

CONTROL AFTER THE RELEASE OF GOODS: OBJECTIVES, FORMS, METHODS OF CUSTOMS INSPECTION.

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Abstract- Annotation to the article: The article provides a comparative analysis of the forms of customs control after release of goods based on the analysis of normative documents of the Customs Union. It also determines the value and efficiency of desk and field customs inspections and reveals similarities and differences in the order of their conduct.

Keywords- Customs Control After Release of Goods, Customs Inspection, Risk Management System.

I. INTRODUCTION

The rapid development of international trade, the growth of foreign trade turnover of the Russian Federation, Russia's participation in international trade and customs organizations, the adoption of main international customs conventions require the Customs Service of the Russian Federation to use new approaches to the organization of customs control. These new approaches involve simplification of customs procedures for the movement of goods across the customs border, reducing the period of their implementation and transfer of the main load of customs control to the subsequent period of commodities circulation.

That is why since 2011 significant efforts of customs authorities of the nation were aimed at creating favorable conditions for the development of foreign trade and economic activities by improving customs operations. The priority areas are following: optimization of control procedures, expansion of the field of modern customs information technologies application, development of cooperation with the customs services of the countries participating in the Customs Union and other partners in foreign economic relations to simplify customs procedures, reduce the time for customs declaration while increasing the efficiency of customs control.

Implementation of measures to simplify customs procedures, as well as the introduction of electronic declaration contributed to the expansion of the scope of the customs control after the release of goods. Customs control after the release of the goods can resist violation of applicable laws by traders, without creating additional difficulties in trade relations with foreign partners. By now the control activities of the customs authorities actually moved from the stage of the customs declaration to the control after release of the goods.

In turn, the main form of customs control after release of goods, allowing a comprehensive check of the compliance of foreign economic activity (FEA)

participants to the customs legislation, is a customs inspection. The latter among other things reduces the number of operations by customs authorities at the release of goods, thereby contributing to the acceleration of turnover and to costs reduction both by customs authorities, and foreign trade subjects.

Customs inspections under customs control after the release of the goods are an integral part of the customs authorities' activities in the context of implementing the risk management system. Customs inspections are carried out on a mandatory basis, and their main task is to identify violations of customs legislation by traders.

Customs Code of the Customs Union (hereinafter – the Code) provides for two forms of customs inspection: desk and field inspection, which, according to the Code, differ from each other by the method and the nature of its conduct.

The objectives of our study are to find out what is a customs inspection in practice? Is there a significant difference between the two forms of customs inspection? In fact, it is often found that what is written in the law, does not always work in practice. For example, so it was with “customs revision”, established by the Customs Code of the Russian Federation, which was in force before the establishment of the Customs Union. The Code provided for two forms of revision: general and specific, but in fact, they did not differ by the subject and order of their conduct¹.

Before finding out whether the two forms of customs inspection repeat the experience of the two forms of customs revision or not, it should be recalled what is a customs inspection in general, and what is its

¹ Customs Inspection and Customs Revision [electronic resource] // Customs Broker: information portal.
URL: <http://www.brokert.ru/material/tamozhennaya-proverka-reviziya> (date accessed: 02. 04. 2014).

procedure. The essence of financial and economic activity inspection is to identify the facts of reduction (non-inclusion) of customs duties, misuse of the rules of accounting documentation, non-compliance with customs legislation in the financial statements of the companies participating in FEA². During the inspections supervisors also reveal cases of illegal acquisition of benefits. This is achieved by analyzing the misuse of the goods at the import of which the object of the inspection has been granted privileges on payment of customs duties.

In addition, customs inspections can reveal violations of currency legislation by the inspection objects, including complete or partial lack of charges on foreign currency earnings. The unreliable statements of the commodity codes in accordance with Commodity Nomenclature of FEA and of the country of origin are also identified as well as the goods are found which were imported in Russia bypassing customs controls³. Thus, the customs inspection is designed to be an effective tool to identify various violations of the customs legislation by the subjects of foreign trade.

Customs legislation defines the grounds for inspection. As those can be considered the information obtained by the customs authorities, and revealing signs of violation of customs regulations, including data on the location, method and date of their commission.

