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in 19 jurisdictions worldwide

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The Customs Union

Edward Borovikov, Bogdan Evtimov and Igor Danilov

Dentons

Overview

1 What is the main domestic legislation as regards trade remedies?

The main legal instrument for trade defence measures (anti-dumping (AD), countervailing duties (CVD) measures and safeguards) is the Customs Union's founding Agreement on the Application of Safeguards, Anti-dumping and Countervailing Measures in Respect of Third Countries of 25 January 2008 (the TDM Agreement), as amended by the Protocol of 18 October 2011. A number of secondary acts of the Eurasian Economic Commission (the Commission) regulate specific aspects of trade remedies, including confidentiality matters, internal decision-making procedures and methodological materials for domestic producers aiming to facilitate drafting of complaints. The TDM Agreement, the amending Protocol and secondary acts are available on the website of the Commission (in Russian only) at: www.eurasiancommission.org/ru/act/trade/podm/info/Pages/norm_prav_aktj.aspx.

Trade defence measures of the Customs Union apply on imports into the single customs territory. The domestic industry of the Customs Union for the purposes of trade remedies is also defined by reference to producers in the three member states (Russia, Belarus and Kazakhstan).

2 In general terms what is your country's attitude to international trade?

The primary external trade policy objectives of Belarus, Kazakhstan and Russia have been to liberalise regional trade, first within the Customs Union and then among the Eurasian Economic Community (EurAsEC) and Commonwealth of Independent States (CIS) countries.

Since 2008, Russia has also begun negotiations on a comprehensive and ambitious trade agreement with the European Union (EU), its largest trade partner. Those negotiations have been progressing at a slow rate. The negotiating sides have confirmed their intentions for the advancement of the negotiation process at the Russia-European Union summit held in Yekaterinburg on 3 and 4 June 2013.

Moreover, on 22 August 2012 Russia acceded to the WTO. This may be considered as the beginning of a process of gradual liberalisation of the Customs Union's trade with the rest of the world in accordance with WTO rules. In joining the WTO, Russia has committed to ensuring compliance of the Customs Union's trade defence measures with Russia's own WTO obligations and commitments. At the same time, a number of Russian industries have expressed concerns about the potential negative effects of WTO accession and have asked for increased protection.

Kazakhstan is at an advanced stage of its WTO accession negotiations; however a number of difficult issues are still outstanding. Kazakhstan may become a WTO member in 2014. Kazakhstan's eventual tariff concessions on certain goods, made upon its forthcoming accession to the WTO may be lower than current common Customs Union tariff rates, and this could lead to lower applied

tariffs on import in the Customs Union. This in turn may result in more rigorous enforcement of trade defence instruments in the Customs Union upon applications from domestic industries.

There are currently no indications concerning the timing of WTO accession negotiations for Belarus, which have been ongoing since the 1990s.

Trade defence investigations

3 Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

Since 1 July 2012 the authority for trade defence investigations in the Customs Union is the Eurasian Economic Commission (the Commission) and the administrative service directly in charge of conducting trade defence investigations is the Commission's Department for Protection of the Domestic Market. The webpage of the Department for Protection of the Domestic Market is available in the Russian language at: www.eurasiancommission.org/ru/act/trade/podm/Pages/default.aspx.

Final decisions to impose measures following investigations are made by the College of the Commission, consisting of nine ministers from all three member states (www.eurasiancommission.org/RU/Pages/default.aspx).

4 What is the procedure for domestic industry to start a trade remedies case in your jurisdiction? Can the regulator start an investigation ex officio?

According to article 29 of the TDM Agreement, the investigation can be initiated on the Commission's own initiative or on the basis of a complaint lodged by the domestic industry manufacturing a like product (relevant for AD and CVD investigations) or directly competing products (in the case of safeguards). In practice, so far all investigations have been initiated following domestic industry complaints.

The complaint can be lodged either by individual domestic producers or by an association of domestic producers. The Customs Union applies thresholds for domestic industry that are similar to those in other major jurisdictions. In particular, the complainant has to demonstrate that its complaint is expressly supported by at least 25 per cent of the total Customs Union production, and moreover, it has to be supported by over 50 per cent of the volume of the like (or directly competitive) product manufactured by those producers who have expressed an opinion on the complaint.

The Commission decides whether to open an investigation within 30 calendar days from the date when the complaint is deemed to have been submitted. This deadline may be extended where the Commission decides to request additional information or evidence, however, any such extension will not exceed 60 calendar days from the date of the submission of the complaint.

