

Q1 2023

DIGEST
of regulation of international trade in
Russia

April 30, 2023

Dear Colleagues!

Among the most important changes in the regulation of foreign economic activity in the 1st quarter of 2023, the following can be distinguished:

- Unique tracking number for a shipment carried out using navigational seals.
- Procedure for the traceability of batches of regulated products imported into the customs territory of the Eurasian Economic Union and moved through the customs territory of the EAEU was approved.
- Methodology for qualifying obstacles in the internal market of the Eurasian Economic Union and recognizing barriers and restrictions as removed is approved.
- The lists of information on statistical forms of accounting for the movement of goods transferred to the Bank of Russia and authorized banks from 01/01/2024 are indicated.
- The procedure for calculating the volumes of tariff quotas established for meat of cattle and poultry meat from 04/04/2023 has been determined.
- The current volumes of quotas for the export of mineral fertilizers from 03/27/2023 have been specified.
- The order of classification according of the EAEU of multivitamin, vitamin preparations and multivitamin complexes has been determined.
- From July 1, 2023, Federal state control (supervision) in the field of safe handling of pesticides and agrochemicals will be carried out at temporary storage warehouses.
- From April 3, 2023 to November 1, 2024, an experiment is being conducted to test customs monitoring to identify signs of violation of international treaties and acts constituting the law of the Eurasian Economic Union governing customs legal relations, and (or) the legislation of the Russian Federation.
- From March 20 to September 20, 2023, a ban is imposed on the export from the Russian Federation of waste and scrap of precious metals that are essential for the domestic Russian market.
- A list of maritime checkpoints for the departure from Russia of waste and scrap of ferrous metals has been determined.
- A draft resolution of the Government of Russia was submitted to include the Republic of Tatarstan in the list of territories where an experiment is being carried out on labeling alcoholic products imported into the Russian Federation, placed under the customs procedure of a bonded warehouse.

Sincerely,
BRACE Law Firm

1. Laws, by-laws, legal news

1.1. The structure of a unique tracking number for transportation carried out using navigation seals has been determined.

Decision of the Board of the Eurasian Economic Commission dated March 28, 2023 No. 40 "On the structure of the unique number for the transportation of tracking objects carried out using navigation seals"

The unique number of the transportation of tracking objects carried out using navigation seals will have the structure of a 36-character identifier generated (generated) in accordance with the implementation of the UUID (Universally Unique Identifier) standard.

The decision comes into force on April 30, 2023.

1.2. The Methodology for qualifying obstacles in the internal market of the Eurasian Economic Union and recognizing barriers and restrictions as removed has been approved.

Decision of the Board of the Eurasian Economic Commission dated March 28, 2023 No. 41 "On Approval of the Methodology for Qualifying Obstacles in the Internal Market of the Eurasian Economic Union and Recognizing Barriers and Restrictions as Eliminated"

By decision of the Colleague, the Decision of the Board of the Eurasian Economic Commission dated February 2, 2021 No. 10, which approved the methodology governing such legal relations, is recognized as invalid.

Barriers and restrictions in the internal market of the Eurasian Economic Union, included respectively in the register of barriers or the register of restrictions before the date of entry into force of the Decision, shall be recognized as eliminated in the manner prescribed by the Methodology approved by Decision No. 41 dated March 28, 2023.

1.3. The document comes into force on April 30, 2023.

The Procedure for the traceability of batches of regulated products imported into the customs territory of the Eurasian Economic Union and moved through the customs territory of the EAEU was approved.

Decision of the Board of the Eurasian Economic Commission dated March 28, 2023 No. 43 "On Approval of the Procedure for Traceability of Quarantine Products (Quarantine Cargoes, Quarantine Materials, Quarantine Goods) Imported into the Customs Territory of the Eurasian Economic Union and Moved through the Customs Territory of the Eurasian Economic Union"

The procedure determines the sequence of actions to ensure the traceability of batches of regulated products (quarantine goods, regulated materials, regulated goods) with a high phytosanitary risk according to the list according to the annex, imported from third countries into the customs territory of the Eurasian Economic Union and moved through the customs territory of the Union, within the quarantine phytosanitary control (supervision) in order to ensure quarantine phytosanitary security in the customs territory of the Union.