The Code (paragraph 4 of Article 132) lists the grounds for carrying out of the unscheduled customs inspections. They are:

- 1) the data obtained through the analysis of the information contained in the databases of the customs authorities and state control (supervision), and other evidence of a possible violation of the customs legislation;
- 2) application of the person, including one carrying out activities in the field of customs, for the status of authorized economic operator;
- 3) the need for a counter-exit customs inspection;
- 4) application of the competent authority of a foreign country to conduct the examination of a

² Malahina E. Checking FEA Participant [electronic resource] // Alta-Soft: information portal. All for declarants and traders. URL: http://www.vch.ru/cgi-bin/guide.cgi?table_code=30&action=show&id=20 (date accessed: 04/05/2014).

³ Seleznev V.I. Issues of Customs Control after Release of Goods [electronic resource]: Expert opinion // Alta-Soft: information portal. All for declarants and traders, 14.04.2012. URL: http://www.alta.ru/expert_opinion/25374 (date accessed: 02/04/2014).

person committing foreign economic transactions with foreign entities⁴.

Article 161 of the Federal Law No. 311 "On Customs Regulation in the Russian Federation" provides an additional basis for an unscheduled inspection – the expiry of the term for the inspected entity to eliminate its previously identified violations of the customs legislation of the Customs Union and (or) the law of the Russian Federation, mentioned in the notification of the customs authority with the requirement to eliminate these violations⁵.

According to experts, the reasons for the inspection of financial and economic activities of the enterprise participating in FEA may be different. First of all this is the information obtained from various sources which can be divided into formal and informal ones. It can be obtained from individuals and legal entities (e.g., competitors or enemies), from the media (reporting corruption or illegal activities of any company or firm). There are cases when the idea of inspection arises from the content of promotional offers. For example, so it was with one well-known company, importing a particular product and declaring it as a cheap waste. Since it has established itself as a bona fide trader, customs authorities had no claims to the company, and its products were not subjected to a thorough inspection. However, after some time, the customs officer found in one ad annex the familiar name of the firm and the information that it bought up waste overseas that wasn't specified in the declaration. This led to customs inspection and to subsequent bringing to responsibility of the owner of the company in connection with the commission of a customs offense⁶.

In addition to these informal and even indirect sources, there are official information occasions to customs inspections. They are carried out after the

⁴ Customs Code of the Customs Union [electronic resource]: Resolution of the Interstate Council of the Eurasian Economic Community of 27.11.2009 № 17 (as amended. 16.04.2010) // Consultant Plus: Supplemental legal system. URL: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=100808> (date accessed: 09/03/2014).

⁵ On Customs Regulation in the Russian Federation [electronic resource]: Federal Law of 27.11.2010 № 311 (as amended. From 12.03.2014) // Consultant Plus: Supplemental legal system. URL: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=160128> (date accessed: 03/07/2014).

⁶ Malahina E. Checking FEA participant [electronic resource] // Alta-Soft: information portal. All for declarants and traders. URL: http://www.vch.ru/cgi-bin/guide.cgi?table_code=30&action=show&id=20 (date accessed: 04/05/2014).

receiving of the respective materials by the customs authorities from law enforcement, regulatory and other government agencies. The inspection of the company that specializes in brokering can be an example. In order to minimize costs the firm smuggled certain materials, which were then sold to a factory, which made some products from these materials. Tax inspector, routinely checking the factory activity for payment of the VAT, found that the purchase prices of raw materials were suspiciously low and that premium products were made there from low-grade raw materials. The tax office informed the appropriate authorities on all this, including the customs authority, which carried out an unscheduled inspection.

As noted above, there are two forms of customs inspection according to the Code: desk and field inspection, and the order and the form of both are defined in the regulations. In order to determine whether there is a significant difference between them, an analysis of these regulations was conducted.

