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**CUSTOMS REGULATION IN
THE EURASEC CUSTOMS UNION
AND FINANCIAL LAW
DEVELOPMENT IN THE RUSSIAN
FEDERATION**

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**CUSTOMS REGULATION IN THE EURASEC CUSTOMS
UNION AND FINANCIAL LAW DEVELOPMENT
IN THE RUSSIAN FEDERATION²**

Customs payments play special role in the economy of the Russian Federation. They composed just over 50 percent of the total budgetary income on the eve of the Russian Federation's entry into the EurAsEC Customs Union.

The article considers the changes which occurred in the legal base of customs regulation since the EurAsEC Customs Union was created and the Russian Federation became a member. The customs legislation structure of the Customs Union is analyzed in the article. Special attention is given to the acts which became the source of financial law in the Russian Federation, being adopted by supranational regulator, the Eurasian Economic Commission.

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Introduction

The establishing of the Customs Union within the framework of EurAsEC in 2010, which integrates the Russian Federation, the Republic of Kazakhstan and the Republic of Belarus in its structure, became a marquee event for the further development of national legislations of these three countries. It affects not only those sectors of legislation that regulate customs and foreign trade relations, but also other sectors of public law, including financial law.

Prior to the creation of the supranational mechanism regulating economic relationships within the EurAsEC Customs Union and the Common Economic Space, supranational public finances were centralized in the budget of the Union state joining the Russian Federation and the Republic of Belarus. However, neither the bodies participating in the budget formation of the Union State (Parliamentary Assembly of the Russian Federation and the Republic of Belarus, Supreme State Council of the Union State, Council of Ministers of the Union State), nor the budget itself significantly influenced the national finances of the Russian Federation and the Republic of Belarus, and thus there were no reason to assert that any supranational moderator of public finances in the Russian Federation and the Republic of Belarus existed.

The establishment of the EurAsEC Customs Union and formation of the new model of customs regulation and the fiscal effect of the customs regulation for Russia

The situation cardinally changed with the new stage of economic integration and development in the post-soviet space. The establishment of the Customs Union within the EurAsEC and the adoption of the Customs Code³ marked a transition to the bimodal legal regulation of customs payments in the states participating in the Customs Union. Henceforth, the fixing and payment of customs were regulated by the customs legislation of the Customs Union, while in those parts that are not regulated by the custom union legislation the regulation is performed according to the national legislation of the Customs Union member states. The legal basis of customs payments in the Russian Federation is the Federal Law of November 27, 2012 No. 311 – FZ “On Customs Regulation in the Russian Federation”⁴, the Tax Code of the Russian Federation⁵, and the Law of the Russian Federation of May 21, 1993, No. 5003-1 “On Customs Tariffs”⁶.

It is hard to overestimate the fiscal importance of customs duties for the Russian Federation. Custom duties made up from one forth to one third of total budget revenues in various years. In 2010 customs duties exceeded 50 percent of budget revenues. Transfer of legal regulatory

³ The Amendment to the Treaty on the Customs Code of the Customs Union, approved by the Decision of the EurAsEC Interstate Council at the heads of states’ level of November 27, 2009, No. 17. Collection of the legislation of the Russian Federation (hereinafter CL of RF), (2010), No. 50, Art. 6615.

⁴ CL of RF, (2010), No. 48, Art. 6252.

⁵ The Tax Code of the Russian Federation (part one) of July 31, 1998, No. 146-FL, CL of RF, (1998), No. 31, Art. 3824; Tax Code of Russian Federation (part two) of August 5, 2000, No. 117-FL, CL of RF, (2000), No. 32, Art. 3340.

⁶ Rossiyskaya Gazeta (June 5, 1993).

authority relating to compulsory payments, which have such a high fiscal value for the Russian public finances to an international legislative level, is an important step assuming constant monitoring of the financial impact.

When designing the model of international legislative redistribution of customs duty revenues to be integrated into their national budgets, member states of the EurAsEC Customs Union created a unique financial model for the customs union. In the European Union similar redistribution mechanisms do not exist within the framework of its customs union, since customs duties and other payments, collected in relation to goods crossing the customs border of the European Union, are directed to the European Union budget, not to the national budgets of member states.