The decision comes into force after 12 months from the date of its official publication, with the exception of certain provisions for which a different period of their entry into force is established.

1.4. The President of Russia approved the procedure for settlements for residents in the implementation of foreign economic activity.

Decree of the President of the Russian Federation of 06.02.2023 No. 72 "On a special procedure for making settlements between certain legal entities - residents in the course of foreign economic activity"

Foreign currency received from non-residents for goods under foreign economic contracts can be transferred to the accounts of suppliers without its mandatory sale. If the received currency differs from that specified in the contract, the transfer can be made only with the consent of the counterparty.

If the received currency differs from that specified in the supply agreement, it can be transferred to the supplier only with his prior consent. If conversion is necessary, the transfer of funds without the obligatory sale of foreign currency is carried out only with the prior consent of the Russian supplier with the procedure and conditions for conversion.

The beginning of the document is February 6, 2023.

1.5. The transfer to the Bank of Russia and authorized banks of information on the statistical form of accounting for the movement of goods will be carried out by the customs authorities.

Decree of the Government of the Russian Federation of March 29, 2023 No. 499 "On Amendments to the Decree of the Government of the Russian Federation of December 28, 2012 No. 1459"

Lists of information on statistical forms of accounting for the movement of goods transferred to the Bank of Russia and authorized banks are indicated.

Information is transmitted electronically no later than 3 working days from the day following the day of submission of the registration form to the customs authorities.

The Decree comes into force on 01/01/2024.

1.6. The Ministry of Economic Development of Russia has determined the procedure for calculating the volume of tariff quotas established for meat of cattle and poultry meat.

Order of the Ministry of Economic Development of Russia dated January 16, 2023 No. 11 "On the procedure for calculating the volume of tariff quotas established for meat of cattle and poultry meat", Decision of the Board of the Eurasian Economic Commission of August 23, 2022 No. 119 "On the establishment of tariff quotas for regarding certain types of agricultural goods imported into the customs territory of the Eurasian Economic Union, as well as the volume of tariff quotas in relation to these goods imported into the territory of the member states of the Eurasian Economic Union "

By Decision No. 119 of the Board of the Eurasian Economic Commission of August 23, 2022, quotas were established, and by Order of the Ministry of Economic Development of Russia of January 16, 2023 No. 11, quotas are distributed among participants in foreign trade activities according to the formulas approved by this order.

The document takes effect from 04/04/2023.

1.7. The Russian Government specified the current volumes of quotas for the export of mineral fertilizers.

Decree of the Government of the Russian Federation of March 27, 2023 No. 477 "On Amendments to the Decree of the Government of the Russian Federation of December 20, 2022 No. 2353"

For fertilizers under the TN VED EAEU codes 3102 30 100 0 and 3102 30 900 0, an additional quantitative restriction on export from the Russian Federation is set in the amount of 65,000 tons until 03/31/2023.

From April 1 to May 31, 2023, inclusive, an additional quantitative restriction on the export of fertilizers outside the territory of the Russian Federation to states that are not members of the EAEU under the EAEU TN VED codes 3102 30 100 0 and 3102 30 900 0 is set in the amount of 235,000 tons.

The Decree entered into force on March 27, 2023.

1.8. The Board of the Eurasian Economic Commission determined the procedure for classifying multivitamin, vitamin preparations and multivitamin complexes according to the TN VED of the EAEU.

