

## Information letter of the AEB Customs & Transport Committee



**Dear colleagues,**

For many years, members of the AEB (Association of European Business) Customs & Transport Committee have been actively and effectively representing the interests of the international and Russian business community in improving national legislation, promoting best international practices and standards of business, creating favorable conditions for business, and improving the investment climate.

Experts of the AEB Customs & Transport Committee provide members of the Association with the highest qualitative and most relevant information on a wide range of issues, regularly propose initiatives to amend the provisions of the current customs legislation aimed at simplifying customs administration while ensuring an appropriate level of customs control. Members of the Committee are included in the working groups of the Eurasian Economic Commission, the Ministry of Economic Development, the Agency for Strategic Initiatives, and take an active part in the Expert Councils of the State Duma committees, the Expert Advisory Council on the Implementation of Customs Policy under the Federal Customs Service and its regional offices, the Ministry of Transport, other ministries and federal services.

On September 4, 2018, the main part of the provisions of Federal Law No. 289-FZ dated August 3, 2018 "On customs regulation in the Russian Federation and on amendments to certain legislative acts of the Russian Federation" came into force, which was the result of long-term joint work of federal authorities, experts, business representatives and deputies of the State Duma of the Federal Assembly of the Russian Federation.

We offer for your attention comments of leading experts of the AEB Customs and Transport Committee on changes in certain provisions of the new version of the Federal Law "On customs regulation in the Russian Federation and on amendments to certain legislative acts of the Russian Federation", on which the experts worked, and which were actively discussed at meetings of the Committee.

We hope that the comments and recommendations offered to your attention will help to create and use additional advantages in the organization and conducting of business, and will be in great demand by managers in working out plans and strategies for the development of companies in the context of ongoing and upcoming changes.

### **Dmitry Cheltsov**

*Chairman of the Customs & Transport Committee, Association of European Business in the Russian Federation, Member of the Presidium of the ECC for the implementation of customs policy at the FCS of Russia, Head of the Permanent Mission of IRU in the Russian Federation, International Road Transport Union (IRU).*



**Alexander Kirilchenko, Head of the of customs disputes resolution group of the law firm BRYAN CAVE LEIGHTON PAISNER (RUSSIA) LLP** notes that a new Customs Code of the Eurasian Economic Union (EAEU CC), which entered into force on January 1, 2018, has restricted the possibility of subsidiaries of foreign companies to import and export goods to only those for their own

needs. However, the EAEU CC allows changing this rule in national legislation. Article 100 of the Federal Law extends the rights of declarants in comparison with the provisions of the Union legislation (EAEU CC). Thus, branches of foreign companies have the right to declare goods not only for their own needs, but also for commercial purposes, provided that the goods are not moved in a transaction with a company from the countries of the Union, and the foreign company has the right to own, use and (or) dispose of these goods. Thus, foreign companies will be able to supply goods to the Russian market through their branches.

What is new is that when goods are exported with the use of a temporary periodic declaration, the declarant may be a Russian entity in a transaction between Russian entities or between a Russian entity and an entity of another country of the Union.

Alexander Kirilchenko also notes that, unlike the previous customs legislation, the new federal law has streamlined the procedure for desk audit. Now the customs authority is obliged to notify the company about the beginning of such an audit. The federal law also limited their being conducted to 90 days from the date of notification, which in some cases may be extended to 120 days. The audited entity is given the opportunity to submit its objections to the report of customs audit, which should be taken into account when making final decisions, including regarding the imposition of additional customs duties.



**Sergey Gusev, Co-Chairman of the AEB Customs and Transport Committee, GR Manager of Electrolux in Russia**, highlights in the new federal law item 26 of Part 1 of Article 47 of the new law, according to which all exported goods, except for goods subject to export customs duties, are exempt from customs duties for customs operations.

Previously, the business proposed an initiative to release Russian exporters of high-tech products from the payment of fees for customs clearance more than ten years ago. Over the past five years, this proposal has been regularly sent to the governmental authorities by the Association of European Business. It is gratifying to note that last year this proposal found understanding and support in the Ministry of Finance of Russia, as a result of which it was included in the revised draft law before its introduction to the Federal Assembly. Now, in this part too, the customs legislation of the Russian Federation corresponds to the legislation of the EU countries and OECD (Organisation for Economic Co-operation and Development).

The exemption of non-commodity exports from customs duties will be a small but real measure of practical support for Russian production and Russian R&D capable of offering competitive products to the world market.



