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Trade policy

Торговая политика

HIGHER SCHOOL OF ECONOMICS
NATIONAL RESEARCH UNIVERSITY
Institute of Trade Policy

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Dear readers, we are glad to present the third English edition of our "Trade Policy" journal. It is published by the National Research University Higher School of Economics (HSE). The editorial office operates within the HSE Trade Policy Institute within which a Master's programme "International trade Policy" was launched in 2017. We founded the journal in cooperation with colleagues of International Center for Trade and Sustainable Development (ICTSD), Geneva. We are very thankful to our foreign colleagues for their help and cooperation.

The new issue of the journal is devoted to the most topical issues of the global economy and cover a vast variety of aspects. It includes articles by the National Research University — Higher School of Economics professors, as well as papers of our foreign colleagues from Kazakhstan, Canada and Kyrgyzstan, and Russian experts in the area of international trade policy.

A special feature of the current issue is the publication of a series of articles prepared by the participants of the special session of the WTO Public Forum "Trade 2030" which was organized and held jointly by the HSE and the Center for Trade Policy and Law of the University of Carlton (Canada). The articles continue the discussion at the session on the impact of digital trade on mechanisms of international trade regulation and socio-economic development in the world ("*Multi-level Negotiations on Digital Trade Policy; Influence of Digital Technologies in Trade on Economic Development; Risks and Challenges to Trade Within Digital Economy*").

As usual, the journal and its authors pay great attention to issues related to the development of economic cooperation within the Eurasian Economic Union (EAEU), as well as the economic and foreign economic cooperation of its Member States. The issue presents articles on application of trade policy instruments ("*Application of Non-tariff Measures in the Eurasian Economic Union*") and migration processes in the EAEU ("*The Migration Response to the Economic Factors: Lessons from Kazakhstan*"). Another article presents expert analysis devoted to such an important problem as the development of export potential of the EAEU Member States and discusses theoretical and practical aspects of this issue. It includes the factor of the WTO membership and is based on the data for Kazakhstan ("*Theoretical Aspects of Export Potential, its Essence and Development*"). Readers will also be able to read the comments of experts on the first years of practice of the Eurasian Economic Union on various issues, in particular, the mutual recognition of decisions of customs authorities, the introduction of anti-dumping measures, and procedural issues ("*The Court of the Eurasian Economic Union: Some Initial Jurisprudence*").

The journal continues to publish papers on the current topic of the UK's exit from the EU. Future models of trade policy of this country are analyzed in the article within the economic integration section ("*Prospective Models for Britain's Trade Policy after Withdrawal from the EU*").

We hope that materials published in this issue will be of interest to Russian and foreign readers, resulting in larger audience familiar with the covered matters. We highlight that we are happy to welcome our readers as contributors to the journal development.

We are happy to welcome our readers as contributors to the journal and its further development.

M. Medvedkov

От главного редактора

Настоящий номер — третий англоязычный выпуск журнала «Торговая политика». Журнал публикуется Национальным исследовательским университетом «Высшая школа экономики» (НИУ ВШЭ). Наша редакция работает в Институте торговой политики этого высшего учебного заведения, который с 2017 г. реализует магистерскую программу «Международная торговая политика». Данный журнал основан совместно с Международным центром по торговле и устойчивому развитию (Женева). Мы признательны нашим иностранным коллегам за сотрудничество.

Настоящий номер журнала посвящен наиболее актуальным вопросам современной международной экономики, которые охватывают самые разные аспекты. В нем представлены статьи как преподавателей НИУ ВШЭ и российских экспертов-практиков в области торговой политики, так и зарубежных коллег из Казахстана, Канады и Киргизии.

Особенностью настоящего выпуска является публикация серии статей, подготовленных участниками сессии Общественного форума ВТО 2018 г. «Торговля 2030». Данная сессия была организована и проведена совместно НИУ ВШЭ и Центром торговой политики Карлтонского университета (Канада). Статьи продолжают тему дискуссий на сессии «Влияния цифровой торговли на механизмы международного регулирования торговли и социально-экономическое развитие в мире» (обсуждение цифровой торговой политики на различных уровнях торговых переговоров; влияние цифровых технологий в торговле на экономическое развитие; риски и вызовы для торговли в условиях цифровой экономики).

По традиции журнал и его авторы уделяют большое внимание вопросам, связанным с развитием экономического сотрудничества в рамках Евразийского экономического союза (ЕАЭС), а также экономике и внешнеэкономическому сотрудничеству государств-членов. В номере представлены статьи, посвященные применению инструментов торговой политики («Практика применения нетарифных мер в ЕАЭС») и миграционным процессам в объединении («Ответ миграции на экономические факторы (на примере Казахстана)»). Кроме того, в номере представлена публикация, по такой важной проблеме, как развитие экспортного потенциала государств — членов ЕАЭС: теоретические и прикладные аспекты данной проблемы, включая фактор членства в ВТО, рассмотрены на материале Казахстана («Теоретические аспекты природы и развития экспортного потенциала»). Читатели также смогут ознакомиться с комментариями экспертов в отношении первых лет практики ЕАЭС по различным вопросам, в частности, по таким как взаимное признание решений таможенных органов, введение антидемпинговых мер, процедурные вопросы («Суд Евразийского экономического союза:особенности первых судебных процессов»).

Журнал продолжает публикации на актуальную тему выхода Великобритании из Европейского Союза. Перспективы торгово-политического будущего этой страны анализируются в статье, посвященной экономической интеграции («Возможные варианты торговой политики Великобритании после выхода из Европейского Союза»).

Мы надеемся, что материалы, опубликованные в этом номере, будут представлять интерес для российских и зарубежных читателей, в результате чего более многочисленная аудитория будет знакома с освещенными в выпуске темами. Хотелось бы отметить, что мы рады приветствовать наших читателей и в качестве авторов, которые могут внести весомый вклад в развитие журнала и представленных в нем тем.

М.Ю. Медведков

Nathoo R.[1]

Multi-level Negotiations on Digital Trade Policy[2]

The 2018 session of the WTO Public Forum was organized by the HSE jointly with the University of Carleton (Canada), the Center for the Development of Trade Policy of the Republic of Kazakhstan and experts from Belarus. In particular, the discussion focused on factors that, in the conditions of rapid development of digital technologies, could lead to discrimination related to exchange of information and access to digital infrastructure, which are still beyond the scope of multilateral agreements. This article concludes on the main issues on the digital trade policy and socio-economic development. Discussion of these points at the WTO Public Forum has brought practical understanding of the application of the rules of trade within the digital economy.

Keywords: WTO, trade agreements, inclusivity, digital trade, socio-economic development, Canada, Africa.

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Introduction

The world transformation which is going on with the help of global institutions such as the WTO, which has placed its focus on digital trade within operating with emerging technologies, has become a complex system of economic and trade relationships and negotiations taking place at different levels. The movement of factors of production has progressed to an extent where new factors, such as data and information, are playing a major role. That enables the countries to create an environment in trade relations, where digital platform becomes the main ground for trading. It interacts with other elements of digital transaction chains (Fig. 1).

Digital technologies not only bring a great number of opportunities, but also specific challenges that require the consideration of governments and the international community. That is why the WTO has addressed this issue from the perspective of growing demand on digital trade on goods and services.

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2 The article was submitted in November 2018.

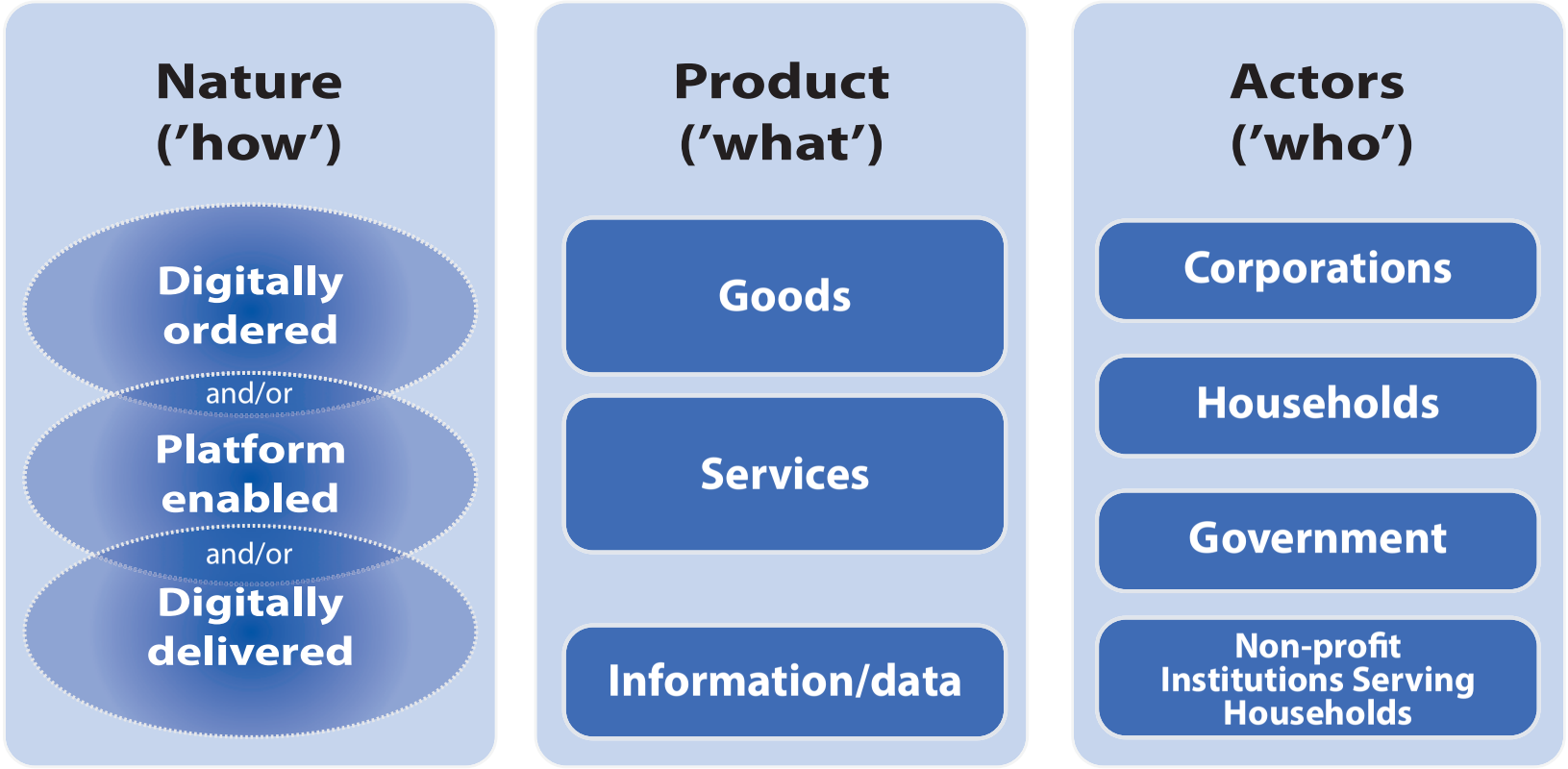

Fig. 1. Dimensions of digital transactions

Sovurce: [1, p.10].

The practical steps which have been mentioned above determine how trade rules as a tool for progress and socio-economic development may work. Those practical steps, which will be discussed later, were shown based on examples of Canada and Africa.

The case of Canada

Canada is a progressive country with a big number of ways to evolve its trade relationships. The current implications for Canada are based on Canada's Progressive Trade Agenda (PTA), which has a direct linkage to the development of digital economy. The well-known problems of incorporating the digital trade into the international trade relations have been overlooked and proposed a practical solution throughout the WTO 2018 Global Forum.

Canada Progressive Trade Agenda has several key indicators which the whole trade system in the country is based on:

- achieving a fairer sharing of the gains from trade, with a particular emphasis on jobs for the middle class [2, p. 23].
- This implies that the country's main aim is to provide as many jobs for the middle-class workers as the system can in order to ensure the high standards of living.
- specific focus on women, indigenous peoples, youth, and small and medium-sized enterprises (SMEs);
- specific reference to labour and the environment;
- safeguarding the government's right to regulate in the public interest;
- procedural reforms to achieve greater transparency and participation of civil society in negotiations; and
- communications to sell the benefits of trade and investment.

On the whole, the country's case provides a clear idea of what the trade agenda of a developed country looks like. These indicators have to be reached at different levels to be successful, so the government seeks to establish them on every part of the trade relation system. The steps have to be taken to deal with the problems of digital trade. The problems, that appear to be solved on the way towards a successful system, include several issues, mentioned on the session of the Global Forum. Those include:

- the easiness of coping products and services has emerged, with the creation of new digital infrastructure
- the new problems with intellectual property
- the dependence of the trade, in order to get access to the market, on the business environment and internal regulations
- the differences between the socio-economic development among the developed and developing countries.

These ideas are challenging, thus the intervention strategies have to be made at the multilateral, plurilateral and as well as domestic levels.

Specifically, on the basis of the purpose of the WTO Global Forum, the linkages and connections between the Canada's agenda and the digital economy have been provided. The key priority that is the most essential for digital economy development is inclusive trade and inclusive growth. Those concepts have been further qualified, reinforced and endorsed at the multilateral level by the WTO, the G20, and the World Economic Forum. However, specifically, the definition that mostly describes the aforementioned technique is as follows: "Inclusive trade and growth is building a system where the benefits are shared more widely by entrepreneurs, MSMEs, women and marginalized groups in all economies."

The progressive trade approach examines the ways to address the barriers posed by the digital movement that limits the opportunities for women, indigenous people, MSMEs, and, on the whole, the international trade. For example, overlooking the case of the small and medium sized businesses, the idea that is pursued by the Canada's Trade Agenda is to improve the policy environment for innovation and promote small micro enterprises growth through innovation, including strengthening digital competitiveness in order to access the opportunities of the Internet and the digital economy.

As mentioned, Canada's inclusive growth is a key socio-economic development priority. Canada is committed to pursuing all of the progressive three principles in its bilateral, multilateral and regional trade negotiations.

Another example can be shown on the basis of NAFTA. Prior to the recent conclusion of the negotiations on NAFTA 2.0 (USMCA) the session came to the agreement that highlighted the necessity to include a digital trade chapter on purpose of the ability of a separate protocol agreement to be able to deal with intellectual property and digital rights management.

In the EU-Canada Comprehensive Economic and Trade Agreement (CETA) there is an article that determines the fact where the potential of e-commerce is seen as a social economic development tool. Furthermore, the agreement sets a pathway for collaboration between Canada and the European Union to approach the challenges and problems that arise in the future with respect to the Internet and digitalization.

Canada's recent attempts that were leaked in to the press were devoted to Canada's most recent draught blueprint to reform the WTO in terms of modernization and enhancement of the WTO rules; the draught includes a section to address the 21st century trade practices, involving digital trade. That brings a potential on what to expect from the implementation of digital trading in the future.

The case of Africa

There are experiments that have been going on to assure that the negotiations for the establishment of trade areas around the world ranging from developed countries to the least developing ones to create a truly worldwide system of trade. As

an example, the current situation in Africa where there are attempts to build a free trade area which have successfully been implemented via an agreement on goods and services trade.

In terms of Africa's transformation industrialization agenda, as it has been mentioned, African continental free trade area was successfully established and signed by its parties in 2018. There will be a phase two for the further liberalization which is supposed to involve negotiations to draught a separate digital commerce protocol.

There are specific reasonings behind that. The main cause of that is that digital trade is rapidly growing in Africa, so there have to be significant changes for the way African countries trade and industrialize, and that puts digital trade in the center of attention. Nevertheless, Africa in this account comes forward to progressive trade and inclusivity and strives to promote human rights by closing the digital divides, promoting more Internet access infrastructure and development through job creation [3, p. 43]. Price indexes should also be take into account (see Fig. 1). However, there are risks and threats based on digital trade and its advancement.

This means that different countries have different capacities to be able to be in a place to take advantage of those benefits. The biggest constraints for Africa are based on poverty and lack of education and skills. Lack of capital in education of people appear a disadvantage in African countries to reach the rewards of e-commerce. In terms of human rights digitalization, it is essentially important to pay attention to ownership and identity as fundamental human rights.

Overlooking at digital trade as a tool for economic development or socio-economic development [4, p. 19]. The objective lies in that the digital economy should be treated as an equalizer that fits utilities bridging the gap between the rural and urban areas to ensure that girls and women equally have access to the international system.

Conclusion

To sum up, e-commerce and digital trade will have a great impact at all levels – domestic, regional and international; this requires complementary strategies at the multilateral, plurilateral and bilateral levels. Canada attempts to advance its progressive trade agenda through active trade negotiations to conclude free trade agreements.

Ultimately, comprehensive consistent and systematic approach at the WTO level as well as the plurilateral and bilateral levels will be needed to handle the speed and intensity with which this digital world is growing, and the challenges that arise. All these should have a positive impact on socio-economic development.

Regions	Domestic e-commerce		Cross-border e-commerce	
	CPI	PPI	CPI	PPI
Africa	1 (16.7)	0 (0.0)	0 (0.0)	0 (0.0)
Asia-Pacific	4 (66.7)	4 (80.0)	2 (33.3)	3 (60.0)
Europe	21 (91.3)	7 (33.3)	8 (34.8)	3 (14.3)
Middle East & Central Asia	1 (50.0)	0 (0.0)	0 (0.0)	0 (0.0)
Western Hemisphere	3 (50.0)	2 (33.3)	2 (33.3)	1 (16.7)
All Regions	30 (69.8)	13 (35.1)	12 (27.9)	7 (18.9)

Fig. 2. Countries including e-commerce in price indexes (based on data for 43 countries, percentages in parenthesis)

Source: [1, p. 23].

References

[1] IMF (2018) Measuring the digital economy. URL: <https://www.imf.org/en/Publications/Policy-Papers/Issues/2018/04/03/022818-measuring-the-digital-economy>.

[2] *Berger T., Frey C.B.* (2016) Digitalisation, deindustrialisation and the future of work. OECD Social, Employment and Migration Working Papers, No. 193. Paris.

[3] *Marien I., Prodnik J. A.* (2014). Digital inclusion and user (dis)empowerment: A critical perspective // The Journal of Policy, Regulation and Strategy for Telecommunications,. No. 16(6). P. 35–47.

[4] *Einav L., Levin J.* (2014). Economics in the Age of Big Data. Science 346 (6210).

Нату Р.[1]

Обсуждение цифровой торговой политики на различных уровнях торговых переговоров[2]

Сессия по тематике данной статьи была организована на Общественном форуме ВТО 2018 г. Высшей школой экономики (РФ) совместно с Карлтонским университетом (Канада), Центром развития торговой политики (Казахстан) и экспертами из Республики Беларусь. Фокусом дискуссии стали факторы, которые в условиях быстрого развития цифровых технологий могут привести к дискриминации в отношении обмена информацией и доступа к цифровой инфраструктуре, но находятся за пределами многостороннего регулирования. В статье делаются выводы об основных проблемах цифровой торговой политики и социально-экономического развития. Обсуждение этих вопросов на Общественном форуме ВТО поспособствовала повышению осведомленности участников по поводу применения правил торговли в условиях цифровой экономики.

Ключевые слова: ВТО, торговые соглашения, цифровая торговля, социально-экономическое развитие, Канада, Африка.

JEL F13

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2 Статья поступила в редакцию в ноябре 2018 г.

Enikeeva Z.[1]

Application of Non-tariff Measures in the Eurasian Economic Union[2]

The paper covers a range of NTMs applied in the EAEU countries. Opportunities and risks in the light of EAEU-Vietnam FTA are analyzed using statistical data and regulations introduced during the last years.

Keywords: EAEU, NTM, TBT, SPS, Vietnam, agricultural products.

JEL: F13

Introduction

On 8 October 2018 the Chief State Veterinary Inspector of the Kyrgyz Republic issued the Decree "On the Implementation of a Temporary Restriction on the Import of Poultry and Poultry Products into the Kyrgyz Republic from Almaty and North Kazakhstan Regions of the Republic of Kazakhstan" (see Picture 1). Due to the suspicion of highly pathogenic avian influenza in the south of the Republic of Kazakhstan, namely in the Almaty region poultry farms (Altyn Kus, Alsad), and the outbreak of Newcastle disease among birds in the Yeletsk, Ayyrtau region of Northern Kazakhstan, and in order to prevent the introduction of the bird flu virus on the territory of the Kyrgyz Republic, in accordance with section 2 "Risk Analysis", subsection 2.1. "Import Risk Analysis" of the Terrestrial Animal Health Code, Law on Veterinary Medicine, paragraph 1, paragraph 2.3. Decree of the Government of the Kyrgyz Republic of 25 April 2006 No. 297 "On measures to protect the territory from the introduction of pathogens of highly pathogenic avian influenza", it was decided to implement a temporary restriction on import of poultry into the Kyrgyz Republic:

- Live poultry, hatching eggs, wild, zoo and circus susceptible animals;
- Poultry meat, egg powder, albumen and other food products processed from hen's eggs;
- Down and feather, hunting trophy;
- Fodder and feed additives from poultry;
- Used equipment for the maintenance and transportation, slaughter and cutting of bird.

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2 The article was submitted in September 2018.

As a counter measure, the Ministry of Agriculture of the Republic of Kazakhstan imposed a temporary ban on the import of meat from Kyrgyzstan, stating that this measure was accepted because of unfavorable situation on particularly dangerous animal diseases in Kyrgyzstan.[1] Five Kyrgyz enterprises eligible for export of meat and meat products under the veterinary control and product supervision to Kazakhstan now were restricted to do it.

In five days after imposing the restriction on the import of poultry and poultry products from Kazakhstan, Kyrgyzstan lifted it based on receiving results of laboratory tests conducted by the Republic State Enterprise by Right of Economic Management "National Veterinary Reference Center" from Kazakhstan on the stabilization of the epizootic situation of highly pathogenic avian influenza in the south of the republic, in poultry farms of Almaty region (Altyn Kus, Alsad), and Newcastle disease among birds in Yelets, Aiyrtau district of the North Kazakhstan region.[2] The same counter measure was done by Kazakhstan and on 19 October 2018 the ban on import of meat and meat products from Kyrgyzstan was lifted too.

These events might be remained with little notice by the rest of the countries, and indeed in the countries themselves, Kyrgyzstan and Kazakhstan, because these bans did not have time to exert any essential influence on trade. However, it is worth recalling that these two states are members of one union, Eurasian Economic Union (EAEU), which also includes Armenia, Belarus and Kazakhstan. And the main purpose of the Union is to provide for free movement of goods, services, capital and labor, pursues coordinated, harmonized and single policy in the sectors determined by the Treaty and international agreements within the Union[3].

In the meanwhile, Russia, who has common borders with the North Kazakhstan, did not impose any ban on import of poultry from Kazakhstan and meat/meat products from Kyrgyzstan during this short period, and it leads to thoughts that the real reasons of bans were others than official.

The more the EAEU gathers pace, the oftener such kind of cases appears. And there is the instrument which might be very helpful in the analysis where viola-

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1 Kudryavtseva T. Response. Kazakhstan imposed a ban on the import of meat from Kyrgyzstan // Information Agency "24.kg". 12.10.2018. URL: https://24.kg/ekonomika/98629_otvetnyie_meryi_kazahstan_vvel_zapret_nanbspvvoz_myasa_iznbspkyirgyizstana/

2 Mokrenko A. Kyrgyzstan lifted restrictions on the import of poultry from Kazakhstan // Information Agency "24.kg". 13.10.2018. URL: https://24.kg/obschestvo/98699_kyirgyizstan_snyal_ogranicheniya_navvoz_ptitsyi_izkazahstana

3 Eurasian Economic Commission, General Information URL: http://www.eaeunion.org/?lang=en#about

tion of legislation is, where domestic industry support is, and where the care of human and animal health is.

EAEU Non-tariff measures: General outline

During the last meeting of vice-primer- ministers of the EAEU country-members in July 2018 discussed about elimination of the following barriers: absence of mutual recognition of electronic digital signatures; ban on the admission of a number of goods produced by their enterprises to the state purchases; appliance by Kyrgyzstan a minimum level of control prices for individual goods imported from the countries of the EAEU; preservation of veterinary control on the Kyrgyz-Kazakh border; and appliance of security deposit in respect of alcohol products imported from the states of the Union.[1]

According to the latest UNCTAD research, tariffs have become less restrictive as a result of tariff liberalization taking place multilaterally, via bilateral and regional trade agreements, or unilaterally. In 2014, between 60 and 70 per cent of agricultural and manufacturing goods in world trade were imported duty-free (UNCTAD, 2016). However, the use of non-tariff measures (NTMs) has a steady growth.

Under non-tariff measures are understood policy measures, other than ordinary customs tariffs, that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both" (UNCTAD, 2010). The main difference between non-tariffs barriers and non-tariff measures is that measures can ***potentially*** have an economic effect, while barriers are put for ***definite*** economic effect (UNCTAD, 2010).

In 2006, UNCTAD established a Group of Eminent Persons and a Multi-Agency Support Team (MAST)[2]. An essential goal was development of an international classification for NTMs with the final objective to increase transparency and understanding about NTMs (UNCTAD, 2014).

The UNCTAD-MAST classification of NTMs has 16 chapters of different measure categories (See Table 1). There are technical measures (chapters A, B and

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1 The removal of the most significant obstacles for the EAEU countries has been launched // Eurasian Economic Commission. 13.07.2018. URL: http://www.eurasiancommission.org/ru/nae/news/Pages/13-07-2018-4.aspx

2 Food and Agriculture Organization of the United Nations, International Monetary Fund, International Trade Centre, Organization for Economic Cooperation and Development, United Nations Conference on Trade and Development, United Nations Industrial Development Organization, World Bank, World Trade Organization.

C), non-technical measure (from chapters D to O) and export-related measure (chapter P).

Table 1
UNCTAD-MAST classification of non-tariff measures

Import-related measures	Technical measures	A	Sanitary and Phytosanitary (SPS) measures
		B	Technical Barriers to Trade (TBT)
		C	Pre-shipment inspections and other formalities
	Non-technical measures	D	Contingent trade-protective measures
		E	Non-automatic licensing, quotas, prohibitions and quantity-control measures
		F	Price-control measures, including additional taxes and charges
		G	Finance measures
		H	Measures affecting competition
		I	Trade-related investment measures
		J	Distribution restrictions
		K	Restrictions on post-sales services
		L	Subsidies (excluding export subsidies)
		M	Government procurement restrictions
		N	Intellectual property
		O	Rules of origin
Export-related measures		P	Export-related measure

Source: International Classification of Non-Tariff Measures. 2012. UNCTAD. URL: https://unctad.org/en/PublicationsLibrary/ditctab20122_en.pdf

Each chapter has sub-chapters with more detailed classification. Table 2 illustrates examples of description of technical barriers to trade sub-chapters.

Table 2
Sub-chapters of technical barriers to trade classification[1]

B1	Prohibitions/restrictions of imports for objectives set out in the TBT agreement	B11 Prohibition for TBT reasons
		B14 Authorization requirement for TBT reasons
		B15 Registration requirement for importers for TBT reasons
B2	Tolerance limits for residues and restricted use of substances	B21 Tolerance limits for residues of or contamination by certain substances
		B22 Restricted use of certain substances

1 *International Classification of Non-Tariff Measures. 2012. UNCTAD. URL: https://unctad.org/en/PublicationsLibrary/ditctab20122_en.pdf*

B3	Labelling, marking and packaging requirements	B31 Labelling requirements
		B32 Marking requirements
		B33 Packaging requirements
B4	Production or post-production requirements	B41 TBT regulations on production processes
		B42 TBT regulations on transport and storage
		B49 Production or post-production requirements, n.e.s.
B6	Product identity requirement	
B7	Product-quality or -performance requirement	
B8	Conformity assessment related to TBT	B81 Product registration requirement
		B82 Testing requirement
		B83 Certification requirement
		B84 Inspection requirement
		B85 Traceability information requirements: B851 Origin of materials and parts B852 Processing history B853 Distribution and location of products after delivery B859 Traceability requirements, n.e.s
		B89 Conformity assessment related to TBT, n.e.s.
B9	TBT measures, n.e.s	

Source: International Classification of Non-Tariff Measures. 2012. UNCTAD. URL: https://unctad.org/en/PublicationsLibrary/ditctab20122_en.pdf

The most frequently observed are measures related to technical measures: sanitary and phytosanitary measures (SPS), technical barriers to trade (TBT) and pre-shipment inspections and other formalities. According to the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures, SPS measures are those that are applied, among others, to protect human, animal or plant life or health from pests or diseases within the territory of a country (i.e. a WTO member State) or protect human or animal life or health from harmful substances in food or drink. By nature, SPS measures are applicable largely to agrifood products. TBT measures are standards or mandatory requirements on product characteristics or their related processes or production methods, including technical regulations, testing and certification procedures.[1]

1 *Non-Tariff Measures: Economic Assessment and Policy Options for Development. 2018. UNCTAD URL: https://unctad.org/en/PublicationsLibrary/ditctab2018d3_en.pdf*

It should be noted that SPS or TBT measures applied by an importing country do not always result in trade reduction. An SPS or a TBT measure on a particular product can increase the competitiveness of a certain exporter against others if the former can comply with the technical requirements with little costs. SPS measures and TBT cannot be eliminated because they are so important for sustainable development by protecting health, safety and the environment. But at the same time, NTMs affect smaller countries and producers disproportionately and negatively. Costs can be reduced through regulatory convergence, such as harmonization, equivalence and mutual recognition.[1]

The EAEU member states continue harmonization of their legislation in a number of important positions. Besides Common Customs Tariffs (CCT) applied by all members, it concerns the organization of interaction of state control bodies at all stages of the product life cycle, including joint inspections with the possibility of participating in them as observers and experts of the Eurasian Economic Commission. Thus, the Eurasian Economic Commission Council approves single lists of SPS measures, technical regulations and other standards: quarantine harmful organisms, common quarantine phytosanitary requirements for regulated products and regulated objects at the customs border and in the customs territory of the Eurasian Economic Union, procedures for laboratory support of quarantine phytosanitary measures and many others.

NTMs Regulation in the Customs Union

There are developed and approved 46 technical regulations, of them 39 had come into force by November 2018.[2] They regulate about 85% of all products being traded. These are technical regulations in the field of food safety, consumer goods, safety equipment, electrical engineering and mechanical engineering, energy resources. On 17 November, another technical regulation of the Union on the safety of equipment for children's playgrounds entered into force.

The development of 12 technical regulations of the Union is in progress, five of which are at the final stage of readiness. These are technical regulations that establish requirements for the energy efficiency of household electrical appliances, main pipelines, civil defense products, alcoholic beverages, poultry meat and products of its processing.

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1 African Development Bank (ADB), United Nations Conference on Trade and Development (UNCTAD). Regional Integration and Non-Tariff Measures in the Economic Community of West African States (ECOWAS). 2018

2 The EAEU should have a unified policy on the use of sanitary and phytosanitary measures // Eurasian Economic Commission. URL: http://www.eurasiancommission.org/ru/nae/news/Pages/25-10-2018-1v.aspx

The technical regulation of the Eurasian Economic Union is a document adopted by the Eurasian Economic Commission which establishes binding requirements for technical regulation on the territory of Union.[1]

According to the EEC, standard is the main tool for the implementation of technical regulations; a document that specifies product characteristics, implementation rules and characteristics of design processes (including surveys), production, construction, installation, commissioning, operation, storage, transportation, sale and disposal, performance of works or services, rules and methods for multiple use research (testing) and measurements, rules for sampling, requirements for terminology, symbols, packaging, labeling or labels and rules for their application.[2]

On 23 September 2011 back then the Customs Union[3] accepted technical regulation "On Toy Safety" (CU TR 008/2011), which contains detailed description of standards, conformity assessment procedures, etc. However, in 2016 the EEC designed the draft of amendment to add to the initial technical regulation. The main proposed change was the establishment of requirements aimed at ensuring the protection of children from possible negative impact on their development and mental health, preventing aggressive behavior, fear and anxiety: conduction of pedagogical and psychological expertise of every imported toy.[4] The suggested measure was considered to save children from commodities containing indecent images, which propagating violence, inhumanity, anti-social and unlawful behavior. And because toy commodities are direct tool of nurturing and physical and psychological child mental health forming, requirements of psychological and pedagogical expertise seemed to be a good preventive measure for technical regulation amendment's initiators.[5]

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1 Technical Regulation and Standardization Chapter // Eurasian Economic Commission. URL: http://www.eurasiancommission.org/ru/act/texnreg/deptexreg/tr/Pages/default.aspx

2 Ibid.

3 The Agreement on creation of the Customs Union came into force on 1 January 2010; it was founded by Belarus, Kazakhstan and Russia. The original treaty establishing the Customs Union was terminated by the agreement establishing the Eurasian Economic Union, signed in 2014, which incorporated the Customs Union into the EAEU's legal framework.

