

LEGAL ALERT (Russia/CIS)

THE CUSTOMS UNION OF RUSSIA, BELARUS AND KAZAKHSTAN

Olga Shtainberg, Adv.*
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On July 6, 2010, the Customs Union of three independent states, the Russian Federation, the Republic of Belarus and the Republic of Kazakhstan (the “**Customs Union**”), became operational, constituting a common customs territory with an external customs border. The Customs Union members are committed to continuing economic integration towards complete removal of customs borders between Russia, Kazakhstan and Belarus during 2011.

Customs Union initiation is an important step towards forming a broad economic alliance of the former Soviet Union republics. According to the statistics published by the member states, Customs Union will create a common market of approximately 170 million population with a US\$2 trillion economy, US\$900 billion trade and 90 billion barrels of oil reserves. According to the declarations published by the member states, harmonizing customs rules is just the first step in setting up a single economic space. Later, member states intent to allow free movement of labor and capital through their territories, resulting ultimately in a single-currency monetary union during 2012.

Customs Union Formation and Structure

The framework for the Customs Union formation was developed under the authority of the Eurasian Economic Community¹. Customs Union legal basis was created by adoption of the **Unified Customs Tariff** and **Unified Non-tariff Customs Regulations** and the execution of the **Agreement on the Customs Code of the Customs Union** on November 27, 2009². Formally, the Customs Union has been established on January 1, 2010. But, until the **Customs**

* Qualified to practice law in the Russian Federation only.

¹ Eurasian Economic Community (EAEC or EurAsEC) was established in 2000 by a number of the former Soviet Union republics, including the Russian Federation, Belarus, Kazakhstan, Kyrgyzstan and Tajikistan, for the purposes of encouraging the economic co-operation between its members by developing, *inter alia*, free trade regime, unified customs area, common energy market and transport network. Uzbekistan became a member of EAEC in January 2006 (and suspended its membership at the end of 2008). In 2002 and 2003 Moldova, Ukraine and Armenia were granted observer status in EAEC.

² The initial formal step towards the Customs Union formation was the execution on October 6, 2007 of the Agreement on Creation of the Single Customs Territory and Customs Union Formation and the Agreement on the Customs Unit Commission.

Code of the Customs Union came into effect on July 6, 2010, the actual operation of the Customs Union was not feasible.

The legal framework of the Customs Union is based on international agreements and protocols executed by the member states, as well as on customs rules, regulations and resolutions adopted and approved by the authorized bodies of the Customs Union. Membership in the Customs Unit is conditioned upon accession to all valid agreements of the Customs Union. The Customs Code is one of the major legal instruments of the Customs Union and it is based on the model of the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention).

The supreme authorities of the Customs Union are the **Inter-State Councils**: at the level of heads of the member states and at the level of governments. These bodies are responsible for the execution of the international agreements forming the legal basis of the Customs Union. The **Customs Union Commission** is the regulatory body, comprising 3 members (1 representative from each of the member states). It is authorized to adopt its resolutions by a majority of votes and its decisions are binding on the member states. The headquarters of the Customs Union Commission are located in Moscow. Most of the Customs Union procedural rules (such as procedures and deadlines for the performance of certain actions, rules relating to document forms, instructions for the completion of customs declarations, etc.) are set forth by the Customs Union Commission. Furthermore, the Customs Union Commission is responsible for maintaining registers of the authorized customs agents, brokers, carriers, duty-free shops and warehouses. Any unresolved dispute or controversy between the member states related to the Customs Union can be submitted to the jurisdiction of the Economic Court of the Commonwealth of the Independent States (CIS) in its capacity as the Court of the Eurasian Economic Community.

Legal Considerations

Customs Union rules and regulations provides for formation of a unified customs zone on the territory of the member states. Goods imported into or manufactured on the territory of any of the member states will be transferred and delivered within the Customs Union territory without payment of customs duties, free of economic limitations and with simplified customs formalities. Border customs control and application of custom clearance procedures in trade between member states will be abolished.

Major customs-related matters shall be governed by the unified system of rules, standards and policies, including *inter alia* with respect to the rights and obligations of the parties to the commercial transactions, customs authorities, customs clearance and procedural rules (e.g. procedures and forms applicable to declaring and releasing goods, payment of customs duties, etc.), classification and customs valuation, technical regulations, sanitary rules and phytosanitary measures, certification and declaration of conformity, identification rules, terminology, packaging, marking and labeling requirements. Furthermore, customs procedures shall be based on the principle of mutual recognition by the member states of the documents issued or filed in compliance with such unified customs regulations. In particular, to allow such mutual documents recognition and to ensure that evaluation and certification methods used in member states are identical, separate agreement has been concluded on the mutual recognition of the authorities and testing laboratories performing work on confirming the conformity.

Unified Customs Tariff Regulations (including, but not limited to, a common commodity classification nomenclature and a customs tariff) provides for the unified customs duties for goods imported on the territory of the Custom Union.

Unified Customs Non-Tariff Regulations of the Customs Union, allow to impose certain economic proscriptions and limitations on the cross-border trade activities in the Customs Union territory, such as quantitative restrictions, exclusive export and/or import rights with respect to certain goods, expert supervision, foreign trade licensing and special foreign trade constraints (including such constraints imposed for the purposes of compliance with certain international sanctions

and/or for protection of the legitimate national interests of the member states, such as homeland security and public health).

Moreover, in order to prevent import of counterfeited goods into the territory of the Customs Union the Customs Code of the Customs Union provides for setting up a **unified register for intellectual property rights**, where the participants of the trade activities will be required to register trade names and trademarks relating to the goods transferred.

Despite the adoption of the Customs Code and numerous Custom Union rules and protocols, at present many aspects of customs activities are still carried out on the basis of the national regulations and standards which remain in force in the member states. The customs control on the borders between the member states has not been abolished. According to the implementation plan, Customs Union regulations should be introduced into and eventually replace the corresponding national rules and standards currently in effect in each member state. The work for the development and implementation of the new Customs Union rules, regulations and policies is currently being processed with the target to make the Customs Union fully operational in January 2011.

It should be noted, that some critical issues related to the Customs Union, such as the recent dispute between the Russian Federation and the Republic of Belarus on export duties on Russian oil and petroleum products to Belarus, remains unsolved and may cause additional delays in implementation of the Customs Union regime.

Final Note

Companies operating in the field of foreign trade on the territory of the Customs Union should take into consideration changes in the local legislation, regulations and customs practices, which might substantially affect their commercial activities, and be prepared to comply with the Customs Union regime once it becomes fully operational.

For more information, please contact:

Alexander Averbuch
Tel: (972)-3-5619050
averbuch@ka-atlaw.com

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General Contact Information:

Address: 48 Menahem Begin Rd., Tel-Aviv 66184 Israel
Tel: (972)-3-5619050 Fax: (972)-3-5619051
E-mail: office@ka-atlaw.com Website: www.ka-atlaw.com