Border of Ukraine” approved by the VR Regulation No 1778-XII dd. 04.11.91.
- Law of Ukraine “On the State Border Guard Service of Ukraine” №661-IV dd. 3.04.2003.
- Law of Ukraine “Legal Status of Foreigners and Stateless Persons” introduced by the VR Regulation No. 3930-XII (3930-12) of February 04, 1994.
- Regulations on border crossing points across the state border and checkpoints, approved by the Decree of Cabinet of Ministers of Ukraine № 751 of 18.08.2010;
- Typical technological scheme of border crossing by persons, automobile, railway and air means of transport and goods transported by them across the state border, approved by the Decree of Cabinet of Ministers of Ukraine № 1989 of 24.12.2003;
- BG patrols leader coordinates activities of control agencies and services (control agencies, hereinafter) when persons, means of transport and cargoes cross Ukrainian state border, coordinates border, customs and other types of control in the BCP within the scope of Procedure of coordination of executive bodies’ and local bodies’ activities relating to the state border regimes; ratified by the Cabinet’s Decree №48 of 18.01.99.
- Work Procedure of officials of the state border protection agencies of the State Border Guard Service of Ukraine (UASBGS) relating to establishing regime in border crossing points across the state border and to controlling its maintenance as well as organizing and ensuring cooperation and coordination of control agencies and services that perform different types of control and are involved in establishing regime at border crossing points across the state border, adopted by the UASBGS Administration’s Order № 627 29.08.2011 and registered with the Ministry of Justice of Ukraine under № 1117/19855 of 23.09.2011;
- By the Order of Administration of UASBGS, SFS, Ministry of transport and connection of Ukraine, Ministry of ecology of Ukraine, Ministry of health care of Ukraine, Ministry of culture and tourism of Ukraine, Ministry of agriculture of Ukraine dated 16.05.2005 No 370/396/208/173/219/294/205, registered in the Ministry of Justice of Ukraine on May 24 2005 under No 567/ 10847. During border and customs control operations at the BCP, execution of control functions concerning supervised objects (vehicles, persons, goods, etc.) while their crossing state border all officials of control authorities have to possess representative cards which are stipulated by the Order on production and supplying the officials of control authorities functioning in the BCP with representative cards
- Decree of Cabinet of Ministers of Ukraine on 22.01.2001 No. 35. approved during checking of persons’ documents on entry into Ukraine, transit or exit of Ukraine the BG shifts “DC” (“BG patrols leader”) perform the instructions (charges) of law enforcement agencies according to the point 14 of the Order on instructions of law enforcement agencies given to State BG service regarding persons crossing state border of Ukraine,

- Order of the UASBGS Administration dated on 30.09.2008 No.810, registered in the Ministry of Justice of Ukraine on 07.11.2008 No.1086/15777 approved the registration of persons and vehicles crossed the border is performed in electronic version during BG control by BG shifts "DC" ("BG patrols leader") by entering information in data bases of the system "Gart-1" according to the Order on informational and telecommunication system of border control "Gart-1" of UASBGS.
- According to the requirements of the Order of the UASBGS Administration dated 02.08.2010 No. 583 "Determination of cases to fill in immigration card of a foreigner, stateless individual", registered in Ministry of Justice of Ukraine on 18.08.2010 No. 702/17997.
- During border guards control of foreigners and stateless individuals, immigration card of a foreigner or of a stateless individual is applied in accordance with Order of UASBGS Administration No. 583 dated 02.08.2012 on "Determination of cases to fill in immigration card of a foreigner, stateless individual", registered with the Ministry of Justice of Ukraine under number 702/17997 on 18.08.2010.
- Regulations on Crossing State Border by Citizens of Ukraine approved by Decree of Cabinet of Ministers of Ukraine No. 57 dated 27.01.1995 in version of Decree of Cabinet of Ministers of Ukraine No. 724 dated 25.08.2010.

Customs

- CC of Ukraine 2012;
- International Convention on the Simplification and Harmonization of Customs procedures (Revised Kyoto Convention 1999);
- Customs control procedures for water transport and transported goods at border crossing points across the state border, approved by the Decree of Cabinet of Ministers of Ukraine № 1989 of 24.12.2003;
- Procedure on establishing customs control zones and their functioning, approved by the Decree of Cabinet of Ministers of Ukraine №1947 of 25.12.2002;
- Instructions on organizing customs control and customs clearance of ships and goods transported by them, adopted by the Order of the State Customs Service of Ukraine (SFS) № 678 of 17.09.2004 and registered with the Ministry of Justice of Ukraine under № 1286/9885 of 08.10.2004 (Instruction on organizing customs control, hereinafter);

State BCSs

- International Health Regulations (2005).
- Law of Ukraine "On plant quarantine" ratified by the Ministry of Agriculture of Ukraine № 414 of 23.08.2005 and registered in the Ministry of Justice of Ukraine № 1121/11401 of 29.09.2005.
- Law of Ukraine "On security and quality of foodstuffs", N 771/97-VR of 23.12.1997.
- Law of Ukraine "On veterinary medicine" ratified by the Cabinet's Decree № 801 of 23.07.2009 (Standard regulation on the Regional Service).
- Ecological and radiological control is carried out for the purpose of ensuring ecological safety when importing in (transiting) Ukraine of materials, raw materials and other belongings according to the Cabinet's Decree № 198 of 20.03.95 "On performing ecological control in BCPs across the state border" and Regulation on ecological control in BCPs across the state border and in the area of responsibility of regional customs houses and customs houses which was ratified by the Order of the Ministry of environmental protection and nuclear security № 204 of 08.09.99, registered with the Ministry of Justice of Ukraine № 787/4080 of 15.11.99 (Regulation of ecological control, hereinafter), Instruction on performing radiological control of vehicles and cargoes in BCPs across the state border and on the customs territory of Ukraine, ratified by the Ministry of ecology and natural resources of Ukraine № 27 of 15.05.2000 and registered by the Ministry of Justice of Ukraine № 411/4632 of 11.07.2000.

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- Law of Ukraine “On environmental protection” of June 25, 1995, No.1264-XXII.
 - Law of Ukraine “On import, export and return of cultural valuables” and Instruction on the procedure of obtaining an approval for export, temporary export of cultural valuables and control over movement thereof across the state border of Ukraine, ratified by the Order of the Ministry of culture and arts of Ukraine № 258 of 22.04.2002, registered with the Ministry of Justice of Ukraine № 571/6859 of 09.07.2002.
 - Export, temporary export and postage of cultural valuables outside the customs territory Ukraine is allowed if a certificate for export from Ukraine (temporary export) of cultural valuable (the certificate, hereinafter) is available; its form is ratified by the Cabinet’s order № 984 of 20.06.2000 “On ratifying the form of a certificate for export from Ukraine (temporary export) of cultural valuables”.
 - Instruction on the procedure of obtaining an approval for export, temporary export of cultural valuables and control over movement thereof across the state border of Ukraine, ratified by the Order of the Ministry of culture and arts of Ukraine № 258 of 22.04.2002, registered in the Ministry of Justice of Ukraine № 571/6859 of 09.07.2002.
 - “On protecting public from infectious diseases” and Rules of sanitary protection of Ukrainian territory, ratified by the Cabinet’s Decree № 893 of 22.08.2011 (hereinafter, Rules of sanitary protection of Ukrainian territory Sanitary-epidemiological control is carried out to prevent importation to Ukraine from a neighbouring state of infectious diseases, viruses and diseases which can cause epidemic, which is in line with International health regulations (2005), Law of Ukraine “On ensuring public sanitary and epidemic well-being”).

Security Services

- Law of Ukraine on Combating Terrorism, № 638-IV of 20.03.2003.
- Order of Ministry of internal affairs of Ukraine, State committee of safeguarding of the state border of Ukraine dated 07.08.2000 No. 520/ 390, registered in the Ministry of Justice of Ukraine on 01.09.2000 No. 571/ 4792 approved if customs infringements are absent and on the basis of written information from customs clearance subdivision, the Shift leader takes following actions according to p. 4.3 of the Instruction on cooperation in the detection of stolen vehicle and order on control of vehicles crossing border.

Ports

- International convention on Safety of life at sea, 1974 (hereinafter, SOLAS Convention, 1974);
- The International Ship and Port Facility Security Code (hereinafter, ISPS Code);
- Convention on Facilitation of International Maritime Traffic (FAL, 1965);
- Merchant Shipping Code of Ukraine No 176/95-VR of 23.05.1995;
- Regulation on the State navigational safety, approved by the Decree of Cabinet of Ministers of Ukraine №1137 of 07.10.2009;
- Procedure of ship supplying at Ukrainian sea and river ports which are used for foreign-going ships, approved by the Decree of Cabinet of Ministers of Ukraine № 846 of 05.08.2009;
- Regulation on General safety service of the State maritime transport administration of Ukraine, approved by the Decree of Cabinet of Ministers of Ukraine № 250 of 16.05.92;
- Regulation on shipping security management system for sea and river transport adopted by the Order of the Ministry of Transport of Ukraine № 904 of 20.11.2003 and registered with the Ministry of Justice of Ukraine under № 1193/8514 of 19.12.2003;
- Rules of ship control for the purpose of ensuring of maritime traffic safety adopted by the Order of the Ministry of Transport of Ukraine № 545 as of 17.07.2003, registered with the Ministry of Justice of Ukraine under № 353/8952 as of 23.03.2004.
- Regulation on the state port surveillance inspectorate of commercial sea port of Ukraine, adopted by the Order of the Ministry of Transport of Ukraine № 574 as of 18.10.2000, registered with the Ministry of Justice of Ukraine under № 775/4996 as of 02.11.2000.,

- Establishment of the BCP for international maritime traffic “Odessa commercial sea port” (BCP, hereinafter) was by the Order of Cabinet of Ministers of Ukraine № 143-p of 29.02.96 “On establishing border crossing points across the state border of Ukraine”.
- The BCP is characterized by: type of transportations – cargoes and passengers; mode of operating – permanent; working hours – 24 hours. According to Chapter 4 of the List of BCPs across the state border through which military goods and nuclear materials are transported, adopted by the Decree of Cabinet of Ministers of Ukraine № 1057 of 17.11.2010, the BCP is approved for transportation of military goods and nuclear materials.
- According to Paragraph 22 of Regulation on BCPs across the state border which was ratified by the Cabinet’s Decree № 751 of 18.08.2010, the boundaries of the territory of the BCP are determined by the authorities of the state enterprise “Odessa commercial sea port” and approved by the Head of Odessa BG Detachment and Head of Odessa Customs . A plot of land, which was assigned to the port for permanent use under the Cabinet’s order № 1333-p of 07.10.2009 ‘On assigning a plot of land for permanent use to the state enterprise “Illichiv'sk commercial sea port”’, belongs to the territory of the BCP as well as a part of the port water area which is assigned to the port for use by the Cabinet’s Decree № 223 of 18.03.2009 “On assigning the water area to be used by the state”

Annex XVII. Documents and Resources Used for the Port Study & Gap & Needs Analysis.

