

The Customs Union: Customs View from Kazakhstan (Three Years After)



Sholpan
Dossymkhanova,
Manager, Tax & Legal
Department, Deloitte
Caspian Region

Time zips along. An impetuous and heady torrent of new knowledge and advanced technologies rushes into our life, new products are created, international trade in goods, work (services) extends, countries converge and borders broaden.

Almost three years have passed since the official launch of the Customs Union and enactment of the Agreement on the Customs Code of the Customs Union, the Agreement on the Principles of Levying Indirect Taxes at the Export and Import of Goods, Execution of Work and Provision of Services within the Customs Union (hereinafter — the Agreement on Indirect Taxes) and other international agreements that have become an indispensable guide for many of us.

Formation of the Customs Union led to elimination of customs declaration of goods between the Customs Union member states, elimination of customs tariffs in the trade between the member states and, after one more year, elimination of customs control on the borders between the states. Despite all the difficulties that arose at the first stage of the customs alliance, in general, the country and businesses have managed to achieve the targets. The mechanism of free circulation of goods within the integrated customs territory started working as it had been intended to for the first stage.

Objectively, the business community now does not have to worry about payment of customs tariffs and taxes while delivering goods from Russia and Belarus to Kazakhstan, there is no need for mandatory storage of goods in the temporary storage warehouses

and incur expenses on storage and on payment for services of customs brokers/representatives, etc. One can list many advantages gained by Kazakhstani business from the Customs Union. We would like to discuss some issues that have been discussed at round tables, meetings and were not resolved yet.

Levying indirect taxes in mutual trade between the Customs Union states

Indirect tax payment mechanisms in mutual trade should work simply and accurately, and the rules for their application should be clear and realizable. For instance, while importing goods from the Customs Union member states it is now required to fill in two documents instead of one customs declaration: a declaration on indirect taxes on the imported goods and a Statement on Import of Goods and Payment of Indirect Taxes (there is place for simplification of tax reporting). It is necessary to take into account that submission of a Statement on Import of Goods and Payment of Indirect Taxes is regulated by the Agreement on Indirect Taxes and the rules of its execution are strictly agreed by the parties.

While some entrepreneurs were learning to complete the fields of the mentioned Statement in practice, others needed to quickly figure out the definition of the date of recognition of imported

goods which initially did not take into account all the situations regarding import of goods, though it directly determined the indirect taxes declaration submission date and payment of indirect taxes itself. Then the entrepreneurs who had hardly had enough time to understand when to recognize imported goods received a new surprise: for some reason the value of their imported goods had to be adjusted according to a special method and significantly increase causing a corresponding increase in the amount of VAT paid. It should be noted that the voice of taxpayers was heard in time and state bodies made appropriate decisions that stabilized the tense atmosphere in the business community.

Looking at the mechanism of levying indirect taxes in mutual trade in general, we need to admit that confirmation of the export of goods from Kazakhstan into the Customs Union countries for the purposes of applying zero value added tax rate has become more complicated. Before launching the Customs Union, to confirm export into Russia it was necessary to provide a copy of the export customs declaration with marks of the customs body made at the customs border of Kazakhstan and other documents.

However, after the launching of the Customs Union, under the Agreement on Indirect Taxes Kazakhstani entrepreneurs became dependent on their counterparts in the Customs Union states. Today when our entrepreneurs export their goods they cannot apply zero VAT rate without a copy of a Statement on Import of Goods and Payment of Indirect Taxes marked with the customs bodies of Russia and Belarus. Time will show the extent to which this issue can be simplified via data exchange between the Customs Union states.

Furthermore, legislation should take into account the specific issues of international supplies connected with change in the amount of goods during transportation caused by deterioration of goods, change in the value of goods resulting from transfer of title to the goods on their way and many other things.

It should be noted that in mutual trade between the Customs Union states we lost some advantages of the customs legislation, such as the customs procedure of customs warehouse which is one of the most widely spread procedures in international trade for promoting goods closer to a customer.

