

Key theory issues of the Eurasian Economic Union customs law

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Abstract

There has been an ongoing discussion on the position of customs law in the legal system since the mid-1970s. The Treaty on the Eurasian Economic Union (EAEU) and EAEU Customs Code (EAEU CC) highlights the position of customs law within the framework of the EAEU legal system. The authors provide a list of the EAEU legal system sources governing customs relationships, a summary of scholars' views on customs law, theoretical and practical backgrounds to EAEU CC categorisations, and identify the key issues for shaping both customs legal theory and the regulation of the EAEU customs legal relations.

1. Introduction

The concept, subject, method and position of customs law in the legal system have been topics for discussion since the mid-1970s. Some scholars state that:

establishing and functioning of the EAEU resulted in a new legal phenomenon – EAEU law which regulates the relationship between the Member-States due to ‘functioning and developing of the economic integration, and the question being about its relationship with Member-States national law’. (Shulyat’ev & Skurchenko, 2017, p. 3)

Here, we have formulated a legal theory on categorising EAEU customs law and provide the theoretical and practical background of its development. We also examine how the viewpoints of the prominent European, US and Russian scholars evolved on the position of customs law in the legal system.

Given the complexity of the subject, the theory of law failed to develop a uniform construction of such fundamental concepts as the (national) customs law (of member states of a regional integration union), international customs law and customs law of a regional integration union. Until now no uniform framework has been created specifying the relationship between these concepts or their hierarchy, subject to the level of economic integration (free trade zone or customs union).

In addition to the hierarchy of the stated categories and establishing the interaction between them, the issues of the relationship between international customs law as universal legal rules developed by the World Trade Organization (WTO), World Customs Organization (WCO) and other international organisations; and supranational (or regional) customs law (customs law of a regional integration union, for example the EAEU and European Union). The general rule that customs law rules ratified and published are superior to regional and national customs law rules can become inapplicable because they are disregarded by the state and integration union.

Thus, the key issue in determining the position of customs law within the system of law is to characterise the relationship between international customs law (in the form of WTO, WCO regulations) and customs law of a regional integration union.

2. Legal basis

2.1. EAEU acts of law system regulating customs legal relations

In accordance with Article 25, Paragraph 1 of the Treaty on the EAEU, Common Customs Tariff of the EAEU and other common measures regulating foreign trade, and Single Commodity Nomenclature of Foreign Economic Activity, common customs regulations are applied within the Customs Union (CU) of the EAEU member states.

The Treaty on the EAEU lays down the fundamentals of the common customs regulations. In accordance with Article 32, common customs regulations are applied subject to the following Acts: the Treaty on the EAEU, the EAEC CC, treaties and acts constituting the law of the Union and governing customs legal relations.

Common customs regulations are exclusively within the scope of the EAEU authority and regulations in the specified area may be adopted by the member states in the cases provided by the Treaty to enforce EAEU acts of law. Unlike the provisions in the EAEU CC, the Treaty fails to provide an option for common customs regulations to be governed by the member states' acts of law.

Incorporating the principle of exclusive authority of the Eurasian Economic Commission (EEC) over common customs regulations, the EAEU CC distinguishes between the scope of supranational acts and national acts to identify the legal personality of the entities who enter into customs legal relations. Common customs territory implies that the rules governing importation of goods shall be uniform in all EAEU member states. However, reference rules to national law a priori shall not be a determinant of different regulation.

The Treaty on the EAEU fails to specify the concept of 'common customs regulations', which is important in its interpretation in theory (the language of a fundamental concept of the integration process in the EAEU) and in practice (predicting future impact on the lawmaking process) as the definition acts as a prerequisite for the uniform understanding of the term.

The concept of 'customs regulations', being a type of legal regulation, is closely related to the concept of 'customs law' since the former is the external form of the law and various legal devices affecting customs relationships.

The EAEU CC came into force on 1 January 2018 and is part of the development of the regulation of customs relationships in the member states. The EAEU CC drafters rejected the concept of 'customs law' that used to be provided in the CC CU. In accordance with Article 1, Paragraph 1, Part 2, of the CC CU, 'Customs Regulation in the Customs Union is made subject to the Customs Law of the Customs Union...'. Article 1 of the EAEU CC states that 'Customs Regulation in the Eurasian Economic Union is made subject to the treaties governing customs relations, including this Code and the acts underlying the Law of the Union (hereinafter "the treaties and acts in the area of customs regulation")'. It might be concluded, based on the comparative analysis of two articles, that the legislator deviated from a fundamental concept of 'legislation' to a mere listing of its underlying acts.

It should be noted that the Revised Kyoto Convention and the European Union Customs Code now in force (Union Customs Code) apply the term 'customs law'.

We shall consider the hierarchy of legal sources of the EAEU, set out in Article 32 of the Treaty of the Union. The leading role belongs to the Treaty of the Union rules, which are followed by the EAEU CC, even though it is an Annex to the Treaty, it is based thereon and develops the Treaty provisions, governing customs legal relations. The next position in the hierarchy is Treaties and Acts, governing customs legal relations, and constituting the Law of the Union.

