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HARMONISATION OF THE LAW OF RUSSIA AND EUROPEAN UNION IN SPHERE OF CUSTOMS REGULATION

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HARMONISATION OF THE LAW OF RUSSIA AND EUROPEAN UNION IN SPHERE OF CUSTOMS REGULATION

Already in the Partnership and Cooperation Agreement between Russia and European Union of 1994 there are provisions on approximation of the parties' legislation in the field of customs and foreign trade. The major precondition for such approximation on the part of the European Community is the fact that the customs legislation of the EU countries is harmonised and even unified for a sufficiently long period of time. Upon establishment of the European Economic Community in 1957, the custom union of Member States implying transfer of a great number of competences in the field of customs and foreign trade policy to the Community institutions has been established. After enactment of the Common Customs Tariff of the Community (1968), the powers to establish and change customs tariffs, make modifications to the bills of goods, lay down customs treatment rules and apply basic non-tariff measures in foreign trade went from Member States to the Community.

As the Community and then the Union were developing further, the scope of competences of supranational institutions in field of customs regulation was continuously extending, while forms and methods of effectuation of those powers have been improving. Since 1994, the Customs Code of the Community has been in effect, which was one the most essential achievements in the field of harmonisation and unification of the European law throughout the entire period of its evolution. The important impetus for the development of Community acquis on foreign trade was the establishment of World Trade Organisation, where not only all the EU Member States, but also the Community as such became members. From that moment onwards the rules of the international law established and adopted in the framework of WTO became an integral part of the EU law.

The Treaty establishing the Constitution for Europe adopted by the EU Member States in 2004 and reflecting significant expansion of their number emphasises that legal regulation in the field of the custom union and common foreign trade policy belongs to the exclusive competence of the Union. One of directions in the implementation of the foreign trade powers of the Union was the conclusion of trade agreements with the third countries including agreements on free trade areas (associations). Such agreements in the EU practice are concluded both to ensure integration with pre-accession countries to the EU (for example, the "European agreements" with the Vyshegrad Four countries: Poland, Czech Republic, Slovakia and Hungary), and established common trade and economic space with the major trading partners of the EU (Agreement on the European economic space between the EU, Norway, Iceland and Liechtenstein). A feature of such agreements is that apart from maintaining

the freedom of the transfer of goods between participant countries (according to the article XXIV, GATT), agreements also establish the basis for other kinds of integration: freedom of movement of services, capitals, labour, freedom of establishment of companies and mutual guarantees for investment, common principles of indirect taxation, etc. The major legal prerequisite of integration processes and one of the requirements of the agreements on free trade concluded by the European Union with the third countries consists in the approximation of legislation of the parties in terms of customs and foreign trade regulation.

Approximation of national legislation with customs and commercial law of EU appears to be logical and justified also for Russian Federation. The main prerequisite for such approximation is the present condition of trade and business relations between Russia and the EU. Even before the EU enlargement in 2004, the Union had provided for over one third of Russia's foreign trade turnover. Now the share of the EU makes by different estimations from 45 % up to 55 % of the Russian import and export. Further lifting of legal and administrative barriers to mutual trade would lead to even further increase of its turnover and facilitate access of the Russian goods to the markets of the EU.

From the political and legal point of view, approximation of the Russian law with the one of the EU does not raise strong objections, either. Back at the emerging stage of foreign trade and customs legislation of the independent Russia, rules and principles of international law such as the General Agreement on Tariffs and Trade (which became a pivotal part of the law of World Trade Organisation), the International Convention on Harmonised Commodity Description and Coding System and Kyoto Convention on Simplification and Harmonisation of Customs Procedures, conventions in the field of the international transportation of goods (TIR, ATA) and many others served as the standard for the legislator. The experience of implementing those international legal instruments in the EU, which is rightfully considered one of the most successful and advanced in the modern world has been and still remains the major reference point for the development of the Russian customs law. Realisation of one of Russia's primary foreign policy objectives at the present stage, i.e. WTO accession, also implies ensuring conformity of the Russian legislation with the international standards.

