



TOPICAL ISSUES IN THE AREA OF FOREIGN TRADE ACTIVITIES

LABELING

In spring 2022, it was resolved to suspend new tests of the marking and traceability of new product groups. It was decided, however, that ongoing testing should continue as planned and the marking and traceability of product groups that were fully marked and traceable on the date of the resolution would remain unchanged.

In 2022, the regulatory authority also adopted several resolutions that changed the procedure for working with the product groups already affected:

- › The marking of imported goods in warehouses belonging to authorized economic operators was permitted.
- › The concept of the trade participant was amended, and the list of trade participants was expanded to include remote sales and marketplace operations (the amendments will become effective on March 1, 2023).
- › Amendments to current directives were drafted that, to some degree, change or clarify how work with marked goods is to be conducted.

In 2022, marking and traceability was launched for:

- › sticks and tobacco-free mixes for hookahs (on March 1);
- › the trade and disposal of finished dairy products (on September 1);
- › the trade and disposal of marked potable water (on November 1).

On March 10, 2022, Government Directive No. 336 was adopted, limiting the number and scope of control and oversight actions to be taken during inspections of trade in marked goods and making it easier for businesses to adapt to the new environment.

PARALLEL IMPORTS

At the end of March 2022, the Russian Government legalized parallel importation.

In April 2022, the Ministry of Industry and Trade of Russia approved a list of goods for which parallel importation is allowed (hereinafter – “the list”). The list includes copious categories of goods with the exception for food, tobacco, medical products and some others.

The list mainly includes the trademarks and goods of the companies who have left the Russian market or have stopped deliveries to Russia. The list is “live” and has been amended several times since its publication. Thus, on one side, every list amendment includes some new goods and trademarks. On the other side, the goods and trademarks for which importation has been continued or resumed may be excluded from the list.

Opinions on the legalization of parallel imports differ. From the Government’s point of view, it is a practical instrument to prevent a deficit of goods within the Russian market. But it is mainly the authorized importers who speak out against the legalization of parallel imports due to the risks, including:

- › creating unequal business conditions;
- › the growth of intra-brand competition;
- › the import of counterfeit goods under the guise of “parallel imports” and others.



EXPORT RESTRICTIONS

In order to ensure the economic security of Russia, a Presidential Decree establishing special economic measures banning/restricting the export of goods from Russia was issued in March 2022.

According to the Presidential Decree, relevant resolutions defining a range (nomenclature) of goods banned/restricted for export, were made on equipment and technologies which are crucial for Russia (including more than 200 products).

The latest changes to the Decree extended bans/restrictions on export until December 31, 2023 inclusive.

The application of the measures described is justified from the perspective of ensuring the uninterrupted functioning of industry, however, it may be inappropriate in some cases.

This refers to cases in which banned equipment should be exported from Russia not to be sold, but for other reasons, for example, to be repaired abroad, as is quite common. So, there are the following options for lobbying on behalf of the interests of business:

- › amending the Government resolution (i.e. excluding certain commodity codes/adding relevant notes to certain codes/expanding a list of exceptions);
- › obtaining temporary individual permission to export.

Upon implementing the options described, it is important to prepare a rigorously legal position and a set of documents to mitigate any risks of refusal regarding such initiatives.

CATEGORIZATION OF FOREIGN TRADE PARTICIPANTS

The categorization of foreign trade participants is a tool of the current subject-oriented model of the FCS Risk Management System (RMS). This model focuses the control of customs authorities on the subjects of foreign trade – foreign trade participants. Legal relations in the field of categorization of foreign trade participants are regulated by Order of the Ministry of Finance of Russia No. 29n dated February 21, 2020 (hereinafter, the “Order”), which became effective in the first half of 2020. The Order contains a mechanism for evaluating foreign trade participants as well as the List of Criteria that characterize their activities. The Order affects the activities of all importers and exporters, and regulates the frequency and scope of customs control measures applied to the categorized persons.

