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«МОСКОВСКИЙ ГОСУДАРСТВЕННЫЙ ЛИНГВИСТИЧЕСКИЙ УНИВЕРСИТЕТ»
ФАКУЛЬТЕТ ЭКОНОМИКИ И ПРАВА
КАФЕДРА МЕЖДУНАРОДНОГО И КОНСТИТУЦИОННОГО ПРАВА

ДОПУСКАЕТСЯ К ЗАЩИТЕ
Заведующий кафедрой международного и конституционного права
д.ю.н., профессор Н.А. Шулепов
_____
«_____» _____ 2012 г.

ДИПЛОМНАЯ РАБОТА

на тему:

Актуальные международно-правовые проблемы регулирования экономической интеграции стран Европейского Союза и Евразийского Экономического Сообщества

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Москва, 2012

The content

The list of abbreviations:

Organizations:

- The United Nations – the UN
- The World Trade Organization – the WTO
- The International Monetary Fund – the IMF
- The World Bank Group – the WBG
- The North American Free Trade Area the NAFTA)
- The Andean Community – the CAN
- The Caribbean Community – the CARICOM
- Common Southern Market – Mercosur
- The Cooperation Council for the Arab States of the Gulf – the CCASG)
- The West African Economic and Monetary Union – the UEMOA
- The Southern African Customs Union – the SACU
- The East African Community – the EAC
- The Economic Community of Central African States – the ECCAS
- The European Union-Andorra - the EU-Andorra
- The European Union-Turkey - the EU-Turkey
- The Central American Common Market – the CACM
- The European Union - the EU
- The Joint Research Centre – JRC
- The European Coal and Steel Community – the ECSC
- The World Customs Organization – the WCO
- An approved economic operator – AEO
- The Eurasian Economic Community - the EurAsEC
- The Common economic area - the CEA
- The Union of Soviet Socialist Republics – the Soviet Union

Documents:

- The General Agreement on Tariffs and Trade 1947 - GATT 1947

- The General Agreement on Tariffs and Trade 1994 - GATT 1994
- The Treaty establishing the European Coal and Steel Community 1951 – the Treaty of Paris
- The Treaty establishing the European Atomic Energy Community 1957 - the Euratom Treaty
- The Treaty establishing the European Economic Community 1957 – the EEC Treaty
- The Single European Act - the EEA
- The common customs tariff – the CCT
- The European Union Customs Code 1993 – the EU Customs Code 1993
- The Harmonized Commodity Description and Coding System - HS

Events:

- Multilateral trade negotiations – MTN
- The Joint European Torus - JET

The Introduction

The development of the modern world view takes course under the influence of economic conditions. These conditions are characterized by the high dynamic of changes, the wide range and diversification of economic activities. Consequently the present posture of affairs requires the determination of technologies, techniques and methods which are to bestead with the withstanding of economic crises, the protection of international and national economies and the efficient and stable development of the world community.

One of such methods is the economic integration on global and regional levels. Thereat it should be mentioned that while the global economic integration bears more universal character, the regional integration include specific factors of integrating states.

In connection therewith the legal regulation of these processes is sufficiently important for the purposes of economic policy withstanding global crises and developing national economies. This type of regulation is formed under certain conditions, rules and in accordance with certain principles. The understanding of these rules and principles shall provide scientists with the universal and effective methods of contemplation and control.

It should be mentioned that the legal research field concerning regional economic integration process is comparatively new in scientific point of view and bears practical character *pari passu* with theoretical aspects.

The present research of the abovementioned processes is devoted to the understanding of their legal nature, the determining common principles and objectives. In particular, the main subject of the present inquiry is the legal regulation of regional economic integration organizations through the examples of the legislation within the European Union (the EU) and the Eurasian Economic Community (the EurAsEC). The fundamental treaties and agreements of the latter constitute the topic of the present research as they include similar objects, structure and provisions. That enables the comparison of the abovementioned integration models' legislation. Moreover it should be stated that although the European

scholars investigate the so-called integration law within the EU since the mid of the 20th century, the legal nature of regional economic integration became the object for scientific research since the fall of the Soviet Union.

Thus the aim of the present research is the determination of main steps towards an economic union, legal principles, objects and norms of the regional economic integration though the examples of the EU and EurAsEC.

In order to reach the abovementioned aim several scientific tasks should be solved, in particular:

- the determination of the regional economic integration position in relation to the globalisation process;
- the historical analysis of legislation formation within the integration models;
- the comparison of the present regulation of the integration models;
- the determination of *lacunas* in the EurAsEC legislation;
- the determination of possible solutions of the abovementioned *lacunas*;

Thereat the main methods of scientific research are historical analysis and legal comparison.

Thus the part concerning the determination of the regional integration in relation to the globalisation can be characterized by the analysis of the World Trade Organisation (the WTO) legal connection towards the regional integration models. Thereat the materials on which the inquiry in this part of the present research is based bear scholar and practical character. In particular the fundamental views of the prominent scholars and the provisions of the WTO General Agreement on Tariffs and Trade 1994 (the GATT 1994) are analysed in relation to the matter of the abovementioned scientific task.

The part of historical analysis includes the separate legal reviews of international treaty frameworks formation within the EU and EurAsEC. The particular emphasis is put on the provisions of the fundamental documents in order to solve the abovementioned scientific tasks. The concerned formation processes

are related to the second part of 20th century, in particular in case of the GATT 1994 and the EU – since the foundation of the organisations, and in case of the EurAsEC – since the fall of the Soviet Union. Thereat the materials on which the inquiry in this part of the present research is based bear par excellence practical character, although some elements of the scholars' fundamental views are presented.

The part in relation to the legal comparison of the present legislations within the EU and EurAsEC include the correlation the provisions of the fundamental treaties and agreements in virtue of objectives, principles and norms in order to determine the common particular qualities and distinctions between these documents.

The part in relation to the determination of *lacunas* in the EurAsEC legislation possible solutions of them includes the generalisation and concrete definitions of the EurAsEC fundamental treaties defaults and possible solutions of these problems. Thereat the materials on which the inquiry in this part of the present research is based represent the conclusions of the previous part.

Taking into consideration the abovementioned aspects it can be concluded that the results of the present research bear practical character in relation to the amending of the EurAsEC legislation and scientific character in relation to understanding of regional economic integration legal nature. That can enable the further theoretical development in the abovementioned field in order to provide the EurAsEC with the techniques and methods of efficient regulation based on the universal and fundamental principles which were attested through the successful examples of integration models.

Part I

The historical aspects of the European Union legislation formation

Chapter 1

Regional integration as the part of globalisation

The theory of the international economic integration appeared and was developed in the 50-70s years of the XX century in the works of such scholars as B.Balassa and J.Tinbergen.

It should be stated that the scholar literature defines in general the notion of the economic integration as the leveling-off of the conditions for economic agents. This notion is also aimed at lessening discrimination. It means that in order to enjoy the privileges and rights of integration model an economic agent is required to belong to any state which participates in integration process[1].

Moreover the notion of economic integration can be defined more broadly as elimination of the artificial barriers for economic activity and oriented implementation of the coordinated and unified trade policy[2].

Along with the scholar definition in practical point of view the notion of economic integration can be considered as the form of intergovernmental economic relationships within the frameworks of which the national productions and sales markets unification is transformed into united economic system. This structure exists and functions under unified law and in unified economic area.[3] Such position of the system provides logically the additional protection and privileges for economic agents in customs, administrative and other types of relationship with governmental bodies.

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[1] "Econometrics" by Dr.sc.ec., Ph., Ac. A. Archipov and the others [V.Mkhitarian, M.Arkhipova, V.Balash, O. Balash, T. Dubrova, V. Sirotin]; Publish. "Prospekt", Moscow, 2009 p. 460 with the reference to: "The Theory of Economic Integration" by Ph.D., Assistant Professor Yale University B.Balassa; Richard D. Irwin.; Homewood, IL.; 1961.; pp. 1-2.

[2] "Econometrics" by Dr.sc.ec., Ph., Ac. A. Archipov and the others [V.Mkhitarian, M.Arkhipova, V.Balash, O. Balash, T. Dubrova, V. Sirotin]; Publish. "Prospekt", Moscow, 2009 p. 460 with the reference to: International Economic Integration by J.Tinbergen, Elsevier, Amsterdam, Brussels, 1954, p. 95

[3] "External trade regulation of the EurAsEC Customs Union" S.Glasiev, T.Mansurov, Publish. "Prospekt", Moscow, 2011, p. 109

However taking into consideration the definitions presented above it may be concluded that the fundamental conditions for economic integration are the unification of the order and regime within the territory of the integration model. In its turn this condition requires the partial limitation of national sovereignty of a state not only in economical, but also in political spheres in connection with the establishment of supranational regulatory bodies.

Thus consequently to gain the common aim of economical integration there should be the political will of national or state authorities.

However through the establishment of integration models states endeavor to ensure the stability of the international economic system and to protect the economically developing countries from the abuse of discretion by the developed ones[4].

However it should be admitted that with the creation of the international economic organizations the confrontment between states does not cease, but transforms into new level. The developed countries endeavor to gain their goals through the deployment of international organizations procedures and mechanisms. Thus international economic organizations have *de facto* double meaning. On one side this institution assists the settlement of conflicts through compromises and through stabilizing the international economic system. On the other side integration models are used by the developed countries to bring pressure on developing countries. It gives rise to new international economic conflicts[5].

Currently the main institutional elements of globalization are the United Nations (the UN), the World Trade Organization (the WTO), the International Monetary Fund (the IMF), the World Bank Group (the WBG).

[4] "External trade regulation of the EurAsEC Customs Union" S.Glasiev, T.Mansurov, Publish. "Prospekt", Moscow, 2011, p. 71

[5] "Globalization and overtaking development" by A.Eljanov, World economy and international relationships, 2004, № 1, p. 7. / Эльянов А. Я. Глобализация и догоняющее развитие // Мировая экономика и международные отношения. 2004. № 1. С. 7.

In practical point of view the most importance in institutional globalization structure belongs to the World Trade Organization (the WTO)[6] and the International Monetary Fund (the IMF)[7].

Nowadays almost all state-members of the Worlds Trade Organization (the WTO) participate in one or more integration groups.

Long term economic cooperation leads to the diversification and intensification of connections between the participants of regional integration in such spheres as services, investments, employment. This process is attended by the unification of regulation system up to the creation of the unified economic policy. The state-to-state economic relations take the different forms of integration. These forms vary from each other not only by the level of economic cooperation and interdependence, but also by the aspects of institutional association[8]. Generally these forms are regulated by Regional Trade Agreements which can be determined as international treaties on the creation of free trade area, customs union or any other type of integration model[9].

It should be mentioned that the WTO rules allow the application of the abovementioned agreements; in particular, it is prescribed by the provisions of the General Agreement on Tariffs and Trade (GATT). This document was designed in the course of the UN Conference on Trade and Employment and was signed in 1947 and lasted until 1993. With the creation of the World Trade Organization in 1995 the provisions of GATT 1947 were included into the General Agreement on Tariffs and Trade 1994 (GATT 1994) during the 8th round of Multilateral trade negotiations (MTN) broadly known as the Uruguay Round.

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[6] "The World Trade Organization. A very short introduction" by Amrita Narlikar, Oxford University Press Inc., New York, 2005, pp. 2-6.

[7] "Bank law" by LLC K.Trofimov, Legal firm "Contract" Wolters Kluwer, Moscow, 2010, pp. 72 -74/ "Банковское право", доктор юридических наук К.Т.Трофимов, Юридическая фирма "Контракт" Волтерс Клувер, Москва, 2010, стр. 72 – 74.