Maritime Conventions

1. Convention on Facilitation of International Maritime Traffic (FAL) of 9 April 1965.
2. International Convention for the Safety of Life at Sea (SOLAS.)

EU Policies, Programs, Guidelines & International Conventions

1. IBM Guidelines in EC External Co-operation , November 2009.
2. ENP-Ukraine Progress Report of 2013.
3. WCO Framework of Standards.
4. Convention on a Common Transit.
5. Revised Kyoto Convention.
6. WCO Arusha Declaration.
7. EU Customs Blueprint.
8. European Union's programme for Ukraine, the 'Support to the Integration of Ukraine into the Trans-European Transport Network (TEN-T). Cross Cutting Issues (WP7) Multimodal Transport, Logistics, Border Issues' report
9. USAID (United States Agency for International Development) /LINC (Local Investment & National Competitiveness Assessment of Import/Export Clearance Processes at Odessa Commercial Seaport (OSCP).
10. Trade & Transport Corridor Management Toolkit Charles Kunaka, & Robin Carruthers.
11. WTO Valuation Guidelines.
12. EC Guidelines for the Western Balkans.
13. WCO Coordinated Border Management Compendium.
14. World Bank Border Management Modernisation.
15. Convention on International Transport of Goods Under Cover of TIR Carnets Convention.
16. Convention on a Common Transit.
17. 'Acquis communautaire'.
18. ENP-Ukraine Progress Report of 2013.
19. WCO SAFE Framework of Standards.
20. United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) – Recommendations and Guidelines on establishing a Single Window.
21. ICC Customs Guidelines Policy Statement Document No. 103-6/12 – (June 2012).
22. WCO Code of Ethics and Conduct Model.
23. EU Guidelines on Standards & Criteria for Trade Security & Facilitation Measures.
24. WCO - Guidelines on National Valuation Databases.
25. World Customs Organisation Guidelines on Enforcement & Compliance and Procedures & Facilitation

Annex XVIII. Gap Matrix.

Intraservice	Border Agency	Gap
Legal & Regulatory Framework	Customs	Gap 1: Legislative Alignment with the EU 'Acquis communautaire' & International Standards
	Veterinary & SPS	Gap 1: Legislative Alignment of Veterinary & SPS with the EU 'Acquis Communautaire' & International Standards
Institutional Framework	Customs	Gap 1: Organisational and HRM Reform
	Customs, Veterinary & SPS	Gap 1: Staff Rotation Systems
		Gap 2: More Flexible Working Hours
		Gap 3: Measurable Time & Performance Standards
Procedures	Customs	Gap 4: Services Engaged in Border Controls
		Gap 1: Implementation of Simplified Procedures & the Authorised Economic Operators (AEO) Concept
		Gap 2: 'Pre-declaration' Procedure
		Gap 3: Risk Analysis at the Ports
		Gap 4: Weighing of Containers
		Gap 5: Implementation of the WCO-Framework of Standards to Secure and Facilitate Global Trade (WCO-FoS) including the Use of GPS Locks
	Gap 6: Excessive Use of Mobile X-ray Equipment as Primary Examination Tools for Containers	
Communication & Information Exchange	Customs	Gap 7: Valuation & Classification
		Gap 1: Pre-arrival Notification
Infrastructure & Equipment	Customs	Gap 1: E-Customs Implementation & Fully Automated Processes
		Gap 2: Transit & New Computerised Transit System (NCTS)
Corruption	Customs	Gap 1: Use of Service Support Vehicles to Move Containers within the Ports
		Gap 2: National Inter-Active Database for Scanned Vehicle Images
Corruption	Veterinary & SPS	Gap 1: Protective Clothing & Uniforms
Inter-Agency	Customs, Veterinary & SPS	Gap 1: Corruption at the Ports of Odessa and Illichiv'sk & adjacent Import Terminals
Inter-Agency	Border Agency	Gap
Legal & Regulatory Framework	Customs, Veterinary & SPS	Gap 1: Too Many Legal Acts Regulating Border Management

Communication & Information Exchange	Customs	Gap 1: Development of Mutual Administrative Assistance (MAA) & Inter-Agency Agreements
		Gap 2: Memoranda of Understanding (MOUs) with the Private Sector
	Customs, Veterinary & SPS	Gap 1: Improved Public Information
		Gap 2: Port & Border Control Service User Satisfaction Surveys
		Gap 3: Inter-agency Exchange of Information including Links between State BCSs Databases
	International	Border Agency
Communication & Information Exchange	Customs, Veterinary & SPS	Gap 1: Lack of Bilateral Agreements Regarding Cross Border Co-Operation
	Veterinary & SPS	Gap 1: Information Technology

Annex XIX. World Bank Logistics Performance Indicators²³¹.

The Logistics Performance Index is an interactive benchmarking tool created to help countries identify the challenges and opportunities they face in their performance on trade logistics and what they can do to improve their performance. The LPI 2014 allows for comparisons across 160 countries. The LPI is based on a worldwide survey of operators on the ground (global freight forwarders and express carriers), providing feedback on the logistics “friendliness” of the countries in which they operate and those with which they trade. They combine in-depth knowledge of the countries in which they operate with informed qualitative assessments of other countries where they trade and experience of global logistics environment. Feedback from operators is supplemented with quantitative data on the performance of key components of the logistics chain in the country of work.

The LPI consists therefore of both qualitative and quantitative measures and helps build profiles of logistics friendliness for these countries. It measures performance along the logistics supply chain within a country and offers two different perspectives: international and domestic.

International LPI provides qualitative evaluations of a country in six areas by its trading partners — logistics professionals working outside the country.

LPI 2014 ranks 160 countries on six dimensions of trade - including customs performance, infrastructure quality, and timeliness of shipments - that have increasingly been recognized as important to development. The data used in the ranking comes from a survey of logistics professionals who are asked questions about the foreign countries in which they operate.

The components analysed in the International LPI were chosen based on recent theoretical and empirical research and on the practical experience of logistics professionals involved in international freight forwarding. They are:

- The efficiency of customs and border management clearance (“Customs”).
- The quality of trade and transport infrastructure (Infrastructure”).
- The ease of arranging competitively priced shipments (Ease of arranging shipments”).
- The competence and quality of logistics services—trucking, forwarding, and customs brokerage (“Quality of logistics services”).
- The ability to track and trace consignments (“Tracking and tracing”).
- The frequency with which shipments reach consignees within scheduled or expected delivery times (“Timeliness”).

The LPI uses standard statistical techniques to aggregate the data into a single indicator that can be used for cross-country comparisons.

In relation to International performance indicators Ukraine has shown small signs of an overall improvement particularly in relation to Customs but it is still only 69 /160 Countries surveyed.

Year	Overall Ranking	Customs Ranking
2007	73	97
2010	102	135
2012	66	88
2014	61	69

Domestic LPI provides both qualitative and quantitative assessments of a country by logistics professionals working inside it. It includes detailed information on the logistics environment, core logistics processes, institutions, and performance time and cost data.

231. <http://lpi.worldbank.org/refers>.

The Domestic LPI looks in detail at the logistics environments in 116 countries. For this measure, surveyed logistics professionals assess the logistics environments in their own countries. This domestic evaluation contains more detailed information on countries' logistics environments, core logistics processes and institutions, and performance time and cost. This approach looks at the logistics constraints within countries, not just at the gateways, such as ports or borders. It uses four major determinants of overall logistics performance to measure performance:

- Infrastructure,
- Services,
- Border procedures and time, and
- Supply chain reliability'.

Export time and cost / Port or airport supply chain	
Distance (kilometres)	3500km
Lead time (days)	5 days
Cost (US\$)	5000US\$
Export time and cost / Land supply chain	
Distance (kilometres)	750km
Lead time (days)	2 days
Cost (US\$)	750US\$
Import time and cost / Port or airport supply chain	
Distance (kilometres)	3500km
Lead time (days)	5 days
Cost (US\$)	5000US\$
Import time and cost / Land supply chain	
Distance (kilometres)	750km
Lead time (days)	2 days
Cost (US\$)	750US\$
Shipments meeting quality criteria (%)	40%
Number of agencies - exports	6
Number of agencies - imports	5
Number of documents - exports	6
Number of documents - imports	5
Clearance time without physical inspection (days)	1 days
Clearance time with physical inspection (days)	1 days
Physical inspection (%)	50%
Multiple inspection (%)	35%

Annex XX. Types of Corruption in Customs²³².

'Rent-seeking' - is literally, rent sought to recover the cost of acquiring or retaining a lucrative position. It includes petty or routine corruption (also called tea or facilitation money), whereby a trader pays a bribe at various stages to get goods cleared. The most common form is "speed" payments, such as those paid to expedite processing of documents and signatures to achieve a faster clearance. However, it may also include the issuing on non-essential certificates, avoiding examination and inspection routines or fees collected for using the examination facilities when no examination takes place. Generally, these tend to be relatively small payments paid in cash to individuals and are often perceived an acceptable part of the clearance process.

Sometimes called survival corruption (as poorly paid government officials try to make ends meet), petty corruption is pervasive and often almost accepted as a necessary evil in some countries. The overall rent may be almost fixed, the size and frequency of bribes depending on the bargaining powers of payer and recipient. Though mainly associated with increased business costs, 'rent-seeking' can have a large and immediate fiscal impact when rents are considered too high and so encourage evasion. Petty corruption often can be reduced by using automation to limit personal interactions between customs officials and traders. Two things are required to combat 'rent-seeking' in border management. One is an adequate working relationship among agencies. The other is a release by default approach—based on a risk management approach, which often can exist before full computerization is rolled out—to eliminate some 'rent-seeking' opportunities.

Patronage - is the making of appointments as part of a reciprocal exchange of favors among political or other interest groups. Patronage networks impede the emergence of an efficient, modern bureaucracy.

They facilitate evasion, so they have high fiscal as well as social impacts. And they often extend to law enforcement agencies, leading to pervasive impunity. While there are no technical methods for dealing with patronage, it is possible to introduce alert mechanisms into customs systems to point out patronage patterns.

Collusion - occurs when a trader or agent evades all or part of a fiscal obligation and a customs officer receives a share in the unpaid amount. Leading to direct—often major—revenue leakage, collusion is largely a political and social problem. Yet it can be partly checked through simple but effective, real time alert mechanisms that bring suspicious transactions to the attention of a network of managers and auditors inside and outside the customs agency. Examples of such transactions include systematic valuation queries or waivers, the repeated processing of imports from the same importer by the same customs officer, and the like.