The requirements for the preparation of a complaint are also similar to those in other jurisdictions, namely the complainants must provide a detailed description of the product concerned and the like or directly competitive products; detailed data on domestic capacity and production, an estimate of domestic consumption, trade data, and data on the indicators relevant for injury analysis; available data on dumping by the imports from or countervailable subsidies in the targeted third country; evidence on trends in imports and factors that may interfere with the analysis of causal link with material or serious injury or threat thereof. The complaint must also contain a proposal on the form, amount and duration of the measures, and adjustment plans (if relevant, usually in the case of safeguards). Normally, all the data should cover the three years preceding the year of the submission of the complaint as well as data on further periods where representative statistics are available. All written submissions have to be accompanied by non-confidential and relatively detailed summaries.

- 5 What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

The notice of initiation of a specific trade remedy investigation is published on the website of the Commission (www.eurasiancommission.org). The date of publication on the website is the first day of the new investigation.

Notifications are also sent to interested parties identified in the complaint and reasonably known to the investigating authorities. Notifications are also usually sent through diplomatic channels to the respective foreign governments of the affected countries. In recent practice, written notifications have occasionally reached their addressees with delays, causing difficulties for interested parties to comply with further procedural deadlines.

Interested parties (exporting producers, importers, consumer associations) can participate in the investigation in person or can appoint legal representatives. There are currently no restrictions on foreign attorneys acting as representatives of interested parties before the Commission. All investigations are, however, conducted in Russian and all documents have to be submitted in Russian or accompanied by a Russian translation.

Within 30 days of the publication on the Commission's website, interested parties must submit a letter to the Commission to be registered as participants in the investigation. Only registered interested parties (namely, participants) may obtain access to the non-confidential files, including a copy of the complaint. Participants must also request public hearings within 60 days and then subsequently submit their memorandum with defensive arguments and data relevant to investigation within 90 calendar days from the date of initiation. The same deadlines apply to all types of trade remedy investigations.

Questionnaires must be answered within 30 days from their receipt (extensions are possible). The same deadline applies to all information requests in the course of the investigation.

Public hearings are normally scheduled within six to seven months after the initiation. Within 15 days after the hearings interested parties are entitled to submit information in writing as provided orally in the course of the public hearings.

Safeguard investigations are normally concluded within nine months, with a possible extension of not more than three months. The respective periods for anti-dumping and anti-subsidy investigations are 12 months for conclusion and six months for extension.

Upon completion of the investigation and before the final decision, the Commission will publish on its website its report of the main findings and conclusions of the investigation. The Council of the Commission will decide on imposition of measures usually within 30 to 45 days of receipt of the report on the investigation and of a draft decision.

- 6 Are the WTO rules on trade remedies applied in national law?

The Customs Union is not in itself a WTO member; Russia is now a WTO member, while Kazakhstan and Belarus are still negotiating their terms of accession.

All definitions of terms, procedural requirements and time limits that apply pursuant to the TDM Agreement and in the Commission's trade defence investigations aim to follow the respective WTO rules.

According to the general position, WTO law that has been implemented by the Customs Union in its agreements becomes an integral part of the Customs Union's legal order and should prevail over other laws that conflict with it. This position follows from the Treaty on the Functioning of the Customs Union in the context of the Multilateral Trading System of 19 May 2011. However, the WTO Agreements do not have direct effect with respect to legal entities and individuals in the Customs Union, and the latter cannot invoke directly the provisions of the WTO Agreements before the EurAsEC Court. Arguably, such legal claims can be done by reference to Customs Union acts implementing WTO rules.

Following Russia's accession to the WTO, Russia is bound to respect its WTO obligations in its policy of trade remedies, which cover any ongoing and new investigations of the Customs Union, as well as trade remedies in force within it.

All countries are treated as market economy countries under the TDM Agreement.

- 7 What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

Since 1 January 2012, the EurAsEC Court has been the sole competent body for judicial review of trade remedy measures adopted by the College of the Commission. In June 2013 the EurAsEC Court issued its first judgment in an anti-dumping case, concerning anti-dumping measures on forged steel rolls from Ukraine. While the judgment of EurAsEC Court was issued in favour of the investigating authority, the Court demonstrated a reasoned approach and willingness to interpret and to allow, to a certain extent, direct applicability of the relevant WTO rules.

