Customs update 2017
Russia
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Introduction

Over the past few years, the customs legal framework has tended to become more oriented towards the internationally recognised approaches. Most of the developments and amendments introduced in 2016 and in the beginning of 2017 in the customs area were meant to simplify customs formalities, improving the investment climate and making the business environment in Russia more attractive. Part of them, the long-awaited Customs Code of the Eurasian Economic Union has been signed by the Eurasian Economic Union member states (except Belarus) and will enter into force no earlier than 1 July 2017. Russia continues to revise the import duty rates following its World Trade Organization (“WTO”) obligations. Also, the amendments to the foreign economic activity commodity nomenclature are being introduced in line with the latest edition of the Harmonized System Nomenclature, adopted by the World Customs Organization.

There have also been developments addressing the issues regularly faced by the businesses involved in foreign trade, e.g. regarding customs valuation, inclusion of licence payments into the customs value, delayed determination of the customs value, etc.

In the beginning of 2016, the Federal Customs Service was transferred under the jurisdiction of the Ministry of Finance, which also supervises the Federal Tax Service. In light of this, further steps towards developing a common approach by the customs and the tax authorities are anticipated. In particular, the integration of information exchange systems of customs and tax authorities has already started, which potentially implies more effective customs and tax administration. However, at this stage it is difficult to predict the timeframe and the level of further integration of the two federal governmental bodies.

In this update, we have summarised the most important changes in the customs laws and regulations, which may affect businesses in 2017.
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General Developments
On 26 December 2016, all the Eurasian Economic Union (the "EEU") member states except Belarus signed the new Customs Code of the EEU (the "EEU Code" or the "Code") which will replace the current Customs Code of the Customs Union. The EEU Code should become effective no earlier than 1 July 2017 after signing by Belarus and subject to subsequent ratification by all the EEU member states.

The key changes to the EEU Code, in particular, include:

- a simplification of customs operations;
- a transition to the electronic document flow. The Code prioritises the electronic declaration, with hard copy declarations allowed for a limited list of cases only;
- a new approach to regulating the authorised economic operators (the "AEOs"), a special category of importers/exporters who enjoy the simplified customs clearance operations. According to the Code, AEOs are classified into three groups with different privileges subject to certain criteria;
- introduction of concept of preliminary decisions issued by the customs authorities regarding the customs valuation methods to be applied to the imported goods. It should be noted that the procedure for issuing such decisions may be applied in an EEU member state only upon adoption of the respective national regulations. Therefore, currently it is difficult to predict whether the preliminary customs valuation decisions will be implemented in Russia.

We believe that the new Code will significantly simplify the customs formalities and will enhance cooperation between the customs authorities of the EEU member states thanks to the electronic document flow and the implementation of unified customs regulations. At the same time, a closer cooperation between the customs authorities of the EEU member states will allow them to analyse the available information (e.g. on customs values for identical/similar goods imported into different EEU member states) and to increase control over the intra-EEU transactions.

The simpler customs operations will enable reducing the waiting time for customs formalities, and customs control may shift from the customs clearance process to the post-clearance stage. This will likely require from businesses stronger internal controls over their customs operations to mitigate the potential customs risks.
General Developments
Russian Supreme Court Issues Clarifications on Customs Matters

The Resolution of the Plenary Session of the Russian Supreme Court No. 18 of 12 May 2016 clarifies several questions, including:

- the determination of and control over the customs value of imported goods;
- the inclusion of royalties into the customs value of imported goods;
- the classification of goods;
- the procedure for appealing the customs authorities’ acts;
- the return of overpaid customs payments.

The clarifications of the Russian Supreme Court may significantly impact the application of the effective customs legislation as they contain an innovative approach to several issues, e.g., customs valuation. For instance, if the price of imported goods is significantly lower than the price of identical/similar goods, the importer should substantiate decreasing the customs value beforehand. In court disputes on customs valuation, the courts should not allow either the importer or the customs authorities to provide new evidence, if either party has not used the opportunity to do so at the stage of additional verification of the customs value.

We recommend that businesses check their practices according to the new approach of the Russian Supreme Court, as well as thoroughly review the EEU Code to identify the impact it will have on their foreign trade activities in Russia.
General Developments

EEU’s Single Market

On 12 February 2016, the Agreement on Unified Principles and Regulations for the Circulation of Medical Products (Medical Devices and Medical Equipment) and the Agreement on Unified Principles and Regulations for the Circulation of Pharmaceuticals in the Eurasian Economic Union entered into force.

In November 2016, the Council of the Eurasian Economic Commission (the “EEC”) adopted a set of documents finalising the legal framework of the EEU’s single market for pharmaceuticals and medical products. It establishes the EEU’s rules and principles for movement of these goods, covering such issues as registration, clinical trials, inspections, pharmacovigilance, and information exchange.