The financial model of the EurAsEC Customs Union supposes the inclusion of a number of legislative acts adopted at the level of the Customs Union and regulating financial relations, in regards to the movement of goods across customs borders, directly into the national systems of financial law of the each member state.

Structure of customs legislation of the Customs Union

An obvious scientific and practical interest for financial law is represented in this connection by the investigation of the concept and structure of the EurAsEC Customs Union legislation, some separate acts of which, as was mentioned above, became integrated into financial law in the Russian Federation, the Republic of Belarus and the Republic of Kazakhstan.

In the Article 3 of the Customs Code the three-level structure of the Customs Union customs legislation is determined. The highest level is represented by the Customs Code of the Customs Union, conferred with the highest legal validity among the all acts of the customs legislation. The international agreements of the Customs Union member states are at the second level, the decisions of the Customs Union supranational authority are at the third level.

The Customs Code (Annex to the Treaty on the Customs Code of the Customs Union of November 27, 2009)⁷ is the act taking legal precedence in the system of the customs legislation.

The norm fixing primacy of the Customs Code among other acts of the Customs Union legislation is contained in Art. 1 of the Decision of the EurAsEC Interstate Council of November 27, 2009, No. 17 “On the Treaty of the Customs Code of the Customs Union”⁸.

Changes in the Customs Code are being introduced through the adoption of protocols, which become integral parts of the Treaty on the Customs Code of the Customs Union (for example,

⁷ CL of RF, (2010), No. 50, Art. 6615. In compliance with the Decision of the EurAsEC Interstate Council of July 5, 2010, No. 48 the Treaty on Customs Code of the Customs Union was put into effect on July 6, 2010, subject to the temporary exemptions established by the Protocol of July 5, 2010. In the Republic of Kazakhstan and the Russian Federation this Treaty is effective from July 1, 2010.

⁸ The text of the Treaty is available on the Customs Union’s web-site at <http://www.tsouz.ru/Docs/Kodeks3/Pages/default.aspx>.

the Protocol of April 16, 2010, “On introducing Changes and Amendments in the Treaty on the Customs Code of the Customs Union of November 27, 2009”⁹).

The customs code is the core legal foundation of customs regulation within the Customs Union, around which the “union customs legislation” was formed. It establishes the legal foundation of customs duties which is the most important constituent of the customs law. In compliance with Art. 1 of the Customs Code the legal regulation of customs duties payment represents one of the customs regulation directions provided for in the Customs Code.

Legal regulation of customs duties constitutes the subject of section two of the Customs Code, which includes among others the six chapters on the financial and law agenda. The chapters specify general provisions on customs duties (Chapter 9); procedure of the customs duties and tax calculation (Chapter 10); payment procedure (Chapter 11); the guarantee of customs duties and tax payment (Chapter 12); refunding of excessively paid or collected customs duties, taxes and other fees (Chapter 13); the recovery of customs duties and taxes (Chapter 14). Chapter 8 also refers to the subject of financial law. This chapter is devoted to the customs value and procedure of the customs valuation of goods by means of which the base for the calculation of customs duties collected at *ad valorem* and combined rates are specified. It also specifies the tax base for VAT and excise duties for the importation of goods into the territory of the Customs Union.

All other international agreements of the member states regulating customs relations within the Customs Union accede in legal validity to the Customs Code and compose the second level of customs legislation.

The contractual base of the Customs Union which supports the regulation of customs relations, including those of financial law, consists of the two groups of international legislative acts:

1) International agreements, currently in force within EurAsEC and adopted prior to establishment of the Customs Union of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation. Those are the Agreement on the Customs Union between the Russian Federation and the Republic of Belarus of January 6, 1995¹⁰; the Treaty on the Customs Union of January 20, 1995¹¹; the Treaty on the Customs Union and Common Economic Space of February 26, 1999¹²; the Treaty on the Establishment of the Eurasian Economic Community of October 10, 2000¹³;

⁹ Text of the Protocol is available on the Customs Union’s web-site at <http://www.tsouz.ru/Docs/IntAgrmnts/Pages/ProtokoloizmTK.aspx>.