According to **Alexander Kosov, Partner and Head of Customs and Foreign Trade Regulation practice at the law firm Pepelyaev Group**, changes in the calculation and payment of penalties deserve special attention. The law establishes an increased amount of penalties

(0.01 of key rate of the Central Bank, not 1/360) in the event of failure to execute the Notification regarding the unpaid customs payments and the application of measures by the customs authorities to enforce them. At the same time, the business community managed to secure additional cases in the law when penalties are not subject to accrual. Previously, some of them were contained only in the legal positions of the Plenum of the Supreme Court of the Russian Federation and the Constitutional Court of the Russian Federation (for example, the occurrence of debt as a result of official clarifications on the procedure for the application of customs legislation or the providing security of the obligation to pay customs duties by a monetary pledge), some were absent (as, for example, in the case of additional charges in connection with the statement of the wrong classification code when declaring all the characteristics of the goods affecting its classification), and some were not specified in the law (for example, sending Notification and Request for payment of funds after the expiry of the deadline). Based on the principles of fairness and balance of public and private interests, these rules allow participants of FEA (Foreign Economic Activity) to avoid such serious financial pressure on their business in the respective cases.



**Wilhelmina Shavshina, Co-Chairperson of the AEB Customs and Transport Committee, Head of foreign trade and customs regulation practice, Legal Director, DLA Piper,** notes as an important achievement the overcoming of the initial wording of the draft law of Article 103 of the EAEU CC "Peculiarities of declaring goods in unassembled or disassembled form, including incomplete or unfinished form, moved within a specified period of time", according to which the possibility of importing complex technological equipment by separate deliveries of components was excluded, classified by one FEACN code of the EAEU, within the framework of several foreign economic transactions.

In the current edition it is established that *Components of goods can be imported into the territory of the Russian Federation in several foreign economic transactions in cases and according to the procedure determined by the Government of the Russian Federation.*

We believe that the inclusion of the settlement of the issue at the level of the Government will also convince the regulator that the removal of restrictions on the import of components within the framework of several foreign economic transactions will allow the choosing of various manufacturers and suppliers specializing in the production of certain types/kinds of equipment (units/components) of high-tech equipment, will allow the selection of the best product modifications with the most acceptable (including price) characteristics for the project, and that this will contribute to the implementation of the policy of import substitution and will counteract the outflow of investment in the creation of new import-substituting industries.

We hope that the Government will promptly establish *the cases and procedures for the import of goods in unassembled or disassembled form, including incomplete or unfinished form*, which will allow elimination of the basis for the transition of the contract system to indirect supplies (through foreign consolidators), and accordingly, the refusal to provide guarantees of equipment manufacturers to Russian industrial companies, which can lead to huge financial losses for the Russian business community.



**Anna Litovchenko, expert on customs issues, Noerr,** adds that initially the bill provided for the condition of obtaining a decision on classification — the purchase of equipment under a single foreign trade agreement. This condition forced buyers of equipment, in the case of a purchase from two or more manufacturers, to switch to indirect deliveries and to conclude transactions through foreign consolidators. Experts of the Committee defended the possibility for importers of industrial equipment, using the special procedure provided by the Customs Code of the EAEU,

to apply to the purchased Equipment a single classification code of the FEACN of the EAEU. Item 7 of Article 103 of the new law provides development of the list of the equipment and the procedure of its import in the case of purchase and delivery under several foreign economic contracts by the Government of the Russian Federation. We will continue to work with the Ministry of Finance of the Russian Federation to develop this procedure.



**Mikhail Komarov, Head of the Customs Services Group of KPMG, Member of the Expert Council of the Budget and Taxes Committee of the State Duma of the Russian Federation,** points out that Article 4 of the Federal Law now directly establishes the right of individuals to receive written explanations from the Ministry of Finance on the application of the legislation of the Russian Federation on customs regulation. This legal norm guarantees customs authorities, declarants, and other entities timely clarification on the most complicated and comprehensive issues, as well as ensures the uniform understanding and application of customs legislation throughout the whole territory of the Russian Federation.

To ensure the electronic document flow processes within the text of the draft law the amendments were proposed and adopted which clarify the following: in case of document exchange between the importer/exporter and the customs authorities, the priority should be with electronic document flow; however, in exceptional cases written form is acceptable. The clarification amendments establishing the approach to sending documents by the importer/exporter to the customs authorities and obtaining documents from the customs authorities by electronic

So, for example, it is established that in the event of a need of receipt of documents and (or) data for customs control by customs authority, the request is sent in the form of an electronic document via the Internet, including with use of a personal account, or by registered mail with notification on delivery, or is handed over to the entity whose documents and (or) data are being checked.

In addition, amendments were developed to provide mechanisms which launch legal norms of the new federal law and the readiness of the federal executive authorities for their practical implementation. Thus, for example, the periods of entry into force of the norm providing for the electronic form of consultation – from January 1, 2020 – were adjusted, because by the specified date it is planned to develop and implement the appropriate specialized software throughout the whole territory of Russia.

In general, we note that a great deal of expert work has been done to improve the quality of the draft law in the Ministry of Finance and the State Duma of the Russian Federation with a view to its timely adoption and entry into force.

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Without a doubt, the adoption of the new version of the law "On customs regulation" was another step towards improving customs legislation, a step that contributes to improving the quality of customs administration in particular and the regulatory environment in general.