

JEL Classification: F53, K33, K34, O32

LEGAL REGULATION OF THE INTERSTATE CUSTOMS INFORMATION SYSTEMS

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Abstract

The author shows the components of the conceptual approaches to improve the institutional and legal framework of information exchange within integration associations of the countries – participants of the Commonwealth of Independent States (further – CIS) in terms of legal regulation of the interstate information systems creation to facilitate trade and reduce commerce, transport and communication costs while making commercial procedures. The paper also describes three stages of Customs procedures automation: 1) automation of Customs declarations processing and Customs payments control; 2) implementing risk analysis and risk management, taking decisions based on them as to the release of goods; 3) creation and development of multifunctional information systems covering all Customs processes with the participation of all national regulatory authorities on the basis of the "Single Window" concept.

The paper deals with the problems that affect the creation of the interstate information systems in the various integration associations as well as the development of their information space and that affect the scope of legal regulation of relations among Customs administrations within the CIS; reviews possibilities and need for interstate information systems; considers possibilities of joining the information exchange or interaction, organized by the interstate system created within one integrated association, by a new member who is not a member of this integration association and didn't participate in the creation of such a system as well as the administrative and legal mechanism for its accession; describes principles of information exchange and interaction that will enable the accession of new members of the information exchange or interaction.

Keywords: legal regulation, the interstate Customs information systems, integration associations of countries, trade facilitation, Customs administrations, automation, information interaction, information exchange.

Introduction

The characteristic elements of the current stage of a society development are globalization, integration, information and communication technologies. Let's define the correlation between these elements.

Globalization includes the processes of economic integration, which represents an institutionally formalized process of regionalization of economic relations at the supranational and national level.

Around the world regional integration associations such as the Association of SouthEast Asian Nations (ASEAN), the European Union (EU), the Southern Common Market (Mercosur) and others are being created and developed. In the CIS there are four integration economic unions with Russia's membership, which are presented below in Fig. 1.



Figure 1. Integration unions within CIS

The development of the integration processes in the Republic of Belarus, Kazakhstan and the Russian Federation is rapidly going. In 2010 the creation of the Customs Union¹ was completed; in 2012 the Common Economic Area² was established. Signing of the Treaty³ on the EuroAsian Economic Community (further – EurAsEC) planned in 2014 will lead to the creation of the EurAsEC beginning from January 1, 2015. At the same time the process of accession of the CIS members to the Customs Union (further – CU) and the Common Economic Area (further – CEA) is running; a number of procedures for the Republic of Armenia's⁴ (the planned date – January 1, 2015) and the Kyrgyz Republic's⁵ accession are being carried out. Trade and transit of goods are the first on the path

¹ *Dogovor o sozdanii edinoj tamozhennoj territorii i formirovanii Tamozhennogo sojuza ot 6 oktjabrja 2007 g.* [Agreement on the establishment of a common Customs territory and development of the Customs Union from October 6, 2007 // Sbornik bazovyh dokumentov Evrazijskogo jekonomicheskogo soobshhestva. – 2-e izdanie. – Moscow: Integracionnyj Komitet Evrazijskogo jekonomicheskogo soobshhestva, 2008. – pp. 447 – 450 (in Russian)]

² *«O Evrazijskoj jekonomicheskoi integracii»: Deklaracija ot 18 nojabrja 2011 g.* ["On the Eurasian economic integration": The Declaration from November 18, 2011] [Jelektronnyj resurs] – Rezhim dostupa : <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=121934> (in Russian)

³ *Dogovor o Evrazijskom jekonomicheskom sojuze (proekt) [The Treaty on the Eurasian Economic Union (draft)]* [Jelektronnyj resurs]. – Rezhim dostupa: <http://www.consultant.ru/law/hotdocs/31555.html> (in Russian)