Thus, the order of their conduct is represented in the following form. In accordance with Article 131 of the Code cameral customs inspections are being carried out through examining and analyzing the information contained in customs declarations, commercial, transport (shipping) and other documents submitted by the inspected entity; the information of the controlling governmental bodies of the countries participating in the Customs Union; other documents and information on the activities of inspected entities, institutions and organizations, available to the customs authorities. This is a fairly new form of customs control, as it appeared in 2010 with the adoption of the Customs Code of the Customs Union⁷. This form of customs control hadn't been applied before.

Cameral customs inspections are being carried out at the location of the customs body without departure to the inspected entity, at the request of the chief of customs, but without issuing regulations (the act of appointment checks). Such inspections are being carried out for an indefinite time period⁸. There is a

possibility that the terms of cameral customs inspections will be established in the future, due to the need for creating a favorable environment for traders.

In the course of cameral customs inspections the requests can be made to other public authorities, such as the tax office.

As practice shows, cameral customs inspections are being carried out more frequently than the exit customs inspections, and their most common result is the identification of the wrong Commodity Nomenclature codes. That can be confirmed by the following example. In the electronic declaration submitted to the customs authorities the goods being declared were "legs for furniture", and its classification code defined by the declarant was 830342 000 9, that meant mountings, fittings and similar articles of non-precious metals, used for furniture which would mean paying a lesser tax.

The control in the form of cameral customs inspection carried out by the customs authority after the release of the goods led to the conclusion on "statement of unreliable information on the classification code and the need to classify goods under the Commodity Nomenclature of FEA heading 9403" and apply appropriate sanctions to the violator⁹.

The conduct of the exit customs inspection differs from that of the desk inspection. Thus, the number of the entities that are being checked in the course of customs inspection is smaller. It can be carried out only in relation to legal entities and individual entrepreneurs. In accordance with the Article 132 of the Code the customs inspection can be carried out by the customs authority with a departure to the place of registration of the legal entity or individual entrepreneur, or to the place of actual implementation of their activities. It allows not only the inspection of the documents and information (commercial, transport documents), concerning import and release of goods, but also the inspection of the documents and information relating to the circulation of the goods after their release (accounting, commercial and transport documents relating to the sale of goods in the territory of the

⁷ Customs Inspection and Customs Revision [electronic resource] // Customs Broker: information portal.

URL: <http://www.brokert.ru/material/tamozhennaya-proverka-reviziya> (date accessed: 02. 04. 2014).

⁸ Customs Code of the Customs Union [electronic resource]: Resolution of the Interstate Council of the Eurasian Economic Community of 27.11.2009 № 17 (as amended. 16.04.2010) // Consultant Plus: Supplemental legal system. URL: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc; base=LAW;n=100808> (date accessed: 09/03/2014).

⁹ Information on the Activities of the FCS of Russia [electronic resource]: Overview of Practice of the Russian FCS Dealing with the Complaints of the Individuals and Entities on the Decisions, Actions (Inaction) of the Customs Authorities in the Field of Customs for 2013: (from 04.22.2014) // Federal Customs Service.

URL: http://www.customs.ru/index.php?option=com_content&view=article&id=19253:-2013-&catid=353:2012-11-28-08-10-27&Itemid=1830 (date accessed: 09/11/2014).

Russian Federation) that are not provided at placing the goods under the customs procedure¹⁰.

According to paragraph 2, Article 132 of the Code the exit inspection may be scheduled and unscheduled¹¹. The first of them is carried out in accordance with the plans of inspections developed by the customs authorities and submitted on the official website of the FCS of Russia. In this case, the Customs Code of the Customs Union does not specify the reasons for the inclusion of certain objects in the inspection plan, leaving the matter within the competence of the customs authority. Practice shows that the basis for inclusion in the inspection plan are the results of the analytical work of the customs authority with the information it had received from various sources, as well as monitoring of the data on offenses committed in the customs activities¹².

In addition, the exit customs inspection, both planned and unplanned, may be appointed as a result of the use of other forms of customs control, as well as the result of cameral customs inspection¹³.

Carrying out of exit customs inspections requires from the inspectors not only the knowledge of the customs, foreign trade, and civil law, but also a high level of knowledge of accounting, tax, and foreign currency accounting. These knowledge and skills are necessary for customs officials who perform the exit customs inspections as to establish violations of customs laws. They have to check the reflection of economic operations with imported goods in the

accounts, correspondence accounts, their compliance with accounting policies, etc.

