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COMMODITY NOMENCLATURE AND THE CLASSIFICATION OF GOODS FOR CUSTOMS PURPOSES IN THE EURASIAN ECONOMIC UNION²

This article presents one of the key features customs law—the customs nomenclature and classification of goods. The study demonstrates the its multifunctional nature: its value for customs tariff regulation and the calculation of customs duties, its use for statistical purposes, and for the identification of a good when it is subject to non-tariff regulation.

The research examines the concepts of the Commodity Nomenclature of Foreign Economic Activity (CNFEA), its international standardization—the Harmonized Commodity Description and Coding System—the basic rules of customs classification, the legal organizational aspects of maintaining the CNFEA and the adoption of provisional decisions on the classification of a good.

Keywords: Customs Union, Eurasian Economic Union (EAEU), customs legislation, the commodity nomenclature of foreign economic activity, classification of goods for customs purposes.

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The classification of goods for customs purposes represents a feature of customs law which provides uniformity in the customs tariff regulation of foreign trade transactions.

The Commodity Nomenclature of Foreign Economic Activity (CNFEA), which is used for the purposes of customs classification, is multifunctional and has become an important legal means without which it is impossible to apply, in practice, any method of state regulation concerning foreign trade.

CNFEA is the systematized nomenclature of goods and their corresponding codes of commodity groups, headings, subheadings and notes. It includes general and specific rules of classification, that is, the establishment of the code of a good by the commodity nomenclature is obligatory. This distinguishes the commodity nomenclature used for customs purposes from any other cases—CNFEA is always the basis of customs tariffs.

The procedures of determining the code of a good by CNFEA (alternatively known as *tariff equating*) have an important economic and legal value.

First, the rate of customs duty and consequently the customs tariff burden on foreign trade operations depend on its customs heading.

Second, the commodity nomenclature is used for determining the non-tariff measures of state regulation (such as licenses, quotas) which are subject to application in respect of particular foreign trade transactions.

Third, the commodity nomenclature represents the basis for maintaining customs statistics, which allow the analysis of a foreign trade turnover and on this basis develop future customs and foreign trade policy.

Maintaining CNFEA enhances and modernizes commodity nomenclature, bringing it into compliance with the statistical customs requirements for international trade and with the changes brought by the modernization of international legal basis of CNFEA.

The legal base of the commodity nomenclature used in the Eurasian Economic Union (EAEU) is constituted by the Harmonized Commodity Description and Coding System of the World Customs Organization (HS) and the

Commodity Nomenclature of Foreign Economic Activity of the Commonwealth of Independent States (CNFEA CIS).

The sophistication of the structure of international trade by the end of the 20th century, the exigencies of international organizations and states in the qualitatively new instruments of the international control of cross-border movement of particular goods, including those which constitute danger to persons, the necessity of implementing continuous monitoring of the foreign trade of species which are under threat of extinction, the avalanche-like increase in the turnover of international goods and the use of computer technologies in customs affairs, and the acceleration of customs procedures — all of these factors led to the need for a unification of customs classifications for modern international trade and the formation of a universal international customs classification—HS.

On 14 June 1983 in Brussels at the session of the Customs Co-operation Council (currently the World Customs Organization), the final version of the International Convention on HS was approved. The Convention came into force on January 1, 1988.³ In the Russian Federation, the Convention came into force on January 1, 1997 (The Resolution of the Government of the Russian Federation from April 3, 1996 № 372)⁴.

The unification of commodity nomenclatures and the formation of HS are the grounds for the simplification and development of foreign trade, the reduction of expenses incurred by the participants of foreign trade which relate to repetitive description, classification, and the coding of goods upon their transition from one classification system to another in the course of international trade.

HS represents the global international customs commodity nomenclature and system of coding the mechanism of maintaining and updating of which best responds to technological shifts in international trade. HS is used as a tool of

³ International Convention on the Harmonized Commodity Description and Coding System (As amended by the Protocol of Amendment to the International Convention on the Harmonized Commodity Description and Coding System of 24 June 1986). Signed in Brussels on 14 June 1983. Entered into force on 1 January 1988. Available at: http://www.wcoomd.org/home_hsnomenclaturetable2012.htm [The official website of the World Customs Organization] (accessed: 26.03.2017).

⁴ Resolution № 372 of the Government of the Russian Federation, dated April 3, 1996 “O prisoyedinenii Rossiiskoi Federatsii k Mezhdunarodnoi konventcii o garmonizirovanoj sisteme opisaniia i kodirovaniia tovarov”, Sobranie zakonodatelstva Rossiiskoi Federatsii, 08.04.1996, N 15, art. 1619.

international trade negotiations within the WTO.

