

# The Eurasian Customs Union in transition

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## Abstract

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In 2010, the Republic of Belarus, Republic of Kazakhstan and the Russian Federation formed the Eurasian Customs Union (ECU). Although the states have achieved an impressive degree of integration, both the aim and initial results of the union are controversial. This paper starts with a brief historical overview and describes the current state of the ECU. The authors then explain what effects the union is having on internal and external trade and identify emerging problems. They also consider a development strategy, paying particular attention to the way the ECU attempts to resolve tensions between the World Trade Organization's (WTO) regime and its own legal order. The paper concludes with a brief outlook.

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## 1. Historical background

Today, the world has far more free trade zones than customs unions. According to the World Trade Organization (WTO), less than ten per cent of all preferential trading agreements take the form of a customs union (WTO 2011, p. 62).

The reasons are that free trade zones are more politically acceptable than customs unions (that is, no loss of autonomy), are independent of geographical factors (cross-continental FTAs) and offer greater flexibility in establishing bilateral trade relationships with the rest of the world (Facchini, Silva & Willmann 2012, p. 25; Andriamananjara 2011, p. 111). Despite all these advantages, Russia, Belarus and Kazakhstan have all decided in favour of a customs union. This integration project is explained in the three countries' recent history.

### 1.1 1993 to 1999

Between 1993 and 1994, the former Soviet Republics (and now independent states) attempted to form an economic union. For this purpose, the state leaders signed the treaty 'on economic union' on 24 September 1993. The further development of this union gave rise to a number of further treaties including the establishment of a free trade zone on 14 April 1994, the creation of a payment union on 21 October 1994 and a customs union on 20 January 1995. A comprehensive economic union enabled the states to maintain the economic ties inherited from the Soviet Union. However, the attempt to involve all new post-Soviet states in an integration project failed owing to various political and economic reasons. Between 1995 and 1999 it was not possible to achieve any significant progress.

### 1.2 2000 to 2006

Since 1999-2000, the post-Soviet states have started to develop their relations with the rest of the world. In 2000, Russia, Belarus, Kyrgyzstan, and Tajikistan founded the Eurasian Economic Community (EurAsEC). This new international organisation is strongly institutionalised. It has replaced the requirement of unanimity with a qualified majority and abolished the principle of 'one state = one vote'. This represents a departure from the usual voting procedures that characterise international arrangements. For three of the five states, Russia, Belarus and Kazakhstan, the EurAsEC provided the springboard for creating the Eurasian Customs Union (ECU).

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### **1.3 2007 to today**

The next important steps towards integration were completed in less than five years. The state leaders of Russia, Belarus and Kazakhstan signed the Treaty Establishing the Customs Union on 6 October 2007. Shortly afterwards, further legal agreements were concluded (despite the tedious political disagreements that repeatedly arose between the member states). In July 2011, the Customs Code of the Eurasian Customs Union (ECU-CC) took effect. This signalled the completion of the customs union and represented a high water mark in the integration process. Since the beginning of 2012, the official description of ‘the Customs Union and the Uniform Economic Area of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation’ was officially adopted and signified an advanced degree of integration. The members plan to achieve the next step (that is, the establishment of the Eurasian Economic Union) by 2015.

## **2. Between a customs and economic union**

The new integration project aims to promote social progress and improve the living standards of the people. The founding states plan to achieve these aims by exploiting existing relationships in production and the economy.<sup>1</sup> The mutual dependency of post-Soviet political economies is often taken for granted and cited as an explanation for the broadly conceived integration projects between these countries. The process of integration is also facilitated by geographical proximity and cultural similarities. To date, however, the political will for integration has been lacking. By creating the ECU, Russia, Belarus and Kazakhstan have attempted to reinvigorate their once comprehensive economic relations, despite the fact that they have been clearly weakened in the 20 years since the collapse of the Soviet Union. By elevating the ECU to a common market, members hope to increase the profitability of Eurasian countries and make them more attractive to investors. On the other hand, establishing a common legal framework by means of supranational legislation will expand the economic freedom that can be claimed by economic operators. The next section deals with the extent to which the partner states have actually succeeded in these endeavours.

