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TITLE

**THE MAIN PROBLEMS OF THE MEMBERSHIP OF ARMENIA TO THE
EURASIAN CUSTOMS UNION AND THE WAYS OF THEIR SOLUTIONS**

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The wise legislator does not begin

*by laying down laws good in themselves,
but the study of their suitability for the society.*

Jean-Jacques Rousseau

INTRODUCTION

The Eurasian Customs Union (EACU) is a customs union which consists of all the Member states of the Eurasian Economic Union. No customs are levied on goods travelling within the customs union and, unlike a free trade area, members of the customs union impose a common external tariff on all goods entering the union. One of the consequences of the customs union is that the Eurasian Union negotiates as a single entity in international trade deals such as the World Trade Organization, instead of individual member states negotiating for themselves. It came into existence on 1 January 2010. Its founding states were Belarus, Kazakhstan and Russia. On 2 January 2015 it was enlarged to include Armenia. Kyrgyzstan acceded to the EEU on 6 August 2015. The original treaty establishing the Customs Union was terminated by the agreement establishing the Eurasian Economic Union, signed in 2014, which incorporated the Customs Union into the EEU's legal framework. The member states continued with economic integration and removed all customs borders between each other after July 2011. On 19 November 2011, the member states put together a joint commission on fostering closer economic ties, planning to create a Eurasian Economic Union by 2015. On 1 January 2012, the three states formed a single economic space to promote further economic integration. The Eurasian Economic Commission is the regulatory agency for the Customs Union and the Eurasian Economic Community. The creation of the Eurasian Customs Union was guaranteed by 3 different treaties signed in 1995, 1999 and 2007. The first treaty in 1995 guaranteeing its creation, the second in 1999 guaranteeing its formation, and the third in 2007 announced the establishment of a common customs territory and the formation of the customs union¹.

At first glance, everything is perfect, however if we go further in details, we will realize a lot of negative impacts which are risky and also carry potential risk. It is not a secret that the membership of Armenia to the EACU was a political rather than a purely economic decision: “Armenia’s agreement to join the Customs Union is a major political step, especially considering

¹ Available at https://en.wikipedia.org/wiki/Eurasian_Customs_Union

the fact that Armenia is pursuing a policy of trying to maintain the principle of complementarity with both Russia and western world”, said politician Alexander Tsinker. According to him, if we analyze the political and socio-economic situation in and around Armenia, it is quite likely that Armenia’s joining the Customs Union can be very productive tactic, and perhaps also strategic measure². To add the period of integration to the Union was one of the most difficult in the recent decades.

The other and maybe the most vital aspect of hampering economic growth of the Union on the whole and the development of cooperation is the leading country of the Union-Russia. The history shows that unions succeed when they are under the patronage of a highly developed State, like in the case of European Union. In case of Russia this guarantee for Armenia does not exist. Confirmation for that is the Marshal’s plan. “The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little” (Roosevelt, 1937). America’s intention to provide large amounts of aid to economically ravaged Europe was first presented as an abstract policy in a speech given at Harvard University in June 1947 by Secretary of State George C. Marshall (Hindley). The speech outlined a rough framework for what would soon become the European Recovery Program, known colloquially as the Marshall plan. The speech came as a surprise to all, and soon became the Economic Cooperation Act of 1948. The proposed program was unique in that it coupled American aid with European decisions, creating a system in which, for the first time, foreign aid relied on an international network of diplomacy³.

Who cares nowadays what the alternative of the membership to the EACU was, but Armenia did have an alternative, and it was The Deep and Comprehensive Free Trade Areas (DCFTA). The DCFTA are three free trade areas established between the European Union, and Georgia, Moldova and Ukraine respectively. The DCFTAs are part of each country's EU Association Agreement. Usually the history does not appreciate “Ifs”, and maybe our membership to DCFTA was rather an illusion than reality and we should proceed from the fact we already have.

The method of studying the aforementioned legal acts will be by making comparative legal analysis between the current Customs Union legislation and the previous Armenian legislation. Since some laws of the current legislation contain a lot of loopholes and are ambiguous, we will

² Available at <http://www.panarmenian.net/arm/news/169649/>

³ *European Recovery and American Aid*. Rep. no. 63072. District of Columbia: President's Committee on Foreign Aid, (1947)

suggest our amendments taking into account the previous norms and regulations and also based on our knowledge and skills in the sphere of customs.

The literature, which was used in the paper mostly, consists of numerous legal acts concerning the current customs regulations and also some vital and necessary aspects of previous customs legislation are used.

In this paper the research question *the solutions to the main problems that Armenia faced according to its membership to the Customs Union* will be examined and answered. The problems in the current customs legislation are a lot, and all of them cannot be discussed. The key loopholes in law and some law adherence to procedures issues are discussed:

1. *The term of “Export customs duty” arose, which did not exist in the previous customs legislation.*

2. *The period for release of goods is shortened.*

3. *The rates of customs duties are heightened.*

4. *Geopolitical problem related to the lack of land border with Union.*

- 4.1. *The problems of transferring personal goods through Customs Union borders.*

The proposed legislative solutions consider perpetual, appropriate and “healthy” solutions at least to some vital issues. In order to reach this conclusion, the Masters paper will be divided into two chapters.