Decision of the Board of the Eurasian Economic Commission dated March 28, 2023 No. 44 “On the classification of multivitamin, vitamin preparations and multivitamin complexes in accordance with the unified Commodity Nomenclature for Foreign Economic Activity of the Eurasian Economic Union”

Preparations consisting of mixed or unmixed products containing as active ingredient a vitamin or a mixture of vitamins, as well as excipients, put up in dosage forms or in forms or packages for retail sale, intended for the treatment or prevention of specific diseases caused by deficiency vitamins, the daily dose of which contains an amount of at least one active substance that exceeds the upper permissible intake level for adults, established for this substance by Appendix 5 to Section 1 of Chapter II of the Uniform Sanitary and Epidemiological and Hygienic Requirements for Products Subject to Sanitary and Epidemiological Surveillance, approved by the Decision of the Commission of the Customs Union dated May 28, 2010 No. 299, in accordance with the Basic Rules for the Interpretation of TN VED 1 and 6 are classified in subposition 3004 50,000 of the unified TN VED of the EAEU.

Preparations for external use intended for skin care, containing a vitamin derivative and excipients as an active ingredient, in accordance with the Basic Rules for the Interpretation of the TN VED 1 and 6, are classified in subheading 3304 99 000 0 of the unified TN VED of the EAEU.

1.9. Federal state control (supervision) in the field of safe handling of pesticides and agrochemicals, in addition to checkpoints across the State Border of the Russian Federation, will be carried out at temporary storage warehouses.

Federal Law No. 100-FZ dated April 3, 2023 “On Amendments to the Federal Law “On the Safe Handling of Pesticides and Agrochemicals” and Article 2 of the Federal Law “On State Control (Supervision) and Municipal Control in the Russian Federation”

Federal state control (supervision) in the field of safe handling of pesticides and agrochemicals in temporary storage warehouses is carried out within 72 hours from the moment pesticides and agrochemicals arrive at the temporary storage warehouse.

The list of warehouses will be determined by the Federal Service for Veterinary and Phytosanitary Supervision agreement with the Federal Customs Service of Russia.

The law comes into force on July 1, 2023.

1.10. From April 3, 2023 to November 1, 2024, an experiment is being conducted in the Russian Federation to introduce a customs monitoring system.

Decree of the Government of the Russian Federation of February 16, 2023 No. 240 “On conducting an experiment on monitoring by customs authorities of information at their disposal and received from persons participating in this experiment from goods accounting systems”

The purpose of the experiment is to test customs monitoring in order to identify signs of violation of international treaties and acts constituting the law of the Eurasian Economic Union governing customs legal relations, and (or) the legislation of the Russian Federation on customs regulation and eliminate their negative consequences, as well as to realize the possibility of carrying out by persons participating in the experiment, self-assessment of the results of customs monitoring.

The Decree entered into force on February 28, 2023.

1.11. Until June 1, 2023, an experiment is being carried out on the use of navigation seals in relation to timber and woodworking products placed under the customs procedure for export in the Republic of Belarus, transported through the territory of the Russian Federation by road transport for the purpose of subsequent departure from the territory of the EAEU.

Decree of the Government of the Russian Federation of 02.02.2023 No. 150 “On conducting an experiment on the use of navigation seals in relation to timber and woodworking products placed under the customs procedure for export in the Republic of Belarus, transported through the territory of the Russian Federation by road transport for the purpose of subsequent departure from the territory of the Eurasian Economic Union”

The experiment is carried out in order to implement the order of the Council of the Eurasian Economic Commission dated October 17, 2022 No. 29 “On the conduct by the Republic of Belarus and the Russian Federation of an experiment on the use of navigation seals in relation to certain categories of goods placed under the customs procedure for export”, as well as the practical development of monitoring mechanisms and tracking shipments within the EAEU.

The Decree entered into force on February 10, 2023. The validity period of the experiment is limited to June 1, 2023.

1.12. From March 20 to September 20, 2023, a ban is imposed on the export from the Russian Federation of waste and scrap of precious metals, which are essential for the domestic market of the Russian Federation.

Decree of the Government of the Russian Federation of March 17, 2023 No. 403 “On the introduction of a temporary ban on the export from the Russian Federation of waste and scrap of precious metals or metals clad with precious metals, other waste and scrap containing precious metal or precious metal compounds used mainly for the extraction of precious metals”

The established ban applies to waste and scrap of precious metals or metals clad with precious metals, as well as waste and scrap of electrical and electronic products used primarily for the extraction of precious metals that are essential for the domestic market of the Russian Federation.

