KIEP Working Paper 08-05

Eurasian Economic Community (EurAsEC): Legal Aspects of Regional Trade Integration

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KIEP Korea Institute for International Economic Policy

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Executive Summary

The Eurasian Economic Community (EurAsEC) is an international economic organization designed to effectively promote the formation of a customs union and a single economic space among six CIS countries: Belarus, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, and Uzbekistan. Moldova, Ukraine, and Armenia have observer status.

As a "newborn child", the EurAsEC has yet to overcome internal and external challenges. The main internal challenge is arguably a two-tiered legal system that has emerged as a result of "diverse speed" integration in the EurAsEC. The external challenge would be posed by (1) other regional integration projects with similar purposes and subject matter, and (2) the membership of EurAsEC countries in the WTO. With respect to other regional projects such as the Single Economic Space between Belarus, Kazakhstan, Ukraine and Russia, there is a need to coordinate them with the EurAsEC. As for the WTO membership issue, EurAsEC countries opted for WTO accession in parallel with the formation of the customs union. Considering the fact that Kyrgyzstan has already entered the WTO, and the remaining members are at different accession stages, the pursued "parallelism" is certainly very challenging for the affected EurAsEC countries.

The formation of the EurAsEC customs union will have certain implications for third-party countries. First, products from third countries will be subject to the CCT and common non-tariff barriers at the EurAsEC external borders while they will be able to freely move

inside the single customs territory with the biggest market in the CIS. Second, the EurAsEC customs union, once established, will be able to enter, on behalf of its members, into trade arrangements with third countries. Third, the coordinated WTO accession policy of EurAsEC countries may produce for WTO members similar market access opportunities to these countries. Fourth, the alteration of the bound duties of Kyrgyzstan and possibly other EurAsEC members that will have joined the WTO prior to the formation of the customs union will require them to negotiate compensatory adjustment with the WTO members concerned. Finally, in the future the EurAsEC customs union may become a WTO member with a new voice in WTO decision making.

Keywords: Eurasian Economic Community (EurAsEC), CIS, regional integration, FTA, customs union, single economic space

국문요약

유라시아경제공동체(EurAsEC)는 2000년 10월 10일 카자흐스탄 알마티에서 출범하여 벨로루시, 러시아, 카자흐스탄, 키르기스스탄, 우즈베키스탄 및 타지키스탄 등 6개국간에 관세동맹과 공동경제구역(single economic space)을 추진하기 위해 설립된 국제경제기구이다. EurAsEC 회원국들은 양자 및 다자 협정을 통해 이미 자유무역을 수행하고 있는데, 현재는 관세동맹 설치 노력을 기울이고 있으며, 장기적으로는 유럽연합과 비슷한 성격을 가진 경제통합모델이 될 수 있다.

EurAsEC는 신국제기구이므로 몇 가지 도전요소를 극복해야 한다. 각 회원국의 대외무역제도가 다르기 때문에 6개 국가간에 관세동맹을 동시에 맺는 것이 현실적으로 불가능하며, 우선 러시아, 벨로루시 및 카자흐스탄 사이에만 관세동맹을 설립하고 나머지 국가들은 그 이후 가입하기로 하였다. 따라서 현 EurAsEC 규범제도가 모든 회원국에 똑같이 적용되지 않아 동일성을 유지하지 못하고 있다. 또한 독립국가연합(CIS) 구역에서 EurAsEC와 유사한 목적을 달성하려고 하는 러시아, 벨로루시, 카자흐스탄 및 우크라이나 간 동일경제구역(single economic space) 등의 경제통합형태들이 있는데, 이러한 경제통합형태의 기능 또는 활동을 EurAsEC와 조정할 필요가 있다. EurAsEC 국가 중 키르기스스탄만 WTO 회원국이고 나머지 국가들은 WTO 가입절차를 밟는 중이기 때문에 EurAsEC의 관세동맹준비과정과 WTO 가입과정을 서로 조화시켜야 하나 이는 쉽지 않은 과제이다.

EurAsEC 관세동맹의 제3국가에 대한 시사점은 다음과 같다. 첫째, 제3국으로부터 수입되는 상품에 공동관세를 지불하면 EurAsEC 역내에서 자유롭게 이동할 수 있다. 둘째, 향후 제3국과의 FTA 등 무역협정은 EurAsEC의 일부 회원국보다는 관세동맹 전체와 맺어질 것이다. 셋째, EurAsEC는 WTO 가입조화정책을 추진하고 있는데, 키르기스스탄 외 각 EurAsEC 회원국은 WTO 가입협상 시 유사한 시장접근제안을 하도록 할 것이다. 넷째, 키르기스스탄은 EurAsEC 관세동맹설립으로 인한 공동관세를 인정할 경우 자국의 WTO 양허표를 수정해야 하며, 이에 따라 해당 WTO 회원국에

보상할 의무가 있다. 다섯째, EurAsEC은 독자적 관세영역으로서 향후 WTO에 가입할 가능성이 있는데, 이 경우 WTO 의사결정에 영향을 미칠 수 있다.

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저서 및 논문

Всемирная торговая ор ганизация и развивающиеся страны: вопросы разрешения споров (2005)
"Cessation and Reparation in the GATT/WTO Legal System: A View from the Law of State Responsibility" (공저, 2007)
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Eurasian Economic Community (EurAsEC): Legal Aspects of Regional Trade Integration

Sherzod Shadikhodjaev*

I. Introduction

Since the dissolution of the Soviet Union in 1991, the newly independent states in the post-Soviet area have been involved in various integration processes. They have aimed to maintain and further develop historically established relations through new regional arrangements that can roughly be grouped into political, military, and economic categories.[1] In the political field, the Commonwealth of Independent States (CIS), the Belarus-Russia Union, the organization of "GUAM" (which stands for Georgia, Ukraine, Azerbaijan and Moldova), the Shanghai Cooperation Organization (which also includes China in addition to five CIS countries) have emerged. In the military field, the Collective Security Treaty Organization was

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[1] This classification is not official. Some regional blocs deal with quite a broad scope of issues so that they can be placed in more than one category.

established. Finally, the economic sphere includes free trade agreements (FTAs), the Single Economic Space between Belarus, Kazakhstan, Ukraine and Russia, and the Eurasian Economic Community (EurAsEC[2]).

The EurAsEC is the most ambitious operational economic bloc in the CIS. The history of the EurAsEC's establishment consists of three major stages.[3] In the first stage, the CIS put forward the idea of launching an economic union among its member states, but failed to fully put it into practice. In the second stage, some CIS countries started to search for deeper economic integration patterns applicable to a smaller group of interested countries rather than the entire CIS. At this point, Russia, Belarus, Kazakhstan, Kyrgyzstan, and Tajikistan decided to create a customs union that would subsequently develop into a single economic space. Their intention was reflected in the customs union agreements and the Treaty on Customs Union and Single Economic Space.[4] While a customs union is a free trade area with a common external tariff, a single economic space is a more comprehensive integration form that includes a common market of goods, services, capital and labor, common economic policy, single infrastructure, and harmonized legislation.[5] The third stage refers to

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[2] The other frequently used abbreviation for the Eurasian Economic Community is "EAEC".

[3] The first two stages are explained in more detail in Section III of this paper.

[4] The English translation of the titles and contents of the CIS, EurAsEC instruments, and other documents in Russian that appear in this paper (except Appendix) is done by the author on his own for the purpose of this study, and thus should not be considered as authentic.

[5] Article 1.1 of the Treaty on Customs Union and Single Economic Space.

the emergence of the EurAsEC — a new international organization with the purpose of facilitating the formation of the customs union and the single economic space. The presidents of the five CIS countries above gathered in Astana, Kazakhstan, on October 10, 2000 to sign the Treaty on the Establishment of the Eurasian Economic Community (hereinafter "EurAsEC Treaty"). The treaty entered into force on May 30, 2001. With Uzbekistan's accession in January 2006, the EurAsEC incorporated the Organization of Central Asian Cooperation. As of February 26, 2008, 113 treaties, including 47 pre-EurAsEC agreements, concerning the creation of the customs union and the single economic space constituted a significant part of "EurAsEC law".[6]

The case of the EurAsEC is unique in that the majority of its members have not yet joined the World Trade Organization (WTO). At the same time, they are working on the harmonization of their external commercial policy to be able to create a full-fledged customs union. Obviously, EurAsEC trade disciplines should ultimately comply with WTO standards.

There have been several writings on the EurAsEC, predominantly in the Russian-language literature. While some of them have discussed virtually all EurAsEC activities[7], others have focused on more specific

[6] For the list of the EurAsEC treaties, see Межпарламентская ассамблея ЕврАзЭС, «Таблица о вступлении в силу международных договоров Евразийского экономического сообщества (по состоянию на 26 февраля 2008 г.)», http://www.ipaeurasec.org/evra/?data=interdocs (visited 7 May 2008).

[7] See Рапота Г.А. и др. (2005), *ЕврАзЕС: Экономическое притяжение*, Москва.

issues, such as organizational matters[8], taxation[9], customs regulation[10], and statistical analysis[11]. Some papers in English and Korean have not addressed the EurAsEC as such, but in the context of CIS regional integration.[12] This paper, by contrast, is fully dedicated to the EurAsEC. Given the lack of legal studies on EurAsEC trade issues, this paper aims to bridge this gap by examining the legal basis of the trade regime within the EurAsEC, referred to, hereinafter as "intra-trade", and EurAsEC's trade regime vis-à-vis third countries, referred to hereinafter "extra-trade". Another distinctive feature of this paper is that it analyzes some legal issues of the EurAsEC customs union from the perspective of the WTO. Due to spatial constraints, the matter of a

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[8] See Кулматов Т.Ш. и др. (2004), *Евразийское экономическое сообщество. Правовые и экономические основы*, Москва: Изд. Юнити.

[9] See Мамбеталиев Н.Т. (2004), «Правовые аспекты международных налоговых договоров в ЕврАзЭС», *Федеральный справочник*, № 15, С. 266-275; Кулматов Т.Ш. и др. (2004), *Евразийское экономическое сообщество. Правовые и экономические основы*, Москва: Изд. Юнити.

[10] See Истомин С.И. и др. (2003), *Таможенный союз стран Евразийского экономического сообщества*, Москва: Изд. Экономика

[11] See Межгосударственный статистический комитет СНГ (2006), *Страны Евразийского экономического сообщества: Беларусь, Казахстан, Кыргыстан, Россия, Таджикиистан и Узбекистан (Статистическийсборник)*, Москва.

