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APPLICATION

OF ANTI-DUMPING DUTIES ON IMPORTS OF STEEL PIPES FOR OIL AND GAS INDUSTRY: VIEW FROM ABROAD

APLICACIÓN DE DERECHOS ANTIDUMPING A LAS IMPORTACIONES DE TUBERÍAS DE ACERO PARA LA INDUSTRIA DEL PETRÓLEO Y DEL GAS: VISTA DESDE EL EXTERIOR

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ABSTRACT

Foreign economic activity is a multi-level, multi-faceted, multi-vector and multi-subject phenomenon that can include different substantial models like foreign trade of the state, e-commerce etc. The authors analyzes the substantial elements of the "foreign economic activity" concept that reflect its public and private law characteristics. The author proposes his understandings of the "foreign economic activity" concept, its properties and particular features. The authors outlines the appearance of the new regulation method as a result of transformation civil and administrative legal regulation methods. The method of the Foreign Trade law in opinion of the author, reflects the symbiosis of the public and private elements in organization of the legal regulation. There is a gradual understanding that country's economic security as an integral part of national security is defined by the level of self-sufficiency and efficiency of the economy. The object of economic security is economy as a system and its integral parts like productive and non-productive assets, financial resources etc. Economic challenges have complex character and are influenced by geopolitical, social, criminal and other factors. The state policy on economic security should include a system of measures to block the sources of all challenges. The article analyzes the modern forms and examples of political risks in the foreign trade.

Keywords: Import of Russian steel, antidumping duty investigation, foreign trade legislation, foreign economic activity, foreign economic relations.

RESUMEN

La actividad económica extranjera es un asunto multi-vector, multi-facetado, multi-vector y multi-tema que puede incluir diferentes modelos sustantivos como el comercio exterior del estado, el comercio electrónico, etc. Los autores de los elementos sustanciales del concepto de "actividad económica extranjera" que reflejan sus características de derecho público y privado. El autor propone su comprensión del concepto de "actividad económica extranjera", sus propiedades y características particulares. Los autores describen la aparición del nuevo método de regulación. El método de la ley de Comercio Exterior en opinión del autor, refleja la simbiosis de los elementos públicos y privados en la organización de la regulación legal. Existe un entendimiento gradual de que la seguridad económica del país como parte integral de la seguridad nacional está determinada por el nivel de autosuficiencia y eficiencia de la economía. El objeto de la seguridad económica es un sistema propio y sus partes integrales. Los desafíos económicos tienen un carácter complejo y están influenciados por factores geopolíticos, sociales, criminales y otros. La política estatal de seguridad económica debe incluir un sistema de medidas. El artículo analiza las formas modernas y ejemplos de riesgos políticos en el comercio exterior.

Palabras clave: Importación de acero ruso, investigación de derechos antidumping, legislación de comercio exterior, actividad económica extranjera, relaciones económicas extranjeras.

INTRODUCTION

The individual needs and public interest are flexibly intertwined in modern legal regulation of foreign trade. This is predetermined by the colossal importance of foreign market for the governmental financial and monetary politics, dynamic economic growth, economic security and self-sustainability of every state. Effective foreign trade policy of the state guarantees stability of international financial and monetary stance of the country, protects national currency, provides necessary resources for national economics and favors the inflow of foreign investments.

The harmony of the civil, administrative and criminal law is a basis for every legal system. As it was correctly said by Posner, the law is extremely conservative and suspicious towards the novelties, highly historically oriented due to its established rituals and archaic terminology and therefore quite often lags behind the development of social relations. This lagging development of legal regulation in contrast with the evolution of social relations provokes the legislator to fill the legal vacuum with public restrictions and permissions, which allow swift and strict response to legal lacunae. This kind of regulation is especially dangerous in such a borderline (literally) sphere as foreign trade.

The dynamics of social relations' development dictate the need for urgent search of new balance between private and public principles and coordination mechanisms between the state and society in foreign trade sphere, so as to provide the freedom of movement of resources between national economics, broadening of legal regulation of foreign trade through inclusion of non-business persons, transformation of commercial activities into quasi-commercial activity.