- 8 How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

There is not yet an established Commission practice of reviews and refunds of trade remedy measures or duties in force. However, there is a legal possibility to request minimum-price undertakings, interim/administrative, newcomer and expiry/sunset reviews as well as refunds in accordance with the TDM Agreement. Reviews may be initiated upon the request of an interested party (an exporting producer or the complainant) or in certain cases may be initiated on the Commission's own motion.

In September 2012 the Commission started a sunset review of the anti-dumping measures on ball bearings from China. In April 2013 upon a request from exporting producers the Commission initiated an interim review of the antidumping duties on steel pipes from Ukraine. By midsummer 2013 both investigations were at an active stage.

The respective WTO rules and Russia's WTO commitments apply in all new review and refund investigations of the Customs Union. Therefore interested parties are encouraged to request new reviews and refunds where the facts justify so doing.

- 9 What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

The Customs Union and the Commission's experience in trade remedies is rather limited. Parties have the right to request minimum-price

undertakings, reviews and refunds as discussed under question 8. The Commission is often reluctant to accept price undertakings. Where a measure or decision of the Commission in this respect is deemed unlawful, it may be challenged before the EurAsEC Court. Parties are generally not advised to engage in methods of avoiding trade remedies, since this may lead to risks of anti-circumvention investigations and measures, the legal basis for which is provided under the TDM Agreement. Even though there have been no anti-circumvention investigations and measures in the Customs Union yet, the Commission and complainants may effectively refer to precedent in anti-circumvention against transshipment or sourcing from other countries and modification or reformulation of products as developed in other major trade remedy jurisdictions.

Customs duties

- 10** Where are normal customs duty rates for your jurisdiction listed? Is there a binding tariff information system or similar in place?

The normal (most-favoured nation) customs duty rates on import of goods into the common customs territory of the Customs Union are listed in the Unified Customs Tariff of the Customs Union. This is revised annually in accordance with the Customs Union's Single Commodity Nomenclature of Foreign Economic Activities (which in turn is based on the Harmonized System of the World Customs Organization). The authority empowered to adopt and amend the Single Customs Tariff and Commodity Nomenclature is the Council of the Commission.

Information on import duty rates is available in Russian on the website of Eurasian Economic Commission (www.eurasiancommission.org/ru/act/trade/catr/ett/Pages/default.aspx). This section of the website is updated regularly and contains generally correct information on duty rates, however, it is made available for information purposes only and is not legally binding.

Kazakhstan has reserved, during a transitional period, the right to apply import tariff rates on specific products that are different from the respective rates in the Unified Customs Tariff.

There are special rules concerning duty rates on export of certain goods to third countries. The three member states of the Customs Union have concluded a separate 'Agreement concerning export duty rates for third countries' according to which each member state establishes its own list of certain goods in respect of which export duties may apply, which is communicated to the Commission. On that basis, the Commission maintains a consolidated list of products subject to export duties for the entire Customs Union. The member states retain powers to adopt and amend the export duty rates applied on export of goods, contained in the consolidated list and originating in their territories. Similar rules are reflected in the Customs Code of the Customs Union. The export duty rates are subject to periodic amendments by decisions of the governments of the member states and there is no single public database of the Customs Union where up-to-date export duty rates can be consulted.

The customs authorities of the member states have a system of issuing preliminary customs classification decisions that may affect the customs duty rate applicable to the product for which such a decision has been requested (similar to the systems of issuing binding tariff information practised in other jurisdictions). The preliminary decisions taken at national level are reported to the Eurasian Economic Commission and listed in a special database, which is available in Russian at the website of the Commission at www.eurasiancommission.org/ru/docs/Pages/solutions.aspx.

- 11** Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

There is currently no single database at the Customs Union level that lists duty rates applicable under preferential arrangements or preferential trade agreements.

The Customs Union applies a unified system of tariff preferences (USTP) to promote economic growth and welfare in developing and least developed countries. The legal basis for the USTP is contained in the Protocol on the USTP between the governments of the Member States of the Customs Union, the Agreement on Unified Customs Tariff Regulation, the Agreement on Rules of Origin for Developing and Least Developed Countries, and other Customs Union acts relating to customs tariff policy. The Customs Union Agreement on Unified Customs Tariff Regulation at article 7 specifies the preferences that are granted to developing countries (75 per cent of the normal duty rate under the Unified Customs Tariff) and to least developed countries (the latter are entitled to benefit from nil duty rates).