[12] See 하유정 (2005),「유라시아 경제공동체(EEC)의 출범과 CIS 경제통합의 전망」, KIEP 지역리포트 01-05; Rilka Dragneva and Joop de Kort (2007), "The Legal Regime for Free Trade in the Commonwealth of Independent States," *International and Comparative Law Quarterly*, Vol. 56, No. 2, pp. 233–266; Patrizia Tumbarello (2005), "Regional Trade Integration and WTO Accession: Which is the Right Sequencing? An Application to the CIS", IMF Working Paper, WP/05/94.

single economic space is not considered. Given that trade liberalization in the EurAsEC has so far been concerned mainly with goods, the services sector and intellectual property issues do not fall within the scope of this study.

The remainder of this paper is organized as follows. Section II explains the attributes of the EurAsEC as an international organization. Sections III and IV discuss the legal foundations of the free trade regime and the customs union in the EurAsEC, respectively. Section V discusses EurAsEC issues related to the WTO, namely the future accession of five EurAsEC members and the WTO-compatibility of the EurAsEC customs union. Section VI concludes the paper.

II. The EurAsEC as an International Economic Organization

The EurAsEC is an international economic organization with the mission to effectively promote the process of formation of a customs union and a single economic space.[13] It has all the attributes of an international organization, such as treaty-based international personality, membership consisting of sovereign states, organizational structure, and a decision-making mechanism. In 2003, the EurAsEC was granted observer status in the General Assembly of the United Nations.[14]

1. International Personality

Under the EurAsEC Treaty, the contracting parties grant to the EurAsEC the legal capacity necessary to accomplish its tasks and objectives.[15] The EurAsEC may enter into relations with states and international organizations and conclude treaties with them. Furthermore, it possesses the rights of a juridical person and may, within the scope of its jurisdiction, enter into contracts, acquire and dispose of property, appear in court, open accounts, and carry out

[13] Article 2 of the EurAsEC Treaty.

[14] *ЕврАзЭС в вопросах и ответах* (2004), Москва, С. 2.

[15] Articles 1 and 11 of the EurAsEC Treaty.

financial transactions.[16] The EurAsEC and its officials enjoy all necessary privileges and immunities.[17]

2. Membership

The EurAsEC consists of six countries: Belarus, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, and Uzbekistan. It is open to all states willing to undertake the commitments under EurAsEC agreements, and which the existing members believe will be capable of complying with these commitments. Any member is free to withdraw from the EurAsEC provided that it has satisfied all procedural requirements. The Interstate Council may suspend the participation of any scofflaw member in the work of EurAsEC bodies, and subsequently expel it from the EurAsEC if the member concerned continues to violate its obligations.[18]

Observer status can be granted, upon the decision of the Interstate Council, to any requesting state or intergovernmental organization.[19] Three countries—Moldova (since 2002), Ukraine (since 2002), and Armenia (since 2003)—are observers at the EurAsEC. Observers have the right to participate in open meetings of EurAsEC bodies, speak at these meetings with the consent of the chair, and have access to their undisclosed decisions; however, they do not have the decision-making

[16] Article 11 of the EurAsEC Treaty.

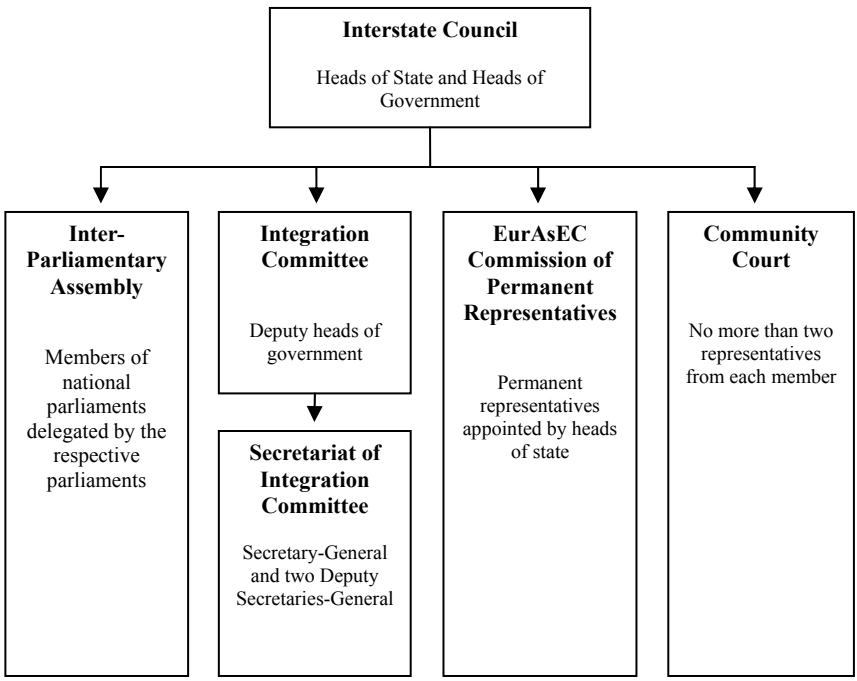
[17] Article 16 of the EurAsEC Treaty.

[18] Article 9 of the EurAsEC Treaty.

[19] Article 10 of the EurAsEC Treaty.

vote and may not sign any documents adopted in the EurAsEC.[20]

Figure 1. The EurAsEC Organizational Structure



3. Structure

The principal bodies of the EurAsEC are the Interstate Council, the Integration Committee, the Inter-Parliamentary Assembly, and the

[20] *ЕврАзЭС в вопросах и ответах* (2004), *supra* note 14, С. 3.

Community Court.[21] The chairmanship of the Interstate Council and the Integration Committee is held in rotation (in Russian alphabetical order) by each member country for one year.[22]

The Interstate Council is a highest decision-making body consisting of the heads of state and heads of government. It considers principal matters concerning common interests of member countries; defines the strategy, directions, and prospects of the integration development; and adopts decisions aimed at implementation of EurAsEC's objectives and tasks. If necessary, it can establish subsidiary bodies of the EurAsEC. The Interstate Council convenes at the level of heads of state at least once per year. The heads of government meet no less than twice per year.[23] As of July 1, 2008, there have been 22 meetings of the Interstate Council, including nine meetings of the heads of state and 13 meetings of the heads of government.[24]

The Integration Committee is a permanent body of the EurAsEC consisting of deputy heads of government of member states. Its main tasks are to ensure coordination among EurAsEC bodies, prepare proposals on the agenda of Interstate Council meetings and drafts of decisions and documents, prepare proposals regarding the formation of the EurAsEC budget, and oversee the implementation of the

[21] Article 3 of the EurAsEC Treaty.

[22] Article 4 of the EurAsEC Treaty.

[23] Article 5 of the EurAsEC Treaty.

[24] See ЕрАзЭС, «Хроника заседаний Межгоссовета ЕврАзЭС», http://www.evrazes.com/ru/main/infopage/192/ (visited July 1, 2008).

Interstate Council's decisions.[25] Integration Committee meetings are held at least once every three months.[26] The seats of the Integration Committee are Almaty, Kazakhstan, and Moscow, Russia.[27]

The Secretariat of the Integration Committee, with the Secretary General as its head, is responsible for the organization of work of and information and technical support for the Interstate Council and the Integration Committee. The Secretary General is the chief administrative official appointed by the Interstate Council, upon the Integration Committee's recommendation, for a term of three years.[28] The total of 97 staff including the Secretary-General work for the Secretariat of the Integration Committee.[29]

In between Integration Committee meetings, the Commission of Permanent Representatives appointed by the heads of state of member nations ensures day-to-day functioning of the EurAsEC.[30]

The Inter-Parliamentary Assembly is a parliamentary cooperation body within the EurAsEC framework that deals with harmonizing the national laws of the member countries and bringing them into conformity with EurAsEC agreements. In this regard, it adopted more than 100 documents.[31] The Inter-Parliamentary Assembly is composed

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[25] Article 6.1 of the EurAsEC Treaty.

[26] Article 6.2 of the EurAsEC Treaty.

[27] Article 12 of the EurAsEC Treaty.

[28] Article 6.3 of the EurAsEC Treaty.

[29] Decision of the EurAsEC Interstate Council on the "Structure of the EurAsEC Integration Committee's Secretariat", No. 266, adopted January 25, 2006.

[30] Article 6.2 of the EurAsEC Treaty.

[31] *Доклад Председателя Межпарламентской Ассамблеи ЕврАзЭС, «Об основных*

of delegated members of national parliaments.[32] The total number of delegates is 106 (Russia, 42 delegates; Belarus, Kazakhstan and Uzbekistan, 16 delegates each; Kyrgyzstan and Tajikistan, 8 delegates each).[33] The Inter-Parliamentary Assembly is located in Saint Petersburg, Russia.[34]

The Community Court ensures uniform enforcement of EurAsEC agreements and decisions, resolves economic disputes arising between EurAsEC members over implementation of these agreements and decisions, and provides interpretations thereof. The Community Court is formed by the representatives of member countries. The number of the representatives of each country may not exceed two persons. The judges are appointed to a term of six years by the Inter-Parliamentary Assembly upon the recommendation of the Interstate Council.[35] The Community Court is based in Minsk, Belarus.[36] Currently, the CIS Economic Court provisionally fulfills the functions of the Community Court until the latter's full establishment.[37]

направлениях деятельности межпарламентской ассамблеи Евразийского экономического сообщества и перспективах ее развития», Приложение к постановлению Бюро МПА ЕврАзЭС от 31.10.07 № 4, http://www.ipaeurasec.org/docsdown/ubaiduloev_doklad_311007.pdf (visited July1, 2008).

[32] Article 7 of the EurAsEC Treaty.

[33] EurAsEC Inter-Parliamentary Assembly, http://www.ipaeurasec.org/mpa/?data=mpa (visited July 1, 2008).

[34] Article 12 of the EurAsEC Treaty.

[35] Article 8 of the EurAsEC Treaty.

[36] Article 12 of the EurAsEC Treaty.

[37] See the EurAsEC-CIS Agreement on Fulfillment by the CIS Economic Court of Functions of

In addition, there are a number of subsidiary bodies in the EurAsEC organizational structure. For instance, the following bodies are attached to the Integration Committee: the Energy Policy Council, the Transport Policy Council, the Council for Border Issues, the Council of Heads of Customs Services, the Council of Heads of Tax Services, the Council of Ministers of Justice, the Committee for Tariff and Non-Tariff Regulation, and others.[38]

4. Decision-Making

The decision-making procedure in the EurAsEC materializes through consensus and voting. The Interstate Council makes its decisions by consensus, except when it decides on suspension or termination of membership in the EurAsEC. In the latter case, the decision is adopted based on the principle "consensus minus the vote of the member concerned."[39] Other bodies decide normally with two-thirds of votes. In case of the Integration Committee, the number of votes in the two-thirds majority corresponds to each member's contribution to the EurAsEC budget. Accordingly, Russia has 40 votes; Belarus, Kazakhstan, and Uzbekistan have 15 votes each; and Kyrgyzstan and Tajikistan have 7.5 votes each.[40]

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the EurAsEC Court, signed in Minsk on March 3, 2004.