In accordance with Article 6 of the Treaty of the Union, the Law of the Union comprises the Treaty, treaties within the Union, treaties of the Union with a third party and decisions and dispositions of the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council, and the Eurasian Economic Commission, adopted within the scope of their authority provided for by this Treaty and treaties within the Union.

Treaties within the Union imply that treaties concluded by the member states to regulate the functioning and development of the Union, whereas treaties of the Union with a third party are the ones concluded with third countries, integration associations thereof and international organisations (Article 2, the Treaty of the Union).

The decisions adopted by the Supreme Eurasian Economic Council and the Eurasian Intergovernmental Council shall not conflict with the Treaty of the Union and treaties within the Union and are subject to be implemented by the member states in the order specified in the national legislation thereof. Where there is a conflict between treaties within the Union and the Treaty of the Union, the latter shall prevail. In cases of a conflict between the decisions of the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council and the EEC, the decisions of the Supreme Eurasian Economic Council shall prevail. A similar mechanism should be provided with respect to the legal acts governing customs legal relationships.

2.2. The WTO law system's impact on regulating customs legal relations

The EAEU CC (Article 3, Paragraph 1) states that customs regulations within the EAEU are based on the harmonisation of treaties and the EAEU acts in the field of customs regulations, with international law rules.

The drafters of the EAEU CC pointed out that many other tasks were fulfilled when drafting the code besides making the terminology and its rules consistent with the provisions of the EAEU Treaty and implementing the provisions of 16 treaties, governing customs legal relationship, and six drafts of treaties. For example, the task of modernising customs administration is subject to the current level of information technology, limiting the national segment of customs regulation, considering the customs rules laid down in the provisions of international conventions on customs law and obligations incurred by the member states within the framework of the WTO, including the WTO Agreement on Trade Facilitation (ATF) (11 December 2013).

Khalipov (2013, pp. 41–42) believes that customs regulations in the CC were not based on the WTO legal system and had an alternative legal framework. The situation is considered to have changed following the entry into force of the EAEU Treaty and the WTO ATF.

The WTO ATF, enacted on 22 February 2017, is part of a set of documents underlying the WTO legal system and about 70 per cent of its provisions govern customs legal relationships.

The EAEU Treaty specified that the rules and regulations of the WTO were taken into consideration when establishing the EAEU, developed and laid down in the Protocol on the Functioning of the EAEU within the Multilateral Trade System (Annex 31 to the Treaty on the EAEU). The Protocol confirmed the prior agreements to apply the Treaty on the Functioning of the Eurasian Economic Union within the Multilateral Trade System (dated 19 May 2011), to regulate the respective relations.

The Treaty specified the ratio of the rules and regulations, adopted by the WTO, to the ones adopted by the CUs, as well as complying with the obligations to the WTO.

In accordance with Article 2 of the Treaty:

The parties shall take any action to make the legal system of the CUs and the decisions of its bodies consistent with the WTO Agreement, as it was stated by each party in the Protocol on accession, including each party obligation incurred as a prerequisite for acceding to the WTO. Prior to taking these actions, the WTO provisions, including the obligations of the parties incurred as a prerequisite for their acceding to the WTO, prevail over the respective provisions of treaties concluded within the framework of the CUs and the decisions adopted by its bodies.

When the bodies of the CUs conclude treaties within the framework thereof, adopt and apply the Acts thereof, the Parties ensure that these treaties and acts comply with the WTO Agreement.

In addition to the ATF, the most important WTO agreements affecting EAEU customs law are the General Agreement on Tariffs and Trade (GATT), as well the agreement on implementation on some articles (for instance, the Antidumping Codex or Agreement on Implementation of Article VII of the GATT 1994).

Before the treaty and EAU CC entered into force (19 May 2011):

the WTO Agreements and the treaties signed within the framework of the regional integration associations are equally binding, notwithstanding the widespread stereotype the former do not prevail over the latter. (Smbatajyn, 2011, p. 76)

At present WTO rules prevail over EAEU rules, which has been specified in the legislation.

It is said in the academic works: ‘the WTO Agreements and the treaties signed within the framework of the regional integration associations are equally binding, notwithstanding the widespread stereotype the former do not prevail over the latter’ (Smbatajyn, 2011, p. 76).

In accordance with the established classification, rules of international law are split into ‘hard’ and ‘soft’. Accordingly, subject to the impact on the Customs Law of the Union, the WTO rules are ‘hard’ (binding), however, the rules adopted by the World Customs Organization are ‘soft’ (advisory), methodical in performing obligations within the framework of the WTO.

The analysis shows that the terminology of the WTO ATF is not used in its entirety in the EAEU CC, such as ‘Single Window’, ‘Preshipment Inspection’, ‘Clearance’ and ‘Committee on Trade Facilitation’. Some sound scientific approach should be developed to deal with the possibility, feasibility and scope of implementation of the WTO ATF provisions into treaties and the EAEU acts in the field of Customs regulations. In this regard, the development and improvement of the Customs Regulations based on the WTO ATF can be continued.

