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TARIFF, NON-TARIFF AND TECHNICAL REGULATION WITHIN THE CUSTOMS UNION IN THE POST-BALI PERIOD AS A PART OF SUPPORTING ECONOMIC SECURITY OF THE REGIONAL ASSOCIATION OF STATES

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Abstract

The main points of this paper were presented at the first Global Conference of the International Network of Customs Universities on May 21-23, 2014 in Baku, the Azerbaijan Republic.

The paper deals with the state regulation of foreign trade relations in the Customs territory of the Customs Union within the Eurasian Economic Union, which is based on the tariff and non-tariff practices and is an element of ensuring the economic security of the regional association of states. The author describes in detail the principles of tariff regulation of foreign trade, characterizes the Common Customs Tariff of the Customs Union, the types of import duties, the mechanism of their entry and distribution, the Single Foreign Economic Activity Commodity Nomenclature of the Customs Union, the unified system of tariff preferences of the Customs Union, the principles of determining the Customs value of goods.

The author also analyzes a range of measures to regulate foreign trade in goods, which are carried out by quantitative and other prohibitions and restrictions of economic nature. In particular, the paper describes such non-tariff methods of regulation used throughout the Customs Union and the Common Economic Area and customary in the international trade as: measures of direct restrictions related to quantitative controls (quotas, countervailing duties and levies, anti-dumping duties) and measures of indirect restrictions (labeling requirements, delivery of goods at certain checkpoints, introduction of Customs and other formalities, sanitary and veterinary standards). The author considers the principles of non-tariff regulation in respect of the importation of goods into the common Customs territory and their export from this territory as well as characterizes the licensing regulations and rules of origin.

The paper describes a variety of non-tariff conditions and requirements for goods: special requirements for goods conformity with technical specifications and standards; use of appropriate procedures for goods technical testing and certification; special requirements for marking and labeling of goods; sanitary, veterinary and phytosanitary requirements.

The author also considers issues related to the legal framework of the tariff, non-tariff and technical regulation of foreign trade within the Customs Union.

Keywords: foreign trade, tariff regulation, non-tariff methods of regulation, prohibitions and restrictions, licensing regulations, rules of origin, technical regulation, legal framework, the Customs Union, the Eurasian Economic Union, the Common Economic Area, the regional association of states.

Introduction

The Doha round of negotiations launched in Qatar in 2001, the Ministerial Conference of the World Trade Organization (further – WTO) held in Bali in December 2001, which addressed the most important issues of agreement on the liberalization of trade and Customs regulation, regional integration, non-discrimination, transparency, openness, fairness and pillar on the rules of trade, monitoring of security protectionist measures through the WTO mechanisms, identified areas to strengthen the multilateral trading system as well as prepare the post-Bali action program. At the same time, the dialectics of the development of a regional economic integration leads to strengthening the role of states' and regional organizations' economic security issues. This contradictory process requires an objective consideration of the parties' interests as well as compromise, consensus and cooperation.

The state regulation of foreign trade relations throughout the Customs territory of the Customs Union within the Eurasian Economic Community (further - EurAsEC) is based on the use of tariff and non-tariff methods. Of the three states in the EurAsEC, Russia is a member of the WTO, Kazakhstan came close to accession, Belarus is in the process of negotiations. The Customs Union's tariff regulation of foreign trade is carried out by the Eurasian Economic Commission.

1. The tariff methods of foreign trade regulation in the Customs Union

The tariff methods aimed at regulating foreign trade through a system of Customs duties established by the Common Customs Tariff of the Customs Union, which is a list of Customs duties rates applied to the goods imported into the Customs territory of the Customs Union.

The tariff regulation of foreign trade performs both fiscal and protective functions. Within the Customs Union territory the Common Customs Tariff has been applicable since January 1, 2010. Since this date national Customs tariffs and legislation in the field of Customs and tariff regulation have become invalid within Member States in connection with the entry into force of the Agreement from January 25, 2008 on a unified Customs and tariff regulation, the Protocol from December 12, 2008 on the conditions and procedure for the use in exceptional cases of the rates of import Customs duties other than the Common Customs Tariff rates, the Customs Union Commission Decision from November 27, 2009 № 130.