Given the extreme importance of the issue of categorization for foreign trade participants, AEB created a Working Group on Categorization (hereinafter, the “WGC”) within the Customs and Transport Committee, which began functioning in the summer of 2020. The WGC holds regular meetings with the Ministry of Finance of Russia and the Federal Customs Service to discuss measures to improve the categorization mechanism.

The WGC sees the main problems in the area of categorization regulation in the List of criteria approved by the Order, which are as follows:

- › duplication of the criteria (simultaneous triggering of the same event);
- › use of non-statutory terminology in the List of criteria;
- › references in the text of the criteria to restricted documents and closed methodologies;
- › violation of the principle of the ratio of “punitive” operations to the total volume of operations.

The above-mentioned problems prevent the establishment of a logical, transparent and understandable categorization mechanism for foreign trade participants.

IMPROVING CRIMINAL LIABILITY FOR CUSTOMS OFFENCES

Over the last few years, the issue of outdated provisions of criminal law relating to economic crimes has been actively discussed at various venues as a factor hindering the economic development of the Russian Federation.

However, the current regulation and draft laws to improve legislation¹ do not eliminate the existing problems, such as:

- › a lack of clear regulation of the objective side of customs offences;
- › the thresholds of liability being disproportionate to the gravity of the offence;
- › the imbalance between the regulation of liability for customs and tax offences in terms of minimum thresholds of liability and grounds for exemption from liability.

¹ <https://regulation.gov.ru/projects#npa=130229>, <https://regulation.gov.ru/projects#search=128100&npa=128100>

The proposals submitted by the Association members to the Presidential Administration, the Russian Ministry of Justice and agreed with other business associations include the following measures to improve legislation:

- › Specifying the elements of customs offences.
- › Increasing the fixed liability thresholds and eliminating the imbalance as compared with tax crimes.
- › Supplementing the fixed values of liability thresholds with relative values, i.e. ones expressed as a percentage of underpayment relative to the total amount of payments made by a person. The business community sees it as a “combined” formula which, on the one hand, would contribute to the fair application of liability for significant offences and to filling the Russian Federation’s budget and, on the other hand, would contribute to the stability of doing business in the Russian Federation.
- › A one-off compensation of damage as a ground for exemption from liability.

The proposed measures would help eliminate undue pressure on business and ensure that criminal liability as the strictest measure of state influence is only applied in the most extreme cases.

IMPROVING EFFICIENCY OF CROSS-BORDER TRANSPORT IN THE CONTEXT OF CURRENT RESTRICTIONS

Following the introduction of several packages of sanctions by the European Union (EU), including bans and limitations on mutual trade and access of Russian transport operators to the EU, as well as the adoption of reciprocal measures by the Russian Federation, a major increase in freight costs and time of delivery has been observed, thus leading to the higher transportation costs in the price of goods for end customers. In particular, this was caused by long queues and delays for border crossing, reaching up to 7 and even more days in peak periods, additional time and money costs to manage trailer swap/transshipment procedures.

In some border crossings the situation is even worse due to the lack or shortage of modernised physical infrastructure, advanced equipment and professional staff, more efficient rules and regulations, procedures for cargo handling.

The current situation requires that necessary measures are developed and adopted aiming at the removal of barriers, maintaining quality and efficiency of international supply chains, as well as the facilitation of border crossing procedures.

Among the proposed measures is the removal of current restrictions to apply to the full extent the Customs Convention on the International Transport of Goods under cover of TIR Carnets on the territory of the Russian Federation, notably:

- › to include in the list of border crossings of the Russian Federation, which allow placing of goods under a customs procedure of customs transit under cover of TIR Carnets when they are moved into the customs territory of the Eurasian Economic Union, BCPs “Burachki” on the Russian-Latvian border, “Dubki” on the Russian-Lithuanian border and “Tagirkent-Kazmalyar” on the Russian-Azerbaijani border;
- › to resume the use of TIR Carnets in seaports (e.g. Astrakhan, St. Petersburg, Vladivostok);
- › to increase the guarantee limit up to EUR 100,000 per TIR Carnet on the territory of the Russian Federation;
- › to allow TIR subcontracting, which is extremely relevant for goods transported to the Russian Federation using a trailer swap procedure.



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