ADMINISTRATIVE METHODS OF STATE MANAGEMENT IN THE SPHERE OF CUSTOMS

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The article dedicates administrative methods of public administration in sphere of customs matters. The author pays attention on the definition of non-tariff measures with regard to non-tariff methods, also how to improve in existing science of classification of administrative methods of public administration in sphere of customs matters.

Administrative methods of management in the field of customs are the most important for the Republic of Belarus as a state party to the EEU. These methods have their national peculiarities, and in many respects are defined by the Republic of Belarus as a sovereign state. However, they are consistent with States parties to the EEU on various issues, but due to objective reasons, are developed taking into account the national interests of States related to the protection of domestic producers from unfair foreign competition. A vivid example of describing national characteristics on the use of administrative methods, is retaliatory sanctions of the Russian Federation on the system of sanctions member States of the EU, USA and other States.

Meanwhile, the consistent application of administrative methods in the EEU is associated with single measures of non-tariff regulation of foreign economic activity in relation to third countries.

Will try to analyze the administrative methods of the government in the field of customs Affairs in the Republic of Belarus as a set ways direct impact on the behavior of the managed entities of foreign economic activity (hereinafter – FEA) and officials of the customs authorities through the publication of legal acts.

This group of methods involves the exercise of powers of the President of the Republic of Belarus in the implementation of the General management of customs business, the Government of the Republic of Belarus on the development of concerted actions both within the state and supranational bodies The state customs Committee of the Republic of Belarus (hereinafter SCC) under the direct leadership of customs services of the Republic of Belarus.

The most complete list of methods required for effective public administration in the field of customs Affairs in the Republic of Belarus, according to the author is the following:

1) establishment of rules of conduct generally or of a private nature;
2) non-tariff measures of regulation of foreign trade (quotas and licensing, voluntary export restraints, technical measures, technical barriers to trade, etc.);
3) implementation of various types of state control within its competence;
4) inclusion in the register of subjects of foreign economic activity, operating in the field of customs;
5) application of administrative coercive measures, financial sanctions.
Given the desire of the Republic of Belarus to accede to the General agreement on tariffs and trade and world trade organization (GATT/WTO), will try to give an objective assessment on the use of each type of administrative methods. The fact that the GATT/WTO in the priority set for the abolishment of non-tariff measures, explaining his position that promotes fair competition of goods on the world market. The state of the world community and nonmembers in the GATT/WTO, apply non-tariff measures in foreign trade. According to the International Bank for reconstruction and development, developed countries apply non-tariff measures in respect of such goods as agricultural products, ferrous metals, textiles, vehicles, and developing countries – food products, ready-made industrial products.

Given the requirements of the GATT/WTO and national interests of the Republic of Belarus, optimal, according to the author, is the following system of administrative methods of management in the field of customs.

1. Establishing rules of conduct generally or of a private nature.

Among these rules set restrictions on the movement of goods across the customs border of the EEU. These prohibitions constitute jus cogens (lat. – "undeniable right" – approx. ed.) in relation to all controlled entities, without exception. The legal nature of prohibitions – the national security of the Republic of Belarus, the life and health of its citizens, flora and fauna. Consequently, among the prohibited movement of goods, weapons, ammunition, narcotic drugs and psychotropic substances, radioactive goods, etc.

Rules of behaviour of entities operating in the field of customs enshrined in the Customs code of the customs Union (hereinafter – TC TC) [1].

2. Non-tariff measures of regulation of foreign trade (quotas and licensing, voluntary export restraints, technical barriers to trade, etc.).