The Customs Union Commission Decision from November 18, 2011 № 850 approved a new edition of the Common Customs Tariff of the Customs Union and the Single Foreign Economic Activity Commodity Nomenclature of the *Customs Union* based on the fifth edition of the Harmonized Commodity Description and Coding System of the World Customs Organization.

The Customs Tariff of the Customs Union implies the following types of import duties:

- 1) Ad valorem duties calculated as a percentage of the Customs value of goods.
- 2) Specific duties calculated per a unit of dutiable goods.
- 3) Combined duties, which combine ad valorem and specific ones.

Import Customs duty is defined as a compulsory payment levied by Customs authorities while goods being imported into the Customs territory of the Customs Union.

The rates of import Customs duties of the Customs Tariff in the Customs Union are uniform and not subject to change depending on the persons transporting goods across the Customs border, the types of transactions and other circumstances, except as provided in the Agreement.

To improve control over the import of goods into the Customs territory, if necessary, seasonal Customs duties can be imposed with the validity not exceeding 6 months a year. Seasonal Customs duties are applied instead of import Customs duties.

For the completion of the Customs Union's legal framework, a mechanism of entry and distribution of import Customs duties as well as other duties, taxes and charges having equivalent effect has been designed. The standards of import Customs duties distribution for each Party are

determined in the following proportions: The Republic of Belarus – 4,7%, Kazakhstan – 7,33%, Russia – 87,97%.

Furthermore, export duties are imposed mainly on a limited number of commodities.

The Agreement on export Customs duties in relation to the third countries was signed on January 25, 2008.

The Single Foreign Economic Activity Commodity Nomenclature of the *Customs Union* (further – SFEACN CU) is a goods classification used by the participants of foreign economic activity as well as Customs authorities of the Member States of the Customs Union for the purposes of Customs procedures. In accordance with the Customs Code it is applied to implement the measures of Customs tariff and non-tariff regulation of foreign trade and other forms of foreign economic activity as well as to collect Customs statistics.

The technical management of the SFEACN CU is carried out by the Federal Customs Service of the Russian Federation.

While goods being imported, tariff concessions in the form of exemption from import Customs duty or reduced rates of import Customs duties can be used, as defined by the Agreement from January 25, 2008 on a unified Customs and tariff regulation etc. In accordance with Article 7 of this Agreement in order to promote the economic growth of developing and least developed countries a uniform system of tariff preferences of the Customs Union is applied.

The legal foundation for determining the Customs value of goods is the Agreement from January 25, 2008 on a unified Customs and tariff regulation; the Agreement from January 25, 2008 on the determination of the Customs value of the goods transported through the Customs border of the Customs Union; the Protocol from December 12, 2008 on ensuring a uniform application of the rules for determining the Customs value of goods transported through the Customs border of the Customs Union.

According to the provisions of the Customs Code of the Customs Union the Customs value of goods is determined by a declarant or Customs agents acting on behalf of the declarant and, in cases established by the Code, by a Customs authority. This rule shall not apply to goods for personal use transported through the Customs border.

2. The non-tariff methods of foreign trade regulation in the Customs Union

A non-tariff regulation is a variety of measures regulating foreign trade in goods, which are carried out by quantitative and other prohibitions and restrictions of economic nature.

Within the Customs Union and the Common Economic Area (further – CEA) the non-tariff regulation is administered previously by the Customs Union Commission, at present – by the Eurasian Economic Commission. The competence of the member states of the Customs Union and the CEA covers application of prohibitions and restrictions on foreign trade in services and intellectual property as well as application of economic and administrative measures to promote the development of foreign trade activity and at the same time to ensure the economic security of the CEA.

The application of these measures throughout the Customs territory is based on the following international agreements having entered into force on January 1, 2008: the Agreement from January 25, 2008 on common measures of non-tariff regulation in relation to third countries; the Agreement from June 9, 2009 on the introduction and application of measures affecting foreign trade in goods within the common Customs territory in relation to third countries; the Agreement from June 9, 2009 on licensing in the field of foreign trade.

