

Russian coast shall not attract them

Free interpretation of the law by the customs officers lead shipowners to the court sessions

Yuriy Nurmuhametov

“Zolotoy Rog”, No. 72, 2005.



Shipowners are ready to return vessels to Russian docks. If they are met half-way.

Prospects of the Russian fleet return to the home flag have been discussed for many years already at different levels. However the majority of vessels work under the flags of convenience still and acceptance of international ship register is expected not earlier than next year and port and customs fees remain almost the highest in the world.

Since this year customs officers in the ports of Primorsky region began to take customs fees and VAT from owners of those vessels that returned from abroad repair. VAT for these vessels means headache for shipowners that pursue them from the middle of the 90s. To look after officers' logic let's make digression to recent times.

After collapse of large shipping enterprises process of new companies formation began. Administrations of new companies considered that if their state would not require them to have repair near native coasts they would quietly do it in those countries where it is economically favorable. After that domestic ship repair enterprises ran into stagnation and foreign shipyards got constant Russian clients.

“Old wording of the Customs Code of the Russian Federation as well as its new wording provided necessity for collection of customs fees at the rate of: 5% - customs fees and VAT (18% from the cost of repair fulfilled in a foreign port)” - senior lawyer from Judicial Company “Inmar” Artem DEINEGA makes his comments. “Logic of this norm is simple: making shipowners have repair in Russia. Thus “scheduled” and “current” repair were not imposed with dues and taxes as world experience of agency services showed that it was not necessary to drive the vessel from the other part of the world to the native harbor to be painted.

You see, even during Soviet times container ships working near Indonesia or Australia did not go Primorsky region to be repaired but entered Singapore docks”.

Expensive native land

The first results of these customs fees collection had simply ended in termination of vessels bringing to the Russian ports by those shipowners who had constant repairs abroad. No slogans about patriotism could force business to bear additional costs having no justifications.

“Fishing companies suffered from it most of all” - Alexander PLATONOV, vice-president of Association of Fishery Enterprises in Primorsky region states. “Fishing companies have such distinguishing feature: they have their vessels repaired between fishing seasons. Total number of fishing vessels in the Far East amounts to almost 2000 units. Ship-repair infrastructure today has no space capacity to take all vessels at local building berths. Taking into account the fact that besides that price policy is milder abroad, many companies had fairly decided that foreign repair is completely justified from the point of view of cost reduction. And when officers began imposing it with taxes and dues they regarded it as administrative pressure upon fishermen. Nobody understood why they should give money for repair in a foreign port that allowed their vessels conduct further professional activity”.

Fortunately for shipowners State Customs Committee of the Russian Federation issued Regulation No. 419-p in 2002 according to which vessel that had been repaired in a foreign port was subject to be imposed with customs dues only if book value of this vessel changed as a result. Thus, shipowners managed to prove necessity of delivery from these dues. As a result since 2002 customs payments were not charged if a vessel was not modernized or re-equipped during foreign repair and if book value of this vessel did not increase as a result.

“However in 2005 Federal Customs Service of the Russian Federation (FCS of the RF) issued and sent to all Russian customs letter with free interpretation of effective Customs Code of the Russian Federation regarding registration of transport facilities including transport facilities brought back after repair performed at them outside the customs territory of the Russian Federation”, - Victor POMELOV, director of legal department at the Far-Eastern Shipping Company, states.