3. Theoretical basis: analysing the legal scholars’ views on customs law branch affiliation

The issue of customs law branch affiliation is common both to the legal scholars in the EAEU member states and to the legal theory worldwide.

3.1. Customs law in the legal theory of foreign countries

First, we shall consider European scholars’ views on the Customs law doctrine since the European Union Customs Law is one of the most developed law branches with due regard for the phases gone through and the period of integration in the European Union.

Professor Czyzowicz (2005, p. 19) points out that ‘the problem of interpreting Customs law in the modern doctrine definitions in the Western Europe and the US is actually beyond the scholars’ interests.’ The professor asserts that the only exception is France (scholars’ works are devoted to the ratio between national and supranational regulation in France and EU) and Spain (the nature of customs procedures) (Czyzowicz, 2005).

A significant contribution to the doctrine of European Customs law was made by Gellert (2009, p. 53–55) when researching the principle of legal certainty in national and supranational systems of regulating customs legal relations.

Czyzowicz (2005, p. 40) goes on to state that ‘the customs law incorporates the most important standards which ensure overall regulation of international trade. The concept of customs policy is a starting point for discussing Customs law, Customs law being the most efficient instrument of implementing customs policy’. However, the definition of Customs Law is unavailable in the works of Polish legal scholars, in customs law doctrines, and other legal sources in Poland. Such concepts as ‘customs system’, ‘Customs Law’ and ‘customs law’ are used likewise in the sources mentioned above. The issue of classifying customs law into an independent branch is also urgent in the Polish doctrine.

When describing the system of EU Customs law sources, Wolfgang (2007, p. 3) focuses on the fact that ‘European customs law is influenced by international law. The rules of commercial international law, which derive from treaties or conventions, are of paramount importance’. Wolfgang and Harden (2016, p. 4), analysing the evolution of the EU customs relations regulation, state that one of the main functions of the EU Customs Law is to formalise a new role of the customs service which is both collecting customs payments and ensuring security of international trade.

Altemöller (2018) shares Wolfgang and Harden’s (2016, p. 4) opinion that ‘customs authorities perform a leading role in the supply chain which combines supervisory and regulatory as well as mediatory and facilitative tasks’. Altemöller (2018, p. 21) assumes that ‘this calls for modernisation of the public management, customs administration as well as further associated institutional renewal’.

Widdowson (2007, p. 31) suggests that the international customs law acts of the WCO and WTO should be regarded as the legal basis for the customs role evolution:

Customs has traditionally been responsible for implementing a wide range of border management policies, often on behalf of other government agencies. The role of Customs has, however, changed significantly in recent times, and what may represent core business for one administration may fall outside the sphere of responsibility of another. This is reflective of the changing environment in which customs authorities operate, and the corresponding changes in government priorities. The World Trade Organization, World Customs Organization and other international bodies are responding through the development of global standards that recognise the changing nature of border management.

Wilmott (2007, p. 11) considers EU Customs Law as the most important factor, without a comprehensive development of which will risk surrendering Europe’s competitive edge in international trade to nations that have more aggressive customs strategies.

Lux (2007, p. 19) supposes that:

The interdependence between international law and European Community law, particularly in the area of customs, is very complex. The ways in which international customs law is incorporated into the Community’s legal system are many and varied, and there is a need to establish some standard mechanisms for the future in order to reduce the diversity of solutions that are found for problems that are similar.

The US Customs Law incorporates the following relationship, in some experts' opinions:

Customs Laws control the import of goods into the United States and the duties (or import taxes) paid on such goods. The United States Customs and Border Protection Agency is the regulatory agency primarily tasked with overseeing American customs laws. (Garcia, 2018)

Most authors point out that Customs law is a branch of Public law. It is implied from the fact that the scope of the issue to be standardised in this branch of law, regulation methods and types of entities call for the application of Customs Law as well as the orders to be performed under Customs Law (Czyzowicz, 2005, p. 40).

Thus, a small critical analysis of the view on customs law theory in different countries enables us to conclude that:

1. The scholarly discussion mentioned previously shows the importance of the customs law theory provisions for foreign doctrine.
2. Customs law is treated as a tool of customs policy, which must ensure favourable conditions for the development of the state economy and integration association economy (for instance, the EU).
3. The fact that European customs law is influenced by international law is not being challenged. At the same time, the paramount importance of the rules of commercial law, which derive from treaties or conventions, is discussed. Commercial international law rather than customs international law is confirmed to be a priority. This point of view gives rise to discourse on the determination of customs law from the standpoint of classifying law branches into public and private.
4. Regarding customs law classification, the majority of scholars point out that it is a branch of public law.

3.2. EAEU customs law doctrine

Matveeva and Rogacheva (2012, p. 6) concluded that:

Customs law can not be regarded so far as a mere Russian Law branch since international law rules are becoming predominant among the sources; the subject matter of legal regulation has been broadened: in particular, it is a relationship involving movement of the goods across the EAEU customs border rather than Russian Federation border. The terminology 'Russian Federation customs border', 'Russian Federation customs territory' are no longer applied'.