The non-tariff regulation methods applicable within the Customs Union and the CEA and common in the international trade include measures of direct restrictions related to quantitative controls (quotas, countervailing duties and levies, anti-dumping duties) and measures of indirect

restrictions (labeling requirements, delivery of goods at certain checkpoints, introduction of Customs and other formalities, sanitary and veterinary standards etc.).

Exports and imports of goods in the trade of the Customs Union with third countries is carried out without any quantitative restrictions, except in the following cases: bans and temporary restrictions on the export of goods to prevent or reduce the critical shortage in the domestic market of food and other goods, which are essential for the domestic market; restrictions on the import of agricultural products or aquatic biological resources imported in any form, if it is necessary to achieve certain sales targets.

The decisions on the application of non-tariff regulation in respect of the importation of goods into the common Customs territory and (or) their exportation from this territory were previously taken by the Customs Union Commission and contemporary – by the Eurasian Economic Commission.

In exceptional cases the parties may unilaterally introduce non-tariff measures for a period not exceeding six months.

The supervision over export (import) of certain goods by means of issuing export (import) permits, which unlike licenses are issued to all applicants without restrictions, is acceptable.

Export and (or) import quotas are applicable in the process of establishing quantitative restrictions imposed by the Eurasian Economic Commission. The goods under these restrictions should occur in the list of goods essential for the domestic market of the Customs Union.

Customs operations with goods connected with the application of import and export quotas are carried out where there is a license for goods import (export) issued by the authorized public authorities of the member states.

According to the national interests of the parties, the Eurasian Economic Commission at the suggestion of a party (parties) can take measures, which concern foreign trade in goods and are not of an economic nature. They include prohibitions of import (export), quantitative restrictions of import (export), granting the exclusive right to import (export), allowing order of import (export) and others.

Licensing is a form of non-tariff regulation, which implies a range of administrative measures establishing the procedure for granting licenses and (or) permits confirming the right to export (import).

The procedure of issuing licenses and permits for goods import and (or) export is determined by the Agreement from June, 9 2009 on the rules of licensing in the field of foreign trade.

Single list of goods subject to prohibitions or restrictions on import or export by the Customs Union member states when trading with third countries (further – Single list) together with provisions on application of restrictions to the goods included in it were approved by the Decision of the EurAsEC Interstate Council adopted on November 27, 2009, №19.

The Agreement from January 25, 2008 on the application of special protective, antidumping and countervailing measures against third countries includes almost all the major provisions stipulated by the relevant WTO agreements: the Agreement on Safeguards, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade and the Agreement on Subsidies and Countervailing Measures.

Rules of origin play an important role in the proper application of tariff and non-tariff regulation. Within a unified system of preferences of the Customs Union the rules of determining the origin of goods from developing and least developed countries established by the Agreement from December 12, 2008 on the rules of determining the origin of goods from developing and least developed countries are applied. In addition, the Agreement from January 25, 2008 on common rules for determining the country of origin of goods is in force within the Customs Union.

3. Technical regulation of foreign trade in the Customs Union

Within the EurAsEC and the Customs Union the concept of policy in the field of technical regulation, application of sanitary, veterinary and phytosanitary measures is determined by the

Agreement from January 25, 2008 on coordinated policy in the field of technical regulation, sanitary and phytosanitary measures.

The technical measures in trade used within the EurAsEC include a variety of conditions and requirements of non-tariff nature applicable to goods. They are special requirements for goods conformity with technical specifications and standards; use of appropriate procedures for goods technical testing and certification; special requirements for marking and labeling of goods; sanitary, veterinary and phytosanitary requirements.

Creating a common Customs territory provides for the members of the Customs Union to carry out a common policy in the field of technical regulation, including the application of sanitary, veterinary and phytosanitary measures, and the existence of common technical requirements inter alia sanitary and epidemiological, hygienic, veterinary and sanitary as well as phytosanitary ones to products and processes related to this territory.

The sanitary-epidemiological control is applicable to the persons, vehicles as well as controlled goods included in the Single list of goods subject to sanitary and epidemiological supervision (control) at the Customs border and Customs territory of the Customs Union. Throughout the Customs territory the uniform sanitary and epidemiological as well as hygienic requirements for the goods subject to sanitary and epidemiologic supervision (control) are used. The Agreement provides for mutual recognition by Member States of the Customs Union documents confirming the safety of products (goods) included in the Single list of goods issued by the authorized authorities under the unified form and certifying the conformity of products (goods) with the uniform sanitary requirements.

