

M.A. KADYRKULOV, S.V. MOZER

# IMPROVEMENT OF INSTRUMENTS OF CUSTOMS ADMINISTRATION: INTERNATIONAL AND LEGAL ASPECT

(The WCO Revised Kyoto Convention Management Committee)

Monograph

Revised  
Kyoto Convention

京都規約

Let's







The State Official Educational Institution  
of Higher Education  
«RUSSIAN CUSTOMS ACADEMY»

The Regional Training Center of the World Customs Organization  
The Research Institute of the Russian Customs Academy

M.A. KADYRKULOV, S.V. MOZER

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The monograph presents historical and modern facts of the World Customs Organization's activities in terms of improving customs regulation and revision of the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention). It analyzes some aspects of the forthcoming work on the updating the Kyoto Convention by the international customs community. It considers the possible directions of mutually beneficial customs cooperation between the World Customs Organization as an international institution for the development and improvement of customs administration and the Eurasian Economic Commission as a permanent regulatory body of the Eurasian Economic Union (EEU).

The monograph can be useful for a wide range of specialists in the field of international customs cooperation and improvement of customs regulation on the basis of international standards. It can be used by scientists, lecturers, students, graduate students and other categories of students in the Russian Customs Academy, in other universities and Regional Training Centers of the World Customs Organization specializing in «Customs» and «Jurisprudence» as well as for experts of the WCO working bodies, Customs and other executive authorities in the Member States of the EEU, experts of the Eurasian Economic Commission for organizing and implementing mutually beneficial customs cooperation between the Eurasian Economic Commission and the World Customs Organization.

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*Dear friends and colleagues!*

*With great pleasure we present to your attention our monograph, which reveals the current issues of the functioning of the World Customs Organization (WCO) in the context of creation and improvement of modern instruments of customs regulation.*

*To date, the WCO is a serious international structure under the aegis of which the international customs community creates modern standards and legal means of customs administration. The WCO Secretariat headed by the Secretary General provides invaluable assistance in this process. Our active cooperation with this international institute, where the experts of the world Customs administrations discuss and decide relevant issues of customs regulation, began in 2016 after the signing of the Memorandum of Understanding between the Eurasian Economic Commission (EEC) and the World Customs Organization. During this time the doors were opened for the EEC specialists to a number of WCO working bodies, which are responsible for various issues of customs administration and trade facilitation.*

*With each working visit to the WCO we learn more about its specifics and peculiarities, realizing the importance of continuing common beneficial cooperation between the Eurasian Economic Union and the WCO on improving customs regulation and matters of common interest. Such interaction already brings its positive results within the framework of Eurasian integration and modernization of the EEU law in customs sphere.*

*In the near future we will witness a revision of the International Convention on Harmonization and Simplification of Customs Procedures. The EEC experts of customs block have already expressed their willingness to participate in this process, which will be no doubt very interesting from the professional and scientific point of view. Actually, the monograph is devoted to the issue of the forthcoming revision of the Kyoto Convention.*

*In this context we are ready to share our experience and knowledge, sincerely hoping that they can be useful for a wide audience – practitioners of Customs authorities, students, graduate students as well as interested persons who study the World Customs Organization and issues of international customs cooperation, legal development means of customs regulation and trade facilitation.*

*Kind regards,*

*Mukai Kadyrkulov*

*Sergei Mozer*

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## SYMBOLS AND ABBREVIATIONS

APEC	– Asia-Pacific Economic Cooperation
CAREC	– Central Asian Regional Economic Cooperation
CCC, Council	– The Customs Cooperation Council
CEN	– Customs Enforcement Network
Convention, Kyoto	– The International Convention on the Simplification and Harmonization of Customs Procedures
Convention, Revised	
Convention	
CUC	– The Commission of the Customs Union
EEC, Commission	– The Eurasian Economic Commission
EEU, Union	– The Eurasian Economic Union
EAEC	– The Eurasian Economic Community
EU	– The European Union
ISCM	– Integrated Supply Chain Management
PTC	– The Permanent Technical Committee
RKC, Revised Kyoto	– The International Convention on the Simplification and Harmonization of Customs Procedures
Convention	
RKCMC, Management Committee	– The Revised Kyoto Convention Management Committee
SAFE	– SAFE Framework of Standards to Secure and Facilitate Global Trade
UCC	– Customs Code of the Eurasian Economic Union
UNECE	– The United Nations Economic Commission for Europe
Treaty	– Treaty on the Eurasian Economic Union
WGCR RKC	– The Working Group on a Comprehensive Review of the Revised Kyoto Convention
WCO, Organization	– The World Customs Organization.

## **FOREWORD**

In the publications on the activities of the World Customs Organization (hereinafter – WCO, the Organization), we repeatedly draw attention to the need to develop mutually beneficial relations between the Eurasian Economic Union (hereinafter – EEU) and the WCO, within the framework of which the experts develop fundamental concepts, ideas, models, instruments and recommendations in the field of customs regulation. In our opinion, the WCO is a universal negotiating platform for the majority of the world's customs administrations, international organizations, representatives of the business community, whose activities are related to the improvement of customs regulation and the governing external trade activities. Full participation in the work of the Organization of stakeholders with the status of the WCO members, observers, stakeholders, including academic circles, allows comprehensive consideration of the customs issues and to prepare proposals for improving customs regulation taking into account different points of view and the variety of options to meet the challenges. Confirmation of this thesis becomes apparent at meetings of various WCO working bodies.

In May 2018 the representatives of the Eurasian Economic Commission (hereinafter – EEC, Commission) as observers participated for the first time in the meeting of the Revised Kyoto Convention Management Committee. We believe that this is a significant event, because, in our understanding, this WCO working body is one of the main ones, which is responsible for a wide range of issues related to modernization and preparation of recommendations, guidelines for the implementation of the provisions of the International Convention on the Simplification and Harmonization of Customs Procedures. The time of participation of the EEC representatives in the meeting of this working body coincided with the development of a package of documents for a comprehensive revision of the Convention by the Working Group on the Comprehensive Review of the Revised Kyoto Convention (hereinafter – WGCR RKC) with active participation of the WCO Secretariat.

On January the 1st, 2018 the Customs Code of the Eurasian Economic Union entered into force on the territory of the EEU. The Parties of the Union are the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation. When drafting the Code, the experts from the Expert Group on Preparation of the Union Customs Code have often referred to the provisions of the Kyoto Convention. In our opinion,

the experience gained in the development of the new Code may be also a matter of interest in the process of a comprehensive review of the Kyoto Convention.

Given the importance of the forthcoming work on the revision of the Kyoto Convention, we considered it possible to conduct a study of this issue taking into account the experience of the EEC on improving customs regulation, touching upon individual issues of revision of the Convention as well as some aspects of the organizational and legal mechanism for managing this project. The monograph presents the point of view of its authors on a number of issues of updating of the Convention. We believe that the variety of approaches and proposals will eventually allow in the near future to develop a fundamental document, which will become for the international customs community a kind of constitution in the field of customs regulation.

The need to study the activities of the World Customs Organization is also confirmed by a number of other circumstances, namely:

- the issue of updating of the Kyoto Convention and the scientific and methodological apparatus applied for these purposes has not been sufficiently studied in scientific community;
- to date, the expert community involved in the revision process of the Convention is in need of an effective scientific and methodological support for this project;
- despite the existence of a multitude of instruments for customs regulation of external trade, the activities of the WCO working bodies (working groups, subgroups, committees, subcommittees, focus groups, etc.) that participated in their development, have not been sufficiently studied;
- it has not been carried out detailed analysis of the rules, regulations and administrative procedures of the WCO working bodies with regard to the possible involvement of customs and economic unions, international organizations, the business community, academia, and other stakeholders in the development of international standards in the field of customs regulations on the platform of the World Customs Organization;
- the prospects and possible models of organization of mutually beneficial customs cooperation between the Eurasian Economic Union and the World Customs Organization have not been sufficiently explored.

The above circumstances determine the relevance of this study.

The object of the study is the activities of the World Customs Organization and its working bodies in connection with the revision of the International Convention on the Simplification and Harmonization of Customs Procedures.

The purpose of the study is to research the activities of the WCO on the revision of the International Convention on the Simplification and Harmonization

of Customs Procedures (hereinafter – Convention, Kyoto Convention, Revised Convention, RKC) as well as to prepare practical proposals for improving the project management mechanism for the updating the Convention.

The subject of the study is the rules, procedures, working materials of the Revised Kyoto Convention Management Committee for the revision of the Kyoto Convention as well as of the Virtual Working Group related to updating of the Convention.

The need to achieve this goal has determined the formulation and solution of the following main tasks:

- study of the organizational form of management of the Kyoto Convention;
- study of relevant issues of application of the Kyoto Convention in the current conditions of customs regulation;
- analysis of the development of relations between the EEC and the WCO at the present stage of international customs cooperation and development of proposals for their improvement;
- analysis of instruments of customs regulation as well as proposals for their improvement;
- study of the project management mechanism for revising of the Convention, as well as approaches to improving the Kyoto Convention;
- study the issue of revision of the Kyoto Convention, as well as the preparation of practical recommendations, including taking into account the experience of updating of customs regulation in the Eurasian Economic Union.

The normative legal basis of the study consists of international conventions and agreements, legal documents regulating the activities of the World Customs Organization, the Eurasian Economic Union and their working bodies.

The empirical basis of the study is presented by archival materials of the Eurasian Economic Commission as well as materials of the World Customs Organization. In addition the study used the experience of the authors in the EEC related to interaction with the WCO.

This work is one of the first studies revealing relevant issues of the revision of the Kyoto Convention in the context of the experience of the Eurasian Economic Union in the field of improving the instruments of customs administration in the EEU Member States.

The scientific value and novelty of the monograph lies in the fact that this study is a factual material based on historical facts and on the current description of the WCO rules, regulations and materials on the project for the updating the Kyoto Convention.

The practical significance of the study is that this research is aimed at improving the project management mechanism for the revision of the Kyoto

Convention. Its materials can be used in the practice of developing conceptual approaches for the updating the RKC.

The monograph consists of an introduction, five chapters, conclusion, a list of sources used and annexes.

The first chapter is devoted to the working bodies of the WCO, which activities are related to the revision of the Kyoto Convention.

The second chapter examines the relevant issues of the application of the Kyoto Convention in the current conditions of customs regulation.

The development of relations between the Eurasian Economic Union and the World Customs Organization at the present stage is considered in the third chapter.

The fourth chapter includes an analysis of the theory of law on improving tools of customs regulation.

The fifth chapter is devoted to conceptual scientific and methodological approaches to the revision of the Kyoto Convention.

The Conclusion summarizes the results of study of the directions of updating the Kyoto Convention, concretizes the further prospects for organizing and implementing mutually beneficial customs cooperation between the EEC and the WCO.

The annexes contain basic documents and information that provide a more detailed study of the subject of this study.

The accomplished research work can be useful for a wide range of specialists in the field of external economic activity, world trade and international customs cooperation. Its results can be used as a basis for further studies on the development of the theory and practice of international customs law and the law of the Eurasian Economic Union.

The monograph can be useful for a wide range of specialists in the field of customs regulation and trade facilitation as well as international customs cooperation.

The work can be used by experts from the WCO Secretariat, the Revised Kyoto Convention Management Committee, the Working Group on the Comprehensive Review of the Revised Kyoto Convention, researchers, lecturers, students, postgraduate students of the Russian Customs Academy, other institutes of higher education and the WCO Regional Training Centers, specializing in «Jurisprudence», «Customs» as well as experts of customs and other executive authorities of the EEU Member States, experts of the Eurasian Economic Commission.

# **Chapter 1**

## **THE WORLD CUSTOMS ORGANIZATION**

### **1.1. The World Customs Organization as a modern institution for improvement of customs regulation and trade facilitation**

As part of the study of international customs law as well as the issues of improvement of customs regulation, the activities of the World Customs Organization in the current conditions of international customs cooperation is a matter of particular interest as well as its impact on customs regulation and trade facilitation. No less important aspects of this issue are a comprehensive study of the functional and institutional aspects of the Organization's activities, in particular the WCO Secretariat and its main working bodies in the relevant areas of operation as well as modern customs regulation instruments and tools developed on the WCO platform. The analysis of the research works relating to the topic in question allows us to conclude that despite the existence of a multitude of instruments of customs regulation of external trade and customs administration the activities of the WCO working bodies (working groups, subgroups, committees, subcommittees, focus groups, etc.), which participated in their development, has not been sufficiently studied.

The history of the WCO began in 1947 when the thirteen European Governments represented in the Committee for European Economic Co-operation agreed to set up a Study Group. This Group examined the possibility of establishing one or more inter-European Customs Unions based on the principles of the General Agreement on Tariffs and Trade (GATT).

In 1948, the Study Group set up two committees – an Economic Committee and a Customs Committee. The Economic Committee was the predecessor of the Organization for Economic Co-operation and Development (OECD), the Customs Committee became the Customs Co-operation Council (CCC).<sup>1</sup>

In 1952, the Convention formally establishing the CCC came into force. The Council is the governing body of the CCC, and the inaugural Session of the Council was held in Brussels on 26 January 1953.

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<sup>1</sup> History. The World Customs Organization. URL: [http://www.wcoomd.org/en/about-us/what-is-the-wco/au\\_history.aspx](http://www.wcoomd.org/en/about-us/what-is-the-wco/au_history.aspx)

Representatives of seventeen European countries attended the first Council Session of the CCC.

After years of membership growth, in 1994 the Council adopted the working name World Customs Organization, to more clearly reflect its transition to a truly global intergovernmental institution. It is now the voice of 181 Customs administrations which operate on all continents and represent all stages of economic development. Today, WCO Members are responsible for processing more than 98% of all international trade.<sup>1</sup>

The main body of the Organization is *the Customs Cooperation Council*.<sup>2</sup> This WCO working body was established in 1950 in accordance with the Convention establishing a Customs Co-operation Council<sup>3</sup> in order to ensure the highest degree of consistency and uniformity in the customs systems of the Member States, and also to study the problems associated with the development and improvement of customs technologies and customs legislation in this regard. The Council is the supreme body of the WCO, as such, takes final decisions concerning the work and activities of the Organization. All WCO working bodies report to the Council, which works with the administrative support of the WCO Secretariat. Each Member of the Organization has the right to be represented in the Council.

It is the responsibility of the Council to examine all issues relating to customs cooperation, which the Contracting Parties agreed to promote in accordance with the main objectives of the Convention; the study of the technical aspects of customs systems as well as related economic factors with a view to provide the Members of the Council with practical means to achieve the highest possible level of coherence and uniformity; preparation of draft conventions and amendments to conventions as well as making recommendations on their adoption by interested governments.

Today the World Customs Organization is the main international institution that develops international standards in the field of customs. It is an excellent platform, where a wide exchange of opinions is provided between the Customs administrations of the world, other international organizations, representatives of the private sector as well as academic circles on problematic issues of customs

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<sup>1</sup> History. The World Customs Organization. URL: [http://www.wcoomd.org/en/about-us/what-is-the-wco/au\\_history.aspx](http://www.wcoomd.org/en/about-us/what-is-the-wco/au_history.aspx)

<sup>2</sup> Council. Terms of Reference for the Council. URL: <http://www.wcoomd.org/en/about-us/wco-working-bodies/council.aspx>

<sup>3</sup> Convention establishing a Customs Co-operation Council. URL: <http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/legal-instruments/conventions-and-agreements/ccc/convccc.pdf?la=en>

administration and trade facilitation. The WCO Secretariat is responsible for ensuring the operation of this international forum. The Secretariat successfully coordinates the work of all WCO working bodies in such areas as tariff and trade issues, procedures and simplifications, law enforcement and capacity building. Realizing the practical importance of the WCO for the development and improvement of customs regulation on a global scale, it should be noted, that its activities have not been sufficiently studied in the scientific community. We believe that a comprehensive study and popularization of the work of the WCO is one of the ways to familiarize experts, academics, students and all interested parties with the existing set of the WCO instruments to improve customs regulation and promote international trade, developed by the international customs community. Undoubtedly, the latter is extremely important for the solution of building of mutually beneficial trade relations in the international trade community as well as organizing efficient work of the Customs administration.

## **1.2. Areas of activity and strategic objectives of the World Customs Organization**

To date, the WCO is an international expert center for customs regulation, as well as a peculiar mouthpiece (voice) of the international customs community, which brings the consolidated position of international experts for stakeholders related to improving customs regulation and trade facilitation.

The work of the World Customs Organization can be divided into five main areas:

- 1) setting standards for a range of diverse but interrelated customs procedures;
- 2) promotion of international cooperation, including information exchange;
- 3) risk management;
- 4) the creation of sustainable development, including the provision of quality technical assistance;
- 5) enhancing the image of Customs as the main function of the civil service, emphasizing its contribution to national economic prosperity and social development.<sup>1</sup>

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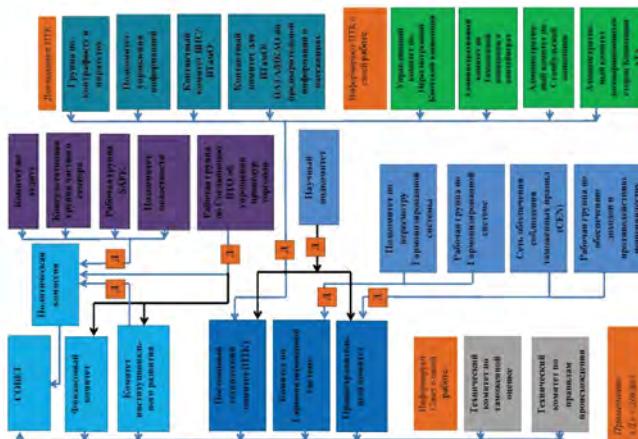
<sup>1</sup> The World Customs Organization. Annual Report 2015–2016. – P.12. URL: [http://www.wcoomd.org/~media/wco/public/global/pdf/media/annual-reports/ar-english-final-2015\\_2016.pdf](http://www.wcoomd.org/~media/wco/public/global/pdf/media/annual-reports/ar-english-final-2015_2016.pdf)

The WCO Working Bodies



The working bodies of the World Customs Organization are the Council, the Policy Commission, the Finance Committee, as well as various committees, working groups, subcommittees and focus groups that are conventionally divided into four blocks:

- 1) questions of tariffs and trade;
  - 2) procedures and facilitations;
  - 3) enforcement and compliance;
  - 4) capacity building development.



The WCO provides guidance and support to Customs administrations to ensure and facilitate legitimate trade, revenue collection, public protection and capacity building.

Let's review the strategic objectives of the WCO.<sup>1</sup>

*Strategic Goal 1 – Promote the security and facilitation of international trade, including simplification and harmonization of Customs procedures = Economic Competitiveness Package.*

The WCO is working with its Members to ensure growth by securing and promoting economic competitiveness. Trade security and facilitation is one of the key factors for economic development of nations and is closely tied into national agendas on social wellbeing, poverty reduction and economic development of countries and their citizens. Likewise, the WCO provides a forum for the development of instruments and tools to simplify and harmonize Customs procedures.<sup>2</sup>

*Strategic Goal 2 – Promote fair, efficient, and effective Revenue collection = Revenue Package.*

Collection of revenue remains a top priority for many Customs administrations, particularly in economies where a substantial portion of government revenue is derived from Customs duties. A modern Customs administration needs to apply the relevant tools and instruments – developed by the WCO and other international bodies – in a consistent manner in order to achieve fair, efficient, and effective revenue collection.

*Strategic Goal 3 – Protect society, public health and safety = Compliance and Enforcement Package.*

The efficiency and effectiveness of Customs border compliance is a determining factor in ensuring goods, people and means of transport comply with laws and regulations, the attainment of safe and secure communities, the economic competitiveness of nations, the growth of international trade and the development of the global marketplace.

The WCO will continue to develop and maintain standards and guidelines with respect to the goal of protecting society. The exchange of Customs enforcement information and Intelligence is crucial to the WCO's Enforcement Strategy. To this end, the WCO will coordinate and implement Customs law enforcement initiatives and operational activities with assistance from key stakeholders.

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<sup>1</sup> WCO Goals. URL: <http://www.wcoomd.org/en/about-us/what-is-the-wco/goals.aspx>

<sup>2</sup> Ibid.

*Strategic Goal 4 – Strengthen Capacity Building = Organizational Development Package.*

Effective and efficient Customs administrations are vital for the economic, social and security development of States. The WCO, as the global center of Customs excellence, plays a central role in development, promotion and support for the implementation of modern Customs standards, procedures and systems and has positioned itself as a global leader in Capacity Building delivery.<sup>1</sup>

The development of Capacity Building tools is linked to three enablers that were emphasized by the Capacity Building Committee as essential for sustainable development and modernization: Political Will, People and Partnerships.

*Strategic Goal 5 – Promote information exchange between all stakeholders.*

The WCO provides a forum for international cooperation to promote greater connectivity and more harmonious interaction, including the exchange of information and experience and the identification of best practices, between Member administrations, other government agencies, international organizations, the private sector and other relevant stakeholders.

*Strategic Goal 6 – Raise the performance and profile of Customs.*

The WCO and the international Customs community promote their strategic priorities, roles and contributions through cooperation, communication and partnership with governments, other international and regional organizations, donors, and the private sector.<sup>2</sup>

*Strategic Goal 7 – Conduct Research and Analysis.*

The WCO conducts research and analysis on a wide range of Customs and international trade topics using various methods in order to promote a professional, knowledge-based service culture, and to benefit the WCO membership and external stakeholders.

### **1.3. Structure of the organizational form of management of the Kyoto Convention**

One of the tasks as part of this research is to study the organizational form of management of the International Convention on the Simplification and Harmonization of Customs Procedures. In our opinion, the structure of this form of management is made up of the structural units of the WCO Secretariat and the

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<sup>1</sup> WCO Goals. URL: <http://www.wcoomd.org/en/about-us/what-is-the-wco/goals.aspx>

<sup>2</sup> Ibid.

Revised Kyoto Convention Management Committee. Let's review the Terms of Reference of the said bodies of the Organization.

### **1.3.1. The Compliance and Facilitation Directorate**

*Compliance and Facilitation Directorate* focuses on enforcement and trade facilitation issues. The instrument (tools) with which the Directorate operates include the Revised Kyoto Convention, the WCO SAFE Framework of Standards to Secure and Facilitate Global Trade, the Risk Management Compendium, Customs Enforcement Network (CEN), Time Release Study (TRS) and the WCO Data Model. Directorate is responsible for developing a WCO strategy for the WTO's Trade Facilitation Agreement (TFA). The Directorate coordinates operations against illegal trade, such as commercial fraud, drugs, tobacco products, intellectual property rights, dangerous goods, and weapons of mass destruction. The Directorate manages the network of the Regional Intelligence Liaison Offices (RILOs) and the Regional Dog Training Centres (RDTCs) of the World Customs Organization.

The structure of the Compliance and Facilitation Directorate includes the Procedures and Facilitation Sub-Directorate and the Compliance and Enforcement Sub-Directorate.

### **1.3.2. The Procedures and Facilitation Sub-Directorate**

The Procedures and Facilitation Sub-Directorate is the Sub-Directorate in the World Customs Organization that primarily deals with securing and facilitating legitimate global supply chains through the simplification and harmonization of Customs procedures.<sup>1</sup>

In order to accomplish this, the Sub-Directorate, working closely with the WCO Members, develops international standards covering all aspects of trade. The main instrument in this domain is the Revised Kyoto Convention – the International Convention on Simplification and Harmonization of Customs Procedures and the SAFE Framework of Standards to Secure and Facilitate Global Trade. The unit also administers other various Conventions that have been ei-

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<sup>1</sup> Procedures and Facilitation Sub-Directorate. URL: <http://www.wcoomd.org/en/about-us/wco-secretariat/the-directorates/compliance-and-facilitation/facilitation.aspx>

ther developed by the WCO or that the WCO has an agreement to administer on behalf of another international organization:

- ATA Convention;
- Istanbul Convention;
- Customs Convention on Containers 1972;
- Conventions and Programmes Concerning Export Controls.

The unit has also developed recommendations to WCO Members that, if implemented, will contribute to trade facilitation.<sup>1</sup>

The Sub-Directorate accomplishes its work of developing international standards and recommendations by working with various committees comprised of WCO Members and representatives of other international organizations and trade associations:

- The Permanent Technical Committee (PTC);
- The SAFE Working Group;
- The Technical Experts Group on Air Cargo Security;
- The Information Management Sub-Committee (IMSC);
- The Administrative Committee of the Istanbul Convention;
- The Management Committee to the Revised Kyoto Convention;
- The Meeting of Contracting Parties to the ATA Convention;
- The Administrative Committee for the Customs Convention on Containers;
- WCO/UPU Contact Committee;
- UCR Correspondance Group;
- The Contact Committee for the WCO/IATA/ICAO Guidelines on Advance Passenger Information.<sup>2</sup>

In order to assist WCO Members in implementing simplified and trade facilitative measures, the Procedures and Facilitation Sub-Directorate has developed various tools that provide guidance and examples of best practices:

- Application of Information and Communication Technology-ICT Guidelines;
- WCO Data Model;
- Unique Consignment Reference;
- Immediate Release Guidelines;
- Advance Passenger Information Guidelines;
- Time Release Study;
- Glossary of International Customs Terms.

<sup>1</sup> Procedures and Facilitation Sub-Directorate. URL: <http://www.wcoomd.org/en/about-us/wco-secretariat/the-directorates/compliance-and-facilitation/facilitation.aspx>

<sup>2</sup> Ibid.

### **1.3.3. The Revised Kyoto Convention Management Committee**

The Revised Kyoto Convention Management Committee (hereinafter-RKC MC, Management Committee) was established in 1999 in order to consider the implementation of the Convention, any measures to secure uniformity in the interpretation and application thereof, and any amendments proposed thereto.

*The Members of the Management Committee* are the Contracting Parties. The competent administration of any entity qualified to become a Contracting Party to this Convention under the provisions of Article 8 or any Member of the World Trade Organization shall be entitled to attend the sessions of the Management Committee as an observer. The status and rights of such observers shall be determined by a Council Decision. The aforementioned rights cannot be exercised before the entry into force of the Decision.<sup>1</sup>

We would like to draw attention to the fact that *the Management Committee may invite the representatives of international governmental and non-governmental organizations to attend the sessions of the Management Committee as observers.*

Let us list the *Purpose and Scope of The Revised Kyoto Convention Management Committee*. To achieve the mandate, the Management Committee:

shall recommend to the Contracting Parties:

(i) amendments to the Body of this Convention;

(ii) amendments to the General Annex, the Specific Annexes and Chapters therein and the incorporation of new Chapters to the General Annex; and

(iii) the incorporation of new Specific Annexes and new Chapters to Specific Annexes,

may decide to amend Recommended Practices or to incorporate new Recommended Practices to Specific Annexes or Chapters therein in accordance with Article 16;

shall consider implementation of the provisions of this Convention in accordance with Article 13, paragraph 4;

shall review and update the Guidelines;

shall consider any other issues of relevance to this Convention that may be referred to it;

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<sup>1</sup> The Revised Kyoto Convention Management Committee. URL: [http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures\\_and\\_facilitation/revised\\_kyoto\\_conv.aspx](http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures_and_facilitation/revised_kyoto_conv.aspx)

shall inform the Permanent Technical Committee and the Council of its decision.<sup>1</sup>

As for the key *deliverables of the activities of the Committee*, we note that before the closure of its session, the Management Committee shall adopt a report. This report shall be transmitted to the Council and to the Contracting Parties and observers mentioned in the Convention.

*Work principles.* The Management Committee shall meet at least once each year. It shall annually elect a Chairman and Vice-Chairman. The Agenda for each session shall be drawn up by the Secretary General in accordance with proposals coming from Contracting Parties. It shall include any proposals for amendments to the Convention communicated by the Contracting Parties together with any other items requested. The invitation and the draft Agenda shall be circulated to the competent administrations of the Contracting Parties and observers at least six weeks before the Committee meets.<sup>2</sup>

*The rules of procedure* for decision-making are as follows. In cases where a decision cannot be arrived at by consensus, the issues to be considered by the Management Committee shall be decided upon by voting of the Contracting Parties present. Proposals regarding amendments and extension of the period of implementation shall be approved by a two-thirds majority of the votes cast. All other matters shall be decided upon by the Management Committee by a majority of the votes cast. The Customs or Economic Unions, that are the Contracting Parties, shall have, in case of voting, only a number of votes equal to the total votes allotted to their Members that are the Contracting Parties.

In the absence of relevant provisions in this Article, the Rules of Procedure of the Council shall be applicable, unless the Management Committee decides otherwise.<sup>3</sup>

*Resources Required.* The Secretary-General convenes the meeting, is responsible for the general administrative procedures of the Committee, including the date and duration of each meeting.

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<sup>1</sup> The Revised Kyoto Convention Management Committee. URL: [http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures\\_and\\_facilitation/revised\\_kyoto\\_conv.aspx](http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures_and_facilitation/revised_kyoto_conv.aspx)

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

## **Chapter 2**

# **INTERNATIONAL CONVENTION ON THE SIMPLIFICATION AND HARMONIZATION OF CUSTOMS PROCEDURES**

### **2.1. On the International Convention on the Simplification and Harmonization of Customs Procedures**

It is noted in the research materials of the WCO that the Revised Kyoto Convention is an international agreement that provides a set of comprehensive customs procedures to facilitate legitimate international trade while effecting customs control, including the protection of revenue collection and society. It deals with key principles of simplified and harmonized Customs procedures, such as predictability, transparency, due process, maximum use of information technology, and modern Customs techniques (e.g. risk management, pre-arrival information, and post-clearance audit).<sup>1</sup>

The Kyoto Convention was adopted on 19 May 1973 as the International Convention on the Simplification and Harmonization of Customs Procedures. It entered into force on 25 September 1974 and had 114 Contracting Parties.<sup>2</sup> The text of the Kyoto Convention (not revised) is currently still applied by 11 of the 114 Contracting Parties, whilst the others have accepted the amended text of the Convention (i.e. the Revised Kyoto Convention).<sup>3</sup>

In June 1999, the WCO Council adopted the revised Kyoto Convention (RKC) as the foundation for effective, modern, 21<sup>st</sup> century customs procedures. The revised version entered into force on 3 February 2006, once 40 Contracting

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<sup>1</sup> Tadashi Yasui. WCO Research and Strategy Unit. Benefits of the Revised Kyoto Convention. WCO Research Paper № 6. – 2010. – P. 3. URL: <http://www.wcoomd.org/en/topics/research/~/~/media/D1549E77EF884FC7813E3AD2AB8C733D.ashx>

<sup>2</sup> As on the 12<sup>th</sup> June 2018. See Kiribati accedes to the Revised Kyoto Convention and becomes the 114<sup>th</sup> Contracting Party (12/06/2018). URL: <http://www.wcoomd.org/en/media/news-room/2018/june/kiribati-accedes-to-the-revised-kyoto-convention-and-becomes-the-114th-contracting-party.aspx>

<sup>3</sup> International Convention on the Simplification and Harmonization of Customs procedures. (The revised Kyoto Convention). The WCO Presentation of the Revised Kyoto Convention (Summary).

Parties to the Kyoto Convention (1973) had acceded to the Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures. There are currently 63 Contracting Parties to the RKC, which represents about 90 % of international trade. A list of all the Contracting Parties to the RKC is presented in Appendix 1, and List of Contracting Parties by region in Appendix 2.

According to the WCO, Customs Administrations play a vital role in the growth of international trade and the development of the global marketplace. The efficiency and effectiveness of customs procedures can significantly influence the economic competitiveness of nations. Changes in the international trading environment resulting from the global integration of modern production and delivery systems utilizing new forms of electronic commerce make it imperative that administrations provide simple, predictable and efficient Customs procedures for clearance of goods. It is widely perceived that complicated, time consuming, ineffective and out-of-date customs procedures are one of the most significant remaining non-tariff barriers to international trade.<sup>1</sup>

In order to provide a comprehensive set of common principles for simple, efficient and predictable customs procedures with effective customs control, the World Customs Organization carried out are vision of the 1963 Convention on the Simplification and Harmonization of Customs Procedures. It became apparent that the present structure of the Convention with the limited obligations imposed on administrations in applying the legal provisions ran counter to the aims of simplification and harmonization of customs procedures in the current international trade environment.<sup>2</sup>

## **2.2. Revision of the Convention and results**

In 1994, it was felt that the Convention had not kept track with the requirements of international trade and the private sector, and did not sufficiently play a role in the simplification and harmonization of Customs procedures. It was therefore decided to examine and revise the Convention to provide an effective simplification and harmonization instrument. The Permanent Technical

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<sup>1</sup> International Convention on the Simplification and Harmonization of Customs Procedures. (The revised Kyoto Convention). The WCO Presentation of the Revised Kyoto Convention (Summary).

<sup>2</sup> Ibid.

Committee undertook a revision and update of the Kyoto Convention in order to comply with the current requirements of international trade.<sup>1</sup>

The revision of the Convention was carried out to ensure the development of the World Customs Organization program for standard and simplified customs procedures in the 21<sup>st</sup> century.

The Management Committee held its Sixth Meeting on 19 and 20 March 2009. At the meeting it was decided to undertake a review of the RKC in view of the developments in the trading environment and in the functions of Customs over the last ten years.<sup>2</sup>

At its fourth and fifth meetings, the Management Committee held a long discussion on activities designed to promote the RKC,<sup>3</sup> adopted the guiding principles and identified a list of possible promotion measures. It also identified the main players and stakeholders, meaning the people, groups and institutions that might contribute to or influence the outcome of the accession and implementation processes (private sector, donor/development agencies, regional integration and co-operation organizations, trade and transport ministries, academic circles, non-governmental organizations, etc).

The main purpose of promotion activities is to bring about the initiation and acceleration of national accession processes. In this connection, it is essential to gain a clear understanding of the following issues – what stage has the Member reached with the national accession process, what are the reasons for the delay, and which players are causing the delay – before deciding what measures should be taken for the country concerned.<sup>4</sup>

By 2009, the WCO Secretariat had done this work, and, as planned, continued in the future. According to the WCO, there are many possible technical assistance responses to these various situations, ranging from the holding of technical workshops (to help Members conduct an in-depth analysis of their

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<sup>1</sup> Point 2. Revised Kyoto Convention – Status report regarding accessions and assistance requirements. Item IV of the Agenda. Policy commission. 61<sup>st</sup> Session. Doc. SP0308E1a. Brussels, 18 May 2009.

<sup>2</sup> Point 12. Revised Kyoto Convention – Status report regarding accessions and assistance requirements. Item IV of the Agenda. Policy commission. 61<sup>st</sup> Session. Doc. SP0308E1a. Brussels, 18 May 2009.

<sup>3</sup> See Docs. PO0021 and PO0029.

<sup>4</sup> Point 14. Revised Kyoto Convention – Status report regarding accessions and assistance requirements. Item IV of the Agenda. Policy commission. 61<sup>st</sup> Session. Doc. SP0308E1a. Brussels, 18 May 2009.

legislation and procedures) to the organization of trade facilitation events for national bodies.<sup>1</sup>

Promotional activities are also extremely important at the regional level, *especially where Customs Unions* are concerned. *It is worth recalling that Customs Unions can become Contracting Parties to the RKC*, and their accession normally takes place at the same time as that of the Members of the Customs Union concerned. This approach is therefore essential, not only because it involves a large number of Members, but also because in many cases, the Members of these Customs Unions are not allowed to accede to the RKC alone (because Customs regulations fall under regional/community competence). In addition to the Customs Unions, there are more initiatives emanating from other regional integration organizations (free trade associations, for example) aimed at involving their Members in a joint RKC accession process. Finally at international level, the existing policy of seizing every opportunity offered by stakeholders, particularly intergovernmental organizations and donors, to promote the RKC and highlight the need to accede to it will be continued.<sup>2</sup>

*Results of the revision of the Convention.* The work on the revision of the Convention was completed in June 1999, when the Council of the World Customs Organization adopted the revised text together with the Protocol of Amendment, which introduced the amendments after it entered into force. At that time, the existing articles of the Convention and the provisions of its Annexes were reviewed and revised in such a way as to reflect modern procedures and meet the requirements both commercial and Customs administrations. Twenty years ago, new provisions were added to the Convention, and texts included modern methodologies *to ensure a balance between customs control functions and revenue collection as well as trade facilitation*. The use of information technology and risk management have also been incorporated to the revised Convention together with other major principles to ensure the Customs to carry out its responsibilities more effectively and facilitate the international movement of goods while ensuring full compliance with national legislation.<sup>3</sup>

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<sup>1</sup> Point 14. Revised Kyoto Convention – Status report regarding accessions and assistance requirements. Item IV of the Agenda. Policy commission. 61st Session. Doc. SP0308E1a. Brussels, 18 May 2009.

<sup>2</sup> Point 16. Revised Kyoto Convention – Status report regarding accessions and assistance requirements. Item IV of the Agenda. Policy commission. 61st Session. Doc. SP0308E1a. Brussels, 18 May 2009.

<sup>3</sup> Based on materials of the WCO.

## 2.3. Major features of the Revised Kyoto Convention

The World Customs Organization presented an analysis of the main characteristics of the Kyoto Convention, revised in 1999. In the context of the forthcoming update of the Convention in the period 2018–2020 analytical materials of a historical nature is a matter of interest. Let's consider the above-mentioned characteristics of the Revised Convention.

**A new structure** consisting of a General Annex that contains the core procedures and practices and that is obligatory for accession and implementation by Contracting Parties. This key Annex covers areas relating to the clearance of goods, payment of duties, customs and trade co-operation, information to be supplied by Customs and appeals in all customs matters – areas that of concern both to the Customs administrations and to the trading community. It also covers areas of customs control including risk management, audit – based controls and mutual administrative assistance between Customs administrations and external organizations, and use of information technology. These provide the key to simple procedures while ensuring adequate Customs control.<sup>1</sup>

**No reservations can be entered against the core provisions of the General Annex.** For this reason though there is a transition period for the present and new Contracting Parties to allow them to make necessary changes in their national legislation for the provisions (3 or 5 years from the time of accession).

There are **several Specific Annexes dealing with different customs procedures**. Contracting Parties may accede to only those Specific Annexes and/or Chapters which deal with the procedures applied by their administration. There are also procedures for the formalities applicable to goods on arrival, temporary storage and warehousing which are equally of interest to the trade.<sup>2</sup>

As in the General Annex, the Standards in the Chapters of the Specific Annexes are obligatory and binding on Contracting Parties that accept an Annex(es) and/or Chapter(s). They will have a transitional period for the application of the Standards (3 years from the time of accession). Reservations can be entered against the Recommended Practices in the Specific Annexes.

Comprehensive implementation Guidelines have been developed for all the Annexes of the Convention. This is essential so that the principles and sim-

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<sup>1</sup> International Convention on the Simplification and Harmonization of Customs procedures. (The revised Kyoto Convention). The WCO Presentation of the Revised Kyoto Convention (Summary).

<sup>2</sup> Ibid.

plified customs procedures contained in the Convention can be applied effectively by Customs administrations. Guidelines on simplification through the use of effective control techniques and automation, which include examples of best practices, have been developed for each procedure. These will be constantly updated to provide information on new and modern practices, which in the future will form the basis of legal texts in the Annexes to the Convention.<sup>1</sup>

## 2.4. Accession to the Convention

Members of the WCO, which have not yet acceded to the Convention are invited to do this in accordance with Article 8 of the Convention. Under Article 8 of the Convention, any Member of the Council and any Member of the United Nations or its specialized agencies may become a Contracting Party to this Convention: by signing it without reservation of ratification; by depositing an instrument of ratification after signing it subject to ratification; or by acceding to it. Any Contracting Party shall, at the time of signing, ratifying or acceding to this Convention, specify which if any of the Specific Annexes or Chapters therein it accepts. It may subsequently notify the depositary that it accepts one or more Specific Annexes or Chapters therein. Contracting Parties accepting any new Specific Annex or any new Chapter of a Specific Annex shall notify the depositary in accordance with paragraph 3 of this Article. *Any Customs or Economic Union may become, in accordance with paragraphs 1, 2 and 3 of this Article, a Contracting Party to this Convention. Such Customs or Economic Union shall inform the depositary of its competence with respect to the matters governed by this Convention. Such Customs or Economic Union shall also inform the depositary of any substantial modification in the extent of its competence. A Customs or Economic Union which is a Contracting Party to this Convention shall, for the matters within its competence, exercise in its own name the rights, and fulfil the responsibilities, which the Convention confers on the Members of such a Union which are Contracting Parties to this Convention. In such a case, the Members of such a Union shall not be entitled to individually exercise these rights, including the right to vote.*<sup>2</sup>

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<sup>1</sup> International Convention on the Simplification and Harmonization of Customs procedures. (The revised Kyoto Convention). The WCO Presentation of the Revised Kyoto Convention (Summary).

<sup>2</sup> Article 8 of the International Convention on the Simplification and Harmonization of Customs Procedures. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/preamble.aspx#ar8](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/preamble.aspx#ar8)

On the basis of Article 18, paragraph 2 of the RKC, it is worth highlighting that this Convention enters into force for any new Contracting Party three months after it has become a Contracting Party in accordance with the provisions of Article 8. At the time of acceding to the RKC, a Contracting Party must specify which of the Specific Annexes or Chapters therein it accepts. It must also inform the depositary (the Secretary General) of the Recommended Practices in respect of which it enters reservations, stating the differences existing between the provisions of its national legislation and those of the Recommended Practice(s) concerned. Any Contracting Party may also, at the time of its accession or subsequently, notify the depositary that the Convention will extend to all or any of the territories for whose international relations it is responsible. Such notification will take effect three months after the date when the depositary receives it. Similarly, in accordance with Article 8, paragraph 5, Customs or Economic Unions may accede to the RKC and must notify the Secretary General of the Council of the territories which form the Customs or Economic Union, and these territories are to be taken as a single territory. They must inform the depositary of their competence with respect to the matters governed by the Convention.<sup>1</sup>

According to the WCO Secretariat, all organizations of public and private sector, which are interested in promoting trade, should fully promote the widespread adoption and implementation of the Revised Kyoto Convention.

## **2.5. Benefits of the Kyoto Convention**

The issue of benefits from the accession and implementation of the Kyoto Convention is researched in the WCO material «Benefits of the Revised Kyoto Convention»<sup>2</sup> performed in 2010 in the WCO Research and Strategy Unit. Tadashi Yasui, the author of this research paper, conditionally divides such benefits into two groups: (1) the benefits associated with accession to the Convention and (2) the benefits related to RKC implementation.

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<sup>1</sup> International Convention on the Simplification and Harmonization of Customs procedures. (The revised Kyoto Convention). The WCO Presentation of the Revised Kyoto Convention (Summary).

<sup>2</sup> See Tadashi Yasui. WCO Research and Strategy Unit. Benefits of the Revised Kyoto Convention. WCO Research Paper № 6. – 2010. URL: <http://www.wcoomd.org/en/topics/research/~/~/media/D1549E77EF884FC7813E3AD2AB8C733D.ashx>

The first group includes certification as having international Customs standards in place, participation in the creation of international standards in the field of customs administration, advantages in conducting negotiations in the field of trade as well as advantages in capacity building activities.<sup>1</sup> The second group of benefits is formed by fast release of goods and lower costs of economic operators, increased revenue, greater attraction of foreign direct investment and economic competitiveness as well as non-economic benefits (promote protection of security, society and human health).<sup>2</sup> A brief analysis of each of the benefits is given in the above-mentioned study. We believe that the list of benefits from the accession and implementation of the Kyoto Convention is much broader, and this issue can be considered within the framework of independent scientific research.

## **2.6. Kyoto Convention and WTO Negotiations on Trade Facilitation**

The modalities of WTO negotiations explicitly state that, in the negotiations, due account shall be taken of the relevant work of the WCO and other international organizations competent in this area. Cognizance of the WCO and its instruments and tools has significantly increased at the WTO. The WCO position on the institutional relationship between the WCO and the WTO is that the WTO rules set out high-level principles and, as regards Customs, the WCO provides the implementation standards such as the RKC, the Harmonized System (HS), etc. This relationship provides both Organizations with mutually supportive impetus and greater synergy for their work. For this purpose, the Secretariat has promoted the WCO's role and its instruments and tools with the WTO and negotiators who recognize that the RKC is a vital reference source. This is a clear indication that the Convention will maintain its relevance in the future.<sup>3</sup>

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<sup>1</sup> See Tadashi Yasui. WCO Research and Strategy Unit. Benefits of the Revised Kyoto Convention. WCO Research Paper № 6. – 2010. – P. 3–5. URL: <http://www.wcoomd.org/en/topics/research/~/~/media/D1549E77EF884FC7813E3AD2AB8C733D.ashx>

<sup>2</sup> Tadashi Yasui. WCO Research and Strategy Unit. Benefits of the Revised Kyoto Convention. WCO Research Paper № 6. – 2010. – P. 5–7. URL: <http://www.wcoomd.org/en/topics/research/~/~/media/D1549E77EF884FC7813E3AD2AB8C733D.ashx>

<sup>3</sup> Point 17. Revised Kyoto Convention – Status report regarding accessions and assistance requirements. Item IV of the Agenda. Policy Commission. 61st Session. Doc. SP0308E1a. Brussels, 18 May 2009.

In our opinion, the thesis that the WTO along with the WCO provides the implementation standards in the field of customs administration is very controversial. The issues of improvement of customs procedures, customs regulation and institutes of customs law is a matter of competence of the World Customs Organization. We proceed from the fact that the WCO is the leading international institution that develops standards in the field of customs regulation, and the transfer of competence in this area to other international organizations is unacceptable.

At the Sixth Meeting of the Management Committee in March 2009, the Secretariat also presented an analysis of the WTO Members' third generation proposals. The Secretariat wished, in this way, to draw Members' attention to the consistency of the measures negotiated at the WTO vis-à-vis WCO instruments and, to that end, decided to use the compilation produced by the WTO Secretariat. Following this analysis, it was noted that, as far as Customs is concerned, the proposed WTO texts are compatible with WCO instruments, in particular the RKC. In this respect, attention is drawn to Doc. SP0307 which provides additional information on the relationship between the two Organizations within the framework of these negotiations.<sup>1</sup>

## **2.7. Kyoto Convention and Framework of Standards to Secure and Facilitate Global Trade**

To fully understand the relevance of the RKC, it should be borne in mind that the SAFE Framework of Standards adopted by 156 WCO Members was developed on the basis of the principles of that Convention. This is demonstrated simply by referring to some of the underlying key elements of the RKC such as the application of simplified customs procedures in a predictable and transparent environment; the adoption of modern techniques such as pre-arrival information, risk management or post-clearance audits; maximum use of Information Technology and implementation of relevant international standards; co-operation with other national agencies and other Customs administrations; close partnerships with trade; and a readily accessible system of appeals. All

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<sup>1</sup> Point 18. Revised Kyoto Convention – Status report regarding accessions and assistance requirements. Item IV of the Agenda. Policy Commission. 61st Session. Doc. SP0308E1a. Brussels, 18 May 2009.

these principles are central to the SAFE Framework of Standards to Secure and Facilitate Global Trade.<sup>1</sup>

## **2.8. Rights and obligations of the Parties to the Convention**

At its first meeting in March 2006, the Revised Kyoto Convention Management Committee prepared a document,<sup>2</sup> which addresses the issue of the rights and obligations of the Contracting Parties to the international customs agreement under consideration. The aim of this document is to summarize the rights and obligations of the Contracting Parties to the Revised Kyoto Convention arising from the provisions contained in the Body of the Convention. In terms of compliance with the Convention, it is worth recalling from the very outset article 26 of the Vienna Convention on the Law of Treaties which stipulates that every treaty in force is binding upon the Parties to it and must be performed by them in good faith.<sup>3</sup>

In the above-mentioned document the Revised Kyoto Convention Management Committee noted that article 2 of the Revised Kyoto Convention sets forth the principle that the Contracting Parties gives a general undertaking to apply the Standards, Transitional Standards and Recommended Practices set out in the Annexes/Chapters. The WCO draws attention the facilities provided for in these provisions are simply the minimum facilities which the Contracting Parties undertake to grant and all Contracting Parties remain entirely free to grant facilities greater than those provided for in the Convention.<sup>4</sup>

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<sup>1</sup> Point 19. Revised Kyoto Convention – Status report regarding accessions and assistance requirements. Item IV of the Agenda. Policy Commission. 61st Session. Doc. SP0308E1a. Brussels, 18 May 2009.

<sup>2</sup> Rights and obligations of the contracting parties/ International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention). Revised Kyoto Convention Management Committee. 1st Meeting, 6–7 March 2006. Doc. PO0004E1a. Brussels, 15 January 2006.

<sup>3</sup> Point 1. Rights and obligations of the contracting parties/ International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention). Revised Kyoto Convention Management Committee. 1st Meeting, 6–7 March 2006. Doc. PO0004E1a. Brussels, 15 January 2006.

<sup>4</sup> Point 2. Rights and obligations of the contracting parties/ International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention). Revised Kyoto Convention Management Committee. 1st Meeting, 6–7 March 2006. Doc. PO0004E1a. Brussels, 15 January 2006.

Article 3 adds that Contracting Parties have the right to apply all prohibitions and restrictions deriving from their national legislation, i.e. not only those based on considerations of public morality or order, public security, public hygiene or health, or veterinary or phytosanitary considerations, or relating to the protection of patents, trademarks and copyrights, but also those imposed on economic or any other grounds. However, the prohibitions or restrictions must be included in the Contracting Party's national legislation in force by which that Party is bound.<sup>1</sup>

A separate section of the document under consideration is devoted to the issue of the adoption of provisions and reservations. Thus, its authors refer to article 12 of the Convention, which provides for the obligatory acceptance of all the provisions in the General Annex. However, a Contracting Party may accept one or more of the Specific Annexes or one or more of the Chapters therein.<sup>2</sup> A Contracting Party which accepts a Specific Annex or Chapter(s) therein shall be bound by all the Standards therein. A Contracting Party which accepts a Specific Annex or Chapter(s) therein shall be bound by all the Recommended Practices therein unless, at the time of acceptance or at any time thereafter, it notifies the depositary of the Recommended Practice(s) in respect of which it enters reservations, stating the differences existing between the provisions of its national legislation and those of the Recommended Practice(s) concerned. Any Contracting Party which has entered reservations may withdraw them, in whole or in part, at any time by notification to the depositary specifying the date on which such withdrawal takes effect.<sup>3</sup>

With regard to the implementation of the provisions of the Convention, the WCO materials focus on the following. Article 13 provides for a transitional period to be granted to Contracting Parties to apply the Standards, Transitional Standards and Recommended Practices. However, if they are not able to apply one or more Recommended Practices during the transitional period set, the Contracting Parties may refrain from applying the Recommended Practices in the Specific Annexes and Chapters they have accepted provided that they enter

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<sup>1</sup> Point 3. Rights and obligations of the contracting parties/ International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention). Revised Kyoto Convention Management Committee. 1st Meeting, 6–7 March 2006. Doc. PO0004E1a. Brussels, 15 January 2006.

<sup>2</sup> Article 12 of International Convention on the Simplification and Harmonization of Customs Procedures. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/preamble.aspx#ar8](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/preamble.aspx#ar8)

<sup>3</sup> Ibid.

appropriate reservations to the Recommended Practices in question.<sup>1</sup> Where the period provided for in paragraph 1 or 2 of this Article would, in practice, be insufficient for any Contracting Party to implement the provisions of the General Annex, that Contracting Party may request the Management Committee, before the end of the period referred to in paragraph 1 or 2 of this Article, to provide an extension of that period. In making the request, the Contracting Party shall state the provision(s) of the General Annex with regard to which an extension of the period is required and the reasons for such request.<sup>2</sup>

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<sup>1</sup> Point 6. Rights and obligations of the contracting parties/ International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention). Revised Kyoto Convention Management Committee. 1st Meeting, 6–7 March 2006. Doc. PO0004E1a. Brussels, 15 January 2006. – P. 2.

<sup>2</sup> Point 7. Rights and obligations of the contracting parties/ International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention). Revised Kyoto Convention Management Committee. 1st Meeting, 6–7 March 2006. Doc. PO0004E1a. Brussels, 15 January 2006. – P. 2.

## **Chapter 3**

# **THE WORLD CUSTOMS ORGANIZATION AND THE EURASIAN ECONOMIC UNION**

### **3.1. Interaction of the Eurasian Economic Union and the World Customs Organization at the current stage**

In modern conditions of functioning of the Eurasian Economic Union the Eurasian Economic Commission, which carries out its activities also in the sphere of tariff and non-tariff regulation, plays an important role in the preparation of legal norms, which regulate customs relations. Such activities are impossible without a serious analysis of international experience, best practices as well as modern institutes of customs law and customs instruments.

Despite the fact that the international customs community has formulated today the main conceptual provisions for the modernization of modern Customs and the prospects for its development, there is a national specificity in the field of customs regulation in the various states and integration associations, which, in our view, needs to be harmonized. In this regard, one of the main tasks for experts and scientists is the development of models and legal mechanisms for harmonization and unification of the various approaches and instruments used by Customs authorities in the conduct of customs operations.

One of the important aspects in the ongoing work on the development of Eurasian integration in the field of customs administration is the study of international experience and best practices in the sphere of customs regulation. This practice is diverse as well as the standards developed by international organizations, which are responsible for issues related to customs regulation and trade facilitation. To date the World Customs Organization is the main institution, where the basic standards are being developed for Customs administration in the world with the active participation of the Customs services of the WCO Member-Countries, as well as other stakeholders.

The WCO objectives include, *inter alia*, promoting security and facilitation of international trade, including simplification and harmonization of customs procedures, promoting fair, efficient, and effective revenue collection as well as enhanc-

ing the role of Customs, conducting analysis and research.<sup>1</sup> The WCO functions include the study of the technical aspects of customs systems, the preparation of draft conventions and amendments to conventions, the development of recommendations, which ensure a uniform interpretation and application of conventions, the provision of information on customs regulations and procedures, etc.

When updating the customs regulation in the Eurasian Economic Union, the experts of the Eurasian Economic often need consultations on various aspects of the customs:

- issues of legal regulation based on the WCO standards; international experience in various areas of customs regulation (for example, customs control, declaring of the goods, customs payments, customs transit, application of information customs technologies, a «single window» mechanism, etc.);
- foreign law enforcement practice;
- familiarization with the guidelines, recommendations, the WCO materials that systematize international experience, with the methods applied by foreign Customs administrations, etc.

In this regard it is very important to have direct contacts with our foreign counterparts from the WCO, APEC, EU, UNECE, CAREC, foreign Customs administrations, as well as the relevant legal framework for building the necessary level of interaction with the listed entities in the field of customs.

We recall that attempts to create a coordinated mechanism for cooperation with the WCO have already been undertaken within the framework of the Eurasian Economic Community (hereinafter – EurAsEC),<sup>2</sup> that is, before the creation of the Eurasian Economic Union. On June 25, 2004, in order to create a mechanism for cooperation between the WCO and the EurAsEC, Memorandum of Understanding Between the World Customs Organization (WCO) Having its Headquarters in Brussels, Belgium, and the Eurasian Economic Community (EAEC), Having its Headquarters in Moscow, Russia and in Almaty, Kazakhstan (25 June, 2004) (hereinafter – 2004 Memorandum)<sup>3</sup> [Annex 3].

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<sup>1</sup> WCO Goals. URL: <http://www.wcoomd.org/en/about-us/what-is-the-wco/goals.aspx>

<sup>2</sup> The Eurasian Economic Community (EurAsEC, EAEC) (2001–2014) is an international economic organization. It was created for effective promotion by its participants of the process of formation of the Customs Union and the Common Economic Space, as well as the implementation of other goals and tasks related to deepening integration in the economic and humanitarian fields. Abolished in connection with the creation of the Eurasian Economic Union (January 2015).