Conclusion of the Partnership and Cooperation Agreement between Russia and the European Union (PCA) in 1994 has elevated approximation of the Russian customs legislation with EU law to the level of international obligations. Evolution of the Russian customs law, in particular acceptance of the new Russian Federation Customs Code (in effect since January 1, 2004) and substantial reform in the system of subordinate legislation testifies on successful fulfilment by Russia of its obligations before the EU. Nevertheless, a number legal, political and economic factors set out the parties to

further tasks in the field of harmonisation of the customs legislation. To such factors, among other, it is possible to attribute: (a) the expiration in 2007 of PCA term and the need of adopting a new document regulating mutual relations; (b) possible WTO accession of Russia by 2007; (c) increase in commodity turnover between Russian Federation and the EU in connection with past and further expansion of the Union; (d) need of improvement of the legal status of the Kaliningrad oblast, a kind of Russian exclave inside the EU; etc.

In case of Russia's accession to WTO, a qualitatively new development stage of the relations with the Union may take the form of free trade area as it is provided in the current PCA. In this connection, further approximation of the Russian customs legislation with EU law should be considered in the context of shaping conditions for the establishment of the free trade area and further effective functioning of this integration entity. One can presume that the major directions of legal harmonisation in the area of customs over the nearest years would be the following aspects:

1. Rules of origin of goods. As it is known, main principle of free movement of goods between member countries being participants to a free trade area according to Art. XXIV GATT, is the elimination of the customs duties and other trade barriers with respect to the goods originating from the territory of member countries (hereinafter, "country" is understood also as the united customs territory established as a result of the custom union between the states). For the goods originating from the third countries, the principle of free movement inside free trade area does not apply. Thus, implementation of free trade area concerning movement of goods implies precise and uniform application by member countries of the rules regulating the identification procedure of the origin of goods.

2. Regulation of the transit of goods. Emergence of the free trade area will lead to altered status of the transit freight traffic going (a) from the EU into RF or from RF to the EU through the territory of a third country (countries); (b) from EU in the third country through territory of RF or from RF to the third country through the territory of the EU; a combination of the above transit circuits may also be possible. To that end, differentiated regulation of transit operations would be required depending on whether the transit goods enjoy the right of free movement between the parties within the free trade areas or not. International transit mechanisms existing at present (in particular, the TIR mechanism) do not promote simplification and increase of volume of transit operations between Russia and the European Community and do not meet the future requirements to commodity circulation within the framework of the free trade area.

3. Approximation of the rules of definition of customs value and tariff classification of goods. According to the principles of free trade area, the goods imported in the EU (or in Russian Federation)

from the third country which passed customs clearance under the certain tariff classification, in case of their further transit to Russian Federation (or, respectively, to the EU) should pass customs clearance on the basis of the same tariff classification, taking into account the features of commodity sub-positions in the customs tariffs of the parties. (It is known that the bills of goods used in the Russian Federation and the EU for the purposes of customs classification, are based on internationally recognised and harmonised description and coding system for the goods). A similar principle should also apply to the definition of customs value of goods given its possible change during transit between member countries of the free trade area. In this connection mutual recognition procedure for the decisions by customs offices of the parties on tariff classification and customs value of goods could have a considerable practical impact.

4. Further approximation of rules in the field of customs treatment. At a development stage of the new Customs Code of Russian Federation and subordinate legislation supplementing it Russia has undertaken serious efforts towards approximation of national rules in the field of customs treatment with the international standards and with similar rules of the European Union. Nevertheless, a fair quantity of the questions concerning implementation of different other kinds of customs treatment demand the further harmonisation with EU law, especially in the light of the future establishment of the free trade area. Within the framework of the present work it obviously appears impossible to consider all or even the majority of possible trends of law harmonisation in the field of customs treatment schemes, however, it is necessary to shed light on some of them being of basic value for the development of bilateral trade.

5. The customs documentation. The Russian Federation recognises the need of ensuring the conformity of its own customs documents for conformity with forms of the documents used in European Union. The question on conversion to the new form of the customs declaration which will correspond to the European form of the customs declaration, a Single Administrative Document, is essentially settled. It is suggested that further harmonisation in this sphere could take into account procedures for simplified entry; in particular, concerning requirements to the documents needed for simplified procedures. Another subject to harmonisation can be the requirements and standards of electronic declaration and access to computer databases on customs clearance.