### **2.1 Completion of the Customs Union**

#### **2.1.1 Abolition of internal customs borders**

The abolition of customs borders between the three countries marked the first stage in realising the ECU. After a delay of several months, border controls were lifted on 1 July 2011. Restrictions to free trade are also in the process of being abolished: a declaration is only necessary when exporting oil products from Russia to other member states. These measures clearly contributed to facilitating trade between the partner countries – especially during the financial and economic crisis.

In mutual trading relationships, energy resources are by far the most important export product. They account for almost 50 per cent of the total exports, with machines, vehicles, chemical and metallurgical products being the most important. Russian exports currently account for almost two-thirds of mutual trade and are rising. However, whilst Russia trades intensively with Belarus and Kazakhstan, trade between the two smaller states appears low and in 2012 amounted to scarcely USD1 billion. The generally positive tendencies are often cited to justify the tripartite Customs Union. Accordingly, the Russian Academy of Sciences has estimated that the total effect of integration will amount to USD400 billion or 15 per cent of shared GDP by 2015 (Kosov 2012, pp. 162-3). The Eurasian Development Bank has also provided an extremely optimistic prognosis concerning economic development within the ECU.<sup>2</sup>

Table 1: Trade statistics in the Eurasian Customs Union for 2010, 2011, 2012 (January to October)

Year	Total turnover of ECU in USD (millions)	Total turnover of ECU as % of previous year	Export								
			Russia			Belarus			Kazakhstan		
			USD (millions)	as % of previous year	% in the ECU	USD (millions)	% of the previous year	% in the ECU	USD (millions)	% of the previous year	% in the ECU
2010	47134.6	129.1	30717.0	118.7	65.2	10418.4	148.2	22.1	5999.2	166.6	12.7
2011	63461.8	134.6	40814.7	132.9	64.3	15182.9	145.7	23.9	7464.2	124.2	11.8
2012	56820.6	109.3	37065.5	112.1	65.3	14049.2	111.2	24.7	5705.9	90.7	10.0

Source: Information of the Economic Commission, www.tsouz.ru.

Regardless of whether this promising prognosis materialises, one has to agree that the aforementioned export statistics are not explained by the abolition of customs barriers alone. In fact, the dynamics of export are the simplest indicator of a regional union's degree of integration; in other words, the degree of welfare depends on the amount of 'intra-trade' that an economic union generates (Do & Watson 2007, p. 12). However, the increased trade figures in the ECU are not due to a reduction in customs duties since duty-free trade in goods between the three countries had already been achieved on the basis of free trade agreements. Rather, the reduction in bureaucracy (more efficient border crossing, simplified payment transactions, less risk of corruption) seems to have had the most telling effect. The introduction of the common customs tariff has also made an important contribution to increasing exports within the ECU.

### 2.1.2 Common tariff

The Common Customs Tariff (CCT) forms the basis of the customs union. According to the legal definition, the CCT consolidates the rates of import duty for goods imported into the common customs area.<sup>3</sup> The customs tariff of 16 July 2012 is based on the Harmonized System for the Nomenclature of Goods of 1 January. This is already the ECU's second CCT (the first applied from 1 January 2010 to 23 August 2012). It largely consists of *ad valorem* (9,473 headings), specific (235 headings) and mixed duties (1,563 headings), which are calculated partly in euros and partly in US dollars. Although a further transition from mixed duties to *ad valorem* or specific duties is planned in future, there are complaints at WTO level that the current proportion of mixed duties is motivated by protectionism in that they permit a greater degree of tariff protection.<sup>4</sup>

The *de facto* adoption of Russian import duties in the first CCT in 2010 entailed a considerable increase in customs duties for Kazakhstan and Belarus (Jandosov & Sabyrova 2011, p. 13) which was offset by increased trade between the partner states. According to the European Bank for Reconstruction and Development (EBRD), this process served to promote trade throughout the region. That said, there is also a risk that less competitive exports from Russia are preventing the importation of cheaper goods from Europe and China.<sup>5</sup> Since the increase of exports within a customs union is usually achieved by a common tariff, the World Bank believes that living standards are negatively affected thereby (owing to trade diversion), despite the positive developments of intra-regional trade (World Bank 2012, pp. 15ff).

