

**Revised Kyoto Convention Management Committee
(19th Meeting, 12 – 13 November 2018)**

Methodological approaches of updating the Revised Kyoto Convention

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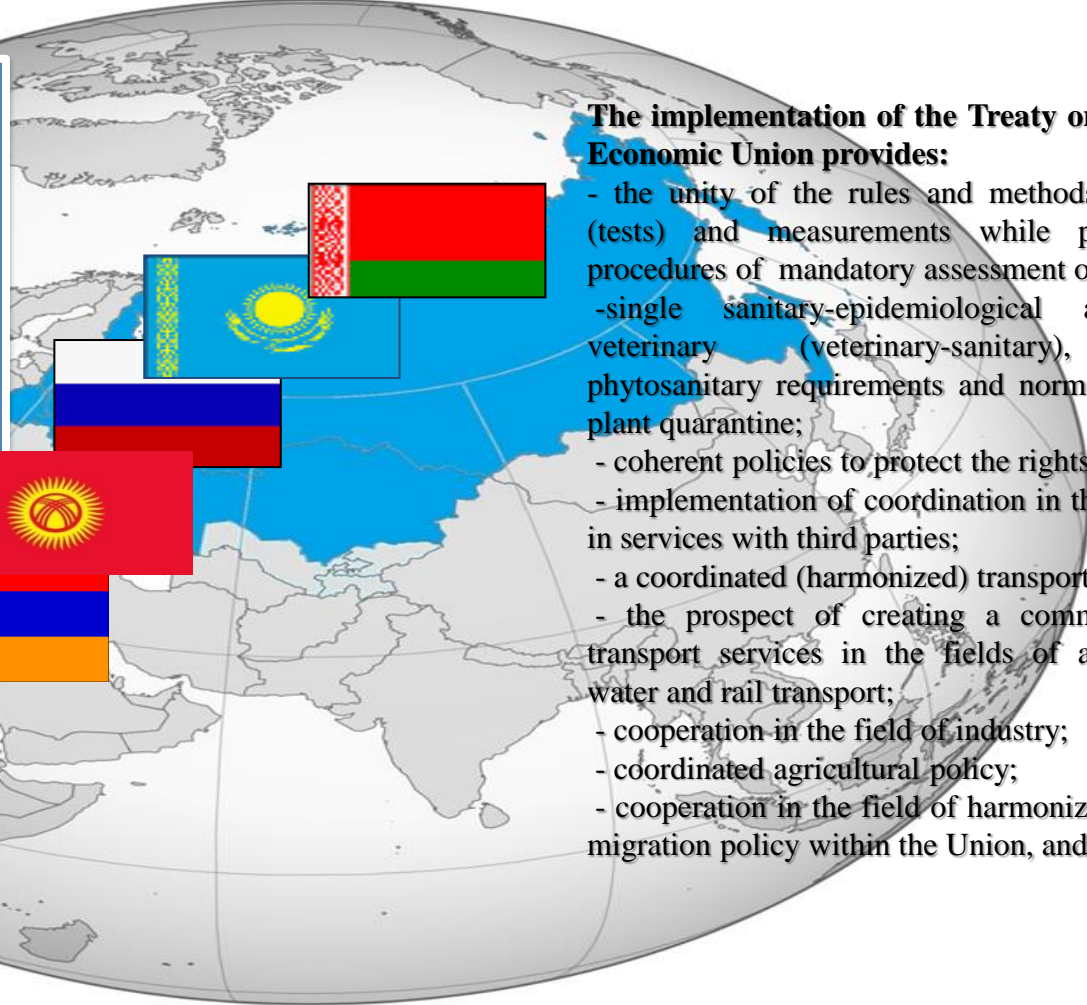
November 12, 2018, Brussels

The Eurasian Economic Union

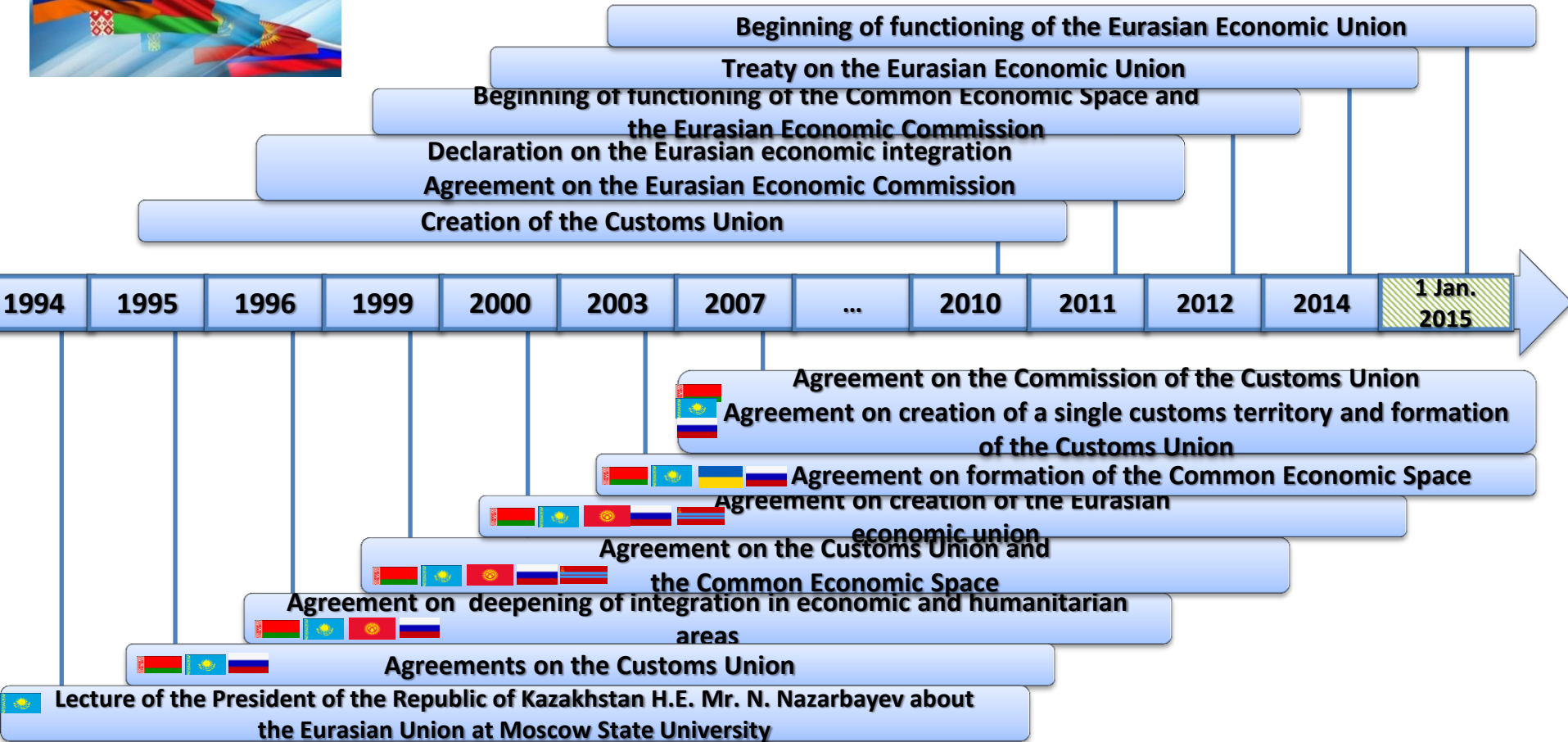
- population of the Eurasian Economic Union is 182,7 million;
- the territory is more than 20 million square kilometers;
- (GDP) is 2.389.2 billion. USD

The implementation of the Treaty on the Eurasian Economic Union provides:

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



Phases of formation of the Eurasian Economic Union



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

Issues of legal regulation based on the WCO standards;

International experience in various areas of customs (for example, customs control, declaring, customs payments, customs transit, application of information customs technologies, the «single window» mechanism, improvement of the legal status of the AEO, etc.);

Foreign law enforcement practice;

Familiarization with the WCO guidance, recommendations, materials, systematizing international experience, with the methods applied by foreign customs administrations, etc.

MEMORANDUM OF UNDERSTANDING

between the Eurasian Economic Commission and the World Customs Organization¹

The Eurasian Economic Commission (EEC) and the World Customs Organization (WCO), hereinafter referred to as “the Parties”:

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

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

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

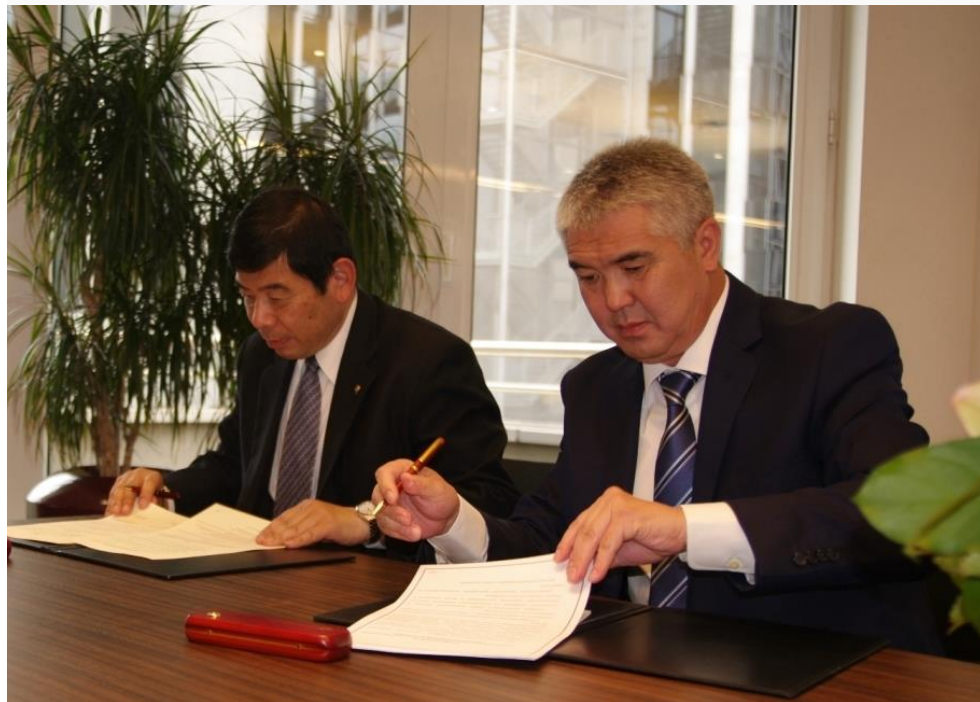
Recognizing that the exchange of information, training activities and technical assistance are essential for the unified application of the key international conventions, recommendations and other standards in the Customs sphere,

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

Have agreed as follows:

Article 1 **General**

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



Scope and forms of the EEC-WCO cooperation

Scope

improvement of Customs, based on international standards

development of international Customs cooperation

elaboration of effective and modern standards in the Customs sphere

establishment of practical cooperation between the Parties in Customs sphere

implementation of the best Customs practices

harmonization and increased effectiveness in the use of resources of Customs administrations

increase in effectiveness of Customs controls

development of Customs infrastructure

Forms

exchange of publically available information and documents concerning matters of common interests

participation of the representatives of one Party in relevant events organized by the other Party

organization of joint meetings, consultations, scientific seminars and conferences on matters of common interest

realization of other forms of cooperation

The EEC participation in the WCO Working Bodies

NOW

The Council

The Permanent Technical Committee

**The Revised Kyoto Convention Management
Committee**

The Working Group on E-Commerce

The SAFE Working Group

**The WCO Working Group on the WTO
Agreement on Trade Facilitation**

PERSPECTIVE

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

The Technical Committee on Rules of Origin

**The Technical Committee on Customs
Valuation**

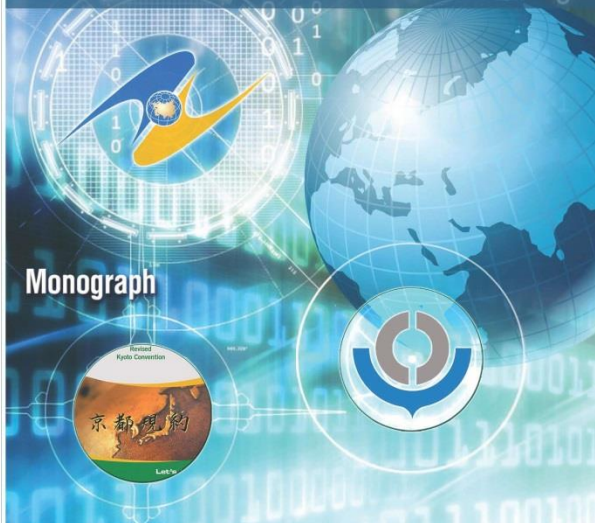
The Harmonized System Committee

Monograph «IMPROVEMENT OF INSTRUMENTS OF CUSTOMS ADMINISTRATION: INTERNATIONAL AND LEGAL ASPECT (2018)

M.A. KADYRKULOV, S.V. MOZER

IMPROVEMENT OF INSTRUMENTS OF CUSTOMS ADMINISTRATION: INTERNATIONAL AND LEGAL ASPECT

(The WCO Revised Kyoto Convention Management Committee)



М.А. КАДЫРКУЛОВ, С.В. МОЗЕР, Н.Г. ЛИПАТОВА

ВСЕМИРНАЯ ТАМОЖЕННАЯ ОРГАНИЗАЦИЯ КАК СОВРЕМЕННЫЙ ИНСТИТУТ СОВЕРШЕНСТВОВАНИЯ ТАМОЖЕННОГО АДМИНИСТРИРОВАНИЯ И УПРОЩЕНИЯ ПРОЦЕДУР ТОРГОВЛИ

МОНОГРАФИЯ



Programs, concepts of development and improvement of customs regulation (as acts of public administration in the field of customs)

Administrative agreement in customs sphere

Forms of management in the sphere of customs regulation

Legal constructions in the field of customs regulation

Administrative and legal regimes (customs procedures)

Legal mechanism in the field of customs regulation

Permissions, bans, positive requiring in the sphere of customs regulation

Normative acts in the sphere of customs regulation

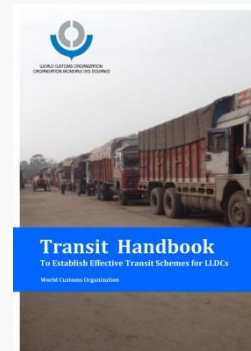
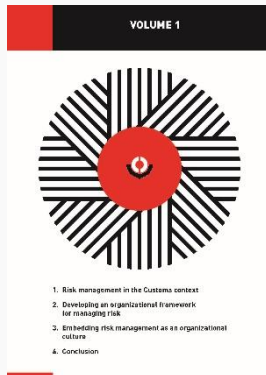
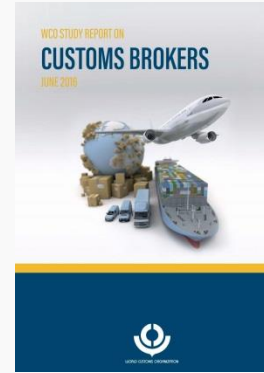
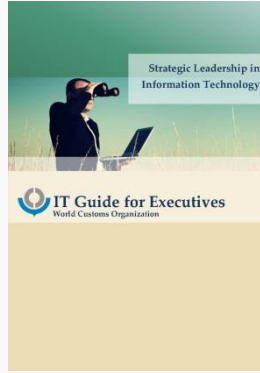
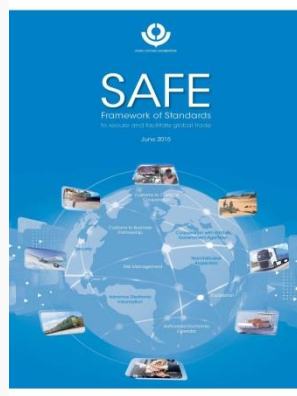
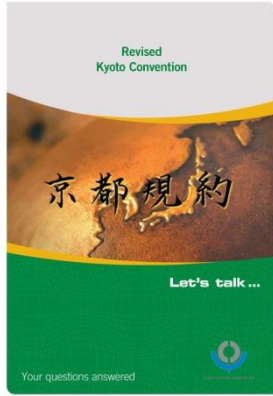
Legal institutes of customs law

Norms of customs law

International treaties related to customs regulation

Customs law as a branch of administrative law

The WCO Instruments and Tools



RKC Guidelines

KYOTO CONVENTION

GENERAL ANNEX GUIDELINES

Chapter 1

GENERAL PRINCIPLES



WORLD CUSTOMS ORGANIZATION

KYOTO CONVENTION

GENERAL ANNEX GUIDELINES

Chapter 4

DUTIES AND TAXES



WORLD CUSTOMS ORGANIZATION

KYOTO CONVENTION

GENERAL ANNEX GUIDELINES

Chapter 5

SECURITY



WORLD CUSTOMS ORGANIZATION

KYOTO CONVENTION

GENERAL ANNEX GUIDELINES

Chapter 6

CUSTOMS CONTROL



WORLD CUSTOMS ORGANIZATION

KYOTO CONVENTION

GENERAL ANNEX GUIDELINES

Chapter 7

APPLICATION OF INFORMATION TECHNOLOGY



WORLD CUSTOMS ORGANIZATION

KYOTO CONVENTION

GENERAL ANNEX GUIDELINES

Chapter 8

RELATIONSHIP BETWEEN THE CUSTOMS AND THIRD PARTIES



WORLD CUSTOMS ORGANIZATION

KYOTO CONVENTION

GENERAL ANNEX GUIDELINES

Chapter 9

INFORMATION, DECISIONS AND RULINGS SUPPLIED BY CUSTOMS



WORLD CUSTOMS ORGANIZATION

KYOTO CONVENTION

GENERAL ANNEX GUIDELINES

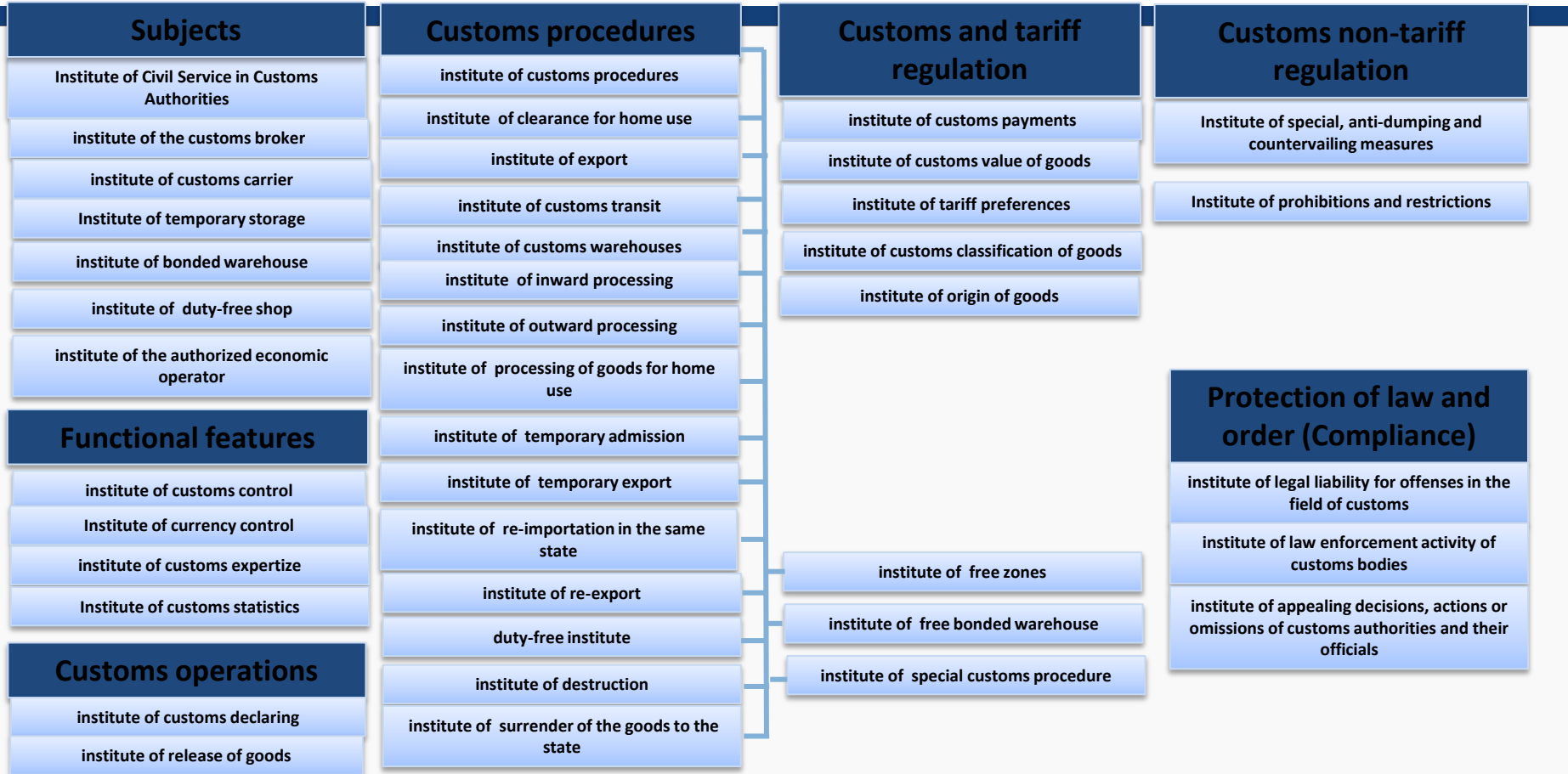
Chapter 10

APPEALS IN CUSTOMS MATTERS

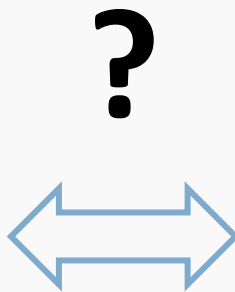
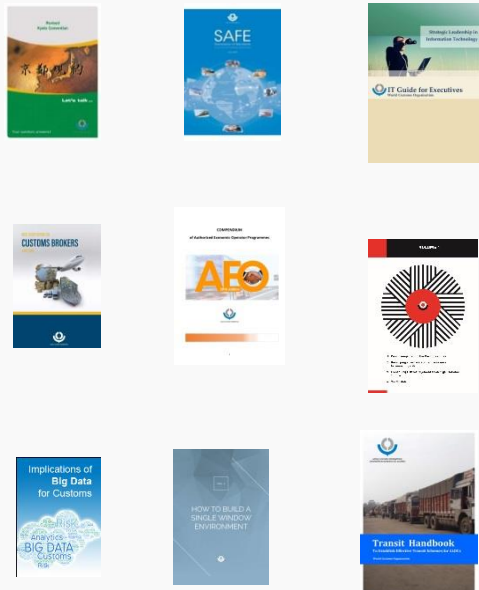


WORLD CUSTOMS ORGANIZATION

Institutes of customs law in the EEU



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



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

1. The issue of revision of the Kyoto Convention is on the agenda of the international customs community since 2009. The preparatory stage for the revision of this agreement coincides with the creation of the Virtual Working Group for the Revision of the Kyoto Convention in 2014 and continues to the present.
2. To date, important organizational and legal documents have been prepared for the beginning of a comprehensive process of modernization of the standards, legal institutions of the Convention. Among them - the Terms of Reference of the Working Group on a Comprehensive Review of the Revised Kyoto Convention as well as the consolidated list of the proposals of the Customs administrations of the WCO Member States for its updating.
3. The list of proposals for the revision of the Convention includes the following institutions of customs law: advanced information; advanced rulings; Authorized Economic Operator; mutual recognition of the AEO legal status; customs control; risk management; customs control based on audit; storage of goods; release of goods; «Single Window» mechanism; E-payments; integrated supply chain management; transit of goods; transshipment of goods; moving of the goods by individuals (travellers).
4. **Proposals for updating the Kyoto Convention** affect technical, informational and technological, methodological aspects of the improvement of customs control (modern instruments, technology): strengthening the role of customs in security matters, the use of modern instruments, technologies to support customs operations, the use of the Internet, the Time Release Study.

1. For the purposes of reviewing the Kyoto Convention, it is important to highlight the current issues of customs regulation, considered by the World Customs Organization on the «Procedure and simplification» block for the last 20 years. The working materials of the Permanent Technical Committee accumulate the existing issues in the field of customs, and their analysis and subsequent classification allows accomplishing the task.
2. For the period from 1997 to 2018, the Permanent Technical Committee considered about **400 topical (relevant) issues of customs regulation**, which can be conditionally divided **into 39 blocks (themes)**. The classification is presented in the above-mentioned Monograph. Among them there are *customs procedures and customs operations, best practices of customs administration, security, a secure supply chain, border management, the «Single Window» mechanism, risk management system, a data model, instruments and tools of the WCO for customs administration and trade facilitation, customs payments, customs technologies, trade facilitation, cooperation of Customs authorities and participants of customs legal relations, etc.*
3. **The above-mentioned thematic classification provides a comprehensive view of the multidisciplinary activities of the WCO, the grandiosity of the project on harmonization and simplification of customs procedures, and can be used to prepare scientific and methodological recommendations for the revision of the Kyoto Convention.**



5. Annual operational plans for the complete review of the RKC

4. Implementation Plan and Proposals for the complete review of the RKC (Project and Action Plan)

3. Creation of an organizational-legal mechanism for the revision of the Convention)

2. Development of a Methodology for the revision of the Convention and updating its provisions, legal institutions, standards, procedures

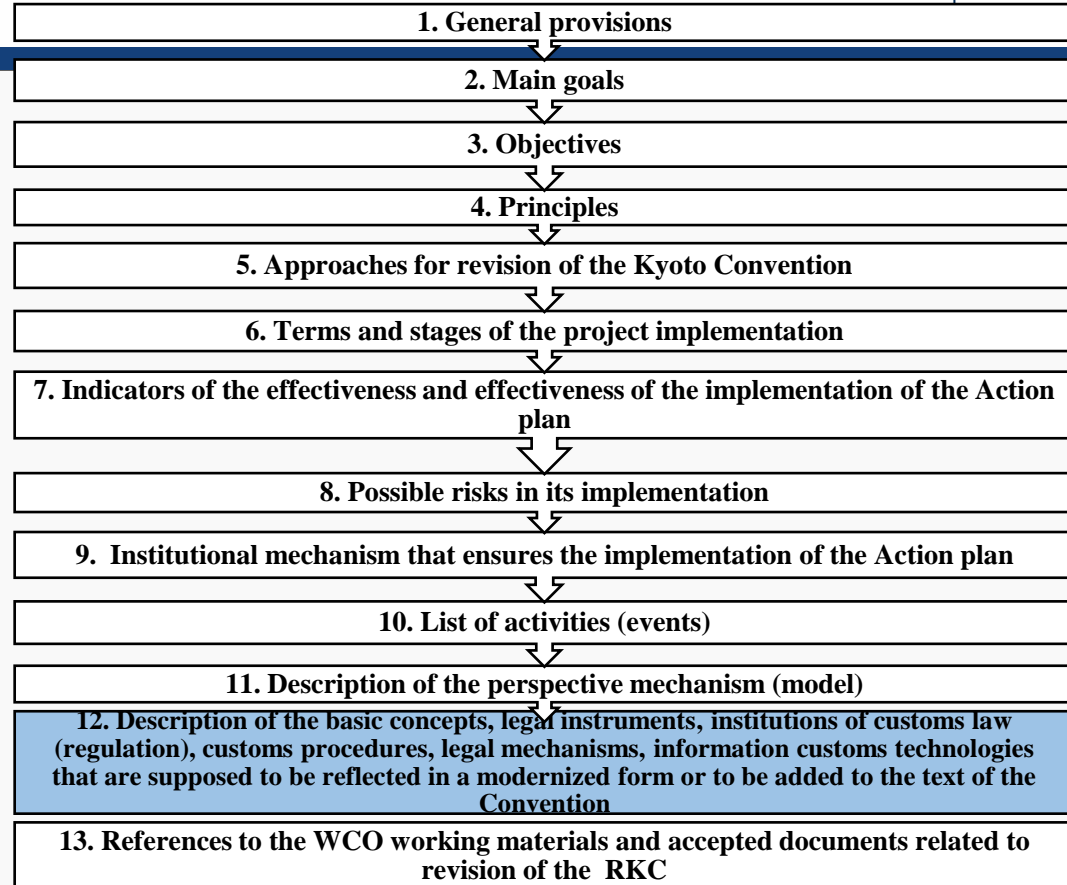
1. Development of a Concept (Guidelines) for the revision of the Kyoto Convention)

In the process of reviewing the Convention, the experts from the WCO Member States, observers as well as from the WCO Secretariat, who participate in this process, in our opinion, **need to have a basic, consolidated document (Concept, Guidance, Strategy).**

In other words, the Concept is a kind of compass, a guide for the revision of the Convention.

After the Concept is created, it is possible to move on to another stage - the preparation of the Action Plan for the revision of the Convention and the creation of a Network Schedule for its Implementation.

The experts **should clearly understand what is required** from them in the process of reviewing the Convention; and in case of controversial issues they need promptly to refer not only to the materials of the meetings of the RKCMC or the WGR RKC, but, above all, to the Concept itself. In the process of reviewing the Convention, it is important to follow a single strategic line.

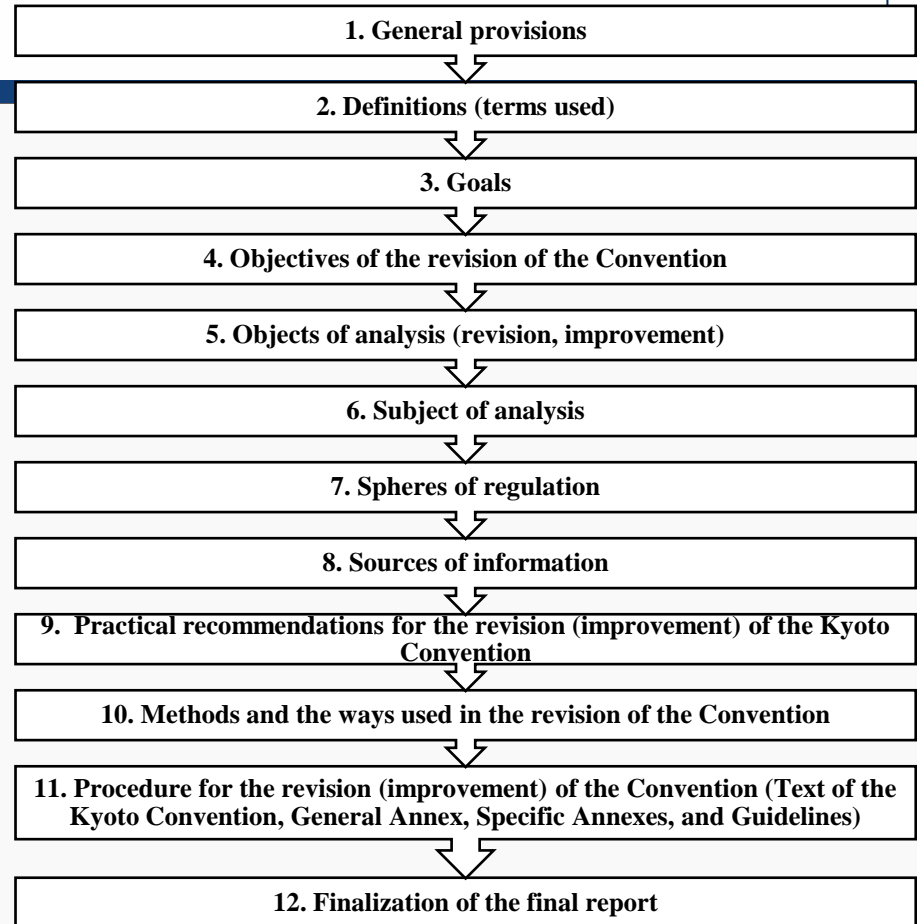


Sections of the Concept of the Revision of the Kyoto Convention

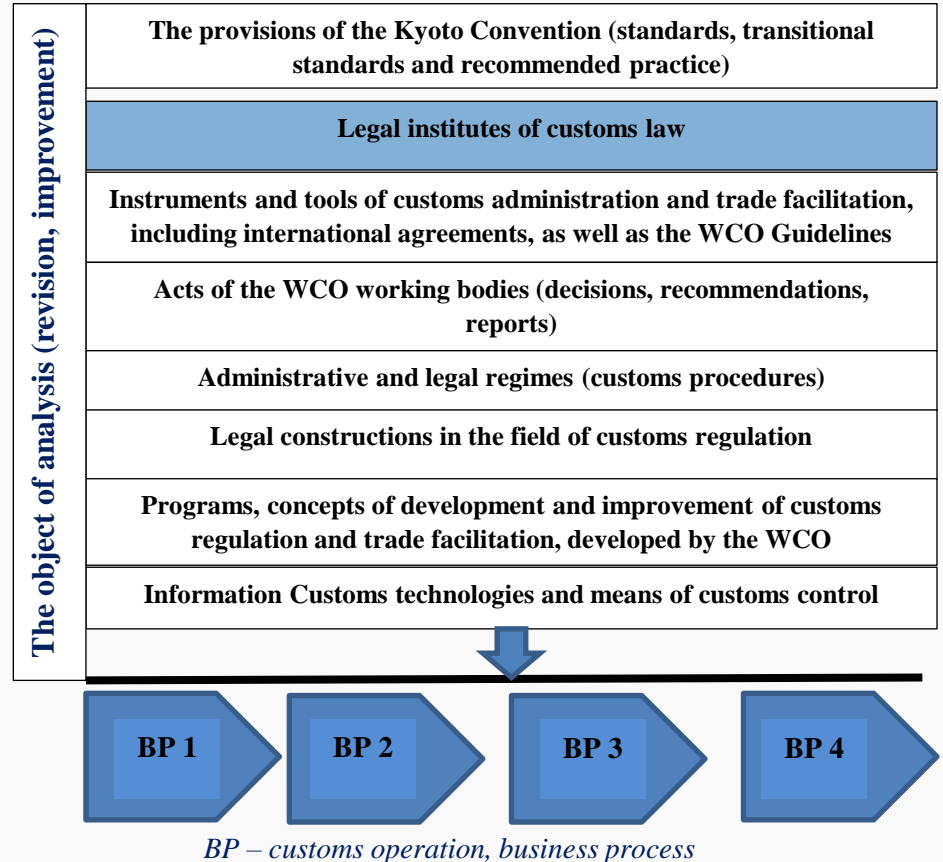
It is obvious that for a project of this scale, the existence of only the Action Plan and the Proposals for the revision of the Convention is not enough

The objects of analysis, methods and the ways of revision of the Convention used in this process should be clear

The methodology is a rule, a certain ready-made «recipe», an algorithm, procedures for any targeted action. It is close to the term «technology». The methodology differs from the method by specifying techniques and tasks. The necessary requirements for the methodology, as for a specific algorithm, procedure, are: *realism; reproducibility; clarity; compliance with the goals and objectives of the planned action; validity; effectiveness*



Returning to the issue of creating a Concept for the revision of the RKC, we believe that the *following objects of analysis (positions, elements) must be reflected conceptually (in the theses) in the Concept itself.*



1. ***Institutional approach*** (from the word «legal institution») – this approach focuses on the legal institution of customs law. In this case, various legal institutions of customs law are analyzed, which are reflected in the Kyoto Convention, international agreements in the field of customs as well as earlier developed WCO guidelines, taking into account the best law enforcement practices and recommendations (proposals) of the WCO Member States and observers. Classification of institutions of customs law is presented on slide № 12.

2. ***Thematic approach***. It represents a way to update the Convention on the basis of the proposals of the WCO experts on various areas of customs regulation. An example of such an approach is the proposals of the Virtual Working Group on the Revision of the Convention as well as the classification of topical issues of customs regulation considered during the meetings of the Permanent Technical Committee in the period from 1997 to 2018.

3. **Operational approach** (from the word «customs operation»). When using this approach to the analysis of the object of improvement, the basic element is the *customs operation, the business process*, which consistently follows one another in the process of organizing a secure supply chain of goods. An approximate list of customs procedures and business processes is presented in the Table 1 «List of business processes (customs operations) connected with supply of goods» (See Monograph «IMPROVEMENT OF INSTRUMENTS OF CUSTOMS ADMINISTRATION: INTERNATIONAL AND LEGAL ASPECT»)

4. **Combined approach.** We believe that the application of a combined (integrated) approach to the modernization of the object under study is the best way to update, revise the Kyoto Convention. It allows combining such elements as *customs procedures, business processes, legal instruments and means of customs regulation in one coordinate system, including customs law institutions, thematic issues, topical issues in the sphere of customs regulation and trade facilitation, the best practice of customs administration.*

It is important to define a circle (group) of the subject, whose activities or relationships will be regulated by the provisions of the revised Convention.

It is important to clearly understand the categories of legal relations in the field of customs with the listed entities. In this case, the experts of the Working Group, when reviewing the Convention, may refer to various WCO instruments and tools, including WCO guidelines that affect the activities of such subjects.

So, if the legal relations with the participation of the AEO, customs broker, carrier, Customs and Tax services are related to the subject of analysis, then the relevant WCO Guidelines can be implemented in the required volume to the Kyoto Convention (AEO Compendium, Study Report on Customs Brokers, Transit Guidelines etc.).

- ✓ **Customs, Tax authorities, other state authorities, in whose competence are the issues of regulation of customs and commercial legal relations;**
- ✓ **exporter;**
- ✓ **importer;**
- ✓ **customs agents (brokers);**
- ✓ **customs carriers;**
- ✓ **owners of temporary storage warehouses;**
- ✓ **owners of customs warehouses;**
- ✓ **owners of free warehouses;**
- ✓ **owners of duty free shops;**
- ✓ **Authorized Economic Operators;**
- ✓ **freight forwarders;**
- ✓ **logistics companies;**
- ✓ **carriers;**
- ✓ **express carriers;**
- ✓ **administrations of air ports;**
- ✓ **chambers of commerce and industry;**
- ✓ **insurance companies;**
- ✓ **banks;**
- ✓ **patent organizations (patent attorneys);**
- ✓ **postal operators and other organizations.**

The definition of the scope allowed the EEC experts to clearly identify the circle of subjects and legal relations with their participation, the spheres of state regulation, as well as the types of activities. We believe that a similar approach can be indicated either in the Concept of the revision of the RKC, or in the Methodology for revision. At the same time, we proceed from the premise that the sphere of coverage (regulation) of the updated Kyoto Convention should concern purely customs legal relations.

Spheres of state regulation:

the sphere of customs, foreign exchange, tax, customs and tariff, non-tariff and technical regulation, the sphere of application of sanitary, veterinary and sanitary, phytosanitary quarantine measures, the sphere of regulation of financial services (banking, insurance), transport and transportation, safety and protection of intellectual property rights

Types of activities:

foreign trade, activities for the provision of transportation and logistics services, financial services (banking, insurance) as well as activities in the field of customs affairs

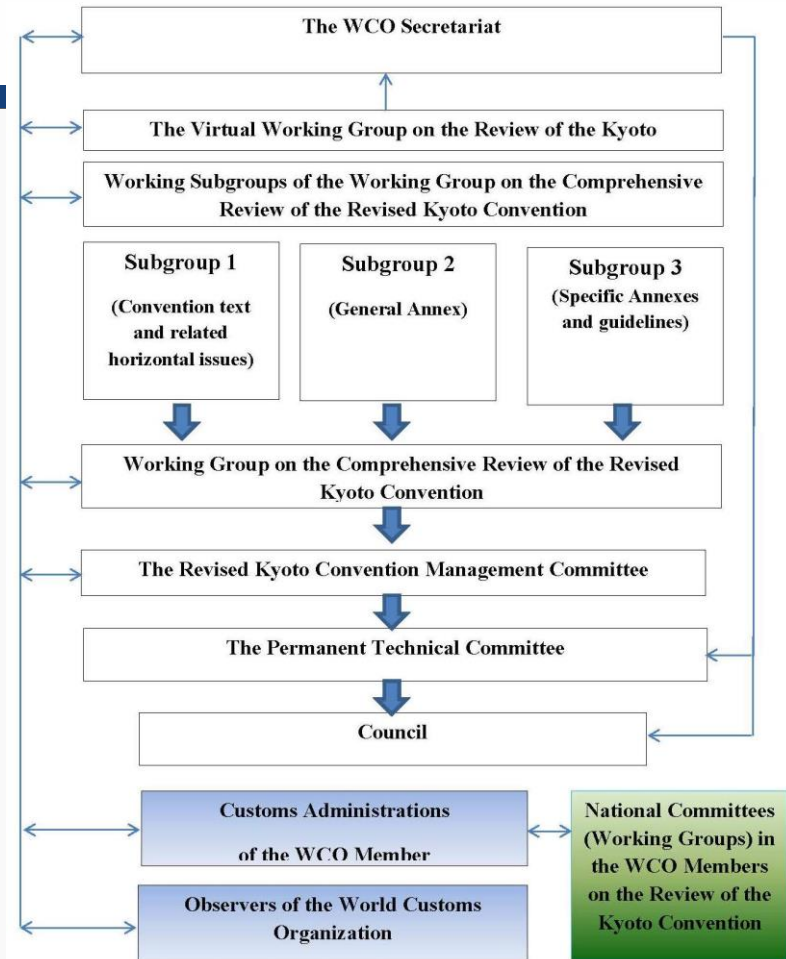
Subjects:

- ✓ state authorities of the Member States: in the field of customs, taxation, customs and tariff and non-tariff regulation; state authorities of the Member States: issuing permits related to foreign economic activity, transport control, sanitary, veterinary and sanitary, phytosanitary quarantine control (supervision), control (supervision) over compliance of technical regulations, export, radiation, foreign exchange and other forms of state control;
- ✓ organizations authorized to issue permits, including chambers of commerce, certification bodies and testing laboratories (centres) performing the work in the field of assessment (confirmation) of compliance with technical regulations of the Union;
- ✓ interested persons: legal entities and individual entrepreneurs engaged in foreign economic activity; persons carrying out activities in the field of customs affairs (customs agents (brokers), customs carriers, owners of temporary storage warehouses, owners of customs warehouses, owners of free warehouses, owners of duty free shops); Authorized Economic Operators; freight forwarders, logistics companies, carriers, express carriers; administrations of air ports, road and rail border crossing points; banks and insurance companies; patent organizations (patent attorneys), postal operators and other organizations.

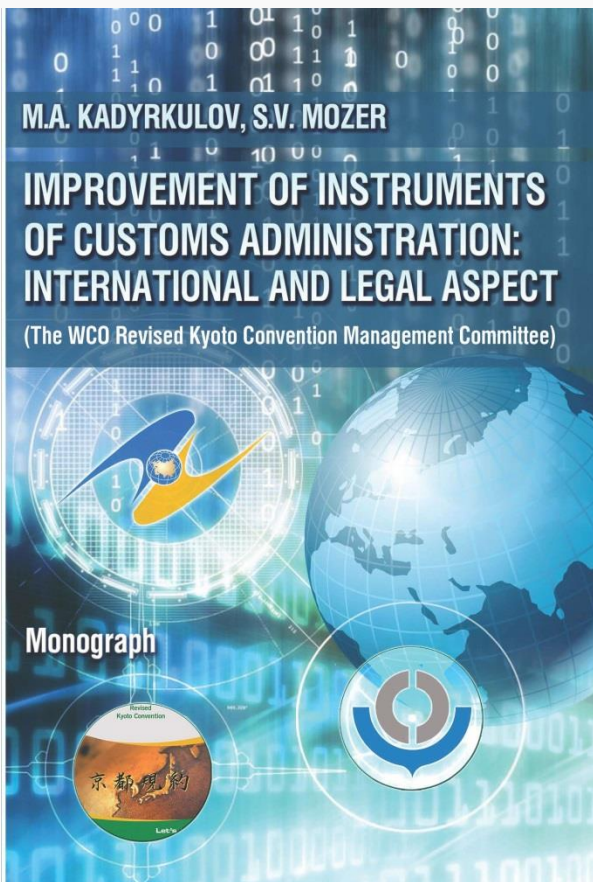
Organizational form of management includes the *structure* and *mechanism* of project management (governance).

The structure determines the composition and responsibility of the interrelated organizational units or links that implement a set of project management functions - project participants united by a common management apparatus for the fulfillment of all the goals and objectives of the project. Elements of the organizational structure of the project are bodies and links of all levels as well as the interrelations between them/

The project management mechanism revitalizes the structure and determines the order, procedures for fulfillment by the project participants of their functions, which are tuned to the effective implementation of the project activities.



1. The WCO has developed modern customs administration instruments that affect a variety of customs law institutions. It is clear that the revised Convention and its accompanying Guidelines should take into account as much as possible legal innovations in the field of customs regulation.
2. The revision of the Kyoto Convention will undoubtedly strengthen the position of the World Customs Organization in the international arena as the main international organization and an important institution of improving customs regulation and trade facilitation.
3. The process of revision of the Convention should be preceded by the creation of an effective scientific and methodological apparatus, an analysis of the approaches to such a revision. It is necessary to work out the correct method of work and establish a time frame for its completion. In addition to this, it is necessary to conduct a preliminary and fundamental analysis of the Convention with a view to correlating its provisions with best and modern customs regulation practices.
4. To date, there is no methodology for assessing the revision of legal instruments of customs regulation (standards, regulations, legal institutions) of the Kyoto Convention. The main directions of this work are formulated only conceptually. In this regard, it is required a **certain concept**, a plan for the revision of such instruments as well as **methodological frameworks** developed with the active participation of stakeholders and the academic community.



The monograph can be read at the following link on the «**Russian Customs Academy: SCIENCE**»:

<http://customs-academy.net/?p=11868>

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Other publications of the author:

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