4 Notification on the development of draft amendments No. 2 introduced to the Technical Regulations of the Customs Union "On the safety of toys" (CU TR 008/2011) // Eurasian Economic Commission. URL: http://www.eurasiancommission.org/ru/act/texnreg/deptexreg/tr/Documents/Уведомление%20изменения%20в%20игрушки_2_игрушки.pdf

5 Ibid.

There were conducted several public discussions related to these amendments, during which there were gathered comments and opinions from representatives of private companies from Russia, European Commission, Association of Toy Producers of the USA, Kazakh Association of Kids Commodities Industry, Ministry of Health of Republic of Belarus and other state authorities from Belarus, Russia and Kazakhstan. Among gathered comments from Russian toy companies who import toys the main persuasive idea was that this expertise will impose additional costs for a range of commodities and as consequence the higher price for a final consumer.

The American Association of Toy Producers argued that the regulation does not comply with the World Trade Organization (WTO) Agreement on technical barriers to trade (TBT), since this amendment does not promote the safety of children, and there is no scientific evidence to support the determination that a toy is detrimental to a child's psychological well-being. Moreover, upon to Association's opinion, "ultimately parents play the most important role in choosing appropriate game for your children whether for security reasons or reflecting the interests and abilities of the child".[1]

As a consequence, the EEC accepted the decision not to obligate the EAEU member states to expose import toys to psychological and pedagogical expertise and developed psychological and pedagogical criteria for importing toys:

- Dolls should give a true image of a person, corresponding to kid's different age stages;
- Dolls should be attractive in appearance and represent the image of a physically healthy person;
- It is prohibited reproduction of violations of the external form of the human body, namely the absence of some of its parts (upper and/or lower extremities, etc.),

Image of the appearance of a person testifying to violations of the state of human health (distorted eyes, mouth, lack of pupils in the eyes, the presence of prosthetic arms and legs, etc.), death (traces of wounds inflicted, sewn body parts, etc.);

Image of parts of the human body that do not correspond to reality (the presence of more than two arms, legs, eyes, the presence of the second head, etc.).[2]

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1 Summary of Comments Technical Regulation Project of the Customs Union "On Safety of Toys" // Eurasian Economic Commission. URL: http://www.eurasiancommission.org/ru/act/texnreg/deptexreg/tr/Documents/СВОДКА%20отзывов%20Игрушки%202%20%20ИТОГ.pdf

2 Technical Regulation "On Safety of Toys" // Eurasian Economic Commission. URL: http://www.eurasiancommission.org/ru/act/texnreg/deptexreg/tr/Pages/bezopToys.aspx

According to the UNCTAD classification, the proposed measure on expertise if it was accepted and entered into force, could be classified as **B9: TBT measures, not elsewhere specified (n. e. s.).**

NTMs within the EAEU

There are several sources of non-tariff measures databases. One of them is WTO notions. The Integrated Trade Intelligence Portal (I-TIP) provides a single entry point for information compiled by the WTO on trade policy measures. It covers as tariff measures, as non-tariff measures which affect trade in goods and services. The I-TIP database includes members' notifications of NTMs as well as information on "specific trade concerns" raised by members at WTO committee meetings.[1]

The main disadvantage of this database is that it is based on WTO notifications by WTO members. As of November 2018, there are 164 members and 23 observer states. Moreover, this I-TIP Goods database includes information on some NTMs: Anti-dumping (ADP), Countervailing (CV), Quantitative Restrictions (QR), Safeguards (SG), Sanitary and Phytosanitary (SPS), Special Safeguards (SSG), Technical Barriers to Trade (TBT), Tariff-rate quotas (TRQ), Export Subsidies (XS).

According to notifications, among EAEU and WTO members, Kyrgyzstan imposes the fewest NTMs: only 9 SPS and 48 TBTs; the highest number of NTMs is imposed by Russia: 21 ADPs, 93 QRs, 150 SPSs, 88 TBTs and 4 TRQs. Because Belarus is not WTO member yet and has negotiating process for becoming a WTO member, there is no data on NTMs imposed by this state (Fig. 1)

Table 3

Data on non-tariff measures

EAEU state	ADP	CV	QR	SG	SPS	SSG	TBT	TRQ	XS
Armenia	-	-	-	-	27	-	83	-	-
Kazakhstan	-	-	29	-	14	-	21	-	-
Kyrgyzstan	-	-	-	-	9	-	48	-	-
Russia	21	-	93	-	150	-	88	4	-

Source: Integrated Trade Intelligence Portal. URL: https://i-tip.wto.org

The most fully fledged and extensive database on non-tariff measures is TRAINS database developed by UNCTAD. It provides comprehensive and systematic information on a broad range of policy instruments that can have an effect on

1 *Integrated Trade Intelligence Portal. URL: https://i-tip.wto.org*

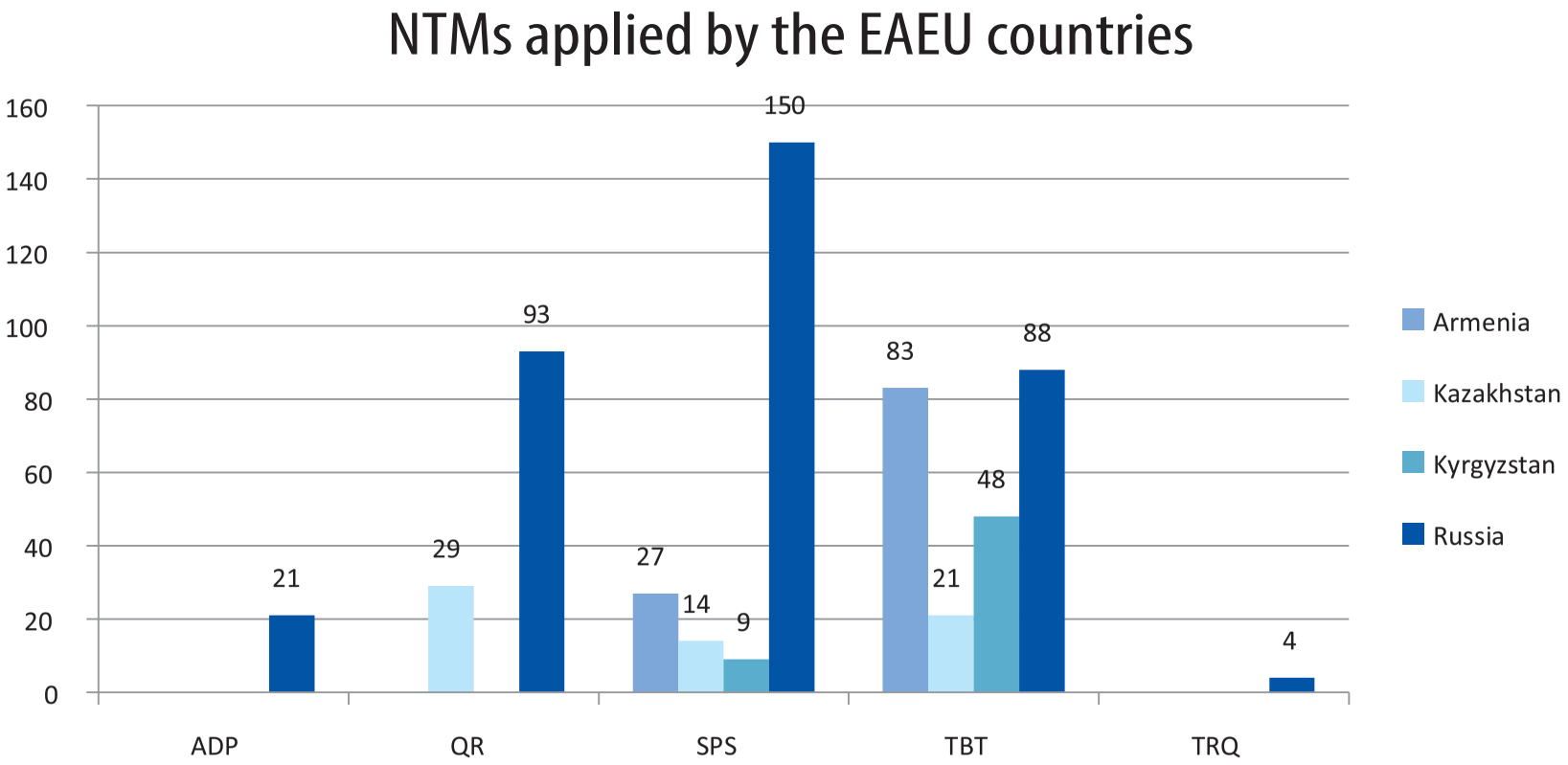

Fig. 1. Comparison of NTMs in respect to WTO notifications

Source: Integrated Trade Intelligence Portal. URL: https://i-tip.wto.org.

international trade in goods. The information includes traditional trade policy instruments, such as quotas or price controls, as well as regulatory and technical measures that stem from important non-trade objectives related to health and environmental protection. The objective of the database is to increase transparency and understanding about trade regulations and trade control measures. Measures, recollected from official sources, national trade regulations, laws and documents, are classified according to the International Classification of NTMs.

Data collection on non-tariff measures for the TRAINS database is still in progress and it does not include information on NTMs in Armenia despite it has been the WTO member since 2003; among Central Asian countries there are presented only Kyrgyzstan and Kazakhstan, while Tajikistan which has been the WTO member since 2013, Uzbekistan which has observing status and Turkmenistan, which does not have any negotiations with WTO for becoming its member, are absent in this portal.

In the meanwhile, the database entangles all countries affected by NTMs, including Armenia, Belarus and the rest countries of the world. Because data collection on NTMs is being gathered, in the nearest future one might expect observation of the full NTMs database with all countries that impose these measures.

Classification of NTMs is based on UNCTAD's classification: Sanitary and Phytosanitary (SPS), Technical Barriers to Trade (TBT), Pre-shipment inspection (INSP), Contingent trade protective measures (CTPM), Quantity control measures (QC), Price control measures (PC), Other measures (OTH) [from chapters G,H,I,J,K,L,M,N,O] and Export-related measures (EXP).

Table 4
Non-tariff measures

State	CTPM	EXP	INSP	OTH	PC	QC	SPS	TBT
Kazakhstan	-	47	5	3	5	3	165	401
Kyrgyzstan	-	54	6	4	4	3	160	365
Russia	19	46	15	1	4	6	206	335

Source: TRAINS UNCTAD. URL: http://trains.unctad.org.

Among three EAEU member states, the biggest number of NTMs is imposed by Russian Federation, 632 measures, while Kazakhstan imposed by 3 measures less, 629 measures and Kyrgyzstan imposed 596 measures (Fig. 2).

As Kazakhstan, Kyrgyzstan and Russia are members of one union and try to unify technical regulations, standards and label requirements, types of non-tariff measures are the same as in other EAEU member-states and it is seen in the Table 4, where amount of SPS measures and TBTs is relatively the same. The same relates to price control measures, quantity control, export-related measures and other measures, with the exception of contingent trade protective measures, imposed only by Russia.

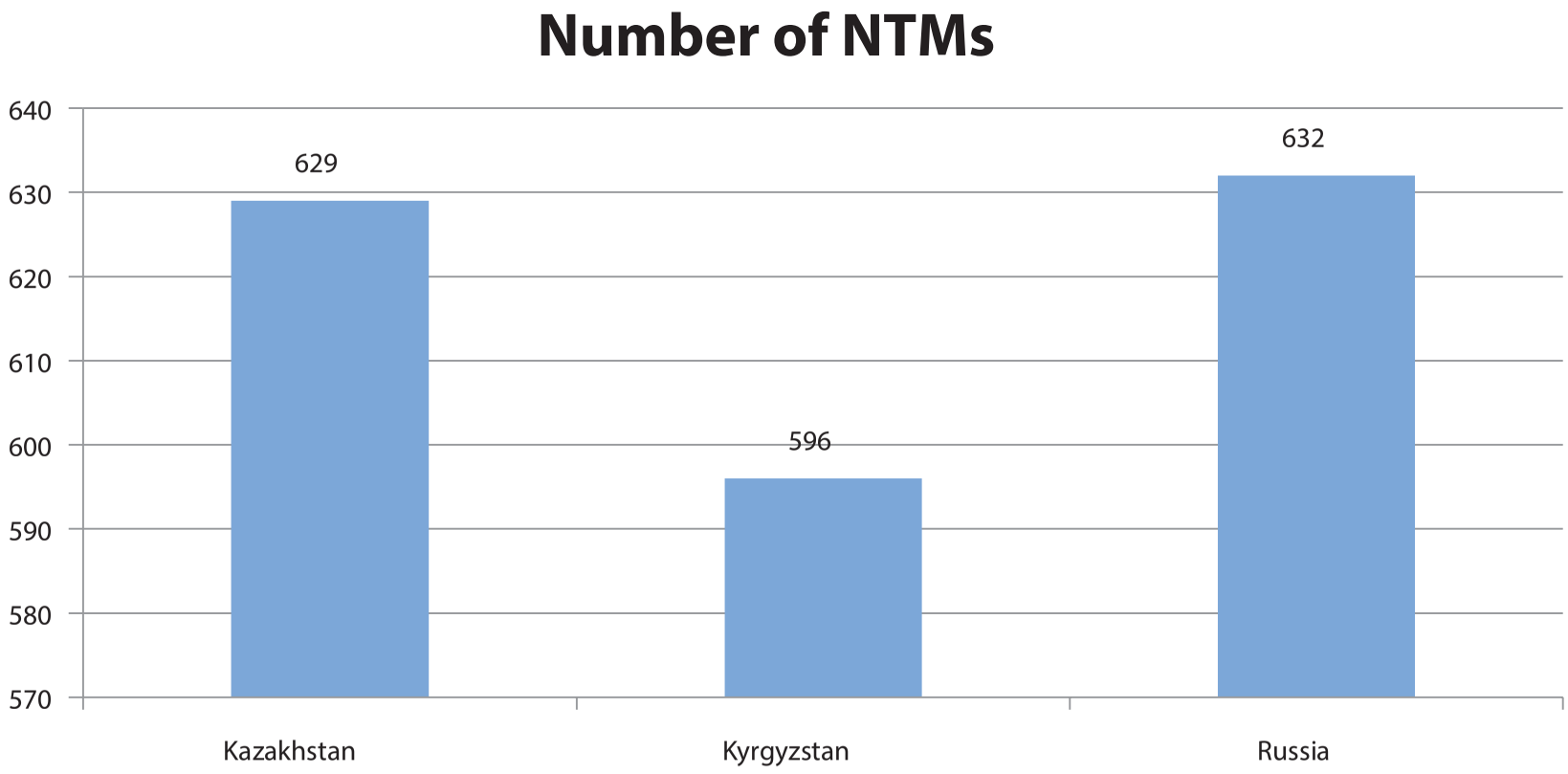

Fig. 2. Number of non-tariff measures

Source: TRAINS UNCTAD. URL: http://trains.unctad.org.

But for all that there is some dissimilarity in non-tariff measures imposed by each country, even in respect to each other. Some of these dissimilarities are being discussed within the Eurasian Economic Union itself.

One such NTM imposed by the Kyrgyz Republic is classified as Price Control measure (F9- Price-control measures, n.e.s) with implementation date from 05/01/2017. In order to keep receiving full amount of indirect taxes, the Kyrgyz Republic defined minimum level of control prices for certain goods. The meaning of this measure is to define minimum prices that will be used in the calculation of indirect taxes and it is applied against EAEU members. The following products are affected by this measure: Portland cement grade M400D20, sugar, coal, wheat flour from durum wheat, wheat flour from soft wheat and spelt, timber, rice and eggs. The price control measure is not spread out on domestic products. This measure was extracted from the national legal basis: "Procedure for the determination, application and monitor of the minimum level of control prices for goods imported into the territory of the Kyrgyz Republic from the member states of the Eurasian Economic Union" approved by the Decree of the Government of the Kyrgyz Republic of 12 October 2016 No. 537.

Among NTMs imposed by Russia, there is export-oriented measure which affects all members with unclear position whether this measure impedes domestic companies as well because it give preferences to the limited number of domestic companies. According to the Order of 14 July 2014 No. 1277-p: List of organizations that are granted an exclusive right to export LNG, several companies like OJSC "Gazprom", OJSC "Rosneft", LLC "Yamal LNG", LLC "Arctic LNG 1", LLC "Arctic LNG 2", LLC "Arctic LNG 3" have exclusive right to export liquefied natural gas (LNG) from the territory of Russia with the presence of export license issued by the Ministry of Energy of Russian Federation. This measure is classified as export-oriented measure (EXP), P21 - State-trading enterprises, for exporting.

There are measures imposed by Russia in relation to separate states, including the EAEU member-states. Since 13 February 2017 Russian, importers have been required to have a permit on imports of certain products from Belarus. This measure is classified as SPS measure (A14 - Special authorization requirement for SPS reasons) and is about adoption of special and additional control measures with respect to Belarus products that bear a risk of African Swine Fever spread. This list entangles 33 products, and all of them are related to agro food products.[1]

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1 Live swine; Meat of swine, fresh, chilled or frozen; Edible offal of swine fresh, chilled or frozen; Pig fat, free of lean meat not rendered or otherwise extracted, fresh, chilled, frozen, salted, in brine, dried or smoked; Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal; Pigs', hogs' or boars' bristles and hair; badger hair and other brush making hair; waste of such bristles or hair; Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof, fresh, chilled, frozen, salted, in brine, dried or smoked; Bones and horn-cores, unworked, defatted, simply prepared (but not cut to shape), treated with acid or

As well, Rosselkoznadzor[1] suspects companies from the Minsk region of Belarus in fraud: meat (beef and beef by-products) originating from Ukraine and European countries (its imports is prohibited to Russia by the means of product embargo) is being supplied by Belarus companies to Russia as meat produced (originating) in Belarus. This is done by re-packing, re-labelling of products. That is why Rosselkhoznadzor decided to temporary ban beef and beef by-products coming from Belarus. This measure is classified as SPS (A11 - Temporary geographic prohibitions for SPS reasons) and came into force on 6 February 2017 and still is in progress.

Many NTMs imposed by Kazakhstan are similar to those imposed by Russia with some differences. For 2018 Kazakhstan enforced quantity control measures

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degelatinised; powder and waste of these products; Animal products not elsewhere specified or included; dead animals of Chapter 1 or 3, unfit for human consumption; Hunting trophies, stuffed animals including those that underwent taxidermy treatment or were preserved; Flinty wheat (only feed grain); Soft wheat (only feed grain); Rye (only feed grain); Barley (only feed grain); Oats (only feed grain); Other corn (only feed grain); Soya bean (only feed grain); Flours and meals of oil seeds or oleaginous fruits, other than those of mustard used as feed; Pig fat (including lard), other than that of heading 02.09 or 15.03; Sausages and similar products, of meat, meat offal or blood; food preparations based on these products; Other prepared or preserved meat, meat offal or blood;

2 Extracts and juices of meat; Stuffed (with sausages, meat or meat by-products, blood or with any combination of these products) pasta, whether or not cooked or otherwise prepared; Processed/melted cheese and food preparations not elsewhere specified or included containing sausages, meat, meat by-products, blood or any combination of these products; Flours, meals and pellets, of meat or meat offal, of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption; greaves; Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants used as feed for animals; Residues of starch manufacture and similar residues, beet-pulp, bagasse and other waste of sugar manufacture, brewing or distilling dregs and waste, whether or not in the form of pellets used as feed for animals; Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of soyabean oil used as feed for animals; Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of vegetable fats or oils, other than those of heading 23.04 or 23.05 used as feed for animals; Vegetable materials and vegetable waste, vegetable residues and by-products, whether or not in the form of pellets, of a kind used in animal feeding, not elsewhere specified or included; Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not dehaired or split, other than those excluded by Note 1 (b) or 1 (c) to this Chapter; Articles of gut (other than silk-worm gut), of goldbeater's skin, of bladders or of tendons; Used equipment intended for transportation, reproduction/breeding, temporary storage of animals of all kinds; used equipment intended for transportation of materials (products) of animal origin.

1 Federal Service for Veterinarian and Vegetation Sanitary Supervision, Russian Federation

in respect to numerous countries[1]. Thus, there is a tariff rate quota for duty free imports of cane raw sugar to the territory of Kazakhstan in 2018 in the amount of 370000 tonnes (QC – E621) and the established tariff-rate quotas for certain agricultural goods (meat of bovine animals (fresh, chilled or frozen), poultry) imported in 2018 into the EEU by Kazakhstan QC measure (E611 - Global alloca-

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1 Afghanistan, Åland Islands, Albania, Algeria, American Samoa, Andorra, Angola, Anguilla, Antarctica, Antigua and Barbuda, Argentina, Aruba, the Netherlands with respect to, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Kingdom of, Bangladesh, Barbados, Belgium, Belize, Benin, Bermuda, Bhutan, Bolivia, Plurinational State of, Bonaire, Sint Eustatius and Saba, Bosnia and Herzegovina, Botswana, Bouvet Island, Brazil, British Indian Ocean Territory, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cabo Verde, Cambodia, Cameroon, Canada, Cayman Islands, Central African Republic, Chad, Channel Islands, Chile, China, Chinese Taipei, Christmas Island, Cocos (Keeling) Islands, Colombia, Comoros, Congo, Cook Islands, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Curacao, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, European Union, Faeroe Islands, Falkland Islands (Islas Malvinas), Fiji, Finland, France, French Polynesia, French Southern Territories, Gabon, Georgia, Germany, Ghana, Gibraltar, Greece, Greenland, Grenada, Guam, Guatemala, Guernsey, Guinea, Guinea-Bissau, Guyana, Haiti, Heard Island and Mcdonald Islands, Holy See, Honduras, Hong Kong, China, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jersey, Jordan, Kenya, Kiribati, Korea, Democratic People's Republic of, Korea, Republic of, Kosovo, Kuwait, the State of, Kyrgyz Republic, Lao People's Democratic Republic, Latvia, Lebanese Republic, Lesotho, Liberia, Republic of, Libya, Liechtenstein, Lithuania, Luxembourg, Macao, China, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mayotte, Mexico, Micronesia, Federated States of, Moldova, Republic of, Monaco, Mongolia, Montenegro, Montserrat, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Netherlands, Netherlands Antilles, New Caledonia, New Zealand, Nicaragua, Niger, Nigeria, Niue, Norfolk Island, Northern Mariana Islands, Norway, Oman, Pakistan, Palau, Palestine, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Pitcairn, Poland, Portugal, Puerto Rico, Qatar, Romania, Rwanda, Saint Barthélemy, Saint Helena, Saint Kitts and Nevis, Saint Lucia, Saint Martin, Saint Pierre and Miquelon, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Sark, Saudi Arabia, Kingdom of, Senegal, Serbia, Seychelles, Sierra Leone, Singapore, Slovak Republic, Slovenia, Solomon Islands, Somalia, South Africa, South Georgia and the South Sandwich Islands, South Sudan, Spain, Sri Lanka, Sudan, Suriname, Svalbard and Jan Mayen, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Tanzania, Thailand, The former Yugoslav Republic of Macedonia, The Gambia, Timor-Leste, Togo, Tokelau, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Turks and Caicos Islands, Tuvalu, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States Minor Outlying Islands, United States of America, Uruguay, Uzbekistan, Vanuatu, Venezuela, Bolivarian Republic of, Vietnam, Virgin Islands, British, Virgin Islands, US, Wallis and Futuna Islands, Western Sahara, Yemen, Zambia, Zimbabwe

tion). The last measure was adopted by the EAEU, Decision of 18 August 2017 N 97 "On establishing the tariff-rate quotas for certain agricultural goods imported in 2018 into the EEU".

In respect to Kyrgyzstan, Kazakhstan imposed the SPS measure A11, a temporary restriction to import live animals that are prone to foot-and-mouth disease, meat and dairy products, raw materials obtained from animals that are prone to foot-and-mouth disease, used equipment intended for storage or slaughter of animals prone to foot-and-mouth disease from Kyrgyz Republic, which came into force on 19 October 2011. The same temporary restrictions are dispersed on Mongolia, Tunisia, Armenia and Turkey.[1]

On 29 May 2015 the Eurasian Economic Union and the Socialist Republic of Vietnam signed a Free Trade Agreement which became the first international document on the FTA between the EAEU and a third party. Upon this Agreement it was decided to regulate the procedure for applying trigger protective measures and bilateral protective measures.[2] The trigger protective measure is applied in the form of customs duty, equivalent to the rate of customs duty applied of the most favoured nation treatment in relation to concerned goods at the date of enter force. These measures are related to the sensitive commodities such as furniture, footwear, light industry commodities, etc. Regarding bilateral protective measure, it can be applied if, as a result of a reduction or cancellation of import customs duties in trade with Vietnam and/or increased imports from Vietnam harm the producers of the EAEU or create the threat of causing such damage.

According to the TRAIND database, Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia imposed TBT – B7 on Vietnam based upon the Technical regulation of Customs Union for "Juices from fruits and vegetables" (CU TR 023/2011) confirmed by Decision of 9 December 2011 No. 882, referring to requirements on the minimum levels of dry substances (fruit juice) in certain types of juice drinks Vietnam products covered by technical measure are the following:

1. Juices from fruits and (or) from vegetables (besides tomato juice).
2. Fruit and (or) vegetable nectars.
3. Fruit and (or) vegetable juice drinks.
4. Fruit and (or) vegetable puree (besides tomato puree), concentrated fruit and (or) vegetable puree (besides tomato concentrated puree).
5. Tomato juices, tomato puree, concentrated tomato puree (pastes).

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1 TRAINS UNCTAD. URL: http://trains.unctad.org

2 On Trigger Protective Measures and Bilateral Protective Measures Appliance within the Agreement on Free Trade between the Eurasian Economic Union and its Member-States and the Socialist Republic of Vietnam // Eurasian Economic Commission Council. 18.10.2016. URL: https://docs.eaeunion.org/docs/ru-ru/01412369/cncd_23122016_115

Besides Vietnam, this technical regulation on requirements of the minimum levels of dry substances as fruit juice is applied to all WTO members as well.

In addition to the described requirement, Kazakhstan imposed a temporary restriction to import feed for birds and used equipment intended for bird storage or slaughter (avian influenza) from Vietnam; this NTMs is classified as SPS measure, A11 - Temporary geographic prohibitions for SPS reasons.

Conclusion

The conducted analysis is just the first effort to investigate non-tariff measures in all of the former Soviet countries. Special interest of NTMs appliance generates the Eurasian Economic Union, as it is kind of unique union after Soviet Union collapse, young enough and ambitious.

The analysis of non-tariff measures applied by members of the Eurasian Economic Union in respect to as other countries as to each other shows that sometimes these measures are imposed for protection of health, environment and safety and they are necessary, like prohibition of import ban on ozone-depleting substances and products containing ozone-depleting substances prohibited for import and export, instruments of extraction (fishing) of aquatic biological resources prohibited for import, plant protection products and other persistent organic pollutants prohibited from being imported and others[1]. In other cases, like implementation of pedagogical and psychological expertise of every importing toy, quantity control of cane raw sugar and others are imposed by other reasons: protection of domestic industry, elimination of the amount of imported goods, especially when imported commodities are more popular than domestic ones and other defensive reasons.

The work on NTMs gathering and analysis should be continued as it might help us to make these measures more transparent, see the cases of rude violation of legislation and commitments like WTO, EAEU, and some kind of "success" measures, which are helpful in sustainable development achievement: protection of health, safety and environment.

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1 TRAINS UNCTAD. URL: http://trains.unctad.org

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[12] Integrated Trade Intelligence Portal. URL: <https://i-tip.wto.org>.

[13] TRAINS UNCTAD. URL: <http://trains.unctad.org>.

[14] On Trigger Protective Measures and Bilateral Protective Measures Appliance within the Agreement on Free Trade between the Eurasian Economic Union and its Member-States and the Socialist Republic of Vietnam // Eurasian Economic Commission Council. 18.10.2016. URL: <https://docs.eaeunion.org/docs/ru-ru/01412369/cncd_23122016_115>.

Еникеева З.[1]

Практика применения нетарифных мер в ЕАЭС[2]

В работе освещается ряд нетарифные мер, применяемых в Евразийском экономическом союзе. На основе статистических данных и регулятивных механизмов, введенных в последние годы, проанализированы возможности и риски с учетом функционирования зоны свободной торговли ЕАЭС-Вьетнам.

Ключевые слова: ЕАЭС, нетарифные меры, технические барьеры, санитарные меры, Вьетнам, сельскохозяйственная продукция.

JEL: F13

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2 Статья поступила в редакцию в сентябре 2018 г.

Rovnov Y., Sporysheva N.[1]

The Court of the Eurasian Economic Union: Some Initial Jurisprudence[2]

This article offers an overview of the first years of case law of the Court of the Eurasian Economic Union, which started its work on 1 January 2015. Both procedural and substantive issues are covered, ranging from the pre-litigation procedure and the presentation of new pleas in law during court proceedings to the mutual recognition of customs authorities' decisions in the Union and the deferral of the decision to impose anti-dumping measures beyond the maximum duration of an anti-dumping investigation.

Keywords: EAEU, WTO, dispute settlement.

JEL: F13

I. Introduction

A number of regional integration organizations have at one point established a supranational court modelled, to a greater or lesser degree, on the Court of Justice of the European Union ('CJEU'). The Eurasian Economic Union ('EAEU' or 'Union'), the most advanced organization of economic integration in the post-Soviet space, is no exception. One of its organs is the Court of the Eurasian Economic Union (the 'Court' or 'Court of the Union'), which began its work on 1 January 2015 with the entry into force of the Treaty on the Eurasian Economic Union of 29 May 2014 ('TEAEU')[3].

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2 The article was submitted in September 2018.

3 The Treaty on the Eurasian Economic Union, Astana, 29 May 2014, in force 1 January 2015. The Treaty was initially signed by Belarus, Kazakhstan and Russia. Armenia and Kyrgyzstan acceded to the Treaty on 2 January 2015 and on 12 August 2015, respectively. Publication.pravo.gov.ru (2018). Oficial'nyj internet-portal pravovoj informacii. URL: <http://publication.pravo.gov.ru/Document/View/0001201501160013.

Although very young, the Court has been relatively active — in nearly four years of operation, it has decided, as of 27 October 2018, six disputes on their merits[1], found applications inadmissible or terminated proceedings on the applicant's request in eleven cases[2], and issued nine advisory opinions.[3]

This article aims to introduce the reader to some of the jurisprudential aspects of Eurasian integration by providing a concise — but by no means exhaustive — overview of the case law the Court has developed to date. After describing in the next section the structure and powers of the Court, the article examines seven sa-

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1 In two cases, General Freight v. Commission, Sevlad v. Commission, the claimant challenged tariff classification by the Commission. Since economic entities may not bring actions against Member States to the Court of the EAEU, the claimants in Tarasik v. Commission and Oil Marine Group v. Commission challenged the Commission's alleged failure to perform monitoring and control of a Member State's compliance with its international obligations.. In one dispute, ArcelorMittal Kryvyi Rih v. Commission, a third-country claimant challenged a Commission decision imposing anti-dumping duties on the claimant's products. As of July 2018, the Court has decided only one inter-state dispute, in which the applicant alleged illegality of the acts of the respondent's customs authorities and courts (Russia v. Belarus). Courteurasian.org. (2018). Court of the Eurasian Economic Union. URL: <http://courteurasian.org/ [Accessed 2018].

2 Gamma v. Commission, Unitrade v. Commission, KAPRI v. Commission, Remdiesel v. Commission, Chamber of Entrepreneurs Atameken (request for advisory opinion), Rusta-Broker v. Commission, Bryanskselmash v. Commission, NLMK v. Commission, VIZ-Steel v. Commission, TMR Import v. Commission, Yarshintorg v. Commission.

3 On request from Commission employees (concerning a Commission Board regulation on employee attestation), Kazakhstan (concerning the application of in-quota tariffs to goods released from customs after expiration of the import license), Belarus (concerning whether a Member State may impose stricter admissibility criteria for vertical agreements — in casu, a lower cap on the market share of each party to a vertical agreement — than those provided for under the TEAEU), Commission (concerning termination of employment of Commission employees), Commission (concerning the application of Article 29 of the TEAEU, which sets out exceptions from the functioning of the single market of goods), Kyrgyzstan (concerning the application of a uniform fee for transportation of cargo in transit via third countries), Deputy Director of the Commission's Department of Technical Regulation and Accreditation (concerning termination of employment of Commission officials due to the limitation on the number of officials of the same nationality), Belarus (concerning whether decisions of the Commission of the Customs Union form part of Union law), Kazakhstan (concerning whether individuals are required to declare foreign currency above USD 10,000 to the customs authority of the EAEU Member State of their destination when travelling from another EAEU Member State by air transport via a third country without leaving the transfer area of the layover airport).

lient procedural and substantive legal issues on which the Court has pronounced in its decisions, orders[1], and advisory opinions.

