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SPECIFIC FEATURES OF FOREIGN ECONOMIC RELATIONS**V. A. Bublik**

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Introduction: *the article analyzes the specific features of foreign economic relations in Russia, studies the trends in determining the ways to improve foreign economic legislation that governs these relations under the conditions of rapidly changing political, economic, social and legal processes. Purpose: to make an attempt to solve the scientific problem concerning the development of the modern concept of foreign economic relations in Russia. Achievement of this purpose is of great theoretical significance for science of civil and business law. Methods: the methods used include historical-legal, logical-legal, system-structural, method of interbranch legal researches, system analysis. Results: foreign economic relationship has a unique structural type of legal relationship. It is a complex system consisting of the main synthetic foreign economic relationship with the dynamic structure and accompanying subsidiary relationships that have a direct impact on the dynamics of the main one, with not a single private entity taking part in them. The complicated foreign economic relations must be distinguished from a set of legal relations, groups of legal relations interconnected in a certain way. Two criteria of differentiation can be identified, one of which is the aim of the legal relationship, and the other is a close interconnection and interdependence of relations that make up the complex relationship so that they cannot be separated from each other without detriment to the purpose of the legal relationship. Conclusions: through the example of the dynamics of foreign economic relationship on export of sturgeon caviar, it is shown that this legal relationship is a combination of civil law relations on export of sturgeon caviar and subsidiary public and private law relations, entering into which is mandatory for the exporter and in some cases also for the importer. The civil law relationship cannot be realized without the proper fulfilment of obli-*

gations under the subsidiary legal relations. Accordingly, the combination of the considered relations can be regarded as a complex legal relationship, because they are all inextricably linked and united by one goal – to fulfil a foreign economic transaction.

Keywords: foreign economic activity; foreign economic relations; structure of a foreign economic relationship; cross-industry legal relations; circulation of objects of civil rights; private law and public law relations

Information in Russian

СПЕЦИФИЧЕСКИЕ ЧЕРТЫ ВНЕШНЕЭКОНОМИЧЕСКОГО ПРАВООТНОШЕНИЯ

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Введение: статья посвящена анализу и выявлению особенностей внешнеэкономических правоотношений в России, исследованию тенденций определения направлений совершенствования внешнеэкономического законодательства, регулирующего внешнеэкономические правоотношения, в условиях динамично изменяющихся политических, экономических, социальных и правовых процессов. **Цель:** основная цель статьи состоит в попытке решения научной проблемы, касающейся построения современной концепции внешнеэкономических правоотношений в России. Достижение поставленной цели имеет существенное теоретическое значение для науки гражданского и предпринимательского права. **Методы:** историко-правовой, логико-юридический, системно-структурный, метод межотраслевых юридических исследований, метод системного анализа. **Результаты:** внешнеэкономическое правоотношение обладает уникальным структурным типом правоотношения. Это сложная система, состоящая из основного синтетического внешнеэкономического правоотношения с динамической структурой и сопровождающих его дополнительных правоотношений, которые напрямую влияют на динамику основного правоотношения, но при этом ни один частный субъект не принимает в них участия. Сложные внешнеэкономические правоотношения необходимо отличать от совокупности правоотношений, групп правоотношений, определенным образом связанных между собой. Можно выделить два критерия их разграничения, одним из ко-

торых является цель правоотношения, а вторым квалифицирующим признаком, свидетельствующим об образовании сложного правоотношения, – тесная взаимосвязь и взаимобусловленность правоотношений, входящих в состав сложного правоотношения, вследствие чего они не могут быть отделены друг от друга без ущерба для достижения цели правоотношения. **Выводы:** на примере динамики внешнеэкономического правоотношения по экспорту икры осетровых видов рыб показано, что это правоотношение представляет собой совокупность гражданского правоотношения по экспорту икры осетровых видов рыб и вспомогательных публичных и частных правоотношений, вступление в которые обязательно для экспортера, а в ряде случаев – для импортера. Причем без надлежащего исполнения обязательств в рамках вспомогательных правоотношений гражданско-правовое отношение не может быть реализовано. Соответственно, совокупность рассмотренных правоотношений может быть представлена как сложное правоотношение, поскольку все они неразрывно связаны между собой и объединены одной целью – исполнить внешнеэкономическую сделку.

Ключевые слова: внешнеэкономическая деятельность; внешнеэкономические правоотношения; структура внешнеэкономического правоотношения; межотраслевые правоотношения; циркулирование объектов гражданских прав; частноправовые и публично-правовые отношения

The nature of foreign economic relations and interconnection of the legal relations which occur in the process of foreign economic activities can be vividly seen by considering the dynamics of a foreign economic relationship. At present, the legal science views the dynamics of a legal relationship only in respect to legal relations of the active type, which are considered to be the relations reflecting the dynamic function of the law and formed on the basis of binding rules. The main feature of such legal relations is that they impose on a person “a positive obligation”, i. e. an obligation “to take certain actions (to perform particular work, to transfer property, etc.)” [2, p. 264]. Foreign economic relations by their nature belong to the active type of legal relations.

