

CUSTOMS LEGISLATION OF THE EURAsEC CUSTOMS UNION**

1. Introduction

Customs legislation takes special place in the juridical system of the Russian Federation. Firstly, it is one of the most “loaded” branches of legislation by the number of constituent normative legal acts. Secondly, it is the most “internationalized” branch of the Russian legislation being developed in the strict correspondence with international legal standards of customs regulation which significantly determine national models of customs regulation. Finally, the customs legislation ensure return of more than half of the total federal budget revenues in the Russian Federation.

The establishment of the Customs Union of the Eurasian Economic Community (EurAsEC) in 2010, which integrated the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation, led to a virtual elimination of customs law as a branch of the Russian legislation and formation of the complex bimodal customs mechanism including the legal base of the customs regulation.

The rapid development of integration processes in the EurAsEC, initially in the format of the Customs Union, and then, the Common Economic Space, led to the emergence of the system of international law acts replacing the national customs legislation of the Customs Union member states. After two years it became the legal basis for further development of the regional economic integration on the post-soviet space.

2. Concept of Customs Regulation in the EurAsEC Customs Union

Transferring a significant part of the lawmaking powers to the institutes of the EurAsEC Customs Union, the Russian Federation has started to use the bimodal mechanism for regulating customs relations.

Customs regulation comprises of the customs legislation of the Customs Union and the national customs legislation of the Customs Union member-states.

Customs regulation competences at national level are implemented in compliance with the national laws, which are adopted in every member-state of the Customs Union and at the same time establish the second level of the customs regulation mechanism in the EurAsEC Customs Union.

* A.N. Kozyrin, Doctor Habilitated in Law, Professor, Head of Department, Financial Law, National Research University “Higher School of Economics”.

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In the Russian Federation the national act regulating customs relations is the Federal Law of November 27, 2010 “On the Customs Regulation in the Russian Federation.”¹ In the Republic of Belarus it is the Customs Code of the Republic of Belarus of January 4, 2007² and respectively, the Customs Code of the Republic of Kazakhstan of June 30, 2010³ is applied in the Republic of Kazakhstan.

The abovementioned laws of the Customs Union member states cannot guide customs regulation independently. They are derived from the customs legislation of the Customs Union and shall not contradict the latter law. The customs regulation matters, which are the subject of the national laws, are delegated to the legislative authorities of member states directly by the Customs Code of the EurAsEC Customs Union.

Thus, the customs legislation of the Customs Union has the priority legal force over the national customs legislation and covers the entire area of the single customs territory of the Customs Union. National law on customs regulation of the Customs Union member state shall comply with the customs legislation of the Customs Union, and shall act only on the territory of the given state.

3. Concept of Customs Legislation of the EurAsEC Customs Union

Concept of the customs legislation of the Customs Union is defined in the Customs Code (Articles 1, 3) through establishing its subject matter, structure and territorial validity.

The customs legislation is a legal base for customs regulation in the EurAsEC Customs Union. It aims at regulating customs relations occurring in the Customs Union, which are the relations connected with:

- Movement of goods through the customs border of the Customs Union;
- Transportation of goods across the single customs territory of the Customs Union under the customs control;
- Temporary storage of goods;
- Customs declaration of goods;
- Release and use of goods in accordance with the customs procedures;
- Implementation of the customs control;
- Payment of customs duties;
- Authority relationship between the customs authorities and the entities exercising the ownership, usage and disposition rights regarding the specified goods.

Customs legislation represents a complex of normative legal acts, which is formed around the Customs Code of the Customs Union that serves as a basic systemically important act of supreme legal force.

¹ The Federal Law of November 27, 2010, No. 311-FZ “On Customs Regulation in the Russian Federation”, *Collection of legislation of the Russian Federation*, 2010, No. 48, Art. 6265.

² Customs Code of the Republic of Belarus of January 4, 2007, No. 204-Z, the *National register of legal acts of the Republic of Belarus*, 2007, No. 17.2/1301.