In order to make it easier for the reader to understand the Court's line of reasoning, an overview of the Court's case law on each specific issue is preceded by English-language excerpts of the legal provisions relied on by the Court in its *ratio decidendi*. Since a single generally accepted translation of the legal instruments making up Union law does not exist, the authors had to make their own terminological choices — a task all the more challenging that the meaning of the Russian terms themselves is not always free from ambiguity (see, in this regard, the terminological discussion in section). Thus, although the English terms the authors eventually opted for do reflect their best judgment, it is not to be assumed that they represent the official or the generally accepted translation of the Russian-language legal texts.

II. General information about the Court

The Court of the Eurasian Economic Union is a standing organ of the Union with the seat in Minsk, Belarus.[2] It is composed of ten judges[3] who are tasked with ensuring uniform application of Union law by the Member States and organs of the Union.[4] Union law is comprised of the TEAEU, international agreements within the Union, international agreements of the Union with a third party, decisions

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1 Decisions ('решения') are Court judgments on the merits of a case, while orders ('постановления') are Court rulings on procedural issues (e.g., admissibility of an application to the Court).

2 The other organs of the Union are the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council, and the Eurasian Economic Commission.

Publication.pravo.gov.ru. (2018). Oficial'nyj internet-portal pravovoj informacii. URL: <http://publication.pravo.gov.ru/Document/View/0001201501160013?index=9&rangeSize=1 [Accessed 2018].

3 Two judges from each Member State of the Union with a term in office of nine years (paragraphs 7 and 8 of the Statute of the Court). No provision for partial rotation of judges is made, i.e. the terms of all judges end simultaneously. Neshataeva, T., Myslivskiĭ, P. and D'iachenko, E. (2015). Evraziiskaia integratsiia: rol' suda [Eurasian Integration: The Role of the Court] Moscow: Statut, pp.107-129.

4 Statute of the Court of the Eurasian Economic Union. (2018). [ebook] Paragraph 2, p.1. URL: <http://courteurasian.org/en/ [Accessed 2018].

and orders of the organs of the Union (except those of the Court).[1] In deciding disputes, the Court applies the generally recognized principles and norms of international law; the TEAEU, international agreements within the Union, and other international agreements to which the states that are parties to the dispute are participants; decisions and orders of the organs of the Union; international custom as evidence of a general practice accepted as law.[2] Note that the Statute expressly directs the Court to apply international agreements in which the parties to the dispute participate, irrespective of whether the other Member States of the Union are also its participants.[3]

From time to time, the Court buttresses its rationale by the legal stances taken by other international tribunals, including the Court of Justice of the European Union, the European Court of Human Rights, and the International Court of Justice.[4] The Panel in *Tarasik v. Commission* stated that 'the legal views and case law of other courts may be taken into consideration as persuasive precedent'.[5] Citations to the case law of other international judicial fora are even more frequent in separate opinions — some judges have quite extensively availed of the opportunity to record their dissent, provided for by the Rules of Procedure of the Court.[6]

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1 Publication.pravo.gov.ru. (2018). Oficial'nyj internet-portal pravovoj informacii. URL: <http://publication.pravo.gov.ru/Document/View/0001201501160013?index=7&rangeSize=1 [Accessed 2018]. In its Advisory Opinion of 10 July 2018, the Court concluded that decisions of the Commission of the Customs Union, the predecessor of the EAEU, are, to the extent they do not contravene the TEAEU, also part of Union law.

2 Statute of the Court of the Eurasian Economic Union. (2018). Paragraph 50, p.7. URL: <http://courteurasian.org/en/ [Accessed 2018]. This is the order in which the sources of law are enumerated in the Statute.

3 See Section below.

4 See, for example, General Freight v. Commission, Decision of the Panel of 04 April 2016, p. 16; General Freight v. Commission, Decision of the Appeals Chamber of 21 June 2016, pp. 15–16, 19.

5 Tarasik v. Commission, Decision of the Panel of 28 December 2015, p. 15.

6 Rules of Procedure of the Court. (2018). [ebook]. Article 79(1), p.32. URL: <http://courteurasian.org/en/ [Accessed 2018]. See, for example, Remdiesel v. Commission, Order of the Panel of 8 April 2016, Dissenting Opinion of Judge Neshataeva, pp. 4–6; ArcelorMittal Kryvyi Rih v. Commission, Decision of the Panel of 27 April 2017, Dissenting Opinion of Judge Chaika, pp. 3–6; Russia v. Belarus, Decision of the Grand Panel of 21 February 2017, Dissenting Opinion of Judge Kolos, pp. 10, 16; Russia v. Belarus, Decision of the Grand Panel of 21 February 2017, Dissenting Opinion of Judge Neshataeva, pp. 5–6.

Only Member States of the Union and 'economic entities' ('хозяйствующие субъекты') (juridical persons and physical persons registered as sole traders in a Member State of the Union or in a third state) have standing to bring disputes before the Court. Notably, the Commission may not initiate proceedings and may only appear before the Court as a respondent or a third party ('party with an interest in a dispute')[1].

A Member State may apply to the Court for a finding that (1) an international agreement within the Union or certain provisions thereof are contrary to the TEAEU; (2) another Member State has infringed the TEAEU, international agreements within the Union, and/or decisions of an organ of the Union or certain provisions of the TEAEU, such agreements and/or decisions; (3) a Commission decision or its certain provisions are contrary to the TEAEU, international agreements within the Union, and/or decisions of an organ of the Union. When hearing an application from a Member State, the Court sits in a Grand Panel composed of all the judges of the Court. There is no further recourse against decisions of the Grand Panel, which are therefore final[2].

Pursuant to paragraph 39(2) of the Statute of the Court[3], an economic entity may seek a finding that: (1) a Commission decision or certain provisions thereof; or (2) a Commission act or failure to act is contrary to the TEAEU or international agreements within the Union *if such decision, provisions thereof, action or failure to act by the Commission directly affect the rights and legitimate interests of the economic entity in the area of entrepreneurial or other economic activity*. In *ArcelorMittal Kryvyi Rih v. Commission*, the Court found that the Commission decision imposing anti-dumping duties on products of the claimant and other Ukrainian producers was, in its entirety, in conformance with Union law[4]. Judge Chaika opined in his dissent that the Court had overstepped its jurisdiction by ruling in respect of the entire Commission decision, including producers which had not lodged an application with the Court: 'It follows from [Paragraph 39(2) of the Statute of the Court] that in contesting a Commission decision, an economic entity may not act on behalf of third parties or public at large'[5].

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1 Statute of the Court of the Eurasian Economic Union. (2018). Paragraph 60, p.8. URL: <http://courteurasian.org/en/ [Accessed 2018].

2 See the resource above. Paragraphs 39, 70, 71, 74, 105–107.

3 Read in conjunction with paragraphs 108 and 109 of the Statute of the Court.

4 ArcelorMittal Kryvyi Rih v. Commission, Decision of the Panel of 27 April 2017, p. 26.

5 ArcelorMittal Kryvyi Rih v. Commission, Decision of the Panel of 27 April 2017, Dissenting Opinion of Judge Chaika, pp. 7, 9.

Applications brought by an economic entity are adjudicated by a Panel, which comprises one judge from each Member State of the Union. Decisions[1] handed down by a Panel may be appealed — only on points of law — to *an* Appeals Chamber, which is not a standing body but consists — in what is a rather peculiar arrangement for international tribunals — of those judges of the Court who did not take part in the first instance proceedings[2]. To date, an Appeals Chamber has only once reversed a Panel's (interim) finding, which in any event did not affect the outcome of the case[3].

Economic entities have made attempts to get around the prohibition for them to challenge acts of the Member States by suing, instead, the Commission for an alleged failure to carry out 'monitoring and control' of the respective Member State's compliance with Union law[4] and to take measures addressing identified violations. Such a claim was indeed made as soon as the very first dispute submitted to the Court, *Gamma v. Commission*. The applicant, a coal producer based in Kazakhstan, sought to have repealed Kazakhstan's export tax on coal as applied to intra-Union trade and, to that end, asked the Court to find that the Commission failed in its duty to perform monitoring and control of Kazakhstan's compliance with Union law. The Court refused to hear the dispute as, in its view, the application failed to specify how the applicant's rights or legitimate interests were infringed by the Commission[5].

In *Tarasik v. Commission*, the first dispute heard by the Court on its merits, the claimant challenged the Commission's refusal to perform monitoring and control (i.e., failure to act) in response to conduct of Kazakhstani customs authorities which the applicant alleged was in contravention of Union law[6]. Judge Chai-

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1 But not orders by which a Panel admits or refuses to admit an application.

2 Paragraphs 70, 71, 76, 77, 79, 80, 110 of the Statute of the Court. Articles 69(2) and 70(1) of the Rules of Procedure of the Court. Note that there is no remand procedure provided for. An Appeals Chamber may affirm a Panel's decision or reverse it in full or in part and hand down a new decision.

3 In General Freight v. Commission, the Appeals Chamber disagreed with the Panel that the non-binding classification opinions of the Harmonized System Committee form part of Union law (see General Freight v. Commission, Decision of the Appeals Chamber of 21 June 2016, p. 19).

4 Paragraph 43(4) of the Regulation on the Eurasian Economic Commission.

5 Gamma v. Commission, Order of the Panel of 10 March 2015, pp. 1–3.

6 For an overview of the facts of the dispute, see Section below.

ka took the view that in interpreting the Commission's obligation to carry out monitoring and control, the Court should appreciate the fact that '[a]n economic entity has no means to defend its private interest [infringed by a Member State's failure to comply with Union law] other than by requesting the Commission to perform monitoring and control'.[1] The majority of the Court, both in the first and appellate instances, disagreed. The Appeals Chamber ruled that monitoring is not a mechanism for supranational supervision and is not necessarily triggered by an application lodged by an economic entity with the Commission.[2] Monitoring is 'primarily' aimed at evaluating, on an ongoing basis, the Member States' compliance with international agreements and decisions of the Union organs with a view to developing suggestions for improvement of Union law.[3] The Appeals Chamber affirmed the conclusion of the Panel that the results of monitoring are intended 'in the first place' for the Member States, hence the performance of the monitoring function by the Commission did not directly affect the rights and legitimate interests of the applicant.[4]

The Panel in *Oil Marine Group v. Commission*, however, while formally sticking with the same interpretation of the Commission's duty to perform 'monitoring and control' as had been set out in *Tarasik*, found in favour of the claimant who sought the same form of order as Mr Tarasik. The Panel reckoned that 'an economic entity has a legitimate interest in the Member States' due compliance with international treaties that form part of Union law and, consequently, in [the Commission's proper performance of the monitoring and control function]'.[5] While a request of an economic entity for the Commission to perform monitoring and control in respect of a Member State's law does not, in and of itself, serve as a legal basis for the commencement of the latter, it — provided always that such request is properly substantiated — nonetheless constitutes a source of information for such monitoring.[6] The Panel found that the Commission, which in the case at

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1 Tarasik v. Commission, Decision of the Appeals Chamber of 03 March 2016, Dissenting Opinion of Judge Chaika, p. 14.

2 The Appeals Chamber stated that 'the obligation to perform monitoring and control […] upon an application by an economic entity is not directly incumbent upon the Commission […]' (see Tarasik v. Commission, Decision of the Appeals Chamber of 3 March 2016, p. 18).

3 Tarasik v. Commission, Decision of the Appeals Chamber of 3 March 2016, pp. 18–19.

4 Ibid, p. 18; Tarasik v. Commission, Decision of the Panel of 28 December 2015,p. 17.

5 Oil Marine Group v. Commission, Decision of the Panel of 11 October 2018, p. 10.

6 Oil Marine Group v. Commission, Decision of the Panel of 11 October 2018, p. 12. The Appeals Chamber in Tarasik v. Commission ruled that 'where an application for

hand confined itself to verifying the content of the Russian Federation's law but failed to establish how it was applied in practice, conducted monitoring and control in a way that was 'incomplete and superficial'[1] and thus violated the rights of Oil Marine Group.[2]

Finally, in *Rusta-Broker v. Commission*, the applicant, a customs representative, felt aggrieved by Russia's application of solidary liability[3] to customs representatives and sought, *inter alia*, a finding that the Commission had failed to carry out monitoring and control of Russia's compliance with Union law. The Panel refused to hear the case as liability of customs representatives was at the time of the events regulated at the national level.[4]

Unlike the CJEU — or even the Court of the Eurasian Economic Community,[5] the predecessor of the EAEU — the Court of the Union has no jurisdiction to give pre-

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monitoring and control is lodged with the Commission by an economic entity, the condition sine qua non for the Commission to perform acts in law is the presentation of sufficient and positive evidence of an infringement of the rights and legitimate interests of the economic entity in the entrepreneurial or other economic activity conferred on it by the [TEAEU] and/or international agreements within the Union' (see Tarasik v. Commission, Decision of the Appeals Chamber of 3 March 2016, p. 19). The Panel apparently deemed that the application of Oil Marine Group to the Commission contained such 'sufficient and positive evidence'.

1 Oil Marine Group v. Commission, Decision of the Panel of 11 October 2018, pp. 13–14.

2 The company's complaint arose from inconsistent application among the EAEU Member States of criteria for the exemption from import duties of watercraft included in international ship registries. More particularly, Oil Marine Group was aggrieved by the failure of the customs and judicial authorities of the Russian Federation to grant the exemption.

3 Referred to in common law systems as joint and several liability.

4 Rusta-Broker v. Commission, Order of the Panel of 12 December 2016, pp. 1–4. In response to a complaint filed with the Commission, the Commission informed the applicant that the draft 2017 Customs Code of the EAEU provides, in Article 405(4), that the customs representative and the declarant are held solidarily liable for customs duties and taxes (see ibid, p. 5).

5 Article 3 of the Agreement on the Initiation of Legal Action at the Court of the Eurasian Economic Community by Economic Entities in Disputes within the Customs Union and on the Specifics of the Related Judicial Procedure of 9 December 2010 conferred on the highest courts of the Member States of the Customs Union a right (and where there is no further recourse against the decision of the judicial organ in the case, imposed an obligation)

liminary rulings on requests by national courts of the Member States.[1] The powers of the Court in respect of remedies it may grant are also quite limited and, generally, do not extend beyond a declaratory relief, i.e. a finding of inconsistency of a respondent's legal instrument, act, or failure to act with Union law. The Statute of the Court mandates that the Court dismiss all requests to award damages and, in general, all requests for pecuniary orders.[2] The lodging of an application with the Court does not normally result in the suspension of the international agreement or Commission decision being challenged.[3] A Commission decision found to be in violation of Union law remains in force until the Commission implements the judgment of the Court,[4] unless the Court suspends the Commission decision 'on a reasoned motion' of a party to the dispute.[5] As for international agreements or acts (failure to act) by the Member States found to be in violation of Union law, the Statute does not prescribe any concrete time periods for bringing them into compliance with Union law.

In addition to contentious, the Court is bestowed with advisory jurisdiction. On request by a Member State or organ of the Union, the Court elucidates the meaning of the provisions of the TEAEU, international agreements within the Union, international agreements with a third party (if the agreement with a third party so provides), and decisions of the organs of the Union. Officers and employees of the organs of the Union may request the Court to provide an interpretation of

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to request the Court of the Eurasian Economic Community to give a preliminary ruling on matters concerning the application of international agreements concluded within the Customs Union and the application of acts of the Commission of the Customs Union affecting the rights and legitimate interests of economic entities, if such matters are material to the resolution of the merits of the case. Court of the Eurasian Economic Union. (2018). Dogovor ob obrashhenii v sud EvrAzJes. URL: <http://courteurasian.org/page-21691 [Accessed 2018].

1 In the only preliminary ruling it had time to make, the Court of the Eurasian Economic Community concluded that the ruling was 'binding, final, [took] effect when pronounced, and applie[d] directly in the Member States of the Customs Union' (see Preliminary Ruling of the Court of the Eurasian Economic Community of 10 July 2013, para. 5 of the operative part).

2 Statute of the Court of the Eurasian Economic Union. (2018). [ebook]. Paragraph 61, p.8. URL: <http://courteurasian.org/en/ [Accessed 2018].

3 Ibid, paragraph 54, p.7.

4 Ibid, paragraph 111, p. 13. The Commission must implement the decision within a reasonable period of time, which must in any case not exceed 60 days from the entry in force of the Court decision, unless the Court prescribes another timeframe (see ibid).

5 Ibid, paragraph 112, p. 13.

provisions relating to employment relations.[1] However, an exercise of advisory jurisdiction by the Court is without prejudice to the authority of the Member States to adopt joint interpretations of international agreements.[2]

Finally, one more restriction on the Court's powers is enshrined in Article 42 of the Statute, which explicitly prohibits the Court from conferring on the organs of the Union any competence additional to that expressly provided under the TEAEU and/or international agreements within the Union. In disputes heard to date, the Court has resorted to this provision to justify its findings that the Commission was not required (did not have the competence) to do what claimants had expected it to do.[3]

Against this background of the Court's powers, the next sections provide an overview of the most important case law of the Court to date. The authors begin with procedural issues, such as the completion of pre-litigation procedures and the introduction of new pleas in law not presented in the application to the Court, to then proceed to substantive matters.

III. Completion of pre-litigation procedures

As is the case with EU and WTO law, Union law requires that the applicant, before bringing a dispute before the Court, seek to settle the dispute out of court by following an established pre-litigation procedure. This requirement equally applies to economic entities and the Member States. In pursuance of Article 33 of its Rules of Procedure, the Court has rejected or shelved those applications from economic entities that fail to provide evidence that the pre-litigation procedure

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1 Note that the Court does not have jurisdiction in employment disputes involving employees or officers of the organs of the Union. In fact, it appears that such disputes do not fall under the jurisdiction of any international or national courts Ispolinov, A. (2016) 'Statut suda EAES kak otrazhenie opaseniy i somneniy gosugarstv-chlenov Evraziiskogo soyuza' [The Statute of the Court as a Reflection of the Concerns and Doubts of the Member States of the Eurasian Union] 4 Pravo, The Journal of the Higher School of Economics, p.160.

2 Statute of the Court of the Eurasian Economic Union. (2018). [ebook]. Paragraphs 46-48, p.6. URL: <http://courteurasian.org/en/ [Accessed 2018].

3 See, for example, Tarasik v. Commission, Decision of the Appeals Chamber of 03 March 2016, p. 28 (to support a finding that the Commission has no powers to perform monitoring and control in respect of agreements which are not part of Union law); Bryanskselmash v. Commission, Order of the Panel of 17 April 2017, p. 5 (to support a finding that the Commission has no regulatory powers in respect of specific industrial subsidies within the Union before the entry into force of a special agreement on the matter).

has been completed.[1] In *Russia v. Belarus*, the first and only interstate dispute to date, a question arose whether a failure by the Russian Federation to include all of its legal claims in the scope of consultations amounts to a failure to observe the pre-litigation procedure established by Union law.

Legal provisions applied in the dispute(s)

- Article 112 of the TEAEU
  - Settlement of Disputes
  - Any disputes relating to the interpretation and/or application of provisions of this Treaty shall be settled through consultations and negotiations.
  - Unless otherwise provided for by the Statute of the Court of the Eurasian Economic Union (Annex 2 to this Treaty), if no agreement is reached within 3 months from the date a formal written request for consultations and negotiations was sent by one party to the dispute to the other party to the dispute, the dispute may be referred by either party to the Court of the Union unless the parties agree to use other procedures to resolve the dispute.
- Paragraph 43 of the Statute of the Court
  - No dispute shall be admitted for hearing by the Court unless the applicant has sought to settle the matter with the respective Member State or the Commission out of court through consultation, negotiation or other means provided for by the Treaty and international treaties within the Union, except as expressly provided for by the Treaty.
- Article 33 of the Rules of Procedure of the Court
  - Admission of an application. Refusal to admit an application. Shelving of an application.
  - […]
  - 2. The Court shall issue an order refusing to admit an application if:
  - […]
  - b) the pre-litigation procedure for the settlement of the dispute has not been observed;
  - […]
- Article 23 of the Rules of Procedure of the Court
  - Adversarial process
  - […]
  - 2. The parties have the right to know of each other's arguments before the commencement of the proceedings.
  - […]
- Paragraph 43 of the Regulation on the Eurasian Economic Commission[2] ('Commission Regulation')

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1 See, for example, KAPRI v. Commission, Order of the Panel of 1 April 2015, p. 4; Tarasik v. Commission, Order of the Panel of 16 September 2015, p. 3.

2 Annex 1 to the TEAEU.

- 43. The College of the Commission shall:
- […]
- 8) assist the Member States in the settlement of disputes within the Union before the disputes are submitted to the Court of the Union;
- […]

- Article 20 of the Agreement of 21 May 2010 on Mutual Administrative Assistance Among Customs Authorities of the Member States of the Customs Union[1] ('Agreement of 21 May 2010')
  - *Settlement of disputes*
  - […]
  - 3. The Commission of the Customs Union shall assist the parties in settling disputes before they are submitted to the Court of the Eurasian Economic Community.
- Article 2 of the Customs Code Treaty of 27 November 2009[2] ('Customs Code Treaty')
  - […]
  - The Commission of the Customs Union shall assist the Parties in settling disputes within the Customs Union before such disputes are submitted to the Court of the Eurasian Economic Community.
  - […].

Case law of the Court

In *Russia v. Belarus*, the claimant presented pleas under certain provisions of: (1) the Customs Code of the Customs Union, which is annexed to the Customs Code Treaty of 27 November 2009; (2) the Agreement of 21 May 2010 on Mutual Administrative Assistance Among Customs Authorities of the Member States of the Customs Union;[3] (3) the TEAEU. However, no pleas under the TEAEU had been a subject of consultations between the parties held before the matter was submitted to the Court.

The order by which the Court admitted the application states the following in respect of the observance by the claimant of the pre-litigation procedure:

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1 Tsouz.ru. (2010). Agreement on Mutual Administrative Assistance Among Customs Authorities of the Member States of the Customs Union. URL: <http://www.tsouz.ru/MGS/mgs21-05-10/Pages/Sogl_vzaimn_adm_pom.aspx [Accessed 2018].

2 Szrf.ru. (2009). Customs Code Treaty. URL: <http://www.szrf.ru/doc.phtml?nb=edition00&issid=2010050000&docid=221 [Accessed 2018].

3 These two agreements remained in force as among the Member States of the EAEU and formed part of the Union law as of the date of the relevant events and as of the date of the dispute.

By way of extrajudicial settlement of this dispute, the Russian Federation sent, on 1 June 2015, a note to the Republic of Belarus with a proposal to settle the matter out of court. Twelve rounds of bilateral consultations were held since August 2015, which failed to resolve the dispute. The negotiations resulted in a table of disagreements between the parties regarding the provisions of the Customs Code of the Customs Union and of the Agreement of 21 May 2010 as they apply to the transportation of domestic appliances from the territory of the Kaliningrad oblast of the Russian Federation to the rest of the customs territory of the Customs Union via the territory of a state which is not a member of the Customs Union.

Therefore, in the view of the Court, as of the date of the lodging of the application by the Russian Federation with the Court, the pre-litigation procedure in respect of this matter had been complied with.[1]

The final judgment, which found, *inter alia*, that the respondent had 'complied not in full' with the provisions of the TEAEU invoked by the Russian Federation, does not deal with the issue of observance of the pre-litigation procedure.

In their dissenting opinions, Judge Fedortsov and Judge Kolos argue that the Court should have declined to examine the applicant's claims under the TEAEU for the following reasons: (1) Article 112 TEAEU provides that a dispute regarding the interpretation and/or application of provisions of the TEAEU may be referred to the Court only after consultations or negotiations have failed to resolve the dispute; consultations held in this case did not touch upon either the TEAEU in general or its specific provisions;[2] (2) pursuant to paragraph 43 of the Statute of the Court and Article 33 of the Rules of Procedure, the Court must reject an application if the applicant has not sought to settle the matter with the respective Member State out of court through consultations, negotiations or by other means;[3] (3) before submitting the dispute to the Court, the applicant *must* have referred it to the Commission which, pursuant to Article 2 of the Customs Code Treaty, Article 20(3) of the Agreement of 21 May 2010, paragraph 43(8) of the Commission Regulation, assists the Member States in resolving disputes within the Union before resort is had to the Court; the requirement to involve an independent third party (*in casu*, the Commission) in the resolution of international disputes accords with international practice,

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1 Russia v. Belarus, Order of the Grand Panel of 12 September 2016, p. 5.

2 Russia v. Belarus, Decision of the Grand Panel of 21 February 2017, Dissenting Opinion of Judge Fedortsov, p. 2; Russia v. Belarus, Decision of the Grand Panel of 21 February 2017, Dissenting Opinion of Judge Kolos, p. 9.

3 Ibid

including that of regional organizations of economic integration, and is, for instance, enshrined in Article 259 of the Treaty on the Functioning of the European Union[1] ('TFEU').[2]

Judge Neshataeva (as did apparently the Court) took a different view:

Paragraph 43 of the Statute of the Court and Article 23(2) of the Rules of Procedure of the Court do not require that the claims addressed as part of the pre-litigation procedure and those made in the application to the Court coincide. This accords with the case law of international courts (e.g., *Nicaragua v. United States of America*, ICJ Reports 1984, p. 428, para. 83).

In this respect, the respondent mixes up the judicial and pre-litigation procedures, the latter not being of adjudicative nature. Accordingly, Article 23(2) of the Rules of Procedure of the Court does not apply to the pre-litigation phase. The purpose of bilateral consultations is to try and settle a dispute which arose out of specific facts examined by the parties. Consultations cannot have as their objective the legal assessment and evaluation of the facts, which is what an applicant seeks from the Court. Uniform application of the law is an objective of the Court (paragraph 2 of the Statute of the Court).

Hence, discontinuance of proceedings on a motion of a respondent or judge would amount to a denial of justice, for the parties would lose the right to put forward their case by presenting their arguments and evidence, while the Court would be unable in a just, unbiased, and independent manner to determine the scope of rights and obligations of the parties.[3]

IV. Introduction of new pleas not presented in the application to the Court

EU law makes a distinction between pleas in law, i.e. legal propositions which provide the basis for the forms of order sought, and arguments relied upon by the party presenting the pleas. The applicant may not introduce new pleas in the course of proceedings save for those pleas that are based on matters of law or of

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1 Consolidated Version of the Treaty on the Functioning of the European Union, 2008 O.J. C 115/47, at 47.

2 Russia v. Belarus, Decision of the Grand Panel of 21 February 2017, Dissenting Opinion of Judge Kolos, pp. 10–11.

3 Russia v. Belarus, Decision of the Grand Panel of 21 February 2017, Dissenting Opinion of Judge Neshataeva, pp. 12–13.

fact which come to light in the course of the procedure.[1] In contrast, parties may adduce new arguments within the scope of the pleas included in their application to the court. This distinction prevents an unanticipated expansion of a dispute beyond the subject-matter stated in the application and thus serves to protect the respondent's rights of defence.

In a similar vein, WTO law differentiates between claims, understood as an allegation 'that the respondent party has violated, or nullified or impaired the benefits arising from, an identified provision of a particular agreement' and arguments 'adduced by a complaining party to demonstrate that the responding party's measure does indeed infringe upon the identified treaty provision'.[2] The procedural rule for the presentation of claims in WTO disputes is the same as that for the presentation of pleas in EU law: '[A]ny claim that is not asserted in the request for the establishment of a panel may not be submitted at any time after submission and acceptance of that request'.[3] The same restriction does not apply to arguments, which may be elaborated in the course on the proceedings. On the other hand, '[b]oth "claims" and "arguments" are distinct from the "evidence" which the complainant or respondent presents to support its assertions of fact and arguments'.[4]

Union law does not make a distinction of this kind between the legal basis for an application (pleas in law) and the arguments relied on. The submissions made by a party in support of the forms of order sought are indiscriminately referred to as 'arguments' ('доводы'). It is tempting to view 'arguments' as this term is used in EAEU law as a party's assertions or contentions linking evidence to the forms of order sought, but the decision of the Appeals Chamber in *General Freight v. Commission* suggests that evidence, too, may be an element of 'arguments'. At the same time, the Court — or at least some of the judges — appear willing to discriminate

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1 Article 84, Rules of Procedure of the General Court, OJ L 105, 23 April 2015, p. 1; Article 127(1), Rules of Procedure of the Court of Justice, OJ L 265, 29 September 2012, p. 1.

2 WTO Appellate Body Report, Korea — Definitive Safeguard Measure on Imports of Certain Dairy Products (Korea — Dairy), WT/DS98/AB/R, adopted 12 January 2000, para 139.

3 Ibid. This is because 'the panel request serves two essential purposes. First, it defines the scope of [and hence the panel's jurisdiction over] the dispute. Second, it serves the due process objective of notifying the respondent and third parties of the nature of the complainant's case[footnote omitted]' (See WTO Appellate Body Report, European Communities and Certain Member States — Measures Affecting Trade in Large Civil Aircraft (EC — Large Civil Aircraft), WT/DS316/AB/R, adopted 1 June 2011, paras 639, 786).

4 Appellate Body Report, Korea — Dairy, above note 58, para 139.

between different categories of arguments and deny admissibility of new arguments of certain categories at later stages of a dispute.

Select legal provisions applied in the dispute(s)

- Article 23 of the Rules of Procedure of the Court
  - *Adversarial process*
  - […]
  - 2. The parties have the right to know of each other's arguments before the start of the Court proceedings.
  - 3. The parties bear the risk of consequences that follow if they take, or fail to take, procedural actions.
- Article 29 of the Rules of Procedure of the Court
  - *Parties to a dispute*
  - […]
  - 2. Parties, their agents have the right to:
  - […]
  - b) […] make statements, give explanations in writing and verbally as well as in electronic form, adduce arguments on all issues arising in the course of the proceedings.
  - […]
  - 3. Parties, their agents shall:
  - […]
  - d) exercise their rights in good faith and not abuse them;
  - […]
- Article 9 of the Rules of Procedure of the Court
  - Application by an economic entity requesting resolution of a dispute
  - An application by an economic entity shall state:
  - […]
  - d) […], the facts and arguments relied on by the economic entity in seeking a form of order as provided for in paragraph 2 herein.
  - […]
  - In its application, an economic entity shall seek the following forms of order in accordance with paragraph 39(2) of the Statute of the Court: a finding that a decision by the Commission or its certain provisions are contrary to the Treaty and/or international agreements within the Union, and/or a finding that a challenged act (failure to act) by the Commission is contrary to the Treaty and/or international agreements within the Union.
- Article 39 of the Rules of Procedure of the Court
  - As part of preparing a case for hearing, the Judge-Rapporteur may:
  - […]
  - c) offer the parties to rectify their claims and defence, and indicate a period to provide the necessary additional documents, materials;
  - […]
- Article 69 of the Rules of Procedure of the Court
  - Scope of review by an Appeals Chamber
  - The Court shall examine an appeal based on the materials on the case record,

within the scope of the arguments presented in the appeal and in the response, which may be complemented by the parties in the course of the proceedings.
  - The Court may admit additional evidence if the party has shown that it was not possible to present the evidence to the Panel for reasons beyond its control and the Court finds these reasons to be compelling.
- Article 48 of the Rules of Procedure of the Court
  - *Statements and motions of the parties*
  - Statements and motions to the Court, including on the merits of claims and defence, shall be made in writing, may be presented verbally during a Court hearing […].

Case law of the Court

In the *Russia v. Belarus* dispute discussed above,[1] most of the claimant's legal claims under the TEAEU were not presented in the application to the Court, were introduced for the first time at the first oral hearing and elaborated at the second oral hearing.[2] The Court made findings on all these claims, including those not included in the application initiating proceedings. In that regard, Judge Kolos noted in his dissenting opinion that adding new pleas in law ('требования') after the commencement of proceedings contradicts the due process requirements under Article 23(2) and the good faith and non-abuse of rights requirements under Article 29(3)(d) of the Rules of Procedure of the Court, which should have given rise to estoppel against the applicant with respect to its claims under the TEAEU.[3]

By contrast, in *General Freight v. Commission*, a new 'argument', which could arguably be characterized as an alternative plea in law, raised by the claimant at an oral hearing was not even mentioned in the first-instance Panel decision —

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1 See Section.

