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LEGAL RISKS ASSOCIATED WITH THE MEMBERSHIP OF RUSSIA IN CUSTOMS UNION AND WORLD TRADE ORGANIZATION

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The author gives characteristic of those legal risks that exist and may be relevant in the coming years due to the increasing influence of international integration processes on the Russian legislation.

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Rule-making and law-enforcement legal risks, which are associated with Russia's membership in the Customs Union and World Trade Organization, today have a key influence on the development of new Customs Code of the Eurasian Economic Union and the implementation of the Russian commitments to the WTO.

The study of Russia's membership in the two integration associations influencing on the domestic legal system – the Customs Union and World Trade Organization – has identified legal risks in this area.

The new Customs Code of the Customs Union (hereinafter – CC CU) is currently under elaboration [2]. Analysis of current international standards and foreign experience in the field of customs regulation and customs administration suggests that the modernization of CC CU is of "catching-up nature". However, already now it is necessary to formulate the norms of the Customs Code, on the basis of the nearest prospects of launching the Eurasian Economic Union, which is scheduled to run from January 1, 2015. Thus the norms of supranational and national customs legislation of Russia, Belarus and Kazakhstan should comply with the requirements of the highest level of economic integration.

In addition, May 19, 2011 Russia, Belarus and Kazakhstan signed the Treaty on the functioning of the Customs Union within the framework of the multilateral trading system [3]. This Treaty defines the correlation of norms and regulations established by the WTO and Customs Union, as well as the procedure for coordination of the parties' actions regarding taking of commitments to the WTO. In accordance with the Treaty, WTO norms dealing with the sphere of regulation of the Customs Union become a part of the legal system of the CU.

If the WTO Agreement stipulates other rules than those stipulated by agreements of the CU and (or) the decisions of its bodies, then the rules of the WTO Agreement shall be applied. Thus, there will be the priority of the country's obligations with respect to the WTO, and the conflict of norms of the CU and the WTO will not happen. Consequently, the Russian commitments to the WTO de facto will be also performed at the level of the CU.

In this regard, we offer the characteristic of those legal risks that currently exist and which will continue to be relevant the next five to seven years due to the increasing influence of international integration processes on the Russian legislation.

A feature of the work on the modernized Code is involving by the legislators of the three states of business representatives of Russia, Belarus and Kazakhstan. Partially, this approach has been applied in administrative legislation of Russia in part of control over the implementation of the "Road map", decrees and orders of the Government of the Russian Federation (paragraph 40 of the "Road map" on compulsory public discussion of its implementation with the participation of representatives of public associations of businessmen, experts and interested federal executive authorities and executive authorities of the constituent entities of the Russian Federation (including the use of information and telecommunication network "Internet"). The consideration of opinions of these categories of persons is also necessary in matters on establishment, reorganization and

liquidation of regional customs departments, customs offices and customs posts (paragraph 3) [6]; monitoring the performance indicators of customs authorities (paragraph 9) [5]).

However, even such a measure, which fully complies with the requirements of the WTO and the International Convention on the Simplification and Harmonization of Customs Procedures (hereinafter referred to as the Kyoto Convention) [1; 4], does not guarantee leveling of the legal risks that already now have a significant influence on the administrative-legal regulation of legal relations in the customs field.

Using the classification developed by M. A. Lapina and D. V. Karpuhin [9], we can attribute legal risks, associated with the membership of Russia in the international integration associations, to rule-making and law-enforcement ones, as well as identify the adverse consequences associated with these risks.

1. Misunderstanding of the ideology of the Kyoto Convention, Framework standards of security and facilitation to the trade of the World Customs Organization [12], the norms of the WTO. Mismatch of the Russian legislation with international requirements, due to membership in the Customs Union and WTO, is an adverse consequence. For example, the institute of prior informing in the CC CU erroneously associate only with the arrival of goods. Although in the Kyoto Convention, international acts and practice of prior informing it is a tool of customs control. In addition, there is a legal risk of complaints of states-trading partners of Russia to the Body on consideration of WTO disputes and very likely loss of our country in connection with discrepancy of its national legislation with the WTO norms (EU complaint against actions of Russia on the application of utilization fee for vehicles).

2. To date, the scientific-practical analysis of the provisions of the WTO Agreement on trade facilitation, adopted in 3-6 December, 2013 [9], in part of influence of its norms on the Russian system of administrative-legal regulation, has not been carried out, although about 80% of Agreement norms are devoted exactly to the activities of customs authorities [10]. The mentioned WTO Agreement will have a key impact on the functioning of the customs administrations of the countries of the world and possibly lead to the revision of the Kyoto Convention, as evidenced by the first results of the work of the joint working group of the WTO and the World Customs Organization [11] on the implementation of the WTO Agreement on trade facilitation.

3. Russia does not have the system of comprehensive study of international standards, to which our country has acceded. Adverse consequences in this case

may include the lack of complete understanding of seriousness and extent of the influence of Russian obligations under international treaties, the ignorance of its benefits and advantages (e.g., regarding the use of dispute resolution procedures to protect the interests of its producers and consolidate precedents beneficial for Russia). More than a year and a half had passed before in the beginning of 2014 the Center for Analysis of WTO Problems was opened, as well as an alternative to it Center under the Ministry of Industry and Trade of the Russian Federation, permanent Mission of the Russian Federation at WTO was established[7]. There is an acute lack of WTO's law experts in public authorities, in business community.