[38] *ЕврАзЭС в вопросах и ответах* (2004), *supra* note 14, С. 5.

[39] Article 13 of the EurAsEC Treaty.

[40] Article 13 of the EurAsEC Treaty.

III. Free Trade Regime

Free trade is an important prerequisite for formation of a customs union. The free trade regime in the EurAsEC is based on bilateral FTAs and the multilateral FTA concluded within the framework of the CIS.

On September 24, 1993, CIS member countries signed the Economic Union Treaty under which an economic union would be established following the formation of a multilateral free trade association, a customs union, a common market, and a currency union.[41] To implement this framework treaty, the signatories concluded a number of separate agreements, including the Agreement on the Formation of a Free Trade Area of April 15, 1994 (CIS FTA). The CIS FTA provides for removal of customs duties, taxes, and other charges with equivalent effect, as well as quantitative restrictions on importation and exportation of goods made in CIS countries. Exceptions—goods that do not fall within this regime—are identified in bilateral documents and should gradually be abolished.[42] The CIS FTA was amended on April 2, 1999 so that the provisions concerning matters such as the transition to the customs union, regime with respect to non-member states, measures of state regulation, and cooperation in the area of export control dropped from the text.

[41] Article 4 of the Economic Union Treaty.

[42] Article 3.2 of the CIS FTA.

Table 1. Bilateral FTAs in the CIS[43]

	Armenia	Azerbaijan	Belarus	Georgia	Kazakhstan	Kyrgyz Rep.	Moldova	Russia	Tajikistan	Turkmenistan	Ukraine	Uzbekistan
Armenia	-			'98	'01	'94	'93	'93		'96		
Azerbaijan		-		'96	'97		'95	'92		'96	'95	'96
Belarus			-				'93	'96	'98		'96	'93
Georgia	'95	'98		-	'99		'98	'94		'96	'96	'95
Kazakhstan		'97	'01	'99	-	'95	'95	'92				'97
Kyrgyz Rep.	'94				'95	-	'95	'93			'98	'98
Moldova	'93	'95	'93	'98	'95	'95	-	'93		'93	'95	'95
Russia	'93	'92	'96	'94	'92	'93	'93	-			'93	'92
Tajikistan			'98						-			'96
Turkmenistan	'96	'96		'96			'93			-		'96
Ukraine		'95	'96	'96		'98	'95	'93			-	'94
Uzbekistan		'96	'93	'95	'97	'98	'95	'92	'96	'96	'94	-

In addition to the multilateral CIS FTA, there are a number of bilateral FTAs entered into by CIS countries either prior to or after the conclusion of the CIS Agreement. Both multilateral and bilateral FTAs have many provisions with similar substance and scope of commitments. In the event of a conflict between the CIS FTA and a bilateral FTA, the CIS FTA prevails.[44] Table 1 shows the state of play in

[43] Tumbarello (2005), *supra* note 12, p. 7.

[44] Article 20.1 of the CIS FTA states:

> Nothing in this Agreement prevents any of the Contracting Parties from implementing the obligations under other international agreements of which this Contracting Party is a signatory or can be a signatory, *provided these obligations do not contradict the provisions*

bilateral FTAs concluded between CIS countries, and, in particular, EurAsEC members (highlighted).

The idea of creation of a customs union in the CIS as initially envisioned in the Economic Union Treaty has failed to materialize for several reasons. Numerous exceptions to free trade and the lack of progress in harmonization of external commercial policies have been major stumbling blocks. These factors, coupled with different standpoints of CIS countries on the prospects of mutual cooperation, generated the so-called "diverse speed" or "diverse level" integration where each consecutive stage of integration would involve only those countries that were mostly prepared to accept it.[45] As a result, Russia and Belarus signed the Customs Union Agreement on January 6, 1995. On January 20, 1995, Belarus, Kazakhstan, and Russia signed the trilateral Customs Union Agreement according to which the signatories assume the rights and obligations accruing under the Belarus-Russia agreement above. Kyrgyzstan and Tajikistan acceded to both agreements in 1996 and 1999, respectively. On February 26, 1999, the five countries concluded the Treaty on Customs Union and Single Economic Space, in which they specified two stages of regional integration: (1) completion of the formation of a customs union with a single customs territory and (2) establishment, on the basis of the customs union, of a single economic space.[46] The signatories committed themselves to provide a full-scale regime of free trade in goods "with

and objectives of this Agreement. (emphasis added)

[45] Рапота Г.А. и др. (2005), *supra* note 7, С. 33-34.

[46] Article 7 of the Treaty on Customs Union and Single Economic Space.

no exceptions and restrictions" on the basis of the existing multilateral and bilateral FTAs.[47] The treaty identifies the components of free trade as follows:[48]

a) non-application of customs duties and quantitative restrictions in mutual trade
b) application of a single indirect taxation system
c) reservation of a party's right to take temporary protective measures on imports from another party in accordance with international rules and national legislation
d) non-granting, without consent of the parties, of more a favorable trade regime, vis-à-vis third countries, than that provided to the parties
e) removal of competition restrictions caused by the conduct of business entities or government interference to the extent that this may affect trade between the business entities of the parties
f) non-discrimination between products of the parties

The concept of free trade in the EurAsEC has two peculiar features. First, it is free trade "with no exceptions and restrictions". This implies that all goods without exception involved in intra-trade can freely cross the internal borders of the EurAsEC without being subject to tariff or non-tariff restrictions. Second, it has some elements related to extra-trade. Notably, as mentioned above, granting of more favorable treatment to a third country than that provided to other EurAsEC

[47] Article 8 of the Treaty on Customs Union and Single Economic Space.

[48] Article 9 of the Treaty on Customs Union and Single Economic Space.

members is, in principle, not allowed. Moreover, the members pursue a single order of extra-trade regulation that includes (1) tariffs, (2) non-tariff measures, (3) establishment of a trade regime, (4) indirect taxes, and (5) currency regulation.[49] A noteworthy point about the single order is that it is recognized as "an important basis and necessary condition for establishment, on a reciprocal basis, of the free trade regime with no exceptions and restrictions."[50] Thus, a withdrawal of a member from this order can be considered by the rest of the members as grounds for terminating the free trade regime with respect to that member.[51] The existence of these extra-trade requirements does not seem to be a common case for FTAs. They are normally attributable to customs unions. The linkage of the extra-trade factor to free trade obviously indicates the strong will of the members to finalize the formation of a customs union in the EurAsEC.

The harmonization of indirect taxation is another important factor ensuring free movement of goods in the EurAsEC. At present, the members accept the principle of destination whereby they impose a zero-rate value added tax (VAT) on exported goods and refund VAT on inputs incorporated into the goods for export. This is in line with the international practice of applying border tax adjustments for indirect taxes.[52] Nevertheless, each member has introduced different time

[49] Article 12 of the Treaty on Customs Union and Single Economic Space.

[50] Article 19 of the Treaty on Customs Union and Single Economic Space.

[51] Article 19 of the Treaty on Customs Union and Single Economic Space.

[52] See e.g. GATT, Report of the Working Party on Border Tax Adjustments, L/3464, adopted December 2, 1970.

frames and procedures for the VAT refund. Moreover, some national laws prohibit VAT refund for certain products.[53] Therefore, the EurAsEC needs to harmonize its border-tax-adjustment policy. The harmonization of the excise policy aimed at reducing the number of excise taxes and unification of their rates is now underway.[54]

A special protocol to be signed by the members in the future is expected to finalize the process of creation of a full-fledged free trade area within the EurAsEC.[55]

[53] See Interstate Council Decision on "Practice of Implementation of the Destination Principle in Imposition of Indirect Taxes in intra-EurAsEC Trade" of September 20, 2002.

[54] Рапота Г.А. и др. (2005), *supra* note 7, С. 137–139.

[55] *Ibid.*, С. 38.

IV. Formation of a Customs Union

According to Article 21 of the Treaty on Customs Union and Single Economic Space, a customs union has the following components:

- a single customs territory
- a common customs tariff
- a trade regime without tariff and non-tariff barriers in intra-trade
- simplified customs control to be subsequently abolished at internal customs borders
- uniform mechanisms of regulation of economy and trade based on global market principles of management and harmonized economic legislation
- governing bodies
- single customs policy and unified customs regimes

At the stage of formation of a customs union, the Integration Committee plays the role of its executive body.[56] The process of creation of a customs union will be finalized by a special treaty.[57] Once the customs union with a single customs territory is fully established, goods imported from third countries will not be subject to restrictions at internal customs borders.[58]

[56] Article 21 of the Treaty on Customs Union and Single Economic Space.

[57] Article 24 of the Treaty on Customs Union and Single Economic Space.

[58] Article 22 of the Treaty on Customs Union and Single Economic Space.

On August 16, 2006, the heads of state of the EurAsEC countries decided that a customs union would be launched first by Russia, Belarus, and Kazakhstan — the countries with most similar external trade regimes — with the remaining members joining subsequently.

1. Common Customs Tariff

A EurAsEC common customs tariff (CCT) will result from unification of all members' customs duties applicable to products from third countries. Ideally, the CCT would apply to all products in the EurAsEC Commodities Nomenclature of Foreign Economic Activity[59], but in practice it is hardly possible to reach 100% unification. For instance, on the basis of the 1995 Customs Union Agreement and an Action Program of its Implementation, Russia, Belarus, and Kazakhstan were able to agree on the unified tariff with respect to 95% of products, but in 2000 the level of unification fell to 60%.[60] The harmonization of EurAsEC members' tariffs is hampered by various factors, such as inclusion of new products in each member's commodities nomenclature, the difference between tariff rates of Russia and Belarus on the one hand and those of the rest of the membership on the other, as well as dissimilar positions of EurAsEC members in the WTO accession talks.[61]

On February 17, 2000, Russia, Belarus, Kazakhstan, Kyrgyzstan, and

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[59] For the EurAsEC Commodities Nomenclature of Foreign Economic Activity, see Section IV:3.

[60] Рапота Г.А. и др. (2005), *supra* note 7, С. 43.

[61] *Ibid.*, С. 43.

