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*Research Article*

## CHALLENGES OF JUDICIAL PRACTICE FOR LITIGATIONS RESULTED FROM FOREIGN ECONOMIC TRANSACTIONS

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*A specific nature of foreign economic relations determines a need for the generation of a new approach to the structure of its legal regulation. Its specificity is that the legal regulation of the aforementioned relations is formed in the context of various spheres of public life and branches of law. Relevant issues of judicial practice regarding litigations resulted from foreign economic transactions are examined in the paper. The research is based on the objective dialectic method of cognition of legal phenomena and procedures related to the selected topic and of the examination of their interconnections. Besides, the research is based on general scientific methods: analysis, synthesis, historical and logical methods, generalization, abstraction, system analysis, modelling and others. Currently, the national economy obviously tends to develop in a sinusoidal manner. It requires considering the possibility (in the frameworks of development of the intersectoral institute of foreign economic law) of using a chance to improve the mechanism of legal regulation in the field of state control over the external economic activities with a focus on judicial practice. The conducted research develops and specifies a theory of intersectoral linkages in respect to the relations in question. As a result of the conducted research, a unique legal regime of intersectoral functional legal institute of foreign economic law is established to change more prominently with the transformation of legal and objective realities.*

**Key words:** *foreign economic law, foreign economic activities, judicial practice for litigations resulted from foreign economic transactions, improvement of a mechanism of legal regulation of foreign economic activity*

The foreign economic activity is one of the priority areas of development for the Russian Federation in the 21<sup>st</sup> century. Foreign economic relations serve as a prerequisite of economic transformations that are largely carried out through imperative legal regulations.

Despite a well-developed significant legal and regulatory framework to regulate the foreign economic activity of legal subjects, regulatory changes occur regularly caused by the dynamic development of foreign relations and, primarily, foreign trade. These changes cause legal conflicts and legal gaps, interrupt the consistency of the legislation which consequently results in litigations in practice.

However, there are opportunities for the improvement of the legal regulation mechanism in the field of state control over the foreign economic activity in the Russian Federation caused by the following circumstances.

Firstly, participants of the foreign economic activity are various legal subjects (e.g., tax payers, such as legal entities of various structures, self-employed businessmen).

Secondly, foreign economic activity is subject to legal regulation of various branches of the Russian law, so the mechanism of legal regulation of the foreign economic activity includes the development trends of the national legal system.

Thirdly, many theoretical and practical issues regarding the improvement of the mechanism for the implementation of legal provisions in the field of state control of the foreign economic activity in the Russian Federation are hardly fully covered in the academic papers.

A more detailed analysis of the judicial practice for litigations resulted from foreign economic transactions is required to improve the mechanism of legal regulation in the foreign economic area.

In the framework of the conducted scientific research, some legal positions of courts of the highest resort shall be provided:

1. Restriction of declarant (payer) rights for the return of overpaid customs payments considering constitutional guarantees for the protection of the right for private property is neither legitimate nor permissible, as the goals of rational organization of state authorities' performance are not the grounds for the restriction of rights and freedoms of citizens and organizations. It results from a possibility of non-compliance with the principles of equality and justice, including those in the field of levying mandatory public charges to the budget<sup>1</sup>.

Besides, the aforementioned position is based on the judgements of the Constitutional Court of the Russian Federation (Resolution No. 10-P dated February 15, 2019, No. 3-P dated January 17, 2018, and No. 3-P dated February 18, 2000).

2. Cl. 29 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 18 'On Some Issues of Customs Legislation Application by Courts' dated May 12, 2016 (hereinafter – Resolution of the Plenum No. 18) includes an explanation that an application for the return of overpaid customs payments shall be considered by the customs authority provided that the declarant has previously also advocated the introduction of changes to the Goods declaration, and the customs authority has provided the documents proving a need for the introduction of these changes.

3. Expiration of a period of the customs control started after the launch of goods shall not be considered the grounds for the dismissal of a decision on the return of overpaid customs payments and shall not lead to ensuing of negative consequences for the declarant (payer) who has applied to the customs authority complying to the deadline for the return of overpaid customs payments (3 years) established in P. 1 Art. 147 of Federal Law No. 311-FZ 'On Customs Regulation in the Russian Federation' dated November 27, 2010.

The aforementioned legal position is related to the situation: 'the corporation has sent an application regarding a need for the introduction of changes into the prices of goods declared in accordance with previous declarations for goods (143 pcs.), as well as an application for the return (credit for) of overpaid sums of customs fees to the customs authority. The customs authority refused to introduce any changes and/or to make additions to the data of 90 declarations out of 143, and announced that it was impossible to make a decision regarding the return of overpaid sums of customs fees, taxes and other funds in respect to that part of the corporation's declaration'<sup>2</sup>.

The position of the customs authority is illegal, as the law shall not impose a duty to apply to the customs authority beforehand to introduce changes into the Goods declaration before applying for a return of overpaid payments on the payer.

Besides, the actions of the customs authority in such a situation lead to a reduction of the period of execution of the declarant (payer's) right for the return of overpaid customs payment compared to the legitimate term<sup>3</sup>.

4. The fact that the supplied goods have been found defective after delivery to the customs territory is itself a basis to change the code of the goods' classification for the customs purposes given that a criterion of the goods classification is intended use, and there is no indication that the declarant has imported one good under the guise of another for further economy on customs payment<sup>4</sup>.

5. A participant of the foreign economic activity has a right to sue for the recognition of respective amounts owed as non-recoverable and debt amortization, in case there are the grounds to suggest that their

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<sup>1</sup> Resolutions of the Constitutional Court of the Russian Federation No. 10-P dated February 15, 2019, No. 3-P dated January 17, 2018, and No. 3-P dated February 18, 2000.

<sup>2</sup> Ruling of the Supreme Court of the Russian Federation No. 305-ES19-10801.

<sup>3</sup> Ibid.

<sup>4</sup> Cl. 41 of Judicial Review of the Supreme Court of the Russian Federation No. 2 (2020).

rights and legal interests are violated by the customs authority which continues to account for the debt after the expiration of the legal period of its recovery<sup>5</sup>.

6. The position similar to the aforementioned one is regarding the tax payer's right to sue for the recognition of respective amounts owed as non-recoverable with respect to similar provisions of Subcl. 4, Cl. 1 of Art. 59 of the Tax Code of the Russian Federation is reflected in Cl. 9 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 57 'On Some Issues Arising during Application of the First Part of the Tax Code of the Russian Federation by Arbitration Courts' dated July 30, 2013, and it is uniform by nature<sup>6</sup>.

7. 'The launch of goods for domestic consumption imported to the Russian Federation and originating not from the territory of the Eurasian Economic Union, in respect to which special rules for the confirmation of compliance of the products to the technical requirements in order to ensure their safety shall not be allowed without inspectorial control'<sup>7</sup>.

Therefore, the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation have manifested their legal positions in respective judicial acts regarding some controversial aspects of the foreign economic activity. Thereby, participants of the foreign economic activity and legal practitioners have received a legal benchmark which allows preventing litigations as well as resolving them in time.

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<sup>5</sup> Cl. 42 of Judicial Review of the Supreme Court of the Russian Federation No. 2 (2020).

<sup>6</sup> Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 57 'On Some Issues Arising during Application of the First Part of the Tax Code of the Russian Federation by Arbitration Courts' dated July 30, 2013.

<sup>7</sup> Cl. 43 of Judicial Review of the Supreme Court of the Russian Federation No. 2 (2020).