

ON CUSTOMS EXAMINATION, IDENTIFICATION AND GOODS CLASSIFICATION

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Abstract

In order to improve the customs management procedure the classification of customs examinations applied in the Federal Customs service of Russia is given in the papers.

The specificity and significance of the customs identification examination is in close connection with the goods criteria, set out in the Goods Nomenclature of foreign economic activity which is accepted by the World Customs Organization as the Harmonized Commodity System (HS). The Goods Identification is carried out for the purposes totally identical to the goods classification carried out in accordance with the HS and always precedes it. The decision on the goods classification depends on the results, and the HS classification Code indicates the measures of state regulations.

Taking into account the complexity of HS system construction it is necessary to work out the mechanisms of goods identification management while fulfilling the customs examinations.

Key words: *HS commodity code, Classification, Identification, Customs examination, Goods.*

1. Introduction

Participating in state regulation of the foreign trade activity and carrying out its fiscal function, the Customs Service of the Russian Federation regularly fills up the state budget and by that promotes economic recovery of the country and increase the population welfare. However, in the new market conditions when the Russian economy became "open", the problem of economic security of the country became more important and more large-scaled.

The current practice shows that criminal communities are well equipped technically and constantly improve methods of the customs crimes execution. Therefore the effective work of Customs authorities is impossible without the application of scientific and technical progress achievements.

In particular, the evidentiary information received as a result of customs examination allows the official bodies of inquiry and preliminary investigation to open and investigate customs crimes in the shortest possible time, and allows the court to make lawful and reasonable decisions on administrative and criminal cases.

2. Examination process executed by the State bodies of the Russian Federation

Nowadays the public expert institutions work in seven federal executive authorities: the Ministry of Internal Affairs (further - the Ministry of Internal Affairs of Russia - MIAR), Federal Security Service (FSS), the Federal Tax Police Service (FTPS), and the Federal Customs Service (further - FCS of Russia), the Ministry of Justice, the Ministry of Defense and the Ministry of Health. Expert divisions are available also in bodies of prosecutor's office.

In expert and forensic divisions of the Central expert and forensic customs office of the Federal Customs Service (CEFA of FCS of Russia) the special types of the problems are solved. These issues are:

- The diagnostic - diagnostics of a stream of goods.
- The identification - identification of goods.
- The preventive - the analysis of the goods streams and synthesis of information on forecasting and prevention of the offenses in the customs sphere (for example, accumulation of a collection of samples for comparative research, etc.) [6].

2.1 Factors influencing the customs examination results

The major factors influencing the productivity of customs examination are:

- The expediency of the examination purpose.
- The observance of procedural and process requirements of the customs examination procedure, as well as fulfillment and registration of its results.

Thus the second factor is the most widespread. In such cases the conclusion is regarded by the court as the inadmissible proof, and the decision of the Customs authority on goods classification is admitted as illegal. It becomes the subject of cancellation. As far as the target of investigations and the purposes of examinations differ the applied methods and techniques vary.

2.2 Objects of customs examinations

The objects of customs examination are the materialized information sources: the goods and subjects moved across the customs border as well as their tests or samples which are selected for research; the objects of smuggling and the cases of administrative offenses; different documents accompanying goods (customs, standard and legal, financial documents etc.) used during the customs registration and control.

2.3 Objectives of customs examinations

The main objective of the customs goods examination is the identification of the commodity properties influencing on the goods classification according to the Harmonized Commodity Nomenclature accepted in the foreign economic activity of the Customs Union as well as the State Regulations. Besides within customs examination the issues connected with identification of the goods origin, its market value etc. are resolved. In this regard the issues of the Customs examination classification are debatable.