[8] "International economic policy coordination" by Willem H.Buiter and Richard C. Marston, Cambridge University Press, Cambridge, 1985, pp. 5-7.

[9] "Trade and globalization: an introduction to regional trade agreements" by David A. Lynch, Rowman and Littlefield Publishers Inc., Maryland, 2010, pp. 235 – 236.

Thus article XXIV (2) of GATT 1947 defines the fundamental notion of a customs territory which “shall be understood to mean any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of the trade of such territory with other territories”.

Further article XXIV (4) of GATT 1994 encourages the conclusion of Regional Trade Agreements as “the contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements”.

Taking into consideration the legal meaning of a customs union and free-trade area it should be mentioned that the detailed definitions of these notions are prescribed by articles XXIV (8,a) and XXIV (8,b) of GATT 1994 respectively. In particular “a customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories”. Thereat two main conditions should be precluded:

- “duties and other restrictive regulations of commerce are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories”;
- “subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union”.

The definition of a free-trade area contemplates the meaning of it as “a group of two or more customs territories in which the duties and other restrictive regulations of commerce are eliminated on substantially all the trade between the constituent territories in products originating in such territories”.

Moreover article XXIV (4) of GATT 1994 precludes that the contracting parties “also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories”. It can be

seen that *sine qua non* for the conclusion of Regional Trade Agreements are the improvement of trade conditions and the prohibition of any preferential treatment.

Moreover it should be mentioned that in accordance with article I (2) of GATT 1994 among such preferences exist the following:

- preferences in force exclusively between two or more of the territories;
- preferences in force exclusively between two or more territories which on July 1, 1939, were connected by common sovereignty or relations of protection or suzerainty;
- preferences in force exclusively between the United States of America and the Republic of Cuba;
- preferences in force exclusively between neighboring countries.

The lists of the abovementioned states and territories are presented in the Annexes A, B, C, D, E and F to GATT 1994. In addition article XXIV (9) of GATT 1994 states that "the preferences referred to in paragraph 2 of article I shall not be affected by the formation of a customs union or of a free-trade area but may be eliminated or adjusted by means of negotiations with contracting parties affected".

It should be mentioned that the provisions of article XXIV (7) of GATT 1994 prescribes the common order for integration group formation. In particular "any contracting party deciding to enter into a customs union or free-trade area, or an interim agreement leading to the formation of such a union or area, shall promptly notify" the participants of GATT "and shall make available to them such information regarding the proposed union or area as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate". Thus it may be concluded that the abovementioned norms create the legal conjunction between globalization and regional integration through the obedience of GATT 1994 participants to the general rules and principles of the WTO.

Chapter 2

The international practices of regional economic integration

The functions of the international organization include international economic conflicts prevention, the establishment of unified rules for trade regimes due to protect national economic interests[10].

The conditions of globalization require the complex settlement of problems which appears on certain markets and in different regions. However global economic integration due to its generality cannot solve all conflicts of regional character[11] and in accordance with the atomism of international integration structure the regional level of economic integration should be precluded in order to withstand the consequences of global economic crises.

Due to the existence of the high interest of any state to endure the negative influence of economic crises it endeavors to posses its own strategy which is oriented on the ensuring of national economic opportunities and competitiveness[12] with the use of development productions factors. Taking this matter into consideration in the context of international trade relationships it should be stated that the mentioned above strategy requires the protection of fundamental assets and internal market[13] of the country from foreign venture capital which usually takes form of investments in national industries[14]. Moreover it involves active scientific, technological, administrative and institutional policy[15] due to establish convenient conditions for the development of competitive entities in promising economic spheres.

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[10] "The world trade organization: legal, economic and political analysis " edited by Patrik F.J.Macrory, Arthur E.Appleton, Michale G.Plummer, Springer Science + Business Media Inc., New York, 2005, pp. 57 - 60.

[11] "External trade regulation of the EurAsEC Customs Union" by S.Glasiev, T.Mansurov, Publish. "Prospekt", Moscow, 2011, pp. 72-73.

[12] "The Global factory. Foreing Assembly in international trade" by Joseph Grundwald and Keneth Flamm, The bookings Institutions, Washington D.C., 1985, p. 247.

[13] "Organizational communication and management: a global perspective" edited by Andrjze K.Kozminski and Donald P.Cushman, State University of New York Press, Albany (USA), 1993, p. 33.

[14] "Strategic intelligence" edited by Loch K.Johnson, Greenwood Publishing Group Inc., Westport (USA), 2007, pp. 187 – 188.

[15] Ibid, p. 241.

The modern reflection of such policy can be found in anti-recessionary strategy, the main element of which is regional integration. It creates a broad market between the member countries of an integration group and consequently promotes their economic security. It is presumed that such common market can be created through the establishment of free trade area, customs, monetary and economic union types. Through realisation of the abovementioned anti-recessionary strategy the member countries of an integration group increase the scales of prospects for their national economic subjects and enhance their competitiveness in international economic area[16].

The abovementioned ideas are reflected in the state practice, in particular in 2010 the EurAsEC Customs Union the free trade area between China and the Association of Southeast Asian Nations were established.

It should be mentioned also that *pari passu* political motives can be added to the fundamental factors of economic integration[17]. In particular, integrating countries endeavour to find their place in the geo-economics structure of the globalizing world and come to conclusion that they can reinforce their standings through the uniting of their economic opportunities. Thus there is the point of view in scholar literature that the Enlargement of the European Union was motivated not only by the economic factors, however by political ones[18]. In particular, the older European Uinon members suffered sufficient expenses due to provide economic aid for the new ones[19].

Nevertheless the occurrence of regional economic integration can be considered as the reaction of states towards the globalization of the developed countries, since the developing countries realize that single membership in globalization process under *de jure* equal conditions, but in view of *de facto*

[16] "External trade regulation of the EurAsEC Customs Union" by S.Glasiev, T.Mansurov, Publish. "Prospekt", Moscow, 2011, p. 68.
[17] "European integration. Methods and economic analysis" by Jacques Pelkmans, Pearson Education Limited, Gosport (UK), 2006, p. 6.
[18] Ibid., p. 3.
[19] "External trade regulation of the EurAsEC Customs Union" by S.Glasiev, T.Mansurov, Publish. "Prospekt", Moscow, 2011, p. 68.

imbalance of opportunities is disastrous and disadvantageous for their national economics. Such regionalism does not include any elements of isolationism and considered by states as a step to the adequate, efficient and equal participation in the process of globalisation, which is objectively inevitable[20].

There are different approaches to the problem of correlation between regional and global integration. On one side economic integration on regional level is accompanied by the establishment of trade coalitions and in this conception it comes into collision with the globalization. On the other side the liberalization of economic connections, even within a region, can be interpreted as a part of the world economic integration. Although there is the tendency of intensification in economic cooperation between states within one region, global economic relations are not terminated. However they transform into new quality and in this point of view regional economic integration elaborates the global one[21].

It should be mentioned that there is no universal theory of regional integration and each model is created and develops in its specific manner, under its historical, economic, social and political conditions.

There are four legal forms of economic integration organization in the scholar literature[22] (the Annex to the present reseach).

1. Free trade area is considered to be the simplest form of regional economic integration. It presumes the abolishment of customs duties and other barriers for commodity circulation within an integrated territory. Usually an agreement on free trade area is a first step in integration process. Since external tariffs can vary in respect to third states the crucial importance under the conditions

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[20] Симония Н. А. Современный этап общественной трансформации стран Востока. М., 2004. С. 23./"The modern stage of the social transformation in the Eastern countries" by N.Simonya, Moscow, 2004, p. 23.

[21] Шишков Ю. В. Регионализация и глобализация мировой экономики: альтернатива или взаимодополнение? // Мировая экономика и международные отношения. 2008. № 8. С. 13./ "Regionalization and globalization of the world economy: alternative or cooperation?" by Y.Shishkov, World economy and international relationships, 2008, № 8, p.13.

[22] "External trade regulation of the EurAsEC Customs Union" by S.Glasiev, T.Mansurov, Publish. "Prospekt", Moscow, 2011, p. 111; "Wirtschaftsintegration und Streitbeteilung außerhalb Europa" by Julia Lehman, Nomos Verlagsgesellschaft, Baden-Baden, 2004, pp. 29 - 35.

of this legal form belongs to rules of origin. Rules of origin can be defined as the criteria through which the national source of a product can be determined. Customs duties imposed on goods depending upon the source of imports. The governmental practice of the rules of origin is broad and various. In particular some governments apply the criterion of change of tariff classification, others the *ad valorem* percentage criterion and yet others the criterion of manufacturing or processing operation[23]. The typical example of a free trade area is the North American Free Trade Area (NAFTA)[24] the members of which (Canada, Mexico and the United States of America) determine by their own tariffs regarding to third states.

2. Customs Union is considered to be a free trade area with a common customs tariff. Since the export of third states is levied by a common tariff, the notion of rules of origin loses here their importance.

As a basis for a common economic area represents itself as an integration model, the elements of which are a common customs tariff, a common customs territory, unified trade rules and unified non-tariff regulation towards third states.

The first step economic integration in Europe was the creation of the Customs Union in the 60s of XX century.

3. In comparison with free trade area and customs union the notion of single market (common economic area) includes not only commodity flows, but also production factors such as capital and labour force. The classic example of this notion is the creation of the Common market in Western Europe in 1991[25].

4. Economic and currency union is considered to be the developed level of common economic area since the unified rules for fiscal and monetary policy regulates the economic relationships within it. Nowadays the European Union is considered to be an economic union for the reason that within its territory a common market was created, the financial operations in its states-members are

[23] http://www.wto.org/english/tratop_e/roi_e/roi_info_e.htm, 14.02.12.
[24] "Internationales Wirtschaftsrecht" by Prof. Dr. Matthias Herdegen, Verlag C.H.Beck, München, 2009, p. 138.
[25] "Europarecht" by Prof. Dr. Rudolf Streinz, C.F.Müller, Hedelberg, 2001, Rn. 957ff

executed by means of single currency – euro[26] and the common economic policy is designed and executed by supranational regulative bodies.

Nowadays there are 12 customs unions which have the different degree of integration and supranational institutions effectiveness.

The part of them passed the process of notification in the WTO in accordance with article XXIV (7) of GATT, in particular the main of them are the Andean Community (the CAN), the Caribbean Community (the CARICOM), Common Southern Market (Mercosur), the Cooperation Council for the Arab States of the Gulf (the CCASG), also known as the Gulf Cooperation Council (the GCC), the West African Economic and Monetary Union (the UEMOA), the Southern African Customs Union (the SACU), the East African Community (the EAC), the Economic Community of Central African States (the ECCAS), the European Union-Andorra (the EU-Andorra), the European Union-Turkey (the EU-Turkey), the Central American Common Market (the CACM)[27].

Chapter 3

The historical types of the European economic integration formalization

However in the only example of the complete integration model which passed all steps in its creation and which is regulated by supranational institutions is represented by the European Union (the EU)[28].

The members of the European Union are 27 states, in particular Germany, France, Italy, Belgium, the Netherlands, Luxemburg – since 1957 (constituent states), the United Kingdom, Denmark, Ireland – since 1972, Greece – since 1981, Spain, Portugal – since 1985, Austria, Finland, Sweden – since 1995, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia, Czech Republic, Estonia, Cyprus, Malta – since 2004, Bulgaria and Rumania – since 2007[29].

