

Customs Union between the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation within the framework of the Eurasian Economic Community

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Abstract

This paper provides an overview of the current status of the Customs Union (CU), an integrated customs area which forms part of the Eurasian Economic Community (EurAsEC). It draws attention to the procedures in place or in the process of being determined, and identifies differences and similarities in those procedures when looked at from other countries' points of view. The paper concludes that the changes over the recent past have, to an extent, influenced customs matters and foreshadows that other countries may join the CU.

Introduction

The Customs Union of the Republic of Belarus, the Russian Federation and the Republic of Kazakhstan (the CU) is an integrated customs area which forms part of the Eurasian Economic Community (EurAsEC).¹ It has a population of 167 million, a total GDP of USD2 trillion and a goods turnover of USD900 billion. Its potential participants include the Republic of Tajikistan, the Kyrgyz Republic, the Republic of Uzbekistan, and the Republic of Armenia.

The establishment of the CU was formalised by the signing of the Treaty on the Establishment of an Integrated Customs Area and Formation of a Customs Union in 2007 (the CU Treaty). The related control agencies and regulatory environment were founded in 2007-10, and the CU came into effect on 1 January 2010. The member states aim to establish a single economic area and remove state borders to facilitate the freedom of movement and establishment of their citizens within the territory of the CU by 1 January 2012.

The Customs Union's administration system

The CU's regulatory system is similar to those of other customs unions. For example, the regulatory bodies of the European Customs Union are the European Council, the Council of Ministers and European Commission; those of the South African customs union are the Council of Ministers, Customs Union Commission and Customs Union Secretariat and – last but not least – in the Cooperation Council of the Arab States of the Gulf, the customs union is represented by the Supreme Council, Council of Ministers and General Secretariat. The following outlines the structure of the Eurasian Economic Community's (EurAsEC) customs union.

The CU is managed by the regulatory bodies of the EurAsEC. Its supreme body is the Interstate Council EurAsEC (the Mezhgossoviet), which is a supranational institution established by the Treaty Establishing

the Eurasian Economic Community of 10 October 2000. The Mezhgossosvet consists of state and government leaders of EurAsEC member states and is presided over by a chairman who is elected every six months. It meets several times a year to discuss the overarching strategic plan.

Also within the Mezhgossosvet there is the Expert Council of the Customs Union. This body consists of five experts in the fields of law and international commerce from each member state. Its task is to review applications by natural and legal entities of member states to ensure that the legally binding decisions of the Customs Union Commission (CUC) comply with the regulations and policies of the CU. The Expert Council is supported in logistical matters by its secretariat, represented by the Legal Department of the CUC Secretariat.

The Agreement Establishing the Customs Union Commission of 6 October 2007 (the CUC Agreement) was signed at the same time as the CU Treaty. The CUC is a standing body whose main task is to ensure the proper functioning and development of the CU at the supranational level. To this end, it continuously monitors the implementation of its decisions by member states. Its members are the deputy governmental leaders of member states who meet at least once a month; like the Mezhgossosvet, its chairman is elected biannually. The CUC acts on the authority of member states and its functions include implementing the resolutions passed by the Mezhgossosvet, issuing recommendations on the formation and functioning of the CU, implementing international agreements and cooperating with the governmental agencies of member states. Since 1 January 2010, the CUC has been authorised to make decisions on the following issues:

- changing import customs duty rates
- maintaining the classification of goods for foreign economic activity
- setting tariff exemptions and tariff quotas
- defining the system of tariff preference
- introducing non-tariff regulations.

The decision-making procedure is defined in Article 7 of the CUC Agreement. The CUC's decisions are drawn up using special forms and require the signature of all its members. To date, the following decisions have been approved: Resolution of the Customs Union Commission, Letter of the Chairman of the Customs Union Commission, Note of the Customs Union Commission, Letter of the Executive Secretary of the Customs Union Commission, Letter of the Secretariat of the Customs Union Commission, and the Letter of the Deputy Secretary of the Customs Union Commission. It has also issued a separate application form for changing rates of import duty.