³ The Code of the Republic of Kazakhstan of June 30, 2010, No. 296-IV “On Customs in the Republic of Kazakhstan”, *Kazakhstanskaya Pravda*, 2010, No. 169–170.

The customs legislation of the Customs Union consists of the three parts:

- 1) Customs Code of the Customs Union;
- 2) International treaties of the Customs Union member states;
- 3) Acts of the supranational authority.

The customs legislation of the Customs Union is applied on the whole territory of the Customs Union, in contrast to the national legislation on customs regulation, which is applied only on the territory of the state adopting the legislation. In other words, the territorial validity of the customs legislation of the Customs Union extends to the customs territory of the Customs Union consisting of the territories of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation including the extraterritorial artificial islands, installations, constructions and other objects regarding which the member states of the Customs Union have the power of exclusive jurisdiction.

4. Customs Code of the Customs Union

The introduction of the Treaty on the Customs Code of the Customs Union signed on November 27, 2009 in Minsk gave an impulse to the formation of the customs legislation of the Customs Union.

In accordance with the decision of the Interstate Council of the Eurasian Economic Community that is the supreme body of the Customs Union, the Treaty on the Customs Code has entered into force on July 6, 2010. Annex to the Treaty constitutes the integral part of the Treaty and it includes the Customs Code of the Customs Union.⁴ As it was noted, the Customs Code of the Customs Union is an act having the supreme legal force. The provision establishing the primacy of the Customs Code among the acts of customs legislation of the Customs Union is included in the Article 1 of the Treaty on the Customs Code of the Customs Union.

The Customs Code is a basic legal act determining the legal foundations for customs regulation within the borders of the Customs Union. All other acts of customs legislation shall be adopted in elaboration of the Customs Code and should conform with it. Legislation acts on customs regulation of the member states of the Customs Union shall conform to the Customs Code.

The principle of correspondence of all the sources of the EurAsEC customs law to the Customs Code regulations is a legal guarantee of the unity of the customs regulation system in the EurAsEC Customs Union. The structure of the Customs Code reflects the main directions of customs regulation and includes sections devoted to:

- general provisions of the customs regulation in the Customs Union;
- customs payments;
- customs control;
- customs operations;
- customs procedures;
- specifics of movement of goods through the customs border.

⁴ *Collection of legislation of the Russian Federation*, 2010, No. 50, Art. 6615.

5. International Agreements of the Customs Union Member States

The second level in the structure of the customs legislation is represented by the international agreements of the Customs Union member states.

It should be clarified that the system of customs legislation includes only those international agreements, which regulate customs relations within the Customs Union. International agreements belonging to the acts of customs legislation can be grouped into the two main groups. The first group consists of the international agreements applied within the EurAsEC and adopted prior to establishment of the Customs Union of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation:

- Agreement on the Customs Union between the Russian Federation and the Republic of Belarus of January 6, 1995;
- Agreement on the Customs Union of January 20, 1995;
- Treaty on the Customs Union and the Common Economic Space of February 26, 1999;
- Treaty on the Establishment of the Eurasian Economic Community of October 10, 2000, and others.

The second group includes international agreements concluded after the creation of the Customs Union and aimed at completing the formation of its contractual legal base:

- Treaty on the Creation of the Single Customs Territory and Establishment of the Customs Union of October 6, 2007;
- Agreement on the Common Customs Tariff Regulation of January 25, 2008;
- Treaty on the Eurasian Economic Commission of November 18, 2011 and others.

The first two levels of the customs legislation (Customs Code of the Customs Union and international agreements of the member states) constitute the legal basis for strategic management in the Customs Union and regulate the most important relations on customs regulation. It is obvious that decisions on the strategically important issues should be given the form of international treaties, which are adopted taking into account the principle of sovereignty applied to the Customs Union member states.

Decisions of the supranational authority shall be taken for regulating operational matters and constitute the third level of the customs legislation of the Customs Union.