There is a short historical abstract in the first part of the **Chapter 1** informing about the creation of the customs and customs unions on the whole. Right after several vital problems are described – existence of the export duties in the legislation of the Eurasian Customs Union, shortened period for release and heightened customs duties. Extra customs duties will, for sure, serve a real barrier for our economy on the whole and the existence of export customs duties itself is inadmissible. Another no less important issue concerning the release of the goods and also their temporary storage is spoken about and also the benefits in customs duties that Armenia still possess, with all the potential risk our economy bears after the suspension of them, are described. There are also comparisons with the previous customs legislation of Armenia.

The beginning of **Chapter 2** points out the importance of such an evil as “Bureaucracy” is. It is described in details the increase of such risks after the membership to the Customs Union. The main issue described in the chapter is around the problem of our geographical location. From this point of view Armenia and Kaliningrad are unique among the members of Eurasian Customs Union. However if Kaliningrad has no differences in their customs policy and legislation with

Russian Federation (being a part of it), Armenia in addition bears the issues of harmonization of legislation.

After all the problems described decisive solutions are suggested. To tell the truth maybe they are not the most convenient and effective ones, but at least they are solutions. Mainly the problems of individuals transporting their personnel commodities are described.

CHAPTER 1

THE LEGAL ISSUES OF THE NEW CUSTOMS LEGISLATION

Customs unions arose in Western Europe in the middle of the XVIII century.

Prior to this, non-state entities had been existed. Thus in the medieval Europe there were cases when feudal lords were concluding Unions with each other to facilitate the collection of fees from traders entering their territory⁴. The goals of such associations were toughening up the existing trade regimes. Charges for the right to trade in the city (or on the market) and for the right to travel on roads, rivers and bridges were collected absolutely everywhere. As a result, such conditions were preventing the trade, the production and the economy on the whole.

For the emerging capitalist countries with intensively developing industry and trade, there was a necessity for a more favorable fiscal regime with at least partially cancellation of internal customs barriers. Over time the number of internal customs gradually was decreasing, the territories were united, but even then borders and internal charges still existed.

One of the ways in which the national customs politics displaced the local ones, was the conclusion of contracts between cities in the framework of freedoms and liberties, granted or recognized by monarchs. In the XIII century they were already widely spread. In this period interstate trade agreements were concluded, in accordance to which citizens of one city, arriving with trading purposes for another city were not obliged to pay any customs duties. Agreements between French cities to facilitate the importation of goods became widespread in the XV century⁵.

The expanding international trade relations brought to the necessity of development of common rules in the sphere of customs regulations. It was already in the XVIII century when scientists and practitioners began to come to the conclusion that on the whole the common customs regulations between countries would bring to the merger of the trading countries into one, namely a single customs policy precedes political unification. This conclusion was confirmed in 1834, when the German Customs Union was created which was also the basis of German unification⁶.

⁴ Weber. German Customs Association. (page 448)

⁵ Pesetski D. P., studio. IV. Customs unions in world history; page 116 (Resource available in Russian)

⁶ Galkin I. S. Creation of the German Empire 1815–1871. / (Moscow, 1986) (Resource available in Russian)

The origins of the concept of "customs union" can be found in the agreement on the customs union of 1867, the French-Monaco Agreement of 1865, the Belgian-Luxembourg Agreement of 1921 and Economic-customs Union of Benelux of 1958⁷.

Of course, the most successful one the European Economic Union, which is based on the "Roman Treaty" of 1957 according to which the Customs Union was created, should be mentioned. Besides there are Central American common market, and also Economic-customs Union of the Central Africa and some others functioning in the world⁸.

This was a short historical abstract on customs unions on the whole; however this chapter is mainly focused on three global issues which arose after the membership of Armenia to the Eurasian Customs Union (hereinafter, the CCCU).

Export customs duty.

In connection with the settlement of foreign trade economies the "Tariff Regulation" concept arose, which plays an important role in the system of import/export customs duties. The development of free competition and also regional and international trade agreements, as a rule, does not encourage the use of these duties. In a market economy and liberalization of foreign economic activity customs duties are important regulators of foreign economic activity.

Article 70 of the CCCU stipulates that customs payment shall include:

- a) Import customs duty;
- b) Export customs duty;
- c) Value-added tax collected upon the import of goods to the customs territory of the Customs Union;
- d) Excise duty tax(s) collected upon the import of goods to the customs territory of the Customs Union;
- e) customs fees.

To add according to the 1-st part of the Article 213 of the CCCU:

“The goods are placed under the customs procedure of export while observing the following conditions: payment of export customs duties if there are no benefits in the payment of export customs duties...”.