⁴ *«O prisoedinenii Respubliki Armenija k Tamozhennomu sojuzu i Edinomu jekonomicheskomu prostranstvu Respubliki Belarus', Respubliki Kazahstan i Rossijskoj Federacii»: Reshenie Vysshego Evrazijskogo jekonomicheskogo soveta ot 24 oktjabrja 2013 g. No 49* ["On accession of the Republic of Armenia to the Customs Union and the Common Economic Space of Belarus, Kazakhstan and the Russian Federation": The decision of the Supreme Eurasian Economic Council from October 24, 2013 No 49] [Jelektronnyj resurs] // Oficial'nyj sajt Evrazijskoj jekonomicheskoi komissii. – Rezhim dostupa : <http://www.eurasiancommission.org/> (in Russian)

⁵ *«O proekte Memoranduma ob uglublenii vzaimodejstvija mezhdu Evrazijskoj jekonomicheskoi komissiej i Kyrgyzskoj Respublikoj»: Reshenie Vysshego Evrazijskogo jekonomicheskogo soveta ot 29 maja 2013 g. No 39* ["About the Memorandum draft on deepening cooperation between the Eurasian Economic Commission and the Kyrgyz Republic": The decision of the Supreme Eurasian Economic Council from May 29, 2013 № 39] [Jelektronnyj resurs] // Oficial'nyj sajt Evrazijskoj jekonomicheskoi komissii. – Rezhim dostupa: <http://www.eurasiancommission.org/> (in Russian)

of economic integration and they are inextricably linked to the performance of Customs operations. Customs clearance, including Customs control and release of goods, is one of the barriers in the delivery chain of goods, which affects the efficiency of trade by extending the speed of trading operations and increasing their value.

The international organizations (the United Nations, the World Trade Organization (further – the WTO), the World Customs Organization) are actively involved in the simplification, harmonization and regulation of trade relations.

The aim of the WTO Doha Round of trade negotiations is to improve the trade prospects of developing countries and implement the Program of activities, including in the area of trade inter alia: the reduction of trade barriers and facilitation of Customs clearance and release of goods in order to reduce the bureaucracy and corruption in the implementation of Customs formalities that respectively will speed up and decrease the cost of trade procedures.

The adoption of the Bali package (2013) is part of the wider WTO Doha Round of trade negotiations, which began in 2001, and creates prospects for further progress within this Round.

The Agreement on trade facilitation is aimed at facilitation of Customs and bureaucratic procedures, which is part of the Bali package and includes, inter alia, the provisions on the use of information technology.

Russia⁶ became the member of the WTO only in 2012. However, guidelines for the reduction of trade barriers and facilitation of Customs clearance and release of goods, which are among the areas of regulation of international trade in the field of liberalization and prospects for further development supported by the WTO were laid in Russia as far back as by the joint Resolution of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the Union of Soviet Socialist Republics (further – USSR) on September 17, 1987 № 1074 "On additional measures to improve foreign economic activity under the new economic conditions", providing "simplification of the existing procedures of the foreign economic activity"⁷. The resolution of the Council of Ministers on October 15, 1988 № 1203 "On the general scheme of management of the state Customs control of the USSR" put the foundation for the development of information and technical components of the Customs service. In 1990 the Chief Scientific Information Computing Center⁸ (further – CSICC) was created, which tasks included creating, implementing and operating a unified automated information system (further – UAIS) of Customs authorities as well as development, testing and implementation of national technical means of Customs control.

At present, information and communication technologies have become key factors of globalization and have made it possible to reduce trade, transport and communication costs. Informatization and technical support of Customs activities is the basis for reducing the time of Customs control.