The general vector of Russian internal and foreign politics is a principle of Russia being the part of civilization, adhering to the values of respects the interests of other participants of global economic, political and other processes, equality and pragmatism.

The Russian legislation considers the equality of subjects of civil law as a legal principle. It recognizes their relations as coordination rather than subordination. This means that despite their rights could be substantially unequal, but the conditions of their exercise must be standard for every holder of the right under the Civil law. As an exception, the foreign trade allows some deviations from the legal equality of its participants and implementation of public (administrative) principles in their relations. As an example of deviation from the principle of equality and discretion of civil law subjects we can mention the relations between the participants of foreign trade (importers and exporters)

and the agencies of currency control within the framework of fulfillment of foreign trade contracts. The administrative dependence of traders on the agencies of customs, currency and other kinds of control is based upon the public legal relations (licensing, registration of contracts etc.), which complicate the private relations of exports and imports.

The important element of the aforementioned principle is a non-discrimination between the participants of foreign trade. Discrimination (Latin *discriminatio* – division, restriction, limitation) is a legal term, which means restriction of rights of companies and persons. This legal regime is forbidden by the national law of democratic countries and international law. Protection from all kinds of discrimination while exercising rights and freedoms means, *inter alia*, ban on all restrictions of rights for same-category persons without objective and reasonable justification (prohibition of different treatment of persons in same or similar situations). The introduction of special regimes for persons in same or similar situations could be justified by the purpose of the legal regulation, i.e. the criteria and legal consequences of differentiation must be substantively interdependent. If this substantive interdependency of criteria and legal consequences of differentiation is observed, the prohibition of discrimination is not violated.

Discrimination in foreign trade is a legal regime, which puts restrictions on rights of companies and persons, originating from some country (or group of countries), in comparison with the rights of companies and persons from other countries, except for special safeguards, anti-dumping and countervailing measures. According to the law, the prohibition of discrimination may be disregarded towards the goods originating from the countries, which have no agreement with Russia about the most-favored nation regime (paragraph 3 article 32, paragraph 3 article 35 of the Federal Law number 164-FZ).

Non-tariff regulation is an exceptional and, mostly, temporary measure. This kind of measures is applied in situations, when traditional customs tariff regulation is not effective. Moreover, while tariff regulation could be regarded as a fiscal measure to increase the budget revenue, non-tariff regulation is always a measure of protection and often has no economic basis. For the last ten years the use of non-tariff measures by Russia, sometimes lacking economic preconditions, enabled the affected countries to claim the political and discriminatory character of these prohibitions: trade wars with Georgia (wine, mineral water, fruits in 2003), wine trade war with Moldova in 2003, milk disputes with Belarus in 2012 and Lithuania in 2013. Unlike the tariff regulation, the non-tariff measures could also be implemented in the sphere of services.

The legal and economic science pays a special attention to the issues of non-tariff regulation because of Eurasian integration processes and Russia's accession to the World Trade Organization.

DEVELOPMENT

Currently the sphere of non-tariff measures is regulated both by the Russian legislation and the international agreements and acts of the Customs Union. The treaties of Customs Union enable Russia to apply some non-tariff measures towards the member-states. But at the moment Russia has no legal basis to introduce and implement safeguards, anti-dumping and countervailing measures against import of goods from Belarus or Kazakhstan. The current Federal Law dated 08/12/2003 number 165-FZ "On safeguards, anti-dumping and countervailing measures for import of goods" allows to implement such measures only in case of import of goods to the customs territory of Russia. Meanwhile, the national customs territory of Russia ceased to exist three years ago especially in relations with the mentioned countries. Russia intensified the usage of such a kind of non-tariff measures as technical barriers – national requirements for the technical specifications of goods, their quality, compliance with sanitary, phytosanitary and veterinary rules, system of certification etc. This is one of the most effective measures of non-tariff regulation because it complies with the WTO rules and allows strict control over the inflow of foreign goods into the national economy.