Article 214 - Emergence and Termination of the Duty to Pay Export Customs Duties and the Deadline of Their Payment for the Goods Placed under the Customs Procedure of Export says:

⁷ Available at Integration processes in the world economy [Electronic resource] <http://geum.ru/book/docum166.htm>

⁸ Pesetski D. P., Studio. IV. Customs unions in world history; (page 117) (Resource available in Russian)

“The duty to pay export customs duties for the goods placed under the customs procedure of export emerges with the declaring party from the moment of registration of the customs declaration by the customs body”.

However there is a loophole in the law giving an opportunity to escape the mandatory fixed export duties on goods and services (though The Customs Code of The Customs Union is not adopted finally by Armenia and still some amendments are foreseen). The above mentioned loophole is the Article 77 of CCCU that is Application of the Rates of Customs Duties and Taxes:

1. For the purposes of calculation of customs duties and taxes, one applies the rates being in effect as of the day of registration of the customs declaration by the customs body, if otherwise is not envisaged in the present Code and/or international treaties of the member-states of the Customs Union.

2. For the purposes of calculation of import customs duties, one applies the rates specified in the Common Customs Tariff of the Customs Union, if otherwise is not envisaged in the present Code and/or international treaties of the member-states of the Customs Union.

For the purposes of calculation of export customs duties, one applies the rates specified in the legislation of the member-states of the Customs Union for the goods included in the summary list of goods generated by the Commission of the Customs Union in compliance with international treaties of the member-states of the Customs Union regulating the issues of application of export customs duties for third countries.

For the purposes of calculation of taxes, one applies the rates specified in the legislation of the member-state of the Customs Union where the goods are placed under the customs procedure or where the fact of illegal moving of goods across the customs border is revealed, if otherwise is not specified in the present Item...

So the law clearly stipulates that some international treaties of the member-states of the Customs Union regulate the issues of application of export customs duties for third countries.

However we obviously need some extra regulations with the above mentioned third countries to escape “export customs duties” or at least minimize them.

On the whole the problem of export customs duties is too vital. Let us go in figures to imagine it better.

According to the information collected from the State Revenue Committee of RA and also some operational data⁹, the foreign trade figures in 2016 are the following: the export totals to

⁹ With the exception of information on energy, as the source for that information serves the Ministry of Energy and Natural Resources and Energy Organization and also taking into account the fact, that the registration date of customs declarations for energy products may not match the actual export and import dates

\$1,783 million US dollars, the import \$3,292 million, the trade balance totals to \$1,509 million¹⁰. This figures describe the real situation Armenian economy is; in addition, export customs duties for sure will serve an extra ground for increase of this gap.

But that figures are only the top of the iceberg. The real problem is that while going into details we realize that our external trade main partners are the third countries upon which export customs duties are levied. Our external trade structure is the following: CIS countries \$1,544 million, European Union countries \$1,219 million; other countries \$2,313 million¹¹. That shows that external trade with third countries is bigger than with the Customs Union countries approximately three times (taking into account the fact that in CIS countries there are included not only Customs Union countries).

It is important to note that due to our previous legislation, in particular, Customs Code of Armenia¹² (hereinafter, the CCA) the term “Export duty” did not exist at all. In light of our economy and geopolitical blockade export duties will make one more barrier for our business to reach the targeted markets.

Up to now there is only one provision for the term “export customs duties” in the Law of the Customs Regulation of the RA (hereinafter, the LCR). Article 92 implies that export duties prescribed by the Armenian law are paid to the Armenia's state budget.

That is a good term and we hope would not be forced to extend the use of the mentioned term in our national legislation.

The period for release.

The period for release of commodities is a vital aspect in the customs regulation.

Article 196 of the CCCU - The Time of Commodities' Release stipulates:

“A customs authority must complete the release of commodities at the latest within one working day following the date of registration of the customs declaration, if not otherwise established by this Code”.

To understand this issue more deeply we would better go to the roots of the problem.

Article 167 of the CCCU - General Provisions on the Temporary Storage of Goods stipulates:

“Temporary storage of goods - storage of foreign goods under customs control in the places of temporary storage before their release by the customs body in compliance with the declared

¹⁰ Available at <http://armstat.am/am>; Socio- Economic Situation of RA, January-December 2016; (page2)

¹¹ Available at <http://armstat.am/am>; Socio- Economic Situation of RA, January-December 2016; (page3)

¹² Customs Code of The Republic of Armenia was adopted on 6 July 2000 (Partially not in force)

customs procedure or before committing other actions envisaged in the customs legislation of the Customs Union without the payment of customs duties, taxes”.