⁶ «O ratifikacii Protokola o prisoedinenii Rossijskoj Federacii k Marrakeshskomu soglasheniju ob uchrezhdenii Vsemirnoj torgovoj organizacii ot 15 aprelja 1994 g.»: *Federal'nyj zakon Rossijskoj Federacii ot 21 ijulja 2012 g. No 126-FZ* ["On ratification of the Protocol on the Accession of the Russian Federation to the Marrakesh Agreement Establishing the World Trade Organization on April 15, 1994": Federal Law of the Russian Federation from July 21, 2012 № 126-FZ] // Rossijskaja gazeta. – 23.07.2012. – No 166 (in Russian)

⁷ «O dopolnitel'nyh merah po sovershenstvovaniju vneshnejekonomicheskoj dejatel'nosti v novyh uslovijah hozjajstvovanija»: *Postanovlenie CK KPSS, Soveta Ministrov SSSR ot 17 sentjabrja 1987 g. No 1074* ["On additional measures to improve foreign economic activity under the new economic conditions": Resolution of the Central Committee of the Communist Party of the USSR, Council of Ministers from September 17, 1987 № 1074] // «Svod zakonov SSSR». – 1990. – Volume 9. – pp. 29 – 50 (in Russian)

⁸ «O sozdanii Glavnogo nauchno – issledovatel'skogo vychislitel'nogo centra i meroprijatijah po obespečeniju ego funkcionirovanija»: *Prikaz Glavnogo Upravlenija Gosudarstvennogo Tamozhennogo Kontrolja pri Sovete Ministrov SSSR ot 19 marta 1990 g. No 53* ["On establishing the Main Research Computing Center and arrangements for its functioning": Order of the Headquarters of State Customs Control under the Council of Ministers from March 19, 1990 № 53] (in Russian)

1. Stages of Customs procedures automation

The automation of Customs procedures⁹ can be divided into several stages.

At the first stage of informatization Customs authorities automate the processing of Customs declarations and control over the payment of Customs duties. As a rule, the computerized processes reproduce processing of existing paper processes and procedures, thus increasing the collection of Customs revenues to the state budget under the conditions of high level of the actual goods and paper documents control. An electronic copy of a Customs declaration is often created by an inspector on the basis of the paper one.

Therefore, these systems are used after importation of goods into the territory of the state. Automation of other Customs processes is minimal. The issues of the analysis of the participants of foreign economic activity and the content of goods as well as simplification of Customs formalities are not taken into consideration. This stage touches Customs administrations of the countries with developing or transitional economies.

At the second stage of informatization Customs authorities pay more attention to risk analysis and management and to taking decision based on them considering the release of goods, which reduces the actual (manual) control of cargoes and increases the flow of goods. To do this, the appropriate information structure is designed both by Customs authorities and business partners. As a rule, entry of declarations into the information system is carried out either by Customs representatives (brokers) or directly by stakeholders. The focus is on the control of high-risk goods, the rest go through a simplified Customs clearance. The majority of Customs administrations of developed countries are currently at this stage.

The third stage of informatization implies the creation and development of multifunctional information systems covering all Customs processes with the participation of all national regulatory authorities on the basis of "Single Window" concept. The exchange of information is carried out in an electronic form, the release of goods is automatic based on risk analysis and takes into account the reliability of a consignor/consignee. At this stage, there is a shift from the actual control of goods on arrival to the documentary control of goods before their actual arrival. Currently, Customs administrations of many countries are taking steps to move to this stage of processes automation.

Within the framework of integration associations the interstate information systems providing the process of goods transit have been created and are being successfully operated. They are the New Computerized Transit System¹⁰ of the EU (NCTS), International Transit of Goods¹¹ in Latin America (TIM) etc. The transition from the use of "Single Window" concept at the national level to its implementation within the framework of integration associations is put into effect. Currently, the "Single Window" concept is implemented at the regional level¹² within ASEAN.

2. Statutory regulation in the field of Customs information technologies

In the field of Customs information technologies statutory regulation of Customs administrations' legal relationships within the CIS territory began to develop from scratch in 1994.