The CUC's instruments are legally binding on CU member states and take effect thirty calendar days after their official release. In cases of urgency, the CUC can bring forward its entry into force but not before the instrument's official release date. Its decisions are only deemed officially released once they have been published on its website (the documents of the CU will also appear in English translation). The CUC is also authorised to make non-binding recommendations.

In accordance with the terms of an agreement with the Russian government, the CUC is based in Moscow, the capital of the Russian Federation. The conditions for locating the CUC on Russian territory are defined in an agreement between it and the Russian government. According to the Commission's rules of procedure, meetings take place once a month and are closed to the public. The time and venue are determined at the previous meeting and the agenda agreed twenty days in advance. Meetings will only be considered legitimate if there is full attendance by CUC members. Extraordinary sessions can be convened either at the request of the Mezhgossosvet or any CUC member.

The CUC heads a Committee on the Regulation of Foreign Commerce (the Committee) consisting of two representatives from the executive authorities of member states responsible for customs tariff and non-tariff regulation. The overall management of the Committee's activities is performed by a chairman

who is elected from the Committee members and appointed by the CUC. The chairman considers the introduction, application, amendment or termination of measures regulating foreign trade with non-member states. It also drafts recommendations for consideration by the CUC. Its budget is financed by the contributions of member states in proportion to their voting rights.

The CUC's executive body is the Secretariat. Its main tasks are to coordinate the activities of the Commission, Committee and the Mezhgossosvet, to disseminate information and provide technical support. The Secretariat also prepares drafts of international treaties and resolutions and produces materials and recommendations on subjects such as the formation of a customs union, the functioning and establishment of an integrated customs territory, the monitoring and analysis of member states' legislation as well as compliance with international agreements and resolutions of the Mezhgossosvet and CUC. The Secretariat also prepares the CUC's budget and reports on its implementation.

The Secretariat is headed by the CUC Executive Secretary which consists of one deputy from each member state (with the exception of the member state that the Executive Secretary represents). The Executive Secretary participates in meetings of the CUC and Mezhgossosvet; and can also be authorised to plan the CUC's financial and material resources, conclude civil law agreements and appear at judicial proceedings.

The Secretariat's structure is regulated by Resolution No. 53 of the 'Structure of the Secretariat of the Customs Union Commission for 2011' which was passed by the Mezhgossosvet on 5 July 2010. The Secretariat currently consists of the Commercial Policy Department; Customs Tariff and Non-tariff Regulation Department; Customs Administration Department; Department for the Policy of the Technical Regulation of Sanitary, Veterinary and Phytosanitary Measures; Financial Policy Department; Customs Statistics Centre (as the Statistics Department); Administrative Department; Legal Department; and the Department for Protective Measures in External Trade. The structure of the Secretariat and the number of its employees are reviewed annually.

The Measures for the Implementation of an Action Plan for the Formation of the Customs Union set up expert groups to draft reports on the following areas: customs and tariff regulation, non-tariff regulation, technical regulation implementation of sanitary, veterinary and phytosanitary measures, customs administration and statistics, indirect taxes, information technologies in the customs union, special protective, anti-dumping and compensation measures, and so on. In order to review a specific issue, the CUC establishes working groups including experts from member states and sub-groups.

The Secretariat also heads a Scientific and Expert Council (the SE Council), which acts as its specialist advisory body. It carries out scientific and legal assessments of proposed international treaties and resolutions of CU agencies, defines strategies for improving international cooperation involving the CU in terms of commercial, economic, monetary and fiscal policy, customs administration, control of tariff and non-tariff regulations, as well as external and internal trade statistics. The SE Council's activities are coordinated by the Executive Secretary who issues an order confirming its composition.

Disputes arising between members are settled by the Court of the Customs Union (the CU Court). Its task is to ensure compliance with CU legislation and settle disputes between member states. To date, the functions of the CU Court are performed by the Court of the EurAsEC which thereby follows the fundamental principles of equality, freedom, coordination, unity, observance of delegated rights, proportionality, trust, justice, consistency and double jeopardy. The member states, CU agencies and economic entities registered within the territory of the member states have standing to challenge the legitimacy of CU legislation or bring a complaint against a member state for violating its obligations.