The restrictions on the movement of goods caused by economic nature. These restrictions are formulated in light of the current economic situation in the country at the time of their application. Appropriate administrative methods allow to regulate foreign Commerce, to solve specific economic and social problems that require surgical intervention of the state. The result of applying non-tariff measures may be suspension of growth in the trade deficit and the alignment of trade or balance of payments, the ability to rationally dispose of a foreign currency when it is lack for the purchase abroad of necessary goods, mobilization of foreign exchange reserves for external debt service. Moreover, proper use of non-tariff measures will allow to obtain concessions in the field of import restrictions on the basis of reciprocity and to abolish discriminatory measures against Belarusian goods in the countries applying for trade and economic cooperation. In our view, non-tariff measures of regulation of foreign economic activity should be called non-tariff methods, as they combined the means and tools to achieve economic stability in the country. This is a result of a desire for uniform application of terminology. As you know, with the concept of "methods of determining the customs value" associated economic methods, therefore, administrative non-tariff methods of regulation of foreign economic activities also represent a set of non-tariff methods of regulation. In this rule should be distinguished:
2.1. Quotas and licensing – types of non-tariff measures quantitative restrictions on export and / or import. Quotas are applied in the Republic of Belarus for the establishment of quantitative restrictions in determining the maximum amount or value of import of goods by individual, tariff, seasonal, global interest and other restrictions. When using quotas Republic Belarus restricts the export of consumer goods, raw materials, since after the modernization of certain sectors of the economy the main task of national importance – to process production with the consequent production with higher added value. Quotas often leads to monopolization of the economy, which limits price competition, therefore it is usually applied in connection with licensing – obtaining special permissions (licenses) to import, export, issued by the authorized body of state management. The government of the Republic of Belarus, taking the decision to impose quotas, determines the method of allocating quotas and in accordance therewith sets forth the procedure of the contest or auction. Quotas are distributed on the basis of equality of subjects of foreign economic activity in relation to quota and non-discrimination on the basis of ownership, place of registration and Licensing etc. – a kind of form of state accounting and control of the import/export of certain categories of goods. In the absence of the license (individual, General) customs authorities have the right to refuse the release of goods.

2.2. "Voluntary" export restraints – concerted action by States on the basis of an international Treaty adopted by the exporters in a particular state or government to limit export to another country, have signed this agreement. Export restrictions can have a quantitative form, value form or market share. In the world practice of "voluntary" export restraints may be taken under coercion, with the aim to avoid the threat of tariffs or other barriers to foreign trade. Known cases of "voluntary" export restrictions when exporting firms that have public value, planning to make big profits from the export of smaller volume products, raising prices for these products, if possible, based on global market conditions. This technique of export restrictions can be used in respect of certain categories of goods of strategic significance in the world (potassium salt, etc.)

2.3. Technical measures – measures relating to administrative and customs formalities. The main technical measures act certification of imported goods and services. The Agreement "On common principles and rules of technical regulation in the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation" dated 18 November 2010 certification is considered as a form of mandatory confirmation of conformity of products manufactured, the requirements of technical regulations of the Customs Union (hereinafter – CU) certification body (assessment (confirmation) of conformity) [2]. Therefore, imported into the customs territory of the EAEU products must meet the technical, sanitary, phytosanitary, veterinary, pharmacological standards and the requirements of the common customs territory. Products that do not meet these requirements, you do not have the required forms of certificates of conformity and declarations of conformity prohibited from being imported to the single customs territory. In the literature to technical measures referred sanitary-epidemiological, veterinary and quarantine phytosanitary control [3, p. 286]. In our opinion, this is not quite
correct. Documentary requirements of customs authorities (certificates, permits, etc.) are technical measures, as accompanied by the implementation of administrative procedures to implement the requirements of the state in which the products are destined. While the issues associated with the implementation of various types of state control imposed on the customs authorities is a completely different institution, governing the issues related to the correct application of the relevant rule of law. In our opinion, it's an independent group of administrative methods, which is not part of non-tariff measures of foreign trade. Technical measures and technical barriers to trade – group non-tariff measures, which are largely similar because of the requirements by the state and authorized state agencies.

2.4. Technical barriers to trade measures, which are caused by the need to provide additional documents to the customs authority for customs operations, as well as perform administrative formalities.

In practice, to give a distinction between technical measures and technical barriers to trade is quite difficult, since they share the same semantic meaning, and quite often in the literature these terms are mutually interchangeable.

In our view, the significant difference of the technical barriers to trade technical measures is that manifest in specific legal forms (standards, technical rules, regulations, safety requirements, requirements for packaging, marking of goods with special marks, etc.).

In the Republic of Belarus since 2001, has a national information center on technical barriers to trade, sanitary and phytosanitary measures (hereinafter – SIC on TBT and SPS), which is essentially the SIC is the national reference and information service (website www.nicwto.by). His main function is to ensure the cooperation of the committees of the GATT/WTO with state bodies of the Republic of Belarus for the provision and exchange of information within the scope of the Agreement on technical barriers to trade [4] and the Agreement on application of sanitary and phytosanitary measures [5].

3. Different types of state control within the competence of the customs authorities. In accordance with the Law of the Republic of Belarus "On customs regulation in the Republic of Belarus", the customs authorities directly involved or participate in various types state control: tax, currency, export, radiation, road, sanitary-quarantine, veterinary, phytosanitary, etc. [6].