⁹ *Rukovodstvo po modernizacii tamozhennoj sluzhby* [Guidelines for Customs Modernization] / [Pod red. Ljuka de Vul'fa, Hose B. Sokola; per. s angl]. – Izdatel'stvo «Ves' Mir», 2007 – pp. 277 – 300 (in Russian)

¹⁰ EC-EFTA WORKING GROUP ON COMMON TRANSIT CUSTOMS CODE COMMITTEE – TRANSIT SECTION final «Transit Manual (NCTS)» TAXUD/1953/2003 – EN rev 8, available at: http://ec.europa.eu/taxation_customs/resources/documents/customs/procedural_aspects/transit/common_community/ncts_manual_en.pdf (accessed 21 April 2014) (in English)

¹¹ Sarmiento, Alvaro, Lucenti, Krista, Garcia, Aurelio 2010, *Automating the Control of Goods in International Transit : Implementing the TIM in Central America*, World Bank, Washington, DC, available at: <https://openknowledge.worldbank.org/handle/10986/10495> (accessed 21 April 2014) (in English)

¹² *ASEAN Single window*, available at: <http://asw.asean.org/> (accessed 21 April 2014) (in English)

Therefore at present the Customs administration of the Russian Federation has accumulated great experience of organizing information exchange and setting the rules of information interaction among Customs authorities both of CIS area countries and of foreign countries. There is an experience of creating interstate information systems¹³ within countries – members of the CIS, the EurAsEC, the Customs Union (further – CU) and the Union State (further – US).

The analysis of the laws directly and indirectly affecting the scope of the interstate information systems creation has allowed the author to comprehensively evaluate this area and develop conceptual approaches¹⁴ to improve the institutional and legal framework of information exchange among the integration associations of the states – CIS participants.

The problems affecting the creation of the interstate information systems in the various integration associations and the development of their information space concern the field of statutory regulation of legal relations in a number of areas, namely:

1. Principles of decision making and execution by the authorities of integration associations.
2. Creation of interstate information systems in the framework of the intergovernmental programs¹⁵ for the designing of information systems.
3. Development of draft legal acts at various levels in the field of exchange of information among national Customs administrations on the basis of bilateral exchange of information and UAIS creation.
4. Developing the international information space.

¹³ Ermakova V.V. *Normativnoe pravovoe regulirovanie sozdaniya mezhgosudarstvennykh informacionnykh sistem s uchastiem tamozhennykh sluzhb v ramkah integracionnykh sojuzov na prostranstve SNG: monografija* [Normative legal regulation of the establishment of inter-state information systems with the participation of Customs services within the framework of integration associations throughout CIS: monograph] / V. V. Ermakova. – Moscow: ZAO «Kniga i Biznes», 2011. – 242 p. (in Russian)

