

Problem of the Used Cars Import on the Territory of the Russian Federation

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Abstract. Authors completed the analysis of the accepted practice of classification of the sawn car bodies in Russia. They conclude that the tools of the Product Range of Foreign Economic Activity do not allow to classify the front and rear parts of the car as goods. Nowadays the participants of foreign economic activity sent the efforts to search for any new way to cut the customs payments. Meanwhile that is not incidental, that during car sale, the sellers specify in their offers not only purely technical characteristics but also the fact that "It is not a Sawn Car". Thereby the sellers of cars agree that the car, obtained by joint of the sawn parts in the handicraft conditions, have an uncertainty of such important characteristic as safety, and that reduces the consumer properties of the purchase. Many buyers consider unsafe and even impossible to use the car in which such fundamental characteristic as safety is not provided. Therefore, the attempts of customs to carry out any classification of goods in the commodity position 8703 for the increase in collectable customs payments have a negative side as the matters of health and life of future owner of the car are concerned.

1. Introduction

One of the goods, which classification repeatedly faces collisions between importers and customs are the cars, imported to the territory of Russia in the incomplete (disassembled) state. Import of cars allowed the importer to declare goods in the incomplete state as auto parts (the rate of import duty is 5%) with the corresponding evasion from the customs payment. In the beginning the importers offered cars (generally from Japan) in unassembled state (an engine, a body, a running gear) through customs of the Far East customs office of Federal Custom Service (FCS) of Russia. After taking an engine, a body, a running gear under the customs procedure of release, the assembly of the car and its registration in State Inspection for Road Traffic Safety (traffic police, GIBBD in Russian) was completed for the internal use. The registration was made under the vehicle passport (VP) of the earlier imported car of the same brand with a mark about replacement of units. The result of the implementation of such scheme of evasion from the customs payment is import of new cars, at the same time the amount of payment of the due customs payments was significantly lower, than when importing the car in assembled state. The earlier-imported car, which has legally stopped being the vehicle, was implemented in the market of auto parts. The cars, assembled from separately imported units, began to be known among consumers of goods as "sets for designing". Cars – sets for designing had success because it was the only way to import to Russia the budgetary car, aged 7 years and more



without payment of the considerable sums of the duties, determined by the Government of Russia for the used cars with maintenance term more than 7 years.

After introduction of the Resolution of the Government of the Russian Federation No. 745 "About a temporary rate of the import customs duty concerning bodies of separate types of vehicles" on October 10, 2008, the import of the ordinary car as a set for designing became economically unprofitable. The rate of the import customs duty on bodies for vehicles has been approved in a size up to 15% of customs cost, but not less than 5000 euros for 1 item.

Thus, participants of foreign economic activity have sent the efforts to search for new decisions on decrease in the amount of customs payments [1].

2. Methodological approaches and analysis

The use of the retrospective method for the research of the problem of import of the sawn cars to the territory of the Russian Federation and a comparative method by comparison of the position of customs and importers on classification of goods according to PRFEA of the sawn cars, and also analytical method when determining commodity accessory of separate parts of the sawn cars and an ergonomic method for assessment of safety of operation of the car received by handicraft connection of separate parts of the sawn car have allowed to reveal the following.

To reduce the customs duty, importers began to import cars in unassembled state with the sawn bodies, otherwise the body was parted to a framework. Though the import of the sawn cars to the territory of Russia from Japan has begun even long before the increase in the rate of the import duty for a vehicle body. But then it has been connected with the possibility of import of spare parts at lower customs cost in comparison with their import separately.

Generally they offered sawn imported bodies of cars of the class "SUVs" at which the bearing structure and the number unit is the frame, and all the other units, including a body, fasten on a frame.

The cars at which the bearing structure and the number unit is the body were also sawn, and both halves of the sawn body (forward and back parts) were made out in the customs declaration on goods (DT) as auto parts during importing to the territory of the Russian Federation [2]. Then both halves of the sawn body were connected by welding, other units of the car joined the received body. The import of the car became the result of the implementation of this scheme of leaving from customs payment but however such a car cannot be registered officially in the bodies of traffic police. One of conditions of registration of the vehicle by GIBDD is the presence of the copy of DT, proving the lawful import of the car's body. But the body of the assembled car, for evasion from customs payment, is imported in the sawn look and in column 31 DT is declared as auto parts (Figure 1).