In the opinion of the law enforcement experts:

when drafting the CU CC the principle of comprehensive content of customs law rules was adopted: the relationships between a business entity and customs authority, resulted from moving the goods across the customs border, involving customs formalities and compliance with other requirements in the customs regulations are governed by CU Customs Law rules. However, in the cases when customs authority deal with the issues or exercise the authority delegated to them within the scope of other (administrative, tax, civil etc) relationship, not governed by CC, the rules thereof contain the renvoi to the domestic law of the Member-States. (Kozukhanov, 2016, p. 55)

Kobzar-Frolova (2013, p. 19) dwells on the independence of customs law. She formulated the definition of customs law with the help of the description of:

the relationship in the field of customs regulations and Customs which are called customs legal relationship. Customs legal relationships are governed by international, supranational and national law rules, have a particular object and subject matter to be regulated, which enables to identify for

research a specific area of public relations and their specificity, and to describe their typical features and characteristics, have a wide range of participants, arise from legal facts significant for this type of relationships.

Shumilov's (2011, p. 17) opinion can be regarded as a conclusive one:

... the adoption of the EAEU Customs Code enabled to distinguish between the 'old', purely intrastate customs law (Soviet and Russian) and modern customs law as an element of international (regional) law (specifying the system of the fundamental rules of law in the international legal act).

Now that most customs regulation issues are subject to supranational jurisdiction, and it is highly likely to become exclusively supranational in the future, it is inevitable that the EAEU Customs Law will be part of international law.

Nowadays, the international law 'integration' aspect of customs law is being rapidly developed by the experts. In particular, Tolochko (2012) considers EAEU law (Customs Union, CES) to be conditionally collectively aimed at identifying a specific subsystem (micro-level) of international law. Tolochko (2012) regards the concept of integration law as a tool 'to systemize conglomerate international law and link it to the national law system of a particular state. The law of any integration association is almost always a regulatory tool aimed at fulfilling specific economic or political tasks by the Member-States participating therein. The author points out both the theoretical significance of identifying integration law as a separate branch and its practical aspect, 'identifying integration law as a separate branch and isolating it may be the key to solving a number of socio-economic problems in the area of integration'.

3.3. Customs law in the law system: retrospective analysis of the doctrine prior to Eurasian integration

The Soviet doctrine, in particular Talalaev (1987, p. 628) as the most prominent representative thereof, defined customs law as:

a set of legal rules to ensure economic control of the national borders, foreign economic and customs policy of the State. The State regulates import of foreign goods and export of domestic goods by levying customs duties thereon when crossing the state border. Customs authorities undertaking control over it are governed by the Customs Law rules provided by the national legislation as well as by the treaties.

Talalaev (1987, p. 628), one of the most prominent Soviet experts in treaty law, points out that:

in some states Customs Law is a part of Administrative Law. However, Customs law is closely connected with the area governed by international law. There are many international agreements, bilateral and multilateral, concluded by the states on customs issues.

In the 1990s three principal viewpoints were expressed in academic works on the issue of customs law branch affiliation which developed Talalaev's point of view. According to the first one, customs law was a branch of administrative law. Bakhrakh and Kivalov (1995, p. 2) formulated the following basis for the point stated: 'Customs Law is the element of Customs' which is, for its part, 'a complex inherently unified institution being part of the executive branch of power'.

The second group of scholars expressed the opinion that customs law is a sub-branch of administrative law (Sandrowskiy, 1974). Thus, Sandrowskiy (1974, p. 20) discussed the specific nature of customs law caused by the fact that:

crossing the customs border leads to the transition from one customs jurisdiction to another one. Such close contact between various legal regimes is not common to other branches or sub-branches of national law.

Moreover, Sandrowskiy, in 1974, made a valuable remark:

if we recognize that it is reasonable to have Customs Law within the scope of Administrative Law, we assume that at present there are grounds to claim that a special sub-branch exists within the area of Administrative Law, namely Customs branch. It is likely, that over time as new legal basis in this area will be developed, Customs Law might be classified as an independent branch.

Kozhukhanov (2016, p. 55) puts forward counter arguments against considering customs law as a sub-branch of administrative law:

The promoters of this approach fail to take into account that customs relationships go far beyond mere contact of various classes of persons with the customs authorities, when the latter apply mostly imperative rules. Thus, the entities involved in the foreign economic business represent various countries within the Russian Federation and actively cooperate with the customs officials, carriers and other persons to have the goods moved across the border etc.

The third viewpoint was to designate customs law as an independent, comprehensive branch of law. Gabrichidze (1995, p. 14), committed to the argument stated above, indicated that customs law in Russia was ‘a set of legal institutions and rules, governing the relationship in the area of Customs’.