The member states have also established the Associated Board of the Customs Administration of Member States (the Associated Board) to coordinate the actions of customs administrations, ensure that the CU's targets and objectives are met and that customs law and regulations relating to matters within the jurisdiction of national customs bodies are applied uniformly. The Associated Board consists of the

directors-general of customs administrations in member states. They are presided over by a chairman who is elected by the board from amongst its members. The Associated Board has a secretariat which provides organisation, information and technical support. Its functions are performed by the Customs Administration of the Russian Federation. The Associated Board coordinates the activities of customs authorities; contributes to the development of a common regulatory environment for customs matters; and ensures the consistent application of customs law as well as common procedures for customs clearance and control. It also facilitates the implementation of customs policy within CU territory.

Customs legislation of the Customs Union

There are ten major sources of customs legislation in the EurAsEC Customs Union:

1. The Treaty Establishing the Eurasian Economic Community of 10 October 2000
2. The Agreement Establishing an Integrated Customs Territory and Formation of a Customs Union of 6 October 2007
3. The Agreement on the Customs Union Commission of 6 October 2007
4. The Common Customs Tariff of the Customs Union of the Republic of Belarus, Republic of Kazakhstan and the Russian Federation
5. The Common non-tariff regulations (unified list of goods whose import/export is subject to prohibitions/limitations imposed by CU member states within the framework of the EurAsEC in relation to trade with third countries and having regard to the rule on limitations)
6. The Customs Code of the Customs Union 2010 (the CU CC)
7. Resolutions of the CUC regulating legal relationships within the CU in accordance with the CU CC and international treaties of the member states and having direct effect
8. International treaties²
9. The Customs Codes,³ resolutions, laws and regulations of CU member states
10. General legal principles.

A number of agreements on customs clearance have been signed, including the Agreement between the governments of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation of 12 December 2008 on the types of customs procedures and customs regimes; the agreement between the governments of the Republic of Belarus, Republic of Kazakhstan and the Russian Federation of 12 December 2008 on the procedure for goods customs declaration, and Resolution No. 4 of 12 December 2008 on the formation of a legal environment for the CU within the framework of the EurAsEC. This Resolution includes an attachment containing the following agreements and protocols:

- Protocol on the conditions and procedure of application, in exceptional circumstances, of import customs duties which differ from the rates of the common customs tariff
- Agreement on the conditions and mechanism of tariff quota implementation
- Protocol on the provision of tariff exemptions
- Protocol on the common system of tariff preferences within the CU
- Agreement on the procedure for declaring goods
- Agreement on the procedure for the calculation and payment of customs charges in the CU member states
- Agreement on the procedure for customs clearance and control in CU member states
- Agreement on the types of customs procedures and regimes
- Protocol on the uniform application of valuation rules for CU imports and exports
- Agreement on the procedure for declaring the value of CU imports and exports
- Agreement on the procedure for verifying the correct valuation of CU imports and exports

- Protocol on the exchange of information required for determining and verifying the customs valuation between customs agencies of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation
- Agreement on the rules for establishing the source of goods originating from developing and the least developed countries.

An information portal (www.tsouz.ru) has been set up in accordance with CUC Resolution No. 62 of 25 June 2009 on the establishment of an official information tool (internet portal) of the CUC. According to the Decision of Interstate Council EurAsEC No. 15 of 27 November 2009, the regulations published on the official site of the CUC have the same legal effect as the official printed publication. The CUC has also developed a common procedure for implementing its resolutions in member states.

Customs clearance

Customs clearance is performed according to the CU CC which entered into force on 1 July 2010. The CU CC is mainly based on the regulations of the *International Convention on the Simplification and Harmonization of Customs Procedures* (the revised Kyoto Convention). In general, the procedure for clearing CU imports and exports reflects the procedure in Russia since most regulations of Russian law are compliant with the revised Kyoto Convention. That said, citizens and foreign commerce agents should be aware of the following aspects.