Currently, all customs and statistical nomenclatures of the world are based on HS. The CNFEA applied within the Customs Union of the EAEU is not an exception.

The nomenclature of HS includes:

- a) commodity headings and subheadings;
- b) the digital codes for headings and subheadings;
- c) section, chapter, and subheading notes;
- d) general rules of interpretation of the HS.

Amendments to the HS nomenclature imply an international legal obligation of each contracting party of the HS Convention within a fixed timeframe to bring into accordance with the supplemented HS their statistical and customs tariff or single customs statistical nomenclatures.

The contracting parties of the HS Convention are bound to the application of HS as a base for their customs statistical nomenclature, which is applied when declaring imported goods and which is used for the collection of statistical data on foreign trade transactions.

In case of developing national customs statistical commodity classification, a member of the HS Convention is not allowed to arbitrarily delete selected commodity headings and subheadings of HS, amend or supplement the first six digits of the HS code, or modify the established basic rules in the annex regarding the application of HS.

It is permitted to *itemize* the HS nomenclature by means of adding additional subsections that are coded with more digits than in the HS.

The distinctive feature of the classification scheme of HS is *comprehensiveness*. Sections I, II and V are constructed on the principle of origin, sections IV, XI, XII, XVII, XVIII, XIX, XX and XXI by functional assignment, sections III, VI, VII by chemical composition, and sections VIII, IX, X, XIII, XIV and XV by the category of the material from which the good was made.

The chapters are allocated with different rule—the degree of good processing.

Simplistically: live animals are classified in chapter 1, skin and leather of animals in chapter 41, and leather footwear in chapter 64.

The HS nomenclature includes 21 sections (denoted in Roman numerals, the section number is not coded), which include 97 chapters (numbered from 1 to 97, also there are non-coded subchapters in the HS, 33 in total), the chapters are divided into commodity headings (1224), and most commodity headings are composed of two types of subheadings—with one hyphen and with two smaller hyphens (initially, there were 5019 subheadings in the HS)⁵.

In HS *six-digit coding* is applied. The code is read as follows: the first two digits indicate number of the chapter, digits three and four correspond to the number of the commodity heading inside the chapter, the fifth digit to the subheading with one hyphen belonging to a certain commodity heading, and the sixth digit to the final subheading with two hyphens belonging to a subheading of the first level (with one hyphen).

For example, the HS code 5202.91 means that the encoded good belongs to the chapter 52 “Cotton”, to the commodity heading 52.02 “Cotton waste (including yarn waste and garnetted stock)” of this chapter, afterwards, to the subheading with one hyphen 5202.9 “yarn waste other” and finally to the commodity subheading with two hyphens 5202.91 “garnetted stock”, which belongs to the commodity subheading 52.02.

Where the corresponding commodity heading of HS is not divided into subheadings, the fifth and sixth digits of the code are converted to zero.

This nomenclature covers all possible types of goods. It means that even if there is no separate subheading allocated to a particular good in the HS nomenclature, it is still possible to assign a six-digit HS classification code to this good. This is possible using the so called “basket provisions” of commodity headings, or using the “other” of commodity subheadings⁶, which classify the

⁵ Berlin E. A., Ivanov N. A. *Tovarnaia nomenklatura vnesheekonomicheskoi deiatelnosti SNG* [Commodity Nomenclature of Foreign Economic Activity of the CIS]. M.: Rossiiskaia Tamozhennaia Akademiia Ed., 1996. P. 84.

⁶ What Every Member of the Trade Community Should Know About: Tariff Classification. Informational publication of the U.S. Customs and border protection. Available at: http://www.cbp.gov/linkhandler/cgov/trade/legal/informed_compliance_pubs/icp017r2.ctt/icp017r2.pdf. [The official website of

goods that are not named in other chapters.

The HS nomenclature requires itemization, which is explained by the necessities of effective tariff protection and the realization of more flexible fiscal policy by states and customs unions.

The classification of a good by the HS nomenclature signifies a phase-by-phase determination of its classification code, that is establishment of chapter, commodity heading and commodity subheading, and its corresponding six-digit code.

The procedure of customs equating is the application of the rules of interpretation for the unambiguous reference of goods to the HS subheading. There are two means that are used for interpretation of the HS nomenclature: internal, or official; and external, or recommendatory. General rules of interpretation that are included in the annexes of HS Convention and in the notes to the sections, chapters, and subheadings belong to the first. To the second type primarily belong the HS Explanatory Notes and the Collection (so-called "compendium") of the classification decisions of the HS Committee.