<sup>3</sup> Memorandum of Understanding Between the World Customs Organization (WCO), Having its Headquarters in Brussels, Belgium, and the Eurasian Economic Community (EAEC), Having its Headquarters in Moscow, Russia and in Almaty, Kazakhstan» (25 June, 2004). URL: [http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/partners/mou/074\\_mou.pdf?la=en](http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/partners/mou/074_mou.pdf?la=en)

According to 2004 Memorandum, the Parties agreed, if necessary, to conduct systematically consultations and seminars on issues of common interest; invite each other to meetings and other events, in accordance with their procedures, in order to exchange their experience; exchange non-classified information and documents. The parties agreed to actively promote the modernization of Customs administrations in the EAEC region through the adoption and implementation of Customs instruments and tools developed and recommended by the WCO. At the same time, the WCO, within the limits of available resources, agreed to make experts available to the EAEC to assist with the development of the Basic Customs Legislations of the EAEC members and other EAEC laws and regulations in order to bring them into conformity with international (WCO) standards and practices.

Somewhat later the Commission of the Customs Union (hereinafter – CUC) raised the issue of the representation of the Customs Union of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation in the WCO bodies; it is mentioned in the information materials of the CUC that a preliminary agreement has been reached with the WCO on granting the status of permanent observer to the Customs Union within the framework of the EAEC under the WCO Council.<sup>1</sup> However, such an agreement remained unrealized, and an effective mechanism for cooperation was not created.<sup>2</sup>

In order to develop practical cooperation within the framework of Eurasian economic integration, the Commission together with the Secretariat of the World Customs Organization in early 2016 prepared a draft Memorandum of Understanding between the Eurasian Economic Commission and the World Customs Organization (hereinafter – the Memorandum). The purpose of concluding the Memorandum is to ensure cooperation between the Commission and the WCO on improving customs regulation. On May 17, 2016 the draft memorandum was approved by the Decree of the Collegium of the Eurasian Economic Commission № 64 «On the draft Memorandum of Understanding between the Eurasian Economic Commission and the World Customs Organization» (Appendix 4) and a month later – on June 17, 2016 the Memorandum was signed in Brussels (Appendix 5).

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<sup>1</sup> Meeting with Secretary General of the World Customs Organization Mr. KunioMikuriya / The official website of the Commission of the Customs Union, October 20, 2009. URL: <http://www.tsouz.ru/news/Pages/news15.aspx>

<sup>2</sup> Goshin V.A, Mozer S.V. Prospects for the accession of the Eurasian Economic Union to the World Customs Organization // Features of the state regulation of external trade in modern conditions: materials of the II scientific and practical conference (Rostov-on-Don, November 19–20, 2015) in two Volumes. Part 1 – Rostov-on-Don: Russian customs academy, Rostov branch, 2015. – P. 20–29. «Russian Customs Academy: SCIENCE». URL: [www.customs-academy.net/?p=8539](http://www.customs-academy.net/?p=8539)

## Memorandum of Understanding between EEC and WCO

### MEMORANDUM OF UNDERSTANDING between the Eurasian Economic Commission and the World Customs Organization<sup>1</sup>

The Eurasian Economic Commission (EEC) and the World Customs Organization (WCO), hereinafter referred to as "the Parties".

Based on the Treaty on the Eurasian Economic Union of 29 May 2014 and the Convention establishing a Customs Co-operation Council of 15 December 1950.

**Recognizing** that the Parties seek to ensure effective functioning of international trade through the use of international instruments, the promotion of best Customs practices, and Customs modernization programmes,

**Recognizing** that the Parties wish to establish and develop cooperation based on mutual support and to create the mechanism for such cooperation,

**Recognizing** that the exchange of information, training activities and technical assistance are essential for the unified application of the key international conventions, recommendations and other standards in the Customs sphere,

**Abiding by** the principles of equality, transparency and mutual understanding,

Have agreed as follows:

#### Article 1 General

The Parties agree to cooperate and consult on matters of common interest in order to coordinate their efforts on trade facilitation and improvement of Customs regulations each within its own competence, as well as to contribute to the economic development of the Member States of the Eurasian Economic Union and of the WCO.



According to the Memorandum, the EEC and the WCO intend to cooperate in such areas as the improvement of Customs, based on international standards; development of international Customs cooperation; elaboration of effective and modern standards in the Customs sphere; establishment of practical co-operation between the Parties in Customs sphere; implementation of the best Customs practices; harmonization and increased effectiveness in the use of resources of Customs administrations; increase in effectiveness of Customs controls; development of Customs infrastructure.

At the same time, within the framework of joint activities the Memorandum envisages the implementation of cooperation through:

- exchange of publicly available information and documents concerning matters of common interest;
- participation of the representatives of one Party in relevant events organized by the other Party;
- organization of joint meetings, consultations, scientific seminars and conferences on matters of common interest;
- realization of other forms of cooperation.

In 2016–2018 the representatives of the customs block of the EEC actively participated in the work of various working bodies of the WCO (Policy Commission, Permanent Technical Committee, the Working Group on E-Commerce, the Working Group on the WTO Agreement on Trade Facilitation, the SAFE Working Group, Istanbul Convention Administrative Committee, and the Revised Kyoto Convention Management Committee).

The EEC expresses its readiness to continue participating in the work of the said bodies, as well as to consider participating in other open-ended WCO groups (committees). For example, issues of classification of goods, customs value and country of origin of goods are relevant for experts of the customs block of the Commission. In this regard, it is important to consider the participation of representatives of the Commission (at first, as observers without the right to vote) at meetings of WCO bodies such as the Harmonized System Committee, the Technical Committee on Rules of Origin, and the Technical Committee on Customs Valuation. Equally promising could be the participation of the Commission's representatives on an ongoing basis in the meetings of the Revised Kyoto Convention Management Committee and the Working Group on the comprehensive review of the Revised Kyoto Convention in the context of the forthcoming revision of the Kyoto Convention.

In our opinion, the conclusion of the Memorandum opens a new page in the relations between the EEC and the WCO, as well as defines the legal basis

## Scope and forms of the EEC–WCO cooperation

Scope	Forms
improvement of Customs, based on international standards	exchange of publically available information and documents concerning matters of common interests
development of International Customs cooperation	participation of the representatives of one Party in relevant events organized by the other Party
elaboration of effective and modern standards in the Customs sphere	organization of joint meetings, consultations, scientific seminars and conferences on matters of common interest
establishment of practical cooperation between the Parties in Customs sphere	realization of other forms of cooperation
implementation of the best Customs practices	
harmonization and increased effectiveness in the use of resources of Customs administrations	
increase in effectiveness of Customs controls	
development of Customs infrastructure	

## The EEC participation in the WCO Working Bodies

NOW

The Council

# The Revised Kyoto Convention Management Committee

The Working Group on E-Commerce

The WCO Working Group on the WTO  
Agreement on Trade Facilitation

PERSPECTIVE

The Working Group on the Comprehensive Review of the Revised Kyoto Convention

The Technical Committee on Rules of Origin

The Technical Committee on Customs Valuation

The Harmonized System Committee

for cooperation and the prospects for cooperation between these respected organizations. It is very important that the agreements reached will lead in the near future to practical results in the development of integration processes in the sphere of customs administration. As we see it, the cooperation of the Commission with the WCO will have a positive impact on the further development of integration processes in the sphere of customs regulation and will contribute to more effective implementation by the Commission of its tasks and functions.

### **3.2. International activities of the Eurasian Economic Union in the framework of interaction with the World Customs Organization**

Starting with the study of the topical issues of the international activity of the Eurasian Economic Union in dealing with the international customs community, we turned first of all to the theory of international law<sup>1</sup> and scientific publications. As it turned out, with rare exceptions<sup>2</sup> the issues of international customs cooperation as well as international activities of international organizations with competence related to customs regulation have not been

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<sup>1</sup> For example, Doctor of Law, prof. Egorov S.A. International law: Textbook. 5th ed. – Moscow: Statute, 2014. – 1087 p. URL: <https://textbook.news/pravo-mejdunarodnoe/mejdunarodnoe-pravo-uchebnik-izd-pererab-dop.html>; Kuznetsov V.I., Tuzmukhamedov B.R. International law: Textbook. – 3rd ed. – Moscow: Norma: Infra-M, 2010. – 720 p. URL: <https://textbook.news/pravo-mejdunarodnoe/mejdunarodnoe-pravo-uchebnik-izd-pererab-norma.html>; Prof. Valeev R.M. and prof. Kurdyukov G.I. International law. Special part: Textbook for high school. – Moscow: Statute, 2010. – 624 p. URL: <https://textbook.news/pravo-mejdunarodnoe/mejdunarodnoe-pravo-osobennaya-chast-uchebnik.html>; Kalamkaryan R.A., Migachev Yu.I. International Law in Questions and Answers: A Training Manual. – Moscow: Eksmo, 2009. – 336 p. URL: <https://textbook.news/pravo-mejdunarodnoe/mejdunarodnoe-pravo-voprosah-otvetah-uchebnoe.html>

<sup>2</sup> Prof. Ignatenko G.V. and prof. Tiunov O.I. International law: Textbook for high school. – 3rd ed. – Moscow: Norma, 2005. – 624 p. URL: <https://textbook.news/pravo-mejdunarodnoe/mejdunarodnoe-pravo-uchebnik-dlya-vuzov-izd.html>; prof. Ignatenko G.V. and prof. Tiunov O.I. International law. Textbook for high school. – Moscow: NORMA-INFRA M, 1999. – 584 p. URL: <https://textbook.news/pravo-mejdunarodnoe/mejdunarodnoe-pravo-uchebnik-dlya-vuzov.html>; Borisov K.G. International Customs Law. – 2nd ed. – Moscow: Publishing house of the People's Friendship University, 2001. – 616 p. URL: <https://textbook.news/pravo-mejdunarodnoe/mejdunarodnoe-tamojennoe-pravo-ucheb-posobie.html>; International Customs Cooperation: Textbook / P.N. Afonin, S.V. Filippenko, N.Yu. Yargina. – St. Petersburg: Intermedia, 2014. – 171 p.

enough studied theoretically. Scientists, as part of studying international customs cooperation, usually analyze the provisions of international conventions and specific instruments of customs regulation,<sup>1</sup> but not procedural aspects of cooperation as a specific type of activity enrolled in the forms established by international law and in the relevant areas. Moreover, it is examined classical legal relations between foreign Customs administrations among themselves as well as the Customs administration and the World Customs Organization. At the same time, the international activity of the EEU in terms of interaction with international organizations, for example, with the WCO, has not been scientifically researched at all. There is no answer to the question whether this activity can be called international customs cooperation in the context of ongoing work to improve customs regulation in the Union.

With certain confidence, we can say that overall, there are few systematized researches in the theory of international law of the directions, spheres, forms of interaction and international activity of international organizations in the field of customs administration. To date, it affects, first of all, the international cooperation, international activities of the EEU with the World Customs Organization. The above-mentioned circumstances determine the relevance of this section of the monograph.

On 17 June 2018 two years have passed since the signing of the Memorandum of Understanding between the Eurasian Economic Commission and the World Customs Organization. Along with the implementation of cooperation between the EEC and the WCO in various areas as well as the forms of interaction established by the Memorandum, a number of issues arise that will require their consideration in the future. Among them – the potential for further cooperation between these respected organizations, the legal status and the role of EEC in improving of customs regulation and trade facilitation within the framework of interaction with the international customs community in the World Customs Organization. Equally important issue is the legal mechanisms for greater integration with the international customs community on topics of common interest.

According to paragraph 2 of Article 1 of the Treaty on the Eurasian Economic Union, the Union is an *international organization of regional economic integration*, which has international legal personality. In accordance with paragraph 1 of Article 18 of the Treaty on the Eurasian Economic Union (hereinafter – Treaty), *the Commission is the permanent governing body of the Union.*

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<sup>1</sup> See, for example, Buvaeva N.E. International Customs Law: Textbook for Masters. – Moscow: Yurayt, 2013. – 376. – Series: Master. URL: <http://static.my-shop.ru/product/pdf/140/1394307.pdf>

According to Article 7 of the Treaty, the *Union has the right to carry out within its competence international activities* aimed at solving the tasks facing the Union. In the framework of such activities the *Union has the right to conduct international cooperation* with states, *international organizations*, and international integration associations, and independently or jointly with Member-States to conclude international treaties with them on issues within its competence. The order of the Union's implementation of international cooperation is established by the decision of the Supreme Eurasian Economic Council. At the same time, in accordance with paragraph 10 of the Procedure for the Implementation of International Cooperation by the Eurasian Economic Union,<sup>1</sup> within the framework of international cooperation the *Commission has the right to sign documents* with third countries, *international organizations*, and international integration associations *that are not international treaties*.

In accordance with the «Procedure for the implementation of international cooperation by the Eurasian Economic Union» (hereinafter – the Procedure for international cooperation), the *international cooperation of the Union* includes *contacts of official representatives and officials* of the Union bodies with official representatives of third countries, international organizations and international integration associations, *participation in international events* including presentations, conferences, seminars.<sup>2</sup> In the context under consideration we note that the law of the Union does not fully disclose the term «*contacts of official representatives and officials*» as well as «*activities of an international character*».

In our opinion, «*contacts*» should be *understood as business ties (communication)*, interaction, relations between the authorized entities of the Union bodies and within their competence and in coordination with the Member States of the Union with (official) representatives of third countries, international organizations, and international integration associations. It should be noted that in the theory of communications, *business communication* is understood as a kind of interpersonal communication aimed at achieving an objective agreement.<sup>3</sup> With regard to our research (interaction of the EEU and the WCO) such an objective

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<sup>1</sup> Approved by the Decision of the Supreme Eurasian Economic Council of December 23, 2014 № 99 « Procedure for the Implementation of International Cooperation by the Eurasian Economic Union». URL: [http://docs.eaeunion.org/docs/ru-ru/0147032/scd\\_25122014\\_99](http://docs.eaeunion.org/docs/ru-ru/0147032/scd_25122014_99)

<sup>2</sup> Item 2 of the Procedure for the Implementation of International Cooperation by the Eurasian Economic Union. Approved by the Decision of the Supreme Eurasian Economic Council of December 23, 2014 № 99. Legal portal of the EEU. URL: [http://docs.eaeunion.org/docs/ru-ru/0147032/scd\\_25122014\\_99](http://docs.eaeunion.org/docs/ru-ru/0147032/scd_25122014_99)

<sup>3</sup> Yakovleva N.F. Business communication: Textbook. – 2nd ed., Moscow: Flinta, 2014. – P. 54. URL: <http://www.kspu.ru/upload/documents/2015/10/19/d6bbd67f8e18db86e8ef-67a147ead680/delovoe-obschenie.pdf>

agreement is associated with coordinating efforts to improve customs regulation for trade facilitation as well as with economic development of the Members of the Eurasian Economic Union within the framework established by the law of the Union in definite directions (scopes) and forms. The following forms of business communication are distinguished: business conversation, phone conversation, negotiations, discussions, press conference, public speech, business correspondence.<sup>1</sup> For the purposes of analysis we also note that in the diplomatic protocol the terms «contacts with officials», «contacts with persons of the host country», «contacts in the field of science and culture», «contacts with representatives of the media», «contacts with business and public organizations», «sports meetings», «presentations in front of different types of audiences», «reception of visitors at the embassy and consular department on personal issues», «correspondence» are used.<sup>2</sup>

As for the second term, under the «activities of an international character» we understand the forms of cooperation such as joint meetings, consultations, scientific workshops and conferences on issues of common interest; participation of representatives of one Party in activities conducted by the other Party; exchange of public information and documents of common interest.

The law of the Union determines not only the forms of cooperation, but also the *circle (group) of persons* for each of them. For example, the above-mentioned contacts with official representatives of third countries, international organizations and international integration associations can be implemented only by members of the Supreme Council, the Eurasian Intergovernmental Council, the Council and the EEC Collegium (official representatives), and by the directors of the Departments of the Commission and their deputies (officials). However, this does not mean at all that the employees of the bodies of the Union,<sup>3</sup> for example, department heads, specialists, department experts cannot be involved in international contacts. On the contrary, this is possible and follows

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<sup>1</sup> Yakovleva N.F. Business communication: Textbook. – 2nd ed., Moscow: Flinta, 2014. – P. 54. URL: <http://www.kspu.ru/upload/documents/2015/10/19/d6bbd67f8e18db86e8ef67a147ead680/delovoe-obschenie.pdf>

<sup>2</sup> Sagaidak O.P. Diplomatic protocol and etiquette: Textbook. Kiev: Znanie, 2006. – 380 p. URL: <http://banauka.ru/61.html>

<sup>3</sup> Employees are citizens of Member-States working in the Union bodies on the basis of employment contract concluded with them, and who are not officials. Article 2 «Definitions» of the Treaty on the Eurasian Economic Union. URL: [http://docs.eaeunion.org/\\_layouts/15/Portal.EEC.NPB/Pages/Download.aspx?siteid={bef9c798-3978-42f3-9ef2-d0fb3d53b75f}&webid=d632c7868-4ee2-4b21-bc64-1995328e6ef3&docguid=a089f4c6-02da-4461-b033-3f5d122e0020&lcid=1033&type=document](http://docs.eaeunion.org/_layouts/15/Portal.EEC.NPB/Pages/Download.aspx?siteid={bef9c798-3978-42f3-9ef2-d0fb3d53b75f}&webid=d632c7868-4ee2-4b21-bc64-1995328e6ef3&docguid=a089f4c6-02da-4461-b033-3f5d122e0020&lcid=1033&type=document)

from point 9 of the Procedure.<sup>1</sup> The current Order on International Cooperation does not strictly define the circle of persons from the bodies of the Union, who can participate *in international events*. However, following the logic, this group includes official representatives, officials as well as *employees of Union bodies*.

Accordingly, participation in the WCO working bodies, for example, employees of the Department of Customs Legislation of the Commission, can be considered as international cooperation with an international organization within the framework of the international activities of the Eurasian Economic Union.

It should be added that the Procedure for the Implementation of International Cooperation by the Eurasian Economic Union does not define any directions (scopes) or forms of interaction. At the same time, according to the Procedure, the international cooperation of the Commission is carried out in accordance with the Main Directions of the Union's International Activities (hereinafter – the Main Directions).<sup>2</sup> The Main Directions are prepared by the Commission on the basis of the proposals of the Member States and the Commission for the Development of Priority Activities of the Union and its targets and are annually approved by the Supreme Council. So the Decision of the Supreme Eurasian Economic Council of December 26, 2016 № 18 determines the priority *directions* for the implementation of the Union's international activities as follows:

- interaction with regional integration associations, *international organizations*, governments of third countries and business communities in order to *identify possible forms and specific areas of cooperation, form a positive image of the Union, hold presentations of the Union and joint profile events at various international venues*;
- interaction with regional integration associations, *international organizations*, governments of third countries and business communities that show interest in cooperation with the Union in order to negotiate with them by official

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<sup>1</sup> «The Chairman and members of the Board of the Commission, judges of the Court of the Union, officials and employees of the Union's bodies in the conduct of international contacts are guided by the basic principles of operation and the purposes of the Union, defined by the Treaty, and Main directions». Item 9 of the Procedure for the Implementation of International Cooperation by the Eurasian Economic Union. URL: [http://docs.eaeunion.org/docs/en-us/0147032/scd\\_25122014\\_99](http://docs.eaeunion.org/docs/en-us/0147032/scd_25122014_99)

<sup>2</sup> Item 5 of the Procedure for the Implementation of International Cooperation by the Eurasian Economic Union. Approved by the Decision of the Supreme Eurasian Economic Council of December 23, 2014 № 99. Legal portal of the EEU. URL: [http://docs.eaeunion.org/docs/en-us/0147032/scd\\_25122014\\_99](http://docs.eaeunion.org/docs/en-us/0147032/scd_25122014_99)

representatives of the Eurasian Economic Commission, conclusion of international treaties, including on trade and economic cooperation and the formation of free trade zones, the preparation and signing of memorandums of understanding, as well as work within the framework of previously signed memoranda;

– interaction with the trade and economic partners of the Union in order to promote the increase in the volume and improvement of the structure of trade and investment, the promotion of integration processes, the innovative development of Member States, and the further development of the Union as an effective and competitive organization on an international scale.

**It is also noted here that the main efforts in the field of international activities of the Union and its Member States will focus on developing cooperation, *inter alia*, with the *World Customs Organization*.<sup>1</sup>**

Continuing the study of the issue of the directions and forms of interaction, in our case of the EEU with the WCO, we remind that the mentioned elements of cooperation are reflected in the Memorandum of Understanding between the Eurasian Economic Commission and the World Customs Organization of June 17, 2016. So according to the Memorandum, the EEC and the WCO are going to cooperate in such *areas (areas of interaction)* as the improvement of Customs based on international standards; development of international Customs cooperation; elaboration of effective and modern standards in the Customs sphere; establishment of practical cooperation between the Parties in Customs sphere; implementation of the best Customs practices; harmonization and increased effectiveness in the use of resources of Customs administrations; increase in effectiveness of Customs controls; development of Customs infrastructure.

At the same time within the framework of joint activities, the Memorandum envisages the implementation of cooperation (*forms of interaction*) by means of exchange of publicly available information and documents concerning matters of common interest; participation of the representatives of one Party in relevant events organized by the other Party; organization of joint meetings, consultations, scientific seminars and conferences on matters of common interest; realization of other forms of cooperation.

We add that the Memorandum of understanding was signed within the framework of one of the forms of international cooperation – *contacts* of the official representative of the Union (Member of the Board (Minister) for Customs

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<sup>1</sup> See: II. Directions of International Activity for 2017. The main directions of the international activity of the Eurasian Economic Union for 2017. Approved by the Decision of the Supreme Eurasian Economic Council of December 26, 2016. № 18. URL: <http://docs.cntd.ru/document/456056122>

Cooperation, Mr. Mukai Kadyrkulov<sup>1</sup>) with the official representatives of international organizations (Secretary General of the World Customs Organization, Mr. Kunio Mikuriya<sup>2</sup>).

In the light of the foregoing, the *forms of interaction between* the EEU and the WCO should be understood as the framework established by the law of the Union and the agreements between these subjects of international law, in which international cooperation is carried out in the field of customs administration and trade facilitation.

In the continuation of our study, let us add that in the theory of law the *international cooperation* is the interaction of states and other subjects of international law carried out by them for a joint coordinated solution of issues in one or another sphere of social relations. In turn, international customs cooperation is an important area of international cooperation of states and international organizations as a whole, consisting in joint coordination of their efforts in the sphere of public relations related to the provision of the order and rules by Customs authorities for the movement of goods and vehicles across the customs borders of the states. As noted above, the EEU has the right to conduct international cooperation with international organizations in the framework of international activities. In our opinion, such cooperation of the EEC with the WCO Secretariat, as well as with the WCO Member-Countries, within the framework of participation in meetings in the WCO working bodies of is an international customs cooperation.

Let's consider law enforcement practice and practical examples in the field under consideration. As noted above, today the representatives of the EEC customs block participate in the various working bodies of the WCO. In December 2016 the EEC representatives participated in the meeting of the Policy Committee, and the Head of the customs bloc – Member of the Board (Minister) for Customs Cooperation of the EEC presented a report for the international customs community on major novelties of the draft Customs Code of the EEU, which entered into force on the 1<sup>st</sup> of January 2018.

Of course, within the framework of international cooperation of the Union and the WCO, the official representatives, officials, and staff of the EEC are working to create a positive image of the Union in front of the international customs community; hold presentations on customs regulation in the EEU;

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<sup>1</sup> Mr. Mukai Kadyrkulov, Member of the Board (Minister) for Customs Cooperation of the Eurasian Economic Commission. URL: [http://www.eurasiancommission.org/en/act/tam\\_sotr/Pages/director.aspx](http://www.eurasiancommission.org/en/act/tam_sotr/Pages/director.aspx)

<sup>2</sup> Mr. Kunio Mikuriya (Japan), the Secretary General of the World Customs Organization. URL: [http://www.wcoomd.org/en/about-us/wco-secretariat/the\\_secretary\\_general.aspx](http://www.wcoomd.org/en/about-us/wco-secretariat/the_secretary_general.aspx)

participate in relevant events in various working bodies of the WCO as well as provide work within the framework of the EEU – WCO Memorandum of Understanding. The main objective of such cooperation and consultations is to co-ordinate efforts to improve customs regulation for simplification of procedures and trade as well as for the economic development of the Member States of the Eurasian Economic Union.<sup>1</sup>

Thus, during the period from September 11 to September 13, 2017, the representative of the Eurasian Economic Commission participated in the meetings of the Subgroup of the SAFE Working Group (hereinafter – the Sub-Group, the SAFE Sub-Group) that took place in Brussels at the WCO Headquarters. The representatives of the WCO Member States and international organizations participated in the Sub-Group's meetings. It should be noted that the SAFE Sub-Group is the working body of the WCO that carries out preparatory work, consults, studies materials and problematic issues for the organization of subsequent sessions of the SAFE Working Group (hereinafter – the Working Group, the SAFE Working Group).<sup>2</sup> The SAFE Sub-Group and the SAFE Working Group are links of a chain, or in another way – an integrated operating mechanism of administration (management) of the entire SAFE Package.

In its turn, the SAFE Working Group acting under authority of paragraph 68 of the June 2007 Report of the Policy Commission (Doc. SP0250), and as referenced in paragraph 69 of the Minutes of the 2007 Customs Co-operation Council,<sup>3</sup> is formed as the successor to the High Level Strategic Group for the purpose of maintaining and further developing the SAFE Framework of Standards.<sup>4</sup> The SAFE Working Group operates at two levels: a level dealing with policy matters concerning which it shall be guided by and report to the Policy Commission; and a second level dealing with technical amendments to the SAFE Framework regarding which it will be guided by and report to the Permanent Technical Committee. It shall also advise these bodies as well as the Secretary General on progress and issues relating to, and arising from, imple-

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<sup>1</sup> See Article 1 of the Memorandum of Understanding between the Eurasian Economic Commission and the World Customs Organization of June 17, 2016. URL: [http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/partners/mou/189\\_mou\\_en.pdf?la=en](http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/partners/mou/189_mou_en.pdf?la=en)

<sup>2</sup> SAFE Working Group. URL: [http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures\\_and\\_facilitation/safe\\_working\\_group.aspx](http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures_and_facilitation/safe_working_group.aspx)

<sup>3</sup> Doc. SC0082

<sup>4</sup> SAFE Working Group. URL: [http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures\\_and\\_facilitation/safe\\_working\\_group.aspx](http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures_and_facilitation/safe_working_group.aspx)

mentation, maintenance and/or amendment of the SAFE Framework of Standards and implementation of the Columbus Programme.

The purpose and scope of the SAFE Working Group is to advise, as appropriate, the Policy Commission, the Permanent Technical Committee and the Secretary General on the full range of issues concerning the SAFE Framework of Standards. Such issues may include matters relating to implementation and amendments concerning the SAFE Framework and further developing and monitoring other WCO initiatives and related Customs matters that impact the operation of the SAFE Framework of Standards. In relation to these matters, specific work will be carried out by the Group and brought forward to the appropriate body for endorsement or further direction. Required tasks will be carried out in periodic meetings convened by the Secretariat and presided over by the Co-Chairpersons (Customs and PSCG) designated by the Group.<sup>1</sup>

At the above-mentioned meeting of the SAFE Sub-Group the participants discussed a wide range of issues related, first of all, to the improvement of the institute of the Authorized Economic Operator. Owing to the previously presented materials of the Department of Customs Legislation and Law Enforcement Practice of the EEC, the WCO Secretariat expressed its interest in acquainting with the EEC legal innovations in improving the administrative and legal status of the AEO in the EEU Member States. Accordingly, the agenda of the meeting of the SAFE Sub-Group included an item that allowed the experts of the international customs community to familiarize themselves with the experience of the Union: methodological approaches, indicators of financial solvency in the EEU.

At the meeting of the Sub-Group, the employee of the customs block of the EEC brought information to the WCO Member States on the Customs Code of the EEU. Within the framework of the report it was outlined the existing organizational and legal mechanisms for improving of customs regulation in the Union, the emphasis was placed on the effective interaction of the Commission with the business community of the countries of the Union, and also sounded the main methodological approaches and indicators of financial solvency, which later, on September 26, were approved by the decision of the EEC Board.<sup>2</sup> Based on the results of the discussions, the WCO Secretariat planned

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<sup>1</sup> SAFE Working Group. URL: [http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures\\_and\\_facilitation/safe\\_working\\_group.aspx](http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures_and_facilitation/safe_working_group.aspx)

<sup>2</sup> Decision of the Board of the Eurasian Economic Commission of September 26, 2017 № 128 «On the application for inclusion in the register of authorized economic operators». URL:[http://docs.eaeunion.org/docs/ru-ru/01414920/clcd\\_28092017\\_128](http://docs.eaeunion.org/docs/ru-ru/01414920/clcd_28092017_128)

to use the financial solvency indicators for the AEO in the EEU as a model in one of the annexes to the WCO Guidelines devoted to the AEO in the section «best practices, international experience». Following the results of cooperation, in June 2018 the WCO issued an updated Customs AEO Valuation Guide. In the mentioned document, the experience of the Eurasian Economic Union is presented in Appendix IV «Examples of Financial Viability».<sup>1</sup>

Within the framework of discussion on certain aspects of the administrative and legal status of the AEO, the representative of the Commission cited the EEC experience, as well as scientific and methodological approaches to improve the AEO institute in the Union. In this context international experts paid an interest to the theoretical substantiation and structuring of the AEO status, the concept of the AEO program as a complex legal phenomenon, the formation of a conceptual apparatus (for example, the term «customs benefits»), as well as methodological approaches for conducting a comparative analysis of the AEO legal status in the EEU Member States. The representatives of the WCO Secretariat and the SAFE Subgroup expressed their desire to familiarize in more detail with the approaches described above for further study and possible inclusion in one of the WCO instruments on the AEO institute.

## Conclusions

In view of the foregoing, let us formulate the conclusions.

The EEU has the right to carry out international activities. In the framework of such activities, the Union carries out international cooperation with international organizations. In relations with the World Customs Organization such cooperation can be called international customs cooperation.

The international customs cooperation of the EEU includes contacts of the official representatives and officials of the Union bodies, among other things, with official representatives of international organizations as well as participation in international events. In the *context* under consideration, «*contacts*» are proposed to understand as *business (working) relations (communication)*, interaction, relations between authorized entities of the Union bodies and within their competence and in coordination with the Member-States of the Union with (official) representatives of third countries, international organizations and international integration associations.

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<sup>1</sup> Customs AEO Validator Guide. The World customs Organization. June 2018. – P. 72. URL: <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/aeo-validator-guide.pdf?db=web>

At the same time official contacts of official representatives and officials of the Union bodies can be held in the following forms: business (working) conversation, conversation using the means of communication (telephone, video, videoconferencing), negotiations, discussions, press conference, public speech, business (working) correspondence.

Under the forms of interaction between the EEU and the WCO it should be understood the framework established and defined by the law of the Union and the agreements between these subjects of international law, in which international cooperation is performed in the field of customs regulation and trade facilitation.

Under the activities of an international character of the EEU in the implementation of international customs cooperation, it is proposed to understand such forms of cooperation as holding joint meetings, consultations, scientific and practical seminars and conferences on issues of common interest; participation of representatives of one Party in activities conducted by the other Party; exchange of public information and documents of common interest.

Within the framework of the international customs cooperation of the EEU and the WCO the official representatives, officials and employee of the EEC are working to create a positive image of the Union in front of the international customs community; hold presentations on customs regulation in the EEU; participate in relevant events in various working bodies of the WCO; and also provide work within the framework of the signed Memorandum of Understanding between the Eurasian Economic Commission and the World Customs Organization of June 17, 2016. Such work is important for improving of customs regulation and trade facilitation in the Eurasian Economic Union.

### **3.3. Improvement of customs regulation in the context of interaction between the EEU and the WCO**

The role of the academic community in the formation of theoretical and practical approaches as well as proposals for updating of customs regulation in the Eurasian Economic Union, in our view, is obvious. Right now, there is a lack of scientific works in the field of customs regulation based not only on the analysis of gained experience, the customs legislation of a particular Member State of the EEU, legal gaps, but also there is a lack of serious analysis of modern international customs instruments and tools developed by the international customs community. We are talking about, first of all, the

instruments of the World Customs Organization, Asia-Pacific Economic Co-operation,<sup>1</sup> Central Asian Regional Economic Cooperation,<sup>2</sup> and European Union (EU).<sup>3</sup>

However, if you turn to the dissertation research on improving customs administration (science specialty 12.00.14 – Administrative Law; administrative process (legal science)), then, in truth, they leave much to be desired. As a rule, these works abound with reflections on the conceptual apparatus used and the need for its improvement. As a practical value, recommendations are given – to introduce unprincipled, in our opinion, changes in several articles of the Customs Code of the Customs Union or some normative acts of Customs Administrations. Such scientific works are not always of a practical interest for the experts of the EEC, who are involved in norm-setting activities, for example, the development of the Customs Code of the EEU.<sup>4</sup> If we apply within the framework of such activities to the proposals of the authorized bodies or the business community of the Member States,<sup>5</sup> it can be noted that there are more than enough of such proposals. And scientific and practical recommendations of individual researchers from science in this area, unfortunately, are lost on this background. Similarly, we see pseudoscientific studies of economists about service in customs, in which, for example, the legal institutes of customs control, currency control, customs examination, customs declaration, release of goods are regarded as a service, but not a function of Customs bodies.

For Customs officers who serve «on the ground» and periodically undergo advanced training in the educational institutions, the interest is rather not the theory of customs law, customs management or the so-called «economy of customs» in its pure form, but scientific studies that accumulate a serious analysis of modern instruments of customs regulation, regional and foreign law enforcement best practices, as well as their analysis in the comparative law.

In the current conditions of the functioning of the EEU, the Eurasian Economic Commission plays an important role in the preparation of legal norms

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<sup>1</sup> APEC Sub-Committee on Customs Procedures (SCCP). URL: <https://www.apec.org/Groups/Committee-on-Trade-and-Investment/Sub-Committee-on-Customs-Procedures>.

<sup>2</sup> Central Asian Regional Economic Cooperation. URL: <http://www.carecprogram.org/ru/>

<sup>3</sup> Taxation and Customs Union. URL: [https://ec.europa.eu/taxation\\_customs/index\\_en](https://ec.europa.eu/taxation_customs/index_en)

<sup>4</sup> Customs Code of the Eurasian Economic Union. URL: [http://www.eurasiancommission.org/ru/act/tam\\_sotr/dep\\_tamoj\\_zak/SiteAssets/Customs%20Code%20of%20the%20EEU.pdf](http://www.eurasiancommission.org/ru/act/tam_sotr/dep_tamoj_zak/SiteAssets/Customs%20Code%20of%20the%20EEU.pdf)

<sup>5</sup> Republic of Armenia, Republic of Belarus, Republic of Kazakhstan, Kyrgyz Republic, Russian Federation.

regulating customs legal relations. Such activities are impossible without a serious analysis of international experience, as well as modern institutions of customs law and customs instruments and tools. Despite the fact that the international customs community today formulated the main conceptual provisions for the updating of modern Customs and the prospects for its development, there is a national specificity in the various states and integration associations in the field of customs regulation, which, in our view, needs to be harmonized.

In this regard, one of the main tasks for experts and scientists is the development of models and legal mechanisms for harmonization and unification of various approaches and instruments used by Customs authorities in the conduct of customs operations. One of the important aspects in the ongoing work on the development of Eurasian integration in the field of customs administration is the study of international experience and best practices in the field of customs. This practice is diverse, as are the standards developed by international organizations, which are responsible for issues of trade facilitation and customs regulation.

In the light of the above, it is necessary to remind the following problems:

- the WCO instruments are not investigated, nor are they classified in the context of the institutes of customs law. Accordingly, within the process of improving of customs regulation, there is no opportunity to promptly appeal to the current developments of the international customs community (the WCO) in this or that area of customs regulation;
- despite the existence of many instruments for customs regulation of external trade and Customs administration, the activities of the WCO working bodies (working groups, sub-groups, committees, sub-committees, focus groups), that participated in their development, have not been sufficiently studied;
- the analysis was not carried out of the rules, regulations and administrative procedures for the activities of the WCO's working bodies with regard to the possible participation of customs, economic unions, international organizations, the business community, academia, and other interested parties in the development of international standards in the field of customs regulation on the platform of the World Customs Organization;
- the prospects and possible models for organizing mutually beneficial customs cooperation between the EEC, the EEU and the World Customs Organization are not sufficiently explored.

## The World Customs Organization as a Modern Institute of Improvement of Customs Regulation and Trade Facilitation



In order to study the role of the WCO in the field of updating customs regulation and trade facilitation, the joint EEC-Russian Customs Academy research project was performed. The result of this project was the publication of a monograph «The World Customs Organization as a modern institution for improving of customs regulation and trade facilitation».<sup>1</sup> The monograph presents historical and modern facts of the activities of the World Customs Organization in the customs sphere and trade facilitation, its functional structure is analyzed, the rules of procedures and administrative aspects of the activities of the structural units of the WCO Secretariat are described as well as the main working bodies in the respective areas of activity of the Organization. It is considered the possible directions of mutually beneficial customs cooperation between the World Customs Organization as an international institution for the development and improvement of customs administration and the Eurasian Economic Commission as a permanent regulatory body of the Eurasian Economic Union.



Over the 65-year period of its operation the WCO has developed many instruments and tools of customs regulation and trade facilitation. As an example, let's call the International Convention on the Simplification and Harmonization of Customs Procedures,<sup>2</sup> WCO SAFE Package,<sup>3</sup> IT Guide for Executives,<sup>4</sup> Study

<sup>1</sup> Kadyrkulov M.A., Mozer S.V., Lipatova N.G. The World Customs Organization as a Modern Institute of Improvement of Customs Regulation and Trade Facilitation: Monograph. Lyubertsy: Publishing house of the Russian Customs Academy, 2017. URL: [http://rta.customs.ru/nrta/attachments/3756\\_978-5-9590-0932-8.pdf](http://rta.customs.ru/nrta/attachments/3756_978-5-9590-0932-8.pdf)

<sup>2</sup> The Revised Kyoto Convention. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx)

<sup>3</sup> WCO SAFE Package. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/safe\\_package.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/safe_package.aspx)

<sup>4</sup> IT Guide for Executives. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/it-guide-for-executives.aspx>

## The WCO Instruments and Tools



Report on Customs Brokers,<sup>1</sup> AEO Compendium,<sup>2</sup> WCO Customs Risk Management Compendium,<sup>3</sup> Transit Handbook<sup>4</sup> and so on.

For comparative analysis we note that there are about 42 institutes of customs law in the customs legislation of the EEU (in the law of the Union in the field of customs regulation).<sup>5</sup>

The mentioned institutions (institutes) of customs law can be conditionally divided into 7 groups on: (1) subjects, (2) functional features, (3) customs operations, (4) customs procedures, (5) customs and tariff regulation, (6) non-tariff regulation, (7) protection of law and order (compliance). For example, on functionalities the institutes of customs control, currency control, customs examination, customs statistics are grouped. The institute of customs declaration and the institute of the release of goods have been provisionally assigned to the group «customs operations», and the institutes of the customs broker, customs carrier, temporary storage, bonded warehouse, duty-free shop are united with common name «grouping on subjects».

If we ask ourselves about the correlation of the institute of customs declaration in the EEU with the WCO instruments on the same subject,<sup>6</sup> then, we come to the understanding that there is no classification of the WCO's customs instruments in the context of this institute of customs law. Within the framework of comparative law we note that Chapter 6 «Customs Control» of the General Annex of the Kyoto Convention refers to the institute of customs control, and Chapter 3 «Clearance and other customs formalities» is connected with the institute of customs declaration, the institute of the release of goods and the institute of an authorized economic operator.

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<sup>1</sup> Study Report on Customs Brokers. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/study-report-on-customs-brokers.aspx>

<sup>2</sup> AEO Compendium. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/aeo-ompndium.aspx>

<sup>3</sup> WCO Customs Risk Management Compendium. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/risk-management-compendium.aspx>

<sup>4</sup> Transit Handbook. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/transit-handbook.aspx>

<sup>5</sup> See Nekrasov D.V. Updating of the administrative and legal status of the authorized economic operator in the conditions of the Eurasian Economic Union: Monograph / D.V. Nekrasov. Moscow: Publishing House of the Russian Customs Academy, 2015. – 230 p. URL: [http://rta.customs.ru/nrta/attachments/3756\\_978-5-9590-0840-6.pdf](http://rta.customs.ru/nrta/attachments/3756_978-5-9590-0840-6.pdf)

<sup>6</sup> The legal norms governing the application to the Customs authority with the use of the customs declaration of information on goods, on the selected customs procedure and (or) other information required for the release of goods.

## Institutes of customs law in the EEU

Subjects	Customs procedures	Customs and tariff regulation	Customs non-tariff regulation	Protection of law and order (Compliance)
Institute of Civil Service in Customs Authorities	institute of customs procedures			
Institute of the customs broker	institute of clearance for home use	institute of customs payments	institute of special, anti-dumping and countervailing measures	
Institute of customs carrier	institute of export	institute of customs value of goods		
Institute of temporary storage	institute of customs transit	institute of tariff preferences	institute of prohibitions and restrictions	
Institute of bonded warehouse	institute of customs warehouses	institute of customs classification of goods		
Institute of duty-free shop	institute of inward processing	institute of origin of goods		
Institute of the authorized economic operator	institute of outward processing			
	institute of processing of goods for home use			
		institute of temporary admission		
		institute of temporary export		institute of legal liability for offenses in the field of customs
		Institute of re-importation in the same state		institute of law enforcement activity of customs bodies
		institute of re-export		institute of appealing decisions, actions or omissions of customs authorities and their officials
		duty-free institute		
		institute of destruction		
		institute of surrenders of the goods to the state		
		institute of release of goods		
			institute of free zones	
			institute of free bonded warehouse	
			institute of special customs procedure	

In turn, the Specific Annex B «Importation»<sup>1</sup> of Kyoto Convention is associated with the institute of release for home use, which along with 17 other customs law institutes are consolidated into a group called «customs procedures».<sup>2</sup> With a view to improve the AEO institute, the researchers can refer not only to Chapter 6 of the General Annex of the Kyoto Convention, but also to the WCO tools such as AEO Implementation Guidance,<sup>3</sup> Model AEO Appeal Procedures,<sup>4</sup> AEO Benefits: Contribution from the WCO Private Sector Consultative Group,<sup>5</sup> the Authorized Economic Operator and the Small and Medium Enterprise (FAQ),<sup>6</sup> Mutual Recognition Arrangement/Agreement Guidelines,<sup>7</sup> AEO Template,<sup>8</sup> Customs AEO Validator Guide,<sup>9</sup> etc. Moreover, the World Trade Organization Agreement on Trade Facilitation of 15.07.2014,<sup>10</sup> which is presented by some experts in the WCO as a breakthrough instrument in the field of trade

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<sup>1</sup> Specific Annex B of the International Convention on the Simplification and Harmonization of Customs Procedures URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/spanb.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/spanb.aspx)

<sup>2</sup> This group also includes such institutes as the institute export, customs transit, of customs warehouses, inward processing, outward processing, processing of goods for home use, temporary admission, temporary export, re-importation in the same state, re-export, duty-free, destruction, surrender of the goods to the state.

<sup>3</sup> AEO Implementation Guidance. URL: [http://www.wcoomd.org/-/media/wco/public/ru/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/3-aeo-implementation-guidance/aeo-implem-guide\\_rus\\_giz.pdf?la=en](http://www.wcoomd.org/-/media/wco/public/ru/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/3-aeo-implementation-guidance/aeo-implem-guide_rus_giz.pdf?la=en)

<sup>4</sup> Model AEO Appeal Procedures. URL: [http://www.wcoomd.org/-/media/wco/public/ru/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/5--model-aeo-appeal-procedures\\_ru.pdf?la=en](http://www.wcoomd.org/-/media/wco/public/ru/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/5--model-aeo-appeal-procedures_ru.pdf?la=en)

<sup>5</sup> AEO Benefits: Contribution from the WCO Private Sector Consultative Group. URL: <http://www.wcoomd.org/-/media/wco/public/ru/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/6-aeo-benefitsru.pdf?la=en>

<sup>6</sup> The Authorized Economic Operator and the Small and Medium Enterprise (FAQ). URL: [http://www.wcoomd.org/-/media/wco/public/ru/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/10-aeo-and-sme/aeo-and-sme\\_rus.pdf?la=en](http://www.wcoomd.org/-/media/wco/public/ru/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/10-aeo-and-sme/aeo-and-sme_rus.pdf?la=en)

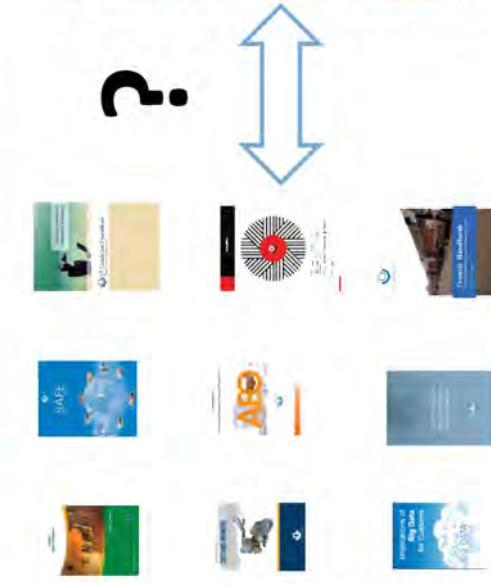
<sup>7</sup> Mutual Recognition Arrangement/Agreement Guidelines. URL: <http://www.wcoomd.org/-/media/wco/public/ru/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/11-guidelines-for-developing-mutual-recognition-arrangementsru.pdf?la=en>

<sup>8</sup> AEO Template. URL: <http://www.wcoomd.org/-/media/wco/public/ru/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/12-aeo-templatelu.pdf?la=en>

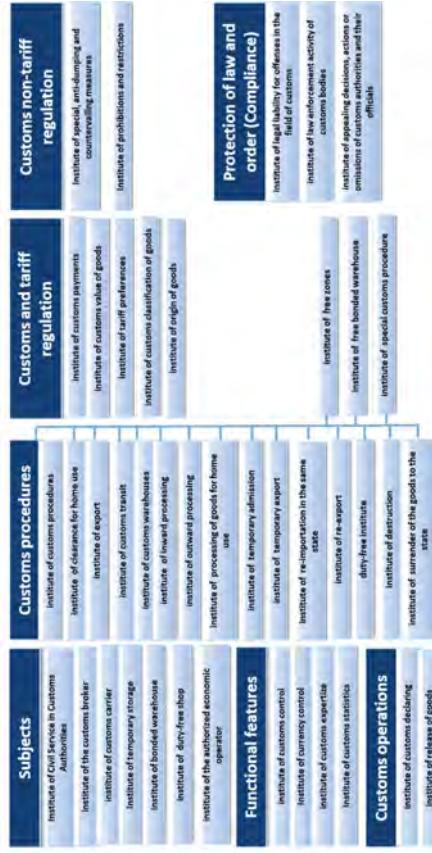
<sup>9</sup> Customs AEO Validator Guide. The World Customs Organization. June 2018. URL: <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/aeo-validator-guide.pdf?db=web>

<sup>10</sup> Agreement on Trade Facilitation. 15 July 2014. WT/L/931. Preparatory Committee on Trade Facilitation. URL: <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/activities-and-programmes/tf-negociations/wto-docs/tntf/2014/931-en.pdf?db=web>

## Relationship of the WCO instruments and institutes of customs law in the Eurasian Economic Union



### Institutes of customs law in the EEU



Today, in the scientific and practical aspect, the WCO instruments have not been classified and analyzed in the context of the institutes of customs law. Accordingly, within the process of improving customs administration, there is no possibility of promptly appealing to the current developments of the international customs community (the WCO) in a particular area of customs regulation.

facilitation, contains norms<sup>1</sup> relating to the AEO institute.<sup>2</sup> And, finally, for the purpose of updating the legal institute of customs transit, it is recommended to at least consult the WCO's Transit Handbook,<sup>3</sup> Specific Annex E «Transit» of the Kyoto Convention.<sup>4</sup>

The foregoing gives grounds to say that modern customs regulation instruments developed in the WCO include a variety of institutes of customs law. However, they have not been researched in complex and in interrelations, nor the relationships of such instruments and institutes of customs law have not been analyzed. In the light of the ongoing work to improve customs administration in the EEU **there is a lack of a universal academic «reference guidelines» which would consolidate the existing WCO instruments and tools in terms of (from the perspective) the above-mentioned legal institutes. The availability of such a universal instrument (guidelines, compendium, handbook, manual) would allow interested persons promptly turn to the WCO instruments depending on the subject of the study. Such an instrument, tool, in our opinion, will also be useful for scientists in the study, including at the dissertation level, of topical issues of customs regulation. We are working on this issue, and in the near future such a tool will be presented to the scientific and expert community.**

We believe that the prospects and results of EEC-WCO cooperation relate to improvement of customs administration in the EEU based on international standards; development of effective and modern instruments of customs regulation and trade facilitation; introduction of best practices of customs administration; joint research on the issues of improving of customs regulation.

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<sup>1</sup> See article 7. Trade Facilitation Measures for Authorized Operators.

<sup>2</sup> An analysis of this Agreement is presented in the articles: Mozer S.V. Analysis of the WTO Agreement on Trade Facilitation // Customs Regulation. Customs control. – 2015. – № 4. – P. 45–48. URL: <http://teloneum.ru/?p=8157>; Goshin V.A., Mozer S.V. On the issue of the functioning of the WCO Working Group on Trade Facilitation. Academic Bulletin of the Rostov branch of the Russian Customs Academy. № 1, 2016. – P. 18–24. URL: <https://library.ru/item.asp?id=25797167>

<sup>3</sup> Transit Handbook. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/transit-handbook.aspx>

<sup>4</sup> Specific Annex E of the International Convention on the Simplification and Harmonization of Customs Procedures. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/spane.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/spane.aspx)

## Conclusions

Based on the above-mentioned, we formulate the conclusions.

1. The role of the scientific community in improving the customs regulation in the EEU is of great importance. Experts from the EEC and the Customs authorities of the Member States are waiting for practical scientific works in the field of customs administration from the academicians made and based on an analysis of international experience on the improvement of various institutes of customs law.

2. In the scientific and expert environment there is a lack of research on the analysis of modern instruments of customs regulation and trade facilitation developed by the WCO, EU, APEC, CAREC etc. The WCO instruments have not been researched, nor have they been classified in the context of the institutes of customs law. Accordingly, within the process of improving of customs administration, there is no possibility of promptly appealing to the current developments of the international customs community (primarily WCO) in this or that area of customs regulation.

3. In the light of the ongoing work of the EEC on the updating of various institutes of customs law, the EEU requires the development of a universal academic «reference guidance» that provides a review and analysis of the existing WCO legal instruments and tools in the context of customs law institutes. The availability of such a universal instrument (guidelines, compendium, handbook, manual) will allow experts of the EEC and customs authorities of the WCO Member States to turn promptly to international standards in the field of customs, depending on the subject of regulation, research, etc.

4. At the moment, there is a shortage of scientific conferences devoted to customs law as an independent science or branch of law. In principle, such work is not carried out. In the EEU countries this work, in our opinion, should be carried out by the Russian Customs Academy<sup>1</sup> as the leading institution in training professional customs officers.

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<sup>1</sup> Russian Customs Academy: Science. URL: <http://customs-academy.net>

# Chapter 4

## IMPROVEMENT OF INSTRUMENTS OF CUSTOMS REGULATION: THEORETICAL ASPECT

It is important to note that the term «instrument of customs regulation» is often used in the designation of *regulatory acts* in the field of customs, *institutes of customs law, norms and rules of conduct*. In everyday practice the instruments also indicate *international agreements* regulating customs legal relations. Thus, it can be said that the institute of an Authorized Economic Operator is an important instrument of customs regulation in terms of building partnership relations between the trusted participants of external economic (trade) activity and customs authorities. Despite the wide use of this term in the practice of customs administration and research on customs, neither the general theory of law nor the theory of administrative law nor scientific works on customs law disclose a legal phenomenon called the «instrument of customs regulation». Let's investigate it on the basis of the theory of law and theoretical approaches known to us.

### 4.1. On legal instruments and tools of customs regulation

The term «instrument of customs regulation» consists of two elements, «instrument» and «customs regulation». Let's consider these categories in a relationship. In the scientific research works on the theory of customs law the term «customs regulation» is understood as the totality of various *means of influence* of the state on public relations directly or indirectly connected with the movement of goods and vehicles across the customs border.<sup>1</sup> It is believed that customs regulation is a complex and multifaceted management mechanism,<sup>2</sup> and the customs regulation system consists of such elements as (1) subjects, (2) their powers, (3) *instruments*, (4) methods and *means of customs regulation*,

<sup>1</sup> Kolchedantsev A.G. On customs regulation in the Russian Federation. // The modern law. – 2004. – № 8. – P. 6.

<sup>2</sup> Novikov A.B. Customs regulation and customs: the metamorphosis of the conceptual apparatus // Scientific notes of the St. Petersburg branch of the Russian Customs Academy. – 2006. – № 2 (26). – P 6.

(5) procedural mechanisms for establishing customs rules and the application of means of customs regulation.<sup>1</sup> In this case, the object of customs regulation is customs relations.<sup>2</sup> Taking into account the mentioned theme of our research, we draw attention to such elements of a system of customs regulation as *instruments* and *means of customs regulation*.

According to the explanatory dictionary of Ushakov, the *toolkit* is a selection, a *set of instruments used* in some specialty.<sup>3</sup> Nekrasov V.A. considers *customs and legal instruments* as *an integral part of the mechanism of state regulation* of economic entities (operators), and the customs regime as a set of legal norms and organizational measures that ensure the integrated application of *instruments of customs regulation*.<sup>4</sup> In turn, a *tool* is understood as the *means*, method used to achieve something.<sup>5</sup> E. Krasov draws attention to that a term «instrument» briefly also means the *tool or the main part of the executive machinery*. In his opinion, legal instruments determine the internal structure and legal regime of the relevant phenomena.<sup>6</sup> Accordingly, in their entirety legal instruments represent a *legal mechanism* that can often be an independent complex legal instrument.

It should be added that the term «instrument of (customs) regulation» is used to refer to such legal phenomena as customs *operations and customs control*,<sup>7</sup>

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<sup>1</sup> Novikov A.B. Customs regulation and customs: the metamorphosis of the conceptual apparatus // Scientific notes of the St. Petersburg branch of the Russian Customs Academy. – 2006. – № 2 (26). – P 6.

<sup>2</sup> Buvaeva N.E. Customs and customs regulation: definition of concepts and their interrelation // Scientific notes of the St. Petersburg branch of the Russian Customs Academy. – 2012. – № 1 (41). – P. 36.