Article 161, 169 and 170 of the same Code implies that when the goods arrive to the customs territory of the Customs Union, the duty to pay import customs duties, taxes emerges with the carrier at the moment when the goods cross the customs border, however in some cases the above mentioned mandatory payments terminated with the carrier, when the goods are delivered to the place of arrival and are placed for temporary storage or placed under the customs procedure in the place of arrival, as well as when the goods depart from the customs territory of the Customs Union, if these goods did not leave the place of crossing of the customs border after arrival to the customs territory of the Customs Union. In order to place the goods for temporary storage, the carrier, other parties enjoying authority for the goods or their representatives submit to the customs body transportation (shipment), commercial and/or customs documents containing information on the goods, consignor (recipient) of goods, country of departure (destination), moreover, such documents may be submitted to the customs body in electronic form. The customs body has only one hour to register the documents presented for the placing of goods for temporary storage. The goods are considered to be in temporary storage from the day of registration by the customs body of the documents presented for the placing of goods for temporary storage.

The duration of the temporary storage of goods makes two months. If there is a written application of the party enjoying authority for the goods or his representative, the customs body shall prolong the mentioned duration. However the limiting time of temporary storage of goods may not be greater than 4 (four) months, and in respect of international mail items kept at the places (offices) of international postal traffic, as well as of the baggage carried by air transport, which is not received or claimed for by a passenger - six months. The law even provides an opportunity for the Commission to fix in respect of some categories of commodities a shorter temporary storage term than the ones established above¹³.

So that means that during a fixed period of time, which is two months (in case of some bureaucratic interference - four months) the foreign trader is obliged to present the customs declaration during that period. However by this he “lures himself into a trap”, as he has a legal requirement according to the Article 196 of the CCCU to release the commodities at the latest within one working day following the date of registration of the customs declaration.

What we did have previously instead of the “Temporary storage”, was the “Responsible storage”.

¹³ Article 170 of the Customs Code of the Customs Union

According to the Article 123 of the CCA (the previous legislation):

“Responsible storage is the fact of keeping commodities and means of transportation under the responsible control of the Customs Authorities”.

At the same time Article 124 - Place for Responsible Storage stipulates:

“The responsible storage of goods and means of transportation shall be made in customs warehouses established by the Customs Authorities”.

Of course the duration of responsible storage was not indefinite. Article 126 - Time Limits for Responsible Storage says:

a) Goods and means of transportation may be under responsible storage till the fee for the responsible storage defined by the law equals the Customs value of goods.

b) The time limit mentioned in paragraph 1 of the present Article may confine with the view of production and expiration date of the goods and specificity of keeping thereof.

It was really liberal legislation and most European countries customs authorities use the same mechanism. So this gave a chance to the importers and also exporters to hold their actions, of course with some responsibilities of paying fees to the customs authorities. But imagine a situation, when one has imported a tremendous amount of goods and temporary have some financial or cash difficulties and need some period of time to go ahead with the payments. This is a wonderful solution. By paying only daily amount of 300 AMD per ton the importer could storage the goods till the fee for responsible storage equals the Customs value of goods.

The same necessity may arise for the exporters. It is not a secret what an unfavorable geographical location Armenia does have and that the main road to the world is Upper Lars border crossing point. To note, the former Georgian military road through Upper Lars checkpoint, became the only land way providing connection between Armenia and Russia since 1990s. The Armenian government often speaks about the necessity of creating an alternative to Upper Lars road, however “ice still does not broke”. As an alternative, demanding a political decision of the states of the region, may serve the roads connecting Georgia with Russia through conflict zones of South Ossetia and Abkhazia but still it is not actual. Upper Lars border crossing is the only overland route connecting Armenia with Russia. In winter, it is often closed because of the threat of avalanches. In spring and autumn the road is shut down by the threat of mudslides.

By getting the information about the closed checkpoint, the exporters, in order not to violate the law requirements to export the goods in a defined period of time, had a chance to apply for responsible storage. To add the exporters and importers of the goods may also apply for responsible

storage not only at the Customs authorities' territories but also on their own territories. (Article 115 of the CCA - Place and Time for Fulfillment of Customs Formalities, which stipulates that:

a. Customs formalities shall be fulfilled in the place assigned for this purpose, during the working hours of the Customs Authorities.

b. When requested by a concerned person, on his own account in the amount stipulated in the present Code, and with the consent of the Customs Authorities, customs formalities may be fulfilled in some other place and outside working hours).

So as we can suppose the legal opportunity of responsible storage was obviously very necessary and privileged for our foreign traders.

To add in case of responsible storage the goods may be kept under till the fee equals the Customs value of goods, however in case of responsible storage there is a fixed time limit, which is extra short for some valuable goods.

To sum up, we have changed our liberal approach with a mandatory requirement. To help our foreign traders and to liberalize the above mentioned legal requirements, it is suggested to abolish Point 1 of the Article 196 of the CCCU at all, and also to make some amendments to the Article 170 of the same Code letting escape 2 months (respectively 4 months) period. As an approach, it can be taken the period suggested by the previous legislation (the commodities should be kept under temporary storage at least until the fee for the responsible storage defined by the law equals the Customs value of goods), which is quite common all over the world.

The rates of customs duties are heightened.