6. Systematisation of customs rules. Experience of European Communities in codification and systematisation of the rules of customs processing of goods and measures concerning tariff and non-tariff import management of goods can become rather useful from the point of view of the improvement of the Russian regulatory base in sphere of customs regulation.

7. System of the custom fees. Implementation of the principles of the free trade area between

Russia and the Union will require that the parties perform harmonisation in the field of the custom duties. Collection of obligatory fees for the customs processing of goods imported in Russia from the EU may contravene the principle of cancellation of the customs and other restrictions concerning the core part of mutual commodity circulation between member-countries of the free trade area.

The listed fields of harmonisation of the customs law of Russia and EU are considered in more detail below.

Rules of origin. Practical enforcement of the free trade area principles if one is established between Russia and the EU will entail as one of its priorities the harmonisation of legislative and administrative rules of the parties as far as rules of origin of goods. Already now the Russian rules of origin of goods based in principle on internationally recognised standards by GATT/WTO are essentially approximated to the rules of origin effective in the EU. Nevertheless, preparation for the establishment of the free trade area requires deeper and more detailed harmonisation in the current field.

The origin of goods (i.e. definition of the country or territory where the goods are made or obtained) directly influences the right of such goods on free transit through territory of the free trade area, since only the goods originating from member-countries enjoy the right of free transit. The problem becomes significantly more complicated if the process of manufacture of certain goods comprises several countries, one of which is a member-country (for example, assembly of goods in Russia from the Chinese components). Definition of the country of origin of such goods will directly affect the status of goods from the point of view of their movement from Russia to the EU and back and on the solution of the problem of collection or non-collection of the customs duties in the event of such transit. In order to prevent discrepancies in the definition of the status of goods it is necessary to unify the criteria effective in member-countries allowing to precisely identify the country of origin of goods produced in different various countries.

Based on the GATT/WTO rules, both the Russian legislation, and the European Union law rather closely formulate the criteria of origin of goods if they are completely made (obtained) within one customs area (Art. 23, EU Customs Codes and Art. 31, RF Customs Code); specialty of the Russian Code is the mention of the case of manufacture of goods on space installations. As to the goods made in two or more customs territories, the wordings of the criteria of their origin (so-called sufficient processing criterion) differ considerably. Thus, the EU Customs Code (Art. 24) provides that the goods are considered as originating from the country in which territory they have undergone the substantial, final and economically justified processing at an enterprise specially meant for such

purpose. Art. 32 (para. 1, 2) of the RF Customs Code allocates the factor of tariff classification as the major one for the decision on the origin of goods (i.e. the country of origin of goods is the country where last operations for processing of the goods took place as a result of which their classification under the bill of goods has changed from the point of view of the relevant item). Such approach differs from European one which regards the factor of tariff classification only as one of the methods of applying the criterion of sufficient processing alongside with economic and industrial methods. Elimination of such divergences in such an issue of paramount importance for the free trade area as rules of origin of goods represents one of the priorities in terms of approximation of the customs law of Russia and the EU.

Harmonisation of rules of origin of goods establishes the conditions for harmonisation in the field of certificates of origin and for an extended administrative cooperation between the parties. If the goods imported in territory of one member-country of the free trade area from the third country are accompanied by the documents confirming their origin, while such documents completely meet the requirements of legislation of the given party, it would be feasible if the same documents were to be unconditionally admitted as the proof of origin of goods also by the other member-country. Such model would considerably simplify customs clearance of goods transferred between the EU and RF and originating from the third countries. Subject to harmonisation could be both the requirements to certificates of origin for the goods originating from member-countries and conditions of relieving the importers from the obligation to submit certificates and use of cumulation principle in relation to the goods originating from the territory of integration associations of the third countries, as well as many other issues.

Transit procedures. The system of an international transit of goods existing currently between Russia and the European Union based on the TIR Convention neither meets the requirements for the establishment of free trade areas, nor effectively serves the needs of the current commodity circulation between RF and the EU. It would be in the interests of Russia to establish an alternative system for the transit of goods with a primary goal to simplify the procedures and improve legal regulation of the transit turnover of goods between Russia, the European Union, and also, possibly, other countries of Europe and the CIS. As a possible model for such alternative system of transit one could offer the system of “common transit” currently effective between the EU and European Free Trade Association (EFTA).