The Customs Union Agreement on veterinary and sanitary measures is designed to meet the provisions of international treaties. The veterinary control (supervision) is applicable to goods (products), inter alia the goods for personal use (controlled goods) transported across the Customs border of the Customs Union and the Customs territory of the Customs Union, included in the Single list of goods subject to veterinary control (supervision). Controlled goods must comply with the unified veterinary (veterinary and sanitary) requirements for the goods subject to veterinary control (supervision). They are also subject to a mandatory veterinary control (supervision) in accordance with the Provision on the common order of veterinary inspection application at the Customs border of the Customs Union and the Customs territory of the Customs Union.

The Customs Union Agreement on Plant Quarantine is developed in accordance with the provisions of the existing international treaties: the International Convention for Plant Quarantine and Protection (Rome, 1951, as in force in 1997), the Agreement on Technical Barriers to Trade and the WTO Agreement on the Application of Sanitary and Phytosanitary Measures adopted following the results of the Uruguay Round of multilateral trade negotiations on April 15, 1994 in Marrakech. The documents defining the mechanism for the implementation of the Customs Union Agreement on Plant Quarantine were approved by the Decision of the Customs Union Commission from June 18, 2010, № 318.

In accordance with this Agreement a quarantine phytosanitary control (supervision) is carried out as indicated in the Provision on the procedure of quarantine phytosanitary control (supervision) at the Customs border of the Customs Union and the Provision on the procedure of quarantine phytosanitary control (supervision) in the Customs territory of the Customs Union.

In July 2011tThe Customs Union Commission approved the single sign for *products circulation* in the market of the *Customs Union* member states – the Eurasian Conformity Sign.

As a basis for the development of technical regulations of the Customs Union the corresponding international standards (regulations, guidelines, recommendations and other documents adopted by the international standardization organizations) are applied, except in cases where the relevant documents are missing or they do not meet the objectives of the Customs Union technical

regulations adoption, inter alia as a result of climatic and geographical factors or technological and other peculiarities. If the abovementioned international documents are absent, regional ones (rules, guidelines, decisions, standards, regulations and other documents), national (public) standards, national technical regulations or their projects are implemented.

Within the Customs Union 31 technical regulations are currently adopted.

The Agreement on the Eurasian Economic Commission provides for the following allocation of functions and powers between the Eurasian Economic Commission and the national governments of the Customs Union member states:

1) The Eurasian Economic Commission coordinates actions in the field of technical regulation, is responsible for the adoption of technical regulations, approves the documents of a binding nature and makes appropriate recommendations on the procedure for their application.

2) The governments of the Customs Union member states approve standards, ensure uniform measurements, carry out accreditation, create the system of conformity assessment and state control as well as establish responsibility in the field of technical regulation.

These measures are aimed at the consistent removal of existing barriers to mutual trade among the Customs Union member states and, at the same time, ensure the economic security of the member states.

Summary and concluding remarks

Consequently, a unified system of tariff, non-tariff and technical regulation is currently functioning in the Customs Union. The foundation of its legal framework included the rules and regulations adopted and recommended by the corresponding international organizations, including the WTO. These regulations take into account a commitment to supporting a powerful multilateral trading system. They also ensure trade expansion as a source of economic growth, job creation and sustainable development.

The tariff, non-tariff and technical regulations are the responsibility of the Eurasian Economic Commission.

The basis of the tariff regulation is the Common Customs Tariff.

The non-tariff regulation methods applicable to trade include conventional methods of the world trade: measures of direct restrictions connected with quantitative control and measures of indirect restrictions, which are mentioned above.

The technical regulation is one of the key elements of Belarus, Russia and Kazakhstan integration into the Customs Union. It provides an access to markets and covers the whole range of measures, including the development and implementation of common technical regulations, uniform interstate standards, a unified system of conformity assessment (confirmation), uniform measurements, common principles and measures of liability, common principles of supervision and an integrated information system of foreign and mutual trade. All technical regulations developed by the Eurasian Economic Commission comply with the current WTO rules.

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