Main Part

According to R. O. Khalfina, “every legal relationship in its dynamics has its own “entry” – in the form of a relevant legal fact and its “exit” – the result which either the will of the parties is aimed at or which occurs regardless of the will of the parties, in accordance with the will of the state and society” [5, p. 306]. The study of different basic legal relations making up the foreign economic relationship from the moment of “entry” to the moment of “exit” will make it possible to distinguish a structural type of the foreign economic relationship. S. S. Alekseev noted that the notion of a “structural type of legal relationship” characterizes the specific features of a method of a particular branch, reflected in the peculiarities of branch legal relationships”. “The presence of such a “structural type” is one of the vivid indicators that we see an independ-

ent major branch” [1, p. 270]. However, we think that the presence of such a “structural type” of legal relationship may be typical not only of major branches of law, but also of complex ones. Thus, the legal relations regulated by entrepreneurial law have no less important distinguishing features than the relations regulated by civil law.

Let us take, for example, a set of basic relations united into the foreign economic relationship on the export of sturgeon caviar beyond the boundaries of the customs territory of the Customs Union.

Such relations are regulated not only by the domestic legislation of the Russian Federation and by the legislation of the Customs Union, but also by international treaties concluded by Russia [9]. The main international legal act regulating the turnover of sturgeon caviar is the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora¹. The presence of restrictions on the export of these goods and regulation at the level of international instruments allows for comprehensive examination of the basic legal relations arising in the course of these foreign economic activities [8].

The core of such foreign economic relations is made up by civil legal relations occurring between a Russian exporter and a foreign importer of sturgeon caviar. However, they cannot be implemented now; and before October 13, 2005 such relations could not even occur without subordinate public legal relations: before the RF Government issued Decree of September 26, 2005 No. 584

¹ Collection of Effective Agreements, Treaties and Conventions Concluded by the USSR with Foreign States. M., 1978. Issue XXXII. Pp. 549–562.

“On Measures of Securing the Fulfillment of Obligations by the Russian Federation Following from the Convention on International Trade in Endangered Species of Wild Fauna and Flora of March 3, 1973 in Relation to Sturgeons”¹, export of sturgeon caviar (from both caught and farm-raised fish) could only be performed within the export quotas.

The above Convention is aimed at protecting different endangered species of wild fauna and flora [6, p. 150], which is explicitly stated in its Article 2. With the purpose of protecting these species, including species of sturgeons, the signatory states have agreed upon a strict monitoring of trade [7].

Pursuant to Item 2 of the RF Government Decree No. 968 of August 17, 1998 “On Measures on Fulfillment of Recommendations of the 10th Conference of the States Signatory to the Convention on International Trade in Endangered Species of Wild Fauna and Flora of March 3, 1973 in Relation to Sturgeons”², export of sturgeons and products from them, including their caviar, from the territory of the Russian Federation was possible (let us repeat) within the export quotas, annually fixed by the RF Government on the basis of proposals agreed upon with the State Fisheries Committee, the Ministry of Natural Resources and the Ministry of Economic Development and Trade of the Russian Federation. Such quotas were fixed both for caviar extracted from sturgeons caught in the natural habitat and for caviar of sturgeons raised at fishing farms in artificial conditions.

By the RF Government Decree No. 584 of September 26, 2005 the regime of sturgeon caviar export was changed: subitem “c” p. 3 of the Decree cancelled quotas on export of caviar from sturgeon raised at fish farms in artificial conditions. This regime is still in effect.

Thus, the Russian legislation has formally provided for two alternative “entries” into foreign economic relationship concerning export of sturgeon caviar, depending on the source of its origin:

1) for export of caviar from sturgeons industrially caught, the exporter shall buy a relevant quota

within the framework of the established administrative procedure³;

2) for export of caviar from sturgeons artificially cultivated, the exporter just enters into a corresponding agreement.

When exporting caviar from sturgeons artificially cultivated, the point of “entry” into foreign economic relationship is not fundamentally different from such point in case of selling caviar on the domestic market of Russia. However, the situation is different in case of exporting caviar from sturgeons industrially caught.

Thus, to enter into such foreign economic relationship, the Russian exporter shall make a bid to participate in the tender or auction to acquire the export quota. The very participation in the tender is a separate private legal relationship complicated by a public legal element. It cannot be recognized as an independent type of relationship because it is entered into exclusively for conclusion and further fulfilment of a foreign economic agreement. It proves the legal integrity of this relationship, which is aimed exclusively at providing a normal, “natural” development of a complicated set of legal facts [2, p. 361]⁴. And it means that this relationship is a part of a complicated set of legal facts of foreign economic relationship and is a subsidiary type of legal relationship.