Kamchatka freethinkers

“History of this free interpretation began from Kamchatka customs, - Artem DEINEGA says. – Repair in Russia did not suit Kamchatka fishermen neither as for terms nor quality. They repaired their trawlers mainly in China or Korea. When they called at Petropavlovsk-Kamchatsky port they had to pay customs dues in connection with repair they made. Therewith customs officers were not interested much in the fact that they violate Article 276 of the Customs Code. And you see it includes explanatory of repair essence. In case of condition “Temporary export” customs dues and taxes shall not be paid at back import if repair at the vessel just included operations required for maintenance of its safety and work and also keeping it in such state it was as of the date of placing it under customs condition “Temporary export”. For legal purposes customs officers try to prove that each unit of ship equipment that had been repaired is not that unit it was before it. It is logical in principle, but why they forget that repair is intended for vessel’s possibility of work solely, i.e. with the purposes of safety and operation of the vessel and maintenance of navigation safety. If repair resulted in such changes as modernization, re-equipment or reconstruction, customs dues are to be paid surely but availability of such changes should not be stated by customs authorities at their own discretion, but by the bodies technical supervision of the vessels on the basis of accepted standards (GOST). One cannot say about changes in technical condition of the vessel if it was painted, presented to classification society and if rapidly wearing elements were replaced during repair. These works are directed to maintenance of vessel’s operation features. The vessel can simply be lost with its cargo and crew without these works. This situation forced shipowners to apply to arbitration courts for protection of their violated rights”.

Decision of Arbitration Court in Kamchatka region in favor of Limited Liability Company “Fish Reign” in which applicant asked to consider void Kamchatka customs’ requirements concerning payment of customs dues, VAT and fine for delayed performance of customs payments became a precedent of sorts. The court agreed that repair of the vessel was necessary for safety and operation, and recognized and cancelled requirements of payment dated November 24, 2004 as inconsistent with the Customs Code of the Russian Federation.

It turns out that as far back as at the end of 2004 arbitration court determined how to treat the main customs law but Federal Customs Service has decided, probably, to ignore arbitration practice. How can one in another way explain appearance of letter No. 27-09 6560 dated June 28, 2005 of the Federal Customs Service that had been already mentioned above? In this letter lawyers from the Federal Customs Service order all Far-Eastern customs (except for Kamchatka customs) to treat Article 276 of the Customs Code of the Rus-

sian Federation in such a way as their colleagues from Kamchatka did. That is any foreign repair must be imposed with customs dues and VAT. In this document they explain the reasons for “puzzling” shipowners with the new payments.

Let’s quote a phrase from this letter: “exemption of tax dues and taxes is connected with the fact that fulfillment of these repair operations shall not have serious economic influence on competitiveness of Russian organizations giving similar services”.

Simple truth is hidden behind this intricate phrase. If we have competitiveness from the part of foreign ship yards, shipowners will never see customs privileges.

Customs patriotism

We can just guess where from customs got such an aspiration to defend domestic ship repair with might and main. Maybe, customs generals looked at empty docks of the Russian ship yards and planned to change this situation with their heroic efforts or they took the opportunity to increase showings concerning collection of payments?

“Explanations stated in the letter of the Federal Customs Service do not correspond to Article 276 of the Customs Code of the Russian Federation and to the other Russian legislative acts. The letter was issued with exceeding of the limits of authority of the Federal Customs Service of the Russian Federation. In fact it makes amendments to the Customs Code of the Russian Federation depriving the shipowners of the right not to pay customs dues for repair. Taking into account provisions of the stated letter from the Federal Customs Service of the Russian Federation, at present almost any repair in a foreign port (irrespective of its volume) is to be imposed with customs dues at the rate of 5% (customs duty) and 18% (VAT) from the cost of any repair. Russian shipowners have only one way out: to appeal against illegal actions in courts and to bring actions against customs bodies concerning losses sustained because of illegal actions of both customs officials and customs bodies”, - Artem DEINEGA thinks.

Many companies follow lawyers’ advice already. Shipping companies do not want to lose millions because customs officers interpret laws at their own discretion. Customs officers’ zeal is too expensive for them. Minimum repair costs from 100 thousand dollars to 500 thousand dollars on the average for these companies (depending on vessel’s class and size). It is easy to suppose that shipowners will give Russia a cheery wave again. And those whose vessels will have to call at home ports will run to the court at once. As Primorsky Shipping Company does today, for example. According to representatives of the company, Primorsky Shipping Company brought several actions to Arbitration court of Primorsky re-

gion at once as for groundlessness of Nakhodka customs requirements concerning payment of VAT and customs dues for 6 vessels repaired abroad.