¹⁰ Bulletin of International Treaties, (1995), No. 10.

¹¹ Bulletin of International Treaties, (1995), No. 6.

¹² Bulletin of International Treaties, (2001), No.12.

¹³ CL of RF, (2002), No. 7, Art. 632.

2) International agreements adopted after the creation of the Customs Union within EurAsEC and directed to the completion of its contractual and legal base. They are the Treaty on the Establishment of the Common Customs Territory and the Formation of the Customs Union of October 6, 2007¹⁴; the Protocol on the Procedure of coming into Force of International Treaties Aimed at Establishing the Contractual and Legal Framework of the Customs Union, on Accession to them and Withdrawal from them of October 6, 2007¹⁵; the Treaty on the Joint Board of the Customs Authorities of the Customs Union Member States of June 22, 2011¹⁶; the Treaty on the Eurasian Economic Commission of November 18, 2011¹⁷.

A significant number of international agreements included in the second group are the basis for the legal regulation of financial relations. Such international agreements in their turn can be grouped by the subject of the legal regulation as follows:

A) international treaties regulating relations occurring at the fixing and collecting of customs duties related to the import of goods: the Treaty on the Unified Customs and Tariff Regulation of January 25, 2008¹⁸; the Protocol on the Terms and Procedure for Applying Import Customs Duty Rates differing from the Rates prescribed by the Unified Customs Tariff in Exceptional Cases of December 12, 2008¹⁹;

B) international agreements regulating relations occurring at the fixing and collecting of customs duties related to the export of goods: the Treaty on Export Customs Duties with Regard to Third Countries of January 25, 2008²⁰; the Treaty on the Procedure of Payment and the Deposit of Export Customs Duties (other duties, taxes and fees of similar effect) concerning Raw Oil and Certain Classes of Goods Made of Oil Exported from the Territory of the Republic of Belarus outside the Customs Territory of the Customs Union of December 9, 2010²¹;

C) international agreements regulating relations on collecting indirect taxes: the Treaty on the Principles of Indirect Tax Collection when Exporting and Importing Goods, Performing Works and Rendering Services in the Customs Union of January 25, 2008²²; the Protocol on the Procedure of Indirect Tax Collection and the Control Mechanism of its Payment when Exporting and Importing Goods in the Customs Union of December 11, 2009²³;

D) international agreements regulating the procedure of customs payment calculation and distribution: the Treaty on the Customs Valuation of Goods crossing the Customs Union Border

¹⁴ CL of RF, (2011), No. 12, Art. 1552.

¹⁵ CL of RF, (2011), No. 12, Art. 1554.

¹⁶ Bulletin of International Treaties, (2012), No. 5.

¹⁷ CL of RF, (2012), No. 11, Art. 1275.

¹⁸ CL of RF, (2010), No. 24, Art. 2935.

¹⁹ CL of RF, (2010), No. 24, Art. 2936.

²⁰ Text of the Agreement is available on the Customs Union's web-site at http://www.tsouz.ru/Docs/IntAgrmnts/Pages/S_o_vivozn_poshl_3strani.aspx.

²¹ CL of RF, (2012), No. 7, Art. 787.

²² Bulletin of International Treaties, (2011), No. 3.

²³ CL of RF, (2010), No. 40, Art. 4987.

of January 25, 2008²⁴; the Protocol on the Common System of Tariff Preferences in the Customs Union of December 12, 2008²⁵; the Treaty on the Establishment and Application of the Deposit and Distribution of Import Customs Duties (other duties, taxes and fees of similar effect) of May 20, 2010²⁶;

E) international treaties regulating relations on fixing and collecting compulsory payments which are not customs payments: the Treaty on the Procedure of the Application of Special Protective, Antidumping, and Compensatory Measures During the Transition Period of November 19, 2010²⁷; the Protocol on the Procedure of Information Provision including Confidential Data to the Investigating Authority for Inquiry Purposes Preceding to the Introduction of Special Protective, Antidumping, and Compensatory Measures with respect to Third Countries of November 19, 2010²⁸;

F) international agreements regulating relations concerning currency regulation and currency exchange control: the Treaty on the Concerted Principles of Exchange Rate Policy of December 9, 2010²⁹; the Treaty on the Interaction of Empowered Authorities of Member States of the Treaty on the Concerted Principles of Exchange Rate Policy of December 9, 2010; Performing Currency Exchange Control of December 15, 2011³⁰; the Treaty on the Procedure of the Transfer of Cash and/or Cash Instruments by Individuals across the Customs Border of the Customs Union of July 5, 2010³¹.