The temporary ban is set for the period from March 20 to September 20, 2023 inclusive.

1.13. Clarifications have been made to the list of goods subject to traceability.

Decree of the Government of the Russian Federation of March 4, 2023 No. 345 “On Amendments to the List of Goods Subject to Traceability”

It has been established that a number of goods imported into the territory of the Russian Federation from the territory of the Republic of Belarus, which are produced in the territory of the Republic of Belarus, are not subject to traceability.

The Decree comes into force on 06.03.2023.

1.14. Since March 4, 2023, the procedure for monitoring prices for oil supplied for export has been established.

Order of the Ministry of Energy of Russia dated February 22, 2023 95 “On approval of the Procedure for monitoring prices for Russian oil supplied for export”

When monitoring prices, information on prices for Russian oil and other brands of oil provided by JSC “St. Petersburg International Commodity and Raw Materials Exchange” is subject to collection; published by the international pricing agency “Argus Media Limited”; provided by the FCS to the Ministry of Energy.

The Decree comes into force on 03/04/2023.

1.15. A list of maritime checkpoints for the departure of waste and ferrous scrap from the Russian Federation has been determined.

Decree of the Government of the Russian Federation of February 22, 2023 303 “On the determination of checkpoints across the state border of the Russian Federation for export from the Russian Federation outside the customs territory of the Eurasian Economic Union of waste and scrap of ferrous metals”

Departure from the Russian Federation of waste and scrap of ferrous metals, certain HS codes of the EAEU, is carried out only from the sea checkpoints of Arkhangelsk, the Big Port of St. Petersburg, Vladivostok, Dudinka, Kaliningrad, Korsakov, Magadan, Murmansk, Petropavlovsk-Kamchatsky.

The Decree comes into force on February 24, 2023. The validity of the document is limited to December 31, 2023.

1.16. Kani-Kurgan is included in the list of specialized checkpoints on the Russian-Chinese section of the state border.

Decree of the Government of the Russian Federation of 08.02.2023 No. 175 “On Amendments to the Appendix to Decree of the Government of the Russian Federation of July 7, 2011 No. 557”

The Kani-Kurgan checkpoint has been added to the list of checkpoints on the Russian-Chinese section of the state border of the Russian Federation intended for the import into the Russian Federation of animals, products of animal origin, feed, feed additives, medicines for animals and regulated products.

The Decree comes into force on February 17, 2023.

1.17. The procedure for the transfer of information by the FCS of Russia in electronic form to the Treasury of Russia on registered declarations for goods and the statistical form of accounting for the movement of goods for the purpose of exercising currency control is established from January 1, 2024.

Decree of the Government of the Russian Federation No. 347 dated 03/04/2023

A list of information on declarations for goods registered by the customs authorities and a list of information on the statistical form of accounting for the movement of goods were determined.

By July 1, 2023, the Federal Customs Service must ensure the development and coordination with the Federal Treasury of the formats of electronic messages, receipts of the Federal Treasury on the acceptance (non-acceptance) of an electronic message.

The beginning of the document is 01/01/2024 (with the exception of certain provisions).

2. Drafts

2.1. The Government proposed to include the Republic of Tatarstan in the list of territories where an experiment is being carried out on labeling alcoholic products imported into the Russian Federation, placed under the customs procedure of a bonded warehouse.

Draft Decree of the Government of the Russian Federation “On Amendments to the Regulations on Conducting from June 1, 2021 to May 31, 2024 an Experiment on Labeling with Federal Special Stamps of Alcoholic Products Imported into the Russian Federation Placed under the Customs Warehouse Customs Procedure”

From June 1, 2021 to May 31, 2024, in the territories of Moscow, St. Petersburg, Bryansk, Vladimir, Kaliningrad, Leningrad, Moscow, Smolensk regions and the Krasnodar Territory, an experiment is being carried out on the labeling of alcoholic products placed under the customs

procedure customs warehouse. The list of territories in accordance with the draft resolution of the Government of Russia is replenished with one more subject – the Republic of Tatarstan.

