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ORDER OF CONFIRMATION OF THE COUNTRY OF GOODS' ORIGIN IN CONTRACTUAL SYSTEM

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Abstract

The current legislation about public procurements provides cases of obligatory confirmation of the country of goods' origin, however the order and methods of its confirmation in practice remain debatable.

Keywords: contractual system, public procurements, country of goods' origin.

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Since January 1, 2014 the Federal law of 05.04.2013 No. 44-FZ "About contractual system in the sphere of purchases of goods, works, services for ensuring the state and municipal needs" (further 44-FZ) entered into force to which acceptance there were considerable changes in the sphere of public procurements. Including the requirement about confirmation of the country of goods' origin became one of short stories.

By the current legislation it is established that for the purpose of protection of bases of the constitutional system, ensuring defense of the country and safety of the state, protection of the domestic market of the Russian Federation, development of national economy and support of the Russian producers by the Government of the Russian Federation the prohibition on the admission of the goods coming from foreign states, works, services according to carried out, rendered by foreign persons, and restrictions of the admission of the specified goods, works, services for the purposes of implementation of public procurements within contractual system (item 3 of Art. 14 44-FZ) is established. In the light of stated actual there is a question of an order of determination and confirmation of a country of source of the specified goods within carrying out procurement procedures.

The law on contractual system of an accurate order of its determination doesn't establish, and contains the general formulation "is performed in accordance with the legislation of the Russian Federation" (item 3 of Art. 14 of Art. 44-FZ). Proceeding from the analysis of the current legislation, regulation concerning an order of determination and confirmation of the country of goods' origin contain in the Customs code of the

Customs union (appendix to the Agreement on the Customs code of the Customs union adopted by the Decision of Interstate Council of EurAsEC at the level of heads of states of 27.11.2009 N 17, further CC).

CC contains separate chapter 7 which and is called "Country of goods' origin". In particular Art. 58 gives us general provisions about the country of goods' origin, including specifies that determination of the country of goods' origin is performed according to the international treaties of state members of customs union regulating rules of determination of the country of goods' origin (item 3 of the Art. of 58 CC). The country of goods' origin is understood as the country in which the goods were completely made or will subject to sufficient handling / conversion (to paragraph 2 of section 1 of the Agreement of the Governments of the State Parties of the CIS countries of 20.11.2009 "About Rules of determination of the country of goods' origin in the Commonwealth of Independent States", further – Rules of determination). As the goods which are completely made are considered:

- a) the natural resources (minerals and mineral products, water, land resources, resources of atmospheric air) got from a subsoil of this country in its territory or in its territorial sea (other reservoir of the country) or from its bottom, or from atmospheric air in the territory of this country;
- b) the production of a phytogenesis which is grown up and/or collected in this country;
- c) the live animals who were born and grown up in this country;

- d) production received in this country from the animals who are grown up in it;
- e) production received as a result of hunting and fishing trade in this country;
- e) production of sea fishing trade and other production of sea trade received by the vessel of this country or leased (affreighted) by it;
- g) production received onboard the overworking vessel of this country only from production specified in the subparagraph "e";
- h) production received from a seabed or from a sea subsoil outside the territorial sea of this country provided that this country has exclusive rights on development of this seabed or this sea subsoil;
- i) the waste and scrap (secondary raw materials) received as a result of production or other operations on conversion, and also which were in the use of a product, collected in this country and suitable only for conversion in raw materials;
- j) production of high technologies received in an outer space in the space courts belonging to this country or leased (affreighted) by it;
- k) the goods made in this country of production specified in subparagraphs "and" – "to" this point (item 2.2 of Section 2 of Rules of determination).

The criterion of sufficiency of conversion can be determined on the basis of the cumulative principle (it is applied in case of consecutive handling / conversion) or quality characteristics. In particular, treat the last:

- a) the change of a goods item according to the nomenclature of goods subject to foreign trade at the level of at least one of the first four signs which resulted from handling/conversion;
- b) accomplishment of necessary conditions, production and technological operations in case of which accomplishment the goods are considered the events from that country in the territory of which these transactions took place;
- c) the rule of an ad valorem share when the cost of the used materials of a foreign origin reaches the fixed percentage share in the price of end products (item 2.4 of Section 2 of Rules of determination).

However the main condition of criterion of sufficient handling / conversion there is a change of a goods item according to the nomenclature of goods subject to foreign trade at the level of at least one of the first four signs (paragraph 6 of Section 2.4 of Rules of determination).

If production declared to delivery conforms to the specified requirements, it is possible to speak with

complete confidence about its origin from the Russian Federation.

Thus the documents confirming the country of goods' origin the declaration on goods origin or the certificate of origin (item 2 of the Art. of 59 CC) are named. The declaration on goods origin is understood as the statement for the country of goods' origin made by the manufacturer, the seller or the sender in connection with commodity exportation provided that in it the data allowing to determine the country of goods' origin are specified. As such declaration the business or any other documents concerning goods (item 1 of the Art. of 60 CC) are used. This definition is applicable only for the external economic relations. So in case of strict interpretation of the specified regulation there is a question of legal value of the specified statement of the manufacturer or the seller out of communication with commodity exportation, and in connection with their domestic sale. Practice interprets this regulation broadly and recognizes as the declaration on goods origin any statement for the country of goods' origin made by the manufacturer, the seller or the sender provided that in it the data allowing to determine the country of goods' origin are specified. Even more questions arise because as such declaration the business or any other documents concerning goods can be used. For law enforcement officials there is open a question of a specific form of the declaration on goods origin. May it have an appearance of the guaranty letter, quality certificate or compliance? The current legislation doesn't give the answer to it.