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[26] http://www.ecb.int/ecb/history/emu/html/index.en.html, 14.02.12.
[27] "External trade regulation of the EurAsEC Customs Union" by S.Glasiev, T.Mansurov, Publish. "Prospekt", Moscow, 2011, p. 111
[28] Ibid.
[29] http://europa.eu/about-eu/countries/index_en.htm, 14.02.12.

The fundamental elements of the EU Customs Union were formulated in the 1950s in particular in the Treaty establishing the European Coal and Steel Community which is known also as the Treaty of Paris. This document was designed during the negotiations which were proposed by the French Foreign Minister, Robert Schuman[30]. The Treaty establishing the European Coal and Steel Community was signed in Paris on 18 April 1951 and entered into force on 24 July 1952, with a validity period limited to 50 years. The Treaty expired on 23 July 2002.

The text of the document was divided into four titles. The first title refers to the provisions on the European Coal and Steel Community, the second title describes the institution order of the Community, the third and forth titles include economic, social and general provisions. The Treaty of Paris includes two protocols. The first protocol contains the provisions on the Court of Justice and the second protocol contains the transitional provisions, which dealt with the implementation of the Treaty, relations with third countries, general safeguards and relations of the European Coal and Steel Community with the Council of Europe.

Article 2 of the Treaty of Paris defined the main aim which was to contribute, in harmony with the general economy of the participants to the treaty and through the establishment of a common market, to economic expansion, growth of employment and a rising standard of living.

Thereat the states participating in the treaty were committed to ensure the most rational distribution of production at the highest possible level of productivity, while safeguarding continuity of employment and taking care not to provoke fundamental and persistent disturbances in their economies[31].

Thus through the establishment of national treatment and in the light of the establishment of the common market, the treaty introduced the free movement of products without customs duties or taxes.

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[30] "The origins and development of the European Union 1945-2008: a history of European Integration" Martin J.Dedman, Routledge, Oxon (UK),2010, p. 55.

[31] "Industrial Organization: a contract based approach" by Nicolas Boccard, Departament d'Economia, Universitat de Girona, Spain, 2006, pp. 21-22

The Treaty of Paris established several institutions such as a High Authority, an Assembly, a Council of Ministers and a Court of Justice. The Community had secondary legal personality.

The High Authority was the independent supranational collegiate executive body with the task of reaching the aims stated by the Treaty in the general interest of the Community. It consisted of nine members (not more than two representatives of each member-state) which were appointed for the term of six years. Moreover this body supervised the processes of modernisation and improvement of production, the supply of products under identical conditions, the development of a common export policy and the improvement of working conditions in the coal and steel industries. The High Authority was assisted by a Consultative Committee which consisted of representatives of producers, workers, consumers and dealers.

The Assembly was also a collegiate body and consisted of 78 deputies (the representatives of the national Parliaments). It should be stated that there was unequal number of representatives in particular in the Assembly were 18 deputies each for Germany, France and Italy, 10 for Belgium and the Netherlands and 4 for Luxembourg.

The Council of Ministers consisted of six representatives of the national governments. The Presidency of the Council was held by each Member State in turn for a period of three months. The main functions of this body was the harmonization the decisions of the High Authority and the general economic policy of the governments. In addition the approval of this organ was required for important decisions taken by the High Authority.

The Court of Justice consisted of seven judges appointed for the term of six years through common consent between the member-states. The main functions of this body were the interpretation and implementation into the national legislations of the treaty provisions.[32]

[32] http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_ecsc_en.htm, 14.02.12.

The member-states took the obligation to provide the information on steel and coal production to the High Authority which in its turn prepared the corresponding economical forecasts. Due to improve this mechanism the European Coal and Steel Community was entitled to require the necessary information, to hold consultations with national governments and to make checks. In case when a member-state maliciously failed to meet the abovementioned obligations the High Authority could impose punishments in forms of fines (maximum of 1 % of annual turnover) and penalty payments (5 % of the average daily turnover for each day's delay).

The economic forecasts prepared on the basis of the information guided the further activities of European Coal and Steel Community in particular in the preparation studies on price trends and market behavior.

The activity of the European Coal and Steel Community was financially supported by levies on coal and steel production and by contracting loans.

The levies were considered to cover administrative expenditure and technical and economic research. In addition to that the funds received from borrowing could only be used to grant loans.

Concerning the investment regulation it should be stated that in accordance with article 54 of the Treaty of Paris the European Coal and Steel Community could “facilitate the carrying out of investment programs by granting loans to undertakings or by guaranteeing other loans which they may contract”.

In accordance with the article 57 of the treaty the European Coal and Steel Community gave “preference to the indirect means of action at its disposal, such as cooperation with national governments to regularize or influence general consumption, particularly that of the public services and also as intervention in regard to prices and commercial policy”.

According to article 60 (1) of the Treaty of Paris two types of practices were prohibited in particular such as “unfair competitive practices, especially purely temporary or purely local price reductions tending towards the acquisition of a monopoly position within the common market and discriminatory practices

involving, within the common market, the application by a seller of dissimilar conditions to comparable transactions, especially on grounds of the nationality of the buyer".

In accordance with article 67 (1) the Treaty of Paris any action of its participant "which might have noticeable repercussions on the conditions of competition in the coal and steel industries should be brought to the attention of the High Authority by the interested government". Thereat according to article 67 (2, 3) of the treaty the High Authority is entitled to take certain measures "after consulting the Consultative Committee and the Council" in cases when an action was "liable to provoke a serious disequilibrium by increasing the differentials in costs of production otherwise than through variations in productivity". In particular these measures could take form of special agreement with a national government and recommendations.

According to article 68 (1) of the Treaty of Paris the methods of fixing wages and social benefits in force should not be affected, as regards the coal and steel industries, by the application of treaty. However the High Authority could intervene, under certain conditions set out in the Treaty, in particular in the event of abnormally low wages and wage reductions.

In accordance with article 71 (1) of the Treaty of Paris the competence of the governments of the treaty participants with respect to commercial policy shall not be affected except the situations stipulated in the provisions of Chapter X. In particular the European Coal and Steel Community was entitled to determine maximum and minimum rates for customs duties and to supervise the granting of import and export licenses. Moreover the participants of the treaty bound themselves to keep the High Authority informed of proposed commercial agreements or arrangements "to the extent that such agreements relate to coal, steel or the importation of other raw materials and of specialized equipment necessary to the production of coal and steel".[33]

[33]http://en.wikisource.org/wiki/The_Treaty_establishing_the_European_Coal_and_Steel_Community_(ECSC), 14.02.12.

The influence of the Treaty establishing the European Coal and Steel Community was positive. Since the Community was able to solve the consequences of crises, to provide balanced development of the production and distribution and to support the necessary industrial restructuring and redevelopment, steel production increased and coal production reached a high level of technological development, safety and environmental quality as compared to the 1950s.[34]

Fifty years after entering into force, the Treaty expired as planned on 23 July 2002.

However it should be admitted that the provisions of the Treaty of Paris regulated the economic relationships within a determined and specific industrial branch, although the norms of it were of supranational character. And in this point of view it bears analogy to the Treaty establishing the European Atomic Energy Community (the Euratom Treaty).[35]

In the course of the European economic integration process there was a conference of the Foreign Ministers of the six Member States of the ECSC held from 1 to 3 June 1955 at the Italian city of Messina, Sicily. As a result of this conference (the Messina Conference) and followed after it meetings of ministers and experts was the creation of a preparatory committee at the beginning of 1956 the main function of which was the preparation of a report on the creation of a European common market. In April 1956, the committee developed the texts of two treaties which regulated the two main spheres determined by member-states of ECSC, in particular:

- the creation of a common market; and
- the creation of an atomic energy community.

[34] http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_ecsc_en.htm, 14.02.12.

[35] http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_euratom_en.htm, 14.02.12.

These documents were signed in Rome in March 1957 and are known as the Treaties of Rome. Following ratification in the member-countries, the two treaties entered into force on 1 January 1958[36].

The main aim of the Treaty establishing the European Atomic Energy Community (the Euratom Treaty) is the development of Europe's nuclear industries, the security of supply and consequently the preclusion of energetic security in Europe. Thereat the principles of high safety are also precluded in the provisions of the treaty in particular Euratom's powers are limited to peaceful civil uses of nuclear energy. It can be seen from the preamble, where the signatories described themselves as:

" - recognizing that nuclear energy represents an essential resource for the development and invigoration of industry and will permit the advancement of the cause of peace …,
- resolved to create the conditions necessary for the development of a powerful nuclear industry which will provide extensive energy resources, lead to the modernization of technical processes and contribute, through its many other applications, to the prosperity of their peoples,
- anxious to create the conditions of safety necessary to eliminate hazards to the life and health of the public,
- desiring to associate other countries with their work and to cooperate with international organizations concerned with the peaceful development of atomic energy …"[37].

The Euratom Treaty consists of 234 articles which are divided into six titles and preceded by a preamble. The number of articles was reduced to 177 following the signature in December 2007 of the Treaty amending the Treaty on European Union (the EU Treaty) and the Treaty establishing the European Community (the EC Treaty).

[36] European “Cosa Nostra” by K. Heinz Duthel, Lulu.com, 2008, p. 146.
[37] http://eur-lex.europa.eu/en/treaties/dat/12006A/12006A.htm, 15.02.12.

The first title includes the provisions on the seven tasks which the treaty entrusts to the European Atomic Energy Community. These provisions are reflected in article 2 of the treaty.

The second title consists of the provisions which regulate the process in the field of nuclear energy (development of research, dissemination of information, health protection, investment, joint enterprises, supplies, safety control, property rights, the nuclear common market and external relations).

The third title includes the regulation of the Community institutions and general financial provisions. These provisions were adapted in accordance with the Treaty amending the EU Treaty and the Euratom Treaty signed in December 2007.

The fourth title consists of the provisions which regulate specific financial provisions.

The fifth and sixth titles preclude the provisions on general provisions and provisions relating to the initial period (setting up the institutions of the Community, initial application provisions and transitional provisions) respectively.

Moreover the Euratom Treaty includes five annexes dealing with the fields of research concerning nuclear energy with reference to article 4 of the treaty, the industrial activities with reference to article 41 of the Treaty, the advantages which may be conferred on joint enterprises under the provisions of article 48 of the Treaty, a list of goods and products subject to the provisions of chapter 9 on the nuclear common market, and the initial research and training program with reference to article 215 of the Treaty.

Furthermore two protocols are also amended the Euratom Treaty. In particular these are the Protocol on the application of the Treaty establishing the European Atomic Energy Community to the non-European parts of the Kingdom of the Netherlands and the Protocol on the Statute of the Court of Justice of the European Atomic Energy Community.[38]

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38 http://en.wikisource.org/wiki/Treaty_establishing_the_European_Atomic_Energy_Community, 15.02.12.

According to the provisions of the Euratom Treaty, the specific tasks of the European Atomic Energy Community are:

- to promote research and to ensure the disclosure of technical information;

The Euratom Commission (an executive body) is entitle to require member-states, persons or enterprises to communicate to it their program relating to nuclear research. At regular period of times the Commission publishes the information of the sectors of nuclear research which it considers to be insufficiently explored. It has also established the Joint Research Centre (JRC) which is considered to be one of the leading institution of the European Atomic Energy Community in nuclear research and also in research in fields such as the environment and food safety. Member-states, persons or enterprises are entitled to call for the Commission in order to obtain non-exclusive licenses under patents, provisionally protected patent rights, utility models or patent applications owned by the European Atomic Energy Community.