### 2.1.3 Reduction of customs duties

When the CCT entered into force, the level of customs protection in the ECU declined. Russia's accession to the WTO in August 2012 played a decisive role in this respect (Weerth 2012, pp. 176ff). As early as July 2012, the Eurasian Economic Commission (the ECU's standing regulatory body [the Economic Commission]) proposed a new Eurasian customs tariff in accordance with Russia's WTO obligations. As a result, the average rate of customs duty in the CCT had fallen from 9.6% to between 7.8% and 7.5%.<sup>6</sup> Russia's WTO obligations are adopted within the CCT on the basis of the Agreement between

Russia, Belarus and Kazakhstan on the Functioning of the Customs Union in the Multilateral Trading System (FCUA); accordingly, the member states' WTO obligations form part of ECU law. The CCT has to be amended every 12 months to reflect Russia's concessions. Accordingly, its rates will continue to gradually fall, as provided in Russia's Protocol of Accession. However, the fall in customs rates is accompanied by a corresponding increase in non-tariff measures.

#### **2.1.4 Non-tariff barriers to trade**

Before the Customs Union was established, indirect protectionist measures represented an important instrument of foreign trade for ECU members. Some years ago, Russian import prohibitions on meat from the United States of America (USA) and wine from Georgia and Moldavia attracted a lot of attention. Such measures were partly motivated by political concerns – the milk war between Russia and Belarus being a good example. Russia's accession to the WTO and the incorporation of WTO standards into the ECU's legal order aim to restrict the member states' freedom to act. However, the European Union (EU) announced as early as November 2012 that the charge for scrapping foreign cars or quotas on wood exports were disproportionate and did not rule out the possibility of making a complaint against Russia at the WTO. The USA also regards the Russian prohibition on imports of beef treated with hormones (introduced at the end of 2012), as infringing WTO law. Russia rejects the criticism and refers to its right to introduce measures to protect health and the environment. Further protective measures are planned should the global economic crisis flare up again, including a number of customs quotas from 2013 to 2015.<sup>7</sup>

The founding of a customs union has made it more difficult for individual ECU members to introduce unilateral non-tariff measures since some of the powers needed to do so have been transferred to its organisations. The responsibility for such measures now rests with the Economic Commission and member states. The former has powers to issue prohibitions and restrictions in relation to imports and exports, safety and security (that is, technical barriers to trade and sanitary and phytosanitary measures), trade protection<sup>8</sup> and, more recently, export controls.<sup>9</sup> Furthermore, there is a framework regulation for export and import licences although the decision on applications still remains with the national authorities.<sup>10</sup> The Economic Commission is not only responsible for introducing protective measures in relation to imports but also for supervising trade restrictions that other countries impose on exports from the customs union.<sup>11</sup>

The role played by technical provisions, sanitary and phytosanitary measures as well as protective, compensatory and anti-dumping duties in ECU trade policy is only likely to increase as a result of the deepening and multilateral development of the customs union. Ultimately, it reflects a global trend. Parallel to this, the Economic Commission will gradually assume a more assertive role in this area and replace the national authorities as the competent contact point for questions relating to non-tariff trade regulation across the whole customs union. It is hoped that, by transferring powers to the Economic Commission, protective measures will be introduced in a way that ensures greater certainty and predictability within the ECU. This, in turn, promises a more effective protection of economic operators' legitimate interests in practice.