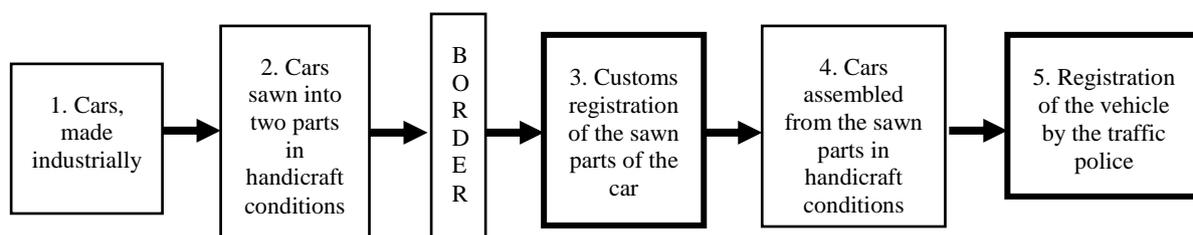


Figure 1. Scheme of delivery of the sawn cars through the customs border of the Russian Federation

The interested persons undertake illegal actions, including falsification of DT, fixture to the body of the panel bearing number of the body from the old car, fastened with welding, for the registration of such a car (called among consumers of goods as a sawn-car, or so called "raspilysh") in traffic police.

3. Results

When importing parts of the sawn body of the car there is a problem of classification of its parts according to the Product Range of foreign economic activity (PRFEA). PRFEA includes no commodity position describing "a forward part of the car" or "a back part of the car". Terms the sawn car, is not fixed by normative documents in Russia [3].

There is a position of authorities about the classification of forward and back half of the sawn cars. The forward parts of the car which are cut off on border between forward and back doors are classified in the commodity subsubposition 8708999800 PRFEA. At the same time the installed autoradio tape recorders, CD-players are classified separately in specially intended commodity positions of PRFEA. Back half of cars which are cut off on border between back and forward doors are classified in a commodity subsubposition 8708 999800 PRFEA. In case of the simultaneous representation to customs registration of forward and back half of the cut cars, these cars are classified in a commodity position 8703 PRFEA as complete cars. The sawn cars having a roof, forward and back doors are classified in a commodity position 8703 PRFEA. The indication of number of the installed engine is at the same time allowed (Table 1).

Table 1. Classification by PRFEA of the front and the rear parts of the cut car: position of customs authorities and importers

Name	Product code on PRFEA (position of the customs authorities)	Product code according to PRFEA (the importer's position)
The body, cut mechanically into the front and rear doors on equal half with the elements of steering and running parts	8708 99	8708 99 990 9
During simultaneous delivery of front and rear parts of bodies with the elements of steering and running parts	8703	8708 29900 9 8708 99 990 9
Body, cut mechanically between front and rear side doors on equal half in the absence of elements of steering and running parts	8708 29	8708 29900 9
In case of simultaneous delivery of front and rear parts of bodies in the absence of elements of steering and running parts	8707 10 900 0	8708 29900 9 8708 99 990 9
Front part, received by cutting of a body mechanically: a bottom cross-section is made on the line between front and rear seats and on the middle of front and rear stands of the luggage compartment. There are sitting lobbies, front optics, the decorative radiator panel, cooling radiator, safety belts, front and rear passenger side doors with glazing, completely the roof panel, a cowl, electric equipment, the instrument panel, the radio tape recorder, a steering tube, front wing and windshield	8707 10 900	8708 29900 9 8708 99 990 9
Front part with the installed diesel engine and two wheels	8703	8708 29900 9 8708 99 990 9

However, when import of the sawn bodies with the subsequent their restoration for evasion from customs payment has begun, customs authorities began to try to take tariff measures for counteraction of import of the sawn cars under the guise of spare parts in a commodity position 8708 PRFEA.