The state can encourage the trade or production of relevant product of the domestic manufacturers through customs import/export duties or to restrict them by the same tools.

Let us discuss the economic content of the functioning of customs duties. They are considered to be such kind of regulator in foreign trade relations, a strong tool in the hands of the government to influence the market mechanisms of export or import, restrict free movement of goods in order to create competitive, equal or more favorable conditions for domestic producers. After the declaration of independence of Armenia the global economic and geopolitical environment forced speeding up the process of forming a market economy. As a result the economy suffered significant changes. The creation of an appropriate institutional framework was an important prerequisite for enrollment of foreign direct investment, which in turn was of great importance for the economic development. The solution of institutional problems of market economy in its turn needs administration and public service system, socio-economic, legislative framework and appropriate institutions for judicial reform and development. These together with market institutional infrastructure, banking,

investment, insurance, audit, consulting companies, creates the legal framework for the establishment of new market economy.

Article 4 of the CCCU - Main Terms Used in the Present Code defines customs duty as an obligatory payment collected by the customs bodies in view of the moving of goods across the customs border.

In respect of non-tariff regulation can be said that quantitative restrictions on imports and exports, quotas or tariff quotas do not apply in Armenia.

The non-tariff regulation currently includes only measures for health, safety and environmental protection purposes, and all kinds of weapons and ammunition import and export of nuclear material and made only with the permission of the government.

The nature of the operation by the Republic of Armenia shall have the following duties:

export shall be paid for goods exported from the customs territory of the Republic of Armenia.

imports are paid for goods imported into the customs territory of the Republic of Armenia.

seasonal period shall be paid on certain specific products for export from the customs territory of the Republic of Armenia or the import area.

According to the Article 71 of the CCCU (Types of Rates of Customs Duties) The rates of customs duties are divided into the following types:

ad valorem ones - specified in percent of the customs cost of the pertinent goods;

specific - specified depending on the physical characteristics in kind (quantity, weight, volume or other characteristics);

combined - combining the types mentioned in Subitems 1 and 2 of the present Article.

In order to emphasize the importance of the above stated Customs duties, let us concentrate on the influence of the latter ones on the “Essential goods”. On the whole essential goods may be defined as a physical item required by a consumer in order to sustain health or life. Some essential good types that are produced by business operators include food, water, gasoline and heating fuel, as well as residential building materials that can be used to construct homes for shelter¹⁴.

On 24 October 2014 in Moscow the members of the Council of the Eurasian Economic Commission from Russia, Belarus and Kazakhstan approved the list of goods and rates for which during the transition period, the Republic of Armenia applies the rates of import customs duties, other than the rates of the Single Customs Tariff of the Eurasian Economic Union¹⁵.

¹⁴ Available at <http://www.businessdictionary.com/definition/essential-good.html>

¹⁵ Available at http://www.consultant.ru/document/cons_doc_LAW_172305/ access 21/03/2017

However these benefits are not forever, they will legally exist until 2022 and some of them even less.

According to the Annex of the law on Trade and Services of the Republic of Armenia the below listed products are considered to be essential goods. There is described in turn the goods respectively with their deadlines in benefits:

- Beef – until 2022
- Chicken - until 2022
- Live fish, fresh or frozen – no benefits
- Milk, not Condensed, without sugar – no benefits
- Butter - until 2020
- Cheese – no benefits
- Egg – no benefits
- Potatoes – until 2022
- Onions – no benefits
- Carrots – no benefits
- Tea – until 2019
- Wheat – until 2020
- Rice – until 2022
- Buckwheat – no benefits
- Wheat flour – no benefits
- Sunflower oil – until 2020
- Margarine – until 2022
- Sugar – until 2019
- Bread – no benefits
- Salt – no benefits

Previously Article 102 of the CCA was regulating the percentage of customs duties for imported goods. The rate was either 10% or 0% and it was quite clear in comparison to the current legislation where we have hundreds of rates.

The list of products with benefits in customs duties is quite large, however the common feature is the fact that sooner or later the tariffs become equal in all member countries, so that means that either now or in the nearest future we will have our imported goods become more expensive.

The solution to this issue however is more complicated than the previous ones. In this case only administrative and legal changes are not enough. Here we do need serious political and also economic changes which will result in import substitution of the above mentioned products or at least some of them.

CHAPTER 2

THE GEOGRAPHICAL ISSOLUTION OF ARMENIA FROM THE CUSTOMS UNION

The issues discussed in the **Chapter 1** are mainly of a legislative nature. Though most of them need some urgent measures to be taken by the Customs Union member countries, however sooner or later there will be some solutions. It remains only for the decisions to be in the favor of our country.

Though if the problems and the gaps of the legislation are solvable problems, then the same is hard to say concerning our geographical problems, that is lack of any land border with our Union partners. Going in parallel with the famous bureaucracy existing in our partners' countries, it is supposed we are not in an envious position.