Tajikistan signed the Agreement on Common Customs Tariff of the Customs Union Member States (CCT Agreement). The agreement entered into force on August 31, 2000. The CCT would consist of *ad valorem*, specific, and combined customs duties, as well as seasonal or other kinds of duties (such as anti-dumping, countervailing duties, or safeguards) if necessary.[62] The CCT rates would escalate depending on the processing of goods – whether they are raw materials, semi-manufactured goods, or ready-made goods.[63] The common tariff is to be formed in stages within the transition period of five years of the entry into force of the CCT Agreement, though this period may be extended if the members so agree.[64] Given the complexity of the establishment of the common tariff, at the outset only Russia, Belarus, and Kazakhstan would set up the CCT to be subsequently accepted by the other members. The unified customs duties of Russia, Belarus, and Kazakhstan constitute a CCT base list of the EurAsEC which will gradually be expanded through harmonization of customs duties contained in two other lists: a commodity list where the difference in duties among customs union members does not exceed 5% and a commodity list with the margin greater than 5%.[65]

To date, Tajikistan has adjusted its tariff to 80% of the CCT base list. Uzbekistan's level of adjustment amounts to 30%.[66] Kyrgyzstan will

[62] Article 2 of the CCT Agreement.

[63] See Article 5 of the CCT Agreement.

[64] Article 6 of the CCT Agreement.

[65] See Articles 6 and 7 of the CCT Agreement.

[66] Министерство экономического развития и торговли Российской Федерации, «Этапы

adjust its tariff rates after the complete formation of the CCT base list and accession of the remaining EurAsEC members to the WTO.[67]

The CCT does not apply to the so-called "sensitive goods", that is, (1) to the goods that are important for domestic consumption and manufacture but are not produced or produced in insufficient amounts in the EurAsEC country concerned, and (2) the goods from the importation of which the domestic industry needs to be protected.[68] During the transition period, national governments annually prepare lists of sensitive goods to be approved by the EurAsEC Integration Committee. The permissible amounts of such products are subject to a quota that was initially set at the level of 15% of the total value of imports made in the previous year. With respect to Tajikistan, the members agreed that alumina was the only sensitive product for this country, and the quota for alumina would be 25% instead of 15%. The members are free to establish their own tariff rates for sensitive goods.[69] In 2005 the consolidated EurAsEC list of sensitive goods included about 3000 commodity items that made up 5% of the total import value.[70] In order to facilitate the unification of customs duties, the next step would be to change the approach above from quotas to the number of allowed sensitive items. In this case, the smaller the

интеграции в Евразийском экономическом сообществе (ЕврАзЭС)» от 1 февраля 2008 г., http://www.economy.gov.ru/wps/wcm/myconnect/economylib/mert/resources/6b79468048bbcc3d9f489f4621b7471d/etapy_integratcii.doc (visited 25 May 2008).

67 *Ibid*.

68 Article 1 of the CCT Agreement.

69 Article 8 of the CCT Agreement.

70 Рапота Г.А. и др. (2005), *supra* note 7, С. 44.

number of sensitive goods, the greater the coverage of the common tariff would be.

2. Unification of Trade Regimes *vis-à-vis* Third Countries

There are three types of trade regimes applicable to third countries: a free trade regime, a most-favored-nation (MFN) regime, and tariff preferences. With respect to the first type, if a EurAsEC member has an FTA with a third country, it must reach agreement with other members to the list of exceptions to the free trade regime or forms of compensation for emerging inconsistencies in trade regimes.[71] This is the case of bilateral FTAs between EurAsEC countries and non-EurAsEC CIS countries in which different products are exempt from free trade. In 2002 the Interstate Council approved a single list of exempt products under these FTAs that will have to be phased out over the period between 2006 and 2012.[72] As a result, by 2012, all goods will be accorded duty-free access in accordance with the FTAs in question.

Currently, only Kyrgyzstan as a WTO member provides MFN treatment on a multilateral basis. The remaining EurAsEC countries are parties to bilateral MFN agreements. Namely, Russia and Belarus grant MFN treatment to over 120 countries, followed by Kazakhstan and Tajikistan (45 countries each),[73] and Uzbekistan (44 countries).[74]

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[71] Article 15 of the Treaty on Customs Union and Single Economic Space.

[72] Рапота Г.А. и др. (2005), *supra* note 7, С. 36–38.

[73] *Ibid.*, С. 46.

The EurAsEC countries agreed that they would impose doubled CCT duties on products from the countries that have not been granted MFN treatment.[75] Once the CCT is introduced, the EurAsEC countries that have joined the WTO will apply it vis-à-vis all WTO members. If a particular member has not yet acceded to the WTO at that point, it will apply the common tariff on a bilateral MFN basis.

Finally, it is necessary to unify tariff preferences granted to developing and least-developed countries.[76] The members of the EurAsEC will draw up lists of both products and developing/least-developed countries eligible for preferential treatment. A preferential tariff rate for developing country beneficiaries will be 75% of the applicable CCT or national tariff. Least-developed countries will enjoy duty-free market access.[77] The work on the unification of tariff preferences is still in progress.

3. Common Customs Policy

As an important component of the customs union, common customs policy requires coordination of customs activities in the EurAsEC. For this reason, the members set up a special organizational

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[74] Министерство внешних экономических связей, инвестиций и торговли Республики Узбекистан, «Внешнеторговый режим Республики Узбекистан», http://www.mfer.uz/external.htm (visited 5 June 2008).

[75] Article 12 of the CCT Agreement.

[76] Article 11 of the CCT Agreement.

[77] Рапота Г.А. и др. (2005), *supra* note 7, С. 46–47.

unit under the Integration Committee — the Council of the Heads of Customs Services. In addition, cooperation of national customs authorities with international organs is also important in forming common customs policy. On June 25, 2004, the EurAsEC and the World Customs Organization (WCO) signed a Memorandum of Understanding (MOU), which provides that the parties will consult and exchange information on matters of mutual interest, and ensure improvement of activities of customs authorities with respect to implementation of WCO recommendations. Pursuant to the MOU, WCO experts may be involved in drafting customs legislation or other relevant laws that would implement WCO standards.[78]

EurAsEC members have adopted a number of documents dealing with simplification of customs procedures between the members with the goal of future abolishment of the customs control at EurAsEC's internal borders. These include, *inter alia*, the Agreement on Common Conditions for Transit via Territories of the Customs Union Member States (January 22, 1998), the Agreement on Simplified Customs Formalities for Goods Moving between the Customs Union Member States (September 24, 1999), the Basic Principles of Performance of Common Customs Control (July 6, 2001), and many others. In addition, the Protocol on Customs Control of Re-export of Goods of Member Countries to Third Countries (May 22, 2001) and the Basic Principles of Customs Valuation of Goods Exported from the Customs Territory of the EurAsEC Member States (July 6, 2001), are designed to unify

[78] Articles 2 and 3 of the MOU.

customs rules and procedures at the external borders.

Since 2003, the members have used the ten-digit Common Commodities Nomenclature of Foreign Economic Activity of the EurAsEC, which reiterates Russia's commodities nomenclature. The latter is based on the WCO's Harmonized System and CIS Single Commodities Nomenclature of Foreign Economic Activity. The EurAsEC commodities nomenclature is periodically updated in accordance with international standards and practice.[79]

4. Trade Remedies

The question of whether trade remedies, such as anti-dumping, countervailing, and safeguard measures, are (or must be) prohibited in the context of regional trade agreements (RTAs) is a controversial issue. According to WTO rules, in both FTAs and customs unions "duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX)" are to be eliminated with respect to intra-RTA trade.[80] Given their purpose and effect of restricting importation of certain goods, it could be said that trade remedies qualify as "other restrictive regulations of commerce". Although trade remedy rules (GATT Articles VI and XIX) are not mentioned in the exception parentheses, the list of exempt provisions

[79] See the Agreement on Common Commodities Nomenclature of Foreign Economic Activity of the Eurasian Economic Community.

[80] Article XXIV:8 of the GATT.

does not seem to be exhaustive.[81] This suggests that RTA members are not prevented from applying trade remedies in intra-trade. As far as the EurAsEC is concerned, its relevant disciplines allow the use of trade remedies in intra-trade, but subject to certain limitations.

Trade remedy rules are contained in a number of EurAsEC instruments, the most relevant of which is the Protocol on Mechanisms of Application of Safeguards, Anti-dumping and Countervailing Measures in Trade of the Customs Union Member States. This document was adopted on February 17, 2000, and amended on October 28, 2003. The objective of the protocol is to coordinate the use of trade remedies to imports from both EurAsEC members and third countries.[82] The Protocol defines various terms used in the trade remedy terminology, such as "dumping", "national economy's branch", "like or directly competitive product", "[…] injury" and "threat of […] injury".

Some comments are worth noting with respect to the "injury" definition given in Article 1 of the protocol in question. In its original version of February 17, 2000, the protocol used the term "substantial injury" (in Russian: существенный ущерб) in the context of all kinds of trade remedy. In its present version of October 28, 2003, it distinguishes three types of injury: "substantial (material, serious) injury", "material injury", and "serious injury". Due to the

[81] See *e.g.* Dukgeun Ahn (2008), "Foe or Friend of GATT Article XXIV: Diversity in Trade Remedy Rules", *Journal of International Economic Law*, Vol. 11, No. 1, pp. 120-121.

[82] Preamble of the Protocol on Mechanisms of Application of Safeguards, Anti-dumping and Countervailing Measures in Trade of the Customs Union Member States.

amendments, the term "substantial injury" is replaced throughout the text with "substantial (material, serious) injury". In addition, "material injury" and "serious injury" are referred to as separate concepts. Substantial (material, serious) injury means "a significant overall impairment" in the position of a national economy's branch caused by an increased volume of imports, dumped or subsidized imports. Material injury (in Russian: материальный ущерб) refers to "an impairment in the position of a national economy's branch" caused by dumped or subsidized import of goods. Serious injury (in Russian: серьезный ущерб) is understood to mean "a significant impairment in the industrial, trade and financial position of a national economy's branch" caused by an increased import of goods. It seems that "substantial (material, serious) injury" is used to cover all types of injury when the same requirements are foreseen for material and serious injury. But this approach does not seem to be plausible because in the light of the wording above, the scope of "substantial (material, serious) injury" on the one hand and that of "material injury" and "serious injury" on the other do not fully coincide. Moreover, the definition of "substantial (material, serious) injury" is relevant to the "like or directly competitive product" involved in increased, dumped, or subsidized imports, whereas "material injury" is defined in relation to the "like product", and "serious injury" in relation to the "directly competitive product". Obviously, the generic term and its sub-categories contradict in terms of the nature of adverse effect on domestic industry ("national economy's branch") and the product coverage. While the protocol defines the concept of "like or directly

competitive product" in one single category, it does not define "like product" as such. Such a distinction is critical for anti-dumping or countervailing investigations. The conceptual discrepancy in the EurAsEC trade remedy rules may cause inconsistent implementation of these rules into national legislation.