Then, there occur legal relations connected with the determination of the size of the export quota and arrangement of tenders and auctions. These relations are independent; they do not presuppose involvement of the exporter, but they directly affect the dynamics of foreign economic relationship. For instance, if the size of export quotas is not fixed, the foreign economic relationship on export will not occur. At the same time, if the size of export quotas is fixed, it does not absolutely mean that the foreign economic relationship on export will occur. Such interconnection of legal relations allows us to conclude that the complicated synthetic foreign economic relationship under analysis is the central element in the general system of

¹ Collection of Legislative Acts of the Russian Federation. 2005. No. 40. Art. 4037. (came into effect on October 13, 2005).

² Ibid. 1998. No. 34. Art. 4094. (became inoperative in connection with the Decree of the Government of the Russian Federation of September 26, 2005 No. 584).

³ On the Procedure of Conducting Tenders and Auctions on the Sale of Quotas in Case of Introduction of the Quantity Restrictions and Licensing for Export and Import of Goods (Works, Services) in the Russian Federation: Decree of the Government of the Russian Federation of October 31, 1996 No. 1299. *Collection of Legislative Acts of the Russian Federation*. 1996. No. 46. Art. 5249.

⁴ The notion “legal integrity” is considered in detail by S. S. Alekseev.

legal relations occurring in the sphere of foreign economic activities and is complemented by subsidiary legal relations, in particular by legal relations in the sphere of establishing quantity restrictions on export.

The given conclusions in respect to the export of sturgeon caviar are of more theoretical rather than practical importance because since 2007 Russia has had a 10-year moratorium on the industrial catching of sturgeons¹; a year-long moratorium was established in 2013 by all the states of the Caspian region, and it was expected to be prolonged for five years at the IV Caspian Summi. Addressing the press, the Russian President V.V. Putin emphasized that Russia had prolonged the moratorium on the industrial catching of sturgeons till the stabilization of their population (actually, for an indefinite period); however, the analysis of the Agreement on the Conservation and Sustainable Use of Water Biore-sources of the Caspian Sea, signed at the Summit², shows that other states of the Caspian region did not support the idea. Consequently, there are, in fact, no possibilities for the export of caviar from industrially caught sturgeons due to the lack of the established export quotas. Taking this into account, we will consider only the dynamics of foreign economic relationship in the export of caviar from artificially cultivated sturgeons.

As it was mentioned above, the very relations occurring in foreign economic contracts for the export of caviar are not significantly different from the relations occurring in case of civil contracts for the delivery of caviar onto the domestic market; therefore, in terms of the dynamics of foreign economic relations they are not of much interest, except for some questions of their termination for the Russian law of foreign economic activities (to be discussed further). However, the scientific importance of such a conclusion cannot be underestimated: the legal science has distinguished the system of legal relations in which the central relationship with its complicated dynamic structure is accompanied by subsidiary legal relations, but they, as a rule, are derivative and do not determine the

very possibility of such legal relations to occur [1, p. 378; 4, pp. 96–102; 3, pp. 23–31]. All this allows us to speak about the unique character of the system of relations occurring in the sphere of foreign economic activities.

The next condition for the development of foreign economic relationship on the export of sturgeon caviar is obtaining a permit for its export. The relations occurring in the process of obtaining permits for export are of administrative legal nature, and the result of passing this administrative procedure determines the fulfillment of obligations under foreign economic contracts for the export of caviar: if the permit is not obtained, export of caviar beyond the territory of the Russian Federation will be impossible³.

The procedure of execution, issuance and registration of permits for export and import of sturgeons and products from them, including caviar (hereafter – the Procedure) was established by Order of the RF Federal Agency for Fisheries (Rosrybolovstvo) of June 18, 2009 No. 526 “On the Procedure for Execution, Issuance and Registration of Permits for Export and Permits for Import, Certificates for Re-Export and Certificates for Introduction of Sturgeons and Their Products, Including Caviar, as Well as Amendments, Suspension and Termination of the Said Permits / Certificates”⁴.

Pursuant to Item 2 of the Procedure, the issuance of permits for the export of sturgeon caviar is effected on the basis of written applications made by Russian and foreign citizens and legal entities. Items 3 and 4 of the Procedure establish requirements for such applications, including the following:

- 1) the application shall be submitted in the Russian language, and in case of a foreign applicant – additionally in the native language of such an applicant;
- 2) the application should specify the purpose of export;
- 3) the application should provide information on the specifically-marked package;
- 4) the application should contain information about the quantity and weight of the delivered caviar;
- 5) the application should contain information on the planned time limits of export, customs and veterinary checkpoints, means of transport and itinerary.

¹ The ban on commercial catching of beluga sturgeon was introduced in 2000, and on commercial catching of common sturgeon and starred sturgeons in 2005. Available at: http://rus.ruvr.ru/2013_12_30/Moratorij-na-vilov-osetra-chernaja-ikra-stanet-dostupnoj-2402 (accessed 14.02.2017).

² On Signing the Agreement on the Conservation and Sustainable Use of Water Biore-sources of the Caspian Sea: Decree of the Government of the Russian Federation of September 20, 2014 No. 1866-p. Available at: <http://government.ru/media/files/xbA6iJP4bSA.pdf> (accessed 14.02.2017).