1. The national residency principle. The CU CC stipulates that the customs declaration is subject to the national residency principle. Article 368 of the CU CC states that the declaration is to be submitted to the customs authorities of the country where the customs applicant resides or is registered. Therefore, Russian legal entities and private entrepreneurs must submit their declarations to the customs authorities of the Russian Federation. This is related to the fact that the customs code is the only piece of legislation which applies uniformly throughout the CU whereas others (regulating, for example, civil law, bank and tax legislation) apply only nationally. This transitional provision does not apply to natural persons transporting goods for personal use, or to the customs transit procedure. In the future the customs declaration may be submitted to the customs authorities of any country regardless of residence of applicant.

2. The procedure for customs declarations. Imported goods are subject to the following sequence of customs operations: the arrival of goods to the CU territory, their temporary storage at the arrival point or transportation in accordance with the transit procedure, and presentation to the customs authority where the customs declaration is to be submitted in accordance with the procedure chosen by the customs declarant. The export declaration is to be submitted in accordance with the export procedure and export customs operations are to be performed at the place of departure from the customs territory of the CU. Goods considered foreign for customs purposes are temporarily stored and transported within the CU territory under the transit procedure.

The main difference with the current procedure is as follows: foreign goods imported into any CU member state and released for free circulation as CU goods subject to the relevant customs procedure can be freely circulated within the entire CU territory. From 1 July 2010, the right to release goods for free circulation in the CU territory applied to goods originating from the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan, as well as to goods deemed to be of a domestic nature for CU member states on this date. However, an exception to this rule applies to dutiable imports where the rate applied by a CU member state is lower than that in the common customs tariff. In this respect, Kazakhstan applied customs duties for the separate commodity items at a lower rate than those in the Common Customs Tariff before 1 January 2015. It is also possible to establish a similar rule on the basis of an international agreement dealing with vehicles imported by natural persons and released into free circulation during the period between the entry into force of the Common Customs Tariff of the

Customs Union (1 January 2010) and the commencement date of the CU. Such goods will be considered conditionally released and are not to be used outside the territory of the CU member state whose customs authority released them. The outstanding customs duties must be paid before they can be transported to the territory of another CU member state.

The CUC resolution No. 199 of 25 March 2010, on the mechanism for the assignment and distribution of customs duties (other equivalent duties, taxes and levies) breaks down the amount of import duties payable to each party as follows: the Republic of Belarus 4.70%; the Republic of Kazakhstan 7.33%, and the Russian Federation 87.97%.

3. Transit. The CU CC provides for a common customs transit procedure which – unlike the Russian customs code – does not divide the transit procedure into internal transit (that is, solely within the territory of the Russian Federation) and international transit (that is, through the territory of the Russian Federation). This amendment also serves to simplify legal implementation. The transit procedure is also subject to general provisions regarding declaration of goods in accordance with the selected procedure (Art. 27 CU CC). The transit declaration is one type of customs declaration: it is still possible to use transportation, commercial or other documents, as well as documents stipulated by international treaties (particularly a TIR carnet and accompanying documents). The list of data to be provided in the transit declaration has not undergone any significant changes, with the following exceptions:

- a transit declaration is to include at least the first six digits of the commodity code as required by the Commodity Classification of the CU (as opposed to four digits stipulated by the Customs Code of the Russian Federation) and information about the documents confirming compliance with border crossing restrictions (if the documents are sufficient for such transportation)
- certain information (that is, vehicle driver data, estimated transit time) is not required.

The transit declaration is to be submitted to the customs authority of destination in hard (paper) and soft (electronic) copies (the submission of a soft copy is currently a right, not an obligation). The transit applicant (according to the Russian CC, is a person authorised for customs transit) can be the shipper, freight forwarder (if they represent the CU member state), a representative of the CU member state party to a foreign transaction, or a person entitled to own, use and/or dispose of the goods. The CU CC clearly defines the cases to which the transit procedure applies: they include the transportation of CU goods from the customs office of exit to the customs office of arrival through the territory of a non-member state. The conditions under which customs transit procedure applies have not changed. One condition for placing goods under the transit procedure is that measures have to be taken which ensure compliance with customs transit. The steps to be taken have not changed (payment of customs duties, taxes, customs convoy and route definition) although the definition of the route serves to complement the first two measures.