4. Declaration of accounting of international standards substitutes their actual implementation. A negative consequence of this legal risk is that there is still a need to adapt Russian legislation into line with the international obligations of the WTO and Kyoto Convention, but this process will take place in a hurry and under adverse conditions of constant threat of sanctions. Moreover, the ignoring of international standards for customs administration and customs regulation means that Russia dooms juridical and physical persons to material and time losses when crossing customs border, does not use a powerful lever for economic development. During the negotiation process on accession of the Russian Federation in the WTO, one of the conditions that were put forward was the correspondence of national customs legislation to international standards. According to the WTO position, the costs of import tariffs are often less than the losses incurred by the international trading community as a result of time-consuming and expensive customs clearance procedures, vague and excessive documentation requirements and ignoring of information technologies [13]. So, the impact of the lack of high-quality customs administration on the final cost of imported goods is reflected in the percentage of direct costs of participants of foreign economic activity related to customs operations and procedures and is an average from 10-15 up to 40-50% in the cost of logistics operations, from 1 up to 4-5% in the ultimate value of goods [8, 23].

5. Most of the international acts that are used in law drafting work are presented in incorrect translation, resulting in a distortion of the original meaning and its wrong enshrining in the supranational and national customs legislation.

6. There is no clear understanding of legal institutes in the customs law, in the CC CU. For example, customs declaration and release of goods constitute a single legal institute that is associated with the putting of goods under a customs procedure.

Another example is the institute of importation of goods and crossing of customs border, which includes the arrival of goods into the customs territory. Import,

arrival, release – the stages of one process, they should not be broken and torn apart; there shall be no removal of any element from the specified sequence.

Insufficient account of the features of separate institutes of customs law adversely affects the legal regulation of constituting public relations. For example, the institute prior informing of customs bodies is widely used. At that, CC CU established the term of "prior informing", and the decisions of the Commission of the Customs Union and the Eurasian Economic Commission contain the term of "prior information". In addition, a whole institute is being tried to squeeze into a Procrustean bed of one article (article 42 of the draft CC of the Eurasian Economic Union) through codification the norms of international agreements on prior informing.

The mixing of the various institutes of customs law happens in the same way. For example, in the course of work on the new CC of the Union, they try to use prior informing for the procedure of customs transit. However, goods under customs transit procedure require a preliminary customs declaration. The given example illustrates the ignorance of international standards, international practice, confusion of concepts, not understanding of ideology.

7. Legal risks associated with the process of codification of the CC EEU are expressed in the fact that this process is conducted, supposedly, on the basis of the Kyoto Convention. However, implementation of not whole (full) institutes, but individual standards and fragments of institutes, takes place in violation of the letter and spirit of the Convention

At present, prior informing of customs bodies about the arrival of goods by vehicles is obligatory. In 2014, it is expected to consolidate similar duties when carriage by rail transport. However, in the CU, preliminary information in accordance with international standards is not automatically sent in the System of risk management of customs bodies. Thus, the CU implements only part of the institute of prior informing, what completely distorts the original concept: prior informing – risk management system – automatic release of goods.

The mentioned legal risk can be illustrated by another important example of partial implementation of individual standards, rather than whole institutes. So, the institute of customs clearance was not fully moved from the Kyoto Convention, and Implemented only in part of verification of registered customs declarations. Thus, CC CU has two independent structural units: chapter 27 "Customs Declaration of Goods" and chapter 30 "Customs Operations Involving the Production of Goods for Domestic Consumption". And in the Kyoto Convention it is a unified institute "Customs Clearance and other Customs Formalities".

8. The emergence of centrifugal forces in the integrated unification within the framework of EurAsEC: both Russia and Belarus and Kazakhstan are constantly trying to attribute norms beneficial for them to the level of national and not of supranational legislation, in order to enshrine in national acts more preferential conditions than in supranational acts. The adverse consequence is desire to level the value of supranational legislation to create a competitive advantages in the struggle with the partners in the integration process.

9. At the national level (as opposed to supranational) continue to give insufficient attention to the issue of promoting trade and encouraging FEA participants for bona fide conduct. The ideology of the Kyoto Convention and the WTO norms is based on the interaction of FEA participants and customs and other regulatory bodies, at that, regulatory bodies are obliged to provide bona fide commercial operators maximally possible simplifications and speed for passing customs procedures. Customs bodies in law-enforcement and rule-making activity consider FEA participants as potential offenders, and the proposed by business representatives amendments to CC CU as an opportunity to create favorable "loopholes" in the customs legislation.

10. A large number of gaps in the legislation, which are due to the complexity and the dynamic development of legal relations in the field of international trade and movement of goods across customs border.

Taking as the basis the developed by M. A. Lapina and D. V. Karpukhin interpretation of public-law risks as a potential hazard, the probability of events that have a negative impact on social relations, which are the subject of legal regulation of certain public-law branches [9], we can describe the negative impact of the legal risks associated with Russia's membership in the WTO and CU:

1) considerable decline in the legal technique of national and supranational rule-making activity;

2) creation of grounds for further contradictions, conflicts with Russia's international obligations;

3) creation of grounds for applying to the Russian Federation of penalties and other measures of responsibility, which can be imposed by an authority responsible for considering disputes for failure to meet WTO requirements;

4) in part of the functioning of the Unified Economic Space, adverse impact of legal risks is an expression of the growing competition between Russia, Belarus and Kazakhstan, which may have a significant negative impact on the integration processes in the Eurasian Economic Community and to prevent the start of functioning of the Eurasian Economic Union from the January 1, 2015.

To summarize the analysis of existing legal risks, it should be noted that the system of administrative-legal regulation of relations in the sphere of moving goods across customs border is currently experiencing a dramatic impact of the norms of international law, in many ways is defined by it (international law). The enumerated legal risks lead to the fact that the supranational and national legislation of Member States of the Eurasian Economic Union will not be adequate in the implementation of international-legal obligations of Member States to each other and to the Member States of the WTO.

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