3.1. Tax control – on the issues connected with the payment of national taxes specified in the Special part of the Tax code of the Republic of Belarus (VAT, excise duties);

3.2. Currency control is carried out in accordance with the Law of the Republic of Belarus "On currency regulation and currency control" [7]. The customs authorities determine the compliance of foreign exchange transactions currency legislation; control the transfer of foreign currency and other currency values across the customs border; prevent the legalization of proceeds from crime, terrorist financing, due to other extremist activity.

3.3. Export control is carried out by the customs authorities of member States of the EEU in accordance with the national legislation, as a single legal framework
is not yet formed, and existing legal acts regulate private matters [8, 9]. In Belarus export controls aimed at establishing a permitting procedure for import to the territory of the Republic of Belarus, transit and exports of specific goods (works, services), implemented in accordance with the Law of the Republic of Belarus "On export control" [10]. The implementation of export controls in Kazakhstan, as follows from the analysis of national legal acts of that state, is largely similar to that implemented in Belarus. This is not to say about the Russian Federation, which, as is known, in military and energy attitude is superior to the other EEC partners. the integration block. In this regard, to unify the issues associated with export controls is not easy. One of the most problematic issues is the list of goods and services subject to export control, as well as the range of bodies involved in the implementation process of this type of state control.

3.4. Radiation monitoring – according to the Decision of the Customs Union Commission dated April 16, 2010 No. 240 "On movement control of sources of ionizing radiation" to finalizing a single implementation of export control in the EEU shall be in accordance with national legal acts [11-15] and provides for the monitoring of the movement of sources of ionizing radiation.

3.5. Car control is carried out by the customs authorities of member States of the EEU in accordance with national legislation and includes: verification of the document granting the right to travel on the territory of a member state of the EEU; weight control of vehicles; control tachometer; transport documents, a special permit for the transport of dangerous goods with regard to compliance with the requirements of the Agreement on the international carriage of perishable foodstuffs and on the special vehicles used for such carriage from September 1, 1970 [16].

3.6. Sanitary-quarantine control is carried out in respect of persons, vehicles and controlled by the state sanitary-epidemiological supervision (control) of products at checkpoints across the customs border of the EEU in order to prevent the importation of potentially hazardous for human health product, delivery, the emergence and spread of infectious and mass non-infectious diseases. The legal basis for its implementation is the Decision of the Customs Union Commission dated may 28, 2010 № 299 "On the application of sanitary measures in the Customs Union", which approved the list of goods, subject to sanitary and epidemiological supervision (control) at the customs border and customs territory of the customs Union; the common sanitary-epidemiological and hygienic requirements for goods subject to sanitary-epidemiological supervision (control); Unified forms of documents confirming safety of products; The regulation on the exercise of state sanitary and epidemiological supervision (control) over persons and vehicles crossing the customs border of the customs Union, controlled goods moved through the customs border of the customs Union and in customs territory of the customs Union. In the Republic of Belarus, as in other member States of the EEU, this type of control is performed on the basis of the interagency legal act adopted by the SCC in cooperation with the Ministry of health and the State border Committee [17].
3.7. Veterinary control is carried out in accordance with the Decision of the Customs Union Commission of 18 June 2010 No. 317 "About application of veterinary-sanitary measures in the Customs Union", which approved the Unified list of goods subject to veterinary control (supervision); The regulation on the common procedure of veterinary control at the customs border of the Customs Union and in customs territory of the Customs Union; the regulation on the common procedure of joint inspections of objects and sampling goods (products) subject to veterinary control (supervision); The common veterinary (veterinary-sanitary) requirements for goods subject to veterinary control (supervision), Unified forms of veterinary certificates. The customs authorities of the Republic of Belarus in the framework of the veterinary control is carried out documentary control.

3.8. Phytosanitary control is carried out based on the Decision of the Customs Union Commission of 18 June 2010 № 318 "On the provision of plant quarantine in the Customs Union", which approved the List of regulated products (regulated goods, regulated materials, regulated goods) subject to quarantine phytosanitary control (supervision) at the customs border of the Customs Union and the customs territory of the Customs Union; the regulation on the procedure of realization of quarantine phytosanitary control (supervision) at the customs border of the Customs Union; The regulations on the procedure of realization of quarantine phytosanitary control (supervision) on customs territory of the customs Union. The customs authorities of the Republic of Belarus phytosanitary and quarantine control implemented in the form of documentary control. The customs authorities of the Russian Federation such the monitoring is performed in accordance with the RF Government decree of 29 June 2011 No. 500 "On approval of rules of implementation of veterinary and quarantine control at checkpoints across the state border", in specialized checkpoints in conjunction with the Federal supervision of consumer rights protection and human welfare [18].