<sup>3</sup> Explanatory dictionary of Ushakov. URL: <https://dic.academic.ru/dic.nsf/ushakov/824654>

<sup>4</sup> Nekrasov V.A. Administrative and legal aspects of the legal regulation of the customs on the territories leased by the Russian Federation: the example of the Baikonur complex: the author's abstract. dis ... cand. jurid. sciences. – Moscow, 2008. URL: <http://www.dissercat.com/content/administrativno-pravovye-aspeky-pravovogo-regulirovaniya-tamozhennogo-dela-na-arenduemykh->

<sup>5</sup> Explanatory dictionary of the Russian language. URL: <http://tolkru.com/page/instrument.php>

<sup>6</sup> Krassov E.O. Legal instruments and mechanisms of corporate governance (review). URL: <http://www.igpran.ru/articles/4062/>

<sup>7</sup> Matveeva O.P, Aleinikov I.A. Development of customs and logistics infrastructure as a factor in improving of the quality of instruments of customs regulation: the regional aspect // Bulletin of the Belgorod University of Cooperation, Economics and Law. – 2016. – № 4 (60). – P. 148. URL: <https://elibrary.ru/item.asp?id=26636771>; Bobyreva E.V., Boldina M.A. Customs control as an instrument of customs regulation of external economic activity in the system of economic security of the Russian Federation // Avenue of Science. – 2017. – Volume 3. Number 3. – P. 459 – 462. URL: <https://elibrary.ru/item.asp?id=30266723>

*customs procedures*,<sup>1</sup> *control function of the Customs authorities*,<sup>2</sup> *customs privileges*,<sup>3</sup> *technology*,<sup>4</sup> *customs tariff*,<sup>5</sup> *customs authorities*,<sup>6</sup> etc. Moreover, «*customs administration*»<sup>7</sup> is considered as a separate «*instrument of customs regulation*».<sup>8</sup>

It is important for this study the understanding of the term «legal means (tools)». According to Alekseyev S.S., «a concept that can cover all legal matter, all its particles, *all legal instruments*, is a category of general and universal character» – legal instruments». This category covers the entire *legal instrument*- both legal norms and all other instruments, and most importantly, «*structures*» (construction, organization) of legal regulation».<sup>9</sup>

It should be noted that in the economic theory it is used the term *means of regulating of external trade*, which can take various forms, including those, directly affecting the price of goods (*tariffs, taxes, excises and other charges*, etc.), and limiting the value volumes or quantity of incoming goods (*quantitative*

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<sup>1</sup> Panina I.V. The role of customs procedures as an instrument of customs regulation of external economic activity // Scientific almanac. – 2015. – № 11-1 (13). – P. 465–459. URL: <https://elibrary.ru/item.asp?id=25313996>

<sup>2</sup> Kosityna L.A. Control function of Customs bodies as an instrument of regulating external economic activity // Police law. – 2007. – № 2 (10). URL: <https://library.ru/item.asp?id=20220078>

<sup>3</sup> Stupnikov A.A. Customs privileges as a modern instrument of administrative and legal regulation of the process of moving of the goods across the customs border of the Customs Union // Journal of Legal Science and Legal Education Reform. – 2012. – № 2 (25). – P. 96–99. URL: <https://library.ru/item.asp?id=20452722>

<sup>4</sup> Yakovleva E.Yu., Sergeev I.V. The review of technology of block chain as the instrument of customs regulation // The Young scientist. – 2017. – № 20 (154). URL: <https://moluch.ru/archive/154/43535/>

<sup>5</sup> Zhivodrova S.A., Suleymanova T.V., Mejitov T.R. Customs Tariff as an instrument for the regulation of external economic activity // State regulation and sustainable development of municipal formations. Collection of articles, Irkutsk. – 2012. – P. 44–40. URL: <https://library.ru/item.asp?id=20223821>

<sup>6</sup> Tyaglov S.G., Kanaki V.V. Customs authorities as an instrument of state regulation of external trade barter transactions // Collection: Economic problems of Russia and the region. Scientific notes. Rostov-on-Don, 2001. P. 74–83.

<sup>7</sup> In this monograph we often use the term «*customs administration*» which is a process, like customs regulation.

<sup>8</sup> See Bakaeva O.Yu. Legal Aspects of customs administration: Concept and Signs // State and Law. – 2009. – № 11. – P. 94. URL: <https://elibrary.ru/item.asp?id=13558320>

<sup>9</sup> Alekseev S.S. Collected works. In 10 Vol. [+ Reference Vol.]. Volume 3: Problems of the theory of law: Course of lectures. – Moscow: Statute, 2010. – P. 216.

*restrictions, licenses, «voluntary» export restrictions, etc.).<sup>1</sup>* In the framework of a comparative analysis, this issue will be discussed below. Along with this, it is used a concept of «instruments of state regulation». In the works devoted to the administrative law Alekhin A.P., Kozlov Yu. M. include the following in a group of traditional regulatory instruments: *taxes, standards, state orders, customs tariffs and duties*, which (tools) are put in one form or another legal form. The authors also draw attention to the fact that in modern conditions, *privatization, bankruptcy of enterprises, etc.* is a peculiar expression of state regulation».<sup>2</sup>

It is impossible not to agree with the opinion of Kolchedantsev A.G., according to whom the impact on customs legal relations is carried out through a variety of means: *legal, organizational, economic, political*, which are available for the state.<sup>3</sup> Customs legislation and scientific doctrine refer to basic *means of customs regulation*, notes Novikov A.B., the *establishment of customs regimes, the system of tariff and non-tariff regulation, customs clearance, customs control, currency control, the fight against the violation of customs regulations*.<sup>4</sup> The same author considers the customs (customs affairs)<sup>5</sup> as a *toolkit for customs regulation*.<sup>6</sup>

## **4.2. The main instruments of customs regulation**

Beginning the theoretical interpretation of the term «instruments of customs regulation», we draw attention to the fact that *customs regulation* is inherently

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<sup>1</sup> See. URL: <http://diplomba.ru/work/38509>

<sup>2</sup> Alekhin A.P., Kozlov Yu.M. Administrative law of the Russian Federation. Part I. Essence and basic institutes of administrative law: Textbook. – M., 1995. Paragraph 7.3.2. State regulation as a function of management. – P. 316.

<sup>3</sup> Kolchedantsev A.G. On customs regulation in the Russian Federation. // Modern law. – 2004. – № 7. – P. 13.

<sup>4</sup> Novikov A.B. Customs regulation and customs: the metamorphosis of the conceptual apparatus // Scientific notes of the St. Petersburg branch of the Russian Customs Academy. – 2006. – № 2 (26). – P. 11.

<sup>5</sup> As a set of methods and means to ensure compliance with customs and tariff and non-tariff regulation.

<sup>6</sup> Customs payments, customs clearance, customs control, restrictions and formalities related to licensing and quoting issues (see Novikov A.B. Customs regulation and customs: metamorphosis of the conceptual apparatus // Scientific notes of the St. Petersburg branch of the Russian Customs Academy. – 2006. – № 2 (26). – P. 12).

a *legal regulation* of public relations in the field of customs administration<sup>1</sup> and is carried out with the help of legal means (instruments). In order to understand their legal nature as a legal phenomenon, let us turn to the theory of law. First of all, we note that legal regulation,<sup>2</sup> as a purposeful impact on human behavior and social relations with the help of legal (juridical) means<sup>3</sup> in contrast to other forms of legal influence, is always carried out through its «*dynamic toolkit (instruments)*» – a special *mechanism* peculiar only for the law, *the whole complex of dynamic systems and structures* designed to legally guarantee the achievement of legal objectives within certain types, models of legal impact on public relations<sup>4</sup>. When considering legal regulation, *legal phenomena* act as *legal means*, i.e. *legal instruments* to achieve certain tasks, they must be accurately known in life, in practical matters. These *legal means* are legal norms, subjective rights, related duties, court decisions, etc. is not a kind of chaotic assemblage of legal phenomena. They are closely linked and together form a rather complex mechanism, called the mechanism of legal regulation.<sup>5</sup> As we see, for this case «legal phenomena», «legal means» and «legal instruments» are considered as identical concepts (terms).

In the theory of law of higher level – instrumental theory – the understanding of law relies not only on the dogma of law, but also on the entire *legal toolkit (instruments)* – on the entire vast and diverse *range of legal means*, which allows us to see in full its «own» logic of law.<sup>6</sup> «*Legal means and legal mechanisms*, according to Alekseev S.S., are a *legal instrument*».<sup>7</sup> In legal theory, *legal norms and principles, law enforcement acts, contracts, legal facts, subjec-*

<sup>1</sup> See Buvaeva N.E. Customs affairs and customs regulation: definition of concepts and their interrelation // Scientific notes of the St. Petersburg branch of the Russian Customs Academy. – 2012. – № 1 (41). – P. 36.

<sup>2</sup> Legal regulation is the process of empowering participants of public relations with powers (rights), obligations, responsibilities (permissions, prohibitions, authorizations), realizing these powers, obligations, responsibility, turning these participants into subjects of legal relations (Vengerov A.B. Theory of State and Law: Textbook. 3rd ed. – Moscow: Jurisprudence, 2000. – P. 232. URL: <http://lawcanal.ru/html.acti.uchebniki.actii.tgp.html>

<sup>3</sup> Alekseev S.S., Arkhipov S.I., Korelsky V.M. and others. Theory of State and Law. Textbook for high school. 1998. URL: <https://studfiles.net/preview/429744/>

<sup>4</sup> Alekseev S.S. Collected works. In 10 Vol. [+ Reference Vol.]. Volume 6: Rise to the Law. – Moscow: Statute, 2010. – P. 250.

<sup>5</sup> Alekseev S.S. Collected works. In 10 Vol. [+ Reference Vol.]. Volume 8: Textbooks and teaching aids. – Moscow: Statute, 2010. – P. 158.

<sup>6</sup> Alekseev S.S. Collected works. In 10 Vol. [+ Reference Vol.]. Volume 6: Rise to the Law. – Moscow: Statute, 2010. – P. 312.

<sup>7</sup> Alekseev S.S. The theory of law. – Moscow: Bek, 1995. – P. 167.

tive rights, legal obligations, bans, benefits, measures of encouragement and punishment, acts of realizing rights and duties, etc. act as the legal means.<sup>1</sup> Pronounced position is close to the views of Malko A.V., who understands the *legal means as legal instruments (phenomena)*, through which the interests of subjects of law are satisfied, and it is achieved the set goals.<sup>2</sup> As we can see, the notion of legal instruments is covered by the term «legal means».

So, let's consider the basic instruments of customs regulation.

**4.2.1. Customs law as a branch of administrative law.** From the point of view of Alekseyev S.S., it is *law* in a civilized society, which is one of the main instruments that can ensure the organization of public life, the beginning of social discipline, the normal functioning of the entire social organism, the effectiveness of social management. In his opinion, the law as a highly effective and expedient social regulator is, first of all, *instrumental* or, in other terminology, performance value, that is the value acting as an *instrument, a tool, means of* ensuring the functioning of other social institutions (state, social management, morals, etc.), other social benefits.<sup>3</sup>

**4.2.2. Norms of customs law.** The instruments by which the natural-legal claims are transformed into subjective rights are the *norms of positive law*.<sup>4</sup> Social norms are prescriptive.<sup>5</sup> As an *instrument of public regulation*, they are always more or less an «external» regulator provided by certain means of influence on people's behavior.<sup>6</sup> *System of legal norms* is called by Alekseev S.S as an instrument of state power.<sup>7</sup> Russian scientist believes that «*legal norms*, especially the *norms of codified acts*, represent a kind of «instrumental shop», that provides the legal system with well-developed legal instruments».<sup>8</sup> Dmitriev Yu.A., Polyansky I.A., Trofimov E.V. pay attention to the fact that the secondary legislation norms constitute an absolute, overwhelming majority in the number of norms of administrative law.

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<sup>1</sup> Electronic resource. URL: [https://studopedia.ru/6\\_110836\\_pravovie-sredstva-ponyatie-i-vidi.html](https://studopedia.ru/6_110836_pravovie-sredstva-ponyatie-i-vidi.html)

<sup>2</sup> Malko A.V. Theory of State and Law. – Moscow: Jurist, 2001. – P. 282.

<sup>3</sup> Alekseev S.S. The theory of law. – Moscow: Bek, 1995. – P. 164.

<sup>4</sup> Ibid. – P. 199.

<sup>5</sup> They set bans, give behavioral standards.

<sup>6</sup> Alekseev S.S. Collected works. In 10 Vol. [+ Reference Vol.]. Volume 3: Problems of the theory of law: Course of lectures. – Moscow: Statute, 2010. – P. 67.

<sup>7</sup> Alekseev S.S. Collected works. In 10 Vol. [+ Reference Vol.]. Volume 8: Textbooks and training manuals. – Moscow: Statute, 2010. – P. 228.

<sup>8</sup> Alekseev S.S. The theory of law. – Moscow: Bek, 1995. – P. 96.

**4.2.3. Legal institutes of customs law.** Along with the norms of a positive law the group of legal instruments includes *legal institutes*.<sup>1</sup> Scientists reasonably consider the legal institutes (institution) of law as *legal toolkit (instrument)*.<sup>2</sup> With regard to customs regulation the system of customs administration is characterized by a multitude of legal institutions. Among them – the institution of customs control, customs declaration, release of goods, customs procedure, export, customs transit, authorized economic operator,<sup>3</sup> customs brokers, classification, definition of the origin, customs value of goods, customs payments, etc.

**4.2.4. Normative acts in the sphere of customs regulation.** We include the *normative acts* into a group of legal phenomena. They are instruments of developments and changes in the regulatory framework of a mechanism; with their help they ensure introduction into the legal system of new norms, their modification, and the abolition of obsolete regulations.<sup>4</sup> For example, the *law* (act, statute) as an instrument of organizing public relations is yet an unsurpassed and comprehensive means of social regulation and control.<sup>5</sup> In the system of customs administration, important regulatory act in every EEU Member States is «Law on Customs Regulation».

**4.2.5. Permissions, bans, positive requiring in the sphere of customs regulation.** At the beginning of the study we mentioned the system of customs regulation, identifying its elements.<sup>6</sup> According to the theory of law, the system of legal regulation is formed by various *methods, ways, techniques* that are used

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<sup>1</sup> A legal institute is an element of the field of law, which includes a set of legal norms governing a qualitatively homogeneous group of social relations (see: Jurisprudence: A Textbook for Universities / Edited by M.I. Abdulaev. – Moscow: Financial Control, 2004. – P. 105).

<sup>2</sup> Alekseev S.S. Collected works. In 10 Vol. [+ Reference Vol.]. Volume 7: Philosophy of law and theory of law. – Moscow: Statute, 2010. – P. 354.

<sup>3</sup> See Nekrasov D.V. Institute of the authorized economic operator in the context of the theory of law // Bulletin of the Financial University. – 2014. – № 1; Nekrasov D.V. Formation of the legal institution of the authorized economic operator in the Customs Union of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation. // Bulletin of the Russian Customs Academy. – 2013. – № 3; Nekrasov D.V. The Institute of the Authorized Economic Operator as an element of the Security supply chain program // Academic Bulletin of the Rostov Branch of the Russian Customs Academy. 2016. – № 3 (24).

<sup>4</sup> Alekseev S.S. Collected works. In 10 Vol. [+ Reference Vol.]. Volume 3: Problems of the theory of law: Course of lectures. – Moscow: Statute, 2010. – P. 413.

<sup>5</sup> Dmitriev A.Yu., Kazmin I.F, Lazarev V.V. General theory of law. – 2nd ed. – Moscow: Publishing house of the Moscow State Technical University named after N.E. Bauman, 1996. – P. 149.

<sup>6</sup> Subjects, their powers, instruments, methods and means of customs regulation, procedural mechanisms for establishing customs rules and the application of means of customs regulation.

by law in regulating public relations. This is the arsenal of *legal instruments*, which the state bodies have.<sup>1</sup> There are three ways of legal regulation: permission, requiring and bans.

**4.2.6. Legal mechanism in the field of customs regulation.** *The legal mechanism* as a legal phenomenon can be attributed to the collective notion «instruments of customs regulation». A legal mechanism is understood as a set of legal norms, legal relations and legal acts participating in the legal impact, and existing as a dynamic, internally unified system, the elements of which acquire new properties precisely as a result of their interaction.<sup>2</sup> For example, the legal mechanism for the AEO consists of the following elements: (1) the *norms of law* formulated in Chapter 61 of the Customs Code of the Eurasian Economic Union<sup>3</sup> and (or) in the national law on customs regulation; (2) the *legal fact* – the submission of an application for the AEO status, conditions for assigning the AEO status, including index of financial solvency, (3) *implementation of the right* – authorization, verification by the customs authorities of the participant of external trade activities for compliance with the conditions of assigning the AEO status, (4) *law enforcement act* – issuing an order of the Customs authority on assigning the legal status of the AEO.

**4.2.7. Administrative and legal regimes (customs procedures).** Turning to the analysis of the next legal phenomenon from the group of instruments of customs regulation, we note the following. If a *legal mechanism* is a purely instrumental substance, a special «set» (as a rule, big enough) of *several legal instruments*, then a *legal regime* is a broader range of legal means, including a number of separate legal instruments and mechanisms covering a certain set of methods and types of legal regulation. Legal regime in contrast to the legal mechanism, in addition to achieve the goal is *directed to regulation of relations* associated with ensuring the functioning of the legal regime itself.<sup>4</sup>

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<sup>1</sup> The system of legal regulation and its elements. URL: [https://studopedia.ru/1\\_102329\\_sistema-pravovogo-regulirovaniya-i-ee-elementi.html](https://studopedia.ru/1_102329_sistema-pravovogo-regulirovaniya-i-ee-elementi.html)

<sup>2</sup> Kuznetsova S.V. On the issue of defining the concept of «legal mechanism». Bulletin of the St. Petersburg University of the Ministry of Internal Affairs of Russia. – 2013. – № 1 (57). – P.11. URL: <https://cyberleninka.ru/article/v/k-voprosu-ob-opredelenii-ponyatiya-pravovoy-mehanizm>

<sup>3</sup> The Customs Code of the Eurasian Economic Union. Annex 1 to the Treaty on the Customs Code of the Eurasian Economic Union. Legal portal of the Eurasian Economic Union. URL: [http://www.eurasiancommission.org/ru/act/tam\\_sotr/dep\\_tamoj\\_zak/SiteAssets/Customs%20Code%20of%20the%20EAEU.pdf](http://www.eurasiancommission.org/ru/act/tam_sotr/dep_tamoj_zak/SiteAssets/Customs%20Code%20of%20the%20EAEU.pdf)

<sup>4</sup> Kuznetsova S.V. On the issue of defining the concept of «legal mechanism». Bulletin of the St. Petersburg University of the Ministry of Internal Affairs of Russia. – 2013. – № 1 (57). – P. 9. URL: <https://cyberleninka.ru/article/v/k-voprosu-ob-opredelenii-ponyatiya-pravovoy-mehanizm>

*The legal regime* can be viewed as a kind of enlarged block in the general *arsenal of legal instruments*, which unites a certain set of legal means into a single construction.<sup>1</sup> In the legal literature Bahrakh D.N., Rossinsky B.V., Starilov Yu.N. note, that legal regimes are considered in several aspects: as *an element of legal instruments*, combining in a single construction a certain set of legal means; as an integral part of the legal system, which along with the subject and method of legal regulation is responsible for the delimitation of one branch of law from another.<sup>2</sup> The legal regime, on the one hand, unites a variety of *legal instruments*, forcing it to work on unified legal principles, and on the other hand it ensures its differentiation, creating different conditions for the realization of the rights and obligations of the subjects, depending on the purposes and tasks, the time and place of the activity, the situation, which is formed under the influence of environmental factors.<sup>3</sup>

With reference to customs regulation, the term «*customs regime*» is used in the legal literature. It is applied in three ways: as an *instrument of customs policy*; as a *special legal regime*; as an institution of customs law.<sup>4</sup> In the first of these meanings the customs regime, according to Malinovskaya V.M., is a system of measures and techniques that ensure the integrated application of *instruments of customs regulation*.<sup>5</sup> The customs regime as one of the types of legal regimes should be understood as a special order of legal regulation, including a certain set of *legal means* and *instruments* that provide legal effect on the functioning of the customs system in a particular state.<sup>6</sup>

The use of *customs procedures* allows, depending on the purpose, the period of import or export of goods, as well as other circumstances, to apply to them various *instruments of legal regulation*. This makes it possible to consider fully the needs and interests of participants of external economic (trade) activity and, ultimately, contribute to the development of external economic relations. The actions of customs authorities in these areas are based on legislative norms in

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<sup>1</sup> Alekseev S.S. Collected works. In 10 Vol. [+ Reference Vol.]. Volume 6: Rise to the Law. – Moscow: Statute, 2010. – P. 264.

<sup>2</sup> Bahrakh D.N., Rossinsky B.V., Starilov Yu.N. Administrative law: Textbook for universities. – 3rd ed. – Moscow: Norma, 2007. – P. 478.

<sup>3</sup> Bahrakh D.N., Rossinsky B.V., Starilov Yu.N. Administrative law: Textbook for universities. – 3rd ed. – Moscow: Norma, 2007. – P. 479.

<sup>4</sup> Malinovskaya V.M. Customs law of Russia. Textbook on public and private law in 2 volumes. Vol. 1: Public law. – Moscow: Statute, 2008. – P. 34. URL: <https://mgimo.ru/files/33516/33516.pdf>

<sup>5</sup> Ibid. – P. 35.

<sup>6</sup> Ibid. – P. 35.

the part of state customs and external trade regulation, as well as international customs law.<sup>1</sup> For example, the Union's law in the field of customs administration established 17 customs procedures (administrative and legal regimes – *author's comment*). Among them – the customs procedure of release of the goods for home use (clearance for home use), export, customs transit, customs warehouse, processing, etc.<sup>2</sup> Thus, the customs procedure (administrative-legal regime) of clearance for home use in the narrow sense is a set of rules of conduct of activities of an economic operator and Customs bodies, the procedure of exercise of their rights of obligations in the field of customs regulation in connection with the release of goods. The elements of the content of this procedure (legal regime) are: (1) *special purpose* is to prevent offenses and other harmful consequences in connection with the import of goods; (2) *principles* – legality, minimization of restrictions on the rights and interests of traders, responsibility of customs authorities and their officials for exceeding the powers, (3) *object* – the aggregate of public relations in the sphere of state (public) management in customs sphere, (4) *means for ensuring the procedure (administrative and legal regime)* – a set of means, ways based on the norms of administrative law.<sup>3</sup>

**4.2.8. Legal constructions in the field of customs regulation.** The next instrument of customs regulation we call the *legal constructions*.<sup>4</sup> It is believed that they are the most perfect legal toolkit (instruments), and a man speaks rightfully about them, when deciding the questions on the use of law in accor-

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<sup>1</sup> Panina I.V. The role of customs procedures as an instrument of customs regulation of external economic activity. Scientific Almanac № 11-1 (13), 2015. URL: <http://ucom.ru/doc-na.2015.11.01.456.pdf>

<sup>2</sup> Chapters 19-36 of the Customs Code of the Eurasian Economic Union. Annex 1 to the Treaty on the Customs Code of the Eurasian Economic Union. Legal portal of the Eurasian Economic Union. URL: [http://www.eurasiancommission.org/ru/act/tam\\_sotr/dep\\_tamoj\\_zak/SiteAssets/Customs%20Code%20of%20the%20EAEU.pdf](http://www.eurasiancommission.org/ru/act/tam_sotr/dep_tamoj_zak/SiteAssets/Customs%20Code%20of%20the%20EAEU.pdf)

<sup>3</sup> For more details see 13.3. Contents of administrative and legal regimes. URL: [http://www.tinlib.ru/yurisprudencija/administrativnoe\\_pravo/p14.php](http://www.tinlib.ru/yurisprudencija/administrativnoe_pravo/p14.php)

<sup>4</sup> «Legal construction» is a peculiar and stable construction of rights, duties, responsibilities, their model schemes, models, in which legal material is clothed (See Alekseev S.S. Collected Works, Vol. 10 [+ Vol. 8: Textbooks and training manuals. – Moscow: Statute, 2010. – P. 68); The legal construction is an ideal (mental) model-representation. As an ideal model, the legal construction acts as a system of cognitive images (concepts, judgments, inferences) and serves as a form of reflection of objective reality (see Leonenko N.T. Legislative Technique: Textbook, Russian Academy of Sciences, Siberian Institute of Management – Novosibirsk: Publishing house of SibAPS, 2015. URL: <https://pravo.studio/yuridicheskaya-tehnika-rossii/priznaki-yuridicheskoy-konstruktsii-73320.html>

dance with the vital tasks that have arisen.<sup>1</sup> When researching this tool, Alekseev S.S. mentions the negative consequences of the rather sad for the jurisprudence quality. In his opinion, the relations and processes that are inherently legal constructions, are, as it were, appropriated by other branches of knowledge – the sciences of the economic and managerial profile, and are simply referred to as «methods», «ways», etc.<sup>2</sup> In the sphere of customs administration, it is possible to single out legal constructions associated, for example, with (1) customs declaration and customs operations related to the lodging, registration, and withdrawal of the goods declaration, the change (addition) of the information declared in the goods declaration; (2) release of goods, (3) customs control, etc. On the one hand, customs declaration, release of goods, customs control are separate institutions of customs law that regulate customs legal relations. On the other hand, listed legal phenomena are stable legal constructions that consolidate a certain order of building rights, obligations, responsibilities, standard schemes implemented within the framework of interaction of Customs authorities and participants of external trade activities. In this case typical schemes, models of the mentioned legal constructions are classically reflected in normative acts of a national character in the EEU Member States as well as in the Union's law in the field of customs. Moreover, the classical models of these legal constructions are fixed in modern instruments of customs administration at the international level.<sup>3</sup>

**4.2.9. Forms of management in the sphere of customs regulation.** The next instrument of customs regulation can be called the *forms of management (administration)*. Forms of management stated legislatively and based on years of experience connected with technological progress and the evolution of human civilization as a whole, are a *set of instruments* in the hands of officials of managing subjects. Their administrative discretion consists in choosing the existing forms of public administration for the performance of the tasks assigned to them and the task they represent. Officials of the authorities, performing any power actions on behalf of the executive body, act with the use of one of the prescribed forms: they *issue an act, issue a document, impose a resolution*, etc.<sup>4</sup>

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<sup>1</sup> Alekseev S.S. Collected works. In 10 Vol. [+ Reference Vol.]. Volume 6: Rise to the Law. – Moscow: Statute, 2010. – P. 242.

<sup>2</sup> Ibid. – P. 243.

<sup>3</sup> See the WCO Instruments and tools. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools.aspx>

<sup>4</sup> Dmitriev Yu.A., Polyansky I.A., Trofimov E.V. Administrative Law of the Russian Federation: a textbook for law schools. Section 3. Chapter 12. Paragraph 1. The concept of the form of public management [Electronic resource]. Access in the legal system GARANT. – P. 132.

The main forms of public administration, which determine the specificity of the managerial process, include two ones: ***acts of public administration*** and ***administrative contracts***.

**4.2.10. Act of public administration** is a central, key form of public administration. The absolute majority of managerial decisions are realized through this instrument. Yu.N. Starilov cites the following detailed definition of the *act of public administration*: «Administrative act: is a legal act that regulates managerial relations or permits a specific management matter (dispute), establishes a new legal status of subjects of law, possessing a publicly-authoritative character, issued by subjects of public administration in unilateral administrative order by authorized bodies and officials in accordance with the established procedure (within the framework of the management process) with the aim of achieving the objectives of public administration solving its tasks and implementing management functions.<sup>1</sup> For example, the Order of the Customs authority on the inclusion of an economic operator in the AEO registry, or in the registers of customs brokers, customs carriers, etc. is a title act (legal act) that establishes the legal status of a participant of external trade activities (AEO, customs carrier, customs broker, etc.) in accordance with applicable law. From the moment of its publication, an economic entity with the appropriate status is provided with rights and obligations in accordance with its legal status in customs legal relations.

**4.2.11. Administrative agreement in customs sphere.** A variation (example) of the *administrative agreement* in the sphere of customs regulation can be called an agreement that is concluded between the Customs authorities and an economic entity (operator) that is granted the status of an Authorized Economic Operator.<sup>2</sup>

**4.2.12. Programs, concepts of development and improvement of customs regulation (as acts of public administration in the field of customs).** In our opinion, a separate group of acts of governance is made up of various

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<sup>1</sup> Dmitriev Yu.A., Polyansky I.A., Trofimov E.V. Administrative Law of the Russian Federation: a textbook for law schools. Section 3. Chapter 12. Paragraph 1. The concept of the form of public management [Electronic resource]. Access in the legal system GARANT. – P. 136.

<sup>2</sup> For more details, see Nekrasov D.V. Updating of the administrative and legal status of the authorized economic operator in the conditions of the Eurasian Economic Union: Monograph. Moscow: Publishing House of the Russian Customs Academy, 2015. – P. 59. URL:[http://rta.customs.ru/nrta/attachments/3756\\_978-5-9590-0840-6.pdf](http://rta.customs.ru/nrta/attachments/3756_978-5-9590-0840-6.pdf)

*programs, action plans,<sup>1</sup> concept,<sup>2</sup>* as complex legal phenomena,<sup>3</sup> related to the development of customs regulation. This conclusion is based on the scientific and practical developments of D.V.Nekrasov.<sup>4</sup> For example, with reference to the improvement of the legal status of the AEO, the author proves the need for the development of an AEO Program, which consists of such elements as legal means (norms of law, rights and obligations, customs benefits, administrative agreements between customs and economic operator), management decisions of customs bodies (about granting the AEO status, its suspension and cancellation), procedures and technologies.

## Conclusions

The results of the analysis allow to identify the main instruments of customs regulation from the mass of legal phenomena (legal means), to classify them, and also to formulate conclusions about their legal nature. In our opinion, the ratio of instruments of customs regulation and means of customs regulation is correlated as part and whole. The term «instrument of customs regulation» can be considered in a narrow and broad sense. In the first case, the instruments of customs regulation should be understood as a certain set of administrative and legal regulations (legal means) as well as activities in the field of public administration and judicial practice to review disputes in the field of customs that

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<sup>1</sup> See, Action Plan («road map») «Improving Customs Administration». Approved by the Decree of the Government of the Russian Federation on 29.06.2012 № 1125-p (Edited of November 28, 2017) «On the approval of the plan of measures («road map») «Improving of the customs administration»; The main directions of improving of customs administration within the Customs Union in 2012–2015. URL: <http://www.tsouz.ru/db/dta/Documents/Functions2012.pdf>

<sup>2</sup> See, for example, the Concept of a Risk management system in the Customs Service of the Russian Federation. Approved by the Order of the State Customs Committee of the Russian Federation of September 26, 2003 № 1069 «On the approval of the Concept of a Risk management system in the Customs Service of the Russian Federation»; The Concept of customs control after the release of goods and (or) vehicles. Approved by Order of the Federal Customs Service of Russia of 07.12.2007 № 1516 «On approval of the Concept of development of customs control after the release of goods and (or) vehicles».

<sup>3</sup> Nekrasov D.V. Program for an Authorized Economic Operator // Customs regulation. Customs control. – 2014. – № 2. URL: <http://www.customs-academy.net/?p=5443>; Nekrasov D.V. The program of the authorized economic operator as an instrument for improving its administrative and legal status // Administrative and municipal law. – № 12.

<sup>4</sup> Register (list) of publications of Nekrasov D.V. URL: <http://customs-academy.net/?p=3531>

affect customs legal relations. These instruments are strictly administrative and legal.

In a broad sense the concept of «legal instruments of customs regulation» includes administrative and legal means of customs regulation as well as economic means, methods, ways of regulating of external trade relations.

In our opinion, instruments of customs regulation are a separate group of legal means regulating customs legal relations in the sphere of customs administration. This group of legal phenomena is *legal provisions* that fix the rights and obligations of subjects of customs legal relations. The concept of instruments of customs regulation is associated with legal forms of management activity<sup>1</sup> and is characterized by the onset or the possibility of the occurrence of certain direct legal consequences for the participants of external trade activities, in respect of which this activity is carried out.<sup>2</sup> Instruments of customs regulation are an integral part of the mechanism of state regulation of the activities of participants in external trade relations. Consequently, legal instruments of customs regulation do not cover such legal phenomena (which are part of the group of legal means), as legal facts, subjective rights, legal obligations, bans, benefits, incentives and punishments. In its content, the concept of «instruments of customs regulation» is narrower the concept of «means of customs regulation».

On the basis of the analysis of the legal norms of the Customs Code of the Union, as well as the customs legislation, the following legal relationships in the field of customs can be identified, to which the instruments of customs regulation are applied:

- the movement of goods across the customs border of the Union, their location and use in the customs territory of the Union or abroad;
- the performance of customs operations related to the arrival of goods in the customs territory of the Union, their departure from the customs territory of the Union, temporary storage of goods, their customs declaration and release, other customs operations;
- payment of customs duties, special, anti-dumping, countervailing duties;
- customs control;

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<sup>1</sup> Legal forms of public administration can directly express themselves in the following: the publication of legal acts of governance (of a regulatory or individual nature); conclusion of administrative contracts; the commission of legally significant actions or actions of a legal nature on the basis of law or on the basis of the issued legal act of management. URL: <https://studfiles.net/preview/5269494/page:3/>

<sup>2</sup> Forms of government. URL: <https://studfiles.net/preview/5269494/page:3/>

- relations between Customs authorities and persons exercising the right to own, use and (or) dispose of goods in the customs territory of the Union or outside it;
- external trade in goods (import and (or) export of goods);
- provision of services (works), including production, distribution, marketing, delivery of services (works) and carried out by the methods specified in customs legislation.
- fight against the violation of customs rules.

To date, the above list of legal relations in the field of customs administration is exhaustive. Accordingly, instruments of legal regulation, which are applied in other legal relationships, are not customs. Thus, the establishment of a non-tariff regulation system cannot be referred to the instruments of customs regulation. Of course, licensing and export quotas are instruments for regulating external trade and affect external economic activity. However, they cannot be called *customs*.

The impact on customs legal relations is carried out by the authorized state authorities through various instruments (means) of regulation: legal, organizational, economic, political. It is necessary to distinguish between legal instruments (means) of customs regulation (*of trade and economic relations*) formulated in the legal science, from instruments (means) of regulation of *external trade* used in economic sciences. The principal difference lies in the *object of regulation*, as well as the *categories of legal relations* regulated by the norms of customs law. If for legal science such an object is a legal relationship, then for an economic science – the economy of the state.

The list of customs legal relations, to which various means of customs regulation are applied, is given above.

The main instruments of customs regulation are:

- customs law as a branch of administrative law;
- international agreements regulating customs legal relations;
- norms of the customs law, and first of all – the norms of codified acts in the sphere of customs administration;
- legal institutions (institutes) of customs law;
- regulatory acts in the sphere of customs regulation;
- permissions, bans, positive binding (requiring) in the sphere of customs administration;
- legal mechanisms in the field of customs administration;
- administrative and legal regimes (customs procedures);
- legal constructions in the field of customs regulation;
- acts of public administration in the field of customs affairs;

- administrative agreements in the customs sphere;
- programs, concepts of development and improvement of customs regulation (as acts of public administration in the field of customs);
- subsidiary rulemaking;
- judicial practice in disputes arising from customs legal relations;
- customs administration.

The signs of the instruments of customs regulation turn into the following: express the legal ways of ensuring the interests of the subjects of the customs legal relationship, the achievement of the set goals; act as the main operating parts (elements) of the operation of customs law, the functional side of the legal regulation mechanism, legal regimes (customs procedures); lead to legal consequences, concrete results, varying degrees of effectiveness of legal regulation; they are provided by the state.<sup>1</sup>

Guided by the theory of the law on instruments and means of legal regulation, it seems possible to classify the instruments of customs regulation as follows:

*According to the degree of complexity the instruments of customs regulation* are divided into: primary,<sup>2</sup> complex,<sup>3</sup>

*on performed function* – regulative<sup>4</sup> and protective (liability for offenses in the field of customs, law enforcement activities of customs authorities, appeals against actions, inaction of customs authorities and their officials);

*on the subject of legal regulation*: international,<sup>5</sup> constitutional,<sup>6</sup> administrative,<sup>7</sup>

*on nature*: substantive, procedural;

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<sup>1</sup> See. Legal means: concept, signs, types. URL: <https://jurkom74.ru/ucheba/pravovie-sredstva-ponyatie-priznaki-vidi>

<sup>2</sup> Permissions, prohibitions, positive binding.

<sup>3</sup> Norms of customs law, legal institutions of customs law; administrative and legal regimes (customs procedures); legal constructions in the field of customs regulation.

<sup>4</sup> Norms of customs law, administrative and legal regimes (customs procedures), administrative agreements in the customs sphere.

<sup>5</sup> For example, the norms of the International Convention on the Simplification and Harmonization of Customs Procedures.

<sup>6</sup> For example, the norms of the Constitution of the Russian Federation, formulated in Articles 15, 71, 74, 106.

<sup>7</sup> For example, the norms of the Law of the Russian Federation of 21.05.1993 № 5003-1 «On Customs Tariff».

*on type of legal regulation:* normative,<sup>1</sup> individual;<sup>2</sup>

*on subjects of customs regulation:* instruments of customs regulation of the activities of the customs broker, carrier, owner of the warehouse, customs, duty-free shop, authorized economic operator, customs authorities;

*on the functional features of customs regulation:* customs control, currency control, customs examination, customs statistics;

*on customs operations:* customs declaration, release of goods;

*on customs procedures:* release for home use, export, customs transit, customs warehouse, processing in the customs territory, processing re-import, re-export, etc.

*on the applied measures of customs and tariff regulation:* customs payments, customs value, tariff preferences, customs classification of goods, country of origin of goods.

#### **4.3. The concept of improving the instruments of customs regulation**

In modern conditions of customs administration, the issue of improving of the instruments of customs regulation listed by us becomes an urgent issue. Significant issues for the theory of customs law are also methods, ways, techniques, approaches, concepts and theoretical views on the improvement of these instruments.

When studying this problem, we talk about various improvement of the objects and use such concepts (terms) as the improvement of «legal means of customs regulation», «means of customs administration», as well as the improvement of «customs legislation», «customs law», «customs administration», «legal norms and regulations in the field of customs». Let us ask ourselves whether it is possible to consider the listed objects of improvement as a single object, or they are independent legal phenomena, in respect of which various methods and ways of improvement are applied?

In scientific publications devoted to the problems of regulation of customs legal relations, we understand under the improvement of customs regulation (administration) the acceleration of the process of customs declaration, the extension

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<sup>1</sup> For example, the institution of the customs broker in the Union Customs Code.

<sup>2</sup> For example, the Federal Customs Service Order on inclusion of a transport company (carrier) in the register of customs carriers.

of the practice of electronic declaration, the transition to paperless technologies,<sup>1</sup> introduction of new customs clearance technologies into the practice of customs clearance, which provide for the introduction of an institute of advanced information, the use of a fully functional Risk management system model,<sup>2</sup> automation of the processes of improving customs operations, customs control, customs payment and the transition to paperless technology, the shift of customs control to the post-release stage.<sup>3</sup> Discussing the improvement of the mechanism of customs regulation Petrusheva N.A. believes that the *direction of improvement*<sup>4</sup> include a reducing customs operations time when declaring and clearing the goods, improving the mechanism for customs payments, developing and improving interagency electronic interaction.<sup>5</sup> Oganyan A.K. relates the improvement of the customs regulation of external trade activities with the improvement of customs administration – by means of improving the Risk Management System, updating the information management customs technologies, improving the quality of customs control, innovations, changes, the transition to new stages of innovative approaches, etc.<sup>6</sup>

In the understanding of Yegorova E.M., Chernova Y.I., Kuysokova S.A. improvement of customs regulation<sup>7</sup> is connected with qualitative transformation of structural elements of foreign trade activity by using innovative models of

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<sup>1</sup> See Polukhin I.V. Perfection of customs administration in the Customs Union // Logistic systems in the global economy. – 2013. – №. 3-1. – P. 187. URL: <https://library.ru/item.asp?id=22541505>

<sup>2</sup> See Medvedev V.N. Some aspects of improving and optimizing the functions of Customs authorities in the context of the reform of the system of Customs administration // Academic Journal of the Rostov Branch of the Russian Customs Academy. – 2012. – № 1 (12). – P. 57. URL: <https://elibrary.ru/item.asp?id=23786986>

<sup>3</sup> Loginova P.D., Seleznev A.A. Customs control after the release of goods as one of the directions for improving of customs administration // Scientific notes of the St. Petersburg Branch of the Russian Customs Academy. – 2016. – № 3 (59). – P. 54. URL: <https://elibrary.ru/item.asp?id=28929401>

<sup>4</sup> Mechanisms of customs regulation.

<sup>5</sup> Petrusheva N.A. Perfection of the mechanism of customs regulation // Actual problems of scientific research. Collection of academic works on the materials of the X International Scientific and Practical Conference. – 2017. – P.3. URL: <https://library.ru/item.asp?id=28981895>

<sup>6</sup> Oganyan A.K. General features and prospects for improving the customs regulation of external economic activity in the Russian Federation // KANT. – 2014. – № 2 (11). – P. 12–14. URL: <https://library.ru/item.asp?id=21968784>

<sup>7</sup> Foreign trade activities of economic operators.

support and stimulation of regional exports.<sup>1</sup> Voblikov A.B. and Voblikova N.A. believe that the improvement of customs administration is associated with the need to implement in economic policy the results of analysis of the activities of Customs authorities (customs operations), the analysis of the situation associated with exchange of goods within the Customs Union.<sup>2</sup> In the opinion of G.G. Zhantayeva, the process of improvement is associated with mandatory consultations with participants of foreign trade activity when establishing customs rules.<sup>3</sup>

Kalmykov S.P. considers that creation of new places of international postal exchange is a way of improvement of the customs regulation related to the international post mailings and purchases through online stores.<sup>4</sup> Improving of customs regulations,<sup>5</sup> according to Dunaevsky V.Yu., is associated with the improvement of measures of customs and tariff regulation, namely the establishment within the quota of specific or combined rates of export duties.<sup>6</sup> Arguing about the prospects of improving the customs regulation in the EEU, Uvalzhanova L.A. forms a thesis on the need to form a common system for implementing joint goals of economic policy.<sup>7</sup>

Dissertational studies on problems of improving customs regulation are a separate source of information that allows analyzing various ideas, concepts, opinions, positions on the issue of modernization of customs administration in the EEU Member States. The analysis of dissertations has shown that the authors of scientific works refer to the subject of perfection the following: *the ar-*

<sup>1</sup> Egorova E.M., Chernova Yu.I., Kuysokova S.A., Mihailuk A.V. Improvements of customs regulation of foreign trade activity of enterprises as the basis for ensuring their competitiveness // Economics of sustainable development. – 2015. – № 3 (23). – P. 188. URL: <https://elibrary.ru/item.asp?id=24641959>

<sup>2</sup> Voblikov A.B., Voblikova N.A. Legal aspects of customs administration in the customs union of EURASEC // Bulletin of Tver State University. Series: Law. – 2013. – № 36. – P. 133. URL: <https://elibrary.ru/item.asp?id=21345369>

<sup>3</sup> Zhantayeva G.G. Updating of customs administration // Domestic jurisprudence. – 2016. – № 11 (13). – P. 48–51. URL: <https://library.ru/item.asp?id=27346064>

<sup>4</sup> Kalmykov S.P. Improvement of customs regulation of international postal mailings and purchases by means of online stores // Bulletin of the Siberian State University of Communications. – 2015. – № 4.1. – P. 35–40. URL: <https://library.ru/item.asp?id=25416731>

<sup>5</sup> Round wood exports.

<sup>6</sup> Dunaevsky V.Yu. Customs regulation of exports of Round wood // Bulletin of the Russian Customs Academy. – 2014. – № 2 (27). – P. 117. URL: <https://library.ru/item.asp?id=21613716>

<sup>7</sup> Uvalzhanova L.A. Prospects for Improving Customs Regulation in the Eurasian Economic Union // The success of modern science. – 2016. – Volume 1. – № 5. – P. 80. URL: <https://elibrary.ru/item.asp?id=26481333>

*ticles of certain normative acts in the sphere of customs, the norms of customs law, the institutions of customs legislation, the existing mechanisms of administrative and legal regulation, customs regimes, procedures for customs clearance, administrative and legal mechanisms for providing services in the field of customs administration, regulatory framework, laws, codified acts, including the Customs Code, customs legislation, international acts, departmental legal acts, departmental rulemaking, customs system, technology and procedures for customs control, management activities of customs authorities, the legal status of individual participants of customs legal relations, law enforcement practice, conceptual framework.* At the same time they propose various directions for improving customs regulation. Let's give some examples.

Yurkin T.F. analyzing problems of legal regulation of customs control, when moving intellectual property objects across the customs border, puts forward the thesis on the need to improve the *norms of the Customs Code*. A similar position is voiced by Khripko A.Yu., who examines the administrative and legal regulation of relations in the field of customs in maritime areas and perspective directions for improving the *procedures for customs clearance and customs control*, comes to the conclusion that it is necessary to improve both the *customs legislation*, and the *Customs Code*.<sup>1</sup> In turn, Dzugaev R.V. believes that the main mechanism for improving customs regulation is the *codification of procedural customs standards* in the *Customs Code of 2003* in accordance with the international legal doctrine in the field of regulation of customs procedures formed on the basis of the new conventional norms of the World Customs Organization.<sup>2</sup> A.N. Turko links the issue of improving legal regulation of the import and export of military products with the improvement of certain *institutions of customs legislation* and the improvement of *customs regimes*. In the thesis of this author, the objects of improvement are, in fact, *customs institutions, legislation, regimes and separate articles of normative acts*.<sup>3</sup> Arguing

<sup>1</sup> Khripko A.Yu. Administrative and legal regulation of relations in the field of customs in marine areas: based on the materials of the Far Eastern region: the author's abstract. dis jurid. sciences. – Moscow, 2005. URL: <http://www.dissercat.com/content/administrativno-pravovoe-regulirovanie-otnoshenii-v-oblasti-tamozhennogo-dela-v-morskikh-pro#ixzz59Lmrf3yD>

<sup>2</sup> Dzugaev R.V. Legal regulation of customs clearance: a comparative legal study: author's abstract. dis... cand. jurid. sciences. – St. Petersburg, 2006. URL: <http://www.dissercat.com/content/pravovoe-regulirovanie-tamozhennogo-oformleniya-sravnitelno-pravovoe-issledovanie#ixzz59Lu86hDP>

<sup>3</sup> See Turko A.N. Peculiarities of customs and legal regulation of import and export of military products: the author's abstract. dis ... cand. jurid. sciences. – Lyubertsy, 2009. URL: <http://www.dissercat.com/content/osobennosti-tamozhennno-pravovogo-regulirovaniya-v-voza-i-vyvoza-produktsii-voennogo-naznachen>

about the improvement of the administrative and legal regulation of the activities of the customs bodies of the Russian Federation, Knyazeva O.A. allocates the following objects for improvement: *regulatory and legal acts, legislation, law enforcement practice, management and development of the system and structure of the Federal Customs Service of Russia, the activities of customs authorities.*<sup>1</sup>

Concerning the issue of *directions of improvement of the administrative and legal regulation of the Customs*, Golovin V.V. asserts that it is necessary to improve the *customs legislation, the institution of customs brokers, the existence of high level requirements of enforcement of legislation, ordering the change of regulatory legal acts, unify legal, administrative, organizational and technical systems of customs regulation, creation a system of preliminary declaration of goods, creation of a unified information network*, etc.<sup>2</sup> According to Ivashchenko M.V., the main *areas of updating and improving the efficiency of customs administration include increasing the level of compliance with the customs legislation of the Russian Federation, ensuring the completeness and timeliness of payment of customs payments, improving the quality of public services by Customs authorities, reducing the costs of traders and the state, associated with customs clearance and customs control, ensuring legality in the administrative-jurisdictional activity, etc.*<sup>3</sup>

One of the most interesting works from a scientific and practical point of view on the improvement of legal instruments in the sphere of customs regulation is the research of D.V. Nekrasov. The author studies the problems of modernization of the administrative and legal status of the AEO in the context of improving the same legal institution. Having opened the content of the legal status of the AEO, having analyzed its main elements, including in the context of the best practice of customs administration in the EEU Member States and

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<sup>1</sup> Knyazeva O.A. Administrative and legal and organizational foundations of the activities of the customs bodies of the Russian Federation: the author's abstract. dis ... cand. jurid. sciences. – Lyubertsy, 2009. URL: <http://www.dissercat.com/content/administrativno-pravovye-i-organizatsionnye-osnovy-deyatelnosti-tamozhennykh-organov-rossii>

<sup>2</sup> Golovin V.V. Features of administrative and legal regulation of the customs: on the basis of the materials of the Russian Federation and the European Union: the author's abstract. dis ... cand. jurid. sciences. – Moscow, 2002. URL: <http://www.dissercat.com/content/osobennosti-administrativno-pravovogo-regulirovaniya-tamozhennogo-dela-po-materialam-rossiis#ixzz59LsJd1qb>

<sup>3</sup> Ivaschenko M.V. Administration in the activities of the Customs bodies of the Russian Federation: the author's abstract. dis ... cand. jurid. sciences. – Rostov-on-Don, 2011. URL: <http://www.dissercat.com/content/administrirovanie-v-deyatelnosti-tamozhennykh-organov-rossiiskoi-federatsii#ixzz59WJAhATX>

abroad, the researcher forms the directions of improving the legal status (institution) of the AEO, and also offers concrete proposals for amending the current legislation (Union Customs Code).<sup>1</sup>

The analysis shows that improvement of customs regulation in research works is understood, first of all, as the improvement of instruments (legal means) of customs regulation along with improving of management activities of Customs authorities.

Among the legal acts that clarify the issue of improving the instruments of customs regulation, a special place takes a Decree of the Government of the Russian Federation № 1125-p of June 29, 2012, which approved the Action plan («road map») «Improving of Customs Administration (hereinafter – the Plan of Measures), and Decree of the Government of the Russian Federation of December 28, 2012 № 2575-p. The latter of these sources approves the Customs Development Strategy until 2020 (hereinafter – Development Strategy). As in the case with the Main Directions 2012, these acts do not operate and do not disclose the term «instruments of customs regulation». However, the Development Strategy states «*improvement is ensured through the formation of universal instruments* and the establishment of indicators of efficiency of activity depending on the dynamically changing external environment and domestic policy».<sup>2</sup> We believe that for the given case, *formation* should be understood as the creation of modern instruments of customs regulation based on international experience, standards and advanced law enforcement practice (best practices). Classification of such instruments is presented in paragraph 4.2 of the monograph.

The Plan of Measures proposes to improve customs operations and customs procedures,<sup>3</sup> in another way, *administrative and legal regimes*. We should remind that administrative and legal regime (customs procedures) is one of the instruments of customs regulation. Analysis of the document in question allows us to conclude, that it affects such institutions of customs law as the *institution*

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<sup>1</sup> See, for example, Nekrasov D.V. Improvement of the administrative and legal status of the Authorized Economic Operator in the conditions of the Eurasian Economic Union: monograph. – Moscow: Publishing House of the Russian Customs Academy, 2015. 203 p.; Nekrasov D.V. The administrative and legal status of the Authorized Economic Operator in the new Customs Code of the Eurasian Economic Union // Bulletin of the Russian Customs Academy. – 2017. – № 3.

<sup>2</sup> See I. General Provisions. Decree of the Government of the Russian Federation of December 28, 2012 № 2575-p. URL: <https://www.alta.ru/tamdoc/12rs2575/>

<sup>3</sup> Action plan (road map) «Improving of customs administration».

*of customs declaration,<sup>1</sup> release of goods,<sup>2</sup> advanced information (preliminary information),<sup>3</sup> Risk management system,<sup>4</sup> customs operations,<sup>5</sup> customs control,<sup>6</sup> the «Single Window» mechanism,<sup>7</sup> customs transit,<sup>8</sup> the Authorized Economic Operator,<sup>9</sup> customs broker,<sup>10</sup> customs payments.* As an example: «the abolition of the requirement of mandatory submission to the customs authority the documents when *customs declaration* of goods and the release of goods, which confirm the authority of the person submitting the customs declaration», is one of the measures of the Plan of Measures to improve customs administration in terms of improving the institution of customs declaration.

The Customs Development Strategy until 2020 identified key conditions and priorities not for improvement of the *instruments or legal means of customs reg-*

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<sup>1</sup> Points 1, 2, 3, 13, 13.1, 14, 15, 19.14. III. Action plan, Action plan (road map) «Improvement of customs administration». Approved by the Decree of the Government of the Russian Federation of June 29, 2012 № 1125-p. URL: <https://www.alta.ru/tamdoc/12rs1125/>

<sup>2</sup> Points 2, 3, 10, 11, 14, 15, 19.14, 27. III. Action plan, Action plan (road map) «Improvement of customs administration». Approved the Decree of the Government of the Russian Federation of June 29, 2012 № 1125-p. URL: <https://www.alta.ru/tamdoc/12rs1125/>

<sup>3</sup> Points 2, 3, 10, 11, 14, 15, 19.14, 27. III. Action plan, Action plan (road map) «Improvement of customs administration». Approved by the Decree of the Government of the Russian Federation of June 29, 2012 № 1125-p. URL: <https://www.alta.ru/tamdoc/12rs1125/>

<sup>4</sup> Points 8, 19.8 (1), 19.8 (2), 19.8 (3). III. Action plan, Action plan (road map) «Improvement of customs administration». Approved by the Decree of the Government of the Russian Federation of June 29, 2012 № 1125-p. URL: <https://www.alta.ru/tamdoc/12rs1125/>

<sup>5</sup> Points 20, 25, 26. III. Action plan, Action plan (road map) «Improvement of customs administration». Approved by the Decree of the Government of the Russian Federation of June 29, 2012 № 1125-p. URL: <https://www.alta.ru/tamdoc/12rs1125/>

<sup>6</sup> Points 27, 28, 29, 31.5, 31.11, 31.14. III. Action plan, Action plan (road map) «Improvement of customs administration». Approved by the Decree of the Government of the Russian Federation of June 29, 2012 № 1125-p. URL: <https://www.alta.ru/tamdoc/12rs1125/>

<sup>7</sup> Points 19, 19.3, 31.2, 32, 32.2, 33, 34, 35, 36. III. Action plan, Action plan (road map) «Improvement of customs administration». Approved by the Decree of the Government of the Russian Federation of June 29, 2012 № 1125-p. URL: <https://www.alta.ru/tamdoc/12rs1125/>

<sup>8</sup> Point 31 of Action plan (road map) «Improvement of customs administration». Approved by the Decree of the Government of the Russian Federation of June 29, 2012 № 1125-p. URL: <https://www.alta.ru/tamdoc/12rs1125/>

<sup>9</sup> Points 60, 67–68 of Action plan (road map) «Improvement of customs administration». Approved by the Decree of the Government of the Russian Federation of June 29, 2012 № 1125-p. URL: <https://www.alta.ru/tamdoc/12rs1125/>

<sup>10</sup> Points 64–66 of Action plan (road map) «Improvement of customs administration». Approved by the Decree of the Government of the Russian Federation of June 29, 2012 № 1125-p. URL: <https://www.alta.ru/tamdoc/12rs1125/>

*ulation*, but improvement of the *Customs service* for the long term. At the same time, the Strategy calls *customs regulation* as one of the directions of development,<sup>1</sup> which, we recall, as a multifaceted management mechanism includes customs *instruments* and *means of customs regulation*.<sup>2</sup> In the present context, in our opinion, the development of customs regulation automatically implies also the development of *instruments* and legal means of customs regulation. It is noteworthy, that the Strategy 2020 as a strategic direction for the development of the Customs service, along with customs regulation, highlights the improvement of *customs control after the release of goods*,<sup>3</sup> which, in our understanding, is an independent instrument of customs regulation as an institution of customs law.