³ See: subitem 5 item 1 Article 183 and subitem 1 item 1 Article 195 of the Customs Code of the Customs Union.

⁴ *Rossiyskaya Gazeta* – Russian Gazette. 2009. 21 May.

It is obvious that despite the fact that requirements for the application to obtain a permit are relatively simple, some of them are excessive.

1. The obligation imposed on the foreign applicant to fill in the application in Russian and his native language (the reasoning behind this requirement may be either for simplifying the administrative procedure of entitling the foreign applicant to fill in the application in his own language or for simplifying the processing of the documents for submitting the application only in the Russian language). The Russian Federation either gives the right to the foreign applicant to fill in the application in his own language for the purpose of simplifying the administrative procedure, or requires submitting the application only in the Russian language for the purpose of simplifying processing of the documents. In the conditions when the foreign applicant acquires goods for export from the Russian producer, the submission of the application in the Russian language cannot be recognized as more burdensome than the procedure effective nowadays.

2. The requirement to submit information on the specifically-marked package. Formally speaking, it corresponds to the requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora¹. However, in our country there is only one normative legal act which establishes requirements to the specifically-marked package of caviar – Order of the RF Federal Agency for Fisheries of August 24, 2009 No. 736 “On Marking Sturgeon Caviar for Export” (hereafter – Order No. 736). This Order is not publicly accessible: you can find it neither on the official website of the RF Federal Agency for Fisheries nor in the reference legal databases “KonsultantPlus” and “Garant”. There are grounds to believe that this act was not published following the procedure established by law and was not registered by the RF Ministry of Justice². The document has been men-

tioned only once – in Decision of the 9th Arbitration Appellate Court of August 30, 2010 No. 09AP-16607/2010³, however, the text of the Order can be received only upon the request in the RF Federal Agency for Fisheries.

3. The requirement to provide information on the planned time limits for export, customs and veterinary checkpoints, means of transport and itinerary. This requirement deprives parties to the foreign economic contract of a possibility to introduce changes in the schedule of delivery. The permit is issued strictly for one specific delivery with certain volume and itinerary and cannot be used for several shipments under the same contract (par. 2 of Item 10 of the Procedure).

Item 5 of the Procedure provides for an exhaustive list of documents submitted together with the application: copies of constituent documents verified following the established procedure – for Russian legal entities; copies of documents verified according to the established procedure on the entry to the Uniform State Register of Legal Entities or copies of the passport or of any other ID document for individual entrepreneurs; copies of contracts between the exporter and the importer or of any other agreement confirming the intention to export or import sturgeons or products from them; documents confirming the payment of the state fee for the issuance of the permit; duly verified copies of documents confirming the applicant’s right to ownership of caviar; documents proving the quality of caviar.

We find it unreasonable that the documents confirming the status of the foreign legal entity – the applicant – have been excluded from the list of documents submitted together with the application. Such an omission does not allow for considerable control over the export of sturgeon caviar in case if the applicant for the export permit is a foreign legal entity.

The procedure of obtaining the export permit explicitly provides for the right of a citizen of the Russian Federation or of a foreign citizen, including the citizen without the status of an individual

¹ See: Supplement 1 and 2 to Resolution 12.7 “Preservation and Trade in Sturgeons and Paddlefish” of the Conference of the Signatory Parties to the Convention of International Trade in Endangered Species of Wild Fauna and Flora of 3 March 1973 (the official translation of the recommendations in the Russian language has not been found). Available at: <http://www.cites.org/eng/res/12/12-07R16.php> (accessed 14.02.2017).

² Consequently, it shall not apply due to Item 10 of the Decree of the President of the Russian Federation of May 23, 1996 No. 763 “On the Procedure of Publishing and Coming into Effect of Acts of the President of the Russian Federation and the Government of the Russian Federation and Normative Le-

gal Acts of Federal Executive Bodies. *Collection of Legislative Acts of the Russian Federation*. 1996. No. 22. Art. 2663.

³ It should be noted that the lack of information on the publication and registration of Order No. 736 (in the judicial decision this question, for unknown reasons, was not discussed) did not prevent the 9th Arbitration Appellate Court from applying this Order in case No. A40-38157/10-79-204 (electronically available). Access from “KonsultantPlus” database (accessed 14.02.2017).

entrepreneur, to apply for a permit for sturgeon caviar export (Items 2, 4.1 and 5). It is obvious that this procedure establishes the general legal regime of controlling export of a certain object of civil rights beyond the territory of the Russian Federation regardless of the exporter. Individuals have the preferential right (without obtaining a permit) to export beyond the territory of the Russian Federation 250 grams of caviar per person regardless of the age of the person¹. As we see, this preferential right belongs to individuals – both to those who have the status of an individual entrepreneur and those without such a status. The rule is designed to determine the maximum volume of export of the object of civil rights beyond the territory of the Russian Federation without following the established procedure of control.