The USTP preferences apply to goods included in lists of goods and countries eligible for such preferences. These lists are established by the Commission. The respective lists of countries and eligible goods as well as relevant legislation are available on the Commission's website (www.eurasiancommission.org/ru/act/trade/dotpf/commonSytem/Pages/normatBaza.aspx).

There is no official list or unified database for the existing preferential trade agreements of member states with third countries. The agreements are numerous; however, the most noteworthy are bilateral trade agreements concluded within the organisation of the CIS. While in 2012 the amended Agreement on the Free Trade Area of the CIS entered into force, the CIS members continue to maintain the network of bilateral free trade agreements. It is expected that the new agreement will harmonise and simplify trade regulations within the CIS in the near future.

Russia currently maintains bilateral preferential trade agreements with: Armenia, Azerbaijan, Georgia, Kyrgyzstan, Moldova, Serbia, Tajikistan, Turkmenistan, Uzbekistan and Ukraine. Kazakhstan has bilateral preferential trade agreements with Armenia, Azerbaijan, Georgia, Kyrgyzstan, Moldova, Tajikistan and Ukraine. Belarus maintains preferential trade agreements with Armenia, Azerbaijan, Kyrgyzstan, Moldova and Tajikistan. Many of these agreements have product exclusions. The Commission is currently taking steps to renegotiate such bilateral trade agreements so that the Customs Union will become a party to such agreements.

- 12** How can GSP treatment for a product be obtained or removed?

The Commission administers the USTP and is responsible for maintaining and updating the following lists:

- a list of eligible developing countries entitled to the general tariff preference (currently 102 countries);
- a list of eligible least developed countries entitled to the special tariff preference (currently 49 countries); and
- a list of the eligible goods originating from developing countries and least developed countries that fall within the scope of the USTP.

The Protocol on the USTP of the Customs Union adopted on 12 December 2008 (in article 2) specifies the country eligibility criteria that the beneficiary countries must meet to be included in the list of eligible countries. The eligibility criteria are complex and include not only relative volume of import and level of country income criteria, but also a number of other requirements, some of which can be regarded as policy or discretionary criteria. The assessment of these criteria is within the powers of the Commission.

Moreover, the list of eligible goods for USTP cannot exceed 20 per cent of all tariff lines in the Unified Commodity Nomenclature. The Commission may also adopt a special list of eligible goods originating from least developed countries, which can contain up to 5 per cent of all tariff lines. Currently there is no such list.

- 13** Is there a duty suspension regime in place? How can duty suspension be obtained?

Customs tariff suspensions involving partial or complete reduction of normal customs duty rates for specific tariff lines or end-uses are provided for in the Agreement on Common Customs Tariff Regulation concluded on 25 January 2008 between the three member states of the Customs Union (in particular articles 5 and 6 thereof). Duty reductions may not benefit individual companies.

The body empowered to adopt decisions for tariff suspensions is the Commission.

Given the recent delegation of respective powers from the member states to the Commission, there is not yet an established formal procedure for requesting tariff suspensions at the level of the Customs Union or the Commission. Therefore, economic operators may be advised to address substantiated requests for tariff suspensions to their national competent ministries, which in turn would be able to refer the request to the Commission.

- 14** Where can customs decisions be challenged in your jurisdiction? What are the procedures?

Acts of the Commission that affect individual rights and interests of economic operators under the founding agreements between Customs Union member countries and laws of the Customs Union or the EurAsEC, including customs tariff policy matters, may be challenged directly by the affected economic operators before the EurAsEC Court. The litigation practice on customs matters before the latter court has been limited to two cases related to the customs classification of certain vehicles and clearance procedures on exported coal. In both cases the Court upheld the claims of the complainants.

Decisions of customs authorities of the member states can be challenged according to the procedures provided in each national jurisdiction. Customs decisions of the Russian authorities can be challenged via an administrative appeal before the higher customs authority and via a judicial challenge before the Russian arbitration courts in accordance with chapter 3 of the Federal Law on Customs Regulation in the Russian Federation (No. 311-FZ of 27 November 2010). The challenge of customs decisions in Kazakhstan is done in accordance with several different types of procedures depending on the type of the challenged customs decision. The challenge involves higher administrative authorities and the national courts. These procedures are provided for in the Code of the Republic of Kazakhstan on Customs Affairs (No. 296-IV ZRK of 30 June 2010) and other legal acts. For instance, a special procedure involving stricter time limits provides for complaints against the notice of customs debt as a result of an inspection by Kazakh customs. The challenge of customs decisions in Belarus can be done by complaint to the customs authorities or to the court (Customs Code of Belarus No. 204-Z of 4 January 2007).

