CROSS-SECTORAL COMMITTEES

CUSTOMS & TRANSPORT COMMITTEE

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Taking into account the rapid development of law enforcement practices regarding customs regulations, experts of the Customs and Transport Committee of the AEB (the "Committee") are constantly analyzing trends in such practices and developing initiatives aimed at improving the regulatory framework in the field of foreign trade to form unified approaches and methodologies. Realizing the need to reduce the risks of doing business, the Committee members identify the most urgent tasks and suggest solutions thereto.

The Committee also mediates a constructive dialogue between government authorities and the business community on customs regulation issues to enhance the business environment and ensure that the parity necessary for a sustainable balance between public and private interests exists.

Considering the current trends in transport and customs regulation, the Committee identified the following issues and proposed recommendations for their resolution.

CUSTOMS VALUE OF IMPORTED GOODS

The current law enforcement practices of the Russian customs authorities evince a multi-factor increase in inspections of customs value. The aim of such inspections is to include additional charges in the customs value. These additional charges are, in particular, license and intra-group payments, dividends, and VAT paid by companies as tax agents in connection with license payments to rightsholders ("agent's VAT"). The inspections often end up with negative results for foreign trade participants, for example, in form of additional large amounts of customs duties and penalties, administrative and criminal liability.

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Due to the above-mentioned increase in control, representatives of the business community are at constant risk of a negative assessment of their approaches to determining customs value and are faced with the customs authorities' ambiguous approach to additional charges. The problematic aspects are: 1) application of intellectual property rights, such as the know-how used in the manufacture of finished products in Russia or in administrative and economic activities in general, as imported goods and the need to include royalties for the specified intellectual property rights in the customs value of such goods, and 2) inclusion of royalties payable for manufactured products in the customs value of raw materials imported for the manufacture of such products.

The problem lies in the lack of recommended examples and techniques, which leads to an excessively broad interpretation of these aspects by customs authorities.

It is important to note that, in 2021, the Federal Customs Service of Russia was focusing on the agent's VAT during customs inspections, referring to Recommended Opinion 4.16, which clarifies the inclusion in the customs value of goods of taxes to be withheld by an importer (tax agent) from income in the form of royalties in favor of a foreign rightsholder in accordance with the tax laws of the country of import.

The Committee's experts note that this Recommended Opinion applies to the inclusion of income tax in the customs value, but not the agent's VAT. This document is also not mandatory, but advisory for application in Russia, from the standpoint of the existing legal system.

In connection with the above, the business community does not have real legal tools to correctly determine the structure

of customs value. It is known that, during the meeting between Vladimir Putin and the head of the Accounts Chamber of Russia Aleksei Kudrin, these shortcomings in the customs legislation were presented as "loopholes", of which, according to the representative of the Accounts Chamber, Russian businesses make systematic use. However, due to the inconsistency of law enforcement and the ambiguity of interpretation of the customs legislation, companies cannot be guaranteed a univocal assessment of the licensing structures they use, which negatively affects their business.

RECOMMENDATIONS

- It is necessary to develop clear regulations on the inclusion of license and intra-group payments, dividends, and agent's VAT in the customs value.
- According to the Committee, the main tool for the unification of approaches used by customs authorities is the improvement of the regulatory framework. The previously developed Recommendation of the EEC Board No. 20 dated November 15, 2016, with Amendment No. 15 dated August 28, 2018, does not disclose sufficient practical examples of various relationships, therefore it is objectively necessary to expand and revise such regulations, as well as the practical examples.
- It seems necessary to develop an opinion at the EAEU level containing uniform provisions on the correctness of the non-inclusion of the agent's VAT in the customs value.
- The publication by the Ministry of Finance of the Russian Federation of the Procedure for Consulting on Customs Value Issues and the Procedure for Obtaining Decisions on the Methodology for Determining Customs Value in the shortest possible time will minimize customs risks for business and significantly increase the efficiency of customs administration in the Russian Federation.

CONFIRMATION OF COUNTRY OF ORIGIN

In accordance with the "Non-Preferential Rules for Identifying the Country of Origin of Goods" approved by Decision of the EEC Council No. 49 dated July 13, 2018, the origin of goods is generally confirmed by a declaration of origin (Clause 23), and in some cases, a certificate of origin (Clauses 24, 25). According to the general rule established by the EAEU Customs Code, a submitted declaration of goods does not have to be accompanied by documents confirming the information stated in the declaration of goods. At the same time, in accordance with Clause 6 of Article 80 of the Customs Code of the EAEU, copies (including hard copies of electronic documents) of these documents may be submitted if, under the Treaty on the Eurasian Economic Union dated 29 May 2014, international treaties and legal acts in the field of customs regulation and/or international treaties of the member states entered into with a third party, the mandatory submission of originals of such documents is not required.

The non-preferential rules do not contain a direct requirement to submit originals of certificates of origin of goods during their customs declaration.

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In practice, however, the customs authorities mandatorily require the provision of the original certificate of origin, while establishing requirements for the form of the certificate. If importers fail to submit the original certificate, they are forced to pay antidumping duties and taxes based on the antidumping duty rate. Under the COVID-19 restrictions, it is difficult to obtain the original certificate, since many Chambers of Commerce have switched to issuing certificates exclusively in electronic form.

Clause 25 of the Non-Preferential Rules allows for the possible use of an electronic system for verifying the origin of goods and the original certificate of origin does not need to be submitted if the customs authorities use the system. At the same time, the requirements for the electronic origin verification system should be established by a separate protocol (Memorandum) between the customs authority of the Member State and the authorized body (paragraph 27). The website of the Eurasian Economic Commission published "information on electronic databases of the authorized bodies of third countries that can be used to check the certificates of origin issued by them as part of preferential and non-preferential trade". These provisions indicate that the requirement by the customs authorities to submit the original certificate of origin in hard copy is excessive.

It is worth noting that this interpretation of the Non-Preferential Rules exists only in the Russian Federation. When importing goods to other EAEU countries, the originals of certificates of origin are not required when declaring goods; the customs authorities check the certificate number indicated in the copy held by the importer in the electronic database and allow the release of goods.

RECOMMENDATIONS

- It seems appropriate to amend Decision of the EEC Council No. 49 dated July 13, 2018, which would eliminate the ambiguous interpretation of the Non-Preferential Rules for determining the country of origin of goods and create conditions for the early transition to electronic verification of certificates of origin. Namely, the rejection of the requirement to submit the original certificate of origin in the presence of a copy of the certificate and information about this certificate in the electronic database of the Eurasian Economic Commission.

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Subclause 7 of Clause 5 of the Requirements for the Certificate of Origin in relation to a document of origin in

cases where the country of export differs from the country of origin:

In the case when certificates of origin of goods are issued in a country of exportation of goods other than the country of origin, Decision No. 49 established the requirement that the certificate must contain the details of the document on the basis of which the country of origin was established by the issuing authority. However, Decision No. 49 does not contain an exact list of documents that can be used for this purpose. In practice, customs authorities reject certificates of origin issued in the country of export other than the country of origin, indicating the illegality of the use of certain documents. Decision No. 49 cannot regulate the issues of confirming the origin of goods transported within the mutual trade of third countries, therefore, the origin of such goods can be confirmed by any documents used in world practice for these purposes.

RECOMMENDATIONS

- To establlish and approve the exact list of documents which can be used to confirm the country of origin of goods.

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