Pursuant to Item 7 of the Procedure, if an applicant submits the necessary information and a full set of documents, the RF Federal Agency for Fisheries sends the application to the Federal State Unitary Enterprise “All-Russian Research Institute of Fisheries and Oceanography” for a recommendation to be made. This recommendation is usually made within one month after the submission of the application and then the recommendation is referred to the RF Federal Agency for Fisheries. Within one month after receiving the recommendation, the RF Federal Agency for Fisheries shall either issue the permit for export or refuse to issue the permit, giving reasons for such refusal (Item 8 of the Procedure). Grounds for refusal may as follows: failure to submit the necessary documents by the applicant; representation of false information; negative recommendation of the FSUE “All-Russian Research Institute of Fisheries and Oceanography”; violation of the RF legislation during export by the applicant.

Item 12 of the Procedure obliges the applicant to provide the RF Federal Agency for Fisheries with information on the actual export transaction.

The legal relations occurring in the process of obtaining the permit for export of sturgeon caviar cannot be recognized as independent legal relations, because they are derivative from the primary civil legal relationship between the exporter and importer, and they cannot occur if there is no foreign economic contract, and they directly affect the dynam-

ics of foreign economic relationship on the whole: without the permit for export, a foreign economic contract cannot be fulfilled; from the moment of obtaining the permit for export the parties to the contract can change the procedure of fulfilling the contract exclusively on the condition of obtaining another permit for export.

Pursuant to Item 7 of the Procedure of obtaining the permit for export, the necessary requirement for the applicant to receive the permit is (let us repeat) the positive recommendation from the scientific body of CITES – “All-Russian Research Institute of Fisheries and Oceanography”. Such a recommendation is made upon the results of the expertise of documents submitted by the applicant and molecular-genetic analysis of caviar samples; for the expertise to be performed the applicant enters into a civil agreement with the Institute² and makes the necessary fee payment.

The cost of services to conduct the expertise and molecular-genetic analysis of caviar is not included in the state fee and is to be paid separately, thus violating the law: to obtain the permit for export it is necessary to pay only the state fee, and the Procedure of obtaining the permit for export does not oblige the applicant to resort to the services of the scientific body of CITES. Moreover, due to the necessity to conduct the molecular-genetic analysis of caviar the applicant should provide the scientific body of CITES with caviar samples, however, the Procedure is silent on this issue. At the same time, without entering into the said agreement and paying and providing samples of caviar, the applicant cannot obtain the positive recommendation from the scientific body of CITES.

Another stage in the development of the foreign economic relationship under consideration is veterinary and sanitary examination of the organization processing caviar.

Pursuant to item “c” of the Supplement to Order No. 736, marking of sturgeon caviar should contain a four-number official registration code of the processing enterprise. However, search in the reference legal databases, such as “KonsultantPlus” and “Garant”, for normative legal acts regulating the assignment of the official registration code to the enterprise processing caviar has

¹ Subitem “i” of item 3 of the Decree of the Government of the Russian Federation of September 26, 2005 No. 584 “On the Measures of Securing Fulfillment of Obligations by the Russian Federation Arising out from the Convention of International Trade in Endangered Species of Wild Fauna and Flora of 3 March 1973 in Respect to Sturgeons”.

² See: Procedure of Processing Applications and Conducting the Expertise on the Possibility of Export (Re-Export) of Sturgeons and Products from Them as Well as of Import of Sturgeons and Products from Them to Russia. Available at: <http://www.vniro.ru/pages/labs/cites/poryadok.doc> (accessed 14.02.2017).

revealed no results. At the same time, it has been found out that the organization which imports (exports), processes, stores, transports and sells hydrobionts, fish, seafood and other products produced from them may be assigned the official registration number, upon the results of the veterinary and sanitary examination by the commission (with the participation of representatives of regulatory veterinary bodies of the subjects of the Russian Federation) with the purpose of determining the suitability of veterinary and sanitary conditions as well as technological conditions for raw processing or raw storage in accordance with the existing veterinary and sanitary rules.

The legal ground for conducting such an examination and further assigning of the above said number is Order of the RF Ministry of Agriculture of October 6, 2008 No. 453 “On Establishing Rules of Organizing Veterinary Supervision over Hydrobionts, Fish, Seafood and Other Types of Products”¹ (hereafter – Order No. 453) and Letter of the Federal Agency for Veterinary and Phytosanitary Supervision of December 1, 2008 No. FS-GK-4/12141² (hereafter – Letter No. 12141). At the same time, only Letter No. 4/12141 mentions the assignment of the registration number to the processing organization.