In accordance with article 10 of the Convention on HS, disputes between contracting parties concerning the interpretation or application of HS is settled by negotiation between them. The disputes that are not settled in this way are passed to the HS Committee, which considers the dispute and makes recommendations for its settlement. The occurrence of such disputes in practice is rare. There are more often latent collisions when the customs administrations of two states prescribe the classifications of the same goods differently. Such hidden "disputes" are resolved in national courts, not by the HS Committee. At the same time, private entities can initiate discussion of a problem in the World Customs Organization through International Chamber of Commerce (ICC), which is invited as the representative of the private sector for participation as an observer in all meetings of HS Committee.

CNFEA CIS is one of the customs commodity nomenclatures that has derived

from HS. It is applied in the territory of states that are signatories to the relevant agreement and represents itemization of the coding of HS nomenclature to the ninth digit.

CNFEA CIS was signed on November 3, 1995.⁷ In this document, in particular it was established (Art.1) that the parties are creating single commodity nomenclature based on HS, in order to implement the tariff and non-tariff measures of the regulation of foreign economic activity, the advancement of maintaining statistical accounting, and the exchange of statistical information. The single nomenclature is provided in the Annex of the corresponding Agreement.

The peculiarity of CNFEA CIS lies in the fact that it is administered by the customs service of one of the contracting states, namely the Russian Federation. These powers are fixed in Article 2 of the Agreement and they state that the Federal Customs Service of Russia (FCSR) monitors changes of the international basis of CNFEA CIS, brings it into accordance with the HS nomenclature, maintains this nomenclature and stores a reference copy, and, at the request of the Council of Heads of the Customs Services, approves classification decisions on the interpretation of CNFEA CIS.

Questions regarding the development of the explanations to the CNFEA CIS lies in joint competence of the customs services of states which are signatories to the Agreement.

The powers of FCSR on maintaining the single nomenclature are limited by the Agreement (Point 2 of Article 2), whereas decisions on the modification and supplementation of CNFEA CIS and explanations on the interpretation of the nomenclature shall be approved by the Council of Heads of Customs Services of the CIS states.

CNFEA CIS represents a nine-digit commodity nomenclature, out of which the first six digits completely correspond to the HS nomenclature and the three subsequent digits are subheadings, which belong to CNFEA CIS.

⁷ The agreement of the states of the CIS, dated November 3, 1995 “O Edinoi Tovarnoi Nomenklature vneshneekonomicheskoi deiatelnosti SNG” [About Single Commodity Nomenclature of Foreign Economic Activity of the Commonwealth of Independent States], Rossiiskaia gazeta, 03.02.1996, N 22.

The seventh and eighth digits of code of the good according to the CNFEA CIS, currently, in most cases, coincide with the Combined Nomenclature of the European Union. This is connected with the fact that the basis of CNFEA CIS — the CNFEA of Russia was developed with difficulty, therefore it was decided to use the subheadings of the Combined Nomenclature of the EU to code goods at the level of seventh and eighth digits.

The shortcomings of the CNFEA CIS, connected with its insufficient itemization, were eliminated with the Commodity nomenclatures, which were passed on the base of the CNFEA CIS and are itemization of the HS Nomenclature and the CNFEA CIS to the tenth digit:

- The Commodity Nomenclature of Foreign Economic Activity of the Eurasian Economic Community (CNFEA EurAsEC);
- The Commodity Nomenclature of Foreign Economic Activity of the Customs Union (CNFEA CU);
- The Commodity Nomenclature of Foreign Economic Activity (CNFEA EAEU).

The functioning of CNFEA EAEU was approved by the Decision of the Eurasian Economic Commission on 16 July 2012 N 54 (with subsequent changes and supplements made) “About the Approval of the Single Commodity Nomenclature of Foreign Economic Activities of the Eurasian Economic Union and the Common Customs Tariff of the Eurasian Economic Union”⁸.

The powers to approve CNFEA EAEU supervene from:

- 1) The Agreement on the Functioning of the Customs Union within the Multilateral Trade System from 19 May 2011;
- 2) The Regulation of the Eurasian Economic Commission, approved by the Decision of the Supreme Eurasian Economic Council at the level of the heads of

⁸ Decision N 54 of the Eurasian Economic Commission, dated July 16, 2012 “Ob utverzhdenii Edinoi Tovarnoi Nomenklaturi vneshneekonomicheskoi deiatelnosti Tamozhennogo Soiuz a i Edinogo Tamozhennogo Tarifa Tamozhennogo Soiuz a” [About the Approval of the Single Commodity Nomenclature of Foreign Economic Activities of the Customs Union and the Common Customs Tariff of the Eurasian Economic Union]. Available at: <http://www.tsouz.ru/>, 23.07.2012 [The official website of the Eurasian Economic Union] (accessed: 26.03.2017).

the states from November 18, 2011 № 1.

