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The Eurasian Economic Community Customs Union: New Realities for Business

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We have entered into the next stage in the formation of the Eurasian Economic Community customs union. By now, all the steps in preparing a legal contractual base for the customs union that are envisaged for the first two phases (up to Jan. 1, 2010, and from Jan. 1, 2010, to July 1, 2010) have been almost fully completed.

The tariff and nontariff regulatory functions were conferred on the customs union commission as a single regulatory body. The conferment took place on Jan. 1, and since then the regulatory mechanisms have started operating in the customs union. July 1 was the start of the second phase in the development of the customs union, which introduced even more sensible changes for the entire economy: Harmonized customs regulation has been introduced, and the commission has been granted the regulatory functions envisaged by the customs code.

With the start of the second phase in the formation of a uniform customs territory, various agreements on technical regulation, sanitary, veterinary and phytosanitary measures have been activated; they all provide for the pursuance of a single policy in the mentioned spheres.

Harmonizing the technical regulation is more time-consuming. A certain transitional mechanism is provided for this: Products with respect to which the requirements and schemes of conformity verification and the measurement investigation methods in each of the member countries coincide with one another or are similar will be put on a single list and permitted for sale on the territory of all member countries. Other products for the time being will be subject to national regulations. At the same time, a new agreement is being put forward for signature; it will define a single instrument of technical regulation with respect to maintaining uniform technical regulations. A coordinating committee for technical

regulation, the application of sanitary, veterinary and phytosanitary measures has been set up under the aegis of the commission.

With the introduction of the customs code of the customs union, from July 1 the duty of collecting indirect taxes in interstate trade between the member countries of the customs union has been vested in the tax authorities. To fulfill these duties, the tax authorities have fine-tuned and agreed on the format of electronic communication. They regularly exchange data from the applications for import and payment of indirect taxes.

Since Sept. 1 an agreement has been active on the distribution of import duties and crediting to accounts. Now duties arrive in the special accounts of all three states and are then automatically distributed between the budgets of the three states.

Of utmost importance is the practical setup of controls on the borders of the customs union. By July 1, 2011, the control functions are expected to have been moved to the outer border of Kazakhstan.

For compliance purposes, the commission constantly monitors the situation with the flow of goods and vehicles across the Belarus-Russia and Kazakhstan-Russia borders. The requirements toward the arrangement of the checkpoints vary significantly, meaning that harmonization is needed. There is also a need for infrastructure that would ensure a high level of control on the outer border. This task is expected to be solved under an interstate target program.

An important question is how to bring unity into the law enforcement practices. In furtherance of the customs code of the customs union, an agreement was passed regarding cooperation in exercise of the national power to impose criminal and administrative liability; nonetheless, the question on corpus delicti and approximation of punishment for an offence is still open.

The application since July 2010 of the legal base of the customs union revealed a number of issues that require quick resolution through the introduction of changes to the customs code of the customs union and international treaties. For example, this refers to the application of risk management systems in light of vital differences in the regulatory and organizational sphere, methods and information technologies, etc.

The new regulation has brought about different interpretations and problems to both business and regulators.

Practical problems arose primarily in the application of new provisions in the absence of clear clarifications and national regulation due to observance of the blanket rules of the customs code of the customs union.

The main instrument that will protect the rights and interests of businesses will be the Eurasian Economic Community court.

At present, the jurisdiction of the Eurasian Economic Community court is being broadened. Thus, entities will be able to challenge the acts or failures to act of the public authorities of the customs union member countries and bodies of the customs union.

An entity may bring a matter to the Eurasian Economic Community court after having tried all of the national remedies. The agreement on the referral of entities to the Eurasian Economic Community court is expected to be signed in December, and by July 2011 the countries will have completed all of the interstate procedures necessary for the agreement to take effect.

Prior to completing the interstate procedures necessary for the execution and activation of the agreement, the interstate council set up an expert council under its aegis based on a decision dated Nov. 27, 2009.

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