Order No. 435 does not provide for the assignment of any numbers or codes, but Item 3 of the “Veterinary Rules on Import (Export) to the territory of the Russian Federation, Processing, Storage, Transportation and Selling of Hydrobionts, Fish, Seafood and Other Animal Products and Products of Their Primary Processing Which Are Neither Industrially Processed Nor Treated by Heat” (approved by Order of the RF Ministry of Agriculture of October 6, 2008 No. 453. Hereafter – the Veterinary Rules) prohibits export of animal products (including fish, other hydrobionts), products of their primary processing (including cooled, slightly frozen, deeply frozen products and caviar) by an organization which has not undergone a veterinary and sanitary examination. The assignment of a registration number is the result of successful veterinary and sanitary examination – necessary for

acquiring the right to the export of production – by the processing organization.

At the same time, the analysis of Order No. 453 and Letter No. 4/12141 has shown the following contradictions between them:

1) under Item 3 of Letter No. 4/12141, an organization processing caviar is given a seven-number registration code: the first two numbers are the code of the region, the next four numbers (the ordinal number and letter symbols) mean: I – an enterprise attested for the work with imported raw materials; E – an enterprise attested for export of its production. At the same time, Order No. 435 requires a four-number code for the organization processing caviar. Neither systemic interpretation of Order No. 435 and Letter No. 4/12141, nor search for any legal acts in the reference legal systems help eliminate this contradiction due to the lack of any other legal and technical rules;

2) under Item 1 of Letter No. 4/12141, veterinary and sanitary examinations of enterprises importing (exporting), processing, storing, transporting and selling hydrobionts, fish, seafood and any other products from them are conducted with the purpose of determining the suitability of veterinary and sanitary conditions as well as technological conditions for processing or storage of import raw in accordance with the existing veterinary and sanitary rules. However, the Letter is silent about what exactly is subject to inspection in the organization processing Russian raw materials for caviar export.

Item 1 of the Veterinary Rules emphasizes that these Rules are designed to ensure veterinary security in the Russian Federation but not in foreign states where the products will be exported. Consequently, the wording of the provisions of the legal acts causes ambiguity whether they are effective in respect to exporters of products produced from Russian raw materials. This ambiguity may be overcome by means of literal interpretation of Item 3 of the Veterinary Rules, under which the Rules provide for examination of both importers and exporters of animal products (including fish and other hydrobionts), products of their primary processing (including cooled, slightly frozen, deeply frozen products and caviar). We consider that the ambiguity revealed is the result of shortcomings of legal drafting.

The procedure of veterinary and sanitary examination to acquire the registration number by

¹ *Rossiyskaya Gazeta* – Russian Gazette. 2008. 19 November.

² Letter of the Federal Agency for Veterinary and Phytosanitary Supervision of December 1, 2008 No. FS-GK-4/12141 (available electronically). Access from “KonsultantPlus” database (accessed 14.02.2017).

an enterprise processing caviar is to be went through only once – with the first delivery of caviar for export. The necessity to go through this procedure is not directly connected with the signed foreign economic contract, and, therefore, it means that this procedure can be gone through before entering into the contract as well as after it. If there is no intention to conduct foreign economic activities, a Russian producer is not required to go through the examination and obtain the registration number; however, without the registration number, special marking cannot be put on the exported goods, which in this case will not be allowed to cross the border of the Russian Federation, and, consequently, the foreign economic relationship will not achieve its purpose. Moreover, the registration number is closely connected with the possibility of the exporter to fulfill its obligations before its counterpart, because a processing enterprise is prohibited to deliver its production beyond the territory of the Russian Federation without such an examination (Item 3 of the Veterinary Rules).

Thus, legal relations arising in connection with the veterinary and sanitary examination of the enterprise processing caviar for export beyond the territory of the Russian Federation are also an important constituent part of the complicated foreign economic relationship.

Analyzing the dynamics of the foreign economic relationship, we put this stage after the stage of obtaining the permit for export based on the following:

1) conducting common economic activities, it is not necessary to enter into legal relations occurring in connection with the veterinary and sanitary examination of the enterprise processing caviar for export beyond the territory of the Russian Federation. So, the exporter will not enter into such legal relations before concluding a foreign economic contract;

2) due to the lack of information on the official publication of Order No. 736, as well as the absence of its text in major legal reference systems, the exporter can learn about the necessity to obtain the registration number only after the request to the RF Federal Agency for Fisheries; and, consequently, the procedure to obtain the code (the veterinary and sanitary examination) can only be initiated after such a request to the Agency;

3) obtaining the registration code is a necessary requirement for special marking of the caviar package; but as the 9th Arbitration Appellate Court ruled in the above mentioned Ruling of August 30, 2010

in case No. A40-38157/10-79-204, “the requirements to the sturgeon caviar package marking ... are to be met only after obtaining the corresponding permit for export”.

Another stage in the development of the analyzed foreign economic relationship is obtaining the veterinary certificate for the exported from the Russian Federation fish, crayfish, shellfish, aquatic animals, and other objects of catching and products of their processing (form 5i)¹.