In case of simultaneous delivery of forward and back parts of bodies with elements of steering parts and running gear, the goods are to be classified in a commodity position 8703 Commodity Nomenclatures of Foreign Economic Activity [4, 5]. The body cut mechanically between lobbies and back side doors on equal half in the absence of elements of steering and running parts, is classified in a subposition 8708 29. In case of simultaneous delivery of forward and back parts of bodies in the absence of elements of steering and running parts, the goods have to be classified in a subsubposition 8707 10 900 0 of the Commodity Nomenclature of Foreign Economic Activity. At the same time both spare parts of one car were made out as like as two peas, and customs authorities had the right to

regard it as import of the whole car. However, spare parts began to be made out on different persons that has deprived customs of an opportunity to counteract import of the sawn cars.

Another attempt of the use of tariff measures were corrections of the declared product code with classification of a forward part of a body. This approach assumed the identification of functional knot or the unit in a forward part of a body which defined the main property of the product. The engine at one time was considered as the Nakhodka customs as such a unit, and a forward part was classified as the engine [6]. Though such approach to classification is impossible as a forward part of the sawn car have no properties of a complete product. The goods represent a whole in which all units are in collecting and are fastened by welding, the soldering, bolts, etc. Respectively, there is no opportunity to make classification of goods in the different commodity positions describing separate parts. For example, the engine is classified as 8407 or 8408 subposition, wheels as subposition 8708, seats as subposition 9401, etc. or to choose among them a part, according to the basic rules of interpretation, the defining main property of a product.

One more attempt of the use of tariff measures were corrections of the declared product code with classification of a forward part of a body according to the rule 2a of the Basic rules of interpretation as the whole body. A forward part has to be received by cutting of a body mechanically as follows: a bottom cross-section on the line between front and back seats and on the middle of side and back racks of the luggage compartment. As a result, a forward part has no engine, the chassis frame, a running gear, a back door of a luggage compartment, a front and rear bumper, a back part of a body, back wings, back sitting, back side glasses of the luggage compartment [7]. At parts of bodies there are sitting lobbies, forward optics, a decorative front grille, a cooling radiator, floor mats made of cloth, seat belts, lobbies and back passenger side doors with a glazing, completely the roof panel, a cowl, electric equipment, the dashboard, the radio tape recorder, a steering column, forward wings and a windshield.

The initiative of customs has been aimed on the prevention of attempts of the importer to register in bodies of traffic police of the car – a so called “raspilysh”. At the same time there is a reference to the joint letter Customs Russia and the Ministry of Internal Affairs of Russia "About streamlining of customs registration and registration of number units", which specified in item 1, that the number units of vehicles include only a body, a cabin, the engine, the engine block was made.

For the confirmation of the position on classification of goods (according to customs authority forward parts of cars have to be classified as the whole body) the custom authorities appoint many examinations in customs laboratory and other expert organizations [8, 9].

The general result of a research of the problem consists that the matter of classification of the cars sawn on a part and imported in the territory of Russia remains open. Customs authorities did not manage to define correctly a code of a product and, as a result to classify it according to PRFEA. A key condition for the correct classification of goods - a way of production of goods. In the case under consideration, goods are made by division of the ready and serviceable car into two independent parts in handicraft conditions.

These parts actually do not represent the collected, and sorted parts, and are scrap metal, received through destruction of a ready-made product.

The car from the recovered parts has to gain official recognition in traffic police as the vehicle and to ensure safety and reliability in use. Whether there will be a car destroyed in handicraft conditions and recovered in handicraft conditions to possess that degree of reliability and safety which it possessed before destruction? To answer this question, testing of the car, similar for that which passes the new car for obtaining the certificate on compliance or approval as the vehicle is necessary.

4. Discussion

The list of questions, answers to which, according to customs, would help the experts to identify unambiguously goods in the customs purposes and which define a position of customs on classification of goods, is developed. The following list of questions [10-12] was created:

- Whether the goods are a forward part of the car?
- Where and how the car cut is made?
- What overall dimensions of the presented part of the car and the whole car of this model?
- Is it possible to carry out the restoration of the car in the presence of the cut-off back part?
- Is it possible to consider these goods an understaffed or incomplete body of the car according to the rule 2 (a) of the Basic rules of interpretation?
- Is the stationary installation of the back bridge assembled with a suspension bracket, cardan transfer, wheels possible?
- Is the integrity of a body of the car broken?
- How can the presented part of the car be used?
- Is it possible to install not getting units (transmission, a running gear, a suspension bracket, wheels)?
- Whether the presented parts have the main properties of a finished or complete product and in what degree?
- Are these goods assembled or disassembled and what is the technology of assembly?
- Are there the main characteristics of finished products and what have the presented goods?
- What is the degree of completeness of the presented product?
- Are these goods classified in the commodity position 8703 PRFEA?
- Are these goods presented in the collected or sorted form (in this case to describe technology and a way of assembly of finished product)?