The system of common transit has been introduced by the Convention of 1987 concluded between European Communities and EFTA. In 1996 the countries of the “Vyshegrad Four” have

joined it: Poland, Czech Republic, Slovakia and Hungary, which then acceded to the EU in 2004. The procedural rules, documents, control mechanisms and securing measures used in the common transit system are in many respects similar to the counterpart rules of the EU customs legislation. Thus the rules of common transit completely correspond with rules of handling internal and external transit of goods established by the Customs Code of Community. Considering the circumstance that the new RF Customs Code has additionally introduced the division of transit into international (external) and internal, the use of the common international legal frameworks for transit of goods between Russia and the EU appears quite logical.

Two options are possible for the common transit system in Russian Federation. The first one consists in Russia's joining the Convention on Common Transit Procedure which entails the need for ensuring the conformity of the Russian customs and transport legislation with requirements of the Convention. Joining the Convention will allow Russia to become a full-scale participant of system of common transit and have a say on decision-making by the system's administration bodies. One of the requirements applied to the candidate countries for the Convention membership, is conversion to the common for the convention parties to standard of documentation identical to one applied today in the European Union. Besides, accession states should use the computerised monitoring system of the transit operations, compatible both technically and legally with the European NCTS system.

The major difficulty of the full-scale connection to the common transit system is of political nature: the country, wishing to join the Convention, should receive the respective invitation. There are also technical difficulties: the automated monitoring system for the shipment of goods (ASKDT) used in Russia does not meet the NCTS requirements and, accordingly, is subject to substantial completion. Besides, as of today, ASKDT does not operate throughout the entire territory of Russian Federation, which is unacceptable from the point of view of joining the system of common transit. Further elaboration of transit documents used in Russia will be required, in particular, bringing the form of the Delivery Control Document (DCD) into full compliance with the form of the Single Administrative Document (SAD) used as the transit declaration for entry into EU and EFTA.

The second possible option for Russia's joining the common transit system could be establishment of a bilateral legal framework between RF and the EU, based on the rules and principles of common transit. Such legal framework could consist of a separate treaty (convention), laying down rules for the performance of transit operations that would be similar to the rules of the Convention on Common Transit Procedure. The contract about transit between Russia and EU can be open for connection of the third countries, in particular, the countries CIS participating in integration processes from the Russian Federation (Eurasian Economic Community, SES).

Creation of bilateral transit system between Russia and the EU will most likely cause basically the same changes in the Russian customs and transport legislation as well as in the system of administration and control over transit operations that would take place in the case of Russia's joining the Convention on Common Transit Procedure. However, the political and organisational difficulties connected to joining the Convention can be avoided. It should be noted that a similar way has been chosen by the Baltic States at the EU pre-accession stage which is witnessed by the Treaty "On Single Baltic Transit" of 2001.

Mutual recognition of decisions. Importance of harmonisation of the law of Russia and the European Union regarding the issues of identifying the country of origin of goods has been shown above. However, identification of origin is but one of the factors allowing importers and customs offices to perform the customs processing of goods and to apply measures of tariff and non-tariff regulation. Other factors, such as a classification of goods and definition of customs value of goods are not less important also. Those factors allow to provide exact and legitimate application of the custom duties to the imported goods, and perform exact calculation of the payable customs and taxes.

Effective rules of the customs law of Russia and the European Union in the field of tariff classification and methods of customs value assessment are sufficiently approximated to each other due to common international legal frameworks. Considering possible harmonisation on these questions, it is necessary to make a reservation that creation of the free trade area between Russia and the EU does require demand unification of the custom duties (such unification is feature is only inherent in for customs unions). Hence, it would be premature to set the purpose of maximum harmonisation of the legislation by the parties in the field of tariff classification and a customs estimation. However some aspects can quite become object of harmonization.