¹⁴ Ermakova V.V. *Normativnoe pravovoe regulirovanie razrabotki i realizacii mezhgosudarstvennykh programm na prostranstve SNG* [Normative legal regulation of the development and implementation of interstate programs within CIS] / V. V. Ermakova // *Probely v rossijskom zakonodatel'stve*. – 2010. – No 4. – pp. 324 – 328 (in Russian); Krotov I.E. *O vybore informacionnoj sistemy upravlenija tamozhennoj dejatel'nost'ju* [On the choice of the information system for Customs activity management] / I. E. Krotov, V. V. Ermakova // *Informacionnoe pravo*. – 2011. – No 1. – pp. 10 – 14 (in Russian); Ermakova V.V. *O podhode k sozdaniju informacionnogo prostranstva Tamozhennogo sojuza, sformirovannogo v ramkah EvrAzJeS* [On the approach to the creation of the information space of the Customs Union created in the framework of EurAsEC] / V.V. Ermakova // *Probely v rossijskom zakonodatel'stve*. – 2011. – No 3. – pp. 284 – 288 (in Russian); Ermakova V.V. *Problemy pravovogo regulirovanija mezhgosudarstvennogo informacionnogo obmena v SNG* [Problems of legal regulation over interstate information exchange within the CIS] / V. V. Ermakova // *Informacionnoe pravo*. – 2011. – No 4. – pp. 21 – 25 (in Russian); Ermakova V.V. *Voprosy strategii razvitija informacionnogo prostranstva Tamozhennogo sojuza na osnove Integrirovannoj informacionnoj sistemy vneshnej i vzaimnoj torgovli Tamozhennogo sojuza* [Issues of the Customs Union information space development strategy on the basis of the integrated information system of foreign and mutual trade of the Customs Union] / V. V. Ermakova // *Pravo i gosudarstvo: teorija i praktika*. – 2011. – No 11. – pp. 140 – 146 (in Russian); Ermakova V.V. *Strategicheskie napravlenija sovershenstvovanija pravovykh osnov soprovozhdenija, razvitija i modernizacii Edinoj avtomatizirovannoj informacionnoj sistemy Tamozhennogo komiteta Sojuznogo gosudarstva* [Strategic directions for improving the legal basis for support, development and modernization of the Unified Automated Information System of the Union State Customs Committee] / V. V. Ermakova // *Biznes v zakone*. – 2012. – No 3. – pp. 134–139 (in Russian); Ermakova V.V. *Razvitie informacionnogo vzaimodejstvija v ramkah Sodruzhestva Nezavisimyh Gosudarstv: osnovy pravovoj strategii* [The development of information exchange within the Commonwealth of Independent States: the foundations of the legal strategy] / V. V. Ermakova // *Informacionnoe pravo*. – 2012. – No 3. – pp. 16 – 21 (in Russian); Ermakova V.V. *Pravovaja strategija sovershenstvovanija pravovykh osnov sozdaniya Edinoj avtomatizirovannoj informacionnoj sistemy tamozhennykh organov v ramkah EvrAzJeS* [The legal strategy for improving the legal framework of the Unified Automated Information System of Customs authorities within the Eurasian Economic Community] / V.V.Ermakova // *Probely v rossijskom zakonodatel'stve*. – 2012 – No 5. – pp. 184–187 (in Russian)

¹⁵ Ermakova V.V. *Pravovaja strategija sozdaniya mezhgosudarstvennykh informacionnykh sistem v ramkah programmnogo regulirovanija na prostranstve SNG* [The legal strategy for the creation of interstate information systems in the frameworks of software regulation within the CIS] / V. V. Ermakova // *Pravo i gosudarstvo: teorija i praktika*. – 2012. – No 7. – pp. 34 – 38 (in Russian)

Let's consider the following three aspects:

1. Opportunities and need for interstate information systems.
2. Possibilities of joining the information exchange or interaction, organized by the interstate system created within one integrated association, by a new member who is not a member of this integration association and didn't participate in the creation of such a system as well as the administrative and legal mechanism for its accession.
3. Principles of information exchange and interaction that will enable the accession of new members of the information exchange or interaction.

3. Creation of interstate information systems

The basis of any single information space is information resources and information systems. The structure of the Single information space for an integration association¹⁶ also includes interstate information systems.

Since an interstate information system is designed to organize an interstate information exchange and interaction by means of electronic documents using, the existence of national information systems, between which information exchange and interaction will be carried out through the abovementioned system, is a prerequisite for the possibility of its creation.

Information obtained from the interstate information system in order to simplify Customs clearance (control and release) should be appropriately used in the national information system. It is possible at the second stage of Customs procedures automation.

Automation of risk analysis and risk management and making decisions on the release of goods is based on the information provided by the Customs administrations of other countries, which means that the information interaction of Customs administrations at the interstate level at the third stage of Customs procedures automation becomes vital. In fact, it may become possible even at the first stage, when an automation of paper-based processes have been implemented.

Thus, we can conclude that the creation of interstate information systems in the field of foreign trade is possible and necessary when Customs administrations use automated systems to manage their activities (the second level of Customs activity automation), which will allow to use information from electronic documents obtained from Customs authorities of other countries in the process of Customs clearance with a view to its simplification on the basis of the information interaction and electronic exchange.