- to establish uniform safety standards and to protect the health of workers and public safety;

Each member-state is obliged to preclude the appropriate provisions, whether by national legislation, regulation or administrative action, to ensure compliance with the basic standards which have been established by the Euratom Treaty. Legislation should be also adopted on medical applications, research, the maximum permissible levels of radioactive contamination in food and the health protection measures to be taken in the event of a radiological emergency. Each member-state is required to provide the Euratom Commission with the general information on any plan for the disposal of radioactive waste.

- to facilitate investment and ensure the establishment of the basic installations necessary for the development of nuclear energy in the EU;

The Euratom Commission regularly publishes nuclear programs (PINCs) indicating, in particular, nuclear energy production targets and the investment required for their development. Persons and enterprises engaged in the industrial

activities enumerated in Annex II to the Euratom Treaty are required to notify the Commission of any investment projects.

- to ensure that all users in the EU receive a regular and equitable supply of ores and nuclear fuels

Supplies of ores, source materials and special fissile materials are ensured by means of a common supply policy based on the principle of equal access to sources of supply. In the abovementioned context, the Euratom Treaty prohibits any actions the goal of which is the preservation of a privileged position for certain users and the establishes the Euratom Supply Agency which is entitled to make an official enquiry on ores, source materials and special fissile materials produced in the territories of member-states and an to conclude export-import contracts relating to the supply of ores, source materials and special fissile. The abovementioned body has secondary legal personality and financial autonomy. It is under the supervision of the Euratom Commission, which issues directives to it and possesses a right of veto over its decisions.
Member-states are obligated to submit an annual report to the Euratom Commission on the development of prospecting and production, on probable reserves and on investment in mining which has been made or is planned in their territories.

- to ensure that civil nuclear materials are not diverted to other , in particular, military purposes;

The Euratom Treaty introduces an extremely comprehensive and strict system of safeguards to ensure that civil nuclear materials are not diverted from the civil use declared in its provisions. In particular, the Euratom Commission is responsible to ensure that, in the territories of the Member States ores, source materials and special fissile materials are not diverted from the intended uses which were declared by users and the national legislation comply with the best available techniques by means of a common market in materials, equipment, etc.

- to establish joint enterprises;

Such enterprises are established for specific projects of fundamental importance to

the development of the nuclear industry in Europe. One of the examples is the Joint European Torus (JET) in the field of nuclear fusion.

The Treaty amending the EU and Euratom Treaties, which was signed in December 2007, changed certain provisions of the Euratom Treaty via its "Protocol № 12 amending the Treaty establishing the European Atomic Energy Community". These changes are limited to adaptations to take account of the new rules established by the amending Treaty, particularly in the institutional and financial fields.

In March 2007 the Commission reviewed and assessed the outlook for the Euratom Treaty. The result was generally positive, particularly in the areas of research, health protection, monitoring of the peaceful use of nuclear material, and international relations.[39]

Chapter 4

The creation of the European Economic Community and the European Union

However in comparison with the abovementioned treaties crucial importance in the European economic integration belongs to the Treaty establishing the European Economic Community (the EEC Treaty) 1957 since it create qualitatively new level for economic cooperation in the region.

In particular this document proclaimed the overall principles of integration which are not limited by specific fields of industries.[40] The idea of a contribution towards the functional construction of a political Europe and the closer unification laid down in the preamble which declares that signatories were:

"- determined to lay the foundations of an ever closer union among the peoples of Europe,
resolved to ensure the economic and social progress of their countries by common action to eliminate the barriers which divide Europe,

[39] http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_euratom_en.htm, 15.02.12.

[40] http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_eec_en.htm, 15.02.12.

affirming as the essential objective of their efforts the constant improvements of the living and working conditions of their peoples,
- recognising that the removal of existing obstacles calls for concerted action in order to guarantee steady expansion, balanced trade and fair competition;
- anxious to strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various regions and the backwardness of the less-favoured regions;
- desiring to contribute, by means of a common commercial policy, to the progressive abolition of restrictions on international trade;
- intending to confirm the solidarity which binds Europe and the overseas countries and desiring to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations;
- resolved by thus pooling their resources to preserve and strengthen peace and liberty, and calling upon the other peoples of Europe who share their ideal to join in their efforts..."[41].

These intentions were fleshed out by creating a common market and a customs union and by developing common policies.

The EEC Treaty includes 240 articles in six separate parts, preceded by a preamble.

- the first part contains the principles which underline the establishment of the European Economic Community via the common market, the customs union and the common policies;
- the second part describes the foundation process of the European Economic Community. It is divided into four titles the provisions of which regulate respectively the free movement of goods; agriculture; the free movement of persons, services and capital; transport;

[41] http://en.wikisource.org/wiki/Treaty_establishing_the_European_Economic_Community, 15.02.14.

- the third part include the provisions on common economic policy which is described in four titles relating to common rules, economic policy, social policy and the European Investment Bank;
- the fourth part concerns the association of overseas countries and territories;
- the fifth part contains the provisions which regulate the EEC institutions, with one title on the institutional provisions and another on the financial provisions;
- the final part of the EEC Treaty includes general and final provisions.

The part of the EEC Treaty represents four annexes relating to certain tariff positions, agricultural products, invisible transactions and overseas countries and territories.[42]

Article 2 of the EEC Treaty precludes that the European Economic Community shall have as its aim, "by establishing a Common Market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increased stability, an accelerated raising of the standard of living and closer relations between its Member States".

This common market is based on the "four freedoms"[43], in particular the free movement of persons, services, goods and capital. It establishes a common economic area through creation of free competition between enterprises. Moreover it determines the conditions governing production and distribution of products and services over and above those industrial fields which are already covered by the other treaties (the Treaty of Rome and the Euratom Treaty).

Article 8 of the EEC Treaty states that "the Common Market shall be progressively established in the course of a transitional period of twelve years. The transitional period shall be divided into three stages of four years each; the length

[42] http://en.wikisource.org/wiki/Treaty_establishing_the_European_Economic_Community, 15.02.15.

[43] "European Union Law: Text, Cases and Materials" edited by John Tillotson, Cavendish Publishing Limited, London, 2000, pp. 257 - 265.

of each stage may be modified in accordance with the provisions set out below. To each stage there shall be allotted a group of actions which shall be undertaken and pursued concurrently". Subject to the exceptions and procedures provided for in the EEC Treaty, the expiry of the transitional period constitutes the latest date by which all the rules laid down must enter into force.

Since the institution of common market is based on the principle of free competition, the EEC Treaty prohibits restrictive agreements and state aids which can affect trade between Member States and whose objective is to prevent, restrict or wrench competition. The overseas countries and territories are associated with the Common Market and the customs union in order to promote trade conditions and jointly economic and social development.

The EEC Treaty abolishes quotas and customs duties between the member-states. It establishes a common external tariff, a sort of external frontier for member-states' products, replacing the preceding tariffs of the different member-states. This customs union is accompanied by a common trade policy which is managed at supranational level.

Certain policies are directly and formally enshrined in the EEC Treaty, such as the common agricultural policy (Articles 38 to 47), common trade policy (Articles 110 to 116) and transport policy (Articles 74 to 84). Others may be launched depending on needs, as specified in Article 235, which stipulates that: "If any action by the Community [the European Economic Community] appears necessary to achieve, in the functioning of the Common Market, one of the aims of the Community in cases where this Treaty [the EEC Treaty] has not provided for the requisite powers of action, the Council [the EEC Council], acting by means of a unanimous vote on a proposal of the Commission [the EEC Commission] and after the Assembly [the EEC Assembly] has been consulted, shall enact the appropriate provisions."

The development of the abovementioned policies was accompanied by the creation of a European Social Fund the aim of which is to improve job opportunities and conditions for workers and to raise their standard of living as

well as to facilitate the European Economic Community's expansion by creating new resources[44].

The EEC Treaty was amended by the several treaties such as:

- the Treaty of Brussels, known as the "Merger Treaty" 1965 which replaced the three Councils of Ministers (the EEC, the ECSC and the Euratom) on the one hand and the two Commissions (the EEC, the Euratom) and the High Authority (the ECSC) on the other hand with a single Council and a single Commission. The creation of latter supranational bodies was supplemented by the institution of a single operative budget;
- the Treaty amending Certain Budgetary Provisions 1970 which replaced the system whereby the Communities were funded by contributions from member-states with that of own resources. It also put in place a single budget for the Communities;
- the Treaty amending Certain Financial Provisions 1975 which empowered European Parliament with the right to reject the budget and to grant a discharge to the Commission for the implementation of the budget. It also established a single Court of Auditors for the three Communities to monitor their accounts and financial management;
- the Treaty on European Union, known as the "Maastricht Treaty" 1992 which brought the three Communities (the Euratom, the ECSC, the EEC) and in the fields of foreign policy, defense, police and justice together under single integration model the European Union. The EEC was renamed, becoming the EC. Furthermore, this Treaty created economic and monetary union, put in place new Community policies (education, culture) and increased the powers of the European Parliament (codecision procedure).Treaty of Amsterdam (1997);
- the Treaty of Amsterdam 1997 which increased the powers of the European Union by creating a Community employment policy, transferring to supranational bodies the part of the areas which were previously subject to

[44] "The Operation of the European Social Fund" by Doreen Collins, Billing and Son Ltd., Worcester (UK), 1983, pp. 1 – 2.

intergovernmental cooperation in the fields of justice and home affairs, introducing measures aimed at enabling closer cooperation between certain member-states (enhanced cooperation). It also extended the co-decision procedure and qualified majority voting and simplified and renumbered the articles of the Treaties;

- the Treaty of Nice 2001 which dealt with the decision procedure in the Council and the extension of the areas of qualified majority voting. Moreover this document simplified the rules on use of the enhanced cooperation procedure and made the judicial system more effective.[45]

It should be stated that from the time of its creation the EEC Treaty represents in connectional point of view the consistent program of economic integration: from the Customs Union to an economic and currency union.

The proclamation of long termed economic aims with the support of legislative development regarding the Customs Union has the qualitative transformation in the relationships of member-states. The Customs Union constituent states came to the agreement to abolish progressively customs duties and quantitative restrictions in mutual trade, to institute a common external tariff and to delegate external trade policy to the European Economic Community. The constituent states came also to the agreement to provide free movement of goods, services, investments and people within the customs territory. Thus the measures which were taken in the customs tariff sphere were permanently considered as the part of the economic integration process in the region. Due to create the Customs Union the transition period of 12 years was established: from 1958 to 1970. Although the Customs union was created in fact earlier, in 1968, it required more than 20 years for the total abolishment of customs barriers through the harmonization of national legislations.[46]

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[45] http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_eec_en.htm, 13.02.12.

[46] "External trade regulation of the EurAsEC Customs Union" by S.Glasiev, T.Mansurov, Publish. "Prospekt", Moscow, 2011, p. 118.

The abovementioned process was finalized with the adoption of the Single European Act (the EEA) 1986[47] which precluded as the main task the creation of a common market between the member-states within which "four freedoms" could exist. The creation of such market in January 1993 led to the abolishment of customs barriers between the member-states. Moreover the EEA was the first major reform of the ECSC Treaties, the Euratom Treaty and the EEC Treaty. It extended the areas of qualified majority voting in the Council, increased the role of the European Parliament (cooperation procedure) and widened EEC powers.

The further treaties influenced impliedly on the Customs Union activity, in particular through amendments to decisions making process and vote system in the EEC Council.