The improvement of other instruments is traced in the context of the tasks set for improving customs regulation. Among them, we can distinguish such legal phenomena (legal institutes) as the *institution of release of the goods, advanced information, declaration, including electronic declaration, the institution of customs control, the risk management system, the Authorized Economic Operator, customs clearance, customs operations, customs procedures (administrative – legal regimes) of import and export of goods, special economic zones, electronic interaction* (as an element of the «Single Window» mechanism – *author's comment*).<sup>4</sup> For example, the improvement of the legal institution (or legal norms, as an instrument of customs regulation – *author's note*) is preliminarily «sewn up» in such tasks of the Strategy 2020 as «ubiquitous implementation of compulsory advanced information mechanisms», and the declaring institution – «transition in 2014 to the electronic form of declaration» and «acceleration of customs operations in the customs declaration of goods in electronic form». In turn, the modernization of the institution of customs control involves, for example, the

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<sup>1</sup> Chapter I «General Provisions» of the Customs Development Strategy until 2020. Approved by the Decree of the Government of the Russian Federation of December 28, 2012 № 2575-p. URL: <https://www.alta.ru/tamdoc/12rs1125/>

<sup>2</sup> See Novikov A.B. Customs regulation and customs: the metamorphosis of the conceptual apparatus // Scientific notes of the St. Petersburg branch of the Russian Customs Academy. – 2006. – № 2 (26). – P. 6.

<sup>3</sup> Chapter IV. «The main strategic directions of development of the customs service of the Russian Federation» Development Strategy of the Customs Service until 2020. Approved by the Order of the Government of the Russian Federation of December 28, 2012 № 2575-p. URL: <https://www.alta.ru/tamdoc/12rs2575/>

<sup>4</sup> Item 1 «Improving of Customs Regulation» Chapters IV. «The main strategic directions of development of the Customs Service of the Russian Federation» Development Strategy of the Customs Service until 2020. Approved by the Decree of the Government of the Russian Federation of December 28, 2012 № 2575-p. URL: <https://www.alta.ru/tamdoc/12rs2575/>

implementation of the task of «automation of customs control processes associated with the decision to release goods in an automatic mode».<sup>1</sup>

The problem of improving the instruments of customs regulation is relevant for the EEC specialists, as well as for experts of the EEU Member States, who are responsible for improving customs administration. To date, a Decree of the EEC Collegium «On the development of decisions of the Eurasian Economic Commission for the implementation of the Customs Code of the Eurasian Economic Union» has been prepared. This document was developed with a view to organizing the work on timely preparation and adoption of the Commission's decisions, envisaged by the Union Customs Code. In the opinion of EEC experts, the development and adoption of decisions of the Commission, aimed at implementing the novelties of the Union Customs Code and the new competence of the Commission laid down in it, allow to improve customs regulation and develop it in order to form the uniform law enforcement practice in the Member-States of the Union.<sup>2</sup> In fact, we are talking about the use of a package «principle of preparation of normative acts». It should be noted that the work on preparation and adoption of the decisions envisaged by the Customs Code of the EEU began in early 2017 when executing the Commission Regulation № 11 of March 3, 2017 «On the development and adoption in 2017 of decisions of the Eurasian Economic Commission envisaged by the Customs Code of the Eurasian Economic Union». Decisions that had to enter into force on January 1, 2018, simultaneously with the new Customs Code, relate the legal institute of customs transit,<sup>3</sup> free customs zone,<sup>4</sup> export

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<sup>1</sup> Item 1 «Improving of Customs Regulation» Chapters IV. «The main strategic directions of development of the Customs Service of the Russian Federation» Development Strategy of the Customs Service until 2020. Approved by the Decree of the Government of the Russian Federation of December 28, 2012 № 2575-p. URL: <https://www.alta.ru/tamdoc/12rs2575/>

<sup>2</sup> See the Reference on the Draft Decree of the Board of the Eurasian Economic Commission «On the Draft Decree of the Council of the Eurasian Economic Commission on the Development of the Decisions of the Eurasian Economic Commission for the Implementation of the Customs Code of the Eurasian Economic Union» of March 3, 2017.

<sup>3</sup> Points 3.4 of the list of decisions of the Eurasian Economic Commission, which come into force from the date of entry into force of the Treaty on the Customs Code of the Eurasian Economic Union. Appendix № 1 to the Decree of the Council of the Eurasian Economic Commission of March 3, 2017 № 11. URL: <https://www.alta.ru/tamdoc/17s00011/>

<sup>4</sup> Point 5 of the list of decisions of the Eurasian Economic Commission, which come into force from the date of entry into force of the Treaty on the Customs Code of the Eurasian Economic Union. Appendix № 1 to the Decree of the Council of the Eurasian Economic Commission of March 3, 2017 № 11. URL: <https://www.alta.ru/tamdoc/17s00011/>

customs procedure, outward processing,<sup>1</sup> declaration,<sup>2</sup> Authorized Economic Operator,<sup>3</sup> customs broker,<sup>4</sup> etc. The development of the EEC decisions on the improvement of the named institutions of customs law is predetermined by reference norms<sup>5</sup> of the EEU Customs Code.

In 2018, taking into account the limited resources of Member States and the Commission for decision-making in the field of customs administration<sup>6</sup> and the need for their rational use in the process of improving of the legal acts of the Union in the field of customs regulation, the Parties and representatives of the EEC selected<sup>7</sup> priority areas for improving the Union's law in the sphere of customs regulation for 2018. As a result of the negotiations, three lists (blocks) of issues were formed, on which it was planned to develop, agree and adopt in 2018 the decisions of the EEC in order to implement the norms of the EEU Customs Code:

- ✓ a list of draft decisions of the Commission to be developed and adopted in 2018;
- ✓ a list of draft decisions of the Commission to be developed in 2018 (which will be developed in 2018, but will be completed as soon as it is ready);
- ✓ a list of draft decisions of the Commission, the development of which requires a comprehensive revision of the laws of the Eurasian Economic Union, adopted in accordance with the EEU Customs Code (scheduled for 2019–2020).

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<sup>1</sup> Point 7 of the list of decisions of the Eurasian Economic Commission, which come into force from the date of entry into force of the Treaty on the Customs Code of the Eurasian Economic Union. Appendix № 1 to the Decree of the Council of the Eurasian Economic Commission of March 3, 2017 № 11. URL: <https://www.alta.ru/tamdoc/17s00011/>

<sup>2</sup> Points 12–14 of the list of decisions of the Eurasian Economic Commission, which come into force from the date of entry into force of the Treaty on the Customs Code of the Eurasian Economic Union. Appendix № 1 to the Decree of the Council of the Eurasian Economic Commission of March 3, 2017 № 11. URL: <https://www.alta.ru/tamdoc/17s00011/>

<sup>3</sup> Points 16–18 of the list of decisions of the Eurasian Economic Commission, which come into force from the date of entry into force of the Treaty on the Customs Code of the Eurasian Economic Union. Appendix № 1 to the Decree of the Council of the Eurasian Economic Commission of March 3, 2017 № 11. URL: <https://www.alta.ru/tamdoc/17s00011/>

<sup>4</sup> Point 24 of the list of decisions of the Eurasian Economic Commission, which come into force from the date of entry into force of the Treaty on the Customs Code of the Eurasian Economic Union. Appendix № 1 to the Decree of the Council of the Eurasian Economic Commission of March 3, 2017 № 11. URL: <https://www.alta.ru/tamdoc/17s00011/>

<sup>5</sup> At that moment.

<sup>6</sup> 30–36 Decisions per year.

<sup>7</sup> On January 25, February 7 and 19, 2018, the meetings were held in the videoconference mode.

Given that the EEU Customs Code provides for a significant amount of new competence, both for the Board and the Council of the Commission, only the Commission's priority decisions were included in the first list, without which the application of the EEU Customs Code will be ineffective due to emerging legal gaps or collisions. List 2 is formed from those decisions that will have a positive impact on customs regulation as a whole, taking into account the relevant interest of Member States as well as participants in foreign trade activities. In turn, the third list is formed from the decisions, the adoption of which is necessary to maintain the legal framework of the Union in the field of customs regulation in an up-to-date state, and to ensure its compliance with the Treaty on the Eurasian Economic Union.<sup>1</sup> In this case, we are talking about the comprehensive revision of the legal acts of the Commission of the Customs Union in the sphere of customs regulation, adopted within the framework of the formation of the Customs Union and the Common Economic Space. The list of EEC draft decisions, *inter alia*, concerns such institutions of customs regulation as *advanced information, classification of goods, customs value of goods, customs declaration, customs control, customs procedures*. Let's pay attention to the fact that, like the Orders of the Council of the Commission of March 3, 2017 № 11, we are not talking about the *directions for improving customs regulation*, but about the *issues the EEC is expected (planned) to take decisions*. The final result of the implementation of both documents is the adoption of legal decisions of the Commission on various issues of customs regulation in consequence of the regulatory requirements of the EEU Customs Code.

At the same time, the issues (directions) for improving and developing the new instruments of customs regulation in the considered way are limited by the framework of the EEU Customs Code.

#### **4.4. Methodological approaches to improve the instruments of customs regulation**

Let's ask ourselves what should be understood under the *improvement of the instruments of customs regulation*, as well as *customs legislation*. According to V.A. Goshin, the process of improvement of the customs legislation is the

<sup>1</sup> Treaty on the Eurasian Economic Union of May 29, 2014. URL: [http://docs.eaeunion.org/\\_layouts/15/Portal.EEC.NPB/Pages/Download.aspx?siteid={bef9c798-3978-42f3-9ef2-d0fb-3d53b75f}&webid=632c7868-4ee2-4b21-bc64-1995328e6ef3&docguid=a089f4c6-02da-4461-b033-3f5d122e0020&lcid=1033&type=document](http://docs.eaeunion.org/_layouts/15/Portal.EEC.NPB/Pages/Download.aspx?siteid={bef9c798-3978-42f3-9ef2-d0fb-3d53b75f}&webid=632c7868-4ee2-4b21-bc64-1995328e6ef3&docguid=a089f4c6-02da-4461-b033-3f5d122e0020&lcid=1033&type=document)

search for reasonable compromises between the interests of the state to ensure security and the business community to accelerate the crossing of goods across the border and customs clearance.<sup>1</sup>

The analysis of research papers on the issue of improving customs administration revealed a problem – the *lack of methodological approaches to improving customs regulation through the improvement of its instruments*. In our opinion, the Decree of the President of the Republic of Belarus № 205 of April 10, 2002, which approved the Concept for the Improvement of the Legislation of the Republic of Belarus (hereinafter – Concept of Improvement) and the Recommendation on the theoretical and methodological framework (basis) of improving the legal system of the Republic of Belarus<sup>2</sup> (hereinafter – Recommendation) can be important sources and form the basis for scientific and methodical developments on improvement of instruments of customs regulation. The aforementioned acts cite methodological approaches to improve the current legislation, including taking into account the legislation of foreign states as well as the norms of international law. The developers of these acts focus on the current state of the system of law and the system of legislation,<sup>3</sup> form the principles and objectives of their development, analyze the instruments used to improve legislation.

Referring to the aforementioned Concept of Improvement and Recommendations when analyzing the development of instruments of customs regulation, we formulate a number of relevant, in our opinion, provisions. For today it is possible to single out both negative and positive trends that are to be considered in the process of improving the instruments of customs regulation. The first group of trends can be attributed to the weak theoretical basis for unification, harmonization and modernization of customs legislation in the EEU Member States in the context of the creation of a unified customs regulation in the Union. Thus, during the preparation of the project of the EEU Customs Code (and draft decisions), despite the open nature of this large-scale project and the involvement of a multitude of stakeholders, participation in the development of a new Code of the scientific community was at a low level. The reason is a serious gap between the theory and practice in the field of customs administration, the lack of the necessary initiative and experience of researchers, academics

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<sup>1</sup> Goshin V.A. Perspectives of improvement of customs administration in the Customs Union of EURASEC // Scientific notes of the St. Petersburg branch of the Russian Customs Academy. – 2013. – № 4 (48). – P. 22.

<sup>2</sup> Approved by the Decision of the Academic Council of the National Center for Legislation and Legal Studies of the Republic of Belarus of April 23, 2013.

<sup>3</sup> The Republic of Belarus.

specializing in customs matters, regarding the formation of relevant, comprehensive (not declarative and abstract) proposals for improving customs regulation in the EEU Member States. Another reason is the lack of opportunity for academic circles to be distracted by this project on an ongoing basis. In addition, often the lack of skills of juridical technique of attracted representatives of science, including necessary experience for the rapid transformation of abstract arguments about the improvement of customs legal relations in the specific norms of the Customs Code or decisions of the Commission, do not allow to draw a conclusion about the active role of the scientific community in the formation of modern instruments of customs regulation within the normative activities of the Commission. We add that the research work carried out on the problems of improvement of customs and tariff regulation of universities, in our opinion, are excessively theorized, insufficiently address the analysis of best practices and modern instruments of customs regulation developed by the international Customs community. Among other trends that may adversely affect the improvement of the instruments of customs regulation – incomplete accounting of the degree of legal regulation of customs legal relations when adopting regulatory legal acts; a large number of reference rules; insufficient forecasting of the consequences of the adoption of certain regulatory legal acts when preparation of their projects, which entail the introduction of changes, additions or cancellations of these acts immediately after their adoption.<sup>1</sup> The positive trends in the improvement of the instruments of customs regulation include the rapid response of the Union law to the changing needs of traders and customs authorities; aspiration to a system and complex updating.<sup>2</sup>

To date, there is no theoretical basis for systematic, integrated development (improvement) of the instruments of customs regulation in the EEU Member States, as well as unification, harmonization of legislation in the Member States of the Union with the law of the Union in the field of customs regulation;<sup>3</sup> the

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<sup>1</sup> See item 9 of the Concept of improving legislation of the Republic of Belarus. Approved by the Decree of the President of the Republic of Belarus «On the Concept of Improving the Legislation of the Republic of Belarus» № 205 of April 10, 2002. URL: <http://naviny.org/2002/04/10/by54225.htm>

<sup>2</sup> See item 6 of the Recommendations on the theoretical and methodological foundations of improving the legal system of the Republic of Belarus. Approved by the Decision of the Academic Council of the National Center for Legislation and Legal Studies of the Republic of Belarus of April 23, 2013. URL: <http://www.pravo.by/pravovaya-informatsiya/normotvorcheskaya-deyatelnost/poleznaya-informatsiya/rekomendatsii-po-teoretiko-metodologicheskim-osnovam-sovershenstvovaniya-pravovoy-sistemy-respubliki>

<sup>3</sup> Until the entry into force of the Union Customs Code on January the 1st, 2018.

lack of a methodology for assessing the effectiveness of the accepted instruments of customs administration as well as the legal, economic, social consequences of the improvement of a particular instrument of customs regulation. Moreover, today there is no analysis of the correlation of administrative and legal instruments of the WCO developed by the experts of Customs services for the purposes of improving customs administration, with instruments of customs regulation in the Member States of the EEU.<sup>1</sup>

According to the Belarusian experts, *improving of legislation* should help to *stabilize it*. We cannot fail to agree with the thesis that, in the process of legal regulation, first of all, it is necessary to solve the tasks connected with providing the characteristics of customs relations subject to legal regulation; definition of the legal regime in the sphere of customs regulation; the establishment of means (instruments), methods and the ways of the designation of the required legal regime. Important aspects of improving of the legislation as well as the instruments of customs regulation, are references to research-works. Stability of the customs legislation, as the final result of its improvement, can be ensured by the consistent implementation of the scientific principle of norm-setting activities, which includes: testing the results of scientific research in practical activities for the preparation and adoption of regulatory legal acts; forecasting of economic, financial, social, ecological and other consequences of adoption of normative legal acts; a systematic approach to solving legal problems. Moreover, the high level of legal culture and professionalism of the actors in the norm-setting process is conducive to ensuring the stability of legislation, which is possible provided that qualified specialists participate in it using methods and ways of scientific analysis.<sup>2</sup>

Developers of the Concept of Improvement apply the term «package principle of preparation of normative acts», which consists in simultaneous

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<sup>1</sup> See Mozer S.V. Improvement of customs regulation in the Eurasian Economic Union in the context of interaction between the Eurasian Economic Commission and the World Customs Organization / Report. XI Regional scientific conference «The current stage of development of the Russian Far East: socio-economic instruments, law enforcement and customs innovation». Vladivostok, October 4, 2017 // The current stage of development of the Russian Far East: socio-economic instruments, law enforcement and customs innovations: a collection of scientific papers of the XI Regional Scientific Conference. – Vladivostok: Publishing House of the Vladivostok branch of the Russian Customs Academy, 2017. ISBN 978-5-9590-0660-0. URL:<http://customs-academy.net/?p=11685>

<sup>2</sup> See point 16 of the Concept of improving the legislation of the Republic of Belarus. Approved by the Decree of the President of the Republic of Belarus «On the Concept of Improving the Legislation of the Republic of Belarus» № 205 of April 10, 2002. URL: <http://naviny.org/2002/04/10/by54225.htm>

development and adoption of a set (package) of normative legal acts regulating specific social relations.<sup>1</sup> In implementing this principle, in their opinion, it is necessary to increase the number of norms of direct action in laws, to reduce the number of reference rules, to strive for the reduction of normative legal acts issued by government bodies. At the same time approbation of such principle can be implemented as an experiment in relation to one of the institutions of legal regulation.<sup>2</sup>

In our opinion, the improvement of instruments of customs regulation should also be carried out taking into account international law and best practices of customs administration (the experience of WCO Member States – *author's note*). It is believed that further development at the legislative level of the mechanism for implementing of international legal norms should become the basis for the application of universally recognized principles of international law, norms of international treaties.<sup>3</sup> Improving the instruments of customs administration should be based on the study of law enforcement practice, legal, statistical and economic information.

It should be added that the Belarusian scientists have developed methodological approaches to improve legislation, which, in our opinion, can be projected to improve instruments of customs regulation. In their opinion, the development of legislation should be implemented, including on the basis of an *instrumental approach*.<sup>4</sup> The application of the *instrumental approach* makes it possible to focus attention on the effectiveness of legislation as means of regulating social relations, applicability in specific historical and political conditions, and the focus of the law on the perspective. The instrumental approach can be used with maximum efficiency in the process of improving national legislation from the point of view of compliance with *formal requirements for the normative array* such as systematic, consistency, compliance with the hierarchy

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<sup>1</sup> See point 19 of the Concept of improving the legislation of the Republic of Belarus. Approved by the Decree of the President of the Republic of Belarus «On the Concept of Improving the Legislation of the Republic of Belarus» № 205 of April 10, 2002. URL: <http://naviny.org/2002/04/10/by54225.htm>

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Recommendations on the theoretical and methodological foundations of improving the legal system of the Republic of Belarus. Approved by the Decision of the Academic Council of the National Center for Legislation and Legal Studies of the Republic of Belarus of April 23, 2013. URL: <http://www.pravo.by/pravovaya-informatsiya/normotvorcheskaya-deyatelnost/poleznaya-informatsiya/rekomendatsii-po-teoretiko-metodologicheskim-osnovam-sovershenstvovaniya-pravovoy-sistemy-respubliki/>

of normative legal acts and the competence of normative bodies (officials), the optimal balance of stability and dynamism of legislation.<sup>1</sup>

Among the *instruments of improving legislation* the scientist call the predictive classifier of legislation,<sup>2</sup> legal monitoring, planning of norm-setting activities, forecasting the development of legislation and the consequences of its change,<sup>3</sup> conducting analytical and scientific research, creating concepts of laws (legal acts),<sup>4</sup> also the systematization of legislation.<sup>5</sup> It is important to note that planning can be strategic (long-term) as well as medium-term. Long-term planning is carried out on the basis of programs for improvement of legislation in a certain sphere of public relations (areas or the institution of legislation), to the development of which specialists of various state bodies, scientists and, if possible, representatives of the public are involved.<sup>6</sup> The complexity of the presentation of normative legal acts, the lack of proper systemic nature, the inconsistency and fragmentation of the normative array increase the time necessary for acquaintance and clarification of the content of the legal norms, implementation of normative legal acts, increase the likelihood of committing offenses, and facilitate legal conflicts.<sup>7</sup> At the same time, legislation is often created situationally as a direct reaction to the need for legal regulation, without adequate and advanced scientific support. In this case, there is a phenomenon of the existence of a legislative array in the absence of scientific research about its place in the system of legislation. The scientific resource assumes carrying out of preliminary scientific researches on a theme of the project of the normative legal act for corresponding researches already to be developed by the time of its creation in the country.<sup>8</sup> When developing new draft normative legal acts, it is necessary to identify problems that make it difficult to solve state tasks. The identification of these problems and the formulation of proposals for their situational decision will allow conducting general theoretical studies, developing proposals for im-

<sup>1</sup> See point 18 of the Concept of improving the legislation of the Republic of Belarus. Approved by the Decree of the President of the Republic of Belarus «On the Concept of Improving the Legislation of the Republic of Belarus» № 205 of April 10, 2002. URL: <http://naviny.org/2002/04/10/by54225.htm>

<sup>2</sup> It allows at the level of the plan and forecast to draw up schemes for future standard-setting works indicating the potentially new structure of the normative array.

<sup>3</sup> Point 24.

<sup>4</sup> Point 20.

<sup>5</sup> Point 23.

<sup>6</sup> Point 19.

<sup>7</sup> Point 26.

<sup>8</sup> Point 26.

proving the methodology of rulemaking, providing insight into problems within the framework of the theory of law.<sup>1</sup>

The scientific resource assumes the publicity of the normative process. It is advisable to involve scientists and specialists in general theory of law and allied areas (fields) in drafting normative legal acts, formulate problems that need to be considered with participation of undergraduates and postgraduate students in working groups for drafting normative legal acts. The development of any draft normative legal act should begin with the analysis of public relations, and the analysis should be carried out by several independent structures, including by involving civil society structures interested in specific legal regulation. In a number of cases, it is necessary to organize broad public discussions, during which social needs will be studied and the most complex problems to be regulated will be identified.<sup>2</sup>

An important direction in improving the instruments of customs regulation is referring to international instruments of customs regulation. However, bringing legislation, for example, in line with international standards, should be a co-ordinated, scientifically based and mutually enriching development, not mechanical borrowing and use of the legal norms of foreign states and the reproduction of the prescriptions of international legal acts.<sup>3</sup> In the opinion of the drafters of the Recommendations, one of the tasks of codification of the international treaties constituting the legal framework of the Customs Union and the Single Economic Space, is the removal of reference norms, the elimination of contradictions, filling gaps and formation of single conceptual apparatus.<sup>4</sup> At the same time, the planning directions for improving legal regulation in the economic sphere should be based on general trends in the development of legislation reflecting the development of similar approaches applied abroad at the international legal level, and also have the quality of outperformance.<sup>5</sup>

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<sup>1</sup> Point 26.

<sup>2</sup> Point 26.

<sup>3</sup> Point 29.

<sup>4</sup> Point 47.

<sup>5</sup> Point 47.

## **Chapter 5**

### **REVISION OF THE KYOTO CONVENTION**

#### **5.1. Conceptual approaches in 2009 for the revision of the Kyoto Convention**

Turning to the issues of a comprehensive revision of the Kyoto Convention, we note the importance of referring to the history of the issue and the experience of the WCO that has been accumulated at the moment. For experts from the WCO Member States and observers who will soon participate in such a fundamental project for the revision of the Convention, the historical section, including the WCO's proposals on this matter, is a matter of interest. Earlier we mentioned the meeting of the Revised Kyoto Convention Management Committee in 2009, where the issue of revision of the Convention has been raised. We believe that the related scientific and practical materials are a matter of interest and deserve special attention. In this regard, we note that the history of the issue and the positions of the Parties is fixed in document PO0034E1a prepared by the WCO Secretariat on February 18, 2009.<sup>1</sup> Let us consider some aspects of this meeting.

First of all, we note that, in accordance with Article 6, paragraph 6, of the Convention, the competent administrations of the Contracting Parties shall communicate to the Secretary General of the Council proposals under paragraph 5 (a), (b), (c) or (d) of this Article and the reasons therefor, together with any requests for the inclusion of items on the Agenda of the sessions of the Management Committee. The Secretary General of the Council shall bring proposals to the attention of the competent administrations of the Contracting Parties and of the observers referred to in paragraphs 2, 3 and 4 of this Article.<sup>2</sup> Guided by this rule, New Zealand, the Netherlands and India sent similar requests to the WCO Secretariat to include the relevant items in the agenda of this meeting. The listed subjects of international law proposed to conduct

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<sup>1</sup> For the 6th meeting of the Revised Kyoto Convention Management Committee (March 19–20, 2009).

<sup>2</sup> Article 6, paragraph 6 of International Convention on the Simplification and Harmonization of Customs Procedures URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/preamble.aspx#ar6](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/preamble.aspx#ar6)

a comprehensive review of the Revised Kyoto Convention in the light of developments in the trade environment and in the field of customs regulation during the last decade.

In particular, **New Zealand** suggested to include the issue of the revision of the Kyoto Convention in the agenda of the RKC MC with the following reasons:

✓ Ten years have passed since the RKC was adopted, and best-practice procedures have significantly changed since that time. We think that a review which examines whether this instrument remains up to date, would be a valuable exercise. The work on the theme of Customs in the 21st Century continues to move forward and an up to date and relevant RKC would form a strong foundation for this work. On the other hand, if the RKC is seen to be out of date, it reduces both the credibility and relevance of this work.<sup>1</sup>

✓ The following issues should be considered:

- the SAFE Framework;
- Developments in the WTO Trade Facilitation Negotiations;
- Coordinated Border management/Single Window initiatives.

✓ **Revision of the RKC would strengthen the WCO's position on the international stage.** As the only comprehensive international convention on trade facilitation and Customs the RKC has already been referred to extensively in the WTO Doha Round. As the Doha negotiations have stalled this provides us with an opportunity to update customs best practice procedures. These could be used to inform future negotiations at the WTO.<sup>2</sup>

✓ A comprehensive review would also enable the WCO Members which are not Contracting Parties to the RKC to share any difficulties they may be encountering with certain provisions and/or procedures in the Convention. These concerns would be taken into consideration in the review process.<sup>3</sup>

In turn, the **Netherlands** expressed the position that the Revised Kyoto Convention is the blueprint for modern, efficient and effective Customs procedures in the 21<sup>st</sup> century. However, only two years after the RKC was adopted the world changed after the attacks in the United States in September 2001. Likewise the Customs environment changed: Customs began playing an active role in protecting society as well as in ensuring national security. Customs had to

<sup>1</sup> Review of the Revised Kyoto Convention: Proposal by India, New Zealand and the Netherlands. International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention). Revised Kyoto Convention Management Committee 6th Session, 19–20 March 2009. Doc. P00034E1a. – P. 1.

<sup>2</sup> Ibid. – P. 2.

<sup>3</sup> Ibid. – P. 2.

adapt to their new role, and new security requirements were introduced which could bring the relation *between control and facilitation out of balance*.<sup>1</sup>

The Netherlandian experts noted that, although the principles of the RKC cover a number of these new measures, such as risk management, it became apparent that the RKC did not cover all new measures related to security. For obvious reasons during the first years after the RKC came into force there was no strong desire among the Contracting Parties to the RKC to amend the legal text of the Convention in a period where Contracting Parties were implementing the RKC into their national legislation and while other Members of the WCO were making preparations for accession to the RKC. As a compromise, the Guidelines to the RKC were amended, where feasible, to accommodate the need to include some of the measures related to security such as modern seal techniques.

Even though the legal text of the RKC remained unchanged, a number of initiatives within the WCO and other international organizations have resulted in new instruments that cover the new requirement related to security. This made it possible for Customs, other governmental agencies and the trade to adapt to the new security environment that also satisfied the needs for harmonized procedures and practices. In June 2005 on the session of the WCO Council the Director General of Customs adopted the Safe Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework).<sup>2</sup> More than 132 Members have already signed a letter of intent to implement the Safe Framework. The SAFE Framework contains Standards and Guidelines which covers, among others, the harmonization of pre-arrival/pre-departure cargo information requirements, the advanced use of risk management, a focus on export controls including outbound inspections and benefits for the legitimate trade based on the concept of the Authorized Economic Operators.<sup>3</sup>

In justifying its position on the need to revise the Kyoto Convention, the Netherlandian side emphasized that the SAFE Framework contains not

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<sup>1</sup> Review of the Revised Kyoto Convention: Proposal by India, New Zealand and the Netherlands. International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention). Revised Kyoto Convention Management Committee 6th Session, 19–20 March 2009. Doc. PO0034E1a. – P. 2.

<sup>2</sup> See the WCO SAFE Package. WCO tools to secure and facilitate global trade. URL:[http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/safe\\_package.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/safe_package.aspx)

<sup>3</sup> Review of the Revised Kyoto convention: Proposal by India, New Zealand and the Netherlands. International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention). Revised Kyoto Convention Management Committee 6th Session, 19–20 March 2009. Doc. PO0034E1a. – P. 3.

exclusively security measures as such, but it includes also the facilitation aspects related to the new security requirements which covers an important task of the WCO to work towards efficient and predictable Customs procedures and the facilitation of legitimate trade. In addition to the SAFE Framework, to facilitate the implementation of several SAFE Framework instruments, Guidelines have been developed, such as the International Supply Chain Guidelines and the AEO Guidelines including specific reference to Small and Medium Enterprises.

The importance of the SAFE Framework is not under discussion; its value has been proved with the implementation of its instruments in a great number of the Customs administrations. However at the same time it must be acknowledged that the SAFE Framework is a non-binding instrument while the Standards in the General Annex and the Specific Annexes of the RKC are binding to the Contracting Parties. One should not lose sight of the importance of the *RKC being the main international instrument with mainly binding provisions which guarantees a maximum of harmonization and simplification of Customs procedures in other words facilitation*.<sup>1</sup>

Most of the instruments included in the SAFE Framework, although developed from a security point of view, cover also the facilitation aspects of the new security measures. The SAFE Framework makes in its title not only a reference to security but also to facilitation. Having said this, it is essential that *further consideration should be given to the necessity to incorporate parts of the SAFE Framework into the legal texts of the RKC*. In addition, where the Guidelines to the RKC recently have been amended, *it is clear that this «temporary measure» should not lead to a situation where parts of the Guidelines are not covered by an appropriate legal provision*.<sup>2</sup> Since the fifth session of the RKC Management Committee a change can be seen as a result of which Contracting Parties and other Members of the WCO endorse the viewpoint to amend the legal provisions of the RKC to bring them more in line with the new security requirements.

After the establishment of the RKC in 1999 a number of new Customs concepts have been developed related to security as well as to the developments in the field of information technology leading to new automated applications. *A number of procedures, concepts and practices deserve a place in the RKC*.

<sup>1</sup> Review of the Revised Kyoto convention: Proposal by India, New Zealand and the Netherlands. International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention). Revised Kyoto Convention Management Committee 6th Session, 19–20 March 2009. Doc. PO0034E1a. – P. 3.

<sup>2</sup> Ibid.

With all the new instruments the RKC will ensure again a balance between the different functions of Customs, namely providing facilitation for legitimate trade while exercising appropriate controls for the protection of society. A number of these items have already been included in the Recommendations of the United Nations, the facilitation instruments of the International Maritime Organization and the European Civil Aviation Conference. Further development of the facilitation instruments of the International Civil Aviation Organization in these areas is to be expected. Also the Customs legislation of a number of Members of the WCO is already aligned to the new security requirements and the matching facilitation measures, possibly developed on the basis of the concepts of the SAFE Framework.<sup>1</sup>

At the end of the presentation of its position, the Netherlands proposed to include the following procedures, concepts and practices in the Convention.

*Advanced cargo information requirements.* The first item is the requirement for advanced cargo information requirements (pre-arrival/pre-departure information). Standard 3.25 of the General Annex makes reference to the advanced lodgment of information; Chapter 3 of the General Annex is related to clearance and other formalities, and covers in general the Customs procedures such as import, export or transit. Providing advanced information is generally not considered to be a Customs procedure. This relates to Specific Annex A, Chapter 1, on the Formalities prior to the lodgment of a goods declaration. Normally this would be the most appropriate place for a provision related to the requirements for advanced information, but this Chapter is only accepted by a small number of Contracting Parties. On the other hand it would make the acceptance easier, while placing the advanced cargo requirements in the General Annex would require the acceptance by all Contracting parties.

*Single Window.* An important concept to facilitate the exchange of information between business and Customs is the Single Window. The Single Window makes it possible that all information required by regulatory agencies dealing with border crossing, including Customs, can be lodged at a single point and at the same time. The Single Window is an effective tool for the streamlining the required information, but it will not work without the necessary data harmonization. The Single Window concept should be covered in Chapter 7 of the General Annex as a concept applicable to the electronic exchange of information between Customs and business. The Single Window would enable

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<sup>1</sup> Review of the Revised Kyoto convention: Proposal by India, New Zealand and the Netherlands. International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention). Revised Kyoto Convention Management Committee 6th Session, 19–20 March 2009. Doc. PO0034E1a. – P. 4.

Cross Border Regulatory Agencies to make arrangements for coordinated risk management and coordinated controls. This concept is often referred to as One Stop Shop. Transitional Standard 3.35 provides already for coordinated examinations, possibly at the same time.<sup>1</sup>

*Authorized Economic Operator.* The AEO is an important instrument to facilitate international trade as counterpart for the new strengthened security requirements. The AEO has a high degree of security standards in respect of their role in the international supply chain. It will provide for, among other benefits, the faster clearance of goods by Customs, for example through reduced examination rates. It is important the concept of the AEO is included in the RKC, either connected to Standard 3.32 on special procedures for authorized persons or Chapter 8 on the relation between Customs and third parties. Guidelines for the procedures involved in the process of application have been developed and could be transferred to the Guidelines of Chapter 3 or Chapter 8 of the General Annex.<sup>2</sup>

*Data harmonization and standardization.* At the time RKC was adopted it was considered to be sufficient to make a general reference in Standard 7.2 of Chapter 7 of the General Annex to the use of relevant international accepted standards for the harmonization and standardization of data elements. However, after the adoption of the RKC in 1999 much effort has been put in the development of the WCO Data Model. In the accompanying Guidelines to Chapter 7 the WCO Data Model has already been included and explained in more detail. Nevertheless, a specific reference to the WCO Data Model as an example of such an international standard would put more emphasis on the importance of the WCO Data Model for Customs, other Cross Border Regulatory Agencies and business.

*Other items to be considered.* In the past years other than the above mentioned items passed in review, which could be discussed for possible inclusion in the legal text of the RKC, such as:

- ✓ more emphasis on export;
- ✓ mutual recognition of controls;
- ✓ mutual recognition of the AEO programs;
- ✓ cooperation with other Cross Border Regulatory Agencies;
- ✓ the international trade supply chain and integrated supply management;

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<sup>1</sup> Review of the Revised Kyoto convention: Proposal by India, New Zealand and the Netherlands. the International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention). Revised Kyoto Convention Management Committee 6th Session, 19–20 March 2009. Doc. PO0034E1a. – P. 4.

<sup>2</sup> Ibid.

- ✓ authorized supply chain and smart and secure trade lanes;
- ✓ non-intrusive inspections;
- ✓ advanced sealing techniques.<sup>1</sup>

Finally, the Customs Service of **India** drew attention to the fact that it is now 10 years since the legal texts and guidelines were finalized and adopted by the Council. The last effort to revise the Kyoto Convention was taken after 25 years. It is felt that with a fairly large number of Contracting Parties already on board, it is appropriate to ask the Management Committee to consider whether a review of the entire Convention and the guidelines should be taken up to ensure that the Convention meets the current practices. India Administration was also of the view that some of the guidelines needed to be examined in detail. Valuable contributions could be made by Members in the process of accession or having already acceded, who have found that more detailed implementation instructions would be useful in making the guidelines more comprehensive. These could assist Contracting Parties, both current and potential, by providing substantive inputs where doubts have arisen on the scope of the legal provisions and its implementation during accession.<sup>2</sup>

Analyzing the stated positions of the Parties, the WCO Secretariat drew attention to the fact that the solution of these fundamental problems requires the development of the ***right working method and set time limits for completion.*** The Secretariat expressed the view that, first, consideration should be given to whether this review is to cover the entire Convention or would be confined to the General Annex. Bearing in mind that a thorough review of the General Annex would be an essential part of the review process, the Contracting Parties will also need to agree that the provisions of the General Annex will have to undergo a methodical and detailed analysis. On this subject it is worth noting that during the revision of the 1973 Convention, many Members volunteered to take on the task of analyzing Annexes and drafting texts for them. There is no doubt that this strong involvement of the Members in the revision work was a major factor in the success of that enterprise.<sup>3</sup>

In the context under consideration, the WCO Secretariat expressed a very important idea: *it is necessary to ensure that when reviewing the Convention,*

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<sup>1</sup> Review of the Revised Kyoto convention: Proposal by India, New Zealand and the Netherlands. the International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention). Revised Kyoto Convention Management Committee 6th Session, 19 – 20 March 2009. Doc. PO0034E1a. – P. 5.

<sup>2</sup> Ibid. – P. 6.

<sup>3</sup> Ibid. – P. 6.

*all developments, which have taken place and which may have an impact on the Convention, are taken into account.*

An analysis of the report of the 6<sup>th</sup> meeting of the Revised Kyoto Convention Management Committee shows that the Committee approved the proposal of India, New Zealand and the Netherlands to review the RKC in terms of the developments that have occurred in the field of trade as well as the functions performed by Customs during the last decades. As for the work to be done between the meetings of the Revised Kyoto Convention Management Committee, it should take into account the comments made during the discussions. Contracting Parties, wishing to participate voluntarily in the process, were invited to contact the WCO Secretariat, which will act as coordinator. In this regard, the Secretariat sent a letter to both *parties* and *observers* to begin the process.<sup>1</sup>

In summary, we will formulate conclusions on the results of the sixth meeting of the Revised Kyoto Convention Management Committee held in the WCO Headquarters from 19 to 20 March 2009.

1. To date, the Revised Kyoto Convention should be a plan for modern, efficient customs procedures in the 21<sup>st</sup> century. Due to objective reasons and, first of all, due to the significant modernization of the legal institutions of customs regulation, the emergence of new instruments for customs regulation of the WCO, the development of modern customs technologies, the formation of new concepts in the field of customs, the administrative and legal mechanisms of customs administration, as well as the agreements reached in the international customs community, the Convention is subject to revision.

2. The revision of the Kyoto Convention will undoubtedly strengthen the position of the World Customs Organization in the international arena as the main international organization and an important institution for improving customs administration and trade facilitation.

3. The Kyoto Convention is the main international instrument with provisions that are legally binding, which in turn ensures maximum harmonization and simplification of customs procedures, in other words, simplifications. The idea of creating certain Framework of standards instead of the Convention is unattractive and unpromising.

4. When revising the Convention, a balance must be struck between the various functions of the Customs service, namely, ensuring the promotion of legitimate trade in the exercise of proper customs control to protect the interests of society and the state.

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<sup>1</sup> Point 42 of the Report on the 6th Meeting of the Revised Kyoto Convention Management Committee (Brussels, 19–20 March 2009). Brussels, 19 March 2009. Doc. PO0035E1a. – P. 8.

5. The process of revision of the Convention should be preceded by the *creation of a scientific and methodological apparatus*, an analysis of the approaches to such a revision.

6. It is necessary to work out the correct method of work and establish a time frame for its completion.

7. The revision of the Convention is necessary in view of the important changes that have occurred in the field of customs administration and trade facilitation over the past 20 years.

8. The provisions of the Revised Kyoto Convention should be methodically and thoroughly analyzed for relevance and subsequent modernization.

9. It requires a fundamental analysis of the Convention with a view to correlating its provisions with modern (best) customs administration practices.

10. Current legal institutions of customs law, customs procedures, concepts and practices deserve to be reflected in the Revised Kyoto Convention. In the year 2009 the following instruments of customs regulation were announced: advanced information on the cargo; Single Window; Authorized Economic Operator, harmonization and standardization of data, special emphasis on exports; mutual recognition of the results of customs control; mutual recognition of the AEO programs; cooperation with other bodies implementing transboundary regulation; international supply chain of goods, integrated supply management of goods; an authorized supply chain, as well as intelligent and secure trade corridors; not intrusive checks; modern technologies for the use of customs seals;

11. Along with the revision of the Convention, it is required a revision of previously established guidelines for the application and implementation of the Kyoto Convention.

12. It is necessary to analyze the inclusion in the legal texts of the Revised Kyoto Convention of the provisions of various WCO instruments (for example, the SAFE, the AEO Guidelines, etc.).

13. When reviewing the Convention, it is necessary to get acquainted with the developments (instruments) of international organizations that are developed to improve customs regulation and trade facilitation.

## **5.2. Revision of the Kyoto Convention: outcomes of 2018**

The eighteenth meeting of the Revised Kyoto Convention Management Committee, in our view, can be called a landmark event, as it summarized the preparatory four-year work of the WCO (2014–2018), which is associated with

the forthcoming process of modernization of the Convention. It has been developed a legal and organizational justification (organizational package) [business case] of an important project for the expert community to review the Kyoto Convention. Some proposals of the WCO Member-States for the modernization of the Convention deserve attention, which were summarized and systematized by the Secretariat of the World Customs Organization, as well as by the Virtual Working Group for the revision of the Kyoto Convention. No less interesting from the scientific point of view is the attempt to create a mechanism for participation of stakeholders in the process of modernization of the Convention.

Let us pay attention to the role of the WCO Secretariat, which administers the work of working bodies (working groups, committees, subcommittees, virtual working groups, etc.), professionally assists participants of the meeting in solving organizational, technical and legal issues. *In our opinion, the coordination of the interaction of Customs administrations carried out by the WCO Secretariat and the maintenance of the functioning of any WCO working body is significant and highly appreciated.* At the meetings of the Committee, the decision on the issues under consideration is taken not by the WCO Secretariat, but by the authorized representatives of the Customs services of the Member-States of the Organization on the basis of a consolidated position. *The WCO Secretariat, providing advisory assistance to countries, is a kind of engine, a processor of the entire management mechanism, as well as a unique resource that preserves the historical memory of the dynamics of any customs issue, the sequence of its consideration by the expert community.*

At the 18th meeting of the Revised Kyoto Convention Management Committee, the participants discussed the Terms of Reference of the Working Group on Comprehensive Review of the Kyoto Convention that was going to be established. In our opinion, one of the discussion issues of the session is the ***issue of stakeholder participation (customs, economic unions, international organizations, representatives of business and academia) in the Working Group.*** Thus, according to the (first, initial) draft Terms of Reference, the Group should be comprised of all interested Members of the WCO (RKC Contracting Parties as well as Non-Contracting Parties). The Working Group will invite, *when appropriate*, the Private Sector Consultative Group (PSCG), partner international organizations and other external stakeholders. It was assumed that the participation of such actors would be based on a *thematic approach* based on the document «Stakeholders engagement». <sup>1</sup> The draft provides that all stakeholders will have the opportunity to participate in the revision to the Convention in a more

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<sup>1</sup> Annex II Stakeholders engagement. Annex II to Annex to Document PO0099E1.

holistic manner and therefore would be effectively engaged with Customs administrations on this important issue. It is also noted here that *stakeholders can not be excluded from the forthcoming work*, and for the management of the revision process of the Convention it is necessary that *all, who wish to express their opinion, be heard*. At the same time, the organizational package for the revision of the Convention clarified the *impossibility of inviting external partners for each meeting of the Working Group*,<sup>1</sup> attention is focused on the need to make efforts to organize *special sessions*.

Thus, on the one hand, on the Committee meeting it was announced an intention to invite all the parties concerned, which are able to participate in the revision of the Kyoto Convention in a comprehensive manner. On the other hand, *their participation can be restricted (limited) by so-called thematic approach*, where *stakeholders* can only be invited to special meetings *in the context of considering thematic issues*. In our opinion, such an approach is not consistent with the current practice of participation of interested parties in the development of modern instruments of customs regulations and ***does not reflect the interests of the WCO observers***, in particular, customs and economic unions. As regards the thematic approach for stakeholder participation in the work of the Working Group, for these purposes a list of customs regulation instruments (thematic blocks) was created: customs formalities; customs procedures; preliminary decisions; post clearance audit, including e-auditing; application of controls on foreign trade activities; fines imposed by Customs authorities; appeals procedures; information exchange within the framework of the «Single Window» mechanism; the provision of electronic services; cooperation between Customs and the Tax services; coordinated border management; integrated supply chain management. It is obvious that the list of legal instruments of customs regulation in the framework of the thematic approach to the revision of the Kyoto Convention by stakeholders is not exhaustive for such a fundamental project to create a «New Constitution» for regulating customs legal relations within the international customs community.

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<sup>1</sup> It is not feasible to invite our external partners for every single meeting of the VWG, however efforts should therefore be made to organize dedicated sessions, built upon the Action Plan to be agreed by the VWG.

### **5.3. Analysis of procedural issues of the Terms of Reference of the Working Group on a Comprehensive Review of the Revised Kyoto Convention**

In view of the above, let us refer to the materials of the Policy Commission, which were brought to attention of the WCO experts at the meeting on May 23, 2003.<sup>1</sup> In particular, on the question of the participation of the WCO observers in the meetings of its working bodies, an important provision was fixed, according to which the *inviting Customs and Economic Unions, and similar regional entities, to attend meetings of WCO bodies as observers may encourage and assist them to incorporate the content of WCO instruments in their regional instruments as well as giving the Secretariat a useful opportunity to hold informal discussions with the observers, during their visits to Brussels, about the Customs-related aspects of that regional entity's work.* In other words, customs and economic unions are important WCO partners in the development of customs administration instruments and trade facilitation. In our opinion, these subjects have a special status in the WCO group of observers, which also includes international organizations, representatives of the business community, academic circles and other interested entities.

It is necessary to remind that according to the Terms of Reference of the Revised Kyoto Convention Management Committee, *the RKC MC may invite the representatives of international governmental and non-governmental organizations* to attend the sessions of the Management Committee as observers. At the same time, it is not stated here about thematic participation of observers in the meetings of the Committee.<sup>2</sup>

The analysis of the rules of procedures (Terms of Reference) of a number of WCO working bodies has shown that participation in the groups of a non-closed nature is not limited for the observers. Thus, the *Permanent Technical Committee* may decide to invite representatives of international organizations to attend sessions of the Committee as observers.<sup>3</sup> In turn, subject to the approval of the Chairperson of the *Information Management Sub-Committee*, the Secretary General may invite representatives of non-Member governments or

<sup>1</sup> See Annex I to Document SP0116E1. Observer status. Brussels, 11 November 2002. – P. I/3.

<sup>2</sup> The Revised Kyoto Convention Management Committee. URL: [http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures\\_and\\_facilitation/revised\\_kyoto\\_conv.aspx](http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures_and_facilitation/revised_kyoto_conv.aspx)

<sup>3</sup> Terms of Reference for the Permanent Technical Committee. URL: [http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures\\_and\\_facilitation/permanent\\_technical\\_committee.aspx](http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures_and_facilitation/permanent_technical_committee.aspx)

of international organizations to attend meetings of the Sub-Committee as observers.<sup>1</sup> Within the organization of *SAFE Working Group*, the Secretariat in consultation with the Co-chairpersons may invite from time to time any relevant persons or organizations as required including consultations and/or presentations as per the agenda.<sup>2</sup> Another example, the *WCO Working Group on the WTO Agreement on Trade Facilitation* is open to all interested Members of the WCO, parties with recognized WCO observer status, partner organizations such as the WTO, and other entities, including those representing private sector, where deemed it appropriate.<sup>3</sup> Finally, The WCO Secretariat, in consultation with the Co-Chairpersons, may on occasion extend an invitation to any relevant experts or organizations as required, including for consultations, contributions and/or presentations.<sup>4</sup>

As a rule, in the practice of the WCO, the observers have the opportunity to participate in the meetings of the majority of its working bodies. Due to objective reasons, the restriction is established for participation in the meetings of the Policy Commission, the Finance Committee and some other working bodies. In this regard, the adoption of the norms in the Terms of Reference of the WGRKC related to participation of the WCO observers only from time to time, based on the thematic approach, *could create a negative precedent for the prospect of subsequent cooperation of WCO with observers.*

In the course of the eighteenth meeting of the Committee the EEC experts presented analysis of the package of documents on the establishment of the Working Group on a Comprehensive Review of the Revised Kyoto Convention, developed by the Virtual Working Group together with experts of the WCO Member-Countries. The participants of the meeting were informed about the project as a whole as well as judicial contradictions, referred to the package of documents. Referring to the working materials of the WCO Policy Commission in 2003 about the importance of participation of customs and economic unions in the working bodies of the WCO, an attention has been given to the inadmissibility of creating a negative precedent for restricting of participation of the representatives of economic and customs unions, business community and

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<sup>1</sup> Information Management Sub-Committee. URL: [http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures\\_and\\_facilitation/information\\_management\\_sub\\_committee.aspx](http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures_and_facilitation/information_management_sub_committee.aspx)

<sup>2</sup> SAFE Working Group. URL: [http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures\\_and\\_facilitation/safe\\_working\\_group.aspx](http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures_and_facilitation/safe_working_group.aspx)

<sup>3</sup> Terms of Reference for the WCO Working Group on the WTO Agreement on Trade Facilitation. URL: <http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/wco-working-bodies/facilitation/tor-for-wto-tfae.pdf?la=en>

<sup>4</sup> Terms of Reference for the WCO Working Group on E-commerce.

other interested partner organizations in developing of modern instruments of customs regulations (thematic approach) on the platform of the WCO.

It is worth noting, that years 2002 and 2007 have a special significance in the WCO history for strengthening the role of customs and economic unions in the work of the World Customs Organization bodies. During this period, serious and interesting discussions took place related to the granting of a legal status (a member of the WCO) to the European Union, which finally was presented in the form of *akin to membership*. At that time, most of the Customs administrations of the WCO Member Countries expressed a thesis about the important role of the EU in the WCO work and the development of instruments of customs regulation. *In 2018, 15 years after the events under consideration, the adoption of a different approach for economic unions (in our case for the EEU) would look inconsistent and would not correspond to the previously adopted line of building mutually beneficial relations between the WCO and partner organizations.* To everyone's satisfaction, this did not happen.

To date, experts of the customs block of the Eurasian Economic Commission are ready to participate in the work of the WGCR RKC on an ongoing basis. The attention of the participants of the eighteenth meeting of the Committee was brought to the conclusion that on January 1, 2018 the Customs Code of the Eurasian Economic Union came into force. The provisions of Kyoto Convention and modern instruments of customs regulations developed by the WCO were used when it was developed. The EEC specialists expressed their readiness to share their experience in the field of updating of legal institutions and standards in the field of customs regulation. The WCO colleagues were acquainted with the experience of organizing the work of the EEC Working-Group on the Improving Customs Legislation,<sup>1</sup> established in accordance with the Decision of the Council of the Commission of October 9, 2013 № 61.<sup>2</sup> It should be noted that the issue of revising of the Kyoto Convention is relevant, and the results of this work depend, *inter alia*, on the quality of the management process and the organization of interaction among its participants. Accordingly, there is a need to define the procedural aspects of the WGCR RKC both in the WCO Headquartered and the expert interaction of this Group by means of information platform Click! The Representatives of the Commission expressed their readiness to send concrete proposals to the WGRKC for procedural, technical mech-

<sup>1</sup> See the Terms of Reference of the Working Group on the Improvement of Customs Legislation, 2013.

<sup>2</sup> Decision of the Council of the Eurasian Economic Commission of October 9, 2013 № 61 «On the establishment of a Working Group under the Eurasian Economic Commission for the improvement of customs legislation». URL: <http://docs.cntd.ru/document/499049962>

anism of cooperation of the experts of the WGCR RKC in revision of the Convention.

We believe that the WCO experts can already consider the formation of a Conception of updating the Revised Kyoto Convention, which can affect the complex variety of legal institutions of customs law, legal innovations, visions, regulations, rules and standards, which need to be updated or included in the revised Convention. In addition, it is advisable to develop a conceptual approach to correlate the Convention with modern instruments of the World Customs Organization in the field of customs regulation and trade facilitation. In this regard, *consideration should be given to a parallel work on the modernization of previously developed guidelines for applying the Kyoto Convention*. It is obvious, when time passed, a question will be raised about a separate operating Guidelines (instructions) for the use of its provision and standards.

It is very important to emphasize the professional work of experts from the Federal Customs Service of Russia throughout the entire meeting of the RK-CMC related to above-mentioned issue. During the discussion, the EEC position was supported by the Russian Federation, the People's Republic of China, Gabon as well as representatives of international organizations from business attending the 18<sup>th</sup> meeting of the Committee. As a result the EEC proposals (in the form of the wording «membership» of Terms of Reference) were adopted, and restrictions on the participation of the WCO observers were lifted in the draft Terms of Reference of WGCR RKC. It should be added that the EEC position is reflected in the Report of the 18th meeting of the Revised Kyoto Convention Management Committee.<sup>1</sup>

In this paragraph, we have considered only some practical aspects of the ongoing work on the revision of the Kyoto Convention. Taking into account the importance of popularizing the WCO activities in the scientific and expert community, including through the interaction with the Eurasian Economic Union, we believe it is possible to continue making publications on this topic. We believe that academic community is able to make its indispensable contribution to the process of the Revised Kyoto Convention updating.

## Conclusions

1. The WCO is an important international institution as well as an effective negotiating platform for the international customs community, including

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<sup>1</sup> Points 53–55 of the Report of the 18th meeting of the Revised Kyoto Convention Management Committee (3–4 May 2018), Brussels, 3 May 2018. Doc. PO0109E1a. – P. 8.

economic unions, international organizations, and representatives of business community.

2. The issue of revision of the Kyoto Convention is on the agenda of the World Customs Organization. To date, activities are under way to complete the preparatory phase for the establishment of the Working Group on a Comprehensive Review of the Kyoto Convention. Participation of the Parties to the Kyoto Convention as well as subjects with observer status of the WCO and other stakeholders is a necessary condition for developing a modern instrument of customs regulation that takes into account the interests of all interested parties.

3. Important organizational and legal documents have been prepared to begin the comprehensive process of modernization of the standards, legal institutions of the Convention. Among them – the draft Terms of Reference of the Working Group on a Comprehensive Review of the Kyoto Convention as well as the consolidated list of proposals of the WCO Customs administrations for modernization of the RKC.

4. As part of the interaction between the EEU and the WCO the Eurasian Economic Commission with observer status was given an excellent opportunity to participate in the work of the Revised Kyoto Convention Management Committee. This circumstance can be called an important milestone in the field of cooperation with the WCO in 2018 and the involvement of the Commission's experts in the process of creating modern instruments of customs administration.

5. The joining of EEC experts in the above-mentioned Working Group and the practical participation in its meetings is a strategic perspective as well as an important line of work for the customs block of the Eurasian Economic Commission.

#### **5.4. Improvement of the instruments of customs regulation: the Revised Kyoto Convention**

The improvement of the instruments of customs regulation remains one of the important and relevant areas in the activity of the Eurasian Economic Commission. The work in this direction is carried out by the experts of the EEC customs block in conjunction with the representatives of the Member States of our Eurasian Economic Union. The subjects involved in this process actively refer to modern concepts, ideas, approaches, normative materials, instruments, best practices in the field of customs. Among them, the International Convention on

the Simplification and Harmonization of Customs Procedures (signed in Kyoto, May 18, 1973) (amended by the Protocol of Amendments of 26 June 1999) takes a special place.

Almost 20 years have passed since the revision of the Convention. If we ask ourselves what we know about the work done at the World Customs Organization on the administration of the Kyoto Convention, the development and ongoing updating of the guidelines, created by international experts in the development of Convention provisions, we'll probably never find, with rare exceptions, a complete answer to the questions posed in scientific and practical publications. The results of the work, researched issues, legal innovations, prospects for modernization of customs administration under the Kyoto Convention are known only to the WCO Secretariat, a narrow group of experts from the Customs administrations of WCO Member Countries – Parties to the Kyoto Convention as well as to observers who participate in the work of the Revised Kyoto Convention Management Committee.