There are many cases which are not subject to customs transit requirements. In the Russian CC, measures to ensure observance of customs transit are not required in relation to goods transported by the shipper, whereas in the CU CC these measures are not required if the functions of the customs declarant⁴ are performed by the customs shipper, an authorised economic operator (AEO) or where the goods are transported by railway, pipeline, or power lines. As far as the customs service of the Republic of Belarus is concerned, the CU CC incorporates a provision permitting customs escort to be performed by customs officials as well as other organisations according to the legislation of the respective CU member state.

To complete the customs transit procedure the following requirements must be met:

- the goods have to be presented to the customs authority on request
- the shipper or other interested person must declare the goods or place them under temporary storage within three hours of completing the transit procedure.

4. Release of goods into free circulation. The CU CC lists the documents required for declaring the goods. CU member states cannot regulate this aspect themselves.

According to the CU, the import declaration must be submitted before the period of temporary storage expires (four months from the date on which goods are presented at the customs office arrival or the internal transit is completed). This gives enough time for a declarant to provide the customs clearance on time.

The period for releasing the goods has also been reduced by one working day (earlier in Russia, the goods were to be released no later than three working days after the customs declaration had been accepted, the documents needed for customs clearance submitted and the goods presented). The release period indicated in CU CC is one working day following the registration of the customs declaration. If necessary, the period for examining the goods by the customs authority can be extended by up to ten days subject to the written permission of the director-general of the relevant customs authority.

Also, the CU CC recognises the following grounds for releasing the goods into free circulation:

- submission to the customs authority of licences, certificates and other documents confirming that other types of state control stipulated by international treaties of CU member states have been complied with⁵
- compliance with the conditions of the relevant customs procedure in accordance with the CU CC
- payment of customs duties, taxes, or provision of an appropriate deposit.

5. Export. Certain provisions of the CU CC aim to simplify customs operations in order to stimulate business activity. The CU CC reduces the release period for exported goods not subject to export customs duties considerably – from the conventional two-day period to a minimum of four hours from the registration of the customs declaration. Also, the number of documents that exporters have to submit when applying for the export procedure in relation to goods not subject to export customs duties is reduced from fourteen to the following seven documents:

1. confirming the authority of the person submitting the customs declaration
2. confirming the conclusion of a foreign trade transaction, or other documents confirming the right of ownership, use and/or disposal of goods outside the foreign trade transaction boundaries, and other commercial documents the customs applicant can submit
3. relating to transportation (shipping)
4. confirming the observance of prohibitions and limitations
5. justifying the classification code claimed for the commodity within the Commodity classification for foreign trade activities
6. confirming payment of customs charges and/or provision of a relevant deposit
7. confirming compliance with currency exchange requirements, as stipulated by the currency legislation of CU member states.

It is particularly noticeable that documents confirming the customs value of the goods are not included on this list of documents. In addition, the fact that the CU CC defines the list of documents needed to submit a customs declaration prevents customs authorities from demanding additional documents when submitting a declaration for non-dutiable exports.

6. Persons performing customs activities. The CU CC extends the list of registered persons performing customs activities. It currently includes the customs representative, owner of a temporary storage warehouse, owner of a customs warehouse, customs shipper, owner of a duty free shop, and also introduces the concept of an AEO. In Russia, the AEO is intended to replace persons using the special customs clearance simplification provided in Article 68 of the Russian CC.