Trade barriers

- 15** What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

The Commission has not yet received a mandate from the member states for handling complaints against trade barriers in third countries, and the fundamental reason is that each member state is in a different stage with respect to its WTO accession. Therefore, the monitoring of trade barriers in third countries is still within the competence of the member states, while Russia is currently the only member state of the Customs Union that can use WTO mechanisms to tackle trade barriers.

Complaints against trade barriers are handled by the ministries responsible for economy and trade of each member state.

Russia represents particular interest in the context of its WTO membership. In Russia, the competent authority for handling trade

barrier complaints is the Ministry of Economic Development, which has an experienced team of foreign-trade experts who regularly deal with complaints about trade barriers in third countries.

- 16** What is the procedure for filing a complaint against a foreign trade barrier?

The national laws of the member states do not provide for a specific procedure for the filing of complaints against trade barriers in third countries. The competent authorities of member states are generally open to hearing the concerns of business. There are no specific time limits. In Russia complaints are submitted in free written form and are considered by the Ministry of Economic Development.

Following the recent accession of Russia to the WTO, economic operators may submit a complaint based on arguments in line with WTO rules and challenging effective trade barriers against exports of Russian-origin goods and services with a Russian element. Such complaints are handled within the Ministry of Economic Development and may be used as a basis for possible consultations or dispute settlement proceedings under WTO rules.

- 17** What will the authority consider when deciding whether to begin an investigation?

Authorities as a rule recommend interested parties to collect available relevant data, such as legislative or administrative acts of the third country's authorities that are believed to be the reason for the trade barrier, statistical information on trade flows that are expected to decrease following the imposition of the trade barrier, data on the negative impact of the trade barrier on the business of the complaining company or effect on the economy of the Customs Union's member state, etc.

As of 2013 the Commission undertakes monitoring and reporting on foreign trade barriers for goods exported by the Customs Union members. The respective reports and lists of foreign trade barriers are published on the Commission's website (www.eurasian-commission.org/ru/act/trade/dotp/Pages/dostup.aspx).

- 18** What measures outside the WTO may the authority unilaterally take against a foreign trade barrier?

Following the accession of Russia to the WTO, Russia's unilateral or retaliatory action must comply with WTO rules.

The Customs Union's member states have working procedures in place to take parallel coordinated action in case a third country imposes a trade barrier or other trade-restrictive measures on one of them. The relevant member state will report the case to the Commission. In consultation with the Commission, member states may then agree upon taking parallel unilateral or retaliatory measures.

Such parallel action may become particularly relevant if Russia is authorised by the WTO to impose retaliatory measures as a result of successful WTO dispute settlement proceedings following non-compliance.

Belarus and Kazakhstan are not yet WTO members; however, their obligations under the Customs Union (which include seeking where possible compliance with WTO rules) may have a restrictive effect on their powers to take unilateral retaliatory action.

- 19** What support does the government expect from the private sector to bring a WTO case?

WTO cases are currently relevant only to Russia. There are not yet specific rules in Russia establishing procedures and requirements for the preparation of WTO complaints. Therefore, the practical support for the preparation of a WTO case in Russia, such as relevant research, evidence, translations and expert advice is currently dependent on the initiative of the business sector.

20 What notable trade barriers other than retaliatory measures does your country impose on imports?

The Customs Union maintains a harmonised system of non-tariff trade regulation on the basis of the Agreement on Unified Non-Tariff Regulation Applicable to Third Countries signed on 25 January 2008 and concluded between the three member states, as well as on the basis of other special Customs Union agreements and acts relating to specific types of non-tariff measures (eg, technical regulations and sanitary and phytosanitary measures).

The Agreement provides the general rules and principles for several types of non-tariff measures. Each specific non-tariff measure, however, is administered at member state-level, as indicated below:

- bans on the export or import of certain goods (in accordance with conditions set out in the Agreement);
- quantitative restrictions for export or import of certain goods (in accordance with the conditions set out in the Agreement);
- delegation of exclusive rights to export or import certain goods;
- export or import licensing;
- surveillance systems with regard to the export or import of certain goods; and
- measures for imposition of United Nations-approved economic sanctions.

