

**SERGEI MOZER**

**LEGAL STATUS OF THE EUROPEAN UNION  
IN THE WORLD CUSTOMS ORGANIZATION**



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**Mozer Sergei. Legal Status of the European Union in the World Customs Organization:** Collection of publications / S.V. Mozer. Moscow, 2023. 140 pages.

This collection of publications contains the author's scientific articles published in 2022, which reveal the legal and organizational basis for obtaining the status of a Member of the World Customs Organization (WCO) by economic and customs unions, as well as the implementation of the Strategic Directions for the Development of Eurasian Economic Integration until 2025 in terms of joint actions with the Member States of the Eurasian Economic Union (EEU), aimed at obtaining by the EEU the status of a Member in the WCO.

The research-materials contain an analysis of the legal instruments, institutional and financial implications, as well as the stages of the European Union accession to the WCO. Scientific and practical recommendations have been formulated for customs and economic unions on building flexible and mutually beneficial relations with the WCO.

The publication can be useful to a wide range of specialists in the field of international customs cooperation and improving customs regulation based on international standards. It can be used by researchers, teachers, students, graduate students and other categories of students at the Russian Customs Academy, other universities and Regional Training Centers of the World Customs Organization in the specialty «Customs Law», «Customs», as well as by specialists of the WCO working bodies, customs and other executive authorities in the Eurasian Economic Union Member States, experts of the Eurasian Economic Commission for the organization and implementation of mutually beneficial customs cooperation between the Eurasian Economic Commission and the World Customs Organization.

## **FROM AUTHOR**

*Dear friends, colleagues!*

*We bring to your attention a collection of publications on the issues of membership of economic and customs unions in the World Customs Organization (WCO).*

*The results of the study may be of interest to supranational governing bodies of customs and economic unions in the world, both in terms of considering their membership in the WCO and organizing effective customs cooperation with the World Customs Organization.*

*The collection of publications examines the prospects of the Eurasian Economic Union (EEU) to get the WCO membership status, analyzes the legal status of observers, as well as the experience of the EU as a precedent for the EEU in terms of membership in the Organization. It also discusses the legal issues related to the EU request, risks, and distribution of competencies between the EU and the Member States, as well as the steps to obtain the desired legal statute.*

*Along with this, the legal, institutional and financial implications of the EU's accession to the WCO, legal issues and the results of amendments to the Convention on Establishing a Customs Cooperation Council, as well as proposals from interested parties on granting the EU a new legal status are analyzed.*

*The research paper analyzes the final acts of the WCO Council on giving the EU in 2007 rights and obligations akin to those enjoyed by WCO members, as well as the identified contradictions with WCO law in connection with these actions.*

*In our opinion, the analysis of the EU legal instruments in terms of membership in the WCO and the formed practical proposals deserve attention.*

*The formulated conclusions and suggestions are the private point of view of the author and are not related to his professional activities.*

*In the light of the foregoing, we hope that the research material presented to your attention will be useful for subsequent scientific research and practical work of the expert community in the Member States of the Eurasian Economic Union.*

*Sergei Mozer*

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## **SYMBOLS AND ABBREVIATIONS**

WCO, Organization	– World Customs Organization
EEU, Union	– Eurasian Economic Union
EEC, Commission	– Eurasian Economic Commission
EU	– European Union
EC	– European Communities
Convention, CCC Convention,	– Convention establishing a Customs Co-operation Council
Strategic Directions	– Strategic Directions for the Development of Eurasian Economic Integration until 2025

## 1. ANALYSIS OF THE LEGAL STATUS OF OBSERVERS IN THE WORLD CUSTOMS ORGANIZATION<sup>1</sup>

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### **Purpose**

To analyze the legal status of observers in the World Customs Organization (WCO).

### **Design/methodology/approach**

The research article is devoted to the issue of the legal status of observers in the WCO. The subject of the study is the legal instruments and tools of the World Customs Organization, as well as its acts regulating the legal status of observers. The research material presents the historical aspects of the participation of observers in the WCO activities, analyzes their international legal status, and also considers the procedural aspects of the work of observers in the activities of the working bodies of this organization. Based on the results of the study, conclusions and recommendations were formed within the framework of cooperation between the Eurasian Economic Commission and the WCO.

### **Social implications**

Conducting a study of the legal status of observers in the WCO is associated with the implementation of paragraph 11.7.5 of the Strategic Directions for the Development of Eurasian Economic Integration until 2025 in terms of cooperation with this international organization.

### **Practical meaning**

The results of the study are of interest to the customs cooperation block of the Eurasian Economic Commission (EEC), and can be used by specialists from customs and other executive authorities in the EEU Member States, EEC experts to organize and implement mutually beneficial customs cooperation between the EEC and the WCO.

The article is recommended to researchers, teachers, students, graduate students and other categories of students in the Russian Customs Academy, in other universities and the WCO regional training centers in the specialties «Customs» and «Jurisprudence».

### **Originality/value**

The research material is based on an analysis of the practical aspects of the activities of the EEC, the WCO and is a continuation of scientific and practical publications on the improvement of the EEU law in the framework of interaction with the WCO.

**Keywords:** *The World Customs Organization, the WCO, the Eurasian Economic Union, EEU, the Eurasian Economic Commission, EEC, customs regulation, customs administration, international customs law, customs, observer, customs and economic union, intergovernmental organizations, non-governmental international organizations.*

## **Introduction**

The World Customs Organization (WCO, Organization) is the main international platform on which international standards of customs administration are determined. Most countries of the world are its members. At the same time,

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<sup>1</sup> *Mozer Sergei.* Analysis of the legal status of observers in the World Customs Organization // Economic Problems and Legal Practice. – № 1. – 2022. (Article) URL: <http://customs-academy.net/?p=14576>

a significant number of subjects interact with the WCO in the status of an observer.

Customs regulation of almost all countries of the world, economic and customs unions is based on WCO standards.

The Eurasian Economic Union (hereinafter referred to as the EEU, the Union) is competent in the field of customs regulation, which the intensification of interaction between the Union and the international customs organization.

In this regard, the interaction of the Eurasian Economic Commission (hereinafter – the EEC, the Commission) with the Organization in the field of customs regulation is one of the important strategic areas of international customs cooperation. Today, the Commission consistently continues the line of building relations with the WCO.

The initial stage of cooperation between the Union and the WCO was the signing in 2016 of the Memorandum of Understanding between the EEC and the WCO dated June 17, 2016.<sup>1</sup>

Representatives of the Commission in the status of an observer got the opportunity to participate in meetings of various WCO bodies<sup>2</sup> and determine international standards in the field of customs regulation, while presenting to the international customs community the opinion of the Commission on the affected customs issues that are within the competence of the Union.

This allows introducing the advanced developments of the Union into international standards and taking into account the WCO legal instruments and tools when improving the law of the Union in the field of customs regulation.

It should be noted that the primary task of the Customs block of the Commission is to further build the capacity of the Union and the Commission in the WCO bodies, primarily for the possibility of influencing WCO decision-making in the development of legal tools.

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<sup>1</sup> For reference: according to the Memorandum, the EEC and the WCO expressed their intention to cooperate in such areas as: improvement of customs legislation based on international standards; development of effective and modern customs regulation standards; organization of practical interaction between the Parties on customs regulation issues; introduction of best practices in customs regulation, etc.

At the same time, within the framework of joint activities, the Memorandum provides for cooperation through the exchange of open information and documents of mutual interest; participation of representatives of one Party in events held by the other Party; holding joint meetings, consultations, scientific and practical seminars and conferences on issues of mutual interest, etc.

<sup>2</sup> For example, the Council, the Permanent Technical Committee, the Revised Kyoto Convention Management Committee, the SAFE Working Group, etc.

To do this, in the *Strategic Directions for the Development of Eurasian Economic Integration until 2025*<sup>1</sup> the following activities are envisaged:

«11.7.5. Development of cooperation with the World Customs Organization (WCO):

- carrying out joint actions with member states aimed at obtaining the Union's membership status in the WCO;
- study of the possibility of joining the Union to the WCO fundamental documents».<sup>2</sup>

The demand for the study of the legal status of observers in the WCO is due to a number of circumstances:

- there is no uniform interpretation of the term «legal status of a WCO observer» in legal science. Previously conducted scientific research was limited to consideration of general issues of the functioning of the WCO and the activities of its working bodies;
- there is no comprehensive analysis and classification of entities that can be granted the legal status of an observer in the WCO.

Despite the active development of the Commission's relations with the WCO, there is no comprehensive study of scientific developments on the legal status of the Commission in this organization as an observer;

- to date, there is no analysis of the rules and procedures of the WCO working bodies, as well as the legal means of the Organization, in terms of granting the legal status of an observer to interested entities, such as non-Member countries; intergovernmental organizations; regional entities, including customs and economic unions; non-governmental international organizations; national bodies representing manufacturing, trade and transport interests and private firms;
- there are no analytical materials on the WCO approaches, the current legal regulation, the rights and obligations established by the internal acts of the Organization for observers, when participating in meetings of its working bodies;
- there are no scientific and methodological recommendations for improving legal relations between the EEC and the WCO.

These circumstances determine the **relevance** of this study.

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<sup>1</sup> Strategic directions for the development of Eurasian economic integration until 2025, Approved by the Decision of the Supreme Eurasian Economic Council dated December 11, 2020 №12. URL: [https://docs.eaeunion.org/docs/ru-ru/01428320/scd\\_12012021\\_12](https://docs.eaeunion.org/docs/ru-ru/01428320/scd_12012021_12).

<sup>2</sup> Strategic directions for the development of Eurasian economic integration until 2025, Approved by the Decision of the Supreme Eurasian Economic Council dated December 11, 2020 № 12. URL: [https://docs.eaeunion.org/docs/ru-ru/01428320/scd\\_12012021\\_12](https://docs.eaeunion.org/docs/ru-ru/01428320/scd_12012021_12).

*Object of study* are the legal relations associated with obtaining the legal status of an observer in the WCO, as well as the legal consequences arising in this regard.

*The subject of the study* is the WCO legal instruments and tools, as well as its acts regulating the legal status of observers.

*Purpose of the study* consists in developing scientific and practical recommendations for improving the legal status of the EEC as an observer in the World Customs Organization.

## **1. Legal prerequisites for the participation of observers in meetings of the working bodies of the World Customs Organization**

Let us consider the historical aspects and legal prerequisites for the formation of the legal status of an observer in the WCO. First of all, we note that in June 2002, at the 99th/100th sessions of the Customs Cooperation Council, *Decision № 308 was adopted* in pursuance of the recommendations of the Ad Hoc Group on Committee Structures and Working Methods, which met in 2001 to study the structure, functioning and management of WCO working bodies.<sup>1</sup> The Council Decision includes the following two provisions regarding observers at WCO meetings:

– *International organizations should be invited to attend meetings, where appropriate.*

– The Secretariat should develop ways to better integrate private sector organizations into the work of the WCO working bodies.<sup>2</sup>

It is worth noting that a little earlier at the 46th meeting of the WCO Policy Commission (hereinafter referred to as the Policy Commission), held in December 2001, a thesis was expressed about the need to develop criteria for granting observer status to requesting organizations, as well as developing mechanisms that allow private sector organizations to more fully integrate into the WCO work and its working bodies.<sup>3</sup>

In fact, the issue of observer status was not discussed in detail at any of the meetings of the Ad Hoc Group, although it was identified by the Group – and

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<sup>1</sup> See Minutes of the 99th/100th sessions of the Customs Co-operation Council (Brussels, 27 to 29 June 2002). Doc. SC0034E1. Brussels, August 30, 2002.

<sup>2</sup> Implementation of the recommendations made by the Ad Hoc Group on Committee Structures and Working Methods. Decision of the Council No. 308. 99th/100th Sessions – June 2002. Annex IV to Doc. SC0034E1. – P.IV/3.

<sup>3</sup> Point 99. Report of the Policy Commission. 46th session. Doc. SP0090E1. Brussels, 29 January 2002. - P.18 .

the meeting of WCO committee chairs – as an important issue requiring attention and guidance. The issue of observer status was considered to have political implications and was therefore outside the competence of the Ad Hoc Group. Consequently, the Council agreed that the Policy Commission would consider this matter on the basis of proposals from the Secretariat. In order to consider this issue, at the 48th meeting of the WCO Policy Commission, which took place on December 11, 2002, a note «On Observer Status» was prepared.<sup>1</sup>

The WCO Secretariat provided the Policy Commission with the materials necessary to make an informed recommendation on this issue. The analyzed material includes:

- (a) brief notes on WCO legal provisions relating to observer status;
- (b) a description of the current situation with respect to the various categories of observers, with some judgments on how this compares with the practice of other intergovernmental organizations, followed by the views and suggestions of the Secretariat on possible areas for improvement in the ongoing work, and
- (c) Draft Guidelines on Observer Status (Guidelines concerning observers) based on the above opinions and suggestions.<sup>2</sup>

## **2. Classification of WCO observers**

One of the objectives of this study is to classify the entities that can be granted legal observer status in the WCO. The following are the main principles of the World Customs Organization for the organization of cooperation with observers.

### **Non-Member countries**

Inviting non-member countries to attend WCO meetings is seen as a practical means of encouraging new accessions. In the absence of any obvious geopolitical factors, the draft list should include any non-member customs administrations that:

- have recently shown interest in the work of the relevant body;
- asked to be invited or
- attended the previous meeting of the same body.

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<sup>1</sup> Observer Status (Item X on the Agenda). SP0116E1. Brussels, 11 November 2002. Policy Commission. 48th session. Istanbul.

<sup>2</sup> Guidelines concerning observations. Annex I to Doc. SP0116E1. Observer Status (Item X on the Agenda). SP0116E1. Brussels, 11 November 2002. Policy Commission. 48th session. Istanbul.

For Council meetings each June, the Secretariat's draft list of observers should also include countries that have completed their formalities with the Belgian Foreign Office for accession and should become WCO members from 1 July.<sup>1</sup>

### **Intergovernmental organizations**

A number of intergovernmental organizations, including some of the specialized agencies of the United Nations, deal with trade, transport and travel issues that are relevant to customs in general. Other intergovernmental organizations, whose work, at first glance, is not related to customs, may from time to time show interest in a particular program or draft document being developed by a WCO body.

The Secretariat's draft list of observers for each meeting should include both of the above types of intergovernmental organizations, as appropriate. The list should include, but not be limited to, relevant intergovernmental organizations that have previously participated in the relevant body. The aim should be to invite intergovernmental organizations that:

- will be able to provide at the meeting specific information or experience in relation to one or more items on the agenda of the meeting;
- work on tools or programs that partially coincide with or complement those that will be discussed at the meeting; or
- may, as a result of attending the meeting, be involved in the involvement of the WCO in their own projects or in highlighting the work of the WCO in the intergovernmental community.

Within that general line, the Secretariat should ensure that its draft lists remain focused and do not become unnecessarily long over time. This can be achieved in particular through:

- termination of the invitation of intergovernmental organizations that did not accept invitations during the last 18 months to 2 years (depending on the frequency of meetings). Of course, they can be reinstated later if they show interest in participating again; as well as
- termination of the invitation of organizations previously invited for thematic reasons, as soon as the relevant topic disappears from the agenda.

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<sup>1</sup> Guidelines concerning observations. Annex I to Doc. SP0116E1. Observer Status (Item X on the Agenda). SP0116E1. Brussels, 11 November 2002. Policy Commission. 48th session. Istanbul. – P.I/2.

### **Regional entities, including customs and economic unions**

*Inviting customs and economic unions* and similar regional organizations to attend meetings of WCO bodies as observers can encourage and help them incorporate the content of WCO instruments into their regional instruments, as well as provide a useful opportunity for the Secretariat to hold informal discussions with observers during their visits to Brussels, tell about the customs aspects of the work of this regional organization.

The presence of observers from regional organizations can also help offset the fact that WCO members in some regions are often unable to travel to Brussels for meetings, and also provide an indirect link to the WCO and its activities for some small island states that are interested in the work of the Organization, but cannot qualify for membership.

The draft list of observers of the Secretariat for each meeting should include all regional organizations that have requested to attend meetings of the relevant body or have recently corresponded with the Secretariat on any key topics on the meeting's agenda.

It is needed to stop inviting regional organizations if they have not attended a meeting of the relevant WCO body within the last eighteen months or two years.

### **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 sharing views and experiences from the sectors they represent.

For most meetings, the Secretariat's draft list of observers is likely to include a number of non-governmental international organizations. The list should include, but not be limited to, relevant non-governmental organizations that have previously participated in the work of the relevant body, provided that the Secretariat is satisfied that they can make a significant contribution to this work.

Unless circumstances so require, the aim should be to invite (if necessary seek out) non-governmental organizations that:

- really international;
- active and efficient in their field;
- represent a sector whose activities are important and directly related to the work of the relevant body;
- represent a sector that is not yet sufficiently represented by another NGO in the draft list.

In order to facilitate the assessment against the above criteria, non-governmental organizations that have not previously participated in the work of the WCO, who apply to the Secretariat for an invitation to a WCO meeting, should be asked to explain why they are seeking this status and what contribution they can make to the work of the relevant WCO body. They should also be asked to provide:

- a brief description of their history and origin;
- details of the nature of their activities;
- details of the nature, number and geographical distribution of the national associations/private firms they represent;
- copies of the latest editions of any newsletters or other publications they send to their members;
- a list of other intergovernmental organizations in which they currently have observer status;
- an indication of how their activities differ from those of any other non-governmental international organizations active in the same sector.<sup>1</sup>

The Secretariat should ensure that its draft lists remain focused and do not become excessively long over time. This can be achieved in particular through:

- termination of invitations to non-governmental international organizations that did not accept invitations during the last 18 months to 2 years (depending on the frequency of meetings). Subsequently, they can be reinstated if they again show interest in participating; as well as
- termination of the invitation of organizations previously invited for thematic reasons, as soon as the relevant topic disappears from the agenda.

### **National bodies representing manufacturing, trade and transport interests and private firms**

The World Customs Organization is an intergovernmental organization, and therefore its committees and other working bodies should have as their partners international, not national bodies, as well as international associations representing the interests of private firms, and not individual private firms themselves. *However, some government-funded trade facilitation bodies that have made valuable contributions to the work of the WCO over the years should be allowed to attend meetings of WCO bodies as observers.*<sup>2</sup>

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<sup>1</sup> Guidelines concerning observations. Annex I to Doc. SP0116E1. Observer Status (Item X on the Agenda). SP0116E1. Brussels, 11 November 2002. Policy Commission. 48th session. Istanbul. – P.I /4.

<sup>2</sup> Fragment of the coursework – proposed changes at the 49th meeting of the Political Commission. See Guidelines Concerning Observers. Annex to Doc. SP0129E1 – Observer Status. (Item X (a) on the Agenda). Policy Commission. 49th session. Brussels, May 23, 2003.

Consequently, neither national authorities nor private companies are allowed to attend meetings of WCO bodies as observers. However, there may be cases where national bodies or national firms may be invited to attend meetings of WCO working bodies as experts/advisers only on certain specific agenda items.

In any case, national organizations and private firms should be actively encouraged to participate in the annual WCO Open Days on Trade, the WCO Business Partnership and the Organization's various symposiums and other trade-related events.

### **Conclusions and recommendations**

The comprehensive analysis of the legal status of WCO observers<sup>1</sup> made it possible to formulate the following conclusions:

1. The issue of more active involvement of international organizations and the development of ways to better integrate private sector organizations into the work of the WCO working bodies was initiated in 2001 by the Policy Commission and the Customs Cooperation Council. This topic touched upon, among other things, the development of criteria for granting observer status to requesting organizations, as well as relevant mechanisms. For the WCO, the issue of observer status has political implications.

2. Today, the rules of procedure of the main WCO technical committees (bodies) provide for the possibility of inviting representatives of the governments of countries that are not members and international organizations as observers (wording may be different). An analysis of the rules of procedure showed that in some cases, the WCO Secretary General may invite observers on his own, in others – only upon agreement with the chairman of the relevant working body.

*There is no official accreditation procedure for observers.*

3. Prior to 2003, none of the WCO legal texts contained any guidance as to the purpose or procedures for inviting observers, or any information that could help in deciding which international organizations and other bodies to invite.

The legal texts of the rules and procedures of a number of WCO working bodies contain provisions on the possibility of participation of observers at meetings. However, such internal acts do not disclose the procedure for inviting, direct participation of observers in the work of a particular WCO body, as well as the rights and obligations of observers. Exception – observers can take

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<sup>1</sup> See International legal status of observers in the World Customs Organization: an analytical review / S.V. Mozer. M.: Publishing house of the Russian Customs Academy, 2021. 80. p. URL: <https://customs-academy.net/?p=14345>

part in the discussion of issues on the agenda of the meeting, consult, make presentations, but not take part in the decision-making process.

4. The study made it possible to identify the following groups of observers of the World Customs Organization:

- a. non-member countries;
- b. intergovernmental organizations;
- c. regional entities (for example, *customs and economic unions*);
- d. non-governmental international organizations;
- e. national bodies representing manufacturing, trade and transport interests and private firms.

A description of the legal status of each of the named observers is presented above in this article.

5. The WCO policy to admit observers, which are not its members, to most of its meetings as observers is broadly in line with the policies of other intergovernmental organizations, although it is noted that some organizations have formal accreditation procedures for observer governments or require membership formalities to be completed for a certain period of time.

To date, the WCO does not see a particular need to impose an additional administrative burden on itself by introducing a formal accreditation procedure for observers.

In order to ensure strict compliance with the Organization's legal instruments on observer status since 2003, the Secretariat has proposed a simple procedure, obtaining the *Secretariat's approval from the Chairman* of the Council or the Chairman of the relevant committee before inviting any observers, and *preparing a list of all observers*<sup>1</sup> who have been invited to attend meetings of any WCO bodies as observers during the previous twelve months. This list shall be circulated for information at Council sessions each year.

6. Intergovernmental organizations are considered to play a much more important role at WCO meetings than observer countries, not only in terms of

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<sup>1</sup> In accordance with the WCO Observer Guidelines, in the interests of greater transparency, an information document on observers should be prepared by the Secretariat once a year for distribution to the annual sessions of the Council. This document, for each WCO committee or other body, should list all non-member countries, organizations and other entities that have been invited to attend meetings during the year. Those who accepted the invitation and sent an observer should be in bold type. Any countries, organizations or other entities that have never previously been invited to a WCO meeting should be marked with an asterisk. See Guidelines Concerning Observers. Annex to Doc. SP0129E1 – Observer Status. (Item X (a) on the Agenda). Policy Commission. 49th session. Brussels, May 23, 2003.

numbers, but also in terms of their impact on the work. Their participation is of great practical and strategic importance for the Organization because:

- it provides a means to ensure that the *tools and programs developed by WCO bodies complement the tools and programs of other intergovernmental organizations working in similar areas and do not duplicate or conflict with their work*;

- *observers from other intergovernmental organizations will often be able to provide useful input from experts on various trade, transport and public health/security issues discussed at meetings of WCO bodies*;

- *these observers will report to their organizations on what the WCO is doing, thereby helping to raise the WCO profile in the intergovernmental community*;

- by inviting observers from other intergovernmental organizations to participate in its meetings, the *WCO maximizes the chances of obtaining observer status in these organizations, which in turn gives the WCO the opportunity to increase its credibility, and also seeks to ensure that customs issues are properly addressed in tools and programs interested intergovernmental organizations*.<sup>1</sup>

According to the author, the above theses can be applied to customs and economic unions and, above all, to the EEU. Thus, the Customs Cooperation block of the Eurasian Economic Commission, as part of its rule-making activities, develops legal means, referring to the WCO legal instruments and tools. Representatives of this block, participating in meetings of various WCO working bodies, certainly make a useful contribution when considering issues of improving customs regulation and trade facilitation procedures. The significance of the WCO authority in the EEU is evidenced at least by the fact that the Strategic Directions for the Development of Eurasian Economic Integration until 2025 provide for a number of measures, including «11.7.5. Development of cooperation with the World Customs Organization (WCO):

- carrying out joint actions with member states aimed at obtaining the Union's membership status in the WCO;

- study of the possibility of joining the Union to the fundamental WCO documents».<sup>2</sup>

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<sup>1</sup> Observer Status (Item X on the Agenda). SP0116E1. Brussels, 11 November 2002. Policy Commission. 48th session. Istanbul. – P. 6.

<sup>2</sup> Strategic directions for the development of Eurasian economic integration until 2025, Approved by the Decision of the Supreme Eurasian Economic Council dated December 11, 2020 No. 12. URL: [https://docs.eaeunion.org/docs/ru-ru/01428320/scd\\_12012021\\_12](https://docs.eaeunion.org/docs/ru-ru/01428320/scd_12012021_12)

The issue of granting observer status to the WCO in the EEU has not yet been raised and can be considered as a prospect for the future. However, we repeat again, the WCO authority in the international customs community, as well as in the framework of the Eurasian economic integration, is quite high.

7. Speaking about the legal status of customs and economic unions in the WCO, it is worth noting that such entities are classified in the group «Regional entities (i.e., Customs and Economic Unions, and similar regional bodies not representing the private sector)». In 2002, the WCO Secretariat was asked to try to work more closely with customs and economic unions and similar regional entities around the world. Against this backdrop, the Secretariat considered that regional organizations that express an interest in attending meetings as observers should definitely be allowed to do so, as this could encourage and help them incorporate the content of WCO documents into their regional instruments, as well as provide the Secretariat with a useful opportunity to conduct informal discussions with observers during their visits to Brussels on customs aspects of the work of regional organizations. For reference, we note that the same provision is reflected in the WCO Guidelines on Observers.

The Secretariat is of the opinion that regional organizations that request to attend meetings of WCO bodies as observers should be invited to do so.<sup>1</sup>

Within the framework of comparative law, we note that the European Community was already in 2002 called *a special case* for the WCO, since it was a full member of several main working bodies of the WCO.

8. In June 2003, at the 101/102 sessions of the Customs Cooperation Council, which took place in Brussels from 26 to 28 June 2003,<sup>2</sup> the Guidelines on observers were approved.<sup>3</sup> The purpose of the document is to introduce clear and transparent principles that facilitate the invitation of observers whose participation would be beneficial to the WCO.

Along with fixing the position of the WCO Secretariat in 2002 on the need to invite customs and economic unions to sessions of the WCO working bodies, the Guidelines fix the following procedural aspects:

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<sup>1</sup> Observer Status (Item X on the Agenda). SP0116E1. Brussels, 11 November 2002. Policy Commission. 48th session. Istanbul. – P. 8.

<sup>2</sup> Points 116-118. ( i ) Observer status. Minutes of the 101st/102nd sessions of the Customs Co-operation Council. (Brussels, 26 to 28 June 2003). Doc. SC0050E1. Brussels, 25 August 2003. – P. I/27.

<sup>3</sup> Guidelines Concerning Observers. Annex to Doc. SP0129E1 – Observer Status. (Item X (a) on the Agenda). Policy Commission. 49th session. Brussels, May 23, 2003.

*«The Secretariat's draft list of observers for each meeting should include all regional organizations that have requested to attend meetings of the relevant body or have recently corresponded with the Secretariat on any key topics on the meeting's agenda.*

*It should be stopped inviting regional organizations if they have not attended a meeting of the relevant WCO body within the last eighteen months or two years».*

Here it is important to pay attention to the **mandatory nature of the presence of** regional organizations, including customs and economic unions, at meetings of the working bodies of the Organization and their active participation in the WCO work. *Otherwise, the interested subject (entity) may be excluded from the list of observers.*

9. Analysis of the practice of interaction between the Commission and the WCO, as well as legal instruments and tools, allows us to highlight the following **rights and obligations of observers in the WCO**:

- ✓ exchange open information and documents of mutual interest;
- ✓ participate by invitation in events held by the WCO;
- ✓ hold joint meetings, consultations, scientific and practical seminars and conferences on issues of mutual interest;
- ✓ take part in the discussion of the agenda of the meeting of the WCO working bodies;
- ✓ prepare a position, corrections and proposals on the agenda of the meeting and working materials, as well as voice them at the sessions of the working bodies;
- ✓ submit documents for consideration, written comments to the Secretariat documents;
- ✓ voice proposals for the modernization of WCO legal instruments and tools, as well as programs for the development of customs regulation and trade facilitation;
- ✓ make proposals for making changes and additions to the draft final report of the meeting of the WCO working body on issues that were voiced by the observer;
- ✓ provide consultations and presentations on the agenda of the meeting;
- ✓ influence through discussions on a particular issue or course of action being pursued;
- ✓ to participate with the Secretariat in correspondence during the intersessional period;
- ✓ provide technical knowledge, special information;

- ✓ disseminate the views and experiences of the organizations and the regulatory sectors they represent;
- ✓ share with the WCO regional experience on customs regulation and trade facilitation;
- ✓ be involved in the World Customs Organization projects;
- ✓ download relevant working papers directly from the website of WCO Members;
- ✓ take seats in the meeting room immediately behind the last row of seats occupied by member delegations;
- ✓ do not have the right to vote;
- ✓ if the chair of a WCO working body deems it necessary, observers may be asked to leave the meeting room during voting.

In our opinion, the legal status of an observer gives broad powers to interact with the WCO. In practice, the observer has the opportunity to represent the interests of its organization, to express positions on any issue on the agenda of the meeting, which is associated with its competence. The only limitation is the lack of the right to vote, as well as the lack of competence in the formation of the agenda of the session of the working body of the Organization.

10. The rules of procedure, as well as the established procedure for cooperation with observers, do not contain normative restrictions on their participation in the discussion of the agenda. On the contrary, the active involvement of observers in improving customs regulation at the WCO site is only welcomed by the Secretariat. Another issue is that not all initiatives of observers can be taken into account by the WCO working body. But there may be political and practical reasons for this.

If we are talking about regional entities, such as customs and economic unions, then the organization of joint work and coordination of efforts of this category of observers and WCO member countries that are the subject of a regional association (customs or economic union) can become a solution to the problem. Here, it is necessary to develop legal procedures for the interaction of the executive body of the union, as an observer of the WCO (in whose competence are customs regulation issues) with the customs services of the member states of this union on issues considered at the WCO site, as well as agreeing a joint position on the agenda of the meeting in the Organization. The optimal solution, in our opinion, is the creation of a permanent advisory body for interaction with the WCO, which includes experts from the executive body of the customs or economic union and the customs authorities of the member states of such a union.

Full participation of customs and economic unions in the WCO work and representation of the interests of such unions and their member states makes it possible to monitor the development of international standards in the field of customs regulation, analyze their compliance with the law of the union in the field of customs regulation, bring information to the customs services of the member states of the union and adopt coordinated decisions on expressing a position on the documents being developed. This allows the executive body of the customs or economic union to ensure constant monitoring of the standards developed at the WCO platform and bring this information to the customs authorities, which, regardless of participation in the events, will be able to keep abreast of the acts being developed and the work being done in the WCO.

11. The WCO legal instruments and tools, as well as the internal acts of the Organization, do not establish rules to whom an application should be sent to obtain observer status at the WCO. However, following the logic, when the list of observers is annually formed by the WCO Secretariat and brought to the attention of the chairmen of its working bodies, such an appeal should be written to the Secretary General of the World Customs Organization.

12. To date, the Eurasian Economic Commission has observer status due to its participation in meetings of various WCO working bodies. In order not to «lose» this status, it is necessary to use the opportunity and continue to actively participate in the discussion of the substantive agenda of the WCO, fully exercising the rights and obligations established for the observer.

An equally important issue is the organization on the Commission platform the work on interaction between the customs services and the Commission, as well as the development of a legal mechanism for cooperation in order to promote common interests in the World Customs Organization and implement the Strategic Directions for the Development of Integration in this direction.

## **BIBLIOGRAPHIC LIST**

1. *Mozer Sergei*. International legal status of observers in the World Customs Organization: an analytical review / S.V. Mozer. Moscow: Publishing House of the Russian Customs Academy, 2021. 80 p.
2. Strategic directions for the development of Eurasian economic integration until 2025, Approved by the Decision of the Supreme Eurasian Economic Council dated December 11, 2020 № 12. URL: [https://docs.eaeunion.org/docs/ru-ru/01428320/scd\\_12012021\\_12](https://docs.eaeunion.org/docs/ru-ru/01428320/scd_12012021_12)
3. Minutes of the 99th/100th sessions of the Customs Co-operation Council (Brussels, 27 to 29 June 2002). Doc. SC0034E1. Brussels, 30 August 2002.

4. Implementation of the recommendations made by the Ad Hoc Group on Committee Structures and Working Methods. Decision of the Council № 308. 99th/100th Sessions – June 2002. Annex IV to Doc. SC0034E1.
5. Report of the Policy Commission. 46th Session. Doc. SP0090E1. Brussels, 29 January 2002.
6. Observer Status (Item X on the Agenda). SP0116E1. Brussels, 11 November 2002. Policy Commission. 48th Session. Istanbul.
7. Guidelines concerning observes. Annex I to Doc. SP0116E1. Observer Status (Item X on the Agenda). SP0116E1. Brussels, 11 November 2002. Policy Commission. 48th Session. Istanbul.
8. Observer status. Minutes of the 101st/102nd sessions of the Customs Co-operation Council. (Brussels, 26 to 28 June 2003). Doc. SC0050E1. Brussels, 25 August 2003.
9. Guidelines Concerning Observers. Annex to Doc. SP0129E1 – Observer Status. (Item X (a) on the Agenda). Policy Commission. 49th Session. Brussels, 23 May 2003.

## 2. ON THE ORGANIZATION OF EFFECTIVE LEGAL RELATIONS WITH THE WORLD CUSTOMS ORGANIZATION: RECOMMENDATIONS FOR CUSTOMS AND ECONOMIC UNIONS<sup>1</sup>

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The presented research material examines the legal issues of organizing interaction between customs and economic unions with the World Customs Organization (WCO), including the issue of obtaining membership status in this international organization.

### **Task**

To formulate proposals for organizing practical interaction between customs and economic unions with the World Customs Organization.

### **Conclusions**

The research article is devoted to the development of effective legal relations between customs and economic unions with the WCO in the current conditions of the functioning of the international customs organization, as well as the development of Eurasian economic integration.

The subject of the study is the WCO legal instruments and tools, as well as the precedent of the European Union (EU) in terms of the formation of perspective relations between the EU and the WCO. The research material analyzes the organization of interaction with the WCO by authorized bodies of customs and economic unions; it also proposes an Action Plan (roadmap) for the Eurasian Economic Union (EEU) to obtain the status of the WCO Member as part of the implementation of the Strategic Directions for the Development of Eurasian Economic Integration until 2025. Based on the results of the study, conclusions and recommendations were formed within the framework of cooperation between the Eurasian Economic Commission and the WCO.

### **Social Consequences**

Conducting a study of the legal status of customs and economic unions in the WCO is associated with the implementation of clause 11.7.5. of the Strategic Directions for the Development of Eurasian Economic Integration until 2025 (Strategic Directions) in terms of cooperation with this international organization.

### **Practical value**

The results of the study are of interest to the customs cooperation block of the Eurasian Economic Commission (EEC), and can be used by specialists from customs and other executive authorities in the EEU member states, EEC experts to organize and implement mutually beneficial customs cooperation between the EEC and the WCO.

The article is recommended to researchers, teachers, students, graduate students and other categories of students in the Russian Customs Academy, in other universities and the WCO regional training centers in the specialties «Customs» and «Jurisprudence».

### **Originality/value**

The research material is based on an analysis of the practical aspects of the EEC – WCO activities and is the result of a comprehensive study of the issue of the legal and organizational basis for obtaining the WCO Member status by economic and customs unions.

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<sup>1</sup> *Sergei Mozer: On the issue of the organization of effective legal relations with the World Customs Organization: recommendations for customs and economic unions // Problems of Economics and legal practice. – № 4.– 2022. (Article) URL: <http://customs-academy.net/?p=14597>*

**Keywords:** *The World Customs Organization, the WCO, the Eurasian Economic Union, EEU, the Eurasian Economic Commission, EEC, customs regulation, customs administration, international customs law, customs, observer, customs and economic union, action plan, roadmap.*

## **Introduction**

In 2022 we completed a comprehensive study of the legal and organizational basis for obtaining the status of a member of the World Customs Organization (WCO) by economic and customs unions. In the course of its preparation, a number of tasks were fulfilled, including the study of the current state of relations between the Eurasian Economic Commission (EEC, Commission) and the WCO; prospects to join the Eurasian Economic Union (EAEU) into the WCO; studied the legal status of observers in the WCO, as well as the legal status of the EU in the WCO; identified and analyzed the stages of consideration by the international customs community of the issue of EU membership in the WCO; considered EU activities in connection with the implementation of the application for membership in the WCO; the competencies of the EU and its member states in the WCO were examined; identified the risks associated with the EU membership in the WCO; studied the legal consequences of amending the Convention Establishing a Customs Co-operation Council (CCC Convention) in connection with the granting the WCO member status to customs and economic unions.

Along with this, we analyzed the legal and procedural aspects of obtaining EU rights and obligations akin to those enjoyed by the WCO members; the procedural aspects of the EU participation in the WCO work, as well as the EU legal instruments, coordinating the joint actions of the EU and its member states in the WCO, were studied.

Worthy of attention, in our opinion, are practical proposals to customs and economic unions on organizing interaction with the WCO, including as part of a study of the issue of membership in this international organization, as well as prepared practical proposals regarding the organization of cooperation with the WCO in the implementation of the Strategic Directions for the Development of Eurasian Economic Integration until 2025 (Strategic Directions). Let's consider such proposals.

### **1. On membership of customs and economic unions in the WCO**

One of the purposes of this article is to prepare practical proposals for customs and economic unions to build productive relations with the WCO. Let us imagine that the functionaries of the integration association, who are in charge

of international customs cooperation, are tasked with developing mutually beneficial relations with the WCO.

The author of this study is deeply convinced that the doors of the WCO are open to any customs or economic union that is a subject of international law and for which the issue of using the legal instruments and tools of this international organization in its rule-making activities is relevant. Another question is what legal status this or that integration economic association sees for itself in the WCO.

Clause 11.7.5. of Strategic Directions provide for the following activities: «Development of cooperation with the World Customs Organization (WCO): carrying out joint actions with member states aimed at obtaining the Union's membership status in the WCO; study of the possibility of joining the Union to the fundamental documents of the WCO».<sup>1</sup>

It must be understood that customs and economic unions can only get observer status, but not a member of the Organization, which unambiguously follows from Article II of the CCC Convention, in accordance with paragraph «d» of which «*The Council may admit representatives of non-Member Governments or of international organizations in the capacity of observers*».

Of course, one can refer to the precedent of the European Communities (European Union) of 2007 on their obtaining the so-called «membership» in the WCO. However, the participants of this deal created it only for the European Communities.

There is a point of view that EU does not have the WCO member status, however, as interim measure, it was *granted «rights akin to those enjoyed by WCO Members»*. At the same time, to date, the WCO does not have any legal interpretation of what should be understood by such a wording.

Despite this fact, in the official WCO information materials posted on the Organization's web page, the European Union, along with the states that are WCO members, is listed as a member of the WCO in the European Region. Yes, with a small remark – «Status akin to WCO membership»,<sup>2</sup> i.e. «status similar to WCO membership».

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<sup>1</sup> Strategic directions for the development of Eurasian economic integration until 2025 / Approved by the Decision of the Supreme Eurasian Economic Council dated December 11, 2020 № 12 «On Strategic Directions for the Development of Eurasian Economic Integration until 2025». URL: [https://docs.eaeunion.org/docs/en-us/01428320/scd\\_12012021\\_12](https://docs.eaeunion.org/docs/en-us/01428320/scd_12012021_12)

<sup>2</sup> World Customs Organization. Europe. Last update: 6/15/2022. – P. 4. URL: <http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/wco-members/list-of-members-with-membership-date.pdf?db=web>

On the other hand, one can take the opposite position, arguing that the EU has the WCO member status. After all, in a narrow sense, legal status can be understood as a set of rights and obligations. In the case of the EU, rights and obligations similar to those enjoyed by WCO members were granted. Based on this logical connection, it can be concluded that the EU was granted a legal status similar to that of a WCO member. At the same time, it is not at all necessary to refer to the official position of the United States in 2007, according to which, a status similar to membership has no legal effect.

Therefore, if a customs or economic union has a serious intention to «get involved» in a project related to obtaining WCO membership (which is impossible due to the rules of the CCC Convention), it must first of all be recognized that the EU membership in the WCO is a real fact. And to confirm this, the countries of this customs or economic union should obviously express their agreement with the recommendation of the Customs Cooperation Council to amend the Convention Establishing a Customs Cooperation Council (June 30, 2007), adopted during the 109/110 meeting of the WCO Council, June 28-30, 2007.

In a previously published study, we presented the results of an analysis of the legal status of observers in the WCO.<sup>1</sup> Let us recall the rights and obligations that the WCO grants to this group of entities:

- ✓ «to exchange open information and documents of mutual interest;
- ✓ participate by invitation in events held by the WCO;
- ✓ hold joint meetings, consultations, scientific and practical seminars and conferences on issues of mutual interest;
- ✓ take part in the discussion of the agenda of the meeting of the working bodies of the WCO;
- ✓ prepare a position, corrections and proposals on the agenda of the meeting and working materials, as well as voice them at the sessions of the working bodies;
- ✓ submit documents for consideration, written comments to the documents of the Secretariat;
- ✓ voice proposals for the modernization of WCO legal instruments and tools, as well as programs for the development of customs administration and trade facilitation;

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<sup>1</sup> See *Mozer S.V. Legal Instruments and Tools of the World Customs Organization: monograph* (in English). Moscow: Editorial and Publishing Department of the Russian Customs Academy, 2021. – 134 p. URL: <http://customs-academy.net/?p=14071>

- ✓ make proposals for making changes and additions to the draft final report of the meeting of the WCO working body on issues that were voiced by the observer;
- ✓ provide consultations and presentations on the agenda of the meeting;
- ✓ influence through discussions on a particular issue or course of action being pursued;
- ✓ to participate with the Secretariat in correspondence during the intersessional period;
- ✓ provide technical knowledge, special information;
- ✓ disseminate the views and experiences of the organizations and the regulatory sectors they represent;
- ✓ share with the WCO regional experience on customs regulation and trade facilitation;
- ✓ be involved in the projects of the World Customs Organization;
- ✓ download relevant working papers directly from the website of WCO Members;
- ✓ take seats in the meeting room immediately behind the last row of seats occupied by member delegations;
- ✓ do not have the right to vote;
- ✓ if the chair of a working body of the WCO deems it necessary, observers may be asked to leave the meeting room during voting».<sup>1</sup>

And now let's ask ourselves the question, why should the customs and economic union receive the status of a WCO member? To pay an annual contribution to the WCO budget of 1 million euros or more? What rights and obligations does a customs or economic union actually receive, which it does not have in the absence of the status of a WCO member? What are the real benefits of such an alliance?

Some would say that a significant advantage is that a WCO member has the right to vote and determine WCO policy on issues within its competence. Or that the observer's proposals are not always taken into account in the rule-making process in various WCO bodies. However, who prevents member states that form such a customs or economic union from representing and lobbying its interests, being in the status of WCO members? The author's practical experience in interaction with the WCO shows that when creating a flexible mechanism for cooperation between the member countries of the economic union and with the

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<sup>1</sup> *Mozer S.V.* Analysis of the legal status of observers in the World Customs Organization // Economic Problems and Legal Practice. – № 1. – 2022. URL: <http://customs-academy.net/?p=14576>

correct, well-organized coordination of their actions on the WCO platform, including before participating in meetings, such problems do not arise.

## **2. Organization of interaction with the WCO authorized bodies of customs and economic unions**

1. Before starting to realize the intention of membership in the WCO, a customs or economic union needs to really understand what **goals and objectives** it pursues. Moreover, before including the thesis of WCO membership as a strategic goal, for example, in the strategic documents of the economic union, it is necessary to have a good **preliminary analysis (report)** of the consequences of such an intention. For the situation looks uncomfortable when the countries of the union make a decision to join the WCO, and then they begin to figure out whether this is possible in principle.

2. To organize cooperation between the union and the international customs organization, a supranational legal framework should be created, for example, fixing in the main directions of the international activities of the union such a goal as organizing cooperation between the union and the WCO. This goal can be reflected in any other strategic documents of the union.

3. At the initial stage of building relations with the WCO, it is important for a customs or economic union to **create a legal basis** for interaction. As a rule, the WCO offers a model memorandum of understanding, which can be adjusted to suit the interests of the parties. Usually, the conclusion of such a memorandum is preceded by consultations with the WCO Secretariat, and when expressing consent, the supranational body of the union is required **to issue an administrative act on the conclusion of a memorandum with the WCO**.

4. **The conclusion of a memorandum with the WCO** at its headquarters can be called the next stage.

5. From this moment on, the supranational body of the union, which is in charge of customs administration, has 2 directions of movement.

The first is **the active involvement in the work of various** WCO bodies in the status of an observer. We are talking about expert work on the current agenda of the WCO, for example, in the formation of legal instruments and tools of the Organization, as well as consideration of topical issues of customs regulation. For the WCO Secretariat, it is important that the observer be completely immersed in the current issue. This is only welcome. The competence of observers is presented above.

Why should this be done? One day, the question may arise about the advisability of involving one or another observer in relatively closed topics, in

the consideration of which priority is given to the members of the Organization. Another reason is that if, over time, the union expresses a desire to obtain the status of a WCO member, then it will need to answer one of the questions – what is the use of the membership of such an union for the WCO and what has it really contributed to its work? Therefore, the formal presence of an observer at WCO meetings or similar participation in its work may not have the best consequences for a customs or economic union.

Often heard during the meeting of the working body of the WCO, the only phrase of the delegate on the agenda under consideration – we support or do not support such an initiative – is not enough. We need a specific study of the issues initiated by the WCO, the formation of a position and active participation in discussions.

For operational work with the WCO in this case, it is necessary to create a ***working mechanism within the supranational body***. This may be an informal group of experts or an established working group that interacts directly with the WCO on behalf of the supranational body.

The second is ***the creation of a legal mechanism for*** representing the interests of the union together with the customs authorities of the member states of the union. For this option, the optimal solution is to create an ***official working group at the level of the union***, which will include representatives of the supranational body of the union, as well as the customs authorities of its member states.

6. The next step is ***the creation of a working group*** (see above – the official working group) in the supranational body of the union for interaction with the WCO, whose competence will include the following issues:

- preparation of conceptual approaches for consideration by the union and the customs authorities of the member states of the current WCO agenda, rules and procedures for their submission, discussion, as well as sending a position to the WCO on topical issues on the WCO agenda;
- consideration by the union and the customs authorities of the member states of the current WCO agenda, as well as the formation and coordination of the positions of the member states on the agenda;
- consideration of proposals and formation of common approaches of member states to build productive relations of the union with the WCO;
- development of customs cooperation and organization of practical interaction between the supranational body of the union, the customs authorities of the member states with the WCO on issues of mutual interest;

- consideration of other issues related to the implementation of the union's agenda in terms of cooperation with the WCO;
- study of the possibility of joining the union to the WCO legal instruments and tools.

If the union intends to still obtain the status of a WCO member, the competence of the working group should be expanded, providing for the following competence for it:

carrying out joint actions with the member states of the union aimed at obtaining the status of a member in the WCO.

7. The working group cannot function effectively without ***the approval of the rules of procedure or the regulations for the working group***. This issue also needs to be resolved in accordance with the established rules.

8. A customs or economic union requires a ***coordinated representation of its interests in the WCO***.

This will be possible thanks to the formation of a mechanism for interaction between the union and the WCO, which defines the procedure for interaction between the supranational body and the customs services of the member states of the union, including mechanisms and procedures for agreeing and making decisions with the customs authorities of the member states of the union.<sup>1</sup>

The full participation of the supranational body in the work of the WCO and representation of the interests of the union and its member states makes it possible to monitor the development of international standards in the field of customs regulation, analyze their compliance with the law of the union in the field of customs regulation, bring information to the customs services of the member states of the union and make coordinated decisions on the expression positions on documents being developed, including legal instruments and tools of the WCO. This allows the supranational body to ensure constant monitoring of the standards developed at the WCO site and bring this information to the customs authorities, which, regardless of participation in the events, will be able to keep abreast of the acts being developed and the work being done in the WCO.<sup>2</sup>

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<sup>1</sup> From the strategy of the block on customs cooperation until 2025. Official resource of the Eurasian Economic Commission. URL: <https://eec.eaeunion.org/upload/medialibrary/993/STRATEGIYA-2025.pdf>

<sup>2</sup> Mozer S.V. Analysis of the legal status of observers in the World Customs Organization // Economic Problems and Legal Practice. – № 1. – 2022. URL: <http://customs-academy.net/?p=14576>

In legal terms, it is required to develop *conceptual approaches* for consideration by the union and its customs authorities the current WCO agenda, the rules and procedures for their adoption, discussion, as well as sending a position to the WCO on topical issues on the WCO agenda.

9. In the event that a customs or economic union has an intention to become a member of the WCO, by analogy with the EU, it is required to *develop an action plan (roadmap)*, which displays the main stages of the implementation of the intention to become a member, the expected result, the deadline for the implementation of each stage, the performers, as well as the type of document.

Such an approach will make it possible to build a sequence of steps necessary to achieve the goals – obtaining by the union the status of a member in the WCO.

After the development, agreement by the Member States and approval of the action plan (road map), the working group will be able to begin the effective implementation of its tasks.

In this article, we examined a set of basic measures that deserve the attention of the authorized bodies of any customs or economic union when building effective relations with the WCO, including when considering the issue of obtaining the legal status of a member in the WCO, which, in the author's opinion, has no tangible prospects soon.

### **3. Action plan (roadmap) for the Eurasian Economic Union on obtaining the status of a WCO Member**

Above, we have given recommendations to customs and economic unions on how to organize effective work with the WCO. Among them (in the presence of a formalized intention to become a member of the WCO) is the development of an action plan (roadmap), which displays the main stages in the implementation of the intention to become a member, the expected result, the period for the implementation of each stage, the executors, and the type of document.

It is obvious that in order to implement clause 11.7.5. of the Strategic Directions, the EEC and the member states of the Union will need to prepare a similar action plan (road map).

However, before we offer a plan of action, let's pay attention to the previously announced fact. Thus, by the Decree of the EEC Council dated 05.04.2021 № 4 «On the action plan for the implementation of the Strategic Directions for the Development of Eurasian Economic Integration until 2025», the corresponding action plan was approved. In the mentioned act of the Commission, measures and implementation mechanisms are named in accordance with the

points of the Strategic Directions, the name of the event, the responsible executor (co-executor), the deadline for implementation and the form of implementation.

The Commission (Member of the Board (Minister) for Customs Cooperation) is appointed as the responsible executor for «carrying out activities with the Member States aimed at obtaining the status of a WCO member by the Union and making the necessary decisions of the Union's bodies». The co-executors are the Member States. The form of implementation of this event is the acts of the Union bodies.<sup>1</sup>

In other words, by 2025, the bodies of the Union must develop the acts necessary for the entry of the Union into the WCO.

Having analyzed the experience of the WCO in terms of granting EU membership, we have formulated the priority steps that need to be taken by the Commission and the Member States of the Union to implement paragraph 11.7.5. Strategic directions:

### **1. Organization of the work of the Commission and the Member States of the Union**

a) Establish a working group for interaction with the World Customs Organization, which is responsible for the implementation of paragraph 11.7.5 of the Strategic Directions.<sup>2</sup>

b) Develop and approve the regulations for the activities of the working group on interaction with the WCO.

c) It is necessary to develop:

– an action plan (roadmap) for the Union to obtain the legal status of a member in the WCO, as well as to join the WCO fundamental legal instruments and tools;

– methodological approaches to study the possibility of joining the Union to the WCO fundamental legal instruments and tools;

– a list of fundamental legal instruments and tools of the WCO, which, in the opinion of the Member States, may become the object of analysis and be con-

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<sup>1</sup> Order of the Council of the Eurasian Economic Commission dated April 5, 2021 № 4 «On the action plan for the implementation of the Strategic Directions for the Development of Eurasian Economic Integration until 2025». Alta - Soft. URL : <https://www.alta.ru/tamdoc/21s00004/>

<sup>2</sup> Such a group was created by the Decree of the EEC Board dated March 29, 2022 № 55 «On the working group for interaction with the World Customs Organization». IS Alta -Soft. URL: <https://www.alta.ru/tamdoc/22r00055/>

sidered within the framework of the implementation of paragraph 11.7.5 of the Strategic Directions;

- conceptual approaches for the consideration by the Union and its customs authorities of the current WCO agenda, the rules and procedures for their adoption, discussion, as well as sending a position to the WCO on topical issues on the WCO agenda;

- the methodology for conducting negotiations between the Commission and the WCO for the purpose of the membership of the Union in the WCO.

## **2. Legal and organizational approaches for the Union to obtain the status of a WCO member**

- a) Conduct a comprehensive study on the legal status of customs and economic unions in the WCO based on the EU precedent.

- b) Conduct research on the following issues:

- the relevance of the Union's membership in the WCO (why is it necessary from a practical point of view);

- the reasons for the membership of the Union in the WCO;

- legal issues related to the forthcoming request of the Union for WCO membership, including the compliance of such a request with the Treaty on the Eurasian Economic Union and other acts of the Union;

- national legislation (constitutional law) of the Member States in terms of implementing the intention of the Union's membership in the WCO;

- institutional issues: the right to vote in the WCO and the division of competence between the Union and its member states;

- about the competence of the Union and the Member States, the practical consequences that may arise as a result of the admission of the Union as a member of the WCO;

- distribution of competence between the Union and its member states on issues covered by the CCC Convention;

- financial issues: about the constant annual contributions of the Union to the WCO budget and the methodology for their calculation;

- risks associated with obtaining the status of a WCO member by the Union;

- the current status of the Union and the Commission in relation to the WCO;

- practical results of the work of the Commission (Union) in the WCO;

- practical measures to consider the request of the Union in the WCO;

- relations of the Union with other intergovernmental organizations;

- about the benefits of WCO membership for the Union;

- about the benefits of membership of the Union for the WCO;

- the likely impact of Union membership on the day-to-day activities of WCO technical committees;
- the degree of participation of the Member States of the Union and the Commission in various working bodies of the WCO.

### **3. Events**

1. Conducting negotiations between the Commission and the WCO Secretariat on membership in the Organization;
2. Decision by the Supreme Eurasian Economic Council to apply for WCO membership;
3. Preparation of an instruction (in the form of an order) of the EEC Council for the Commission to submit the request of the Union to the WCO and, if necessary, to negotiate in order to obtain membership in the WCO;
4. Applying for WCO membership. Sending by the Commission to the WCO Secretariat a letter indicating that the Supreme Eurasian Economic Council has authorized the Commission to negotiate membership in the WCO and asks to create a negotiating structure in the WCO to resolve this issue;
5. Submission by the WCO Secretariat of the issue of the Union's membership in the WCO at a meeting of the Policy Commission and the WCO Council;
6. Consideration by the Policy Commission and the WCO Council of the Union's application for membership in the WCO;
7. Creation of an effective negotiation structure;
8. Development and approval by the Commission and the WCO Secretariat of the negotiation methodology for the Union's membership in the WCO.

*For example, negotiations should be bilateral, that is, between, on the one hand, representatives of the Commission, and on the other hand, representatives of the WCO.*

*Formation of two negotiating groups:*

*Establishment of a Union negotiating team, which consists exclusively of Commission officials. The Member States of the Union participate in the negotiations through the negotiating structure established by the Commission.*

*Establishment of a WCO negotiating group: this should be a small but representative group of members, possibly consisting of the Chair and Vice Chairs of the Council, and a few other members appointed as Vice Chairs to ensure the best regional balance possible. This negotiating group is expected to be chaired by the Chairman of the Council.*

9. Preparation by the WCO Secretariat of a draft decision of the Council, according to which, as a transitional measure pending the entry into force of the amendment to Article XVIII of the Convention, the Union will

be endowed with rights and obligations similar to those of WCO members (rights and obligations akin to those of WCO Members);

10. Preparation by the Commission of a draft decision of the Supreme Eurasian Economic Council on the entry of the Union into the WCO and the fulfillment of rights and obligations similar to membership on an interim basis;

11. Adoption of a decision by the Supreme Eurasian Economic Council on the implementation of rights and obligations similar to temporary membership of the Eurasian Economic Union in the World Customs Organization, as well as the adoption of a declaration of competence of the EAEU on issues covered by the Convention on Establishing a Customs Cooperation Council.

#### **4. Legal acts of the Union necessary for the implementation of clause 11.7.5 of the Strategic Directions**

1. Regulations for the activities of the working group on interaction with the WCO;

2. Action plan (roadmap) for the Union to obtain the legal status of a member in the WCO, as well as accession to its fundamental legal instruments and tools;

3. Methodological approaches to study the possibility of joining the Union to the WCO fundamental legal instruments and tools;

4. List of fundamental legal instruments and tools of the WCO, to which the Union plans to join in the implementation of paragraph 11.7.5. Strategic directions;

5. Conceptual approaches to the consideration by the Union and its customs authorities of the current WCO agenda, the rules and procedures for their submission, discussion, as well as sending a position to the WCO on topical issues on the WCO agenda;

6. Methodology for conducting negotiations between the Commission and the WCO for the purpose of the membership of the Union in the WCO;

7. Decision of the EEC Council to send the request of the Union to the WCO and, if necessary, conduct negotiations by the Commission in order to obtain membership in the WCO;

8. Amending the Treaty on the Eurasian Economic Union (if necessary);

9. Decision of the Supreme Eurasian Economic Council on the fulfillment of rights and obligations similar to interim membership of the EEU in the WCO;

10. Declaration of competence of the Union in matters covered by the Convention establishing the Customs Cooperation Council;

11. Guiding principles for coordinating joint actions of the Union and Member States in the WCO.

In this research paper, we have identified individual activities, as well as legal acts, that need to be considered when studying the implementation of clause 11.7.5. of Strategic directions in terms of cooperation with the WCO. This is the so-called ideal scenario of a possible development of events.

According to the author, the experts of the Commission and Member States on the way to the goal will face several factors that will not allow in the near future to fully implement the Strategic Directions in terms of cooperation with the WCO:

- political factor;
- protection of national competence by member states on the way of the Union's movement to the status of membership in the WCO;
- lack of a flexible management mechanism (for this project) with the necessary competence for prompt decision-making on a wide range of issues of building promising relations with the WCO;
- lack of necessary legal instruments.

To date, the issue of continuing effective interaction between the Commission and the WCO remains extremely important. However, the next stage of such work should be the transformation or qualitative transition of cooperation between the Commission and the WCO to a new level – the interaction of a united front of the Commission and Member States with this international customs organization on behalf of the Union.

This does not mean that these two or three processes should not run in parallel. On the contrary, customs cooperation will only benefit when the Union in the WCO is positioned at several levels:

- Commission – WCO;
- Member State of the Union – WCO;
- Commission + Member States of the Union – WCO.

In this regard, we note that the implementation of international activities by the Commission with the international expert community, including on customs regulation and trade facilitation at the WCO site, is regulated primarily by the Treaty on the Eurasian Economic Union,<sup>1</sup> the Main Directions of International Activities of the Eurasian Economic Union,<sup>2</sup> as well as the procedure for the implementation of international cooperation by the Eurasian Economic Union.<sup>3</sup>

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<sup>1</sup> Article 7 of the Treaty on the Eurasian Economic Union. URL:<https://docs.cntd.en/document/420205962>

<sup>2</sup> Approved annually by the Supreme Eurasian Economic Council.

<sup>3</sup> Approved by the decision of the Supreme Eurasian Economic Council № 9 of December 23, 2014 «On the procedure for the implementation of international cooperation by the Eurasian Economic Union».

Not all procedural aspects of such cooperation are defined at the regulatory level. According to the author, excessive regulation of the procedural aspects of international customs cooperation is inappropriate, and indeed impossible.

At the same time, such interaction benefits if, within the framework of the structural divisions of the Commission responsible for organizing cooperation with foreign partners, there is a clear understanding of such issues as regulatory regulation, the competencies of the division, coordination of cooperation within the division, planning and reporting, office work, participation in events in international customs cooperation, etc.

We are talking about internal regulations, in relation to the customs block of the Commission – on the organization and procedure for the implementation of international customs cooperation of the department of the block for customs cooperation of the Commission.

We believe that in the near future the Commission will need to get acquainted with research materials on the implementation of the Strategic Directions for the Development of Eurasian Economic Integration until 2025 in terms of cooperation with the WCO. And we hope that the results of this study can be used in expert work in practice.

## **BIBLIOGRAPHIC LIST**

1. *Mozer S.V.* Analysis of the legal status of observers in the World Customs Organization // Gaps in Economics and Legal Practice. – № 1. – 2022. URL: <https://customs-academy.net/?p=14576>
2. *Mozer S.V.* Legal Instruments and Tools of the World Customs Organization: monograph (in English). Moscow: Editorial and Publishing Department of the Russian Customs Academy, 2021. – 134 p. URL: <http://customs-academy.net/?p=14071>
3. *Kadyrkulov M.A., Mozer S.V., Lipatova N.G.* The World Customs Organization as a Modern Institute for Improving Customs Administration and Trade Facilitation: monograph. Lyubertsy: RIO Russian Customs Academy, 2017. URL: [http://customs-academy.net/wp-content/uploads/2018/11/МОН.-ВТамО\\_Кадыркулов\\_Мозер\\_Липатова\\_.pdf](http://customs-academy.net/wp-content/uploads/2018/11/МОН.-ВТамО_Кадыркулов_Мозер_Липатова_.pdf)
4. Treaty on the Eurasian Economic Union of May 29, 2014 URL: <https://docs.cntd.ru/document/420205962>
5. Strategic Directions for the Development of Eurasian Economic Integration until 2025 / Approved by the Decision of the Supreme Eurasian Economic Council dated December 11, 2020 № 12. «On Strategic Directions for the Development of Eurasian Economic Integration until 2025». URL: [https://docs.eaeunion.org/docs/en-us/01428320/scd\\_12012021\\_12](https://docs.eaeunion.org/docs/en-us/01428320/scd_12012021_12)

6. Decision of the Supreme Eurasian Economic Council dated December 23, 2014 № 99 «On the Procedure for the Implementation of International Cooperation by the Eurasian Economic Union». URL : <https://docs.cntd.ru/document/420242714>
7. Decision of the Supreme Eurasian Economic Council dated December 10, 2021 № 20 «On the Main Directions of the International Activities of the Eurasian Economic Union for 2022».
8. Order of the Council of the Eurasian Economic Commission dated April 5, 2021 № 4 «On the action plan for the implementation of the Strategic Directions for the Development of Eurasian Economic Integration until 2025». Alta – Soft. URL: <https://www.alta.ru/tamdoc/21s00004/>
9. Order of the EEC Board dated March 29, 2022 № 55 «On the Working Group for Interaction with the World Customs Organization». IS Alta-Soft. URL: <https://www.alta.en/tamdoc/22r00055/>
10. Activity strategy of the block on customs cooperation until 2025. Official resource of the Eurasian Economic Commission. URL: <https://customs-academy.net/?p=14576>
11. World Customs Organization. Europe. Last update: 6/15/2022. – P. 4. URL: <http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/wco-members/list-of-members-with-membership-date.pdf?db=web>

### 3. ORGANIZATIONAL AND LEGAL ASPECTS OF THE MEMBERSHIP OF THE EUROPEAN COMMUNITIES IN THE WORLD CUSTOMS ORGANIZATION AS A PRECEDENT FOR CUSTOMS AND ECONOMIC UNIONS<sup>1</sup>

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#### **Task**

To systematize the EC (EU) experience in terms of obtaining rights and obligations akin to those enjoyed by the WCO members, including highlighting the actions and stages in connection with the consideration of the EC application for membership in the World Customs Organization.

#### **Conclusions**

The research article is devoted to the issues of the EC (EU) legal status of in the WCO and the use of the EC precedent for the implementation of the Strategic Directions for the Development of Eurasian Economic Integration until 2025 (Strategic Directions) in terms of joint actions with Member States aimed at obtaining the Union's membership status in the WCO.

The subject of the study is the activities and stages passed by the EC in the framework of interaction with the WCO to change the legal status from an observer to akin to the WCO membership. The research paper presents in abstract form the legal instruments and legal structures that have been developed at the expert level to satisfy the EC application. The identified activities, by analogy, can be used to develop an action plan (roadmap) for the Eurasian Economic Union (EEU) to obtain the WCO member status.

Based on the results of the study, conclusions and recommendations were formed within the framework of cooperation between the Eurasian Economic Commission and the WCO.

#### **Social Consequences**

Conducting a study of the legal status of customs and economic unions in the WCO is associated with the implementation of paragraph 11.7.5. of Strategic Directions in terms of cooperation with this international organization.

#### **Practical value**

The results of the study are of interest to the customs cooperation block of the Eurasian Economic Commission (EEC), and can be used by specialists from customs and other executive authorities in the EEU member states, EEC experts to organize and implement mutually beneficial customs cooperation between the EEC and the WCO.

The article is recommended to researchers, teachers, students, graduate students and other categories of students in the Russian Customs Academy, in other universities and the WCO regional training centers in the specialties «Customs» and «Jurisprudence».

#### **Originality/value**

The research material is based on an analysis of the practical aspects of the activities of the EEC, the WCO and is the result of a comprehensive study of the issue of the legal and organizational basis for obtaining the WCO member status by economic and customs unions.

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<sup>1</sup> *Sergei Mozer*. Organizational and legal aspects of the European Communities membership in the World Customs Organization as a precedent for customs and economic unions // Socio-political Sciences. – № 4. – 2022. (Article) URL: <http://customs-academy.net/?p=14924>

**Keywords:** *The World Customs Organization, the WCO, the Eurasian Economic Union, EEU, the Eurasian Economic Commission, EEC, European Communities, European Union, EU, EC, customs regulation, customs administration, international customs law, customs, observer, customs and economic union, action plan, roadmap.*

The issues of developing effective interaction with the World Customs Organization (WCO) have been on the agenda of the Eurasian integration agenda since 2017, when the Memorandum of Understanding between the Eurasian Economic Commission and the World Customs Organization was signed on June 17, 2016, Brussels.<sup>1</sup> Over the past period, the Eurasian Economic Commission (Commission, EEC) has become an active subject of legal relations with the international customs community at the WCO site. This international customs organization permanently invites the Commission as an observer to various meetings of its working bodies. It should be noted that such interaction is bilateral, i.e. Commission – WCO. At the same time, there is no such cooperation at the level of the Eurasian Economic Union (Union) and the WCO.

According to the author, the situation has changed conceptually with the adoption of the Strategic Directions for the Development of Eurasian Economic Integration until 2025<sup>2</sup> (Strategic Directions), in which, among other measures, the development of cooperation with the WCO is secured through joint actions with the Member States aimed at obtaining the status of a member by the Union in the WCO; as well as the study of the possibility of joining the Union to the fundamental WCO documents.<sup>3</sup>

The implementation of these intentions will significantly strengthen the positions of the Union and the Member States in the WCO and jointly defend the

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<sup>1</sup> Memorandum of Understanding between the Eurasian Economic Commission and the World Customs Organization of June 17, 2016 // Kadyrkulov M.A., Mozer S.V., Lipatova N.G. The World Customs Organization as a Modern Institute for Improving Customs Administration and Facilitating Trade Procedures: monograph. Lyubertsy: RIO of the Russian Customs Academy, 2017. – P. 165. URL: <http://customs-academy.net/?p=10587>

<sup>2</sup> Strategic directions for the development of Eurasian economic integration until 2025 / Approved by the Decision of the Supreme Eurasian Economic Council dated December 11, 2020 № 12 «On Strategic directions for the development of Eurasian economic integration until 2025». URL: [https://docs.eaeunion.org/docs/en-us/01428320/scd\\_12012021\\_12](https://docs.eaeunion.org/docs/en-us/01428320/scd_12012021_12)

<sup>3</sup> Clause 11.7.5. of Strategic Directions for the Development of Eurasian Economic Integration until 2025 / Approved by the Decision of the Supreme Eurasian Economic Council dated December 11, 2020 № 12. «On Strategic Directions for the Development of Eurasian Economic Integration until 2025». URL: [https://docs.eaeunion.org/docs/ru-ru/01428320/scd\\_12012021\\_12](https://docs.eaeunion.org/docs/ru-ru/01428320/scd_12012021_12)

interests of the Union and the Member States in this most important international organization.<sup>1</sup>

The need to study the legal status of customs and economic unions in the WCO is also confirmed by a number of other circumstances, namely:

- there are no scientific and practical recommendations for customs and economic unions on building relations with the WCO;<sup>2</sup>

- there is no action plan (roadmap) for interaction between the EEC and the WCO;

- there is no analysis of the legal, institutional and financial implications of the Union's accession to the WCO;

- there is no analysis of the risks associated with the membership of the Union in the WCO, including the distribution of competence of the Union and its member states;

The above circumstances determine the relevance of this study in the context of the implementation of the Strategic Directions.

For the purposes of implementing of the Strategic Directions in terms of cooperation with the WCO, by order of the Board of the Eurasian Economic Commission № 55 dated March 29, 2022, a Working Group on Cooperation with the World Customs Organization<sup>3</sup> (Working Group) was established. On June 7<sup>th</sup>, 2022 its first meeting was held, during which it became obvious to the authorized experts of the customs authorities of the Member States of the Union that it was necessary to study the precedent of the European Union (EU)<sup>4</sup> in terms of obtaining rights and obligations akin to those enjoyed by the WCO members.

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<sup>1</sup> *Mozher S.V.* International legal status of observers in the World Customs Organization: an analytical review / S.V. Mozher. M.: RIO of the Russian Customs Academy, 2021. – P. 5. URL: <http://customs-academy.net/?p=14345>

<sup>2</sup> *Mozher S.V.* On the issue of organizing effective legal relations with the World Customs Organization: recommendations for customs and economic unions // Problems of Economics and Legal Practice. – № 4. – 2022. URL: <http://customs-academy.net/?p=14597>

<sup>3</sup> Order of the EEC Board dated March 29, 2022 № 55 «On the working group for interaction with the World Customs Organization». IS Alta -Soft. URL: <https://www.alta.ru/tamdoc/22r00055/>

<sup>4</sup> Note: On December 1, 2009, following the entry into force of the Treaty of Lisbon, the successor to the European Community became the European Union (therefore, the concept of the European Community has not been used since).

We recall that in 2022, the author conducted a comprehensive study of the legal and organizational foundations for obtaining WCO member status by economic and customs unions.<sup>1</sup>

The purpose of this article is to reveal the experience of the EU in terms of obtaining the so-called membership of an economic union in the WCO, including the stages passed and steps taken in this regard.

In the event that a customs or economic union, represented by authorized management bodies, sets the task, for example, to carry out joint actions with the member states of the union aimed at obtaining the union's membership status in the WCO, it is required to study the EU precedent, as well as a clear understanding of what the EU had to go through to strike the political «deal» formalized in the Council Decision № 318 in June 2007.

The following is a complete list of steps taken by stakeholders to meet the EU's two applications for WCO membership.

The list of successive EU actions presented below, in our opinion, is of practical importance for the formation of an action plan (road map) for obtaining the Union's membership in the WCO based on the experience of the European Communities. Actually, such an action plan has already been presented to the attention of the scientific and expert community in one of the author's research articles.<sup>2</sup> We have identified the following 4 stages that the EU went through to obtain the desired international legal status in the WCO:

## **Stage I**

1. Conducting negotiations between the European Commission and the WCO Secretariat on membership in the Organization.

2. Adoption of the decision of the Council of Ministers of the EC to apply for membership in the WCO (adopted unanimously).

3. The Council of Ministers of the EU instructs the European Commission (the EC) to submit an EU request to the WCO and, if necessary, to negotiate with a view to obtaining membership in the WCO (March 2001).

4. The EU Council of Ministers authorizes the European Commission to negotiate an amendment to the Convention Establishing the Customs Cooperation Council (Decision of 19 March 2001) (CCC Convention).

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<sup>1</sup> See *Mozer Sergei*. On the issue of organizing effective and legal relations with the World Customs Organization: recommendations for customs and economic unions // Problems of Economics and Legal Practice. – № 4. – 2022. URL: <http://customs-academy.net/?p=14597>

<sup>2</sup> Ibid.

5. Applying for the WCO membership. Letter dated 19 April 2001 from the European Commission to the WCO Secretariat indicating that the Council of the European Community has authorized the EC to negotiate an amendment to the CCC Convention to allow the EU to become the WCO member.

In its letter, the Commission on the merits:

- Proposes a draft amendment to the CCC Convention that would allow the EU to become a Contracting Party to the Convention;
- suggests possible means of facilitating the entry into force of such an amendment;
- establishes a number of practical measures that may be taken prior to the adoption of such an amendment to improve the participation of the EU in the WCO work; and
- asks to create a negotiating structure in the WCO to resolve this issue.

6. WCO Secretariat circulates EC letter to all Members for information (May 2001).

7. Conducting consultations of the WCO Secretariat with

- depositary of the Convention (Ministry of Foreign Affairs of Belgium);
- a specialist in international contract law (Legal Adviser of the WCO Secretariat);
- Commission of the European Community;
- Familiarization with various published sources of information on EU membership in some other intergovernmental organizations.

The goal is to obtain an initial position on the legal aspects of EU membership in the WCO and prepare background material to form the basis for discussions in the Policy Commission (PC) and the Council (May 2001).

8. Preparation by the WCO Secretariat of an information note (reference material) dated 31.05.2001 «Request for Membership of the European Community») for the 45th meeting of the PC (25-27 June 2001) in order to create a basis for discussions. The material contains the following elements:

- the current status of the EU in relation to the WCO (2001);
- legal and practical provisions adopted in the organizations of which the European Community is a member (FAO and WTO);
- legal issues related to the EU request;
- practical arrangements for processing a request from the EU.

9. Formation of position by the WCO Secretariat (31.05.2001). The Policy Commission was invited to conduct a preliminary discussion of the issues raised in the reference material (dated 31.05.2001) and make recommendations to the Council regarding:

- a) the principle of starting negotiations with a view to
  - (i) EU membership in the WCO; and
  - (ii) in the short term, the introduction of measures aimed at facilitating the participation of the EU in the work of the WCO; and
- (b) if this principle is to be accepted, the procedures to be put in place for the success of these negotiations.

10. Carrying out political discussions initiated by governments and the EU, seeking a political solution (since the dissemination of the information note of the WCO Secretariat dated May 31, 2002).

11. Planning for a preliminary discussion of the EC request at the PC and Council meetings in June 2001.

12. Preliminary discussion of the EC request at the 45th meeting of the WCO PC (25-27 June 2001) with the participation of the EC Director General responsible for taxation and the customs union.

The following actual elements are considered:

- the current status of the EU in relation to the WCO (2001);
- legal and practical provisions adopted in the organizations of which the EU is already a member (Food and Agriculture Organization of the United Nations; World Trade Organization (WTO);
- legal issues related to the EU request.

13. Participation of the EC Director General responsible for taxation and the customs union in the 45th meeting of the WCO PC (25-27 June 2001) in discussions on the Secretariat's approach to EU membership in the WCO, as well as the submission of a Community request for membership.

14. Discussion of the EC application at the 97-98 meeting of the WCO Council (28-30 June 2021). Event results:

The Chairman of the Council stated that there is no agreement in the Council and the PC on the principle of starting negotiations on EU membership in the WCO.

The Council agreed with the PC that it would be premature at this stage to set up a working group to start a negotiation process or take provisional measures.

Many questions have been raised that require further study, incl. related not only to customs matters, but also to the constitutional, legal or practical aspects of the EU request.

Various national authorities will need to be consulted.

The most logical solution would be to postpone the response to the EU request (for a year – author's note) until the end of Council meetings in June 2002 and leave this document open in order to give WCO members more time for

consultation and reflection, and also to facilitate the collection of additional information.

The Chair asked the Secretary-General, through the Vice-Chairs, to draw up a list of specific questions from Members that they considered merited further study.

15. Participation of the EU representative in the 97-98 meeting of the WCO Council (28-30 June 2021) when discussing this issue and presenting the Community request for membership, as well as explaining the motives (reasons) underlying the EU request for membership.

*Additional information for stage I*

Creation of an effective negotiation structure

Proposals from the WCO Secretariat regarding practical arrangements for processing a request from the EU. It is mentioned in the information note of 31.05.2001 «Request for membership of the European Community» to the 45th meeting of the PC (25-27 June 2001):

Acceptance of the principle of EU membership as worthy of study, the consequence is the initiation of a process of further consideration of issues leading to negotiations on an acceptable outcome.

Adoption of the principle of starting negotiations with a view to EU membership in the WCO at Council meetings.

Development and harmonization of the methodology of negotiations with the aim of EU membership in the WCO. Negotiations should be bilateral, that is, between, on the one hand, representatives of the EU, and on the other, representatives of the WCO.

Formation of two negotiating groups:

Establishment of a Community negotiating group composed exclusively of EC officials. EU member states do not participate in the negotiations.

Establishment of a WCO negotiating group: this should be a small but representative group of members, possibly consisting of the Chair and Vice Chairs of the Council, and a few other members appointed as Vice Chairs to ensure the best regional balance possible. The Chairman of the Council was supposed to head this negotiating group.

## **Stage II**

16. Formation by the Secretariat of the list of questions on the issues of EU membership in the WCO (after the 97/98 Council meeting, June 28-30, 2001).

17. Preparation by the Secretariat of a list of questions on the issues of EU membership in the WCO to the Policy Commission.

18. A written request from the WCO Secretariat to the Vice-Chairs to see if Members in their respective regions wish to propose any aspects of the EU membership request that should be further explored (following the 97/98th Council meeting on 28 – June 30, 2001).

19. Received by the Secretariat from the Vice-Chair, Delegate of the United Kingdom representing the European Region, with a list of possible topics for study identified by Members in the European Region (22 October 2001).

20. Providing survey participants with a list of possible topics for study, which were previously identified by member countries of the European Region.

21. Conducting consultations at the regional level by Vice-Chairs with WCO members. The goal is to get an opinion on the consequences for the WCO of the emergence of free trade areas and agreements, customs unions and other similar phenomena.

22. Formation by November 2001 by the WCO Secretariat of the questionnaire.

The aim is to assist member countries in deciding whether to start negotiations given the EU's membership in the WCO. Areas of study (6 questions):

- current status/aspirations of regional groupings around the world (executor – Vice Chairs, Secretariat);

- EU relations with other intergovernmental organizations (executor – EC, Secretariat);

- relations of other regional groupings with intergovernmental organizations (executor – Vice-Chairmen, Secretariat);

- the benefits of EU membership in the WCO (executor – EU, Secretariat, interested members);

- the competence of the EU and the EU member states in the case of EU membership in the WCO (executor – the EU);

- the likely impact of EU membership on the day-to-day activities of WCO technical committees (executed by the Secretariat).

*Note: Questions were identified (agreed) by the WCO Policy Commission at its 46th session in December 2001 and were requested by the PC, Secretary General and WCO Members for a fact-based decision.*

23. The WCO Secretariat considered it premature to consider the questions that had been formed, although there was no doubt that they were of great importance in the negotiations on EU membership in the WCO (voiced on November 6, 2001).

24. By the 46th meeting of the PC, December 10-12, 2001 (November 6, 2001), the WCO Secretariat formed the following positions:

- in order to examine the issue of EU competence, it is necessary to send to the EC copies of the agendas of all meetings of the WCO working bodies in the last 12 months with a request to distinguish – for example, by color coding – between agenda items for which the EU will be responsible and those that will remain in the area of responsibility of individual members (*note – in fact the proposal was not implemented*);

- it is proposed that the WCO Secretariat assess the possible impact of EU membership on the day-to-day work of WCO technical committees by comparing the degree of participation of EU Member States and the EC in (i) a committee of which the EU is a member (e.g. the HS Committee), and (ii) a committee, in which the EU participates as an observer (for example, the Law Enforcement Committee) (*note – the proposal was not implemented*).

25. Consideration of the issue of EU membership in the WCO at the 46th session of the PC (10 – 12 December 2001). Decisions taken:

- The WCO Secretariat has identified possible areas of study and fulfilled its mandate;

- issues in the working paper that are of direct relevance to the EU and its application for WCO accession will be referred to the EU for further comments, inputs and research;

- at the regional level, the Vice-Chairs will consult with WCO members to seek their views on the implications for the WCO of free trade areas and agreements, customs unions and other such phenomena;

- the PC will revisit this issue in June 2002 based on inputs (positions) to be received from the EU and the Vice Chairs.

26. In December 2001, the Policy Commission instructs the WCO Secretary General to receive answers to the questions asked in accordance with the questionnaire developed by the Secretariat.

27. The Secretariat in December 2001 invited the EC to provide preliminary information:

- about the relations that customs and economic groupings in the European Region maintain with various intergovernmental organizations;

- about the benefits of EU membership for the WCO;

- on the competence, practical consequences that may arise as a result of the EU's admission as a member of the WCO.

The Secretariat's formal letter of response was sent to the EU on 7 February 2002.

28. Submission by the European Community on April 24, 2002 to the WCO Secretariat of materials (positions) on those research issues that are directly related to it:

- distribution of competence between the EU and its member states;
- EU relations with other international organizations;
- why EU membership would be beneficial for the WCO.

29. Provision by Vice-Presidents of the views of the WCO members by region on the implications for the WCO of the emergence of free trade areas and agreements, customs unions, etc.

- 26.04.2002 – Deputy Chairman of the Asia-Pacific region.
- 06.05.2002 – Deputy Chairman from the region of North Africa, the Near and Middle East.
- May 17, 2002 – Deputy Chairman of the European Region of the WCO.

30. By the 47th PC meeting, June 24-26, 2002 (May 31, 2002), the WCO Secretariat formed the following positions:

It was obvious and inappropriate for the WCO Secretariat to take a stand on what is essentially a matter of national policy. In these circumstances, the Secretariat limited itself to indicating that the options open to the PC could include the following:

- to recommend to the Council to start negotiations with a view to EU membership, with the Secretariat tasked to prepare draft terms of reference;
- to recommend to the Council to defer consideration of this issue until WCO priorities allow it to allocate the necessary time and resources;
- to recommend to the Council to reject the EU's request for negotiations;
- to recommend to the Council not to take a decision on the EU request for the time being, pending further consideration at the national level and/or provision of additional information (to be determined by the Policy Commission).

31. 47th meeting of the WCO Policy Commission (24 – 26 June 2002). The main results of the meeting:

The WCO Secretariat no longer sees a need for the PC to undertake any further studies at this stage. The Head of the WCO Secretariat undertook to keep the PC and the WCO Council informed of any developments that could be reported to him in the course of political discussions.

The Policy Commission took note of the Secretary General's remarks and agreed with him that this issue (about EU membership in the WCO – *author's note*) should be left open. The Secretary General is requested to monitor the situation and inform the PC and the Council when events occur that need to be brought to their attention.

32. 99/100 Meeting of the WCO Council (27-29 June 2002). The main results of the meeting:

The issue of EU membership in the WCO was considered. The Council took note of the following information: The Chairman of the Council explained that the Secretary General had informed the PC that the issue of EU membership in the WCO was currently the subject of political discussions initiated by governments and the EU, and suggested that it be left open until found a political solution. The PC requested the Secretary General to monitor the situation and keep the PC and Council informed of developments that need to be brought to their attention.

### **Stage III**

33. Organization of contacts, holding meetings at the political level, including negotiations between the EC and the WCO Secretariat on the submission of a new application for EU membership in the WCO (in 2006).

34. Repeated request by the European Commission to the WCO Secretary General for EU accession to the WCO (June 2006).

35. 55th session of the WCO Policy Commission (26 – 28 June 2006). The main results of the meeting:

The Secretary General stated that in June 2006 he received a second request from the EU for WCO membership and suggested that this issue be added to agenda item XV of the 55th PC meeting (other matters). Thus, the issue of EU membership in the WCO was re-submitted to the PC for consideration *ex post facto* without providing an opportunity for member countries to discuss it with the competent national authorities in advance. Accordingly, the substantive discussion during the 55th meeting of the WCO SP was not as long and deep as in 2001 and 2002.

36. Presentation by the Secretary General of the EU request for EU accession to the WCO at the 55th meeting of the PC (26 – 28 June 2006). The Secretary General stated that any legal, institutional or financial implications of EU accession to the WCO will be presented to the December 2006 PC meeting in a report prepared by the Secretariat.

37. Submission of the EU request by the EC Director General for Taxation and Customs Union (TAXUD) at the 55th meeting of the PC (26 – 28 June 2006). The representative of the EU proposed an amendment to Article XVIII of the CCC Convention.

38. The Policy Commission during its 55th meeting (26-28 June 2006) «requested»\* the WCO Secretariat to prepare a paper outlining the possible institutional, legal and financial implications of EU membership in the WCO for discussion at the Commission meeting in December 2006 (from the speech of the

WCO Secretary General at the 107th/108th meeting of the WCO Council, June 29 – July 1, 2006).

*\*Author's note: in the materials of the 55th meeting of the WCO PC (see paragraphs 234 – 244 of the report dated 06/28/2006) there is no such instruction («request»). The above is an initiative of the WCO Secretariat, but not an instruction of the Policy Commission.*

39. 107/108th Meeting of the WCO Council (29 June to 1 July 2006). The event began the day after the completion of the 55th PC meeting. The analyzed EU issues were not on the agenda of the Council meeting. The only source of information about the EU re-application of June 2006 was the report of the 55th meeting of the PC dated 28 June 2006 under the heading «political issues».

In fact, WCO members were not ready to discuss the issue of EU membership in the WCO within the framework of the 107/108th meeting of the WCO Council.

The Secretary General informed the Council of the EU's request for WCO membership made at the 55th PC meeting (26-28 June 2006).

The Chairman of the Council suggested that it might be premature to discuss the details of the EU request at this stage.

As a result of the 107/108th meeting, the WCO Council took note of the EU's request for WCO membership and requested the Secretariat to prepare a paper on the institutional, financial and legal implications, taking into account the questions raised regarding other regional groupings. It was noted that this issue will be discussed on the basis of the Secretariat document not only by the Policy Commission, but also at the upcoming regional meetings in order to pave the way for a comprehensive discussion at the 2007 sessions of the Council.

40. Participation of the Director General for Taxation and Customs Union (TAXUD) of the EC in the 107/108th meeting of the WCO Council (29 June to 1 July 2006). Theses were voiced on the reasons for the repeated sending of the EU request to the WCO.

41. Council's instruction to the WCO Secretariat to prepare a paper on the institutional, financial and legal implications (of EU membership in the WCO – *author's note*), taking into account the issues raised in relation to other regional groupings (June 29 to July 1, 2006).

42. Preparation by the WCO Secretariat of an information document (for the 56th PC meeting) on the institutional, financial and legal implications of EU accession to the WCO entitled «Request for Membership of the European Communities», dated 2 November 2006. Document structure:

- the current status of the EU in relation to the WCO;
- legal issues of the consequences of amendments to the CCC Convention;

- institutional issues: the right to vote and the division of competencies between the EU and its member states;

- financial matters: about the constant annual contributions of the EU to the WCO budget and the methodology for their calculation.

The operative part of the information paper (at the 56th meeting) invited the Policy Commission to consider the EU's renewed request for WCO membership in order to pave the way for a comprehensive discussion of this issue at the 2007 meetings of the Council.

43. Preparation by the WCO Secretariat of a study (for the 56th PC meeting) on the status of customs and economic unions and similar regional groupings around the world «Comparative analysis of the powers of various customs unions and the European Communities» dated November 2, 2006.

44. Formation by the WCO Secretariat of the position dated November 2, 2006, including on the procedures for amending the CCC Convention and granting EU membership in the WCO:

- preparation and approval of the wording of the necessary amendments to the legal texts of the CCC Convention;

- the adoption of a formal decision of the Council setting out these amendments, which must be approved by a two-thirds majority of the members present at the meeting of the Council and having the right to vote;

- amendments to the CCC Convention should then be recommended by the Council to the contracting parties to the CCC Convention;

- contracting parties that accept the amendments must notify the Belgian Foreign Ministry of their acceptance in writing;

- the amendments enter into force three months after the Belgian Ministry of Foreign Affairs receives a written notification of the acceptance of such amendments to the CCC Convention from all contracting parties to the convention;

- while the amendment procedure is pending, the Council may wish to adopt a decision that can be implemented with immediate effect, giving the EU the same rights and obligations (as amended) enjoyed by WCO members;

- such a decision of the Council must be approved by a two-thirds majority of the members present at the meetings of the Council and having the right to vote.

45. 56th session of the WCO PC (December 5-7, 2006). The main results of the meeting:

- reviewed the working paper of the WCO Secretariat on the institutional, financial and legal implications of the EU's accession to the WCO under the title «Request for Membership of the European Communities» dated November 2, 2006.

– The Secretary General (1) proposed to put the WCO relations with the EU on a more formal basis, (2) committed to prepare a new working paper by the Secretariat to respond to the various issues raised by the PC.

– Based on the results of the meeting, the Chairman of the PC stated that, in general, the EU accession is supported, but some political and legal issues have to be resolved.

46. Statement by the EC Director General for Taxation and Customs Union at the 57th meeting of the PC (5-7 December 2006). The EU representative appreciated the working paper of the WCO Secretariat on the institutional, financial and legal implications of the EU's accession to the WCO, entitled «Request for membership of the European Communities» dated 2 November 2006, and also stated the reasons for the EU's application to seek membership in the WCO in 2001.

47. Preparation by the WCO Secretariat of a package of proposals for granting the EU the status of a WCO member for consideration at the 57th meeting of the Policy Commission (01.06.2007):

– a draft amendment to Article XVIII of the Convention establishing a Customs Cooperation Council allowing customs and economic unions to become Contracting Parties to the Convention and hence members of the WCO;

– a draft recommendation of the Council required solely for the purposes of formalizing the adoption of the aforementioned amendment and bringing it to the attention of the WCO member governments for adoption;

– a draft decision of the Council, according to which, as an interim measure pending the entry into force of the amendment to Article XVIII of the Convention, the European Communities will be endowed with rights and obligations akin to those of WCO Members.

Along with this, in the WCO Secretariat prepared material dated 01.06.2007, the thesis was put forward that the Council should be proposed to adopt a decision allowing the EU to have rights and obligations akin to those of WCO membership prior to ratification of the amendment to the CCC Convention.

In the operative part of the WCO Secretariat document dated 01.06.2007, the PC was asked to decide whether it is ready to recommend to the Council to take steps to allow customs and economic unions to become members of the Organization and take interim measures in favor of the EU.

If so, the PC is invited to study and, if necessary, recommend to the Council for adoption the listed 3 draft documents.

48. Proposals of the European Commission of 14.05.2007 have been prepared for a Council Decision on the accession of the European Communities to

the World Customs Organization and the exercise of rights and obligations akin to membership ad interim (COM(2007) 252 final.2007/0087 (ACC). Brussels, 14.5.2007):

- explanatory memorandum;
- proposals for a decision of the Council on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim;
- declaration of competence of the European Communities in matters covered by the Convention establishing the Customs Cooperation Council.
- legislative financial report (statement).

49. Materials of the Council of the European Union dated 16.05.2007 on the proposals sent on 14.05.2007 by the Commission for the decision of the Council on the accession of the European Communities to the World Customs Organization and the fulfillment of rights and obligations akin to membership ad interim have been prepared:

- explanatory memorandum;
- proposals for a decision of the Council on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim;
- declaration of competence of the European Communities in matters covered by the Convention Establishing a Customs Cooperation Council.
- legislative financial report (statement).

50. It was prepared materials of the Council of the European Union dated 20.05.2007 – Legislative acts and other instruments. Subject: Decision of the Council on the exercise of rights and obligations akin to membership ad interim of the European Communities in the World Customs Organization:

- decision of the Council to exercise rights and obligations akin to membership ad interim by the European Communities in the World Customs Organization;
- declaration of competence of the European Communities in matters covered by the Convention establishing the Customs Cooperation Council.

51. Adoption of the decision of the Council of the EU of 25 June 2007 (2007/668/EC) on the exercise of rights and obligations akin to membership ad interim by the European Community in the World Customs Organization, as well as the declaration of competence of the European Communities in matters covered by the Convention establishing the Customs Council cooperation (annex to the decision of 25.06.2007).

52. 57th session of the WCO PC (June 25-27, 2007). The main results of the meeting:

The Secretary General stated the following:

- The WCO Secretariat proposes an interim solution that will allow the EU to enjoy rights akin to membership until the amendment enters into force;
- a draft decision of the Council on the status of the EU in relation to the WCO (01.06.2007) was drawn up in consultation with the EC;
- the draft Council decision setting out an interim solution pending the entry into force of this amendment concerns exclusively the EU.

The PC unanimously agreed to the amendments proposed by the group. It recommended to the Council:

(a) adopt a draft recommendation (draft WCO recommendation to amend the CCC Convention) for customs and economic unions to become members of the WCO, and

(b) adopt a draft decision on the granting to the European Communities of rights akin to membership, pending acceptance of the above recommendation by all contracting Parties.

#### **Stage IV**

53. 109/110 WCO Council Meeting (28-30 June), WCO Headquarters, Brussels. The main results of the meeting:

The Secretary General noted that the WCO Council is being asked to approve a two-stage process comprising the Council's recommendation for an amendment to the CCC Convention and a draft decision to be applied until the amendments enter into force. He expressed the hope that six years after the EU first asked for negotiations to join the WCO, the Organization could welcome into its membership the largest economic grouping in the world.

The adoption of temporary measures that gave the EU rights and obligations akin those enjoyed by the WCO membership. The WCO Council adopted **by acclamation**:

- a draft Recommendation of the Customs Co-operation Council concerning the amendment of the Convention Establishing a Customs Co-operation Council (*note – for customs and economic unions to become members of the WCO*);
- a draft decision of the Council to give the EU rights and obligations **akin to** those enjoyed by the WCO members, pending the entry into force of the amendment to Article XVIII of the Convention.

*Note: According to the decision of the Council, **the European Communities were not granted membership or the status of a member of the WCO**, but rights and obligations akin to those enjoyed by the WCO Members.*

54. Participation of the EC Director General responsible for Taxation and Customs Union (TAXUD) in the 109/110 meeting of the WCO Council (28-30 June) in discussions on the agenda of the meeting regarding the satisfaction of the Community request for WCO membership.

55. 119/120 WCO Council Meetings, 28-30 June 2012. The WCO Secretariat review on the EU Statue at WCO.

56. Development of guidelines «WCO Membership: Ensuring Community Coordination». The document was prepared by the General Secretariat of the Council of the European Union and submitted to the Working Party on the Customs Union (customs law and policy) on 22 April 2008 on the subject of «EU membership in the World Customs Organization – Ensuring Community Coordination».

The above list of activities that were implemented by the EU to obtain rights and obligation akin to those enjoyed by the WCO members in the period from 2001-2008 is formalized in 56 steps and conditionally divided by us into 4 stages.

The study of this list allows us to formulate a comprehensive view on the issues of membership of the customs and economic union in the WCO and, most importantly, to convey to the experts of the Working Group on Interaction with the WCO<sup>1</sup> that the implementation of clause 11.7.5. of Strategic Direction in terms of «carrying out joint actions with member states aimed at obtaining by the Union a status of the WCO member»<sup>2</sup> requires an integrated approach and is not an easy task.

According to the author, the formulated list is of interest for expert work at the site of the customs cooperation block of the Commission associated with the forthcoming development of an action plan for the Union in terms of carrying out joint actions with member states aimed at obtaining the status of the WCO member.

At the same time, organizational and legal approaches can be used as a basis for discussions (organization of the work of the Commission and the Member States of the Union; legal and organizational approaches for the Union to obtain the status of a WCO member; activities; legal acts of the Union necessary for the implementation of paragraph 11.7.5. of the Strategic Directions) formulated by the author for these purposes in a separate research material.<sup>3</sup>

<sup>1</sup> Order of the EEC Board dated March 29, 2022 № 55 «On the working group for interaction with the World Customs Organization». IS Alta -Soft. URL: <https://www.alta.ru/tamdoc/22r00055/>

<sup>2</sup> Strategic directions for the development of Eurasian economic integration until 2025 / Approved by the Decision of the Supreme Eurasian Economic Council dated December 11, 2020 No. 12. “On Strategic directions for the development of Eurasian economic integration until 2025”. URL: [https://docs.eaeunion.org/docs/en-us/01428320/scd\\_12012021\\_12](https://docs.eaeunion.org/docs/en-us/01428320/scd_12012021_12)

<sup>3</sup> *Mozher S.V.* On the issue of organizing effective and legal relations with the World Customs Organization: recommendations for customs and economic unions // Problems of Economics and Legal Practice. – № 4. – 2022. URL: <http://customs-academy.net/?p=14597>

## BIBLIOGRAPHIC LIST

1. Mozer S.V. International and legal status of observers in the World Customs Organization: an analytical review / S.V. Mozer. Moscow: RIO Russian Customs Academy, 2021. URL: <http://customs-academy.net/?p=14338>
2. Mozer S.V. On the issue of organizing effective legal relations with the World Customs Organization: recommendations for customs and economic unions // Problems of Economics and Legal Practice. – № 4. – 2022. URL: <http://customs-academy.net/?p=14597>
3. Goshin V.A., Mozer S.V. Prospects for getting the World Customs Organization membership status by the Eurasian Economic Union // Features of state regulation of foreign trade activities in modern conditions: materials of the II scientific and practical conference (Rostov-on-Don, November 19-20, 2015). In 2 parts. Part 1 – Rostov-on-Don: Russian Customs Academy, Rostov branch, 2015. – p.20-29. Electronic resource «Russian Custom Academy: SCIENCE»: <http://www.customs-academy.net/?p=8539>
4. Goshin V.A., Mozer S.V. The possibility of obtaining the status of a member of the World Customs Organization by economic and customs unions: the experience of the European Union // Bulletin of the Russian Customs Academy № 4, 2015. p. 52-60. URL: <https://www.elibrary.ru/item.asp?id=24913948>
5. Kadyrkulov M.A., Mozer S.V., Lipatova N.G. World Customs Organization as a Modern Institute for Improving Customs Administration and Trade Facilitation Procedures: monograph. Lyubertsy: RIO Russian Customs Academy, 2017. URL: [http://customs-academy.net/wp-content/uploads/2018/11/Мон.-ВТамО\\_Кадыркулов\\_Мозер\\_Липатова\\_.pdf](http://customs-academy.net/wp-content/uploads/2018/11/Мон.-ВТамО_Кадыркулов_Мозер_Липатова_.pdf)
6. Strategic directions for the development of Eurasian economic integration until 2025 / Approved by the Decision of the Supreme Eurasian Economic Council dated December 11, 2020 № 12 «On Strategic Directions for the Development of Eurasian Economic Integration until 2025». URL: [https://docs.eaeunion.org/docs/en-us/01428320/scd\\_12012021\\_12](https://docs.eaeunion.org/docs/en-us/01428320/scd_12012021_12)
7. Order of the EEC Board dated March 29, 2022 № 55 «On the Working Group on Interaction with the World Customs Organization». IS Alta-Soft. URL: <https://www.alta.ru/tamdoc/22r00055/>
8. Memorandum of Understanding between the Eurasian Economic Commission and the World Customs Organization of June 17, 2016 // Kadyrkulov M.A., Mozer S.V., Lipatova N.G. World Customs Organization as a Modern Institute for Improving Customs Administration and Trade Facilitation Procedures: monograph. Lyubertsy: RIO Russian Customs Academy, 2017. – P. 165. URL: <http://customs-academy.net/?p=10587>

#### 4. ANALYSIS OF THE LEGAL INSTRUMENTS OF THE EUROPEAN UNION REGULATING ITS LEGAL STATUS IN THE WORLD CUSTOMS ORGANIZATION<sup>1</sup>

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##### **Task**

To systematize and analyze the EU legal instruments and tools developed by authorized European institutions in connection with the consideration of an application for membership in the World Customs Organization.

##### **Conclusions**

The research article is devoted to the issue of the EU legal status in the WCO and the use of the EU precedent for the implementation of the Strategic Directions for the Development of Eurasian Economic Integration until 2025 (Strategic Directions) in terms of joint actions with Member States aimed at obtaining the Union's membership status in the WCO.

The subject of the study is the EU approaches to the legal status in the WCO; explanatory memorandum of the European Commission on WCO membership; Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim; Declaration of competence by the European Communities in matters covered by the Convention establishing a Customs Co-operation Council.

The analysis of the EU legal instruments in relation to the WCO membership can be used to develop legal tools for the Eurasian Economic Union (EEU) to obtain the status of the WCO member in the course of implementing the Strategic Directions.

##### **Social Consequences**

Conducting a study of the legal status of customs and economic unions in the WCO is associated with the implementation of paragraph 11.7.5. of Strategic Directions in terms of cooperation with this international organization.

##### **Practical value**

The results of the study are of interest to the customs cooperation block of the Eurasian Economic Commission (EEC), and can be used by specialists from customs and other executive authorities in the EEU member states, EEC experts to organize and implement mutually beneficial customs cooperation between the EEC and the WCO.

The article is recommended to researchers, teachers, students, graduate students and other categories of students in the Russian Customs Academy, in other universities and the WCO regional training centers in the specialties «Customs» and «Jurisprudence».

##### **Originality/value**

The research material is based on an analysis of the practical aspects of the activities of the EU, the WCO and is the result of a comprehensive study of the issue of the legal and organizational basis for obtaining the WCO member status by economic and customs unions.