2.4 Types of customs examinations

The Customs examinations can be divided conditionally into classes, sorts and types which have their own characteristic signs: subject, tasks, objects and methods of research. According to the purpose of the

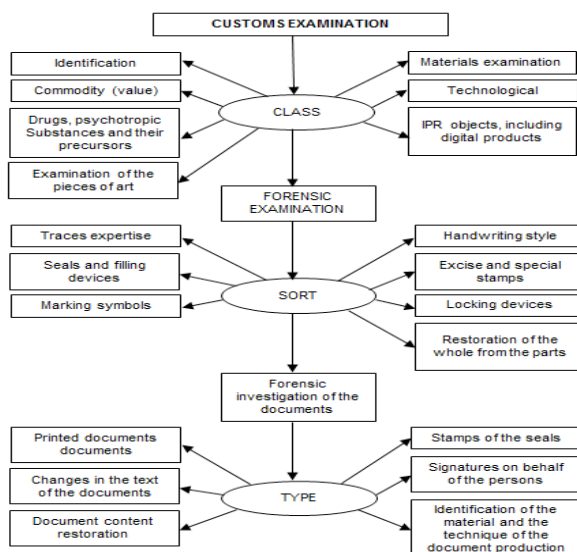


Figure 1. Types of customs examinations executed by the FCS of Russia

customs control the main types of commodity examination are presented: identification, commodity examination, materials research, technological examination, forensic examination etc., (Figure 1, [5]).

2.5 Identification examination is the mostly widespread type of investigation

According to statistical data of the main indicators of the CEFA of the FCS of Russia activity, among all the types of the customs examinations the main share of identification examinations constitute more than 50% [7].

Goods identification at the customs examinations is carried out according to the Goods Nomenclature of the Customs Union. The identification always precedes the classification, and the decision on its classification depends on the results of its execution. The classification code points out to the measures of State Regulations.

Specificity and the importance of the identifying customs examination is in inseparable connection with the goods criteria established by the Goods Nomenclature which is the subject of the foreign trade activities. Considering the complexity of the Goods Nomenclature and the rules of classification it is very important to develop the mechanisms of the goods identification management when carrying out customs examinations.

2.6 Questionnaire making methods at identification examination execution

Goods Identification management is impossible without the knowledge of the Goods Nomenclature basics. Thus the statement of questions before the expert is of great importance. This method is one of the most popular innovations of the Federal Customs service of the Russian Federation. The recommendations on questionnaire making methods are worked out by the Federal Customs Service. These questions take into account the specifics of the Goods Nomenclature and contain the criteria characterizing the goods of a certain group.

The current practice shows that these recommendations are too far from perfection, but at this very step they solve the problems which arouse during the customs examination process.

The questions which do not influence on the goods classification according to the Goods Nomenclature, which are behind the competence of the customs experts and allow their various interpretation lead to the considerable time expenditure and to the additional overloading of analytical equipment. Such questions can be the basis for a refusal in customs examination execution.

For example, the objective put before the expert - to define, whether the characteristics of the goods are in conformity with the classification requirements of the

Goods Nomenclature, goes beyond the competences of the expert who is carrying out the customs examination. In this case putting a question (task) it is necessary to specify, what exact characteristics (physical or chemical properties, quantitative or qualitative structure and consumer properties) should be revealed in the course of examination. In this case the legally significant expert's decision about the correspondence of the goods characteristics to the Goods Nomenclature Code enters into the competence of the Customs Body Official [4].

2.7 The conditions of identification examination execution

Besides, in order that identifying customs examination was effective, exact and timely the samples (tests) of goods have to be presentable, i.e. are defined by the documents on standardization and characterizing the structure and properties of all of the volume of the represented and investigated goods. There has to be an accurate order of appointment and carrying out of the customs examination, both in the expert divisions of the Customs authorities and in the non-state expert organizations accredited properly and authorized by the FCS of Russia.

