

Customs Declarations, Warehouse Quantities and Shipping Documents – When They Don't Add Up

By [Elena Belozerova](#)

May 17, 2011

The  Moscow Times

The Age-Old Problem



Elena Belozerova
Associate Director

Even in the contemporary world, the most ancient of trading and customs issues can still arise, leading to moments where law abiding traders find themselves with quantities of goods requiring customs clearance, which their documentation does not explain.

An examination of documentation often reveals supplier or logistics error behind the undeclared goods, compounded by subsequent acceptance at the warehouse of the company needing to declare them. This means that, *prima facie*, the declarant has a discrepancy involving the customs declaration and the number of goods to be declared because of the actions of others. Declarants' rights to examine imported items prior to making a customs declaration are not always practicable, and the general sense of urgency that can accompany customs clearance is often stressful even for the most thoroughly law-abiding companies. This article is about what they can do when finding themselves in this situation.

The first thing those finding themselves handling undeclared goods usually want to know is what they can do to legally clear the goods, or, conversely, what risks accompany a failure to declare.

All goods imported but not cleared through customs are classed as illegal imports. This means that they must be cleared when discovered, with relevant customs payments made, using a legislated customs procedure.

What to Do?

Article 81 of the Customs Union Code stipulates that when uncleared goods are identified they must be cleared, but it doesn't specify any declaration process. This leaves those needing to clear undeclared goods under the general provisions of the Customs Union Code, Russian Federation Federal Law No. 311 "On Customs Regulation in the Russian Federation." Foreign goods can be declared by two processes: submitting a new declaration or adjusting data in a previously submitted declaration.

A New Declaration

Before filing a separate declaration, a company should prepare inventory statements, relevant explanations and arrange preliminary discussions with customs officials. After this, payment of customs duties and VAT should precede the filing of a written application describing the situation, with explanatory documentation attached. Note that even if customs authorities register the new customs declaration, issues relating to supporting documentation may still arise during customs clearance.

Adjusting the Old Declaration

Adjusting a previously cleared declaration requires reconciliation of internal audits with the cleared declaration in order to identify the clearance error, thus justifying an application for adjustment.

We believe that an application to adjust a customs declaration may be submitted to customs authorities, the same way as established for adjusting customs value after goods have been released. Our reasoning is that adjusting the quantity of goods in the customs declaration requires modification of the total customs value and, therefore, revised customs payments.

Before this, however, the declarant should identify the customs declaration error, draw up inventory statements, adjust inventory and financial accounting data, and draw up a report reconciling consignment notes and the customs declaration. After completing this, the declarant should start discussions with the customs officials involved in the original clearance, prepare a written application to customs with documentation, determine the customs value and make customs payments.

After completing the preliminary steps, the declarant should then submit a written explanation to customs authorities on why the customs value requires adjustment, indicating the goods declaration number and including relevant documentation (Clause 10 of the Procedure for Adjusting the Customs Value of Goods approved by Resolution of the Customs Union Commission No. 376, dated Sept. 20, 2010).

Other Options and Risks

Other options include destroying the undeclared goods or surrendering them to the state. These options also require separate customs declarations and permission from customs authorities.

Unintentional failure to declare goods worth more than 1.5 million rubles encompasses major risk of criminal proceedings under article 188 of the Criminal Code (smuggling). Goods clearance through adjusting a customs declaration does not eliminate this risk, but prosecution is only possible where intent is proved, and identification of erroneously supplied goods, appropriate customs payments and filing a new or adjusted customs declaration may be an argument for defense.

Where unpaid customs payments exceed 3 million rubles, there is a high risk of criminal proceedings under Article 194 of the Criminal Code, "Avoidance of customs payments charged to an entity or an individual."

There are further risks of administrative sanction and fines ranging from 50 to 200 percent of the value of the goods.

Prevention

To avoid illegality, we strongly advise a focus on planning and organization, with effective logistics and documentation management. This should include:

1. Effective communications with suppliers and logistics providers to ensure understanding of the implications of not declaring goods;
2. Clear supplier liability for inappropriate documentation in contracts;
3. Clear logistics provider liability for discrepancies between actual goods quantity, shipment data and transportation documents, where the declarant company has direct contract logistics providers;

4. Provision for customs representative contractual liability covering breaches of customs legislation;
5. Financial liability agreements with materially responsible persons requiring physical counting of goods upon acceptance, and reconciliation of quantities and names with shipping documentation upon delivery to the warehouse;
6. Effective warehouse inventory processes;
7. Effective sanction systems for persons in charge of goods acceptance and inventory management;
8. Modification of job descriptions for relevant responsible persons to reflect personal responsibility for goods acceptance at company warehouses;
9. Effective financial accounting.

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