

**ACTUAL PROBLEMS OF CUSTOMS CLASSIFICATION  
(on the example of Foreign Economic Activity Commodity Nomenclature  
of the Eurasian Economic Union)**

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The subject. The article is devoted to the main problem of customs classification on the example of Foreign Economic Activity Commodity Nomenclature (FEACN) of the EAEU. The purpose of the paper is to define the concept and meaning of classification of goods for customs purposes, the characteristics of the legal basis of FEACN, the identification of the features of cases challenging the decisions of customs authorities on the classification of goods in accordance with the EAEU FEACN. The hypothesis is to confirm or refute the relevance of the problems of customs classification for participants of foreign economic activity, and for customs authorities.

The methodological basis for the study: general scientific methods (analysis, synthesis, comparison, description); private and academic (interpretation, formal-legal).

Results, scope. Features of classification of goods in customs declaration, in the implementation of customs control and in other cases regulated by the Customs Code of the EAEU. The classification of goods for customs purposes should be understood as the action taken by the declarant or customs authorities to classify goods as specific commodity items, sub-items and sub-sub-items of FEACN in accordance with the Basic rules of interpretation and the corresponding digital codes, which has legal significance in determining the amount of customs payments, in the application of non-tariff regulation measures and in the framework of customs statistics for the purpose of summarizing data on goods moved. The current FEACN of the EAEU was approved by the decision of the Council of the Eurasian Economic Commission. The FEACN used in the EAEU is derived from the Harmonized commodity description and coding system. In addition, the FEACN of the Commonwealth of Independent States, introduced after the conclusion of the relevant international legal agreement by the former Soviet republics in 1995, acts as the international basis of the EAEU FEACN.

Since the size of customs payments depends on the HS code, the majority of disputes between participants of foreign economic activity and customs authorities arise in this category of cases, moreover, their number increases from year to year.

Conclusions. As a result of the study, the concept and importance of classification of goods for customs purposes are defined, the legal basis of FEACN is characterized, the features of cases on challenging the decisions of customs authorities on the classification of goods in accordance with the EAEU FEACN are revealed. All of the above indicates the relevance of the problems of customs classification for participants of foreign economic activity, and for the customs authorities.

## 1. Introduction.

Unification and harmonization of systems of description and coding of goods used to form the system of customs tariffs is the most important area of international cooperation in the field of customs. This direction, according to D. V. Korf, is the main volume of work in the field of international customs cooperation [1, p. 33].

Currently, most countries of the world are guided by the Harmonized system of description and coding of goods [2, p. 38; 3, p. 3], which can significantly simplify the movement of goods across the customs border and increase the turnover of international trade in goods [4, p. 121; 5, p. 59].

Consideration of the problems of classification of goods for customs purposes is extremely important for the participants of foreign economic activity, since the commodity nomenclature along with the country of origin of goods is among the factors influencing the amount of customs duties. I. L. Vakhterova also points out that the topic of classification of goods for customs purposes is one of the most relevant, since most disputes with customs authorities arise at the stage of confirmation of the declared by the declarant classification code of goods [6].

## 2. The concept and meaning of classification of goods for customs purposes.

Features of classification of goods at customs Declaration, at implementation of customs control and in other cases are regulated by the Customs Code of the Eurasian Economic Union (further – the Customs Code of the EAEU). At the same time, the EAEU CC does not contain a legal definition of the concept of "classification of goods".

In the legal literature there are different approaches to the definition of the concept. D. V. Korf suggests under the classification of goods for customs purposes to understand the classification of goods to specific commodity items, subpositions and sub-subpositions of the Commodity nomenclature of foreign economic activity of the EAEU in accordance with the Basic rules of interpretation of the HS, and the corresponding digital codes [1, p. 34]. That is, the classification of goods is considered as a kind of activity carried out for customs purposes.

A commodity item is a classification grouping of goods that has a no-name and a code consisting of four digits or more, provided that all digits starting with the fifth are zeros. A subposition is a classification grouping of goods that is part of a

commodity item, has a one-or two-digit name and either has a code consisting of six digits or more, provided that the fifth digit of the code is different from zero and all the digits of the code starting with the seventh are zeros, or does not have a code, provided that the fifth digit of the codes of subordinate classification groups is different from zero. A sub-subposition is a classification grouping of goods that is part of a sub-position, and in its absence is part of a commodity item and either has a code consisting of more than six digits, or does not have a code, but has a single-or multi-digit name, provided that the codes of subordinate classification groups have a fifth digit "zero" and/or consist of more than six digits [7, p. 120]. There is another approach. In particular, A. V. Nesterov and V. I. Begishev consider the classification of goods for customs purposes as the legal relations arising between subjects of law (officials of customs bodies and participants of foreign trade activities) at the legally relevant classification of goods transported through the customs border, under the common Commodity nomenclature of foreign economic activity [8, p. 25].