6. Decisions of the Eurasian Economic Commission

Acts of supranational authority regulating customs relations within the Customs Union shall be adopted in accordance with acts constituting the two preceding levels of the customs legislation that are the Customs Code and international agreements of the Customs Union member states. Development of integration processes in the EurAsEC and the way towards creation of the EurAsEC Common Economic Space has led to reforming the institutional structure of the integration union. Initially, the Commission of the Customs Union acted as a supranational authority.

In 2012, the Eurasian Economic Commission became the standing regulating body of the Customs Union and the Common Economic Space. Thereafter the Commission of the Customs Union has been abolished.

The legal base of the activity of the supranational regulator is constituted by the Treaty on the Eurasian Economic Commission of November 18, 2011 and by the Decision of the Supreme Economic Council of November 18, 2011 “On Rules of Procedure for the Eurasian Economic Commission.”

The area of activity of the new supranational authority has been expanded significantly in comparison with the powers of the Commission of the Customs Union. Along with the issues of the customs policy and foreign trade regulations, the newly formed Eurasian Economic Commission implements also the supranational regulation in the field of macro-economic, monetary, competitive and energy policies, natural monopolies, transport, labor migration, financial markets and other areas of economic policy.

Simultaneously with the expansion and diversification of the supranational authority’s activity, the structure of the Commission and the procedures, under which it operates, have been complicated.

The Eurasian Economic Commission consists of the Commission Council and the Commission Board.

Within its competence the Commission takes decisions mandatory for the Customs Union member states, and recommendations, which are not of a binding nature.

The Commission takes decisions on the basis of voting by the members of the Commission Council or the Commission Board, the votes of the Commission are distributed according to the following principle: one voting member of the Commission Council or the Commission Board is one vote.

The abolished Commission of the Customs Union applied different procedure for votes’ distribution, which allowed the Russian Federation influence decisions of supranational nature. The old Treaty on the Commission of the Customs Union (in Article 7) provided for the following distribution of votes in the Commission: 21,5 for the Republic of Belarus; 21,5 for the Republic of Kazakhstan and 57 for the Russian Federation. Such votes’ distribution in the Commission allowed the Russian Federation to block decisions supported by the two other member states. It misses that opportunity within the framework of the Eurasian Economic Commission.

The Commission Council, within its powers, takes decisions by consensus. If consensus is not achieved then the issue is referred to the Supreme Eurasian Economic Council on the proposal of any member of the Commission Council.

The Commission Board takes decisions by consensus or qualified majority of two thirds votes of the total number of its members. The list of issues, decisions which are taken by consensus or qualified majority of votes, shall be determined by the Rules of Procedure for the Commission.

The acts of customs legislation of the Customs Union include:

- a) decisions taken by the Council of the Eurasian Economic Commission, for example the Decision of July 16, 2012, No. 54 “On the Approval of the Single Commodity Nomenclature of the Foreign Economic Activity of the Customs Union and the Common Customs Tariff of the Customs Union”, the Decision of July 16, 2012, No. 55 “On the Application by the Republic of Belarus and the Republic of Kazakhstan of the Import Customs Duties Rates Different from the Rates of the Common Customs Tariff, in Respect of Certain Categories of Goods”, etc.;

- b) decisions adopted by the Board of the Economic Commission: for example, the Decision of July 12, 2012, No. 110 “On import (export) of goods for the purposes of organization and holding of the XXII Olympic Games and XI Paralympic Games 2014 in Sochi”, the Decision of December 2, 2013, No. 284 “On the Procedure for the Adoption of Decisions on the Classification of Certain Types of Goods by the Eurasian Economic Commission”, etc.

Previous decisions of the abolished Commission of the Customs Union continue to be applied as customs regulations until they are changed or annulled by the Eurasian Economic Commission.⁵

All decisions of the Eurasian Economic Commission must be placed on the official website of the Eurasian Economic Commission at: eurasiancommission.org (according to the Decision of the Board of the Eurasian Economic Commission of April 16, 2013, No. 83).