#### **2.1.5 The economic test: pass or fail?**

Economic analysts agree that the ECU's common tariff policy has triggered a shift in foreign trade. Arguably, new non-tariff trade provisions amount to a *de facto* discrimination against foreign imports. However, the question as to whether the ECU has led to an increase or reduction in living standards or has had discriminatory or liberalising effects cannot be answered by an economic test alone. In any case, the increase in trading activities and a clear reduction in trade barriers *between* the three countries is of far greater significance. Arguably, greater liberalisation and economic integration will promote trading relationships *with non-member states*.

### 3. Customs treatment and trade facilitation

Traditionally, customs unions have been created by abolishing internal customs barriers and harmonising trade policy and customs formalities in relation to third party states (Lux 2008, p. 163). Russia, Belarus and Kazakhstan have gone a step further in realising their aim of integration and have harmonised their customs rules in the ECU-CC. The ECU-CC, consisting of almost 400 articles, represents an international treaty that takes priority over member states' national law and takes direct effect. In Eurasian countries, therefore, customs law was the first legal area of supranational regulation (Kozyrin 2011, p. 3).

Customs law must keep up with the changing environment of international trade (Wolfgang & Natzel 2008, p. 39). For this reason, the next section asks whether there are any legal deficiencies in the customs union and what steps members are taking to develop customs law.

#### 3.1 Problem areas

A number of representative studies into the underlying conditions of business permit of a comparative analysis. In its *Doing Business* series, the World Bank investigates the extent to which the business policies in individual states serve to promote trade.<sup>12</sup> It analyses progress made in ten categories, including international trade. As Table 2 shows, since they abolished internal customs duties, none of the three ECU members has been able to make significant progress in facilitating trade beyond establishing common customs borders. In almost all areas, Russia, Belarus and Kazakhstan score below average in the region.

Table 2: The ECU countries in 'Ranking on trading across borders in 2011/2012/2013'

Indicators	Average in Eastern Europe and Central Asia	Belarus	Kazakhstan	Russia
Aggregate ranking	-105/107	-152/151	-176/182	-160/162
Documents to export (number)	6.4/7/7	8/9/9	10/10/9	8/8/8
Time to export (days)	26.7/27/26	15/15/15	81/76/81	36/36/21
Cost to export (USD per container)	1651.7/1774/2134	1772/2210/1510	3005/3130/4685	1850/1850/2820
Documents to import (number)	7.6/8/8	8/10/10	12/12/12	13/10/11
Time to import (days)	28.1/29/29	20/30/30	67/62/69	36/36/36
Cost to import (USD per container)	1845.4/1990/2349	1770/2615/2315	3055/3290/4665	1850/1800/2920

Source: www.doingbusiness.org.

Whereas the *Doing Business* reports are generally based on an analysis of legislation, the *Business Environment and Enterprise Performance Survey* (BEEPS) Project examines the quality of the business environment in practice.<sup>13</sup> It found that the business climate gradually improved between 2009 and 2012. Nevertheless, there are still clear deficiencies in relation to taxation, anti-corruption strategies and qualified workers which negatively affect international trade. Finally, the *Logistics Performance Index* must be mentioned: the current rankings (2012) place Kazakhstan, Belarus and Russia 86th, 91st and 95th – between the Dominican Republic and Lebanon.<sup>14</sup>

Therefore, the creation of the customs union has not significantly improved the situation. This is confirmed by recent questionnaires completed by economic operators. Only a third of Russian companies questioned by the *WZIOM* market research centre in November 2012 reported that border crossing times had decreased;<sup>15</sup> 64% of exporters still spend more than three hours waiting at the border customs office; 49% report that the procedure sometimes lasts more than 24 hours. Imports (including 100% of food imports) are separately controlled by customs, veterinary and consumer protection authorities;

border authorities do not use computerised systems. One must also take into account several layers of customs legislation, hundreds of requirements in the ECU-CC and differing rules in the three member states which frustrate the intended simplification of trade (Bakaeva 2011, p. 121). The costs incurred by customs procedures are still too high. This is reflected in the rhetoric of the political decision makers regarding the deficiencies in the national customs administrations.