If a EurAsEC member intends to apply a trade remedy against goods imported from third countries, it first informs, not later than 30 days prior to the expected day of application of the measure concerned, other members and suggests that consultations be held. If the measure targets goods imported from another member, the member seeking a trade remedy invites, not later than 30 days prior to the expected termination of investigations, the interested member(s) to enter into consultations and suggests settlement methods alternative to the trade remedy sought. In the course of consultations, the parties should endeavor to reach a mutually satisfactory solution precluding the anti-dumping, countervailing, or safeguard measure, as the case may be.[83] If such a solution is not reached, the matter is to be referred to the Commission for Protection of Domestic Markets under the Integration Committee.[84] The Commission should basically recommend an alternative means of settlement or a less-restrictive measure than that sought by the investigating member. The investigating member should endeavor to implement the Commission's recommendations. If the

[83] Article 4 of the Protocol on Mechanisms of Application of Safeguards, Anti-dumping and Countervailing Measures in Trade of the Customs Union Member States.

[84] Articles 3 and 4 of the Protocol on Mechanisms of Application of Safeguards, Anti-dumping and Countervailing Measures in Trade of the Customs Union Member States.

member does not agree with the Commission's recommendations, it is free, subject to a prior notification of the Commission, to apply measures to protect its domestic market in accordance with its legislation.[85] In case of urgency, the member concerned may take, prior to consultations, provisional measures provided that the consultations will immediately be held and the Integration Committee will be informed of the measures applied.[86]

From the protocol it is evident that trade remedies are not desirable protective measures in intra-trade. This is even more obvious from the Decision of the Interstate Council of May 13, 2002, in which the members explicitly stated their intention not to apply trade remedies in their mutual trade in the future. While Belarus, Kazakhstan, Kyrgyzstan, and Tajikistan have supported the idea of a treaty-based principle of non-application of trade remedies in EurAsEC trade, Russia has considered this approach premature. It was thus agreed to implement the non-application principle on a step-by-step basis with developing alternative mechanisms for protection of domestic industries.[87]

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[85] Article 4a of the Protocol on Mechanisms of Application of Safeguards, Anti-dumping and Countervailing Measures in Trade of the Customs Union Member States.

[86] Article 12 of the Protocol on Mechanisms of Application of Safeguards, Anti-dumping and Countervailing Measures in Trade of the Customs Union Member States.

[87] Межпарламентсткая ассамблея ЕврАзЭС, «Сравнительно-правовой анализ законодательств государств – членов ЕврАзЭС в области специальных защитных, антидемпинговых и компенсационных мер, проведенный с учетом положений ГАТТ 1994 года, Соглашения ВТО по субсидиям и компенсационным мерам, Соглашения ВТО по защитным мерам», Приложение к постановлению МПА от 16.06.03 № 4-16.

5. Non-Tariff Regulatory Measures

The Agreement on Single Measures of Non-tariff Regulation during the Formation of the Customs Union signed on October 22, 1997, pursues a single non-tariff policy toward third countries. The scope of non-tariff regulatory measures subject to the provisions of this agreement includes (a) state monopoly on exportation/importation, (b) export control, (c) quantitative restrictions on export/import, (d) prohibition or restriction of export/import, (e) participation in execution of international economic sanctions, and (f) technical, pharmaceutical, sanitary/phytosanitary, veterinary, or environmental standards and requirements, as well as quality control of imported goods.[88]

On January 28, 1999, the Protocol on Single Order of Application of Technical, Medical, Pharmaceutical, Sanitary, Veterinary, Phytosanitary and Environmental Standards, Norms, Rules and Requirements with respect to Goods Imported to the Customs Union Member States was signed. The unification of these standards is considered one of the several prerequisites for a gradual move toward building a single customs territory.[89] The single order of application of the aforementioned standards comprises identification, prevention, and suppression of violations of importation rules for the goods that are subject to

[88] Article 2 of the Agreement on Single Measures of Non-tariff Regulation during the Formation of the Customs Union.

[89] Preamble of the Protocol on Single Order of Application of Technical, Medical, Pharmaceutical, Sanitary, Veterinary, Phytosanitary and Environmental Standards, Norms, Rules and Requirements with respect to Goods Imported to the Customs Union Member States.

common technical rules.[90] The scope of targeted standards under this protocol is quite broad, though the protocol does not define them, perhaps leaving this matter to the discretion of national legislators.

With respect to export control, on October 28, 2003, the EurAsEC members concluded the Agreement on Single Order of Export Control of the EurAsEC Member States providing for a single mechanism of controlling the exportation of arms, military products, nuclear materials, and other goods that may be used in the production of arms. The list of items subject to export control is drafted by the Integration Committee and subsequently approved by the Interstate Council at the level of heads of government. Export control normally takes the form of licensing and customs control.[91]

On January 22, 2004, the Integration Committee approved a single list of products that are subject to export/import restrictions or prohibitions in trade with third countries. The products on the list include various sorts of alcohol and alcoholic beverages, pharmaceutical products, weapons, narcotic substance, etc. While some goods are subject to both export and import restrictions/prohibitions, the export of goods such as alcohol, alcoholic beverages, and pharmaceuticals is not banned or limited. The goods that are subject only to export restrictions or prohibitions are cultural treasures and other products

[90] Article 1 of the Protocol on Single Order of Application of Technical, Medical, Pharmaceutical, Sanitary, Veterinary, Phytosanitary and Environmental Standards, Norms, Rules and Requirements with respect to Goods Imported to the Customs Union Member States.

[91] See Article 3 of the Agreement on Single Order of Export Control of the EurAsEC Member States.

identified by international rules. The import and export regimes of the goods enumerated on the single list are regulated individually pursuant to the national legislation of each member country.

On March 24, 2005, the heads of government signed the Agreement on the Fundamentals of Harmonization of Technical Regulations of the EurAsEC Member States. A "technical regulation of the EurAsEC" is a document approved by a EurAsEC treaty that sets out mandatory requirements for products (including buildings), production processes, exploitation, storage, transportation, sale, and utilization. A technical regulation may contain rules and forms of conformity assessment, identification rules, requirements for terminology, packaging, as well as marking or labeling.[92] Interestingly, the concept of "technical regulation" in the EurAsEC is broader than that of the WTO Agreement on Technical Barriers to Trade (TBT Agreement). Notably, this term refers, *inter alia*, to buildings. The requirements concerning storage, transportation, sale and utilization are not found in the TBT Agreement. Each EurAsEC member is obliged to enforce a EurAsEC technical regulation on its territory. Requirements in EurAsEC technical regulations are exhaustive, so no additional requirements by a member are allowed.[93] In addition, the Inter-parliamentary Assembly adopted a so-called "typical draft" on the fundamentals of technical regulation — a model act that could be used by the members for drafting national

[92] Article 1 of the Agreement on the Fundamentals of Harmonization of Technical Regulations of the EurAsEC Member States.

[93] Article 2.2 of the Agreement on the Fundamentals of Harmonization of Technical Regulations of the EurAsEC Member States.

laws on technical regulation.

Finally, it is also important to note that in addition to EurAsEC documents on non-tariff regulatory measures, a number of CIS instruments dealing with the same subject matter are applicable to EurAsEC members. These are, *inter alia*, the CIS FTA (Article 4 on technical and other special requirements) and the Agreement on Technical Barriers within a Free Trade Area of June 20, 2000. The former provides for MFN and national treatment for goods originating from CIS countries in terms of technical and quality requirements. The latter is "guided by the principles" of the GATT/WTO, and "takes into account" the TBT Agreement. More specifically, basic concepts such as "technical regulation" and "standard" are defined in a manner similar to the TBT Agreement. Thus, "technical regulation" in the CIS context differs from the "technical regulation of the EurAsEC" considered above. The existence of overlapping disciplines adopted in the CIS and the EurAsEC may bring about confusion in their application. An ideal approach for the EurAsEC would be to follow the existing CIS rules and introduce its own disciplines only on new issues. But in the current situation, it seems that the CIS and EurAsEC rules coexist to the extent they do not conflict. Given that the provisions of the CIS agreement in question are "without prejudice to the rights and obligations of [its] parties arising under other treaties,"[94] should a conflict of norms emerge, the EurAsEC rules concerned take precedence.

[94] Article 15 of the Agreement on Technical Barriers within a Free Trade Area.

6. Rules of Origin

The country of origin for goods involved in EurAsEC intra-trade is determined in accordance with the Decision of the CIS Council of Heads of Government on "Rules of Determining a Country of Origin of Goods" (adopted on 24 September 1993).[95] On November 30, 2000, this decision was replaced with a renewed one. The country of origin of a product is considered a country where the product was wholly produced or was subject to substantial transformation. The wholly-produced goods include natural resources, animals, and plants or products thereof, among others.[96] With respect to the substantial transformation test for products that incorporate inputs from and undergo transformation in several CIS countries, the country of final transformation is considered the country of origin pursuant to the "cumulation" principle.[97]

If a non-CIS country is involved in the production of a particular good, substantial transformation may be manifested through (i) changes of tariff headings; (ii) conditions, production, or technological processes; and (iii) an *ad valorem* portion. Among them, the change in tariff heading is the decisive criterion according to which a product is

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[95] Article 4 of the CCT Agreement.

[96] For the list of wholly-produced products, see paragraph 1 of the "Rules of Determining a Country of Origin of Goods" attached to the Decision of the CIS Council of Heads of Government of 30 November 2000.

[97] Paragraph 3 of the "Rules of Determining a Country of Origin of Goods" attached to the Decision of the CIS Council of Heads of Government of 30 November 2000.

considered substantially transformed if its tariff classification has changed at any of the first four digits. This criterion applies to all products except those included in the list of conditions or production or technological processes attached to the decision above. In this case, a specified good is considered as originating from the country where these conditions or processes have occurred. The rule of the *ad valorem* portion determines whether the value of materials used or the value added constitutes a fixed percentage of the final product's price, and may apply to the products on the list above either as a separate criterion or in combination with the remaining criteria of substantial transformation.[98]

7. Dispute Settlement

EurAsEC treaties are not considered as a single package. Therefore, a number of EurAsEC agreements have their own dispute settlement clauses providing for negotiations/consultations or permitting other means of peaceful settlement agreed upon by disputing parties. Since the institutionalization of the EurAsEC as an international organization, the disputing parties may also resort to the Community Court, which is endowed to resolve inter-state economic disputes arising from application of EurAsEC agreements and decisions of EurAsEC bodies, from performance of legal obligations thereunder, or other disputes as provided for under EurAsEC agreements. The Statute of the EurAsEC

[98] Paragraph 4 of the "Rules of Determining a Country of Origin of Goods" attached to the Decision of the CIS Council of Heads of Government of November 30, 2000.

Court of April 27, 2003, states that disputes shall be considered by the court at the request of the government of the member concerned.[99] The court's decision is final and mandatory. It also recommends a specific mode of implementation. The decision is adopted by two-thirds of all appointed and acting judges.[100] The court also provides interpretation of certain provisions of EurAsEC agreements and decisions either when addressing a particular dispute or at the request of any member, the Interstate Council, the Inter-Parliamentary Assembly, or the Integration Committee.[101] For instance, the CIS Economic Court, which is provisionally performing the EurAsEC Court's functions, expressed its advisory opinion on interpretation of certain provisions of the EurAsEC Treaty. The request concerned was submitted by the Integration Committee.[102]

EurAsEC instruments seem to fall short of providing remedies other than the court's rulings and recommendations, and possible suspension or termination of membership of a scofflaw country. At the same time, under the Treaty on Customs Union and Single Economic Space, the parties agreed to conclude an agreement specifying responsibility of the party for failure to fulfill its commitments under

[99] Paragraph 5 of the Statute of the EurAsEC Court.

[100] Paragraph 6 of the Statute of the EurAsEC Court.

[101] Paragraph 7 of the Statute of the EurAsEC Court.

[102] See Экономический суд СНГ, «Толкование учредительных документов Евразийского Экономического Сообщества», http://sudsng.org/decree/interpretation-11/ (visited June 10, 2008).

that treaty.[103] Should such an agreement cover only violations of the treaty in question, it may bring about a fragmented system of remedies within the EurAsEC.

[103] Article 66 of the Treaty on Customs Union and Single Economic Space.

V. The EurAsEC and the WTO

1. WTO Accession of EurAsEC Members

On June 3, 1997, the heads of governments of Russia, Belarus, Kazakhstan, and Kyrgyzstan signed the Protocol on International Trade Negotiations of the Parties to the Customs Union Agreements during Accession to the WTO. Uzbekistan acceded to the protocol following its entry into the EurAsEC. The protocol recognizes the right to independent accession to the WTO, and calls on the parties to coordinate their accession negotiations through the exchange of information and consultations on the strategy and tactics of the negations.

In 1998 Kyrgyzstan joined the WTO with substantially lowered national tariffs. Kyrgyzstan's bound tariff envisages zero-rate import duties for 45% of the goods in the EurAsEC commodities nomenclature. The level of coincidence of the Kyrgyz tariff with the EurAsEC commodities nomenclature states a level of 19%, or 33% if compared to the EurAsEC CCT base list.[104] This has been a serious impediment in the process of the unification of the CCT. Therefore, in 2002, the members agreed to improve the coordination mechanism for negotiations through a number of the following measures. First, they decided to follow, to the greatest extent possible, Russia's accession

[104] Рапота Г.А. и др. (2005), *supra* note 7, С. 44–45.

conditions. Belarus has fully accepted Russia's accession offers. In 2003 Tajikistan submitted to the WTO Secretariat its goods and services offers that are based on Russia's and Kazakhstan's offers. Second, the members agreed to promptly coordinate their negotiating positions through both bilateral and multilateral consultations. In particular, every three months the heads of national negotiation delegations hold consultations in which they report on the progress in their accession talks. Third, should a EurAsEC member join the WTO, it will support the other members in entering the WTO.[105]

2. WTO-Compatibility of the EurAsEC Customs Union

In April 1999, Kyrgyzstan notified the Customs Union Agreement to the WTO.[106] The notification was made under GATT Article XXIV. The agreement, which was characterized as an "interim agreement" leading to the formation of a customs union, is currently under review by the WTO Committee on RTAs.[107] This case is, in fact, very peculiar in that although most RTAs have been implemented in stages, only a few have expressly been notified as "interim agreements."[108]

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[105] *Ibid.*, С. 52-53; Рапота Г.А. (2004), «Евразийское экономическое сообщество: цели, задачи и перспективы», http://www.evrazes.com/ru/main/infopage/81/ (visited June 10, 2008).

[106] WTO, *Working Party on the Accession of the Kyrgyz Republic – Accession of the Kyrgyz Republic - Notification from the Kyrgyz Republic*, WT/ACC/KGZ/30, WT/REG71/1, April 6, 1999.

[107] See WTO, "Regional Trade Agreements Notified to the GATT/WTO and in Force", http://www.wto.org/english/tratop_e/region_e/region_e.htm (visited June 5, 2008).

[108] See WTO, *Committee on Regional Trade Agreements – Synopsis of "Systemic" Issues Related to Regional Trade Agreements – Note by the Secretariat*, WT/REG/W/37, March 2, 2000, para. 47.

GATT Article XXIV sets forth both internal and external requirements for customs unions. According to the internal requirement, "duties and other restrictive regulations of commerce […must be] eliminated with respect to substantially all the trade."[109] Given that the free trade regime among EurAsEC members applies "with no exceptions or restrictions" to the product coverage, the "substantially all the trade" standard is fully met. With respect to Kyrgyzstan's notification, one WTO member raised a question as to whether the general 15% threshold for "sensitive goods" not covered by the CCT[110] satisfies the "substantially all the trade" requirement. Since the "substantially all the trade" requirement is pertinent to intra-trade rather than extra-trade, which involves sensitive goods, among others, the 15% threshold does not have anything to do with this requirement. Rather, the question is whether it satisfies the GATT requirement that "substantially the same duties and other regulations of commerce [be] applied by each of the members of the [customs] union to the trade of territories not included in the union."[111] Kyrgyzstan was right in emphasizing this aspect.[112] The GATT

[109] Article XXIV:8(a)(i) of the GATT.

[110] See Section IV:1 of this paper.

[111] Article XXIV:8(a)(ii) of the GATT.

[112] WTO, *Committee on Regional Trade Agreements – Customs Union between the Kyrgyz Republic, the Russian Federation, Belarus, Kazakhstan and Tajikistan – Questions and Replies*, WT/REG71/6, January 3, 2001, Answer to Question 4:

> The figure of 15 per cent was set bearing in mind the "substantially the same tariffs" requirement. It establishes only the maximum deviation allowable and not a

provisions on RTAs do not provide any guidance on how duties on products from third countries must be "substantially the same." Nor is there agreement among WTO members on its meaning.[113] Perhaps the quantitative aspect (the share of CCT-covered products in the total trade) and/or the qualitative aspect (the sectoral coverage of trade under the CCT) could be taken into account. Each member of the EurAsEC is free to use its own tariff rates for sensitive goods within the transition period, and it is unknown at this time whether they will continue this practice after the formation of the customs union. Considering that the 15% threshold was reduced to 8% in 2004 and 5% in 2005[114], and expecting this downward trend to continue, one can presume that sensitive products excluded from the CCT will constitute an insignificant portion of imports from third countries.

The external requirement of Article XXIV consists of two elements: (1) A customs union must not result in increased trade barriers vis-à-vis third countries, (2) or else the customs union member concerned will have to provide adequate compensation. With regard to the first element, GATT Article XXIV:5(a) provides that the following:

> [W]ith respect to a customs union, or an interim agreement leading to a formation of a customs union, the duties and

requirement. Members may not necessarily use all 15 per cent. Moreover, during the interim period the Agreement is not required to cover substantially all of the trade.

[113] See *e.g.* WTO, *Committee on Regional Trade Agreements – Synopsis of "Systemic" Issues Related to Regional Trade Agreements – Note by the Secretariat*, WT/REG/W/37, March 2, 2000, paras. 59–61.

[114] Рапота Г.А. и др. (2005), *supra* note 7, С. 44.

> other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement shall not *on the whole* be higher or more restrictive than *the general incidence* of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be. (emphasis added)

The words "on the whole" and "the general incidence" suggest that duties applicable before and after the formation of a customs union should be compared not for each individual product, but for all products as a whole. In particular, this would require an "overall assessment of weighted average tariff rates and of customs duties collected" where applied rates of duty (that is, not bound rates) should be taken into account.[115] As to "other regulations of commerce" presumably including trade remedies and rules of origin, "for which quantification and aggregation are difficult, the examination of individual measures, regulations, products covered and trade flows affected may be required."[116]

The second element of the external requirement is formulated in GATT Article XXIV:6 as follows:

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[115] Paragraph 2 of the Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994.

[116] Paragraph 2 of the Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994.

> If, in fulfilling the requirements of subparagraph 5 (a), a contracting party proposes to increase any rate of duty inconsistently with the provisions of Article II, the procedure set forth in Article XXVIII shall apply. In providing for compensatory adjustment, due account shall be taken of the compensation already afforded by the reduction brought about in the corresponding duty of the other constituents of the [customs] union.

The WTO requirements imposed on a customs union are currently relevant to Kyrgyzstan, and may become pertinent to the remaining EurAsEC members when they join the WTO in the future. If Kyrgyzstan increases its bound rate of duty to comply with the CCT, it will have to compensate for the increase by granting a new concession. However, Kyrgyzstan should enter into GATT Article XXVIII negotiations and consultations on modification of its schedule "before tariff concessions are modified or withdrawn upon the formation of a customs union or an interim agreement leading to the formation of a customs union."[117] Members that have an "initial negotiating right", "principal supplying interest", or "substantial interest" in the concession concerned are entitled to participate in the Article XXVIII procedures.

With respect to the second sentence of Article XXIV:6 requiring consideration of the compensation already afforded by other customs

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[117] Paragraph 4 of the Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994.

union countries (which are deemed to be WTO members), it will not apply if modification of Kyrgyzstan's schedule takes place before the WTO accession of other EurAsEC members. The second sentence becomes applicable only if at least one more EurAsEC member joins the WTO, and the establishment of the customs union will result in lowering of that member's bound rates of duties.

Finally, any interim agreement for a customs union or a free trade area is required to "include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time."[118] The "reasonable length of time" is considered to be a maximum of ten years, and may be prolonged only in exceptional cases, provided that WTO member parties to the interim RTA submit to the WTO Council for Trade in Goods "a full explanation" of why a longer period is needed.[119] As noted above, the transition period for the introduction of the EurAsEC CCT—the indispensible element of a customs union—is five years with a possible prolongation subject to the mutual agreement of EurAsEC members. Given that the EurAsEC members determine the time frames for the complete formation of the customs union "with account of generally recognized international norms and rules,"[120] WTO requirements for the "reasonable length of time" should apply.[121] Since the CCT Agreement took effect on August

[118] Article XXIV:5(c) of the GATT.

[119] Paragraph 3 of the Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994.

[120] Article 23 of the Treaty on Customs Union and Single Economic Space.

[121] See also WTO, WT/REG71/6, *supra* note 112, Answer to Question 2.

31, 2000, the "reasonable length of time" for the EurAsEC customs union would be until August 31, 2010, unless it is properly extended. Indeed, the EurAsEC Secretary General announced that the customs union will be created by 2010, though initially it would include only Russia, Belarus, and Kazakhstan.[122] To this end, over 2007–2008, the three members have signed twelve agreements relating to the formation of the customs union, most of which are concerned with some issues already dealt with by previous EurAsEC agreements, such as tariff and non-tariff regulation, trade remedies, rules of origin, indirect taxation, and others.

[122] ИНТЕРФАКС, «Товарооборот между странами ЕврАзЭС достиг почти $100 млрд, на повестку дня встал вопрос о Таможенном союзе» от 25 апреля 2008 г., posted at http://www.evrazes.com/ru/main/messagepage/769/ (visited June 19, 2008).

VI. Conclusion

The EurAsEC is a unique international organization providing institutional and legal framework for large-scale regional integration in the post-Soviet area. The EurAsEC does not deal with only trade. It also addresses several other issues such as transportation, energy, the environment, education, labor, migration, and other social problems of common interest. The EurAsEC will probably enlarge in the future and reach most of or even all of the CIS countries. From a long-term perspective, the EurAsEC has the potential to become the "CIS-type" European Union (EU).[123] In this regard, the matter of applicability of the EU integration model to the EurAsEC, as well as non-trade issues falling within the scope of the EurAsEC jurisprudence, can open the door for future research.

As a "newborn child", the EurAsEC has yet to overcome internal and external challenges. The main internal challenge is arguably a two-tiered legal system that has emerged as a result of "diverse speed" integration in the EurAsEC. A number of recently-concluded agreements are applicable only to Russia, Belarus, and Kazakhstan, while the remaining EurAsEC agreements are relevant for all members. Until the other members join the customs union, which is to be launched by 2010, EurAsEC treaties will remain split in two sets of rules that overlap to some extent due to the identical subject matter.

[123] See *ibid*.

Overlapping disciplines may raise the problem of conflict of norms, whereas the two-tiered system, as such, weakens the integrity of EurAsEC law. In these circumstances, the remaining members (Kyrgyzstan, Tajikistan, and Uzbekistan) should accede to the customs union in a timely manner so that a single set of rules applies within the EurAsEC customs territory.

The external challenge would be posed by (1) other regional integration projects with similar purposes and subject matter, and (2) the membership of EurAsEC countries in the WTO. With respect to the other regional projects and especially the Single Economic Space between Belarus, Kazakhstan, Ukraine, and Russia, there is a need to coordinate them with the EurAsEC. One possibility would be merger of mutually duplicating entities, as it was the case of the Organization of Central Asian Cooperation incorporated into the EurAsEC. As for the WTO membership issue, EurAsEC countries opted for WTO accession in parallel with the formation of the customs union. Considering the fact that Kyrgyzstan has already entered the WTO, and the remaining members are at different accession stages, the pursued "parallelism" is certainly very challenging for the affected EurAsEC countries.

The formation of the EurAsEC customs union will have certain implications for third countries. First, products from third countries will be subject to the CCT and common non-tariff barriers at the EurAsEC external borders while they will be able to freely move inside the single customs territory with the biggest market in the CIS. Second, the EurAsEC customs union, once established, will be able to enter, on

behalf of its members, into trade arrangements with third countries. Third, the coordinated WTO accession policy of EurAsEC countries will produce for WTO members similar market access opportunities to these countries. In their accession talks, the EurAsEC countries will try to adhere to the agreed CCT. Fourth, the alteration of bound duties of Kyrgyzstan and possibly other EurAsEC members that will have joined the WTO prior to the formation of the customs union will require them to negotiate compensatory adjustment with the WTO members that have an "initial negotiating right", "principal supplying interest", or "substantial interest" in the bound concession. Finally, the EurAsEC may apply for WTO membership in the future.[124] This scenario, however, is possible only after the creation of the customs union with all of its constituent countries being WTO members. As a WTO member, the EurAsEC will be able to affect decision making on important issues in the multilateral trading system.

[124] Article XII:1 of the Marrakesh Agreement Establishing the World Trade Organization states:
> Any State or *separate customs territory* possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. (emphasis added)

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Appendix

TREATY

On the Establishment of the Eurasian Economic Community[125]

(Unofficial Translation)

The Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic, the Russian Federation, and the Republic of Tajikistan, hereinafter referred to as the "Contracting Parties",

Motivated by the will to ensure their dynamic development by coordinating their socioeconomic reforms, combined with effective use of their economic potentials to improve the living standards of their citizens;

Determined to improve the effectiveness of cooperation for the purposes of furthering mutual integration processes and deepening mutual cooperation in various fields;

Aware of the need to coordinate their approaches to integration with the world economy and the international trade system;

As an expression of their readiness to fully comply with their undertaking under the Agreement on the Customs Union Between the Russian Federation and the Republic of Belarus dated 6 January 1995,

[125] Copied, subject to the author's modifications, from WTO, Committee on Regional Trade Agreements – Customs Union between the Kyrgyz Republic, the Russian Federation, Belarus, Kazakhstan and Tajikistan, WT/REG71/7, 23 February 2001. The abbreviation "EAEC" used in the original translation is replaced by "EurAsEC" to ensure consistent use of the abbreviation throughout this paper.

the Agreement on the Customs Union dated 20 January 1995, the Agreement on Deepening Integration in Economic and Humanitarian Spheres dated 29 March 1996, and the Agreement on the Customs Union and Single Economic Space dated 26 February 1999;

As a demonstration of their commitment to the principles of the Charter of the United Nations Organization and also to the generally accepted principles and disciplines of international law,

Hereby agree as follows:

Article 1

Foundation of the International Organization

The Contracting Parties hereby establish an international organization "Eurasian Economic Community" (hereinafter, the "EurAsEC" or the "Community").

The EurAsEC shall have such powers as are voluntarily transferred to it by the Contracting Parties in accordance with the provisions of this Agreement. The Contracting Parties remain sovereign and full-fledged subjects of international law.

Article 2

Objectives and Tasks

The purpose of formation of the EurAsEC is for the Contracting Parties to effectively promote the process of formation of the Customs

Union and the Single Economic Space, and to implement other objectives and tasks outlined in the above-mentioned agreements on the Customs Union, the Agreement on Deepening Integration in Economic and Humanitarian Spheres, and the Agreement on the Customs Union and Single Economic Space, in stages as scheduled under the above documents.

Any agreements earlier made between the Contracting Parties, and resolutions of the integration management bodies remain effective to the extent that they do not contradict this Agreement.

Article 3

Authorities

To provide continuity of the integration management bodies earlier created by the Contracting Parties, the following shall be maintained to implement the objectives and tasks of this Agreement within the EurAsEC format:

- The Interstate Council;
- The Integration Committee;
- The Inter-Parliamentary Assembly (IPA); and
- The Community Court.

It is the Interstate Council that is authorised to terminate the functioning of the integration management bodies set up under the Agreement on Deepening Integration in Economic and Humanitarian Spheres dated 29 March 1996, and the Agreement on the Customs Union and Single Economic Space of 26 February 1999.

Article 4

Chairmanship

The Chairmanship of the Interstate Council and the Integration Committee shall be held by rotation in the alphabetical order by each Member-State of the Community for one year.

The procedure for electing the Chair for other bodies of the Community shall be provided under corresponding regulations.

Article 5

Interstate Council

The Interstate Council is the chief executive body of the EurAsEC. Its membership comprises heads of state and government leaders of the Contracting Parties.

The Interstate Council shall consider executive issues of the Community concerning the common interests of the Member-States, define the strategy, guidelines and prospects of the integration development, and make decisions aimed at implementation of the objectives and tasks of the EurAsEC.

The Interstate Council shall issue instructions to the Integration Committee, address the Inter-Parliamentary Assembly with requests and recommendations, and submit inquires to the Community Court.

The Interstate Council may resolve to establish auxiliary bodies of the Community.

The Interstate Council shall meet on the level of heads of states no less than once a year, while the government leaders shall meet no less than twice a year. The summits shall be chaired by a representative of the Contracting Party chairing the Interstate Council at such time.

The functions and procedures of the Interstate Council shall be provided in the By-Laws to be approved by the Interstate Council on the level of heads of state of the EurAsEC Member-States.

Article 6

Integration Committee

The Integration Committee is a permanent body of the EurAsEC.

1. The main tasks of the Integration Committee are to:

- ensure coordinated action between the EurAsEC bodies;
- prepare proposals regarding the agendas of meetings of the Interstate Council and the level of participating officials, and prepare also draft resolutions and documents;
- prepare proposals regarding formation of the EurAsEC Budget and control its implementation;
- control the enforcement of resolutions of the Interstate Council.

In order to fulfill its tasks the Integration Committee shall:

- make decisions to the extent of its authority as defined hereunder or delegated to it by the Interstate Council;
- annually present to the Interstate Council a status report on the

Community affairs and the progress of implementation of its objectives and tasks, a progress report regarding its own activity, and regarding the implementation of the Budget of the EurAsEC;

- consider measures aimed at attaining the objectives of the Community, including making appropriate agreements and maintaining a uniform policy on specific issues for the Contracting Parties, and prepare corresponding proposals;
- retain the right to submit recommendations to the Interstate Council, submit recommendations and requests to the Inter-Parliamentary Assembly, and inquiries to the Community Court.

2. The Integration Committee shall include deputy heads of the governments of the Contracting Parties. Chairman of the Integration Committee shall take part in the meetings of the Interstate Council.

Meetings of the Integration Committee shall be held at least once every three months.

In between the meetings of the Integration Committee, day-to-day functioning of the Community will be supported by an EurAsEC Commission of Permanent Representatives of the Contracting Parties appointed by the heads of state of the Member-States.

3. Organization of work and information and technical support for the Interstate Council and the Integration Committee shall be the responsibility of the Secretariat of the Integration Committee (the "Secretariat").

The Secretariat shall be led by its Secretary-General to be appointed by the Interstate Council based on the Integration Committee's

recommendation for a term of three years.

The Secretary-General is the chief administrator of the Community, who participates in the meetings of the Interstate Council and the Integration Committee.

The Secretariat shall be formed of citizens of the Member-States on quota basis prorated for the respective contributions of the Contracting Parties to the Community Budget, and of persons employed on contract basis.

As regards their official duties, the Secretary-General and the staff of the Secretariat must not request or receive instructions from any Contracting Party or any authority other than the Community. They must abstain from any actions which might affect their status as international officials responsible only to the EurAsEC.

The Contracting Parties shall respect the international nature of responsibilities of the Secretary-General and the staff of the Secretariat and shall not try to exercise any pressure on them while they are doing their duty.