In the context of the third viewpoint, Vorobiev (1996, p. 19) formulated the concept of customs law that provides that:

it is a comprehensive branch of Russian Law governing the relationship between the customs authorities and the persons regarding movement of the goods and the vehicles be the latter across the customs border, customs clearance, control and the required payments being carried out and collected in compliance with the law.

In Vorobiev’s opinion, the reason for classifying customs law into a separate branch is:

the relationship inherent thereto which is governed exclusively by it – these are specific relations, arising from movement of the goods across the customs border and the requirement (imposed by the State, being laid down as a law) to have it cleared and controlled, customs duties being collected.

Nozdrachev (1998, p. 256) assumed that ‘Customs Law was a comprehensive branch of law comprising a set of legal rules from various branches.’ At present, the scholar is working at ‘a systematic approach to define Customs Law as a new branch being developed and identifying its main institutions’. The concept of comprehensive law branches emerged in the late 1940s and remains relevant so far. In Rybakova’s opinion (2013, p. 179), ‘complex public relationships underlie emerging comprehensive legal concepts.’ Khalipov (2011, p. 61), who also mentions a complex nature thereof, articulated the following notion of customs law: ‘a set of legal rules governing the order of proper movement of the goods (vehicles) across the customs border’.

Many scholars had expressed the opinion of the considerable impact made by international law on customs law long before the CUs and Single Economic Space was formed, and legal regulation of customs relations became supranational. For instance, Fomina (1995, p. 135) considered ‘international law to be an active element affecting the area of Customs regulation’, which was caused by ‘rapid development of RF foreign economic relations as well as the increase in inter-State contacts’.

Zraychkin (2000, p. 37) asserted that:

Customs Law was at the interface of two or more legal fields of the State. National Customs law and Foreign Customs law interact in this way. When national branches of law enter into contact a new cross-territory law is being developed (international law). Thereby a newly formed international customs law is the institution both of international law and national law.

Thus, a small critical analysis of the view on customs law theory in Russia and EAEU member states enables us to conclude that:

1. Before commencement of the EAEU Russian scholars viewed customs law as part of administrative law; only some scientists stated that customs law is a separate branch in the legal system.
2. The viewpoint that customs law is partly international, as stated above by some Russian scholars, has been confirmed in the drafting of the customs law of the CUs within the framework of the EAEU.

4. Results

4.1. On approaches to have customs law hypothetically categorised within the framework of the EAEU law system

We shall therefore give arguments for having the EAEU customs law hypothetically categorised as an independent branch, applying law branch features as developed by Reicher (1974, p. 51). These arguments are:

1. A set of legal rules corresponded to a specific type of public relations (customs relations), that is, in this respect it has a single and separate subject matter of regulation and, consequently, the unity of the subject matter. The subject matter of customs law comprises the relationship arising from and (or) involving movement of goods across EAEU customs borders, their carriage across EAEU single customs territory under customs control, temporary storage, customs declaration, release and use of goods according to the customs procedures, customs control, customs payments, as well as exercising power by the customs authority over the entities who have possession, enjoyment and disposal of the goods described.
2. A specific type of public relations governed by such a set of legal rules has enormous public significance caused by the EAEU member states' budgets (Russia in particular) being critically dependent on customs revenue, as well as the need to ensure national and regional security (fight against customs offences), the safety and wellbeing of the consumers and the population at large.
3. The legal framework underlying such a set of legal rules must be significantly large. By 2019 the EAEU Customs Law comprised a few thousand regulations.
4. Public interest to have a new branch of law categorised and spun off (Chikvadze & Yampolskaya, 1967, p. 89) is aimed at organising comprehensive customs legal relations and systematising customs law, which is getting more complex due to expanding the scope of supranational regulation with the national regulation range being unchanged. Public interest is also evidenced by the fact that EAEU member states when joining the WTO undertook to make supranational and national regulation in compliance with the WTO rules. Moreover, a new paradigm of international trade is developing – a digital economy wherein cross-border paperless trade dominates. The factors mentioned, regarding emerging new transport means (unmanned vehicles) and new cross-border paperless technologies, lead to public interest in organising legal regulations in customs legal relations.

To prove the public significance of categorising customs law as an independent branch, Romanova's view (2017, p. 38) can be quoted:

the development of Customs Law within the framework of integration associations is particularly valuable, since the Customs Union is a key phase of international economic integration, and absent single customs regulations further progress in the field of integration seems hardly achievable.

Kozukhanov (2016, p. 55) shares Reicher's opinion:

Customs law is one of the Russian law branches. The rules thereof govern the process of generating budget revenue in the country and providing national security. As one of the system-forming branches it might be called meaningful and important in the functioning of the State.

Hence, a discussion on whether the EAEU customs law is an independent branch, an element of international customs law or an element of EAEU law (integration association law) is ongoing and in some cases controversial.