It should be kept in mind that the customs inspection must be appointed in accordance with the principle of random selection of the objects of customs control based on risk management and only if there is a violation of the customs legislation. Thereby the unjustified interference in the activities of traders can be eliminated. It also means that the customs authorities don't deal with the problem of total control.

As for the timing of the exit inspections, the Code sets limits to the frequency of such inspections. According to paragraph 7, Article 132 of the Code the scheduled exit customs inspections are being carried out not more than once a year in respect of the same inspected entity. Scheduled exit customs inspections are being carried out by the customs authorities in respect of the authorized economic operators once every three years. Unscheduled exit customs checks can be carried out without restrictions of periodicity of their conduct¹⁴.

The term of the exit customs inspection shall not exceed two months and may be extended for one more month by the resolution of the customs authority conducting the inspection¹⁵. Roughly the exit customs inspection can be divided into several stages. First, the customs authority conducts preliminary analytical work, the results of which define whether the customs inspection is appropriate or not. In case of the order by higher customs body the preliminary work is not being carried out¹⁶.

At this stage, the customs authorities monitor traders on the subject of their stated customs

¹⁰ Customs Code of the Customs Union [electronic resource]: Resolution of the Interstate Council of the Eurasian Economic Community of 27.11.2009 № 17 (as amended. 16.04.2010) // Consultant Plus: Supplemental legal system. URL: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc; base=LAW;n=100808> (date accessed: 09/03/2014).

¹¹ Customs Code of the Customs Union [electronic resource]: Resolution of the Interstate Council of the Eurasian Economic Community of 27.11.2009 № 17 (as amended. 16.04.2010) // Consultant Plus: Supplemental legal system. URL: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc; base=LAW;n=100808> (date accessed: 09/03/2014).

¹² Seleznev VI Issues of Customs Control after the Release of the Goods [electronic resource]: Expert Opinion // Alta-Soft: information portal. All for declarants and traders, 14.04.2012. URL: http://www.alta.ru/expert_opinion/25374 (date accessed: 02/04/2014).

¹³ Customs Inspection and Customs Revision [electronic resource] // Customs Broker: information portal. URL: <http://www.brokert.ru/material/tamozhennaya-proverka-reviziya> (date accessed: 02. 04. 2014).

¹⁴ Customs Code of the Customs Union [electronic resource]: Resolution of the Interstate Council of the Eurasian Economic Community of 27.11.2009 № 17 (as amended. 16.04.2010) // Consultant Plus: Supplemental legal system. URL: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc; base=LAW;n=100808> (date accessed: 09/03/2014).

¹⁵ Customs Code of the Customs Union [electronic resource]: Resolution of the Interstate Council of the Eurasian Economic Community of 27.11.2009 № 17 (as amended. 16.04.2010) // Consultant Plus: Supplemental legal system. URL: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc; base=LAW;n=100808> (date accessed: 09/03/2014).

¹⁶ On Approval of the Actions of Customs Officials during the Customs Control in the Form of Customs Inspection [electronic resource]: Order of the Federal Customs Service of Russia from 06.07.2012, N 1373 // Consultant Plus: Supplemental legal system. URL: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc; base=LAW;n=132537> (date accessed: 03/07/2014).

procedures, commodity groups, commodity subheadings, and the country of origin.

According to the results of the monitoring and analysis potential risks are being identified, as well as proposals for customs control after the release of the goods are being prepared.

In addition to monitoring, the inspection is being conducted regarding commercial, accounting and other documents relating to foreign trade and the subsequent operations with the goods. In this case, the inspections are being carried out in respect of: 1) the accounting policies of the inspected FEA entity, the working chart of accounts, the existing workflow, the identification of the specificity of the accounting business operations and its compliance with legislation and international rules; 2) the documents relating to the conduct of import activities; 3) the information on the transfer of ownership in the commission of import operations; 4) further movement of goods; 5) operations on the movement of goods (for disposal, sale) in the accounts; 6) the movement of funds in the appropriate accounts, funds transfer, and so on¹⁷.