### **3.2 Reform plans**

In view of the existing problems, the Economic Commission plans a series of comprehensive measures for reforming the ECU's customs law in preparation for a general revision of the ECU-CC in 2015.<sup>16</sup> These measures plan to grant simplifications to particularly reliable economic operators in order to promote the transparency of business transactions and increase the efficiency of the customs authorities in performing risk analysis and customs controls. The measures include, for example, reforming the identification of participants as well as guaranteeing compatibility with the European Economic Operators' Registration and Identification (EORI) number.<sup>17</sup>

Although some elements of this ambitious plan have already been completed, there is still work to do. Accordingly, ECU members have gradually implemented initiatives of the World Customs Organization (WCO) (the Kyoto Convention, SAFE Framework). Since 17 July 2012, all economic operators in the customs union using road transport have been required to submit advance electronic declarations and this requirement will soon be extended to cover other means of transportation. The legal status of Authorized Economic Operators (AEO) is slowly making progress: in 2012 more than 120 applications for AEO status were submitted to the Federal Customs Services in Russia alone. Currently, 70 companies have had their applications accepted, 20 applications have been rejected and the remainder have yet to be checked.<sup>18</sup> In the partner state of Kazakhstan, two regions started a pilot project for the electronic customs declaration of exports; the project will be extended to other customs procedures at the end of 2013.<sup>19</sup> A new bill on customs regulation in Belarus promises to simplify customs clearance considerably.<sup>20</sup> At the end of 2012, the Economic Commission also issued rules ensuring the uniform application of customs valuation methods.<sup>21</sup>

### **3.3 Legal deficiencies**

Despite this, the Russian-Belarusian-Kazakh customs union has a long way to go and one should not expect a dramatic improvement in the *Doing Business* rankings any time soon. The legislative and institutional demands are widely recognised by both member states and organisations of the customs union. However, legal practice appears to be deficient in a number of respects. In Russia, public authorities complain of partisanship, corruption and the lack of qualified personnel. The situation in the two partner states is not much better: legal failings are increasingly being discovered in all areas (World Economic Forum 2013, p. 9). It is therefore unsurprising that economic operators have little faith in the domestic legal system and prefer to base their legal transactions on foreign law. In Russia, for example, only 10% of commercially important contracts are subject to Russian law; the majority of Russian contracts for import and export are drafted according to English law.<sup>22</sup> This tendency is apparent in relation to the judicial venue as well, with a striking number of disputes involving Eurasian states being heard in foreign states. For example, almost 16% of all cases heard by the London Court of International Arbitration (LCIA) involve CIS states; by comparison, disputes relating to other European states account for only 10%.<sup>23</sup> This is all the more impressive considering the extent of economic relations between the EU Member States. This problem is also attracting attention within the customs union. Although the shift in economic activities from Russia to Kazakhstan has usually been attributed to the lower rate of VAT, it is now becoming clear this may also be due to the high costs of customs clearance at the Russian border. The shift in trading activities may appear disadvantageous from an economic point of view but allows legal risks to be avoided. Russian Customs may lose the vast majority of appeals against the *ex*

post collection of import duties,<sup>24</sup> but small and medium-sized companies are unable to bear the costs of proceedings. Such examples make clear that the greatest obstacle to the development of the internal market and foreign trade is legal uncertainty rather than economic risk. This problem will not be solved by the planned creation of an International Arbitration Tribunal of the Customs Union.

If the ECU is to become an economic area attractive for investors in the *long term*, the rule of law and system of justice must be firmly established. Economic operators will only do business in ECU member states if they trust the decisions of public authorities and have effective appeal procedures.

## **4. Current developments**

This integration project of Russia, Belarus and Kazakhstan is extremely ambitious considering that its ultimate aim is the establishment of a full-blown economic union in less than ten years. The subjects of cooperation between the three partner states are enunciated in the *Declaration on the Eurasian Economic Integration* (Declaration of Integration) of 18 November 2011. Directly after the preamble, the state leaders affirm that the Eurasian economic area is to be based on generally recognised principles of international law. The second paragraph stresses the importance of each of the three states acceding to the WTO as well as the adoption of practical standards and rules facilitating cooperation in the Eurasian economic area. This represents an important political statement.