Items 14 and 15 of the Veterinary Rules provide for export of goods from the territory of the Russian Federation if the goods are produced by economic entities, checked according to the established procedure and recognized fully corresponding to the established requirements, and upon the written consent of the RF State Veterinary Inspector-in-Chief. To meet the said requirements, the RF Ministry of Agriculture issued Order of October 13, 2008 No. 462 “On Establishing Rules of Veterinary and Sanitary Expertise of Sea Fish and Caviar”² (hereafter – the Expertise Rules). Item 5 of the Expertise Rules states that if the results of the veterinary and sanitary expertise confirm the safety of fish and (or) caviar, the Federal Agency for Veterinary and Phytosanitary Supervision (Rosselkhoz nadzor) issues a veterinary accompanying document for each lot of fish and (or) caviar, in accordance with the Rules of issuing veterinary accompanying documents.

In 2010, the RF Federal Agency for Fisheries came to the conclusion that the functions performed by the Federal Agency for Veterinary and Phytosanitary Supervision under the Veterinary Rules and Expertise Rules are beyond the framework stipulated by the legislation, and the Rules themselves restrict rights of economic subjects to export and import of goods. Therefore, the RF Federal Agency for Fisheries asked the Federal Antimonopoly Service to analyze these Rules in terms of violating anti-monopoly legislation as well as Federal Law of July 26, 2006 No. 135-FZ “On the Protection of Competition” (hereafter – the Law on Competition) and make it possible to terminate the Veterinary Rules and Expertise

¹ The form of the certificate is established as Supplement 13 to Order of the RF Ministry of Agriculture of November 16, 2006 No. 422 “On Establishing Rules of Issuance of Veterinary Accompanying Documents” (hereafter – Rules of Issuance of Veterinary Accompanying Documents). *Bulletin of Normative Legal Acts of Federal Executive Bodies*. 2006. No. 52.

² *Rossiyskaya Gazeta* – Russian Gazette. 2009. 20 May.

Rules. The Federal Antimonopoly Service agreed to the arguments of the RF Federal Agency for Fisheries and came to the conclusion that, by issuing the Veterinary Rules and Expertise Rules, the RF Ministry of Agriculture violated Part 1 of Article 15 of the Law on Competition (RF FAS Decision of August 5, 2010 No. 1 15/5-10 in the case concerning the violation of antimonopoly legislation¹). However, considering case No. A40-137033/10-79-892, commercial courts of the Moscow District came to the conclusion that this ruling of the RF Ministry of Agriculture was passed in accordance with the current legislation and does not violate the legislation on the protection of competition². Consequently, nowadays to export sturgeon caviar beyond the territory of the Russian Federation, the exporter must obtain not only the consent to export from the RF Federal Agency for Fisheries but also the permission from the Federal Agency for Veterinary and Phytosanitary Supervision in the form of a veterinary certificate.

Under Item 1.3 of the Rules of issuing veterinary accompanying documents, it is necessary to obtain a veterinary permit for transportation of sturgeon caviar beyond the boundaries of the district (of the city) and for the caviar export beyond the territory of the Russian Federation – the veterinary certificate (form 5i). Item 2.10 specifically states that the form 5i veterinary certificates are issued for the goods exported from the territory of the Russian Federation instead of veterinary permits.

The provisions of the Rules of issuing veterinary accompanying documents on the necessity to obtain veterinary accompanying documents (both permits and certificates) in respect to caviar of any type have been challenged in the RF Supreme Court on the ground of the fact that caviar as a ready-made product which has been certified and produced in strict accordance with sanitary rules should not be subject to veterinary inspection. However, this appeal was dismissed according to

the Decision of the RF Supreme Court of May 14, 2007 No. GKPI07-80, remained unchanged by Ruling of the RF Supreme Court of July 31, 2007 No. KAS07-344³. Under Item 2.7 of the Rules of issuing veterinary accompanying documents, the exchange of veterinary permits to veterinary certificates shall be made within one day without the necessity to conduct the laboratory study of caviar.

Thus, though a producer of sturgeon caviar is obliged to obtain a veterinary permit for transportation of caviar for selling it on the Russian domestic market, for export of caviar it is necessary to obtain a veterinary certificate, an independent veterinary accompanying document; otherwise export of caviar beyond the territory of the Russian Federation shall be prohibited.

The exporter is obliged to obtain a passport of the transaction to make calculations under a foreign economic transaction with the value exceeding 50,000 US dollars at the official currency rate established by the Bank of Russia on the date of concluding the contract or, if the official currency rate is not established by the Bank of Russia, at the currency rate established by any other means recommended by the Bank of Russia. If the price of the transaction is less than 50,000 US dollars, a passport of the transaction shall not be obtained, but the resident of Russia is obliged to provide the authorized bank where the resident has the account with the certificate of currency operations and with documents connected with the currency operations mentioned in the certificate of currency operations⁴.

Under Article 20 of the Law on Currency Control, a passport of the transaction is an instrument of currency control and shall contain the information necessary to provide registration and reporting and to perform currency control over currency operations between residents and non-residents. Consequently, the necessity for a resident to enter into legal relations to obtain a passport of the transaction (as well as a certificate of currency operations) is determined by the resident's participation in foreign economic activities. Such legal relations will

¹ Decision of the Federal Antimonopoly Service of the Russian Federation of August 5, 2010 No. 1 15/5-10 in the case concerning the violation of antimonopoly legislation (electronically available). Access from "KonsultantPlus" database (accessed 14.02.2017).