Both Russian Customs Code (Art. 41) and the Customs Code of the Community (Art. 12) provide for the application procedure to customs offices for the interim decision on tariff classification of goods. Such interim decisions are becoming mandatory not only for the persons who have applied for them, but also for all customs offices in the particular jurisdiction (respectively, Russian Federation and Member States of the EU), taking into account possible appeal against the decision in a higher body or court. For the sake of improving the customs clearance procedures between Russia and the EU it would be feasible to establish the procedure for the mutual recognition of interim decisions by the customs offices of the parties on the tariff classification of goods. Thus, without doubt, it will be necessary to consider available divergences in bills of goods of the parties on the level of sub-positions as well as distinctions in the rules of classification established in comments to the

bills.

A similar procedure of a mutual recognition could be applied with regard to the decisions of the parties' customs authorities concerning assessment of the customs value of goods. The decisions connected with refusal to apply the basic customs valuation method, i.e. the one of transaction price, by virtue of certain reasons mutually admitted by the legal provisions of both parties (transfer pricing, limited turnover, etc.). Subject to mutual recognition could be made the decisions of customs offices concerning election of this or that customs valuation method, recognition of accuracy of calculations of the customs value provided by importers, revision of the previous decisions, etc. The customs value of goods established by Russia or EU customs as such could be acknowledged by the customs bodies of the other party taking into account its possible alteration connected with the movement of goods through the territory of the parties.

Customs treatment. It is difficult enough to set the limits of possible harmonisation of the rights of the parties in sphere of customs treatment. On the one hand, from the point of view of simplification of customs clearance for the Russian and European importers (exporters), the greatest possible approximation of application rules of customs treatment would have a rather positive significance. On the other hand, establishment of the free trade area (as opposed to custom union) does not require so high degree of harmonisation of the customs law. It is necessary to note, that the rules of the Russian and European law existing as of today in sphere of customs treatment and procedures are rather close to each other, both by virtue of the common international legal bases (Kyoto convention, etc.), and due to the work carried out in the Russian Federation along the lines of approximation with the law of the European Community (which has been especially graphically shown by the development of the new Customs Code). Nevertheless, taking into account the circumstance that regulations about customs treatment act as a core of the customs legislation (both Russian, and European), further harmonisation of the customs law between Russia and the EU is hardly possible without continued approximation with respect to customs treatment schemes.

As a starting point for the further harmonisation of customs treatment one can offer the most basic provisions, i.e. classification of treatment modes and related differentiation of formalities as well as requirements applied to different treatment schemes. In spite of the fact that lists of customs modes in the Russian and EU legislation differ insignificantly, their classification differs essentially. The Customs Code of the EU distinguishes between customs treatment/regime proper and customs procedures comprising the contents of a customs treatment (pattern of exposing goods to customs procedure). Customs procedures in the understanding of the European Code are internationally

recognised kinds of customs treatments to which the European law applies tougher requirements compared to modes proper. The EU Customs Code recognises as customs procedures the release for free circulation, export, transit, temporary admission, customs warehousing, external and internal processing and processing under customs supervision. The latter five procedures are qualified as the ones with economic impact. The following schemes are considered by the Code as customs treatment proper: re-export, free zone (free warehouse), destruction of goods and refusal from goods.

The basic procedural difference of customs procedures from customs treatment according to the EU law consists in the fact that according to the general rule, placement of goods under customs procedure requires submission of the customs declaration. Customs procedures with economic impact, except for the declaration, require the permission of customs bodies. Choosing a customs procedure or customs treatment according to the EU law is considered to be the prerogative of the entrant (proprietor of goods); the customs house is obliged to make customs clearance and release of goods according to the chosen procedure (treatment) if it does not contradict with the provisions of the EU law.

Classification of customs treatment modes in the Russian Customs Code is based on their significance for the international commodity operations: basic, economic, final and special (the notion of “customs procedure” is also used in RF Customs Code, although its meaning differs from the European one). Consequently, all customs treatment schemes require declaring according to the Russian law. Moreover, RF Customs Code stipulates that permissions are necessary for all kinds of customs treatment (Art. 157, Part 1). Such distinction in the notion of customs treatment in practice leads to more complex implementation procedure for some of them in Russia compared to the one applied to similar ones in the EU (for example, in case of re-export of goods). Apparently, Russian legislator could use the EU practice of simplification for the system of formalities in individual kinds of customs treatment including relaxation of the rules on mandatory declaration.