### **4.1 The WTO problem**

#### **4.1.1 WTO accession**

The Declaration of Integration also resolves the debate concerning the WTO membership of the customs union which has been going on since 2009, insofar as it refers to a separate WTO accession 'of each of the three states'. As a rule, WTO law does permit customs unions to exist subject to Art. XXIV GATT but only as between its member states (that is, once the state in question has joined) (Herrmann 2011, pp. 45, 121). To date, this has not been the case. It may well be that Russia's accession to the WTO will accelerate the accession of the other two states because now Russia's WTO obligations will be implemented in the legal order of the customs union. However, even if Kazakhstan were to join the world trading club as early as 2013, negotiations with Belarus remain on hold for the foreseeable future.

#### **4.1.2 The danger of legal fragmentation**

If ECU members accede to the WTO individually, there will be a risk of legal fragmentation within the customs union. This would occur if the concessions required of Kazakhstan or Belarus were different to those of Russia and thereby gave rise to different legal obligations. According to Art. 1(3) of the FCUA, the WTO obligations of ECU members that join the WTO also form part of the customs union's legal order. To solve this problem, Art. (5) of the same agreement obliges member states to comply with international law and the obligations of the state which first acceded to the WTO whenever the negotiation of accession touches on matters regulated by the ECU or its organisations.

#### **4.1.3 The application of WTO law in the Eurasian Customs Union**

As far as the ECU is concerned, the FCUA agreement already regulates the relationship between WTO law and the legal system of the customs union – despite the fact that two of the three member states have yet to join the WTO. First of all, the member states undertake to ensure the ECU's legal system complies with the Treaty Establishing the WTO, as well as with the WTO obligations of each of the acceding member states. Until then, WTO law takes priority over agreements within the ECU and the decisions of its organisations. In addition, the rights and duties of each ECU member arising under the WTO agreements are exempt from review by the ECU (including the Eurasian Court) and are not open to amendment by international agreement entered into by the members. In other words, the ECU members

undertake to comply with WTO law when entering into international agreements affecting the customs union and when passing and applying legal acts issued by its organisations.

### **4.1.4 Another obstacle?**

The obligation contained in the FCUA that its members must comply with WTO law, has turned the ECU into an instrument for the multilateral liberalisation of Belarus and Kazakhstan. The ECU offers an interesting practical example of the ‘stepping stones/stumbling blocks’ debate concerning the conflict between the proliferation of regional trade agreements and the multilateral system of trade. At the same time, it is unclear what status WTO law has in the customs union. Hitherto, Russian WTO obligations have always been implemented by the customs legislation of the customs union. Whether the Eurasian Court in Minsk dares to give its opinion on this question within the context of a legal interpretation (as did its European equivalent in Luxembourg) remains to be seen. Clearly, it is of great significance that national courts can refer to provisions of WTO law when interpreting national law. Some point to Russia’s protocol of accession in support of the proposition that WTO law takes direct effect.<sup>25</sup>

## **4.2 Between Europe and Asia**

Besides integration into the world trade order, ECU members aim to reinforce *intra-regional trade relations*. The geopolitical situation of the three states means that cooperation with other economic blocs is a priority. For this reason, the Declaration of Integration ends with a passage which underlines ‘the pragmatism of coordinated cooperation to harmonise and approximate the process of integration in the Euro-Atlantic region and Eurasia’.

### **4.2.1 Europe**

#### *4.2.1.1 The EU as a model for integration*

The Declaration on Integration particularly emphasises partnership with the EU. This is further confirmation of the fact that the EU represents an attractive model of integration for other regional trade relations despite the crisis. There are many indications of this in the ECU’s legal and institutional structures.