7. Remote release of goods. The CU CC provides the legal basis for introducing remote release technology which, along with preliminary notification and electronic declaration, aims to make customs clearance more efficient. Article 193(6) of the CU CC states that goods intended for preliminary declaration are to be presented to the customs authority registering the customs declaration and any other customs authority defined by the legislation of the CU member state, thirty calendar days from the date of registration. This is a progressive standard compared with the Russian CC, under which the goods intended for preliminary declaration are to be presented solely to the customs authority where the customs declaration was registered. The provisions of the CU increase the use of technology for the remote release of goods, including the use of a preliminary notification.

8. Transportation of goods intended for personal use. The main principles of the CU CC governing the customs procedures relating to goods intended for personal use transported by natural persons are almost identical to those of the Russian legislation.

The CU raises the limits for duty-free import; accordingly, natural persons can import goods (with the exception of vehicles) duty free, as accompanied or unaccompanied baggage which does not exceed 1,500 Euro in value and 50 kg in weight. If these limits are exceeded, a unified customs duty and tax rate is applied to the excess amounting to 30 per cent of the customs value of the said goods and not less than 4 Euro per kilogram. In the case of alcoholic beverages and beer, the limit for duty free import is no more than three litres per natural person (being at least 18 years of age). If this limit is exceeded (from three to five litres), the duty rate is 10 Euro per litre of the volume in excess of three litres. For tobacco and tobacco products, the limit is no more than 200 cigarettes or 50 cigars (cigarillos) or 250 grams of tobacco, or an assortment of the above products provided the total weight does not exceed 250 grams per natural person (being at least 18 years of age).

According to the CU Treaty, if a natural person carries cash and/or travellers cheques into or out of the CU, the total amount of which exceeds USD10,000, the carrier must submit a passenger customs declaration in respect of the whole amount. However, if the total does not exceed USD10,000, the cash and/or travellers cheques can be declared voluntarily by the natural person. On the other hand, cash instruments, except for travellers cheques taken into or out of the CU, are subject to written declaration irrespective of the amount concerned.

Conclusions

Essentially, this paper reflects the current status of the CU. Its rules are not fully determined and are in process of formation. However, the new CU in the territory of the Commonwealth of Independent States (CIS) has been enacted and has the necessary institutions and legislation to regulate customs matters. More countries may join the CU in future: Tajikistan and Kyrgyzstan (Kyrgyzstan has been holding official negotiations on future accession from April 2011) are possible accession candidates and the Russian Federation is trying to persuade the Ukraine to join. However, the creation of the CU has been motivated by political considerations and, in this respect, it is possible that the new customs union will resemble the previous customs union within the CIS territory with the participation of the Russian Federation.

References

Customs Code of the Customs Union 2010.

Ermakova, VV & Krotov, IE 2011, 'Control system of the customs union in the framework of the Eurasian economic community', *Journal of Business Law*, no. 3, pp. 113-17.

Eurasian Economic Community, official website, www.tsouz.ru.

Eurasian Economic Community 2008, 2nd edn, Integration Committee of the Eurasian Economic Community, Moscow, p. 607.

Slyusar, NB 2011, 'Institutional grounds for activity of the Customs Union', *Journal of Customs Matters*, no. 1.

Endnotes

- 1 In the framework of the World Customs Organization Eurasian Economic Community use the abbreviation EAEC.
- 2 According to the Protocol on the Procedure for the Entry into Force of International Agreements Intended to Form a Contractual Legal Framework for the Customs Union and for Withdrawal from and Accession to the Customs Union of 6 October 2007, international treaties, forming the basis of the Customs Union (CU), fall into two classes: international treaties in the framework of EurAsEC and international treaties intended to complete the formation of the contractual legal environment of the CU.
- 3 In the Republic of Belarus, the effective Customs Code will be amended; in the Russian Federation, the Federal Law on Customs Regulation in the Russian Federation has been passed, which will replace the effective Customs Code of the Russian Federation; in the Republic of Kazakhstan, a new Customs Code has been adopted.
- 4 According to the CC CU, a declarant is a person declaring the goods or in the name of whom the goods are declared.
- 5 For Russian participants in foreign trade activities, it should be noted that new export limitations were included in CU legislation – notification in case of import of encoding devices, licencing in case of import of alcohol products, etc.

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