

May 2015

Customs Alert

Legal update

EEU +

At a meeting of the Supreme Eurasian Economic Council on 8 May 2015, a number of documents were signed in connection with Kyrgyzstan's accession to the Eurasian Economic Union (EEU), including two protocols on the transition period for Kyrgyzstan's accession.

You may recall that, on 23 December 2014 in Moscow, the presidents of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation signed an agreement with the president of the Kyrgyz Republic on Kyrgyzstan's accession to the EEU.

In the near future, once these protocols have entered into force and all necessary ratification procedures have been completed, Kyrgyzstan is expected to officially join the union.

Statistics of the Federal Customs Service

Federal budget revenues administered by the customs authorities came to RUB 354.49 billion in April 2015, thus totaling RUB 1,567.87 billion for the first four months of 2015 - a little over half the revenues for the same period of 2014.

As noted previously, declining revenues are usually closely followed by an increase in customs inspections both before and after goods are released, resulting in additional customs charges.

Changes in non-tariff regulation

Decision No. 30 of the Board of the Eurasian Economic Commission of 21 April 2015 "On Non-Tariff Regulation" entered into force on 23 May 2015.

This decision states that the permission procedure for importing and/or exporting listed goods to/from the EEC includes, among other things, licensing in accordance with new approved provisions on the import/export of such goods as hazardous waste and encryption tools.

Note that, when the decision enters into force, certain sections and provisions approved by Decision No. 134 of the Board of the Eurasian Economic Commission of 16 August 2012 "On Regulatory Legal Acts in the Area of Non-Tariff Regulation" will lose force, but documents issued on the basis of this decision will remain in force until their term expires. The adoption of a new decision on non-tariff regulation issues that have already been regulated has to do, above all, with the formation of the EEC, since the principal changes concern terminology. The new decision also describes the procedure for obtaining permission documents in greater detail.

Draft decree of the Russian Government

A draft government decree "On the Approval of Criteria for Classifying Industrial Products as Industrial Products without Russian-Produced Counterparts as Well as Criteria for Classifying Industrial Products as Goods Produced in the Russian Federation" has been posted on the unified portal for information on regulatory acts drafted by federal executive bodies and their public discussion (www.regulation.gov.ru). This draft was developed by the Ministry of Industry and Trade pursuant to Federal Law No. 488-FZ "On Industrial Policy in the Russian Federation" of 31 December 2014, which enters into force on 30 June 2015.

The discussion of the draft will last until 30 May 2015.

The document is being developed for the purpose of implementing measures to stimulate industry and in order to establish conditions, prohibitions and restrictions for goods that originate in a foreign country or group of foreign countries and lack counterparts produced in the EEC.

The draft includes appendices setting criteria for classifying products as goods produced in Russia for various industries: healthcare and pharmaceuticals, the auto industry, electronics, etc.

Amendments to the Federal Law "On Customs Regulation in the Russian Federation"

Amendments to Federal Law No. 311-FZ "On Customs Regulation in the Russian Federation" of 27 November 2010 (Law 311-FZ) entered into force on 8 May 2015. The amendments concern the form of security for a rights holder's obligation to reimburse losses if the release of goods is suspended.

Under Article 306, part 5, of Law 311-FZ, a rights holder's application to enter intellectual property in the customs register of intellectual property must be accompanied by the rights holder's written undertaking to compensate property damage that the declarer, owner or recipient of goods or other persons may incur if the release of goods is suspended.

Previously, customs law (Article 307, part 2, of Law 311-FZ) stated that this obligation could be secured by any of several means under Russian civil law, e.g. a deposit, bank guarantee, guarantee or civil liability insurance. The amendments eliminate this choice and state that a rights holder's obligation to compensate losses may be secured only by civil liability insurance. The amount to be insured remains unchanged: RUB 300,000.

If, within one month after notification is sent of a decision to take measures suspending the release of goods, a rights holder fails to provide an insurance agreement (policy) to the Federal Customs Service insuring the risk of liability for damage that may be incurred by the declarer, owner or recipient of goods or

other persons, the Federal Customs Service will decline to enter intellectual property in the register.

Continuing discussion of parallel imports

The discussion of parallel imports may soon yield its first results. Today parallel imports, i.e. imports of original goods without special permission from the trademark holder, are prohibited in Russia. Recently, however, the customs authorities have been actively supporting the initiative to legalize parallel imports. This support may have to do with the fact that customs payments to the budget fell off markedly following the prohibition of certain imports. The customs authorities could use customs payments from persons transporting such goods to patch these holes in the budget.

At the same time, consultations are already under way in the Eurasian Economic Commission on parallel imports of medical goods, pharmaceuticals, spare auto parts and other goods. By the end of May 2015, according to our information, the Federal Antimonopoly Service, the Ministry for Economic Development, the Ministry of Industry and Trade, the Ministry of Health and the Federal Customs Service are to prepare complete lists of goods that can be imported without permission from the trademark holders as well as a list of countries from which such goods can be imported. Consultations with the Eurasian Economic Commission should take place in summer 2015. It is thought that the fate of parallel imports may be decided by 2016.

Advanced development zones

Federal Law No. 473-FZ of 29 December 2014 "On Advanced Development Zones in the Russian Federation" entered into force on 30 March 2015.

Such zones are formed by the Russian government to create favorable conditions for investments and accelerated economic development as well as comfortable living conditions for the public. To this end, a special legal system applies to business activity in such zones. The law was designed to create conditions for the accelerated development of constituent entities of the Russian Federation, particularly in the Russian Far East.

In addition to tax benefits, the Russian government may decide to give such a territory the status of free customs zone, in which case it becomes the equivalent of a special economic zone. Free customs zone status involves exemptions from customs payments, and non-tariff regulation does not apply to foreign goods located and used in such zones. If such a customs status is terminated and goods are released in the Customs Union, customs payments must be made on both imported finished goods and goods produced in the zone from foreign goods.

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