The first two levels of the customs legislation, composing the legal base of strategic management in the Customs Union, regulate the most fundamental relationships. Decisions of regulatory nature, being adopted for these issues, should be given the form of international legal agreements passed in compliance with the principle of sovereignty of the Customs Union member state.

The third level of the customs legislation (by the criteria of decreasing legal precedence) consists of the decisions approved by the Customs Union supranational authority. When appraising the place of the supranational authority, acts within the customs legislation system of the Customs Union, the Customs Code (Art. 3) establishes that such acts are approved in accordance with the Customs Code and the international agreements of the Customs Union member states.

²⁴ CL of RF, (2012), No. 32, Art. 4471.

²⁵ CL of RF, (2010), No. 24, Art. 2938.

²⁶ CL of RF, (2010), No. 40, Art. 4990.

²⁷ CL of RF, (2012), No. 12, Art. 1367.

²⁸ CL of RF, (2011), No. 38, Art.5324.

²⁹ CL of RF, (2012), No. 5, Art. 544.

³⁰ Bulletin of International Treaties, (2012), No. 5.

³¹ CL of RF, (2012), No. 36, Art. 4867.

Before 2012 the Commission of the Customs Union had been such an authority and since then the supranational regulating powers in the area of customs relationships was delegated to the Eurasian Economic Commission.

Supranational regulating authority

The need to perform operational management of the economic integration processes calls for the establishment of supranational institutions. The requirement for supranational regulation is particularly important in the area of customs relationships, since there are frequent fluctuations in the commodity and money markets. These fluctuations require decision making mechanisms able to make necessary corrections in foreign trade promptly, without procedural delays.

The Commission of the Customs Union was such an authority at the initial stage of the Customs Union formation. It was instituted as a “unified constantly acting regulating authority”³² with the main task of ensuring proper conditions for the functioning and development of the Customs Union.

The Treaty on the Commission of the Customs Union of October 6, 2007³³, and the Rules and Procedures of the Commission of the Customs Union adopted by the Decision of the EurAsEC Interstate Council (the Supreme Authority of the Customs Union) at the level of heads of the states of December 12, 2008, No. 5, constituted the legal foundation for the Commission’s activity.

The Treaty on the Commission of the Customs Union says that the supranational regulation authority should perform its activity in compliance with the following principles: voluntary step-by-step delegation on the part of the public authorities of the Customs Union member states to the Commission; ensuring the mutual benefit and protection of national interests of the member states; economic sufficiency of decisions made; transparency, publicity and impartiality (Art. 2 of the Treaty on the Commission).

The Commission authorities were determined by international agreements between the Customs Union member states, and by the decisions of the EurAsEC Interstate Council, which is the supreme authority of the Customs Union. Within its competence, the decisions of the Commission are binding for the Customs Union member states (Art. 7 of the Treaty on the Commission).

According to clause 4 of the Decision of the EurAsEC Interstate Council of November 27, 2009, No. 15 “On the Issues of Activity Organization of the Commission of the Customs Union”, the Commission’s decisions apply immediately in the Customs Union member states.

³² Art. 1, the Agreement on the Commission of the Customs Union of October 6, 2007.

³³ CL of RF, (2011), No. 12, Art. 1553.

They have also have legal force of acts being adopted by those public authorities and officials of the member states competencies of which includes regulation of appropriate legal relationships at the day of transferring to the Commission of the particular authorities.