The functions and the procedures of the Integration Committee shall be provided under the By-Laws to be approved by the Interstate Council.

Article 7

Inter-Parliamentary Assembly

The Inter-Parliamentary Assembly is a parliamentary cooperation body within the EurAsEC considering issues of harmonisation

(approximation, unification) of the national laws of the Contracting Parties and bringing them into conformity with the agreements made in the EurAsEC format for the purposes of implementing the tasks of the Community.

The Inter-Parliamentary Assembly is formed of members of parliaments of the Contracting Parties delegated by such parliaments.

The Inter-Parliamentary Assembly shall, to the extent of its powers:

- develop fundamentals of legislation in the basic spheres of legal relations falling within the competence of the Interstate Council;
- adopt standard drafts as basis for development of national legal acts;
- be able to extend recommendations to the Interstate Council, requests and recommendations to the Integration Committee and the parliaments of the Contracting Parties, and submit inquiries to the Community Court.

The By-Laws of the Inter-Parliamentary Assembly shall be approved by the Interstate Council.

Article 8

Community Court

The Community Court shall provide guarantees of uniform enforcement by the Contracting Parties of this Agreement and other agreements between the Community members and decisions taken by EurAsEC bodies.

The Community Court shall consider also economic disputes

arising between the Contracting Parties on issues of implementation of decisions of the EurAsEC bodies and provisions of agreements effective between the Community members, provide explanations and opinions in respect thereof.

The Community Court shall be formed of representatives of the Contracting Parties, two representatives from each Contracting Party. The Judges shall be appointed by the Inter-Parliamentary Assembly based on recommendations of the Interstate Council, for six years.

The organization and the procedures of the Community Court shall be provided under its Statute to be approved by the Interstate Council.

Article 9

Membership

Membership of the EurAsEC is open to all states which will undertake the commitments arising hereunder and under other EurAsEC agreements, in accordance with the schedule established by resolution of the Interstate Council, and which the Members of the EurAsEC believe to be able and willing to comply with such commitments.

Any Contracting Party shall have the right to withdraw from the EurAsEC provided it has complied with its obligations to the Community and its Members, and has notified the Integration Committee officially of its withdrawal from this Agreement no later than twelve months prior to the withdrawal date. Membership shall terminate in the current budgetary year where the notice had been sent

before the approval of the Community Budget for the next budgetary year. Where the notice is sent after the next year's Budget has been approved, membership shall terminate in such subsequent budgetary year.

Participation in the work of EurAsEC bodies may be suspended by resolution of the Interstate Council for a Contracting Party in breach of the terms of this Agreement and/or other Community agreements. If such Contracting Party continues to be in breach of its obligations, the Interstate Council may resolve to expel it from the Community as of such date as the Interstate Council may determine.

Article 10

Observership

The observer status at the EurAsEC can be granted to any state or international interstate (intergovernmental) organization applying for such status.

Decisions to grant, suspend or cancel the observer status shall be taken by the Interstate Council.

Article 11

Legal Capacity

The EurAsEC shall wield the legal capacity required to implement its tasks and objectives in the territories of each Contracting Party.

The EurAsEC may establish relationships with states and

international organizations and enter into agreements.

The EurAsEC shall wield the rights of a legal entity and shall be able for the purpose of implementing its tasks and objectives to:

- enter into agreements;
- acquire property and dispose of it;
- appear in court;
- open accounts and carry out financial transactions.

Article 12

Location of Authorities

The Integration Committee shall be based in the City of Almaty (the Republic of Kazakhstan) and the City of Moscow (the Russian Federation).

The Inter-Parliamentary Assembly shall be based in the City of Saint Petersburg (the Russian Federation).

The Community Court shall be based in the City of Minsk (the Republic of Belarus).

Subject to the decision of the Interstate Council, territorial presence of the Integration Committee may be established in the Member-States of the Community.

Article 13

The Decision-Making Procedure[126]

[126] The text of this provision is modified by the author in accordance with the Protocol on

The Interstate Council shall take all of its decisions by consensus, except those regarding suspension or termination of Community membership, where a decision shall be taken based on the principle "consensus minus the vote of the member concerned."

The Integration Committee shall take its decisions by a two-thirds' majority of votes. Where five Contracting Parties vote in favor of a decision, but there is still no two-thirds' majority, the issue will be referred to the Interstate Council. The number of votes of each of the Contracting Parties shall correspond to their respected prorated contributions to the Community Budget for maintenance of the EurAsEC authorities, financing of the holding of meetings of the EurAsEC authorities and the Commission of Permanent Representatives and shall be as follows:

- The Republic of Belarus – 15 votes;
- The Republic of Kazakhstan – 15 votes;
- The Kyrgyz Republic – 7.5 votes;
- The Russian Federation – 40 votes;
- The Republic of Tajikistan – 7.5 votes
- The Republic of Uzbekistan – 15.

Article 14

Enforcement of Decisions

Decisions of the EurAsEC authorities shall be enforced by the

Amendments and Additions to the Treaty on the Establishment of the Eurasian Economic Community of October 10, 2000, signed on January 25, 2006.

Contracting Parties by passing the required national regulatory legal acts as provided under their national laws.

Control over the enforcement of obligations of the Contracting Parties in respect of implementation of this Agreement, other agreements effective for the Community purposes, and decisions of the EurAsEC authorities shall be effected by the authorities of the Community to the extent of their powers.

Article 15

Financing[127]

1. The functioning of the EurAsEC authorities shall be financed out of the Community Budget.

The Community Budget for each financial year shall be planned by the Secretariat of the Integration Committee subject to consents of the member-states, shall be considered in the specified order and be approved by the Interstate Council.

The Community Budget shall never be in deficit.

2. The Community Budget shall be formed of:

1) pro rata contributions of the Contracting Parties for maintenance of the EurAsEC authorities, financing of the holding of meetings of the EurAsEC authorities and the Commission of Permanent Representatives

[127] The text of this provision is modified by the author in accordance with the Protocol on Amendments and Additions to the Treaty on the Establishment of the Eurasian Economic Community of October 10, 2000, signed on January 25, 2006.

as follows:

- The Republic of Belarus – 15 per cent;
- The Republic of Kazakhstan – 15 per cent;
- The Kyrgyz Republic –7.5 per cent;
- The Russian Federation – 40 per cent;
- The Republic of Tajikistan – 7.5 per cent;
- The Republic of Uzbekistan – 15 per cent.

2) contributions of the Contracting Parties for financing of special interstate programs of the EurAsEC and other arrangements, determined by decisions of the Interstate Council, in amounts proportionate to the Contracting Parties' participation rate defined in decisions of the Interstate Council for each program.

3. The budgetary funds shall be used to:

- maintain the EurAsEC authorities;
- finance the holding of meetings of the EurAsEC authorities and the Commission of Permanent Representatives;
- finance special interstate programs of the EurAsEC;
- finance other arrangements approved by the Interstate Council and consistent with the purposes and tasks of the EurAsEC.

Where the debt of one of the Contracting Parties in terms of its pro rata contribution to the EurAsEC budget exceeds the amount equivalent to its annual pro rata contribution, the Interstate Council may resolve to deprive it of its voting right in the Community authorities until full repayment of the debt. Its votes shall then be allocated among the remaining Contracting Parties proportionally to their respective pro rata contributions to the Community Budget for

maintenance of the EurAsEC authorities and financing of the holding of meetings of the EurAsEC authorities and the Commission of Permanent Representatives.

Article 16

Privileges and Immunities

The Community and its officials shall enjoy all privileges and immunities required to effect the functions and implement the goals hereunder and under other EurAsEC agreements.

The extent of privileges and immunities of the Community and its officials, the Secretariat staff and the territorial Representative Offices of the Integration Committee, and the Permanent Representatives of the Contracting Parties in the Community shall be provided under separate documents.

Article 17

Working Language

The Working language of the EurAsEC shall be the Russian language.

Article 18

Validity Term and Effective Date

This Agreement shall be made for an indefinite term.

This Agreement shall be subject to ratification by the Contracting Parties and shall take effect as of the date the depository, which function shall be undertaken by the Integration Committee, receives the last notice of completion of national procedures required to give effect to this Agreement.

Where necessary, the Parties shall bring their national laws into conformity with the terms hereof.

Article 19

Amendments and Supplements

Possible amendments and supplements hereto shall be made out as a separate protocol by the Contracting Parties, which protocol shall be an integral part of this Agreement.

Article 20

Registration

This Agreement is subject to registration with the Secretariat of the United Nations Organization as provided under Article 102 of the UN Charter.

Made in the City of Astana on 10 October 2000, one counterpart in each of the Belorussian, Kyrgyz, Russian and Tajik languages, all counterparts having equal legal force. In the event of any controversy regarding the content of this Agreement, the Contracting Parties shall revert to the Russian language version.

The original agreement shall be kept in the Integration Committee which shall provide each of the Contracting Parties with a certified copy.

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Eurasian Economic Community (EurAsEC): Legal Aspects of Regional Trade Integration

Sherzod Shadikhodjaev

The Eurasian Economic Community (EurAsEC) is an international economic organization designed to effectively promote the formation of a customs union and a single economic space among six CIS countries: Belarus, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, and Uzbekistan. Moldova, Ukraine, and Armenia have observer status.

As a "newborn child", the EurAsEC has yet to overcome internal and external challenges. The main internal challenge is arguably a two-tiered legal system that has emerged as a result of "diverse speed" integration in the EurAsEC. The external challenge would be posed by (1) other regional integration projects with similar purposes and subject matter, and (2) the membership of EurAsEC countries in the WTO. With respect to other regional projects such as the Single Economic Space between Belarus, Kazakhstan, Ukraine and Russia, there is a need to coordinate them with the EurAsEC. As for the WTO membership issue, EurAsEC countries opted for WTO accession in parallel with the formation of the customs union. Considering the fact that Kyrgyzstan has already entered the WTO, and the remaining members are at different accession stages, the pursued "parallelism" is certainly very challenging for the affected EurAsEC countries.

The formation of the EurAsEC customs union will have certain implications for third countries. First, products from third countries will be subject to the CCT and common non-tariff barriers at the EurAsEC external borders while they will be able to freely move inside the single customs territory with the biggest market in the CIS. Second, the EurAsEC customs union, once established, will be able to enter, on behalf of its members, into trade arrangements with third countries. Third, the coordinated WTO accession policy of EurAsEC countries may produce for WTO members similar market access opportunities to these countries. Fourth, the alteration of the bound duties of Kyrgyzstan and possibly other EurAsEC members that will have joined the WTO prior to the formation of the customs union will require them to negotiate compensatory adjustment with the WTO members concerned. Finally, in the future the EurAsEC customs union may become a WTO member with a new voice in WTO decision making.

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