Collusion at borders can be addressed through:

- Checks and balances using external data (for example, data obtained automatically from across the border) to validate processing.
- As much as possible, automatic capture of basic data that cannot be interfered with later.
- Downstream control.

Grand (or criminal) corruption - occurs when criminal interests pay or otherwise exert pressure to protect their illegal operations, such as drug trafficking. Often such corruption amounts to state capture by criminal networks. Assessing its impact is difficult, as family or gang networks—sometimes intricate—collude in corrupt practices that allow large revenue leakage and the passage of illicit and hazardous goods (drugs in particular). The greatest costs of corruption to state and society are not the rents and bribes as such but the underlying distortions, revenue leakages and criminal activities that they reveal and facilitate on a larger scale. Indeed, in fragile states grand corruption does not cause large fiscal leakages—rather, in more severe ways; it threatens the writ of the state. Grand corruption can be partly addressed through an overhaul of procedures, legislation, and institutional mandate with auditing tools to help detect corruption levels. Such an overhaul can be only partly effective, because the deep social and political roots of criminal networks undermine any attempt at overhauling systems—especially in fragile states and countries in conflict, where the rule of law is generally extremely weak.

232. WB Customs Modernisation Handbook Chapter 20 refers.

Annex XXI. Arusha Declaration.



THE REVISED ARUSHA DECLARATION

DECLARATION OF THE CUSTOMS CO-OPERATION COUNCIL CONCERNING GOOD GOVERNANCE AND INTEGRITY IN CUSTOMS

THE CUSTOMS CO-OPERATION COUNCIL¹,

NOTING that Customs administrations throughout the world perform a number of vitally important tasks on behalf of their Governments and contribute to national goals such as revenue collection, community protection, trade facilitation and protection of national security;

ACKNOWLEDGING that integrity is a critical issue for all nations and for all Customs administrations and that the presence of corruption can severely limit Customs capacity to effectively accomplish its mission. The adverse effects of corruption can include :

- a reduction in national security and community protection;
- revenue leakage and fraud;
- a reduction in foreign investment;
- increased costs which are ultimately borne by the community;
- the maintenance of barriers to international trade and economic growth;
- a reduction in public trust and confidence in government institutions;
- a reduction in the level of trust and co-operation between Customs administrations and other government agencies;
- a reduction in the level of voluntary compliance with Customs laws and regulations; and
- low staff morale and “esprit de corps”;

CONSIDERING that corruption can be combated effectively only as part of a comprehensive national effort;

AFFIRMING that a priority for all Governments should be to ensure that Customs is free of corruption. This requires firm political will and a sustained commitment to the fight against corruption;

DECLARES that an effective national Customs integrity programme must address the following key factors :

1. Leadership and Commitment

The prime responsibility for corruption prevention must rest with the head of Customs and the executive management team. The need for high levels of integrity must be stressed and commitment to the fight against corruption maintained over the long term. Customs managers and supervisors should adopt a strong leadership role and accept an appropriate level of responsibility and accountability for maintaining high levels of integrity in all aspects of Customs work. Customs managers should demonstrate a clear and unequivocal focus on integrity and be seen to set an example that is consistent with both the letter and spirit of the Code of Conduct.

2. Regulatory Framework

Customs laws, regulations, administrative guidelines and procedures should be harmonized and simplified to the greatest extent possible so that Customs formalities can proceed without undue burden. This process involves the adoption of internationally agreed conventions, other instruments and accepted standards. Customs practices should be reviewed and redeveloped to eliminate red tape and reduce unnecessary duplication. Duty rates should be moderated where possible and exemptions to standard rules be minimized. Systems and procedures should be in accordance with the revised International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention).

3. Transparency

Customs clients are entitled to expect a high degree of certainty and predictability in their dealings with Customs. Customs laws, regulations, procedures and administrative guidelines should be made public, be easily accessible and applied in a uniform and consistent manner. The basis upon which discretionary powers can be exercised should be clearly defined. Appeal and administrative review mechanisms should be established to provide a mechanism for clients to challenge or seek review of Customs decisions. Client service charters or performance standards should be established which set out the level of service clients can expect from Customs.

¹ Customs Co-operation Council is the official name of the World Customs Organization (WCO).

4. Automation

Automation or computerization of Customs functions can improve efficiency and effectiveness and remove many opportunities for corruption. Automation can also increase the level of accountability and provide an audit trail for later monitoring and review of administrative decisions and the exercise of official discretion. Where possible, automated systems should be configured in such a way as to minimize the opportunity for the inappropriate exercise of official discretion, face-to-face contact between Customs personnel and clients and the physical handling and transfer of funds.

5. Reform and Modernization

Corruption typically occurs in situations where outdated and inefficient practices are employed and where clients have an incentive to attempt to avoid slow or burdensome procedures by offering bribes and paying facilitation fees. Customs administrations should reform and modernize their systems and procedures to eliminate any perceived advantages which might be obtained through circumventing official requirements. Such reform and modernization initiatives should be comprehensive in nature and focus on all aspects of Customs operations and performance. The Revised Kyoto Convention provides a sound reference point for such initiatives.

6. Audit and Investigation

The prevention and control of corruption in Customs can be assisted by the implementation of a range of appropriate monitoring and control mechanisms such as internal check programmes, internal and external auditing and investigation and prosecution regimes. Such regimes should strike a reasonable balance between positive strategies to encourage high levels of integrity and repressive strategies designed to identify incidences of corruption and to discipline or prosecute those personnel involved. Customs personnel, clients and the general public should be encouraged to report corrupt, unethical or illegal activity and, when such information is provided, it should be investigated in a prompt and thorough manner and sources should be protected. Where large scale or complex investigations are warranted or in administrations where corruption is widespread, there should also be recourse to independent anti-corruption agencies.

7. Code of Conduct

A key element of any effective integrity programme is the development, issue and acceptance of a comprehensive code of conduct which sets out in very practical and unambiguous terms the behaviour expected of all Customs personnel. Penalties for non-compliance should be articulated in the code, calibrated to correspond to the seriousness of the violation and supported by appropriate administrative and legislative provisions.

8. Human Resource Management

The implementation of sound human resource management policies and procedures plays a major role in the fight against corruption in Customs. Human resource management practices, which have proved useful in controlling or eliminating corruption in Customs, include :

- providing sufficient salary, other remuneration and conditions to ensure Customs personnel are able to maintain a decent standard of living;
- recruiting and retaining personnel who have, and are likely to maintain, high standards of integrity;
- ensuring staff selection and promotion procedures are free of bias and favoritism and based on the principle of merit;
- ensuring that decisions on the deployment, rotation and relocation of staff take account of the need to remove opportunities for Customs personnel to hold vulnerable positions for long periods of time;
- providing adequate training and professional development to Customs personnel upon recruitment and throughout their careers to continually promote and reinforce the importance of maintaining high ethical and professional standards; and
- implementing appropriate performance appraisal and management systems which reinforce sound practices and which foster high levels of personal and professional integrity.

9. Morale and Organizational Culture

Corruption is most likely to occur in organizations where morale or 'esprit de corps' is low and where Customs personnel do not have pride in the reputation of their administration. Customs employees are more likely to act with integrity when morale is high, where human resource management practices are fair and where there are reasonable opportunities for career development and progression. Employees at all levels should be actively involved in the anti-corruption programme and should be encouraged to accept an appropriate level of responsibility for the integrity of the administration.

10. Relationship with the Private Sector

Customs administrations should foster an open, transparent and productive relationship with the private sector. Client groups should be encouraged to accept an appropriate level of responsibility and accountability for the problem and the identification and implementation of practical solutions. The establishment of Memoranda of Understanding between Customs and industry bodies can be useful in this regard. Likewise, the development of codes of conduct for the private sector, which clearly set out standards of professional behaviour, can be useful. Penalties associated with engaging in corrupt behaviour must be sufficient to deter client groups from paying bribes or facilitation fees to obtain preferential treatment.

We, the Members of the Customs Co-operation Council, call upon Customs administrations to implement comprehensive and sustainable integrity action plans based on the key principles outlined above and on Governments, the business sector and members of the international community to support Customs in its fight against corruption.

Done at Arusha, Tanzania, on the 7th day of July 1993 (81st/82nd Council Sessions) and revised in June 2003 (101st/102nd Council Sessions).

Annex XXII. Decree No. 467.

APPROVED by the Decree of Cabinet of Ministers dated May 23 2012, № 467

On approval of exhaustive list of reasonable grounds for performing examination (re-examination) of goods and commercial vehicles by customs authorities of Ukraine

According to p.5 art.338 of CC of Ukraine the Cabinet of Ministers resolved on the following:

- 1.** To approve an exhaustive list of reasonable grounds for performing examination (re-examination) of goods and commercial vehicles by customs authorities of Ukraine (attached).
- 2.** The exhaustive list approved by this Decree does not cover the circumstances at p.2-4 art.338 of CC of Ukraine.
- 3.** Current Decree comes into the legal force since the 1st of June 2012.

Prime-Minister of Ukraine

M. Azarov

Exhaustive list of reasonable grounds for performing examination (re-examination) of goods and commercial vehicles by customs authorities of Ukraine

- 1.** Absence or non-confirmation of the information regarding the performing of customs clearance of goods and commercial vehicles.
- 2.** Transportation of goods and commercial vehicles through the customs border of Ukraine and/or out of the borders of customs control zone during the off-duty hours of customs service.
- 3.** Transportation of goods and commercial vehicles within the limits of controlled border area, the border line out of customs location area or out of customs control zones.
- 4.** Transportation of goods and commercial vehicles on a route or in a manner which is non-relevant for the transfer of such kind of goods and commercial vehicles.
- 5.** Transportation of goods and commercial vehicles on a route or in a manner which is typical for smuggling traffic or for transfer of goods being the subjects of customs rules infringements.
- 6.** The fact of bringing by citizens an unreasonable amount of goods which is not proper for personal things transportation.
- 7.** Presence of signs of arranging the goods and commercial vehicles with specially prepared secret compartments (hiding places) or using other means that make complicated discovering of goods.
- 8.** Availability of the features making a certain type of goods is disguised to look like a different one.
- 9.** Suggestion, based on the results of using the technical facilities of customs control, of prohibition or limitations imposed according to the legislation on the goods being transferred through the customs border of Ukraine.
- 10.** Discovering, based on the results of using the technical facilities of customs control, of places in the goods and commercial vehicles used for hiding goods from the customs control.
- 11.** Discrepancies of the data obtained while using the technical facilities of customs control and those in the submitted documents for customs control.
- 12.** Submitting to the customs, as a reason of goods transportation, forged or illegally obtained documents, or discovering false data in the submitted documents.
- 13.** Transportation of goods and commercial vehicles unlawfully released from customs control as a result of the exploitation of position by the customs office officials.
- 14.** Receiving the information from law-enforcement agencies about the transfer of goods and commercial vehicles breaking customs legislation.