Certain decisions of the Commission have become not only acts of the Customs Union, but sources of national public finance legislation for the Customs Union member states, so far as they regulate matters related to customs duties, customs value, other compulsory payments in foreign trade. For example, the Decision of November 27, 2009, No. 130 “On the Uniform Customs and Tariff Regulation of the Customs Union of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation”; the Decision of September 20, 2010, No. 376, “On the Procedures of Declaring, Control over, and Adjustment of Goods Customs Value”; the Decision of November 18, 2010, No. 512 “On Regulation of the Peculiarities of Waste Product Customs Value Resulted from Foreign Goods Processing”; the Decision of September 23, 2011, No. 802 “On Certain Issues of Application of Special Protective, Antidumping, and Compensatory Measures in the Common Customs Territory of the Customs Union”.

The Commission’s decisions of compulsory nature enter into effect 30 calendar days after the day of their official publishing, and, in exceptional cases requiring urgent settlement, the Commission decision can stipulate another day not be earlier than the date of its official publishing (Art. 2 of the Protocol of December 9, 2010, “On Introducing Changes and Amendments to the Treaty on the Commission of the Customs Union of October 6, 2007”³⁴).

The dynamic development of the integration processes in EurAsEC and progress towards the formation of the Common Economic Space have reformed the institutional structure of EurAsEC.

In 2012 the Eurasian Economic Commission became the single permanently operating regulatory authority of the Customs Union and the Common Economic Space. The Commission’s main task is ensuring conditions for the proper functioning and development of the Customs Union and the Common Economic Space, as well as making propositions on policy concerning economic integration.

The Treaty on the Eurasian Economic Commission of November 18, 2011³⁵, and the Decision of November 18, 2011, No. 1 of the Supreme Eurasian Economic Council “On the Rules of Procedure of the Eurasian Economic Commission” constitute the legal basis of the new supranational authority’s activity.

³⁴ Bulletin of International Treaties, (2011), No. 9.

³⁵ CL of RF, (2012), No. 11, Art. 1275.

The Treaty on Eurasian Economic Commission came into force on February 2, 2012. Simultaneously the Commission of the Customs Union was abolished, and its authority was delegated to the Eurasian Economic Commission.

The scope of the activity of the new supranational authority was significantly expanded compared to the powers of the Commission of the Customs Union. Along with the customs policy and foreign trade regulation issues (customs tariff and non-tariff regulation, customs administration, the deposit and distribution of export customs duties, establishing trade regimes with regard to third countries, external and mutual trade statistics), the newly established Eurasian Economic Commission implements supranational regulation in the policy areas of macroeconomics, foreign exchange, competition and energy, as well as natural monopolies, transport and transportation, labor migration, financial markets, public and municipal procurements.

Simultaneously with expansion and diversification of the scope of supranational regulation the complexification of Commission's structure and procedures, in compliance with which it acts, took place. The Eurasian Economic Commission is composed of the Commission Council and the Commission Board, the activity of which is regulated by the Rules of Procedure of the Eurasian Economic Commission. Besides that, the Commission can form structural units (Commission departments), representative offices in the Customs Union member states, as well as in third countries and under international organizations.

The Commission makes decisions which are compulsory for the Customs Union; it also issues non-compulsory recommendations.

Art. 5 of the Treaty on the Eurasian Economic Commission replicates the statements of Art. 3 of the Customs Code on decisions of Commission that are to be a constituent of customs legislation and are to be applied to the entire territory of the Customs Union: "Decisions of the Commission enter into the contractual and legal base of the Customs Union and the Common Economic Space and are subject to application in the territories of Parties".

The Commission's decisions are adopted by the Commission Council and the Commission Board within their authorities fixed in the Treaty on Eurasian Economic Commission and according to the order stipulated by the Treaty and Commission's Rules of Procedures.

According to Art. 7 of the Treaty on the Eurasian Economic Commission, decisions of the Commission are approved based on the voting of the Commission Council or Commission Board members, where each council and board member has one vote.

It's worth mentioning that the previously Treaty on the Commission of the Customs Union (Art. 7) stipulated the following statements concerning to votes distribution in the Commission at

approving decisions: the Republic of Belarus – 21.5; the Republic of Kazakhstan – 21.5; the Russian Federation – 57.