Among the subjects of these relations, the authors include customs officials and participants in foreign economic activity.

The actual content of the legal relations under consideration is the actual behavior of the subjects of customs and legal relations, legal and subjective legal rights and obligations of the subjects, i.e. the measure of their possible and proper behavior in certain situations, established by the norms of customs law.

We believe that each of the above approaches is correct in its own way, because they reflect different aspects of the phenomenon under consideration.

Customs classification of goods performs three main functions:

- use in determining the value of the customs duty rate;
- use of non-tariff measures;
- use in customs statistics to compile data on goods being moved.

In view of the above, we consider it possible to understand the classification of goods for customs purposes as the action taken by the declarant or customs authorities to classify goods to specific commodity items, sub-items and sub-sub-items of the HS in accordance with the Basic rules of interpretation and the corresponding digital codes, which has legal significance in determining the amount of customs duties, in the application of non-tariff regulation measures and for the purpose of summarizing data on

goods transported.

### 3. The legal basis of the Commodity nomenclature of foreign economic activity.

In 1983, the customs cooperation Council developed the Harmonized commodity description and coding system (HS) [9], which entered into force on 1 January 1988. The Russian Federation has acceded to the International Convention on the Harmonized system of description and coding of goods by decree of The Government of the Russian Federation of 3 April 1996 No. 372 [10, p. 71].

The creation of a Harmonized commodity description and coding system was aimed at increasing the turnover of foreign trade, as it made it possible to eliminate the need for re-classification and coding of goods when they moved across the customs borders of States using different classification systems.

Currently, almost all customs statistical nomenclatures of the world are based on the Harmonized system of description and coding of goods [11, p. 79; 12, p. 133]. Is no exception to this rule of the Commodity nomenclature of foreign economic activity used in the framework of the EAEU [13, p. 4].

On November 3, 1995, the CIS FEA Agreement was signed, which is also the basis of the Commodity nomenclature of foreign economic activity in the EAEU.

The FEACN of the CIS is one of the customs commodity nomenclature derived from the Harmonized system. It is valid in the territory of the States that signed the relevant Agreement, and is a detailed coding of the nomenclature of the Harmonized system to the ninth sign.

Article 1 of the Agreement defines that the parties shall create a single HS-derived commodity nomenclature for the implementation of tariff and non-tariff regulation of foreign economic activity, improvement of statistical accounting and exchange of statistical information. The specificity of the CIS HS is that it is conducted by the customs service of one of the Contracting States, namely the Russian Federation. These powers are enshrined in Art. 2 of the Agreement and concluded that the Federal customs service of Russia monitors the changes in the international framework the FEACN of the CIS, leading the FEACN of the CIS in accordance with the nomenclature of the HS, the nomenclature and stores the reference instance and on behalf of the Council of heads of customs service approves classification decision for the interpretation of the FEACN of the CIS [14, p. 4].

The current Commodity nomenclature of foreign economic activity of the Eurasian Economic Union was approved by the decision of the Council of the Eurasian Economic Commission of July 16, 2012 № 54 "On approval of the unified Commodity nomenclature of foreign economic activity of the Eurasian economic Union and the Common customs tariff of the Eurasian economic Union".

The functions of maintenance of the FEACN of the cu in accordance with the customs code of the EAEU is entrusted to the Eurasian economic Commission. In particular, the Eurasian economic Commission performs the following functions in this area:

- 1) monitoring of changes in the international framework of the Commodity nomenclature of foreign economic activity, as well as explanations on the interpretation of this international framework;
- 2) bringing the Commodity nomenclature of foreign economic activity and explanations to it in accordance with its international basis;
- 3) introduction of amendments to the Commodity nomenclature of foreign economic activity and its explanations on the proposals of the member States;
- 4) drawing up and sending to the authorized state bodies of the member States of information on compliance of codes of the Commodity nomenclature of foreign economic activity at the level of commodity items, subpositions and subpositions in the form of tables at transition to the next version of its international basis;
- 5) preparation and sending to the authorized state bodies of the member States of the Commodity nomenclature of foreign economic activity and explanations to it;
- 6) other functions necessary for conducting the Commodity nomenclature of foreign economic activity.