If necessary, during the delivery of cargo, its reloading from one vehicle to another, then such movement of cargo is allowed after prior notification of the intermediate customs authority. Transportation of products according to the draft resolution in this case is carried out in containers, and its reloading is carried out without removing customs seals, seals imposed upon importation into the Russian Federation.

Organizations with suspended or revoked licenses to carry out activities for the purchase, storage and supply of alcoholic products or the storage of alcoholic products do not participate in the experiment. At the same time, the owners of customs warehouses and temporary storage warehouses cannot continue to be participants in the experiment if they are excluded from the relevant register.

3. Law Enforcement

3.1. Incorrect classification of goods in accordance with the TN VED led to losses for the company

Resolution of the Arbitration Court of the North-Western District dated March 29, 2023 No. F07-3074 / 2023 in case No. A56-53077 / 2022

The company filed a lawsuit to recover damages from the Federal Customs Service at the expense of the Russian treasury.

As a result of the adoption by the customs authority of an unlawful decision on the classification of goods in accordance with the TN VED, the company suffered losses associated with its illegal bringing to administrative responsibility.

The company's claim is satisfied, since the funds paid by it as an administrative fine due to unlawful bringing to administrative responsibility are real damage caused to the company.

3.2. The requirement of the customs authority on the need to indicate in the certificates of origin of goods the details of the documents on the origin of goods does not comply with customs legislation.

Resolution of the Arbitration Court of the Moscow District dated April 5, 2023 F05-5222/2023 in case no. A40-123996/2022

The company's statement of claim to invalidate the decision to amend the goods declaration was considered by the court in several instances.

Customs, after checking the correctness of determining the origin of goods, issued a decision stating that non-preferential certificates of origin of goods were not issued in accordance with mandatory requirements and the country of origin of goods was not confirmed.

The company's demand was satisfied, since the requirement of customs on the need to indicate in the certificates of origin of goods the details of documents on the origin of goods issued in the country of origin of the goods does not comply with customs legislation.

3.3. Recovery from the customs authority of interest on the amount of excessively collected customs payments.

Decree of the Arbitration Court of the Volga District of February 8, 2023 F06-27900/2022 in case no. A57-3009/2022

The company filed a claim for the recovery of interest accrued on the amount of excessively collected customs payments.

The company pointed to the inaction of the customs authority, expressed in non-payment of interest on the amount of excessively collected customs payments.

According to paragraph 35 of the Decree of the Plenum of the Supreme Court of the Russian Federation dated November 26, 2019 49 “On some issues arising in judicial practice in connection with the entry into force of the Customs Code of the Eurasian Economic Union” in order to compensate for losses caused by illegal seizure of funds from participants in foreign economic activity, the legislation provides for the payment of interest in respect of excessively collected amounts of customs duties and taxes.

The company's demand was satisfied, since the inaction of the customs authority was established, the calculation of interest was recognized as correct.

3.4. The payer of customs payments has the right to demand the return of the specified amount that was received into the budget unjustifiably (in excess) due to the lack of evidence from the customs authority about the incorrect classification of the goods.

Resolution of the Arbitration Court of the Central District dated March 15, 2023 F10-3944/2022 in case no. A08-6792/2021

The company filed a lawsuit to invalidate the decision of the customs authority, the obligation to return overpaid customs payments.

Based on the results of the audit, the customs authority revealed that the classification of goods according to the TN VED EAEU code chosen by the company during customs declaration was carried out incorrectly, in connection with which the customs authority made the contested decision on the classification of goods according to the TN VED EAEU code, which is different from that declared by the company.

The company's claim was satisfied, since the customs authority did not provide evidence that the classification of goods according to the EAEU TN VED code chosen by the company during customs declaration was carried out incorrectly.