In compliance with Art. 12 of the Treaty on the Eurasian Economic Commission, the Commission Council adopts consensus decisions within its authorities. If consensus is not reached, the issue is presented to the Supreme Eurasian Economic Council upon the suggestion of any member of the Commission Council.

The procedure of approving decisions by the Commission Board is specified in Art. 21 of the Treaty. The Commission Board approves decisions by reaching consensus or by a two thirds majority. The list of decisions which are made by consensus or a majority of two thirds of the total number of the Board members, is fixed by Rules and Procedures (part 6, Chapter 5; part 5, Chapter 2; Amendment “Functions and Authorities of the Council”).

Currently, considering the short duration of the Eurasian Economic Commission’s existence the majority of supranational authority’s decisions which are constituents of the Customs Union customs legislation, are composed of acts adopted by the predecessor of the Eurasian Economic Commission – the Commission of the Customs Union.

The first examples of the Eurasian Economic Commission’s supranational lawmaking, including those of financial law, have been already presented. It is worth mentioning the following documents among the Decisions of the Eurasian Economic Commission’s Council³⁶: the Decision of July 16, 2012, No. 54, “On Adopting Uniform Commodity Nomenclature of Foreign Economic Activity of the Customs Union and the Uniform Customs Tariff of the Customs Union”; the Decision of July 16, 2012, No. 55, “On the Application of the Export Customs Tariffs Rates by the Republic of Belarus and the Republic of Kazakhstan differing from Rates prescribed by the Uniform Customs Tariff of the Customs Union in relation to Separate Classes of Goods”; the Decision of August 24, 2012, No. 73, “On the Adjustment of the Contractual and Legal Base of the Customs Union and the Common Economic Space in accordance with the Uniform Commodity Nomenclature of the Foreign Economic Activity of the Customs Union and the Uniform Customs Tariff of the Customs Union, approved by the Decision of the Eurasian Economic Commission’s Council of July 16, 2012, No. 54”.

Examples of regulatory legislative acts concerning financial relationships can be also found among the first decisions: the Decision of March 7, 2012, No. 1 of the Eurasian Economic Commission's Board “On Certain Issues of the Application of Special Protective, Antidumping, and Compensatory Measures in the Common Customs Territory of the Customs Union”; the Decision of July 12, 2012, No. 110, “On Import/Export of Goods for the XXII Winter Olympics

³⁶ Texts of the Council and Board of the Eurasian Economic Commission are available on the official web-site of the Eurasian Economic Commission at <http://www.tsouz.ru>.

and XI Winter Paralympics in Sochi, 2014”); the Decision of December 12, 2012, No. 273, “On the Application of the Summation Method (Method 5) for the Customs Valuation of Goods”.

The acts of supranational authority are in force in the entire customs territory of the Customs Union, and the common customs law rules apply. Special provisions of customs regulations can be used in cases determined by the Customs Code or international agreements of the Customs Union member states.

Decisions of the Commission which regulate issues of the customs duties and other obligatory payments of public law relating to the transferring of goods across the customs border, customs valuation, customs tariff preferences, currency control, become the basis of financial law.

The Commission’s decisions, being neither the acts issued by public authorities of member states, nor international treaties in their generally accepted meaning, are compulsory in the common customs territory. These decisions are considered as regulatory legislative acts in the common customs territory because of the delegation by lawmaking authorities of the Customs Union member states to the supranational body in compliance with the member states’ constitutions and international agreements signed by them and only because the supranational body’s order is legally implemented in accordance with the prescribed operating procedures of the Eurasian Economic Commission.

Conclusion

The formation of the EurAsEC Customs Union and the creation of the Common Economic Space bring regulatory legal acts of supranational nature to the legal system of the Russian Federation. By virtue of the comprehensive character of the relations regulated by the customs legislation, the acts of the Eurasian Economic Commission complete the system of administrative and financial law.

Customs legislation acts become the basis of financial law if they regulate relationships pertaining to customs payment collection, redistribution of customs payment revenues among national budgets of the Customs Union member states, perform foreign exchange control, and other matters which are subject to the public finances.

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