Annex XXIII. Transit to Euroterminal Draft Proposal.

Draft Concept

To consider the feasibility of introducing a satisfactory solution for both Customs and Business that aims to reduce or eliminate the need to present shipments for transit clearance at the Transit Terminal - Customs Clearance unit No. 2 (Transit Terminal) - within the territory of Odessa Port when the final destination is import clearance at the adjacent Customs Cargo Terminal hereinafter referred to as the Euroterminal facility (outside the port). The change in the current procedure would permit direct delivery of shipments from the temporary storage platform / area to the Euroterminal under a revised and experimental scheme.

Current System

Shipments arriving by sea at Odessa Port and requiring import clearance in the Odessa district are able to use the Euroterminal facility, situated adjacent to the territory of the port. Such shipments require completion of a transit procedure to allow them to cross the state border and facilitate transport from the territory of the port to the Euroterminal. In accordance with CC Chapter 17 transit shipments are presented at the Transit Terminal - Customs Clearance unit No. 2 - and a transit procedure is initiated. This step in the transportation process has the potential for delays caused by documentation processing and also by controls performed by Customs and the State BCSs which may take the form of weighing and scanning of containers, as well as physical examination and sampling of goods. In theory, shipments that undergo controls at this stage should not be subject to similar, further duplicitous controls at the Euroterminal.

When other factors such as those described below are considered the need for such a procedural step, appears to be extraneous:

- Firstly, it is understood that in accordance with the Article 194 Paragraph 1 of the CC of Ukraine, for shipments requiring an internal transit procedure within Ukraine in addition to transit documents, the submission of a preliminary notification (PP) or preliminary declaration (PD - high value/risk consignments) is necessary. Preliminary notification EE IM 40 is a declarant's notification submitted to customs in advance at the final place of destination - in this case the Euroterminal - of the intention to bring cargo into or from the customs territory of Ukraine. Preliminary notification is submitted in electronic format (Article 194 Paragraph 4) and is available to Customs at the port (Transit Terminal) via the Customs electronic declaration processing system (Inspector 2006). The EE IM 40 must contain all information which is sufficient for importation and release of goods and in addition, perhaps more importantly, duties and taxes are deposited or available at this point before shipments are able to leave the territory of the port for their final destination.
- Secondly, following completion of any Customs or BCS controls at the Transit Terminal and initiation of the transit procedure, shipments, placed under customs seal, are conveyed by vehicle via a specially constructed internal roadway forming within the territory of Odessa Port, until reaching at the northern extremity, a manned entry / exit e-gate²³³, approximately 3km away from the transit terminal. The roadway between the Customs Clearance unit No. 2 and the entry/ exit e-gate is fenced and enclosed without direct access to or from the land-side, and is monitored along its entire length by CCTV. As a result the roadway is effectively a 'secure transport corridor', which provides an additional level of security under which the integrity of shipments are fully safeguarded. At the right-hand side exit e-gate from the port a specially segregated lane dedicated for traffic with a final destination of the Euroterminal, funnels vehicles seamlessly into the secure landside parking area of the Euroterminal facility ensuring that vehicles undertaking this route never travel on public roads.

233. The entry/exit e-gates to the port use RFID technology to register vehicles/ containers entering or leaving the port linked to the Port Information System which receives data about the vehicle and cargo and provides time stamps to record movements i.e. Gate-in and Gate-out. The system also electronically records the identity passes of personnel entering and leaving the port.

Fig 1²³⁴.

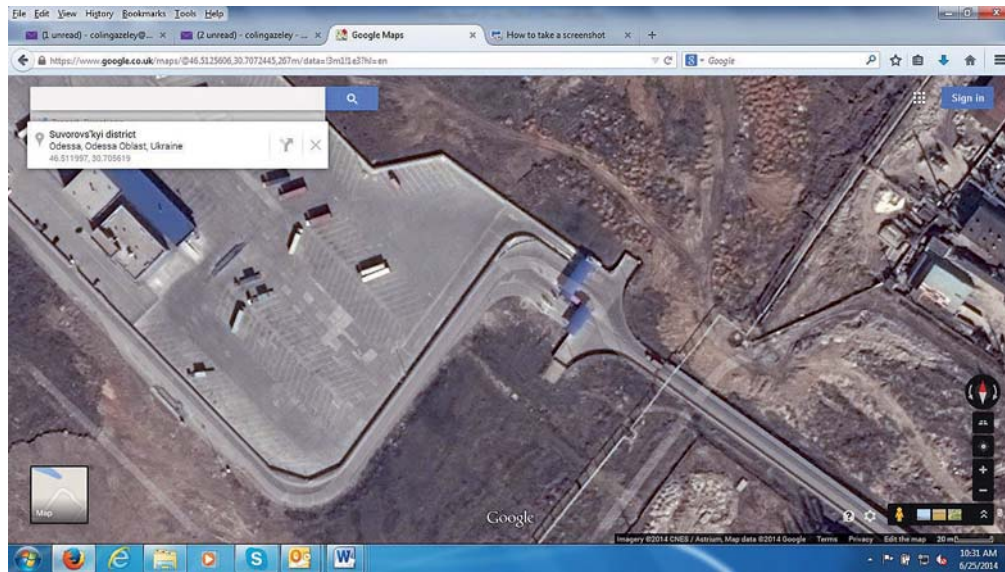
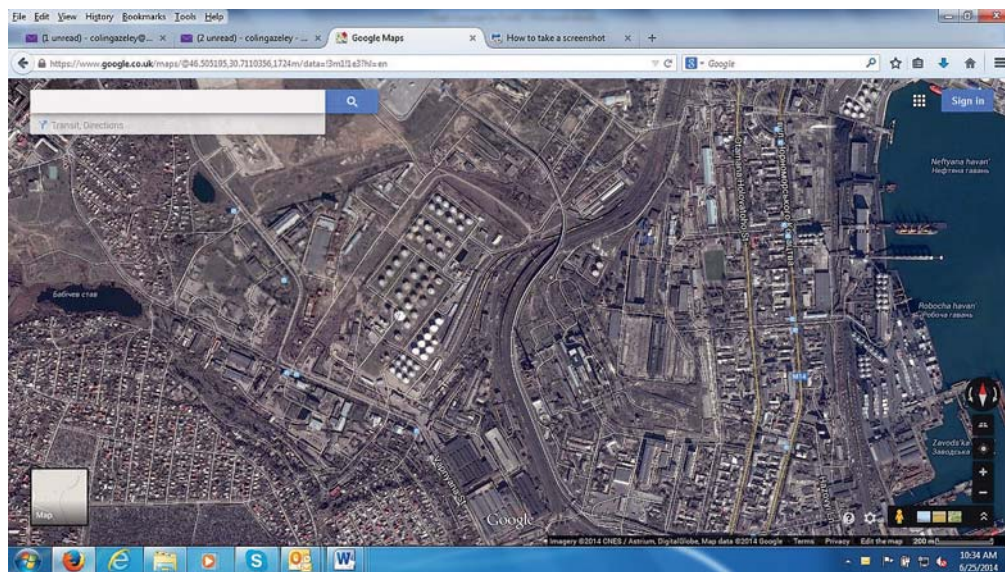


Fig 2²³⁵.



Proposal

As shipments referred to above are documented and registered with Customs at the Euroterminal (EE IM 40), revenue and duties are secure (monies are deposited in advance or covered by means of a transit guarantee), transportation integrity is assured (by use of the internal transport corridor & e-gate stamps provided by Port Authority through the ISPS and in addition, all border controls if required are able to be performed when shipments have safely arrived at the Euroterminal, there would appear to be serious justification for considering the re-assessment of the existing 'transit procedure', and elaborating an acceptable alternative that continues to safeguard revenue, cargo integrity but aims to reduce inherent delays and costs.

234. Google Maps: Photograph Entry / Exit e-gate from OSCP territory and entrance to secure parking of the Euroterminal facility via a dedicated segregated lane refers.
235. Google Maps photograph showing: Customs Clearance unit No. 2 within the territory of Odessa Port and the secure roadway (in the middle of the picture, running mid- top to bottom) leading to the entry/ exit e-gate & Euroterminal facility at the Northern extremity of the port.

The introduction of an individual and specialized scheme to take account of shipments that fit this particular category and routing is hereby proposed as outlined below;

1. Following discussion between Customs and Business stakeholders with the support of EUBAM, plans should be elaborated to implement a 'Pilot Project' introducing a new procedure initially for a restricted number of selected 'trusted traders' or 'authorized consignees'²³⁶ selected by Customs, based on risk analysis and intelligence led criteria, which will be able to take advantage of a 'virtual Green Lane' or 'Fast Track' system aimed at expediting shipments arriving by sea at Odessa Port with final destination and clearance at the Euroterminal.
2. The new procedure would implement methods using documents - other than transit documents - and existing Information and Communications Technologies (ICT) systems e.g. Customs or the ISPS, to expedite and facilitate the transport of shipments directly from the temporary storage areas within the territory of Odessa Port for traffic to the Euroterminal facility, thereby dispensing with the need for existing transit procedures at Customs Clearance unit No. 2.
3. The 'Pilot Project' would be monitored and evaluated and following a pre-determined period of operation if successful, further expanded to include other operators selected using risk based intelligence led criteria.
4. Other security measures complimenting those already in place could provide additional safeguards, and include the use of technological solutions, such as: e-seals incorporating Radio Frequency Identification Devices (RFID) & ZigBee technologies²³⁷, hand-held scanners/readers and/or centralised monitoring²³⁸ in order to track and trace vehicles / containers over the short distance involved ensuring safe delivery.

Conclusion

The reduction or elimination of the 'transit procedure' step in the current process of conveying shipments between Odessa Port and the Euroterminal is proposed primarily to reduce delays and costs to business and further facilitate trade.

Customs and Business stakeholders should work together to assess whether the volume of traffic and length of delays along the short route between Odessa Port and Euroterminal are sufficient to justify changes in existing procedures and additionally the introduction of e-seal & RFID technology.

Predictability is key for Business in this area of their activities. The removal of any barrier in the overall import process which doesn't enhance revenue security or cargo integrity but does more to potentially create delays, apply duplicitous controls and in addition, provide opportunities for 'rent-seeking' behaviours, will undoubtedly be welcomed. The SFS can additionally benefit from simplifying the process making better use of resources by the deployment of staff to areas where risk is higher and eliminating a working practice where it is alleged corrupt practices can flourish.

Changes to existing transit procedures are likely to require at the very least some regulatory amendments in order to introduce and implement the experimental scheme on a more permanent basis. Furthermore, such decisions may also have far reaching implications concerning levels of investment when it comes to determining the type of e-seals, RFIDs, readers, centralised databases, monitoring facilities and re-deployment of staff that may or may not be required.