2 Russia v. Belarus, Decision of the Grand Panel of 21 February 2017, Dissenting Opinion of Judge Fedortsov, p. 3. At the first oral hearing, the applicant claimed infringement of the TEAEU by the customs authorities of Belarus. At the second oral hearing, it additionally alleged infringement of the TEAEU by the judicial authorities of Belarus (see ibid).

3 Russia v. Belarus, Decision of the Grand Panel of 21 February 2017 of 21 February 2017, Dissenting Opinion of Judge Kolos, pp. 9–10. Procedural estoppel was also mentioned, as 'a generally recognized principle and norm of international law which follows from the principle of bona fides', in the dissenting opinion in another dispute, Remdiesel v. Commission. In that case, Judge Neshataeva argued that the Commission, having failed to plead lack of jurisdiction within the timeframe prescribed for lodging a defence, should have been estopped from presenting this plea at a later stage in the proceedings (Remdiesel v. Commission, Order of the Panel of 8 April 2016, Dissenting Opinion of Judge Neshataeva, pp. 3–4). In this regard, both judges refer, inter alia, to Ciulla v. Italy, Judgment, 22 February 1989, Series A, No. 148, paras 28–29.

it is only the Appeals Chamber that engaged with it, because the new plea was also presented in the appeal.[1] The claimant imported into the Union air-cooled water chillers, which he contended should be classified under heading 8415 of the Commodity Nomenclature of the Eurasian Economic Union. The customs authority, however, classified the chillers under subheading 8418 in accordance with the Commission classification decision No. 117 of 18 July 2014. The claimant therefore lodged an application with the Court, requesting it to find that the said decision was not in compliance with the EAEU Commodity Nomenclature.[2] During the oral hearings, the claimant additionally invoked the International Convention on the Harmonized Commodity Description and Coding System ('HS Convention'),[3] to which all EAEU Member States are parties,[4] and the classification decision taken by the Harmonized System Committee at its 34th session ('HS Committee Decision), according to which the chillers may be classified not only under subheading 8418.69 (import tariff rate 10%), as provided for in the Commission decision, but also under subheading 8418.61 (import tariff rate 9.4%), 'as the case may be'.[5] The claimant's alternative 'argument' therefore was that the Commission decision was contrary to the TEAEU and the international agreements within the Union because it was inconsistent with the HS Committee decision.

The Appeals Chamber stated that the claimant had not sought to rectify its claims before the Panel by following the procedure provided for in the Rules of Procedure and, pursuant to Article 23(3) of the Rules, had to face the consequences of its failure to take the required procedural action. This — in a line of reasoning which is difficult fully to grasp — led the Appeals Chamber to conclude that the HS Committee classification decision must be treated as evidence adduced in support of the claimant's original plea (that in accordance with the HS Conven-

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1 General Freight v. Commission, Decision of the Appeals Chamber of 21 June 2016, pp. 21, 22.

2 General Freight v. Commission, Decision of the Panel of 04 April 2016, pp. 2–4.

3 International Convention on the Harmonized Commodity Description and Coding System, Brussels, 14 June 1983, as amended by the Protocol of Amendment of 24 June 1986. Wcoomd.org. (2017). World Customs Organization. URL: <http://www.wcoomd.org/en/topics/nomenclature/instrument-and-tools/hs-nomenclature-2017-edition/hs-nomenclature-2017-edition.aspx [Accessed 2018].

4 General Freight v. Commission, Decision of the Panel of 4 April 2016, pp. 1–3, 9–11. On the status of the HS Convention in Union law, see Section below.

5 General Freight v. Commission, Decision of the Appeals Chamber of 21 June 2016, pp. 3–4, 11–12, 21.

tion, the chillers in question should be classified under heading 8415). Since the HS Committee decision was irrelevant to that original plea (recall that the HS Committee decision provides for classification of the chillers under subheading 8418.61 or 8418.69, but not under heading 8415), the Appeals Chamber concluded that the Panel was correct in declining to admit the evidence and that it must also be rejected on appeal.[1]

In his separate opinion, Judge Chaika disagreed, noting that neither the Statute of the Court nor the Rules of Procedure contain any prohibition for a claimant to present new arguments on appeal — a conclusion, in his view, supported by Article 69(1) of the Rules of Procedure.[2] The latter puts restrictions only on new evidence, but evidence (information about facts obtained by following the procedure established by law) is not to be confused with arguments (a party's assessment of the facts of a case). Therefore, the Appeals Chamber should have examined the claimant's new argument on its merits rather than dismissing it on a formal ground.[3] Moreover, in the view of Judge Chaika, Article 39 of the Rules of Procedure concerns the actions of the Judge-Rapporteur and does not restrict the actions of the parties to the dispute. It follows from Articles 29(2)(b) and 48 of the Rules of Procedure that oral and written proceedings co-exist in the Court, which means that a Panel must examine all claims, pleas, and defences irrespective of the form in which they are presented.[4]

V. Judicial review of non-binding instruments

The Court held in *Sevlad v. Commission* (Panel) and in *General Freight v. Commission* (Appeals Chamber) that Commission classification *decisions* are not judicially reviewable for consistency with classification opinions (decisions) prepared by the Harmonized System Committee as the latter, in accordance with Articles 7(1)(b) and 8(2) of the HS Convention, constitute recommendations and are thus not

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1 General Freight v. Commission, Decision of the Appeals Chamber of 21 June 2016, pp. 22–23.

2 General Freight v. Commission, Decision of the Appeals Chamber of 21 June 2016, Separate Opinion of Judge Chaika, p. 4.

3 Ibid, pp. 4–7. Judge Chaika clarifies that, in response to the new plea, the Appeals Chamber should have repeated its finding that the HS Committee classification decisions do not have a binding force, thus a failure to follow the opinions contained in them does not imply an inconsistency with the HS Convention (ibid, p. 7).

4 Ibid, pp. 7–8.

legally binding on the parties to the HS Convention.[1] In *Remdiesel v. Commission*, a reverse issue arose — whether a Commission *recommendation*, a non-binding legal act, is reviewable by the Court of the EAEU.

Select legal provisions applied in the dispute(s)

- Article 5 of the Agreement on the Eurasian Economic Commission of 18 November 2011[2]

1. The Commission shall, within its powers, adopt decisions, which shall be binding on the Parties, and recommendations, which shall be non-binding.
   – […]

- Paragraph 13 of the Commission Regulation
  - The Commission shall, within its powers, adopt decisions, which are normative legal acts binding on the Member States; orders, which are internal administrative acts; and non-binding recommendations.
  - Decisions of the Commission shall form part of Union law and shall be directly applicable in the Member States.
- Article 6 of the TEAEU

1. The Law of the Union shall consist of:
   – this Treaty;
   – international treaties within the Union;
   – international treaties of the Union with a third party;
   – decisions and orders of the Supreme Eurasian Economic Council,
   – the Eurasian Intergovernmental Council, and the Eurasian Economic Commission adopted within the powers provided for by this Treaty and international treaties within the Union.
   – Decisions of the Supreme Eurasian Economic Council and Eurasian Intergovernmental Council shall be implemented by the Member States as provided for in their national legislation.

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1 Sevlad v. Commission, Decision of the Panel of 7 April 2016, p. 20; General Freight v. Commission, Decision of Appeals Chamber of 21 June 2016, pp. 17–19. The Court, however, clarified that '[t]hough of only recommendatory character, [HS Committee] classification opinions must be taken into account to ensure uniform interpretation and application of the Harmonized Commodity Description and Coding System of the World Customs Organization' (Sevlad v. Commission, Decision of Appeals Chamber of 2 June 2016, p. 23). These opinions 'may be of significant assistance in determining the scope of the HS and EAEU Commodity Nomenclature headings' (General Freight v. Commission, Decision of Appeals Chamber of 21 June 2016, p. 19).

2 Szrf.ru. (2011). Agreement on the Eurasian Economic Commission of 18 November. URL: <http://www.szrf.ru/doc.phtml?nb=edition00&issid=2012011000&docid=93. [Accessed 2018]. The agreement was in force at the time of the events, but lapsed with the coming into force of the TEAEU. A provision substantially similar to this one is currently laid down in paragraph 13 of the Commission Regulation.

– […]
- Paragraph 39 of the Statute of the Court
  – 39. The Court shall resolve disputes arising in connection with the implementation of the Treaty, international treaties within the Union and/or decisions of the Bodies of the Union:
  – […]
  – 2) at the request of an economic entity:
  – concerning compliance of a Commission decision or of certain provisions thereof […] with the Treaty and/or international agreements within the Union […];
  – […]
- Article 56 of the Rules of Procedure of the Court

1. The Court shall dismiss the case if it establishes that:
   – a) the dispute falls outside of the jurisdiction of the Court;
   – […]

Case law of the Court

The claimant in *Remdiesel v. Commission* is an importer of marine engines, which the claimant classified under subheading 8408.10 of the EAEU Commodity Nomenclature (described in the Harmonized System Nomenclature as 'Marine propulsion engines'), the applied import tariff rate is 0%. Following an inspection in 2014, the customs authority reclassified the engines under subheading 8408.90 ('Other engines'), the applied tariff rate is 9%.[1] It must be noted that the Russian-language description of subheading 8408.10 which was used, at the time of the events, in the EAEU Commodity Nomenclature ('двигатели для силовых судовых установок') is broader than the English-language description used in the Harmonized System Nomenclature ('Marine propulsion engines') and may indeed be interpreted to include non-propulsion as well as propulsion engines.[2] Thus, in the claimant's opinion, the customs authority's decision was based on the explanatory notes to subheadings 8408.10.11 to 8408.10.99, implemented by a Commission College Recommendation No. 4 of 12 March 2013, which stated that these subheadings do not cover engines used for purposes other than propulsion.[3]

The Commission contended that, pursuant to Article 5(1) of the Agreement on the Eurasian Economic Commission of 18 November 2011 and paragraph 39(2) of the Statute of the Court, Commission recommendations, being non-binding on

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1 Remdiesel v. Commission, Order of the Panel of 8 April 2016, pp. 2–3.

2 The discrepancy has been eliminated in the EAEU Commodity Nomenclature currently in effect.

3 Remdiesel v. Commission, Order of the Panel of 8 April 2016, pp. 2–3.

the Member States of the Union, are not judicially reviewable. The Commission therefore moved the Court to dismiss the case for lack of jurisdiction pursuant to Article 56(1) of the Rules of Procedure.[1] The claimant argued that the Commission Recommendation in dispute is a regulatory act that must be reviewable for consistency with the Union law and is inconsistent with the Agreement on the Eurasian Economic Commission of 18 November 2011, the TEAEU, the Decision of the EAEU Board No. 54 of 16 July 2012, by which the EAEU Commodity Nomenclature was adopted.[2]

The Panel concluded that 'Commission recommendations (including Commission College Recommendation No. 4) are not normative legal acts, do not form part of Union law pursuant to Article 6 of the TEAEU[3] and are not challengeable in the Court as they fall outside of its jurisdiction'. The Panel therefore dismissed the case (terminated the proceedings).[4] The Appeals Chamber refused to hear the claimant's appeal as the Statute of the Court does not provide for appeals against Panel orders on procedural issues, but only against Panel decisions on the merits.[5]

A dissent by Judge Neshataeva explains, *inter alia*, why, in her opinion, the Court did have jurisdiction over this dispute. Firstly, responding to executive organs' issuance of non-binding interpretations inconsistent with superior law, the case law and the legal doctrine of EAEU Member States have recognized the judicial reviewability of 'interpretative acts'. This uniform national jurisprudence has resulted in the adoption of laws or Supreme Court resolutions which enshrine the right to a judicial review of interpretative acts. Secondly, the same approach is followed by integration organizations. In particular, the CJEU has ruled that '[a] n action for annulment must […] be available in the case of all measures adopted by the institutions, whatever their nature or form, which are intended to have legal effect' (*Commission v. Council*, 22/70, ECR 263, para 42). Thirdly, the Court should have adopted a systemic and teleological approach to interpretation of the term 'Commission decision' as a normative legal act enacted by an organ of the Union, which may or may not have binding legal force. Moreover, the Commission recommendation in dispute is *de facto* binding as it is routinely applied by customs authorities in making classification decisions and affects the rights and

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1 Ibid, pp. 5–7.

2 Ibid, p. 7. The Order of the Panel does not mention any specific legal provisions of these treaties and legal acts challenged by the applicant.

3 See Section above.

4 Remdiesel v. Commission, Order of the Panel of 8 April 2016, p. 8.

5 Remdiesel v. Commission, Order of the Appeals Chamber of 11 May 2016, pp. 3–4.

legitimate interests of public at large.[1] The Court's finding of no jurisdiction based on an arbitrary designation of a Commission's normative legal act as a 'recommendation' may thus essentially result in a denial of justice.[2]

As for the substance of the dispute, Judge Neshataeva took the view that 'even if the challenged explanatory notes [adopted by the Commission recommendation at issue] are consistent with the acts of superior legal force, the Commission's practices with respect to the explanatory notes must be compliant with the fundamental principles of legal certainty and respect for legitimate expectations of economic entities'. This means that 'legal regulation must be certain and predictable, [and] economic entities have the right to know in advance and anticipate the legal implications which the adoption of a legal act may have, so as to be able to protect their legitimate expectations'.[3]

VI. Conditions for the application of treaties 'external' to union law

It was mentioned in section II that the Statute unambiguously mandates that the Court apply 'international agreements to which the states that are parties to the dispute are participants'. There are a few categories of such agreements.

Firstly, an external agreement which was not concluded within the Union may nonetheless be incorporated into Union law by reference (this, for example, is the case for the rights and obligations under the WTO agreements of the Member States of the Union that have acceded to the WTO[4]). Secondly, an external agreement which is not expressly incorporated by reference into Union law may nevertheless be so fundamental to the operation of the Union that the Court treats it essentially as an international agreement within the Union (e.g., the HS Convention, to which all the Member States of the Union are parties). Finally,

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1 Remdiesel v. Commission, Order of the Panel of 8 April 2016, Dissenting Opinion of Judge Neshataeva, pp. 4–8.

2 Ibid, pp. 14–15.

3 Ibid, pp. 13–14.

4 Such rights and obligations form part of the legal system of the Union to the extent they relate to: (1) the legal matters that the Parties have authorized the organs of the Customs Union to regulate within the framework of the Customs Union; or (2) the legal matters regulated by the international agreements which constitute the legal framework of the Customs Union (Article 1 of the Agreement of 19 May 2011 on the Functioning of the Customs Union within the Framework of the Multilateral Trading System, see note 88 below).

in a dispute brought by an economic entity against the Commission, the Court refused to give effect to a less salient external agreement to which only a few Member States of the Union, including the one whose conduct gave rise to the judicial proceedings, were a party.

Select legal provisions applied in the dispute(s)

- Article 2 of the TEAEU
  - *Definitions*
  - […]
  - 'international agreements within the Union' means international agreements concluded among the Member States on matters related to the functioning and development of the Union;
  - […]
- Paragraph 50 of the Statute of the Court
  - In deciding disputes, the Court shall apply:

1) the generally recognized principles and norms of international law;
2) the TEAEU, international agreements within the Union, and other international agreements to which the states that are parties to the dispute are participants;
3) decisions and orders of the organs of the Union;
4) international custom as evidence of a general practice accepted as law.

- Article 45 of the Rules of Procedure of the Court
  - *Judicial review in disputes brought by an economic entity against a Commission decision or certain provisions thereof and/or against an act (failure to act) by the Commission*

1. In carrying out a review in disputes brought by an economic entity against a Commission decision or certain provisions thereof and/or against an act (failure to act) by the Commission the Court in session shall review:
   - […]
   - c) the challenged decision or certain provisions thereof and/or the challenged act (failure to act) by the Commission for compliance with the TEAEU and/or international agreements within the Union.
   - […]

- Article 25 of the TEAEU
  - *The Principles of the Functioning of the Customs Union*
  - […]

2. For the purposes of this Treaty, the terms below shall have the following meaning:
   - […]
   - 'Unified Commodity Nomenclature of the Foreign Economic Activity of the Eurasian Economic Union' (EAEU CN) means the foreign economic activity commodity nomenclature based on the Harmonized Commodity Description and Coding System of the World Customs Organization and the Unified Foreign Economic Activity Commodity Nomenclature of the Commonwealth of Independent States;
   - […]

- Article 51 of the 2009 Customs Code of the Customs Union[1]

1. The commodity nomenclature of foreign economic activity shall be based on the Harmonized Commodity Description and Coding System of the World Customs Organization and the Unified Foreign Economic Activity Commodity Nomenclature of the Commonwealth of Independent States.
   – […]

- Article 1 of the Agreement of 19 May 2011 on the Functioning of the Customs Union within the Framework of the Multilateral Trading System ('Agreement of 19 May 2011')[2]

1. From the date of accession of any of the Parties to the WTO, the provisions of the WTO Agreement as set out in the Protocol of Accession of such Party to the WTO, including the commitments undertaken by such Party as part of the terms of its accession to the WTO, which relate to the legal matters that the Parties have authorized the organs of the Customs Union to regulate within the framework of the Customs Union as well as those which relate to the legal matters regulated by the international agreements which constitute the legal framework of the Customs Union, shall become part of the legal system of the Customs Union. […]

- Paragraph 43 of the Commission Regulation
  – The College of the Commission shall carry out the following functions and powers:
  – […]
  – 4. monitors and controls compliance with international agreements which form part of Union law and with decisions of the Commission, and notifies to the Member States the need to comply.
  – […]

Case law of the Court

In *General Freight v. Commission* and *Sevlad v. Commission*, the claimants requested the Court to determine whether a Commission classification decision was consistent with the HS Convention. The Panel in *General Freight v. Commission* found that the HS Convention governs the customs tariff relations within the Union and

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1 Mddoc.mid.ru. (2017). Customs Code of the Eurasian Economic Union. URL: <http://mddoc.mid.ru/api/ia/download/?uuid=b48c5fca-9b44-40d4-ad92-40a5987f8f82 [Accessed 2018]. The 2017 Customs Code of the Eurasian Economic Union has been signed and will, upon its ratification by the Member States and entry into force, replace the currently effective Customs Code of the Customs Union.

2 Mddoc.mid.ru. (2011). Agreement on the Functioning of the Customs Union within the Framework of the Multilateral Trading System. URL: <http://mddoc.mid.ru/api/ia/download/?uuid=42c5a7ed-02fd-44cc-beed-a463ec239867 [Accessed 2018].

thus constitutes applicable law in the dispute 'alongside' Union law.[1] This is so because: (1) Article 51 of the Customs Code of the Customs Union, which forms part of Union law, expressly refers to the Harmonized Commodity Description and Coding System of the World Customs Organization as the basis for the commodity nomenclature of the Union;[2] (2) all the Member States of the Union have ratified the HS Convention and have thus undertook, under Article 3.1 of the HS Convention, to maintain their customs tariff and statistical nomenclatures in conformity with the Harmonized System; (3) Article 45 of the TEAEU transfers to the Commission the competence to maintain the EAEU commodity nomenclature and common customs tariff.[3] The Appeals Chamber affirmed, specifying that the judicial review of a Commission decision for compliance with the HS Convention is carried out 'in pursuance of the requirement of Article 45(1)(c) of the Rules of Procedure',[4] which mandates that the Court review said decisions for compliance with (1) the TEAEU and/or (2) international agreements within the Union. The Appeals Chamber thus appears to have equated, for the purposes of Article 45(1)(c), the HS Convention to an international agreement within the Union.

On the way to its conclusion as to the status of the HS Convention in Union law, the Appeals Chamber in *General Freight v. Commission* devised a two-tier test to determine whether an international agreement which is not an international agreement within the Union nor an international agreement of the Union with a third party nonetheless binds the Union. Under this test, an external agreement binds the Union if: 1) all the Member States of the EAEU are participants to the agreement; 2) the subject matter of the agreement relates to the EAEU's common policy.[5] The Appeals Chamber stated that this test reflects the established practice

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1 General Freight v. Commission, Decision of the Panel of 4 April 2016, p. 11. Remarkably for a court rooted in the continental legal tradition, the Panel notes that the same conclusion reached by its predecessor, the Court of the Eurasian Economic Community ('EEC'), has the force of stare decisis because pursuant to Article 3.3 of the Agreement on the Termination of the Eurasian Economic Community, after the termination of the EEC, the decisions of the Court of the EEC remain in force. In its Advisory Opinion of 10 July 2018, the Court also explicitly referred to stare decisis as the principle it follows in interpreting the norms of international law.

2 In this respect, the Appeals Chamber made an additional reference to Article 25 of the TEAEU: General Freight v. Commission, Decision of the Appeals Chamber of 21 June 2016, p. 15.

3 General Freight v. Commission, Decision of the Panel of 4 April 2016, pp. 10–11.

4 General Freight v. Commission, Decision of the Appeals Chamber of 21 June 2016, pp. 13–17.

5 Ibid, p. 15.

of integration organizations and provided references to a few CJEU cases, including *International Fruit Company and Others*, *Intertanko and Others*, etc.[1]

Judge Chaika dissented with regard to the second criterion, arguing it should be wider in scope and include both common and concerted policy areas, i.e. all areas in which powers have been transferred to the supranational level.[2] He referred, in particular, to an earlier Panel decision in *Sevlad v. Commission*, in which the Panel, without making a distinction between Commission powers pertaining to the common as opposed to concerted policy areas, had found that the right of the Commission to 'take into account' the rights and obligations of the Member States of the Union under the HS Convention derived from the powers transferred to the Commission by the Member States.[3]

In *ArcelorMittal Kryvyi Rih v. Commission*, the claimant invoked certain provisions of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994[4] ('Anti-Dumping Agreement'). The Panel found that, pursuant to Article 99(4) of the TEAEU and Annex 31 thereto, the Agreement of 19 May 2011 on the Functioning of the Customs Union within the Framework of the Multilateral Trading System applies in the Union. In accordance with Article 1 of the Agreement of 19 May 2011, the WTO Agreement and the relevant commitments of the Member States under their Protocols of Accession to the WTO, to the extent such commitments relate to the powers transferred by the Members States of the Union to the organs of the Union, form part of Union law. The Panel concluded that the judicial review of the Commission decision at issue, which imposed anti-dumping duties on bars and rods originating in Ukraine, must also 'take into account' the provisions of the

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1 General Freight v. Commission, Decision of the Appeals Chamber of 21 June 2016, pp. 15–16.

2 General Freight v. Commission, Decision of the Appeals Chamber of 21 June 2016, Dissenting Opinion of Judge Chaika, pp. 8–10. For a description of the different levels of policy integration, see Section below.

3 General Freight v. Commission, Decision of the Appeals Chamber of 21 June 2016, Dissenting Opinion of Judge Chaika, p. 10. The claimant in Sevlad v. Commission argued that the Commission had unacceptably broadly interpreted the relevant HS Committee classification opinion. As discussed above (see Section), the Court ruled that HS Committee opinions are not binding legal acts and Commission decisions therefore cannot be reviewed for consistency with them.

4 GATT Secretariat. (2002). The Results of the Uruguay Round of Multilateral Trade Negotiations, the Legal Texts. URL: <https://www.wto.org/english/docs_e/legal_e/19-adp_01_e.htm [Accessed 2018].

GATT 1994 and the Anti-Dumping Agreement.[1] At one point, the Panel also said it was taking into account the WTO case law and buttressed its rationale on one of the legal issues with (its own reading of) a statement made by a WTO Panel in a dispute settlement report.[2]

In *Tarasik v. Commission*, a question arose whether the Court could (and should) apply the 1958 Geneva Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts[3] ('Geneva Agreement'). Only three out of five current Member States of the Union have acceded to the agreement (and were its participants at the time of the dispute) — Belarus, Kazakhstan and the Russian Federation. While Article 50 of the Statute directs the Court to apply 'international agreements to which the states that are parties to the dispute are participants', Kazakhstan, whose actions essentially gave rise the claimant's grievances, was not a party to the dispute as economic entities cannot bring actions against the Member States of the Union, but only against decisions and acts (failure to act) of the Commission.

Konstantin Tarasik is a sole trader who imported Nissan Titan vehicles from the US to Kazakhstan. In his customs declaration, he classified the vehicles under heading 8704 as motor vehicles for the transport of goods. Such vehicles are not subject to the excise tax in Kazakhstan. The customs authorities of Kazakhstan did not contend that the classification made by the importer in the declaration was erroneous. However, for taxation purposes, the customs authorities reclassified the vehicles as, essentially, light motor vehicles for the transport of persons (an excisable good under the Tax Code of Kazakhstan) and assessed excise tax. Having exhausted domestic remedies, Tarasik filed a complaint with the Commission. After the Commission responded that it lacked the powers to review for lawfulness actions and decisions of national customs authorities, Tarasik challenged the Commission's failure to act before the Court.[4] He alleged, among other things, that the Commis-

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1 ArcelorMittal Kryvyi Rih v. Commission, Decision of the Panel of 27 April 2017, pp. 5–6.

2 Ibid, p. 16. The reference was to the WTO Panel Report in Russia — Anti-dumping Duties on Light Commercial Vehicles from Germany and Italy, WT/DS479/R, adopted 27 January 2017 and the issue concerned the period for injury analysis in an anti-dumping investigation.

3 Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions, done at Geneva, 20 March 1958, UNTS 335, p. 211.

4 The facts of the dispute are best summarized in a concise manner in Tarasik v. Commission, Decision of the Appeals Chamber of 03 March 2016, Dissenting Opinion of Judge Neshataeva, pp. 1–3.

sion had failed in its duty to carry out the monitoring and control of compliance by Kazakhstan with international agreements, as prescribed by subparagraph 43(4) of the Commission Regulation, i.e. had failed to look to it that Kazakhstan complied with its obligations under, *inter alia*, the Geneva Agreement.[1]

The Panel, which disallowed the application, did not engage with the claim under the Geneva Agreement at any length (if at all). In his dissenting opinion, Judge Chaika noted, in particular, that the requirements contained in the EAEU Technical Regulation 'On the Safety of Wheeled Transport Vehicles' are harmonized with the United Nations Economic Commission for Europe ('UNECE') Vehicle Regulations which are adopted under the Geneva Agreement — a fact which makes the Geneva Agreement, in relation to the Member States of the Union, 'a universal international agreement in the area of technical regulation in the Union, whose provisions are binding [on the Member States]'.[2] Article 3 of the Geneva Agreement lays down a provision for the mutual recognition of type approvals between the contracting parties of the agreement. In this dispute, the type of chassis used on the imported vehicles was indicated in the documentation issued by the US manufacturer (the US also being a contracting party to the Geneva Agreement). However, the customs authorities of Kazakhstan, contrary to Article 3 of the Geneva Agreement, disregarded this documentation and used another type of chassis (light vehicle chassis instead of heavy vehicle chassis) for classification purposes. This, according to Judge Chaika, should have led the Panel to conclude that the Republic of Kazakhstan was in violation of the Geneva Agreement.[3]

On appeal, the claimant essentially repeated the arguments set out by Judge Chaika in his dissent. The Appeals Chamber responded that the Geneva Agreement does not form part of Union law, is not binding on all the Member States of the Union, and applies only among its participants. The Commission therefore has no power to monitor and control Kazakhstan's compliance with the Geneva Agreement.[4] The fact that the Technical Regulation 'On the Safety of Wheeled Transport Vehicles' is harmonized with the relevant UNECE Regulations which are adopted under the Geneva Agreement does not mean that the provisions of the Geneva

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1 Tarasik v. Commission, Decision of the Panel of 28 December 2015, p. 6.

2 Tarasik v. Commission, Decision of the Panel of 28 December 2015, Dissenting Opinion of Judge Chaika, p. 5.

3 Recall, however, the Kazakhstan was not, and could not be, the respondent in the dispute. The application alleged that the Commission had failed to monitor and control Kazakhstan's compliance with, inter alia, the Geneva Agreement. Thus Kazakhstan's (non-) compliance with the Geneva Agreement was in any case an interim issue.

4 Tarasik v. Commission, Decision of the Appeals Chamber of 03 March 2016, p. 24.

Agreement apply unconditionally and/or take precedent in the sphere of technical regulation in the Union, or are included in Union law.[1] 'Compliance with the Geneva Agreement by the Republic of Kazakhstan forms part of the exclusive competence of the Republic of Kazakhstan as a subject of international law'.[2]

VII. Mutual recognition of customs authorities' decisions in the customs union

In *Russia v. Belarus*, a question arose as to the extent to which Union law restricts the actions of national customs authorities or, in other words, as to the relationship between Union law and national laws of the Member States in the areas covered by Union law. The Court made some important pronouncements, in particular with regard to direct application of the relevant provisions of Union law and the unconditional nature of the obligation of mutual recognition of customs authorities' decisions in the Union.

Select legal provisions applied in the dispute(s)

- Article 123 of the Customs Code of the Customs Union
  - *Mutual administrative assistance*

1. For the purposes of this chapter, mutual administrative assistance means actions of the customs authority of one Member State of the Customs Union on behalf of or in collaboration with the customs authority of another Member State of the Customs Union for the proper application of the customs law of the Customs Union and for the prevention, repression, investigation of customs offences in the Customs Union.
2. Mutual administrative assistance includes:
   - the exchange of information among customs authorities of the Member States of the Customs Union;
   - the mutual recognition of decisions adopted by customs authorities;
   - the carrying-out of certain customs controls provided for under this Code by the customs authority of a Member State of the Customs Union on behalf of the customs authority of another Member State of the Customs Union.
   - Mutual administrative assistance may also include other kinds of interaction among the customs authorities in accordance with international agreements of the Member States of the Customs Union.

- Article 125 of the Customs Code of the Customs Union
  - *Mutual recognition of decisions adopted by customs authorities*
  - Decisions of customs authorities adopted as part of completing customs

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1 *Tarasik v. Commission, Decision of the Appeals Chamber of 03 March 2016*, p. 27.

2 *Ibid, p. 28.*

formalities in respect of goods in the process of importation into or exportation from the customs territory of the Customs Union, goods under customs control, goods in customs transit through the customs territory of the Customs Union, goods in bonded storage, goods undergoing customs control procedures shall be mutually recognized by the customs authorities of the Member States of the Customs Union and shall have equal legal force in the customs territory of the Customs Union in the cases defined by the customs legislation of the Customs Union.

- Article 11 of the Agreement of 21 May 2010 on Mutual Administrative Assistance Among Customs Authorities of the Member States of the Customs Union ('Agreement of 21 May 2010')
  - *Grounds for submitting a request to carry out certain customs controls*

1. The grounds for submitting a request to carry out certain customs controls shall be:

1) The need to confirm the existence of goods under customs control;
2) […]
3) The existence of information which evidences a possible violation of the customs legislation of the Customs Union and/or of a Member State of the Customs Union, whose customs authority is submitting the request.

2. A request may also be submitted on grounds other than those enumerated in paragraph 1 herein.

- Article 17 of the Agreement of the Agreement of 21 May 2010
  - *Decisions of customs authorities subject to mutual recognition*
  - The following decisions of customs authorities shall be mutually recognized and shall have equal legal force in the customs territory of the Customs Union:

1. Adopted in compliance with the customs law of the Customs Union in the course of completing customs formalities on goods entering or leaving the customs territory of the Customs Union, goods under customs control, goods in customs transit through the customs territory of the Customs Union, goods in bonded storage;
2. Adopted in compliance with the customs law of the Customs Union in the course of carrying out customs controls.

- Article 3 of the TEAEU
  - The Union shall carry out its activities within the competence conferred on it by the Member States in accordance with this Treaty, on the basis of the following principles:
  - […]
  - promotion of mutually beneficial cooperation and equality of rights while taking into account the national interests of the Parties;
  - […]
- Article 25 of the TEAEU
  - *Principles of the Functioning of the Customs Union*

1. The following principles apply within the Customs Union of the Member States:
   - […]

5) free movement of goods between the territories of the Member States with no customs declaration or state controls (transport, sanitary, veterinary sanitary, quarantine phytosanitary controls), except as otherwise provided under this Treaty.
– […]

- Annex 5 to the Agreement on Accession of the Republic of Armenia to the TEAEU of 10 October 2014[1]
– […]

5. When in customs transit from the customs territory of the Union to the customs territory of the Union via territories of foreign states, Eurasian Economic Union goods retain the status of Eurasian Economic Union goods.
– […]

Case law of the Court

Throughout 2014 and in 2015, customs authorities of Belarus detained properly documented shipments of household appliances in customs transit from Kaliningrad oblast,[2] where the appliances were assembled from imported components, to the rest of Russia via Lithuania and Belarus. Although the appliances had been found by Russia's competent authority, the Chamber of Commerce and Industry, to meet the sufficient processing criteria and had thus been duly declared as Union goods, the customs authorities of Belarus refused to recognize them as such (i.e., refused to give effect to the decision to release the goods adopted by the Russian customs authority) and opened administrative proceedings which resulted in a finding of an administrative offence (failure to declare non-Union goods) and forfeiture of the goods to Belarus.