CNFEA EAEU is integrated into the Common Customs Tariff of the Eurasian Economic Union and represents its inalienable part.

The decisions on entering modifications and additions to CNFEA EAEU are made by the Eurasian Economic Commission⁹

The acts of the Board of the Eurasian Economic Commission document explanations to the Commodity Nomenclature (Recommendation N 23 of the Board of the Eurasian Economic Commission “About Explanations to the Single Commodity Nomenclature of Foreign Economic Activity of the Eurasian Economic Union”¹⁰) and the classification decisions on certain types of goods (for example, the Decision of the Board of the Eurasian Economic Commission from September 16, 2014 N 157 “About Classification of Gauze Fabric by Single Commodity Nomenclature of Foreign Economic Activity of the Customs Union”¹¹).

In cases of disputes over classification decisions and other matters concerned with the application of CNFEA EAEU, the dispute decisions are made by the Court of the EAEU. The technical maintenance of CNFEA EAEU is performed by the Secretary of the Eurasian Economic Commission and the Federal Customs Service, which include the Bureau of Commodity Nomenclature of the FCS of Russia.

The basis for the legal mechanism of the interaction between the supranational body and the Federal Customs Service concerning issues of the

⁹ For instance, the Decision N 64 of the Council of the Eurasian Economic Commission, dated September 18, 2014 “O vnesenii izmenenii v Edinuiu Tovarnuiu Nomenklaturu vneshneekonomicheskoi deiatelnosti Tamozhennogo Soiuz a Edinii Tamozhennii Tarif Tamozhennogo Soiuz a v otnoshenii otdelnykh vidov pressovogo oborudovaniia dlia aviacionnoi promishlennosti” [On Entering Modifications to the Single Commodity Nomenclature of Foreign Economic Activity of the Customs Union and Common Customs Tariff of the Customs Union Concerning Separate Types of the Press Equipment for Aviation Industry]. Available at: <http://www.eurasiancommission.org/>, 23.09.2014 [The official website of the Eurasian Economic Union] (accessed: 26.03.2017).

¹⁰ Recommendation N 23 of the Board of the Eurasian Economic Commission “O poiasneniiakh k Edinoi Tovarnoi Nomenklature vneshneekonomicheskoi deiatelnosti Evraziiskogo Ekonomicheskogo Soiuz a” [About Explanations to the Single Commodity Nomenclature of Foreign Economic Activity of the Eurasian Economic Union]. Available at: <http://eaeunion.org/>, 01.12.2016 [The official website of the Eurasian Economic Union] (accessed: 26.03.2017).

¹¹ Decision N 157 of the Board of the Eurasian Economic Commission “O klassifikatsii tkani marlevoi po Edinoi Tovarnoi Nomenklature vneshneekonomicheskoi deiatelnosti Tamozhennogo Soiuz a” [About Classification of Gauze Fabric by Single Commodity Nomenclature of Foreign Economic Activity of the Customs Union]. Available at: <http://www.eurasiancommission.org/>, 17.09.2014. [The official website of the Eurasian Economic Commission] (accessed: 26.03.2017).

technical maintenance of the Commodity Nomenclature was enshrined in the Decision of the Commission of the Customs Union N 295 “About documents regarding the technical maintenance of the Single Commodity Nomenclature of Foreign Economic Activity of the Customs Union”¹².

The Russian legislation on customs regulation determines the main dimensions of the activities of the Bureau of Commodity Nomenclature of FCSR.

The Bureau participates in the fulfilment of Russia’s obligations arising from its participation in the International Convention on Harmonized Commodity Description and Coding System of 14 June 1983 and the Agreement on the Single Nomenclature of Foreign Economic Activity of the Commonwealth of Independent States of 3 November 1995.

It also participates in the preparation of proposals for the development of state policies in the field of customs affairs and their implementation in the maintenance and application of commodity nomenclatures of foreign economic activity.

The Bureau of Commodity Nomenclature of FCSR organizes and coordinates the activities of customs bodies concerning the accurateness of the classification of goods in accordance with CNFEA EAEU and the compliance of the adoption of preliminary decisions about the classification of goods in accordance with CNFEA EAEU.