One of the well-known modern analysts of the bureaucracy phenomenon, a non-long-deceased author Yu. Kamenka wrote: "Bureaucracy is superior to the differences Between capitalism and communism, democracy and dictatorship, industrialized "Western world" and the ancient empires with their organized despotism and also "Agrarian" societies. It has formed our past and intends domination over our future. Numerous interpretations of the concept of "bureaucracy" exist which can be reduced to four Basic types: "Weberian", Marks, Imperial ("Eastern") and Realistic (Modern)¹⁶. Karl Marks for instance considered the bureaucracy in its description looks like an absolute evil. He describes bureaucracy as a "parasitic organism", fundamentally incapable to play any positive role in the life of society¹⁷. Weber, in his turn, thought bureaucracy was hierarchical subordination of all the subjects of bureaucratic organization, their connection with the norms of law and administrative procedures, impersonality, that is, the independence of the decision from desires of specific performers, and rationality.¹⁸ The imperial ("eastern") interpretation of the

¹⁶ Obolonski A. V. Bureaucracy and bureaucracy (to the theory of the issue) // State and Law. 1993. № 12. P. 88—98. (Resource available in Russian)

¹⁷ Makarenko V. P. Analysis of the bureaucracy of class-antagonistic society in the early works K. Marks. Rostov on Don, 1985. (Resource available in Russian)

¹⁸ Weber M. Essay on Bureaucracy//Rourke F. Bureaucratic Power in National Policy Making. Boston, 1986. P. 62—73.

theory of bureaucracy is a tradition that goes back to centuries. The essence of this type of bureaucracy is the possibility of widespread arbitrariness in relation to the subordinate population¹⁹.

Geopolitical problem related to the lack of land border with Union.

We do concentrate on the term and types of bureaucracy, in order to mention the potential risk of “Marks’ evil”. The customs services of the countries of the former Soviet Union are not considered to be the perfect ones, and among them Federal Customs Service of Russian Federation was not the most succeeded one. Unwillingly we occurred in a situation where we are forced to amend our previous effective legislation and procedures and instead adopt the one which is less favorable²⁰. And all these are accompanied with the high cultural level of bureaucracy and corruption risks existing on the territories of the Customs Union member countries.

Russia, Belarus, Kazakhstan, Kirgizia all these countries have a land border with at least one of the Union member country. Unlike them Armenia does not have any direct connection with its Union partners, but air. The fact itself makes our country unique, so that means that some separate legal provision is required from that point of view. For instance, there are no any customs authorities on the border of Russia and Kazakhstan, or Russia and Belarus. Both people and commodities may be transported freely between countries. Unlike them, all the people and commodities are subject to customs control on our northern border. We hereby will discuss the main problems.

The transit shipment declaration is a mandatory requirement.

It is quite obvious that goods are mainly imported to Armenia by land transportation through Georgia. In order to pass our northern neighbor the importer/exporter is required to fill in a customs transit shipment declaration in the departure place²¹.

According to the Article 210 of the CCCU the goods acquire the status of the goods of the Customs Union, if the following conditions are observed:

“The goods placed under the customs procedure of release for internal consumption acquire the status of the goods of the Customs Union:

- a) payment of import customs duties and taxes, if there are no tariff preferences, benefits in the payment of customs duties and taxes;
- b) observance of prohibitions and restrictions;

¹⁹ Obolonski A. V. Post-Soviet bureaucracy: a quasi-bureaucratic ruling class; P.11(Resource available in Russian)

²⁰ We cite in a present form, as a lot of legal acts adopted before our membership to the Customs Union, are still in force.

²¹ Customs Union Commission's decision (N438) on registration of the transit declaration and "customs transit" procedure for the implementation of customs procedures related to customs operations of customs bodies, signed on 17 August 2010 between the Union member states (Resource available in Armenian)

c) submission of documents confirming observance of restrictions associated with the application of special protective, anti-dumping and compensation measures”.

In case of import of goods the customs official standing on the northern border of Armenia needs some evidence to make sure the goods are of the Customs Union origin and the transit shipment declaration is that evidence.

At first sight everything is not so bad, just another required piece of paper in quite a difficult and long process, but this extra requirement for the transporters sometimes is too costly. The Upper Lars checkpoint is often closed especially in winter periods. The accumulation of cars and huge queues make the declaration process at Georgian customs quite long. Besides the transporters need to close the transit shipment declaration when leaving the country in particular when reaching Bavra, Bagratashen or Gogavan customs points on Armenian border.

The process of closing the transit shipment declarations is often accompanied with serious difficulties and delays. The carriers usually face the problem of low quality and mistakes in the completed declarations. In these cases the customs officials of the destination customs point need to send a request telegram and wait for the answer in order to be assured and to close the transit shipment declaration. Sometimes this process takes quite a long time.

Each time we face such situation, the risk of bureaucracy is obvious.