The current legislation includes the following groups of non-tariff measures:

1. Economic measures – quantitative restrictions, quotas, licensing, export (import) monopoly, safeguards, anti-dumping and countervailing measures, embargo (articles 21, 23, 24, 26 of the Federal Law number 164-FZ). The economic measures are used only in foreign trade in goods.
2. Non-economic measures, which are used to protect national interests and goals as defined by the Federal Law number 164-FZ. They are used both for trade in goods and services. The classification of non-tariff measures is based upon the decision of the Higher Court of the Russian Federation dated 24/10/2016 number 18 "On some issues of implementation by courts of the Special section of the Code of Administrative Offences". As a non-economic measure could be considered the special procedure of admission of foreign investors to the strategic spheres of the Russian economy. In contrast to the economic measures, the non-economic measures are applied by Russian state bodies according to the Russian legislation.

Despite the fact that the Federal Law number 164-FZ does not cover the relations regulated by the Federal Law "On exports control" the aforementioned classification could also be applied in this sphere.

The Federal Law dated 08/12/2003 number 165-FZ "On safeguards, anti-dumping and countervailing measures in import of goods" made some important changes in the mechanism of providing proper competition. Perhaps for the first time since liberalization of foreign trade in 1991 it details the procedures and ways of protecting the Russian market without violating the WTO rules. It is well known that "the anti-dumping laws are the most egregious exemptions in the international trade legislation, when the foreign producer bears much more burdensome price restrictions than those that are placed upon the national producer by the domestic laws, including the competition". The law regulates the procedure of application and implementation of safeguards, anti-dumping and countervailing measures in import of goods, as well as investigations prior to these measures. These document, undoubtedly, increases the public element in the legal regulation of foreign trade. For example the Russian Government is authorized by this document to conduct the investigation. It defines the time frames for investigation and implementation of its results. In especially urgent cases the Government is authorized to impose the special preliminary duty on the goods, that damage the national economy.

CONCLUSIONS

According to the agreement concluded in 1999 the American authorities abstained from protection of its market by duties, and instead imposed limits and minimum price on import of Russian steel. The largest US steel producers (U.S. Steel Corp., Nucor Corp., ArcelorMittal USA LLC and others) demanded to suspend this agreement, which allows Russian steelmakers to deliver their goods to USA without the risk of anti-dumping duties. The problem for the American metallurgical companies is that since 1999 the market price of steel in USA considerably outgrew the price, fixed in the Agreement. This year, the difference between the minimum price and market price has grown to 180 \$ per tonne and this allows the Russian producers to offer their consumers more lucrative prices than American steel-makers. The stable price spread between the imports from Russia and other markets shows that the Agreement on suspension of anti-dumping investigation is not working. Inability to stop dumping allows Russian producers to sale the hot-rolled steel in volumes that are substantial and damage-inducing for the American market. During the first six months of 2014 the volume of Russian export of sheet metal to USA grew 15-fold. The

“Severstal” company confirmed the growth of delivery and explained it by low volumes of export in 2013 due to low prices, therefore it complies with the terms of the Agreement. The “Severstal” explained this year’s sharp increase by the last year’s low base. On 21st of October, 2014 the US Department of Commerce has decided to terminate a 15-year-old agreement on Russian hot-rolled steel imports and this will resume a significant amount of anti-dumping duties.

The global events has drastically changed the established understandings of the balance between the law and the politics, the politics and economics, the economics and the law. The global tendency towards multipolarity could not leave the elements of current world order unaffected. Until recently, the relations between politics and economics were considered as dialectical. The states often used foreign policy for economic goals through protectionist actions. If global political decisions were needed, they were guaranteed by the national economic potential. The law was not used as a legal décor for political and economic projects. Unfortunately, the development of modern world is defined by the laws of geopolitics rather than by economic practicability or legal patterns. Political preferences interfere in legal institutions (legal policy, legislation) and even influence the laws of economics (not terminating but blocking and complicating them).

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