This provision may be extended to other fields, in other words the creation of inter-agencies and interstate information systems is possible and necessary only where the parties have their own information systems. However, when it is necessary to organize information exchange and interaction, but a party doesn't have its own information system, then it is possible to create for it a segment of an information system that provides information exchange on the part of this party.

4. Opportunities and basic principles of a new members' joining the information exchange and interaction, the administrative and legal mechanism for its accession

The creation of interstate information systems is possible on the basis of an interstate treaty or agreement. What should such an agreement be?

If, for example, the Russian Federation or the Republic of Belarus or the Republic of Kazakhstan will create interstate information systems both within each integration organization, which members they are (the Russian Federation and the Republic of Belarus are members of 4 integration associations, the Republic of Kazakhstan – of 3 integration associations), and within the CIS with

¹⁶ Ermakova V.V. *Voprosy teorii edinogo informacionnogo prostranstva integracionnyh sojuzov [Issues of the theory of a single information space of integration unions / V. V. Ermakova // Gosudarstvo i pravo. – 2012. – No 8. – pp. 104 – 108 (in Russian)*

each participant on the basis of bilateral agreements, we will get a lot of information systems related to the same processes.

This fact tells us that the agreement on the creation of an interstate information system should provide for a new member's possible joining the information exchange or interaction organized by this system¹⁷.

Requirements for administrative and legal mechanism of a new participant's joining the information exchange or for the creation of interaction rules (including a non-member of the integration association having designed an information system) are to be defined in the relevant provisions of an international agreement (a particular interstate agreement).

In the context of the rapid pace of integration processes development and extension, in particular within the CIS, international agreement should contain provisions allowing the accession of new members and the mechanism of this procedure.

This is the legal aspect of the issue.

Let us turn to the technical side of the issue, as it is pointless to implement the legal aspect without technical support.

To ensure the technical possibility of a new member's joining the information exchange or interaction organized by the interstate information system, the author has stated the principles¹⁸ of the interstate information exchange and interaction among public authorities, the interstate information systems creation as well as the development of a common information space of integration associations on the basis of a systematic analysis of the principles of arranging information exchange and establishing the rules of information interaction among Customs administrations within the CIS, the EurAsEC, the CU and the US.

Summary and concluding remarks

Thus, arranging information exchanges or interactions related to similar procedures should be carried out on the basis of unified (standard) rules, which will allow combining several agreements within a single interstate information system while concluding them uniformly between different states.

Separate information systems should be created for each common procedure¹⁹ (for example, Customs transit) on the base of "one procedure – one system" principle.

These principles are applicable to other areas of interstate management. These principles of standardization or unification of an information system creation are valid both for information systems and for the field of law.

Endnotes

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¹⁷ Ermakova V.V. *Pravovye osnovy informacionnogo vzaimodejstija gosudarstv – chlenov Tamozhennogo sojuza v ramkah EvrAzJeS* [Legal basis of information exchange between member-states of the Customs Union within the EurAsEC] / V. V. Ermakova // *Informacionnoe pravo*. – 2010. – No 4. – pp. 26 – 30 (in Russian)

¹⁸ Ermakova V.V. *Informacionnoe vzaimodejstvie tamozhennyh sluzhb v ramkah integracionnyh ob"edinenij na prostvanstve SNG* [Information interaction between Customs services within the framework of integration associations throughout CIS] / V. V. Ermakova // *Zakon i pravo*. – 2010. – No 11. – pp. 95 – 98

¹⁹ Krotov I. E. *Ob opyte vnedrenija informacionnyh tamozhennyh sistem v Respublike Koreja* [On the experience of the information Customs systems implementation in the Republic of Korea] / I. E. Krotov, V. V. Ermakova // *Vestnik Rossijskoj Tamozhennoj Akademii*. – 2010. – No 3. – pp. 24 – 30 (in Russian)

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