Moreover in accordance with article 2 of the EU Treaty new member are obliged to adopt the whole aggregation of norms which exist on the moment of accession to the EU without any exceptions. This principle is broadly known as the principle acquis communautaire the meaning of which precludes that a state limits its sovereignty in favor of an integration model.[48]

According to the definition given in article 9 of the Treaty of Rome (now article 23) "the Community shall be based upon a customs union covering the exchange of all goods and comprising both the prohibition, as between Member States, of customs duties on importation and exportation and all charges with equivalent effect and the adoption of a common customs tariff in their relations with third countries". Furthermore the provision of article 9 (2) precludes that the abolishment of any customs barriers "shall apply to products originating in Member States and also to products coming from third countries and having been entered for consumption in Member States".

It should be mentioned that the system of united customs territory based also on such notion as a common customs tariff (the CCT). The adoption of the customs

[47] "European Union Law" by Margot Horspool and Matthew Humphreys, Oxford University Press Inc., New York, 2006, p. 6.
[48] Article 2 of the Treaty establishing the European economic Community under the amendment of the Treaty on the European Union.

union tariff is legally binding to all EU member-states including new participants. The adoption of the common customs tariff in 1968 led to the sufficient enlargement of the EU power in customs policy. Thus any decision on tariff policy, even if it refers to single member-state, can be adopted only by the EU bodies. The alteration of the CCT customs duties and abeyances may be applied through a decision of the EU Council. This decision is made by qualified majority[49].

The right to negotiate with third states on tariff matters including plurilateral negotiations within the framework of GATT 1994 has become the part of EU bodies' functions. The EU Commission provides the EU Council with recommendations on such negotiations and participates in them through its representatives upon authorization of the EU Council and in accordance with its guide-line. Thus all forms of the CCT alteration, in particular autonomous (*ex parte*) and pactional (as a result of negotiations), belong to the EU bodies' functions and cannot be executed by member-states.

The CCT adoption led to the creation of unified customs norms and rules, and first of all regarding to the determination of customs territory, customs valuation methods and rules of origin. Without them it is practically impossible to provide the unified appliance of the common customs tariff by all EU member-states.

The EU Customs Code 1993 is considered to be the compilation of these norms and rules which are usually based on the provisions of so named the WTO treaties.

This document was established in accordance with the Council Regulation (EEC) № 2913/92 of 12 October 1992 and it represents the codification of Community customs legislation. It replaces a great many acts of law, thereby increasing transparency. It lays down the scope of customs provisions and the basic definitions. Its norms and rules mainly concern:

[49] "European Union Law" by Alina Koczorowska, Routledge-Cavendish, Oxon (UK), 2008, p. 483.

- general provisions on people's rights and obligations with regard to customs rules (right of representation, information and others) which are contained in Title I;
- the basic provisions governing trade in goods, in particular import and export duties, customs value, the EC's customs tariff, the tariff classification of goods and the rules of origin. These provisions are contained in Title II (Chapters 1-3);
- the provisions applicable to goods brought into the EC's customs territory until they are assigned a custom-approved treatment or use. These norms are contained in Title III cover the provisions on the entry of goods into the EC's customs territory (Chapter 1), the presentation of such goods to customs services (Chapter 2), the obligation to assign goods presented to customs-approved treatment or use (Chapter 4), temporary storage (Chapter 5) and the provisions applicable to non-community goods which have moved under a transit procedure (Chapter 6);
- the provisions applicable to customs-approved treatment or use which are contained in Title IV and describe the placing of goods under customs procedures, release for free circulation, transit, customs warehousing, inward and outward processing, processing under customs control, temporary admission and export;
- the provisions concerning privileged operations, customs debt and appeals which are contained in Titles VI, VII and VIII respectively.

There were several amendings of the EU Customs Code 1993. In particular in 1997 the adopted amendments simplified the Code in order to optimize its implementation in the member-states. They preclude the legal regulation of the customs debt and control of free zones, and the simplification of formalities surrounding the customs declaration.

The amendments adopted in 1999 chiefly concern customs transit in particular they clarify and improve the rules on discharging the transit procedure and the responsibilities of those authorized to use such procedure. They also cover

financial guarantees and procedures for recovering debts arising from Community transit operations.

In 2000 the complex amending act of the EU Customs Code was adopted and precluded measures aimed at:

- introducing procedures for preventing fraud;
- simplifying and rationalizing customs rules and procedures;
- facilitating the use of electronically submitted declarations;
- facilitating the use of the procedures for inward processing, processing under customs control, temporary admission and free zones;
- defining a new concept of protecting "good faith" for those importing goods under preferential conditions.

In accordance with the 2005 amendments economic operators are required to provide the customs authorities with detailed information of goods before they are imported into the EU or exported from it. This new concept broadly known as the concept of approved economic operator (AEO) simplifies trade procedure. The EU member-states may grant AEO status to any economic operator meeting common criteria which concern control systems, financial solvency and the operator's track record in complying with the rules.

The EU member-states are required to use risk-analysis methods. Uniform Community criteria have been introduced for identifying risks for control purposes. The machinery is based on electronic systems.

However the abovementioned amendings were incapable to solve the modern challenges of the XXI century. Due to this reason and in accordance with the legal unifying and optimizing policy which is known as the Lisbon Strategy in November 2005 the EU Commission adopted a proposal aimed at modernising the Community Customs Code. In particular the main its function was the simplifying of the legislation and administrative procedures governing imports and exports. Facilitating customs operations in this way reduces costs. In addition, the EU Commission proposes:

- streamlining structures and making terminology more consistent;

- streamlining the system of customs guarantees;
- extending the use of single authorisations (whereby an authorisation issued by one EU member-state on completion of a procedure would be valid throughout the EU Community).

The modern CCT is based on the EC Combined nomenclature which was adopted in accordance with the Council Regulation (EEC) № 2658/87 of 23 July 1987 and devoted to customs and statistics purposes on the common basis of the Harmonized Commodity Description and Coding System (HS) which represents itself as an internationally standardized system of names and numbers for classifying traded products developed and maintained by the World Customs Organization (the WCO).

In particular two additional digital code characters were appended to six HS digital code characters. That allows taking into consideration the EEC trade interests by the application of the CCT.

Thus the CCT consists of 21 chapters, 99 groups, over 1300 customs positions and more than 5000 sub-positions, which in their turn subdivided into several sub-positions.

In 2006 the CCT included in common 9843 tariff lines which are considered as the product code used at the national level, beyond the 6 digits of the Harmonized System [50]. That means the high level of specification in customs declaration. It allows the EEC to run down or to enhance customs duties in case of necessity such as, for example, when there are discriminating actions of the other WTO member-states and under the WTO authorization.

From 2001 the CCT was formed on four-column base. The first column contains the commodity code under the EC Combined nomenclature; the second one includes commodity description; the third column contains the information in regard to conventional customs rates, which were agreed during the Uruguay Round; the fourth one includes measurements units.

[50] "External trade regulation of the EurAsEC Customs Union" by S.Glasiev, T.Mansurov, Publish. "Prospekt", Moscow, 2011, p. 120.

It should be stated that in the customs practice several types of customs duties[51] are applied: *ad valorem* customs duties, percental in accordance with an import commodity price (these are considered to be the most widespread – over 90 %); specific which are fixed in Euro for a unit; mixed which represent the combination of *ad valorem* customs duties and specific ones; alternative and changing such as seasonal.

The customs duties rates in relation to all tariff lines lay in close connection with the obligations undertaken by the EEC within the WTO and the EEC is not entitled to alter them by its own in accordance with the provisions of article XXIV of GATT.

The provisions of the Treaty of Rome do not preclude detailed regulation on common trade policy. However in the Program on actions in the sphere of common trade[52] adopted by the EC Council on the proposal of the EC Commission in September 1962 it is stipulated that bilateral trade agreements between the EEC member-states and third states should be replaced by agreements concluded by the EC Commission on behalf of the EEC.

As the first step it was precluded that a reservation clause on the EEC would be included into the texts of further agreements with third states. That would allow reviewing the provisions of these agreements in accordance with the EEC common economic policy. The duration of several agreements with third states could not exceed more than transition period and, in case of the absence of a reservation clause on the EEC, it could not exceed one year.

In accordance with the provisions of the Treaty of Rome the EC Council's decisions on common economic policy should be adopted unanimously during the first and the second stages of transition period. And on the third stage these decision could be adopted by supermajority.

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[51] "Business guide to the World Trading System", International Trade Center UNCTAD/WTO and Commonwealth Secretariat, Geneva, 1999, pp. 65 – 66.

[52] "The Economics of Europe: From Common Market to European Union" by Prof. Dennis Swann, Penguin Books Ltd; 9th edition (16 Oct 2000), p. 232.

Thus the European Commission is entitled to hold negotiations on trade and tariff matters under the directives of the European Council and *via* the consultations with a special committee appointed by the European Council from the member-states' representatives. In case of positive results of negotiations a new trade agreement will be signed by the European Council on behalf of the EEC.

It should be stated that during the existence of the EEC the international treaty framework with third states sufficiently increased. Moreover the unification of the EEC customs legislation was provided mainly through the adoption of over 75 regulations and directives by the European Council and Commission in period from 1968 to 1992. The application of these documents was complicated due to sufficient number.

In 1992 the provisions of the abovementioned documents were codified through the creation of the EU Customs Code which can be considered as the main common document in the EU customs legislation[53].

In order to promote harmonisation of the national customs legislation the EEC Commission adopted the Commission regulation № 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) № 2913/92 establishing the Community Customs Code. This document includes the provisions on interpretation of the Community Customs Code norms and rules and in its annexes the forms of customs documents are presented. This Regulation was legally binding to the all EEC member-states.

However after the transformation of the European Economic Community into the European Union the provisions of the Community Customs Code were to be modernized. Thus the European Parliament and the European Council adopted the Regulation (EC) of 23 April 2008 laying down the Community Customs Code 2008 (the Modernized Customs Code) which in accordance with article 1 (1) lays "down the general rules and procedures applicable to goods brought into or out of the customs territory of the Community".

[53] "External trade regulation of the EurAsEC Customs Union" by S.Glasiev, T.Mansurov, Publish. "Prospekt", Moscow, 2011, p. 122.

In accordance with article 2 of the Modernized Customs Code "customs authorities shall put in place measures aimed, in particular, at the following:

(a) protecting the financial interests of the Community and its Member States;

(b) protecting the Community from unfair and illegal trade while supporting legitimate business activity;

(c) ensuring the security and safety of the Community and its residents, and the protection of the environment, where appropriate in close cooperation with other authorities;

(d) maintaining a proper balance between customs controls and facilitation of legitimate trade."

In accordance with article 2 and 3 of the EEC Treaty and in compliance with the provisions of the Community Customs Code national legislations of the EU member-states can be applied only in institutional matters, in particular in creation and functioning of national customs authorities, in personal liability for customs legal violations which lay in close connection with national administrative and criminal law.

However the main aspects of the EU Modernized Customs Code include the orientation of its provisions on the balance between customs authorities' requirements, the unified application of customs legislation and the interests of private entrepreneurs, the protection of their economic rights and freedoms.

In particular such balance is preserved by the right of appeal to national and supranational court authorities. This rights is precluded by the preamble of the Regulation (EC) of 23 April 2008 which states that "in accordance with the Charter of Fundamental Rights of the European Union, it is necessary, in addition to the right of appeal against any decision taken by the customs authorities, to provide for the right of every person to be heard before any decision is taken which would adversely affect him".