As has been previously stated there are both theoretical reasons to have the EAEU Customs Code categorised as an independent branch (like the European Union Customs law) and a practical background, as follows:

1. The probable primacy of the WTO rules over supranational regional EAEU Law has both theoretical and practical dimensions. The point is that the 'hard' law rules and binding international standards being laid down by the WTO comply with the Anglo-Saxon law system, with customs law traditionally being the sub-branch of commercial law (Law Merchant). Such positioning in the law system determines the method regulating customs relations, which is different from the imperative Continental Law system adopted by the EAEU member states. In Belarus, Kazakhstan, Russia, Armenia and Kirghizia, prior to the EAEU formation, customs law used to be a complex branch, significantly affected by administrative law and adopting its method of subjection to the authorities.
2. There is no doubt that, subject to rapidly developing customs relations, customs law doctrine is necessary for a successful, balanced, elaborate lawmaking process by the EAEU Member States representatives. The work on The Treaty on the Eurasian Economic Union and EAEU Customs Code revealed a severe shortage of theory provisions the legislator could rely on.

4.2. Determining the factors stimulating future development of the EAEU customs legal relations

Legal regulation of the EAEU customs relations will be developing due to the following factors:

- implementation of digital agenda
- performing the obligations incurred in connection with WTO membership
- reforming the tax system
- settling traders' residence issues
- enhancing the Authorized Economic Operator status.

Cutting-edge information and communication technologies also underlie such development. The EAEU CC, which entered into force on 1 January 2018, is a document which, inter alia, lays down legal grounds for further application of information and communication technologies in customs

legal relations. Priority should be given to the electronic customs declaration, and electronic data interchange being provided when a customs applicant deals with the customs authority. Priority of the e-document has been set, with paper records as a copy. A new e-document has been introduced providing preliminary information. Some customs formalities may be carried out in an automated mode, without human intervention, by means of information systems.

A hypothesis may be formed, based on the analysis made above, that the development of a digital economy, digital supply chains, emerging new types of transport and commerce dictate the need for transforming legal regulations of customs relations. This sort of ‘evolution’ will cause considerable difficulties for customs authorities and border services, making them contact digitally with new interested parties and partners.

The following methodological approaches may help to determine the factors indicating the development of the EAEU customs relations regulation. Methodologists, when describing a tool for determining the realities, apply the following formula: one and the same reason in similar conditions always has the same effect. However, it should be considered that, on the one hand, the conditions and reasons are interdependent, but on the other, they are independent. Consequently, in this area of research, the formula, linking the cause and the conditions, is as follows: applying information communications technologies (ICT) on a large scale in international trade determines the revision of the legal regulation of customs relations.

Wolfgang and Rogmann (2019, p. 79) state that:

developing information-communications technologies and speeding up international integration is an integral part of establishing modern international economic relations. First of all, the events occurring take the form of making the economy digital, e-commerce being an element thereof.

ICT plays a crucial role in implementing the WTO ATF (the Agreement) subject to Article 7 rules of the General Annex to the Revised Kyoto Convention (Kyoto Guiding principles in the area of ICT).

Hence, as previously stated by the authors, the significance of the WTO and WCO Acts in determining the factors indicating the development of customs relations regulation in the Russian Federation, within the framework of the EAEU, is to incorporate into the EAEU CC the standards provided by the WTO Agreement on Trade Facilitation, by the Revised Kyoto Convention, as drafted in 2020, and other international instruments, as well as to further develop the EAEU CC legal institutions (such as customs control, customs formalities, customs declaration and Authorized Economic Operators) based on, rather than subject to, the previously mentioned Agreement and Convention (Rulskaya et al., 2018).

5. Discussion and conclusion

5.1. Key aspects of the customs relationship in the Eurasian Economic Union at present and in the long term, 2020–2030

We have considered the modern factors indicating the development of customs relations regulation in the Russian Federation within the framework of the EAEU and conceptually identified the key features. To create the image of the Russian Customs Service until 2024 (in the long term up to 2030), the following unique determinants may be specified:

1. The factors affecting the development of customs relations in the EAEU may include:
 - regionalisation as a new direction of globalisation (concluding a growing number of agreements on multilateral and bilateral Free Trade Areas, GATT (WTO), as a global multilateral trade system, going through crisis)
 - the need for Customs to administer movement of goods in various legal systems worldwide
 - paper workflow and manual customs procedures are replaced by automated release of goods for domestic consumption, by, for example, automated registration of customs declarations.
2. The factors considered are crucial for reviewing the legal status of the Customs Service in the hierarchy of government authorities. An attempted inquiry into the legal relationship of movement of goods and vehicles across the Union customs border, application of international standards and analysis of modern foreign experience in the operation of customs authorities worldwide, within the framework of the predictive function of legal theory, enables us to formulate the direction in which the legal status of customs authorities will be developing.
3. The International Customs Community (EAEU member states included) makes attempts to work out an international Act, with due regard for digitalising international trade, which would set proper standards of customs regulation and administration. A new version of the Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures ought to become such an Act. Therefore, drafting the Act, governing customs legal relations, shall be based on the standards laid down in the WTO and WCO treaties (namely, the Revised Kyoto Convention, as drafted in 2020).