Other non-tariff measures, such as export controls, technical regulations, sanitary or veterinary and phytosanitary (SPS) measures, including plant quarantine measures are routinely applied by the member states. They are subject to special agreements or rules at the level of the Customs Union and the member states. The most notable trade barriers in Russia and the Customs Union are traditionally of SPS nature, including the most recent bans on US exports of poultry and meat due to a zero-tolerance policy on residues of antibiotics and steroids (such as ractopamine, which is banned in Russia and also in other jurisdictions such as the European Union and China). Other goods subject to extensive safety controls and requirements in Russia and the Customs Union include wine and spirits from Georgia, cheese from Ukraine and other items. Parallel to this, all Customs Union members make extensive use of stringent import licensing regimes for alcohols and pharmaceuticals.

Export controls

21 What general controls are imposed on exports?

The majority of goods exported from the customs territory of the Customs Union are free from export controls and export taxes and duties. There are, however, exceptions, which often affect certain natural resources, hydrocarbons and energy goods, raw materials, certain agricultural and forestry products, dual-use goods etc. The matter of customs duties on export in the context of the Customs Union has been addressed under question 10; therefore this section will deal with other export controls. Exceptions for similar primary goods may also apply in the internal trade among the member states. The rules on export controls in the external trade of the member states are provided in the Agreement on Unified Rules of Export Control of member states of the Eurasian Economic Community of 28 October 2003. This has been in force since 1 January 2010 for the Customs Union's member states and is relevant also for the internal trade among the participants of the Customs Union. The Agreement contains a set of common harmonised rules and procedures in regard to trade in specific raw materials; dual-use goods and equipment; technology and services that might be used in weapons of mass destruction and missile delivery systems; and military goods and equipment. The Agreement establishes a common list of goods and technology subject to export control.

Under the Agreement, the Customs Union's member states are called on to communicate and cooperate among themselves, and coordinate in the enforcement of export controls on goods included in the common list.

However, the member states retain certain powers and remain responsible for the establishment and management of national competent authorities in charge of administering export controls and issuing export licences for the listed goods. Procedures involving customs declarations, controls and, where relevant, payments of export taxes and duties apply to exports of goods and technologies on the common list outside the territory of the Customs Union.

22 Which authorities handle the controls?

The following authorities handle export controls in the Customs Union's member states:

- In Russia, the Federal Service for Technical and Export Control (FSTEC (<http://fstec.ru/>)) is in charge of all matters on export control. It acts pursuant to the Federal Law on Export Control No. 183-FZ, of 18 July 1999.
- In Kazakhstan, the Industry Committee of the Ministry of Industry and New Technologies of the Republic of Kazakhstan (www.mit.kz) is responsible for export controls. It acts on the basis of the Law of Republic of Kazakhstan on Export Control No. 300 III, of 21 August 2007.
- In Belarus, the State Military-Industrial Committee of the Republic of Belarus (www.vpk.gov.by) is in charge of export controls in Belarus under the Law of the Republic of Belarus on Export Control, of 6 January 1998.

23 Are separate controls imposed on specific products? Is a licence required to export such products? Give details.

On 21 September 2004 the participants of the EurAsEC, including the Customs Union Member States adopted common lists of goods and technologies subject to export control (Decision of the EurAsEC Interstate Council No. 190 of 21 September 2004).

Those lists contain six model sub-lists for goods and technology items subject to export controls. The titles of the sub-lists include pathogenic microorganisms and substances and genetically modified organisms; special chemicals suitable for use in chemical weapons; nuclear materials and non-nuclear materials and respective technologies, dual-use technologies and equipment, including but not limited to those applicable for nuclear uses, for use in military weapons, and for missiles. The specific contents of each sub-list are developed in the national legislation of each member state of the Customs Union.

Exports of listed items are subject to non-automatic licences or permissions (an authorisation with attached conditions) issued by the national export control authorities indicated under question 22 above. There are individual (transaction-specific) and general (long-term) licences. At the Customs Union level, the responsible national authorities are required to exchange regularly information on issued licences or permissions and on the conditions attached to such permissions.

There is a Draft Agreement on Movement of Military Goods Among the Members of the Customs Union and Through the Border of the Customs Union. While not yet in force, this draft agreement seeks to establish common rules on trade and transit of military goods, including a unified list of the covered military goods.