One of the key features of the single market for pharmaceuticals and medical products will be the EEU registration procedure. Producers of medical products must register them in accordance with the unified EEU’s regulations by 31 December 2021, while pharmaceutical manufacturers must register them under the unified EEU’s regulations by 31 December 2025. Until then, the national registration of medical products and pharmaceuticals will continue to be valid.

The full roll-out of the single market for electrical energy is expected by 2019, for oil and petroleum products – by 2024.

The single market developments should open up new opportunities, encouraging the intra-EEU trade and cooperation by simplifying the logistics, reducing the trading barriers and costs.
Customs Valuation
Delayed Determination of Customs Value

Decision of the EEC Board No. 133 dated 1 November 2016 amends the existing procedure for the delayed determination of customs value.

Previously, the delayed determination of customs value was allowed for exchange-traded commodities only. The scope has now been expanded to include:

- The goods, with regard to which the importer is contractually obliged to make payments for the use of intellectual property (e.g. royalties), and such payments are calculated based on the data not known at the time of submitting a customs declaration;

- The goods, part of the proceeds from which is due to the seller and calculated based on the data not known at the time of submitting a customs declaration.

The final customs value must be determined within 15 months of the date the customs declaration is registered.

This procedure covers the widespread practice of determining the final transaction price after the customs clearance, e.g. if the final transaction price payable to the seller depends on the revenues derived by the purchaser from the domestic re-sale of imported goods.
Customs Valuation
Inclusion of Royalties into Customs Value

The Recommendations of the EEC Board No. 20 of 15 November 2016 (the "Recommendations"), which came into effect on 17 November 2016, develop common approaches to inclusion of licence fees and other similar payments for the use of intellectual property objects into the customs value of imported goods into the EEU customs territory. The Recommendations give a definition of licence fees and other similar payments and detail the conditions for including such payments into the customs value, providing illustrative cases (two of them are summarised below).

Example 1. An EEU company ("Company A") purchases trademarked clothing from a foreign manufacturer and imports it into the EEU territory. The right to use the relevant trademark in relation to the goods’ importation and sales is granted to Company A under a licence agreement it signs with its parent company ("Parent Company"). The Parent Company also controls the manufacturer. The royalty is calculated based on the sales revenue derived from the sale of the imported goods in the EEU. Since (i) the right to use the trademark is granted for import and sale of the trademarked goods, and (ii) the Parent Company controls both Company A and the manufacturer, the licence payments must be included into the customs value of the imported clothing.

Example 2. An EEU company ("Company B") purchases foil from independent foreign manufacturers to package goods produced in the EEU ("Goods"). The right to place the trademark on the Goods is granted to Company B under a licence agreement signed with a related foreign trademark holder ("Licensor"). The trademark is placed on the foil by the foil manufacturers as requested by Company B, i.e. the imported foil already bears the trademark. The royalty is calculated based on the revenue derived by Company B from the sale of the foil-packaged Goods in the EEU. Since (i) the licence agreement does not address packaging of the Goods, and (ii) there are no requirements to packaging from the Licensor, the licence payments do not need to be included into the customs value of the imported foil.

Although formally the recommendations of the EEC Board are not legally binding, in practice they may change the approach of the customs authorities and courts.

In light of this, we recommend that businesses determine whether the Recommendations impact their current or planned approach towards the inclusion of licence fees and other similar payments in the customs value of imported goods.
Customs Duties
Reduction of Customs Duties

The EEC continues to revise import duty rates on certain goods in line with Russia’s WTO obligations. For example, the EEC Council Resolution No. 40 of 16 May 2016 decreased the import duty rates on certain types of paper, footwear, confectionary products, fish, ferrous metals, cars, refrigerating machinery, and construction materials.

The Resolution came into effect on 1 September 2016, with the exception of several provisions which came into effect on 31 December 2016.

According to Russia’s WTO obligations, a gradual decrease of import duty rates is expected until 2019.
Customs Duties
Updated Commodity Nomenclature

The EEC has introduced extensive amendments to the EEU Unified Customs Tariff and Foreign Economic Activity Commodity Nomenclature (the “FEACN”) effective of 1 January 2017. The amendments were adopted due to the introduction of the new, 6th edition of the Harmonized System Nomenclature, adopted by the World Customs Organization.

Businesses involved in foreign trade are urged to review the tariff classification of their products to ensure that the applied tariff codes are in line with the new edition of the FEACN.
The EEC Council has adopted the list of goods originating from the developing and least developed countries and subject to import duty reduction or qualifying for a zero duty rate (Resolution No. 8 of 13 January 2017). The Resolution has been published on the EEC website on 28 February 2017 and will become effective on 28 August 2017. It is stated that the decision was adopted within the framework of IX WTO Ministerial Conference, which is, in particular, aimed at streamlining trade, allowing the developing countries more options for providing food security, boosting the least-developed countries’ trade and facilitating their development in general.