Compulsory at the preliminary stage of the inspection preparation is to identify the reputational characteristics of the inspected entity (the duration of the exercise of economic activity, lack of a breach of customs legislation within a certain time, and others.)¹⁸.

Preparatory work precedes the customs inspection and is carried out in a minimum time period not exceeding 15 working days from the date of the decision to conduct the examination. In this process, the list of issues to be examined is also being determined. If necessary, a program of its implementation can be designed by the decision of the head of the customs authority authorized unit¹⁹.

Considering the preliminary stage of the customs inspection, one can find that the difference between the analytical and preparatory work is very insignificant. All the necessary operations, including preparation, are being carried out in the course of analytic work.

For the exit customs inspection a commission is being formed by the customs authority, its head is being appointed, which organizes the preparation and conduct of the inspection, sets deadlines, and identifies necessary actions (examination, control)²⁰. The inspection itself starts after the presentation of the decision on the conclusion of preparatory work by the head of the commission²¹.

A distinctive feature of the exit customs inspection is the examination of premises and territories occupied by the inspected entity (Clause 1, Article 119 of the Code). This type of customs control can be carried out only in the course of exit customs inspection.

For example, an individual entrepreneur was engaged in selling of technical information carriers, as well as of other non-food items. South operational customs office received the information about the sale of mobile devices "Apple" and "Samsung" on the domestic market in violation of customs legislation.

In the course of the analysis of the information it was found that at the individual entrepreneur site the clients were offered mobile phones, tablet computers, including those of trademarks "Apple" and "Samsung". However, according to the information provided on the official website of the company "Apple Inc." in the Russian Federation, this entrepreneur wasn't on the list of "Apple Inc." authorized service representatives (including retailers) or authorized distributors in Rostov-on-Don.

¹⁷ Guidelines for the Customs Control after the Release of the Goods [electronic resource] // Eurasian Business Council: Legal Consultative resource. URL: http://www.customs-union.com/sites/customs-union.com/files/images/rekomendacii_pismo_fts_rf_ot_31_oktyabrya_2013_g_n_23-20_49026.pdf (date accessed: 04/06/2014).

¹⁸ Guidelines for the Customs Control after the Release of the Goods [electronic resource] // Eurasian Business Council: Legal Consultative resource. URL: http://www.customs-union.com/sites/customs-union.com/files/images/rekomendacii_pismo_fts_rf_ot_31_oktyabrya_2013_g_n_23-20_49026.pdf (date accessed: 04/06/2014).

¹⁹ On Approval of the Actions of Customs Officials during the Customs Control in the Form of Customs Inspection [electronic resource]: Order of the Federal

Customs Service of Russia from 06.07.2012, N 1373 // Consultant Plus: Supplemental legal system. URL: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=132537> (date accessed: 03/07/2014).

²⁰ On Approval of the Actions of Customs Officials during the Customs Control in the Form of Customs Inspection [electronic resource]: Order of the Federal Customs Service of Russia from 06.07.2012, N 1373 // Consultant Plus: Supplemental legal system. URL: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=132537> (date accessed: 03/07/2014).

²¹ On Approval of the Actions of Customs Officials during the Customs Control in the form of Customs Inspection [electronic resource]: Order of the Federal Customs Service of Russia from 06.07.2012, N 1373 // Consultant Plus: Supplemental legal system. URL: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=132537> (date accessed: 03/07/2014).

During the customs inspection the customs officers carried out the examination of the premises and territories owned by the individual entrepreneur. In the course of the examination of the premises the mobile devices “iPhone 5S”, “iPhone 5C”, “iPad mini”, “iPad Air”, the copyright holder of which is the company “Apple Inc.”, and one cell phone “Galaxy S4” marked “Samsung”, the copyright holder of which is the company “Samsung Electronics CO., LTD.”, a total of 40 pieces, were found there.