The process of transit shipment and its declaring also has another, not less vital problem. Article 219 of the CCCU defines the Duration of the Customs Transit Shipment:

1. The duration of the customs transit shipment from the customs body of departure to the customs body of destination is specified by the customs body of departure in compliance with the ordinary duration of transportation of goods proceeding from the transport type and capacities of the transport vehicle, specified route, other conditions of transportation, and/or an application of the declarant or the carrier, if the carrier has not acted as the declarant of the customs treatment of customs transit, as well as while taking into account the requirements of the driver working hours/rest regime in compliance with international treaties, however, it may not be longer than the limiting duration of the customs transit shipment.

2. The limiting duration of the customs transit shipment may not be greater than the period determined proceeding from two thousand kilometers per month.

3. If there is a motivated appeal of the declaring party or the carrier, if the carrier did not act as the declaring party of the customs transit customs procedure, the duration of the customs transit shipment specified by the customs body may be prolonged within the deadline specified in Item 2 of the present Article.

The Article obviously mentions the discretionary power the customs officers possess in their rights of decision the time periods for goods carriage. Quite often there are some vehicle breakdowns or drivers' health issues and so on. However the deadline violation fact is regarded as administrative violation. The 2-nd part of the Article 7 of the CCCU implies that our customs bodies are in charge of the administrative process (proceedings) in the cases of administrative violations and have a legal right to call the parties to account in the cases of administrative liability in compliance with the legislation of the member-states of the Customs Union. At the same time our legislation on that (Article 195 of the CCA - Failure to Deliver Goods, Means of Transportation and Accompanying Documents to Customs Authority) stipulates: in case of failure to deliver goods and means of transportation under customs control from one customs authority of the Republic of Armenia to another customs authority, a penalty in the amount of 100.000 drams shall be imposed.

So it is easy to conclude that discretionary power of the officials may bring to the administrative violations by the carriers of goods.

The previous legislation on transit shipment was quite different, the logic was that it was applied to the territory of Armenia only, however the current one applies to the whole Union. Article 27 of the CCA (the previous legislation) Defined the Customs Regime of "Transit shipment":

"The customs regime of "transit shipment" shall regulate transportation of goods under customs control between two customs points in the territory of the Republic of Armenia without modification of the bill of lading".

So there is clearly mentioned in the first point "in the territory of the Republic of Armenia". Nowadays the scope of this regime is much bigger. It connects any two customs points of Customs Union.

To sum up previously Armenia was a detached customs unit separated from the entire world. Nowadays the whole Customs Union is considered one customs unit with Armenia as a small part, where goods can be transferred freely without any customs duties.

The best solution for the described issues would be:

1. An individual approach in defining the duration of the customs transit shipment rather than a generalized one. The customs officials should take into account not only the distance and the possible queues on the borders, but also such facts as the type and technical conditions of the vehicle, the quality of the road and also some other difficulties the carrier may face.

2. Raising the professionalism and reducing the corruption risks among the customs authorities on the territory of the whole Union.

The problems of transporting personal goods through Customs Union borders.

Both legal persons and individuals face the same problem while transporting goods inside the Customs Union. However in case it is simplistic for a company, can you imagine how the situation looks like with an individual, who is not educated and informed enough and who tries to transport his own goods from for instance Rostov to Gyumri. I assure he will not be very lucky with the existing bureaucratic requirements.

The physical person transporting some commodities, even his own belongings from Russia to Armenia is forced to complete a customs declaration as a proof for Armenian customs service that the commodities are not foreign ones, but goods of the Customs Union.

According to the 2-nd part of the Article 156 (Place and Time of Arrival of Goods to the Customs Territory of the Customs Union) of the CCCU:

“After crossing the customs border, imported goods must be delivered by the carrier to the places of arrival or other places mentioned in Item 1 of the present Article and presented to the customs body. Any change of condition of the goods or breaking of their packing is not allowed, as well as the change, removal, destruction or damage to the available seals, stamps and other means of identification”.

As we see the law does not separate the commodities of the legal entities from the physical persons' ones. That means that in order to pass the territory of Georgia the carrier needs to seal the vehicle, otherwise he cannot prove that the goods or part of them were not acquired on the territory of Georgia. However in order to install a seal the cargo part should be separated from the passengers' cabin. So this causes extra difficulties and sometimes even makes carriage through Georgia impossible and individuals are forced to apply for specialized carriers.

On the whole it occurs that a man who wants to transport some belongings from Russia to Armenia needs to complete a transit shipment declaration, then seal the vehicle, then complete one more transit shipment declaration in Georgia, then close the mentioned declarations correspondingly on the Georgian and Armenian borders. All these procedures should be followed with all the existing risks and bureaucracy, which quite often force the people to choose air transportation to the land one.

To add the legislation regulating the quantity and the amount of goods natural persons may transport through the customs border of the Customs Union as accompanying cargo goods is so vague, that is still interpreted differently by different specialists.