For the first time, the EEC representatives participated in the 18<sup>th</sup> meeting of the Revised Kyoto Convention Management Committee in May 2018.<sup>1</sup> As we noted earlier, the eighteenth meeting of the Committee, in our view, can be called a landmark event, as it covered the four-year preparatory work of the WCO (2014–2018), which is associated with the forthcoming process of updating of the Convention. It has been developed a legal and organizational justification (organizational package, business case) of an extremely important draft for revision of the Kyoto Convention. Some proposals of the WCO Member-States for updating the Convention, which were summarized and systematized by the WCO Secretariat as well as by the Virtual Working-Group on the Review of the Kyoto Convention, are worthy of the attention. Investigating the historical aspects of this project, we note that since 2014 the WCO has intensified the work of the Revised Kyoto Convention Management Committee. In the near future, the Working Group on the Comprehensive Review of the Kyoto Convention will be established, and it will be administratively subordinated to the Committee.

An analysis of the WCO working materials shows that in 2009 a number of Contracting Parties to the Kyoto Convention put forward proposals for updating the Convention, but at the time no action was taken. Subsequently, experts from the WCO Member States drew attention to the need to identify areas for the revision of the Convention, which should remain a relevant instrument

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<sup>1</sup> The 18<sup>th</sup> meeting of the Revised Kyoto Convention Management Committee. 3–4 May 2018, Brussels, Headquarters of the World Customs Organization.

for customs administration. Following a survey of the WCO Member States conducted by the WCO Secretariat in January 2015, it was decided at the 14th meeting of the RKCMC to establish a Virtual Working Group with the mandate – to explore possible directions for the updating the Kyoto Convention and to report to the Committee the provisions (areas) of the Convention that require modernization as well as ways to achieve possible changes.<sup>1</sup> During the 15th meeting of the RKCMC in 2016, a report of the Virtual Working Group was presented, which highlights a significant number of areas for a possible revision of the international agreement. In the course of the work, the Committee concluded that there was a general consensus among delegates that the entire Convention was subject to revision in order to remain relevant and continue to meet the needs of modern Customs. Review should affect the Convention, General Annex, the Specific Annexes and the Guidelines, which are created for the purposes of the provisions of the Kyoto Convention.

To facilitate the work on a comprehensive revision of the Convention, another Virtual Working Group (2016) was established. The mandate of the new group was to define the stages of the process, develop a plan, including key objectives, a broad approach, tasks and road map, to explore how other international organizations are updating their relevant conventions, and to develop a detailed analysis of the impact of the review, including benefits, problems and possible solutions.

After the preliminary report of the Virtual Working Group (2016) established in 2016, it has been unanimously approved the proposal for a comprehensive review of the Kyoto Convention at the 16<sup>th</sup> meeting of the RKCMC in April 2017. Subsequently, the final report of the Virtual Working Group (2016) was approved at the 17<sup>th</sup> meeting of the Committee in November 2017. The meeting agreed that the best way to promote a comprehensive review process would be the establishment of a Working Group for the Comprehensive Review of the Revised Kyoto Convention with a clear mandate. It was suggested that financial and administrative implications be considered, including the possible recruitment of additional WCO staff, whose activities would be related to the revision of the international agreement. Based on the experience gained from the previous revision of the Kyoto Convention in 1994–1999, it was recommended that the Working Group pursue its activities through the allocation of tasks to smaller subgroups under the overall guidance of the WG. According

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<sup>1</sup> Business case for the creation of a Working Group on the Comprehensive Review of the Revised Kyoto Convention (RKC). Appendix II to Final Report of the New Virtual Working Group on the Review of the Revised Kyoto Convention (RKC) for RK/MC 3–4 May 2018. – Brussels, 29 March 2018. – P. 1.

to experts, this approach will be effective and will speed up the process of revision of the Convention.

It should be noted that the creation of the Working Groups in the WCO is carried out in accordance with Council Decision № 308 of 2002. The Decision provides that the creation of any new working group should be approved by the Policy Commission. In this regard, it was suggested that the Policy Commission approves the establishment of a Working Group on a Comprehensive Review of the Revised Kyoto Convention. In order to advance the work on the revision of the Convention, the Committee decided to establish a new Virtual Working Group, in effect until the Working Group is approved by the Policy Commission and the Council.

It is expected that the Working Group on Revision of the Revised Kyoto Convention will remain in effect until the work process is completed and the Revised Convention is approved by the Revised Kyoto Convention Management Committee. It is expected that this process will take three years from the creation of the Working Group. The goal is to get the draft amendments to the Convention by December 2020, to adopt them by the Committee in the 2020/2021 financial year.

With regard to membership in this working body of the WCO, according to the final Terms of Reference, the WG will be open to all interested Members of the WCO (Contracting Parties as well as Non-Contracting Parties). The WGRKC may invite partner international governmental and non-governmental organizations, and representatives of the Private Sector Consultative Group and other external stakeholders to attend the meetings as necessary. This working body of the WCO will carry out its work at meetings at the WCO Headquarters and, if necessary, as part of the inter-sessional work in a virtual mode.

## **5.5. Overview of the directions of updating the Kyoto Convention**

When studying the issue of directions of improving legal institutions reflected in the Kyoto Convention, the WCO Secretariat also carried out work within the framework of interaction with customs administrations of the WCO Member States. As a result, a number of proposals were formulated. In particular, in the Interim report of the Virtual Working Group prepared for the Revised Kyoto Convention Management Committee on April 6–7, 2017, the proposals were highlighted and affect the following stages (business processes):

(1) the stage preceding the customs clearance, (2) the stage of customs clearance, (3) the stage after the release of the goods and, finally, (4) the related institutions (operations). Let us consider these proposals in more detail.

### Pre-clearance phase

*Emphasize the role of Customs in security* is one of the suggestions of the WCO experts, conjugated with the view that the role of the customs service in the legal institution of a secure supply chain should be reflected. The argument is that there is no reference in the Convention to the institution under consideration. To date, the term «security», used in the Convention, is associated with the concept of «financial guarantee», which in turn is not related to the institution of a secure supply chain of goods.

*SAFE Framework of Standards*. Another proposal from the WCO experts – the Kyoto Convention does not reflect the provisions of the SAFE.<sup>1</sup> In this regard, there is an opinion on the need to reflect the SAFE standards in the Convention.

*Legal institute of advanced cargo information*. No less important instrument of customs regulation, which, in the opinion of foreign experts, is subject to modernization, is the institution of advanced information on the transported goods. In particular, the Convention does not clearly reveal the legal institution under consideration (the instrument of customs regulation).<sup>2</sup> In this context, it is proposed to add a new chapter to the General Annex of the Convention, consolidating the advance cargo information instrument within the institution of a secure supply chain of goods.

*The legal institute of the Authorized Economic Operator*. To date, the AEO institute is only indirectly reflected in the Kyoto Convention. So, according to the transitional standard 3.32 of Chapter 3 of the General Annex of the Convention «for authorized persons who meet criteria specified by the Customs, including having an appropriate record of compliance with Customs requirements and a satisfactory system for managing their commercial records, the Customs shall provide for: (1) release of the goods on the provision of the minimum information necessary to identify the goods and permit the subsequent completion of the final Goods declaration; (2) clearance of the goods at the

<sup>1</sup> WCO SAFE Package. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/safe\\_package.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/safe_package.aspx); SAFE Framework of Standards to Secure and Facilitate Global Trade – 2015 edition [http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/safe2015\\_e\\_final.pdf?la=en](http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/safe2015_e_final.pdf?la=en)

<sup>2</sup> See Chapter 3 of the General Annex, Standard 3.25. of the International Convention on the Simplification and Harmonization of Customs Procedures.

declarant's premises or another place authorized by the Customs; and, in addition, to the extent possible, other special procedures such as: allowing a single Goods declaration for all imports or exports in a given period where goods are imported or exported frequently by the same person; use of the authorized persons' commercial records to self-assess their duty and tax liability and, where appropriate, to ensure compliance with other Customs requirements; allowing the lodgment of the Goods declaration by means of an entry in the records of the authorized person to be supported subsequently by a supplementary Goods declaration.<sup>1</sup>

At the third meeting of the Committee, which was held on November 5–6, 2007 at the WCO Headquarters, the participants expressed the opinion that there is no need to develop any manuals for this institution of customs law. Obviously, such an approach was predetermined by the existence of a Framework of Standards to Secure and Facilitate Global Trade, where the legal institution of the AEO is given a place. The Virtual Working Group expressed the view that the standard contains a good and appropriate framework, and the AEO concept is covered by this general provision (the AEO is a special case of an authorized person).

In our opinion, it is difficult to agree with this thesis. First, the above-mentioned standard 3.32 deals with authorized persons, but not with Authorized Economic Operators. Secondly, a list of customs benefits (special simplifications),<sup>2</sup> named in the same standard in 1999, does not reflect modern and best practices in the field of customs, including in the EEU Member States as well as the developments of the WCO in 2017, proposed within the framework of the SAFE Working Group. We consider it is important that the standards of the Kyoto Convention in the modernization process reflect the main provisions of the modern AEO institution, including the requirements and conditions for assigning the legal status of the AEO, the concept of mutual recognition of the legal status of the AEO by foreign customs administrations.

*Advanced ruling.* According to the standard 9.4 of the General Annex, at the request of the interested person, the Customs shall provide, as quickly and as accurately as possible, information relating to the specific matters raised by

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<sup>1</sup> Transitional Standard 3.32 of Chapter 3 of the General Annex of the International Convention on the simplification and harmonization of Customs procedures. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/gach3.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/gach3.aspx)

<sup>2</sup> It should be noted that the Kyoto Convention does not contain the term «special simplifications», «customs benefits».

the interested person and pertaining to Customs law.<sup>1</sup> In its turn, it is noted in the standard 9.9 that, the Customs shall issue binding rulings at the request of the interested person provided that the Customs have all the information they deem necessary.<sup>2</sup> Let us note that in Article 3 «advanced rulings» of the World Trade Organization Agreement on Trade Facilitation (hereinafter – Bali Agreement) «each Member shall issue an advance ruling in a reasonable, time-bound manner to the applicant that has submitted a written request containing all necessary information. If a Member declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision».<sup>3</sup> It should be noted that the Bali Agreement contains the definition of the term «advanced rulings» this is a written decision provided by a Member to the applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member shall provide to the good at the time of importation with regard to: (i) the good's tariff classification; and (ii) the origin of the good.<sup>4</sup> In addition to the advance rulings defined in subparagraph (a), Members are encouraged to provide advance rulings on: (i) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts; (ii) the applicability of the Member's requirements for relief or exemption from customs duties; (iii) the application of the Member's requirements for quotas, including tariff quotas; and (iv) any additional matters for which a Member considers it appropriate to issue an advance ruling.<sup>5</sup>

In this case, an applicant is an exporter, importer or any person with a justifiable cause or a representative thereof. In the light of the above, the experts of the Virtual Working Group proposed to amend the Kyoto Convention by add-

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<sup>1</sup> 9.4. Standard of the General Annex of the International Convention on the Simplification and Harmonization of Customs Procedures. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/gach9.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/gach9.aspx)

<sup>2</sup> 9.9. Standard of the General Annex of the International Convention on the Simplification and Harmonization of Customs Procedures. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/gach9.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/gach9.aspx)

<sup>3</sup> Article 3 of the WTO Agreement on trade facilitation. Annex to the Protocol amending the Marrakesh Agreement establishing the World Trade Organization. URL: [https://www.wto.org/English/Tratop\\_E/tradfa\\_e/tradfa\\_e.htm#II](https://www.wto.org/English/Tratop_E/tradfa_e/tradfa_e.htm#II)

<sup>4</sup> Point 9 (a) article 3 of the WTO Agreement on trade facilitation. Annex to the Protocol amending the Marrakesh Agreement establishing the World Trade Organization. URL: [https://www.wto.org/English/Tratop\\_E/tradfa\\_e/tradfa\\_e.htm#II](https://www.wto.org/English/Tratop_E/tradfa_e/tradfa_e.htm#II)

<sup>5</sup> Point 9 (b) article 3 of the WTO Agreement on trade facilitation. Annex to the Protocol amending the Marrakesh Agreement establishing the World Trade Organization. URL: [https://www.wto.org/English/Tratop\\_E/tradfa\\_e/tradfa\\_e.htm#II](https://www.wto.org/English/Tratop_E/tradfa_e/tradfa_e.htm#II)

ing a standard on advanced ruling that affect such institutions of customs law as classification, origin of goods, and customs valuation.<sup>1</sup>

*Legal institution of risk management system* (hereinafter – RMS). In accordance with Chapter 6 of the General Annex, in the application of Customs control, the Customs shall use risk management, the Customs shall use risk analysis to determine which persons and which goods, including means of transport, should be examined and the extent of the examination. The Customs shall adopt a compliance measurement strategy to support risk management.<sup>2</sup> According to the experts of the Virtual Group, the Kyoto Convention does not adequately reflect the concept of risk management, technical achievements as well as the importance of its use in the implementation of customs control and the simplification of legitimate trade. It should be added that the SAFE standards and the WCO Customs Risk Management Compendium<sup>3</sup> were adopted after the previous revision of the Kyoto Convention. In this regard, the Convention does not fully reflect the best practices of customs administration in the considered way and is subject to revision.

Of course, the formulated minimum rules of the Bali Agreement to the institution under consideration are somewhat wider than those of the Kyoto Convention. Thus, Article 4 of the TFA «risk management» specifies each Member shall, to the extent possible, adopt or maintain a risk management system for customs control. At the same time it shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or a disguised restriction on international trade. Each Member shall concentrate customs control and, to the extent possible other relevant border controls, on *high-risk consignments* and expedite the release of *low-risk consignments*. It is noted here also that a Member also may select, on a random basis, consignments for such controls as part of its risk management; each Member shall base risk management on an assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, *inter alia*, the Harmonized System code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of

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<sup>1</sup> See Annex I to the Interim Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (6, 7 April 2017). Brussels, 24 February 2017. Annex to doc PO0095E1. – P. I/7.

<sup>2</sup> Standards 6.6, 6.4 and 6.5 of the General Annex of the International Convention on the Simplification and Harmonization of Customs Procedures. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/gach6.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/gach6.aspx)

<sup>3</sup> The WCO Customs Risk Management Compendium. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/risk-management-compendium.aspx>

transport.<sup>1</sup> In view of the above, it is proposed to update the Kyoto Convention, reflecting in its standards the best practice of customs administration for risk management.<sup>2</sup>

### Clearance phase

*A legal instrument – a «Single Window» mechanism.* One of the institutions (instruments) of customs law, which is considered by the Virtual Working Group at the customs clearance phase, is a «Single Window». A significant number of scientific events have been devoted to the development of the «Single Window» mechanism, including in the EEU Member States<sup>3</sup> and publications.<sup>4</sup> However, the institution of customs regulation under study in the broad sense of the concept of a «Single Window» is not reflected in the Kyoto Convention. At the same time, certain standards of the Convention can be correlated with the legal instrument under consideration. In particular, the transitional standard 3.35 of the General Annex establishes, that if the goods must be inspected by other competent authorities and the Customs also schedules an examination, the Customs shall ensure that the inspections are coordinated and, if possible, carried out at the same time.<sup>5</sup> In this case, it is a question of coordinated control activities by various controlling bodies, which is part of the concept of the «Single

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<sup>1</sup> Article 4 (4.1–4.4.) of the WTO Agreement on trade facilitation. Annex to the Protocol amending the Marrakesh Agreement establishing the World Trade Organization. URL: [https://www.wto.org/English/Tratop\\_E/tradfa\\_e/tradfa\\_e.htm#II](https://www.wto.org/English/Tratop_E/tradfa_e/tradfa_e.htm#II)

<sup>2</sup> See Annex I to the Interim Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (6, 7 April 2017). Brussels, 24 February 2017. Annex to doc PO0095E1. – P. I/7.

<sup>3</sup> Materials of conferences and seminars. Eurasian Economic Commission. URL: [http://www.eurasiancommission.org/en/act/tam\\_sotr/Pages/konf.aspx](http://www.eurasiancommission.org/en/act/tam_sotr/Pages/konf.aspx)

<sup>4</sup> See, for example, Sekerbayeva D.K., Mozer S.V. Prospects of development of a national «Single Window» mechanism in the Member States of the Eurasian Economic Union at the current stage // The Academic Bulletin of the Rostov Branch of the Russian Customs Academy. 2017. № 3 (28). – P. 15–27. URL: <http://customs-academy.net/?p=11223>; Sekerbayeva D.K., Mozer S.V. The «Single Window» mechanism in the Member-States of the EEU: from the formation of the conceptual apparatus to the reference model // The Scientific notes of the St. Petersburg Branch of the Russian Customs Academy. 2017. № 2 (62). – P. 24–30. URL: <http://customs-academy.net/?p=11339>

<sup>5</sup> 3.35 Transitional Standard of the General Annex of the International Convention on the Simplification and Harmonization of Customs Procedures. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/gach3.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/gach3.aspx)

Window» mechanism.<sup>1</sup> According to the transitional standard 3.18 of the General Annex the Customs shall permit the lodgment of supporting documents by electronic means. Here, in the standard 3.21, it is noted that Customs shall permit the lodging of the Goods declaration by electronic means.<sup>2</sup> If the goods must be inspected by other competent authorities and the Customs also schedules an examination, the Customs shall ensure that the inspections are coordinated and, if possible, carried out at the same time.<sup>3</sup> These provisions of the Convention provide for rules of the lodgment of accompanying documents and declarations for goods by the electronic means of communication to the Customs service. The WCO experts believe that it is necessary to ensure the provision of all information and documents using the same means.<sup>4</sup> At the same time, when introducing computer applications, the Customs shall use relevant internationally accepted standards.<sup>5</sup> It is considered that for the «Single Window» the customs service should seek that the parties concerned also use internationally recognized standards.<sup>6</sup> It is also important to have compatibility between various solutions in the field of computer technology to organize effective interaction between customs, economic agents, regulatory bodies and third parties.

Thus, the inclusion of a new separate annex in the Guidelines to the Kyoto Convention, which may include all the characteristics and advantages of the «Single Window» mechanism, can be considered as one of the approaches

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<sup>1</sup> See Annex I to the Interim Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (6, 7 April 2017). Brussels, 24 February 2017. Annex to Doc. PO0095E1. – P. I / 7.

<sup>2</sup> 3.21 Transitional Standard of the General Annex of the International Convention on the Simplification and Harmonization of Customs Procedures. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/gach3.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/gach3.aspx)

<sup>3</sup> 3.35 Transitional Standard of the General Annex of the International Convention on the Simplification and Harmonization of Customs Procedures. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/gach3.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/gach3.aspx)

<sup>4</sup> See Annex I to the Interim Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (6, 7 April 2017). Brussels, 24 February 2017. Annex to Doc. PO0095E1. – P. I / 7

<sup>5</sup> 7.2. Standard of the General Annex of the International Convention on the Simplification and Harmonization of Customs Procedures. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/gach7.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/gach7.aspx)

<sup>6</sup> See Annex I to the Interim Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (6, 7 April 2017). Brussels, 24 February 2017. Annex to Doc. PO0095E1. – P. I / 8.

to modernizing the Convention. The Guidelines should refer to the instruments and standards of the WCO, UNECE, for example, the Single Window Guidelines,<sup>1</sup> the WCO SAFE Package,<sup>2</sup> the WCO Data Model,<sup>3</sup> the WCO Coordinated Border Management Compendium<sup>4</sup> as well as the WCO recommendations.<sup>5</sup>

*Legal norms of the institution of customs control, storage and release (perishable goods).* For the institution of customs control, which regulates legal relations, in particular, related to the implementation of control measures for perishable goods, the Virtual Working Group refers to Standard 3.34 of the General Annex of the Convention and Article 7.9 of the Bali Agreement (TFA). According to this standard, when scheduling examinations, priority shall be given to the examination of live animals and perishable goods and to other goods which the Customs accept are urgently required.<sup>6</sup> The TFA establishes the following rules for the customs control, storage and release of perishable goods:

With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Member shall provide for the release of perishable goods: (a) under normal circumstances within the shortest possible time; and (b) in exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities. Each Member shall give appropriate priority to perishable goods when scheduling any examinations that may be required. Each Member shall either arrange or allow an importer to arrange for the proper storage of perishable goods pending their release. The Member may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those

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<sup>1</sup> Single Window Guidelines. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/single-window-guidelines.aspx>

<sup>2</sup> WCO SAFE Package. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/safe\\_package.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/safe_package.aspx)

<sup>3</sup> WCO Data Model. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/data-model.aspx>

<sup>4</sup> WCO Coordinated Border Management Compendium. URL: [http://www.wcoomd.org/~/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/cbm-en\\_lr.pdf?la=en](http://www.wcoomd.org/~/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/cbm-en_lr.pdf?la=en)

<sup>5</sup> See Annex I to the Interim Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (6, 7 April 2017). Brussels, 24 February 2017. Annex to Doc. PO0095E1. – P. I / 8.

<sup>6</sup> Standard 3.34 of the General Annex of the International Convention on the Simplification and Harmonization of Customs Procedures. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/gach3.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/gach3.aspx)

storage facilities, including authorizations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. The Member shall, where practicable and consistent with domestic legislation, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities. In cases of significant delay in the release of perishable goods, and upon written request, the importing Member shall, to the extent practicable, provide a communication on the reasons for the delay.<sup>1</sup> Based on the above, it is proposed to update the Kyoto Convention, reflecting in its standards current law enforcement practice on the issue under consideration.

*Legal institute of electronic payments.* At the moment the Kyoto Convention does not contain standards for the implementation of settlement legal relations in electronic form through electronic payments. It is believed that due to effective payment systems, a high degree of trade facilitation is achieved. However, success depends on how the rules of the implementation of foreign trade activities are related to payments and optimized for trade facilitation. To date, the mechanism of the «Single Window» is available in several versions of electronic payments.<sup>2</sup> The use of modern technologies in the automation of payment systems has led to a revolutionized change in the speed and efficiency of payments. Payment of duties, taxes and fees is an important business process in the «Single Window» environment. In addition to payment of customs duties, the importer must make payments of various types within the international supply chain of goods (money transfers for the supply of commercial goods as well as payment for transport and logistics services). Thus, an electronic payment not only helps to obtain quickly regulatory clearance, but is also crucial to support logistical and commercial process.<sup>3</sup>

Arguing about the nature of electronic payments, we note that the methods (ways) of electronic payment include the transfer of information about payments made in electronic form, instead of physical exchange of paper (cash, checks, claims, vouchers and etc.). Electronic payments can be made directly from home or workplace, using computers (including mobile devices). It is believed that electronic payment methods help to reduce transaction costs by

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<sup>1</sup> Article 9 «Perishable Goods» of the WTO Agreement on trade facilitation. Annex to the Protocol amending the Marrakesh Agreement establishing the World Trade Organization. URL: [https://www.wto.org/English/Tratop\\_E/tradfa\\_e/tradfa\\_e.htm#II](https://www.wto.org/English/Tratop_E/tradfa_e/tradfa_e.htm#II)

<sup>2</sup> Innovation in business process & e-payments in Single Window. Part IV. Vol. 2. URL: <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/activities-and-programmes/single-window/compendium/swcompendiumvol2partiv.pdf>

<sup>3</sup> Ibid.

allowing remote and temporary factors in the payment process and provide a high degree of automation for the entity involved in trade relations as well as Customs and banks.<sup>1</sup> The adoption of electronic means of payment of duties, taxes and fees implies that the Customs must establish the necessary technologies and services linking their systems to the banking system, to verify payment details and ensure the acceptance of amounts of money. The amounts received in electronic form by banks and communicated by them should be coordinated with the amounts indicated for customs as payment by electronic means. The amounts should also be reconciled periodically, both at the transaction level and at the gross level.<sup>2</sup> More details on the electronic payment system within the framework of customs administration and the construction of the «Single Window» mechanism are set out in the Single Window Guidelines.<sup>3</sup>

It is necessary to add that in accordance with point 7.2 of article 7 «release and clearance of goods» of the TFA, each Member shall, to the extent practicable, adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees, and charges collected by customs incurred upon importation and exportation.<sup>4</sup> Focusing on the leadership of the WCO on the creation of the «Single Window» mechanism and Article 7 of the Bali Agreement, it is possible to single out the main elements of the electronic payment system:

- ✓ providing trading entities the possibility of electronic payment of tariffs, duties, and other customs fees (as far as possible);
- ✓ application of procedures allowing the release of imported or exported goods before final calculation of customs duties and duties, if all legal requirements are met;
- ✓ in such cases, to ensure the possibility of using the guarantee in the form of a surety or other means of payment, while the amount of such a guarantee should not exceed the amount that amount be charged.<sup>5</sup>

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<sup>1</sup> Innovation in business process & e-payments in single window. Part IV. Vol. 2. – P. 32. URL: <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/activities-and-programmes/single-window/compendium/swcompendiumvol2partiv.pdf>

<sup>2</sup> Ibid.

<sup>3</sup> Single Window Guidelines. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/single-window-guidelines.aspx>

<sup>4</sup> Point 7.2 of article 7 «Release and clearance of goods» of the of the WTO Agreement on trade facilitation. Annex to the Protocol amending the Marrakesh Agreement establishing the World Trade Organization. URL: [https://www.wto.org/English/Tratop\\_E/tradfa\\_e/tradfa\\_e.htm#II](https://www.wto.org/English/Tratop_E/tradfa_e/tradfa_e.htm#II)

<sup>5</sup> See the Report of Novozhilova M.A., May 15, 2018. Astana, Electronic customs payments as part of a «Single Window» (the example of Russia).

In the light of the above, the experts of the Virtual Working Group expressed their opinion on the need to amend the text of the Convention by introducing a standard on the establishment of an electronic system for payment of duties, taxes, fees, etc.<sup>1</sup>

*Use of modern tools and technology to support Customs processes.* This issue is directly reflected in the standard 3.12 «Goods declaration» of Chapter 3; chapter 6 «Customs control»; Chapter 7 «Application of information technology» of the General Annex; Chapter 1 of the Specific Annex E «Customs transit». Under the use of modern instruments and technologies that support the functioning of the Customs service, the Revised Kyoto Convention Management Committee understands:

- ✓ non-intrusive inspection (cargo and people);
- ✓ advanced sealing techniques;
- ✓ mobility (smart phones and tablets);
- ✓ the Internet (of things) – information and data sources;
- ✓ detection equipment (drugs, cash, explosives and laboratories);
- ✓ cybercrime;
- ✓ forensic tools and services (inspection of devices and auditing tools);
- ✓ biometrics;
- ✓ RFID and Barcodes (including readers);
- ✓ surveillance (cell phone tracking, CCTV, imaging, night vision, communications and number plate recognition tools);
- ✓ risk management processes (modelling, gaming and intelligence management tools);
- ✓ data standards and privacy (PNRGOV, WCO Data Model);
- ✓ robotics;
- ✓ social media/websites/blogs and other communications channels/mechanisms;
- ✓ development of electronic commerce (online shopping, alternate payment mechanisms, de minimis and revenue collection options, and online learning/training);
- ✓ IT developments:
  - encryption techniques;
  - cloud computing, data centres, outsourcing, and computing power and speed;

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<sup>1</sup> See Annex I to the Interim Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (6, 7 April 2017). Brussels, 24 February 2017. Annex to doc PO0095E1. – P. I/9.

- data analytics;
- document management systems;
- 3D printing;
- drones;
- GPS devices and GPS enabled equipment;
- analysis/points for consideration.

According to the experts of the Virtual Working Group, to date, Chapter 7 Application of Information Technology is at best very simplified and doesn't reflect the major changes that have and are taking place in IT.<sup>1</sup> In addition, Chapter 9 also could be updated and refreshed and reflect a more modern world.

### **Post-clearance phase**

*Institute of Customs control on the basis of audit (audit-based control).*

Chapter 6 of the General Annex of the Kyoto Convention establishes standards for the legal institution of customs control.<sup>2</sup> According to standard 6.6, customs control systems shall include audit-based controls.<sup>3</sup> At the same time, the Convention does not detail this standard. Investigating this legal institution, the WCO experts also refer to Article 7.5 «Post-clearance Audit» of the Bali Agreement. Thus, with a view to expediting the release of goods, each Member shall adopt or maintain post-clearance audit to ensure compliance with customs and other related laws and regulations; the state shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Member shall conduct post-clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved the Member shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations, and the reasons for the results. In this case, the Member State of the Agreement acknowledge that information obtained in post-clearance audit may be used in further administrative or judicial proceedings; and the Members shall, wherever practicable, use the result of post-clearance audit in applying

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<sup>1</sup> See Annex I to the Interim Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (6, 7 April 2017). Brussels, 24 February 2017. Annex to doc PO0095E1. – P. I/11.

<sup>2</sup> Standards 6.1–6.10, Chapter 6 of the International Convention on the Simplification and Harmonization of Customs Procedures.

<sup>3</sup> Standards 6.6, Chapter 6 of the International Convention on the Simplification and Harmonization of Customs Procedures. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/gach6.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/gach6.aspx)

risk management.<sup>1</sup> In the light of the foregoing, the modernization of the Kyoto Convention can be realized by reflecting the best practice of customs regulation of customs control on the basis of audit.

*Institute of Customs Audit. Audit «Support the auditing of electronic declarants records using simplified procedures».* This issue is regulated by several chapters of the General Annex of the Kyoto Convention: (1) Standards 3.6-3.10 «The declarant» of Chapter 3 «Clearance and other customs formalities», (2) Standards 6.6, 6.9 and 6.10 of Chapter 6 «Customs Control», (3) Chapter 7 «Application of information technology».<sup>2</sup>

In particular, any person having the right to dispose of the goods shall be entitled to act as declarant.<sup>3</sup> The declarant shall be held responsible to the Customs for the accuracy of the particulars given in the Goods declaration and the payment of the duties and taxes.<sup>4</sup> Customs control systems shall include audit-based controls.<sup>5</sup> The Customs shall use *information technology* and electronic commerce to the greatest possible extent to enhance Customs control.<sup>6</sup> At the same time, the Customs shall evaluate traders' commercial systems where those systems have an impact on Customs operations to ensure compliance with

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<sup>1</sup> Paragraphs 5.1–5.4, Article 7 «Release and clearance of goods» of the of the WTO Agreement on trade facilitation. Annex to the Protocol amending the Marrakesh Agreement establishing the World Trade Organization. URL: [https://www.wto.org/English/Tratop\\_E/tradfa\\_e/tradfa\\_e.htm#II](https://www.wto.org/English/Tratop_E/tradfa_e/tradfa_e.htm#II)

<sup>2</sup> See Annex I to the Interim Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (6, 7 April 2017). Brussels, 24 February 2017. Annex to doc PO0095E1. – P. I/12.

<sup>3</sup> Standards 3.7, Chapter 3 «Clearance and other customs formalities» of the International Convention on the Simplification and Harmonization of Customs Procedures. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/gach3.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/gach3.aspx)

<sup>4</sup> Standards 3.8, Chapter 3 «Clearance and other customs formalities» of the International Convention on the Simplification and Harmonization of Customs Procedures. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/gach3.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/gach3.aspx)

<sup>5</sup> Standards 6.6, Chapter 6 «Customs control» of the International Convention on the Simplification and Harmonization of Customs Procedures. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/gach6.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/gach6.aspx)

<sup>6</sup> Transitional Standards 6.9, Chapter 6 «Customs control» of the International Convention on the Simplification and Harmonization of Customs Procedures. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/gach6.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/gach6.aspx)

Customs requirements.<sup>1</sup> Finally, the Customs shall apply information technology to support Customs operations, where it is cost-effective and efficient for the Customs and for the trade. The Customs shall specify the conditions for its application.<sup>2</sup>

When examining the institution of customs control (audit after the release of goods), the WCO experts note that traditionally Customs services can mutually administer issues regulating the activities of the declarant. In modern conditions of application of information technologies, Customs services, as a rule, track the records of the declarant automatically within the framework of the entire customs procedure. The best practice, in their opinion, is to use by the declarants of their own internal systems. At the same time, Customs administrations conduct regular audits to evaluate the quality of the declaring process in conjunction with timely electronic records.<sup>3</sup>

It should be noted that the concept of the declarant as a subject of customs legal relations, the definition of its rights and obligations is established, as noted above, in Chapter 3 of the General Annex. Nevertheless, the provisions of the Kyoto Convention do not contain rules or standards regulating legal relations to control the activities of the declarant or with its participation. In this connection, at the expert level, there is a view that the Convention is subject to modernization in the part under consideration.<sup>4</sup> The Virtual Working Group on the Revision of the Kyoto Convention expressed a clear view that the use of information technology facilitates the simplification of customs procedures. Corresponding amendments should also be reflected in the modernized text of the Convention.<sup>5</sup>

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<sup>1</sup> Standards 6.10, Chapter 6 «Customs control» of the International Convention on the Simplification and Harmonization of Customs Procedures URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/gach6.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/gach6.aspx)

<sup>2</sup> Standards 7.1, Chapter 7 «Application of information technology» of the International Convention on the Simplification and Harmonization of Customs Procedures. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/gach7.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/gach7.aspx)

<sup>3</sup> See Annex I to the Interim Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (6, 7 April 2017). Brussels, 24 February 2017. Annex to doc PO0095E1. – P. I/12.

<sup>4</sup> Either to amend the Convention directly, or to revise guidelines.

<sup>5</sup> See Annex I to the Interim Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (6, 7 April 2017). Brussels, 24 February 2017. Annex to doc PO0095E1. – P. I/12.

## Cross-cutting (intersectoral) stages

The WCO experts include in this block of the instruments of customs regulations, customs procedures, standards, that should be reflected in the updated Revised Kyoto Convention, the following: Integrated Supply Chain Management, the legal *institute of the mutual recognition of the AEO legal status, institute of transit and transshipment, the movement of goods by natural persons (travelers)*, as well as using the Internet, time release study, etc.

*The legal institute of Integrated supply chain management (ISCM).* The WCO Integrated Supply Chain Management Guidelines were adopted in 2004 so after the previous revision of the RKC and therefore the Convention does not reflect the content of the ISCM Guidelines.<sup>1</sup> Thus, the standards of the Convention do not reflect the provisions of this manual, as well as features of advanced law enforcement practice in this part. Accordingly, the above-mentioned complex legal institution of customs law can be considered as an object of modernization, implementation within the framework of the Kyoto Convention planned for revision.

*Mutual recognition of the legal status of the Authorized Economic Operator.* First of all, we note that the problems of mutual recognition of the administrative and legal status of the AEO at the scientific level are fundamentally disclosed in the research works of D.V. Nekrasov.<sup>2</sup> As noted above, the legal institution of the AEO is only partially affected by the Kyoto Convention. The standards of the Convention do not reflect the concept of mutual recognition of the legal status of the AEO promoted and implemented in practice by foreign customs administrations. In the light of the foregoing, there is a thesis about the need to update the Convention by referring to the WCO SAFE, as well as relevant guidelines, a strategy on mutual recognition.<sup>3</sup>

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<sup>1</sup> Customs Guidelines on Integrated Supply Chain Management, World Customs Organization. June 2004. URL: <http://www.wcoomd.org/~/media/D81B2807C64A4B669942F88D-51D5FCF6.ashx>

<sup>2</sup> Nekrasov D.V., Rylskaya M.A. On the issue of mutual recognition of the legal status of the AEO in the practice of customs administration / Bulletin of Economic Security. – 2017. – № 1. P. 126–135; Nekrasov D.V. Improvement of the administrative and legal status of the Authorized Economic Operator in the conditions of the Eurasian Economic Union: Monograph / D.V. Nekrasov. Moscow: Publishing House of the Russian Customs Academy, 2015. 203 p. «Russian Customs Academy: SCIENCE». URL: [www.customs-academy.net/?p=8299](http://www.customs-academy.net/?p=8299)

<sup>3</sup> See Annex I to the Interim Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (6, 7 April 2017). Brussels, 24 February 2017. Annex to doc PO0095E1. – P. I/13.

*The legal institute of transit and transshipment of goods.* The considered instrument of customs regulation is fixed in the standards of the Specific Annex E «Transit», which is an integral part of the Kyoto Convention.<sup>1</sup> For the modernization of the Convention in this part, the WCO experts have formulated a number of proposals. Among them – to review the RKC transit/transshipment guidelines, and how free zones/hubbing impact trade, including also the following:

- ✓ secure trade lanes – connecting authorized traders between two countries to develop an end-to-end supply chain with Customs using their systems to clear goods;
- ✓ better use of information (e.g. data model) to risk assess goods and do this risk assessment from a whole of border approach;
- ✓ using technology (electronic seals, cloud information management), elements of emerging technologies that need to be factored into RKC and actually can relate to the items listed;
- ✓ reflect developments in postal traffic and express consignments.<sup>2</sup>

*Travellers.* The rules governing the customs formalities and related to travelers, including customs control with respect to them, are specified in Chapter 1 «Travellers» of Specific Annex J of the Convention, as well as in the standard 6.4, Chapter 6 «Customs control» of the General Annex. It should be noted that the Convention does not fully reflect the legal innovations, as well as the ongoing changes in the customs regulation of the movement of goods by individuals (Travellers). Topical issues of customs administration in this sphere include such as growth in international travel including tourism, E-passports, non-intrusive inspection (body scanners), biometrics, advanced passengers information (API) and Passenger name record (PNR), E-gate clearance, the growing linkage between Customs and Immigration agencies, trusted traveler schemes – creation of separate lanes for accredited low risk passengers, passenger pre-clearance, growth in migration, foreign fighters (recruitment, home grown and returning), Punta Cana resolution of the WCO – Customs role in the fight against terrorism, the increasing importance of the border as a natural

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<sup>1</sup> Specific Annex E «Transit» of the International Convention on the Simplification and Harmonization of Customs Procedures. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv/kyoto\\_new/spane.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/spane.aspx)

<sup>2</sup> See Annex I to the Interim Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (6, 7 April 2017). Brussels, 24 February 2017. Annex to doc PO0095E1. – P. I/14.

intervention point.<sup>1</sup> In the context under consideration, it is proposed to amend the Convention, increasing the focus on security as well as on the above issues.

*The legal institute of release of the goods (the expedited release of air cargo).* Proposals for the modernization of the Kyoto Convention through the introduction in its standards of an *expedited release of the air goods* also come from the experts of the Virtual Working Group.<sup>2</sup> However, the WCO materials again refer to the articles of the Bali Agreement (TFA). Thus, in accordance with Article 7.8 of this Agreement each Member shall adopt or maintain procedures allowing for the expedited release of at least those goods entered through air cargo facilities to persons who apply for such treatment, while maintaining customs control. If a Member employs criteria limiting who may apply, the Member may, in published criteria, require that the applicant shall, as conditions for qualifying for the application of the treatment described in paragraph 8.2 to its expedited shipments: (a) provide adequate infrastructure and payment of customs expenses related to processing of expedited shipments in cases where the applicant fulfils the Member's requirements for such processing to be performed at a dedicated facility; (b) submit in advance of the arrival of an expedited shipment the information necessary for the release; (c) be assessed fees limited in amount to the approximate cost of services rendered in providing the treatment described in paragraph 8.2; (d) maintain a high degree of control over expedited shipments through the use of internal security, logistics, and tracking technology from pick-up to delivery; (e) provide expedited shipment from pick-up to delivery; (f) assume liability for payment of all customs duties, taxes, fees, and charges to the customs authority for the goods; (g) have a good record of compliance with customs and other related laws and regulations; (h) comply with other conditions directly related to the effective enforcement of the Member's laws, regulations, and procedural requirements, that specifically relate to providing the treatment described in paragraph 8.2.

Subject to paragraphs 8.1 and 8.3, Members shall: (a) minimize the documentation required for the release of expedited shipments in accordance with paragraph 1 of Article 10 and, to the extent possible, provide for release based on a single submission of information on certain shipments; (b) provide for expedited shipments to be released under normal circumstances as rapidly as possible after arrival, provided the information required for release has been

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<sup>1</sup> See Annex I to the Interim Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (6, 7 April 2017). Brussels, 24 February 2017. Annex to doc PO0095E1. – P. I/14.

<sup>2</sup> Ibid. – P. I/15.

submitted; (c) endeavor to apply the treatment in subparagraphs (a) and (b) to shipments of any weight or value recognizing that a Member is permitted to require additional entry procedures, including declarations and supporting documentation and payment of duties and taxes, and to limit such treatment based on the type of good, provided the treatment is not limited to low value goods such as documents; and (d) provide, to the extent possible, for a de minimis shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods. Internal taxes such as value added taxes and excise taxes, applied to imports consistently with Article III of the GATT 1994 are not subject to this provision.<sup>1</sup>

Among other legal and organizational-technical innovations proposed to be reflected in the Kyoto Convention include the *possibility of participants of foreign trade activities to comment on proposed changes in legislation, the use of the Internet as a tool for business, the creation of enquiry points and the application of the time-release study.*

One of the relevant sources of information on the forthcoming updating of legal institutions, standards, provisions of the Kyoto Convention can be called Annex II to the Final Report of the Virtual Working Group for Revised Kyoto Convention Management Committee of October 9, 2017, which was considered at a meeting of the RKCMC on November 13–14 of the same year.<sup>2</sup> The mentioned Annex is known for the WCO experts as «Stakeholder Engagement». This document suggests the so-called «thematic participation» of stakeholders in the modernization of the Kyoto Convention. Initially, the proposed mechanism for participation, for example, of customs and economic unions, international organizations and international business, academic circles in the revision of the Convention, in our view, was not ideal, and, to our satisfaction, with the submission of EEC representatives with the active support of the Russian Federation, China, Gabon as well as international organizations representing business interests was changed at the 18<sup>th</sup> meeting of the RKCMC. Without going into details of this process as well as the past discussions on this issue, we will draw attention to topics that were highlighted by the experts of the Virtual Working Group for possible discussion with interested parties (stakeholder).

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<sup>1</sup> Point 8 «Expedited Shipments» of article 7 «Release and clearance of goods» of the WTO Agreement on Trade Facilitation. Annex to the Protocol amending the Marrakesh Agreement establishing the World Trade Organization. URL: [https://www.wto.org/English/Tratop\\_E/tradfa\\_e/tradfa\\_e.htm#II](https://www.wto.org/English/Tratop_E/tradfa_e/tradfa_e.htm#II)

<sup>2</sup> Final Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee, Brussels 09 October 2017. Annex to Document PO0099E1.

The problems of the thematic approach were conditionally divided into 4 groups of issues affecting various legal relations in the field of customs. The first relates to the *target and confront those who do not comply*. This group includes such areas of customs administration as post clearance audit including e-auditing; impact on control measures on trade and NGO's; Customs penalties and enforcement techniques; appeals procedures.

The second set of issues *increase compliance and reduce risk* refers to the *legal institution of the AEO and the trusted trader programmes; information exchange; Tax and Customs co-operation; public perception of Customs; integrity issues and coordinated border management; Smart and Secure Trade Lanes (SSTL) / Integrated Supply Chain Management (ISCM)*.

The third block is *Make it easier and less costly to comply* includes *customs formalities; electronic services including Single Window; simplification of customs procedures; dissemination of necessary information; publication of guidelines; advanced rulings – methods and procedures; Time Release Studies; data harmonization; automation*.

Finally, the fourth set of topical issues that were to be considered with stakeholders when modernizing the Kyoto Convention – *contribute to social and economic growth* – includes *effective risk management to hinder illicit trade and support legitimate trade; integrity of Customs procedures and processes; awareness of technological changes and advancements; engagement with external stakeholders as a pillar Customs policy; Ensuring awareness of trade facilitation measures; investment in personnel and technology; dispute resolution; monitoring implementation*.

## Conclusions

Concluding the analysis of the instruments of customs regulation (standards, regulations, legal institutions), which in the short term will undergo revision (modernization) in the Kyoto Convention with the active participation of the WCO Secretariat and Customs administrations of its Member States, we summarize the following.

1. The issue of revision of the Kyoto Convention is on the agenda of the international customs community since 2009. The preparatory stage for the revision of this agreement coincides with the creation of the Virtual Working Group for the Revision of the Kyoto Convention in 2014 and continues to the present.

2. To date, important organizational and legal documents have been prepared for the beginning of a comprehensive process of modernization of the

standards, legal institutions of the Convention. Among them – the Terms of Reference of the Working Group on a Comprehensive Review of the Revised Kyoto Convention as well as the consolidated list of the proposals of the Customs administrations of the WCO Member States for its updating.

3. The list of proposals for the revision of the Convention includes the following institutions of customs law:

- ✓ advanced information;
- ✓ advanced rulings;
- ✓ Authorized Economic Operator;
- ✓ mutual recognition of the AEO legal status;
- ✓ customs control;
- ✓ risk management;
- ✓ customs control based on audit;
- ✓ storage of goods;
- ✓ release of goods;
- ✓ «Single Window» mechanism;
- ✓ E-payments;
- ✓ integrated supply chain management;
- ✓ transit of goods;
- ✓ transshipment of goods;
- ✓ moving of the goods by individuals (travellers).

Proposals for the modernization of the Convention affect the technical, informational and technological, methodological aspects of the improvement of customs control (modern instruments, technology): strengthening the role of customs in security matters, the use of modern instruments, technologies to support customs operations, the use of the Internet, the Time Release Study.

For comparative analysis, we remind that there are about 42 institutions of customs law in the law of the Eurasian Economic Union in customs regulation. The mentioned institutions of customs law can be conditionally divided into 7 groups on: (1) subjects, (2) functional features, (3) customs operations, (4) customs procedures, (5) customs and tariff regulation, (6) non-tariff regulation, (7) protection of law and order. For example, the following legal institutions are grouped on functionalities: customs control, currency control, customs examination, customs statistics. The institute of customs declaration and the institute for the release of goods have been provisionally assigned to the group «customs operations» and the institutions of the customs brokers, customs carrier,

temporary storage, bonded warehouse, duty-free shop are united by the common name «grouping on subjects».<sup>1</sup>

This circumstance as well as a thematic, substantive analysis of the problems of customs regulation and trade facilitation (considered, for example, by the WCO Permanent Technical Committee over the last 20 years) allows us to conclude that the consolidated proposals for the revision of the Kyoto Convention do not fully affect the current instruments (legal institutions) of customs regulation. Accordingly, the list of legal institutions, standards, rules, provisions that should be considered as part of the modernization of the Convention requires expansion.

4. Analysis of the thematic approach of stakeholder engagement (participation) in the revision of the Convention allows us to conclude that among other things in the modernization process it is also planned to consider the following legal institutions and instruments of customs administration:

- ✓ customs formalities;
- ✓ customs procedures;
- ✓ advanced ruling;
- ✓ application of customs audit, incl. electronic audit;
- ✓ application of control measures of foreign trade activities;
- ✓ penalties imposed by Customs authorities;
- ✓ appeals procedures;
- ✓ information exchange within the framework of the «Single Window» mechanism;
- ✓ provision of electronic services;
- ✓ cooperation between Customs and the Tax service;
- ✓ coordinated border management;
- ✓ integrated supply chain management.

5. Proposals for the revision of the Convention are grouped in the context of the sequence of customs operations (business processes). At the same time, this approach is not ideal, since it does not correspond to the structure of the Kyoto Convention, and does not always allow for a comprehensive analysis of a specific institution of customs law.<sup>2</sup> We believe that the methodological approaches

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<sup>1</sup> See Mozer Sergei, Ph.D. Improving of customs regulation in the context of the WTO Trade Facilitation Agreement: lecture / Moscow International Model of the World Customs Organization, the Russian Customs Academy – 2018, March 20th 2018, Lyubertsy.

<sup>2</sup> For example, the legal institution of customs control is divided into the following elements in the context of the stages: risk management systems, customs control based on audit; and the AEO Institute is divided into 2 issues: AEO general provisions, and mutual recognition of the legal status of the AEO.

for improving the instruments of customs regulation of the Convention (standards, legal institutions, regulations) can be grouped and considered as (1) in the context of customs operations (business processes), and (2) institutions of customs law (formed by the theory of law), and also (3) in the context of the structure of the Kyoto Convention.

6. Report of the Virtual Working Group on the revision of the Kyoto Convention,<sup>1</sup> which sets forth proposals for improving the Convention, referring to sources of customs regulation as well as practical recommendations, does not fully cover the actual development of the WCO (instruments, guidelines). So, in the graph «Analysis» of Report, its drafters very often refer to the norms of the World Trade Organization Agreement on Trade Facilitation. In particular, this concerns such instruments (institutions) of customs administration as advanced ruling, risk management system, release of perishable goods, use of E-payment system, customs control based on audit methods, release of goods, use of the Internet, etc. The issues of the Bali Agreement were repeatedly raised in research works.<sup>2</sup> In our opinion, *the Bali Agreement is an international instrument based on WCO instruments. Since the Bali Agreement is secondary (derivative) to the entire WCO instruments complex, it is legally incorrect to raise the thesis about priority of this Agreement over the current WCO developments (instruments and tools)*. Moreover, the thesis on interpreting the provisions of the Bali Agreement through the WCO instruments is unacceptable.

In fact, taking the competence and unconditional leadership of the WCO in the creation of modern instruments of customs regulation, *the World Trade Organization under the banner of «trade facilitation» has created*

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<sup>1</sup> Annex I to the Interim Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (6, 7 April 2017). Brussels, 24 February 2017. Annex to doc PO0095E1.

<sup>2</sup> Mozer Sergei, Ph.D. Improving of customs regulation in the context of the WTO Trade Facilitation Agreement: lecture / Moscow International Model of the World Customs Organization, the Russian Customs Academy – 2018, March 20th 2018, Lyubertsy; Goshin V.A., Mozer S.V. On the issue of the functioning of the WCO Working Group on Trade Facilitation. Academic Bulletin of the Rostov branch of the Russian customs Academy № 1, 2016. P. 18–24; Moser S.V. Analysis of the WTO Agreement on Trade Facilitation // Customs Regulation. Customs control. – 2015. – № 4. – P. 45–48; Mozer S.V. Some aspects of improving of customs regulation through the prism of the WTO Agreement on Trade Facilitation / International Conference «Treaty of the Eurasian Economic Union: New dimensions of integration» / Section «Development of the customs legislation of the EEC and its implementation in practice», December 19, 2014, The Russian Presidential Academy of National Economy and Public Administration, Moscow.

*an instrument of customs regulation.* There is a substitution of the concepts (term) «instrument of customs regulation» and «instrument of trade simplification». It should be added that neither the WCO, nor the EEU or another international organization, have the competence to comment, clarify the application of the TFA Agreement. This is the competence of the WTO (!). In our opinion, from the political point of view, *it is not entirely correct to position the TFA Agreement in the WCO as an advanced instrument of «trade facilitation», moreover, to refer to it at every opportunity.* With this approach, it looks like that it is not the WCO, but the WTO is a trendsetter in the customs sphere which, of course, does not correspond to reality. In our opinion, *the WCO is the only international and modern institution that has a serious impact on the creation of international standards, rules, legal institutions as well as on the development of ideas, concepts and technologies in the field of customs administration (regulation).* We do not lower the importance of the Bali Agreement for trade facilitation, but we proceed from the fact that, with the forthcoming review of the Kyoto Convention, an excessive reference to the TFA norms is politically incorrect. Instead, accents should be made on the current instruments of the WCO.

7. To date, there is no methodology for assessing the revision of legal instruments for customs regulation (standards, regulations, legal institutions) of the Kyoto Convention. The main directions of this work are formulated only conceptually. In this regard, it is required a certain concept, a plan for the revision of such instruments as well as methodological frameworks developed with the active participation of stakeholders and the academic community.

8. The participation of the experts of the Eurasian Economic Commission in the comprehensive revision of the instruments of customs regulation laid down by the Kyoto Convention, in our opinion, can have a positive effect on the work carried out in the WCO. And the EEC experts express their readiness to share their experience with colleagues from the WCO, obtained during the development of the EEU Customs Code and a set of legal acts adopted with the EEU Member States to develop the provisions of the new Code.<sup>1</sup> It is obvious that the participation of the EEC experts in the revision of the Kyoto Convention will, after a while, be considered as a preparatory stage, a set of activities for the subsequent accession of the EEU to the Revised Kyoto Convention.

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<sup>1</sup> Points 53–56. Report of the 18th meeting of the Revised Kyoto Convention Management Committee (3–4 May 2018), Brussels, 3 May 2018, Doc. PO0109E1a. – P. 8.

9. At the same time, it is a matter of interest the comparative analysis of the legal institutions of the EEU Customs Code for the purpose of correlating with the legal institutions (instruments, standards, rules) of customs regulation as well as the proposals of the Customs administrations of the WCO Member Countries that have been modernized, revised, implemented in the Kyoto Convention in the short term. If the EEU Customs Code is based, *inter alia*, on the standards of the Kyoto Convention, the norms of which have not been changed for the last 20 years, there is a question – which way the EEU law needs to be updated in the field of customs regulation after completion of work on the revision of the Convention. And does it make sense? In any case, the specialists of the customs block of the Eurasian Economic Commission actively monitor the process under consideration and, without a doubt, should flexibly orient in the WCO legal innovations and instruments, which, we believe, will be developed with their participation in the WCO working bodies.

## **5.6. Classification of topical issues of customs regulation considered by the Permanent Technical Committee in 1997–2018**

As part of the ongoing analysis to identify topical issues of customs administration, which should be reflected in the provisions of the revised Kyoto Convention, we turned to the working materials of the Permanent Technical Committee. The boundary of the study is 1997–2018 respectively, 159–219 meetings of the PTC. We believe that a brief overview of the systematized material as well as the classification that we offer allows us to get acquainted in detail with the scope of issues discussed at the PTC meetings on customs regulation.

First of all, we note that to date the Permanent Technical Committee is at the top of the WCO working bodies, which are united by the common name «Procedure and facilitation». In fact, this is an important governing and effective working body of the Organization, whose competence covers issues of improving customs administration. Any results of the work of WCO working bodies included in this block are forwarded to the consideration and approval of the PTC. The analysis of the work of the PTC allowed us to formulate the main issues that can be taken into consideration in the comprehensive revision of the Convention.

*It should be reminded that the Permanent Technical Committee was established on December 15, 1950 in accordance with Article V of the Convention*

*establishing a Customs Cooperation Council. This WCO Working Body acts under the overall direction of the WCO Council and Policy Commission with administrative support provided by the WCO Secretariat.<sup>1</sup>*

*As noted by WCO experts, the role assigned to the PTC at its inception was to initiate technical studies (other than as regards Nomenclature and Valuation) with the object of enabling the Council to discharge the obligations of the Convention establishing the CCC in accordance with the general purposes of the Convention. For this purpose, the powers conferred upon the Council by virtue of Article III of the Convention are save as regards the provisions of paragraphs (c), (d), (e) and (h) of that Article, delegated to the Committee insofar as they are necessary for the execution of its functions. The Committee does not have the power to make recommendations to Governments of Members or to international organizations without the express authority of the Council.*

*In addition, the PTC also performs such particular tasks as may be assigned to it by the Council or under the terms of Conventions adopted by the Council.<sup>2</sup>*

*The functions of the Permanent Technical Committee are to:*

- ✓ contribute to the strategic direction of work done by the WCO in respect of the promotion, development and administration of trade facilitation instruments and tools, in accordance with the WCO Strategic Plan;
- ✓ help to enhance co-operation between Customs administrations and governmental and non-governmental (private sector) organizations in the field of trade facilitation;
- ✓ introduce and promote initiatives aimed at improving the effectiveness of Customs through information technology and electronic commerce, Customs co-operation and the establishment of various legal instruments;
- ✓ develop various tools designed to enhance efficiency in trade (particularly the Guide to measure the time required for the release of goods), and promote their use by Members;
- ✓ contribute to the development of means and methods to facilitate, simplify and harmonize the Customs formalities applicable to postal consignments;
- ✓ provide strategic support for the WCO's capacity building programmes for its Members.