**Keywords:** *The World Customs Organization, the WCO, the Eurasian Economic Union, EEU, the Eurasian Economic Commission, EEC, European Communities, European Union, EU, EC, customs regulation, customs administration, international customs law, customs, customs and economic union, legal instruments and tools.*

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<sup>1</sup> *Mozher Sergei. Analysis of the legal instruments of the European Union regulating its legal status in the World Customs Organization// Problems of economics and legal practice. – №5. – 2022 (Article). URL: <http://customs-academy.net/?p=15114>*

## Introduction

This article is a continuation of the study of the implementation of the Strategic Directions for the Development of Eurasian Economic Integration until 2025<sup>1</sup> (Strategic Directions), in terms of developing cooperation with the World Customs Organization (WCO, Organization) through joint actions with Member States aimed at obtaining the Union's membership status in the WCO.<sup>2</sup>

A series of meetings of the Working Group on Interaction with the World Customs Organization (Working Group)<sup>3</sup> held in 2022 at the expert level in the Eurasian Economic Commission revealed the need for the preparation of analytical materials that characterize the precedent of the European Union (EU) in relation to membership in the World Customs Organization. Of particular interest is the analysis of EU legal instruments in this aspect. However, to date, there is no such a comprehensive analysis at the scientific and expert level. This argument determines the relevance of this study, as well as its practical significance for expert work in the Working Group.

### 1. Legal approaches of the EU to the legal status in the WCO

Exploring the legal status of the EU in the WCO, we also turned to the legal acts of the European Union. If we are talking about the EU precedent in the WCO, which can be used by other customs and economic unions in order to obtain a status bigger than the status of an «observer» and «akin to» the status of the WCO member, then EU legal approaches and adopted acts are of interest for these purposes at the expert level.

Among the considered acts there are 4 documents, of which the final one is the decision of the EU Council of June 25, 2007 on the implementation of rights

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<sup>1</sup> See paragraph 11.7.5. of Strategic Directions for the Development of Eurasian Economic Integration until 2025 / Approved by the Decision of the Supreme Eurasian Economic Council dated December 11, 2020 № 12. «On Strategic Directions for the Development of Eurasian Economic Integration until 2025». URL: [https://docs.eaeunion.org/docs/en-us/01428320/scd\\_12012021\\_12](https://docs.eaeunion.org/docs/en-us/01428320/scd_12012021_12)

<sup>2</sup> *Mozher S.V.* Organizational and legal aspects of the European Communities membership in the World Customs Organization as a precedent for customs and economic unions // Socio-political Sciences. – № 4. – 2022. URL: <http://customs-academy.net/?p=14924>; *Mozher S.V.* On the issue of the organization of effective legal relations with the World Customs Organization: recommendations for customs and economic unions // Problems of Economics and legal practice. – № 4. – 2022. URL: <http://customs-academy.net/?p=14597>

<sup>3</sup> Order of the EEC Board dated March 29, 2022 № 55 «On the Working Group for Interaction with the World Customs Organization». IS Alta -Soft. URL: <https://www.alta.ru/tamdoc/22r00055/>

and obligations akin to membership ad interim by the European Communities in the World Customs Organization:<sup>1</sup>

1) *proposal of the European Commission* (EC) dated 14.05.2007 for a Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim:<sup>2</sup>

- Explanatory Memorandum;
- Proposal for a Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim;<sup>3</sup>
- Declaration of competence by the European Communities in matters covered by the Convention establishing a Customs Co-operation Council;
- Legislative financial statement.

2) *materials of the Council of the European Union* dated 16.05.2007 on the Proposal for a Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim:<sup>4</sup>

- Explanatory Memorandum;
- Proposal for a Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim;

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<sup>1</sup> Council decision of 25 June 2007 on the exercise of rights and obligations akin to membership to ad interim by the European Community in the World Customs Organization (2007/668/EC). Official Journal of the European Union. L 274/11. URL: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32007D0668>

<sup>2</sup> Proposal for a Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim (presented by the Commission). Commission of the European Communities. COM(2007) 252 final. 2007/0087 (ACC). Brussels, 14.5.2007. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007PC0252&from=EN>

<sup>3</sup> Proposal for a Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim (presented by the Commission).

<sup>4</sup> Proposal for a Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim (presented by the Commission). Commission of the European Communities. COM(2007) 252 final. 2007/0087 (ACC). Brussels, 14.5.2007 // Interinstitutional File: 2007/0087 (ACC). 9692/07. UD50. ENFOCUSTOM 51. COMER 72. Council of the European Union. Brussels, 16 May 2007. URL: <https://www.psp.cz/doc/00/02/23/00022310.pdf>

- Declaration of competence by the European Communities in matters covered by the Convention establishing a Customs Co-operation Council;
- Legislative financial statement.

3) **materials of the Council of the European Union** of 20.06.2007 on the decision of the Council Decision on the Exercise of Rights and Obligations akin to Membership ad Interim by the European Community in the World Customs Organization.<sup>1</sup>

– Council Decision of on the exercise of rights and obligations akin to membership ad interim by the European Community in the World Customs Organization;

– Declaration of competence by the European Community in matters covered by the Convention establishing a Customs Cooperation Council.<sup>2</sup>

4) **decision of the Council of June 25, 2007 (2007/668/EC)** on the exercise of rights and obligations akin to membership to ad interim by the European Community in the World Customs Organization,<sup>3</sup> as well as an annex to the decision – a **Declaration of competence** by the European Community in matters covered by the Convention establishing a Customs Cooperation Council<sup>4</sup>.

5) **«Guidelines. WCO Membership: Ensuring Community Coordination»**, prepared by the General Secretariat of the Council of the European Union for the Working Party on Customs Union (Customs Legislation and Policy).<sup>5</sup>

<sup>1</sup> Legislative acts and other instruments. Subject: Council Decision on the Exercise of Rights and Obligations akin to Membership ad Interim by the European Community in the World Customs Organization. Interinstitutional File: 2007/0087 (ACC). 10764/1/07. REV 1(en). UD 59. UD 59 ENFOCUSTOM 67. COMER 94. Council of the European Union. Brussels, 20 June 2007. URL: [https://www.eumonitor.nl/9353000/1/j4nvgs5kjg27kof\\_j9vvik7m1c3gyxp/vi7jgt6abdy6/f=/10764\\_1\\_07\\_rev\\_1.pdf](https://www.eumonitor.nl/9353000/1/j4nvgs5kjg27kof_j9vvik7m1c3gyxp/vi7jgt6abdy6/f=/10764_1_07_rev_1.pdf)

<sup>2</sup> Declaration of competence by the European Community in matters covered by the Convention establishing a Customs Cooperation Council.

<sup>3</sup> Council decision of 25 June 2007 on the exercise of rights and obligations akin to membership to ad interim by the European Community in the World Customs Organization (2007/668/EC). Official Journal of the European Union. L 274/11. URL: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32007D0668>

<sup>4</sup> Declaration of competence by the European Community in matters covered by the Convention establishing a Customs Cooperation Council.

<sup>5</sup> Guidelines. WCO Membership: Ensuring Community Coordination. Doc 8594/08. UD 63. Council of the European Union. Brussels, 22 April 2008. URL: <https://data.consilium.europa.eu/doc/document/ST%208594%202008%20INIT/EN/pdf>

Let's look at the chronology of events. The WCO Council at its 109/110 session, which took place on June 28-30, 2007,<sup>1</sup> adopted Decision № 318, which granted the EU, as an interim measure, *rights akin to those* enjoyed by the WCO members. On the eve of this event, on June 25-27, the 57th session of the WCO Policy Commission (PC) was held, which sent the same decision in the form of a draft for consideration and approval by the Council.

1.5 months before the consideration of the issue of EU «membership» in the WCO, the European Commission on May 14, 2007 sent proposals to the EU Council for the adoption of a Council decision on the exercise of rights and obligations akin to membership to ad interim by the European Community in the World Customs Organization.<sup>2</sup> This package includes an explanatory memorandum, a draft decision of the EU Council (proposals), a declaration of competence of the European Communities, as well as a legislative financial statement.

Two days later, on May 16, 2007, the materials of the Council of the EU were prepared,<sup>3</sup> the content of which mirrors the sent package of documents of the European Commission dated May 14, 2007. Almost a month later, on June 20, 2007, the expert community got acquainted with the draft decision of the Council and the declaration of competence of the European Communities,<sup>4</sup> which were adopted a week later on June 25, 2007.<sup>5</sup>

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<sup>1</sup> At the WCO Headquarters in Brussels.

<sup>2</sup> Council decision of 25 June 2007 on the exercise of rights and obligations akin to membership to ad interim by the European Community in the World Customs Organization (2007/668/EC). Official Journal of the European Union. L 274/11. URL: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32007D0668>

<sup>3</sup> Proposal for a Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim (presented by the Commission). Commission of the European Communities. COM(2007) 252 final. 2007/0087 (ACC). Brussels, 14.5.2007 // Interinstitutional File: 2007/0087 (ACC). 9692/07. UD50. ENFOCUSTOM 51. COMER 72. Council of the European Union. Brussels, 16 May 2007. URL: <https://www.psp.cz/doc/00/02/23/00022310.pdf>

<sup>4</sup> Legislative acts and other instruments. Subject: Council decision on the exercise of rights and obligations akin to membership ad interim by the European Community in the World Customs Organization. Interinstitutional File: 2007/0087 (ACC). 10764/1/07. REV 1(en). UD 59. UD 59 ENFOCUSTOM 67. COMER 94. Council of the European Union. Brussels, Brussels, 20 June 2007. URL: [https://www.eumonitor.nl/9353000/1/j4nvgs5kjg27kof\\_j9vvik7m1c3gyxp/vi7jgt6abdy6/f=/10764\\_1\\_07\\_rev\\_1.pdf](https://www.eumonitor.nl/9353000/1/j4nvgs5kjg27kof_j9vvik7m1c3gyxp/vi7jgt6abdy6/f=/10764_1_07_rev_1.pdf)

<sup>5</sup> Council decision of 25 June 2007 on the exercise of rights and obligations akin to membership to ad interim by the European Community in the World Customs Organization (2007/668/EC). Official Journal of the European Union. L 274/11. URL: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32007D0668>

For reference, we note that in the materials of the EU Council of 20.06.2007 and the decision of 25.06.2007 there is no explanatory memorandum and a legislative financial statement.

It is obvious that the named acts, as well as the steps taken by the EU, were successfully developed and implemented, taking into account the preliminary consultations and agreements reached by the European Commission, the WCO Secretariat and interested parties.

## **2. European Commission Explanatory Memorandum on the WCO Membership**

Let's consider the explanatory memorandum contained in the proposals of the European Commission dated 14.05.2007 for the decision of the Council on the exercise of rights and obligations akin to membership to ad interim by the European Community in the World Customs Organization. We add that the memorandum briefly describes the history of the issue and the steps taken by the EU towards «membership» in the Organization. For the purposes of comparative analysis regarding the submission of information by the WCO Secretariat and the European Commission, we present it in full.

The memorandum notes that the decision of the EU Council that the European Community<sup>1</sup> should seek for membership in the WCO was adopted on March 19, 2001. In this regard, the EU Council authorized the Commission to negotiate with the WCO on EU membership in this organization. Based on this decision, the EU applied for WCO membership in April 2001.<sup>2</sup> The issue of EU membership in the WCO was considered in 2001 at the June meeting of the WCO Council,<sup>3</sup> as well as at subsequent meetings in December 2001 and June 2002. At that time several countries opposed it, and in 2002 the WCO Council left this issue open *waiting for a political solution to emerge*. Following *contacts at political level*, the above request was again presented to the WCO Council in June 2006. This time the proposal was approved and in December

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<sup>1</sup> On December 1, 2009, after the entry into force of the Treaty of Lisbon, the successor of the European Community became the European Union (therefore, the concept of the European Community has not been used since).

<sup>2</sup> Proposal for a Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim (presented by the Commission). Commission of the European Communities. COM(2007) 252 final. 2007/0087 (ACC). Brussels, 14.5.2007. – P.2. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007PC0252&from=EN>

<sup>3</sup> The WCO Council is the highest decision-making body of the World Customs Organization, including all members at the level of heads of customs services.

2006 the WCO Council and then the WCO PC<sup>1</sup> examined the legal, voting and budgetary issues pertinent to the membership of the European Community in the WCO.<sup>2</sup>

Throughout its work, the Commission has kept Member States in the Customs Policy Group informed of the progress of the review and the practical implications of potential WCO membership. It is noteworthy that at that time the EU participated in the work of those WCO bodies that were created by international treaties or agreements to which the EU was a party.<sup>3</sup> As for the work of the EU in other WCO bodies, it could only participate as an observer, and in some cases a special invitation was required (for example, PC meetings).

As a member of the WCO, the European Community would be entitled to participate in all of its bodies, which are open to general membership, and to be elected to elected bodies. It should be noted that customs matters were the exclusive competence of the Community by virtue of the Treaty establishing the European Community and secondary legislation, most importantly the EU Customs Code. There is also some *acquis* in the area of customs cooperation related to customs offences and other matters related to EU Member States competences, as regulated by title VI of the Treaty establishing the European Union.<sup>4</sup>

To advance the issue of obtaining the necessary status for the EU in the WCO, it was necessary to resolve the issue of the competence of the Community and its member states in the WCO.

In this regard, the explanatory memorandum dated 14.05.2007 notes that the relevant provisions are fixed in the declaration on the Community competence in the World Customs Organization in the field of customs.<sup>5</sup> In all WCO bodies, *the position* of the Community on issues within the competence of the Community will be formed. In turn, for matters falling under national competence, EU Member States should strive to adopt a common position in order to ensure the

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<sup>1</sup> Policy Commission of the World Customs Organization.

<sup>2</sup> Proposal for a Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership *ad interim* (presented by the Commission). Commission of the European Communities. COM(2007) 252 final. 2007/0087 (ACC). Brussels, 14.5.2007. – P.2. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007PC0252&from=EN>

<sup>3</sup> For example, the Agreement on Customs Valuation, the Harmonized System, the Revised Kyoto Convention.

<sup>4</sup> Ibid. – P.3.

<sup>5</sup> A declaration of Community competence to the World Customs Organization in the field of customs matters.

unity of external representation of the Community and its Member States, as required by the case law of the European Court of Justice.<sup>1</sup>

According to the explanatory memorandum, Coordinated Community positions will be established in the Council's Customs Union (Legislation and Policy) Working Party or in the Customs Code Committee. On issues subject to Community competence, the European Community casts a number of votes equal to the number of its EU Member States in line with established practice in the World Customs Organization administered Conventions (e.g. the Revised Kyoto Convention, the Istanbul Convention) and the World Trade Organization.<sup>2</sup>

IX §1 Marrakesh Agreement Establishing the World Trade Organization (Marrakesh, April 15, 1994),<sup>3</sup> «Where the European Communities exercise their right to vote, they shall have a number of votes equal to the number of their member States which are Members of the WTO». An exception is the HS Convention, where the European Community, together with its Member States, as contracting party has only one vote.<sup>4</sup>

It also stipulates that EU Member States will continue to pay their *membership fees* to the WCO, which was recognized by the Council in its decision of 19 March 2001.

The European Community will pay an annual contribution to the WCO to strengthen the work of the Organization and to cover additional administrative expenses. The EC contribution will be such that the combined EU Member States and EC contributions to the WCO reflect the weight and importance of the European Community in international trade and customs matters. The overall share of contribution of the EC and EU Member States to the WCO will also be comparable in relative terms to the combined contributions to the WTO.<sup>5</sup>

The Community contribution would bring the combined contribution of the EC and the EU Member States to less than 38% of the total of the World

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<sup>1</sup> Opinion 1/94 of the ECJ, ECR 1994, I-5267 §108. URL: [https://eur-lex.europa.eu/resource.html?uri=cellar:3568c114-591b-4373-bb72-53523ffd70ce.0002.03/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:3568c114-591b-4373-bb72-53523ffd70ce.0002.03/DOC_1&format=PDF)

<sup>2</sup> Proposal for a Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim (presented by the Commission). Commission of the European Communities. COM(2007) 252 final. 2007/0087 (ACC). Brussels, 14.5.2007. – P.3. URL: <https://eur-lex.europa.eu/legal-content/EN/TEXT/PDF/?uri=CELEX:52007PC0252&from=EN>

<sup>3</sup> Marrakesh Agreement Establishing the World Trade Organization (Marrakesh, April 15, 1994). URL: [https://www.wto.org/english/docs\\_e/legal\\_e/04-wto\\_e.htm](https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm)

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

Customs Organization, while in the case of the World Trade Organization it amounts to about 42%, calculated on the basis of share of world trade.

The WCO, the explanatory memorandum notes, will have to modify the Convention establishing a Customs Co-operation Council (CCC Convention) to enable accession of customs and economic unions inter alia the European Community. The Council of the WCO at its 109th/110th session of June 2007 is expected to adopt a decision to *amend the Convention*. The amendment will enter into force after all WCO members have given written notification of their acceptance of the amendment. Once the Convention has been modified, the European Community will be able to deposit *a legal instrument of accession*.<sup>1</sup>

In addition, the WCO Council at its 109th/110th session of June 2007 is also expected to adopt a decision in order to allow the EC to temporarily exercise the rights and obligations which *are akin to a member's* with immediate effect. *Member States are called upon to support these two decisions of the WCO Council in the interest of the EC*.<sup>2</sup>

Further, it is stated that the EU *will be in a position to accept the interim status*. In addition, the explanatory memorandum briefly reflects topics such as stakeholder consultation and impact assessment, legal elements, proposals to the Council of the EU, budgetary implications.

### **3. Decision of the Council of the EU on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim: an analysis of problematic issues**

We noted above that the proposals of the EC dated 14.05.2007 for the decision of the Council on the accession of the European Communities to the WCO and the exercise of *rights and obligations akin to membership ad interim*<sup>3</sup> contained (1) an Explanatory Memorandum, (2) *proposal for a Council decision on the accession of the European Communities to the World Customs Organization*

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<sup>1</sup> Marrakesh Agreement Establishing the World Trade Organization (Marrakesh, April 15, 1994). URL: [https://www.wto.org/english/docs\\_e/legal\\_e/04-wto\\_e.htm](https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm) – P. 4.

<sup>2</sup> Ibid.

<sup>3</sup> Proposal for a Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim (presented by the Commission). Commission of the European Communities. COM(2007) 252 final. 2007/0087 (ACC). Brussels, 14.5.2007. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007PC0252&from=EN>

*and the exercise of rights and obligations akin to membership ad interim*, (3) Declaration of competence by the European Communities in matters covered by the Convention establishing a Customs Co-operation Council, as well as a Legislative financial statement.

The purpose of this study – to get acquainted with text of the mentioned *proposals for the decision of the Council*, as well as analyze them taking into account the EU Council decision of 25.06.2007.

We know three versions of the proposals for the EU Council decision and one final, adopted by this Council on 25.06.2007.

1. The main content of the EC proposals to the EU Council of 14.05.2007, which had to adopt such proposals in the form of a decision, is as follows:

The preamble to the proposals of the draft decision of the EU Council notes:

- on March 19, 2001, the Council decided to authorize the Commission to negotiate on behalf of the EU the accession of the European Community to the WCO;

- the Convention Establishing the Customs Cooperation Council is expected to be amended by the WCO Council at its 109/110 meeting in June 2007 to allow customs or economic unions, including the EU, to gain WCO membership;

- preliminary talks were held with the WCO, after which the EU and the WCO explored the possibility for the EU to exercise rights and obligations akin to those of WCO members pending ratification of the amended Convention Establishing the Customs Cooperation Council by all WCO members;

- it is expected that the EU will be in a position to assume these rights and obligations in the framework of the CCC Convention in matters of Community competence;

- the EU Member States shall maintain their status in the WCO.

The competence of the EU and its Member States is set out in the draft decision as follows:

- both the European Community and its Member States have competence in the areas covered by the CCC Convention, it is therefore desirable for the European Community to become a Contracting Party to the Convention in order to carry out together the obligations laid down in the Convention and exercise together the rights it confers in cases of shared competence in order to guarantee the uniform application of the Convention;

- for matters falling under European Community competence a European Community position must be established. For matters falling *under national competence* EU Member States should strive to adopt a common position to

ensure the unity of external representation of the European Community and its Member States;<sup>1</sup>

– in view of the above *the Council should adopt the necessary decision to enable European Community membership* to the WCO and to provide for the exercise of rights and obligations akin to membership ad interim.<sup>2</sup>

The operative part of the proposals of the EU Council draft decision is as follows:

Upon entry into force of the amendment to the CCC Convention allowing the EC to become a member of that organization, the EC shall express its consent to be bound by the amended Convention and thereby accede to the WCO.

The Commission is hereby authorized to designate the person empowered *to deposit the instrument of the formal notification* to the depositor of the Convention in order to bind the Community, subject to the fulfillment of the procedural requirements of the EC Treaty.

EU Member States shall vote in favour of the Council of the WCO decisions according to which the European Community shall, *as an interim measure, be granted rights akin to those enjoyed by WCO Members*, subject to the conditions contained therein.<sup>3</sup>

The European Commission shall submit *a letter* to the WCO according to which the European Community accepts the *rights and obligations akin to those of WCO members* as laid down in the WCO Council decision pending the entry into force of the amendment of the Convention establishing a Customs Co-operation Council.

The letter shall contain a declaration of competence as specified in Annex 1.

The European Community shall pay an annual contribution to the WCO to strengthen the work of the WCO and to cover additional administrative expenses as of 1 July 2007.<sup>4</sup>

2. For reference, we note that the ***materials of the EU Council dated 16.05.2007*** on proposals sent on 14.05.2007 by the Commission for the deci-

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<sup>1</sup> Proposal for a Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim (presented by the Commission). Commission of the European Communities. COM(2007) 252 final. 2007/0087 (ACC). Brussels, 14.5.2007. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007PC0252&from=EN>

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

sion of the Council on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership *ad interim*<sup>1</sup> in the part of the draft decision of the Council were reflected in that the same editorial.

3. In turn, *the materials of the Council of the European Union dated 20.06.2007* on the exercise of rights and obligations akin to membership *ad interim* by the European Community in the World Customs Organization<sup>2</sup> on the draft decision **have visible differences**. Let us add that the considered draft decision of 20.06.2007 was adopted in the current version by the EU Council on 25.06.2007.

We will consider the amendments to the draft decision of the EU Council, introduced by the experts of this body of the European Community by 20.06.2007:

(a) *in the preamble of the draft decision of the EU Council*, the provision is **completely deleted**, according to which «it is therefore desirable for the European Community to become a Contracting Party to the Convention in order *to carry out together* the obligations laid down in the Convention and *exercise together the rights* it confers in cases of shared competence in order to guarantee the uniform application of the Convention».

Obviously, at the level of the EU Council, it was considered inappropriate to establish a rule according to which the EU and EU Member States ***exercise together the rights and fulfill obligations*** (*in the specified context*), *set out in the convention that established the WCO*;

(b) it is deleted the concept (expression) of «***national competence***» from the provision of the project, which separates the competence of the EU and nation-

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<sup>1</sup> Proposal for a Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership *ad interim* (presented by the Commission). Commission of the European Communities. COM( 2007) 252 final. 2007/0087 (ACC). Brussels, 14.5.2007 // Interinstitutional File: 2007/0087 (ACC). 9692/07. UD50. ENFOCUSTOM 51. COMER 72. Council of the European Union. Brussels, 16 May 2007. URL: <https://www.psp.cz/doc/00/02/23/00022310.pdf>

<sup>2</sup> Legislative acts and other instruments. Subject: COUNCIL DECISION on the exercise of rights and obligations akin to membership *ad interim* by the European Community in the World Customs Organization. Interinstitutional File: 2007/0087 (ACC). 10764/1/07. REV 1(en). UD 59. UD 59 ENFOCUSTOM 67. COMER 94. Council of the European Union. Brussels, Brussels, 20 June 2007. URL: [https://www.eumonitor.nl/9353000/1/j4nvg5kjg27kof\\_j9vvik7m1c3gyxp/vi7jgt6abdy6/f=/10764\\_1\\_07\\_rev\\_1.pdf](https://www.eumonitor.nl/9353000/1/j4nvg5kjg27kof_j9vvik7m1c3gyxp/vi7jgt6abdy6/f=/10764_1_07_rev_1.pdf)

al competence.<sup>1</sup> This term is replaced by the expression «*matters falling under European Community competence*».

Here, as above, **it is clear that «national competence» and any «exercise together» the rights of the EU with its countries are «non-ideal» formulations for the EU Council.** And this despite the fact that the EU, by virtue of the CCC Convention, cannot become its contracting party (until amendments are made to the convention), and, therefore, be a member of the WCO. **It turns out that not a WCO member, but its observer represented by the EU, determines in the Organization the policy of subjects (EU member states) that are full members of the WCO.** Thus, we see an attempt made by the EU Council to transfer the external competence of the EU to the WCO field (platform), where the *European Communities have only an observer status* and, by virtue of the convention, are not entitled to receive rights and bear obligations in accordance with the provisions of the CCC Convention.

In the light of the foregoing, it can be considered legitimate the concern that was expressed on the issue of EU membership in the WCO in June 2001 at the 45th session of the PC about lowering the status of general directors of customs authorities to the status of nominal figureheads. It can be added that not only the heads, but *also the lowering of the status (we read – the competence) of the customs authorities and their states.*

(c) replace the provision on «the Council should adopt the necessary decision to enable European Community membership to the WCO and to provide for the exercise of rights and obligations akin to membership ad interim» with a mandatory rule according to which «the Council should provide for the exercise of *rights and obligations akin to membership ad interim by the European Community in the WCO*, including the payment of an annual contribution».

Maybe this amendment has its own logic, since we are talking about a decision that will be adopted by the Council of the EU anyway. Let us note that in the new version of the draft the EU Council, and not the Commission, is *obliged to ensuring the exercise of rights and obligations akin to membership ad interim by the European Community in the WCO, including the payment of an annual contribution*».

(d) **in the operative part of the decision of the EU Council**, the following provision is deleted:

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<sup>1</sup> 7. For matters falling under European Community competence a European Community position must be established. For matters falling under ***national competence*** EU Member States should strive to adopt a common position to ensure the unity of external representation of the European Community and its Member States.

*«Upon entry into force of the amendment to the Convention establishing a Customs Co-operation Council allowing the European Community to become a member of that organization, the European Community shall express its consent to be bound by the amended Convention and thereby accede to the World Customs Organization».*

Let us ask ourselves why in the EU Council version, in contrast to the proposals of the EU Commission, this paragraph of the decision was deleted?

The fact is that the abolished paragraph presumes that the EU will be able to become a member of the WCO *only after the entry into force of the amendment to the CCC Convention*. In other words, if the amendment to the CCC Convention has not entered into force, it cannot be argued that the EU has agreed and assumed the obligations arising from the convention; in this case it also cannot be argued that the EU has acceded to the WCO. Otherwise, the EU cannot obtain the rights and obligations arising from the convention.

We agree that this is a very «inconvenient» wording of the norm a week before the meeting of the WCO Policy Commission and then the WCO Council (June 2007), which should decide on granting the EU rights and obligations *akin to those enjoyed by WCO Members*. According to the author, **we must pay tribute to the experts of the EU Council, who quickly noticed the «inconsistency» and a clear contradiction with the approaches previously presented at the WCO, as well as possible negative consequences.**

(e) it is removed the provision that *«the Commission is hereby authorised to designate the person empowered to deposit the instrument of the formal notification to the depositor of the Convention in order to bind the Community, subject to the fulfillment of the procedural requirements of the EC Treaty».*

Let's ask another question: **how «slightly» to overlook (not to notice) the rules of the CCC Convention in terms of «joining» an international organization (ratifying the convention) in such a way that everything is beautiful and does not raise questions from experts?** To do this, it is sufficient *not to mention or delete in the draft decision the reference to the rule on the deposit of an instrument of ratification*. After all, **if (in the case of the WCO) the instrument of ratification has not been deposited with the Belgian Foreign Ministry, then this organization will not be able to notify all signatory and acceding governments, as well as the WCO Secretary General, about each document deposited, that is, about membership in the WCO.**

The analysis of this paragraph leads us to turn to Article XVI of the CCC Convention, according to which the convention shall be subject to ratification, and the Instruments of ratification shall be deposited with the Belgian Ministry

of Foreign Affairs, which shall notify all signatory and acceding Governments and the Secretary General of each such deposit.<sup>1</sup>

According to article XVIII of the same international act, the Government of any State which is not a signatory to the present Convention may accede thereto as from 1 April, 1951.

It follows that **the Commission is not authorized to deposit** (at the Belgian Foreign Office – *author's note*) **an instrument of official notification** (Instruments of ratification), and therefore cannot bind the Community, provided that the procedural requirements of the EU Treaty are met. **Such an action can only be taken by the acceding government and not by an international organization.**

This is the reason to change the proposal of the Commission in this part by the EU Council.

(e) a new provision is introduced whereby «The European Community *accepts the rights and obligations akin to those of World Customs Organization members* as laid down in the World Customs Organization Council decision pending the entry into force of the amendment of the Convention establishing a Customs Cooperation Council».

Let us pay attention to the fact *that the draft decision of the EU Council of 20.06.2007<sup>2</sup> recognizes the rights and obligations set out in the WCO Council decision, which does not yet exist (!)* even at the time of the adoption of this project by the EU Council on June 25, 2007.<sup>3</sup>

**It is difficult to imagine that an international organization, for example, the Eurasian Economic Commission or the South African Customs Union, in its legal act in advance *assumed rights and obligations* that were not granted to them by the decision of another international organization (WCO).**

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<sup>1</sup> Convention establishing the Customs Cooperation Council. URL: [https://www.wcoomd.org/en/about-us/legal-instruments/~/\\_media/7E31EB9C9DC24D7984C217508F05D9E8.ashx](https://www.wcoomd.org/en/about-us/legal-instruments/~/_media/7E31EB9C9DC24D7984C217508F05D9E8.ashx)

<sup>2</sup> Legislative acts and other instruments. Subject: COUNCIL DECISION on the exercise of rights and obligations akin to membership ad interim by the European Community in the World Customs Organization. Interinstitutional File: 2007/0087 (ACC). 10764/1/07. REV 1(en). UD 59. UD 59 ENFOCUSTOM 67. COMER 94. Council of the European Union. Brussels, Brussels, 20 June 2007. URL: [https://www.eumonitor.nl/9353000/1/j4nvgs5kjjg27kof\\_j9vvik7m1c3gyxp/vi7jgt6abdy6/f=/10764\\_1\\_07\\_rev\\_1.pdf](https://www.eumonitor.nl/9353000/1/j4nvgs5kjjg27kof_j9vvik7m1c3gyxp/vi7jgt6abdy6/f=/10764_1_07_rev_1.pdf)

<sup>3</sup> Council decision of 25 June 2007 on the exercise of rights and obligations akin to membership to ad interim by the European Community in the World Customs Organization (2007/668/EC). Official Journal of the European Union. L 274/11. URL: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32007D0668>

Of course, we understand what rights and obligations we are talking about in relation to the materials of the 56th and 57th meetings of the WCO PC, as well as 109/110 sessions of the WCO Council. But the fact is that by June 25, 2007, such rights and obligations had not been granted by the WCO Council to the European Communities.

Let's imagine for a moment that the decision of the WCO Council dated July 5, 2007 № 318 «Status of the European Communities vis-à-vis the World Customs Organization» was not adopted for any reason. What's next? What will be the next steps and consequences for the decision taken by the EU Council?

According to the author the talk is about political agreements unknown to us, that the WCO Council will make the right decision. In our opinion, EU «membership» in the WCO is a purely political issue, and the decision itself is preliminarily reached agreements and an orchestrated action plan with interested parties. **This thesis is confirmed by the abstention (refrain) from the formal voting procedure in the WCO Council on the status of the EU in the WCO. After all, the decision was made by acclamation,<sup>1</sup> i.e. without a formal vote.**

It should be noted that by November 2, 2006 the WCO Secretariat formulated the position that *«such a decision of the Council must be approved by a two-thirds majority of the members present at the meetings of the Council and having the right to vote»*. Obviously, something went wrong.

(g) in the same way as in paragraph «e» of this analysis, the obligation of the EC under the draft decision of the EU Council of 14.05.2007 «send a letter to the WCO in which the EU accepts rights and obligations akin to the rights and obligations of WCO members» looks like. Accordingly, it is not entirely clear how one can send a letter of the European Commission and assume rights and obligations, if legally such rights and obligations of the EU are not granted and do not legally exist.

In addition, *this paragraph has been slightly modernized* by replacing the obligation to «**submit a letter** to the WCO...» with «to **communicate to** the World Customs Organization that the European Community accepts the rights and obligations akin to those of World Customs Organization members».

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<sup>1</sup> Acclamation (lat. *acclamatio* – «shout, exclamation») – a simplified procedure for making or rejecting a decision based on the reaction of the participants, expressed in the form of applause, exclamations, remarks and other direct (informal) expression of one's opinion / KARTASLOV.RU. URL: <https://kartaslov.ru/meaning-words/acclamation>

So, we examined the main differences between the draft proposals of the EC and the draft decision of the EU Council, which was adopted on June 25, 2007 (2007/668/EC) on the exercise of rights and obligations akin to membership *ad interim* by the European Community in the WCO.<sup>1</sup>

#### **4. Declaration of competence of the European Communities in matters covered by the CCC Convention**

An extremely important issue, in our opinion, is the competence of the customs or economic union in the WCO, associated with the rights and obligations that, accordingly, the subject of international law<sup>2</sup> in the WCO assumes when preparing, and subsequently – when executing decisions (arrangements) reached in the working bodies of this Organization. In this context, it is worth recalling that, according to the Treaty on the Eurasian Economic Union of May 29, 2014, the EEU Member States implement a coordinated policy (including customs – *author's note*) within the limits and volumes established by international treaties within the Union.<sup>3</sup>

When examining the EU legal instruments, which were used to obtain certain rights and obligations in the WCO, one should highlight the next document of the European Commission, dated 14.05.2007 – «Declaration of competence by the European Communities in matters covered by the Convention establishing a Customs Co-operation Council». The Declaration is an annex to the Council's proposed decision by the European Commission on the accession of the EU to the WCO and the exercise of rights and obligations akin to membership *ad interim*.

In the text part of the declaration of competence, it is noted that, in accordance with the Treaty establishing the European Community, as amended, this declaration sets out the competence that the EU Member States have transferred to the Communities in matters governed by the Convention establishing a Customs Co-operation Council. However the exercise of competence which EU Member States has transferred to the European Communities pursuant to the

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<sup>1</sup> Council decision of 25 June 2007 on the exercise of rights and obligations akin to membership to *ad interim* by the European Community in the World Customs Organization (2007/668/EC). Official Journal of the European Union. L 274/11. URL: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32007D0668>

<sup>2</sup> Economic or customs union.

<sup>3</sup> Clause 2 of Article 5 of the Treaty on the Eurasian Economic Union dated May 29, 2014. Electronic fund of legal and regulatory documents «Code». URL: <https://docs.cntd.eu/document/420205962>

Treaties is, by its nature, liable to continuous change. It is also noted here that the European Communities therefore reserve the right to adjust the declaration.<sup>1</sup>

For the purposes of comparative analysis, we note that in accordance with subparagraph «a» of paragraph 5 of Article 8 of the International Convention on the Simplification and Harmonization of Customs Procedures *«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»*.<sup>2</sup>

In the case of the Kyoto Convention, the competence of the Community was set out in a declaration in Annex II to the Council Decision of 17 March 2003 on the accession of the European Community to the Protocol amending the International Convention on the Simplification and Harmonization of Customs Procedures.

Annex II establishes competences in accordance with the requirements of the Convention: *«For the purposes of Article 8(5)(a) of the Convention, as amended by the Protocol of Amendment, the European Community is competent for all matters governed by body of the Convention and its General Annex, except for those matters not falling within its exclusive explicit or implicit competence as laid down in the Treaty establishing the European Community as amended and within secondary Community legislation»*.<sup>3</sup>

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<sup>1</sup> Declaration of competence by the European Communities in matters covered by the Convention establishing a Customs Co-operation Council. Proposal for a Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim (presented by the Commission). Commission of the European Communities. COM(2007) 252 final. 2007/0087 (ACC). Brussels, 14.5.2007. – P.9. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007PC0252&from=EN>

<sup>2</sup> Pp. «a» paragraph 5 of Art. 8 (Ratification of the Convention) International Convention on the Simplification and Harmonization of Customs Procedures of May 18, 1973, as amended by the Protocol amending the International Convention on the Simplification and Harmonization of Customs Procedures of June 26, 1999. URL: [https://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/conventions/kyoto-convention/revised-kyoto-convention/body\\_gen-annex-and-specific-annexes.pdf?la=en](https://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/conventions/kyoto-convention/revised-kyoto-convention/body_gen-annex-and-specific-annexes.pdf?la=en)

<sup>3</sup> Information. Annex II to Council Decision of 17 March 2003 concerning the accession of the European Community to the Protocol of Amendment to the International Convention on the simplification and harmonization of customs procedures (Kyoto Convention). Official Journal L 086, 03/04/2003 P. 0021 – 0045. – PI86/45. URL: <https://op.europa.eu/en/publication-detail/-/publication/1554cf70-455d-4388-a9c0-d60c338f049d/language-en/format-PDF>

The Declaration of Competence of 14.05.2007 grouped the policy areas and corresponding EU legal acts. In particular, the following policy areas (competences) transferred to the Community are given in the table of the annex under study: customs union, common commercial policy; customs cooperation; facilitation of customs procedures; customs valuation; origin; Harmonized system, tariff classification; tariff and quota matters; compliance and enforcement: drug precursors, fight against counterfeiting, cash control; supply chain security; transit, temporary admission; capacity building, technical assistance, training.<sup>1</sup>

It is necessary to note that the grouping of legal acts by policy areas, as well as the list of these acts in the declaration of 14.05.2007, fully coincide with the grouping and list in the declaration of competence of the European Communities on issues covered by the CCC Convention of 01.06.2007,<sup>2</sup> presented to the attention of the 57th session of the Policy Commission.

A similar content of the declaration of EU competence is contained in the materials of the EU Council of 16.05.2007.<sup>3</sup>

Already in the EU Council materials of 20.06.2007<sup>4</sup> *the listed policy areas*, named in the draft declaration dated 14.05.2007, as well as brought to the attention of the WCO PC by 01.06.2007, **are not mentioned at all, but only a list of EU acts is given.** Wherein the declaration of EU competence of 20.06.2007 was changed in comparison with the draft declaration of 16.05.2007 and adopts

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<sup>1</sup> Declaration of competence by the European Communities in matters covered by the Convention establishing a Customs Co-operation Council. Proposal for a Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim (presented by the Commission). Commission of the European Communities. COM( 2007) 252 final. 2007/0087 (ACC). Brussels, 14.5.2007. URL: <https://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007PC0252&from=EN>

<sup>2</sup> Membership request by the European Communities. Policy Commission. Annex II to Doc. SP0247E1a. 57th session. SP0247E1a. Brussels, 1 June 2007. – II/1.

<sup>3</sup> Proposal for a Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim (presented by the Commission). Commission of the European Communities. COM( 2007) 252 final. 2007/0087 (ACC). Brussels, 14.5.2007 // Interinstitutional File: 2007/0087 (ACC). 9692/07. UD50. ENFOCUSTOM 51. COMER 72. Council of the European Union. Brussels, 16 May 2007. URL: <https://www.psp.cz/doc/00/02/23/00022310.pdf>

<sup>4</sup> Legislative acts and other instruments. Subject: COUNCIL DECISION on the exercise of rights and obligations akin to membership ad interim by the European Community in the World Customs Organization. Interinstitutional File: 2007/0087 (ACC). 10764/1/07. REV 1(en). UD 59. UD 59 ENFOCUSTOM 67. COMER 94. Council of the European Union. Brussels, Brussels, 20 June 2007. URL: [https://www.eumonitor.nl/9353000/1/j4nvgs5kjg27kof\\_j9vvik7m1c3gyxp/vi7jgt6abdy6/f=/10764\\_1\\_07\\_rev\\_1.pdf](https://www.eumonitor.nl/9353000/1/j4nvgs5kjg27kof_j9vvik7m1c3gyxp/vi7jgt6abdy6/f=/10764_1_07_rev_1.pdf)

a different content, which is approved after 5 days by the EU Council decision of 25.06.2007 № 2007/668/EC. It is worth noting that in the EU Council decision of 25.06.2007, the above list of EU legal acts is now referred to as «measures», «legal instruments» relating to customs issues adopted by the Community.

**The question cannot but arise – how do these measures relate to the CCC Convention and the institutions of customs law, and also, why was it not considered necessary to reflect the political areas (competences) transferred to the Community in the final document of the EU Council of 25.06.2007?**

Thus, the EU Declaration of Competence of 01.06.2007, sent by the European Commission for consideration at the 57th meeting of the PC in the framework of the issue of EU membership in the WCO, differs from the declaration adopted by the Council of the EU on 25.06.2006.

Another question logically arises – about the powers of the European Commission to send a declaration of its competence to the WCO PC by 01.06.2007 in advance to consider the issue of EU membership, while such a declaration, but already *in a modified form*, was adopted by the EU Council three weeks later on June 25, 2007? In other words, the European Commission sends a document (declaration) to the PC, which will be adopted at the EU level after 3 weeks, and the WCO Secretariat does not ask any questions about this.

When examining the issue of competence transferred to the Community by the EU Member States, let us turn to the declaration of competence, which was approved by the decision of the EU Council on June 25, 2007 № 2007/668/EC.<sup>1</sup> As noted above, this act was adopted by the EU Council 3 days before the meeting of the WCO Council 109/110 2007, which took place from 28 to 30 June 2007.

The declaration of competence adopted by the Council states that, in accordance with the Treaty establishing the European Community, as amended, this declaration establishes the competence which *the EU Member States have transferred to the Communities in matters governed by the Convention establishing a Customs Co-operation Council*.<sup>2</sup>

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<sup>1</sup> Declaration of competence by the European Community in matters covered by the Convention establishing a Customs Cooperation Council. Annex to Council Decision of 25 June 2007 on the exercise of rights and obligations akin to membership ad interim by the European Community in the World Customs Organization (2007/668/EC). URL: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32007D0668>

<sup>2</sup> Ibid.

The European Community declares that, in accordance with Articles 131-134 of the Treaty establishing the European Community, it has *exclusive competence on common commercial policy*.

The European Community may conclude international agreements whenever the *internal competence* has already been used in order to adopt measures for implementing common policies or if international agreement is necessary to obtain one of the European Community's objectives. The European Community's *external competence* is *exclusive* to the extent to which an international agreement affects internal European Community rules or alters their scope. Where this is the case, it is not for the Member States of the European Community but for the European Community to enter into external undertakings with third States or International Organizations. A list of measures concerning customs matters adopted by the Community is provided for in the list of legal instruments in the Annex to this Declaration.<sup>1</sup>

The exercise of competence which Member States of the European Community have transferred to the European Community pursuant to the Treaties is, by its nature, liable to continuous change. The European Community therefore reserves the right to adjust the declaration.

The exercise of the powers conferred by the Member States of the European Community to the European Community in accordance with the Treaties is, by its very nature, subject to constant change. The European Community therefore reserves the right to correct the declaration.<sup>2</sup>

Let us pay attention to the legal technique in the preparation of both declarations. Thus, in contrast to the draft (European Commission and Council of the EU) declarations of competence of May 14, 2007 and May 16, 2007, the adopted EU declaration of competence of June 25, 2007 *does not contain references to specific policy areas* (in the field of customs regulation), *nor a list of legal acts grouped by areas of customs regulation*.<sup>3</sup> For this case, the declaration

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<sup>1</sup> Declaration of competence by the European Community in matters covered by the Convention establishing a Customs Cooperation Council. Annex to Council Decision of 25 June 2007 on the exercise of rights and obligations akin to membership ad interim by the European Community in the World Customs Organization (2007/668/EC). URL: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32007D0668>.

<sup>2</sup> Ibid.

<sup>3</sup> Areas: customs union, common commercial policy; customs cooperation; facilitation of customs procedures; customs valuation; origin; Harmonized system, tariff classification; tariff and quota matters; compliance and enforcement: drug precursors, fight against counterfeiting, cash control; supply chain security; transit, temporary admission; capacity building, technical assistance, training.

dated June 25, 2007 is accompanied by an appendix, which only names the acts (measures affecting customs issues) of the EU *without their correspondence to specific blocs of areas of customs regulation*.

In the context of the issue under consideration, let us turn to the **case law of the EU**. Thus, before obtaining membership in the WCO, it was planned that in all WCO bodies the Community would form a position on issues within its competence. At the same time, on matters within national competence, the EU Member States were to seek to adopt a common position in order to ensure the unity of the external representation of the Community and its Member States, as required by the case law of the European Court of Justice (currently called the Court of Justice of the European Union).<sup>1</sup>

According to paragraph 108 of Opinion 1/94 of 15 November 1994 (Community competence to conclude international agreements relating to services and the protection of intellectual property – Article 228(6) of the EC Treaty)<sup>2</sup> *«where it is apparent that the subject-matter of an agreement or convention falls in part within the competence of the Community and in part within that of the Member States, it is essential to ensure close cooperation between the Member States and the Community institutions, both in the process of negotiation and conclusion and in the fulfillment of the commitments entered into. That obligation to cooperate flows from the requirement of unity in the international representation of the Community»*.

## Conclusions:

1. The process of obtaining the so-called EU «membership» in the WCO, along with ongoing intensive political consultations and negotiations of the EU with the WCO Secretariat and foreign partners, simultaneously required the creation of a legal framework within the EU. Such legal foundations were formed promptly and in a very short time – from 14.05.2007 to 25.06.2007.

Less than a year later, on April 28, 2008, the expert community got acquainted with the approaches – «Guidelines. WCO Membership: Ensuring Community Coordination», prepared by the General Secretariat of the Council of the

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<sup>1</sup> Opinion of the Court of 15 November 1994. – Competence of the Community to conclude international agreements concerning services and the protection of intellectual property – Article 228 (6) of the EC Treaty. – Opinion 1/94. European Court Reports 1994 I-05267. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1434894612069&uri=CELEX:61994CV0001>

<sup>2</sup> Ibid.

European Union for the Working Party on Customs Union (Customs Law and Policy).<sup>1</sup>

2. 1.5 months before the consideration of the issue of EU «membership» in the WCO, the European Commission on May 14, 2007 sent proposals to the EU Council for the adoption of a Council decision on the exercise of rights and obligations *akin to membership to ad interim* by the European Community in the World Customs Organization.<sup>2</sup> This package includes *an explanatory memorandum, a draft decision of the EU Council* (proposals), a *declaration of competence of the European Communities*, as well as a *legislative financial statement*.

3. Two days later, on May 16, 2007, materials of the EU Council were prepared,<sup>3</sup> the content of which mirrors the sent package of documents of the EC dated May 14, 2007. Almost a month later, on June 20, 2007, the expert community got acquainted with the draft decision of the Council and the declaration of competence of the European Communities,<sup>4</sup> which were adopted a week later by the decision of the EU Council of June 25, 2007 (2007/668 / EC) on the exercise of rights and obligations *akin to membership to ad interim* by the European Community in the World Customs Organization.<sup>5</sup>

<sup>1</sup> Guidelines. WCO Membership: Ensuring Community Coordination. Doc 8594/08. UD 63. Council of the European Union. Brussels, 22 April 2008. URL: <https://data.consilium.europa.eu/doc/document/ST%208594%202008%20INIT/EN/pdf>

<sup>2</sup> Council decision of 25 June 2007 on the exercise of rights and obligations *akin to membership to ad interim* by the European Community in the World Customs Organization (2007/668/EC). Official Journal of the European Union. L 274/11. URL: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32007D0668>

<sup>3</sup> Proposal for a Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations *akin to membership to ad interim* (presented by the Commission). Commission of the European Communities. COM(2007) 252 final. 2007/0087 (ACC). Brussels, 14.5.2007 // Interinstitutional File: 2007/0087 (ACC). 9692/07. UD50. ENFOCUSTOM 51. COMER 72. Council of the European Union. Brussels, 16 May 2007. URL: <https://www.psp.cz/doc/00/02/23/00022310.pdf>

<sup>4</sup> Legislative acts and other instruments. Subject: COUNCIL DECISION on the exercise of rights and obligations *akin to membership to ad interim* by the European Community in the World Customs Organization. Interinstitutional File: 2007/0087 (ACC). 10764/1/07. REV 1(en). UD 59. UD 59 ENFOCUSTOM 67. COMER 94. Council of the European Union. Brussels, 20 June 2007. URL: [https://www.eumonitor.nl/9353000/1/j4nvgs5kjjg27kof\\_j9vvik7m1c3gyxp/vi7jgt6abdy6/f=/10764\\_1\\_07\\_rev\\_1.pdf](https://www.eumonitor.nl/9353000/1/j4nvgs5kjjg27kof_j9vvik7m1c3gyxp/vi7jgt6abdy6/f=/10764_1_07_rev_1.pdf)

<sup>5</sup> Council decision of 25 June 2007 on the exercise of rights and obligations *akin to membership to ad interim* by the European Community in the World Customs Organization (2007/668/EC). Official Journal of the European Union. L 274/11. URL: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32007D0668>

4. According to the author, the named acts, as well as the steps taken by the EU, were successfully developed and implemented taking into account the preliminary political consultations and agreements reached by the European Commission, the WCO Secretariat and interested parties.

## BIBLIOGRAPHIC LIST

1. *Goshin V.A., Mozer S.V.* The possibility of obtaining the status of a member of the World Customs Organization by economic and customs unions: the experience of the European Union // Bulletin of the Russian Customs Academy № 4, 2015. p. 52-60.
2. *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://customs-academy.net/wp-content/uploads/2018/11/МОН.-ВТамО\\_Кадыркулов\\_Мозер\\_Липатова\\_.pdf](http://customs-academy.net/wp-content/uploads/2018/11/МОН.-ВТамО_Кадыркулов_Мозер_Липатова_.pdf)
3. *Mozer S.V.* Organizational and legal aspects of the membership of the European Communities in the World Customs Organization as a precedent for customs and economic unions // Socio-political sciences. – № 4. – 2022. URL: <http://customs-academy.net/?p=14924>
4. *Mozer S.V.* On the issue of organizing effective legal relations with the World Customs Organization: recommendations for customs and economic unions // Problems of Economics and Legal Practice. – № 4. – 2022. URL: <http://customs-academy.net/?p=14597>
5. Strategic Directions for the Development of Eurasian Economic Integration until 2025. Approved by the Decision of the Supreme Eurasian Economic Council dated December 11, 2020 № 12. URL: [https://docs.eaeunion.org/docs/ru-ru/01428320/scd\\_12012021\\_12](https://docs.eaeunion.org/docs/ru-ru/01428320/scd_12012021_12)
6. International Convention on the Simplification and Harmonization of Customs Procedures of May 18, 1973 as amended by the Protocol on Amendments to the International Convention on the Simplification and Harmonization of Customs Procedures of June 26, 1999. URL: [https://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/conventions/kyoto-convention/revised-kyoto-convention/body\\_gen-annex-and-specific-annexes.pdf?la=en](https://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/conventions/kyoto-convention/revised-kyoto-convention/body_gen-annex-and-specific-annexes.pdf?la=en)
7. Marrakesh Agreement Establishing the World Trade Organization (Marrakesh, April 15, 1994). GARANT system: <http://base.garant.ru/2541158/#ixzz4fYPzEAib>
8. Convention Establishing a Customs Co-operation Council. URL: <https://www.wcoomd.org/en/about-us/legal-instruments/~/-/media/7E31EB9C9DC24D7984C217508F05D9E8.ashx>

9. Treaty on the Eurasian Economic Union of May 29, 2014. Electronic fund of legal and regulatory documents «Code». URL: <https://docs.cntd.ru/document/420205962>
10. Order of the Eurasian Economic Commission Board dated March 29, 2022 № 55 «On the Working Group for Interaction with the World Customs Organization». IS Alta-Soft. URL: <https://www.alta.ru/tamdoc/22r00055/>
11. Council decision of 25 June 2007 on the exercise of rights and obligations akin to membership ad interim by the European Community in the World Customs Organization(2007/668/EC). Official Journal of the European Union. L274/11. URL: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32007D0668>
12. Proposal for a Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim (presented by the Commission). Commission of the European Communities. COM(2007) 252 final. 2007/0087 (ACC). Brussels, 14.5.2007. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007PC0252&from=EN>
13. Proposal for a Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim (presented by the Commission). Commission of the European Communities. COM(2007) 252 final. 2007/0087 (ACC). Brussels, 14.5.2007 // Interinstitutional File: 2007/0087 (ACC). 9692/07. UD 50. ENFOCUSTOM 51. COMER 72. Council of the European Union. Brussels, 16 May 2007. URL: <https://www.psp.cz/doc/00/02/23/00022310.pdf>
14. Legislative acts and other instruments. Subject: Council Decision on the Exercise of Rights and Obligations akin to Membership ad Interim by the European Community in the World Customs Organization. Interinstitutional File: 2007/0087 (ACC). 10764/1/07. REV 1 (en). UD 59. UD 59 ENFOCUSTOM 67. COMER 94. Council of the European Union. Brussels, 20 June 2007. URL: [https://www.eumonitor.nl/9353000/1/j4nvgs5kjg27kof\\_j9vvik7mlc3gyxp/vi7jgt6abdy6/f=/10764\\_1\\_07\\_rev\\_1.pdf](https://www.eumonitor.nl/9353000/1/j4nvgs5kjg27kof_j9vvik7mlc3gyxp/vi7jgt6abdy6/f=/10764_1_07_rev_1.pdf)
15. Guidelines. WCO Membership: Ensuring Community Coordination. Doc 8594/08. UD 63. Council of the European Union. Brussels, 22 April 2008. URL: <https://data.consilium.europa.eu/doc/document/ST%208594%202008%20INIT/EN/pdf>
16. Opinion 1/94 of the ECJ, ECR 1994, I-5267 §108. URL: [https://eur-lex.europa.eu/resource.html?uri=cellar:3568c114-591b-4373-bb72-53523ffd70ce.0002.03/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:3568c114-591b-4373-bb72-53523ffd70ce.0002.03/DOC_1&format=PDF)
17. Declaration of competence by the European Communities in matters covered by the Convention establishing a Customs Co-operation Council. Proposal for a Council decision on the accession of the European Communities to the World Customs Organization and the exercise of rights and obligations akin to membership ad interim (presented by the Commission). Commission of the

- European Communities. COM(2007) 252 final. 2007/0087 (ACC). Brussels, 14.5.2007. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007PC0252&from=EN>
18. Information. Annex II to Council Decision of 17 March 2003 concerning the accession of the European Community to the Protocol of Amendment to the International Convention on the simplification and harmonization of customs procedures (Kyoto Convention). Official Journal L 086, 03/04/2003 P. 0021 – 0045. – P. I.86/45. URL: <https://op.europa.eu/en/publication-detail/-/publication/1554cf70-455d-4388-a9c0-d60c338f049d/language-en/format-PDF>
  19. Membership request by the European Communities. Policy Commission. Annex II to Doc. SP0247E1a. 57th Session. SP0247E1a. Brussels, 1 June 2007.
  20. Declaration of competence by the European Community in matters covered by the Convention establishing a Customs Cooperation Council. Annex to Council Decision of 25 June 2007 on the exercise of rights and obligations akin to membership ad interim by the European Community in the World Customs Organization (2007/668/EC). URL: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32007D0668>
  21. Opinion of the Court of 15 November 1994. – Competence of the Community to conclude international agreements concerning services and the protection of intellectual property – Article 228 (6) of the EC Treaty. – Opinion 1/94. European Court Reports 1994 I-05267. URL: <https://eur-lex.europa.eu/legal-content/EN/TEXT/?qid=1434894612069&uri=CELEX:61994CV0001>
  22. KARTASLOV.RU. URL: <https://kartaslov.ru/значение-слова/аккламация>

## 5. ANALYSIS OF STAGES AND ORGANIZATIONAL AND LEGAL FEATURES OF OBTAINING MEMBERSHIP BY THE EUROPEAN UNION IN THE WORLD CUSTOMS ORGANIZATION<sup>1</sup>

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The presented research material analyzes the organizational and legal features and the first two stages, within which the European Communities (EC) implemented measures to obtain membership status in the World Customs Organization (WCO).

### **Task**

To systematize and analyze legal and organizational features, as well as activities aimed at obtaining rights and obligations akin to those enjoyed by the WCO members for the EU in the period from 2001 to 2002.

### **Conclusions**

The research article is devoted to the issues of the legal status of the EU in the WCO and the use of the EU precedent for the implementation of the Strategic Directions for the Development of Eurasian Economic Integration until 2025 (Strategic Directions) in terms of joint actions with Member States aimed at obtaining the Union's membership status in the WCO.

The subject of the study is the stages, activities, organizational and legal instruments and consequences of EU membership in the WCO.

The performed analysis of stages and legal and organizational features of obtaining EU membership in the WCO can be used to develop conceptual approaches for the Eurasian Economic Union (EEU) to obtain the WCO membership status in the course of implementing the Strategic Directions.

### **Social Consequences**

Conducting a study of the legal status of customs and economic unions in the WCO is associated with the implementation of paragraph 11.7.5. of Strategic Directions in terms of cooperation with this international organization.

### **Practical value**

The results of the study are of interest to the customs cooperation block of the Eurasian Economic Commission (EEC) and can be used by specialists from customs and other executive authorities in the EEU member states, EEC experts to organize and implement mutually beneficial customs cooperation between the EEC and the WCO.

The article is recommended to researchers, teachers, students, graduate students and other categories of students in the Russian Customs Academy, in other universities and the WCO regional training centers in the specialties «Customs» and «Jurisprudence».

### **Originality/value**

The research material is based on an analysis of the practical aspects of the activities of the EU, the WCO and is the result of a comprehensive study of the issue of the legal and organizational basis for obtaining the WCO member status by economic and customs unions.

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<sup>1</sup> *Mozer Sergei*. Analysis of stages and organizational and legal features of obtaining membership by the European Union in the World Customs Organization // Problems in Russian Legislation. – № 6. – 2022. (Article). URL: <https://customs-academy.net/?p=17773>

**Keywords:** *the World Customs Organization, the WCO, the Eurasian Economic Union, EEU, the Eurasian Economic Commission, EEC, European Communities, European Union, EU, EC, customs regulation, customs administration, international customs law, customs, customs and economic union, legal instruments and tools.*

## Introduction

As part of the development of Eurasian economic integration, an urgent issue is the development of cooperation with the World Customs Organization (hereinafter referred to as the WCO, the Organization), which can be called a modern institution for improving customs regulation and trade facilitation.<sup>1</sup> Experts from the customs services of the WCO member states, customs and economic unions, international organizations in observer status, as well as academic circles interact with the WCO, primarily on the issue of the formation of legal instruments and tools in the field of customs regulation. In other words, international standards and approaches to the organization of customs and trade facilitation are being created.

In 2020, in the Eurasian Economic Union (hereinafter referred to as the EAEU, the Union), among the promising areas for the development of Eurasian economic integration, «carrying out joint actions with member states aimed at obtaining the Union's WCO member status» was singled out.<sup>2</sup> In order to form practical steps for the implementation of this event, we conducted a scientific study on the topic «Legal and organizational basis for economic and customs unions to get the status of member of the World Customs Organization», the results of which are published in scientific journals and this article.

For example, the activities and stages passed by the European Community (hereinafter referred to as the EU)<sup>3</sup> within the framework of interaction with the WCO to change the legal status from an observer to a status similar to

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<sup>1</sup> Kadyrkulov M.A., Mozer S.V., Lipatova N.G. The World Customs Organization as a Modern Institute for Improving Customs Administration and Facilitating Trade Procedures: monograph. Lyubertsy: RIO of the Russian Customs Academy, 2017. – 173 p. [http://customs-academy.net/wp-content/uploads/2018/11/Mon.-VTamO\\_Kadyrkulov\\_Moser\\_Lipatova\\_.pdf](http://customs-academy.net/wp-content/uploads/2018/11/Mon.-VTamO_Kadyrkulov_Moser_Lipatova_.pdf)

<sup>2</sup> Clause 11.7.5. of Strategic directions for the development of Eurasian economic integration until 2025. Approved by the Decision of the Supreme Eurasian Economic Council dated December 11, 2020 № 12. URL : [https://docs.eaeunion.org/docs/ru-ru/01428320/scd\\_12012021\\_12](https://docs.eaeunion.org/docs/ru-ru/01428320/scd_12012021_12)

<sup>3</sup> On December 1, 2009, after the entry into force of the Treaty of Lisbon, the successor of the European Community became the European Union (therefore, the concept of the European Community has not been used since).

WCO membership are analyzed.<sup>1</sup> Special attention is paid to the organization of interaction with the WCO by authorized bodies of customs and economic unions, as well as approaches are proposed for the formation of a draft action plan (road map) of the Union for obtaining the status of a WCO member in the course of implementing the Strategic Directions for the Development of Eurasian Economic Integration until 2025 (hereinafter referred to as the Strategic Directions).<sup>2</sup> Along with this, an analysis was made of the legal instruments of the European Union that regulate its legal status in the WCO.<sup>3</sup> In other words, a comprehensive understanding of the issues of the so-called membership of customs and economic unions in the WCO has already been formed at the scientific level.

At the same time, for experts whose competence is the implementation of clause 11.7.5 of the Strategic Directions, the problems of the Union's membership in the WCO in a practical way (organizational and legal aspects) are not entirely clear. Moreover, the specifics of the EU precedent at various stages of achieving the goal of WCO membership are not known.

These circumstances determine the relevance of this research material. So, let's analyze the stages that the EU went through to obtain rights and obligations akin to those enjoyed by the WCO Members.

A comprehensive analysis of materials on the EU membership in the WCO shows that the process of obtaining the status of the European Community «akin to membership» consisted of four stages.<sup>4</sup> In this article, we will analyze the first two.

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<sup>1</sup> *Mozer S.V.* Organizational and legal aspects of the membership of the European Communities in the World Customs Organization as a precedent for customs and economic unions // Socio-political sciences. – № 4. – 2022 URL: <https://www.urvak.ru/articles/sotsia-4366-vypusk-4-organizatsionno-pravovye-aspe/>

<sup>2</sup> *Mozer S.V.* On the issue of organizing effective legal relations with the World Customs Organization: recommendations for customs and economic unions // Problems of Economics and Legal Practice. – № 4. – 2022 URL: <https://www.urvak.ru/articles/probl-8028-vypusk-4-k-voprosu-ob-organizatsii-effe/>

<sup>3</sup> *Mozer S.V.* Analysis of the legal instruments of the European Union governing its legal status in the World Customs Organization. // Socio-political sciences. – № 5. – 2022

<sup>4</sup> The systematization of all stages and activities implemented by the EU are analyzed in the article by *Mozer S.V.* Organizational and legal aspects of the membership of the European Communities in the World Customs Organization as a precedent for customs and economic unions // Socio-political sciences. – № 4. – 2022 . URL: <https://www.urvak.ru/articles/sotsia-4366-vypusk-4-organizatsionno-pravovye-aspe/>

## FIRST STAGE

We refer to the first stage the EU application for the WCO membership dated April 19, 2001 and its consideration at the 45th session of the WCO Policy Commission (hereinafter referred to as the PC) on June 25-27, as well as the 97-98 meeting of the Council on June 28-30 of the same of the year.

In its application, the EU proposed a draft amendment to the Convention Establishing a Customs Co-operation Council<sup>1</sup> (hereinafter referred to as the CCC Convention), which would allow the EU to become a contracting party to the Convention; possible means of facilitating the entry into force of such an amendment; a number of practical steps that could be taken prior to the adoption of such an amendment to improve the participation of the EU in the work of the WCO; and asked to establish a negotiating structure in the WCO to resolve this issue.

In order to organize the consideration of the issue by the WCO Secretariat, the following factual elements were analyzed: the current status of the EU in relation to the WCO; legal and practical provisions adopted in the organizations of which the EU is already a member; legal issues related to the EU request; practical arrangements for processing a request from the EU.

At the time of consideration of the EU request for WCO membership (2001), none of the provisions of the CCC Convention did not allow the EU and did not give the right to become a member of the WCO. To date, the situation has not changed. According to the same Convention, customs and economic unions can only have observer status in the WCO.

**The main theses of the EU on obtaining the status of a WCO member are as follows:**

- European Union – exceptional construction (unique example);
- the Community has a moral right to have its wish to join the WCO considered by this international organization;
- the application of the EU, representing 15 member countries (2001), which together constitute a significant share of international trade, deserves attention;
- the EU has a lot to offer to the WCO, including in terms of technical expertise given its experience in building a customs union between its member states;

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<sup>1</sup> Convention Establishing a Customs Co-operation Council. WCO. URL: [https://www.wcoomd.org/en/about-us/legal-instruments/~/\\_media/7E31EB9C9DC24D7984C217508F05D9E8.ashx](https://www.wcoomd.org/en/about-us/legal-instruments/~/_media/7E31EB9C9DC24D7984C217508F05D9E8.ashx)

– EU accession will bring clarity and simplify the work of the WCO, as well as strengthen the role and importance of the WCO and enhance its authority;

– full membership in the WCO will allow the EU to make an even more useful contribution to the work and goals of the Organization. Full membership will be a logical addition to the Community's existing participation in various WCO conventions and committees;

The European Community needs to:

– obtain *formal membership in the WCO* by amending the CCC Convention;

– become a contracting party to the CCC Convention *with the same status* as the governments of WCO member countries;

– obtain in practice *rights similar to those of WCO members*;

– become a member of the WCO and exercise on its own behalf the rights and obligations imposed by the CCC Convention on EU member states, including the right to vote;

– the Community will replace itself with its members, and this will not affect the number of votes on those matters for which it is responsible in accordance with the provisions of the European Treaties. In the field of customs, almost all competences belong to the Community;

– some transitional arrangements need to be in place to allow the community to participate in WCO committees, as well as transitional arrangements for voting rights.

As part of the discussions on EU membership in the WCO, we identified **the following risks**:

– the main texts, drawn up 50 years ago, do not allow economic entities to join the Organization;

– any vote in which the Community has participated without legal status *may subsequently be declared null and void*;<sup>1</sup>

– the structure of the WCO does not allow for the formal participation of entities like the EU (various types of trade-related institutions), even though all of them have had an impact on customs policy and practice;

– the question should not be considered in terms of whether the EU should be allowed to join the WCO, but more generally, whether any customs or economic union should be allowed to do so;

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<sup>1</sup> Point 38. Membership Request from the European Community. (Item X on the Agenda – Other business). Policy Commission. 45th session . SP0071E1. Brussels, 31 May 2001. – P.8.

- the question of membership of the EU or any other customs union raises complex legal and possibly some political questions;
- there is no conviction that EU membership is necessarily the right approach;
- it is unlikely that an attempt to amend the CCC Convention will actually succeed in practice, the EU request should be approached with great caution;
- legal advisers advocate greater caution when considering EU membership in the WCO, as there is a risk that the legitimacy of decisions taken by the Council could be violated and questioned later if such arrangements are put into effect;
- opening the CCC Convention (for revision) may trigger all sorts of other requests for amendments;
- setting a precedent for other regional economic groupings;
- many trade agreements are rapidly approaching a status similar to that of the EU, there is a risk that the structure of the WCO could be threatened (setting a precedent);
- if the votes of a number of WCO Members were concentrated in one body, the value of the WCO would be diminished;<sup>1</sup>
- lowering the status of general directors of customs authorities to the status of figureheads;
- many WCO members were members of regional economic groupings of this kind. If such an economic grouping, as, for example, ECOWAS in West Africa, is accepted as a member of the WCO, then, apparently, the decisions taken by ECOWAS in the context of the activities of the WCO will also be entrusted to ECOWAS members. This is seen as a *potential conflict of sovereignty*;
- it is premature to create a working group to start the negotiation process or take temporary measures.

In the course of studying the issues of obtaining the EU's status as a member of the WCO, the Secretariat generated **a number of questions** that deserve attention:

The EU must indicate the matters in respect of which competence has been transferred to it by its Member States, as well as the matters in respect of which competence is shared between it and its Member States. For all matters not so stipulated, Member States are presumed to retain their national competence;

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<sup>1</sup> Point 91. Report of the Policy Commission. 45th session. SP0075E2. Brussels, 27 June 2001. – P. 14.

It was necessary to study in detail the following legal issues in consultation with the depositary of the CCC Convention (Belgian Foreign Ministry) and the legal adviser of the Secretariat, who is a specialist in international contract law:

- Is the wording of the proposed amendment to Article XVIII acceptable?
- Would the insertion in the CCC Convention of this single new provision be sufficient to cover not only the membership status of the European Community, but also the changed situation of the EC Member States vis-à-vis the Organization?
- What consequent amendments would need to be made to other formal instruments such as the Council's Rules of Procedure?
- To what extent would the formal instruments of the WCO's various Committees and other technical bodies have to be amended in order to reflect the new status of the European Community within those bodies?<sup>1</sup>

Along with this, issues of seating arrangements, voting procedures, as well as participation in the work of the WCO committees were considered. The proposals form to the following theses:

*Seating order at WCO meetings:* the EU representative should sit next to the Member State (EU) holding the EU Presidency (EU position).

*voting procedure:* the representative of the EU must, if he has not been granted the right to vote on his own behalf in accordance with the Conventions, on matters within the competence of the Community, be able to exercise the right to vote on behalf of the Member States of the EU (EU position).

*participation in committees:* while the EU has observer status at all meetings of the WCO, with the exception of the Policy Commission and the Finance Committee. Allow the European Commission (hereinafter referred to as the EC) to participate in the PC meeting, either on its own behalf or as an observer. Do not participate in meetings of the Finance Committee until the EU has assumed a significant part of the Member States' contribution.

In the course of researching topical issues of the legal status of the EU in the WCO, we systematized the US position on this topic. In our opinion, it deserves special attention. The main theses of the American side are as follows:

- the EU is not eligible for membership in accordance with the provisions of the CCC Convention;
- an amendment to the CCC Convention would require the consent of each contracting party, and the United States Government is currently not granting its consent;

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<sup>1</sup> Point 31. Membership Request from the European Community. (Item X on the Agenda – Other business). Policy Commission. 45th session . SP0071E1. Brussels, 31 May 2001. – P.7.

– the United States does not agree that an amendment to the CCC (granting EU Membership) Convention is a priority, necessary or in the best interests of the WCO and its members;<sup>1</sup>

– the US government opposes:

– any proposal to draft an amendment to the Convention;

– any suggestion that there might be possible means of facilitating the entry into force of such an amendment;

– the establishment of any practical measures that would allow the European Community to, in effect, enjoy the benefits of membership prior to such an amendment; and

– any suggestion that a negotiating structure be established to allow any of these issues to be carried forward.<sup>2</sup>

If the votes of a number of WCO Members were concentrated in one body, the value of the WCO would be diminished.<sup>3</sup>

This entails lowering the status of general directors of customs authorities to the status of figureheads.

The issue of competence is a concern. The EU has recognized that it has only certain competences in the field of customs, while others remain with the 15 member states. The task of defining these competencies is best handled through the European Community's own consultation mechanism and not within the WCO.

The Council Convention embodies the Organization and all that it stands for. The decision to open it up for amendment should not be taken lightly, as there are many potential dangers, in particular requests for other amendments that could change the very nature of the Organization.

From a legal point of view, it was clear that economic unions, customs unions and similar bodies could not be members of the WCO. Changing this will require positive approval from all WCO Member States and will be a challenging task.

One of the objectives of this study is to develop a draft action plan (roadmap) for obtaining the status of a WCO member by an economic union (EEU) based on the EU precedent. The study of this issue made it possible to identify the following **steps for the EU and the WCO to achieve this goal** :

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<sup>1</sup> Point 89. Report of the Policy Commission. 45th session. SP0075E2. Brussels, 27 June 2001. – P.14.

<sup>2</sup> Point 101. Ibid. – P.15.

<sup>3</sup> Point 91. Ibid. – P.14.

1. Conducting negotiations between the European Commission and the WCO Secretariat on membership in the Organization.

2. Adoption of the decision of the Council of Ministers of the EU to apply for membership in the WCO (adopted unanimously).

3. EU Council of Ministers authorizes the European Commission to submit an EU request to the WCO and, if necessary, to negotiate for WCO membership (March 2001).

4. The Council of the European Community authorizes the European Commission to negotiate an amendment to the Convention establishing the Customs Cooperation Council (decision of 19 March 2001).<sup>1</sup>

5. Applying for WCO membership. Letter from the European Commission to the WCO Secretariat indicating that the Council of the European Community has authorized the EC to negotiate an amendment to the CCC Convention to allow the European Community (EC) to become a member of the WCO (19 April 2001).

In its letter, the Commission on the merits:

- Proposes a draft amendment to the CCC Convention that would allow the EU to become a Contracting Party to the Convention;

- suggests possible means of facilitating the entry into force of such an amendment;

- establishes a number of practical measures that may be taken prior to the adoption of such an amendment to improve the participation of the EU in the work of the WCO; and

- asks to create a negotiating structure in the WCO to resolve this issue.

6. WCO Secretariat circulates letter from EC to all Members for information (May 2001).

7. Conducting consultations of the WCO Secretariat with:

- *depositary of the Convention (Ministry of Foreign Affairs of Belgium);*

- *a specialist in international contract law (Legal Adviser of the WCO Secretariat);*

- *Commission of the European Community;*

- *Familiarization with various published sources of information on EU membership in some other intergovernmental organizations.*

The aim is to obtain an initial position on the legal aspects of EU membership in the WCO and prepare background material to form the basis for discussions in the PC and the Council.

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<sup>1</sup> On basis unanimous solutions Council European Communities March 19, 2001 (Decision by the Council of the European Communities of 19 March 2001).

8. Preparation by the WCO Secretariat of background material dated 31.05.2001<sup>1</sup> for the 45th PC meeting (25-27 June 2001) to provide a basis for discussions (based on consultations, see paragraph 7 above).<sup>2</sup>

9. Formation of position by the WCO Secretariat (31.05.2001). The Policy Commission was invited to conduct a preliminary discussion on the issues raised in the background paper and make recommendations to the Council on:

a) the principle of starting negotiations with a view to

(i) EU membership in the WCO; and

(ii) in the short term, the introduction of measures aimed at facilitating the participation of the EU in the work of the WCO; and

(b) if this principle is to be accepted, the procedures to be put in place for the success of these negotiations.

10. Carrying out political discussions initiated by governments and the EU, seeking a political solution (since the dissemination of the information note of the WCO Secretariat dated May 31, 2002).

11. Planning for a preliminary discussion of the EC request at the PC and Council meetings in June 2001.

12. Preliminary discussion of the EC request at the 45th session of the WCO PC (25-27 June 2001)<sup>3</sup> with the participation of the EC Director General responsible for taxation and the customs union.

The following actual elements are considered:

– Current status of the EU in relation to the WCO (2001).

– Legal and practical provisions adopted in the organizations of which the EU is already a member (Food and Agriculture Organization of the United Nations; World Trade Organization (WTO)).

– Legal issues related to the EU request.

13. Participation of the EC Director General responsible for taxation and the customs union in the 45th meeting of the WCO PC (25-27 June 2001) in discussions on the Secretariat's approach to EU membership in the WCO, as well as the submission of a Community request for membership.

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<sup>1</sup> Information is provided on the current status of the European Community in relation to the WCO, the provisions adopted in the two organizations (FAO and WTO) of which the European Community was a member at that time, as well as on the legal issues raised in the request for European Community membership.

<sup>2</sup> Mozer S.V. Organizational and legal aspects of the membership of the European Communities in the World Customs Organization as a precedent for customs and economic unions // Socio-political sciences. – № 4. – 2022 URL: <http://customs-academy.net/?p=14924>

<sup>3</sup> With the participation of the Director General of the European Commission, responsible for taxation and the customs union.

14. Discussion of the EC application at the 97-98 sessions of the WCO Council (28-30 June 2021). Event results:

The Chairman of the Council stated that there is no agreement in the Council and the PC on the principle of starting negotiations on EU membership in the WCO.

The Council agreed with the PC that it would be premature at this stage to set up a working group to start a negotiation process or take provisional measures.

Many questions have been raised that require further study, incl. related not only to customs matters, but also to the constitutional, legal or practical aspects of the EU request.

Various national authorities will need to be consulted.

The most logical solution would be to postpone the response to the EU request (for a year – *author's note*) until the end of Council meetings in June 2002 and leave this document open in order to give WCO members more time for consultation and reflection, and also to facilitate the collection of additional information.

The Chair requested the Secretary-General, through the Vice-Chairs, to draw up a list of specific questions from Members that they considered merited further study.

15. Participation of the EU representative in the 97-98 sessions of the WCO Council (28-30 June 2021) when discussing this issue and presenting the Community request for membership, as well as explaining the motives (reasons) underlying the EU request for membership.<sup>1</sup>

16. **Additional information for stage I** (on the establishment of a negotiating structure):

Proposals from the WCO Secretariat regarding *practical measures to process a request from the EU*:

- *Acceptance of the principle of EU membership as worthy of study, the consequence is the initiation of a process of further consideration of issues leading to negotiations on an acceptable outcome.*

- *Adoption of the principle of starting negotiations with a view to EU membership in the WCO at Council meetings.*

- *Development and harmonization of the methodology of negotiations with the aim of EU membership in the WCO. Negotiations should be bilateral, that*

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<sup>1</sup> Mozer S.V. Organizational and legal aspects of the membership of the European Communities in the World Customs Organization as a precedent for customs and economic unions // Socio-political sciences. – № 4. – 2022 URL: <http://customs-academy.net/?p=14924>

is, between, on the one hand, representatives of the EU, and on the other, representatives of the WCO.

*Formation of two negotiating groups:*

- *the creation of a Community negotiating group, which consists exclusively of EC officials; EU member states do not participate in the negotiations;*

- *Establishment of a WCO negotiating group: this should be a small but representative group of members, possibly consisting of the Chair and Vice Chairs of the Council, as well as a few other members appointed as Vice Chairs to ensure the best possible regional balance. The Chairman of the Council was supposed to head this negotiating group.*

In conclusion, we note that neither in the PC nor in the Council was there agreement on the principle of initiating negotiations with a view to EU membership in the WCO. At its 97th-98th sessions (28-30 June 2001), the Council decided to keep this topic open until June 2002 to give Members more time for consultation and considerations, and to facilitate the gathering of additional information.

## **SECOND STAGE**

We analyzed the second negotiation stage, during which the international customs community actively discussed the possibility of granting WCO member status to the EU. A feature of this stage is the formation of questions and the preparation of answers about potential EU membership (after the 97/98 Council sessions, June 28-30, 2001).

The analysis of the WCO materials made it possible to identify **6 groups of questions on the subject of the study**, which include **24 questions**:

- general questions on regional economic groupings (associations);
- general questions at the request of the EU;
- competence of the EU in the WCO;
- on amendments to the CCC Convention;
- EU membership fees to the WCO;
- participation of the EU in the work of the WCO.

The classification given is as follows:

*General questions on regional economic groupings (associations)*

1. Should the EU request be considered in isolation, or would it be preferable to work on the assumption that other customs unions may qualify for WCO membership in the future?<sup>1</sup>

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<sup>1</sup> The most frequently raised issue during the discussions.

2. What is the current legal status and future expectations of the various regional economic groupings to which WCO members belong?

2.1. What way these groupings are currently use and are expected to use in the future their member states in customs affairs?

2.2. Do these regional groups consider it possible to apply for WCO membership? and

2.3. How would the Member States concerned react in such a case?

3. How are customs unions and trade groupings treated in other international organizations in terms of having observer status or full membership?

*General questions at the request of the EU*

4. What benefits will EU membership bring to the WCO?

5. What will be the impact on the day-to-day work of WCO technical committees when an economic union represents its members (e.g. in terms of the quality of the discussion)?

6. Has the EU applied for membership in any other intergovernmental organizations and been rejected (and if so, for what reasons), and are any organizations other than the WCO currently discussing an application for EU membership?

7. Could a proposal from the EU and possibly other customs unions of a similar status besides membership represent a better approach to the issue?

8. What is the position of the EU in relation to other international organizations?

9. Is it worth doing a study to determine the benefits of EU membership for the WCO?

Note : The only party that opposed any research on the possibility of starting negotiations with the EU on this topic was the United States.

*Competence of the EU in the WCO*

10. Clarifications should be given on the issue of competence in order to give the WCO members a clear and complete understanding of the practical implications that may arise from the admission of the EU as a member of the WCO.

11. If the EU were to become a member of the WCO, what would be its role compared to that of the EU Member States in the activities of the Organization?

12. If the EU becomes a WCO member, in what areas of WCO activities will the European Community exercise the rights and obligations of its member states, and in what areas will EU member states continue to exercise their rights (including the right to vote) individually?

13. Can a distinction be made, for example by color coding, between agenda items for which the EU will be responsible and those that will remain the responsibility of individual EU Member States?

14. If the EU were to become a member of the WCO, what would be its role, compared to that of its member states, in the activities of the Organization?

*On Amendments to the Convention Establishing the Customs Cooperation Council*

15. Is the WCO really wish to accept the EU as a member and, if so, should appropriate amendments be made to the CCC Convention and other legal instruments with reference to the EU only or to customs and economic unions in general?

16. Should there be a general revision of the CCC Convention, and not just an amendment to it, given that this convention was conceived as a technical instrument fifty years ago and the needs of members have changed over time?

17. What amendments need to be made to the CCC Convention (and other WCO legal instruments) to allow the EU to become a member?

18. Can, in practice, the European Community be granted rights similar to those of members (including the right to vote) prior to actual membership?

19. Is there a need to standardize the status of the EU in the various WCO committees?

*EU membership fees to the WCO*

20. How will the issue of membership fees be handled?

*EU participation in the work of the WCO*

21. In case of accession to the WCO, will the EU (or any other customs union) participate in the governance structures of the Organization, i.e. the Finance Committee and the Policy Commission?

22. What will be the relationship between the EU (or any other customs union) and WCO regional structures?

23. About seating at sessions. If it is agreed that the WCO should start negotiations on Community membership, should there be any changes to the seating arrangements for WCO sessions and EU interventions in the meantime?

*Voting right*

24. What voting rights will the EU have?

In light of the foregoing, the WCO Secretariat has proposed that the following studies be carried out in the first half of 2002 to help Member States decide whether or not to start negotiations in view of EU membership in the WCO. In doing so, **6 themes** were identified :

- current status/aspirations of regional groupings around the world (executor – Vice Chairs, Secretariat);
- EU relations with other intergovernmental organizations (executor – EC, Secretariat);

- relations of other regional groupings with intergovernmental organizations (executor – vice-chairmen, Secretariat);
- the benefits of EU membership in the WCO (executor – EU, Secretariat, interested members);
- the competence of the EU and the EU member states in the case of EU membership in the WCO (executor – the EU);
- the likely impact of EU membership on the day-to-day activities of WCO technical committees (executed by the Secretariat).

### **Answers to questions by the European Community**

On 24 April 2002, the EC submitted to the WCO Secretariat its position on the three issues listed in the Secretariat's paper on possible topics for study, namely:

- distribution of powers between the EU and its member states;
- EU relations with other international organizations; and
- why EU membership would be beneficial for the WCO.

According to the author, the answers provided by the EU to the questions posed are incomplete and do not give a clear idea, for example, of the EU's relations with international organizations, as well as the benefits of EU membership for the WCO. The main emphasis was placed on the so-called uniqueness of the EU and its central place in the system of relations with EU member states. The EU thesis about the absence of the need to submit a declaration on the division of competence between the EU and its member states, as well as the constant development of the competence of the Community and the difficulty of developing a position (on the division of competence – *author's note*) before the start of the negotiation process on obtaining the status of a WCO member. At the same time, as noted in the materials of the EU, the issue of division of competencies is the sole responsibility of the EU and its member states. In other words, there is exclusive competence, but information on the division of responsibility (competence) between the EU and its Member States cannot be provided. And this despite the fact that until today, in accordance with the CCC Convention, customs and economic unions cannot be members of the WCO, but only observers.

It is worth noting that *most of the questions* about the potential EU membership in the WCO, which were voiced by the WCO member countries at the sessions of the PC and the Council, *were not included in the generated list of questions* sent by the Secretariat to the EU and vice-chairs for the regions of the Organization. For example it were ignored *the issues of EU membership fees in the*

*WCO, the right to vote of the EU, the standardization of the status of the EU in various WCO committees, the impact on the daily work of WCO technical committees (quality of discussion), the role of the EU compared to the role of EU Member States in the activities of the WCO, areas of activity of the EU and EU member states in the WCO, relations between the EU and regional structures of the WCO, etc.*

Here are the main theses from the EU's responses to the questions posed:

1. The EU is more than a customs union. It constitutes an economic union that has achieved a unique level of integration at the international level.<sup>1</sup>

2. There is no need for a declaration on competence sharing the responsibility between the EU and its Member States. In addition, Community competencies are in a permanent state of evolution. It would be very difficult to establish such a position before the negotiating process started. In addition, the question of the sharing of competencies is solely the responsibility of the EC and its' Member States.<sup>2</sup>

3. EU member states<sup>3</sup> have built much more between themselves than a free trade area or a simple customs union. They act in commercial and customs affairs as if they formed one country in which internal borders between states have been abolished.

4. The EU customs union is based on common legislation adopted by a qualified majority, not unanimously. This legislation no longer falls within the legal competence of the EU Member States, which, by the Treaty of Rome, have transferred decision-making power on this matter to specific common institutions.

5. Customs legislation is adopted according to a decision-making process where, in certain cases, the European Parliament plays an essential role; and

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<sup>1</sup> Point 2.1. Annex V to doc. SP0102E1. Membership Request from the European Community. Policy Commission. SP0102E1. 47th session. Brussels, 31 May 2002. – P.V/1.

<sup>2</sup> Ibid.

<sup>3</sup> Germany, Austria, Belgium, Denmark, Spain, Finland, France, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, United Kingdom of Great Britain and Northern Ireland, Sweden. Ongoing accession negotiations with Bulgaria, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Czech Republic, Romania, Slovakia, Slovenia foresee a union of 27 member states in the near future (Turkey is also a candidate country) // Germany, Austria, Belgium, Denmark, Spain, Finland, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, the United Kingdom of Great Britain and of Northern Ireland, Sweden. The current accession negotiations with Bulgaria, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Czech Republic, Romania, Slovakia, Slovenia allow to foresee, in the near future, a union of 27 Member States (Turkey is also a candidate country).

this Parliament, made up of Members elected directly by European citizens, is the expression of genuine European sovereignty.<sup>1</sup>

6. The Customs Code which is common to all 15 Member States of the EC, is directly applicable in each, and constitutes a unified customs territory.<sup>2</sup>

7. The adoption of customs legislation falls to common Institutions, created by the Treaty of Rome, the Council of the European Union, the European Parliament and, as regards the measures of implementation and control of Community law, the European Commission, which replaced the national authorities of the Member States. In addition a Court of Justice was created to interpret Community law. This customs union constitutes a unique example of developed integration, for customs as well as for political, legal, economic and monetary aspects.<sup>3</sup>

8. In this Community architecture, the European Commission occupies a central place.

9. The European Commission is guarantor of application of the Community customs law, which ensures equivalent results throughout the customs territory of the EC. In fact, the European Commission is at the center of this process of co-ordination of actions of these administrations, ensuring that the latter act as if they formed only one administration.<sup>4</sup>

10. All the fields in which the scope of the WTO and the WCO overlap fall within the exclusive competence of the EC (customs value, origin, tariff measures, counterfeits, facilitation of trade, etc).

11. Competence shared with competencies of Member States – training, money laundering, nuclear products.

12. Some customs matters connected with measures aiming to ensure the respect of law and order still fall within the exclusive competence of the Member States of the EC.<sup>5</sup>

13. It is indispensable for the proper functioning of the EC that the sharing of competencies between the EC and its Member States be extended at external level, within the framework of EC participation in the work of international organizations such as the WTO or the WCO.

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<sup>1</sup> Point 2.9. Annex V to doc. SP0102E1. Membership Request from the European Community. Policy Commission. SP0102E1. 47th session. Brussels, 31 May 2002. – P. V/4.

<sup>2</sup> Ibid.

<sup>3</sup> Point 2.11. Annex V to doc. SP0102E1. Membership Request from the European Community. Policy Commission. SP 0102 E 1.47th session. Brussels, May 31, 2002. – P. V /5.

<sup>4</sup> Ibid. Point 2.12.

<sup>5</sup> Ibid. Point 2.13.

14. The vast majority of issues dealt with by the WCO fall within the exclusive competence of the EU.

15. At the legal level, the Member States no longer have the power to take almost all decisions taken on customs matters.

16. The accession of the EU to the WCO will clarify the situation in the interests of both this organization and its members, and at the same time satisfy the internal legal reality of the EU.

17. The fact that the EU can only act through its member states creates an undoubted confusion that is detrimental to the normal functioning of the WCO itself. The EU cannot fully participate in the work of the two main bodies, the WCO Council and the Permanent Technical Committee, as it can in other WCO bodies.

In our opinion, the main incident is that when forming a new status of the EU in the WCO, within the framework of the international customs organization, an attempt is made to transfer the competences of the European group of WCO member countries to an entity (EU) with observer status, which, by virtue of WCO law, cannot be a member of this organization. According to the EU, the Community has exclusive competence in matters of customs regulation within the framework of European institutions and a similar situation should be for it in the WCO. And for these purposes, little is needed – to change the status of an observer to the status of a WCO member. In this case, the status of the customs administrations of the EU member states becomes nominal, since decisions will be made for one or another customs administration in Brussels.

### **Measures to obtain the status of a WCO member**

The analysis of the second stage of obtaining EU status in the WCO made it possible to identify several more activities that were necessary to fulfill the EU application:

1. The President of the WCO Council requests the Secretariat, with the participation of the Vice-Presidents, to compile a list of specific issues deserving further study (97-98 sessions of the WCO Council (28-30 June 2001)).

2. Formation by the Secretariat of a list of questions on the issues of EU membership in the WCO (after the 97/98 Council sessions, June 28-30, 2001).

3. Preparation by the Secretariat of a list of questions on the issues of EU membership in the WCO to the Policy Commission.

4. The WCO Secretariat considered it premature to consider the questions that had been formed, although there was no doubt that they were of great importance in the negotiations on EU membership in the WCO (voiced on November 6, 2001).

5. With the consent of the PC, studies on the identified issues are planned to be submitted to the Policy Commission and the Council.<sup>1</sup>

6. Contacting the Secretariat in writing to the Vice-Presidents to see if members in their respective regions wish to propose any aspects of the EU membership request that should be further explored (following the 97/98th sessions of the Council, which took place on 28 – 30 June 2001).

7. Received by the Secretariat a response from the Vice-Chair, Delegate of the United Kingdom representing the European Region, with a list of possible topics for study identified by Members in the European Region (22 October 2001).

8. Presenting to survey participants a list of possible topics for study, which have been previously identified by member countries of the European Region.

9. Holding consultations at the regional level by Vice-Chairs with WCO members. The goal is to get an opinion on the consequences for the WCO of the emergence of free trade areas and agreements, customs unions and other similar phenomena.

10. Formation by November 2001 by the WCO Secretariat of the questionnaire. The aim is to assist member countries in deciding whether to start negotiations given the EU's membership in the WCO. Areas of study (6 questions):

- current status/aspirations of regional groupings around the world (executor – Vice Chairs, Secretariat);

- EU relations with other intergovernmental organizations (executor – EC, Secretariat);

- relations of other regional groupings with intergovernmental organizations (executor – vice-chairmen, Secretariat);

- the benefits of EU membership in the WCO (executor – EU, Secretariat, interested members);

- the competence of the EU and the EU member states in the case of EU membership in the WCO (executor – the EU);

- the likely impact of EU membership on the day-to-day activities of WCO technical committees (executed by the Secretariat).

Note: These questions were identified (agreed) by the PC at its 46th session in December 2001 and were requested by the PC, the Secretary General and WCO Members for a fact-based decision.

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<sup>1</sup> Moser S.V. Organizational and legal aspects of the membership of the European Communities in the World Customs Organization as a precedent for customs and economic unions // Socio-political sciences. – № 4. – 2022 URL: <http://customs-academy.net/?p=14924>

11. By the 46th session of the PC, December 10-12, 2001, the WCO Secretariat formed the following positions:

In order to examine the issue of EU competence, it is necessary to send copies of the agendas of all meetings of the working bodies of the WCO in the last 12 months to the EC with a request to distinguish – for example, by color coding – between agenda items of the meeting for which the European Community will be responsible and those for which will remain the responsibility of individual members (in fact, the proposal has not been implemented – *author's note*);

it is proposed that the WCO Secretariat assess the possible impact of EU membership on the day-to-day work of WCO technical committees by comparing the degree of participation of EU Member States and the European Commission in (i) a committee of which the EU is a member (e.g. the HS Committee), and (ii) a committee, in which the EU participates as an observer (for example, the Law Enforcement Committee) (the proposal was not implemented – *author's note*).

12. Consideration of the issue of EU membership in the WCO at the 46th session of the PC (10 – 12 December 2001). Decisions taken:

- the WCO Secretariat has identified possible areas of study and fulfilled its mandate;

- issues in the working paper that are of direct relevance to the EU and its application for WCO accession will be referred to the EU for further comments, inputs and research;

- at the regional level, the Vice-Chairs will consult with WCO members to seek their views on the implications for the WCO of free trade areas and agreements, customs unions and other such phenomena;

- the PC will return to this issue in June 2002 based on inputs (positions) to be received from the EU and the Vice Chairs.<sup>1</sup>

13. In December 2001, the PC instructs the WCO Secretary General to receive answers to the questions asked in accordance with the questionnaire developed by the Secretariat.

14. The Secretariat in December 2001 invited the EC to provide preliminary information:

- about the relations that customs and economic groupings in the European Region maintain with various intergovernmental organizations;

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<sup>1</sup> Mozer S.V. Organizational and legal aspects of the membership of the European Communities in the World Customs Organization as a precedent for customs and economic unions // Socio-political sciences. – № 4. – 2022 URL: <http://customs-academy.net/?p=14924>

- about the benefits of EU membership for the WCO;
- on the competence, practical consequences that may arise as a result of the EU's admission as a member of the WCO.

The Secretariat's formal letter of response was sent to the EU on 7 February 2002.

15. Presentation by the European Community on April 24, 2002 to the WCO Secretariat of materials (positions) on those research issues that are directly related to it:

- distribution of powers between the EU and its member states;
- EU relations with other international organizations;
- why EU membership would be beneficial for the WCO.

16. Provision by Vice-Presidents of the views of WCO members by region on the implications for the WCO of the emergence of free trade areas and agreements, customs unions, etc.

- 26.04.2002 – Deputy Chairman of the Asia-Pacific region.
- 06.05.2002 – Deputy Chairman from the region of North Africa, the Near and Middle East.
- May 17, 2002 – Deputy Chairman of the European Region of the WCO.

17. By the 47<sup>th</sup> session of the PC, June 24-26, 2002, the WCO Secretariat formed the following positions:

It has become obvious to the WCO Secretariat and it would be inappropriate to take a stand on what is essentially a matter of national policy. In these circumstances, the Secretariat limited itself to indicating that the options open to the PC could include the following:

- to recommend to the Council to start negotiations with a view to EU membership, while the Secretariat will be instructed ***to prepare a draft terms of reference*** for negotiations (the event has not been implemented – *author's note*);
- recommend to the Council *to defer consideration of this issue* until WCO priorities allow it to allocate the necessary time and resources;
- recommend to the Council *to reject the EU's request* for negotiations;
- to recommend to *the Council not to take a decision on the EU request* for the time being, pending further consideration at the national level and/or provision of additional information (to be determined by the Policy Commission).

18. 47th session of the WCO Policy Commission (24 – 26 June 2002). The WCO Secretariat no longer saw the need for the PC to undertake any further studies at this stage. The Head of the WCO Secretariat undertook to keep the PC and Council informed of any developments that could be reported to him in the course of political discussions.

In turn, the PC took note of the Secretary General's comments and agreed with him that this issue should be left open. The Secretary General was requested to monitor the situation and report to the PC and the Council when events occur that need to be brought to their attention.<sup>1</sup>

19. 99/100 Sessions of the WCO Council (27-29 June 2002). The issue of EU membership in the WCO was considered. The Council took note of the following information: the Chairperson of the Council explained that the Secretary General had informed the Policy Commission that the issue of EU membership in the WCO was currently the subject of political discussions initiated by governments and the EU, and suggested that it be left open until found a political solution. The PC requested the Secretary General to monitor the situation and keep the PC and Council informed of developments that need to be brought to their attention.

### **On the risks associated with obtaining the status of a WCO member**

Above we systematized the risks that, in the opinion of WCO members, could arise in connection with granting the EU the status of a WCO member. The list below contains additional risks that the Secretariat and WCO Members have voiced in the framework of the formation of questions and preparation of answers on the legal status of the EU:

- the amendment of the CCC Convention (in terms of granting EU membership – *author's note*) is not a priority, necessary or in the interests of the WCO;<sup>2</sup>
- the competence of the EU and its member countries will not be clearly defined in all cases dealt with by the WCO. This, in turn, will increase uncertainty in customs facilitation and enforcement efforts and place a greater burden on the WCO;
- it is necessary to conduct a study to determine the benefits of EU membership for the WCO. According to the WCO Secretariat, this could be a key issue for member countries as they seek to determine their national position with regard to the EC membership request;<sup>3</sup>
- the question of whether to revise the CCC Convention as a whole, rather than simply amending it to allow EU membership, will not arise unless the

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<sup>1</sup> Mozer S.V. Organizational and legal aspects of the membership of the European Communities in the World Customs Organization as a precedent for customs and economic unions // Socio-political sciences. – № 4. – 2022 URL: <http://customs-academy.net/?p=14924>

<sup>2</sup> USA position.

<sup>3</sup> Point 20. Membership Request from the European Community. Item XI on the Agenda. Policy Commission. 46th session. SP0085E1. Brussels, 6 November 2001. – P.4.

*principle of negotiating* such membership is accepted. Therefore, it is premature to consider this issue;<sup>1</sup>

- the limited resources of the Secretariat should not be spent on studying the issue of EU membership in the WCO, especially in the light of the discussions on the need to prioritize the work of the Organization and meet the requirements of members as a whole;

- Opening the CCC Convention for amendments will require extremely large resources and time. This will divert attention from the work of the already limited resources of the Organization;

- the process may take years to complete and the results are uncertain;

- the resources of the Secretariat have been exhausted to carry out the work of priority for its members, as indicated in the Strategic Plan;<sup>2</sup>

- Some WCO Members do not want the resources of the Secretariat to be used to resolve the issue of EU membership, as other more important priorities must be resolved within the Strategic Plan.

The next element that we traditionally single out in the conclusions based on the results of the study of the issue is *the position of the United States*. Within the framework of the analyzed stage it is as follows:

The United States Government, after internal deliberations, gave the most careful consideration to the EC's request for WCO membership, as well as the possibility of conducting a study on the request for EU membership. It studied the implications of amending the Convention and considered the resources that would be required to do so.

As stated at the June PC and Council meetings, the United States does not believe that amending the Convention as requested would be in the Organization's best interest.

The United States valued the continued involvement of the EC in the WCO as an observer. According to the US, *the EC had an ability to represent its views fully; through its Member States it had the ability to join or block consensus in areas of its competence*. The United States did not believe that an amendment to the Council Convention was a priority, was a necessity, or was in the best interest of the WCO. Opening the Convention to amendment would be extremely resource and time intensive. It would detract from the Organization's already limited resources and would divert attention from work prioritized by the Members in the Strategic Plan. The process could take years to complete, with un-

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<sup>1</sup> Position of the WCO Secretariat.

<sup>2</sup> US position.

certain results. The WCO's limited resources should instead be used to advance Customs facilitation measures that addressed the needs of the trading community and administrations' respective law enforcement responsibilities.<sup>1</sup>

EC-divided competency *would not be clear-cut in all cases dealt with by the WCO*, and this in turn would increase uncertainty in efforts on Customs facilitation and law enforcement. This would impose greater burdens on the WCO.<sup>2</sup>

Therefore, the United States did not favour amending the Convention. In fact, the Convention already contained membership criteria that the European Commission could utilize when it met them. The United States also recommended against the Secretariat undertaking any studies regarding the possibility of opening negotiations with the EC on this topic. The United States felt that the Secretariat's resources were stretched to capacity in conducting the work prioritized by its Members as outlined in the Strategic Plan.<sup>3</sup>

*On the merits of the issue of amending the Convention of the Customs Cooperation Council*, 2 theses can be distinguished:

- the admission of the European Community as a member of the WCO would require amendments to the Council Convention; and
- an amendment to the Convention will require the express written consent of all Contracting Parties to the Convention.

## Conclusions

The study allowed us to identify 4 stages in which the EU has made efforts to obtain a status similar (akin to) to WCO membership. This article analyzes the organizational and legal features and the first two stages on the EU's path to WCO «membership».

The author systematizes the main theses of the EU on obtaining the status of a WCO member, highlights the risks associated with such membership, and also formed a number of issues that deserve attention (6 groups on the subject of study). Moreover, the research article analyzes the position of the EU on the issues voiced, and also highlights measures to obtain the status of the WCO member).

According to the author, the EU does not have the status of a WCO member (member of the Council), since, in accordance with the CCC Convention, such status is granted only to states (members of the Council are the government of any separate customs territory). Customs and economic unions as

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<sup>1</sup> Point 107. Report of the Policy Commission. 46th session. SP0090E1. Brussels, 29 January 2002. – P.20.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

international organizations are entitled to receive only observer status. The thesis about the exclusive role of the EU, the presence of some moral right to membership in the WCO, is contrary to the norms of the CCC Convention, has no legal consequences.

The results of the study are proposed to be used within the framework of the expert activities of the EEU, in particular, the Working Group on Interaction with the World Customs Organization, established on March 29, 2022 by order of the EEC Board № 55.<sup>1</sup>

## BIBLIOGRAPHIC LIST

1. *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://customs-academy.net/wp-content/uploads/2018/11/Мон.-ВТамО\\_Кадыркулов\\_Мозер\\_Липатова\\_.pdf](http://customs-academy.net/wp-content/uploads/2018/11/Мон.-ВТамО_Кадыркулов_Мозер_Липатова_.pdf)
2. *Mozer S.V.* Organizational and legal aspects of the membership of the European Communities in the World Customs Organization as a precedent for customs and economic unions // Socio-political sciences. – № 4. – 2022. URL: <http://customs-academy.net/?p=14924>
3. *Mozer S.V.* On the issue of organizing effective legal relations with the World Customs Organization: recommendations for customs and economic unions // Problems of Economics and Legal Practice. – № 4. – 2022. URL: <http://customs-academy.net/?p=14597>
4. *Mozer S.V.* Analysis of the legal instruments of the European Union governing its legal status in the World Customs Organization. // Socio-political sciences. – № 5. – 2022. URL: <http://customs-academy.net/?p=15114>
5. The EEC creates a legal framework for effective coordination of the actions of the EEU customs services with the WCO. 08.06.2022. URL: <http://customs-academy.net/?p=14390>
6. A road map for development of cooperation with the World Customs Organization/ EEC News. 27.09.2022. URL: <http://customs-academy.net/?p=14524>
7. Strategic Directions for the Development of Eurasian Economic Integration until 2025. Approved by the Decision of the Supreme Eurasian Economic Council dated December 11, 2020 № 12. URL: [https://docs.eaeunion.org/docs/ru-ru/01428320/scd\\_12012021\\_12](https://docs.eaeunion.org/docs/ru-ru/01428320/scd_12012021_12)

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<sup>1</sup> The EEC creates a legal framework for effective coordination of the actions of the customs services of the EAEU countries with the WCO. June 8, 2022 URL: <http://customs-academy.net/?p=14387> ; The EEC considered approaches to the formation of an action plan for organizing cooperation with the WCO// EEC News, 09/27/2022. URL: <http://customs-academy.net/?p=14516>

8. International Convention on the Simplification and Harmonization of Customs Procedures of May 18, 1973 as amended by the Protocol on Amendments to the International Convention on the Simplification and Harmonization of Customs Procedures of June 26, 1999. Electronic fund of legal and normative-technical documents «Consortium Code». URL: <https://docs.cntd.ru/document/1901082>
9. Membership Request from the European Community. (Item X on the Agenda – Other business). Policy Commission. 45th Session. SP0071E1. Brussels, 31 May 2001.
10. Report of the Policy Commission. 45th Session. SP0075E2. Brussels, 27 June 2001.
11. Membership Request from the European Community. Item XI on the Agenda. Policy Commission. 46th Session. SP0085E1. Brussels, 6 November 2001.
12. Report of the Policy Commission. 46th Session. SP0090E1. Brussels, 29 January 2002.
13. Membership Request from the European Community. Policy Commission. SP0102E1. 47th Session. Brussels, 31 May 2002.

## 6. ORGANIZATIONAL AND LEGAL FEATURES OF OBTAINING BY THE EUROPEAN UNION RIGHTS AND OBLIGATIONS AKIN TO THOSE ENJOYED BY THE WCO MEMBERS<sup>1</sup>

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The presented research material is a continuation of a previously published article on the organizational and legal features of obtaining membership in the World Customs Organization (WCO) by the European Communities (EC), contains an analysis of the third and fourth stages (2006-2007), within which the EC received rights and obligations akin to those of the World Customs Organization Members.

### **Task**

To systematize and analyze legal and organizational features, as well as activities aimed at obtaining rights and obligations akin to those enjoyed by the WCO members for the EC in the period from 2006 and 2007.

### **Conclusions**

The research article is devoted to the issues of the legal status of the EU in the WCO and the use of the EU precedent for the implementation of the Strategic Directions for the Development of Eurasian Economic Integration until 2025 (Strategic Directions) in terms of joint actions with Member States aimed at obtaining by the Union the WCO membership status.

The subject of the study is the stages, activities, organizational and legal instruments and consequences of EU membership in the WCO.

The performed analysis of stages and legal and organizational features of obtaining by EU the WCO membership can be used to develop conceptual approaches for the Eurasian Economic Union (EEU) to obtain the WCO membership status in the course of implementing the Strategic Directions.

### **Social Consequences**

Conducting a study of the legal status of customs and economic unions in the WCO is associated with the implementation of paragraph 11.7.5. of Strategic Directions in terms of cooperation with this international organization.

### **Practical value**

The results of the study are of interest to the customs cooperation block of the Eurasian Economic Commission (EEC) and can be used by specialists from customs and other executive authorities in the EEU member states, EEC experts to organize and implement mutually beneficial customs cooperation between the EEC and the WCO.

The article is recommended to researchers, teachers, students, graduate students and other categories of students in the Russian Customs Academy, in other universities and the WCO regional training centers in the specialties «Customs» and «Jurisprudence».

### **Originality/value**

The research material is based on an analysis of the practical aspects of the activities of the EU, the WCO and is the result of a comprehensive study of the issue of the legal and organizational basis for obtaining the WCO member status by economic and customs unions.

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<sup>1</sup> *Mozer Sergei.* Organizational and legal features of obtaining by the European Union rights and obligations akin to those enjoyed by the WCO members // Gaps in Russian Legislation. – № 7. – 2022. (Article) URL: <https://customs-academy.net/?p=17899>

**Keywords:** *The World Customs Organization, the WCO, the Eurasian Economic Union, EEU, the Eurasian Economic Commission, EEC, European Communities, European Union, EU, EC, customs regulation, customs administration, international customs law, customs, customs and economic union, legal instruments and tools.*

## Introduction

Effective development of trade relations is impossible without creating a favorable legal climate. The presence of stable and flexible legal means that ensure a balance of interests of business and regulatory government authorities in terms of compliance with customs legislation is a guarantee of minimizing the impact of global economic challenges, including in the Eurasian Economic Union (Union). The Customs Cooperation Block of the Eurasian Economic Commission (Commission, EEC) actively interacts with the international customs community on the study of best practices in customs regulation. Bilateral relations with the World Customs Organization (WCO) can be called productive, on the platform of which the Commission participates in the development and modernization of the WCO legal instruments and tools. Such cooperation is transformed into expert work within the Commission and the Union to improve the law in the field of customs.

The study of the issues of the legal status of the European Union<sup>1</sup> (EU) in the World Customs Organization began at the expert level of the Eurasian Economic Commission in 2015, when a request was received from one of the countries of the Eurasian Economic Union to consider the question of obtaining the so-called «associated membership of the WCO» by the Union.<sup>2</sup> With the adoption of the Strategic Directions for the Development of Eurasian Economic Integration until 2025<sup>3</sup> (Strategic Directions) and the establishment in the Commission of a Work-

<sup>1</sup> On December 1, 2009, after the entry into force of the Treaty of Lisbon, the successor of the European Community became the European Union (therefore, the concept of the European Community has not been used since).

<sup>2</sup> See, for example, Goshin V.A., Mozer S.V. Prospects for the entry of the Eurasian Economic Union into the World Customs Organization // Features of state regulation of foreign trade activities in modern conditions: materials of the II scientific and practical conference (Rostov-on-Don, November 19-20, 2015) V. 2 h. Part 1 – Rostov n/a: Russian Customs Academy, Rostov branch, 2015. – p.20-29. «RCA: Science»: <http://www.customs-academy.net/?p=8539>; Goshin V.A., Mozer S.V. The possibility of obtaining the status of a member of the World Customs Organization by economic and customs unions: the experience of the European Union // Bulletin of the Russian Customs Academy № 4, 2015. p. 52-60. URL: <https://www.elibrary.ru/item.asp?id=24913948>.

<sup>3</sup> Strategic Directions for the Development of Eurasian Economic Integration until 2025 / Approved by the Decision of the Supreme Eurasian Economic Council dated December 11, 2020 № 12. «On Strategic Directions for the Development of Eurasian Economic Integration until 2025». URL : [https://docs.eaeunion.org/docs/ru-ru/01428320/scd\\_12012021\\_12](https://docs.eaeunion.org/docs/ru-ru/01428320/scd_12012021_12)

ing Group on interaction with the WCO in 2022,<sup>1</sup> the issue of conducting joint actions with Member States aimed at obtaining the Union's membership status in the WCO received legal consolidation and subsequent development.

By virtue of the Convention Establishing a Customs Co-operation Council of 1950<sup>2</sup> (CCC Convention, Convention) *members of the Council are* (1) the Contracting Parties to the present Convention, (2) the Government of any separate Customs territory. According to paragraph (d) of article II of the same Convention, «the Council may admit representatives of non-Member Governments or of international organizations in the capacity of *observers*».<sup>3</sup> Thus, membership of an international organization (for example, a customs or economic union) in the WCO is limited to the legal status of an «observer».<sup>4</sup>

Thus, there are no legal grounds for the membership of the Union in the WCO. Despite this, the thesis is put forward about the use of the EU precedent in the WCO. For experts who draw parallels with the EU and follow this line, we note that *the EU is not a member of the WCO*, but has *rights and obligations akin to those of WCO Members*. Along with this, there is no legal interpretation of what should be understood by such a status.<sup>5</sup>

Without going into deep analysis, one can refer to the materials of the WCO Secretariat dated 14.07.2022 «Brief overview (synopsis of positions) of Conventions sponsored or administered by the Customs Co-operation Council», where the European Union belongs to the group of entities **not members of the Council** (Council non – members)<sup>6</sup>, that is, it does not have the status of a WCO member (*author's note*).

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<sup>1</sup> Order of the EEC Board dated March 29, 2022 № 55 «On the Working Group for Interaction with the World Customs Organization». IS Alta -Soft. URL : <https://www.alta.en/tamdoc/22r00055/>

<sup>2</sup> Convention Establishing Customs Cooperation Council, 1950. Electronic fund of legal and regulatory documents «Consortium Code». URL: <https://docs.cntd.ru/document/1900878>

<sup>3</sup> Paragraph (d) of Article II of the 1950 Customs Cooperation Council Convention URL: [http://www.wcoomd.org/en/about-us/legal-instruments/~/\\_media/85C43EA98BB443FABAE073FD17B0965B.ashx](http://www.wcoomd.org/en/about-us/legal-instruments/~/_media/85C43EA98BB443FABAE073FD17B0965B.ashx)

<sup>4</sup> *Mozer S.V.* Organizational and legal aspects of the membership of the European Communities in the World Customs Organization as a precedent for customs and economic unions // Socio-political sciences. – № 4. – 2022. URL: <https://customs-academy.net/?p=14924>

<sup>5</sup> *Mozer S.V.* On the organization of effective legal relations with the World Customs Organization: recommendations for customs and economic unions // Problems of Economics and Legal Practice. – № 4. – 2022 URL : <https://customs-academy.net/?p=14597>

<sup>6</sup> Conventions sponsored or administered by the Customs Co-operation Council. – Synopsis of position as of 30 June 2022. General Secretariat. SG 0223 Eb . Brussels, 14 July 2022. – P.6.

To date, we have conducted a comprehensive study «Legal and organizational basis for economic and customs unions to get the status of member of the World Customs Organization»<sup>1</sup> and its results, no doubt, can be useful for the expert work of the Commission in the framework of the implementation of paragraph 11.7.5. of Strategic directions in terms of cooperation with the WCO.

And the analysis of the first two stages and organizational and legal features of obtaining EU membership in the WCO in the period 2001-2002 was brought to the attention of the scientific and expert community in 2022.<sup>2</sup> *This article is a continuation of the research material and covers the next two stages (3rd and 4th)*, as a result of which the European Communities were granted rights akin to those of WCO Members. Let's consider them in detail.

### THIRD STAGE

In our opinion, the beginning of the third stage on the way for the EU to obtain the status of a WCO member is the sending in June 2006 by the European Commission to the WCO Secretary General of a repeated request for the EU to join the WCO.<sup>3</sup> The EU expressed its intention to resume negotiations with a view to joining the WCO.<sup>4</sup>

**1. General analysis.** Based on the results of the analysis of the 3rd stage of obtaining the rights and obligations of the EU akin to those that WCO member countries have, we have identified the following topics that deserve the attention of the expert and scientific community:

- repeated EU request for WCO membership and its reasons;
- on the preparation by the WCO Secretariat of a comprehensive document on the institutional, financial and legal implications of EU membership in the Organization;<sup>5</sup>

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<sup>1</sup> *Mozer Sergei.* Legal and organizational basis for economic and customs unions to get the status of member of the World Customs Organization»: monograph /S.V. Mozer. Moscow: Publishing House of the Russian Customs Academy, 2022. 462 pages.URL: <http://customs-academy.net/?p=14986>

<sup>2</sup> *Mozer Sergei.* Analysis of stages and organizational and legal features of obtaining membership by the European Union in the World Customs Organization // Problems in Russian Legislation. – № 6. – 2022. (Article). URL: <https://customs-academy.net/?p=17773>

<sup>3</sup> See point 2. Report of the Policy Commission. 55th session. SP0217E1b. Brussels, 28 June 2006. – P.1.

<sup>4</sup> Point 234.Ibid. – P.37.

<sup>5</sup> *Mozer S.V.* Organizational and legal aspects of the membership of the European Communities in the World Customs Organization as a precedent for customs and economic unions // Socio-political sciences. – № 4. – 2022. URL: <https://customs-academy.net/?p=14924>

- analysis of the powers of various customs unions and the European Communities;

- a package of proposals (legal structure for the EU) and temporary measures associated with the granting the EU membership in the WCO;

- declaration of EU competence in matters covered by the Convention Establishing a Customs Cooperation Council;

- stages of movement towards EU membership in the WCO at the 3rd stage;

- questions on the issues of EU membership in the WCO;

- EU voting in the WCO;

- EU membership fees to the WCO;

- the opinion of the WCO Secretary General on EU membership in the WCO;

- the EU as a separate customs territory;

- implications for other regional groups.

In our opinion, the study of each of the selected topics will allow at the expert level to understand in a complex the problems of the formation of the current legal status of the EU in the WCO.

We believe that the third stage of the EU's movement towards obtaining the status of a WCO member, which we have identified, has formed the legal outlines of the settlement of this issue. It is worth noting that the main message of the work carried out by the international customs community was that the EU is «a true Customs Union» and a «sui generis entity».

According to the author, this is a very controversial thesis, given the fact that the international customs community and the WCO Secretariat have not yet formed the criteria for the so-called «uniqueness» for a customs or economic union that can bring it closer to obtaining rights and obligations in the WCO, similar to those that are provided and assigned to full member states of the WCO.

As much as we talk about the precedent of the EU in the WCO for other customs and economic unions, it must be understood that the legal construct on provisional measures granting the so-called EU membership in the WCO was developed exclusively for the European Communities. These words are confirmed by the speech of the WCO Secretary General at the 57th session of the WCO Policy Commission. He drew attention to the specific aspects that whereas the proposed amendment to the Convention would permit any Customs or Economic Union to become a Member of the WCO provided that the Council approved its request, the draft Decision setting out an interim solu-

tion pending the entry into force of that amendment related solely to the European Communities.<sup>1</sup>

Let us pay special attention to the fact that the WCO act, which proposed to amend the said convention, is not binding on WCO members, since it is expressed in the form of a *recommendation*. This is not a Council *decision*. There is no need to build illusions that the amendment to the Convention proposed in the recommendation of the Council will come into force, and customs and economic unions will be able to obtain the status of a WCO member before the final modernization of the Convention.

And this despite the fact that on the eve of the development of interim measures for the EU in the WCO, Vice-Chairs representing the regions of West and Central Africa and North Africa, the Near and Middle East within the framework of the 56th session of the PC expressed a thesis of fundamental importance – «it essential that ***any solution adopted in order to enable the European Communities to join the WCO should not take the form of a special arrangement specific to the EC***, but should also provide for the longer-term perspective of accession by other Customs Unions in the future. In this connection, it was stressed that there would be a need for clarity as to what actually constituted a Customs Union; the criteria to be fulfilled would have to be clearly specified, but care should be taken to ensure that they were not unattainable in practice».<sup>2</sup>

Obviously, the vice-chairmen were not heard. No, of course, they were heard, fixing such a possibility in the recommendations for amending the convention, which will never enter into force. However, in fact, the decision of the Council on the EU took the form of *a special arrangement specific to the EC*, which was asked to be prevented by representatives of various WCO regions. We should note that this decision was made in 2007 by *acclamation*,<sup>3</sup> that is, without a formal vote (!).

The fact is that this is a political, geopolitical, and not a technical (customs) decision. The WCO Secretary General considers, that the EC membership re-

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<sup>1</sup> Point 210. Membership request by the European Communities. Report of the Policy Commission. Policy Commission. 57th session. SP0250E1b. Brussels, 27 June 2007. – P.35.

<sup>2</sup> Point 328. Membership request by the European Communities. Policy Commission. Policy Commission. 56th session. SP0232E1a. Brussels, January 26, 2007. – P. 56.

<sup>3</sup> Acclamation (lat. *acclamatio* – «shout, exclamation») – a simplified procedure for making or rejecting a decision based on the reaction of the participants, expressed in the form of applause, exclamations, remarks and other direct (informal) expression of one's opinion / KARTASLOV.RU. URL: <https://kartaslov.ru/meaning-words/acclamation>

quest was *essentially a political issue*, to be dealt with nationally at the Ministerial level as it was not a Customs matter per se. The European Union was a reality; as an actor in the international community, in Geneva the EC was negotiating with Governments world-wide on trade issues. In order to reflect the reality of the geopolitical situation, it would seem logical to place the WCO's relationship with the European Communities on a more official footing, particularly bearing in mind the fact that the EC had adopted many legislative measures based on WCO instruments.<sup>1</sup>

**2. EU re-request.** The beginning of the third stage on the path to EU membership in the WCO is the sending in June 2006 by the European Commission to the WCO Secretary General a repeated request for EU accession to the WCO.<sup>2</sup> The EU expressed its intention to resume negotiations with a view to joining the WCO.<sup>3</sup>

**3. Reasons for the request.** The European Commission announced 4 reasons for the EU's intention to become a WCO member. To date, we have consistently identified 3 versions of such reasons, which were polished by the WCO Secretariat in the course of preparation for the PC and the Council meetings.

original version

It is necessary to provide a more accurate reflection of the reality of the European Union, since the customs union not only fell under the competence of the Community, but was in fact the first achievement of the latter.

All the work done by the EU (especially with the proposal to revise the Customs Code) has allowed the EU to say that it has made a constructive contribution to the activities of the WCO.<sup>4</sup>

The EU is already a contracting party to several WCO conventions and a member of several key WCO bodies. The existing cooperation can only be expanded through EU accession to the WCO.<sup>5</sup>

The last reason is related to the minor institutional impact that EU accession will have on the WCO, since in terms of voting the EU will simply replace its

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<sup>1</sup> Point 312. Membership request by the European Communities. Policy Commission. Policy Commission. 56th session. SP0232E1a. Brussels, 26 January 2007. – P. 54.

<sup>2</sup> See Point 2. Report of the Policy Commission. 55th session. SP0217E1b. Brussels, 28 June 2006. – P.1.

<sup>3</sup> Point 234. Ibid . – P.37 .

<sup>4</sup> For example, from the point of view of the security of the international supply chain of goods or the fight against counterfeit products and piracy.

<sup>5</sup> Point 240. Report of the Policy Commission. 55th session. SP0217E1b. Brussels, 28 June 2006. – P.38.

members and will not have more «weight» in the decision-making mechanism of the WCO.

Second version (interpretation by the WCO Secretariat)

Having the EU as a member of the WCO would provide a more accurate reflection of reality than the current situation, given the extent to which fiscal matters fall within the purview of the EU; Community Customs legislation is applicable in all EC Member countries and is administered by the European Court of Justice. The customs union falls under the competence of the Community, as does trade policy, which is the reason why the EU is a member of the WTO. The EU is simply seeking equivalent treatment within the WCO.<sup>1</sup>

Over the past four years, the EC has worked on a number of issues that the WCO is also involved in, in particular in the area of supply chain security and the fight against counterfeiting and piracy.<sup>2</sup> As a result, the EU is in a position to make a constructive contribution to the WCO activities.<sup>3</sup>

The EU is already a Contracting Party to a number of WCO instruments and full member status<sup>4</sup> would be a logical extension of this situation.<sup>5</sup>

In institutional terms the accession of the European Communities would have very little impact on the distribution of votes, as it would merely mean that in areas where Community competence was clearly recognized, the Euro-

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<sup>1</sup> It was actually voiced by the EU in June 2006: the first reason is that it is necessary to provide a more accurate reflection of the reality of the European Union, since the Customs Union not only fell under the competence of the Community, but was in fact the first achievement of the latter.

<sup>2</sup> See *Goshin V.A., Mozer S.V.* The possibility of obtaining the status of a member of the World Customs Organization by economic and customs unions: the experience of the European Union // Bulletin of the Russian Customs Academy № 4, 2015. p. 52-60. URL: <https://www.elibrary.ru/item.asp?id=24913948>

<sup>3</sup> It was actually voiced by the EU in June 2006: the second reason was that all the work done by the EU over the past four years (especially with the proposal to revise the Customs Code) allowed the EU to naturally say that it has made a constructive contribution to the WCO activities, for example, in terms of the security of the international supply chain of goods or the fight against counterfeiting and piracy.

<sup>4</sup> Point 8. Membership Request by the European Communities. Policy Commission. 56th session. Chennai. SP0231E1a. Brussels, November 2, 2006. – P.2.

<sup>5</sup> It was actually voiced by the EU in June 2006: as a third reason, the Director General added that the EU is already a contracting party to some WCO conventions and a member of several key WCO bodies. He pointed out that the existing cooperation could only be expanded through EU accession to the WCO.

pean Community would exercise the votes of those EU Members which were entitled to vote in the WCO body concerned.<sup>1</sup> No additional votes will be used.<sup>2</sup>

final version<sup>3</sup>–

The European Communities have simply asked that the EU's powers in matters related to customs be treated in the same way as its competencies in trade are viewed in the context of the WTO. In fact, this was the main argument of the EU in favor of WCO membership. The EC was an advanced, last-generation Customs Union with exclusive responsibilities in a number of areas of trade and customs policy, and WCO and WTO should take comparable approaches to these responsibilities.

*The second reason* was the level of activity of the EC and its Members, and of the European Commission in particular, in WCO affairs over the previous four years. The European Commission had considerably increased its support for the WCO and had contributed a great deal to the activities of the Organization, and wished to continue to do so. Full membership of the Organization would make this more possible for the future.<sup>4</sup>

*The third reason* had to be found in the long-term prospects for the development of international and commercial issues at the multilateral level. Many more issues of a commercial nature could be expected to spill over from the WTO sphere into the Customs policy sphere. A typical example of this was provided by the proliferation of regional agreements on commercial policy, an issue which was going to create challenges for an Organization such as the WCO. As the EC had responsibilities in commercial policy, it should have adequate status in discussions on related Customs policy matters; therefore it would make sense, given the long-term perspectives for the organization of commercial relations at the international level, to support the current moves to confirm the status of the EC as a full Member of the WCO.<sup>5</sup>

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<sup>1</sup> Point 8. Membership Request by the European Communities. Policy Commission. 56th session. Chennai. SP0231E1a. Brussels, November 2, 2006. – P.2.

<sup>2</sup> It was actually voiced by the EU in June 2006: the latter reason has to do with the slight institutional impact that EU accession will have on the WCO, since in terms of voting the EU will simply replace its members and will not have more «weight» in the decision-making mechanism of the WCO.

<sup>3</sup> Presented at the 56th meeting of the Policy Commission.

<sup>4</sup> Point 317. Membership request by the European Communities. Policy Commission. Policy Commission. 56th session. SP0232E1a. Brussels, 26 January 2007. – P. 54.

<sup>5</sup> Ibid.

**4. Comprehensive Document.** In order to comprehensively consider the issue being analyzed, on November 2, 2006, the Secretariat prepared a comprehensive document in the form of reference materials on the legal, institutional and financial implications of the EU's accession to the WCO.<sup>1</sup> Among them are the following headings:

- the current status of the European Communities in relation to the WCO;
- legal issues of the consequences of amending the Convention on the Establishing a Customs Cooperation Council;
- institutional issues (the right to vote and the division of competencies between the EU and its member states);
- financial issues: about the constant annual contributions to the WCO budget and the methodology for their calculation.<sup>2</sup>

**5. A Study in Customs Unions.** In addition, the WCO Secretariat has conducted a study, analysis of the status as of 2006 and future expectations of customs and economic unions around the world, which provides a comparative analysis of the powers of various customs unions and the European Communities.<sup>3</sup> The study also paid attention to the Eurasian Economic Community. A conclusion was prepared based on the results of the analysis of the powers of various customs unions and the European Communities.

**6. Package of Proposals (Legal Structure) and Interim Measures for the EU at the WCO.** In June 2007, the WCO Secretariat prepared a package of proposals (a set of draft texts) that were supposed to consolidate the new legal status of the EU in the WCO:

- Draft amendment to article XVIII of the Convention establishing a Customs Co-operation Council, allowing customs and economic unions to become contracting parties to the convention and therefore members of the WCO;
- Draft Recommendation of the Customs Co-operation Council required to bring into effect the amendment to article XVIII of the Convention establishing a Customs Co-operation Council;

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<sup>1</sup> Membership Request by the European Communities. Policy Commission. 56th session. Chennai. Brussels, November 2, 2006.

<sup>2</sup> Mozer S.V. Organizational and legal aspects of the membership of the European Communities in the World Customs Organization as a precedent for customs and economic unions // Socio-political sciences. – № 4. – 2022. URL: <https://customs-academy.net/?p=14924>

<sup>3</sup> See Comparative Analysis of the Powers of Various Customs Unions and the European Communities. Annex to Doc. SP0231E1a. Membership Request by the European Communities. Policy Commission. 56th session. Chennai. SP0231E1a. Brussels, November 2, 2006.

– Draft Council Decision to give the European Communities rights and obligations akin to those of WCO Members, pending the entry into force of the amendment to Article XVIII of the Convention.

a) Draft decision of the Council

Since the CCC Convention does not allow the granting of WCO membership status to customs and economic unions, the WCO Secretariat has developed interim measures associated with the granting to the EU membership in the WCO. This is the aforementioned draft decision of the Council on giving the European Communities rights and obligations akin to those of WCO Members, pending the entry into force of the amendment to Article XVIII of the Convention.

For reference, the Council decided that *«pending the entry into force of an amendment permitting Customs or Economic Unions to accede to the Convention, the European Communities shall, as an interim measure, be granted rights akin to those enjoyed by WCO Members, subject to the following special arrangements and conditions»*.<sup>1</sup>

The temporary solution proposed in this Council's draft decision does not actually grant EU membership in the WCO, but gives them certain rights and responsibilities akin to those of WCO Members.<sup>2</sup> Also, under the terms of the draft Decision, the interim decision and the position with regard to the ratification of the amendments to the Convention were to be reviewed on a regular basis. This meant that the Council would be free to extend, alter or rescind the interim arrangements at any time, depending on how the legal situation unfolded in the future.<sup>3</sup>

b) Draft Council Recommendation

The Draft Amendment to Article XVIII of the Convention Establishing a Customs Cooperation Council to Allow Customs and Economic Unions to Become Contracting Parties to the Convention and Hence Members of the WCO is structured as follows:

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<sup>1</sup> Annex V to Doc. SP0250E1b. Draft decision of the Council No. 109th/110th sessions – June 2007. Status of the European Communities vis-à-vis the World Customs Organization. Report of the Policy Commission. Policy Commission. 57th session. SP0250E1b. Brussels, 27 June 2007. – P. VI/3.

<sup>2</sup> In response, the Secretary general remarked that the interim solution proposed in the draft Decision now before the Council would not actually grant the EC membership of the WCO, but would merely give it certain rights and obligations similar to those of WCO Members.

<sup>3</sup> Point 165. Membership request by the European Communities. Minutes of the 109th/110th sessions of the Customs Co-operation Council. Brussels, 28 – 30 June 2007. SC0082E1a. Brussels, 14 August 2007. – P.31.

*“(d) Any Customs or Economic Union may become, in accordance with paragraphs (a), (b) and (c) above, a Contracting Party to this Convention. Any request from a Customs or Economic Union to become a Contracting Party shall first be submitted to the Council for approval. For the purposes of this Convention, Customs or Economic Union means a Union constituted by, and composed of, States which has competence to adopt its own regulations that are binding on those States in respect of matters governed by this Convention, and has competence to decide, in accordance with its internal procedures, to accede to this Convention.*

To date, this amendment has not entered into force and, in the opinion of the author, it is unlikely that this will happen in the future.

**7. EU Declaration of Competence.** Special attention should be paid to the Declaration of competence by the European Communities in matters covered by the Convention Establishing a Customs Co-operation Council, which was prepared by the European Communities. The Declaration was brought to the attention of the experts for the 57th session of the WCO PC.<sup>1</sup>

Declaration of competence by the European Communities in matters covered by the Convention establishing a Customs Co-operation Council is a grouped table that consists of EU policy areas (*customs union, common trade policy, customs cooperation; customs facilitation; customs valuation; origin; harmonized system, tariff classification; tariffs and quotas; law enforcement: drug precursors, counterfeiting, cash control; supply chain security; transit, temporary admission; institutional development, technical assistance, training*) with reference to EU legal acts.

Such a presentation of material in the declaration does not allow to quickly understand the real competence of the EU in the selected areas of customs regulation (areas of EU policy).

This table contains a list of EU regulations, but does not provide specific explanations of EU competence that may be understandable to a wide audience of experts.

The European Communities retain or reserve the right to amend this declaration of competence.

For the convenience of expert work and understanding of the problem of delimiting the competence of the EU and their countries in the WCO, we have identified *the main theses voiced by representatives of the EU and the WCO during the consideration of this issue*. They come down to this:

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<sup>1</sup> See Membership request by the European Communities. Policy Commission. Annex II to Doc. SP0247E1a. 57th session. SP0247E1a. Brussels, 1 June 2007. – II /1.

– it is important to understand how it will be resolved, and what issues fall within the competence of the EU, and which remain the responsibility of its individual member states;

– the EU will represent its members in those matters for which it is responsible under the terms of the European Treaties;

– the two WCO conventions to which the EU is a contracting party (i.e. the Revised Kyoto Convention and the Istanbul Convention) require contracting customs or economic unions to delineate competence between themselves and their member states. Thus, both conventions read:

– such Customs or Economic Union shall inform the depositary of its competence with respect to the matters governed by this Convention.<sup>1</sup> Such Customs or Economic Union shall also inform the depositary of any substantial modification in the extent of its competence;<sup>2</sup>

– in the case of the Revised Kyoto Convention, the EU addressed this obligation by adopting a decision<sup>3</sup> which states, inter alia, that «...the European Community is competent for all matters governed by the body of the Convention and its General Annex, except for those matters not falling within its exclusive explicit or implicit competence as laid down in the Treaty establishing the European Community as amended and within secondary Community legislation»;

– the European Commission suggests that this general declaration would be useful in the WCO membership context also, adding that in practical terms, the EU Member States could continue to speak and present their opinions in matters of budget, audit, nominations, elections, and probably (pending legal advice) in matters of capacity building, integrity and enforcement. For Customs

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<sup>1</sup> *Mozer S.V.* Organizational and legal aspects of the membership of the European Communities in the World Customs Organization as a precedent for customs and economic unions // Socio-political sciences. – № 4. – 2022. URL: <https://customs-academy.net/?p=14924>

<sup>2</sup> See Revised Kyoto Convention, Article 8, paragraph 5(a), and Istanbul Convention, Article 24, paragraph 7.

<sup>3</sup> EC Council Decision of 17 March 2003 concerning the accession of the European Community to the Protocol of Amendment to the International Convention on the simplification and harmonization of Customs procedures (Kyoto Convention) (2003/231/EC), published in OJ L86, 3.4. 2003. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003D0231>; <https://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/legal-instruments/conventions-and-agreements/contracting-parties-and-instruments/european-union/ec-200303-instrument-of-accession.pdf?la=en>

policy matters such as facilitation, valuation, origin and the Harmonized System, the European Communities would be competent;<sup>1</sup>

- the European Communities would be competent in most areas of WCO business, with the Members retaining competence in certain fields, particularly those related to matters of «law and order»; there would be a small grey area for which the European Communities and its Members would need to find solutions;<sup>2</sup>

- *within the EU on issues within the competence of the Community, common positions in the work of the WCO will be developed and expressed.* This does not mean that the European Commission will be the sole representative – common positions will also be expressed by representatives of the EU members;

- it is important that senior customs officials of the Member States continue to have the opportunity to speak, because the experience of efficient, expeditious customs activities is still theirs. It is equally important to note that Community positions would be elaborated only in matters of Community competence; on other matters, it was presumed that the *EC would have the status of an observer as at present*, having the possibility of contributing to the discussions but not the status of a full Member.<sup>3</sup>

**8. Stages.** Within each stage of the EU's journey towards WCO membership, we highlight the actions that have been taken by the WCO Secretariat and stakeholders to achieve the EU's goal. As part of the third stage, they are reduced to the following:

Organization of contacts, holding meetings at the political level, including negotiations between the EC and the WCO Secretariat on the submission of a new application for EU membership in the WCO;

Sending in June 2006 by the European Commission of a repeated request to the Secretary General for EU accession to the WCO;

Adoption of the decision of the EU Council of 25 June 2007 (2007/668/EC) on the exercise of rights and obligations akin to membership ad interim by the European Community in the World Customs Organization, as well as the Declaration of competence by the European Community in matters covered by the

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<sup>1</sup> Point 45. Membership Request by the European Communities. Policy Commission. 56th session. Chennai. SP0231E1a. Brussels, 2 November 2006. – P.9.

<sup>2</sup> Membership request by the European Communities. Policy Commission. Policy Commission. 56th session. SP0232E1a. Brussels, 26 January 2007.

<sup>3</sup> Point 319. Membership request by the European Communities. Policy Commission. Policy Commission. 56th session. SP0232E1a. Brussels, January 26, 2007. – P. 55.