² See: Decision of the Moscow Commercial Court of March 4, 2011; Rulings of the 9th Commercial Court of Moscow of July, 7 2011, RF FAS of September 28, 2011 in the case No. A40-137033/10-79-892; RF FAS Decision of August 5, 2010 No. 1 15/5-10 in the case concerning the violation of antimonopoly legislation (electronically available). Access from "KonsultantPlus" database (accessed 14.02.2017).

³ Access from "KonsultantPlus" database (accessed 14.02.2017).

⁴ See item 5.2 and item 2.1 of the Instruction of the Bank of Russia of June 4, 2012 No. 138-I "On the Procedure of Providing the Authorized Banks by Residents and Non-Residents with Documents and Information Connected with Currency Operations, on the Procedure of Obtaining Passports of Transactions as well as on the Procedure of Registering and Controlling Currency Operations by the Authorized Banks". *Bulletin of the Bank of Russia*. 2012. No. 48–49.

not occur in cases when there are no foreign economic activities.

The customs formalities concerning sturgeon caviar export are one of the last stages of the foreign economic relationship. Under Article 163 of the Customs Code of the Customs Union, in case of export of goods from the customs territory of the Customs Union, a person going through the customs formalities in accordance with the conditions of the foreign economic transaction shall submit to the customs body a customs declaration or any other document which allows for their export from the customs territory of the Customs Union, as well as documents and information provided for by the customs legislation. The Customs Code of the Customs Union pays special attention to the documents which confirm the compliance to the prohibitions and restrictions established for the circulation of particular goods. Departure of the goods from the customs territory of the Customs Union is only allowed with the permission of the customs body.

When the exported goods are being declared, customs bodies usually check not only the correctness of the declaration filled and the necessary fee paid but also the availability of all the documents necessary for the export of goods, the observance of all the restrictions applied in connection with the special protective, anti-dumping and compensatory measures, the observance of all the required procedures, including the procedures connected with the exercise of currency control (Art. 181 and 183 of the Customs Code of the Customs Union).

Pursuant to item 2 of Article 213 of the Customs Code of the Customs Union, goods placed under the customs procedure of export and actually transported from the customs territory of the Customs Union lose the status of goods of the Customs Union. It also means that as soon as goods are actually exported from the customs territory of the Customs Union, the foreign economic relationship regulated by the Russian law ceases to exist. By this time, the purpose of the legal regulation of such relationship by the law of foreign economic activities has been achieved: the definite object of civil rights has legally been withdrawn from the national economy; the only basic legal relationship which will exist is the relationship connected with the repatriation of foreign currency profit. The private

legal relationship formed by the foreign economic contract will, under the influence of public legal rules of the importing state, be transformed into the relationship regulated by the rules of foreign economic law of another state.

Under Article 19 of the Law on Foreign Currency Control, when conducting foreign economic activities, residents, unless stated otherwise, shall ensure within the time limits fixed in foreign economic agreements (contracts) the following:

1) the receipt of foreign currency or the currency of the Russian Federation under the terms of the said agreements (contracts) from non-residents to the accounts in the authorized banks for the goods passed over to non-residents, for services provided, for information or results of intellectual activity, including exclusive rights over them;

2) the return to the Russian Federation of the money paid by non-residents for the non-imported to the territory of the Russian Federation (not received in the territory of the Russian Federation) goods, unperformed work, services not rendered, information or results of intellectual activity not passed over, including exclusive rights over them.

The basic legal relationship on the return of foreign currency profit may cease by the moment sturgeon caviar is actually taken away from the customs territory of the Customs Union or it may continue after sturgeon caviar is exported. In this case, the legislator provides the parties to the foreign economic contract with the right to determine themselves when this obligation shall be fulfilled.

Conclusion

Thus, by the example of the dynamics of the foreign economic relationship on sturgeon caviar export we have proved that this relationship is a combination of a civil relationship on the export of sturgeon caviar and some subsidiary public and private relations, entering into which is obligatory for the exporter and only in some cases also for the importer. However, without the proper performance of obligations within the frameworks of subsidiary relations, the civil legal relationship cannot be realized.

Consequently, the set of the analyzed relations may be viewed as a complex type of relationship because all these relations are interconnected and united by one common goal – to fulfil a foreign economic transaction.

Foreign economic relationship has a dynamic structure and the performance of the civil legal relationship is closely interconnected with the proper fulfilment of obligations by one of the parties under the subsidiary public and private relations. Moreover, the system of foreign economic relationship includes subsidiary legal relations which can have not only an accompanying role but also predetermine the development of the major relationship: these are the relations on establishing quotas and applying special protective, anti-dumping and compensatory measures.

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