Thus, digitalising (due to the widespread application of ICT) of international trade causes transformation of the customs legal relationship; the effect thereof is amendment to the theory of Customs administration in the context of cross-border paperless trade.

In our opinion, the current trend to have customs procedures automated is crucial for the transition to a new paradigm of monitoring and supervising by customs authorities, based on:

- A fundamental standard of interaction between customs authorities and traders by means of data exchange and e-messages rather than e-workflow and e-documents
- The use of artificial intelligence, processing of big data, applying block-chain technology, the Internet of Things in customs' legal relations
- application of the WCO data model
- Automated issuing of customs documents (legally significant data) for customs control based on the information provided by commercial, transport and other documents involved in a foreign trade transaction.

5.2. Customs law branch affiliation and approaches to have customs law hypothetically categorised with the framework of the EAEU legal system

The analysis of the EAEU Customs legal acts subject to the legislative supremacy of WTO rules over the EAEU rules enables us to reach the conclusion on Customs Law branch affiliation to have it hypothetically categorised within the framework of the EAEU law system.

The theory of law failed to develop a uniform construction of such fundamental concepts as (national) customs law (of member states of a regional integration union), international customs law, and customs law of a regional integration union. So far, a uniform framework has been created specifying the relationship between these concepts, with their hierarchy subject to the level of economic integration (free trade zone or customs union).

In this connection the following hierarchy is suggested:

1. International customs law, which is a set of uniform WTO and WCO legal rules (as well as those of other international organisations) governing customs issues in international trade
2. Supranational (or regional) customs law (customs law of a regional integration union, for example, the EAEU and EU), which cannot conflict with the rules of international customs law. On the contrary, the general principles and rules of international customs law lay the basis for supranational customs law and are created pursuant to the standards set out in international customs law rules.
3. National customs law of the states, including:
 - a) member states of regional integration unions (may be available if the national segment of customs regulation is allowed under supranational customs law)
 - b) non-member states, providing uniform customs tariff, customs area and customs laws.

Our assumption is that EAEU customs law may be considered a separate branch of law that is within the scope of supranational (or regional) customs law (customs law of a regional integration union), subject to the classification provided.

References

- Altemöller, F. (2018). How do the changing international trade relations impact on public administration? *World Customs Journal*, 12(1), 17–26. [https://worldcustomsjournal.org/Archives/Volume%2012%2C%20Number%201%20\(Mar%202018\)/1846%2001%20WCJ%20v12n1%20Altemoeller.pdf](https://worldcustomsjournal.org/Archives/Volume%2012%2C%20Number%201%20(Mar%202018)/1846%2001%20WCJ%20v12n1%20Altemoeller.pdf)
- Bakhrakh, D., & Kivalov, S. (1995). *Customs law of Russia*. 305.
- Chikvadze, V., & Yampolskaya T. (1967). О системе советского права [On the system of Soviet law]. *Soviet State and Law*, 9, 84–90.
- Czyzowicz, W. (2005). Customs law in the legal system: methodological approach. *Proceedings of the International Conference Customs law in the legal system*. 250.
- Fomina, O. (1995). *Международное таможенное право* [International tax law]. *Economics and Law*, 5, 128–136.
- Gabrighidze, A. (1995). *Таможенное право России* [Russian customs law] 410.
- Garcia, M. (2018). *Customs Law*. <https://www.hg.org/customs-law.html>
- Khalipov, S. (2011). *Таможенное право: учебник* [Customs law: textbook]. 271.
- Kobzar-Frolova, M. (2013). Отношения в области таможенного регулирования и таможенного дела: правовая характеристика [Relations in the field of customs regulation and customs: legal characteristics]. *Bulletin of the Russian Customs Academy*, 2, 17–29.
- Kozhankov, Y. (2013). *Таможенное регулирование в ЕврАзЭС: учебник* [Customs regulation in the Customs Union within EurAsEC: textbook] 2nd ed., Northwestern University Press. 522.
- Kozukhanov, N. (2016). О методе таможенного права [On the method of customs law]. *Bulletin of the Russian Customs Academy*, 4, 52–61.
- Gellert, L. (2009). Rechtsverbindlichkeit von Leitlinien der Europäischen Kommission [Legally binding guidelines of the European Commission]. Customs Union and e-government. Proceedings of the 21st European Customs Law Day of the EFA on 18 and 19 June 2009 in Linz, 51–58. <https://www.wvu-customs.de/fileadmin/downloads/Linz-1-1.pdf>
- Lux, M. (2007). EU customs law and international law. *World Customs Journal*, 1(1), 19–29. [https://worldcustomsjournal.org/Archives/Volume%201%2C%20Number%201%20\(Mar%202007\)/05%20EU_customs_law_and_international_law.pdf](https://worldcustomsjournal.org/Archives/Volume%201%2C%20Number%201%20(Mar%202007)/05%20EU_customs_law_and_international_law.pdf)
- Matveeva, T., & Rogacheva, O. (2012). *Таможенное право: учебное пособие Воронежского государственного университета* [Customs law: training manual of Voronezh state University]. Publishing House of Voronezh State University. 183.
- Nozdrachev, A. (1998). *Таможенное право* [Customs law]. 298.
- Reicher, V. (1974). Socio-historical types of insurance. 198.
- Romanova, M. (2017). Роль актов «мягкого права» в таможенном праве Европейского союза [The role of acts of ‘soft law’ in the customs law of the European Union]. *Customs Business*, 2, 37–40.
- Rulskaya, M., Kozhankov, A., & Bobrova, O. (2018). О теории таможенного права Евразийского экономического союза [On the theory of customs law in the Eurasian Customs Union]. *State and Law*, 8, 31–38. DOI: 10.31857/S013207690000782-2
- Rubakova, S. (2013). Комплексные правоотношения как основа выделения новых отраслей права (на примере Финансового права) [Complex relations as the basis for the emergence of complex entities in law (on the example of financial law)]. *Leningrad Legal Journal*, 3(33), 169–183.
- Sandrowski, K. (1974). *Таможенное право* [Customs law]. 255.