7. Conclusion

Bringing the analysis of the current state of the customs legislation of the Customs Union to an end, we can state the following:

1. Customs legislation represents the numerous and diverse legal acts regulating customs relations in the EurAsEC Customs Union.

All these acts constitute the uniform system arranged around the basic act, the EurAsEC Customs Code. Other acts of the customs legislation shall be adopted in accordance with the Customs Code of the Customs Union, for elaboration and in pursuance of its provisions.

2. Customs legislation of the Customs Union integrates acts of strategic regulation (the Customs Code of the Customs Union and the international agreements of the Customs Union member states), and acts of operational regulation of the supranational nature (Decisions of the Eurasian Economic Commission, and , before 2012, of the Commission of the Customs Union).

3. For the Russian Federation since its accession to the EurAsEC Customs Union in 2010, the most important feature of the legal regulation of customs relations has become the creation of bimodal mechanism integrating customs legislation of the Customs Union and national legislation on customs regulation applied in the territory of the Russian Federation.

Customs legislation of the Customs Union has priority legal force over the national legislation and extends its action to the entire single customs territory of the Customs Union. In turn, the national legislation on customs regulation is formed in accordance with the provisions of the customs legislation of the Customs Union, shall not contradict it and is applied within the territory of the respective member state of the Customs Union.

⁵ The numerous decisions of the Commission of the Customs Union regulating important aspects of customs law are still in force: for example, the Decision of the Commission of the Customs Union of September 20, 2010, No. 376 “On the Procedure of Declaring, Control and Adjustment of the Customs Value of Goods”, Decision of the Commission of the Customs Union of June 18, 2010, No. 317 “On Implementation of Veterinary and Sanitary Measures in the Customs Union”, etc.

4. Customs Code of the Customs Union (Article 1) establishes one of the major principles of the EurAsEC customs law that is the balance between the two levels of customs regulation, which are the customs regulation performed within the framework of the Customs Union and the customs regulation implemented in the territory of the Customs Union member state. National regulation of customs relations is implemented only until the appropriate provisions of the customs legislation of the Customs Union are established.

Prawodawstwo Unii Celnej Euroazjatyckiej Unii Gospodarczej

S t r e s z c z e n i e

Artykuł poświęcony jest mechanizmowi regulacji prawnych w zakresie tworzenia i działalności Unii Celnej Euroazjatyckiej Unii Gospodarczej. Autor analizuje koncepcję oraz strukturę prawodawstwa celnego Unii Celnej i krajowych przepisów dotyczących regulacji prawnych stosunków celnych członków Euroazjatyckiej Unii Gospodarczej. Regulacje celne składają się z przepisów prawa celnego Unii Celnej i krajowego prawodawstwa celnego z krajów członkowskich Unii Celnej. W związku z tym szczególną uwagę zwraca się na zasady relacji między poziomami międzynarodowych i krajowych regulacji stosunków celnych w Euroazjatyckiej Unii Gospodarczej. Wraz z rozwojem liczby uczestników integracji zwiększają się potrzeby skutecznego działania ponadnarodowego regulatora – Euroazjatyckiej Komisji Gospodarczej – w celu podejmowania decyzji w trybie operacyjnym. Gwarancją realizacji osiągniętych porozumień musi być wzmocnienie pozycji Euroazjatyckiej Komisji Gospodarczej i dodatkowych uprawnień do zarządzania polityką gospodarczą w ramach Euroazjatyckiej Unii Gospodarczej. Unifikacja przepisów krajów członkowskich Unii Celnej oraz rozróżnienie między prawem międzynarodowym, ponadnarodowym i krajowym w chwili obecnej jest jednym z najbardziej strategicznych zadań działalności Euroazjatyckiej Komisji Gospodarczej. W początkowej fazie tworzenia Euroazjatyckiej Unii Gospodarczej uprawnienia ponadnarodowego regulatora – Euroazjatyckiej Komisji Gospodarczej – zostaną rozszerzone i poprawione.