In order to perform its corresponding tasks, the Bureau prepares Russian language versions of documents of the World Customs Organization concerning HS, develops proposals for the classification of certain goods in accordance with the CNFEA EAEU, and maintains the Collection of preliminary decisions about classification of goods in accordance with the CNFEA EAEU, which is available on the website of FCSR.

¹² Decision of the Commission of the Customs Union N 295 “O dokumentakh po tekhnicheskomu vedeniiu Edinoi Tovarnoi Nomenklaturi vneshneekonoicheskoi deiatelnosti Tamozhennogo Soiuza” [About documents regarding the technical maintenance of the Single Commodity Nomenclature of Foreign Economic Activity of the Customs Union]. Available at: <http://www.tsouz.ru/>, 25.06.2010. [The official website of the Customs Union Commission]. Entered into force on 1 July 2010

The Customs Code of Customs Union¹³ (Art. 51) establishes for FCSR the following functions for technical management of CNFEA EAEU:

1. monitoring changes in the international framework of CNFEA, and explanations and solutions for the interpretation of this framework;
2. making proposals to the Eurasian Economic Commission of the customs union on bringing CNFEA into conformity with its international basis;
3. preparation for the publication and the direction of CNFEA and explanations for it to the Eurasian Economic Commission.

Conclusions

To summarize the analysis of the legal basis for the classification of goods for customs purposes within the EAEU, we note the following:

1. The procedures of customs classification and single commodity nomenclature are used for the identification of goods for customs purposes, and also, they provide a means of achieving uniformity of customs classification.

The unification of customs nomenclature that is used in world trade is one of the most vital tasks of the World Customs Organization and modern international customs law.

2. The classification of goods for customs purposes with the application of commodity nomenclature is used for regulating customs tariff and non-tariff international trade and maintaining foreign trade statistics.

The customs classification of goods and assignments of the corresponding code to this good from commodity nomenclature constitute the initial stage of the procedure of customs tariff regulation, that is determination of the amount of the customs duty, which is subject to payment for the movement of this good across the customs border. Only after determining the code of the good according to the commodity nomenclature, it is possible to establish the rate of the customs duty that is subject to payment.

¹³ Tamozhenii kodeks Tamozhennogo Soiuz [Customs Code of Customs Union], dated 27.11.2009, Sbornik zakonodatelstva Rossiiskoi Federatsii, 13.12.2010, N 50, art. 6615.

This classification also initiates the application of the instruments of non-tariff regulation (such as licenses, quotas) to the goods of international trade. Without the implementation of customs classification, administrative barriers in foreign trade cannot be used.

Both of these circumstances causes the most conflict in the procedures of the customs classification of foreign trade.

3. In order to minimize conflict in the customs classification of goods, legal means, such explanations by competent bodies of the application of commodity nomenclature and the adoption of preliminary decisions in assigning the commodity code for a particular good, are actively used.

When a dispute is not resolved in the pre-judicially, it is passed to the court.

4. In the EAEU, for the customs classification of goods participating in international trade, CNFEA is used. This represents the version of commodity nomenclature derived from HS — the outcome of the World Customs Organization for the unification of national customs statistics for the classification of goods participating in international trade.

5. The basis for CNFEA, used in the Common Customs Tariff of the EAEU, is CNFEA CIS, which was enacted in 1995 by the post-soviet republics of the USSR after the conclusion of the corresponding international legal agreement. The CNFEA CIS is extremely close to the unified versions of commodity nomenclatures: its first six digits coincide with HS; and the seventh and eighth digits with the Combined Nomenclature of the European Union. The itemization of the nomenclature for the ninth and tenth digits is under competence of EAEU.

6. The Eurasian Economic Commission (art. 54 of the Treaty on Eurasian Economic Union) is responsible for the maintenance of the Single Commodity Nomenclature of Foreign Economic Activity of the Eurasian Economic Union.

The power of the Eurasian Economic Commission to approve the Commodity Nomenclature is realized through the adoption of decisions by the Council of the Eurasian Economic Commission. Modifications and additions to the Commodity Nomenclature can be made by the decisions of the Council and the Board of the

Eurasian Economic Commission.

The Board of Eurasian Economic Commission also prepares explanations of the Commodity Nomenclature (through adoption of Board recommendations) and the adoption of classification decisions on certain types of goods.

7. The technical maintenance of the Commodity Nomenclature is carried on by the Secretariat of the Eurasian Economic Commission and the FCSR, which includes the Bureau of Commodity Nomenclature.

The peculiarity of the Commodity Nomenclature of the EAEU is the delegation of the powers of the technical maintenance of the CNFEA EAEU to FCSR which carries it out on behalf of all EAEU, in accordance with the Customs code of the Customs union.

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