After interstate consultations failed to resolve the matter, Russia brought the dispute before the Court, alleging a violation by Belarus (specifically, by its customs authorities and courts) of the obligation to recognize the decisions of customs authorities of another Member State of the Union, enshrined in Article 125 of the Customs Code of the Customs Union, as well as a violation of related provisions (Articles 11 and 17) of the Agreement of 21 May 2010 on Mutual Administrative Assistance Among Customs Authorities of the Member States of the Customs Union and of Article 3 of the TEAEU.[3]

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1 Consultant.ru. (2014). Agreement on the Accession of the Republic of Armenia to the Treaty on the Eurasian Economic Union. URL: <http://www.consultant.ru/document/cons_doc_LAW_169854/ [Accessed 2018].

2 Russian exclave on the Baltic Sea.

3 Russia v. Belarus, Order of the Grand Panel of 12 September 2016 p. 10; Decision of the Grand Panel of 21 February 2017, Separate Opinion of Judge Chaika, pp. 2–4.

Belarus argued that the actions of its customs authorities were taken in compliance with the provisions of Union law governing customs controls and in pursuance of the national laws of Belarus governing administrative penalties for infringements of customs rules.[1] In the view of Belarus, the Court had no jurisdiction *ratione materiae* over the dispute to the extent it arose out of the actions of the national authorities of Belarus based on the municipal law of Belarus. The Grand Panel confined itself to finding, in the order admitting the application, that the Court has jurisdiction in disputes over compliance by a Member State with provisions of Union law, and since the TEAEU and the Agreement of 21 May 2010 form part of Union law, the Court had jurisdiction over this dispute.[2] The Grand Panel, however, stopped short of a declaration of the general supremacy of Union law over the national laws of the Member States.[3]

On the merits of the case, the Grand Panel ruled that:

1. Mutual recognition of decisions adopted by customs authorities does not imply the sending of inquiries, requests, information, or the performance of any other acts which would serve as pre-conditions for such recognition. Accordingly, 'in the cases established in the customs law of the Customs Union, decisions adopted by customs authorities must be mutually recognized *a priori*, without any reservations or conditions. Until proven otherwise, such decisions are presumed to be in full conformance with the requirements applying to them and, consequently, with the customs law of the Customs Union.[4]
2. Article 11 of the Agreement of 21 May 2010 lists the sufficient grounds on which customs authorities of a Member State must submit a request to the customs authorities of another Member State to perform certain actions on behalf of the former. Article 11 constitutes *jus singulare* in relation to the general provisions governing customs controls (in particular, those on risk management) and thus takes precedence over the latter.[5]

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1 Russia v. Belarus, Decision of the Grand Panel of 21 February 2017, p. 2; Russia v. Belarus, Decision of the Grand Panel of 21 February 2017, Dissenting Opinion of Judge Kolos, pp. 3–5.

2 Russia v. Belarus, Order of the Grand Panel of 12 September 2016, pp. 3–5.

3 In that respect, Judge Chaika stated in his separate opinion that the Court should have followed the approach of the CJEU in Costa v ENEL and Amministrazione delle finanze dello Stato v Simmenthal (See Russia v. Belarus, Decision of the Grand Panel of 21 February 2017, Separate Opinion of Judge Chaika, pp. 5–6).

4 Russia v. Belarus, Decision of the Grand Panel of 21 February 2017, pp. 6–7.

5 Ibid, p. 9–10.

3. Actions of a Member State in relation to customs controls, which go beyond what is required by the customs law of the Customs Union and represent an expansive interpretation of the rights of the Member States, contradict the principles of the functioning of the Customs Union, in particular those laid down in Article 25(1)(5) of the TEAEU.[1]
4. It is 'appropriate' for the customs authorities of a Member State which carry out customs controls on Customs Union goods in customs transit from one Member State to another Member State of the Union to 'refrain' from unilaterally deciding on the accuracy, admissibility, sufficiency of the documents issued by the competent authorities of the state of departure as the Agreement of 21 May 2010 requires the observance of the established international procedures for mutual administrative assistance among the customs authorities.[2]
5. The Agreement of 21 May 2010, in particular its Article 17 (which defines what decisions of customs authorities must be mutually recognized in the Union), elaborates on the provisions of Article 125 of the Customs Code of the Customs Union on the mutual recognition of customs authorities' decisions. The provisions of Article 17 are imperative,[3] do not contain exceptions or references, and therefore must apply directly. If properly applied, Article 125 of the Customs Code, Articles 11 and 12 of the Agreement of 21 May 2010 do not leave room for raising the issue of (non-)recognition of a good as a Union good when such good is in customs transit from one Member State to another Member State of the Union.[4]
6. In addition, an issue similar to this one is dealt with in the Agreement on the Accession of Armenia[5] to the EAEU. Annex 5(5) of the Agreement provides that Union goods in customs transit from a Member State of the Union to another Member State of the Union via a third party retain the status of Union goods.[6]

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1 Russia v. Belarus, Decision of the Grand Panel of 21 February 2017, p. 10.

2 Ibid, p. 11.

3 In other words, mandatory, i.e. do not allow for derogations.

4 Russia v. Belarus, Decision of the Grand Panel of 21 February 2017, pp. 11–12.

5 Armenia is, essentially, an exclave of the EAEU as it has no common borders with the other Member States of the EAEU.

6 Russia v. Belarus, Decision of the Grand Panel of 21 February 2017, pp. 15.

VIII. Competition policy: Whether a Member State may impose stricter admissibility criteria for vertical agreements than those provided for under the TEAEU

As part of Union-wide competition rules, the TEAEU prohibits certain vertical agreements, but also provides for exceptions from the prohibition. In particular, a vertical agreement is permitted if the market share of each party to the vertical agreement in the relevant product market does not exceed 20 percent. Belarus requested an advisory opinion from the Court on whether the Member States may establish a lower market share threshold for the exception.

Select legal provisions applied in the dispute(s)

- Article 76 of the TEAEU
  - *Common rules of competition*
  - […]

4. Vertical agreements between economic entities (market operators) are prohibited, except for vertical agreements which are deemed admissible in accordance with the admissibility criteria established by Annex 10 to this Treaty, if:

1) such agreements lead or may lead to the fixing of the resale price of a product, except where the seller fixes the maximum resale price for the buyer;
2) such agreements provide for the obligation of the buyer not to sell the products of an economic entity which is in competition with the seller. This prohibition does not apply to agreements providing for the buyer to arrange the sale of products under the trademark or another branding device of the seller or producer.
   – […]

- Annex 19 to the TEAEU
  - II. Admissibility of agreements; derogations
  - […]

6. Vertical agreements are admissible if:

1) such agreements are franchise agreements;
2) the share of each economic entity (market operator) which is a party to such agreement in the product market of the product which constitutes the subject matter of the vertical agreement does not exceed 20 percent.
   – […]

- Article 74 of the TEAEU
  - *General provisions*
  - […]

3. The Member States have the right to establish in their laws additional prohibitions as well as additional requirements and restrictions in respect of the prohibitions provided for in Articles 75 and 76 of this Treaty.

Case law of the Court

The Court started by saying that it had to determine, as a preliminary matter, whether the regulation of competition is within the competence of the Union or the Member States. Depending on the degree of cohesion, a policy pursued by the

Member States in a specific economic sector may be either 'coordinated', 'concerted',[1] or 'common'.[2] The Court devised a two-tier test for the identification of areas of common policy: (1) the existence of uniform legal regulation; 2) delegation of competence by the Member States to the EAEU.[3] Both concerted and coordinated policies are pursued with a view to achieving the objectives set out in the TEAEU. The difference is that the former requires harmonization of national laws of the Member States to the extent necessary to achieve the objectives, while the latter — only the establishment of common approaches.[4]

The Court concluded that the degree of cohesion of the Member States' activities in the area of competition will vary depending on: (1) the nature of the market (national or transboundary); and (2) the nationality of the economic entity concerned (a Member State market or a third country market).[5]

Competition in a transboundary market, i.e. a market whose geographical boundaries encompass the territories of two or more Member States,[6] is a matter of common Union policy. In particular, Annex 19 to the TEAEU establishes common competition rules in transboundary markets and confers on the Commission the power to supervise compliance with the rules.[7]

The TEAEU expressly provides that the activities of economic entities of third countries, if such activities may have a negative effect on competition in the product markets of the Member States, are subject to the Member States' concerted policy.[8]

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1 In many translations of the TEAEU this policy is referred to as 'agreed policy'.

2 Article 1(1) of the TEAEU.

3 Advisory Opinion of the Grand Panel of 4 April 2017, p. 4.

4 Article 2 of the TEAEU; Advisory Opinion of the Grand Panel of 4 April 2017, p. 4.

5 Advisory Opinion of the Grand Panel of 4 April 2017, p. 6.

6 The detailed criteria to determine a market as 'transboundary' are established in the Decision of the Supreme Eurasian Economic Council of 19 December 2012 No 29 'On approval of the criteria for classifying a market as transboundary'.

7 Advisory Opinion of the Grand Panel of 4 April 2017, p. 5.

8 Article 74(4) of the TEAEU as cited in Advisory Opinion of the Grand Panel of 4 April 2017, pp. 5-6.

As for competition on the national markets of the Member States, Articles 75-76 of the TEAEU only establish common principles and rules, which may be elaborated in the national laws of the Member States. In particular, Article 74(3) of the TEAEU specifically allows the Member States to establish in their national laws other prohibitions and additional requirements and restrictions in respect of the prohibitions enshrined in the TEAEU. This brought the Court to conclude that the protection of competition in the national markets is a matter of coordinated Union policy.[1] Therefore, the Member States have, as a matter of principle, a degree of discretion in regulating competition in their national markets.

Turning to the main issue of the dispute, the Court concluded that Union law makes a distinction between 'admissibility criteria' and 'prohibitions'. After reviewing the dictionary definitions of some of the terms used in the relevant provisions, the Court ruled that Article 74(3) of the TEAEU allows the Member States to introduce additional *prohibitions* or requirements and restrictions in respect of the *prohibitions* enshrined in the TEAEU, but not add to or modify the existing *admissibility criteria*.[2]

IX. Whether the deferral of a decision to impose anti-dumping measures extends the duration of an anti-dumping investigation or is otherwise prejudicial to the interests of foreign producers or importers

Anti-dumping, safeguard, and countervailing measures on products originating from third countries and imported into the Union are applied on a Union-wide basis through Commission decisions.[3] Investigations are conducted by the Commission's Department for Internal Market Defence.[4] Union law does not expressly prescribe any time limits for the adoption by the Commission of a decision to impose an anti-dumping duty after the *de facto* conclusion of an anti-dumping investigation. In *ArcelorMittal Kryvyi Rih v. Commission*, one of the central issues was whether a delay in the adoption of a Commission decision imposing anti-dumping duties beyond the 18-month period provides a basis for a finding of inconsistency of the decision with Union law.

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1 Advisory Opinion of the Grand Panel of 4 April 2017, p. 5.

2 Advisory Opinion of the Grand Panel of 4 April 2017, p. 8–9.

3 Article 48(2) of the TEAEU.

4 Article 48(4) of the TEAEU. Decision of the Board of the Commission of 7 March 2012 No 1 'On some issues of the application of safeguard, anti-dumping, and countervailing measures in the single customs territory of the Customs Union'.

Select legal provisions applied in the dispute(s)

- Article 45 of the Rules of Procedure of the Court
  - *Judicial review in disputes brought by an economic entity against a Commission decision or certain provisions thereof and/or against an act (failure to act) by the Commission*
  - […]

2. […]
   - A review of a Commission decision relating to the application of a safeguard, anti-dumping, or countervailing measure […] shall be limited to a review of:
   - Observance by the Commission of the essential procedural requirements, the correct application of the legal norms which precede the adoption of the decision in dispute;
   - […]

- Article 78 of the Rules of Procedure of the Court
  - *General requirements for a decision of the Court*
  - […]

8. If in the absence of violations identified by the Court in pursuance of Article 45 of these Rules of Procedure, the safeguard, anti-dumping, or countervailing investigation […] could not have resulted in a different decision of the Commission […], the decision of the Commission may be found to be in compliance with the Treaty and/or international agreements within the Union.

- Article 5 of the Anti-Dumping Agreement
  - *Initiation and subsequent investigation*
  - […]

5.10 Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation.

- Article 30 of the Agreement of 25 January 2008 on the Application of Safeguard, Anti-Dumping, and Countervailing Measures in Respect of Third Countries ('Agreement of 25 January 2008').[1]
  - *Commencement and conduct of investigation*
  - […]

13. The duration of an investigation shall not exceed:
    - […]

2) 12 months from the date of commencement of an investigation based on

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1 Mddoc.mid.ru. (2008). Agreement on the Application of Safeguard, Anti-Dumping, and Countervailing Measures in Respect of Third Countries. URL: <http://mddoc.mid.ru/api/ia/download/?uuid=db810659-3e83-4555-9920-34ce565306e6, http://mddoc.mid.ru/api/ia/download/?uuid=ff901a03-4a0d-4505-88f4-bfa63570d2d4. This agreement was in force throughout most of the duration of the investigation in dispute, but expired on 1 January 2015 with the entry into force of the TEAEU (Annex 33(I)(6) to the TEAEU) and was replaced by Annex 8 to the TEAEU.

an application seeking the imposition of an antidumping or countervailing measure. This duration may be extended by the [investigating] authority, but by no more than 6 months.

15. The date of conclusion of an investigation shall be the date on which the Commission of the Customs Union considers the investigation report and a draft of the decision of the Commission of the Customs Union [imposing, extending, revising, or terminating the measure].

- Protocol on the Application of Safeguard, Anti-Dumping, and Countervailing Measures in Respect of Third Countries (Annex 8 to the TEAEU)

107. An anti-dumping measure shall be imposed by a decision of the Commission in an amount and for a term which are necessary to remove injury to the domestic industry of the Member States caused by dumped imports.

217. The duration of an investigation shall not exceed:

– […]

2) 12 months from the date of commencement of an investigation based on an application seeking the imposition of an antidumping or countervailing measure. This duration may be extended by the investigating authority, but by no more than 6 months.

219. The date of conclusion of an investigation shall be the date on which the Commission considers the investigation report and a draft of the Commission [decision imposing, extending, revising, or terminating the measure].

Case law of the Court

On 20 November 2013, the Commission commenced an anti-dumping investigation concerning imports of bars and rods originating in Ukraine. The investigation was concluded on 19 May 2015, but the decision to impose anti-dumping duties was adopted only on 29 March 2016, i.e. over 10 months after the *de facto* conclusion of the investigation and more than two years after its commencement.[1] Based on these facts, in *ArcelorMittal Kryvyi Rih v. Commission*, the claimant, who was among the producers covered by the Commission decision, alleged a violation of the time limits set for the duration of an anti-dumping investigation or, alternatively, an abuse of right by the Commission — in the claimant's view, the adoption of the decision beyond the time limit set by the law for the conduct of an investigation had resulted in the infringement of the rights of foreign producers and importers.[2]

The Court found no fault in the deferred adoption of the decision by the Commission. The 'formal' duration of the investigation did not exceed the limits set

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1 ArcelorMittal Kryvyu Rih v. Commission, Decision of the Panel of 27 April 2017, p. 2.

2 Ibid, pp. 7–8.

by Article 30(13)(2) of the Agreement of 25 January 2008, paragraph 207(2) of Annex 8 to the TEAEU, and Article 5.10 of the Anti-Dumping Agreement. To the Court, the legally relevant fact is the date on which the investigation is deemed concluded as per Article 30(15) of the Agreement of 25 January 2008 and paragraph 219 of Annex 8 to the TEAEU. Deferred adoption of the decision to impose anti-dumping duties does not extend the formal duration of an investigation and thus does not result in a violation of the applicable legal provisions.[1] As for the abuse of right argument, the Court stated that the claimant had not produced evidence of any damage the claimant had sustained as a result of the deferral by the Commission of the decision to impose the anti-dumping measures.[2]

Judge Chaika disagreed that the Commission may adopt a decision imposing an anti-dumping measure after the 18 months, which he qualifies as the preclusive period, have lapsed.[3] He noted that in accordance with the established Commission practice, an investigation is deemed concluded by the adoption of a decision imposing an anti-dumping measure rather than by the consideration of a report of the investigating authority. Expiration of the preclusive period must therefore terminate an investigation and bar the Commission from adopting a decision to impose or not to impose an anti-dumping measure.[4]

To Judge Chaika, a violation of the preclusive period may result in a distortion of the dumping margin and an incorrect assessment of the anti-dumping duty, i.e. may affect the substance of the Commission decision. For this reason, the requirement to conclude an investigation within the preclusive period constitutes an essential procedural requirement. In these circumstances, Article 78(8) of the Rules of Procedure of the Court should not apply and the claimant should not be required to demonstrate that, absent the violation, the outcome of the investigation would have been different. Since the deficiencies of an act adopted with an essential procedural violation may be remedied only through nullification of the act, the Court should have found that the Commission decision is contrary to Union law.[5]

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1 ArcelorMittal Kryvyu Rih v. Commission, Decision of the Panel of 27 April 2017, pp. 17–18.

2 Ibid, p. 19.

3 ArcelorMittal Kryvyi Rih v. Commission, Decision of the Panel of 27 April 2017, Dissenting Opinion of Judge Chaika, p. 2.

4 Ibid, p. 4.

5 Ibid, pp. 5–7.

X. Conclusion

Although still very young, the Court has developed some important jurisprudence on both procedural and substantive matters of Union law. Apparently seeing itself part of the wider system of public international law and dispute settlement, the Court readily borrows from the case law of the courts of other integration organizations, in particular of the CJEU, of the International Court of Justice, and of the Dispute Settlement Body of the WTO. In a move strikingly uncharacteristic of other international fora, it asserts, in no uncertain terms, the doctrine of *stare decisis,* though, when referring to it, the Court apparently means that previous cases constitute, to use the words of a WTO panel, 'useful and persuasive guidance',[1] rather than formally binding precedent.

The jurisprudence of the Court is — and should be — heavily shaped by its Statute, which was carefully crafted to prevent the judiciary of the Union from slipping out of the bounds set for it by the Member States and taking on a role in the Eurasian integration process beyond that which the Member States were willing to accord it. In enforcing Union law, the Court is cautious not to encroach, to the extent possible, on the territory over which the Member States may claim sovereignty and, despite the admonition of some of the judges that the Court should not shy away from gap-filling,[2] should protect the weaker party in procedural terms[3] and take into consideration its legitimate expectations in substantive matters,[4] the Court prefers to manifest loyalty to black-letter law and distant neutrality, which in the eyes of the beholder may at times come off as deference to the national authorities or the Commission. In this context, the recent first win for a private claimant in *Oil Marine Group v. Commission* may give the Court a boost in confidence from the business community in the Member States and lay the first stone in the reputation of the Court as an independent and impartial dispute settlement forum.

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1 WTO Panel Report, Brazil — Measures Affecting Desiccated Coconut (Brazil — Desiccated Coconut), WT/DS22/R, adopted 20 March 1997, para 258.

2 Remdiesel v. Commission, Order of the Panel of 8 April 2016, Dissenting Opinion of Judge Neshataeva, p. 16.

3 Tarasik v. Commission, Decision of the Appeals Chamber of 03 March 2016, Dissenting Opinion of Judge Neshataeva, pp. 9–10; Tarasik v. Commission, Decision of the Appeals Chamber of 03 March 2016, Dissenting Opinion of Judge Chaika, p. 14.

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Ровнов Ю.Е., Спорышева Н.А.[1]

Суд Евразийского экономического союза: особенности первых судебных процессов[2]

В статье приводится обзор первых лет судебных процессов в Суде Евразийского экономического союза, который начал функционировать 1 января 2015 г. Освещены вопросы различного характера, в т.ч. процедурные, как касающиеся досудебных разбирательств и заявлений в ходе судебных заседаний, взаимного признания решений таможенных органов и увеличению срока введения антидемпинговых мер относительно максимальной длительности антидемпингового расследования.

Ключевые слова: ЕАЭС, ВТО, разрешение споров**.**

JEL: F13

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2 Статья поступила в редакцию в сентябре 2018 г.

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Prospective Models for Britain's Trade Policy after Withdrawal from the EU[2]

The scope of the paper is limited to several aspects of Britain's economic relationship with the European Union after the departure from this bloc. Apart from general matters like the EU budget and the EU legislation, special attention is paid to economic and regulatory conditions of the EU single market as these aspects have been sensitive throughout the history of the European integration resulting in shaping some of the presented models, based on national economy priorities of the EU partners including those from the EFTA. Taking into account crucial drawbacks of the Draft Withdrawal Agreement published on 14 November 2018, the author's view that it is unlikely to succeed, at least in the current wording, the paper provides solutions for the UK's post-Brexit trade policy should it leave the EU with no deal.

Keywords: Brexit, United Kingdom, European Union, single market, economic integration, trade policy.

JEL: F15

INTRODUCTION

In 2017, both Houses of the UK Parliament confirmed the result of the EU membership referendum by voting for the European Union (Notification of Withdrawal) Bill. The Bill was passed by the European Parliament and given Royal Assent by Her Majesty The Queen on 16 March 2017 effectively becoming an Act of Parliament. On 29 March 2017 the UK Prime Minister Theresa May notified the European Council in accordance with Article 50(2) of the Treaty on European Union of Britain's intention to leave the EU. The process mentioned above was not smooth.

However, it was just the beginning of launching the Brexit mechanism. Later proceedings happened to be much more complex and resulted in the MPs resigning from such Cabinet Ministers positions as Secretary for Exiting the Europe-

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2 The article was submitted in November 2018.

an Union and Foreign Secretary. Nonetheless, the Prime Minister continued to ignore proposals of Members of Parliament and on 13 November 2018 the UK Government and the EU agreed on the text of the Withdrawal Agreement. New challenges arose because the PM signed up to poor conditions for the UK including the Irish backstop which became widely disputed over.

EARLIER FINDINGS

It was clear from the start of the Brexit process that if the United Kingdom adopts one of the alternatives to membership mentioned in the last section, then the government would be able to establish its own trade policy outlines. However, most principles are likely to remain the same as they are set within the EU common trade policy framework. Post-hard-Brexit conditions would not provide as much leverage in foreign trade as the UK currently experiences. This also relates to Britain's participation in the WTO dispute resolution system. Though some disputes are technical, other cases may take on political dimensions. Even if an FTA with the EU is reached, Britain alone would not be so powerful, compared to be a part of the EU united front as a member of the single market.

The European Union as a whole has also gained lots of experience in trade liberalization with external partners. There are three major types of agreements.

1. Customs Unions establishing a common external tariff and eliminating customs duties in bilateral trade flows;
2. Association Agreements, Stabilization Agreements, (Deep and Comprehensive) Free Trade Agreements or Economic Partnership Agreements reducing or eliminating customs tariffs in bilateral trade;
3. Partnership and Cooperation Agreements establishing just basic principles of liberalization of economic relations.

Apart from trade agreements in place, the EU has not yet applied several finalized agreements, namely those with Canada, East African Countries, Singapore, Vietnam and West Africa. Essentially, there is a list of ongoing negotiations with different countries or blocs across the globe, notably with the United States and Japan. Moreover, there are negotiations regarding an investment agreement with China and the Trade in Services Agreement (TiSA). Thus, the European Union is one of key players in the global network of current and prospective agreements.

According to some concepts, regionalism in trade is opposed to multilateral cooperation within the WTO system. Recently this discourse has shifted to Multilateralism—Plurilateralism approach [1, p. 142]. However, whatever flexibility is granted to the UK by 'hard' Brexit provisions in terms of concluding own agreements, it should be highlighted that negotiations are becoming mostly regional or bilateral, so it is the EU that provides leverage to Britain in trade disputes or striking trade deals. Given the circumstances, this is especially significant in trade in services due to regulatory barriers which exist even within the EU single market.

Surely, not trade in goods and services only will be affected should Britain leave the EU. Other matters regulated by the WTO e.g. trade-related aspects of intellectual property rights also depend on the Brexit deal because Britain takes advantage of the economic bloc's weight whilst striking new deals on numerous matters.

Pursuant to a 'hard' Brexit plan, current EU trade arrangements and ongoing negotiations may not be transferred to Britain by default. Actually, the UK would have to negotiate its departure from the EU as well as trade agreements with non-EU countries and blocs at the same time. A question arises whether it is possible at all bearing in mind the provisional two-year period according to the Treaty on European Union. As a consequence, it is likely that whilst discussing and voting on a motion regarding Brexit negotiations, Members of the European Parliament will adhere to their current views. Specifically, they might propose conditions that negotiations on time-limited transitional arrangements taking future relations plans into account cannot take place unless the progress towards the UK's withdrawal agreement has been made. Alternatively, a condition on a deal on future UK-EU relations might be required, e.g. that an agreement cannot be reached until Britain has withdrawn from the EU. MEPs have already highlighted they would insist that the UK should meet all financial obligations to the EU despite Britain's contribution to the EU project and institutions.

Besides, the European Union might also be affected by Brexit because the UK contributes to its attractiveness as a trade partner and FDI destination. Although European countries account for about half of world services exports, the share of Britain constitutes six per cent which is larger than individual shares of other EU countries. Furthermore, the UK is the world's second biggest services exporter after the United States [2, p. 70].

Despite some protectionist measures which gained momentum due to crises, the European Union has a progressive and open trade policy partly shaped by Britain. In 2014 the European Commission proposed a new trade and investment strategy called 'Trade for all: Towards a more responsible trade and investment policy' which highlighted effective and transparent trade. On 29 March 2017 the EU Commissioner for Trade Cecilia Malmström addressed European Economic and Social Committee with speech 'A progressive trade policy in a protectionist age' to discuss CETA, TTIP and other agreements negotiated.

In recent years, the European Union's key ambitions regarding foreign trade have been the Transatlantic Trade and Investment Partnership (EU—US) and the Economic Partnership (EU—Japan) while both have not been so prioritized in those countries' trade agendas. However, after D. Trump's decisions to abandon the Trans-Pacific Partnership and to launch 'trade wars', taken in 2017 and 2018 correspondingly, the situation appears to be changing. Besides, in March 2018 11 parties of the former TPP signed the revised version of the arrangement titled Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

Britain's contribution to liberalization of international trade and European foreign economic affairs should not be underestimated. It has advocated the WTO Doha Development Agenda, called for acceleration of TTIP negotiations and proposed trade arrangements in addition to an investment agreement with China.

As for the EU-27 economy, its total GDP is expected to decline by about 15 per cent if Britain leaves the single market [3]. In terms of foreign trade, the share of the EU without Britain is likely to be at the level of around 14 per cent in the world's total while the share of Britain alone would reach about four per cent [Ibid].

It is still too early to say which trade policy instruments Britain will actively use in the future. But surely it will employ trade remedies at a larger scale than it does now. The European Commission currently handles trade remedies and several UK industries may seek import protection through such measures after Brexit. The UK will set up its own national investigating authority for trade remedies [4]. But it is important to remember that a huge number of domestic consumers and companies depend on imported intermediate goods from outside the EU and would be put at a disadvantage by such contingent trade protection measures.

CHALLENGES

Nature of the negotiated arrangement

Apart from 'default' most-favoured nation principle, the EU and UK have a lot of preferential trade arrangements concluded before Brexit negotiations. That means a trade-off about the access to the Single Market (mainly absence of tariff and non-tariff barriers to trade), and special regime for EU goods regulations, budgetary contributions, social and employment legislation, etc. is a reasonable way forward.

According to the 'Swiss model', the restrictions on trade would be mostly facilitated. The European Economic Area provides full, tariff-free access to the internal market, and Balassa's criteria for the 'common market' [5, pp. 2, 90] regional integration stage. Norway, Iceland and Liechtenstein enjoy the same advantage. However, there would be some inevitable restrictions on the UK's foreign trade under this scenario.

Rules of origin

The EU applies a common external tariff. This is a reason for rules that imported products can move with no restrictions within the EU if respective tariff has been paid. For instance, a vehicle entering Britain from Japan may be re-exported to other EU states with no barriers to trade. The situation is different if products are imported via the European Economic Area (the same Japanese vehicle re-exported to the Union from Iceland) or via other states with which the EU has special trade agreements as they do not apply the Union's external tariff.

The Union's Rules of Origin set out where a product was initially produced and whether tariffs should take place. It is obvious that the EU operates in the complicated GVCs and has concluded lots of preferential agreements so this might be a complex and long lasting procedure. Some aspects of this process, e.g. compliance regulations would not be favourable for British companies. It is believed that "the process of adapting to rules of origin-based duty-free trade under a new UK-EU free trade agreement would be tedious, costly and disruptive to trade" [6]. Nevertheless, rather often advantages covered by special preferential regimes are more significant than compliance costs. Consequently, in many cases companies choose to follow 'most favoured nation' tariffs despite criteria for origin.

As for the measures being taken to establish the origin of goods and their impact on prices within the trade arrangements between the European Free Trade Association and the European Economic Community, it was calculated by scholars just before the Maastricht Treaty came into force that border costs reach minimum three per cent of imported products' value [7, pp. 112-121].

Anti-dumping and other non-tariff barriers

Even in case of participation in the European Economic Area, British products would also be subject to potential anti-dumping procedures initiated by the Union. One of the most notable cases in this regard took place in 2005 when a duty of 16 per cent was introduced by the Union regarding salmon imported from Norway. Britain would have to follow the European Single Market rules and regulations even if a bilateral arrangement (Swiss model) is agreed upon.

Restrictions on services trade

Due to the Single Market, Iceland and other members of the European Economic Area may have similar rights in trade in services as the EU states do. Besides, as in a number of spheres they have no access to the mechanism establishing rules of this trade as those are discussed within the EU institutions. Britain has a rather developed services sector and its net balance of trade in services with the EU is huge so it would not be favourable for the UK to lose access to such a mechanism and consequently to liberalize trade.

Meanwhile, experts argue that this might be crucial for the British economy due to the EU currency union - of which the UK decided not to be a part –and financial services standards. According to the organization dealing with trade in financial services TheCityUK, "the provision of financial services in the UK by non-UK firms has become to a large degree dependent on the maintenance of [a] common EU legal framework and the UK's part in devising it and operating within it. The evolutionary character of this common legal framework means that the UK must be engaged at all levels of policy development." [8].

Britain has even once needed to appeal to the ECJ regarding the ECB's recommendations to locate clearance bodies for financial services denominated in the

Euro currency in countries of the Eurozone. The basis for the UK's legal argument has always been that the EU Single Market four freedoms are not to be disrupted for its Members. At the same time, Britain did not always get support regarding its financial sector from the majority of the EU states. For instance, special arrangements were not voted for at the meeting of the Council of the European Union in 2011.

However, in the 'No-deal' scenario, having left the European Economic Area, Britain would not be in a powerful position whilst concluding arrangements on trade in goods and services with the European Union. Even the Swiss model in spite of close economic ties of this country with the EU does not automatically imply the freedom of trade in services. Undoubtedly, such freedom should be agreed upon in order to follow trade liberalization trends instead of having obstacles to free trade.

Again, the UK's financial sector would need to be restructured in the way of setting up branches of banks and other financial organizations in the Union should they plan to take part in cross-border transactions.

Apart from the financial authorities in the EU countries there are also supranational institutions like the ECB which are responsible for introducing new standards for the financial sector. After the world economic crisis, they become more demanding in relation to the external financial services providers. This includes additional burden and bureaucracy, e.g. registration with the European Securities Markets Authority and the ban imposed on several types of operations. These innovations are scheduled to be implemented in 2019.

SOLUTIONS

On 14 November 2018, the Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (hereinafter — Withdrawal Agreement) was published [9]. Considering absence of solid support among Members of Parliament (even Conservative ones), the UK Government is *highly likely* to be defeated after the debates on the Withdrawal Agreement in the House of Commons scheduled for December 2018. No matter should the debates and vote take place on time or be deferred due to powerful parliamentary opposition to the Prime Minister's plans, this outcome should not be taken off the table.