The natural persons have legal opportunity to transport through the customs border of the Customs Union, without paying any customs duties, as both accompanying and not accompanying cargo goods intended for personal use:

not exceeding the equivalent of 10,000 Euros in their total value and 50 kilograms in their total weight by air transportation²²

not exceeding the equivalent of 1,500 Euros in their total value and 50 kilograms in their total weight by other means of transportation (in case of Armenia only inland)²³

not exceeding the equivalent of 1,000 Euros in their total value and 31 kilograms in their total weight for the goods delivered by the carrier to the recipient address during a calendar month²⁴.

On the other hand, there is a government decision N 865 on 30 July 2015 about the products of the obvious commercial quantity imported by persons other than self-proprietors, which provides an exact quantity of every product that can be imported to Armenia without any customs duties. That means that the customs officials should consider both legal acts taking into account the hierarchy between them.

As you see a primitive issue has at least two important legal acts for regulation, though previously a short article in the CCA regulated it, which stipulated:

a) Without any customs duties natural persons may transport through the Customs border of the Republic of Armenia as accompanying cargo goods not exceeding the equivalent of 300 US\$ in their total value and 50 kilograms in their total weight²⁵.

b) Without any customs duties natural persons may transport through the Customs border of the Republic of Armenia goods not exceeding the equivalent of 100 US\$ in their total value and 20 kilograms in their total weight by international postal services.

To avoid misunderstandings both for individuals importing goods for personal use and for the customs officials we suggest:

1. Amendments in the above mentioned Agreement and also declaring null and void the government decision. The quantities and amounts of the goods for personal use which may be imported without paying any customs duties should be fixed and stable.

2. Possibility not to fill in the transit shipment declaration for individuals. To prove the fact that the imported commodities are from Customs Union country and not from Georgia, it is

²² Appendix 3 of The Agreement on Transporting Personal Goods of the Natural Persons Through the Customs Border of the Customs Union, signed on 19 October 2011 between the Union member states

²³ *Id.* Appendix 3

²⁴ *Id.* Appendix 3

²⁵ *Supra* note 12, Article 105

suggested providing only some evidence. Example of such evidence can serve a stamp on the supporting documents - passport for equipment, manual or, in case of lack of the latter, a hand-written document. It is necessary to amend the law on the transit of goods with relevant paragraphs allowing the customs authorities to be based also on the seals but not only on the existence of a transit customs declaration. This will reduce bureaucratic and financial fuss at least for the individuals.

CONCLUSION

Before our membership to the Customs Union, the Customs Code of Armenia was the main legal act almost totally regulating the sphere of customs. The answers to the most questions could be found there. Even the existence of other legal acts regulating some local issues was clearly stated in the code. Nowadays the legislation of Customs Union on customs regulation is “scattered around the world”. Dozens of legal acts like agreements, government decisions, codes and laws regulate customs relation. This fact causes the main inconvenience both for the self-education of customs officials and for importers/exporters.

Lack of necessary education level among the customs officials and the existence of bureaucracy with the corruption risks together complicate any processes of cardinal changes. In civilized countries bureaucracy is not "inflating", on the contrary it is tried to be reduced and get closer to the functioning of private firms, where operates the principal of “Customer is always right.” One cannot solve the problem with punitive measures, instead should seriously engage in the morale of employees. For example, in the United States in the period of L. Johnson, “The Ethical Code of an Employee” was adopted regulating very wide spectrum of officials’ behavior. According to the latter not only the maximum price of accepted gifts, but also the collection of money in the benefit of colleagues in trouble, and even visits to their subordinates are under the regulation²⁶.

We do take exact measures to decrease the bureaucratic and going in parallel the corruption risks. The proof of that is the enactment of the law criminalizing illicit enrichment. For the law and also corresponding amendments to the Criminal Code and Criminal Procedure Code received 96 votes. The draft proposes a liability for the cases where the official having obligation to submit declaration held increase of the assets or decrease in liabilities that exceed his lawful income and cannot be reasonably justified by this income. For the offense of illicit enrichment is designed for 3-6 years of imprisonment in addition the deprivation of the right to be appointed to certain positions.²⁷

For an open society with established and well-functioning civil institutions bureaucracy is not terrible. It is under public control on four sides, fairly "transparent" and responsive to the needs of citizens, openly interacts with pressure groups. The creation of a modern civil service should go hand in hand with formation of civil society. But if civil society is formed spontaneously, and the

²⁶ Ostrom V. *The Intellectual Crisis in American Public Administration*. (Tuscaloosa, 1989)

²⁷ Available at <http://www.pastinfo.am/hy/news/2016/12/16/486274>

state can only contribute to this or at least should not interfere, then the modernization of the civil service in no way let alone or deal with it sporadically. Here we need a clear concept, perseverance and consistency in its implementation.

Both the advantages and disadvantages of our membership to the Union are a lot, but the main ones are that we have gained a market with population of 170 million and from an economic point of view, this fact is nothing but a miracle, but still face some administrative and geopolitical problems to it's access and our country has a great potential to withdraw benefits from any co-operation if it is strong in itself.

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