Formally the expert is right, when refusing making the answer to the question of the possibility of reference of a forward part of the car to the understaffed or incomplete vehicle according to the rule 2a of the Basic rules of interpretation of PRFEA [13, 14]. However, customs authority, asking these questions to straight lines seeks to focus attention of the expert on importance of these questions for decision-making on classification of goods. Therefore the expert, without answering questions of possession of a forward part of the car of the main characteristics of the complete or complete car, nevertheless had to construct so the conclusion that the text of the conclusion contained the answer to the question posed. Here essentially important is a characteristic of operation of receiving a forward part of the car and an assessment of reversibility of this operation according to the established production schedules [15, 16].

There is a precedent when Nakhodka custom, on the basis of the expert opinion, I have carried goods to commodity a position 8703 PRFEA. The main point in the position of customs authority with classification of goods was the question of a possibility of restoration of the car in the presence of the cut-off back part and the affirmative answer to it [17-20].

We will give other examples connected with adjustment by the Nakhodka customs of the declared product code on the basis of the conclusion of the customs expert.

Are imported by the importer:

- "forward parts of the Toyota car Surf", a product code on PRFEA 8708 99 990 9. The customs has made the decision on classification of goods with assignment of the Commodity Nomenclature of Foreign Economic Activity code 8708 29 900 0;

- "a forward part of the Toyota Hiace car, 1995, with the installed diesel engine, with two wheels", a product code on PRFEA 8708 99 990 9. The customs has made the decision on classification of goods with the room of goods in a commodity position 8703 Commodity Nomenclatures of Foreign Economic Activity;

- "forward parts of the car, a product code on PRFEA 8708 99 990 9. The customs has made the decision on classification of goods with assignment of a code 8707109000 Commodity Nomenclatures of Foreign Economic Activity;

- "parts of the car", a product code on PRFEA 8708 29 990 9. The customs has made the decision on classification of goods with the room of goods in a commodity position 8703 Commodity Nomenclatures of Foreign Economic Activity;

- "forward parts of bodies of the car", a product code on PRFEA 8708 29 990 9. The customs has made the decision on classification of goods with assignment of the code 8707109000 of the Commodity Nomenclatures [21-23].

However, the adjustments, accepted by customs [24, 25], were successfully challenged by importers in the judicial proceeding.

5. Conclusions

The following conclusion can be stated as a result of the carried out research. In the 87th group there is no commodity position describing "a forward part of the car" or "a back part of the car". The existing rules do not regulate classification of the destroyed cars. The section XVII of Product Range of Foreign Economic Activity does not contain the note, similar to the note, which is regulating the classification of the goods finally unsuitable for the use for the intended purpose. Another note of the Custom Code specified that groups 86-88 terms can be applied to the parts and accessories which are used only or generally with the products of these groups. A forward part of the car (as well as a back part) cannot be used is exclusive, generally with group products 87. It can only be taken to pieces which can separately be used with products of these groups.

Thus the tools of Product Range of Foreign Economic Activity do not allow to classify forward and back parts of the car.

Unlike a forward part of the car the framework of a body is the completing element and a part of the car. According to the Decision of ECE from 03.15.2012 No. 8 the car body framework consisting of the metal cores strengthened by panels of various configurations, and collected one-piece (welded) units, which make a body basis is classified in a commodity position 8707 Product Range of Foreign Economic Activity of the Custom Code as a body in an disassembled state.

The Resolution of the Government of the Russian Federation No. 745 "About a temporary rate of the import customs duty concerning bodies of separate types of vehicles" 10.10.2008

Order of FCS of Russia "About classification according to Product Range of Foreign Economic Activity of the CU of separate goods"

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