#### *4.2.1.2 The EU as an economic partner*

The EU is the most important economic partner of all three ECU countries. However, there are considerable differences in both the legal framework for bilateral relationships and the intensity of trade between the EU and individual ECU member states. Although trade between the EU and Russia has reached record levels and the country remains the EU’s third largest trading partner (after the USA and China), this cooperation lacks a legal basis appropriate to the current situation. As of 2012, all there was to show for the negotiations on a new Partnership and Cooperation Agreement between the EU and Russia (started in 2008) was ‘progress in areas of disagreement’.<sup>26</sup> The bilateral relations between the EU and Belarus are still regulated by the Trade and Cooperation Agreement concluded with the Soviet Union in 1989 whilst the new Partnership Agreement of 1995 has never been ratified by the EU in response to Belarus’s intransigence on democratic reform and civil and political rights. Only Kazakhstan has achieved an effective legal framework with the EU: in addition to the Agreement on Partnership and Cooperation of 1995 (which entered into force in 1999)<sup>27</sup> and the EU strategy for Central Asia,<sup>28</sup> negotiations on a Partnership and Cooperation Agreement started in 2011. Kazakhstan has also been holding a constructive dialogue with individual EU states. Accordingly, Germany concluded the Agreement on Partnership in the Field of Raw Materials, Industry and Technology with Kazakhstan in 2012 which gave it access to rare earths.<sup>29</sup> Now, Eurasian states would like to open *en bloc* negotiations with the EU concerning a free trade zone. The EU is not unfamiliar with the idea of closer intra-regional cooperation: partnership agreements with regional groupings form an important component of European



trade policy. However, it is questionable whether a free trade zone between the EU and ECU is capable of bringing the parties greater political, economic and legal advantages than separate bilateral agreements.

#### 4.2.2 Asia

Russia would also like to appear as a troika in relation to the Pacific region. Although this is not so apparent in the ECU's trade policy, it is nevertheless growing in importance. In September 2012, the ECU appeared as a trade bloc for the first time at the summit of the Asia-Pacific Economic Cooperation (APEC) hosted by the Russian city of Vladivostok. The ECU's importance looks set to grow in this region considering that the EU and Asian-Pacific region are aiming to increase trade passing through Eurasian countries five-fold by 2020. This will considerably increase the profile of the ECU as a transit region (Putin 2012) and, in this context, a number of free trade agreements are being negotiated between the ECU and individual APEC states. Negotiations between the Economic Commission, Vietnam and New Zealand may even lead to a free trade agreement in 2013.

## 5. Outlook

The customs union of Russia, Belarus and Kazakhstan has embarked on a process of integration necessitated by cultural and geographical proximity. Despite initial trade diversion, the parties are hopeful that net welfare will increase. This is supported by trade growth within the union. The integration project of the three states is not limited to the Eurasian region. Rather, the creation of a customs union in accordance with WTO law will serve to propel Belarus and Kazakhstan into the multilateral trading system. However, further liberalisation is necessary before this can be achieved. It is uncertain whether the customs union will serve to increase the negotiating power of Eurasian countries in relation to other trade blocs because it does not provide for a joint policy towards other countries. This may change in light of increasing integration and the further unification of foreign trade policies brought about by economic union. However, the greatest challenge for the three countries lies in the creation of a *legal* rather than economic union. Ultimately, it is unclear exactly where the process of integration is heading.

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## Notes

- 1 See Preamble of the Agreement of 29 March 1996 and the Agreement of 26 February 1999.
- 2 [www.eabr.org/tr/research/publication/articles/](http://www.eabr.org/tr/research/publication/articles/).
- 3 Available at [www.tsouz.ru/db/cttr/cttwtwo/Pages/default.aspx](http://www.tsouz.ru/db/cttr/cttwtwo/Pages/default.aspx). The export duties that represent a significant source of income for all three states have still not been harmonised.
- 4 [www.economy.gov.ru/mincc/press/interview/doc20130116\\_05](http://www.economy.gov.ru/mincc/press/interview/doc20130116_05).
- 5 *Vedomosti*, 12 July 2012, No. 128 (3142), Sanoma Independent Media, Moscow.
- 6 Press release of the Economic Commission, [www.tsouz.ru/news/Pages/20-07-2012.aspx](http://www.tsouz.ru/news/Pages/20-07-2012.aspx).
- 7 Press release of the Government of the Russian Federation, <http://government.ru/gov/results/18830/print/>.
- 8 Art. 3-6, 9 Agreement on the uniform non-tariff trade measures in relation to third countries of 25 January 2008; Art. 2 of the Agreement on the introduction and application of measures in the single customs territory affecting foreign trade with third countries of 9 June 2009.
- 9 The basis for this is the Agreement on the import and export of military goods of 10 May 2012 which has not yet entered into force.
- 10 Art. 3 of the Agreement on rules governing the issue of licences in foreign trade of 9 June 2009.
- 11 According to information provided by the Economic Commission there are 95 restrictive measures in force against goods of the Customs Union (as of December 2012). In particular, the EU has 20 measures and the USA 17 measures protecting their markets against imports from the ECU. See the analysis of restrictive measures in relation to goods of the customs union in trade with the most important partners in CIS states and further abroad.
- 12 [www.doingbusiness.org](http://www.doingbusiness.org).
- 13 The report on Russia has already been published, [www.ebrd.com/pages/research/economics/data/beeps.shtml](http://www.ebrd.com/pages/research/economics/data/beeps.shtml).
- 14 [http://siteresources.worldbank.org/TRADE/Resources/239070-1336654966193/LPI\\_2012\\_rankings.pdf](http://siteresources.worldbank.org/TRADE/Resources/239070-1336654966193/LPI_2012_rankings.pdf).
- 15 *Vedomosti*, 19 December 2012, No. 241 (3255), Sanoma Independent Media, Moscow.
- 16 See Proposals for improving the customs clearance in the customs union 2012-2015, [www.tsouz.ru/news/Documents/P-01-10.pdf](http://www.tsouz.ru/news/Documents/P-01-10.pdf).
- 17 [www.tsouz.ru/eek/torg/Documents/K\\_35.pdf](http://www.tsouz.ru/eek/torg/Documents/K_35.pdf).
- 18 The Federal Customs Service of Russia in 2012: Facts and Statistics, [http://customs.ru/index.php?option=com\\_content&view=article&id=16856:2012-&catid=40:2011-01-24-15-02-45&Itemid=2094&Itemid=1835](http://customs.ru/index.php?option=com_content&view=article&id=16856:2012-&catid=40:2011-01-24-15-02-45&Itemid=2094&Itemid=1835).
- 19 [http://keden.kz/ru/news\\_tam.php?id=47179](http://keden.kz/ru/news_tam.php?id=47179).
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- 22 See also *Vedomosti*, 25 July 2012, No. 137 (3151), Sanoma Independent Media, Moscow.
- 23 [www.rg.ru/2013/02/11/arbitrazh.html](http://www.rg.ru/2013/02/11/arbitrazh.html).
- 24 [www.fontanka.ru/2011/02/15/138/](http://www.fontanka.ru/2011/02/15/138/).
- 25 See the summary of the presentation by Professor M Bronckers (2012), [www.law.msu.ru/node/24640](http://www.law.msu.ru/node/24640).
- 26 [www.faz.net/aktuell/politik/europaeische-union/cu-russland-gipfel-fortschritte-in-streitfragen-12002108.html](http://www.faz.net/aktuell/politik/europaeische-union/cu-russland-gipfel-fortschritte-in-streitfragen-12002108.html).
- 27 [http://trade.ec.europa.eu/doclib/docs/2004/april/tradoc\\_116738.pdf](http://trade.ec.europa.eu/doclib/docs/2004/april/tradoc_116738.pdf).
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- 29 See Press release of the BMWi, [www.bmw.de/DE/Presse/pressemitteilungen.did=474650.html](http://www.bmw.de/DE/Presse/pressemitteilungen.did=474650.html).

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