24 Has your jurisdiction implemented the WCO's SAFE Framework of Standards. Does it have an AEO programme or similar?

The Unified Customs Code of the Customs Union and other agreements concerning the Customs Union and EurAsEC have made efforts to take into account the World Customs Organizations's SAFE Framework of Standards to secure and facilitate global trade and the related concept of Authorized Economic Operators (AEO). Certain of those standards are implemented by separate legal instruments, including the Agreement on Notification and Exchange of Preliminary Information Regarding Goods and Vehicles

Transported Across the Customs Border of the Customs Union of 21 May 2010. Many provisions of WCO's SAFE Framework of Standards are also implemented directly into the national legislation of the Customs Union's Member States.

The Unified Customs Code of the Customs Union also contains provisions similar to the status of AEO. In particular Articles 38 to 42 of the Unified Customs Code effectively regulate all rights and responsibilities of AEO, including for export activities.

However, the Customs Union's member states continue to assign and regulate AEO status solely in accordance with their national laws. Therefore an entity included in the list of AEOs in one member state would be able to enjoy the respective rights and privileges only within the jurisdiction of that particular member state.

25 Where is information on countries subject to export controls listed?

The administration of export controls in the Customs Union and its member states is based on the sub-lists of goods subject to export control (see question 23) rather than on lists of countries of destination. However, the country of destination is relevant for the imposition of economic sanctions with respect to specific countries, persons and entities. For information on economic sanctions see question 28.

26 Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad? Give details.

As stated above, export controls with regard to the destination of the goods and technologies, including with respect to persons and institutions in third countries are relevant in the context of economic sanctions. See question 30.

27 What are the possible penalties for violation of export controls?

Penalties for violation of export controls are imposed according to the national legislation of the Customs Union's member states. All three countries provide for administrative and criminal liability for the individuals found to have violated export control rules. Their actions can also be subject to civil damage claims. Legal entities may be subject to financial penalties or may be prohibited from running foreign economic activities up to three years or both. The gravity of the penalties is similar in all the three countries.

In Russia, criminal offences related to export controls are subject to financial penalties up to 500,000 roubles, imprisonment for up to three years, a prohibition on engaging in certain activities for up to five years or forced labour for up to three years. However, for violations committed by an organised group of persons or in connection to weapons of mass destruction, the imprisonment period is up to seven years and the financial penalty is up to 1 million roubles.

Administrative liability is limited to penalties of up to 20,000 roubles for legal entities and 2,000 roubles for individuals with or without confiscation of the property subject to the offence.

Trade embargoes

28 What government offices impose trade sanctions?

The Commission may introduce measures on foreign trade to implement economic sanctions against specific third countries that are approved by the United Nations Security Council. The measures should be adopted unanimously by all three members of the Customs Union. The legal basis for imposition of economic sanctions is contained in the Agreement on the Introduction and Application of Measures Affecting Foreign Trade in Goods on the Common Customs Territory to Third Countries of 9 June 2009.

Under the above Agreement the member states of the Customs Union may also adopt sanctions at the national level for the protection of national security interests. Such measures can be introduced

pursuant to the respective domestic legislation (eg, article 13 of the Federal Law of the Russian Federation on Fundamentals of the State Regulation of Foreign Trade, No. 164-FZ, of 8 December 2003). Other members of the Customs Union are called on to respect and tolerate unilateral measures affecting foreign trade.

29 What countries are currently the subject of trade embargoes by your country?

The Member States of the Customs Union each introduce and maintain sanctions and trade embargoes on the basis of the respective United Nations Security Council resolutions. However, the exact scope and conditions may vary from one member state of the Customs Union to another. For that reason, there is no single source of information on trade embargoes or economic sanctions maintained in the Customs Union by its member states. Individual measures are provided for in various governmental decrees, or resolutions of member states.

In 2013, the member states have maintained trade embargoes and sanctions with respect to the following countries:

- Afghanistan/the Taliban;
- Angola;
- the Democratic Republic of the Congo;
- Iran;
- Ivory Coast;
- Liberia;
- Libya;
- North Korea;
- Somalia;
- Sudan/Darfur; and
- various individuals and organisations, suspected of participation in terrorist networks or activities, and residing in various third countries, including but not limited to the above. See question 30.

30 Are individuals or specific companies subject to financial sanctions?

Individuals and specific organisations and companies are already subject to financial sanctions by the member states of the Customs Union. The measures applied to individuals and entities include freezing financial assets and economic assets.