As it is stated in article 23 (2) of the Regulation (EC) of 23 April 2008 "the right of appeal may be exercised in at least two steps:

(a) initially, before the customs authorities or a judicial authority or other body designated for that purpose by the Member States;

(b) subsequently, before a higher independent body, which may be a judicial authority or an equivalent specialized body, according to the provisions in force in the Member States".

Consequently an appeal can be transferred to a judicial body only after the review of customs authority.

Moreover the abovementioned procedures lay in close connection with the principle the transparency of the European customs legislation and its appliance. In particular corresponding legislative instruments are published in the Official Journal of the EC and the provisions of the EU Modernized Customs Code precludes the requirement to national customs authorities to provide individual entrepreneurs with the information in regard of customs rules which are in force within national borders under personal responsibility for adequacy of such information[54].

However the main legal methods of customs regional integration are mutual recognition, harmonization and unification. These methods are based on provisions of the EU Modernized Customs Code and expressed in EU judicial practice.

The classic example is the decision in the case "Cassis de Dijon" 1979 which related to the principle of rules of origin. In particular an French importer was prohibited by the German authorities from importing a French liqueur "Cassis de Dijon" into Germany on the grounds that national legislation prevented the sale of any drink with an alcohol content between 15% and 25% (the alcohol content of "Cassis de Dijon" is lower). The importer argued that the German legal measure was in contravention of Article 28 of the EC Treaty, being a measure equivalent to a quantitative restriction on importation. The German customs authorities argued that this measure was not concerned with country of origin at all, and would have applied to domestic as well as to imported products.

[54] "External trade regulation of the EurAsEC Customs Union" by S.Glasiev, T.Mansurov, Publish. "Prospekt", Moscow, 2011, p. 124.

Finally the European Court of Justice held that the measure was equivalent to a quota, because it would have the practical effect of restricting imports, even though it did not directly target imported goods.[55]

The common supervision is delegated to EU Customs Code Committee which consist of the representatives of the EU member-states. The main functions of this supranational body are legal analysis of the regulation drafts designed by the EU Commission and the supervision over national customs authorities.

The latest harmonization and codification of the EU legislation resulted in the creation of the Treaty of Lisbon 2007 which is considered as an amendment to the EEC Treaty. However its provisions bear the fundamental and crucial importance to the whole European Union. Entered into force on 1 December 2009 it amended by the provisions in articles 1 and 1 the Treaty on European Union and the Treaty on the Functioning of the European Union (the EEC Treaty). In particular the Treaty of Lisbon abolishes the former EU architecture and makes a new allocation of competencies between the EU and the Member States. The way in which the European institutions function and the decision-making process are also subject to modifications. The aim is to improve the way in which decisions are made in an enlarged Union of 27 Member States. The Treaty of Lisbon reforms several of the EU's internal and external policies. In particular, it enables the institutions to legislate and take measures in new policy areas. The Treaty of Lisbon contains two important institutional innovations with a significant impact on the Union's external action: the "permanent" President of the European Council appointed for a renewable term of two and a half years, and the new High Representative for Foreign Affairs and Security Policy and Vice-President of the Commission, who shall ensure the consistency of the Union's external action.[56]

[55] http://lawiki.org/lawwiki/Cassis_de_Dijon_case_%281979%29, 13.02.12.
[56] http://europa.eu/lisbon_treaty/glance/external_relations/index_en.htm, 13.02.12.

Part II

The historical aspects of the Eurasian Economic Community legislation formation

Chapter 1

The first stage in the development of the international treaty framework of the EurAsEC Customs Union.

The first attempts of customs union creation were taken after the fall of the Soviet Union when the former soviet republics concluded several treaties such as the Treaty on the Customs Union of 6 January 1995, the Agreement on the Customs Union of 20 January 1995 and the Treaty on the Customs Union and the Common Economic Area of 26 February 1999. However the abovementioned examples have declarative character and their provisions were not binding on states-participants. On the other hand these international treaties determined aims, principles and mechanisms of the integration model formation[57].

The direct formation and development of the international legal basis commenced in the network of the Eurasian Economic Community (EurAsEC) from 2007 when the functions of a supreme regulation body was delegated to the EurAsEC Interstate Council composed by the representatives of three states, in particular of the Republic Belarus, the Republic Kazakhstan and the Russian Federation. Moreover the permanent executive body, the Customs Union Commission, was created in order to provide the functioning and development of the integration model.

The abovementioned institutional bodies proved their efficiency in practice. Thus, during the work of the EurAsEC Interstate Council in 2007 three fundamental treaties were adopted, in particular the Treaty on the Customs Union Commission, the Treaty on the creation of the common customs territory and establishment of the customs union, the Protocol on the procedure of entry into force of international treaties aimed at establishing the contractual and legal

[57] "Law and interstate associations" edited by doctor of law, Prof. V.Vishnijakov, Yuridichesky Center Press, Saint Petersburg, 2003, pp. 75 - 82.

framework of the customs union, accession to them and withdrawal from them. Moreover by its resolution the Interstate Council adopted the Action plan for establishing the customs union within the Eurasian Economic Community. Clause 1 of this document precluded the list of international treaties which are considered as the international treaty framework for the Customs Union:

- Agreement on the unified system of customs and tariff regulation;
- Agreement on the export duties with regard to third countries;
- Agreement on common rules for determining the country of origin of goods;
- Agreement on common measures for non-tariff regulation with regard to third countries;
- Agreement on the coordinated policy with regard to technical standards, sanitary and phytosanitary measures;
- Agreement on application of special safeguard, anti-dumping and countervailing measures to third countries;
- Agreement on customs valuation of goods transferred through the customs border of the customs union;
- Agreement on keeping the customs statistics of foreign and mutual trade of goods of the customs union;
- Agreement on the principles of indirect taxation at export and/or import of goods, performing work and rendering services in the customs union.

Besides the abovementioned list of the international treaties the action plan included also the time frames for their conclusion. On January 25, 2008, the treaties were adopted by the Interstate Council represented by the heads of governments. In accordance with their provisions the main principles and legal terms of common customs policy, tariff and non-tariff regulation, rules of origin were set in the official form of international treaty.

On December 12, 2008, the further sufficient step in the creation of the institutional basis for the Customs Union was wade, in particular the agreement of the on the Secretariat of the Customs Union Commission was concluded by the

Interstate Council at the level of the heads of governments. This executive body was invested with authorities to execute functions necessary for the procedural and institutional support.

In period from 2009 to 2010 within the frame of the Customs Union were concluded the Agreement on the introduction and appliance of the measures referring external trade within the Customs territory in regard to third states and the Agreement on the licensure in the sphere of external trade.

Moreover in accordance with the Annex I to the Treaty on the creation of the common customs territory and establishment of the customs union three transition periods were precluded: the preliminary period lasted to January 1, 2010, the first period lasted from January 1, 2010, to July 1, 2010, and the second period lasted from July 1, 2010, to July 1, 2011. Thereat the particular date of the Customs Union establishment was set at the end of the first transition period.

Within the preliminary transition period two main objectives were solved, in particular the creation of the international treaty framework for the Customs Union and the stagewise removal of the harmonised governmental control to the eternal borders of the common customs territory.

The milestone in the Customs Union development is the conclusion of the Treaty on the Customs code of the Customs Union. The letter represents the complex codification of the customs legislation within the integration model.

In order to establish legal regulation on tariff and non-tariff policy the Interstate Council adopted the Resolutions on the unified Nomenclature of goods for the Customs Union external trade and the Common customs tariff of the Customs Union.

During the preliminary transition period and in order to harmonise the national legislations several agreements such as the Agreement on the coordinated policy with regard to technical standards, sanitary and phytosanitary measures of 25 January 2008 were adopted.

Moreover for the purposes of strict supranational control the detailed legal basis was established for statistics. In particular, the Interstate Council adopted the

Resolution of 9 June 2009 № 13 on entry into force of the Agreement on keeping the customs statistics of foreign and mutual trade of goods of the Customs Union and the Customs Union Commission through its Resolution of 26 November 2009 adopted the Unified methodology of the customs statistics of foreign and mutual trade of goods of the Customs Union state-members. Moreover the heads of the governments adopted the Protocol on transmission customs statistics information of foreign and mutual trade of goods of the Customs Union state-members of 11 December 2009.

The supranational legislation regulates also the aspects of indirect taxation within the Customs Union. In particular the Interstate Council at the level of the heads of the governments adopted the Agreement on the principles of indirect tax collection at export and import of goods, performing work and rendering services in the Customs Union of 25 January 2008. This document includes 10 articles and recognizes two main principles of indirect tax collection in the Customs union, in particular the principle of indirect taxation on the export of goods presented in article 2 of the document, precluding that "at the export of goods the zero VAT rate and (or) an exemption from (refund of) excise-duty is applied, on condition that there is documentary evidence of export" and the principle of indirect taxation on the import of goods presented in article 3 of the document, precluding that "on the import of goods to the territory of one member state from the territory of another member state of the Customs Union, excise duties are collected by tax authorities of the importing state, except for goods imported to the territory of one member state from the territory of another member state of the Customs Union for the purpose of processing and subsequent export of the resulting product from the territory of the latter member state, transited goods and goods not subject to taxation at import, in accordance with the legislation of the Customs Union's member states". Moreover the provisions of article 3 of the Agreement stipulates that "the specific features of indirect taxation at import to special (free trade) economic zones shall be stipulated in a separate protocol signed by the parties" to the Agreement.

In order to promote the abovementioned provisions the Protocol on indirect tax collection at export and import of goods in the Customs Union and the Protocol on indirect tax collection performing work and rendering services in the Customs Union performing work and rendering services in the Customs Union at performing work and rendering services in the Customs Union of 11 December 2009. Moreover the interdepartmental Protocol on information electronic exchange among the tax authorities of the Customs Union state-members in relation to indirect tax paid with the stated blank on importation of goods and indirect tax payment.

In accordance with the aims of the first transitional stage the Customs Union Commission developed several treaties on tariff and non-tariff regulation. These treaties were adopted, signed by the representatives of the EurAsEC member-states and entered into force on January 1, 2010:

- the Agreement on common customs tariff regulation of 25 January 2008;
- the Agreement on the conditions and mechanisms of tariff preferences appliance of 12 December 2008;
- the Protocol on the conditions and order of the extraordinary appliance of the import customs duty rates different from the Common Customs Tariff rates of 12 December 2008;
- the Protocol on tariff preferences of 12 December 2008;
- the Protocol on the common system of tariff preferences of 12 December 2008;
- the Agreement on common measures for non-tariff regulation with regard to the third countries of 25 January 2008;
- the Agreement on measures with regard to external trade within the common customs territory in relation to third states of 9 June 2009;
- the Agreement on licensing in external trade of 9 June 2009.

The bright examples of the supranational execution of powers by the EurAsEC bodies are two lists which were adopted by the Customs Union

Commission. These documents are the List of the goods in relation to which quotas and tariff preferences scopes were stated of 18 November 2010[58] and the List of the goods which are sufficient for the internal market of the Customs Union and in relation to which can be applied temporary export limitations and prohibitions in extraordinary cases of 27 January 2010[59].

Meanwhile the Customs Union Commission provided the policy of trade regimes unification. First of all it related to third states. Due to these objectives the abovementioned supranational body analyzed the existing trade treaties of the Customs Union member-states with respect to the principles of most favoured nation treatment and free trade in relation to third states. Consequently the Customs Union Commission adopted the Concept of the trade regimes unification.