In 2016, Boris Johnson MP coined a term 'Project Fear' in relation to debates before the UK referendum which was held on 23 June 2016. Later, whilst serving as Foreign Secretary, he alongside other 'Brexiteers' and experts endlessly used this term to highlight relatively low costs of the hard-Brexit model of leaving the EU, saying there are no solutions at all (see Fig. 1). According to Baker McKenzie, businesses based at both sides have started preparations for a no-deal scenario [10, p.2]

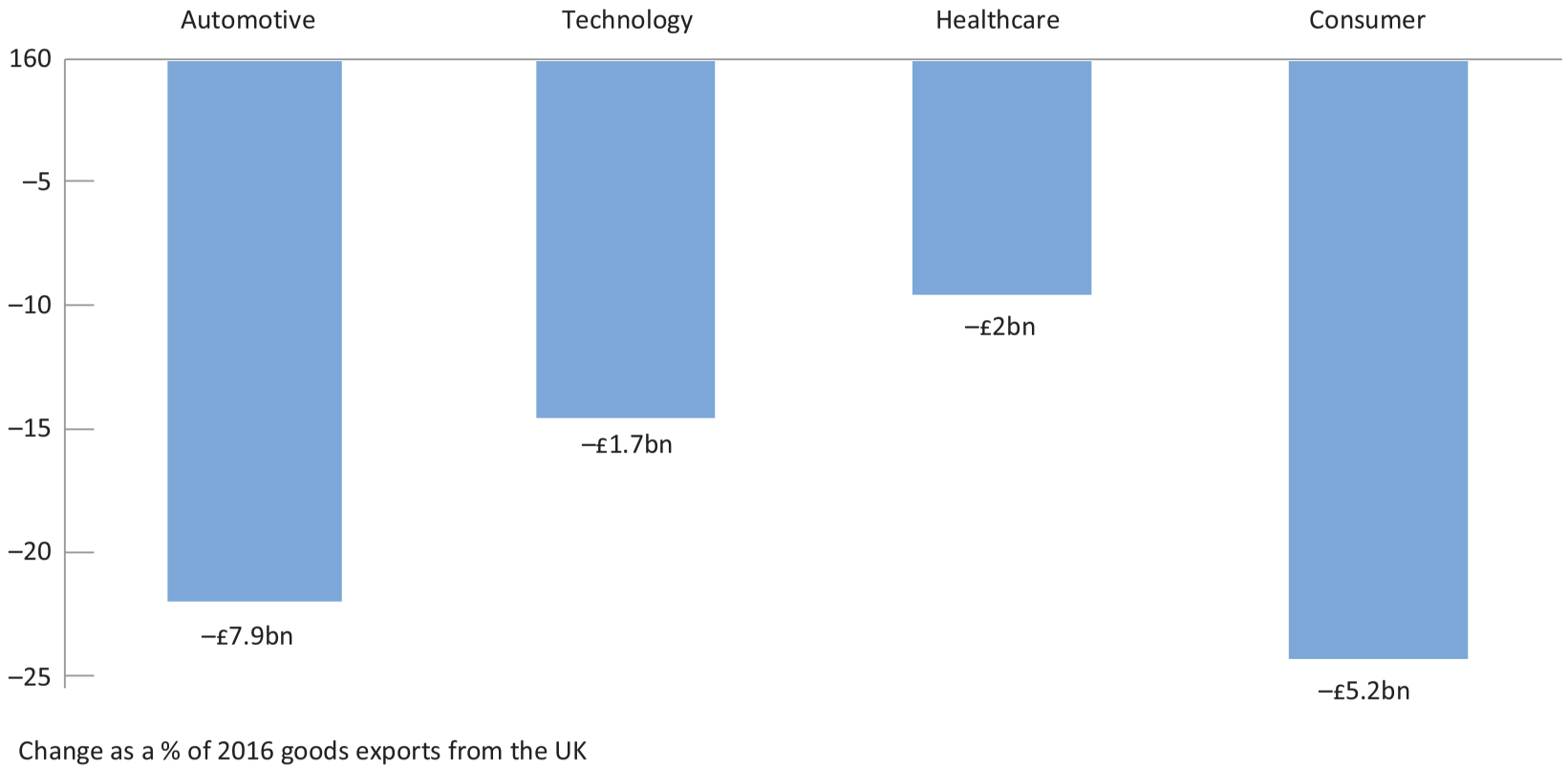

Fig. 1. Impact of a hard Brexit on the UK goods exports to the EU (as a per cent of 2016)

Source: [10, p.3].

Solution-wise, it is useful to refer to the WTO agreements in order to find out an implicit trade policy option that has never been publicly suggested by the UK government and the EU. A hidden solution preventing the UK from momentous quitting the EU Customs Union and/or Single Market. The General Agreement on Tariffs and Trade 1947 (later updated in 1994) includes an Article XXIV "Territorial Application — Frontier Traffic — Customs Unions and Free-trade Areas" which creates an opportunity for an interim agreement between the UK and the EU-27. The EU as a whole and the EU states are all the WTO Members hence the 'WTO Model'/'No-deal' can potentially be smoother than the UK Government, numerous politicians, experts and the society predict.

That is due to two sections of GATT Article XXIV cited below.

"4. 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. They 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" [11]. This is a rather general section just confirming basic GATT/WTO principles of predictable of growing access to markets. The next section specifies how this might be implemented in the Brexit case.

"5. Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; *Provided* that:

(*a*) with respect to a customs union, or an interim agreement leading to a formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;

(*b*) with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free–trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement as the case may be" [Ibid].

According to these, there is a special mechanism the UK and EU-27 might launch. Even having left the EU on 'No-deal' terms, the UK would temporarily

be able to maintain tariffs and quotas at zero level in trade with the EU-27. Surely, the EU would benefit from such a regime. This is a mutually beneficial way forward in case of 'No-deal' scenario as otherwise tariffs on products from the EU would be rather high.

CONCLUSION

To sum up, an outline of several prospective scenarios for the EU-UK economic relations most commonly referred to is covered in the paper. However, notwithstanding the models and their essential characteristics presented within this study there is still a probability that a new unique interaction model might emerge.

At the same time, there is still nothing certain regarding Britain's departure from the European Union including a model it will adopt as an alternative to membership. This lengthy period might affect investors, financial markets, currencies, employment, trade balance, and lots of other issues. If it happens that the UK should ensure greater and fair competition, there is much at stake so adjustment measures are to be designed immediately.

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Возможные варианты торговой политики Великобритании после выхода из Европейского Союза[2]

Данная работа посвящена ряду аспектов экономического взаимодействия Соединенного Королевства с Европейским Союзом после запланированного на март 2019 г. выхода из данного объединения. Помимо общих пунктов повестки переговоров, в частности, бюджета и законодательства ЕС, особое внимание уделено экономико-правовым условиям, связанным с Единым внутренним рынком ЕС, поскольку данные вопросы всегда являлись «чувствительными» на протяжении истории европейской интеграции, что привело к формированию различных моделей взаимодействия

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ЕС с внешними странами, в т.ч. членами ЕАСТ, с учетом приоритетов их экономического развития. Учитывая значительные недостатки Проекта Соглашения о выходе Соединенного Королевства из Европейского Союза, опубликованного 14 ноября 2018 г., и авторскую точку зрения, что данное соглашение не будет одобрено Парламентом Великобритании, по крайней мере, в текущем виде, в работе формулируются предложения для торговой политики страны, в случае, если будет осуществлен выход «без сделки».

Ключевые слова: Брексит, Соединенное Королевство, Европейский Союз, единый внутренний рынок, экономическая интеграция, торговая политика.

JEL: F15

Amirbekova A.[1]

Theoretical Aspects of Export Potential, its Essence and Development[2]

The article examines the concept of "export potential", identifies parameters that characterize it, and also provides the author's definition of this concept. From the author's conclusions, it should be noted that the behavioral nature of exports plays a fundamental role in shaping the direction of the export strategy itself, since "export behavior" involves the transformation of the export model and advancing it to a new level - the level of innovative development. In addition, in modern conditions, especially in the conditions of the WTO, it is important to consider "export-behavior" in conditions of the world economy challenges. The central element of these challenges is the "decision-making" process. Such actions can have liberalizing or discriminatory character in regard to business partners. Thus, according to the author, the current export potential of Kazakhstan should be considered as a possible behavior in the external economic environment that meets the requirements of the WTO.

Keywords: export competitiveness, export potential, export behavior, World Trade Organization, intra-industry trade, non-tariff barriers.

JEL: F19

Introduction

In-depth examination of the theoretical literature allowed us to see the diversity of existing definitions of export. According to definitions in the economic literature, export potential, on the one hand, should be considered as an aggregate of strength and opportunity [1] (from the Latin word "potentia" - strength), and on the other, as export. Concurrently, the semantics of the term shows that the concept of "export" comes from the Latin "exportare", which literally means "to take out of the port".

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2 The article was submitted in October 2018.

The essence of export potential is not defined in the economic literature, so its definition will be discussed in terms of the characterization of its types differentiated by spatial and temporal features. In the scholarly literature, significant attention is paid to spatial features, which include "regional" and "world" levels. In connection with the existing definitions of "export potential", we describe the region's capability to produce the necessary amount of export-oriented products that would meet the quality needs of the external market. Temporally potential can be exploited and unexploited.

Issues and solutions

While defining export potential, it is necessary to take into account the direct correlations, namely:

First, export potential is a driving force of economic activity, thereby different scholars consider export potential as an integral part of the "economic potential", interpreting it as an ability of

- the national economy branches to cumulatively provide services and produce products [2];
- the economic mechanism for implementing derivative functions based on scientific and technical achievements [3];
- the economic system to process the country resources in order to meet the needs of the society [4];
- the national economy in general and individual economic regions in particular, to create a certain amount of consumer values while developing social productive forces and their level of efficiency [5].

As can be seen from the above, the aggregate economic potential is a complex structural phenomenon: a) a cumulative ability of economy to fulfill production activity, which includes production of goods and provision of services aimed at meeting the needs of domestic markets; b) the ability of economy to meet the needs of foreign markets; c) availability of technical resources, the use of which can be effective if socio-economic factors are taken into account.

Secondly, the increase in export potential is closely connected to the implementation of foreign economic policy. The structural analysis of economic potential provides an opportunity to explore the essence of one of its core components - "*the external economic potential*". Accordingly, same methods were utilized to determine the essence of export potential as it was used in the interpretation of economic potential. The researchers' conclusion was based on the following theory - a new phenomenon is similar to the other one and, consequently, is already known, thereby the information obtained earlier is applied to a new phenomenon [6].

Thirdly, the concept of quality correlates with the concept of *"export competitiveness"* to a certain extent. In our view, all definitions above which correlate prod-

uct quality with export potential are somewhat limited, for they just identify the production capacity of the economy. This is asserted by Pilipenko, who defines export potential as an opportunity to produce the necessary quantity of goods to carry out export that would meet the quality and competitiveness needs of the external market [7].

Therefore, an understanding has been established that export potential is the ability of the entire economy, federal subjects, and individual industries and companies to produce the necessary quantity of export-oriented competitive products [8]. Transformation of export potential existed at different historical periods. Though in the 21st century, entering the world economy into a new stage of development has closely linked it with the concept of competitiveness. Therefore, such components as "capability" and "opportunity" are nowadays replaced with more refined qualitative characteristics. In such situation, it makes sense to find out to what extent is export potential associated with the concept of "competitiveness", as many researchers do not relate the capacity-building of export potential to factors for increasing the economic competitiveness of a country [9]. It has been therefore determined that there is a direct correlation between export potential and competitiveness. Success largely depends on competitiveness because the ability to win a market share arises only if both the particular product and the company are competitive.

However, these definitions do not take into account sales and other opportunities [10]. Therefore, it is necessary to clarify the definition of "export potential" itself, since according to Schwander [11], export potential does not mean only the availability of production capabilities, but it also means the integrated ability to satisfy consumers' demands as much as possible, while taking into account the rational use of resources and interests of the state and other parties. That is, quality improvement ("quality or modernization of products") can either be embodied in the technology itself ("modernization of production processes") [12] or via integration of large production stages within the company or its location ("functional modernization"). Recent studies [13, 14] also confirm that export has very low "survival capability" for new participants. This is specifically true for low-income countries, where many constraints like currency fluctuations, search and information cost, and other challenges exist, all of which constitute a threat to export flows during the first years of activity. It can be assumed that the variety of theoretical models and approaches clarifying the nature, characteristics, and structural features of export potential implies a certain correlation between export potential and the level of competitiveness.

When defining the concept of export potential itself, systematization of different views is required; therefore, it is necessary to distinguish common and different content of export potential in the existing interpretations. Such systematization allows us to distinguish several points of view from one another. The first group of researchers consider export potential as a qualitative feature of a national economy, i.e. the potential ability of a country to export currently produced or available products and resources [5 p. 400].

The second group of researchers provide a broader definition identifying such factors as *sources, stocks, means, and opportunities* as export objects that can be used to solve problems, achieve goals, and provide opportunities in some particular area for a specific person, society, or a state [15].

According to the author, the export potential is a category with complex qualitative predetermination so it is necessary to rely on other specific parameters when identifying its nature. In addition to above mentioned definitions, other characteristics of export potential can be considered, such as: a complex multifaceted phenomenon revealed when concurrently perceived as "an indicator", "a process", "a behavior", and *quantitative characteristics of economic parameters of economic development*. Therefore, research will be further developed in terms of these three parameters.

Consideration of export potential as of a special process allows reflecting the "process character" of production and of the export activity itself. O'Donnell believes that export potential is a process that allows a business to resort to marketing opportunities while saving volume of trade [16].

We agree with the scholar, since building up marketing opportunities and focusing on current conditions is highly relevant, as it is necessary to reduce the extent of government intervention, especially in the context of Kazakhstan's membership in WTO. In general, export potential here may reflect the nature of export activities.

Tazhieva believes that export potential is a synthetic concept characterized by the level of productive forces development that constitutes a certain aggregate potential depending on the scale and nature of an enterprise [17]. However, we do not support her argument because consideration of aggregate potential is limited by the enterprise, and it does not extend the area of responsibility beyond its limits in the conditions of prevailing institutional environment.

Exploring export potential as a part of economic potential, Buckley and others also imply a process, which determines the presence of such factors as labor cost, productivity, prices, and R&D [18].

The above definition is distinguished by a number of important clarifications, since it includes not only the ability of economic potential to address existing market opportunities, but also the ability to shape the mechanisms of future development. In either event, Buckley [18, p. 125] implies the existence of internal opportunities to adapt the economic system to changing external conditions. Indeed, the economic situation is being changed with the unification of world trade relations, increased competition, and etc.

In the above literature, export potential was considered as a process, but in the practice of economic life, export potential is often used as an "indicator" of economic potential. For instance, Savinov and others [19] see it as a complex indicator that takes into account properties and characteristics of a market where goods

can be potentially sold. It is quite obvious that export potential is primarily the ratio of exports to total sales. At the same time, the deepening of trade relations is maintained by both increasing the range of products and qualitative changes in the product itself. In product specialization, this can be observed through the levels of inter-sectoral trade that may arise as a result of specialization of production, as well as specialization in various levels of quality.

In modern economics, in addition to the above mentioned definitions, an understanding of *"export-behavior"* [20] exists as well, which is used to describe marketing innovations. Differently, but in the same context, Castro et al. made an attempt to determine to what extent the value of exports and productivity together can determine intra-firm export behavior [21].

The application of this approach is based on the perception that the export itself is already considered as the result of an innovative method. Therefore, Thomas and Araujo see export-behavior as an innovation strategy, so the action of entering a new market can be seen as the adoption of innovative behavior [22].

Sharing this point of view, it concurrently seems legitimate to expand the application of this interpretation. This can be confirmed by the following arguments:

- this behavioral nature of exports can play a fundamental role in shaping the direction of export development strategy itself;
- shaping the direction of export development during the transformation of export model and transition to a new level, i.e. innovative development.

It should be noted that the two previous interpretations are not excluded and can be used in the study of multifaceted questions of export potential formation.

Meanwhile, as the world practice has shown, in the conditions of the challenges of the world economy, the decision-making process itself becomes a central element. In this regard, the consideration of this problem as applied to conditions of WTO makes it implicated in the values of a regulatory theory[1]. These actions applied by the country may be liberalizing or discriminatory in relation to business partners.

Conclusion

Therefore, in the context of a country's general exports development, it is not only legitimate, but also necessary to investigate its behavior in the circumstances of WTO conditions. At the same time, the adoption of WTO requirements and par-

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1 "Regulatory economic theory is part of economic theory that provides recommendations and calls for action on the regulatory economy on which economic policy, i.e. economic decision making, is based".

ticular countries taking certain obligations forces export potential to work in a narrowing or expansion mode, as confirmed by the results of the study. The boundaries between them are porous, and as competitiveness grows on the basis of economy engagement in the trajectory of sustainable growth, the expansion regime increases fulfilled export potential, strengthening its position in various markets.

In the study of economic performance in conditions of WTO, the qualitative arguments used above are logically connected with the main thesis, but they also admit the need for new clarifications. Hence, the author's interpretation is that "the current export potential of Kazakhstan should be considered as a possible mode of behavior in a foreign economic environment that meets the requirements of WTO".

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Амирбекова А.[1]

Теоретические аспекты природы и развития экспортного потенциала[2]

В статье рассмотрена природа категории «экспортный потенциал», выявлены параметры, характеризующие его, а также дано авторское определение этого понятия. Из авторских выводов следует, что поведенческий характер экспорта играет основополагающую роль в формировании направления собственно стратегии экспорта, так как «экспорт-поведение» предполагает трансформацию модели экспорта и перехода его на новый уровень — уровень инновационного развития. Наряду с этим в современных условиях, особенно в условиях ВТО, «экспорт-поведение» актуально рассматривать в условиях вызовов мировой экономики, центральным звеном которого представляется «процесс» принятия решений, причем данные действия могут иметь либерализационный или дискриминационный характер по отношению к деловым партнерам. Таким образом, по мнению автора, экспортный потенциал Казахстана в настоящее время следует рассматривать как возможный образ поведения во внешнеэкономической среде, отвечающий требованиям ВТО.

Ключевые слова: конкурентоспособность экспорта, экспорт-поведение, экспортный потенциал, Всемирная Торговая Организация, внутриотраслевая торговля, нетарифные барьеры

JEL: F19

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2 Статья поступила в редакцию в октябре 2018 г.

Zhaksybayeva N., Nurzhanova S.[1]

The Migration Response to the Economic Factors: Lessons from Kazakhstan[2]

This paper studies the influence of economic conditions in Kazakhstan to the willingness of people to migrate from Kazakhstan to Russia. There were high numbers of people emigrating from Kazakhstan to Russia in 2008 (10,365) and 2009 (11,187) due to the economic crisis in 2008. We argue that the lower economic development in Kazakhstan leads to the higher migration of people from Kazakhstan to Russia. Economic data for Kazakhstan and Russia in 2004-2014 periods is examined to establish whether the economic development and net migration are strongly correlated. Net migration is the difference in total number of people leaving the country and coming to the country. A positive net migration occurs when there are more people entering to the country than going out. A negative net migration means that more people are leaving the country than coming in. Moreover, in order to compare results among different social groups, relationship of net migration based on residency (urban and rural) and age categories to the economic indicators is analyzed. It is found out that net migration from Kazakhstan to Russia is highly affected by the economic situation in Kazakhstan, especially by unemployment level in Kazakhstan. Thus, the results indicate that urban residents more tend to move to Russia than rural residents due to It is concluded that economic reasons are significant for retired people. Based on the results of the study, it is assumed that the migration situation will improve when Kazakhstan diversifies economy, invests in small and medium enterprises, and reviews employment policy.

Keywords: migration, Kazakhstan, Russian Federation, economy.

JEL: F22

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Introduction

This study addresses the effect of economic factors on migration from Kazakhstan to Russia. The main argument is that the movement of people is closely related to the various economic conditions of the country. We answer the question "How does economic development influence to migration from and Kazakhstan to Russia?" Furthermore, we analyze how the migration has changed from 1990s.

To understand why migration is a crucial issue, we need to acknowledge that the main resource of a country is people. In the globalizing world ideas, information, technology and people move easily. Especially the development of transportation roads, increase in liberalization of trade relations, development of communication tools leads to more intensive migration process.

Migration is "the movement of a person or group of persons from one geographical unit to another across and administrative or political border, and wishing to settle permanently or temporarily in a place other than their place of origin" (IOM, 2003, p.8).

The migration process in the territory of Kazakhstan differs across the time. For instance, in the 90s of 20thcentury the CIS region experienced inter-state migration towards Belarus, Ukraine and Russia. The reasons were the collapse of the Soviet Union, ethnic, political rational and the emergence of independent states in Central Asia. The main flows were Russians from ex-Soviet countries to Russia, especially from Kazakhstan (Zaionchkovskaya, 1996, 2000). In the new millennium the migration process in the post- Soviet countries has started to stabilize and there are no such high patterns like in 1990s and the reasons to migrate have changed significantly.

According to Ravenstein's push and pull factors theory of migration, there are some reasons that dominate in making a decision. For instance, ethnicity, family ties, psychological and emotional effect, legal framework, economic reasons etc.

After independence there was a negative net migration (balance of emigrants and immigrants) from Kazakhstan to other countries. According to the individual choice theory of migration, another push factor of migration is ethnicity (Zelinskiy,1971). The situation can be explained by this theory, and we argue that the willingness of people to migrate to the ethnic origin countries was one of the dominant factors. The nationalities of Slavic origin and German population of Post-Soviet Kazakhstan started returning to their ethnic origin countries (Andrienko and Guriev, 2004). According to the data of Statistics Committee of Kazakhstan in 2014, the top spots in the index of emigration by nationality were occupied by Russians. For instance, the peak of migration was in 1994, when almost half a million (477,000) people emigrated from Kazakhstan to Russia, and the majority of whom were ethnic Russians (Nurumbetova, 2010). Due to the lack of exact number of people migrating from Kazakhstan to Russia in the context of nationalities in Kazakhstani database, the argument could be checked via data provided by stat.gov.kz for the net migration from Kazakhstan to CIS countries by ethnicities (Fig. 1). Considering that the

biggest share of emigrants to CIS is migrating to Russia, we assume that it shows trends for Kazakhstan- Russia destination. High negative net is observed among Russians, Belarusians and Germans. Among them, Russians have the highest number of negative net migration. It means that in comparison with other nationalities Russians emigrate most and immigrate less than others. Over the last year this index slipped into -17,000 (Fig. 1). It is worth noting that the dynamics of the net migration demonstrates a various picture over the past five years. So, in 2010 the difference between Russians left and coming into the Republic of Kazakhstan reached -13,000, while in 2011 the figure jumped to nearly -20,000, and then showed -18,000 and -14,000 in 2012 and 2013 respectively. It was the highest degree of negative net migration in 2008. It could be again explainable by the global economic crisis.

"Family ties" is another factor that may cause migration, because if there is a family member in a host country, there is a high possibility to migrate to that particular country. Also, the existence of relatives who have already migrated to the destination country facilitates the process of migration (Borjas and Bronars, 1999)

Ravenstein's (1889) neoclassical economy and push and pull factors theory of migration introduces "laws of migration", and one of the seven laws states that key cause of migration are economic factors. According to Ravenstein's theory, migration initiatives are forced by such push factors as poverty, low social status, unemployment, bad political situation etc., and pull factors as job opportunities, high income, political freedom, psychological aspects etc. In the macro level of migration these trends can be explained by unbalanced job distribution, meaning more jobs and higher salary are provided in one country and comparably less opportunities in others (Massey, 1998).

Kazakhstan's and Russia's attempts to overcome negative consequences of the world economic crisis in 2008 have influenced the movement of people between those countries. The main patterns are that low skilled people tend to move from the southern neighbors (Kyrgyzstan, Uzbekistan, Turkmenistan) to Kazakhstan and Russia, whereas, high skilled people migrate from Kazakhstan to Russia or other foreign countries. It is important to understand how economic development influences the migration process, in order to foresee the social, economic, demographic challenges in the future. Also, our research is significant in the current reality, because Kazakhstan is facing economic challenges. GDP growth in 2015 was 1.3%[1], and the projection growth by IMF for 2016 is zero[2]. Moreover, the emigration of human resources increases the necessity in workforce. Also, if to take into account

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1 Country Overview. (2016, 20 March). URL: <http://www.worldbank.org/en/country/kazakhstan/overview.

2 S&P в 2016 году не прогнозирует рост ВВП Казахстана. (2016, 14 March). URL: <https://kapital.kz/economic/48599/s-p-v-2016-godu-ne-prognoziruet-rost-vvp-kazahstana.html.

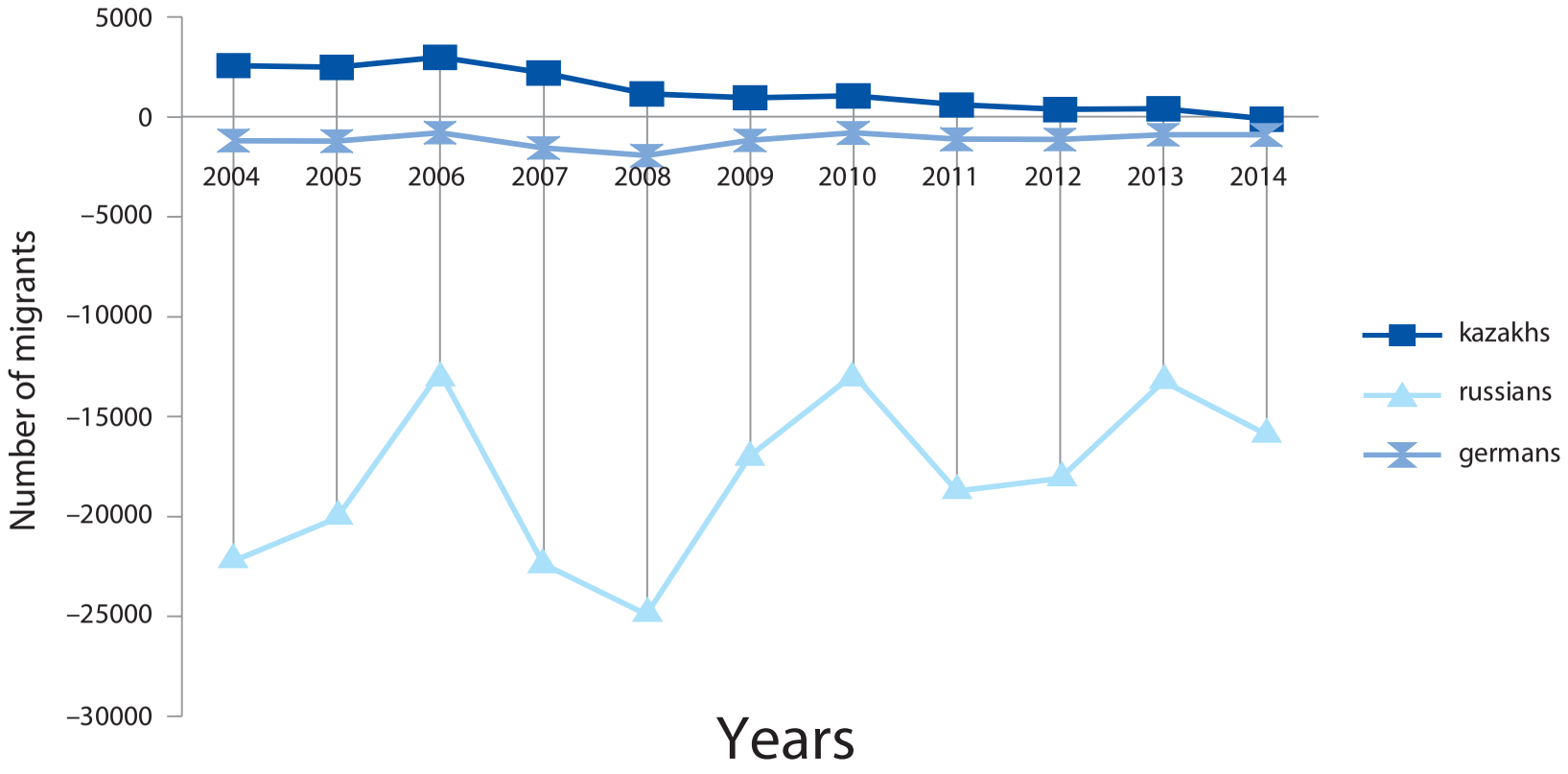

Figure 1. Net Migration to/from Kazakhstan to/from CIS countries by ethnicities.

Source: Estimated by the authors.

that the vast majority of migrants are professionals with technical and higher education, it is very costly to Kazakhstan. According to Zhatkanbaeva et al. (2012), the cost of emigration of professionals was 125 billion U.S. dollars within 1992-2004. So, because of the above stated reasons, we believe that our research has an importance.

Our research is closely connected with the study done by Becker, Musabek, Seitenova, Urzhumova (2005). Their work is focused on the monthly data in a period from 1995 to 1999. There were several interesting findings, and for instance, the paper argues that the retirement age and working age groups have different responsiveness to the economic issues as unemployment level in Kazakhstan and Russia, real wage rates, real exchange rates, inflation and real capital investment. As the result of the research they find out that retired people are migrating more to Russia from Kazakhstan than people of other age groups. Moreover, their results show that Russian ruble crisis in 1998 has a huge effect on migration. As the result of the paper authors could prove via statistical analysis their assumptions that economic reasons are significant in making the decision to migrate. Having found these kinds of results we are interested in testing such patterns for more recent times, and therefore we focus on 2004-2014 years data.

This paper is organized in a way that it explains the main migration patterns from Kazakhstan to Russia in the past 15 years. The following section Significance of problem argues about the aims to provide arguments why the topic is urgent, and how it could contribute to the previous research done on the topic. The next section called The Model, and it focuses on the assumptions that we present throughout the paper. In this section there were introduced the sources of data used for the research, and methods that were applied.

The section The Results present the outcomes of the regressions. Feasible policy recommendations that are aimed to improve the situation were presented in the section Conclusion and Recommendations. For instance, the improvement of Employment Map 2020 plan, diversification of economy and exchange rate stabilization have been suggested as possible solutions to the problem.

Significance of problem

Migration topic is broad with different dimensions and could be studied from various perspectives (Mustafayev, 2006). Due to the lack of research on migration in post- independence Kazakhstan our paper contributes to the topic. The studies on migration describe mostly the patterns of the migration in general, but do not focus on the particular receiving countries. Our study considers Kazakhstan-Russia net migration. Moreover, we provide recommendations to prevent it, whereas majority of the study done is descriptive.

According to the United Nations Development Program, Kazakhstan lost over two million people in 1992-2004 as a result of external migration. According to Fig.

2, the number of people emigrating from Kazakhstan to Russia sharply climbed in 2008 (10,365) and 2009 (11,187) respectively. It could be explainable with the Global Economic Crisis in 2008 that damaged the economy of Kazakhstan more intensively than Russian, because Kazakh economy was young, unstable in comparison with the economy of Russia. World financial markets froze up the capital inflows to banks in Kazakhstan that caused a credit crisis in the beginning of 2008. Also the immediate fall of the oil prices lead the economy of Kazakhstan to fall into the recession. That's why it leads to the shutdown of businesses and increase of the unemployment. For comparison, the unemployment rate in Kazakhstan was 7.3%, while in Russia this indicator was 6.4%[1]. As the result of this economic situation people started moving to Russia in search of a job and higher salaries. But in 2010 Kazakhstan introduced a policy of diversification and economy started recovering from the consequences of economic crisis. As the result of a state programs of combatting crisis in 2010 (8,267 people) and 2011 (4,513 people) we can see steady decrease in the number of migrating people to Russia.

Migration has increased during the transition period to a market economy. It was accompanied by a structural crisis and the liquidation of many manufacturing companies in non-production sphere. "Unemployment", "hopelessness", "no means of subsistence" are the reasons for labor migration referred to the respondents themselves during the interviews conducted in most of the donor countries of CIS by United Nations, Economic and Social Affairs (Ivakhnyuk, 2006). Due to the lack of workplaces, galloping inflation and a sharp drop in the standard of living, people were forced to seek alternative sources of income, including those outside the traditional places of residence and employment. The above stated statistical data shows as economic factors have impact not only to the wellbeing of people, but also to the willingness to stay in their homeland. Thus, it's important to study the impact of economic reasons on migration.

There is a difficulty of forming a common methodology for the study of international migration as a phenomenon of international political reality. Despite a large literature that addresses issues related to both international and regional level migration processes, the topic Kazakhstani migration has not been studied adequately. It is important to consider international experience and develop policies to prevent massive outflow of people. The uniqueness of this work is that the issue of migration has not been researched in complex with economic indicators in Kazakhstan for the last 15 years. The result of the work will be a good base for further research of emigration. This work may raise attention of foreign organizations and research institutions of the Commonwealth of Independent States. Research results and findings can also serve as material for further study of population migration.

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1 Trading economics. URL: <http://www.tradingeconomics.com/russia/unemployment-rate.

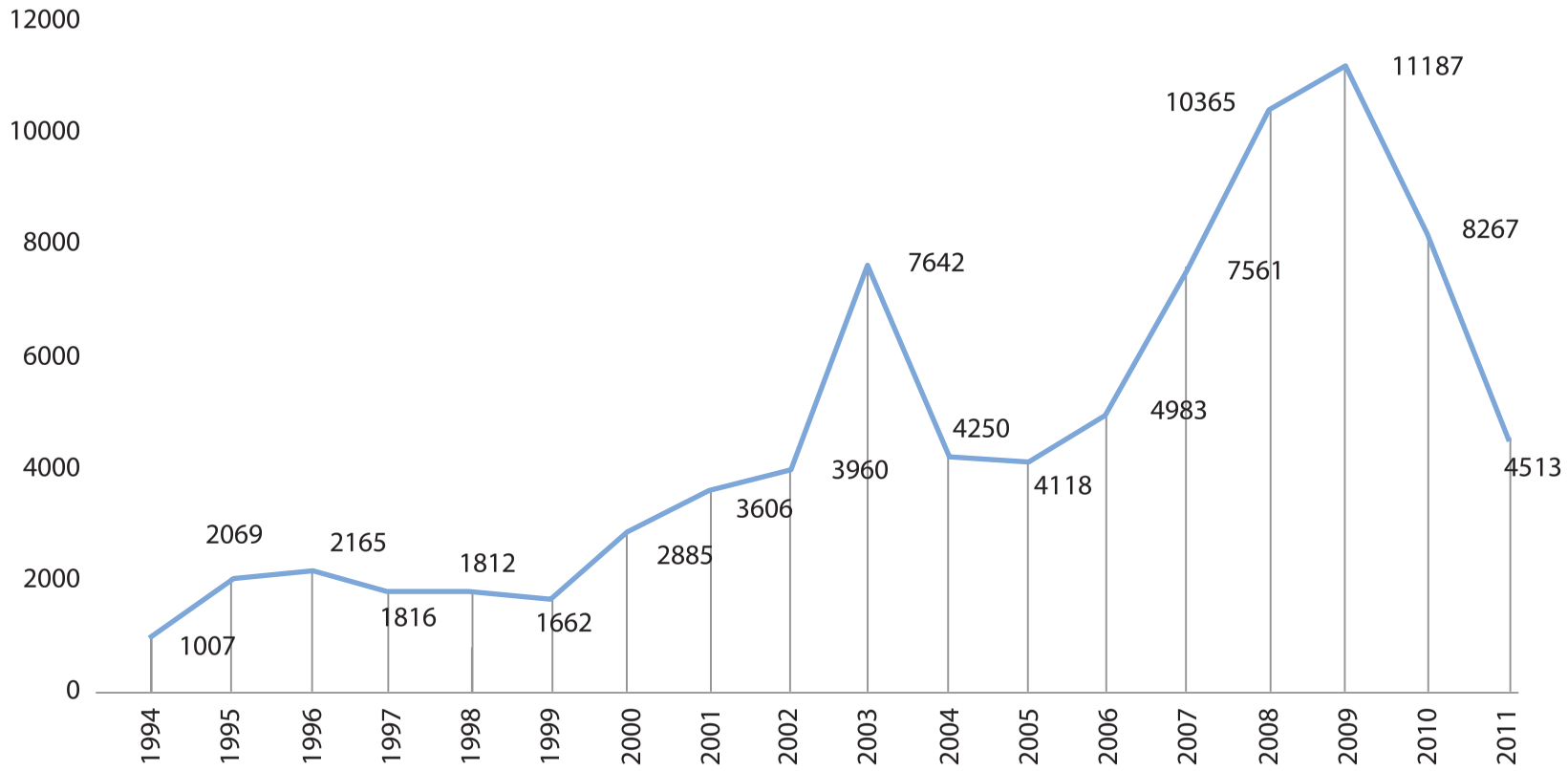

Figure 2. Number of emigrants from Kazakhstan to Russian Federation (1994-2011).

Source: Estimated by the authors.

According to Zelinsky's (1971) „hypothesis of the mobility transition", there are 2 categories of migrants: low-skilled and high-skilled. The second needs more attention, because high-qualified professionals have higher productivity and boom the economy. So, one of the aspects, why immigration problems are crucial for the research, is that it may cause outflow of professionals, brain drain problem in the country of origin. The effect of the brain drain is huge for the labor market in the country of origin (Hamada, 1977, p20). It spends a big amount of financial resources in order to educate their people and provide scholarships, build institutions, then as the result of the emigration they lose considerable amount of professionals. For the countries that have less capable human resources keeping them is very important. Taking into consideration a huge damage of an emigration of professionals this research paper contributes to the study of migration of highly qualified citizens and analyzes possible causes.

The emigration of professionals is very harmful for the economy of Kazakhstan. The total damage caused by the brain drain has been calculated according to the method tested in Russia, and it was valued at 125 billion U.S. dollars. It shows that the problem of brain drain is very significant for Kazakhstan (Zhatkanbaeva, 2012). As illustrated by the official figures in Table 1 (Statistical Committee of RK) for three years in categories: "higher education", "incomplete higher education", "secondary special education", the net migration was negative for the "Higher education", "incomplete higher education" and "Secondary special" categories of migrants by levels of education. It means that the number of people emigrating is higher than people coming to the permanent stay from Russia to Kazakhstan. The main directions for those who left Kazakhstan are CIS countries, where there is demand for their skills. Thus migration is detrimental issue to study, and our paper contributes to the following topic by analyzing the reasons of migration. If we can find the reasons of migration, it would be easier to come up with policies to prevent it.

Table 1

Net migration by education level to/from Kazakhstan to/from CIS

	Emigrants			Immigrants			Net migration
Years	2009	2010	2011	2009	2010	2011	2009–2011
Total	31,282	31,775	29,832	28,273	22,448	27,082	15,086
Higher education	4,180	4,327	3,791	7,598	6,618	8,380	–10,298
Incomplete higher education	986	1,018	791	1,817	1,251	1,236	–1,509
Secondary special	6,118	7,021	6,564	8,668	7,021	9,016	–5,002
High school	15,808	15,641	15,088	7,432	5,506	6,224	27,375
Incomplete high school	4,157	3,735	3,393	2,688	1,992	2,156	4,449
Other	33	33	205	70	60	70	714

Source: Ministry of National Economy of the Republic of Kazakhstan Committee on Statistics. URL http://stat.gov.kz

In 2008, the President of Kazakhstan called for all scientists who are abroad to return to Kazakhstan, and support the development of domestic science, by promising decent wages, and the ability to do research on the most modern equipment. Some accepted the offer and came back. On the other hand, the initiative was not within the framework of a special state program. It was just an ideological appeal to nation building.

The National Population Program 2011-2020 was introduced by the Government of Republic of Kazakhstan in 2005. It aims to improve demographic situation, to maintain a balance between the immigrants and emigrants within the country. According to this plan, the number of emigrants should not to outnumber the immigrants (Nazarova, 2000). Our research aims to assist in the implementation of the state policies within the framework of this plan. It helps to identify the parts of the program that are not performing well.

Taking into account above mentioned arguments we can conclude that the issue of migration touches different aspects of economy. The migration process is influenced by economic indicators. Our work targets the Government of Republic of Kazakhstan as its main client. The findings of this research and provided recommendations could be a good base for the development of policies on migration.

Model

According to Heleniak (2003), the push and pull factors of migration from Kazakhstan to Russia are due to the ethnicity. But Becker et al. (2005) find that there are economic reasons to migrate in this direction. We argue that lower level of economic development in Kazakhstan leads to the negative net migration from Kazakhstan to Russia. Net migration is the total number of people who leave the country less the total number of people who move to that country. A positive net migration means that there are more people coming to the country than leaving it, and a negative net migration represents that more people are leaving than entering the country. We focus on the period from 2004 to 2014, because there is a research for the after independence period 1995-1999 (Becker et al, 2005) and when we have started our research, the latest available data was for 2014. Moreover, Zaionchkovskaya (1996) finds that the main cause of migration from Kazakhstan to Russia after the independence was the willingness of people to move back to the ethnic origin countries, and this flow has slowed down in 2000s. The economic growth of Kazakhstan (0.5% in 1996, 10.7% in 2006, 4.3% in 2014) has improved the conditions in the country, and migration reasons have changed[1].

1 Index mundi. URL: <http://www.indexmundi.com/kazakhstan/gdp_real_growth_rate.html.

In this work we analyze that lower economic development in Kazakhstan leads to the higher willingness to migrate from Kazakhstan to Russia. We regress net migration from Kazakhstan to Russia on unemployment level in Kazakhstan, controlling for unemployment level in Russia, real exchange rate tenge/ruble, real wage rate, real capital investment in Russia, real capital investment in Kazakhstan, inflation rate in Russia. The data on net migration from Kazakhstan to Russia, real wage rate in Kazakhstan, real capital investment in Kazakhstan are taken from the official website of the Ministry of National Economy of the Republic of Kazakhstan Committee on Statistics (Statistics Committee) website. The data on real wage rate in Russia, real capital investment in Russia are retrieved from Russian Federation Federal State Statistics Service (Russian Statistics Service) website. The unemployment level in Kazakhstan and Russia, inflation rate in Russia are from the website of the World Bank. The exchange rate tenge/ruble is from the website of Kazfin.

We are looking at the relationship of unemployment level in Kazakhstan to the net migration from Kazakhstan to Russia. The independent variable is unemployment level in Kazakhstan. We estimate the negative relationship with the dependent variable: higher the unemployment level in Kazakhstan is, the net migration from Kazakhstan to Russia will be negative (people are more willing to migrate from Kazakhstan to Russia).

We use control variables in order to analyze properly our main hypothesis. By regressing unemployment level in Russia as the control variable we expect that higher the unemployment level in Russia is, lower the willingness of people to migrate from Kazakhstan to Russia will be.

With real exchange rate tenge/ruble we estimate that people's decision to migrate is influenced by the exchange rate, because they would like to have better quality of life and compare prices in both countries.

According to neo-classical economic theory, labor migration is possible due to the wage differences between countries. Those international labor flows create a new equilibrium, and real wages are the same in all countries at that point (Borjas, 1989; Massey et al., 1993, 1998; Bauer and Zimmermann, 1995, Oeberg, 1997). The other control variable is real wage rate. We expect that higher the real wage rate is, higher the willingness to migrate from Kazakhstan to Russia will be. We use the formula from Becker et al. paper (2005), in order to have the ratio of real earnings for both countries:

$$RRE = \frac{W_{rus} / P_{rus}}{W_{kaz} / P_{kaz}} \times EW_{rus} \times Q,$$

W_{rus}– the average nominal wage in Russia, P_{rus} — the consumer price index in Russia, W_{kaz} — the average nominal wage in Kazakhstan, P_{kaz} — the consumer price index in Kazakhstan, E — the exchange rate, the number of Kazakhstani tenge per Russian ruble, Q — the real exchange rate.

We take real capital investment in Russia and real capital investment in Kazakhstan as the control variables. The capital investment per employee might influence to the increase in wage and employment in future, and affect to the expectations of people who are willing to migrate. We estimate that higher the real capital investment in Russia is, higher the willingness to migrate from Kazakhstan to Russia will be; higher the real capital investment in Kazakhstan is, lower the willingness to migrate from Kazakhstan to Russia will be.

The next control variable is inflation rate in Russia. We expect that higher the inflation in Russia is, lower the willingness to migrate from Kazakhstan to Russia will be.

According to Becker et al. (2005), the specific social groups' migration has different patterns. Furthermore, we analyze the specific social groups' responsiveness to the unemployment level in Kazakhstan and other economic variables. We change the dependent variable to net migration of Russian ethnicity from Kazakhstan to Russia, net migration of German ethnicity from Kazakhstan to Russia, net migration of urban residents from Kazakhstan to CIS, net migration of rural residents from Kazakhstan to CIS, net migration of three different age groups from Kazakhstan to CIS. All the data is taken from the Statistics Committee website. The data of net migration for urban, rural, and age categories are from Kazakhstan to CIS countries, but we assume that the migration is predominantly to Russia specifically (in 2014 82% of total migrants to CIS countries migrated from Kazakhstan to Russia)[1].

According to Heleniak (2003), the movement of Russian and German ethnicity representatives from Kazakhstan was due to the ethnicity reasons and willingness to move back to the origin countries after the collapse of the USSR. We analyze if those variables are responsive to the economic reasons. We expect that the higher level of unemployment in Kazakhstan is, higher the willingness of Russian and German ethnicity representatives to migrate from Kazakhstan to Russia will be.

Thus, we analyze the migration of urban and rural residents from Kazakhstan to Russia due to the economic reasons. We expect that higher the unemployment level in Kazakhstan is, higher the willingness of urban residents to migrate from Kazakhstan to Russia will be. According to Zelinskiy (1971), internal migration is higher from rural places to urban, whereas, international migration takes place mostly by urban residents. We assume that the urban residents are more willing to migrate from Kazakhstan to Russia than rural residents, because if the rural resident is not satisfied with current life conditions, she/he is more willing to migrate to Kazakhstan's cities, rather than abroad. On the contrary, urban residents who want to migrate have a choice to move to other Kazakhstan's cities or abroad, in our case to Russia.

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1 В какие страны эмигрируют Казахстанцы? (2015, 4 December). URL: <http://www.kursiv.kz/news/top_ratings/v-kakie-strany-emigriruut-kazahstancy/.

When we analyze the migration from Kazakhstan to Russia for different age groups, we divide the age for three categories. First age group is 6-17 years old, second age group is 17-62 (57) years old, and third age group is 63 (58)+ years old. As we can notice from Fig. 4, children from 6-17 years is less migrating rather than adults. Migration indicators are higher in the second group rather than people older than 63. The net migration data of the first and second groups show similar patterns due to the assumption that children follow their adult parents, and it is flexible. However, the third group's net migration data is more stable. We expect that three age groups are responsive to the different economic variables, and retired people (the third group) are estimated the less significant results. The estimations are that higher the unemployment level in Kazakhstan, higher the willingness of the adult people to migrate from Kazakhstan, and children should follow adults; whereas, the economic reasons are not significant for retired people.

Regression results

Becker et al. (2005) argue that the migration from Kazakhstan to Russia is responsive to the economic situation. They regress net migration rate of two countries on economic shocks. Becker et al. (2005) concentrate on six categories of variables. First, they analyze the influence of difference of current and past periods' values of dependent variables to the current growth rates. Second, according to Heleniak (1999) and Andrienko and Guriev (2004), people of working age are motivated to migrate by changes in the labor market, like relative wage rates and unemployment. Third, investment per worker might positively affect to future wage and employment growth. Fourth, the retirement age people tend to move due to family reasons and similar pension policies in both countries. Fifth, there is a relationship of exchange rate by the willingness to migrate. Finally, the economic news like economic crisis (Russian crisis in 1998) might influence to the decision to move. Becker et al. (2005) find that net migration of working age people is influenced by changes in opportunities and expected earnings. Whereas, changes in exchange rates influence to migration immediately and effect is in a minimal period. Moreover, the Russian crisis variable shows the reduction in emigration from Kazakhstan to Russia. The retired people are willing to migrate due to strong inter-generational ties. Therefore, the elderly people move if their children make decision to migrate.

We use the similar model, but argue that lower the economic development of Kazakhstan is, higher the willingness to migrate from Kazakhstan to Russia. We analyze net migration from Kazakhstan to Russia on unemployment level in Kazakhstan, controlling for unemployment level in Russia, real exchange rate tenge/ruble, real wage rate, real capital investment in Russia, real capital investment in Kazakhstan, inflation rate in Russia.Net migration is the total number of people leaving the country less the total number of people arriving to that country. A positive net migration is that there are more people coming to the country than leaving it, and a negative net migration means that more people are leaving than moving to the country.

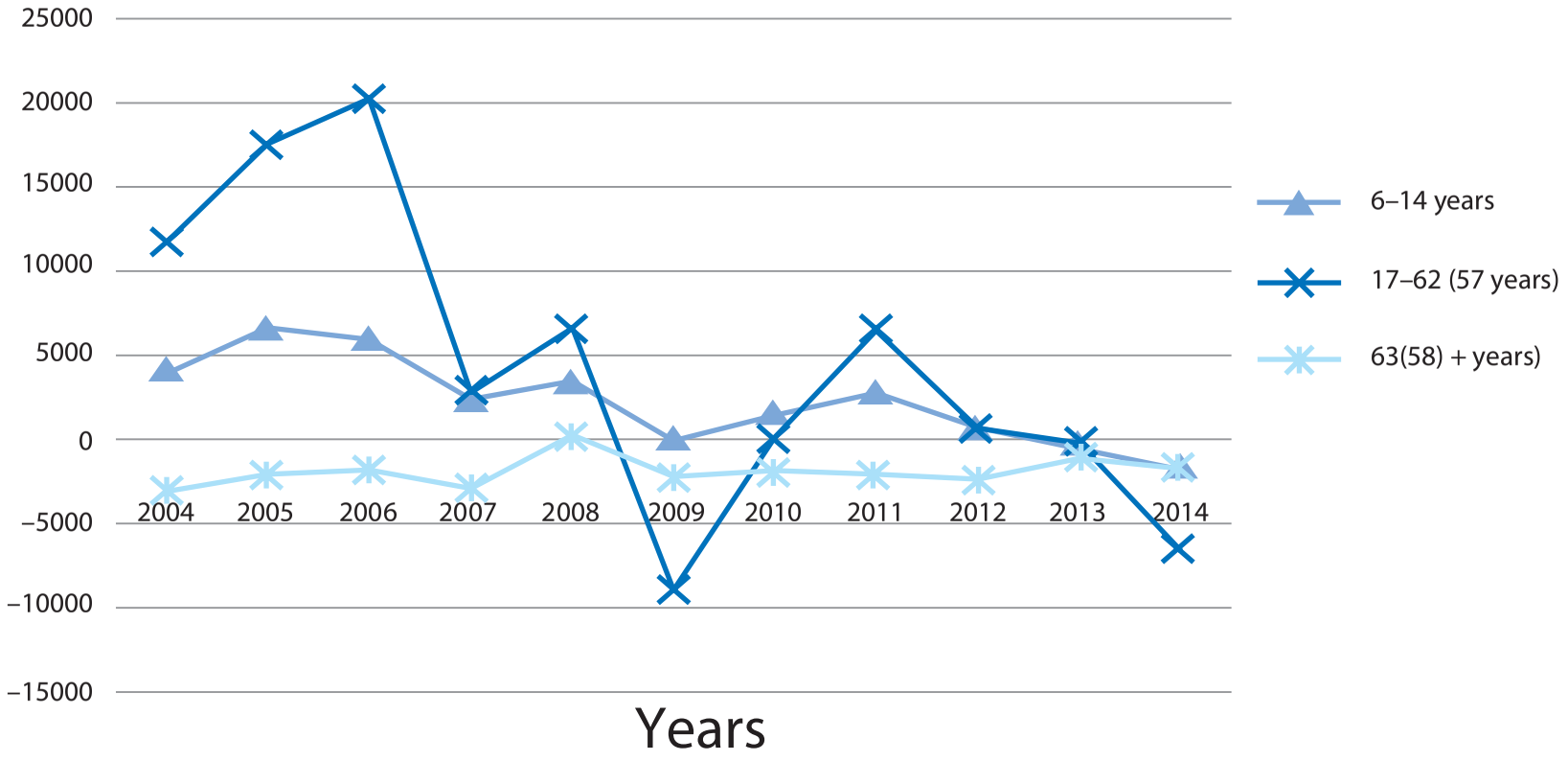

Figure 3. Net migration by age categories from/to Kazakhstan to/from CIS.

Source: Estimated by the authors.

We expect that the higher unemployment level in Kazakhstan leads to the increase in people's willingness to migrate from Kazakhstan to Russia. We assume that people are willing to move to the country with higher wage rates. We estimate that people migrate more often when the real capital investment is higher in the destination country. Thus, due to the high inflation rate in Russia people might make decision to stay in Kazakhstan.

The regression results are indicated in Table 2. The variables for unemployment, real wage rate, real capital investment and inflation are insignificant for the current year, but they are statistically significant for the previous year (Lag 1). When we run regression using unemployment data for previous two years (Lag 2), it was not significant. On the other hand, the real exchange rate is statistically significant for the current year, not previous.

We did not estimate in the beginning that the previous year (lag) variables would be significant. But it is rational that migrants are interested in the conditions in destination countries. When someone is willing to move from one place to other, the person tends to expect better life. The migrants look at the previous year's chances to get jobs, compare salaries and prices of two countries, but they look to the real time's exchange rate in order to estimate options.

Thus, the signs and relationships are as we have estimated before running the regression. The more level of unemployment in Kazakhstan, the net migration is decreasing and more people are willing to migrate to Russia. We estimate that the exchange rate of the previous year might influence to the decision to migrate, but the regression shows that it is statistically insignificant. Real capital investment per worker shows the positive relationship with the dependent variable. People are more willing to migrate if there is smaller real capital investment in Kazakhstan. Inflations for the current and previous years are statistically insignificant, and such results are unexpected. The possible reason is that people who are willing to migrate consider the real wage rate, which is adjusted to the inflation. Also migrants may look to the consumer basket, but not to the inflation level.

To sum up, the pull factor is better economic conditions in the destination country. For example, the economy of Kazakhstan has been improved from 2004 to 2014. The GDP growth of Kazakhstan was at peak in 2006 (10.7%), during the 2008 crisis it has decreased to 3.3% (2008) and 1.2% (2009)[1]. But the anti-crisis policies (stabilization of financial sector, solution of the housing market problems, investing in SME, agriculture, industrialization and infrastructure) were successful, and in 2010 the economy recovered with the growth 7.3%. On the other hand, the Russian economic growth was at peak in 2007 (8.5%), and after the 2008 cri

1 Index mundi. URL: <http://www.indexmundi.com/kazakhstan/gdp_real_growth_rate.html.

Table 2

Regression results[1]

Y	Net migration				Net mig Russians	Net mig Germans	Net migration
Constant	5,05 (3,73)s	5,58 (4,12)	3,58 (3,10)	6,87*9 (44,81)	5,03 (–14,64)	0,41 (25,40)	7,13 (46,95)
Unemployment in Russia (L1)				–0,68* (–20,901	–0,47 (–8,901	–0,0045 (–12,951	–0,74 (–23,43)
Unemployment in Kazakhstan (LI)	–0,1 (–3,78)	–0,11 H–14)	–0,065 (–2,71)	–0,18* (–32,95)	–0,13 (–1464)	–0,014 (–23,64)	–0,19 (–55,21)
Real wage rate	–1,67	–2,19	–1,004	–1,11*	–1,36		
(L1)	(–4,06)	(–3,78)	(–2,41)	(–31,101)	(–14,33)		
Real wage rate	–0,84	–0,88	–0,95	–0,79*	–0 596	–0,09	–1,94
(L2)	(3,02)	(–3,32)	(4,72)	(–20,52)	(–9,47)	(–14,72)	(–26,69)
Real exchange	–0,31	–0,37	–0,197	–0,33*		–0,039	–0,74
rate	(–3,77)	(–4,05)	(–2,52)	(–31,97)		(–9,54)	(–23,24)
Real exchange		0,11				–0,017	–0,34
rate (L1)		(1,21)				(–16,05)	(–35,58)
Real capital				–3,06*	–1,96	–0,28	–3,17
investment (L1)				(–12,90)	(–5,06)	(–11,08)	(–22,48)
Inflation (L1)							0,0001 (2,31)
R2	0,8220	0,8802	0,9339	0,9825	0,9967	0,9962	0,9999
Adj R2	0,6440	0,6806	0,8238	0,9301	0,9868	0,9930	0,9991
Durbin–Watson	1,015443	1,230407	1,600137	1,614291	2,615093	2,615093	
d–statistics	(reject)	(reject)	(inconclusive)	(inconclusive)	(fail to reject)	(fail to reject)10	

Source: Estimated by the authors.

*1 Coefficients are in hundred thousand: t-statistics is in parenthesis, * p<0.05. We assume that residuals from different regressions could be correlated due to a period with a positive residual for net migration as total is likely to have a positive residual for other different ethnic groups. Langrangemultipler (LM) tests of heteroskedasticity give us the results to reject the hypothesis of homoskedasticity, according to Breusch and Pagan (1980). The results of Durbin Watson statistics illustrate different results. When finding d-statistics is less than dL=1.59, we reject the null hypothesis, and conclude that there does exist positive first order autocorrelation. When d-statistics of regressions more than dU=1.76, we fail to reject the null hypothesis, which means that we have no evidence of significant autocorrelation. In the cases where Durbin-Watson statistics is between dL=1.59 and dU=1.76, we are inconclusive, neither rejecting nor failing to reject the null hypothesis. Moreover, we should ensure that our results are not pretended, we have to test for nonstationarity. The standard method to test is the Dickey-Fuller test. We look to the p-value in comparison to the significance level α=0.05. Our computed values are lower than the significance level, and we should reject the null hypothesis, which is (H0) there is a unit root for the series. We accept HA that there is no unit root for the series. The series is stationary..*

sis it decreased to –7.8% (2009), but recovered in 2010 with 4.5% growth[1]. We conclude that people are less willing to move from Kazakhstan to Russia if the economic situation is better in Kazakhstan than in Russia.

We argue that the lower economic development of Kazakhstan leads to the higher willingness of people to migrate from Kazakhstan to Russia. We also assume that the migration

patterns might be different by ages of people, and among urban and rural residents. In the regression we use data of net migration by our social groups from Kazakhstan to CIS due to the limits of database. The assumption is that migrants predominantly move to specifically Russia among CIS countries (in 2014 82% of total migrants to CIS countries migrated from Kazakhstan to Russia)[2].

We find that net migration among urban residents is responsive to the economic variables. The level of unemployment in Kazakhstan for the previous year, the control variables like the level of unemployment in Russia for the previous year, real wage rate for the previous year, real exchange rate for the previous year are significant for urban residents. People tend to look for the conditions in the destination place, and compare with the current situation in the origin country. The rural residents show the similar results. But the main difference between urban and rural residents is the results on the unemployment level in Kazakhstan in the current year. When we regress net migration among urban residents on the unemployment level in Kazakhstan, the result is statistically significant. But when we analyze net migration.

Among rural residents on the unemployment level in Kazakhstan, the finding is not statistically significant. We assume that it is due to the difference in life styles in urban and rural areas. If a person is officially unemployed in rural area, she/he might be self-employed and work in own agriculture fields. As a result, rural resident might decide to move due to the long term unemployment, and the finding proves it by showing the statistical significance for the previous year unemployment level in Kazakhstan. To sum up, when there is unemployment in the current period, urban residents tend to move from Kazakhstan to Russia in order to find better work places. On the other hand, rural residents migrate when they are not able to find jobs for a long time. Moreover, rural residents make decision to move to cities in Kazakhstan rather to the other country (Aldashev, Dietz, 2011).

Furthermore, we were surprised that patterns of net migration among rural and urban residents were similar. However, net migration among urban residents is

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1 Index mundi. URL: <http://www.indexmundi.com/russia/gdp_real_growth_rate.html>.

2 Index mundi. URL: <http://www.kursiv.kz/news/top_ratings/v-kakie-strany-emigriruut-kazahstancy/>.

Table 3

Regression results[1]

Y	Net migration in urban		NH migration in rural		Net mig AGE1		Net mig AGE2		Net mig AGE2	
Constant	0,36 (–3,26)	0,74 (0,85)	–0,96 (–2,36)	–0,019 (–1,93)	1,04 (2,30)	–0,079 (–2,09)	–0,28 (0,82)	–0,2 (–1,35)	–0,48 (038)	–0,31 (–2,10)
Unemployment in Russia	0,011 (0,53)			0,014 (0,76)		–0,003 (–0,42)	0,028* (2,59)	–0 03 (–1,05)		
Unemployment in Russia (L1)		0,06* (2,31)	0,072* (2,61)		0,039* (2,76)				0,08 (1,89)	0,002 (0,43)
Unemployment in Kazakhstan	0,04 (2,42)			0,03 (1,76)		0,019* (3,24)		0,07* (2,99)		
Unemployment in Kazakhstan (LI)		–0,08* (–2,82)	–0,04*16(–2,12)		0,046* (–3,07)		–0,006 (–0,51)		0,002 (0,04)	0,002 (0,51)
Real wage rate		–2,22* (–2,66)			–1,6* (–3,68)		0,29 (0,86)		1,36 (1,12)	0,28 (1,98)
Real wage rate(LI)		–0,17 (–0,64)			–0,33* (–2,45)		–0,23 (–2,17)			0,03 (0,70)
Real exchange rate (L1)		0,49* (2,71)	0,16* (2,21)		0 31* (3,30)		0,02 (0,23)		–0,13 (–0,50)	–0,026 (–0,85)
Inflation (L1)		0,005 (1,56)			0,003* (2,06)		–0,001 (–0,98)		–0 002 (–0,40)	–0,0008 (–1,63)
R2	0,6082	0,9447	0,5898	0,5182	0,9729	0,6444	0,9308	0,5542	0,9128	0,8408
Adj R2	0,5102	0,7788	0,3847	0,3977	0,8915	0,5555	0,7231	0,4427	0,6793	0,3632

Source: Estimated by the autors.

1 *Coefficients are in hundred thousand: t-statistics is in parenthesis? * p<0.05.*

statistically stronger than net migration among rural residents due to the sample size. As the urban-rural movements patterns show, people from the big cities are more willing to emigrate than residents of rural places. According to Fig. 4, urban population shows higher net migration trends, which means that number of urban people moving are higher than the number of rural people moving.

According to the age groups, net migration in the first age group (7-17 years) shows the same results as net migration in the second age group (18-62(57) years). We argue that children (first age group) follow their parents (second age group). We find that higher the unemployment level in Kazakhstan is, higher the willingness of people from 7 to 62(57) years old to migrate from Kazakhstan to Russia will be.

On the other hand, the third age group (63(58)+ years) shows the statistically insignificant results. We assume that retired people's reason to move is not related to the economic conditions, because they might get pensions in Russia as well. According to the bilateral agreement between Kazakhstan and Russia, the person should have a work experience from 1992, and despite of the working country, she/he has a right to receive pension in one of two countries[1]. Longino and Bradley (2003) find that the retirement age people are more willing to migrate to the places with better quality of life. But we argue that retired people have willingness to live in the same city with their children (Becker et al., 2005). They might be helpful in raising grandchildren and reducing the costs for kindergartens, etc.

To sum up, we find that the higher unemployment level in Kazakhstan leads to the higher willingness to migrate from Kazakhstan to Russia. The economic situation in a country is important for making the decision to migrate. People tend to move to the place with better life conditions. However, when we analyze by specific groups based on residency and age, we find different patterns. We argue that urban and rural residents show similar results, but urban residents' case is stronger due to the higher sample size. Furthermore, we find that children follow adults (parents), and they are responsive to the economic conditions. Whereas retired people's result is not statistically significant, and their push and pull factors are not related to economic reasons.

Conclusion and Recommendations

Overall, the results of this research are similar to the findings of Becker et al. (2005), and the empirical analyze shows that the economic situations in Kazakhstan affect to the migration of people from Kazakhstan to Russia. We find that the movement

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1 Муминов А. (2015, 10 April). Пенсия, прощай! Стариков, переехавших из РК в РФ, хотят лишить заработанного годами. URL: <http://www.kursiv.kz/news/vlast/pensiya_proshchay_starikov_pereekhavshikh_iz_kazakhstana_v_rossiyu_khotyat_lishit_zarabotannogo_goda_491/.