<sup>1</sup> Terms of Reference for the Permanent Technical Committee. URL: [http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures\\_and\\_facilitation/permenant\\_technical\\_committee.aspx](http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures_and_facilitation/permenant_technical_committee.aspx)

<sup>2</sup> Kadyrkulov M.A., Mozer Sergei, Lipatova N.G. The World Customs Organization as a Modern Institute of Improvement of Customs Regulation and Trade Facilitation: a monograph. Lyubertsy: Publishing house of the Russian Customs Academy, 2017. – P. 75–78. URL: [http://rta.customs.ru/nrta/attachments/3756\\_978-5-9590-0932-8.pdf](http://rta.customs.ru/nrta/attachments/3756_978-5-9590-0932-8.pdf)

*Key deliverables of the Permanent Technical Committee:*

- ✓ *report to and make recommendations to the Council on the matters within its area of responsibility;*
- ✓ *take decisions, or initiate or undertake actions in the areas for which it is responsible.*<sup>1</sup>

This study allowed us to formulate 39 blocks of questions (issues) examined during the last 20 years at the PTC meetings. In aggregate terms, these blocks combine, on average, 400 sub-questions. Thus, the scope of PTC work along with the WCO activities is obvious and deserves high appreciation. Considering that the Kyoto Convention has not been revised during the same period, we believe that referring to the grouped material in blocks and their subsequent analysis can have a positive impact on the process of a comprehensive revision of the Convention. So, the discussed issues are grouped as follows:

- 1) security, secure supply chain of goods;
- 2) border (border management);
- 3) data used for customs purposes;
- 4) documents used in the field of customs administration;
- 5) Single Window (Single Window mechanism);
- 6) customs law, compliance (legislation) in the field of customs;
- 7) identification of participants in foreign trade activity and identification of goods;
- 8) the WCO instruments and tools for the purposes of customs administration and trade facilitation;
- 9) Kyoto Convention;
- 10) measures of tariff regulation (prohibitions and restrictions);
- 11) equipment for customs purposes;
- 12) organizational matters of the activities of the Permanent Technical Committee;
- 13) carriage (transportation) of goods;
- 14) customs payments;
- 15) indicators, indicators of efficiency of customs administration and trade facilitation;
- 16) postal traffic;
- 17) programs implemented by the WCO;
- 18) projects on modernization of customs regulation;

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<sup>1</sup> Terms of Reference for the Permanent Technical Committee. URL: [http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures\\_and\\_facilitation/permanent\\_technical\\_committee.aspx](http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures_and_facilitation/permanent_technical_committee.aspx)

- 19) procedures, operations (customs);
- 20) law enforcement;
- 21) best practices in customs administration (experience of the WCO Member-Countries and observers);
- 22) classification of goods;
- 23) origin of goods;
- 24) working bodies of the WCO (materials);
- 25) decisions of the Permanent Technical Committee;
- 26) cooperation in the field of customs administration and trade facilitation;
- 27) standards in the field of customs regulation;
- 28) subjects of customs legal relations;
- 29) risk management system;
- 30) customs and its role in the regulation of foreign trade relations;
- 31) technology (customs);
- 32) goods;
- 33) trade;
- 34) transport;
- 35) trade facilitation;
- 36) Authorized Economic Operator;
- 37) individuals (physical persons);
- 38) the terms used in the customs sphere;
- 39) other.

In order to understand the depth and importance of the work done by the World Customs Organization and the Permanent Technical Committee we will consider the list of mentioned issues in detail.

*Security, secure supply chain of goods.* This block includes issues related to safe border crossing, supply chain of goods, data security, integrated supply chain management, integrated border management. These include pre-information issues (advanced information), advance passenger information, pre-scanning of goods before they are sent to the destination country (the USA case), mail (post) traffic, cross-border supply and aviation security. A separate position is taken by a question of the correlation of security issues in the provisions of the Kyoto Convention.

*Border (border management).* This position includes analytical materials and the WCO developments related to border management, integrated and co-ordinated border management, safe border crossing, cross-border supply, and cooperation of agencies at the border.

*Data used for customs purposes.* Among the issues considered by the Permanent Technical Committee, we include in this block such information as collection,

exchange and management of information, data analysis, data security, Big data, quality, data harmonization, information modeling, Data model, including related data WCO proposals, data when transit, electronic lodgment, electronic data.

*Documents used in the field of customs administration.* The named item speaks for itself. For example, this group of considered by the PTC questions can include airway bills, certificate (export), invoices, electronic filing of documents, e-ATA, e-TIR.

*Single Window (Single Window mechanism).* The issue of the «Single Window» mechanism is seen in the PTC materials, which are related to the following topics: a Single Window, block chain, Internet of things, customs clearance within «Single Window», electronic cargo transportation system, electronic customs (including strategy), electronic commerce (including strategy), electronic ATA, electronic TIR, electronic transit.

*Customs law, compliance (legislation) in the field of customs.* This block includes the issues of compliance with customs legislation, including the WCO's research on this issue.

*Identification of participants of foreign trade activity and identification of goods.* It reflects the general issues of identification of participants of foreign trade activities as well as the identifiers used, the seller's identification number, the identification of goods being moved.

*The WCO instruments and tools for the purposes of customs administration and trade facilitation.* The issues, questions, materials of the WCO working bodies, final documents, guidelines, concepts, various developments, etc., which form this group, in our opinion, are the most interesting source of information in the scientific and practical sense, including for the purpose of a comprehensive review of the Kyoto Convention. All instruments of the WCO (a block «procedures and facilitation») made publicly available on the official website of the Organization.<sup>1</sup> We should note that in the WCO understanding «tools» are *non binding informal publications developed by the WCO to assist their Members and traders in the field of Customs.*<sup>2</sup> The WCO instrument list is significant. As an example, we highlight such as the WCO Handbook on Inward and Outward Processing Procedures,<sup>3</sup> Guidelines on Customs-Tax

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<sup>1</sup> Instruments and Tools. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools.aspx>

<sup>2</sup> See the World Customs Organization Web-site. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools.aspx>

<sup>3</sup> WCO Handbook on Inward and Outward Processing Procedures. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/wco-handbook-on-inward-and-outward-processing-procedures.aspx>

Cooperation,<sup>1</sup> Study Report on Customs Brokers,<sup>2</sup> WCO Customs Risk Management Compendium,<sup>3</sup> WCO SAFE Package,<sup>4</sup> WCO Data Model,<sup>5</sup> Single Window Guidelines,<sup>6</sup> Immediate Release Guidelines,<sup>7</sup> AEO Compendium,<sup>8</sup> Transit Guidelines,<sup>9</sup> Transit Handbook<sup>10</sup> and others.

Each of the WCO instruments is unique and deserves special attention when updating the Kyoto Convention. It can simultaneously cover several legal institutions of customs law as well as it relates to various stages of a secure supply chain of goods as well as customs procedures related to customs operations, including prior to submission of a goods declaration and introducing (placing) the goods under customs procedure.

In our opinion, when revising the Convention, it is necessary to use not only the WCO instruments related to the «Procedure and simplification» block, but also to other blocks. Such tools are grouped as follows:

- 1) procedures and facilitations;<sup>11</sup>
- 2) Nomenclature and Classification of Goods;<sup>12</sup>

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<sup>1</sup> Guidelines on Customs-Tax Cooperation. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/guidelines-on-customs-tax-cooperation.aspx>

<sup>2</sup> Study Report on Customs Brokers. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/study-report-on-customs-brokers.aspx>

<sup>3</sup> WCO Customs Risk Management Compendium. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/risk-management-compendium.aspx>

<sup>4</sup> WCO SAFE Package. URL: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/safe\\_package.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/safe_package.aspx)

<sup>5</sup> WCO Data Model. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/data-model.aspx>

<sup>6</sup> Single Window Guidelines. <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/single-window-guidelines.aspx>

<sup>7</sup> Immediate Release Guidelines. URL:<http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/immediate-release-guidelines.aspx>

<sup>8</sup> AEO Compendium. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/aeo-compendium.aspx>

<sup>9</sup> Transit Guidelines. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/transit-guidelines.aspx>

<sup>10</sup> Transit Handbook. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/transit-handbook.aspx>

<sup>11</sup> Procedures and facilitations. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools.aspx>

<sup>12</sup> Nomenclature and Classification of Goods. <http://www.wcoomd.org/en/topics/nomenclature/instrument-and-tools.aspx>

- 3) valuation;<sup>1</sup>
- 4) origin;<sup>2</sup>
- 5) enforcement and compliance;<sup>3</sup>
- 6) capacity building;<sup>4</sup>
- 7) integrity.<sup>5</sup>

Again we note that the WCO instruments that form these blocks are publicly available on the official website of the World Customs Organization.

*Kyoto Convention.* The analysis of the PTC materials on the revision of the Convention makes it possible to put them in a separate cluster of issues. This includes the history of the issue, the entry into force of the Convention, its revision, ratification, the strategy developed by the WCO of the guidelines for the implementation of the Convention, the economic package, indicators, the terminology used, the fight against customs violence, customs technology, the procedures for transit and processing of goods in the customs territory, customs seals. The listed sub-questions deserve special attention and require detailed analysis in the process of modernization of the Convention.

*Measures of tariff regulation (prohibitions and restrictions).* This group regards the prohibitions and restrictions, applicable in international trade relations, as well as issues of certification of transported goods.

*Equipment for customs purposes.* This cluster of issues relates, in particular, to the use of containers for transportation of goods, as well as various devices for customs purposes, including drones. The group includes the theme of the use of customs seals, also electronic ones.

*Organizational matters of the Permanent Technical Committee activities.* This block does not affect the Kyoto Convention, but it is interesting in the context of a study of the WCO activities. We included in this group the questions related to the functioning of the PTC, the Committee's work schedule, action plans, the preparation of reports, monitoring, programs being implemented, and the effectiveness of the Committee's activities.

*Customs Payment.* The legal institute of customs payments, along with the institution of customs operations, the valuation, and the country of origin of

<sup>1</sup> Valuation. URL: <http://www.wcoomd.org/en/topics/valuation/instruments-and-tools.aspx>

<sup>2</sup> Origin. URL: <http://www.wcoomd.org/en/topics/origin/instrument-and-tools.aspx>

<sup>3</sup> Enforcement and compliance. URL: <http://www.wcoomd.org/en/topics/enforcement-and-compliance/instruments-and-tools.aspx>

<sup>4</sup> Capacity Building. URL: <http://www.wcoomd.org/en/topics/capacity-building/instrument-and-tools.aspx>

<sup>5</sup> Integrity. <http://www.wcoomd.org/en/topics/integrity/instrument-and-tools.aspx>

goods, are, in our opinion, the basic institutions of customs and financial law that regulate customs relations between customs and participants of foreign trade activities. Undoubtedly, this issue was repeatedly considered by the WCO experts at the PTC meetings. Among other things, attention was paid to customs payments in general, guarantee mechanisms, as well as recommendations for improving mechanisms for paying of customs duties.

*Indicators, indicators of efficiency of customs administration and trade facilitation.* Development of indicators characterizing the efficiency of the Customs authorities, including the efficiency of customs operations, customs control, is a very interesting area of the WCO work, as well as research in the scientific community. Unfortunately, to date, the international customs community has not created uniform methods of assessment, indicators, characterizing the effectiveness of customs administration (regulation) in the field of customs. Indicators, which we had occasion to familiarize with, rather relate to trade, but not to customs. In this regard, the WCO, if necessary, has the opportunity to strengthen the direction of this activity for the nearest future. We believe that such work should be carried out by the WCO experts, WCO Members and its observers. At the same time, the theoretical and potential transfer of such an initiative to a platform, for example, the WTO or the IMF, in our view, is not promising. Within the framework of considering issue the PTC has highlighted the indicators characterizing the activity of participants of foreign trade activities, logistics in general, the definition of benchmarking as well as the preparation of the WCO Guide on relevant indicators.

*Postal traffic.* The volume and frequency of the issues considered at the PTC meetings related to the topic of postal traffic allowed us to bring them into a separate group. In particular, it includes such questions as international postal traffic, standards, postal traffic, export, transit of postal items, express-mail, customs clearance, application of the risk management system when moving postal items, the relationship of Customs authorities with Post administrations, the use of documents (declarations, air waybills) as well as scientific research in the area under consideration.

*Customs procedures, operations.* As noted above, the block of customs procedures and customs operations is the most interesting for the scientific and practical study of problems of customs administration, considered during the last 20 years at the PTC meetings. Appealing to the title of the International Convention on the Simplification and Harmonization of Customs Procedures, the study block of questions is, in fact, the main one in the revision process of the Convention. Previously examined at the Committee's meetings, the WCO sub-questions and materials are important empirical materials for the experts

in the revision process of the Convention. Having familiarized with the materials of the PTC on the issues of improving customs procedures, we formulate the following positions:

- 1) customs procedures (general issues);
- 2) simplification of customs procedures;
- 3) transparency of customs procedures;
- 4) customs procedure for export, including postal items;
- 5) customs procedure for re-importation;
- 6) customs processing procedure;
- 7) customs transit procedure;
- 8) customs procedure of transit under the Kyoto Convention;
- 9) customs procedure of duty-free trade;
- 10) customs procedure of free customs zone;
- 11) customs procedure of a temporary storage of goods;
- 12) customs procedure of temporary admission;
- 13) customs procedure of duty-free trade;
- 14) special customs zones;
- 15) free trade zones;
- 16) customs formalities;
- 17) customs inspection (USA precedent);
- 18) release, including immediate;
- 19) declaring, including postal items;
- 20) documents (electronic lodgment);
- 21) customs clearance, including postal items as well as within the framework of a «Single Window» mechanism;
- 22) customs control after the release of goods (post-audit control);
- 23) advanced information;
- 24) electronic submission (lodgment) of documents for customs purposes;
- 25) electronic transit.

The WCO Secretariat, in conjunction with the Member States and the observers of the Organization, pays sufficient attention to the above issues within the framework of the meetings of the Permanent Technical Committee. The WCO accumulated material on the subject of improving customs procedures is invaluable, including for the purpose of modernizing the Kyoto Convention.

*Law enforcement.* This block of issues covers customs and trade offenses, including offenses in the context of the Kyoto Convention; customs offenses, organized crime, illegal trade (for example, tobacco), smuggling, counterfeiting, piracy, corruption, money laundering, law enforcement, complaints against

actions of customs authorities. This can include the cooperation of the WCO and Interpol, the joint work of the PTC and the Enforcement Committee as well as the Customs Enforcement Network.

*Best practices in customs administration (experience of the WCO Member Countries and observers).* The analyzed block of issues considered at the PTC meetings is presented by presentation materials of the WCO Member States and observers on various issues of customs regulation as well as simplification and harmonization of customs procedures.

*Classification of goods.* The content of the topic is clear from its name.

*Origin of goods.* The content of the topic is obviously based on its name.

*Working bodies of the WCO (materials).* We include the reports of the WCO working bodies to this group, which are sent to the PTC for review in accordance with the results of their work. In fact, such documents at the official level record the positions of the participants of the meetings on the issues of simplification and updating customs procedures.

*Decisions of the Permanent Technical Committee.* This type of information sources like the above-mentioned materials of the WCO's working bodies, reflect the positions of WCO Members on topical issues of customs regulation. Without a doubt, they can be the object of research in updating the Kyoto Convention.

*Cooperation in the field of customs administration and trade facilitation.* The following group forms the following issues and directions of customs co-operation: customs cooperation (general issues), cooperation of agencies at the border, interaction of customs with the participants of foreign trade activities, the administration of railways, Post, Tax administration, etc.

*Subjects of customs legal relations.* This group is represented by the positions, regulations, ideas, proposals voiced by the WCO experts at the PTC meetings that relate to the activities of the participants of customs legal relations. Among them, for example, the declarant (model, licensing, proposals), small and medium enterprises, post, Authorized Economic Operator, tax service, etc.

*Risk management system.* To date, the legal institution of customs control in the international customs community is associated with a risk management system. We have not identified any methodology, recommendations in the WCO community, related to improving the ways, forms and methods of customs control. With the exception of the WCO Customs Risk Management Compendium (in two volumes)<sup>1</sup> as well as the Guidelines on Customs Control for the Kyoto

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<sup>1</sup> WCO Customs Risk Management Compendium. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/risk-management-compendium.aspx>

Convention, 1999,<sup>1</sup> there are no other materials on the institution of customs law under consideration. Undoubtedly, the mentioned WCO materials, along with the Kyoto Convention, form the basis for the modernization of customs control by the Customs authorities of WCO Member Countries. However, we believe that additional development of scientific and practical recommendations, concepts and guidelines on the institution of customs law under consideration is necessary. With regard to the PTC meetings, much attention has been paid to the issues of risk management including its application.

*Customs and its role in the regulation of foreign trade relations.* The block under consideration is formed by the following topics: the future of Customs, Customs in the 21<sup>st</sup> century, the modernization of Customs authorities, the global network for Customs including conceptual approaches for its development, electronic customs, including strategy, integrity issues, Customs and regional integration, Customs and market, cooperation of customs with business, railways, post.

*Customs technology.* The improvement of Customs administration is connected with the use of modern customs technology. A considerable amount of reports from various WCO working bodies are devoted to the question of their use in today customs activities. The most comprehensive classification of the sub-questions of this block is presented in the proposals of the Virtual Working Group on the Revision of the Kyoto Convention in paragraph 5.5.<sup>2</sup>

*Goods.* An independent group is a block, which we identified under the name «goods». It includes the subject of security and quality of transported goods, identification, certification, conformity assessment as well as the classification of goods. Moreover, depending on their functional purpose, the WCO materials address the issues of the movement of cultural property (goods), express-mail, international mail, humanitarian aid, animals, tobacco, weapons, diamonds and chemical products.

*Trade.* One of the most relevant topics, examined by experts on various WCO platforms, is trade facilitation. In the theoretical sense, trade and customs administration procedures are divided. At the same time, these two independent concepts (terms) and institutions are interrelated. In our opinion, the improvement and modernization of customs administration (regulation) positively affects the simplification (facilitation) of trade procedures. Accordingly,

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<sup>1</sup> Guidelines on customs control. Kyoto Convention. General Annex. Chapter 6. The World customs Organization. 1999. URL: <http://www.wcoomd.org/~media/wco/public/global/pdf/topics/wto-atf/dev/rkc-guidelines-ch-6.pdf>

<sup>2</sup> 5.5. Overview of the direction of updating the Kyoto Convention.

the modernization of the instruments of customs regulation has a positive effect on customs and foreign trade relations. In our opinion, the development at the international level of modern instruments of customs administration is the competence of the World Customs Organization. And any projects related to the development (by other international organizations) of instruments of *customs* administration under the signboard of «trade facilitation» (for example, the above-mentioned precedent of the TFA) do not position the image of the WCO in the correct context. The problem is not that such instruments are created, but that they are compiled on the basis of previously created by the WCO instruments tools and, in the aftermath, are presented by third Parties as breakthrough in the field of Customs. Moreover, in the context under consideration, the thesis of individual experts on the full conformity of the WCO instruments and tools to such developments (instruments), for example, created by the WTO, is unacceptable. In this regard, the modernization of the Kyoto Convention on the WCO platform will, of course, strengthen the WCO image and role as the main international institution responsible for improving customs regulation and simplification of customs procedures, which in turn facilitate the trade.

Among the issues addressed by the PTC, we highlight such as cross-border supply of goods, supply management, trade corridors, trade logistics, international treaties, e-commerce and its strategy, dematerialization of documents, informal trade, trade offenses, trade facilitation, including national committees, the basic principles of trade facilitation. We understand that when reviewing the Kyoto Convention, the developers and lobbyists of the TFA Agreement will refer to its provisions to the maximum extent possible. However, in this case, it should not be forgotten that the Bali Agreement itself is a compilation of the various WCO instruments and tools created during the last years of the WCO activities. In this regard, it is proposed to minimize such references and directly refer to the WCO developments (instruments and tools). If we talk about strengthening the image of WCO and its role in harmonization and simplification of customs procedures, as well as trade facilitation, another approach will not be ideal in the political sense when reviewing the Convention.

*Transport.* We consider the issues of moving goods by road, rail and air transport in the group under consideration, as well as simplification and cooperation of carriers with Customs authorities.

*Trade facilitation.* An equally interesting group of issues that is paid attention to by experts of the PTC is the simplification of trade procedures. This block comprises general issues of trade facilitation, simplification of costs, simplified procedures, simplification (customs benefits) for the AEO and air

carriers, the establishment of national trade facilitation committees within the framework of the Bali Agreement, and others.

*Authorized Economic Operator.* The legal institution of the Authorized Economic Operator can truly be called the most relevant and significant for the organization of a secure supply chain of goods. The issues associated with the functioning of this institution are actively discussed at the meetings of the SAFE Working Group<sup>1</sup> and the Permanent Technical Committee. Among other things, the experts consider such as modernization of requirements and conditions for granting the legal status of the AEO, classification of special simplifications (customs benefits) depending on the type of activity of the Authorized Economic Operator,<sup>2</sup> mutual recognition of the AEO legal status, etc.

*Individuals (natural person).* A separate block identifies the problematic of movement of goods by individuals. This group can include, for example, advanced information on the movement of passengers across the border, biometric passenger data.

*Terms (glossary).* When conducting scientific and practical research on the subject of customs regulation, scientists and experts often turn to the conceptual apparatus in the field of customs. The work on the updating of the glossary of terms is carried out by the WCO Secretariat and working bodies on an ongoing basis. The source of information under consideration, without a doubt, should be used as part of the process of modernization of the Kyoto Convention.

## Conclusions

In the light of the foregoing, we formulate the conclusions on the paragraph.

1. For the purposes of reviewing the Kyoto Convention, it is important to highlight the current issues of customs regulation, considered by the World Customs Organization on the «Procedure and simplification» block for the last 20 years. The working materials of the Permanent Technical Committee accumulate the existing issues in the field of customs, and their analysis and subsequent classification allows accomplishing the task.

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<sup>1</sup> Kadyrkulov M.A., Mozer Sergei, Lipatova N.G. The World Customs Organization as a Modern Institute of Improvement of Customs Regulation and Trade Facilitation: a monograph. Lyubertsy: Publishing house of the Russian Customs Academy, 2017. URL: [http://rta.customs.ru/nrta/attachments/3756\\_978-5-9590-0932-8.pdf](http://rta.customs.ru/nrta/attachments/3756_978-5-9590-0932-8.pdf)

<sup>2</sup> See Mozer S.V. Classification of special simplifications (customs benefits) for the AEO: initiatives of the World Customs Organization // Scientific note of St. Petersburg branch of the Russian Customs Academy. – 2017. – № 3 (63). – P. 10–18. URL: <http://customs-academy.net/?p=11655>

2. For the period from 1997 to 2018, the Permanent Technical Committee considered about 400 topical (relevant) issues of customs regulation, which can be conditionally divided into 39 blocks (themes). The classification is given above. Among them there are customs procedures and customs operations, best practices of customs administration, security, a secure supply chain, border management, the «Single Window» mechanism, risk management system, a data model, instruments and tools of the WCO for customs administration and trade facilitation, customs payments, customs technologies, trade facilitation, cooperation of Customs authorities and participants of customs legal relations, etc.

3. The above-mentioned thematic classification provides a comprehensive view of the multidisciplinary activities of the WCO, the grandiosity of the project on harmonization and simplification of customs procedures, and can be used to prepare scientific and methodological recommendations for the revision of the Kyoto Convention.

4. In the light of scientific research on the features of the WCO functioning, the obtained thematic grouping of the issues addressed by the Organization may be a matter of interest for capacity building. For example, the above-mentioned materials can be used in the educational process as well as the formation of themes (topics) of control works, coursework, diploma projects in universities as well as dissertational research on the problems of international legal regulation of customs legal relations.

## **5.7. Proposals for the revision of the Kyoto Convention**

Based on the experience related to the preparation and implementation of projects for the updating customs administration in the EEU Member States, in this section of the monograph we present a scientific and practical view on the organizational, legal and procedural aspects of the forthcoming revision of the Kyoto Convention. Our approaches are based on the results of the work of specialists and experts of the customs block of the Eurasian Economic Commission, which, in our opinion, deserve good appreciation.

In this section we will consider the issues of the organizational and legal mechanism, the action plan, referring to the WCO materials and legal regulation in the Eurasian Economic Union.

### **5.7.1. Plan of activities for the revision of the Kyoto Convention**

To date, the Virtual Working Group has prepared an Implementation Plan for the revision of the Kyoto Convention.<sup>1</sup> The Implementation Plan (hereinafter – the Plan) describes the main steps that will be taken to fully revise the Convention, which was agreed at the 16th meeting of the Revised Kyoto Convention Management Committee in April 2017. The Plan provides an overview of the planned main tasks related to the implementation process and the proposed timetable. It is noted that the Plan is a «living» document, which will vary depending on subsequent research and the decisions of RKCMC.<sup>2</sup> The proposed annual workflow specified in the timetable should continue until the revision of the Convention is fully completed. At the end of the review process the Revised Kyoto Convention Management Committee should present a complete reviewed RKC for adoption.

It should be recalled that the overall objective of the full revision of the Kyoto Convention is to update and modernize the Convention to facilitate trade, improve efficiency and compliance with customs legislation, and encourage the WCO Members to accede to the Convention. In addition, the process of implementing such a revision makes it possible to eliminate the risk of a non-standardized approach. The WCO experts believe that it is also important to create a future-proof (forward-looking) mechanism that allows the Convention to take into account the forthcoming changes in such important areas as e-commerce, security, digital customs, customs and tax cooperation, etc.<sup>3</sup>

Concerning the revision of the Convention itself, we note that according to the Final Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (2017) the Working Group based on its new mandate will be composed of all interested WCO Members (contracting parties as well as non-contracting parties) and the WCO Secretariat. We do hope that the WCO observers will be also included in this group. The primary tasks for the new WG would be to address fundamental horizontal issues; and consider the outcome of the Secretariat's study on «How International Organizations review / update and monitor the implementation of their respective Conventions» and provide recommendations as to the future structure of the instrument.

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<sup>1</sup> Revised Kyoto Convention Implementation Plan for the complete review of the RKC (Project and action Plan). Annex I to Annex to Document PO0099E1 (Final Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee).

<sup>2</sup> Final Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (13–14 November 2017). Annex to Document PO0099E1. Brussels, 09 October 2017 – P. 2.

<sup>3</sup> Ibid.

Taking into account the tasks assigned to the Working Group, it is recommended to establish three Sub-Groups each reporting directly to the WGCR RKC. The Sub-Groups should work in parallel to ensure coherency and report directly to the WGCR RKC on a quarterly basis. The WGCR RKC is expected to provide feedback to the respective Sub-Groups through meetings scheduled for no later than two weeks after the receipt of the Sub-Groups progress reports.<sup>1</sup>

It is suggested that the three Sub-Groups would be accountable as follows:

- The RKC body and relevant horizontal issues;
- The RKC General Annex;
- The RKC Specific Annexes and Guidelines.

It should be noted that the above-mentioned Implementation Plan is divided into 5 blocks each of which is related to the structure of the Convention as well as guidelines for its implementation. Let's consider the content of the Plan.

One of his *first steps* is a creation of the Working Group. The implementer (performer) is the Revised Kyoto Convention Management Committee.

The next stage is the *review phase*, within the framework of which it is planned to create three Sub-Working Groups that will work in parallel. At this stage, it is planned, if necessary, to update the Plan, discuss whether the Revised Kyoto Convention should remain a Convention or become a Framework of Standards, prepare recommendations to the Revised Kyoto Convention Management Committee on this issue, discuss the future structure of the new instrument. The listed activities are carried out by the WGCR RKC.

*The third phase is the review of RKC Body.* The following steps have been identified for this phase: revision and updating the preamble and chapters of the Convention, the development of a monitoring and compliance mechanism, the revision and updating definitions, the revision and updating transitional measures, development a future proof mechanism, review and evaluate how the SAFE and other WCO instruments and tools can be integrated in the best way into the Revised Convention, the preparation of reports and recommendations on the progress of work to be submitted to the Working Group, the adoption of interim reports and the recommendations of the Working Group. This work will be carried out by a Sub-Group that has a competence to review the text (body) of the Convention and to consider relevant horizontal issues. At the same time, the last item of the section of the Plan under consideration on interim reports

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<sup>1</sup> Final Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (13–14 November 2017). Annex to Document PO0099E1. Brussels, 09 October 2017 – P. 2.

and recommendations is prepared by the Revised Kyoto Convention Management Committee.

*The fourth stage* is the revision of the General Annex. This group includes the following actions: article by article revision of the General Annex, the revision and updating of the general principles and definitions, the incorporation of the recommendations of the 2016 Working Group, the preparation of progress reports and recommendations on the Revised General Annex submitted to the Working Group, the adoption of the interim report and the recommendations of the Working Group. The authorized entity for the implementation of these steps is the Sub-Group on the revision of the General Annex. At the same time, as for the third stage, the adoption of the interim report and recommendations of the Working Group is carried out by the RKCMC.

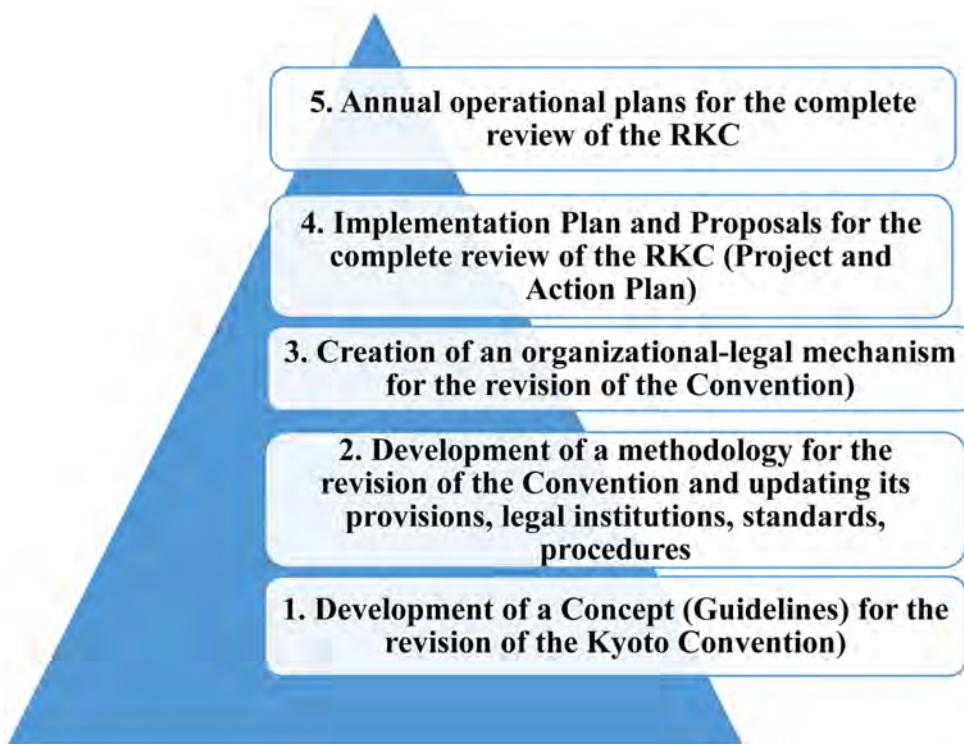
Finally, at *the fifth phase*, Specific Annexes and Guidelines are revised. The following steps are included in the phase under consideration: revision and modernization of the Specific Annexes and Guidelines of the Revised Kyoto Convention, revision and modernization of principles and definitions, incorporation of the recommendations of the Virtual Working Group 2016, preparation of reports and recommendations on the progress of the revision of the Specific Annexes and Guidelines submitted to the Working Group. The listed items of the Plan are carried out by the Sub-Group, which is responsible for the revision of the Specific Annexes and Guidelines.

The last two activities of the Plan – the adoption of interim reports and recommendations of the Working Group as well as the adoption of a full review of the Kyoto Convention – are carried out by Revised Kyoto Convention Management Committee.<sup>1</sup>

*In general, the prepared Action Plan, in our view, is a good basis for the modernization of the Kyoto Convention. However, it does not contain several important positions. Among them – (1) development of a Concept (Guidelines) for the revision of the Kyoto Convention, (2) preparation of a Methodology for the revision of the Convention (and modernization of its provisions, legal institutions, standards, procedures), and (3) creation of an organizational-legal mechanism for the revision of the Convention. In addition to the above, the Action Plan can be supplemented with a clause about the popularization of the ongoing work on the revision of the Kyoto Convention in the framework of institutional development: working with the media, organizing open lectures, discussions, conferences. Let's consider these issues in more detail.*

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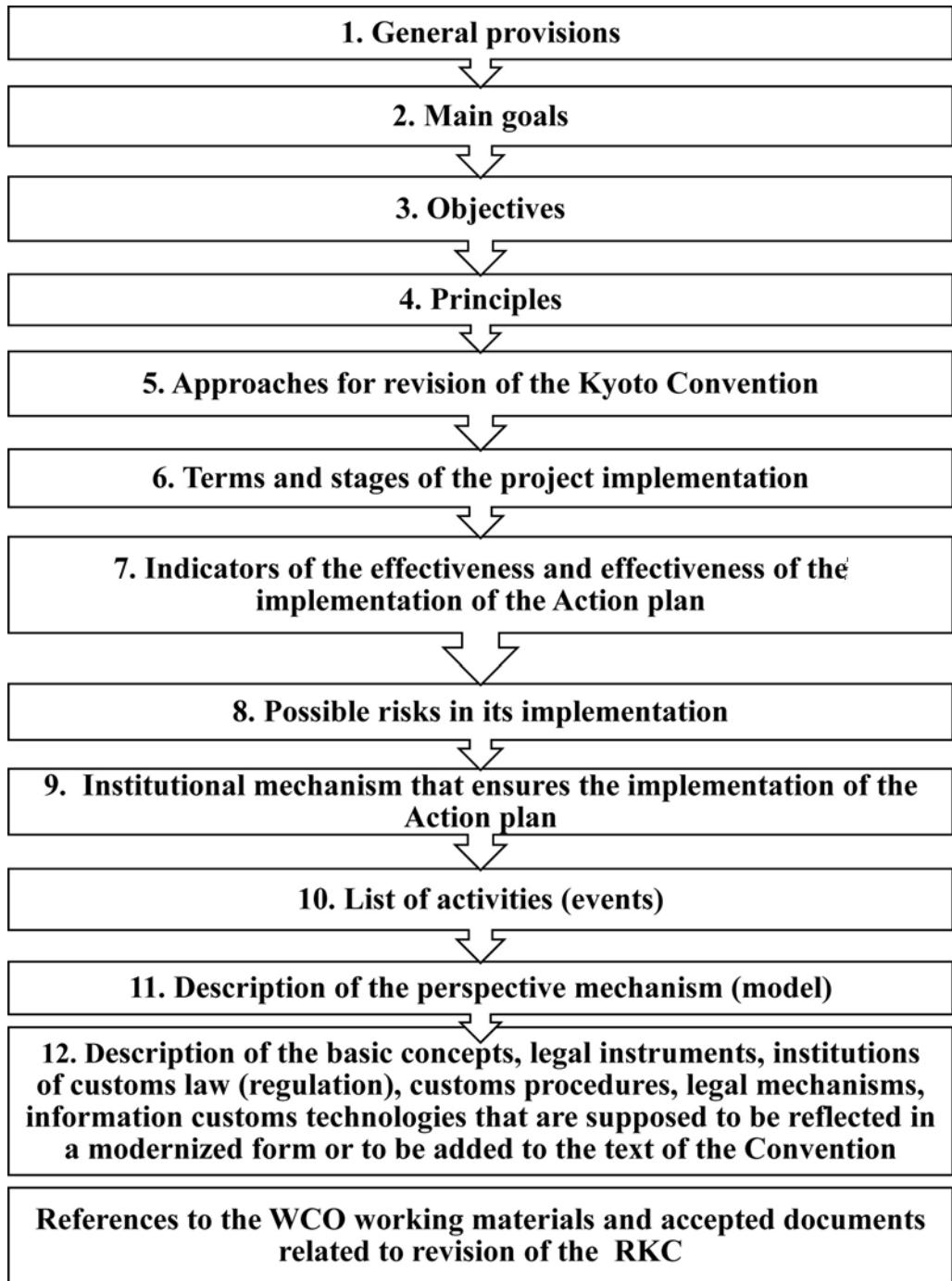
<sup>1</sup> Annex I to Annex to Document PO0099E1. RKC Implementation Plan for the complete review of the RKC (Project and Action Plan).



*Scheme 1. Basic organizational approaches for the RKC revision*

### **5.7.2. Concept of the revision of the Kyoto Convention**

Today, the experts of the WCO Member States and observers have an opportunity in the process of improving customs administration to study the issues of updating the Kyoto Convention only on the basis of working materials of the RKCMC meetings as well as departmental analytical research and developments (materials) if available. Such materials are posted on the information resource of the WCO and are available only to authorized persons of the WCO Members. Even if one assumes that the specialists involved from the Customs services of the WCO Member Countries have an access to these working materials, they are not able to promptly enter into the matter without first getting acquainted with the full package of documents on revision of the Kyoto Convention, including the dynamics of the issue, existing problems, proposals of the Parties, etc. This takes time, which is always lacking. And it is very important not to lose the details.



*Scheme 2. Sections of the Concept of the Revision  
of the Kyoto Convention*

In the process of reviewing the Convention, the experts from the WCO Member States, observers as well as from the WCO Secretariat, who participate in this process, in our opinion, **need to have a basic, consolidated document (Concept, Guidance, Strategy)**, where it is systemized such sections as *main goals, objectives, principles, approaches for revision of the Kyoto Convention, the terms and stages of the project implementation, indicators of the effectiveness and effectiveness of the implementation of the Action plan, the possible risks in its implementation, the institutional mechanism that ensures the implementation of the plan, a list of activities (events), description of the perspective mechanism (model)*. Moreover, in this document, as we see, *the description of the basic concepts, institutions of customs law (regulation), customs procedures, legal mechanisms, information customs technologies should be fixed that are supposed to be reflected in a modernized form or to be added to the text of the Convention*. In addition, the Concept should be accompanied by *references to the WCO working materials and accepted documents in the field under consideration*. In other words, the Concept is a kind of compass, a guide for the revision of the Convention.

We need to note, a concept is understood as the result of a generalized schematization of the material of direct descriptions of the situation and the course of activity.<sup>1</sup> The term concept (from the Latin «conception») means a system of views, a common understanding of something; the main idea, the constructive principle.<sup>2</sup> In management theory, the purpose of the concept is to define the key directions of the operation of the management object, which involves identifying ways and technologies to achieve the goals set, identifying the main factors for achieving them. A well thought-out concept is, first of all, the directions, priorities and technologies for the development of the management facility for the long-term period.<sup>3</sup> The concept should present the most priority directions for the development of the management object for a specific period of time or until the goal is achieved. It essentially serves as a generally presented scenario for achieving the goals, which also need to be clarified in the process of concept development. In addition, the concept defines the ways of transition from the

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<sup>1</sup> Methodological dictionary for managers. URL: <http://voluntary.ru/termin/koncepcija.html>

<sup>2</sup> Vlasenko O.N. Normative legal technique. Institute of Legislation and Comparative Law under the Government of the Russian Federation, 2013; Abramova A.I., Vlasenko N.A. Formulation of the idea and preparation of the concept of a normative legal act. URL: <https://scicenter.online/yuridicheskaya-tehnika-scicenter/formulirovanie-idei-podgotovka-kontseptsii-157147.html>

<sup>3</sup> Strategic management. Concept. URL: <https://studme.org/1350082618647/menedzhment/kontseptsiya>

current position of the object to the desired one in accordance with the goals set by the subject of management.<sup>1</sup> In this case the large concept should contain the following components.

1. General description and assessment of the state of the object and its position in the external environment.
2. Objectives of the development of the object for a given period.
3. Problems and tasks that must be solved to achieve strategic goals.
4. Ways and stages (phases) of achieving strategic goals.
5. Expected results and state of the controlled object at the end of the specified period.
6. Indicators by which the degree of achievement of strategic goals can be assessed.
7. Characterization of the management system that ensures achievement of strategic goals.<sup>2</sup>

The term concept is used in the theory of legal technology, according to which a concept (of a normative act) performs an important task in the law-making process. It determines the general limits of the future legal regulation, which includes ensuring compatibility and feasibility of the proposed act in conjunction with existing regulatory legal acts, strict observance of its species identity, substantive regulation, regulatory and structural division of the legal material placed in the draft.<sup>3</sup> The concept of a draft regulatory legal act based on a common understanding of the term, is a proposal, a proposed model, a legal framework for settling the actual situation. The draft normative legal act is an interrelated correlation of subjective legal rights and legal obligations, powers and legal responsibility, reflected in the concept of the document. The perfection (updating) of the concept, its regulatory logic – an indicator of the quality of the future law, basically – the condition for the effectiveness of legal regulation.<sup>4</sup>

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<sup>1</sup> Strategic management. Concept. URL:<https://studme.org/1350082618647/menedzhment/kontseptsiya>

<sup>2</sup> Ibid.

<sup>3</sup> Vlasenko O.N. Normative legal technique. Institute of Legislation and Comparative Law under the Government of the Russian Federation, 2013; Abramova A.I., Vlasenko N.A. Formulation of the idea and preparation of the concept of a normative legal act. URL: <https://scicenter.online/yuridicheskaya-tehnika-scicenter/formulirovanie-idei-podgotovka-kontseptsii-157147.html>

<sup>4</sup> Ibid.

In the light of the above, we draw attention to the fact that, to date, the WCO experts have developed a reduced *list of activities (events)*,<sup>1</sup> which is given above, as well as *proposals for the modernization of the Kyoto Convention*. It is necessary to remind, that we are talking about the Interim Report of the Virtual Working Group prepared for the Revised Kyoto Convention Management Committee on April 6–7, 2017, which outlined proposals that affect such stages (business processes) as the phase preceding the customs clearance, the phase of customs clearance, phase after the release of goods and, finally, related institutions (operations).<sup>2</sup> Materials on this subject are listed in paragraph 5.5 of this monograph.<sup>3</sup>

The document we are speaking about can be the *Concept for the Revision of the Kyoto Convention*. After the Concept is created, it is possible to move on to another stage – the preparation of the Action Plan for the revision of the Convention and the creation of a Network Schedule for its Implementation. On the other hand, if developed Action Plan is filled with the above-mentioned sections with the necessary explanations, then it can also fulfill the role of the Concept (Guidelines, Strategies). Appealing to the theory of legal technology, ideally we also allow the development of the *Concept of the Kyoto Convention*. The experts should clearly understand what is required from them in the process of reviewing the Convention; and in case of controversial issues they need promptly to refer not only to the materials of the meetings of the RKC or the WGCR RKC, but, above all, to the Concept itself. In the process of reviewing the Convention, it is important to follow a single strategic line. In our opinion, it can be provided either by the development of an independent *Concept (Strategy Guidelines)* or by a major change and filling the existing draft Action Plan for the RKC revision with the relevant sections.

As an example, we refer to the Concept of Development of the Customs Authorities of the Russian Federation (hereinafter – Development Concept), which was approved by the Decree of the Government of the Russian Federation № 2225-p of December 14, 2005. The Development *Concept* of customs bodies determines the *main goals, tasks and directions of development of customs bodies, a system of measures* for the implementation of the Concept. *It is the basis for the development of programs and plans for the development of the*

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<sup>1</sup> See. Final Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (13–14 November 2017). Annex to Document PO0099E1. Brussels, 09 October 2017.

<sup>2</sup> Annex I to the Interim Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (6, 7 April 2017). Brussels, 24 February 2017. Annex to Doc. PO0095E1.

<sup>3</sup> 5.5. Overview of the direction of updating the Kyoto Convention.

customs bodies of the Russian Federation for the medium and long term.<sup>1</sup> The implementation of this Concept has formed the basis for ensuring the state's interests in the customs sphere, countering threats to economic security and creating favorable conditions for foreign trade. Further improvement is provided through the *formation of universal instruments* and the *establishment of performance indicators*, depending on the dynamically changing external environment and internal policy of the state.<sup>2</sup>

In December 2012 the Government of Russia has approved the Strategy of the Customs Service of the Russian Federation until 2020. It defines the *key conditions and priorities for improving the Customs service* in the long term in connection with long-term goals and objectives.<sup>3</sup>

Another example follows from the experience of the Eurasian Economic Commission on the development of the «single window» mechanism in the Member States of the Eurasian Economic Union (Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia). To successfully promote and obtain the necessary result, the Union bodies adopted the documents of strategic and operational planning – the Action Plan for the implementation of the Guidelines for the development of the Single Window» mechanism, as well as the annually approved detailed plans.<sup>4</sup> We will notice, that that the Action Plan was approved by the Decision of the Supreme Eurasian Economic Council of May 8, 2015 № 19 «On the Plan of measures for the implementation of the Main Directions for the development of the «Single Window» mechanism in the system of regulation of foreign economic activity». It is available in English on the official website of the EEC.<sup>5</sup>

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<sup>1</sup> I. General provisions of the Concept for the Development of the Customs Authorities of the Russian Federation. Approved by the Decree of the Government of the Russian Federation of December 14, 2005 № 2225-p. URL: <https://www.alta.ru/tamdoc/05pr2225/>

<sup>2</sup> See I. General provisions of the Strategy for the Development of the Customs Service of the Russian Federation until 2020. Approved by the Decree of the Government of the Russian Federation of December 28, 2012 № 2575-p. URL: <https://www.alta.ru/tamdoc/12rs2575/>

<sup>3</sup> Strategy of Development of the Customs Service of the Russian Federation until 2020. Approved by the Decree of the Government of the Russian Federation of December 28, 2012 № 2575-p. URL: <https://www.alta.ru/tamdoc/12rs2575/>

<sup>4</sup> Sekerbayeva D.K., Mozer S.V. Prospects for the development of a national «single window» mechanism in the Member-States of the Eurasian Economic Union at the current stage // Academic Bulletin of the Rostov Branch of the Russian Customs Academy № 3 (28), 2017. – P. 17. URL: <http://customs-academy.net/?p=11223>

<sup>5</sup> Collection of regulatory legal acts to implement and develop the «single window» mechanism in the Member-States of the Eurasian Economic Union for 2014-2015. URL: [http://www.eurasiancommission.org/ru/act/tam\\_sotr/edinoe\\_okno/Documents/%D0%A1%D0%B1%D0%BE%D1%80%D0%BD%D0%B8%D0%BA\\_%D0%9D%D0%9F%D0%90%D0%B0%D0%BD%D0%B3%D0%BB\\_All\\_2.pdf](http://www.eurasiancommission.org/ru/act/tam_sotr/edinoe_okno/Documents/%D0%A1%D0%B1%D0%BE%D1%80%D0%BD%D0%B8%D0%BA_%D0%9D%D0%9F%D0%90%D0%B0%D0%BD%D0%B3%D0%BB_All_2.pdf)

Thus, the development by the experts of the Working Group on the Comprehensive Review of the Kyoto Convention of an independent Concept (Guidelines, Strategies) for the revision of the Convention, or the finalization of the Action Plan, taking into account the above-mentioned recommendations, is the cornerstone of successful work to revise the Convention. We believe that not only Member States, but also the WCO observers – customs and economic unions, representatives of the business community as well as academic circles – can be involved in the development of such a Concept.

### **5.7.3. On the Methodology of the revision of the Kyoto Convention**

In paragraph 5.7.1<sup>1</sup> of our research we proposed to supplement the Action Plan with item on the development of a methodology for the revision of the Kyoto Convention (updating regulations, legal institutions, standards, procedures). It is necessary to note that in our understanding, the methodology is a rule, a certain ready-made «recipe», an algorithm, procedures for any targeted action. It is close to the term «technology». The methodology differs from the method by specifying techniques and tasks. The necessary requirements for the methodology, as for a specific algorithm, procedure, are: realism; reproducibility; clarity; compliance with the goals and objectives of the planned action; validity; effectiveness.<sup>2</sup>

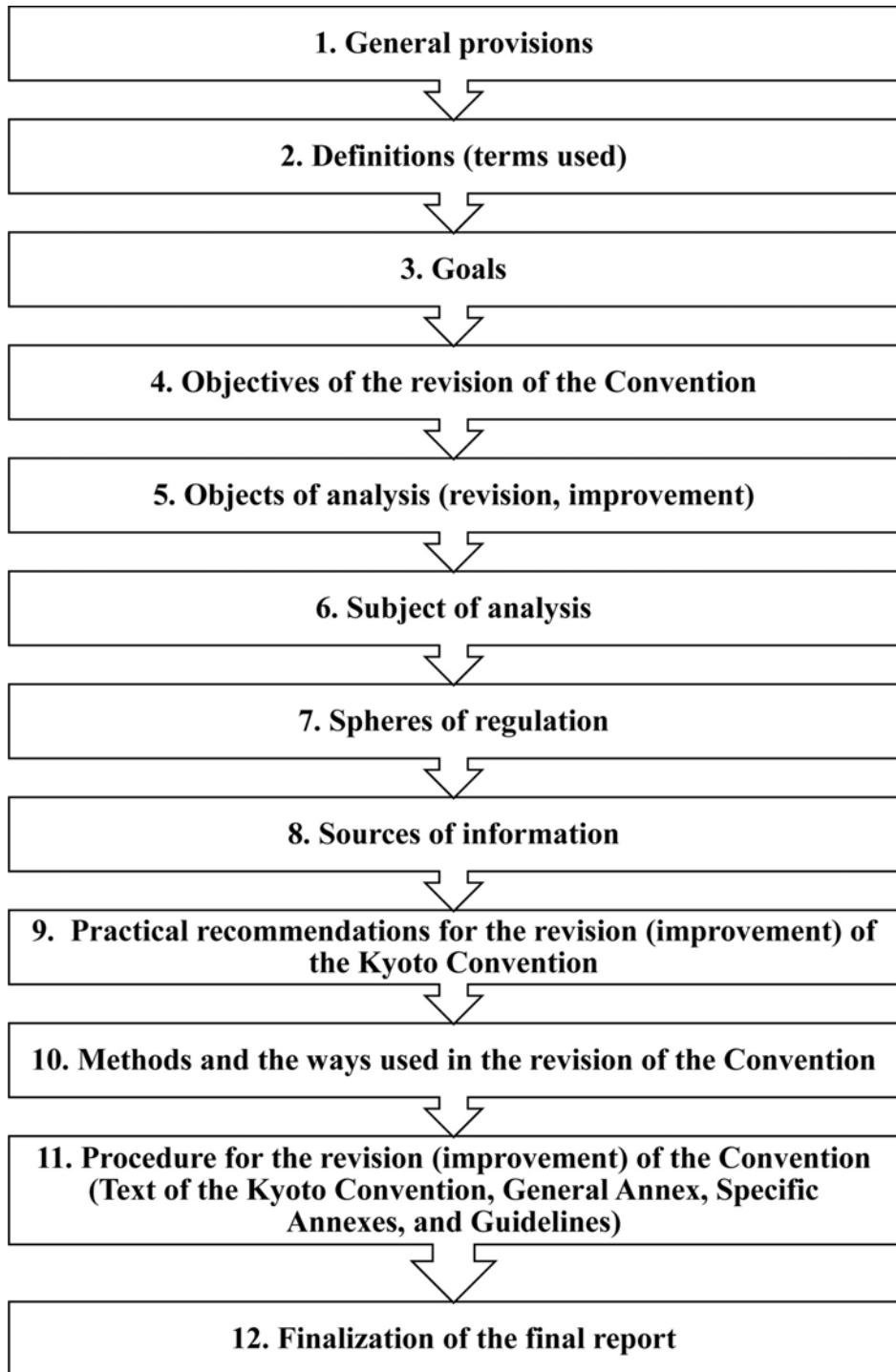
It is obvious that for a project of this scale, *the existence of only the Action Plan and the Proposals for the revision of the Convention is not enough*. In addition, as we noted above, today there is no Concept for the revision of the Convention. Experts, who will be involved in the revision process, should clearly understand the algorithm, procedures for reviewing (improving) the Convention. They should not doubt about the purpose, the task of revision. The objects of analysis, methods and the ways of revision of the Convention used in this process should be clear.

Classically, the methodology should contain the following sections: *general provisions, definitions (terms used), goals, objectives of the revision of the Convention, objects of analysis (revision, improvement), subject of analysis, spheres of regulation, sources of information, practical recommendations for the revision (improvement) of the Kyoto Convention, methods and the ways used in the revision of the Convention, the procedure for the revision (improvement)*

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<sup>1</sup> 5.7.1. Plan of activities for the revision of the Kyoto Convention.

<sup>2</sup> Academician. URL: <https://dic.academic.ru/dic.nsf/ruwiki/1034729>



*Scheme 3. Sections of the Methodology of the Revision of the Kyoto Convention*

*of the Convention (Text of the Convention, General Annex, Specific Annexes, and Guidelines), the finalization of the final report.* As an example, we refer to the experience of the Eurasian Economic Commission for the development of the «Single Window» mechanism in the Member States of the Eurasian Economic Union. The experts of the Commission and the EEU Member States developed a methodology for assessing the state (level) of development of the national «Single Window» mechanisms, which was approved by the Decision of the Board of the Eurasian Economic Commission on September 28, № 123. This document is available in the English language of the EEC website.<sup>1</sup>

Let's go with some elements of the Methodology, which, in our view, should be developed along with the Concept of the revision of the Kyoto Convention.

**The object of analysis (revision, improvement).** Referring to chapter 4 of the monograph, which discloses theoretical provisions on the improvement of the instruments of customs administration,<sup>2</sup> we believe that the following legal phenomena (instruments) are the subject of analysis.

1. Provisions of the Kyoto Convention (standards, transitional standards and recommendations for practical application).
2. Legal institutions of customs law, reflected in the Convention, as well as in the WCO legal instruments and tools.
3. Instruments and tools of customs administration and trade facilitation, developed or administered by the WCO (international agreements and guidelines).
4. Instruments and means of customs administration and trade facilitation developed by other international organizations (EU, APEC, WTO, etc.).
5. Acts of the WCO working bodies (decisions, recommendations) in the field of customs regulations and trade facilitation.
6. Administrative and legal regimes (customs procedures).
7. Customs operations.
8. Legal mechanism in the field of customs administration.
9. Legal constructions in the field of customs regulation.
10. Programs, concepts of development and improvement of customs regulation and trade facilitation developed by the WCO.
11. Information customs technologies.
12. Means of customs control.

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<sup>1</sup> Collection of regulatory legal acts to implement and develop the «single window» mechanism in the member states of the Eurasian Economic Union for 2014-2015. URL: [http://www.eurasiancommission.org/ru/act/tam\\_sotr/edinoe\\_okno/Documents/%D0%A1%D0%B1%D0%BE%D1%80%D0%BD%D0%B8%D0%BA\\_%D0%9D%D0%9F%D0%90%D0%91%D0%BD%D0%BD%D0%B3%D0%BB\\_All\\_2.pdf](http://www.eurasiancommission.org/ru/act/tam_sotr/edinoe_okno/Documents/%D0%A1%D0%B1%D0%BE%D1%80%D0%BD%D0%B8%D0%BA_%D0%9D%D0%9F%D0%90%D0%91%D0%BD%D0%BD%D0%B3%D0%BB_All_2.pdf)

<sup>2</sup> See Paragraph 4.2. The main instruments of customs regulation.

In the framework of comparative law, including in the analysis of advanced law enforcement practices in WCO Member Countries, national normative acts in the field of customs regulation, concepts, programs, etc. can be included in the group of objects of analysis.

We recall that the list of proposals formulated to date on the revision of the Convention (see § 5.5 of the Monograph)<sup>1</sup> includes the following institutions of customs law: *advanced information; advanced ruling; an Authorized Economic Operator; mutual recognition of the legal status of AEO; customs control; risk management systems; customs control based on audit; storage of goods; release of goods; the Single Window» mechanism; electronic payments; integrated supply chain management; transit of goods; transshipment of goods; movement of goods by individuals (passengers, travellers)*. In addition, experts of the Virtual Working Group on the Revision of the Kyoto Convention identified other subjects of analysis: *customs formalities; customs procedures; preliminary decisions; application of customs audit, incl. electronic audit; application of controls on foreign trade activities; fines imposed by Customs authorities; appeals procedures; information exchange within the framework of the «Single Window» mechanism; the provision of electronic services; cooperation between Customs and Tax services; coordinated border management; integrated supply chain management*.

Finally, the modernization of the Convention also touches upon the *technical, information and technological, methodological aspects of improving customs regulation (modern instruments, technologies); strengthening the role of Customs in security matters, the use of modern instruments, technologies to support customs operations, the use of the Internet, time release study*.

The issues discussed (39 blocks) within the framework of the meetings of the WCO Permanent Technical Committee in the period 1997–2018, in our opinion, is a separate subject of research (see § 5.6 of the monograph).<sup>2</sup> Part of the identified issues on the PTC meetings, of course, overlaps with topical issues (legal institutions, instruments, means, etc.) in the field of customs regulation, which are to be modernized as part of the revision of the Convention. For the purposes of a comprehensive analysis, we reiterate that the materials of the PTC concern the following subject: *safety, a secure supply chain of goods; border (border management); data used for customs purposes; documents used in the field of customs administration; «Single Window» mechanism; customs law*,

<sup>1</sup> § 5.5. Overview of the direction of updating the Kyoto Convention.

<sup>2</sup> Classification of topical issues of customs regulation, considered by the Permanent Technical Committee in 1997–2018.

*compliance with legislation in the field of customs; identification of participants of foreign trade activities and goods; the WCO instruments and means for the purposes of customs administration and trade facilitation; the Kyoto Convention; measures of non-tariff regulation (prohibitions and restrictions); equipment for customs purposes; organizational issues of activities of the Permanent Technical Committee; transportation; customs payments; indicators, indicators of efficiency of customs administration and trade facilitation; postal items; programs implemented by the WCO; projects on modernization of customs regulations; procedures, customs operations; law enforcement; best practices of customs administration (experience of the WCO Member Countries and observers); classification of goods; origin of goods; the WCO working bodies (materials); decisions of the Permanent Technical Committee; cooperation in the field of customs administration and trade facilitation; standards in the field of customs regulation; subjects of customs legal relations; risk management system; Customs and its role in the regulation of foreign trade relations; customs technologies; goods; trade; transport; trade facilitation; an Authorized Economic Operator; individuals; terms used in the customs sphere.*

Returning to the issue of creating a Concept for the revision of the RKC, we believe that the ***above-mentioned objects of analysis (positions, elements) must be reflected conceptually (in the theses) in the Concept itself.***

Let's pay attention to the fact that customs operations are a separate object of research. Proposals to improve the provisions of the Kyoto Convention (§ 5.5 of the monograph) affect 4 phases: (1) pre-clearance phase, (2) clearance phase, (3) post-clearance phase and (4) cross-cutting (intersectoral) stages.<sup>1</sup>

Let's ask whether more detailed information of customs operations (business processes) is necessary? After all, in the case of detailed information of such operations, the WCO experts can analyze in more detail the problems associated with customs procedures and trade facilitation. Thus, analyzing the current issues of the status and development of a «Single Window» mechanism in the EEU Member States, the specialists of the Eurasian Economic Commission formed a list of operations (business processes) that relate to commercial procedures, payment under the contract, transport procedures (delivery), cargo insurance, customs broker, advanced information, arrival of goods, customs transit, customs operations (preceding the lodgment of goods declaration), customs payments, customs declaring, customs control after the release of goods, the formation and presentation of statistical reports.

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<sup>1</sup> See Annex I to the Interim Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (6, 7 April 2017). Brussels, 24 February 2017. Annex to doc PO0095E1.

The detailed presentation of list of customs operations and business processes is presented in Annex 6.<sup>1</sup>

The above-mentioned examples allow us to formulate several approaches to the study of the object of modernization as part of the RKC revision process:

1. **Institutional approach** (from the word «legal institution») – this approach focuses on the legal institution of customs law. In this case, various legal institutions of customs law are analyzed, which are reflected in the Kyoto Convention, international agreements in the field of customs as well as earlier developed WCO guidelines, taking into account the best law enforcement practices and recommendations (proposals) of the WCO Member States and observers. Classification of institutions of customs law is presented in § 3.3 of the monograph.<sup>2</sup>

2. **Thematic approach.** It represents a way to update the Convention on the basis of the proposals of the WCO experts on various areas of customs regulation. An example of such an approach is the proposals of the Virtual Working Group on the Revision of the Convention<sup>3</sup> as well as the classification of topical issues of customs regulation considered during the meetings of the Permanent Technical Committee in the period from 1997 to 2018.<sup>4</sup>

3. **Operational approach** (from the word «customs operation»). When using this approach to the analysis of the object of improvement, the basic element is the *customs operation, the business process*, which consistently follows one another in the process of organizing a secure supply chain of goods. An approximate list of customs procedures and business processes is presented in the Table 1 «List of business processes (customs operations) connected with supply of goods».

4. **Combined approach.** We believe that the application of a combined (integrated) approach to the modernization of the object under study is the best way to update, revise the Kyoto Convention. It allows combining such elements as *customs procedures, business processes, legal instruments and means of customs regulation in one coordinate system, including customs law institutions, thematic issues, topical issues in the sphere of customs regulation and trade facilitation, the best practice of customs administration*.

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<sup>1</sup> Provisional list of business processes. Annex 3 to the Methods for Assessing the State of Development of National «Single Window» Mechanisms. – P. 135–160.

<sup>2</sup> § 3.3. Improvement of customs regulation in the context of interaction between the EEU and the WCO.

<sup>3</sup> See § 5.5. Overview of the direction of updating the Kyoto Convention.

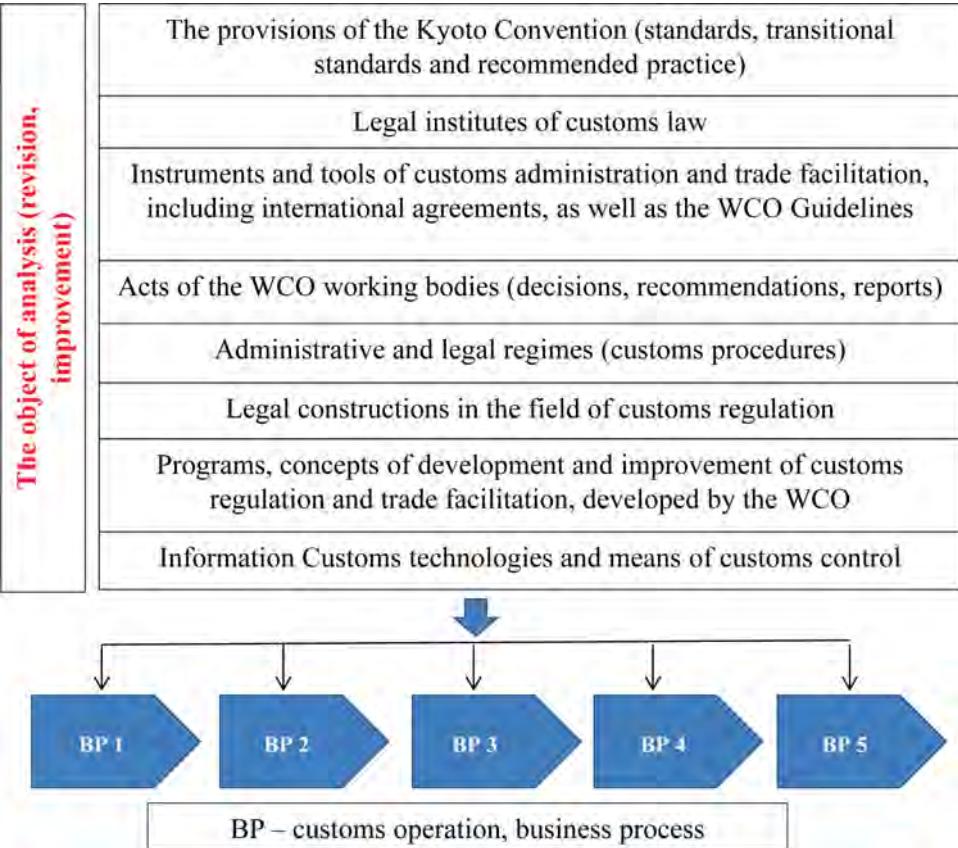
<sup>4</sup> See § 5.6. Classification of topical issues of customs regulation, considered by the Permanent Technical Committee in 1997–2018.

**The subject of analysis (revision, improvement).** We refer to the subject of analysis the legal relations that arise between Customs authorities and other state authorities (regulating foreign economic (trade) activity) and economic operators, which export and import goods, entities involved in foreign economic activity (for example, customs brokers, carriers, Authorized Economic Operators, owners of customs warehouses and other). In legal theory, a legal relationship is a relationship between subjects of law, which is participants, concerning an object, when rights and duties arise.

*Note:* in theory of law, the object of research, as a rule, is *legal relations*, and the subject – *legal instruments*.

In the context under consideration, it is important to define a circle (group) of the subject, whose activities or relationships will be regulated by the provisions of the revised Convention. So, if we say that «single-window» mechanism should be conceptually identified in the Kyoto Convention, and at the same time it is needed to emphasize the use of paperless technologies in the performance of customs operations, then the Convention should (to some extent) regulate legal relations related to moving of goods between the following subjects:

- ✓ Customs, Tax authorities, other state authorities, in whose competence are the issues of regulation of customs and commercial legal relations;
- ✓ exporter;
- ✓ importer;
- ✓ customs agents (brokers);
- ✓ customs carriers;
- ✓ owners of temporary storage warehouses;
- ✓ owners of customs warehouses;
- ✓ owners of free warehouses;
- ✓ owners of duty free shops;
- ✓ Authorized Economic Operators;
- ✓ freight forwarders;
- ✓ logistics companies;
- ✓ carriers;
- ✓ express carriers;
- ✓ administrations of air ports;
- ✓ chambers of commerce and industry;
- ✓ insurance companies;
- ✓ banks;
- ✓ patent organizations (patent attorneys);
- ✓ postal operators and other organizations.



*Scheme 4. Objects of analysis*

It is important to clearly understand the categories of legal relations in the field of customs with the listed entities. In this case, the experts of the Working Group, when reviewing the Convention, may refer to various WCO instruments and tools, including WCO guidelines that affect the activities of such subjects. So, if the legal relations with the participation of the AEO, customs broker, carrier, Customs and Tax services are related to the subject of analysis, then the relevant WCO Guidelines can be implemented in the required volume to the Kyoto Convention (AEO Compendium,<sup>1</sup> Study Report on Customs Brokers,<sup>2</sup> Transit Guidelines<sup>3</sup> etc.).

<sup>1</sup> AEO Compendium. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/aeo-compendium.aspx>

<sup>2</sup> Study Report on Customs Brokers. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/study-report-on-customs-brokers.aspx>

<sup>3</sup> Transit Guidelines. URL: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/transit-guidelines.aspx>

Let us refer again to the experience of the Eurasian Economic Commission. In 2015 it has been prepared the Plan of measures on realization of the Main Directions of Development of the «Single Window» Mechanism in the System of Regulation of Foreign Economic Activity. The scope of the reference model is defined in this document.<sup>1</sup>

*Note.* The reference model of the national «Single Window» mechanism (hereinafter – «reference model») is a tool to simplify international trade procedures in order to optimize public procedures related to foreign economic activity, and to create conditions for carrying out electronic transactions and e-commerce. The reference model is intended to ensure the transition to a qualitatively new level of development of the national «Single Window» mechanisms to create conditions to reduce the transaction costs of persons engaged in foreign economic activity and providing services in this area and to reduce administrative costs in the work of state authorities of the Member States regulating foreign economic activity.<sup>2</sup>

The reference model applies to:

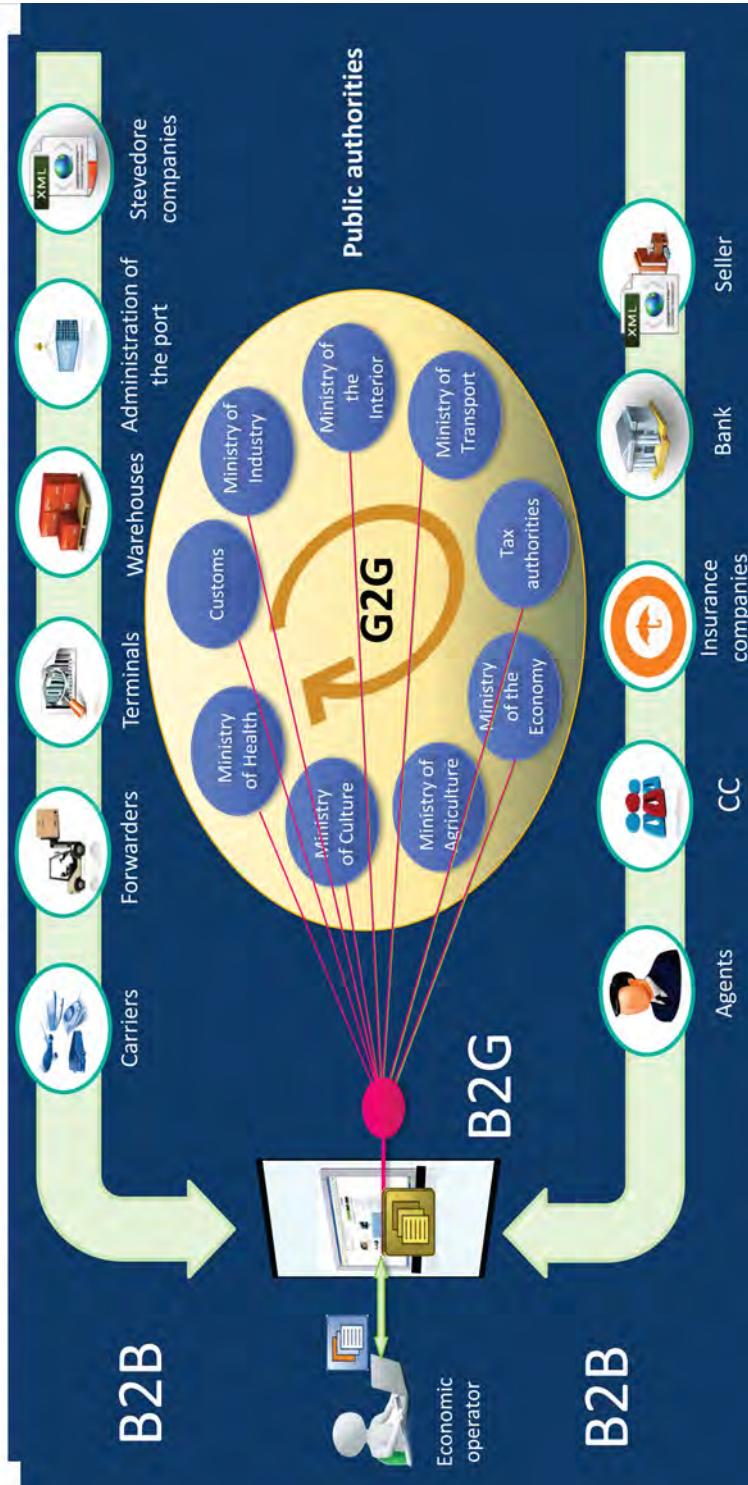
- 1) *spheres of state regulation:* the sphere of customs, foreign exchange, tax, customs and tariff, non-tariff and technical regulation, the sphere of application of sanitary, veterinary and sanitary, phytosanitary quarantine measures, the sphere of regulation of financial services (banking, insurance), transport and transportation, safety and protection of intellectual property rights;
- 2) *types of activities:* foreign trade, activities for the provision of transportation and logistics services, financial services (banking, insurance) as well as activities in the field of customs affairs;
- 3) *subjects:*  
state authorities of the Member States: in the field of customs, taxation, customs and tariff and non-tariff regulation; state authorities of the Member States:

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<sup>1</sup> Decision № 19 of the Supreme Eurasian Economic Council dated May 8, 2015 // Collection of regulatory legal acts to implement and develop the «single window» mechanism in the member states of the Eurasian Economic Union for 2014–2015. URL: [http://www.eurasiancommission.org/ru/act/tam\\_sotr/edinoe\\_okno/Documents/%D0%A1%D0%B1%D0%BE%D1%80%D0%BD%D0%B8%D0%BA\\_%D0%9D%D0%9F%D0%90\\_%D0%B0%D0%BD%D0%B3%D0%BB\\_All\\_2.pdf](http://www.eurasiancommission.org/ru/act/tam_sotr/edinoe_okno/Documents/%D0%A1%D0%B1%D0%BE%D1%80%D0%BD%D0%B8%D0%BA_%D0%9D%D0%9F%D0%90_%D0%B0%D0%BD%D0%B3%D0%BB_All_2.pdf)

<sup>2</sup> Chapter 5 of Action Plan on implementation the Main Directions for Development of the «Single Window» Mechanism in the System of Regulation of Foreign Economic Activity. Approved by the Decision № 19 of the Supreme Eurasian Economic Council of May 8, 2015// Collection of regulatory legal acts to implement and develop the «single window» mechanism in the member states of the Eurasian Economic Union for 2014–2015. URL: [http://www.eurasiancommission.org/ru/act/tam\\_sotr/edinoe\\_okno/Documents/%D0%A1%D0%B1%D0%BE%D1%80%D0%BD%D0%B8%D0%BA\\_%D0%9D%D0%9F%D0%90\\_%D0%B0%D0%BD%D0%B3%D0%BB\\_All\\_2.pdf](http://www.eurasiancommission.org/ru/act/tam_sotr/edinoe_okno/Documents/%D0%A1%D0%B1%D0%BE%D1%80%D0%BD%D0%B8%D0%BA_%D0%9D%D0%9F%D0%90_%D0%B0%D0%BD%D0%B3%D0%BB_All_2.pdf)

## Scope of the national SW mechanism (EEU)



issuing permits related to foreign economic activity, transport control, sanitary, veterinary and sanitary, phytosanitary quarantine control (supervision), control (supervision) over compliance of technical regulations, export, radiation, foreign exchange and other forms of state control;

organizations authorized to issue permits, including chambers of commerce, certification bodies and testing laboratories (centres) performing the work in the field of assessment (confirmation) of compliance with technical regulations of the Union;

interested persons: legal entities and individual entrepreneurs engaged in foreign economic activity; persons carrying out activities in the field of customs affairs (customs agents (brokers), customs carriers, owners of temporary storage warehouses, owners of customs warehouses, owners of free warehouses, owners of duty free shops); Authorized Economic Operators; freight forwarders, logistics companies, carriers, express carriers; administrations of air ports, road and rail border crossing points; banks and insurance companies; patent organizations (patent attorneys), postal operators and other organizations.<sup>1</sup>

As it can be seen, the definition of the scope allowed the EEC experts to clearly identify the circle of subjects and legal relations with their participation, the spheres of state regulation, as well as the types of activities. We believe that a similar approach can be indicated either in the Concept of the revision of the RKC, or in the Methodology for revision. At the same time, we proceed from the premise that *the sphere of coverage (regulation) of the updated Kyoto Convention should concern purely customs legal relations.*

**Information sources.** We believe that when reviewing the Kyoto Convention, the experts of the Working Group may use the following information, presented in English:

- materials of the meetings of the Revised Kyoto Convention Management Committee (reports, references (information), explanatory notes, etc.);
- materials of the Working Group on the Comprehensive Review of the Kyoto Convention;
- materials from the meetings of the WCO working bodies;

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<sup>1</sup> 7. Scope of the reference model. Chapter 5 of Action Plan on implementation the Main Directions for Development of the «single window» Mechanism in the System of Regulation of Foreign Economic Activity. Approved by the Decision № 19 of the Supreme Eurasian Economic Council dated May 8, 2015 // Collection of regulatory legal acts to implement and develop the «Single Window» mechanism in the member states of the Eurasian Economic Union for 2014–2015. – P. 34–35. URL: [http://www.eurasiancommission.org/ru/act/tam\\_sotr/edinoe\\_okno/Documents/%D0%A1%D0%B1%D0%BE%D1%80%D0%BD%D0%B8%D0%BA%D0%9D%D0%9F%D0%90%D0%B0%D0%BD%D0%B3%D0%BB\\_All\\_2.pdf](http://www.eurasiancommission.org/ru/act/tam_sotr/edinoe_okno/Documents/%D0%A1%D0%B1%D0%BE%D1%80%D0%BD%D0%B8%D0%BA%D0%9D%D0%9F%D0%90%D0%B0%D0%BD%D0%B3%D0%BB_All_2.pdf)

- within the framework of comparative law when research of best law enforcement practices of the WCO Member States: legal acts, including decrees, national (state) programs, resolutions, action plans («road maps») for improving customs administration etc.; comments on customs legislation of the WCO Members, regulations, letters, instructions, orders, departmental orders, reports of state bodies and (or) authorized organizations of the WCO Member Countries in the field of foreign economic (trade) activity, reports of independent experts, judicial and administrative decisions, analytical materials and other;
- materials, proposals, recommendations, etc. provided by the WCO observers on various issues of improving customs administration and trade facilitation;
- as additional sources of information, the WCO experts can use the articles on the review of legislation in the field of customs regulation of the WCO Members, reports and recommendations of various conferences and seminars, international comments and other open sources of information.<sup>1</sup>

#### **5.7.4. Organizational and legal aspects of interaction between the participants of the Working Group on a Comprehensive Review of the Revised Kyoto Convention**

The revision of the Kyoto Convention is a serious project, which is expected to be implemented within three years. In our opinion, any project of this scale should have its own *organizational form of management*, which includes the ***structure*** and ***mechanism of project management*** (governance). According to the theory of management, the *structure* determines the composition and responsibility of the interrelated organizational units or links that implement a set of project management functions – project participants united by a common management apparatus for the fulfillment of all the goals and objectives of the project. Elements of the organizational structure of the project are bodies and links of all levels as well as the interrelations between them.<sup>2</sup>

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<sup>1</sup> See Chapter 6, Chapter 11 of Action Plan on implementation the Main Directions for Development of the «single window» Mechanism in the System of Regulation of Foreign Economic Activity. Approved by the Decision № 19 of the Supreme Eurasian Economic Council dated May 8, 2015 // Collection of regulatory legal acts to implement and develop the «Single Window» mechanism in the Member-States of the Eurasian Economic Union for 2014–2015. URL: [http://www.eurasiancommission.org/ru/act/tam\\_sotr/edinoe\\_okno/Documents/%D0%A1%D0%B1%D0%BE%D1%80%D0%BD%D0%B8%D0%BA\\_%D0%9D%D0%9F%D0%90\\_%D0%B0%D0%BD%D0%B3%D0%BB\\_All\\_2.pdf](http://www.eurasiancommission.org/ru/act/tam_sotr/edinoe_okno/Documents/%D0%A1%D0%B1%D0%BE%D1%80%D0%BD%D0%B8%D0%BA_%D0%9D%D0%9F%D0%90_%D0%B0%D0%BD%D0%B3%D0%BB_All_2.pdf)

<sup>2</sup> Tsvetkov A.V., Vasilyev D.K., Kolosova E.V. Why – corporate project management systems? URL: <http://hr-portal.ru/article/opyt-vnedreniya-upravleniya-proektami-v-rossii>

For the revision of the Kyoto Convention, the organizational units that, we believe, will manage the project, include the WCO Secretariat, the Working Group on a Comprehensive Review of the Kyoto Convention, Sub-Groups established within the framework of this Working Group, the Virtual Working Group, the Revised Kyoto Convention Management Committee, Permanent Technical Committee and Council of the World Customs Organization.

A separate block, which also establishes the organizational structure, should be formed by the Customs administrations of the WCO Member States, the observers of the World Customs Organization participating in this project as well as the National Committees (Working Groups) in the WCO Members on the review of the Kyoto Convention (see § 5.7.6).<sup>1</sup>

In turn, *the project management mechanism* revitalizes the structure and determines *the order, procedures for fulfillment by the project participants of their functions*, which are tuned to the effective implementation of the project activities.<sup>2</sup> To understand the project management mechanism, we turn to the Terms of Reference of the Working Group on a Comprehensive Review of the Kyoto Convention (Annex 7).<sup>3</sup>

According to the Terms of Reference of the Working Group on the comprehensive review of the Revised Kyoto Convention, the WGRKC shall carry out its work through physical meetings to be held in the WCO Headquarters and, when appropriate, intersessional work will be carried out virtually via the CLiKC! Platform. The WGRKC shall hold a maximum of six meetings per year. The meetings will be held with simultaneous interpretation in French and English and all working documents will be available in French and English. In order to assist the WGRKC in fulfilling its mandate, the WGRKC shall also establish, as directed by the RKC/MC, three Sub-Groups which shall report directly to the WGRKC. These Sub-Groups shall work in parallel and their activities will be composed as follows:

Sub-Group I: The RKC Body and relevant horizontal issues.

Sub-Group II: The RKC General Annex.

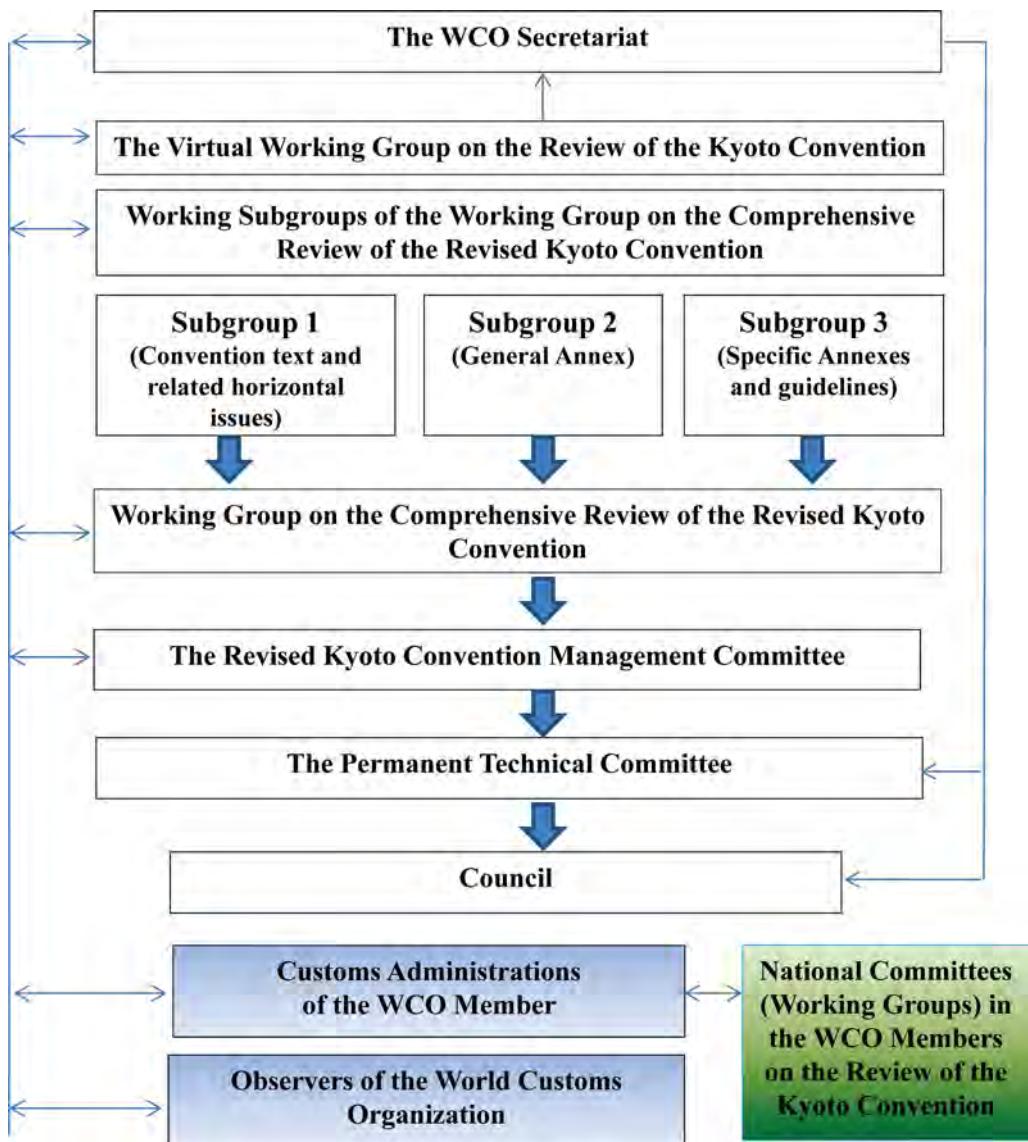
Sub-Group III: The RKC Specific Annexes and Guidelines.

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<sup>1</sup> § 5.7.6. On the issue of national Working Groups (Committees) for the comprehensive revision of the Kyoto Convention.

<sup>2</sup> Tsvetkov A.V., Vasilyev D.K., Kolosova E.V. Why – corporate project management systems? URL: <http://hr-portal.ru/article/opyt-vnedreniya-upravleniya-proektami-v-rossii>

<sup>3</sup> Terms of Reference of the Working Group on a Comprehensive Review of the Revised Kyoto Convention. URL: [http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures\\_and\\_facilitation/wg\\_comprehensive\\_review\\_rkc.aspx](http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures_and_facilitation/wg_comprehensive_review_rkc.aspx)



*Scheme 5. Project management structure of the revision of the Kyoto Convention*

The working arrangements, including the structure of the Sub-Groups, may be adjusted based on recommendations of the WGRKC. The Sub-Groups shall annually elect a moderator and rapporteur from among their members. The Sub-Groups shall carry out their work virtually via the CLiKC! Platform to the greatest extent possible, and, where necessary, may meet in person at the discretion of the Sub-Group moderators, coordinating the schedule with the

regularly-scheduled WGRKC, subject to the approval of the Chair of the Working Group. The work of the Sub-Groups shall be carried out in French and English, unless otherwise decided by the Sub-Group. The Sub-Groups will work in conjunction to address cross-cutting issues. The WGRKC will communicate with key stakeholders, as necessary. The WGRKC shall be subject to ongoing review by the RKC/MC of progress against the key deliverables. The WCO Secretariat shall provide the necessary support. The reports of the WGRKC shall be distributed to participants within two weeks after the meetings.<sup>1</sup>

It is obvious that the above-mentioned excerpts from the Terms of Reference of the Working Group on a Comprehensive Review of the Revised Kyoto Convention do not disclose the order, procedures for the fulfillment by the project participants (organizational units) of their functions. Moreover, it is required to clarify the interaction order within the Virtual Working Group, the status of documents and materials that will be considered in a virtual mode. For example, can it be asserted that an offer (proposal) received within the framework of a Virtual Group is an official proposal of a WCO Member State, or is it a private opinion of the expert, who sent it. At the same time, we assume that excessive detailing of the work of the Working Group, including Virtual one, is not required, and the forthcoming work will be carried out in the context of the accumulated experience and existing law enforcement practice in the WCO working bodies.

In this context, let us refer to the experience of the Eurasian Economic Commission on the development of the Customs Code of the Eurasian Economic Union.

The Decision of the Eurasian Economic Council of October 9, 2013 № 61 established the Working Group on the Improvement of Customs Legislation.<sup>2</sup> The composition of the Working Group for the Improvement of Customs Legislation was approved by the Decision of the Board of the EEC of 12 November, 2013 № 256.<sup>3</sup> On December 4, 2013 the Terms of Reference (Rules) of the Working Group on the Improvement of the Customs Legislation have

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<sup>1</sup> Terms of Reference of the Working Group on the Comprehensive Review of the Revised Kyoto Convention. URL: [http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures\\_and\\_facilitation/wg\\_comprehensive\\_review\\_rkc.aspx](http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures_and_facilitation/wg_comprehensive_review_rkc.aspx)

<sup>2</sup> Decision of the Council of the Eurasian Economic Commission of October 9, 2013 № 61 «On the establishment of a Working Group on the Improvement of Customs Legislation». URL: <https://www.alta.ru/tamdoc/13sr0061/>

<sup>3</sup> Decision of the Board of the Eurasian Economic Commission of November 12, 2013 № 256 «On the Working Group to Improve the Customs Legislation». URL: <https://www.alta.ru/tamdoc/13kr0256/>

been approved and under this the Expert Group on Draft the Customs Code of the Eurasian Economic Union was created. To understand the organizational mechanism for the implementation of the project on the preparation of the Union Customs Code, we will consider some of the provisions of the Working Group's Rules (Terms of Reference):

- the meetings of the Expert Group are held in accordance with the Indicative schedule of meetings of the Expert Group agreed by the Working Group and approved by the Head of the Working Group. Specific dates for the meetings of the Expert Group may be specified (changed) on the proposal of the Members of the Working Group.
- the meetings of the Expert Group are held at the premises of the Commission (on the basis of the Department of Customs Legislation and Law Enforcement Practice, hereinafter – the Department).
- the results of the Expert Group meetings are drawn up in the form of texts of articles, chapters, sections of the Union Customs Code, tables of disagreements, references and other materials (hereinafter – the results of the work of the Expert Group).

The results of the work of the Expert Group are transferred to the Department with the purpose of organizing their distribution as well as consideration and coordination at the meetings of the Working Group.

- by the decision of the Head of the Working Group, the meetings of the Working Group *may be held in the videoconference mode*.
- the materials for the meetings of the Working Group on the Improvement of Customs Legislation are formed on the basis of:

proposals of the Member States of the Customs Union and Common Economic Space, the Departments of the Commission and representatives of the business community on the improvement of customs legislation;

the results of monitoring the legal framework of the Customs Union and Common Economic Space and the analysis of law enforcement practices conducted by the Department; proposals for the inclusion of international treaties governing customs legal relations in the draft of the Customs Code prepared by the Department;

results of the analysis of reference rules for the legislation of the Member States of the Customs Union contained in the Customs Code of the Customs Union and other international agreements governing customs relations in the Customs Union;

proposals of the Members of the Working Group submitted to the meetings of the Working Group;

- the agenda of the Working Group meetings includes:

issues related to discussing areas for improvement of customs legislation, as envisaged by the Plan of directions of improving customs legislation, agreed by the Members of the Working Group and approved by the Head of the Working Group;

discussion and coordination of the texts of articles, chapters, sections of the draft of the Union Customs Code prepared by the Expert Group;

requiring the consideration at the level of the Working Group of problematic issues, for which the agreed position was not developed by the Expert Group.

Other issues on the proposal of the Members of the Working Group.

– if the issue on the agenda of the meeting of the Working Group is included on the proposal of a Member of the Working Group, the proposal and materials thereon shall be sent by the Member of the Working Group to the Head of the Working Group no later than ten working days before the date of the meeting of the Working Group;

– the agenda of the meeting of the Working Group prepared by the Department and approved by the Head of the Working Group shall be sent to the Members of the Working Group no later than seven working days before the date of the meeting of the Working Group;

– *a Member of the Working Group has the right to invite experts to the meeting of the Working Group on issues to be discussed at the meeting;*

– the results of the meetings of the Working Group are drawn up in the form of a protocol of the Working Group, which records all the issues considered, the decisions taken on them, and the disagreements. If there are differences on the issue under consideration between the Members of the Working Group, who are representatives of one Member State of the Customs Union (executive bodies, business community), the decision on this issue is taken by the Member of the Working Group, determined by the coordinator responsible for making decisions on improving the customs legislation, from a Member State of the Union or by a Member of the Working Group to which, in accordance with the second paragraph of clause 17 of these Regulations, a competence is given on decision-making.

The protocol may be accompanied by summary documents, reference materials and other documents. The protocol is approved by the Head of the Working Group.

– the minutes and other materials of the meeting of the Working Group are sent, including electronically, to the Members of the Working Group within three working days from the date of the meeting.

– minutes of meetings of the Working Group are kept in the Department of Customs Legislation and Law Enforcement Practice.

**Another example.** Within the framework of the project on the development of the «Single Window» mechanism in Member States of the Eurasian Eco-

nomic Union, it has been created an institutional mechanism to ensure the implementation of the Pan for the implementation of the Basic Directions for the development of the «Single Window» mechanism in the regulation of foreign economic activity. In particular, the organizational mechanism at the supranational level that ensures the implementation of the Plan is based on the structure of the Union's bodies provided for in the Treaty on the Union. So, the Council of the Commission makes decisions on strategic issues of implementation of this Plan, including on systemic issues, approval and financing of annual detailed plans. At the same time, the Board of the Commission makes decisions and recommendations provided for in this Plan.

The Commission creates a Working Group to implement this Plan, under the guidance of one of the Members of the Board of the Commission. This working group ensures overall coordination and monitoring of the implementation of this Plan, prepares proposals in the form of draft acts of the Union bodies, develops draft annual detailed plans, reviews reports on the implementation of this Plan.

At the national level, coordinating (advisory) bodies authorized to implement this Plan are established in the Member States, which include heads of state bodies as well as representatives of the business community. Such coordinating (advisory) bodies provide proposals to state bodies on the creation and development of national «Single Window» mechanisms within the framework of the implementation of this Plan. The authorized state body responsible for the implementation of the Main Directions performs the organization of the activities of the national coordinating (advisory) body. In order to coordinate the implementation of this Plan, the national coordinating (advisory) bodies and the Working Group carry out interaction.

The above excerpts from the Regulations (ToR) of the Expert Group on the preparation of the draft of the Union Customs Code regulate important issues of cooperation between the EEU Member States, EEC and stakeholders (the business community) in the implementation of the project. A clear understanding of the organizational and legal mechanism for the development of the draft of the Union Customs Code ensured the operational work of the experts of the Parties and the preparation of a new Customs Code of the Union. The same approaches were implemented when creating an organizational mechanism within the framework of the «Single Window» mechanism. We believe that similar conceptual approaches can be used to create an institutional and legal mechanism for the revision of the Kyoto Convention. Moreover, the descriptive part of it can be reflected in the Concept for the revision of the Kyoto Convention, or in the Plan of Measures for its revision.

## High level Working Group

Head – Member of The Board - Minister in charge of Customs Cooperation

### Coordination Council

- 1) Persons in charge of «Single Window» national project in Member States
- 2) Heads of each unit

Member of the Working Group on thematic areas:

### UNIT Electronic Customs

### UNIT E-commerce, payments and taxes

### UNIT Permits

### UNIT Transportation and logistics

### UNIT Information technologies

### Analysis and Coordination Expert Group

- Expert Groups      Expert Groups      Expert Groups

### **5.7.5. The role of observers in the revision of the Kyoto Convention**

In this study, we have several times raised the issue of the participation of WCO observers in the revision of the Kyoto Convention. Since this issue is relevant for the EEC, we summarize in this paragraph the previously voiced propositions.

It is recognized that the WCO observers can make a significant contribution to the work of the World Customs Organization, in particular by providing specialized information or expert advice to its various bodies.<sup>1</sup> At the 18th meeting of the Revised Kyoto Convention Management Committee, the meeting participants discussed the Terms of Reference (working procedure) of the establishing Working Group being. In our opinion, one of the discussion issues of the session is the issue of *stakeholder engagement, participation* (customs, economic unions, international organizations, representatives of big business and academia) in the Working Group on the Comprehensive Review of the Kyoto Convention. Thus, according to the (initial) draft Terms of Reference presented at the 18th meeting, the Group is open to the participation of all interested Members of the WCO. If necessary, partner international organizations, representatives of the Private Sector Consultative Group and other external stakeholders are invited to participate in the work on the basis of the document «Stakeholders engagement».<sup>2</sup> As noted above, it was assumed that the participation of such actors would be *based on a thematic approach*.<sup>3</sup> In the draft it was provided that all stakeholders will have the opportunity to participate in the revision to the Convention in a more holistic manner and therefore engage effectively with customs administrations on this important issue. It is also noted here that stakeholders can not be excluded from the forthcoming work, and for the management of the revision process of the Convention it is necessary that all who wish to express their opinion be heard. At the same time, the organizational package for the revision of the Convention clarified the impossibility of inviting external partners for each meeting of the WGCR RKC,<sup>4</sup> attention is focused on the need to make efforts to organize special sessions.

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<sup>1</sup> Annex to Doc. SP0129E1. – P.3.

<sup>2</sup> Annex I to the Interim Report of the Virtual Working Group to the Revised Kyoto Convention Management Committee (6, 7 April 2017). Brussels, 24 February 2017. Annex to Doc. PO0095E1.

<sup>3</sup> Ibid.

<sup>4</sup> It is not feasible to invite our external partners for every single meeting of the VWG, however efforts should therefore be made to organize dedicated sessions, built upon the Action Plan to be agreed by the VWG.

Thus, on the one hand, on the Committee meeting an intention to invite all the parties concerned was announced, which are able to participate in the revision of the Kyoto Convention in a comprehensive manner. On the other hand, their participation can be restricted (limited) by so-called thematic approach, where stakeholders can only be invited to special meetings in the context of considering thematic issues. In our opinion, such an approach is not consistent with the current practice of participation of interested parties in the development of modern instruments of customs regulations and does not reflect the interests of the WCO observers, *in particular, customs and economic unions*.

If we refer to the materials of the Policy Commission of 2002 and 2007, the participation of *economic and Customs Unions* in the work of the WCO bodies, when developing customs administration instruments in the WCO, was considered important. In this case, the WCO instruments are implemented in the legal means of customs regulation of such unions and, thus, it is provided harmonization of customs operations and procedures.

*In the absence of the Conception for the revision of the Convention, the Methodology for the revision of the Kyoto Convention, the Detailed Plan and the Path (planning) network of the modernization of the Convention*, there is a thesis about the need for the preparation of the «Stakeholders Engagement Plan» for the current revision of the Convention. We believe that the development of a Stakeholder Engagement Plan is premature before the development of mentioned conceptual documents (see § 5.7.1),<sup>1</sup> on the basis of which a subsequent comprehensive work on modernization of the RKC is to be carried out. Obviously, the thematic approach to participation of the WCO observers will still be used in organizing interaction of the WCO and the stakeholders. The thematic approach allows the participation of observers only on separate (narrow) issues of customs administration. In other words, it allows the use of a mechanism to restrict (limit) their participation in the revision of the Kyoto Convention.

To understand the problematic, let us give an example. When organizing the work of the WCO Working Group on the WTO Agreement on Trade Facilitation, the WCO observers were not separated on the basis of a thematic approach. All interested persons had the opportunity to participate actively in the work of this group at WCO Headquarters in Brussels. However, now, when the WCO is to develop actually an «international constitution» in the field of customs regulation for the international customs community, a thesis is raised about inviting WCO observers on the basis of the thematic approach (!).

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<sup>1</sup> § 5.7.1. Plan of activities for the revision of the Kyoto Convention.

*If the EEC experts participate* in the revision process of the Kyoto Convention on an ongoing basis, *like the experts of the European Commission*, the WCO Secretariat will have arguments to urge the EEU to join the revised Convention after the revision is completed. In this case, it can be argued that EEC experts participated in its revision, and their experience and proposals were used in the framework of the modernization of this international instrument. We draw attention to the fact, that the *EEU and the EU are special subjects*, and their role in improving of the instruments of customs administration, in our opinion, is significant.

At the beginning of the monograph we referred to the materials of the sixth meeting of the Revised Kyoto Convention Management Committee of 2009 on the revision of the Kyoto Convention. It is noted here that ***the Customs Unions can become Contracting Parties to the Revised Kyoto Convention***, and their accession usually takes place simultaneously, as the Member States of the relevant Customs union. Therefore, this approach is necessary not only because it includes a large number of WCO Members, but also because in many cases Members of these customs unions are not allowed to join themselves to the Revised Kyoto Convention (since customs regulations fall under the regional competence or competence of the community).<sup>1</sup> In our opinion, this circumstance confirms our *thesis about the importance of participation of customs and economic unions in the revision of the Convention* even if such unions have observer status within the WCO.

It should be recalled that in June 2001 the Council at its 97-98 meeting considered the status and the rights of observers in the Revised Kyoto Convention Management Committee. At the end of the meeting the Council approved a **Decision № 305 «Status and Rights of Observers to the Revised Kyoto Convention Management Committee»**. Important provisions of this document include the following: *In accordance with Article 6 (7) the Secretary General of the Council shall invite the entities referred to in Article 6 (3) of the Convention to attend all sessions of the Management Committee as observers. Observers at sessions of the Management Committee shall have the right to participate fully in the sessions but shall not have the right to vote.*<sup>2</sup>

Thus, the WCO Council established the rights of observers to participate fully and in all sessions of the Revised Kyoto Convention Management Committee. At the same time, there is no thematic approach for inviting observers.

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<sup>1</sup> Point 15. Revised Kyoto Convention – Status report regarding accessions and assistance requirements. Item IV of the Agenda. Policy Commission. 61st Session. Doc. SP0308E1a. Brussels, 18 May 2009.

<sup>2</sup> Items 1–2 of the Decision of the Council № 305 (97th/98th Sessions – June 2001) «Status and rights of observers to the Revised Kyoto Convention Management Committee».

Experts of the Eurasian Economic Commission proceed from the fact that in the revision of the Kyoto Convention, the WCO observers should be maximally attracted to its updating. This thesis confirms the experience of the EEU in the modernization of the instruments of customs regulation. Thus, when creating the new EEU Customs Code, the representatives of business community of the EEU Member States, academic circles and other interested parties (stakeholders) were involved in the work of the Expert Group along the process of developing a new Code. Such organizational and legal mechanism of project management allowed to take into account the interests, positions, proposals of the listed subjects (stakeholders).

The WCO materials on revision of the Kyoto Convention use the term «stakeholders». At the same time, there is no definition of this term. In this context, we believe it is necessary to use the WCO conceptual apparatus, which uses the terms **WCO Members and Observers**.

To date, there is the following classification of observers of the World Customs Organization.

1. *Non-Member countries*. Inviting non-Member countries to attend WCO meetings is seen as a practical means of encouraging new accessions.<sup>1</sup>

2. *Intergovernmental organizations*. A number of intergovernmental organizations, including certain United Nations specialized agencies, deal with trade, transport and travel-related matters which are relevant to Customs in general. Other intergovernmental organizations, whose work is at first sight unrelated to Customs, may from time to time have an interest in a specific programme or draft instrument being developed by a WCO body.<sup>2</sup>

3. *Regional entities*. **Inviting Customs and Economic Unions**, and similar regional entities, to attend meetings of WCO bodies as observers *may encourage and assist them to incorporate the content of WCO instruments in their regional instruments, as well as giving the Secretariat a useful opportunity to hold informal discussions with the observers, during their visits to Brussels, about the Customs-related aspects of that regional entity's work. The presence of observers from regional entities can also help compensate for the fact that WCO Members in some regions are frequently unable to travel to Brussels for meetings as well as providing an indirect link with the WCO and its activities for some small island States which are interested in the Organization's work but are unable to envisage membership.*<sup>3</sup>

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<sup>1</sup> See Annex I to Document SP0116E1. Observer status. Brussels, 11 November 2002. – P. I/1.

<sup>2</sup> Ibid. – P. I/2.

<sup>3</sup> Ibid. – P. I/3

*4. Non-governmental international organizations.* Non-governmental international organizations representing commercial and non-commercial interests can make a significant contribution to the work of WCO bodies in providing technical expertise and communicating the views and experiences of the sectors they represent.

*5. National bodies representing manufacturing, trade and transport interests and private firms.* The WCO is an intergovernmental organization and, as such, its committees and other working bodies should have as their interlocutors international – not national – bodies and international associations representing the interests of private firms, rather than individual private firms themselves. Consequently, neither national bodies nor private firms should be permitted to attend meetings of WCO bodies as observers. There may, however, be occasions where national bodies or national firms may be invited to attend WCO working-body meetings as experts/consultants for certain specific Agenda items only. In contrast, both national bodies and private firms should be actively encouraged to participate in the annual WCO Open Days for Trade, the WCO Business Partnership and the various WCO Symposiums and other trade-related events.<sup>1</sup>

In view of the above, we formulate the conclusions on the paragraph.

The observers of the World Customs Organization participate effectively in the work of various WCO working bodies and make their contribution to the improvement of customs regulation and trade facilitation. The restriction (limitation) of their participation (engagement) in the revision of the Kyoto Convention by means of application of the thematic approach is inconsistent with the practice of the WCO. *This thesis can be challenged*, but the fact remains.

In our opinion, customs and economic unions in the WCO group of observers have a special status. This applies both to the EU, during the period when it was an observer in WCO, and to the EEU, which is invited to meetings of WCO working bodies in the status of observer. We believe that the participation of customs and economic unions in the revision of the Kyoto Convention will have a positive impact on the improvement of customs administration tools. And their involvement in this process on the basis of the thematic approach is not a promising element in the organizational and legal mechanism for the revision of the Convention.

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<sup>1</sup> See Annex I to Document SP0116E1. Observer status. Brussels, 11 November 2002. – P. I/4.

### **5.7.6. On the issue of National Working Groups (Committees) on a Comprehensive Review of the Kyoto Convention**

In §5.7.4 devoted to the organizational and legal aspects of the interaction of the participants of the Working Group on the Comprehensive Review of the Kyoto Convention,<sup>1</sup> we singled out the National Committees (Working Groups) for the revision of the Kyoto Convention. In our opinion, for a comprehensive review of the RKC, along with a clear expression of the political will (on the updating the Convention) of WCO Member Countries participating in this project, an appropriate *governance mechanism* should be established *at the national level* as well as an authorized body (working group, committee) that in cooperation with Customs administration will promote and popularize this project in the state. It is desirable that this working body be created in the Customs service of a Member Country of the WCO.

National Customs administrations should actively participate in this work throughout the project to revise the Convention. Proposals for the updating this international act, in our opinion, can be consulted at the consultative level with national businesses and state authorized bodies, in which competence the issues of improving customs regulation and trade facilitation procedures are located. It is also important to popularize this project in every Member State of the WCO, including in the media and scientific publications.

Let us turn to the experience of the Eurasian Economic Commission. Practice has shown that the normative activities of the Commission in the field of Customs become more effective with maximum use of such mechanisms as *advisory committees, working groups and expert groups established at the EEC*. It should be noted that the upper level of this advisory mechanism is made up of two Committees – the *Consultative Committee on Customs Regulation* and the *Consultative Committee for the Interaction of Control Bodies at the Customs Border*.

The main tasks (competence) of the *Consultative Committee for Customs Regulation* are: preparation for the EEC of recommendations on improving the international treaties and acts constituting the Union's law to regulate customs relations as well as proposals on practical implementation of international treaties and acts in the field of customs regulation; conducting consultations on customs regulation; development of proposals for improving information interaction between the Customs authorities of the Member States of the Union.

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<sup>1</sup> § 5.7.4. Organizational and legal aspects of interaction between the participants of the Working Group on a Comprehensive Review of the Revised Kyoto Convention.

Within the framework of this Consultative Committee, it is being actively considered the issues of creating effective instruments of customs regulation aimed at eliminating unnecessary administrative barriers and improving customs legislation of the Union.<sup>1</sup>

To implement the tasks assigned to it, the Committee performs the following functions:

- a) analyzes international treaties and acts regulating the customs legal relations, constituting the law of the Union as well as the legislation of the Member States in the field of customs regulation; law enforcement practice of Member States in the field of customs regulation; activities of international organizations in the field of customs regulation;
- b) prepares proposals on improving customs regulation, including the use of customs procedures, customs control, development and use of customs infrastructure, with the exception of issues (questions) related to the arrangement and equipping checkpoints across the customs border of the Union; ensuring a uniform law enforcement practice in the implementation of legal relations by means of international treaties and acts, constituting the law of the Union;
- c) performs other functions within its competence.

The Committee consists of representatives of state authorities including heads (deputy heads) of these bodies (hereinafter – authorized representatives). To form the composition (structure) of the Committee, the Collegium requests from Member States proposals for candidacies of authorized representatives. *Representatives of business community, scientific and public organizations, and other independent experts may be included in the Committee on the proposal of the Member States.*

In its turn, the ***Consultative Committee for the Interaction of Control Bodies at the Customs Border*** is working out proposals for the Collegium on the interaction of the executive authorities of the Member States of the Union that perform control functions at the customs border, the development of infrastructure and technologies in the places of movement of goods and vehicles across the customs border of the EEU.

The Consultative Committee on Customs Regulation established working (expert) groups, which activities are organized, depending on the competence, by the Department of Customs Legislation and Law Enforcement Practice and the Department of Customs Infrastructure:

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<sup>1</sup> Paragraph 3 of Chapter II of the Regulation on the Consultative Committee on Customs Regulation. Approved by the Decision of the Board of the Eurasian Economic Commission of March 22, 2016 № 24 «On the Consultative Committee on Customs Regulation». URL: <https://www.alta.ru/tamdoc/16kr0024/>

- ✓ Working Group on development of the institute of the Authorized Economic Operator;
- ✓ Expert Group on customs value issues;
- ✓ Working Group on the improvement of customs operations in respect of goods for personal use transported by individuals;
- ✓ Expert Group on the development of structures, formats and classifiers of documents and information submitted in electronic form;
- ✓ Expert Group on the development of the integrated information system of the Union in the part of general processes in the customs sphere.

There is also an Expert Group on preliminary information under the Consultative Committee for Interaction of Control Bodies at the Customs Border.

A separate Working Group was established outside the Consultative Committees to discuss creation of the Unified system for the identification of participants of foreign economic (trade) activity. There is an Expert Group on preparation of projects of legal acts of the EEU bodies, necessary for creation the Unified system for the identification of participants of foreign economic (trade) activity.

Special mention should be made of the work of the Expert Group on the drafting of the Customs Code of the EEU and the Meeting of High-Level Officials authorized to resolve disagreements on the draft Agreement on the Customs Code of the Eurasian Economic Union. The results of its activity were completed in 2017 by the adoption of a new fundamental act – the Customs Code of the Eurasian Economic Union, which regulates customs legal relations on the territory of the EEU.<sup>1</sup>

The above structure of the consultative bodies allows the customs block of the Commission to conduct a flexible, prompt and comprehensive consultation with authorized bodies and the business community of the EEU Member States on a wide range of topical issues of customs administration. So, in 2016 more than 416 various issues related to improving customs regulation were considered, 300 of which – at the meetings of the Expert Group for the preparation of the project of the Union Customs Code. In total, 66 meetings were held, 37% of which were negotiated for the development and adoption of the Union Customs Code.

With the involvement of the EEC experts in the work of the Working Group on a Comprehensive Review of the Revised Kyoto Convention, con-

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<sup>1</sup> Customs Code of the Eurasian Economic Union. Annex 1 to the Treaty on the Customs Code of the Eurasian Economic Union. Legal portal of the Eurasian Economic Union. URL: [http://www.eurasiancommission.org/ru/act/tam\\_sotr/dep\\_tamoj\\_zak/SiteAssets/Customs%20Code%20of%20the%20EAEU.pdf](http://www.eurasiancommission.org/ru/act/tam_sotr/dep_tamoj_zak/SiteAssets/Customs%20Code%20of%20the%20EAEU.pdf)

sideration could be given to the establishment of a Working Group (Expert Group) for the revision of the Kyoto Convention within the Consultative Committee on Customs Regulation (EEC). The decision on this issue will depend on a number of factors. Among them – *the frequency and scope of involvement of the EEC experts in the revision of the Kyoto Convention*, resolution of organizational and legal issues with the EEU Member States on the issues under consideration.

## CONCLUSION

In this monograph we have considered some aspects of the forthcoming work of the World Customs Organization on the revision of the International Convention on the Simplification and Harmonization of Customs Procedures. The international customs community expects an interesting and at the same time very serious project on revision of the RKC, which at the moment remains the main instrument of customs administration at the international level. In order to achieve a good result at the end of the project, not only Member States parties to the Convention, but also the WCO observers, including customs and economic unions, should be allowed to participate in this process.

Within the frames of interaction between the EEU and the WCO the Eurasian Economic Commission as observer got the opportunity to participate in the work of the Revised Kyoto Convention Management Committee. This circumstance can be called an important milestone in the field of cooperation with WCO in 2018 and the involvement of the Commission's experts in the process of creating modern instruments of customs administration. The entry of EEC specialists into the Revised Kyoto Convention Management Committee and the practical participation in the meetings of this WCO working body is a strategic perspective as well as an important line of work for the customs block of the Commission.

To date, the Revised Kyoto Convention should be a plan for modern, efficient customs procedures in the 21<sup>st</sup> century. The Convention is subject to revision due to objective reasons and, first of all, due to the significant modernization of the legal institutions of customs regulation, the emergence of new WCO instruments of customs regulation, the development of modern customs technologies, the formation of new concepts in the field of customs, the administrative and legal mechanisms of customs administration as well as the agreements reached in the international customs community.

We believe that the WCO Secretariat and the working bodies of this respected Organization need to continue the policy of using any opportunity to promote the Revised Kyoto Convention in the world. Accordingly, the process of its revision should be open and take into account the interests of interested stakeholders, including Customs, other state control authorities, economic operators, economic entities involved in the near-customs sphere.

To date, the WCO has developed modern customs administration instruments that affect a variety of customs law institutions. It is clear that the revised Convention and its accompanying Guidelines should take into account as much as possible legal innovations in the field of customs administration. The revision of the Convention is necessary in view of the important changes that have occurred in the field of customs administration and trade facilitation over the past 20 years.

The revision of the Kyoto Convention will undoubtedly strengthen the position of the World Customs Organization in the international arena as the main international organization and an important institution of improving customs regulation and trade facilitation.

The process of revision of the Convention should be preceded by the creation of an effective scientific and methodological apparatus, an analysis of the approaches to such a revision. It is necessary to work out the correct method of work and establish a time frame for its completion. In addition to this, it is necessary to conduct a fundamental analysis of the Convention with a view to correlating its provisions with best and modern customs regulation practices.

To date, there is no methodology for assessing the revision of legal instruments of customs regulation (standards, regulations, legal institutions) of the Kyoto Convention. The main directions of this work are formulated only conceptually. In this regard, it is required a certain concept, a plan for the revision of such instruments as well as methodological frameworks developed with the active participation of stakeholders and the academic community.

Experts of the customs block of the Eurasian Economic Commission are ready to participate in the revision of the Kyoto Convention. And we sincerely hope that the international customs community in the near future will receive a new instrument of customs administration, which will become a new Customs Constitution and a benchmark for many years.

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## ANNEXES

### Annex 1

#### Contracting Parties to the Revised Kyoto Convention<sup>1</sup>

<b>CONTRACTING PARTIES (*was a CP to 1973 Convention)</b>	<b>Dates of signature without reservation or of deposit of Instruments of ratification or accession</b>	<b>Dates of subsequent notification on Specific Annexes and Chapters</b>	<b>Notification</b>
<b>ALBANIA</b>	04-06-2013		PG0218B1
<b>ALGERIA*</b>	26-06-1999 • DZ199906 (Empowering signature without reservation)	14-06-2001 • DZ200106 (Subs notice)	SG0099
<b>ANGOLA</b>	23-02-2017		PG0267B1
<b>ARGENTINA</b>		19-06-2015	PG0251B1
<b>ARMENIA</b>	19-07-2013		PG0225B1
<b>AUSTRALIA*</b>	10-10-2000 • AU200003 (Empowering signature subject to ratification) • AU200004 (Note verbale) • AU200007 (Instrument of ratification) • AU200010 (Note verbale)		SG0084
<b>AUSTRIA*</b>	30-04-2004 • AT200404 (Instrument of accession) • AT200405 (Note verbale)		PG0063

<sup>1</sup> Contracting Parties to the Revised Kyoto Convention by WCO Region (as of 12 June 2018). URL: [http://www.wcoomd.org/en/Topics/Facilitation/Instrument%20and%20Tools/Conventions/pf\\_revised\\_kyoto\\_conv/Instruments](http://www.wcoomd.org/en/Topics/Facilitation/Instrument%20and%20Tools/Conventions/pf_revised_kyoto_conv/Instruments)

<b>CONTRACTING PARTIES (*was a CP to 1973 Convention)</b>	<b>Dates of signature without reservation or of deposit of Instruments of ratification or accession</b>	<b>Dates of subsequent notification on Specific Annexes and Chapters</b>	<b>Notification</b>
<b>AZERBAIJAN</b>	03-02-2006 • AZ200401 (Instrument of accession) • AZ200402 (Note verbale)		PG0119
<b>BAHRAIN</b>	• BH201204 (Instrument of accession) • BH201205 (Note Verbal)		PG0207B1
<b>BANGLADESH</b>	27-07-2012 • BD201207 (Instrument of accession) • BD201207 (Note Verbal)		PG0215B1
<b>BELARUS*</b>	20-12-2010 • BY201012 (Instrument of accession) • BY201101 (Note verbale)		PG0193B1
<b>BELGIUM*</b>	30-04-2004 • BE2004 (Instrument of accession)		PG0064
<b>BENIN</b>	05-01-2017		PG0262B1
<b>BHUTAN</b>	15-09-2014		PG0240B1
<b>BOTSWANA*</b>	26-06-2006 • BW200604 (Instrument of accession) • BW200606 (Note verbale)		PG0123
<b>BULGARIA*</b>	17-03-2004 • BG200312 (Instrument of accession) • BG200403 (Note verbale)		PG0057

<b>CONTRACTING PARTIES (*was a CP to 1973 Convention)</b>	<b>Dates of signature without reservation or of deposit of Instruments of ratification or accession</b>	<b>Dates of subsequent notification on Specific Annexes and Chapters</b>	<b>Notification</b>
<b>BURKINA FASO</b>	08-07-2017		PG0276B1
<b>CAMBODIA</b>	28-06-2014		PG0236B1
<b>CAMEROON*</b>	18-11-2014		PG0242B1
<b>CANADA*</b>	09-11-2000 • CA20008 (Instrument of accession)	26-06-2013	SG0083
<b>CAPE VERDE</b>	27-06-2013		PG0221B1
<b>CHINA*</b>	15-06-2000 • CN200006 (Empowering signature without reservation)	14-07-2016	PG0258B1
<b>CONGO (Rep. of the)</b>	14-12-2017		PG0278B1
<b>CONGO (Dem. Rep. of the)*</b>	24-06-2009 • CD200906 (Instrument of Accession)		SG0062E/F
<b>CÔTE D'IVOIRE</b>	27-06-2013		PG0222B1
<b>CROATIA*</b>	02-11-2005 • HR200509 (Instrument of accession)		PG0102
<b>CUBA*</b>	24-09-2009 • CU200906 (Instrument of accession) • CU200906 (Note verbale)		PG0173B1a
<b>CYPRUS*</b>	25-10-2004 • CY200410 (Instrument of accession) • CY200410 (Note verbale)		PG0095

<b>CONTRACTING PARTIES (*was a CP to 1973 Convention)</b>	<b>Dates of signature without reservation or of deposit of Instruments of ratification or accession</b>	<b>Dates of subsequent notification on Specific Annexes and Chapters</b>	<b>Notification</b>
<b>CZECH REPUBLIC*</b>	19-09-2001 • CZ200006 (Empowering signature subject to ratification) • CZ200106 (Instrument of ratification)		SG00133
<b>DENMARK*</b>	30-04-2004 • DK200212 (Instrument of accession)	17-06-2004 • DK200406 (Subs notice) • DK200406 (Note verbale)	PG0065
<b>DOMINICAN REPUBLIC</b>	• DO201206 (Instrument of accession) • DO201206 (Note Verbal)		PG0209B1
<b>EGYPT*</b>	08-01-2008 • EG2008 (Instrument of accession)	• EG201104 (Subs Notice) • EG201104 (Note verbale) • EG201105 (WCO note)	PG0118EF
<b>ESTONIA</b>	28-07-2006 • EE200609 (Instrument of accession) • EE200609 (Note verbale)		PG0140
<b>EUROPEAN UNION*</b>	30-04-2004 • EC200303 (Instrument of accession)		PG0061
<b>FINLAND*</b>	30-04-2004 • FI200212 (Instrument of accession)		PG0066

<b>CONTRACTING PARTIES (*was a CP to 1973 Convention)</b>	<b>Dates of signature without reservation or of deposit of Instruments of ratification or accession</b>	<b>Dates of subsequent notification on Specific Annexes and Chapters</b>	<b>Notification</b>
<b>FIJI*</b>	29-01-2010 • FJ20102901 (Instrument of Accession)		PG0175B1
<b>FRANCE*</b>	22-07-2004 • FR200212 (Instrument of accession) • FR200407 (Note verbale)		PG0093
<b>GABON</b>	15-11-2012 • GA201211 (Instrument d'adhésion)		PG0217B1
<b>GERMANY*</b>	30-04-2004 • DE2004 (Instrument of accession)		PG0062
<b>GREECE*</b>	30-04-2004 • GR200307 (Instrument of accession)		PG0067
<b>HUNGARY*</b>	29-04-2004 • HU200404 (Instrument of accession) • HU200404 (Note verbale)		PG0059
<b>ICELAND</b>	08-10-2015		PG0254B1
<b>INDIA*</b>	03-11-2005 • IN200510 (Instrument of accession) • IN200511 (Note verbale)		PG0101
<b>INDONESIA</b>	22-08-2014		PG0238B1
<b>IRAN</b>	23-02-2016		PG0256B1

<b>CONTRACTING PARTIES (*was a CP to 1973 Convention)</b>	<b>Dates of signature without reservation or of deposit of Instruments of ratification or accession</b>	<b>Dates of subsequent notification on Specific Annexes and Chapters</b>	<b>Notification</b>
<b>IRELAND*</b>	30-04-2004 • IE200404 (Instrument of accession)		PG0068
<b>ITALY*</b>	30-04-2004 • IT200112 (Instrument of accession)		PG0069
<b>JAPAN*</b>	26-06-2001 • JP200106 (Instrument of accession) • JP200106 (Note verbale)		SG0125
<b>JORDAN</b>	08-12-2006 • JO200606 (Empowering signature) • JO200607 (Instrument of accession)		PG0144
<b>KAZAKHSTAN</b>	19-06-2009 • KA200906 (Instrument of accession) KA200906 (Note verbale)		PG0164
<b>KENYA*</b>	25-06-2009 • KE201006 (Instrument of accession)		PG0186B1a
<b>KIRIBATI</b>	11-06-2018		PG0279B1
<b>KOREA*</b>	19-02-2003 • KR200301 (Instrument of accession)		PG0035
<b>KUWAIT</b>	14-04-2017		PG0269B1
<b>LAO PEOPLE'S DEMOCRATIC REPUBLIC</b>	16-07-2016		PG0257B1

<b>CONTRACTING PARTIES (*was a CP to 1973 Convention)</b>	<b>Dates of signature without reservation or of deposit of Instruments of ratification or accession</b>	<b>Dates of subsequent notification on Specific Annexes and Chapters</b>	<b>Notification</b>
<b>LATVIA*</b>	20-09-2001 • LV200006 (Empowering signature subject to ratification) • LV200109 (Instrument of ratification) • LV200109 (Note verbale)		SG0134
<b>LESOTHO*</b>	15-06-2000		SG0064
<b>LITHUANIA*</b>	27-04-2004 • LT200404 (Instrument of accession) • LT200404 (Note verbale)		PG0060
<b>LUXEMBOURG*</b>	26-01-2006 • LU200512 (Instrument of accession) • LU200601 Note verbale)		PG0118
<b>MADAGASCAR*</b>	27-06-2007 • MG200704 (Instrument of accession) • MG200706 (Note verbale)		PG0147
<b>MALAWI*</b>	06-09-2013		PG0227B1
<b>MALAYSIA</b>	30-06-2008 • Malaysia (Instrument of accession)		PG0153B1
<b>MALI</b>	04-05-2010 • ML201004 (Note Verbal) • ML201001 (Instrument of accession)		PG0177B1a

Continue Annex 1

<b>CONTRACTING PARTIES (*was a CP to 1973 Convention)</b>	<b>Dates of signature without reservation or of deposit of Instruments of ratification or accession</b>	<b>Dates of subsequent notification on Specific Annexes and Chapters</b>	<b>Notification</b>
<b>MALTA</b>	11-05-2010 • MT201011 (Instrument of accession)		PG0179B1a
<b>MAURITIUS</b>	24-09-2008 • Mauritius (Instrument of accession)		PG0161E
<b>MONGOLIA</b>	01-07-2006 • MN200606 (Instrument of accession)		PG0124
<b>MONTENE-GRO*</b>	16-06-2008 • ME200806 (Instrument of Accession)		PG0155B
<b>MOROCCO*</b>	16-06-2000 • MA200002 (Empowering signature without reservation)		SG0066
<b>MOZAMBIQUE</b>	11-07-2012 • MZ201207 (Instrument of accession) • MZ201207 (Note Verbal)		PG0214B1
<b>NAMIBIA</b>	03-02-2006 • NA200403 (Instrument of accession) • NA200405 (Note verbale)		PG0120
<b>NEPAL</b>	03-02-2017		PG0266B1b
<b>NETHER-LANDS*</b>	30-04-2004 • NL200403 (Instrument of accession)		PG0070

<b>CONTRACTING PARTIES (*was a CP to 1973 Convention)</b>	<b>Dates of signature without reservation or of deposit of Instruments of ratification or accession</b>	<b>Dates of subsequent notification on Specific Annexes and Chapters</b>	<b>Notification</b>
<b>NEW ZEALAND*</b>	07-07-2000 • NZ200006 (Instrument of accession)	05-08-2000 • NZ200508 (Subs notice)	SG0067
<b>NIGER</b>	13-02-2015		PG0249B1
<b>NIGERIA</b>	• NG201206 (Instrument of accession) • NG201206 (Note verbale)		PG0210B1
<b>NORWAY*</b>	09-01-2007 • NO200610 (Instrument of accession) • NO200701 (Note verbale)		PG0142
<b>OMAN</b>	06-01-2015		PG0246B1
<b>PAKISTAN*</b>	01-10-2004 • PK200402 (Instrument of accession)		PG0094
<b>PAPUA NEW GUINEA</b>	31-01-2014		PG0234B1
<b>PHILIPPINES*</b>	25-06-2010 • PH200903 (Instrument of accession)		PG0187F1a PG0187E1a
<b>POLAND*</b>	09-07-2004 • PL200405 (Instrument of accession) • PL200406 (Note verbale)		PG0079
<b>PORTUGAL*</b>	15-04-2005 • PT200503 (Instrument of accession) • PT200504 (Note verbale)		PG0100

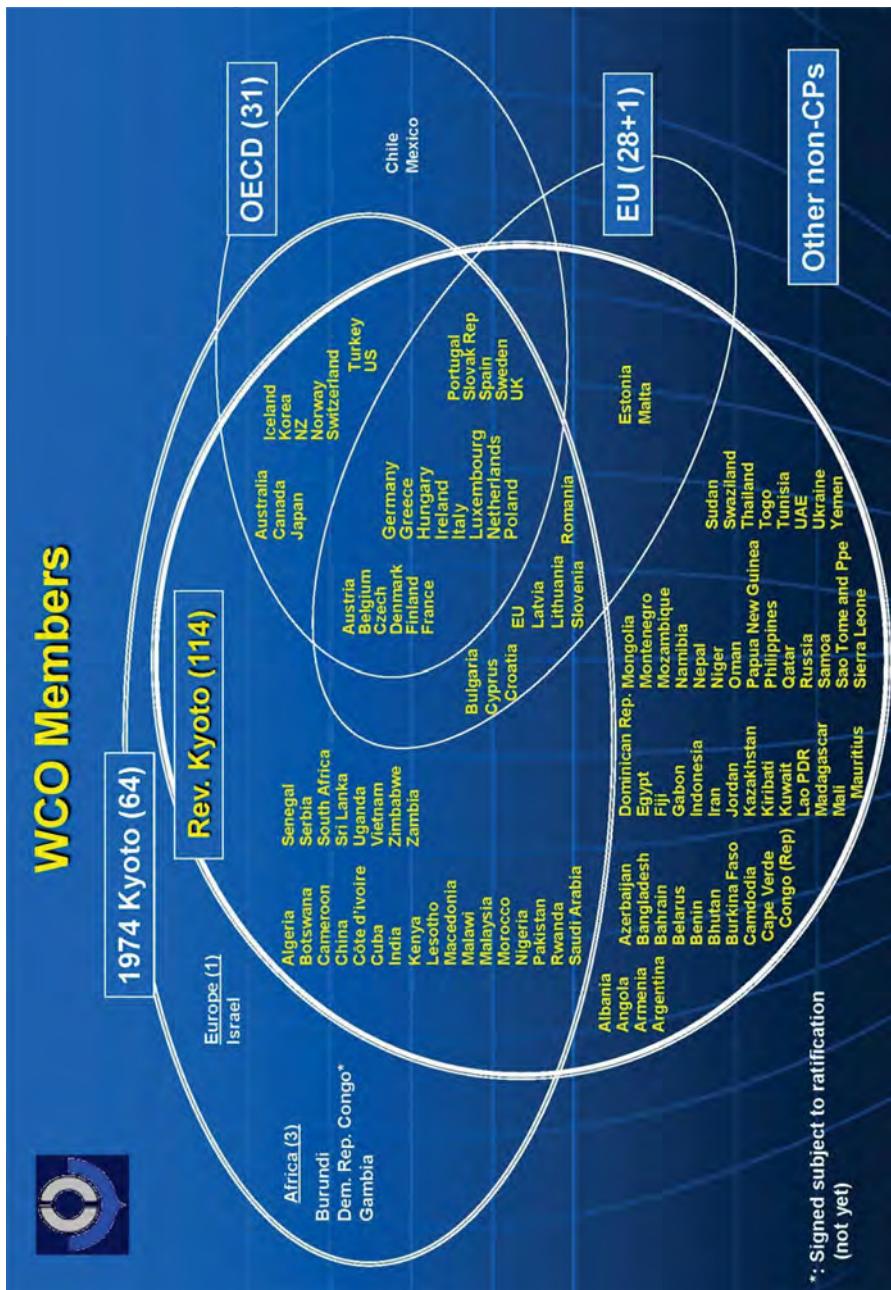
<b>CONTRACTING PARTIES (*was a CP to 1973 Convention)</b>	<b>Dates of signature without reservation or of deposit of Instruments of ratification or accession</b>	<b>Dates of subsequent notification on Specific Annexes and Chapters</b>	<b>Notification</b>
<b>QATAR</b>	13-07-2009 • QA200907 (Instrument of accession) • QA200907 (Note verbale) • QA200907 (Joining document)		PG0169
<b>ROMANIA</b>	27-12-2010 • RO201012 (Instrument of accession) • RO201102 (Note verbale)		PG0195B1
<b>RUSSIA*</b>	02-02-2011 • RU201102 (Instrument of accession) • RU201104 (Note verbale)		PG0196B1a
<b>RWANDA*</b>	21-11-2011 • RW201109 (Instrument of accession) • RW201111 (Note verbale)		PG0204B1b
<b>SAMOA</b>	27-10-2016		PG0260B1
<b>SAO TOME AND PRINCIPE</b>	08-05-2017		PG0273B1
<b>SAUDI ARABIA*</b>	27-04-2011 • SA201104 (Instrument of accession) • SA201105 (Note verbale)		PG0198B1
<b>SENEGAL*</b>	21-03-2006 • SN200602 (Instrument of accession) • SN200604 (Note verbale)		PG0121

<b>CONTRACTING PARTIES (*was a CP to 1973 Convention)</b>	<b>Dates of signature without reservation or of deposit of Instruments of ratification or accession</b>	<b>Dates of subsequent notification on Specific Annexes and Chapters</b>	<b>Notification</b>
<b>SERBIA*</b>	18-09-2007 • RS200709 (Instrument of accession)		PG0150
<b>SIERRA LEONE</b>	12-06-2015		PG0252B1
<b>SLOVAKIA*</b>	19-09-2002 • SK200006 (Empowering signature subject to ratification) • SK200208 (Instrument of ratification) • SK200209 (Note verbale)		PG0030
<b>SLOVENIA*</b>	27-04-2004 • SI200404 (Instrument of accession) • SI200404 (Note verbale)		PG0058
<b>SOUTH AFRICA*</b>	18-05-2004 • ZA200404 (Instrument of accession)		PG0074
<b>SPAIN*</b>	30-04-2004 • ES200305 (Instrument of accession)		PG0071
<b>SRI LANKA*</b>	26-06-2009 • LKA200906 (Instrument of ratification)		PG0172B1a
<b>SUDAN*</b>	16-08-2009 • SD20091608 (Note Verbal) • SD20091608 (Instrument of Accession)		PG0174B1
<b>SWEDEN*</b>	30-04-2004 • SE200404 (Instrument of accession)		PG0072

<b>CONTRACTING PARTIES (*was a CP to 1973 Convention)</b>	<b>Dates of signature without reservation or of deposit of Instruments of ratification or accession</b>	<b>Dates of subsequent notification on Specific Annexes and Chapters</b>	<b>Notification</b>
<b>SWAZILAND</b>	31-10-2012 • SZ201210 (Instrument of accession) • SZ201210 (Note Verbal)		PG0216B1
<b>SWITZER-LAND*</b>	26-06-2004 • CH200006 (Empowering signature subject to ratification) • CH200406 (Instrument of ratification)		PG0078
<b>THAILAND</b>	12-06-2015		PG0250B1
<b>THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA</b>	28-07-2009 • MK200907 (Instrument of ratification) • MK200907 (Note verbale)		PG0171
<b>TOGO</b>	28-06-2014		PG0237B1
<b>TUNISIA</b>	24-07-2017		PG0275B1
<b>TURKEY*</b>	03-05-2006 • TR200604 (Instrument of accession) • TR200605 (Note verbale)		PG0122
<b>UGANDA*</b>	27-06-2002 • UG200203 (Instrument of accession) • UG200206 (Note verbale)	• UG200207 (Subs notice) • UG200208 (Subs notice)	PG0029
<b>UKRAINE*</b>	15-06-2011 • UA201106 (Instrument of Accession)		PG0199B1

<b>CONTRACTING PARTIES (*was a CP to 1973 Convention)</b>	<b>Dates of signature without reservation or of deposit of Instruments of ratification or accession</b>	<b>Dates of subsequent notification on Specific Annexes and Chapters</b>	<b>Notification</b>
<b>UNITED ARAB EMIRATES*</b>	31-06-2010 • AE201005 (Instrument of accession) • AE2010006 (Note verbale)		PG0189B1a
<b>UNITED KINGDOM*</b>	30-04-2004 • GB200212 (Instrument of accession)		PG0073
<b>UNITED STATES*</b>	06-12-2005 • US200512 (Instrument of accession)		PG0117
<b>VIETNAM*</b>	08-01-2008 • VN200712 (Instrument of accession) • VN200712 (Note verbale)		PG0117EF
<b>YEMEN</b>	27-06-2013		PG0223B1
<b>ZAMBIA*</b>	01-07-2006 • ZM200602 (Instrument of ratification)		PG0125
<b>ZIMBABWE*</b>	10-02-2003 • ZW200212 (Instrument of ratification) • SW200302 (Note verbale)		SG0072
<b>TOTAL NUMBER OF CP's</b>	<b>114</b>		

## List of Contracting Parties to the RKC – Chart<sup>1</sup>



<sup>1</sup> WCO Materials.

**Memorandum of Understanding Between the World Customs Organization (WCO), Having its Headquarters in Brussels, Belgium, and the Eurasian Economic Community (EAEC), Having its Headquarters in Moscow, Russia and in Almaty, Kazakhstan (25 June, 2004)**



**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
WORLD CUSTOMS ORGANIZATION (WCO)  
AND THE  
EURASIAN ECONOMIC COMMUNITY (EAEC)**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE WORLD CUSTOMS ORGANIZATION<sup>1</sup> (WCO),  
HAVING ITS HEADQUARTERS IN BRUSSELS, BELGIUM,  
AND THE EURASIAN ECONOMIC COMMUNITY (EAEC),  
HAVING ITS HEADQUARTERS IN MOSCOW, RUSSIA, AND  
IN ALMATY, KAZAKHSTAN**

The World Customs Organization (WCO) and the Eurasian Economic Community (EAEC), referred to hereinafter as "the Parties":

**RECOGNIZING** that the Parties wish to establish a mutually supportive relationship,

**RECOGNIZING** also that the Parties wish to establish appropriate arrangements for co-operation,

**Have agreed as follows :**

**ARTICLE I**

The Parties shall co-operate in the discharge of their respective mandates in accordance with the provisions of this Memorandum of Understanding.

For the purposes of this Memorandum, any reference to the EAEC or WCO (if not explicitly to the Secretariat of the Integration Committee of the EAEC or the WCO Secretariat) is understood to refer to the decision-making bodies of the EAEC and WCO, respectively.

**ARTICLE II**

The Parties agree, where appropriate, to :

- establish and maintain consultation and hold seminars on issues of common interest;
- invite each other to meetings and other events, in accordance with their procedures, in order to exchange their experience;
- exchange non-classified information and documents.

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<sup>1</sup> Established as the Customs Co-operation Council.

### **ARTICLE III**

The Parties agree to actively promote the modernization of Customs administrations in the EAEC region through the adoption and implementation of Customs instruments and tools developed and recommended by the WCO.

The WCO shall, within the limits of the available resources, make experts available to the EAEC to assist with the development of the Basic Customs Legislations of EAEC members and other EAEC laws and regulations, in order to bring them into conformity with international (WCO) standards and practices.

### **ARTICLE IV**

Wherever possible, the Secretariat of the Integration Committee of the EAEC and the WCO Secretariat shall co-ordinate joint activities in sectors of common interest.

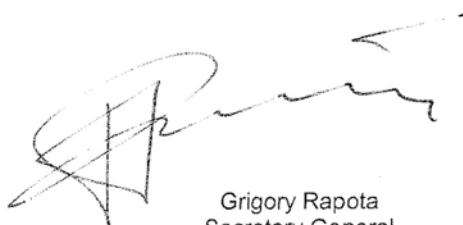
### **ARTICLE V**

1. This Memorandum of Understanding shall enter into force on the date of its signature.
2. It shall be reviewed upon the request of either the Secretary General of the EAEC or the Secretary General of the WCO, and may be amended by mutual agreement.
3. This Memorandum of Understanding may be terminated by either Party at any time, by written notification.
4. This Memorandum of Understanding shall be regarded as an administrative arrangement between the Parties thereto. Any dispute over the interpretation or application of any provision herein contained shall be settled through negotiations or by such other means as the Parties shall mutually agree.

Done at Brussels, on 25 June 2004, in two copies in the English, French and Russian languages, the texts in all three languages having equal legal force.



Michel Danet  
Secretary General  
World Customs Organization



Grigory Rapota  
Secretary General  
Eurasian Economic Community

**Decree of the Collegium of the Eurasian Economic Commission  
№ 64 «On the draft Memorandum of Understanding between  
the Eurasian Economic Commission and the World Customs  
Organization» (17 May 2016)**



**ЕВРАЗИЙСКАЯ ЭКОНОМИЧЕСКАЯ КОМИССИЯ  
КОЛЛЕГИЯ**

**Р А С П О Р Я Ж Е Н И Е**

«17» мая 2016 г.

**№ 64**

г. Москва

**О проекте Меморандума о взаимопонимании между  
Евразийской экономической комиссией  
и Всемирной таможенной организацией**

1. Одобрить проект Меморандума о взаимопонимании между Евразийской экономической комиссией и Всемирной таможенной организацией (прилагается).

Поручить члену Коллегии (Министру) по таможенному сотрудничеству Евразийской экономической комиссии Кадыркулову М.А. подписать указанный Меморандум, разрешив в ходе переговоров о его подписании вносить в прилагаемый проект изменения, не имеющие принципиального характера.

2. Настоящее распоряжение вступает в силу с даты его принятия.

Председатель Коллегии  
Евразийской экономической комиссии



Т. Саркисян

**Memorandum of Understanding between the Eurasian Economic Commission and the World Customs Organization  
(17 June 2016)**

**MEMORANDUM OF UNDERSTANDING  
between the Eurasian Economic Commission and the World Customs Organization<sup>1</sup>**

The Eurasian Economic Commission (EEC) and the World Customs Organization (WCO), hereinafter referred to as "the Parties":

**Based on the** Treaty on the Eurasian Economic Union of 29 May 2014 and the Convention establishing a Customs Co-operation Council of 15 December 1950,

**Recognizing** that the Parties seek to ensure effective functioning of international trade through the use of international instruments, the promotion of best Customs practices, and Customs modernization programmes,

**Recognizing** that the Parties wish to establish and develop cooperation based on mutual support and to create the mechanism for such cooperation,

**Recognizing** that the exchange of information, training activities and technical assistance are essential for the unified application of the key international conventions, recommendations and other standards in the Customs sphere,

**Abiding by** the principles of equality, transparency and mutual understanding,

Have agreed as follows:

**Article 1  
General**

The Parties agree to cooperate and consult on matters of common interest in order to coordinate their efforts on trade facilitation and improvement of Customs regulations each within its own competence, as well as to contribute to the economic development of the Member States of the Eurasian Economic Union and of the WCO.

**Article 2  
Scope of cooperation**

For the purposes of this Memorandum of Understanding, the Parties agree to cooperate in the following areas:

- Improvement of Customs, based on international standards;
- Development of international Customs cooperation;
- Elaboration of effective and modern standards in the Customs sphere;
- Establishment of practical cooperation between the Parties in Customs matters;
- Implementation of best Customs practices;
- Harmonization and increased effectiveness in the use of the resources of Customs administrations;
- Increase in effectiveness of Customs controls;
- Development of Customs infrastructure.

<sup>1</sup> Established in 1952 as the Customs Co-operation Council.



**Article 3  
Forms of cooperation**

The Parties agree to cooperate, where appropriate and inter alia, in the following forms:

- Exchange of publically available information and documents concerning matters of common interest;
- Participation of the representatives of one Party in relevant events organized by the other Party;
- Organization of joint meetings, consultations, scientific seminars and conferences on matters of common interest.

**Article 4  
Programmes of activities**

The Parties shall invite each other to meetings and events of common interest in accordance with the relevant rules and procedures of each Organization.

The terms and procedures for the holding of joint meetings shall be determined by the Parties in each specific case.

**Article 5  
Entry into force, amendments, termination**

The Memorandum of Understanding does not constitute an international agreement and does not impose legal and financial obligations on either of the Parties.

This Memorandum of Understanding may be amended by mutual agreement of the Parties by concluding a supplementary agreement.

This Memorandum of Understanding shall enter into force on the date of its signature.

This Memorandum of Understanding may be terminated by either Party at any time, by written notification. In such case, the Memorandum of Understanding shall terminate on the date stipulated in the notification.

Done at Brussels on 17 June 2016 in two originals each in the English and Russian languages. In case of any discrepancy, the English text shall prevail.

**For the Eurasian Economic Commission**

Mukai Kadyrkulov  
Member of the Board  
(Minister) for Customs Cooperation

**For the World Customs Organization**

Kunio Mikuriya  
Secretary General

## **Provisional list of customs operations and business processes<sup>1</sup>**

### **I. EXPORT OF GOODS FROM THE CUSTOMS TERRITORY OF THE EURASIAN ECONOMIC UNION**

#### **1. Payment, payments and e-commerce**

##### **1. Selection of trade partner:**

- ✓ search for a foreign partner – a buyer of goods;
- ✓ information exchange about the seller, buyer and goods;
- ✓ consideration of the offer:
  - formation of the offer by the exporter (product name, price and quantity);
  - consideration of the offer: by the importer;
- ✓ formation of a request for delivery;
- ✓ sending a proforma invoice;
- ✓ conclusion of the contract and delivery terms (conclusion of an individual contract or through exchange of a request for delivery and proforma invoice);
- ✓ registration of the contract in currency exchange control bodies (currency transaction report form) (in case provided for in the legislation of the Member State of the Eurasian Economic Union (hereinafter referred to as the «Member State», the «Union», respectively).

##### **2. Order of goods:**

- ✓ preparation of goods for delivery (issue of invoice and packing list);
- ✓ sending invoice and packing list;

##### **3. Payment under the contract:**

- ✓ request for payment (requirement of payment for goods);
- ✓ making payment;

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<sup>1</sup> See Annex 3 to the Methods for Assessing the State of Development of National “Single Window” Mechanisms». Collection of regulatory legal acts to implement and develop the «single window» mechanism in the Member- States of the Eurasian Economic Union for 2014-2015. – P. 135 – 160. URL: [http://www.eurasiancommission.org/ru/act/tam\\_sotr/edinoe\\_okno/Documents/%D0%A1%D0%B1%D0%BE%D1%80%D0%BD%D0%B8%D0%BA\\_%D0%9D%D0%9F%D0%90\\_%D0%B0%D0%BD%D0%B3%D0%BB\\_All\\_2.pdf](http://www.eurasiancommission.org/ru/act/tam_sotr/edinoe_okno/Documents/%D0%A1%D0%B1%D0%BE%D1%80%D0%BD%D0%B8%D0%BA_%D0%9D%D0%9F%D0%90_%D0%B0%D0%BD%D0%B3%D0%BB_All_2.pdf)

4. Payment of customs duties:

- ✓ payment via bank:
  - bank wire transfer;
  - payment via terminal;
  - cash payment in the bank cash office;
  - receiving a document confirming payment.
- ✓ confirmation of payment of customs duties:
  - making marks about money transfer;
  - making marks about money transfer.

5. Payment for services:

- ✓ payment for obtaining of a permit;
- ✓ payment for services of goods transportation;
- ✓ payment of insurance premium;
- ✓ payment for services of customs broker;
- ✓ payment of charges for advance ruling according to Commodity Nomenclature of Foreign Economic Activity of the EAEU.

6. Provision of documents confirming the actual export of goods from the customs territory of the Union and reasonability of application of the zero rate of value added tax (exemption from excise duties) (for deliveries to the Member States):

- ✓ providing information on the actual export of goods;
- ✓ consideration (estimation) of a set of documents (information) confirming the reasonability of application of zero rate of value added tax (exemption from excise duties);
- ✓ confirmation of the reasonability of application of zero rate of value added tax (exemption from excise duties), or denial of the right to apply zero VAT rate (exemption from excise duties).

## 2. Permits

7. Obtaining permits for compliance with prohibitions and restrictions:

- ✓ preparation of applications for obtaining permits;
- ✓ sending documents to the authorized authority of the Member State (hereinafter referred to as the «authorized authority»);
- ✓ review of the documents submitted by the authorized authority;
- ✓ request for information and documents from the importer;
- ✓ issue of a permit.

8. Obtaining permits of the authorized authority (documents required for placing goods under the selected customs procedure).

### **3. Transport and Logistics**

9. Transportation of goods:

- ✓ search for a transport company;
- ✓ sending a request;
- ✓ consideration of the request;
- ✓ conclusion of a contract;
- ✓ sending a request for goods transportation;
- ✓ preparation of the consignment note;
- ✓ sending a draft consignment note;
- ✓ sending confirmation of the request for transportation;
- ✓ reservation of transport for goods transportation;
- ✓ loading of goods by the exporter (start of transportation);
- ✓ sending a consignment note.

10. Cargo insurance:

- ✓ search for an insurance company;
- ✓ sending a request:
  - a request;
  - letter of credit invoice packing list;
  - a draft consignment note.
- ✓ analysis of risks and the amount of the insurance premium;
- ✓ approval of the amount of insurance coverage;
- ✓ issue of insurance certificate;
- ✓ submission of a contract for goods transportation;
- ✓ issue of insurance police.

### **4. E-Customs**

11. Determination of classification code of goods according to Commodity Nomenclature of Foreign Economic Activity of the EAEU:

- ✓ obtaining an advance ruling according to Commodity Nomenclature of Foreign Economic Activity of the EAEU:
  - preparation of an application for advance ruling accompanied with the documents containing information of:
    - composition (structure) of goods;

- o technology of goods;
- o production properties (operating principle), purpose, scope of use of goods.
- sending an application and documents;
- consideration of the application and attached documents;
- obtaining an advance ruling according to Commodity Nomenclature of Foreign Economic Activity of the EAEU.

12. Obtaining a certificate of the country of origin of goods

13. Customs broker:

- ✓ search for customs broker;
- ✓ sending a request of the need to use services of a customs broker;
- ✓ exchange of information about goods and preparation of a proposal to conclude a contract;
- ✓ conclusion of a contract importer, carrier, forwarder – customs broker;
- ✓ sending documents for preparation of preliminary information and subsequent customs declaration (including preliminary declaration):
  - contract;
  - commercial documents (invoice);
  - packing list catalogue;
  - transport (shipment) documents permits;
  - certificate of origin of goods.

14. Customs operations, preceding submission of customs declaration:

- ✓ goods sampling;
- ✓ placement of goods in the customs control zone.

15. Customs declaration:

- ✓ formation of a declaration for goods containing information on:
  - declared customs procedure customs applicant, customs broker, goods consigner and consignee;
  - vehicles used for international transportation;
  - goods: name, description; classification code of goods according to Commodity Nomenclature of Foreign Economic Activity of the EAEU; description of packages (number, kind, labelling and serial numbers); quantity (in kilograms (gross and net weight) and other measure units); customs value; statistical value;

- calculation of customs duties: rates of customs duties, taxes, customs charges; application of exemptions from payment of customs duties; amounts of calculated customs duties, taxes, customs charges; exchange rates;
  - foreign trade transaction and its basic conditions;
  - upholding of restrictions goods manufacturer;
  - confirmation of compliance with terms of placing goods under the customs procedure;
  - documents submitted for customs declaration;
  - person that executed a declaration for goods;
  - place and date of executing the declaration for goods.
- ✓ submission of (sending) a declaration for goods;
- ✓ registration of a declaration for goods;
- ✓ review of a declaration for goods (format and logical control);
- ✓ modification and supplement of data stated in the declaration for goods before release of goods;
- ✓ application of risk management system;
- ✓ conduct of customs control (in case of operation of the risk management system);
- ✓ sampling for customs expertise;
- ✓ holding customs expertise;
- ✓ release of goods;
- ✓ exportation of goods from the temporary storage place.

#### 16. Departure of goods:

- ✓ submission of documents and information;
- ✓ verification of compliance with prohibitions and restrictions (check for available permits);
- ✓ carrying out customs, transport, veterinary, phytosanitary or sanitary and quarantine control;
- ✓ carrying out customs examination (inspection):
  - sending a notification of the customs examination (inspection);
  - preparation of a certificate of customs examination (inspection);
  - transfer of a copy of a certificate of customs examination (inspection).
- ✓ goods sampling by authorized authority;
- ✓ unloading, handling, transshipment, change of vehicle;
- ✓ conduct of border control.

## **II. IMPORTATION OF GOODS INTO THE CUSTOMS TERRITORY OF THE UNION**

### **1. Payment, payments and e-commerce**

#### **1. Selection of trade partner:**

- ✓ search for a foreign partner – a seller of goods and conclusion of a contract;
- ✓ information exchange about the seller, buyer and goods;
- ✓ consideration of the offer:
  - formation of the offer by the exporter (product name, price and quantity);
  - consideration of the offer: by the importer.

#### **✓ formation of a request for delivery;**

- ✓ sending a proforma invoice;

- ✓ conclusion of the contract and delivery terms (conclusion of an individual contract or through exchange of a request for delivery and proforma invoice);

- ✓ registration of the contract in currency exchange control bodies (currency transaction report form) (in case provided for in the legislation of the Member State).

#### **2. Order of goods:**

- ✓ preparation of goods for delivery (issue of invoice and packing list);
- ✓ sending invoice and packing list.

#### **3. Payment under the contract:**

- ✓ request for payment (requirement of payment for goods);
- ✓ making payment.

#### **4. Payment of customs duties:**

- ✓ payment via bank:
  - bank wire transfer;
  - payment via terminal;
  - cash payment in the bank cash office.
- ✓ receiving a document confirming payment;
- ✓ confirmation of payment of customs duties:
  - making marks about money transfer.

**5. Payment for services:**

- ✓ payment for obtaining of a permit;
- ✓ payment for services of goods transportation;
- ✓ payment of insurance premium;
- ✓ payment for services of customs broker;
- ✓ payment of charges for advance ruling according to Commodity Nomenclature of Foreign Economic Activity of the EAEU.

**2. Permits**

**6. Obtaining permits for compliance with prohibitions and restrictions:**

- ✓ preparation of applications for obtaining permits;
- ✓ sending documents to the authorized authority;
- ✓ review of the documents submitted by the authorized authority;
- ✓ request for information and documents from the importer;
- ✓ issue of a permit.

**7. Obtaining a permit of the authorized authority (documents required for placing goods under the selected customs procedure).**

**3. Transport and Logistics**

**8. Transportation of goods:**

- ✓ search for a transport company;
- ✓ sending a request;
- ✓ consideration of the request;
- ✓ conclusion of a contract;
- ✓ sending a request for transportation;
- ✓ preparation of the consignment note;
- ✓ sending a draft consignment note;
- ✓ sending confirmation of the request for transportation;
- ✓ reservation of transport for goods transportation;
- ✓ loading of goods by the exporter (start of transportation);
- ✓ sending a consignment note.

**9. Cargo insurance:**

- ✓ search for an insurance company;
- ✓ sending a request for cargo insurance:
  - a request for cargo insurance;

- letter of credit;
  - invoice;
  - packing list;
  - a draft consignment note.
- ✓ analysis of risks and the amount of the insurance premium;
- ✓ approval of the amount of insurance coverage;
- ✓ issue of insurance certificate;
- ✓ submission of a contract for goods transportation;
- ✓ issue of insurance police.

#### **4. E-Customs**

10. Determination of classification code of goods according to Commodity Nomenclature of Foreign Economic Activity of the EAEU:

- ✓ obtaining an advance ruling according to Commodity Nomenclature of Foreign Economic Activity of the EAEU
  - preparation of an application for advance ruling accompanied with the documents containing information of:
    - composition (structure) of goods;
    - technology of goods production;
    - properties (operating principle), purpose, scope of use of goods;
- ✓ sending an application and documents;
- ✓ consideration of the application and attached documents;
- ✓ obtaining an advance ruling according to Commodity Nomenclature of Foreign Economic Activity of the EAEU.

11. Determination of the country of goods origin:

- ✓ obtaining an advance ruling in respect of the country of origin of goods.

12. Customs broker:

- ✓ search for customs broker;
- ✓ sending a request of the need to use services of a customs broker;
- ✓ exchange of information about goods and preparation of a proposal to conclude a contract;
- ✓ conclusion of a contract;
- ✓ sending documents for preparation of preliminary information and subsequent;

- ✓ customs declaration (including preliminary declaration):
  - contract;
  - commercial documents (invoice);
  - packing list catalogue;
  - transport (shipment) documents permits;
  - certificate of origin of goods.

13. Preliminary informing:

- ✓ representation of information in respect of the goods imported by road at least 2 hours prior to importation, containing information of:
  - consigner, consignee in accordance with the transport (shipping) documents;
  - the country of origin and destination of goods;
  - customs applicant;
  - carrier;
  - vehicle of international transportation used for transportation of goods;
  - name, quantity, value of goods in accordance with commercial, transportation (shipping) documents;
  - code of goods at the level of at least the first 6 digits;
  - gross weight or volume, as well as quantity of goods in additional measuring units for each code of Commodity Nomenclature of Foreign Economic Activity of the EAEU (if any);
  - number of packages;
  - destination of goods in accordance with transportation (shipping) documents;
  - documents confirming compliance with restrictions;
  - planned transshipment of goods or cargo operations in transit;
  - time and place of arrival of goods into the territory of the Union;
- ✓ e-mail containing a unique identification number of transportation.

14. Arrival of goods into the customs territory of the Union:

- ✓ conduct of border control;
- ✓ submission of documents and information, and unique identification number of transportation;
- ✓ verification of compliance with prohibitions and restrictions (check for available permits);
- ✓ carrying out customs, transport, veterinary, phytosanitary or sanitary and quarantine control;

- ✓ request using a unique identification transportation number for preliminary information from the database of customs bodies and comparison of the data contained in the documents submitted with the data from the database;
- ✓ conduct of the data analysis using the risk management system and application of customs control forms;
- ✓ application of risk management system;
- ✓ carrying out customs examination (inspection);
- ✓ sampling by authorized authority;
- ✓ unloading, handling, transshipment, change of vehicle;
- ✓ transfer of documents for placing goods and vehicles under the customs procedure of customs transit.

**15. Customs transit:**

- ✓ insurance of payment of customs duties and taxes in customs transit (deposit, bank guarantee, surety, insurance contract, money) or customs support of vehicles;
- ✓ preparation of a transit declaration;
- ✓ submission of the transit declaration, documents and data;
- ✓ registration of the transit declaration;
- ✓ review of the transit declaration:
  - application of risk management system;
  - conduct of customs control;
- ✓ release of goods;
- ✓ delivery of goods:
  - extension of delivery period for goods:
    - a reasoned appeal of the customs applicant or the carrier to the customs body;
    - extension of delivery period for goods by the customs body;
  - unloading, handling, transshipment in transit and other loading operations with goods, as well as change of vehicles (if required):
    - an appeal to the customs body for a permit or a notification of the customs body (if seals are not broken);
    - obtaining a permit of the customs body or a refusal to issue a permit for cargo operations with goods;
    - conduct of freight operations and drafting of a certificate (if necessary);
- ✓ placement in the customs control zone in the place of goods delivery:

- notification of arrival of the vehicle with goods to the customs body of destination;
- registration of arrival;
- informing the importer of goods arrival and placing them in the customs control zone in the place of goods delivery;
- ✓ completion of customs transit;
- ✓ obtaining a permit to unload goods in the temporary storage place.

16. Customs operations, preceding submission of customs declaration:

- ✓ goods sampling;
- ✓ obtaining a document on conformity assessment.

17. Customs declaration:

- ✓ formation of a declaration for goods containing information on:
  - declared customs procedure;
  - customs applicant, customs broker, goods consigner and consignee;
  - vehicles used for international transportation;
  - goods: name, description; classification code of goods according to Commodity Nomenclature of Foreign Economic Activity of the EAEU; description of packages (number, kind, labelling and serial numbers); quantity (in kilograms (gross and net weight) and other measure units); customs value; statistical value;
  - calculation of customs duties: rates of customs duties, taxes, customs charges; application of exemptions from payment of customs duties; amounts of calculated customs duties, taxes, customs charges; exchange rates;
  - foreign trade transaction and its basic conditions;
  - upholding of restrictions goods manufacturer;
  - confirmation of compliance with terms of placing goods under the customs procedure;
  - documents submitted for customs declaration;
  - person that executed a declaration for goods;
  - place and date of executing the declaration for goods;
- ✓ submission of (sending) a declaration for goods;
- ✓ registration of a declaration for goods;
- ✓ review of a declaration for goods (format and logical control);
- ✓ modification and supplement of data stated in the declaration for goods before release of goods;

- ✓ application of risk management system;
- ✓ conduct of customs control (in case of operation of the risk management system);
- ✓ sampling for customs expertise;
- ✓ holding customs expertise;
- ✓ release of goods;
- ✓ exportation of goods from the temporary storage place.

18. Customs control after release of goods:

- ✓ checking of the data accuracy specified in the declaration for goods:
  - goods classification according to Commodity Nomenclature of Foreign Economic Activity of the EAEU;
  - country of origin, as well as compliance with the terms for granting tariff preferences;
  - control of customs value of goods;
  - prohibitions and restrictions established by the legislation of the Member States;
  - intellectual property rights protection placing goods under the customs;
  - procedure;
  - procedure and conditions for granting exemptions from payment of customs duties and other exemptions, deferments, instalments for payment of customs duties;
  - calculations, completeness and timeliness of payment of customs duties;
- ✓ exchange of documents and data in electronic form between the customs body and the participant of foreign trade activities;
- ✓ formation of a notification of the customs control following the audit conducted by the risk management system:
  - field customs inspection;
  - cameral customs inspection;
  - other forms of customs control;
- ✓ request for information from other authorized authorities;
- ✓ request for information and documents from a participant of foreign economic activity;
- ✓ formation and direction of the certificate on the results of the customs inspection.

### **III. TRANSIT OF GOODS THROUGH THE CUSTOMS TERRITORY OF THE UNION**

#### **1. Payment, payments and e-commerce**

1. Payment for services of goods transportation.
2. Payment of insurance premium.
3. Payment for services of customs broker.

#### **2. Transport and Logistics**

##### **4. Transportation of goods:**

- ✓ search for a transport company;
- ✓ sending a request;
- ✓ consideration of the request;
- ✓ conclusion of a contract;
- ✓ sending a request for goods;
- ✓ transportation;
- ✓ preparation of the consignment note;
- ✓ sending a draft consignment note;
- ✓ sending confirmation of the request for transportation;
- ✓ reservation of transport for goods transportation;
- ✓ loading of goods by the exporter (start of transportation);
- ✓ sending a consignment note.

##### **5. Cargo insurance:**

- ✓ search for an insurance company;
- ✓ sending a request for cargo insurance:
  - a request for cargo insurance;
  - letter of credit;
  - invoice;
  - packing list;
  - a draft consignment note;
- ✓ analysis of risks and the amount of the insurance premium;
- ✓ approval of the amount of insurance coverage;
- ✓ issue of insurance certificate;
- ✓ submission of a contract for transportation;
- ✓ issue of insurance police;
- ✓ payment of insurance premium.

### **3. E-Customs**

**6. Customs broker:**

- ✓ search for customs broker;
- ✓ sending a request of the need to use services of a customs broker;
- ✓ exchange of information about goods and preparation of a proposal to conclude a contract;
- ✓ conclusion of a contract;
- ✓ sending documents for preparation of preliminary information and subsequent customs declaration (including preliminary declaration):
  - contract;
  - commercial documents (invoice);
  - packing list;
  - catalogue;
  - transport (shipment) documents;
  - permits;
  - certificate of origin of goods.

**7. Preliminary informing:**

- ✓ representation of information in respect of the goods imported by road at least 2 hours prior to importation, containing information of:
  - consigner, consignee of goods in accordance with transportation (shipping) documents;
  - the country of origin and destination of goods;
  - customs applicant;
  - carrier;
  - vehicle of international transportation used for transportation of goods;
  - name, quantity, value of goods in accordance with commercial, transportation (shipping) documents;
  - code of goods at the level of at least the first 6 digits;
  - gross weight or volume, as well as quantity of goods in additional measuring units for each code of Commodity Nomenclature of Foreign Economic Activity of the EAEU (if any);
  - number of packages;
  - destination of goods in accordance with transportation (shipping) documents;
  - documents confirming compliance with restrictions;
  - planned transshipment of goods or cargo operations in transit;

- time and place of arrival of goods into the territory of the Union
- ✓ e-mail containing a unique identification number of transportation.

8. Arrival of goods into the customs territory of the Union:

- ✓ conduct of border control;
- ✓ submission of documents and information, and unique identification number of transportation;
- ✓ verification of compliance with prohibitions and restrictions (check for available permits);
- ✓ carrying out customs, transport, veterinary, phytosanitary or sanitary and quarantine control;
- ✓ request using a unique identification transportation number for preliminary information from the database of customs bodies and comparison of the data contained in the documents submitted with the data from the database;
- ✓ conduct of the data analysis using the risk management system and application of customs control forms;
- ✓ application of risk management system;
- ✓ carrying out customs examination (inspection);
- ✓ sampling by authorized authority;
- ✓ unloading, handling, transshipment, change of vehicle;
- ✓ transfer of documents for placing goods and vehicles under the customs procedure of customs transit.

9. Customs transit:

- ✓ insurance of payment of customs duties and taxes in customs transit (deposit, bank guarantee, surety, insurance contract, money) or customs support of vehicles;
- ✓ preparation of a transit declaration;
- ✓ submission of the transit declaration, documents and data;
- ✓ registration of the transit declaration;
- ✓ review of the transit declaration:
  - application of risk management system;
  - conduct of customs control;
- ✓ release of goods;
- ✓ delivery of goods.

## **Terms of Reference of the Working Group on a Comprehensive Review of the Revised Kyoto Convention (WGRKC)<sup>1</sup>**

### **Approved by the Policy Commission**

### **Confirmed by the Council**

**Duration:** Until the comprehensive review is completed and the outcome is approved by the Revised Kyoto Convention Management Committee (RKC/MC) in the financial year 2020/2021.

#### **1. Mandate**

The Working Group on the Comprehensive Review of the Revised Kyoto Convention (WGRKC) is established for the purpose of conducting a comprehensive review of the Revised Kyoto Convention (RKC).

#### **2. Scope**

The comprehensive review will cover both the structure and content of the Body of the Convention, General Annex, Specific Annexes and Guidelines. In undertaking the comprehensive review, the WGRKC will propose changes to the RKC in accordance with its findings. The comprehensive review will take into account the Reports of the 17th and 18th RKC/MC.

#### **3. Membership**

The WGRKC will be open to all interested Members of the WCO (Contracting Parties as well as Non-Contracting Parties). The WGRKC may invite partner international governmental and non-governmental organizations, and representatives of the Private Sector Consultative Group and other external stakeholders to attend the meetings as necessary.

#### **4. Key Deliverables**

The WGRKC shall deliver the following:  
a. a work plan, updated if necessary,

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<sup>1</sup> Terms of Reference of the Working Group on a Comprehensive Review of the Revised Kyoto Convention. URL: [http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures\\_and\\_facilitation/wg\\_comprehensive\\_review\\_rkc.aspx](http://www.wcoomd.org/en/about-us/wco-working-bodies/procedures_and_facilitation/wg_comprehensive_review_rkc.aspx)

- b. progress reports after each meeting of the WGRKC, and
- c. final report with the recommendations of the WGRKC.

The deliverables shall be presented to the RKC/MC for its consideration and approval.

## **5. Means of Operation**

- a. Members of the WGRKC shall annually elect the Chairperson and the Vice-Chairperson (EU) from among the members of the WGRKC.
- b. The WGRKC shall carry out its work through physical meetings to be held in the WCO Headquarters and, when appropriate, intersessional work will be carried out virtually via the CLiKC! Platform. The WGRKC shall have a maximum of six meetings per year.
- c. The meetings will be held with simultaneous interpretation in French and English and all working documents will be available in French and English.
- d. In order to assist the WGRKC in fulfilling its mandate, the WGRKC shall also establish, as directed by the RKC/MC, three Sub-Groups which shall report directly to the WGRKC. These Sub-Groups shall work in parallel and will be composed as follows:
  1. Sub-Group I: The RKC Body and relevant horizontal issues.
  2. Sub-Group II: The RKC General Annex.
  3. Sub-Group III: The RKC Specific Annexes and Guidelines.

The working arrangements including the structure of the Sub-Groups may be adjusted based on recommendations of the WGRKC.

- e. The Sub-Groups shall annually elect a moderator and rapporteur from among its members. The Sub-Groups shall carry out their work virtually via the CLiKC! Platform to the greatest extent possible, and, where necessary, may meet in person at the discretion of the Sub-Groups moderator, coordinating the schedule with the regularly-scheduled WGRKC, subject to the approval of the Chair of the Working Group. The work of the Sub-Groups shall be carried out in French and English, unless otherwise decided by the Sub-Group.

- f. The Sub-Groups will work in conjunction to address cross-cutting issues.
- g. The WGRKC will communicate with key stakeholders, as necessary.

## **6. Monitoring and Evaluation**

The WGRKC shall be subject to ongoing review by the RKC/MC of progress against the key deliverables.

## **7. Secretariat Support**

The WCO Secretariat shall provide the necessary support. The reports of the WGRKC shall be distributed to participants within two weeks after the meeting.

The scientific publication

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## IMPROVEMENT OF INSTRUMENTS OF CUSTOMS ADMINISTRATION: INTERNATIONAL AND LEGAL ASPECT

(The WCO Revised Kyoto Convention Management Committee)

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