According to the information received from the company “Apple Rus”, which is the only official importer of the goods marked with the trademark “Apple” into the Russian Federation, and performs import of mobile phones “iPhone” into the customs territory of the Customs Union, the goods found at the site of the above mentioned trader, were the original products of the company “Apple Inc.” However in this case the “Apple Rus Ltd.” did not carry out the customs declaring and the importation of these phones into the territory of the Customs Union. These phones had letter combinations in the name of the lot which indicated that they were intended for sale in the United States and Hong Kong.

According to the information provided by the “SRSS LLC” which is a legal entity established by “Samsung Electronics CO., LTD.” in the Russian Federation, it was found in the course of the inspection that it was an original product of «Samsung» company.

The inspection found that the above mentioned individual entrepreneur possessed no documents on the mobile phones and computers, despite the fact that the deadline for submission of these documents was extended repeatedly on his appeals. Based on the test results Head of the Southern Customs Administration decided to initiate the calculation and collection of unpaid customs duties with the individual entrepreneur as a person who has acquired illegally imported goods, having information about the illegality of their entry²².

In addition to the exit customs inspection the counter-exit customs inspection can be assigned if it is necessary to validate the information provided by the inspected entity. This inspection is being carried out in respect of the entities related to the entity being checked during the inspection through transactions in

goods. It is unscheduled, of course²³. For example, company A sells goods to company B. In the course of inspection of the company B customs authority may request the documents confirming the transaction, from the company A. However, in this case, the company A has the right to refuse the request to provide documents for review. Then, if necessary, the customs authority draws up a report on the inspection of the company A., and then in a similar way conducts the unscheduled exit customs inspection of this object too.

Counter-exit customs inspection is carried out in the same manner as the customs inspection. Common and different features of the two types of customs inspections after the release of goods identified by us are shown for clarity in Table 1.

Table 1. Comparison of cameral customs inspection and exit customs inspection

	Cameral customs inspection	Exit customs inspection
Objective	Compliance with the requirements established by the customs legislation	Compliance to the requirements established by the customs legislation
Subject	Department of customs control after the release of the goods	1. Department of customs control after the release of the goods. 2. Involvement of experts: departments of the customs value control, operational and investigative department, the Commodity Nomenclature and the origin of the goods departments

²² Judicial Practice [electronic resource]: Appeal Definition of the Rostov Regional Court on 18.08.2014 in the Case of N 33-10002 / 2014 // Consultant Plus: Supplemental legal system. URL: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc; base=SOJ;n=969583> (date accessed: 18/09/2014).

²³ On Approval of the Actions of Customs Officials during the Customs Control in the Form of Customs Inspection [electronic resource]: Order of the Federal Customs Service of Russia from 06.07.2012, N 1373 // Consultant Plus: Supplemental legal system. URL: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc; base=LAW;n=132537> (date accessed: 03/07/2014).

Object	All traders. Issues to be inspected	Legal entities and individual entrepreneurs. Issues to be checked
Content	Study and analysis of the information contained in customs declarations, commercial, transport (shipping) and other documents	Inspection of the customs, accounting, commercial and transport documents. Inspection, examination
Venue	Without going to the inspected entity; without issuing regulations (the instrument of appointment checks)	With the departure to the place of registration of the legal entity, to the place of business of an individual entrepreneur
Periodicity	Carried out without restrictions of their periodicity	Scheduled: no more than once a year. Scheduled (for authorized economic operators): once in three years. Unscheduled: unlimited frequency of inspections
Timing	Carried out without restrictions of their periodicity	Shouldn't exceed 2 months, may be extended for another month
Result	Exit customs inspection may be initiated	Counter-exit customs inspection can be assigned. Decision-making by the customs authority (to adjust the vehicle, classification, etc.) Administrative, criminal proceedings

Thus, analyzing the information about the form of the customs inspection, one may conclude that there are two forms of it which are distinctly different in the nature of their appointment and conduct. They differ in content, in terms of the inspectors' powers, as well as in terms of their timing, etc. But if one thinks about them and evaluates their practical implementation, it is possible to conclude that in reality these two forms are but one. Cameral customs inspection is essentially the initial stage of the customs control after the release of the goods, which under certain grounds transforms into the second stage, i.e., in the exit customs inspection. Therefore, the advisability of a normative establishing of the two forms of customs inspection should be considered.

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