The list prepared by the EEC Council covers the goods with existing tariff preferences (primarily food products), introducing the new ones for the least-developed countries (e.g. ferrous and non-ferrous metals, some engineering products).

The EEC plans to further expand the list of preferential goods. In this respect, businesses importing goods from the developing and least developed countries to the EEU are recommended to monitor the list of the goods qualifying for tariff preferences to identify potential savings.
Liability for Breach of Customs Laws
Liability for Breach of Customs Laws
Release from Administrative Liability

On 4 July 2016, amendments to the Russian Code of Administrative Offences (the “Administrative Code”) came into force, allowing the companies involved in foreign trade to be relieved from administrative liability for non-declaration and/or incorrect declaration of the goods if they voluntarily amend their customs declarations and make good on customs payments due.

However, the principle of “voluntary admission of error” is applicable only when certain conditions are met, and namely:

• no administrative violations have been identified by the customs authorities with respect to the goods;

• the declarant is not being audited by the customs authorities;

• no customs payments are overdue.

In practice, these conditions may be hard to meet, since the customs authorities may conduct audits without notifying the declarants, and there would be no certainty as to whether an audit is going on while submitting an error.
Liability for Breach of Customs Laws
Statistical Forms on the Intra-EEU Trade

Under the law, relevant statistical forms must be submitted with the customs authorities in respect of the goods moved between the EEU member states. The deadline for the statistical form submission is 8th business day of the month following the month of the goods’ shipment.

The statistical form should be filled in and submitted via the company’s account on the Federal Customs Service’s website.

Effective 29 January 2017, the Federal Law No. 510-FZ dated 28 December 2016 introduced a separate administrative offence to the Administrative Code for the failure to submit the statistical forms, meet the deadlines for submission or incorrect submission of the statistical forms to the customs authorities. Previously, a company could be held administratively liable for such offence only under the general article of the Administrative Code establishing liability for the failure to duly submit statistical data.

The legal entities failing to duly submit the aforementioned statistical form are subject to administrative fine. The fine for the first breach is from RUB 20,000 (circa USD 350) up to RUB 50,000 (circa USD 900), while for the repeated breaches it is from RUB 50,000 (circa USD 900) up to RUB 100,000 (circa USD 1,800).

As these administrative fines are specifically addressing the non-submission of statistical forms to the customs authorities, the number of administrative cases caused by technical errors, misprints or omission of certain information may potentially increase.

Therefore, businesses involved in the intra-EEU trade should thoroughly review the data submitted in the statistical forms to ensure that they are consistent with other reporting filed with the state authorities, as well as to comply with the deadlines and procedure for submitting the statistical forms in order to manage the risk of being held administratively liable.
Since August 2014, certain agricultural products, raw materials and foods originated from the European Union, the USA, Canada, Australia, Norway, the Ukraine, Albania, Montenegro, Iceland, and Liechtenstein have been prohibited for import. These prohibitions were initially implemented until 5 August 2016.

As political tensions between Russia, US and some EU countries continue, the sanctions against Russia remain in place, and so do Russia’s counter-sanctions. In June 2016 the embargo on the import of certain types of foods into Russia was extended until 31 December 2017 (Executive Order of the President of Russia No. 305 dated 29 June 2016, and Resolution of the Russian Government No. 608 dated 30 June 2016).
Other

Regulation of Goods Without Domestically Manufactured Analogues

Resolution of the Russian Government No. 1230 of 23 November 2016 introduces the new criteria for electronics, building materials, furniture and wood-processing goods that must be met to recognise these goods as having no domestically manufactured analogues. In particular, specific requirements for manufacturing equipment, processing operations, etc. are established.

These criteria are also used to substantiate customs benefits, i.e. exemption from import VAT for certain goods.

The Resolution came into effect on 1 December 2016.
On 5 October 2016, the Free Trade Agreement (the “FTA”) of 29 May 2015 between the Eurasian Economic Union (representing its member states) and the Socialist Republic of Vietnam came into force. The FTA provides for the mutual decrease or annulment of import duty rates for nearly 10,000 classification codes, mostly from the date the FTA comes into force, and after a transition period for some more codes. The FTA also provides for a simplification of customs formalities, as well as cooperation in electronic commerce.

In the framework of free-trade development with Vietnam, a Protocol was also signed by Russia and Vietnam to support production of motor vehicles in Vietnam. Under the Protocol, authorized Russian companies (e.g. GAZ, KamAZ, Sollers) create joint ventures with the Vietnamese partners to manufacture vehicles. Generally, Vietnam will grant tariff quotas for duty-free import of kits necessary for production of such motor vehicles.
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We hope that you will find this customs update interesting and useful. Should you have any questions or comments, please do not hesitate to contact our specialists listed below.

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