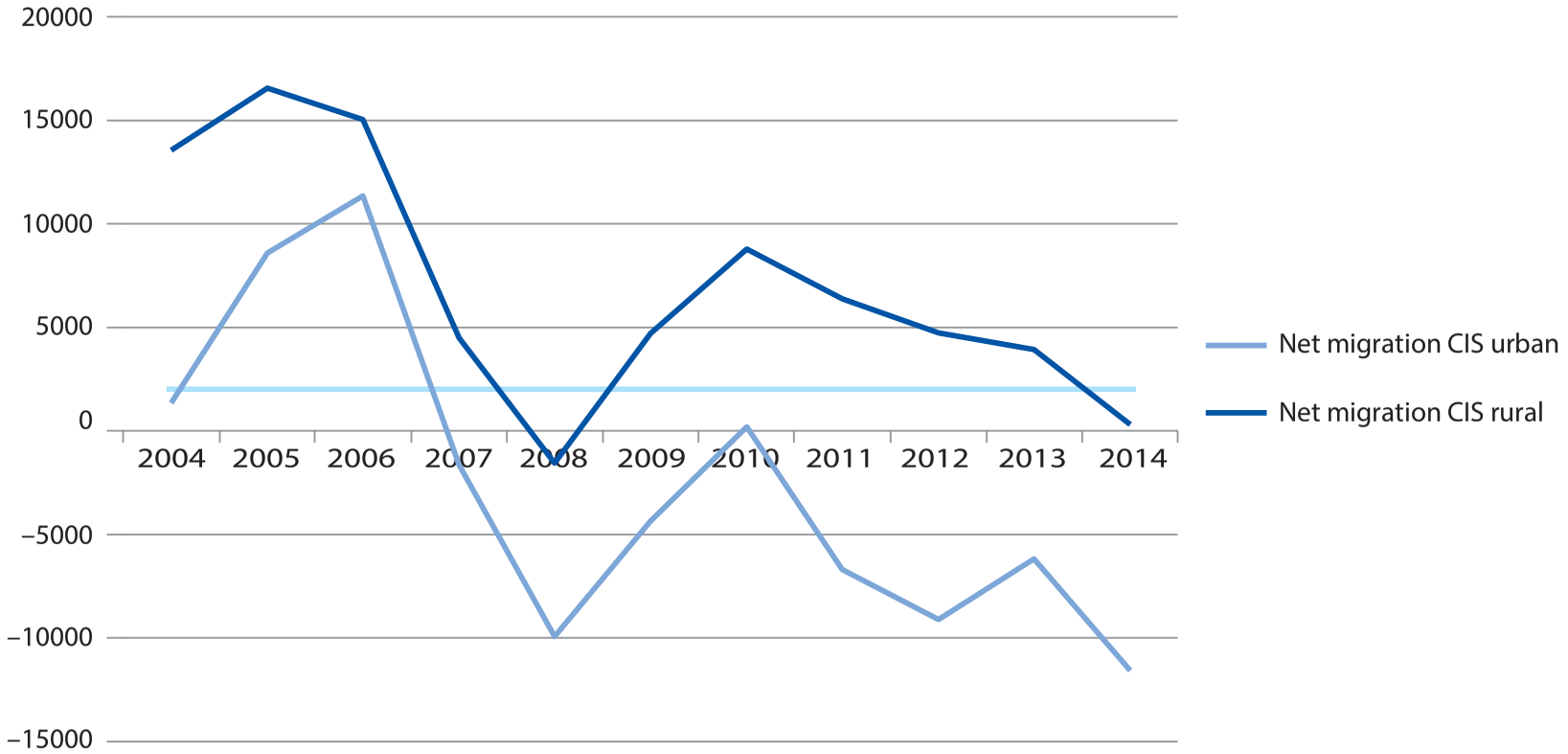

Fig. 4. Net migration of urban and rural residents from/to Kazakhstan from/to CIS countries

Source: Estimated by the authors.

of people from Kazakhstan to Russia is influenced by the unemployment level in Kazakhstan. The push factor of migration from Kazakhstan to Russia is the difficulties in finding jobs.

Interestingly, the regression of net migration from Kazakhstan to Russia on economic variables was statistically insignificant for the current year indicators, but it was significant for the previous year data. We explain this as potential migrants consider the previous year economic patterns to make a decision. However, we observe that the exchange rate data is only important for the current year.

Furthermore, we assume that various social groups react differently to the economic situation. We analyze the effect of economic factors in Kazakhstan to net migration of urban and rural residents, and different age groups. The results of net migration of urban and rural residents were similar; they are motivated by better economic conditions. But due to bigger sample size net migration of urban residents is strongly significant. According to the age groups, children follow adults (parents), and retired people are not motivated by economic indicators.

We argue that lower the economic development of Kazakhstan is, higher the willingness to migrate from Kazakhstan to Russia. Due to the finding that the unemployment is a push factor of migration, there is a need to focus on diminishing the level of unemployment. There are several programs that are targeted to deal with this problem. We consider the following policies for creating new work places:

- Population employment program - 2020;
- Further development of Small and medium enterprises (SME).

Population employment program - 2020 has been introduced in 2015 with the initiative of the government of Kazakhstan. The program goals are increasing the level of employment, promoting welfare improvement, and reducing unemployment. The target is that the unemployment rate will not exceed 5 % up to 2020 in Kazakhstan. The program has two steps. It is efficient, and according to the results of the fourth quarter of 2014, the unemployment level decreased for 0.8% in comparison with 2010.

Despite the positive effects of the program, there is a need for proper monitoring system. The program evaluates underemployed and self-employed people, and seasonal workers as successful cases. However, these groups have no pension insurance, and they are out of the work during non-seasons. But the sustainable goal of the program should be to provide long-term employment.

As our research indicates, by improving Population Employment — 2020 program we increase the number of work places, and decrease the willingness of people to migrate from Kazakhstan to Russia.

Thus, small and medium businesses are one of the factors of economic growth. The role of small and medium-sized businesses is indispensable in solving the

most pressing economic and social problems, including unemployment. The more government will increase the instruments of business support, higher will be the level of employment (Mamyrov et al., 2002). We recommend government to reduce red tape bureaucracy during the registration and shutting down of the business. Moreover, there should be business supportive policies as reduction of taxes, attractive loans, and affordable business consulting for potential entrepreneurs. Small and medium enterprisers' development will raise the employment and develop the economy, which motivate people to stay in Kazakhstan.

We find that the economic development is important factor to motivate people to stay in the country. Kazakhstan's economy is based on the oil and gas revenue. In order to avoid the "Dutch curse", there should be diversification of economy from crude oil and gas industry. The dominance of primary industries in the structure of the economy leads to the instability of economic growth and long-term stagnation. Therefore, purposeful state policy of diversification and modernization of the economy has a strategic importance for Kazakhstan. The diversification policy positively influences to the increase of competitiveness, and changes raw material orientation of the economy. It improves sustainable economic growth of the country and individual regions. The diversification of economy has an impact to slowing down the migration from Kazakhstan to Russia by developing new sectors of economy, creating new jobs, decreasing unemployment, and in overall, to upgrade the life conditions in Kazakhstan (Rakhmatullina, 2012).

Furthermore, there should be public consultation and public debate about the migration process. For example, in Germany government's commission on migration and integration challenged dominant ideas, and made major changes in thinking and policy (Suessmuth, 2001). The actions should not be in the high level. But sometimes officially commissioned studies (the economics of migration) might significantly influence to policy formation (Glover et al., 2001; Smith and Edmonston, 1997).

To conclude, due to the findings of research we recommend creating new work places by improving Population employment program — 2020, and supporting small and medium businesses; diversifying the economy; and increasing public awareness towards migration.

Going forward, further analyses of migration response to the economic factors might be wise to consider the influence of the Customs Union and the Eurasian Economic Union. Thus, this work uses yearly data, but the results can be replicated with monthly data. We take the data from the Statistical Committee of Kazakhstan, but it might be done by using data from the Russian sources.

To sum up, this study contributes to the previous research on migration process in Kazakhstan by focusing on the economic factors, and provides with feasible recommendations to the government to decrease the outflow of people from Kazakhstan to Russia.

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Жаксыбаева Н., Нуржанова С.[1]

Ответ миграции на экономические факторы (на примере Казахстана)[2]

В данной статье рассматривается влияние экономических условий в Казахстане на желание людей мигрировать из Казахстана в Россию. В 2008 году большое количество людей эмигрировало из Казахстана в Россию (10 365) и 2009 году (11 187) ввиду экономического кризиса 2008 года. Утверждается, что более низкое экономическое развитие в Казахстане ведет к увеличению миграции людей из Казахстана в Россию. В статье изучаются экономические данные Казахстана и России за период 2004-2014 гг., чтобы выяснить, насколько сильно коррелируют экономическое развитие и сальдо миграция. Сальдо миграции - это разница в общем количестве людей, покидающих страну и прибывающих в страну. Положительное сальдо миграции происходит, когда в страну въезжает больше людей, чем выезжает. Отрицательное сальдо миграции означает, что больше людей покидают страну, чем приезжают. Кроме того, чтобы сравнить результаты среди различных социальных групп, анализируется взаимосвязь чистой миграции на основе резидентских (городских и сельских) и возрастных категорий с экономическими показателями. Выдвигается гипотеза, что на чистую миграцию из Казахстана в Россию сильно влияет экономическая ситуация в Казахстане, особенно уровень безработицы в Казахстане. Таким образом, результаты показывают, что городские жители в большей степени склонны переезжать в Россию, чем сельские жители из-за экономической ситуации. Делается вывод, что экономические причины не имеют значения для пенсионеров. На основе результатов исследования, формулируются практические шаги для улучшения ситуации с миграцией, а именно диверсификация экономики Казахстана, инвестирование (малые и средние предприятия) и пересмотр политики занятости.

Ключевые слова: миграция, Казахстан, Российская Федерация, экономика.

JEL: F22

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2 Статья поступила в редакцию в сентябре 2018 г.

Daniltsev A.[1]

Risks and Challenges to Trade Within Digital Economy[2]

Discussions and debates over international trade in the global digital economy, especially e-commerce have surged in numbers in the recent years. This article establishes the growing tendency of implementing information technologies in trade relations and examines the main opportunities for Russia to promote ideas concerning the development of digital technologies in international economic relations. The recent 2018 WTO Public Forum in Geneva discussed the role of the correlation between digital trade policy and socio-economic development. The idea of how Russia can contribute to the evolution of emerging technologies is developed within the paper.

Keywords: WTO, emerging technology, trade relations, trade agreements, education, e-commerce.

JEL: O24

Introduction

The world is undergoing crucial changes, and the trade relationships among countries involve several important steps — the interconnection between exchange of products and exchange of services. The major tendency of this era is that not only that the goods and services are tradable, but also the movement of factors of production is increasing among the countries. With the creation of digital economy, the most significant role in this tendency plays the rise of new factors of production — information and big data, which appear to be essential in international economic cooperation and increases the opportunities to attain a greater market access.

With the growing issue of implementing information technologies into trade, digital economy has become a compelling problem towards the regulation of new instruments and directions of trade among the countries. The most important challenge nowadays lies in the ability of countries to enlarge the number of areas, involved in trade, and include digital commerce into their scope.

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2 The article was submitted in November 2018.

Benefits and drawbacks of emerging technologies for the WTO

Digital economy is not only a powerful and effective instrument to introduce the world-changing cooperation technique, but also provides opportunities to lower the transaction costs between the countries to ensure the easy entrance to the market. The development of e-commerce and the formation of the digital economy as a whole creates tremendous opportunities to accelerate the economic turnaround of meeting human needs and increasing well-being. [1, pp. 340-342]. To imply some detail in this assumption, the digital infrastructure includes three main components:

- The actual infrastructure of access to the Internet
- The availability of software
- The availability of data (or data access)

The development of international involvement in digital economy has several directions of impact on the socio-economic progress. First of all, information technology is increasingly pervasive, accessible and affordable. The combinations of technologies could multiply this impact. From the point of consumers, they are acquiring benefits, as well as producers, who are able to create the new business models and establish new ones in this area.

However, the urgent need to negotiate over the problems of involving information technologies has been caused by the difficulty of enforcing the trade within the digital economy. Like with any new and large-scale process of structural change, this stage requires the creation of new institutional capacities, regulatory mechanisms and in particular measures aimed at ensuring proportional development, compensating for problems and imbalances and, in general, ensuring the inclusiveness of the process.

Digitalization creates new factors and directions for inequality in the global economy. A great number of scholars have been addressing this well-known "digital divide" issue. The difference in access to digital networks poses serious problems to the countries. Technology impact differs between and among developed and developing countries and within those groupings. The aforementioned three major components display significant manifestations of inequality and discrimination:

- The provision of users with effective Internet access

This means that the gap between high income and low-income group of countries is shown to be almost two times difference between each other (Fig. 1).

- High level of monopolization of the software market
- Extremely high monopolization of digital platforms (Amazon, Aliexpress), etc.

At the same time, competition policy issues are not addressed at the multilateral level. Meanwhile, in developed countries antitrust legislation is sufficiently developed, in less developed countries, this trend seems to be very weak, or there is a lack of qualified personnel, experience or practice among workers. Furthermore, there is a

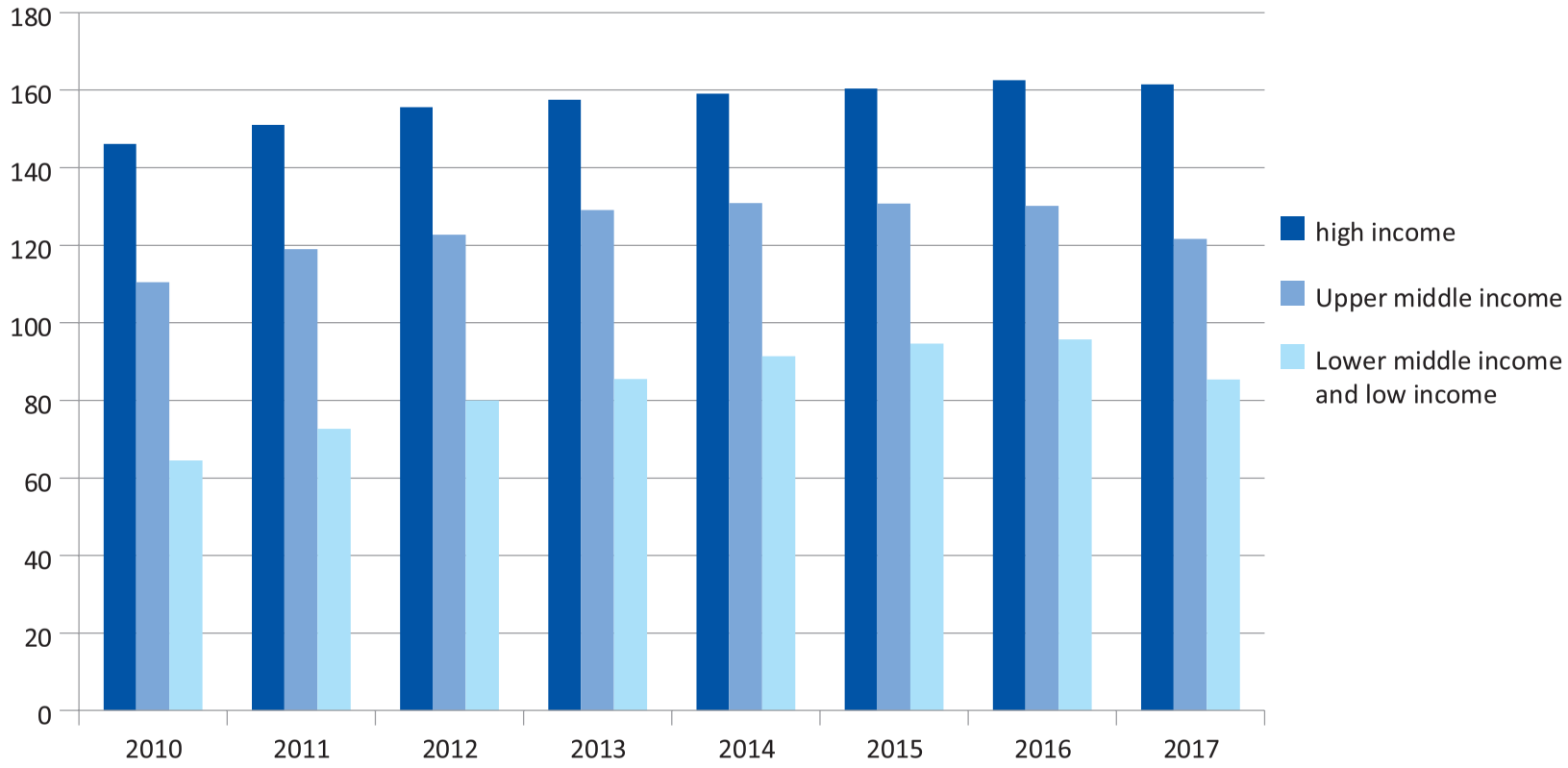

Fig. 1. Number of mobile and fixed broadband Internet connections per 100 people in different groups of countries

Source: [2].

high probability of facing subsidies (direct or hidden) of digital monopolists from more developed countries for promoting their own businesses in this area.

Access to data (the possibility of using big data technologies) is largely determined by both institutional factors and material resources, both of which act against the less developed countries.

The data on the availability of servers presented above indicates the weakness in the position of countries with low per capita incomes. To a large extent, the solution to this problem depends on the solution of the problem of data localization. However, the issue is obviously quite complex and controversial and the positions on this issue can differ.

Similarly, the problem of the institutional lag of the states with a lower level of development in matters that may be crucial in connection with the development of the digital economy and electronic commerce is highly significant. This factor can lead to rather negative consequences both for the developing countries themselves and the development of digital commerce as a whole.

On the one hand, the markets of countries with low and even low incomes are potentially attractive for e-commerce, especially given the opportunity to drastically reduce transaction costs and ensure high availability of products for the consumer without the need to develop traditional trade infrastructure [3, p. 32].

On the other hand, there is the problem of the risk of insufficient development of regulatory institutions and their readiness to meet the requirements that digital technology development may present.

The new trade technologies and related mechanisms of competition, regulation of access to the market (i.e. consumer data), digital trade infrastructure, consumer rights protection and other participants in trade have high demand for new requirements for regulatory institutions and practices.

To sum up, the question lies in discussing the risks associated with an inverse effect of the "digital divide" in the regulatory area - the possible consequences of the regulatory lagging behind the pace of development of electronic commerce and digitalization in general in developing countries. And the other question states whether the WTO as a system can achieve the balance on these issues in the next ten years and be the most efficient driving force to address challenges of social economic development.

One of the areas of concern is the fact that the mechanisms for the protection of the rights of right holders can inhibit the digital development of less wealthy countries. However, balanced and effective mechanisms for the protection of intellectual property rights are an important prerequisite for the successful commercial use of digital technologies. Insufficient protection of the rights can lead to

the development of grey markets, violation of the rights of consumers, but in the end will inevitably lead to conflict with the rights holders and the attempts to restrict access to advanced products for problem partners [4, pp. 34-37]. Undoubtedly, in the future, the enormous potential for scaling up digital technologies and the use of network effects will dramatically increase the importance of effective regulation in the field of intellectual property rights.

Possible solutions

The potential solutions to the digital trade problem do not involve only implementing rules in this particular area. The major solution to these problems would be a combination of rules which would provide for the movement of factors and help comprise them together systematically. All the factors of production at play can be developed in a system, whereas the task proposed to solve these issues would majorly depend on the differenced among the countries. There are some implications for the flexibility among the countries:

- The implementation of rubber rules
- The creation of specific part of obligations
- Special and differential treatment.
- The solutions to these problems include several points, among which there are

Ability to implement general disciplines to reach an agreement among different players. However, these might not serve as the best and the most effective regulations due to a high risk of a great number of barriers and bilateral instruments, such as new technological protectionism and "the risk to be late"

Development of regional trade agreements. However, there can occur a risk of fragmentation and appearance of "digital" regions and so called technological platforms, with many outsiders facing regional barriers. Furthermore, there is a possible lack of transparency among the players.

Achievement of a flexible agreement providing differential treatment to reflect different features of countries, and this system is more beneficial than the old regionalism as it could be transparent and have general principles and be open for opportunities to different levels by choosing different sets or levels of obligations.

The creation of conditions for real, equal and effective (as well as without increased risks of negative consequences) inclusion of developing countries in the development of the digital economy will be possible only with some limitations:

The implementation of large-scale assistance programs in the direction of improving regulatory mechanisms and the potential for their improvement;

The creation of a new, more flexible and problem-oriented system of special and differential mode. Similarly, this should include not only formal concessions with

respect to obligations, but also a part related to rendering assistance in fulfilling obligations, as well as elements aimed at reducing the risks associated with insufficient regulatory capacities with regard to high-tech global and trade arrangements.

Conclusion

To sum up, the biggest danger nowadays is the fragmentation of the world economy, in which it can be divided into groups of countries by level of development. On the basis of the WTO countries can start a movement to eliminate discrimination on the level of states development. In these circumstances, it is important to maintain the right balance between regulation and openness, and, in addition, it is necessary to interact more actively with the economies at the forefront.

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Данильцев А.[1]

Риски и вызовы для торговли в условиях цифровой экономики[2]

Обсуждения и научные дебаты на тему международной торговли в условиях глобальной цифровой экономики, в частности, электронной торговли, в последние годы стали проводиться значительно чаще. Статья освещает тенденцию применения информационных технологий в мировой торговле и основные возможности продвижения идей развития цифровых технологий в международных экономических отношениях для России и пути вклада России в эволюцию цифровых технологий. Также анализируется вопрос взаимосвязи между цифровой торговой политикой и социально-экономическим развитием, рассмотренный на состоявшемся в октябре 2018 г. Общественном форуме ВТО в Женеве.

Ключевые слова: ВТО, технологии, торгово-экономические отношения, торговые соглашения, образование, электронная торговля.

JEL: O24

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2 Статья поступила в редакцию в ноябре 2018 г.

Rourke P.[1]

Influence of Digital Technologies in Trade on Economic Development[2]

The digital trade agenda has been increasing the past few decades. However, it became so large that the system of international trade cannot match the pace of the development of digital innovations and technologies. This article focuses on discussing disruptive technologies with the correlation to the socio-economic development, as well as understanding the gains of inclusive trade and using different economic trade policy instruments to ensure the balance between the implementation of tools and the digital economy. The major point of this article is to explain what measures have to be taken to narrow the gap between the countries with different development levels.

Keywords: trade policy, economic instruments, e-commerce, country differentiation, multilateral agreements, transparency, socio-economic development.

JEL: O35

Introduction

The development of Internet commerce and the creation of the digital economy enables the countries to experience impressive possibilities to increase the economic production cycle which meet human needs and improve welfare of people. Consequently, this does not prevent the countries from an increase in new capacities, such as institutions, other regulatory methods and techniques and measures focused on ensuring proportional development. The inclusiveness of the process is ensured through compensating for problems and imbalances. With a successful example of the U.S agenda, which is considered to be very transparent and a very expanded one, U.S trade institutions have proposed several key facts:

- To give the whole information about their digital trade policies
- To promote open access to the internet
- To prohibit digital customs duties
- To secure discrimination
- To enable cross-border data flaws
- To prevent localization barriers, issues about the transfer of the technologies

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2 The article was submitted in November 2018.

- To protect critical source codes
- To ensure technology choices
- To advance innovative authentication methods, network competition, consumer protection, encryption,
- To build adaptable frameworks
- To ensure cybersecurity, standardization
- To increase market access
- To make more transparent customer procedures.

These issues are very complex and difficult to deal with, that is why the WTO is facing these problems and is searching for a solution that would enable these issues to become simpler and more transparent. Such a solution has to take into account and review the procedure of how trade documentation is issued (see Fig. 1).

The trend over the digitalization and trade changes, the services make changes, while transportation and providing trade finance skills are services relative to education and other skills which are essential to produce mass scaled goods [2, pp. 59-61]. Crucially, the trade finance process is highly fragmented across numerous entities (see Fig. 2). These trends, furthermore, might decrease the cost of market entry if one can lower the cost of the goods down to a reasonable level that small firms can grow and find particular niches in the industries.

General impact on economic development

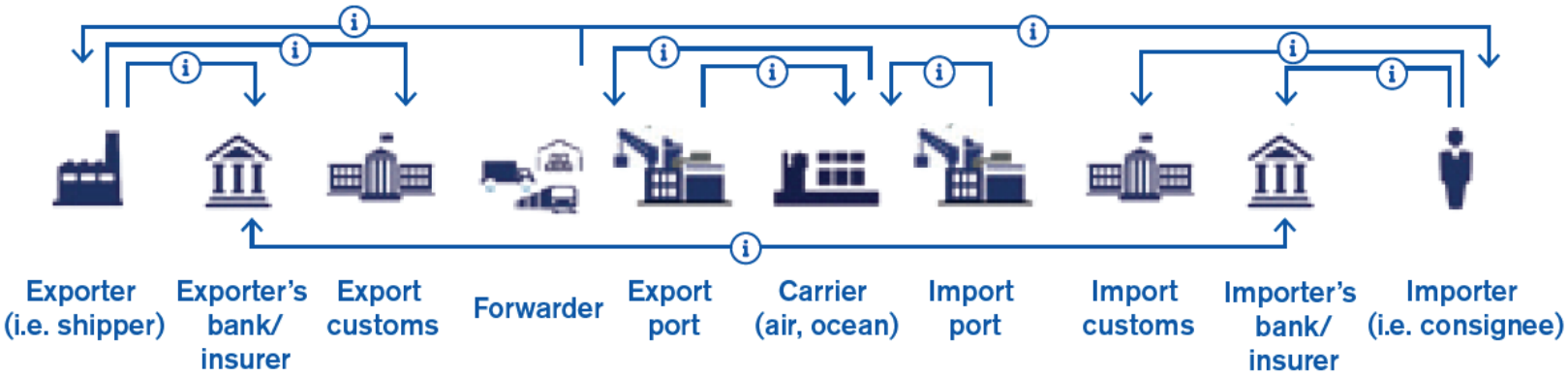
These trends and changes, overall, have a deep impact on the trade system. One of the impacts is that information technology is increasingly pervasive, accessible and affordable [3, p. 15-17]. Moreover, the different combinations of technologies could multiply this impact. While consumers enjoy great benefits, producers have to create new business models in this area in a whole host of others.

There is also an influence on employment and unemployment. The employment and unemployment effects, i.e. matching work with new jobs, is a type of structural problems that other countries face.

One more important fact is related to increased competition between those who have access versus those that do not or have less access to digital technology [4, p. 386]. Technology impact differs between and among developed and developing countries and within those groupings.

Distribution of benefits

The link between current mainstream and potential is not considered to be clear, thus it is very difficult to plan and to implement the rules that would apply and be reasonable and work to the advantage of the country if it starts negotiating as soon



Typical documentation issued

▪ Sales contract and trade terms ▪ Commercial invoice ▪ Packing list	▪ Letter of credit ▪ Insurance policy	▪ Certificate of origin ▪ Customs value declaration ▪ Export licenses/ certificate	▪ House bill of lading / House airway bill ▪ Delivery note ▪ Shipment status	▪ Port declara-tion ▪ Manifest ▪ Shipment status	▪ Master bill of lading/ Airway bill ▪ Shipment status (e.g. booking confirmation, arrival notification)	▪ Port declaration ▪ Manifest ▪ Shipment status	▪ Customs clearance ▪ Import licenses/ certificates	▪ Letter of credit procession	▪ Purchase order

Fig. 1. Typical international trade documentation

So urce: [1, p.18].

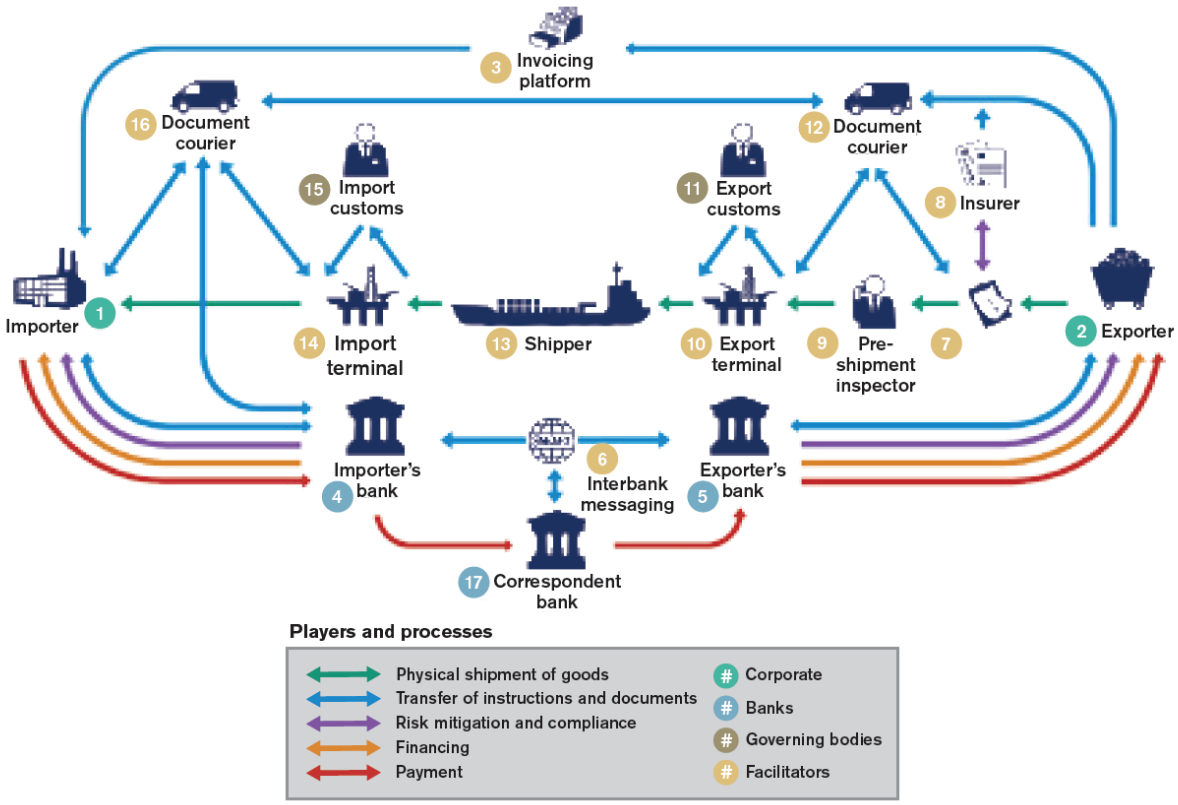


Fig. 2. Traditional trade finance process fragmentation

Source: [1, p.21].

as possible. One more significant issue to mention about disruptive technologies that the biggest destructor, an innovation yet may have not even been created. That means that the disruptive technologies change at a very high pace, thus they have to be approached under a high surveillance [5, p. 25, 38].

The new problems met by the WTO on the topic of the development of disruptive economic technologies are:

- The difference between the socio-economic statuses among the countries
- The business environment and internal regulations appear to dictate the level of trade possibilities in order to get access to the market
- The problems of new infrastructure that provide high possibilities of copying.

By now, the response has been made at regional and bilateral levels, although yet there are sets of inclusive growth issues to be seen and approached.

The main question arises whether the WTO is capable of achieving the practical steps of in the next ten years and whether there is an efficient mechanism to address challenges of social economic development.

Trade negotiations are suggested as an effective tool to increase customer market access. However, it is not dedicated only to the market access, but to a whole combination of various factors. The trade rules, as suggested within the session of the WTO, take a great amount of time to be implemented and to be efficiently put to work.

Another exclusive tool to solve the current issues is cooperation agreements outside of the trade agreements. It is a different mechanism that can be used to address some of the issues, where the trade issues, which are to be negotiated, are so far intractable.

Second technique that could be valuable to the resolution is the implementation deficit of facilitation agreements. This affects customs procedures and borders as costs of doing business. However, there is a whole combination of other implementation issues that can address social economic development issues.

The final methodology is the most important one — the domestic reform.

Conclusion

The existing multilateral rules for regulating trade relationships are aimed at the possibility of building a balanced trade system. With the ability to create an equal and fair environment for the trading sides which assumes the need to take into consideration the factors of different starting levels, economic and organizational capabilities, and the need for development assistance. All these propositions manifest themselves in the trade system alongside mechanisms of special and differential treatment and the possibility of applying unilateral trade preferences.

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Рурк Ф.[1]

Влияние цифровых технологий в торговле на экономическое развитие[2]

Повестка цифровой торговли наполняется на протяжении нескольких последних десятилетий. Однако она стала настолько обширной, что изменение системы международной торговли отстает от темпов развития цифровых инноваций и технологий. В статье уделено внимание подрывным технологиям и их взаимосвязи с социально-экономическим развитием, а также выгодам от инклюзивной торговли и применения торгово-политического инструментария в целях обеспечения баланса между применяемыми мерами и цифровой экономикой. В статье рассмотрены меры, которые необходимо применять для сокращения разрыва в экономическом развитии между странами.

Ключевые слова: торговая политика, экономические инструменты, электронная торговля, дифференциация стран, многосторонние соглашения, транспарентность, социально-экономическое развитие.

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