It should be noted that the implementation described within this paragraph controls associated with administrative methods, as it provides for the implementation of the regulations, drawing up protocols on administrative offences for violation of transport legislation. In such cases, the customs authorities are forced to interact with the relevant authorities, competent in the areas being considered.

4. The inclusion of subjects of foreign economic activity in the registry of entities operating in the field of customs. The SCC performs the register of customs representatives, customs carriers, owners of temporary storage warehouses, owners of customs warehouses, owners of duty free shops, authorized economic operators. SCC in considering applications stakeholders in inclusion in the appropriate register, takes into account the fulfilment of other conditions stipulated by law (the required amount as security for payment of customs duties, reporting, etc.), on the basis of which a legal entity carrying out foreign economic activity in the area of customs, entered in the register, and the corresponding information is transmitted to the Eurasian economic Commission. The SCC
maintains a strict control on the fulfillment of all conditions for inclusion of subjects in the appropriate register.

5. The application of measures of administrative coercion. Administrative enforcement by customs authorities, is a special kind of state administrative influence, has as its purpose the protection of the public relations in the field of customs [19, p. 22]. Measures of administrative coercion in the customs area have a fairly wide range. The customs authorities may apply various types of administrative enforcement [20, p. 20]. Among them helpful, preclusive and recovery measures, measures of administrative responsibility [21, p. 62; 22, p. 210; 23, p. 18; 24, p. 34-35; 25, p. 153-154], as well as measures of administrative and procedural components [26, p. 223]. Administrative and customs enforcement is applied by officials of customs bodies vested with special powers in the field of law enforcement. Currently these bodies emphasize the administrative and legal prevention through the implementation, within its competence, different types of state control in the relevant forms.

The customs authorities of the Republic of Belarus in the number of actively used measures of restraint use: 1) cessation of movement of goods across the customs border; 2) the denial of release of goods; 3) seizure of the goods; 4) suspension of customs operations with the goods in the Commission of administrative customs offences and more. The legislation provides as preventive measures the use of special measures of administrative coercion [27, p. 111-112], including the use of firearms (personnel) weapons [28], aerosol and chemical preparations, special vehicles, service animals, etc.

When making a special legal act (regulations on the implementation of the customs inspection), customs authorities may suspend the movement of funds on account of foreign trade entity, assign the inventory and so on.

The customs authorities of the Republic of Belarus is authorized to carry out the process in cases of administrative offences and on a wide range of administrative violations to apply administrative liability. The exception is those types of administrative offences, which provides for the confiscation of goods and vehicles.

In fact, the customs control acts as a function, method and as a preventative tool. The mere presence of the verification is a precautionary measure to prevent violations of the customs legislation. This is a forced measure, not depending on the will, desire controlled entity/object, and hence this power measure. Even if an administrative offence is not carried out, and these coercive measures are applied to prevent administrative violations, violations of the customs legislation.

6. The use of material sanctions. The customs authorities since 2007 do not contain penalties for the offences in the field of customs. In the form of financial sanctions fines apply in respect of physical persons (citizens of the Republic of Belarus, foreign citizens, stateless persons, legal persons, officials, individual entrepreneurs. It should be noted that the non-application of penalties allowed us to simplify the work of inspectors of Department of customs investigations and customs inspection, as it does not use the Department of customs duties, which previously helped to include interest and penalty. With each change in the
provisions of the Code of the Republic of Belarus on administrative offences penalties for violation of the customs legislation increase. However, these changes do not unify with the member States of the EEU is based on the experience of member States of the EU.

From the analysis of administrative methods of regulation of customs business, we can formulate the following conclusions.

1. Classification of sanitary-epidemiological control, veterinary control, quarantine and phytosanitary control to technical measures is not entirely correct. Documentary requirements of customs authorities (certificates, permits, etc.) technological measures, as accompanied by the implementation of administrative procedures to implement the requirements of the state in which the products are destined. Issues related to the implementation of the various types of state control imposed on customs authorities, is a completely different institution, governing the issues related to the correct application of the relevant industry legislation. Therefore, it's an independent group of administrative methods, which is not part of non-tariff measures of foreign trade.

2. Non-tariff measures of regulation of foreign economic activity should be called non-tariff methods, as they combined the means and tools to achieve economic stability in the country.

3. The list of non-tariff methods listed in the article, in our opinion, is optimal, since the expansion of the number of these methods may lead to isolation of the Republic of Belarus and the impossibility of establishing trade and economic cooperation with other States outside the EEU.

References:


