Improving customs regulation in the context of the WTO Trade Facilitation Agreement

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The Eurasian Economic Union

- population of the Eurasian Economic Union is 182,7 million;
- the territory is more than 20 million square kilometers;
- (GDP) is 2.389.2 billion. USD

The implementation of the Treaty on the Eurasian Economic Union provides:
- the unity of the rules and methods of researches (tests) and measurements while performing the procedures of mandatory assessment of conformity;
- single sanitary-epidemiological and hygienic, veterinary (veterinary-sanitary), quarantine phytosanitary requirements and norms to ensure the plant quarantine;
- coherent policies to protect the rights of consumers;
- implementation of coordination in the field of trade in services with third parties;
- a coordinated (harmonized) transport policy;
- the prospect of creating a common market of transport services in the fields of automobile, air, water and rail transport;
- cooperation in the field of industry;
- coordinated agricultural policy;
- cooperation in the field of harmonization of a labor migration policy within the Union, and others.
Phases of formation of the Eurasian Economic Union

- Treaty on the Eurasian Economic Union
  - Beginning of functioning of the Eurasian Economic Union
- Declaration on the Eurasian economic integration
- Agreement on the Eurasian Economic Commission
- Creation of the Customs Union
  - Agreement on the Commission of the Customs Union
  - Agreement on creation of a single customs territory and formation of the Customs Union
- Agreement on formation of the Common Economic Space
- Agreement on creation of the Eurasian economic union
  - Agreement on the Customs Union and the Common Economic Space
- Agreement on deepening of integration in economic and humanitarian areas
  - Agreements on the Customs Union
- Declaration on the Eurasian economic integration
  - Agreement on formation of the Common Economic Space
  - Agreement on the Commission of the Customs Union
  - Agreement on creation of a single customs territory and formation of the Customs Union
- Agreements on the Customs Union
  - Agreement on deepening of integration in economic and humanitarian areas
- Lecture of the President of the Republic of Kazakhstan H.E. Mr. N. Nazarbayev about the Eurasian Union at Moscow State University
- Treaty on the Eurasian Economic Union
  - Beginning of functioning of the Eurasian Economic Union
Customs regulation in the EEU

- trade regime with third party countries
- customs tariff
- rules of determining country of origin and customs value of goods
- customs territory
- customs legislation

- No customs control at the internal borders between the Member States
- Allocation of customs duties between the Member States

High level of realization
When modernizing customs regulations in the EEU, the EEC experts need to consult on various aspects of customs matters:

- Issues of legal regulation based on the WCO standards;
- International experience in various areas of customs (for example, customs control, declaring, customs payments, customs transit, application of information customs technologies, the "single window" mechanism, improvement of the legal status of the AEO, etc.);
- Foreign law enforcement practice;
- Familiarization with the WCO guidance, recommendations, materials, systematizing international experience, with the methods applied by foreign customs administrations, etc.
The WCO instruments in the scientific context have not been investigated, nor have they been classified in the context of the legal institutes of customs law. Accordingly, within the process of improving customs regulation, 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;

Despite the existence of many instruments for customs regulation of foreign trade and customs regulation, the activities of the WCO working bodies (working groups, subgroups, committees, subcommittees, focus groups) that participated in their development have not been sufficiently studied;

The analysis 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 was not carried out;

It is not analyzed the prospects and possible models for organizing mutually beneficial customs cooperation between the EEC, the EEU and the World Customs Organization.
MEMORANDUM OF UNDERSTANDING
between the Eurasian Economic Commission and the World Customs Organization

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.
### Scope and forms of EEC-WCO cooperation

<table>
<thead>
<tr>
<th>Scope</th>
<th>Forms</th>
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<tbody>
<tr>
<td>improvement of customs legislation based on international standards</td>
<td>exchange of open information and documents representing mutual interests</td>
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<tr>
<td>development of international customs cooperation</td>
<td>Participation of representatives of one Party in activities carried out by the other Party</td>
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<td>разработка эффективных и современных стандартов таможенного администрирования</td>
<td>holding joint meetings, consultations, scientific and practical seminars and conferences on issues of mutual interest</td>
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<td>development of efficient and modern standards of customs administration</td>
<td>implementation of other forms of cooperation</td>
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<td>introduction of best practices in customs administration</td>
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<td>optimization and increase of efficiency of use of resources of customs administrations</td>
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<td>increasing the effectiveness of customs control; development of customs infrastructure</td>
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## EEC participation in the WCO working bodies

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<th>NOW</th>
<th>PERSPECTIVE</th>
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<tr>
<td>Council</td>
<td>Harmonized System Committee</td>
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<tr>
<td>Policy Commission</td>
<td>Technical Committee on Rules of Origin</td>
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<tr>
<td>Permanent Technical Committee</td>
<td>Technical Committee on Customs Valuation</td>
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<tr>
<td>Working Group on E-Commerce</td>
<td>The Revised Kyoto Convention Management Committee</td>
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<td>SAFE Working Group</td>
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<tr>
<td>The WCO Working Group on the WTO Agreement on Trade Facilitation</td>
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<tr>
<td>Istanbul Convention Administrative Committee</td>
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<td>Contracting Parties to the ATA Convention</td>
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The World Customs Organization
The World Customs Organization Secretariat consists of more than 150 full-time staff from around the world and is engaged in the day-to-day affairs of the WCO under the leadership of the Secretary-General.

The Secretariat also provides technical, logistical and professional support to the various working bodies established by the Council, provides institutional development, technical assistance and training, and develops and supports international customs instruments in the field of customs administration and trade facilitation.
The working bodies of the World Customs Organization are the Council, the Political 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 Tools

The WCO Instruments and Tools
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.
ANNEX TO THE PROTOCOL AMENDING THE MARRAKESH AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION

AGREEMENT ON TRADE FACILITATION

Preamble

Members,

Having regard to the negotiations launched under the Doha Ministerial Declaration;

Recalling and reaffirming the mandate and principles contained in paragraph 27 of the Doha Ministerial Declaration (WT/MIN(01)/DEC/1) and in Annex D of the Decision of the Doha Work Programme adopted by the General Council on 1 August 2004 (WT/L/579), as well as in paragraph 33 of and Annex E to the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC);

Desiring to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit;

Recognizing the particular needs of developing and especially least-developed country Members and desiring to enhance assistance and support for capacity building in this area;

Recognizing the need for effective cooperation among Members on trade facilitation and customs compliance issues;

Hereby agree as follows:

SECTION I

ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION

1. Publication

1.1 Each Member shall promptly publish the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders, and other interested parties to become acquainted with them:

https://www.wto.org/English/Tratop_E/tradfa_e/tradfa_e.htm#II
SECTION I
ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION
ARTICLE 2: OPPORTUNITY TO COMMENT, INFORMATION BEFORE ENTRY INTO FORCE AND CONSULTATION
ARTICLE 3: ADVANCE RULINGS
ARTICLE 4: PROCEDURES FOR APPEAL OR REVIEW
ARTICLE 5: OTHER MEASURES TO ENHANCE IMPARTIALITY, NON DISCRIMINATION AND TRANSPARENCY
ARTICLE 6: DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION AND PENALTIES
ARTICLE 7: RELEASE AND CLEARANCE OF GOODS
1. Pre-arrival Processing
2. Electronic Payment
3. Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges
4. Risk Management
5. Post-clearance Audit
6. Establishment and Publication of Average Release Times
7. Trade Facilitation Measures for Authorized Operators
8. Expedited Shipments
9. Perishable Goods
ARTICLE 8: BORDER AGENCY COOPERATION
ARTICLE 9: MOVEMENT OF GOODS UNDER CUSTOMS CONTROL INTENDED FOR IMPORT
ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION AND TRANSIT
1. Single Window
2. Use of Customs Brokers
ARTICLE 11: FREEDOM OF TRANSIT
ARTICLE 12: CUSTOMS COOPERATION
SECTION II
The WCO Working Group on the WTO Agreement on Trade Facilitation

Annex III to Doc. SC0140E1a

TERMS OF REFERENCE FOR THE WCO WORKING GROUP ON THE WTO AGREEMENT ON TRADE FACILITATION

Confirmed by the Council - June 2014

Chairperson: Representative of a WCO Member administration
Established: March 2014
Duration: Until superseded or revoked

1. **Mandate**

The WCO Working Group on the WTO Agreement on Trade Facilitation (TFAWG), acting under authority of paragraph 19 of the June 2014 Report of the Policy Commission (Doc. SP0487E1b), and as referenced in paragraph 99 of the Minutes of the 2014 Customs Co-operation Council (Doc. SC0140E1a), is formed for the purpose of taking up the practical aspects of meeting expectations arising out of the WTO Agreement on Trade Facilitation (WTO TFA). The Working Group will operate 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 matters regarding which it will be guided by and report to the Permanent Technical Committee and the Capacity Building Committee in matters of their respective competence. It advises these bodies, as well as the Secretary General, on progress and issues relating to categorization according to the TFA, tailor-made technical assistance, and future implementation of the TFA by WCO Members.

2. **Membership**

The TFAWG will be 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 the private sector, where deemed appropriate.

4. **Key Deliverables**

The key deliverables of the TFAWG are to:

- analyse, prepare and evaluate relevant actions and measures in relation to practical aspects of meeting expectations arising from the WTO TFA; and
- submit timely reports to the Policy Commission, Permanent Technical Committee and Capacity Building Committee as appropriate, that shall:
  - provide recommendations of the TFAWG based on an analysis of the needs assessments which includes technical assistance, and
  - describe the WCO’s activities for the technical assistance and capacity building effort to support implementation of the WTO TFA;
- establish and maintain an annual work plan, including timelines, for TFA-related activities.

5. **Means of Operation**

The TFAWG will meet under the leadership of its Chairperson, with membership being determined as specified above.

The Customs members of the TFAWG will elect the Chairperson and the Vice-Chairperson for a two-year term from among its Customs members. The outgoing Customs Chairperson and Vice-Chairperson will be eligible for re-election, though rotation of the chairpersonship is desirable, with the Vice-Chairperson succeeding the Chairperson.

The TFAWG will conduct its work in English and French.
Implementation Guidance

**Article 1**
Publication and availability of information

**Article 2**
Opportunity to comment, information before entry into force and consultations

**Article 3**
Advance rulings

**Article 4**
Procedures for appeal or review

**Article 5**
Other measures to enhance impartiality, non-discrimination and transparency

**Article 6**
Disciplines on fees and charges imposed on or in connection with importation and exportation and penalties

**Article 7**
Release and clearance of goods

**Article 8**
Border agency cooperation

**Article 9**
Movement of Goods Intended for Import Under Customs Control

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7. Trade Facilitation Measures for Authorized Operators

7.2. The specified criteria shall be related to compliance, or the risk of non-compliance, with requirements specified in a Member's laws, regulations or procedures. The specified criteria, which shall be published, may include:
(a) An appropriate record of compliance with customs and other related laws and regulations,
(b) A system of managing records to allow for necessary internal controls,
c) Financial solvency, including, where appropriate, provision of a sufficient security/guarantee, and,
d) Supply chain security.

Customs benefits
7.3. The trade facilitation measures provided pursuant to paragraph 7.1. shall include at least 3 of the following measures:
(a) Low documentary and data requirements as appropriate;
(b) Low rate of physical inspections and examinations as appropriate;
(c) Rapid release time as appropriate;
(d) Deferred payment of duties, taxes, fees and charges;
(e) Use of comprehensive guarantees or reduced guarantees;
(f) A single customs declaration for all imports or exports in a given period; and
(g) Clearance of goods at the premises of the authorized operator or another place authorized by customs.
## Structure of the AEO Legal Status

### Target Block
- Objective of activity
- Tasks of activities
- Functions of activity

### Competent Block
- Rights
- Obligations
- Customs benefits
- Legal capacity
- Field of activity of AEO

### Organizational Block
- Procedure for inclusion in the register of AEO
- Procedure of suspension of AEO status
- Procedure of exclusion AEO out of the register
- Licensing and other ways of legalizing the AEO activities
- Responsibility
- Guarantee of activity
- Restrictions (bans) of activities
- Procedure of interaction with customs authorities
- Mutual recognition of the legal status of AEO by customs administrations
- Powers of public authorities in relation to the AEO
Elements of improving the legal status of AEO

- Rights of AEO
- Obligations of AEO
- Field of activity of AEO
- Procedure of interaction with customs authorities
- Procedure for inclusion in the register of AEO
- Mutual recognition of the status of AEO
- Conditions (requirements) assigning the AEO status
- Customs benefits

Assigning the AEO status

Requirements
**AEO SIMPLIFICATIONS (BENEFITS)**

- **Single Certificate**
  - temporary storage at the AEO premises.
  - release before declaring the goods.
  - Performance of customs operations in the AEO premises.
  - other simplifications.

- **Certificate III type**
  - priority treatment.
  - no guarantee when goods are placed under transit procedure.
  - no guarantee in the course of delaying final determination of customs value and duties.
  - no guarantee during customs inspection.
  - release of goods before lodging the declaration.
  - priority participation in pilot projects and experiments.
  - remote (centralized) release of goods.
  - temporary storage at the AEO premises.
  - customs clearance and customs control of goods at the AEO premises.
  - use of an AEO means of identification (customs seals).
  - delivery of goods to the AEO warehouse.
  - termination of transit procedure at the AEO storage premises.
  - fewer physical and documents-based controls (AEO – low risk legal entity).
  - deferred payment of duties.

**Certificate I type**

**Certificate II type**
4. Single Window

4.1 Members shall endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.

4.2 In cases where documentation and/or data requirements have already been received through the single window, the same documentation and/or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

4.3 Members shall notify the Committee the details of operation of the single window.

4.4 Members shall, to the extent possible and practical, use information technology to support the single window.

Decision No. 68 of the Supreme Eurasian Economic Council, dated May 29, 2014

Main Directions of National’s Single Window development

Basic principles of the Single Window development:

• Each country develops National Single Window (NSW);
• Coordination of efforts makes it possible to convergence approaches of the National Single Window development;
• Ensuring mutual recognition of electronic data;
• Using the infrastructure of the integrated information system of the Union for the organization of NSWs information exchange.
4.1 Each Member shall, to the extent possible, adopt or maintain a risk management system for customs control.

4.2 Each Member shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.

4.3 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. Each Member may also select, on a random basis, consignments for customs control as part of its risk management.

4.4 Each Member shall base risk management on assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, inter alia, HS 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 transport.
To develop the AEO legal institute or «Single Window» mechanism, the WCO tools are of great importance, but not the article (7) (AEO) or 4 (SW) of the TFA Agreement.

The thesis about the priority importance of the TFA Agreement for the development of the AEO institute / SW mechanism is doubtful. The opinion that the WCO instruments for the AEO/ SW are compliant to Article 7 / 4 of the TFA Agreement is erroneous.

The WCO instruments and tools are the main source of information for the development of customs regulation, including the AEO.
Based on the analysis of WCO materials (reports, presentations), it can be concluded that there is a list of unresolved issues, for which there is no an unequivocal answer from experts:
1. The reason and the need to develop a new **customs instrument** (TFA) on the WTO platform, but not in the WCO.
2. The competence of the WTO to develop legal norms and instruments for **customs administration**, when the appropriate WCO tools are available already.
3. The TFA is not the WCO' instrument.
4. Lack of unified WCO recommendations on the implementation of the Agreement (the WTO has a full competence over the TFA. At the same time the WCO has not competence to make any recommendations related to TFA application, implementation, since it is neither a developer nor a party to this agreement).
5. Prospects and tools for implementing the Agreement in the practice of **customs administration**.
6. Further use of the current WCO instruments developed to implement the International Convention on the Simplification and Harmonization of Customs Procedures.
7. Development of the WCO tools for the implementation of the Agreement.
8. Status and priority issues for the application of the provisions of the Kyoto Convention in the practice of customs administration in the context of the development of the Agreement.
9. Prospects for delegating authority to monitor the implementation of the Agreement in **customs matters** (WCO or WTO?).
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Other publications of the author:
http://customs-academy.net/?page_id=10398