- Shulyat'ev, I., & Skurchenko N. (2017). Имплементация норм права Евразийского экономического союза в законодательство государств - членов ЕАЭС [In the implementation of the law of the Eurasian Economic Union in the legislation of states - members of the union]. *International Economic Law*, 3, 3–13.
- Shumilov, A. (2011). Таможенное право как часть международного права [Customs law as a part of international law]. *Detective*, 4(37), 66–72.
- Smbatajyn, A. (2011). ВТО и региональные торговые объединения: соотношение «правовых сил» в урегулировании торговых споров [WTO and regional integration organization]. *Bulletin of Foreign Trade*, 8, 74–82.
- Talalaev, A. (1987). Юридический энциклопедический словарь. 2ое дополн. изд.: гл.редактор А.Я. Сухарев. Москва [Prominent legal scholars of Russia (the second half of the XX century)]. *Encyclopedic Dictionary of Biographies*, 548.
- Tolochko, O. (2012). Международное экономическое право и имплементация его норм в национальное законодательство (на примере Республики Беларусь) [International economic law and implementation of its norms in national legislation (on the example of the Republic of Belarus)]. 388.
- World Customs Organization (WCO). (2019, June). *Use of the ICT – WTO Agreement on Trade Facilitation*. http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/wto-atf/use-of-ict-in-the-implementation-of-the-wto-tfa_en.pdf?db=web
- Vorobiev, V. (1995). *Основы таможенного дела. Учебное пособие в VII выпусках. Выпуск IV. Правовое регулирование таможенного дела* [Basics of customs. Textbook in VII issues. Issue IV. Legal regulation of customs Affairs, Russian Customs Academy]. 126.
- Widdowson, D. (2007). The changing role of customs: evolution or revolution? *World Customs Journal*, 1, 31–37. [https://worldcustomsjournal.org/Archives/Volume%201%2C%20Number%201%20\(Mar%202007\)/06%20The_changing_role_of_Customs_evolution_or_revolution.pdf](https://worldcustomsjournal.org/Archives/Volume%201%2C%20Number%201%20(Mar%202007)/06%20The_changing_role_of_Customs_evolution_or_revolution.pdf)
- Wilmott, P. (2007). A review of the European Commission's plans for an electronic customs environment. *World Customs Journal*, 1(1), 11–17. [https://worldcustomsjournal.org/Archives/Volume%201%2C%20Number%201%20\(Mar%202007\)/04%20A_review_of_the_European_Commissions_plans_for_an_electronic_customs_environment.pdf](https://worldcustomsjournal.org/Archives/Volume%201%2C%20Number%201%20(Mar%202007)/04%20A_review_of_the_European_Commissions_plans_for_an_electronic_customs_environment.pdf)
- Wolfgang, H.-M., & Harden, K. (2016). The new European customs law. *World Customs Journal*, 10(1), 3–15. <https://worldcustomsjournal.org/Archives/Volume%2010%2C%20Number%201%20%28Mar%202016%29/1796%2001%20WCJ%20v10n1%20Wolfgang%20%26%20Harden.pdf>
- Wolfgang, H.-M., & Rogmann, A. (2019). On the future of the WCO Revised Kyoto Convention. *WCO News*, 88, 79–80. <https://mag.wcoomd.org/magazine/wco-news-88/on-the-future-of-the-wco-revised-kyoto-convention/>
- Wolfgang, H.-M. (2007). Emerging issues in European customs law. *World Customs Journal*, 1(1), 3–10. [https://worldcustomsjournal.org/Archives/Volume%201%2C%20Number%201%20\(Mar%202007\)/03%20Emerging_issues_in_European_customs_law.pdf](https://worldcustomsjournal.org/Archives/Volume%201%2C%20Number%201%20(Mar%202007)/03%20Emerging_issues_in_European_customs_law.pdf)
- Zraychkin, A. (2000). *Таможенное право в системе российского права* [Customs law in the Russian law]. Thesis. 189.

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