The first condition is necessary for the achievement of the customs examination purpose, the second one is necessary for the terms of its performance observance which are established by the Customs legislation [1]. The term of the customs examination can't exceed 20 (twenty) working days from the date of the materials acceptance by the customs expert for execution. However the term of the customs examination execution can be prolonged in the order established by the legislation of the Member States of the Customs Union. The practice shows that this order allows the prolongation of the term for an indefinite period of time. This is a gross violation of the rights of the foreign trade activities participants.

In case the customs examination is carried out by the other authorized organization the term of the customs examination procedure can be prolonged according to the written permission of the Head of the authorized organization and coordinated with the Customs authority which has appointed the customs examination. In practice these terms can be prolonged several times and as a result the customs examination can be carried out within a year or more.

2.8 Identification examination specificity

We believe that the Identifying customs examination being very specific has to be executed by the experts of the CIFA of the FCS of Russia only.

However the refusal in the customs examination execution can be given to the appointed customs authority in case when:

- The insufficiency of information for the customs examination execution takes place.
- The decision on the purpose of customs examination is issued in an inadequate way.
- There is a discrepancy of the tests and samples packing safety in the description specified in the decision of the customs examination execution.
- There are no necessary material base and special conditions for carrying out the customs examination.
- There is an absence of an expert with the proper qualifications.

When it is impossible to carry out the customs examination by the experts of the CIFA of the FCS of Russia the expert from the other authorized organization can be involved. The procedure of the customs examination is executed on the contract basis. In such cases an invited expert organization is obliged to present to the Customs body the documents confirming the presence of the expert and the proper equipment at its disposal.

The order of the other organization involvement into the customs examination execution is provided by the CIFA departmental orders [2, and 3].

Taking into consideration the necessity of the Customs legislation observance this practice demands a serious improvement.

It is also obvious that the established order is a temporary measure because the powers delegation should be determined by the measures of responsibility. It is connected with the fact that the customs examination (departmental) can be used within the legal proceedings.

The current legislation consolidates by its norms only the concept of the State judicial and expert activity.

The legal definition of it is given in the in the Art. 1 of the FL-73 "About the State judicial and expert activity in the Russian Federation". According to this norm the subjects of the State judicial and expert activities are the State judicial and expert bodies. They execute the function of the State judicial examination and have the official experts who are assigned to make the judicial examinations by the request of the Head of the State judicial and expert body.

However the procedural legislation allows carrying out the production of judicial examination not only by the state experts, but also by the other persons to whom the production of judicial examination is entrusted. They are the employees of the non-state expert organizations and private experts. The lack of the regulations of their activity causes many contradictions in the customs technologies and legal practice.

The current practice shows that non-state expert organizations have a great interest to the examinations execution. It is connected with the fact that the expert

opinions issued by the other expert organizations are accepted by the Courts on an equal basis with the conclusions given by the experts of the CIFA of the FCS of Russia. The same practice confirms that the quality of such conclusions is very low. It can be easily explained by the fact that the customs expert should obtain the knowledge in exclusively customs sphere (the goods nomenclature, customs value, the country of the goods origin determination, etc.). The experts from non-state organizations do not have this knowledge.

Taking into consideration that customs examination is the instrument of the foreign trade activity regulation the legitimacy of the expert opinions working in the field of the customs business is of great importance.

3. Conclusions

- Summarizing all stated above it should be noted that the majority of the difficulties arising at the customs examination appointment and execution, including identification examination were inevitable when forming the Customs Union. However, when forming strategic development plans of the customs examination institute it was important to understand the importance of the goods identification taking into account the criteria put in the Goods Nomenclature and its place in the general methodology of the goods classification.

- This general direction assumes the development of the goods identification management mechanism when carrying out the customs examinations and their inclusion into the Concept of the customs examination management institute development on the common customs territory of the Customs Union. In order to fulfill the main provisions of the Concept it is very important to work out the equal demands to the responsibility of the state and commercial experts, experts training system in order to make the customs examination procedure identical. It is very important to take into consideration that the replenishment of the state budget and strengthening of economic stability of the country in general depend on timely, effective and exact customs examination.

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