Integrated customs legislation for three

The Customs Code of the Customs Union (hereinafter the Customs Code) was drawn up within the shortest possible period, and the Kazakhstani party was the one responsible for its development. Despite the fact that at that time there was a successfully functioning national customs code prepared in line with international principles and agreements, the new Customs Code and a new understanding of the customary rules brought a lot of surprises for the Kazakhstani business and foreign investors.

Thus, the period of temporary import and export of goods was unexpectedly reduced from three to two years and now prolongation of the stated period after two years is impossible. At the same time, a limited list of goods was introduced providing for a special period of temporary import (permission) for certain types of goods exceeding that provided by the Customs Code. However, it covers a narrow list of goods and amending the Decision of the Customs Union Commission is a rather lengthy process.

In this situation, to avoid breaches of the customs regulations, businesses had to find a new optimal solution, replacing the customs procedure of temporary import with the procedure of release for domestic consumption without changing the title to the goods. Due to the established "stereotype" about the release for domestic consumption, it took some time for the customs bodies to start using the approach that allowed applying this procedure to all types of agreements/contracts. But finally a solution was found though each entrepreneur reached it in his own way.

DESTINATION KAZAKHSTAN

In this context, we suppose it would be reasonable to remember that Kazakhstan ratified Istanbul Convention on Temporary Import in 2010 (Law of the Republic of Kazakhstan #346-IV from 3 November 2010) and joined some of its addenda.

This Convention allows simplifying clearance of temporarily imported goods for exhibitions, expositions, concerts, and sport events. However, the Convention does not operate in Kazakhstan because there is no guaranteeing body, while in Russia and Belarus it functions to full extent. We suppose that application of the provisions of the Istanbul Convention would enable Kazakhstan to position itself properly at EXPO-2017 exhibition and would enable entrepreneurs to spur up trade and exhibition activity both in Kazakhstan and abroad.

The next aspect that raised a storm of various feelings was inclusion of license fees (royalty) into the customs value of imported goods, though their amount is generally unknown at the time of customs clearance and release of goods.

Despite the fact that Kazakhstan always applied basic principles of establishing customs value in accordance with international agreements on customs value within GATT (WTO), after 1 July 2010 changes were introduced in customs bodies' approach to application of the customs value establishing mechanism regarding the use of the first method when license fees are included into the customs value.

Thus, in the customs bodies' opinion, importers of products of companies that hold title to internationally acclaimed brands paying a license fee (royalty) to the rightholder (licensor) are required to include such payments into the customs value of the goods and pay duties and taxes arising from import of the goods to the territory of the Customs Union.

In this case the concerns of the business are caused by the fact that in practice the amount of license fees may be unknown at customs clearance and can be proved by documents only after sale of the goods,

i.e. after customs clearance declaration is issued by the customs bodies.

From the perspective of the customs, if documents on the amount of license fees are not available during customs declaration it casts doubt on eligibility for applying the first method for establishing customs value or binds the declaring importer to submit a customs value adjustment form, which has corresponding customs consequences. It forms a situation where business becomes a "hostage" of the situation from the start.

Unfortunately, draft Decision of the Eurasian Economic Commission Council "On Deferred Determination of Customs Value" has been being negotiated by the parties for the second year already. The draft enables deferring determination of the customs value in the specified cases when some of its elements can be adjusted and clarified only after release of goods.

At present, customs authorities of the Customs Union member states are actively discussing the Protocol on Amending the Customs Code. Official bodies state that these will be technical and editing corrections only, though we consider that the amendments made to the aforementioned Protocol go beyond editing corrections and contain substantial changes which the business will learn about only upon ratification of the Protocol, having come "a way of bitter mistakes".

The creation of the Customs Union between Kazakhstan, Russia and Belarus can be also compared to the beginning of new times and a new epoch opening new opportunities and plans for future to us. The extent to which our hopes will be realized depends, of course, on many factors and the striving of each participant. But we trust that we will manage to overcome successfully any difficulties we meet on our way if we move together in the same direction and listen to each other, choosing only the best experience and providing equal opportunities for achieving the target to everyone.