3.5. The Appellate Chamber of the EAEU Court agreed with the decision of the Court that the inclusion of the commodity subheading 8430 50 000 2 “narrow-grip cleaning machines” in the TN VED of the EAEU does not comply with the Treaty on the Eurasian Economic Union dated May 29, 2014

Decision of the Court of the Eurasian Economic Union dated March 14, 2023 “On leaving unchanged the Decision of the Court of the Eurasian Economic Union dated December 8, 2022, which satisfied the application for recognition of the Decision of the EEC Council dated September 14, 2021 No. of the Common Customs Tariff of the Eurasian Economic Union, as well as on the amendment and invalidation of certain decisions of the Council of the Eurasian Economic Commission “partially inconsistent with the Treaty on the Eurasian Economic Union of May 29, 2014 and the Customs Code of the Eurasian Economic Union”

The Court of Appeal supports the conclusions “on the violation by the EEC of the description of goods, notes and explanations for the product group, compliance with the principle of consistency in the formulation and determination of the place of the disputed sub-subposition in the FEACN of the EAEU”.

The Commission's argument is based on the thesis that it is impossible to classify narrow-cut shearers according to the FEACN of the EAEU with a commodity code other than sub-heading 8430 50 000 2, since, according to the EEC, such machines are not named anywhere else and are not covered by any other position.

The criteria for classifying goods for customs purposes are the objective characteristics and properties of the goods, the functional purpose of the goods, which must be correlated with the texts of the headings and the corresponding notes to sections or groups.

3.6. Cancellation of the decision of the customs authority to hold the company liable for non-compliance with established prohibitions and restrictions on imported goods

Resolution of the Arbitration Court of the North-Western District dated March 21, 2023 No. F07-22018/2022 in case No. A56-87577/2021

The requirement to cancel the decision of the customs authority to bring the company to administrative responsibility under Art. 16.3 of the Code of Administrative Offenses of the Russian Federation for non-compliance with the established prohibitions and restrictions on imported goods (there is no stamp on the passage of sanitary and epidemiological control on the bill of lading) was considered by the court and satisfied, since the presence in the actions of the company of the offense imputed to it was not proven; the obligation to carry out sanitary and quarantine control in respect of the disputed consignment of goods by the customs authority has not been confirmed.

The courts noted that Order No. 299 and Rule No. 500, together with the norms of the Customs Code of the EAEU, established a triple control of the compliance of goods with mandatory requirements: at the stage of arrival, submission of a customs declaration, release of goods. The carrier of the disputed cargo submitted preliminary information to the customs post about the arrival of the cargo on the ship. The transmitted information contained information about the cargo (bill of lading, name, quantity, weight, code, container number).

The courts concluded that the customs authority received from the carrier full information about both the cargo and the shipping and commercial documents, including the bill of lading, even before the actual arrival of the disputed goods at the port of unloading and had the opportunity to determine the control measures in relation to the goods imported in the container goods bill of lading.

3.7. The actions of the customs authority were declared unacceptable, and the decision to adjust the customs value was declared invalid.

Resolution of the Arbitration Court of the North Caucasus District dated March 15, 2023 F08-1159/2023 in case no. A32-4112/2022

The statement of claim was filed to invalidate the decisions of the customs authority, the obligation to eliminate the violations.

The customs authority made an adjustment to the customs value of goods on the basis of the sixth (reserve) method, referring to the value of a homogeneous product declared earlier.

The requirement is satisfied, since the documents submitted by the entrepreneur make it possible to determine the value of the goods. The courts established that the documents submitted by the entrepreneur to confirm the determination of the customs value of goods, including price lists and export declarations, correspond to the content and conditions of the concluded transaction, contain the necessary information about the name of the goods and its value, and also allow you to reliably set the price in relation to quantitatively determined characteristics of the goods, terms of delivery and payment.

The courts, having analyzed the conditions of the entrepreneur's foreign trade transaction contained in the contract and specifications, rightfully pointed out the unreasonable use by the customs authority when adjusting the customs value of goods for disputed DT information, since the information used by the customs concerns engines with high power and other technical equipment, which significantly affects the cost.

The use by the customs authority when adjusting the value of only the values of the customs value index, and not the price per unit of a homogeneous product, is unacceptable, since the cost of disputed goods does not depend on their weight, but on the manufacturer, model, technical characteristics and configuration.

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About Us

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