On the one hand Customs already operate a centralised control and monitoring system, which could mean that costs may be diminished. On the other, Business may be interested to participate in a public/private initiative/partnership co-financing and operating enhancements to the system if the benefits can be demonstrated to be sufficiently rewarding. Working in partnership would in addition, provide further opportunities to build, positive, constructive Customs-Business relationships.

236. 'Authorised Consignee' status in this case is different to that used by the EU and would allow the trader to receive shipments at the Euroterminal facility without the need to present them and a transit declaration at Customs Clearance unit No.2 in OCSP.

237. Appendices I, II & III refer.

238. Customs currently operates a centrally monitored system overseen from HQ in Kiev to track and trace high risk or high value goods in transit, particularly cigarette consignments for Moldova or Transnistrian region, which uses electronic GPS, locks.

Other issues to consider:

- Who, how and where (location) would e-seals be placed on the container- Could this allow for more contrived delays - In Canada the shipper applies the seal and scans it entering the details into the customs system;
- Redeployment of Customs Officers to TSP to apply seals;
- Time limits could be set between time of request for sealing and time sealing is completed.

Appendix I. Latest Development in Technological Solutions.

Latest developments in the use of RFID technology incorporate devices, which utilise the ZigBee protocol²³⁹ - named after the dance performed by honeybees returning to the hive. ZigBee permits the transfer of data over large distances – out of line of sight, using a system similar to Wi-Fi that allows the RFID and e-seal to interact with location and satellite GSM²⁴⁰ devices placed in/on a means of transport. This development does not require the same level of scanner/ reader infrastructure as with basic RFIDs. E-seals²⁴¹ using the ZigBee protocol therefore have the capability of both sending RFID data (including departure and arrival times, location, e-seal and truck numbers, the seal's lock and unlock times, and the status of the trip—normal or otherwise) to static/fixed or hand-held readers, while for vehicles in transit, which are out of range of conventional RFID readers, the e-seal can send data to the back-end server via a cellular telephone connection.

E-seals²⁴²:

Disposable and reusable e-seals normally conform to the ISO 17712 and can come equipped with a RFID tag which is either:

- Passive - activated by scanner / reader or
- Active - combined with a rechargeable battery.

Stored encrypted data encoded to the e-seal's RFID tag are read by static or fixed, mobile or hand-held devices which download the unique ID number of the seal along with any other stored information. Read data can also link the RFID tag /seal ID to a container number already stored in the system, and these identifiers can be further linked with centralised servers.

E-seals connected to communications databases and centralised servers, which are able to process these electronic signals, can detect:

- Tampering of seals;
- Diversion from assigned routes particularly in respect of transit corridors;
- Splitting of tractor unit from trailers;
- Opening of container/vehicle.

In addition, such systems using ZigBee technology and/or GPS (as described above) have the potential to produce digital maps and allow the production of detailed trip summaries providing the further capability of investigation and the increased use and development of risk analysis.

239. ZigBee is a specification for a suite of high-level communication protocols used to create personal area networks built from small, low-power digital radios. ZigBee is based on an IEEE 802.15 standard. Though low-powered, ZigBee devices can transmit data over long distances by passing data through intermediate devices to reach more distant ones, creating a mesh network; i.e., a network with no centralized control or high-power transmitter/receiver able to reach all of the networked devices. The decentralized nature of such wireless ad hoc networks makes them suitable for applications where a central node can't be relied upon. ZigBee is used in applications that require only a low data rate, long battery life, and secure networking. ZigBee has a defined rate of 250 Kbit/s, best suited for periodic or intermittent data or a single signal transmission from a sensor or input device. Applications include wireless light switches, electrical meters with in-home-displays, traffic management systems, and other consumer and industrial equipment that requires short-range wireless transfer of data at relatively low rates. The technology defined by the ZigBee specification is intended to be simpler and less expensive than other WPANs, such as Bluetooth or Wi-Fi. http://www.telkonet.com/datasheets/ZigBee_Rev1_022014.pdf refers.

240. GSM -Global System for Mobile Communications, originally Group Spécial Mobile, is a standard developed by the European Telecommunications Standards Institute (ETSI) to describe protocols for second-generation (2G) digital cellular networks used by mobile phones. It became the de facto global standard for mobile communications with over 80% market share.

241. Annex III: Example E-seal with RFID capability refers.

242. <http://www.rfidjournal.com/articles/view?8907/2#sthash.PXF3jsTp.dpuf> refers.

E-seal system Functionality

An example of an e-seal system in operation is described below;

1. Static or fixed e-seal RFID readers located at exit gates to ports, airports, BCPs etc. read e-seal RFID tags in order to create a record of a truck's /container's/ cargo's departure time transmitting its unique ID number while within read range of a reader—normally up to 100 meters.
 - If equipped with ZigBee technology and/or GPS while in transit and out of range of the static or fixed readers, the e-seal continues to transmit its coordinates allowing Customs/shippers to track the seal/truck/container/cargo in real time and establish its exact location along the route.
2. If, at any time, the truck deviates from its expected path, or stops moving before arriving at its destination, or if the seal is tampered with, the software detects an anomaly and displays an alert for customs officials who are monitoring shipments from a remote office.
3. With the right software high-risk/high revenue products can be highlighted for Customs attention in order that they can monitor more closely individual consignments and ensure safe delivery.
 - On arrival at the final destination the truck /container/ cargo, the e-seal's RFID tag is read once more. The e-seal can be removed and if appropriate is available for use again.

The introduction and enhanced use of this technology has provided countries such as Taiwan with the opportunity to establish what are known as 'Green Lanes' where following a process of risk analysis and an assessment of compliance levels, 'trusted traders' are permitted to move their goods quickly through the Customs clearance process without inspection and examination.

The use of such electronic visibility and security systems, allowing Customs (and shippers) to know the exact location of a container/cargo/vehicle and at the same time be immediately alerted if an intrusion event occurs, is increasingly being seen as "good practice".

Potential advantages of e-seals & RFIDs for Customs:

- Measurable and quantifiable reductions in the levels of smuggling.

Potential advantages of e-seals & RFIDs for Trade:

- Trade facilitation without compromising security control.
- Reduced waiting times for transit clearance.
- Accelerated truck movements.
- Potential reductions in the cost of transit guarantees due to improved cargo visibility and security.
- Potential reductions in the levels of physical inspections (containers and seals).
- Overall reductions in the level of transport costs.
- Reduced congestion at ports and BCPs.
- Increases to the general volume of trade.
- Faster transit times.

Potential disadvantages of e-seals & RFIDs for Customs:

- Cost of investment in technological infrastructure and compute software/ communications centre required to manage a fully integrated RFID e-seal GPS/GPRS system²⁴³.
- Requirement to administer the system.

243. Truck X-ray integration can be another element to include in the system to further secure transit movements by scanning vehicles both at the beginning and end of each movement to identify any undetectable violations of container integrity.

Appendix II. Example RFID Re-usable e seal.



The patented Hyperion RFID re-usable e seal is a combination of a specially designed plastic indicative and electronic protection that contains passive RFID technology compliant to the EPCGlobal Gen2 standard.

Capabilities include:

- Real-time business intelligence
- Supply chain control
- Protection of high-value cargo
- Cutting-edge data management & audit

Allows for monitoring, tracking, and managing of supply chains across remote locations and secures high-value cargo and products.

A stand-alone seal with reusable electronic portion and one-time replaceable indicative seals. Works with a Motorola 9090 handheld reader and has an operating life time of 1 year. Can also be read with permanent readers. This is a point-to-point reading of time stamped events.

Product Features

- Seal tamper sensor that detects breakage or removal of strap
- Adjustable strap length to fit various applications
- Disposable plastic strap for on-time usage. Re-usable sensor unit.
- Can determine temperature, shock, humidity, light, tilt, x-ray through various sensors.
- Real time clock
- 2 LEDs for visual status reporting (on/off/tampered)
- Event log for storing of time stamped events
- Activation and status reporting via RFID
- Operating life time: 1 year or 25 uses.
- Shelf storage life time: 3 years

Applications

- In-Bond Shipments
- Valves
- Tote Boxes
- Trailer Doors
- Rail cars
- Hatches
- High Valve Tracking
- Bulk Shipments
- Full Pallet Nettings

Technical Specifications

- EPCglobal Gen 2, Class 1+ tag
- 96-bit EPC code and 48-bit serial number (TID bank)
- Operating Frequency Range: 860 – 960 MHz (ETSI/FCC)
- Reading range: Up to 1 to 3 ft. depending on antenna and reader.
- Seal can be read with Motorola 9090 or fixed reader.
- Sensor data access via User memory bank (according to Class 1 specification)
- Activation and reset.
- Status Data: tamper status, seal state and clock
- Persistent event log.

Environmental

- Temperature: Operating: -40 °F to 158 °F (-20 °C to +60 °C)
- Humidity: 95% non-condensing at 158 °C (70°C)

Appendix III. WTO FTA ARTICLE 11: FREEDOM OF TRANSIT.

1. Any regulations or formalities in connection with traffic in transit imposed by a Member shall not:
 - a. be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a reasonably available less trade restrictive manner,
 - b. be applied in a manner that would constitute a disguised restriction on traffic in transit.
2. Traffic in transit shall not be conditioned upon collection of any fees or charges imposed in respect of transit, except the charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.
3. Members shall not seek, take or maintain any voluntary restraints or any other similar measures on traffic in transit. This is without prejudice to existing and future national regulations, bilateral or multilateral arrangements related to regulating transport consistent with WTO rules.
4. Each Member shall accord to products which will be in transit through the territory of any other Member treatment no less favourable than that which would be accorded to such products if they were being transported from their place of origin to their destination without going through the territory of such other Member.
5. Members are encouraged to make available, where practicable, physically separate infrastructure (such as lanes, berths and similar) for traffic in transit.
6. Formalities, documentation requirements and customs controls, in connection with traffic in transit, shall not be more burdensome than necessary to:
 - a. identify the goods; and
 - b. ensure fulfilment of transit requirements.
7. Once goods have been put under a transit procedure and have been authorized to proceed from the point of origination in a Member's territory, they will not be subject to any customs charges nor unnecessary delays or restrictions until they conclude their transit at the point of destination within the Member's territory.
8. Members shall not apply technical regulations and conformity assessment procedures within the meaning of the Agreement on Technical Barriers to Trade on goods in transit.
9. Members shall allow and provide for advance filing and processing of transit documentation and data prior to the arrival of goods.
10. Once traffic in transit has reached the customs office where it exits the territory of the Member, that office shall promptly terminate the transit operation if transit requirements have been met.
11. Where a Member requires a guarantee in the form of a surety, deposit or other appropriate monetary or non-monetary instrument for traffic in transit, such guarantee shall be limited to ensuring that requirements arising from such traffic in transit are fulfilled.