Sanctions against persons and entities take place at national level. The authorities of each member state maintain and publish lists of organisations and persons, in particular those suspected of terrorist activities (eg, Russia's FSTEC website (www.fstec.ru/_exp/_2zakon3ree.htm) and the Decision of the Council of Ministers of the Republic of Belarus No. 336 of 11 March 2006). The authorities regularly exchange information within the Customs Union.

The names of newly affected legal entities and individuals subject to financial sanctions are as a rule annexed to the national legal act of the member state implementing new sanctions.

According to the Russian Federal Law 272-FZ of 28 December 2012 on Measures Impacting Individuals Involved in Violations of Fundamental Human Rights and Freedoms and of Rights and Freedoms of Citizens of the Russian Federation, the Russian authorities can prohibit entry and seize the property and assets of listed individuals (mostly individuals having US citizenship but also potentially citizens of other countries) considered to have been involved in violations of fundamental rights and freedoms and in offences against Russian citizens. This federal law is widely seen as a retaliatory measure by Russia against recent US legislation known as the Sergei Magnitsky Rule of Law Accountability Act of 2012, which imposes individual sanctions on persons involved in violations of human rights and rule of law in Russia. The list of individuals subject to sanctions under Federal Law 272-FZ of 28 December 2012 is available at: www.mid.ru/BDOMP/Brp_4.nsf/arh/A6BFAECA92DF6CFF44257B4C002AB703?OpenDocument.

Update and trends

Following Russia's WTO accession, a number of trade and customs practices in Russia and the Customs Union attracted criticism from other WTO members, in particular the United States and the European Union. The most pressing issues currently include car 'utilisation' or 'recycling' fees applied by Russia to imported vehicles, seen by other countries as discriminatory, as well as various sanitary and phytosanitary measures.

In order to address the international criticism regarding car utilisation fees, the Russian authorities have prepared legislative proposals to eliminate any discriminatory effects of the fees. However, it remains to be seen whether Russian authorities will be able to secure their adoption and entry into force in a reasonable time. It also remains unclear whether Russia's main trading partners will abstain from using WTO dispute settlement procedures in order to speed up the resolution of this issue in the course of 2013.

Recent investigative practices of the Eurasian Economic Commission on safeguard measures, such as those affecting imports of caramel, tubes and pipes of corrosion-resistant steel and grain harvesters have also been considered controversial. In particular, the potential re-imposition of safeguard measures on imported grain

harvesters in the Customs Union would have a considerable negative effect on the US and EU exports of grain harvesting machinery. WTO rules impose high standards on authorities conducting safeguard investigations. Therefore other WTO members, prompted by their exporting producers, may decide to put the Customs Union's safeguard practices to the test based on Russia's WTO obligations and commitments.

In parallel, Russian authorities have been looking into what they consider discriminatory energy cost-adjustment methodologies employed by European Union authorities in anti-dumping investigations affecting Russian goods. Such cost-adjustment methodologies have been applied predominantly to investigated imports of Russian industrial goods manufactured in highly energy-intensive processes. The cost adjustment methodologies questioned by Russian authorities have involved the replacement of lower Russian energy costs with higher energy costs in another country market when calculating Russian normal value, and usually result in a higher dumping margin.

Observers cannot exclude Russia's first WTO dispute settlement case – either as a respondent or as a claimant in the very near future.

Miscellaneous

- 31** Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

Traditionally, the Customs Union's member states have relied on export taxes or export duties, mostly on raw materials and hydrocarbons. The rationale for export taxes has been to secure significant income for the national budgets as well as to redistribute income from the large businesses to the state and eventually to contribute to more equal distribution of the nations' wealth from natural endowments. Export taxes may also potentially affect precious metals and minerals and rare earths, however this area is now regulated by WTO rules and commitments at least as far as the largest member state, Russia, is concerned.

Member states also have recourse to non-tariff measures on imports and exports of goods. See question 20.

In addition, the Commission maintains a list of strategic goods which can be subject to temporary export restrictions in case of shortages and other critical situations (see Decision of the Commission of the Customs Union of 27 January 2010 No. 168, and notably its annex 1, as amended).

Unilateral measures by the member states of the Customs Union restricting imports or exports of goods from their national territories remain exceptional but are still possible. Such exceptions are more likely to materialise in areas such as economic sanctions, measures necessary to maintain the national balance of payments, as well as measures taken to protect essential national security interests.

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