Given that the basis of the FEACN of the EAEU is the international Convention on the Harmonized system of description and coding of goods and FEACN of the CIS, the current system of coding of goods in the EAEU is as follows: the first six characters of the code designation of goods correspond to the nomenclature of the HS, the seventh, eighth signs, the ninth – FEACN of the CIS. The tenth sign of the product code is designed to detail the goods at the level of FEA of the EAEU.

Classification of goods in accordance with the HS of the EAEU is carried out in accordance with the six rules of classification of goods (OPI HS). These rules apply on the principle: "If not the first, then the next." OPI HS essentially enshrine the procedure for the classification of goods. The first five OPI provide for the inclusion of goods in a certain commodity item, the sixth rule provides for the inclusion of goods in the relevant

subposition, subposition.

#### **4. Features of cases on challenging the decisions of customs authorities on the classification of goods in accordance with the CU FEA.**

The decision on the classification of goods is made by the declarant or on behalf of the declarant by the customs representative. According to part 2 of Article 15 of the Federal law from 03.08.2018 No. 289-FZ "On customs regulation in the Russian Federation and on amendments to certain legislative acts of the Russian Federation" upon detection by the customs authority before release of the goods, and after the release of the goods to the wrong classification of the customs authority carries out the classification of goods and decide on the classification of goods.

Since the size of customs payments depends on the HS code, the majority of disputes between participants of foreign economic activity and customs authorities arise in this category of cases, moreover, their number increases from year to year.

Challenging the decisions of the customs authorities on the classification of goods by HS is possible in the customs authorities and (or) in court.

Appeal of the specified decisions in a judicial order is performed according to requirements of administrative legal proceedings (section III of the Arbitration procedural code of the Russian Federation).

The category of disputes under consideration has the following specific features.

First, the burden of proving the legality and validity of the decision on the classification of goods lies with the customs authority, not with the economic entity. It is the customs authority that is obliged to justify all the legal and factual grounds for its decision.

At the same time, the court does not have the competence to determine the position to which a particular product belongs in accordance with the HS. In paragraph 7 of The information letter of the Presidium of the HAC of 17.06.1996 № 5 "Review of the practice of disputes related to the application of customs legislation" stated: if the arbitration court during the consideration of such a dispute will be found that the classification of goods is made incorrectly, it recognizes the decision of the customs authority invalid. The arbitration court has no right to refer the goods to the corresponding items of the Commodity nomenclature of foreign economic activity independently.

Secondly, the choice of a specific HS code is always based on the assessment of the characteristics of the declared goods to be described, and the description

process is associated with the completeness and reliability of information about the goods (a certain set of information corresponding to or untrue) . Legal significance in the classification of goods is their differentiation (differentiation criteria) for commodity items HS in accordance with the IP HS.

Third, in point 20 of the resolution of Plenum of the Supreme Court of the Russian Federation of 12.05.2016 N 18 "About some questions of application by vessels of the customs legislation" it is explained that validity of the classification decision is checked by court proceeding from the assessment of the proofs provided by customs authority and the declarant confirming data on signs (properties, characteristics) of the declared goods important for its correct classification.

In this regard, the availability of expert opinions on the identification of goods in the case file is important, since often the classification of goods requires special knowledge. Customs authorities often appoint identification expertise within the customs control in accordance with Chapter 53 of the customs code of the EAEU. However, foreign trade participants in case of disagreement with the findings of customs experts have the right to apply for a forensic examination in accordance with article 82 of the APC [15, p. 29].

The expediency of the appointment of a forensic examination on the identification of goods even in the presence of the conclusion of the customs expert is evidenced by the numerous judicial practice in similar cases related to challenging the decisions of the customs authority to change the classification of goods in accordance with the HS.

#### **5. Conclusions.**

Features of classification of goods in customs Declaration, in the implementation of customs control and in other cases regulated by the customs code of the EAEU. The classification of goods for customs purposes should be understood as the action taken by the declarant or customs authorities to classify goods as specific commodity items, sub-items and sub-sub-items of the HS in accordance with the Basic rules of interpretation and the corresponding digital codes, which has legal significance in determining the amount of customs payments, in the application of non-tariff regulation measures and in the framework of customs statistics in order to summarize data on goods being moved.

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