-
- 12.** Once the Member has determined that its transit requirements have been satisfied, the guarantee shall be discharged without delay.
 - 13.** Each Member shall, in a manner consistent with its laws and regulations, allow comprehensive guarantees which include multiple transactions for same operators or renewal of guarantees without discharge for subsequent consignments.
 - 14.** Each Member shall make available to the public the relevant information it uses to set the guarantee, including single transaction and, where applicable, multiple transaction guarantee.
 - 15.** Each Member may require the use of customs convoys or customs escorts for traffic in transit only in circumstances presenting high risks or when compliance with customs laws and regulations cannot be ensured through the use of guarantees. General rules applicable to customs convoys or customs escorts shall be published in accordance with Article 1.
 - 16.** Members shall endeavour to cooperate and coordinate with one another with a view to enhance freedom of transit. Such cooperation and coordination may include, but is not limited to an understanding on:
 - i.** charges
 - ii.** formalities and legal requirements; and
 - iii.** the practical operation of transit regimes.
 - 17.** Each Member shall endeavour to appoint a national transit coordinator to which all enquiries and proposals by other Members relating to the good functioning of transit operations can be addressed.

Annex XXIV. SPS control clearance World Bank Border Management Modernisation (Chapter 16 refers).

'Border processing by SPS agencies is preferably guided by recommendations of the standard setting bodies—the Codex Alimentarius Commission, the International Plant Protection Convention, and OIE. Border post SPS clearance is only part of the total SPS clearance process. The process starts with an application for import licenses and permits. For many products, sanitary or Phyto-sanitary certificates are needed from the origin country. Obtaining the required permits, licenses, and certificates can be time consuming (filing applications in advance, waiting for approvals) and costly (fees and unofficial payments). At the border, quarantine officers check required papers, collect statistical and other information, and check whether goods conform to the papers. The officers do partial or full physical inspections, take samples, and perform simple tests or send samples to a laboratory. Finally they decide on destruction, quarantine, or treatment—and on release or rejection.

Animals may be quarantined in the exit country under that country's competent authority. Fresh products and live animals usually need to be checked and released at the border post. Other quarantined goods may be sent to bonded private or government warehouses, where inspections can be carried out and from which the goods are released after all diagnostic and other requirements are met.

Controls should depend on the risks associated with goods. Even if no formal risk management is in place, controls will differ by goods, shippers, and perhaps informal payments. Import permits and health certificates need not result in faster clearance at the border.

Many SPS agencies perform their role in sequence with customs. In some countries—such as the People's Republic of China—customs decides which goods need SPS clearance. After a customs declaration is filed, the applicant may be directed to the SPS agencies for further clearance before returning to customs. This is also the case in Ukraine at the BCPs when no SPS inspectors are present

Common weaknesses in SPS control procedures.

SPS control measures in most developing countries are far from satisfactory. They do not adequately protect against trade related health hazards, do not sufficiently ensure market access, and are too costly for traders. Health protection weaknesses often include:

The inability to identify (diagnose) health hazards as a result of weak staff qualifications at both inspectorates and border posts, insufficient diagnostic and testing capacities to verify animal health and product safety, and an insufficient operating budget.

- Lack of systematic data gathering and an absence of risk profiles.
- Little guidance for inspectors about priority health hazards.
- The absence of inspection manuals.
- A bias in interventions toward revenue generation from fees and informal payments.

Market access weaknesses often include:

- Inadequate data collecting and processing, leading to an inability to provide needed information to trading partners for obtaining market access.
- Inadequate expertise to challenge adverse decisions by importing countries.
- The non-recognition of a country's competent authority by its trading partners—because of weaknesses in its institutional framework, in its control capacities, or in its technical expertise.

Costs of doing business often include:

- Separate declarations for SPS control and customs.
- Duplication of tasks and data gathering at the border by customs, quarantine agencies, and border police (immigration).

-
- Poor coordination of border processes and time consuming sequential processes.
 - Inadequate information technology, making electronic lodging impossible.
 - Inefficient and redundant bureaucratic procedures.
 - Higher inspection rates than necessary because of poor risk management.
 - Unnecessary duplicative administrative requirements for private and public safety (quality) assurance schemes and transport documentation.
 - ‘rent-seeking’ and corruption.
 - Unnecessary testing, inspection, and disinfection treatment costs.

Priorities in developing countries.

Most developing countries seem to give the highest priority to promoting market access by meeting importing countries’ requirements. Health protection also receives attention, yet health controls are often ineffective and driven partly by ‘rent-seeking’ (fees and informal payments). Developing countries generally give much less attention to the cost of doing business, at least at the agencies responsible for conducting controls. The incentive structure for developing country quarantine agencies, for example, often prompts many inspections, tests, certifications, and permits—with little emphasis on risk management and reducing inspection rates. International support from donors and international organizations (such as FAO and OIE) usually targets SPS control capacities for improving market access and health protection, while it gives less attention to the transaction costs borne by the private sector.

Performance measurement.

Measuring the performance of SPS agencies is very difficult. No performance indicators exist. Virtually no efforts are made to assess performance, other than through specialists’ subjective judgments. Time release studies could capture some of the time spent on SPS controls at the border—but such data are not used in SPS services. One reason for not using time release study data is the preoccupation with market access and health protection. Another may be that the cost of SPS procedures is generally higher away from the border than at the border. Moreover, the individual contribution of each SPS service (plant health, animal health, and food safety) in time release studies may be too small to be measured precisely, so the results may be less useful for reforming policy.

SPS agencies and customs agencies.

It may be cost effective for customs agencies to perform certain general tasks for SPS agencies—tasks such as checking conformity between goods and documents, deciding whether goods should be checked by quarantine officers on referral, and checking expiration dates on food labels. Indeed, some countries formally delegate these powers to customs.

Yet SPS agencies generally see such cooperation with customs as a mixed blessing, if not as a direct threat. Regularly heard from SPS agencies are the complaints that customs is interested only in taxation, not in health protection; that customs officials have no expertise in SPS issues; and that delegating SPS tasks to customs results (allegedly) in the release of goods that need SPS checking. Accordingly, SPS agencies frequently expend much political energy protecting their existing mandates and administrative competence. (It is also fair to say that many customs agencies are not eager to take on additional tasks.) Similar arguments arose in turf struggles between customs and immigration authorities. But the successful delegation models used for many years by customs and immigration in Australia—and more recently in the United States—suggest that customs can perform routine tasks, such as immigration processing, without lowering standards. With effective information technology, and with a dataset based on harmonized system codes, it should be possible for customs to ensure that goods subject to SPS inspection are sent to the proper quarantine officials. However, the experience of one middle income country with extensive international trade shows that, despite many years of talks, customs and SPS agencies have not been able to agree on information sharing procedures for control and risk management. That is why many SPS agencies still collect their own information—failing to make progress in e-commerce and to establish a national single window. To be sure, more product

and process information may be required for SPS control than for customs control. For SPS there may be more product details, as well as seasonality information, so a shared database using harmonized system codes might require additions beyond those codes. The problem is not insurmountable with effectively deployed information technology, developed in cooperation with all users. At present SPS agencies typically are behind in their adoption of such technology.

The typical SPS agency is also behind in using risk management techniques effectively. One reason why cooperation between customs and SPS agencies may be difficult is that risk assessment generally seems more complex for SPS than for customs. Causes of complexity include:

The range of products, hazards, and ecological conditions related to SPS.

- The cost of collecting data on health hazards.
- The varying SPS control requirements imposed by importing and exporting countries.

Because of this technical complexity and the gap in capacities, involving SPS agencies actively in collaborative border management will require prolonged capacity building as a precondition. At present there is apparently little understanding of the differences between customs agencies and SPS agencies in risk parameters, risk assessment, and risk management. This lack of understanding can lead to the mistaken belief that the goal is to establish a single integrated risk management system for both agencies. In fact, the most that is possible is some coordination in selecting shipments for physical inspections.

What is needed is not one risk management system but, instead, one comprehensive risk management framework. Such a framework should use proven disciplines to meet the risks faced by both customs and SPS agencies.

Coordination among SPS agencies.

Overlapping jurisdictions and rivalry among SPS agencies are common—especially between agencies in agriculture ministries and public health ministries. Overlapping responsibilities may be functional (animal product safety and human health), or they may arise from agency responsibilities for different parts of the overall supply chain (agricultural inputs, production, primary processing, transport, and wholesale and retail markets). Some countries have tried to solve coordination problems by merging the various services into a single agency. After recent changes, the United States has only one border inspection agency (the Department of Homeland Security). China has one organization responsible for inspection and market access policies (the General Administration of Quality Supervision, Inspection and Quarantine). And other countries have only a single agency for food safety. No solution is perfect—a single agency may struggle to acquire the necessary competence in policymaking, data collection, standard setting, risk management, and control over domestic production and markets. Having a single quarantine agency on the border gives some advantages in efficiency and in cooperation with customs and other border agencies. But these advantages may be reduced by additional coordination issues and by strife among SPS agencies behind the border’.

Annex XXV. High Profile Cases of Corruption and alleged corrupt practices, behaviour, illegal fee rates in relation to the Ports of Odessa and Illichivsk.

2012

Several corruption cases were reported within the BCSs services in recent period:

- 1.** In January 2012, according to information received, a Moldovan company was requested by a representative of an Odessa-registered shipping agency to pay 2,000.00 USD to customs officers in order to speed up customs clearance;
- 2.** At the beginning of 2012, former Deputy Head of Customs Post in Odessa port and the Deputy Head of Customs Clearance unit No. 3 of the same Customs Post received illegal payments from representatives of commercial enterprises in connection with facilitation of delayed customs clearance of goods. According to media reports the amount was 32,350.00 USD;
- 3.** In October 2012 it was reported that, as a result of search activities performed by officers of the General Prosecutor's Office in the premises of Odessa Customs over 870,000.00 USD were discovered. Alexandr Vdovichenko, the Head of Odessa Customs, was dismissed. It was reported, that amount of money which was found in his service vehicle, was meant to be delivered to customs officers in Kiev. Additionally it was reported, that 22,000.00 USD was found in Vdovichenko's office in Odessa Customs.
- 4.** FOOD experts observed on one occasion during a desk review of a customs declaration and attached documents, that 100 USD were found. The incident occurred at Euroterminal in Odessa Port and was reported with local prosecution office taking over the investigation.

2013-2014

Between 2013 and 2014 it is alleged that delays of up to 7 days were artificially created in order to obtain bribes and corrupt payments for the customs clearance of goods in transit. Different law enforcement requirements are used to excuse delays in the process of cargo clearance. EUBAM'S presence and authority has also on occasion been sighted as a reason to retain cargo in the port²⁴⁴. Such artificial delaying tactics can be overcome by the illegal payment of 'hurry-up' money to officials but such practices create an atmosphere of uncertainty and unpredictability both of which are an anathema to the trade.