At the end of the first stage the Customs Union international treaty framework was sufficiently increased due to the adoption of more than 50 international treaties by the Customs Union member-states. These treaties lay in close connection with the Customs Union Customs Code as its several norms are referenced. For example, in order to regulate the collection of customs duties the Customs Union member-states concluded the Agreement on the enlistment and distribution of import customs duties (the other customs duties, taxes and duties of the same meaning)[60]. The provisions of this document prescribed the unified mechanism for the collection of customs duties in relation to the provisions of the Customs Union Customs Code.

In furtherance of the international treaties provisions the Customs Union Commission adopted several important regulatory legal acts in the different spheres of customs practice, in particular:

1. in the sphere of customs regulation – forms for customs reports, common registers of trade operations participants and instructions for these documents;

[58] http://www.garant.ru/products/ipo/prime/doc/12081115/#12081115, 15.02.2012;
[59] http://www.customsunion.ru/info/3281.html, 15.02.2012;
[60] http://www.tsouz.ru/MGS/mgs21-05-10/Pages/Sogl_o_mexanizme_zachisl_poshlin.aspx, 15.02.2012;

2. in the sphere of customs tariff regulation – the Regulation on the technical support of the common Nomenclature of goods in the Customs Union external trade[61] and the Regulation on the adoption of resolutions and clarifications on selective number of commodities by the Customs Union Commission[62];

3. in the sphere of sanitary measures – the List of goods which are subject to sanitary and epidemiological supervision (control) on the borders of the Customs Union, the Unified sanitary and epidemiological requirements to the goods which are subject to sanitary and epidemiological supervision (control);

4. in the sphere of veterinary control – the Unified list of the goods which are subject to veterinary control, the Regulation on common veterinary control on the borders of the Customs Union and within the customs territory.

5. in the sphere of the technical regulation – the Regulation on the import of the goods (commodities) which are subject to binding conformity assessment.[63]

Chapter 2

The second stage in the development of the international treaty framework of the EurAsEC Customs Union.

The second stage of the Customs Union formation was conditioned upon the entry into force of the Agreement on the Customs Union Customs Code which entered into force on July 1, 2010. In accordance with article 4 (1) of the Agreement on the distribution of the goods which are subject to conformity assessment (control) within the Customs Union of 11 December 2009[64] and article 3 of the Agreement on mutual recognition of certificate (conformity assessment (control)) bodies and testing laboratories (centres) fulfilling conformity assessment (control) of 11 December 2009[65] the functions in the formation and promotion of the Unified list of the goods which are subject to conformity assessment (control)

[61] http://www.tsouz.ru/KTS/KTS17/Pages/P1_295.aspx, 15.02.12;
[62] http://www.tsouz.ru/KTS/KTS17/Pages/P_296.aspx, 15.02.12.
[63] "External trade regulation of the EurAsEC Customs Union" by S.Glasiev, T.Mansurov, Publish. "Prospekt", Moscow, 2011, p. 161-162.
[64] http://tsouz.ru/MGS/mgs-11-12-09/Pages/mgs25-27-pril1.aspx, 16.02.12.
[65] http://www.sovac.ru/node/233, 16.02.12.

were delegated to the Customs Union Commission. In relation to that the functions of the certificates issuance, formation and promotion of the Unified register of certificate (conformity assessment (control)) bodies of the Customs Union were also delegated to the Customs Union Commission.

In the context of the information cooperation two fundamental agreements were adopted, in particular the Agreement on the creation, functioning and development of the Integrated information system on external and internal trade of the Customs Union of 21 September 2010[66] and the Agreement on information technologies appliance by electronic documentation exchange in external and mutual trade within the Customs Union of 21 September 2010[67]. The abovementioned documents lay in close connection with the Concept on the creation of the Integrated information system of external and mutual trade of the Customs Union which was adopted by the EurAsEC Interstate Council on November 27, 2010[68].

Moreover in view of the entry into force of the Customs Union Agreement on sanitary measures[69], the Customs Union Agreement on veterinary and sanitary measures[70] and the Customs Union Agreement on plant quarantine[71] of 11 December 2009 the functions in the sphere of sanitary control ware delegated to the Customs Union Commission.

In order to promote interstate cooperation in the sphere of criminal and administrative law the Interstate Council at the level of the heads of governments adopted the Treaty on the aspects of the criminal and administrative responsibility for violation of the Customs Union legislation and the member-states legislations[72] and the Agreement on legal aid and cooperation between the customs authorities of the Customs Union member-states in the sphere of criminal and administrative

[66] http://www.tsouz.ru/DOCS/INTAGRMNTS/Pages/IISVVT.aspx, 16.02.12.
[67] http://www.tsouz.ru/DOCS/INTAGRMNTS/Pages/Obmen_eldoc.aspx, 16.02.12.
[68] http://www.tsouz.ru/KTS/meeting10/Documents/kts10_121_pril1.pdf, 16.02.12.
[69] http://www.tsouz.ru/MGS/mgs-11-12-09/Pages/mgs25-28-pril1.aspx, 16.0212.
[70] http://www.tsouz.ru/MGS/mgs-11-12-09/Pages/mgs25-29-pril1.aspx, 16.02.12.
[71] http://www.customsunion.by/info/3348.html, 16.02.12.
[72] http://www.tsouz.ru/MGS/MGS11/Pages/P1_50.aspx, 16.02.12.

law[73] of 5 July 2010. In accordance with article 2 (1) of the Treaty on the aspects of the criminal and administrative responsibility for violation of the Customs Union legislation and the member-states legislations, the provisions of the abovementioned documents regulates the aspects of criminal and administrative responsibilities for violation against national and supranational customs legislation.

Thus it may be concluded that by 2011 the sufficient results in the Customs Union international treaty framework formation were achieved. In particular more than 60 treaties of international character were signed. In accordance with provisions of these documents several functions in various spheres of control were delegated to the Customs Union Commission. These processes correspond to the requirements stated in the Stages and terms of the EurAsEC Customs Union unified customs territory formation[74] of 9 June 2009, the Action plan for establishing the customs union within the Eurasian Economic Community of 6 October 2007[75] and the Action plan for establishing the Common economic area of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation in 2010-2011 of 19 December 2009[76].

Chapter 3

The creation of the Common economic area within the Eurasian Economic Community

The latter document correlates to the fundamental aim of the EurAsEC member-states' efforts – the creation of the Common economic area (the CEA) within which economic relationships are regulated by the harmonized and unified norms based on the common market principles.

The Action plan for establishing the Common economic area of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation in

[73] http://tsouz.ru/MGS/MGS11/Pages/P2_50.aspx, 16.02.12.
[74] http://www.tsouz.ru/MGS/MGS_23/Pages/reshenie_9_prilozenie.aspx, 16.02.12.
[75] http://www.evrazes.com/docs/view/166, 16.02.12.
[76] http://www.tsouz.ru/MGS/MGS_Extra/Pages/reshenie_extra_plan.aspx, 16.02.12.

2010-2011 of 19 December 2009[77] prescribes the formulation of two sets of documents devoted to the regulation in four fundamental fields, in particular:

- macroeconomic policy;
- currency policy;
- energy, transport, communication policy;
- working labour;
- technical development.

In accordance with the abovementioned document the legal regulation in these fields was embodied in 17 agreements which entered into force on January 1, 2012, and represent the CEA legislation.

One of the most important spheres within the CEA is the common macroeconomic policy which represents an example of supranational regulation. The crucial importance in this field belongs to the provisions of the Agreement on coordinated macroeconomic policy of 9 December 2010[78].

In accordance with article 2 (2) of the agreement two main principles of coordinated macroeconomic policy are determined:

- the ensuring of stable growth;
- the adherence of balanced national measures.

Thereat these national measures includes in accordance with article 5 (2, 4) of the agreement:

- annual central government budget deficit not more than 3 % of gross domestic product (GDP);
- government debt not more than 50 % of GDP;
- inflation rate (mid-annual consumer price index) should not exceed in 5 percentage points the inflation rate of the CEA member-sate with the minimum price advance

It should be mentioned that these measures enter into force since January 1, 2013.

[77] Ibid.
[78] http://www.fas.gov.ru/international-partnership/common-economic-space/documents/documents_30698.html, 17.02.12.

In conclusion it can be stated that at the present time the EurAsEC member-states entered into the third stage in the integration process related to the creation of the common economic area. However the extremely broad legal regulation may complicate the abovementioned process notwithstanding that the fields and priorities of such regulation are definitely determined. Consequently the use of comparative legal method in research of fundamental documents of the European Union and the Eurasian Economic Community may provide means for solution of the existing legal problems in the EurAsEC legislation.

Part III

The comparison of the European Union and the Eurasian Economic Community fundamental legal frameworks

Chapter 1

The comparison of the objectives stated in the fundamental documents

Comparing the European Union legislation and the Eurasian Economic community legal regulation it should be mentioned that both systems have several common fundamental aspects.

These aspects are reflected in the fundamental documents of the integration models.

In particular, the objectives in the integration processes of two supranational organizations are the same. It can be illustrated by the provisions of the Treaty establishing the European Economic Community 1957 (the EEC Treaty) and the Treaty on the establishment of the Eurasian Economic Community 2000 (the EurAsEC Treaty).

It should be admitted that although the present European integration model developed to an economic union and regulated also by the Treaty on the European Union 1992 (the TEU), the principles and fundamental norms in the economic integration of the EU member-states were laid down in the provisions of the EEC Treaty.

Thus in accordance with article 2 of the EEC Treaty which prescribes that "it shall be the aim of the Community, by establishing a Common Market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increased stability, an accelerated raising of the standard of living and closer relations between its Member States".[79]

The similar aims are strived by the EurAsEC member-states in accordance with article 2 of the EurAsEC Treaty which stipulates that the "EurAsEC is established in order to effectively advance the process of the formation by the Contracting Parties of a customs union and a single economic space, and to achieve the other objectives and purposes laid down in the Agreements referred to above, concerning the customs union, the Treaty on increased integration in the economic and humanitarian fields and the Treaty on a customs union and a single economic space, in accordance with the phases outlined in those instruments."[80]

As it may be seen from the above mentioned provisions, the main objectives of the supranational integration processes are economic advantages from common economic policy in the form of single economic space.

The common economic policy has the supranational charter and can be enforced through the system of supranational regulation which is equal in both integration models. In particular the contracting parties to the EEC Treaty proclaimed the creation of the European Economic Community in article 1 and in accordance with article 5 of the treaty assumed the commitment to take all general or particular measures which are appropriate for ensuring the carrying out of the obligations arising out of the treaty or resulting from the acts of the institutions of the European Economic Community. Moreover they should facilitate the achievement of the Community's aims and abstain from any measures likely to jeopardise the attainment of the objectives of the treaty.

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[79] http://en.wikisource.org/wiki/Treaty_establishing_the_European_Economic_Community, 18.02.12.

[80] http://evrazes.com/docs/view/95, 18.02.12.

The similar general rule on supranational status of regulation within the Eurasian Economic Community is entrenched in articles 1 which precludes that the contracting parties establish an international organization, the Eurasian Economic Community which has the powers voluntarily conferred on it by the contracting parties under the treaty. However in comparison with the above mentioned provisions of the EEC Treaty article 11 of the EurAsEC Treaty the limits of the EurAsEC legal capacity are determined. In particular, the EurAsEC shall, in the territory of each contracting party, have the necessary legal capacity to achieve its objectives and purposes and may enter into relations with states and international organizations, and conclude treaties with them.