Convention establishing a Customs Cooperation Council (annex to the decision dated 25.06.2007);

Presentation by the WCO Secretary General of the EU request for EU accession to the WCO at the 55th session of the PC (26-28 June 2006);

Presentation of the EU request by the Director General for Taxation and Customs Union (TAXUD) at the 55th session of the PC (28-29 June 2006);

Presentation of the EU request by the Director General for Taxation and Customs Union (TAXUD) at the Council meeting (29.06.2006 – 01.07.2006);<sup>1</sup>

Statement by the WCO Secretary General at the 107th/108th session of the WCO Council (29 June to 1 July 2006) on the EU request for WCO accession;

Participation of the Director General for Taxation and Customs Union (TAXUD) of the EC in the 107/108th sessions of the WCO Council (29 June to 1 July 2006); theses were voiced on the reasons for the repeated sending of the EU request to the WCO;

Council (107/108 meeting) taking note of the EU's request for WCO membership;

Council instructing the WCO Secretariat to prepare a paper on the institutional, financial and legal implications (of EU membership in the WCO – *author's note*) taking into account issues raised in relation to other regional groupings (29 June to 1 July 2006);

Preparation by the WCO Secretariat of an information paper (for the 56th PC session) on the institutional, financial and legal implications of the EU's accession to the WCO entitled «Membership Request by the European Communities», dated 2 November 2006, SP0231E1a. Document structure:

- *the current status of the EU in relation to the WCO;*
- *legal issues of the consequences of amendments to the CCC Convention;*
- *institutional issues: the right to vote and the division of competencies between the EU and its member states;*
- *financial matters: about the constant annual contributions of the EU to the WCO budget and the methodology for their calculation.*

*In the operative part of the document (at the 56th meeting) the Policy Commission was invited to consider the renewed request of the EU for membership in the WCO in order to pave the way for a comprehensive discussion of this issue at the Council sessions in 2007;*<sup>2</sup>

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<sup>1</sup> Mozer S.V. Organizational and legal aspects of the membership of the European Communities in the World Customs Organization as a precedent for customs and economic unions // Socio-political sciences. – № 4. – 2022. URL: <https://customs-academy.net/?p=14924>

<sup>2</sup> Ibid.

Preparation with the WCO Secretariat of a study (for the 56th PC session) on the status of customs and economic unions and similar regional groupings around the world, Comparative Analysis of the Powers of Different Customs Unions and European Communities, November 2, 2006, SP0231E1a;

Formation of the position of the WCO Secretariat of November 2, 2006 (doc. SP0231E1a), including procedures for amending the CCC Convention and granting EU membership to the WCO:

- *preparation and approval of the wording of the necessary amendments to the legal texts of the CCC Convention;*
- *adoption of a formal decision of the Council setting out these amendments, which must be approved by a majority of two-thirds of the members present at the Council meeting and having the right to vote;*
- *amendments to the CCC Convention should then be recommended by the Council to the contracting parties to the CCC Convention;*
- *contracting parties that accept the amendments must notify the Belgian Foreign Ministry of their acceptance in writing;*
- *the amendments enter into force three months after the Belgian Ministry of Foreign Affairs receives a written notification of the acceptance of such amendments to the CCC Convention from all contracting parties to the Convention;*
- *while the amendment procedure is pending, the Council may wish to adopt a decision that can be implemented with immediate effect, giving the EU the same rights and obligations (as amended) enjoyed by WCO members;*
- *such a decision of the Council must be approved by a two-thirds majority of the members present at the meetings of the Council and having the right to vote;*

56th Session of the WCO Policy Commission (December 5-7, 2006):

- *reviewed the working paper of the WCO Secretariat on the institutional, financial and legal implications of the EU's accession to the WCO entitled «Membership Request by the European Communities» dated November 2, 2006, SP0231E1a;*
- *The Secretary General (1) proposed to put WCO relations with the EU on a more formal footing, (2) committed to prepare a new working paper by the Secretariat to respond to the various issues raised by the PC;*
- *Based on the results of the session, the Chairperson of the PC stated that, in general, the EU accession is supported, but some political and legal issues remain to be resolved;*

Commitment by the WCO Secretary General to prepare by the Secretariat a new working paper responding to the various issues raised at the 56th PC session (5-7 December 2006);

Preparation by the WCO Secretariat of a package of proposals for granting the status of a WCO member to the EU for consideration at the 57th session of the PC (doc. SP0247E1a, 01.06.2007):

- *Draft amendment to article XVIII of the Convention establishing a Customs Co-operation Council, allowing customs and economic unions to become contracting parties to the Convention and therefore members of the WCO;*<sup>1</sup>

- *Draft Recommendation of the Customs Co-operation Council required to bring into effect the amendment to article XVIII of the Convention establishing a Customs Co-operation Council;*

- *Draft Council Decision to give the European Communities rights and obligations akin to those of WCO Members, pending the entry into force of the amendment to Article XVIII of the convention;*

57th session of the PC (25-27 June 2007), during which:

- The WCO Secretariat proposes an interim solution that will allow the EU to use rights akin to those of WCO members until the amendment enters into force;

- The Policy Commission unanimously agreed with the amendments proposed by the group and recommended to the Council:

- (a) adopt a draft recommendation (draft WCO recommendation to amend the CCC Convention) for customs and economic unions to become members of the WCO, and

- (b) adopt a draft decision granting the EU rights akin to those enjoyed by members, pending acceptance of the above recommendation by all contracting Parties.

**9. Questions about EU membership in the WCO.** As part of the third stage of consideration of the issue of EU membership in the WCO, we identified the following issues of the expert community:

If the European Union is admitted as a member of the WCO, the Council should be prepared for similar *requests from other economic groupings around the world*. For the sake of uniformity, it is important to clearly state how such requests will be dealt with.

Will any amendments to the CCC Convention be required to take into account the changed situation of the EU Member States in relation to the Organization? It would be a prerequisite that EU accession should under no circumstances lead, de jure or de facto, to the withdrawal from the Organization of any EU Member State.

What amendments would need to be made to other official documents, such as the Council's rules of procedure?

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<sup>1</sup> *Mozar S.V.* Organizational and legal aspects of the membership of the European Communities in the World Customs Organization as a precedent for customs and economic unions // Socio-political sciences. – № 4. – 2022. URL: <https://customs-academy.net/?p=14924>

To what extent will the formal documents of the various WCO committees and other technical bodies need to be changed to reflect the new status of the EU in these bodies?

Who sought to join the WCO – the European Union or the European Communities, and what was the difference between them?

What will the EU be able to do as a member of the WCO that it has not yet done in its current status?

Which issues will fall within the competence of the EU, and which will remain the responsibility of the EU member states?

If it is a financial question, what level of contribution is expected from the EU, what balance will be struck between the contribution of the EU and the contribution of the EU Member States, and what will be the relationship between the contribution and the number of votes awarded?

**10. EU vote at the WCO.** The main theses on this issue can be divided into 2 groups: those voiced in the third stage, as well as formalized in the draft decision of the Council on giving the European Communities rights and obligations akin to those (rights and obligations) of WCO members, before the entry into force of the amendment to Article XVIII of the Convention.

*During the discussions*, the following approaches were voiced:

- in terms of voting, the EU will simply replace its members and have no more «weight» in the decision-making mechanism of the WCO;
- the admission of the European Communities as members will not affect the total number of votes currently enjoyed by the EU as a whole;<sup>1</sup>
- the European Commission will only cast the same number of votes as currently granted to EU Member States;
- from an institutional point of view, EU accession will have very little effect on the distribution of votes, since it will simply mean that in those areas where Community competence is explicitly recognized, the European Community will exercise the voting rights of those EU members that had the right to vote in the relevant WCO body.<sup>2</sup> No additional votes will be used;<sup>3</sup>

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<sup>1</sup> Membership request by the European Communities. Policy Commission. Policy Commission. 56th session. SP0232E1a. Brussels, 26 January 2007.

<sup>2</sup> Point 8. Ibid. – P.2.

<sup>3</sup> It was actually voiced by the EU in June 2006: The last reason has to do with the slight institutional impact that EU accession will have on the WCO, since in terms of voting, the EU will simply replace its members and will not have more «weight» in the decision-making mechanism of the WCO.

EU membership does not confer any additional voting rights on the EU and its members. The suggestion that the EU simply exercise the voting power of its member states is entirely in line with the situation in the WTO and in the WCO bodies.<sup>1</sup>

With regard to *the interim measures formalized in the Council's draft decision*, here are excerpts:

*«3. In all other WCO bodies,<sup>2</sup> the European Communities shall have the same rights and responsibilities as the Members of the WCO, with the following exceptions:*

*3.1. where a vote is held on a matter within its competence, the European Communities shall not have an individual vote, but shall exercise in its own name the votes of all of its Member States that have the right to vote in accordance with the Rules of Procedure. In such case, the Member States of the European Communities shall not be allowed individually to exercise their voting rights;*

*3.2. where a vote is held on a matter which does not fall within its competence, the European Communities shall not have a vote. Those Member States of the European Communities which are represented at the meeting shall individually exercise their voting rights».*<sup>3</sup>

**11. Membership fee.** One of the important issue of the analyzed problems is the annual contribution of the EU to the WCO budget, as well as the method of its calculation.

For the first time at the regulatory level, the amount of the annual contribution of the EU was determined on 01.06.2007 in the draft Council Decision for the 57th session of the WCO Policy Commission<sup>4</sup> in the amount of

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<sup>1</sup> Such as the Revised Kyoto Convention Management Committee and the Istanbul Convention Administrative Committee, where the EU is already a member. The only notable exception is the Harmonized System Committee, in which, in accordance with the provisions of the HS Convention, the European Communities and its 25 member states together have one vote. In practice, this vote is taken by the Community Delegate.

<sup>2</sup> Including, but not limited to: the Council, the Permanent Technical Committee, the Enforcement Committee, the Information Management Sub-Committee and the Integrity Sub-Committee.

<sup>3</sup> Annex V to Doc. SP0250E1b. Draft decision of the Council No. 109th/110th sessions – June 2007. Status of the European Communities vis-à-vis the World Customs Organization. Report of the Policy Commission. Policy Commission. 57th session. SP0250E1b. Brussels, 27 June 2007. – P. VI/3.

<sup>4</sup> Annex IV to Doc. SP0247E1a. Membership request by the European Communities. Policy Commission. 57th session. SP0247E1a. Brussels, 1 June 2007. – IV/3.

1 million euros. In the final wording of the mentioned draft decision, submitted to the 109/110 Council meeting, this rule is formed as follows:

«5. The European Communities shall contribute to the WCO an amount of 1,000,000 euros per year. This amount shall be adjusted in line with the evolution of the WCO Members' overall contributions».<sup>1</sup>

**12. *Opinion of the Secretary General.*** It is believed that the opinion of the WCO Secretary General is actually identified with the position of the Secretariat of the Organization. In this regard, we have highlighted the following of his theses on EU membership in the WCO:

– the fact that the CCC Convention of the Council does not allow customs unions to join the Organization is clearly a serious difficulty;<sup>2</sup>

– *the EC membership request was essentially a political issue*, to be dealt with nationally at the Ministerial level as it was not a Customs matter per se. The European Union was a reality; as an actor in the international community, in Geneva the EC was negotiating with Governments world-wide on trade issues. In order to reflect the reality of the geopolitical situation, it would seem logical to place the WCO's relationship with the European Communities on a more official footing, particularly bearing in mind the fact that the EC had adopted many legislative measures based on WCO instruments;<sup>3</sup>

– irrespective of the outcome of the European Communities' request, the Organization should reflect on what could be done to facilitate the involvement of regional groupings in the work of the WCO;<sup>4</sup>

– political and technical issues should not outweigh each other.

**13. *EU as an autonomous customs territory.*** At the third stage, an approach was announced on the possibility of granting the EU the status of a autonomous customs territory. However, none of those who participated in the discussion showed any interest in the possibility of the EU joining the WCO as an autonomous customs territory in accordance with the existing provision

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<sup>1</sup> Annex V to Doc. SP0250E1b. Draft decision of the Council No. ...109th/110th sessions – June 2007. Status of the European Communities vis-à-vis the World Customs Organization. Report of the Policy Commission. Policy Commission. 57th session. SP0250E1b. Brussels, 27 June 2007. – P. VI/3.

<sup>2</sup> Membership request by the European Communities. Policy Commission. Policy Commission. 56th session. SP0232E1a. Brussels, 26 January 2007.

<sup>3</sup> Point 312.Ibid. – P. 54.

<sup>4</sup> Point 313.Ibid.

of the Council convention.<sup>1</sup> It is noted that it is difficult to interpret this provision as allowing the EU to join, as they are not an «separate» customs territory as required by the provision.

#### FOURTH STAGE

The fourth and final stage – the acquisition by the European Union of WCO membership, or rather, rights and obligations akin to those enjoyed by members of the Organization, in our opinion, begins in June 2007, when the 109/110 sessions of the WCO Council (28– 30 June). The main theses that characterize this period are as follows:

1. Interim measures, which gave the EU rights and obligations akin to those of WCO members, were adopted at the 109/110 sessions of the WCO Council, which took place from 28 to 30 June 2007 at WCO Headquarters in Brussels.<sup>2</sup>

2. The option proposed at the Council meeting for EU membership in the WCO was a two-stage process.

First. The Council adopted a recommendation that amended two articles of the CCC Convention to allow customs or economic unions to join the WCO with the approval of the Council.

Second. The Council adopted a decision that granted the EU, as an interim measure, rights akin to those enjoyed by WCO Members. It should be noted in particular that, *according to the decision of the Council, the European Communities were granted neither membership nor the status of a member of the WCO, but rights and obligations* akin to those enjoyed by WCO Members.

3. The Russian side fully supported the recommendation allowing the accession of customs or economic unions to the CCC Convention, as well as the temporary solution proposed in favor of the EU, which immediately gave the EU rights and obligations equivalent to those applicable to WCO members, including the corresponding financial obligations.

4. When discussing the issue of the status of the EU in the WCO, the delegates operated with such concepts as the status akin to that of a Member, rights and obligations similar to those of WCO Members, interim membership for the EU, rights and obligations equivalent to those applicable to WCO Members, rights and obligations similar to those of WCO Members.

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<sup>1</sup> Membership request by the European Communities. Policy Commission. Policy Commission. 56th session. SP 0232 E1a. Brussels, January 26, 2007.

<sup>2</sup> Mozer S.V. Organizational and legal aspects of the membership of the European Communities in the World Customs Organization as a precedent for customs and economic unions // Socio-political sciences. – № 4. – 2022. URL: <https://customs-academy.net/?p=14924>

At the same time, in the final decision of the Council № 318, in relation to the legal status of the EU, the wording «*rights akin to those enjoyed by WCO Members*» is used.

5. As part of the discussions, clarification was received from the WCO according to which the interim solution proposed in the draft Council Decision does not actually grant EU membership in the WCO, but only grants them certain rights and obligations akin to those that WCO members have.

6. The thesis that Decision of the Council № 318, 5 July 2007 (109/110 Sessions, June 2007 – «Status of the European Communities vis-à-vis the World Customs Organization») represents «de juris recognition of a membership» that already existed de facto due to the participation of the EU Member States in the WCO activities of the, is highly controversial.

7. The positive aspects of WCO Council Decision № 318 are as follows:

decision (interim measure) of the WCO № 318 on granting the EU *rights akin to those enjoyed by WCO members*, as well as a provision according to which, *in the working bodies of the WCO, the EU has the same rights and responsibilities as the WCO members*<sup>1</sup> is of great political importance for the EU and was considered at a difficult time for the development of customs;

setting a precedent for other economic and customs unions;

in its composition, the WCO receives one of the largest economic integration associations in the world;

consolidation of efforts on the WCO platform to solve problems related to world trade and improve customs regulation.

8. **The main risks** (concerns) that were voiced by representatives of individual WCO member states are as follows:

in granting interim EU membership, the Council is not acting in accordance with the provisions of the CCC Convention;

the legal status of acts (actions) that are performed by a new WCO member in accordance with the temporary status is not clear;

the decision of the Council to grant certain rights and obligations to the EU should not create legal problems;

WCO legal texts on the admission of customs and economic unions to the Organization should contain clear, objective criteria that will apply to any other customs or economic unions seeking to join the WCO in the future;

amendments to the CCC Convention may require amendments to the respective national laws of member countries through the country's legislature.

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<sup>1</sup> Paragraphs 1-7 of Council Decision № 318.

9. The EU precedent presupposes the existence of a common position of the member states of the respective customs, economic union on granting the integration association a certain status in the WCO.

10. Voting procedure. According to Rule 21 of the Rules of Procedure of the Council, decisions are made by a majority of at least two-thirds of the members present at the meeting and having the right to vote, except for decisions concerning the Rules of Procedure, where a majority of at least two-thirds of all members is required (Article VI of the CCC Convention).<sup>1</sup>

At the same time, the decision to grant the EU rights and obligations in the WCO was taken by the Council by acclamation. In the theory of law, acclamation is understood as the method of decision-making used in international organizations and at conferences without voting, based on the approval of the decision by applause, remarks, etc.

## Conclusions

We have completed a study of all stages and activities that have been implemented by the EU to obtain a status akin to membership in the WCO. The first 2 stages refer to the period 2001 – 2002. Their main analysis is presented in a separate research material.<sup>2</sup>

The next 2 stages in the period 2006 – 2007 became the final for the EU on the way to obtaining the desired status in the WCO, when the legal status of an observer was transformed into the status of a non-member of the WCO, but similar to membership. The EU has been given rights and obligations akin to those enjoyed by WCO members.

In this article we presented a general analysis of the issues of EU membership in the WCO, considered the repeated request of the EU to the WCO and the reasons for sending it, analyzed the package of proposals and interim measures for the EU in the WCO, paid attention to the declaration of EU competence, systematized the stages (activities) of 2006-2007, as well as voiced topical issues of membership, voting and payment of EU membership fees in the WCO. Along with this, risks are highlighted.

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<sup>1</sup> Kadyrkulov M.A., Mozer S.V., Lipatova N.G. The World Customs Organization as a Modern Institute for Improving Customs Administration and Facilitating Trade Procedures: monograph. Lyubertsy: RIO Russian Customs Academy, 2017. URL: [http://customs-academy.net/wp-content/uploads/2018/11/Мон.-ВТамО\\_Кадыркулов\\_Мозер\\_Липатова\\_.pdf](http://customs-academy.net/wp-content/uploads/2018/11/Мон.-ВТамО_Кадыркулов_Мозер_Липатова_.pdf)

<sup>2</sup> See Mozer S.V. Analysis of the stages and organizational and legal features of obtaining membership of the European Union in the World Customs Organization // Problems in Russian legislation. – № 6. – 2022 URL: <https://customs-academy.net/?p=17773>

The listed elements make it possible to analyze the legal and organizational dynamics on the path of the so-called EU membership in the international customs organization, and also enable the experts of the Working Group on Interaction with the WCO<sup>1</sup> to have a comprehensive understanding of the prospects for the implementation of the Strategic Directions in terms of joint actions with member states aimed at obtaining by the EEU the status of a member in the WCO (based on the EU experience).<sup>2</sup>

The results of the study are proposed to be used within the framework of the expert activities of the mentioned working group.

### BIBLIOGRAPHIC LIST

1. *Goshin V.A., Mozer S.V.* Prospects for the entry of the Eurasian Economic Union into the World Customs Organization // Features of state regulation of foreign trade activities in modern conditions: materials of the II scientific and practical conference (Rostov-on-Don, November 19-20, 2015) V. 2 h. Part 1 – Rostov n/a: Russian Customs Academy, Rostov branch, 2015. Electronic resource «Russian Customs Academy: SCIENCE»: <http://www.customs-academy.net/?p=8539>
2. *Goshin V.A., Mozer S.V.* The possibility of obtaining the status of a member of the World Customs Organization by economic and customs unions: the experience of the European Union // Bulletin of the Russian Customs Academy № 4, 2015. URL: <https://www.elibrary.ru/item.asp?id=24913948>
3. *Mozer S.V.* Analysis of the stages and organizational and legal features of obtaining membership of the European Union in the World Customs Organization // Problems in Russian legislation. – № 6. – 2022 URL: <https://customs-academy.net/?p=17773>
4. *Mozer S.V.* Organizational and legal aspects of the membership of the European Communities in the World Customs Organization as a precedent for customs and economic unions // Socio-political sciences. – № 4. – 2022. URL: <https://customs-academy.net/?p=14924>
5. Strategic Directions for the Development of Eurasian Economic Integration until 2025 / Approved by the Decision of the Supreme Eurasian Economic Council dated December 11, 2020 № 12. «On Strategic Directions for the Development of Eurasian Economic Integration until 2025». URL: [https://docs.eaeunion.org/docs/en-us/01428320/scd\\_12012021\\_12](https://docs.eaeunion.org/docs/en-us/01428320/scd_12012021_12)

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<sup>1</sup> It was created by the Order of the EEC Board dated March 29, 2022 № 55 «On the Working Group for Interaction with the World Customs Organization». IS Alta -Soft. URL: <https://www.alta.ru/tamdoc/22r00055/>

<sup>2</sup> See *Mozer S.V.* Organizational and legal aspects of the membership of the European Communities in the World Customs Organization as a precedent for customs and economic unions // Socio-political sciences. – № 4. – 2022. URL: <https://customs-academy.net/?p=14924>

6. Order of the EEC Board dated March 29, 2022 № 55 «On the working group for interaction with the World Customs Organization». IS Alta-Soft. URL: <https://www.alta.ru/tamdoc/22r00055/>
7. Conventions sponsored or administered by the Customs Co-operation Council. – Synopsis of position as of 30 June 2022. General Secretariat. SG0223Eb. Brussels, 14 July 2022.
8. Convention on the Establishment of the Council of Customs Cooperation of 1950. Electronic fund of legal and regulatory documents «Consortium Code». URL: <https://docs.cntd.ru/document/1900878>
9. Report of the Policy Commission. 55th Session. SP0217E1b. Brussels, 28 June 2006.
10. Membership Request by the European Communities. Policy Commission. 56th Session. Chennai. SP0231E1a. Brussels, 2 November 2006.
11. Comparative Analysis of the Powers of Various Customs Unions and the European Communities. Annex to Doc. SP0231E1a. Membership Request by the European Communities. Policy Commission. 56th Session. Chennai. SP0231E1a. Brussels, 2 November 2006.
12. Membership request by the European Communities. Report of the Policy Commission. Policy Commission. 56th Session. SP0232E1a. Brussels, 26 January 2007.
13. Membership request by the European Communities. Policy Commission. 57th Session. SP0247E1a. Brussels, 1 June 2007.
14. Membership request by the European Communities. Report of the Policy Commission. Policy Commission. 57th Session. SP0250E1b. Brussels, 27 June 2007.
15. Membership request by the European Communities. Minutes of the 109th/110th sessions of the Customs Co-operation Council. Brussels, 28 – 30 June 2007. SC0082E1a. Brussels, 14 August 2007.
16. Draft decision of the Council № 109th/110th sessions – June 2007. Status of the European Communities vis-à-vis the World Customs Organization. Report of the Policy Commission. Policy Commission. 57th Session. SP0250E1b. Brussels, 27 June 2007.
17. EC Council Decision of 17 March 2003 concerning the accession of the European Community to the Protocol of Amendment to the International Convention on the simplification and harmonization of Customs procedures (Kyoto Convention) (2003/231/EC), published in OJ L86, 3.4.2003. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003D0231>
18. KARTASLOV.RU. URL: <https://kartaslov.ru/значение-слова/аккламация>

## CONCLUSION

We have completed a comprehensive study of the legal and organizational foundations for obtaining the WCO member status by economic and customs unions. In the course of its preparation, the tasks set were fulfilled, including the study of the current state of relations between the EEC and the WCO; prospects for the entry of the EEU into the WCO; legal status of observers in the WCO, as well as the legal status of the EU in the WCO; stages of consideration by the international customs community of the issue of EU membership in the WCO; EU activities in connection with the implementation of the application for membership in the WCO; the competencies of the EU and its member states in the WCO; risks associated with the EU membership in the WCO; legal consequences of amending the CCC Convention in connection with the granting of WCO member status to customs and economic unions.

Along with this, we analyzed the legal and procedural aspects of obtaining EU rights and obligations akin to the rights of WCO members; the procedural aspects of the EU participation in the WCO work, as well as the EU legal instruments, coordinating the joint actions of the EU and its member states in the WCO, were studied.

The most interesting, in our opinion, are the formed practical proposals to customs and economic unions on organizing interaction with the WCO, including within the framework of consideration of the issue of membership in this international organization; as well as prepared practical proposals for customs and economic unions in terms of organizing cooperation with the WCO.

Finally, we have prepared (as a first approximation) an action plan (road-map) for the EEU to obtain the status of a member in this international customs organization as part of the implementation of the Strategic Directions for the Development of Eurasian Economic Integration until 2025.

It should be noted that the EEC is actively developing relations with the WCO in the status of an observer through participation in meetings in its various working bodies. At the same time, the status of an observer provides it with ample opportunities in terms of developing legal instruments and tools of the WCO.

In the current conditions of the development of customs regulation in the EEU, it is necessary to strengthen cooperation with the WCO on issues that are within the competence of the Commission, including through the creation of

a legal mechanism for interaction between the Commission and the Member States of the Union at the WCO platform.

Getting the Union the status of a member of the WCO can be called a promising goal. At the same time, according to the CCC Convention, *an international organization (customs or economic union) can only obtain observer status* in the WCO. The Convention does not disclose the scope of the rights and obligations of the entity that has received such a status.

With regard to the use of the EU precedent associated with the EEU obtaining the status of a WCO member, we note that there are no rules in WCO law that fix the legal status of the EU as a WCO member. The structure of this organization does not allow for the formal participation of entities like the EU (various types of trade-related institutions) even though they all have had an impact on customs policy and practice.

Accordingly, speaking about the status or membership of the EU in the WCO, we mean, first of all, the wording enshrined in the decision of the WCO Council № 318 of 05.07.2007 – *rights and obligations akin to those enjoyed by the WCO members*. At the same time, it should be understood that the legal structure on interim measures, which provides the so-called EU membership in the WCO, was developed exclusively for the EU, which was confirmed in the theses of the WCO Secretary General.<sup>1</sup>

At the same time, one should not forget about the opinion of one of the WCO member countries that the «akin to» resolution (ATR) has no legal effect, reflects the desire of the WCO Membership; the Council exceeded its authority under the current text of the WCO Convention when it purported to grant rights «akin to» membership to the EC.<sup>2</sup>

An analysis of the issue on EU membership in the WCO is, of course, of interest at the expert level in the EEC and the member states of the EEU in the framework of the implementation of the Strategic Directions. It is necessary to understand the risks that may arise in the future as the Union moves forward towards its goal. So, the main concerns that were voiced by representatives of individual WCO member states are as follows:

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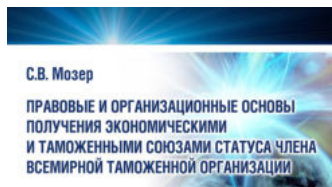
<sup>1</sup> Point 210. Membership request by the European Communities. Report of the Policy Commission. Policy Commission. 57th session. SP0250E1b. Brussels, 27 June 2007. – P.35.

<sup>2</sup> Summary of U.S. intervention to World Customs Organization (June 2007). Agenda item XIII – Other business. Participation of the European Community in the World Customs organization. US Department of State. 20.01.2009. URL: <http://2001-2009.state.gov/s/l/2007/112685.htm>

- in granting provisional EU membership, the Council is not acting in accordance with the CCC Convention;
- if the votes of several WCO members are concentrated in one body, the value of the WCO will decrease;
- lowering the status of general directors of customs authorities to the status of nominee heads;
- the legal status of acts (actions) that are performed by a new WCO member in accordance with the temporary status is not clear;
- WCO legal texts on the admission of customs and economic unions to the Organization should contain clear objective criteria that will apply to any other customs or economic unions seeking to join the WCO in the future;
- any vote in which the Community has participated without legal standing may subsequently be declared null and void.

We believe that in the near future the EEC will need to get acquainted with research materials on the implementation of the Strategic Directions for the Development of Eurasian Economic Integration until 2025 in terms of cooperation with the WCO. And we hope that the results of this study can be used in expert work in practice.

## AUTHOR'S PUBLICATIONS

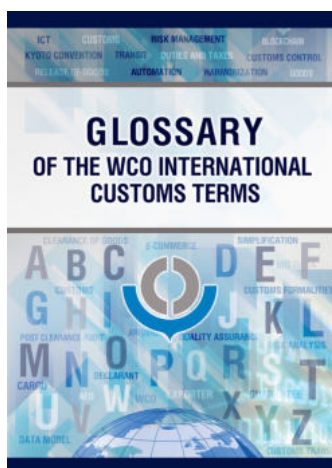


**Mozer Sergei. Legal and Organizational Basis for Economic and Customs Unions to get the Status of Member of the World Customs Organization: monograph / S.V. Mozer. Moscow: Publishing House of the Russian Customs Academy, 2022. 462 pages.**



This monograph has been prepared as part of the study of the legal and organizational basis for obtaining the status of a Member of the World Customs Organization (WCO) by economic and customs unions, as well as the implementation of the Strategic Directions for the Development of Eurasian Economic Integration until 2025 in terms of joint actions with the Member States of the Eurasian Economic Union (EEU), aimed at obtaining by the EEU the status of a Member in the WCO.

The study contains an analysis of the legal instruments, institutional and financial implications, as well as the stages of the European Union accession to the WCO. Scientific and practical recommendations have been formulated for customs and economic unions on building flexible and mutually beneficial relations with the WCO.



**Glossary of the WCO International Customs Terms / Mozer Sergei (compiler). Moscow: Publishing House of the Russian Customs Academy, 2021. 304 p.**

Glossary of the WCO International Customs Terms has been prepared to assist the Revised Kyoto Convention Management Committee (WCO) in revision of the International Convention on the Simplification and Harmonization of Customs Procedures.

The glossary consists of 864 terms and definitions with reference to the legal instruments and tools in which they are reflected – the WCO legal instruments and tools, created during 1953 – 2020, as well as presented to the attention of the international customs community by their developers (international organizations and customs administrations) within the framework of the activities of various WCO working bodies.



**Mozer Sergei. Legal Instruments and tools of the World Customs Organization: Guide / S.V. Mozer. Moscow: Publishing House of the Russian Customs Academy, 2021. 128 p.**

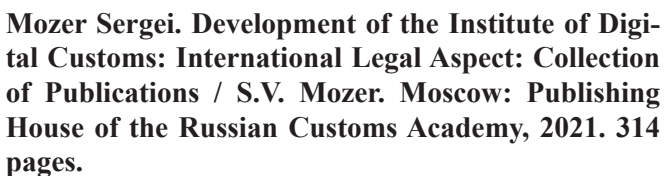
The Guide presents methodological approaches for the classification of legal instruments and tools of the World Customs Organization in the context of customs law institutions, which were developed over the period 1953 – 2020. It also contains the results of a practical analysis of legal means. It is analyzed the general dynamics of the creation of the WCO legal instruments and tools; it is represented the analysis of legal instruments and tools in the context of their forms, types and proposals (concepts) for the revision of the Kyoto Convention; institute

of digital customs, as well as topical issues of customs regulation. Within the framework of the study, the practical proposals were formulated for the analysis of the standards of the World Customs Organization.



**Mozer Sergei. International legal status of observers in the World Customs Organization: an analytical review / S.V. Mozer. Moscow: Publishing House of the Russian Customs Academy, 2021. 86 p.**

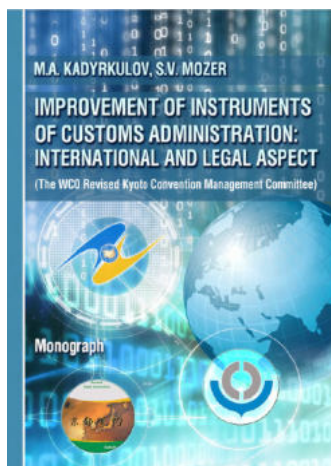
The research work presents the historical aspects of the participation of observers in the activities of the World Customs Organization (WCO), analyzes their international legal status, and also considers the procedural aspects of the work of observers in the activities of the working bodies of this Organization. Based on the results of the study, conclusions and recommendations were formed in the framework of cooperation between the Eurasian Economic Commission and the WCO.



Customs Work Program of the World Customs Organization. The author investigates the issue of correlating the analyzed institution with various instruments of customs regulation, which are created by the international customs community in the World Customs Organization.



The monograph represents historical and current facts of the formation of the institution of electronic and digital customs in the World Customs Organization. It analyzes various activities of the WCO working bodies for the development of digital customs. Attention is paid to the issues related to preparation of the Digital Customs Concept, the Digital Customs Maturity Model, and the WCO Digital Customs Work Program. The author investigates the issues of correlating the analyzed institution with various instruments of customs regulation which are created by the international customs community in the World Customs Organization.



**Kadyrkulov M.A., Mozer S.V. Improvement of instruments of customs administration: international and legal aspect (The Revised Kyoto Convention Management Committee): monograph / M.A. Kadyrkulov, S.V. Mozer. Moscow: Publishing House of the Russian Customs Academy, 2018. 248 p.**

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).



**M.A. Kadyrkulov, S.V. Mozer, N.G. Lipatova. The World Customs Organization as a Modern Institute of Improvement of Customs Regulation and Trade Facilitation: Monograph / Moscow: the Publishing House of the Russian Customs Academy, 2017. 172 p.**

The monograph presents historical and modern facts of the activities of the World Customs Organization in the customs sphere and trade facilitation. It analyzes the WCO functional structure, describes the rules of procedures and administrative aspects of the activities of the structural divisions of the WCO Secretariat, as well as the main working bodies in the relevant areas of the Organization. It considers possible ways of mutually beneficial customs cooperation between the World Customs

Organization as an international institute for development and improvement of customs regulation and the Eurasian Economic Commission as a permanent regulatory body of the Eurasian Economic Union (EEU).

The scientific publication

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