The most common form of these activities experienced by the trade in Odessa Port appears to be the deliberate cause of delays associated with customs clearance of cargo including the processing and authentication/endorsing of documents, procedures related to the weighing, examination and scanning of means of transport and goods.

²⁴⁴ EUBAM Special Report Odessa Commercial Sea Port 30/052014 refers.

Uncorroborated Alleged Illegal Fee Price Lists²⁴⁵

Odessa Port

“Shortcomings of the process of container cargo clearance allegedly led to abuse of powers by state officials that resulted in obligatory and alternative bribes to be paid to customs clearance units during the container cargo clearance (EE - preliminary notification/preliminary customs declaration (PP/PD), transit regimes), in particular:

1. Endorsement of an order– from 5 up to 10 USD per container;
2. CMR processing by the Cargo delivery control unit– from 10 up to 20 USD per container;
3. Processing of PP/PD, documents under Import-40 regime – from 20 up to 50 USD per container;
4. Speeding up the clearance process (during one hour since the documents are submitted) – 50 USD per container;
5. Customs clearance in case weight discrepancies are detected: if actual weight is less than declared - 50 USD per each short weight ton, if actual weight is greater than declared - 100 USD per each short weight ton;
6. Abolition of contrived examination – 50-500 USD per container;
7. Abolition of contrived examination with 100% unloading – 500-1000 USD per container;

In case of refusal to pay all the above mentioned bribes, customs officials did not accept documents for further customs clearance (it is impossible to prove this fact after the respective claim has been submitted as there are no records proving acceptance of the set of documents by a customs official), delayed the clearance process as long as possible after the documents' acceptance, threatened economic operators that their cargo will not be cleared (won't leave the territory of the port) etc.. Time spent by the transport means at the territory of ports is proof of these facts. Unfortunately, it is difficult to documentary record this fact as management of units does not personally receive bribes (as a rule, it happens in the end of the month through an intermediary) and a majority of freight forwards is afraid to lose a job.

- Rates for the facilitation of containers can be as high as \$500 or \$100 for each Officer in terms of bribes if 300,000 containers at \$500 then illegal payments to officials could be as high as \$150 / yr.”

Illichiv'sk Port

“IMPORT (non-hazardous cargos, not foodstuff) according to the current practice in \$:

- freight forwarding at the port - in order to affect clearance at Customs, cargo delivery control unit, approval/endorsement, Border Guard, admission cards, ecology, loading on to vehicle- \$80-\$90 ;
- possible expenses at the port (depending on the type of examination and involvement of dockers) - examination \$50-\$150
- Scanning (a private scanner when state CU scanner is inoperable) - \$30-\$35.
- Depending on the type of cargo the following expenses can be: - Anti-smuggling unit - quarantine (in case of cargo of vegetative origin) – veterinary service (in case of cargo of animal origin) - \$50 up to \$300 per each position (excluding the Anti-smuggling unit, not more than \$100 in order not to be examined by this unit. normally for anti-smuggling to avoid examination - \$50-\$80.”

Euroterminal²⁴⁶

‘In February 2013 the Washington-based Organised Crime and Corruption Reporting Project (OCCRP) published three articles about potential corruption in the CCT Euroterminal at Odessa Port. April 2011 former president unit Yanukovych instructed the former head of Ukraine's Customs service Ihor Kalenyk to assist in the opening of a new terminal which was then open later that year. According to the

245. Annex XXVIII Open Letter to Odessa Customs from Primary Trade Union of Freight Forwarders of Odessa Region refers.

246. Source <http://slidstvo.info/index.php/rozsliduvannia/31-proshavay-zbroya> refers.

OCCRP many businesses complained that they had been pressured by customs officers into using the new Euroterminal (CCT). Some businesses claimed that the new terminal led to higher fees and new problems. One businessman stated that at the Euroterminal ‘you pay US\$100 just for them to open the gates and then you pay US\$400 to transport your cargo from the port to the terminal’. However other importers have stated that the Euroterminal is better and cheaper than the old system of using high-cost customs brokers.

Before the establishment of the Euroterminal customs officials demanded cash payments to clear goods or importers could use well-connected customs brokers commonly referred to as the ‘chosen ones’ or ‘fancy brokers’. A table with official and unofficial duties/fees to be paid was published. Customs brokers and importers claimed that implementing the scheme would not have been possible without the involvement of top officials from the customs service. According to an official of the Odessa City Council and member of the legislatures organised crime commission the privileged brokers were connected to high-ranking political officials but the system has been dismantled. In November 2011 the co-founder of one of the fancy brokers was murdered this was perceived as connected with corruption Odessa port.

Other anecdotal information from anonymous sources within the field of Customs Brokers

- Regular customs officers and other control agencies are involved only in petty facilitation corruption in the form “\$50 thank you” for processing of a declaration;
- The main problem with processing declarations is the customs value. If the declared customs value is less than the reference price indicated in the internal customs values database, then the official will start fault-finding in the declaration (the dots and commas are in the wrong places; the word “road” is omitted in the address line, while in the other address line this word is present etc.) hence forcing the importer to accept the higher value. This nitpicking in some instances can last for days/weeks. Any attempt to go to the Odessa Customs HQs will fail because respective officers will simply hide from the importer.
- There are two main reasons for this situation with the customs value:
 - Revenue collection. The more revenue the better.;
 - “Fashionable” brokers. Unlike the regular brokers, the “fashionable brokers” are able to convince officials to accept the declared customs value which is lower than the reference customs value for this type of goods in the internal customs values database.
- No info about the court cases on contesting the overstated customs value established the Customs;
- Even if the importer/broker works under a direct contract (the producer and consignor is the same entity) and all the documents are genuine and the country is an EU MS, the Customs will not accept the declared customs value if it is lower than the reference value from the internal customs values database.
- Time-wise customs clearance was shorter before the CCT Euroterminal became a monopoly. Now it takes a day to perform all necessary steps on the territory of the port to have the container released from the territory of the port in order to get to the Euroterminal (sometimes weighing is necessary), hence the actual submission of the declaration takes place on the next day. The competition is obviously needed. Euroterminal was considered expensive even before it became a monopolist (now Euroterminal even calculates its prices on the basis of the USD\UAH exchange rate).’

Annex XXVI. Extract from the Decree No 597 dd. 7.08.2013 of the Cabinet of Ministers of Ukraine.

'Some issues of compensation of employees of the Ministry of Revenue and Duties and its territorial bodies' refers. Managers and specialists who ensure administration of taxes, customs duties, a single fee, perform operational and search activity and pre-trial investigation of criminal offenses, combating smuggling and customs violations, the Ministry of Revenue and Duties.

Position title	Monthly salary, UAH
Director of the Department	2354 - 2461
Head of the autonomous directorate, directorate	2087 - 2247
Head of the autonomous unit	1980 - 2087
Head of the unit within the department, autonomous directorate, directorate	1766 - 1873
Officer in charge of the autonomous sector	1589 - 1632
Officer in charge of the sector within the department, autonomous directorate, directorate, autonomous unit	1471 - 1525
Chief state auditor	1295 - 1348
Chief state inspector, senior state auditor	1177 - 1231
Senior state inspector	1027 - 1059
State inspector	910 - 942

Managers and specialists who exercise control over the collection of taxes and other payments, organize the control over the receipt of payments to the budget and their compulsory collection, recording, evaluation, storage of seized and confiscated property, carry out operational and search activity and pre-trial investigation of criminal offenses, customs control and customs clearance, combating smuggling and customs violations, the Ministry of Revenue and Duties.

Position title	Monthly salary, UAH
Head: general directorate, interregional general directorate, customs	1883 - 2119
First deputy head: general directorate, interregional general directorate, customs	1787 - 2012
Deputy head: general directorate, interregional general directorate, customs, deputy head of the general directorate (interregional general directorate, customs) - head of the directorate, head of the specialized tax inspection.	1696 - 1905
Deputy head of the specialized tax inspection- head of division	1611 - 1810
Head of the directorate, autonomous unit	1210 - 1573
Head of the customs post	1175 - 1200
Head of the unit within the directorate, customs post	1056 - 1150
Assistant to the director of: general directorate, interregional general directorate, customs	864 - 957
Officer in charge of the autonomous sector	934 - 1039
Officer in charge of the sector within the directorate, unit	906 - 1008
Chief state auditor	899 - 992
Chief state inspector, senior state auditor	805 - 864
Senior state inspector	712 - 782
State inspector	677 - 712

SALARY SCALES, SOUTH CUSTOMS OF THE STATE FISCAL SERVICE OF UKRAINE

Remuneration = salary + seniority bonus + bonus for a rank + monthly bonus + bonus for high achievements.

Minimum salary was equated to minimum wages = 1218 UAH.

more than 3 years	10% of salary
more than 10 years	20% of salary
more than 15 years	25% of salary
more than 20 years	25% of salary
more than 25 years	30% of salary
more than 30 years	40% of salary

Bonus for a rank - min 105 UAH up to 140 UAH max.

Monthly bonus (differs each month, it is fixed for a managerial position; it can be increased, reduced or abolished in relation to inspectors and deputy heads of divisions, based on performance results, within the allowance limits).

Bonus for high achievements – up to 50% of salary.

For example, a head of the autonomous unit at the Customs:

Approximate calculation:

Salary	2281 UAH
rank	120 UAH
work experience (20%)	456 UAH
bonus for high achievements (50%)	1428,5 UAH
bonus (50%)	1140,5 UAH
TOTAL (gross salary)	5.426 UAH
TOTAL (net salary)	4.2323 UAH

Similar calculation scheme is applied in relation to the position of a state inspector, but his/her salary is 1218 UAH.

Thus, remuneration depends on a position, length of service, rank, wage increments and bonuses. More detailed information on all the bonuses is laid down in the Decree of the Cabinet of Ministers of Ukraine dd. 09.03.2006 № 268 (e.g. there is a bonus for foreign language and other bonuses which are not paid to all the staff).

Annex XXVII. Port Fees.