Moreover the EurAsEC shall have the rights of a legal person for the achievement of its objectives and purposes, and inter alia has the right to:

- conclude treaties;
- acquire and dispose of property;
- take part in court proceedings;
- open accounts and perform transactions with monetary funds.

Chapter 2

The comparison of the institutional aspects

As it may be seen from the above mentioned provisions, the achievement of the stated in the treaties objectives are reached through supranational regulation and coordination embodied in legal capacities and common economic policies of the integration models. Thereat these policies are executed by the supranational regulative systems precluded by the provisions of the concerned treaties.

In particular, article 4 (1) of the EEC Treaty precludes the existence of EEC Assembly, Council, Commission and Court of Justice. The functions of these bodies are described in part five (Institutions of Community), articles 137 – 188 of the EEC Treaty.

Thus in accordance with article 137 of the treaty the EEC Assembly exercises the powers of deliberation and of control which are conferred upon it by

the treaty. For this purpose and according to article 138 (1) of the EEC Treaty this body is composed of delegates whom the Parliaments shall be called upon to appoint from among their members in accordance with the procedure laid down by each EEC member-state.

With a view to ensuring the achievement of the objectives laid down in the treaty, and under the conditions provided for therein, article 145 of the EEC Treaty precludes the functions of the EEC Council which are:

- ensuring the co-ordination of the general economic policies of the member-states; and
- disposing of a power of decision.

Thereat in accordance with article 146 this body is composed of representatives of the member-states, and each national government shall delegate to it one of its members.

More functions in integration policy are delegated to the EEC Commission which according to article 155 of the EEC Treaty shall:

- ensure the application of the provisions of the treaty and of the provisions enacted by the institutions of the Community in pursuance thereof;
- formulate recommendations or opinions in matters which are the subject of the treaty, where the latter expressly so provides or where the Commission considers it necessary;
- under the conditions laid down in the treaty dispose of a power of decision of its own and participate in the preparation of acts of the Council and of the Assembly; and
- exercise the competence conferred on it by the Council for the implementation of the rules laid down by the latter.

The important function of the legal control is delegated to the Court of Justice which in accordance with article 164 of the EEC Treaty shall ensure observance of law and justice in the interpretation and application of this document.

Comparing the functions of the EurAsEC bodies with the responsibilities of the EEC institutions it should be mentioned that the former are similar to the latter. In particular article 3 of the EurAsEC treaty prescribes the existence of the EurAsEC Interstate Council, Integration Committee, Interparliamentary Assembly and Community Court.

The functions and institutional importance of these bodies are determined in articles 5 – 8 of the EurAsEC Treaty. Thus, according to article 5 of the treaty the Interstate Council is the supreme organ of the EurAsEC and considers questions of principle in the Community relating to the common interests of the member states, decides on the strategy, means and prospects for integration development and shall take decisions for implementing the objectives and purposes of the EurAsEC. It is composed of the Heads of State and the Heads of Government of the Contracting Parties. Concerning its institutional importance it should be admitted that there is no similar norm which precluded the status of supreme organ in the provisions of the EEC Treaty.

The functions in integration policy within the EurAsEC are delegated to the Integration Committee the main tasks of which in accordance with article 6 (1) of the EurAsEc Treaty are:

- ensuring cooperation between the organs of the EurAsEC;
- preparing proposals for the agenda of meetings of the Interstate Council and the level at which they are held, together with draft decisions and documents;
- preparing proposals for drawing up the EurAsEC budget and monitoring its execution;
- monitoring the implementation of decisions taken by the Interstate Council.

Comparing these function with the functions of the EEC Commission it may be concluded that they are similar.

Quiet different situation exist in comparing the functions of the EurAsEC Interparliamentary Assembly and the EEC Assembly. Although these bodies are

composed of the representatives of the national parliaments their functions are different. In particular while the EEC Assembly is a controlling body, the EurAsEC Interparliamentary Assembly shall in accordance with article 7 of the EurAsEC treaty deal with the issues of harmonization (bringing closer together, unification) of the national legislation of the Contracting Parties and the issues of bringing that legislation into conformity with treaties concluded within the framework of the EurAsEC.

Comparing the institutional roles of the EEC Court of Justice and the EurAsEC Community Court it should admitted that the functions of both supranational bodies are similar. In particular as its Europen analogue the Community court shall in accordance with article 8 of the EurAsEC Treaty ensure that its provisions and other treaties in force in the Community framework as well as resolutions adopted by the EurAsEC bodies are applied by the member-states in a uniform manner.

Taking into consideration the abovementioned aspects it may be concluded that in comparison with provisions of the EEC Treaty the rules and norms of the EurAsEC Treaty preclude the hierarchy of the institutional structure with exact description of functions in the integration model.

Chapter 3

The comparison of the fundamental principles

Comparing the principles of integration policy it should be mentioned that while the fundamental principles of such policy within the European Economic Community are prescribed by the single document and single norm, in particular by article 3 of the EEC Treaty, the EurAsEc Treaty has the reference in its preamble to the provisions of the Treaty on a customs union and a single economic space of 26 February 1999 which contains the list of such principles. In accordance with article 4 of the abovementioned document these principles are:

- the principle of non-discrimination;
- the principle of common interest;

- common (universal) principles: mutual assistance, voluntariness, equality, responsibility for adopted decisions, transparency.

Although the meaning of these principles are the same it should be admitted that the list of principles in article 3 of the EEC Treaty is more exact:

- the elimination, as between Member States, of customs duties and of quantitative restrictions in regard to the importation and exportation of goods, as well as of all other measures with equivalent effect;
- the establishment of a common customs tariff and a common commercial policy towards third countries;
- the abolition, as between Member States, of the obstacles to the free movement of persons, services and capital;
- the inauguration of a common agricultural policy;
- the inauguration of a common transport policy;
- the establishment of a system ensuring that competition shall not be distorted in the Common Market;
- the application of procedures which shall make it possible to co-ordinate the economic policies of Member States and to remedy disequilibria in their balances of payments;
- the approximation of their respective municipal law to the extent necessary for the functioning of the Common Market;
- the creation of a European Social Fund in order to improve the possibilities of employment for workers and to contribute to the raising of their standard of living;
- the establishment of a European Investment Bank intended to facilitate the economic expansion of the Community through the creation of new resources; and
- the association of overseas countries and territories with the Community with a view to increasing trade and to pursuing jointly their effort towards economic and social development.

In spite of the similarity of objectives, principles and common institutional structure precluded by the EurAsEC and EEC legislation systems the fundamental difference between these legal regulations is that the legislation of the European Economic Community and European Union is codified into two main documents - the EEC Treaty and the Treaty on the European Union 1992 which prescribe the division of powers between the national authorities and supranational institutions in accordance with article 4, 5 and 6 of the Treaty on the European Union[81] and the fundamental legal regulations in the strategic fields such as the free movements of goods, agriculture, the free movement of persons, services and capital, transport.

Although the strategic spheres in integration policy within the EurAsEc were determined in the provisions of the Treaty on a customs union and a single economic space of 26 February 1999 and developed in provisions the Declaration on Eurasian economic integration of 18 November 2011[82], the Action plan for establishing the Common economic area of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation in 2010-2011 of 19 December 2009 and adopted in compliance with it 17 international treaties, the necessity of EurAsEC legislation codifying is sufficiently high.

Taking into consideration that the process of codification is considerably complex and the necessity of EurAsEc legislation clarification, it may be concluded that there is the essentiality to adopt the amending to the Treaty on the establishment of the Eurasian Economic Community 2000 by implementing into its provisions the article on the principles of economic integration policy within the Community.

This list should be based on the text of article 4 of the Treaty on a customs union and a single economic space of 26 February 1999 and developed in accordance with the provisions of the present EurAsEC legislation.

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[81] http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/ce321/ce32120061229en00010331.pdf, 19.02.12.

[82] http://news.kremlin.ru/ref_notes/1091, 19.02.12.

The conclusion

In the conclusion of the present research the importance of its results should be determined as they enable the understanding of the regional economic integration legal nature. In particular, these results lay in close relation to the main aspects of integration process. These aspects are the following:

- the regional economic integration is directly connected with the process of globalisation due to the high development of technologies and technical abilities and consequently due to dynamical economic communication;
- the process of regional economic integration is divided into four main stages which include free trade area, customs union, common economic area and economic and currency union. Thereat the European Union is considered to reach the latter, while the EurAsEC has just entered the stage of common economic area;
- in accordance with the abovementioned aspect the EU and EurAsEC legislations can be compared in order to determine similarities and differences of these supranational law systems as the objectives, principles and institutional mechanisms of the integration models bear the similar character;
- consequently that enables to determine the *lacunas* in the EurAsEC legal regulation in order to develop possible solution which can make the considered legislation more efficient and meaningful;
- the results of the considered legislations comparison set out that although the fundamental objectives and principles of the EU and EurAsEC legal systems bear the similar character, there is the prospect of promotion for the EurAsEC as its legislation is divided into the sufficient amount of the international treaties, agreements and the documents of the supranational organisation. Consequently it is concluded that the necessity of the EurAsEC legislation codification is essentially high;
- taking into consideration that the process of the supranational legislation codification bear complex and elaborate character it is concluded that the stage in this direction should be related to the clear determination of the fundamental principles list. Thus it proposed to enlarge the list of economic

integration principles vested in the Treaty on a customs union and a single economic space of 26 February 1999 which bears the fundamental character for the EurAsEC legislation;

- it is proposed that the abovementioned enlargement of the principles list should be achieved through the partial implementation of several principles vested in the Treaty establishing the European Economic Community 1957 and on the basis of the Treaty on the establishment of the Eurasian Economic Community 2000.

Considering the proposals in practical point of view it should be stated that the amendments to the EurAsEC fundamental document should appear as an example for the clarification of the supranational legislation through the reduction of its main provisions. Taking into consideration that the integration process affects the rights and interests of most every common market participants the clear understanding of its rules and norms has high importance for the effectiveness of such macroeconomic management. Moreover in view of the sublime level of information technologies development the process of codification shall create the conditions which will be favourable for the promotion of the EurAsEC common economic area functioning.

Thereat the abovementioned codification work requires deep analysis in scientific point of view in order to determine the main particular qualities of the considered field of law. And in this regard it should be stated that the scholar views and approaches are considerable different as while the European scholars have already recognized the scientific importance of the so-called integration law which is known broadly as the law of the European Union, the experience of the EurAsEC member-states' scholar schools in the scientific research of the concerned matter is comparably lower than its European analogue. For this reason the inquiry in integration legislation is devoted to arouse the interest among the scholars and to lead to the crucially and qualitatively new level as the wide scale of its practical influence and importance are objective.

In this point of view it should be stated that there is not only the prospect and suppositions, but also the clear practical necessity of further scientific research in relation to the present provisions of the EurAsEC legislation and to the further norms of the supranational organisation the elaboration of which is based on the adopted action plans.

Taking into consideration the abovementioned aspects of regional economic integration, its legal nature and in view of its increasing practical actuality it is to confirm that the scientific research in this field of law shall provide the international community with the efficient methods of supranational regulation. Consequently these methods will assist to withstand the cycle global crises and to develop national and international economies. That in its turn will create the conditions which will be favourable for the formation of the material base designed to bestead with the solution of particular global problems such as famine, humanitarian disasters and technogenic catastrophes as these events pregnant with dangerous consequences would have their influence not only to the separate states or group of states, but also to the whole international community.

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The Annex

The stages of regional economic integration: