Controversy about goods classification: the use of terms and their definitions according to FEACN of the CU

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Abstract. The paper considers the problematic terminological questions that arise among declarants and customs officials when classifying goods. Disadvantages of receiving a classification decision are described. The necessity to harmonize the terms “raw fat”, “speck” and “animal rendered fat” in the FEACN of the CU is shown.

1. Introduction

One of the key questions leading to controversy between the customs authorities and participants in foreign economic activity is goods classification according to the Foreign Economic Activity Commodity Nomenclature of the Customs Union (hereinafter referred to as the FEACN of the CU). This trend is quite explicable, as the classification code determines both the rate of customs duties and adherence to prohibitions and restrictions regarding each particular category of foods.

As specified in the provisions of the Customs Code of the Customs Union (hereinafter referred to as the CC of the CU) (paragraph 1, article 20), a declarant and other persons classify goods on their own according to the FEACN of the CU in the customs declaration procedure [1,2]. Control of the correctness of goods classification is carried out by the customs authorities.

Customs statistics data show that more than half of the unreliable declarations are linked with the peculiarities of filling in column 31, as the information about declared goods necessary for assigning to a 10-digit classification code is indicated there (Figure 1). When filling in column 31, declarants face problems with regard to the lack of harmonization in terminology used in normative documents of different levels, ambiguity of several terms/definitions or their absence [3,4].

Figure 1. Main mistakes made when filling in goods declarations
(*Analysis of the declaration array for 12 months of 2020)
Not infrequently in customs processing of goods, the customs office does not accept a FEACN code chosen by a declarant and insists on using another code that, as a rule, leads to a higher duty rate. In these cases, the practical activities in the sphere of customs procedures indicate that preliminary decisions (also known as customs classification decisions) can help to increase the reliability of declarations. Customs authorities can classify goods upon application before their customs declaration by making preliminary decisions for classification of commodities according to the FEACN of the CU (CC of the CU, paragraph 1, article 21) [1].

Meanwhile, preliminary classification decisions made in the Russian Federation will not be applied in other EAEU countries. Consequently, none of the Union countries is interested in a unified approach to classification of the same goods because, according to CC of the CU (paragraph 4, article 21) [5], preliminary decisions for classification of commodities are obligatory only when declaring goods on the territory of a Union member state, whose customs authority made preliminary decisions.

With that, about two months are necessary to prepare technical documentation required by customs authorities and a minimum of 2-3 months are needed to formalize classification decisions. At the same time, it is unprofitable to organize storage in temporary storage warehouses (TSW) due to the long period of formalization [6]. Moreover, meat product transportation and storage are complicated by the necessity to maintain a temperature regime, which is rather difficult to control in TSW facilities. This situation, to a large extent, complicates both assignment of a certain code to goods by participants in foreign economic activity and identification at customs control and verification of reliability of a claimed code by customs officials. Today, therefore, detection and analysis of existing problems as well as determination of ways to solve these problems are relevant in customs affairs.

The analysis of judicial practice materials regarding disputes over decisions about goods classification for customs purposes, which were caused by the absence of terms in the FEACN of the CU or their varying interpretations, partly revealed some problematic terms, for which judicial practice negative for customs authorities became more frequent. When analysing case materials, the following terms were identified: meat, meat trimmings, fatty tissue, animal fat, beef fat, raw fat and speck. In the FEACN of the CU, there are no clear definitions of terms “fatty tissue” and “raw fat”, while the definitions of “beef fat” and “meat” are totally absent. It can be noted additionally that the 67th Session on amendments to the Harmonized Commodity Description and Coding System of the World Customs Organization held from 12 to 30 April, 2021 considered a suggestion to exclude “fat trimmings of boned meat with chemical leanness of meat less than 20%” from commodity group 02, as notes to this term are not envisaged in group 02.

After fatty tissue separation from a carcass, fat can contain small pieces of muscle tissue, while meat can contain part of the animal’s fatty tissue. These items are classified in FEACN of the CU in different groups that significantly differ from each other by rates of import customs duties. According to the general provisions of group 02 in the FEACN of the CU, “animal fat presented separately” is not included (group 15) (excluding pork fat separated from lean meat…); however, animal fat contained in carcases or in meat is considered a meat constituent. Therefore, animal fat contained in carcases or in meat is a meat constituent and is subjected to classification in commodity items of group 02, depending on the processing method. “Rendered pork fat” is classified in group 15 of the FEACN of the CU.

It is profitable for a declarant to classify fatty tissue in group 15 of the FEACN of the CU (where a rate of 5-10% is applied depending on a purpose) and pork fatty tissue in item 0209 (the rate is 15%, but no less than 0.15 euro/kg) [7]. Significantly higher rates of import customs duties were established, and different prohibitions and restrictions are in force, for meat classified in group 02 of the FEACN of the CU.

When analysing court disputes on the above indicated terms, customs authorities cancelled the classification code in all cases and established codes with much higher import customs duties, that is, they suggested classification as meat (Table 1).
Table 1. Problematic terms in classification

| On the part of participants in FEA | code of FEACN of the CU | On the part of customs authorities |
|-----------------------------------|-------------------------|----------------------------------|
| “Frozen beef fat…”               | 1502 90 900 0; rate of import customs duty – 10% | “Frozen beef…”                   |
|                                   |                         | 0202 30 900 8; rate of import customs duty – 50%, but no less than 0.15 euro/kg | “Frozen beef…”                   |
| “Frozen beef subcutaneous raw fat…” | 1502 90 900 0; rate of import customs duty – 10% | “Frozen beef…”                   |
|                                   |                         | 0202 30 900 4; rate of import customs duty – 15% | “Frozen beef…”                   |
| “Frozen pork mid-back fat, free of lean meat…” | 0209 10 110 0; rate of import customs duty – 15% | “Fresh, chilled or frozen pork…” |
|                                   |                         | 0203 29 550 9; rate of import customs duty – 65% | “Fresh, chilled or frozen pork…” |

An example of such situation is the judicial case of the Constanta company [8]. The company imported to the Customs Union territory and declared a commodity “pork mid-back fat (speck) separated from lean meat in boxes on pallets, producer – Chili”. For this, the commodity code of FEACN of the CU was 0209101100, which corresponded to the rate of import customs duty of 15% and VAT of 10%. However, during customs processing, the customs authority made a decision about classification, according to which the commodity under dispute was assigned to sub-subitem 0203295509 “fresh, chilled or frozen pork”, with the rate of import customs duty of 65%.

Dissatisfied with the conclusions of the customs expert, the declarant turned to the V.M. Gorbatov Research Center for Food Systems for commodity identification.

Answering the declarant’s question about determination of the commodity name (to what meat raw material type/product type the commodity samples should be assigned), the experts noted in their opinion that according to GOST R 52427-2005 “Meat industry. Food products. Terms and definitions” the term “subcutaneous fat” means raw fat in the form of fatty tissue deposits taken from the external carcass part upon its cutting. Subcutaneous pork fat is called speck.

According to GOST R 54704-2011 “Frozen meat blocks. General specifications”, back fat has a mass fraction of muscle tissue no more than 5% and mid-back fat no more than 10%. According to GOST R 55485-2013 “Fat products. Specifications”, back fat is a speck taken from the whole length of a pork half-carcass from the last cervical vertebra to the first caudal vertebra over one-third of the rib length. Mid-back fat is taken from two-thirds of the bottom part of a pork carcass. The standard envisages the use of speck with the content of muscle tissue of up to 50% when producing products from speck.

Therefore, all presented samples were pork subcutaneous fat (speck) removed from different parts of carcasses and the customs authority had no grounds to assign this commodity to sub-subitem 0203. There are also many disagreements between customs authorities and declarants due to the absence in the explanatory notes for group 15 of the clear definition of “animal rendered fat”; although, it is implied that this commodity is classified exactly in this group. Instead, the term “lard” is used, which is not enshrined in the Technical Regulation of the Customs Union TR CU 034/2013 “On meat and meat product safety” and other normative documents, and has no description in the FEACN group.

Therefore, reasons for court disputes that arise between the participants in foreign economic activity and customs officers are terminological problems as well as the absence in the FEACN of the CU of identification attributes necessary for correct classification of fatty tissue from slaughtered animals.
At the first stage, the problems of ensuring reliability of the declared code in repeated cases would be solved if preliminary decisions made by customs authorities of a EAEU member state become obligatory for all participant states.

To solve problems at the second stage, it is necessary to harmonize terminology used in the FEACN of the CU and its explanatory notes and in the Russian normative documentation and create clear definitions of such terms as raw fat, fatty tissue, animal fat, meat, meat trimmings, animal rendered fat, speck.

These measures will make identification of the described commodities easier, accelerate the whole process of customs processing and minimize expenses associated with expenditure on judicial trials for all participants in foreign economic activity.

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