The certificate of origin is the document unambiguously testimonial of the country of goods' origin and the issued authorized bodies or the organizations of this country or country of export if in the country of export the certificate is issued on the basis of the data received from the country of goods' origin (item 1 of the Art. of 61 CC). As the authorized organization in the Russian Federation the Chamber of Commerce and Industry (Art. 231 of the Federal law of 27.11.2010 No. 311-FZ "About customs regulation in the Russian Federation" acts; item 18 of Art. 12 of the Charter of Chamber of Commerce and Industry of the Russian Federation (Constituent Congress of Chamber of Commerce and Industry of RSFSR 19.10.1991)). Thus issue of certificates is performed on a paid basis (item 1.14 of the Regulations on an order of registration, the certificate and issue of certificates of origin of goods, and also other documents connected with implementation of foreign economic activity (The resolution of Board of Chamber of Commerce and Industry of the Russian Federation of 23.12.2010)), also for registration it is necessary to provide acts of the independent examination executed by the expert organization (division) of Chamber of Commerce and Industry according to the rules of determination of the

country of goods' origin stated in the Customs code of the Customs Union (item 2.2 of the Regulations on an order of registration, the certificate and issue of certificates of origin of goods, and also other documents connected with implementation of foreign economic activity). These actions attract assignment on participants of procurement procedures of additional financial burden and are reflected in a final price of goods in the form of its increase.

Terms of issue of certificates are established by the territorial Chambers of Commerce and Industry which are directly performing issue and in some cases reach till 60 days from the date of the address. And the maximum term on submission of requests provided for an open tender constitutes 20 days. Thus, there is difficult a possibility of participation in procurement procedures.

Remains open and the question in which what case the document shall be provided? According to item 6.2 of Rules of determination of the country of goods' origin for the purpose of provision of a free trade regime as the document confirming a country of source of an imported goods the declaration on goods origin if the total cost of such goods coming from the State Party of the Agreement and declared in one batch doesn't exceed the amount equivalent 5 000 (to five thousand) US dollars can be provided. However this provision generates some more questions. First, whether public procurements within contractual system of one of forms of provision of a free trade regime are? For the answer to this question it is necessary to understand that represents a free trade regime. In understanding of GATT 1994 (The General agreement on rates and trade of 1994 (GATT) (Together with "The Marrakesh protocol...") (It is concluded in Marrakech 15.04.1994)) the free trade regime represents one of the closest forms of the international economic integration. Provides a free trade regime:

- provision of a national treatment concerning the internal taxation and regulation;
- provision of a national treatment concerning public procurements;
- ensuring freedom of transit;
- application of technical measures, and also sanitary and phytosanitary measures based on the relevant standards of the World Trade Organization;
- regulation of provision of subsidies;
- an application regulation in mutual trade of anti-dumping, countervailing and protective measures.

Thus, the purchases for the state needs performed within contractual system are directly referred to one of forms of provision of a free trade regime owing to specifying of the international agreement.

Secondly, what in this case it is necessary to understand as a batch? We find legal determination in section 1 of Rules of determination: the batch is goods which go at the same time according to one or several commodity transport documents to one consignee from one consignor, and also goods which are sent on one post delivery note or move as baggage one person crossing border.

Thus, calculation of a specific batch will be always made proceeding from conditions of the specific public contract, and in particular, availability of conditions in it about the periods of delivery of job lots of goods and determination of their amount. In the absence of the delivery schedule and a clause about the maximum amount of one selection, we in the right to consider that all amount of goods concerning which the public contract is signed, can be delivered by one batch.

Thirdly, for what date it is necessary to make calculation of an amount of transaction? The matter becomes especially actual in the light of the last considerable rate fluctuations of currencies. Whether it is necessary to make calculation for date of the conclusion of the public contract or on a delivery date of a job lot. The Accounting regulation "Accounting of Assets and Liabilities Which Cost Is Expressed in Foreign Currency" (PBU 3/2006) is devoted to the answer to this question. According to it date for work of recalculation transaction date is. As in compliance of item 2 of Art. 34 44-FZ the price of the contract is firm and is determined on all contract date, and documents confirming the country of goods' origin shall be provided at the time of its conclusion, it is represented to more true to make recalculation on date of procedure of determination of the winner.

Proceeding from everything is higher stated, we draw a conclusion that according to the current legislation the document provided for the purpose of confirmation of the country of goods' origin in case of the conclusion of the public contract is determined proceeding from provisions of the specific contract, namely availability of conditions in it about the periods and delivery lots, taking into account the cost of job lots which in terms of date of procedure of determination of the winner shan't exceed the amount equivalent 5 000 (to five thousand) US dollars. In case of observance of the specified conditions the declaration of goods origin, in other cases - the certificate of origin can be provided.

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РАЗВИТИЕ

ПОРЯДОК ПОДТВЕРЖДЕНИЯ СТРАНЫ ПРОИСХОЖДЕНИЯ ТОВАРА В КОНТРАКТНОЙ СИСТЕМЕ

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Аннотация

Действующее законодательство о государственных закупках предусматривает случаи обязательного подтверждения страны происхождения товара, однако порядок и способы ее подтверждения на практике остаются дискуссионными.

Ключевые слова: контрактная система, государственные закупки, страна происхождения товара.

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