Odessa	
Description of the service provided	Price
SC «HPC Ukraina», US dollars (VAT exclusive)	
Weighing, for 1 vehicle (with and/or without a container)	9.00
Additional services as to the placing of a container at the warehouse (sampling, cargo examination, cargo piece count, transportation of a container for weighing, stuffing etc.)	25.00
LLC EUROTERMINAL (Cargo customs complex-CCC) US dollars, VAT included	
Registration & recording of a vehicle at the CCC territory	51.25
Stay (parking) of a vehicle at the CCC territory **: - first 24 hrs. - in 24 hrs. (per each period of 24 hours)	non-tariffed 22,50
Weighing of a vehicle at the weigh bridge up to 60 tons	21.25
Weighing of an empty vehicle using an additional weighing complex	12.5
Rendering of services related to the use of the examination ramp (per each vehicle)	44.4
Use of the sanitary examination zone (per each transport mean)	17.87
LLC EUROTERMINAL (TIR parking), US dollars , VAT included	
For each entry to the Dry port (Dry port TIR parking), with the right to stay at the territory of Dry port (TIR parking) within 24 hours since the moment of registration of a vehicle by an employee	26.00
Return of the empty equipment to the container terminals' territory of SE «OCSP»	9.00
Per each subsequent period of 24 hours	26.00
LLC Brookline-Kiev Port, UAH, VAT exclusive	
Weighing of a container	72.00
Use of terminal's infrastructure	20.00
Intra-port transportation	250.00
LLC «METALSUKRAINE CORP LTD», UAH, VAT exclusive	
Weighing of a container	120.00
LLC INSERNOEXPORT, UAH, VAT included	
Weighing of a container	110.00
SE «Ukrainian Sea Ports Authority», Odessa (Transit cargo terminal) UAH, VAT included	
Use of infrastructure (return of the empty equipment)	70.86
Use of infrastructure (imp. with/without an examination 24 hrs.)	400.03
Use of infrastructure (in 24 hrs.)	180.00
Examination	377.12
Illichiv'sk	
PE CTI, VAT exclusive	
Forwarding services, UAH	45.49
Weighing, US dollars	25.00
SE «Ukrainian Sea Ports Authority», UAH, VAT exclusive	
Use of infrastructure with the vehicle parked at the port within 24 hrs.	66.00
Use of infrastructure with the vehicle parked at the port for more than 24 hrs., per each 24 hrs. period, beginning with the 25th hour	140.00
Admission of a vehicle	12.88

SE «SEA COMMERCIAL PORT OF ILLICHIVSK», UAH, VAT exclusive	
Use of port resources & equipment for examination of the container cargo	480.98
Complex of services in relation to commercial vehicles with import containers, Specialized cargo complex	424.06
LLC «Illichivsk sea fishing port», US dollars, VAT exclusive	
Use of infrastructure (return of the empty equipment)	10.00
Weighing	9.00
LLC «Millennium 2003», UAH, VAT exclusive	
Organization of an examination in the specialized sanitary examination zone	170.00
Integrated tariff (weighing using the truck weight bridge, organization of an examination in the specialized sanitary examination zone)	240.00
Weighing using the truck weight bridge	60.56
LLC «PPL 33-35», UAH, VAT exclusive	
Information services during the clearance of container cargo (in electronic form), per 1 container	40.00

Conversion Rates refer:

- LLC Euroterminal - Weighing 1 x Vehicle acc. to the NBU rate at the date of rendering of services
- LLC Euroterminal -Conversion of UAH to US dollars at the NBU official exchange rate, on the date of rendering of services (on a day when client's vehicle leaves the CCC territory)
- Illichivsk Weighing - acc. to the NBU rate at the date of invoice' issuance
- Illichivsk sea fishing port - acc. to the NBU rate at the date of invoice' issuance

Annex XXVIII. Open Letter to Odessa Customs from Primary Trade Union of Freight Forwarders of Odessa Region.

PRIMARY TRADE UNION ORGANIZATION OF FREIGHT FORWARDERS OF ODESSA REGION

Kulikove pole 1, office # 341, Odessa, 65079, tel. 050-495-54-54

Ref # 31

dd. 07.04.2014

Acting Head of the Odessa Customs A.I. Shtank

Dear Andriy Ivanovych,

A Trade union of Freight Forwarders of Odessa region presents its compliments to You and expresses its readiness to provide any support in improving situation with the customs clearance of cargoes, placed under different customs regimes (internal transit, transit), at the BCPs across the state border of Ukraine, in particular, container cargoes (at Odessa, Illichivsk and Yuzhnyy Sea Ports). Therefore, we consider necessary to inform you about the existing problems with the cargo clearance, namely:

- 1.** Delays in fulfilling the endorsement procedure, procedures when technical means of customs control are used (weighing, examination, scanning etc.) as well as delays in release of cargo in accordance with the customs regime declared;
- 2.** Interference of law enforcement authorities in the customs clearance of cargoes;
- 3.** Irresponsibility of state officials for interference in the entrepreneurs' economic activity etc.

During 2013 and in the beginning of 2014 officials of the control bodies (officials of Customs and law-enforcement agencies) artificially had created crisis situations that caused delays up to 7 days in customs clearance of cargoes that are in transit and internal transit.

Cargo endorsement procedure is carried out in accordance with the temporary procedure on customs clearance of loaded containers meant for exit from Odessa Commercial Sea Port, by applying port community system; its paragraph 3.3 stipulates that a clearance process should be carried out within 2 hours but this is not true in fact. The duration of endorsement procedure is not regulated at other BCPs at all that results in abuse of powers by customs officials.

Shortcomings of the process of container cargo clearance led to abuse of powers by state officials that resulted in obligatory and alternative bribes to be paid to customs clearance units during the container cargo clearance (EE - preliminary notification/preliminary customs declaration (PN/PCD), transit regimes), in particular:

- 1.** Endorsement of an order– from 5 up to 10 USD per container;
- 2.** CMR processing by the Cargo delivery control unit– from 10 up to 20 USD per container;
- 3.** Processing of PN/PCD, documents under Import-40 regime – from 20 up to 50 USD per container;
- 4.** Speeding up the clearance process (during one hour since the documents are submitted) – 50 USD per container;
- 5.** Customs clearance in case weight discrepancies are detected: if actual weight is less than declared - 50 USD per each short weight ton, if actual weight is greater than declared - 100 USD per each short weight ton;
- 6.** Abolition of contrived examination – 50-500 USD per container;
- 7.** Abolition of contrived examination with 100% unloading – 500-1000 USD per container;

In case of refusal to pay all the above mentioned bribes, customs officials did not accept documents for further customs clearance (it is impossible to prove this fact after the respective claim has been submitted as there are no records proving acceptance of the set of documents by a customs official), dragged the clearance process as long as possible after the documents' acceptance, threatened economic operators that their cargo will not be cleared (won't leave the territory of the port) etc.. Time spent by the transport means at the territory of ports is a proof of these facts. Unfortunately, it is difficult to documentary record this fact as management of units does not personally receive bribes (as a rule, it happens in the end of the month through an intermediary) and a majority of freight forwards is afraid to lose a job.

We have problems caused by poor organization of the process of customs formalities fulfillment by customs officials as well as by interference of law-enforcement officials in the customs clearance of cargo containers which are in transit through the territory of our state under customs control up to the inland customs post (import and export). First of all, it is connected with the request of law-enforcement officials to conduct additional examinations and re-examinations of containers notwithstanding that 100% of freight undergoes a weighing procedure (it is illegal in our opinion) and other procedures when technical means of customs control are used. Primarily, we would like to highlight that we are not against any checks but they must be carried out within the framework of Ukrainian legislation and envisage time standards. Nowadays we face situation when:

- Law-enforcement officials do not properly process documents for initiating aforementioned checks
- And also during their conduction;
- Time and duration of examination depends on the decision of a law-enforcement official that
- Contradicts the CC of Ukraine and other legal acts, which stipulate that customs control is
- Solely carried out by revenue and duties authorities;
- Zero efficiency of examinations carried out (no violations or discrepancies detected);
- Moreover, the burden of all costs associated with the inspection of goods rests on carriers, freight forwarders, customs brokers, importers, exporters but not on the officials who initiated inspection activities as foreseen by the paragraph 13 of the Resolution of the Cabinet of Ministers of Ukraine №320 dd. 02.04.2009 "On approval of the procedure of goods' movement at BCPs across the state border that are situated on the territory of sea ports of Ukraine, during container transportation by direct-mixed communication" when no acts of legislation are detected during control operations (weighing, examination etc.);

Nowadays law-enforcement and control authorities "terrorize" entrepreneurs by uncertainty as regards the duration of inspection measures, make compensation of losses suffered by entrepreneurs impossible by their own actions, nonperformance or by irresponsibility for their own actions.

Letters, which are used by law-enforcement and control authorities as the basis for interfering in the economic operators activity in order to apply additional types of control, have exclusively a formal and fictions nature, in our opinion, do not meet the requirements of Art 338 of the CC of Ukraine and the Resolution of the Cabinet of Ministers of Ukraine №467 as of 23.05.2012 "On approval of exhaustive list of grounds on the basis of which an examination (re-examination) of goods, commercial vehicles can be carried out by the customs authorities of Ukraine". This is confirmed by the effectiveness of such measures, it is almost zero - less than 0,5% in quantitative terms, but as regards quality it is close to 0%, because the ratio of additional expenses, incurred by entrepreneurs due to conduction of examinations, payment for storage, use of infrastructure, standing time of vehicles, to other expenses, caused by the detention of cargo due to types of control applied, and an economic impact of the detected violation is incomparable.

In opposition to this, a meeting of the association of freight forwarders (container lines, terminals, freight forwarders, carriers, and customs brokers) took place on 26.03.2014 – approximately 170 company representatives (in total) attended the meeting, which resulted in:

- Establishment of rapid response teams to fight corruption and abuse of powers, their main goal is to record such acts;
- Adoption of the resolution;
- Establishment of a working group which will draft proposals aimed at simplification of cargo clearance procedures, creation of technological and procedural conditions, eliminating a human factor and a possibility to demand bribes by any state officials who are involved in the technological process at the territory of BCPs.

A Facebook group “No corruption on transport” was created which has more than 500 members.

The following representatives of relevant associations participate in the work of these groups: Association of International Road Transport Carriers (ASMAP), Association of International Freight Forwarders of Ukraine (AIFFU, a leading organization), and our trade unions. The Container Lines Association of Ukraine, Prosecutor’s Office, Regional State Administration, and AIFFU coordinate actions of the working groups’.

We also inform you about the possibility of lobbying interests only of own companies by representatives of the Public Council under the MoRD General Directorate in Odessa oblast (including management of the committee on customs affairs) while pretending that they protect public interests.

Considering abovementioned we would like to request the following:

1. To delegate (maybe, remotely) one representative of the Odessa Customs to coordinate cooperation with the above working groups;
2. To implement measures aimed at prevention of corruption from the side of the Odessa Customs officials;
3. Following the internal order, to impose an obligation on Customs to implement paragraph 13 of the Resolution of the Cabinet of Ministers of Ukraine №320 dd. 02.04.2009 “On approval of the procedure of goods’ movement at BCPs across the state border that are situated on the territory of sea ports of Ukraine, during container transportation by direct-mixed communication” which stipulates that if no acts of legislation infringements were detected in the course of such checks (weighing, examination etc.), an initiator has to pay for services provided;

Head of the Trade Union Committee

V.V. Berestenko