In the context of harmonisation of the law of Russia and the EU looks feasible to consider also the development of the Russian legal regulation concerning free zones (free warehouses) which at present remains beyond the framework of the RF Customs Code.

Another trend for the efforts aimed at the approximation of rules in the field of customs treatment could be harmonisation of rules governing temporary admission of goods and vehicles. Such harmonisation is necessary in the conditions of increasing volumes of foreign trade transactions between Russia and the European Union, alongside with enhanced tourist, scientific, professional, cultural, sports and other exchanges between citizens of Russia and the EU. Harmonisation of temporary admission could be developed both on the level of national law (by maximum

approximation of rules within customs codes and subordinate legislation), and international one (by development of a separate mutual treaty about the order of temporary admission of goods and vehicles from Russia to the EU and from the EU to Russia).

The customs documentation. The question of making forms of the basic customs documents used in Russian Federation comply with the standards of the European Union has been discussed for a long enough time and causes no essential objections. As it is known, since 1993 in European Community as a comprehensive form of the written customs declaration the so-called Single Administrative Document (SAD) is applied. The important step on the way to simplification of customs clearance procedure for the Russian and European importers and exporters can become transition to a single form of customs declarations on the basis of the Single Administrative Document.

In connection with increased role of electronic data processing in customs operations and development of electronic declaring system, the issue of transition to single electronic data exchange standard between importers (exporters) and customs authorities of Russia and the European Union becomes quite topical (in the EU countries, a uniform EDI standard of electronic customs documentation is applied). It is suggested that if the free trade area between Russia and EU is established, the question will be raised regarding the development of legal and a technical basis for the functioning of a uniform electronic database on customs operations.

One of trends in the harmonisation of the customs law between Russia and the EU could be harmonisation in the field of simplified entry procedures. The uniform approach of the parties is necessary in such areas as: (a) the list of cases when the right of using procedures arises; (b) requirements to structure and the form of documents used in simplified procedures; (b) use of the electronic form of granting of the data; (r) forms and a quality monitoring above use of simplified procedures. Application in the Russian law of the European experience of encouraging legal foreign trade activity would be feasible in the form of granting eligibility for various simplified schemes of customs clearance to those importers and exporters involved in regular foreign trade operations over a long period of time without known infringement of customs and tax laws.

Systematisation of customs rules. The basic rules within the customs law based on the international obligations of the parties are codified both in Russia and in the European Union as Customs Codes. Both codes are enacted by means of legislative procedure and are binding within the respective customs territories for all legal subjects. As to auxiliary rules, which have not been

included in the customs codes, this is where the practices of Russia and the EU differ. The European Community followed the way of codification of such rules by having collected them into the Regulation on application of the Customs Code (№2454/93) issued by the European Commission shortly after the adoption of the Code (the Code as such has been enacted by the Regulation of the EU Council as the supreme legislative body of Community). The structure of the Rules repeats the one of the Code, which to a sufficient extent increases clarity, accessibility and systemic nature of the entire set of customs rules existing in the European Union. Thus, the major bulk of rules within the EU law in the field of customs regulation is concentrated in two documents: the Customs Code and Regulation concerning its application.

In Russian Federation, after coming into force in 2004 of the new Customs Code, the quantity of subordinate legislation in customs sphere has been appreciably reduced. Nevertheless, to familiarise oneself with the rules governing certain customs operations applied in Russia, foreign trade operators are compelled to refer, apart from legal acts (Customs Code, Tax Code, Law on Customs Tariffs, etc.), to the decisions of the Government isolated and not connected among each other, orders by Federal Customs Service, statutory acts by the Ministry of Finance, the Central Bank and other authorities. Apparently, the use of the EU experience with regard on systematisation of minor auxiliary rules would allow a considerably increase in openness and transparency of the Russian customs law for foreign trade players.

One more example of ensuring transparency of customs rules in the European Union is the Integrated Tariff of the Community (TARIC) established in 1987 (Council Regulation No 2658/87). TARIC is based on the bill of goods under EU General Custom Tariff and includes apart from the tariff measures (customs, tariff preferences, tariff quotas, etc.), the ones of foreign trade protection nature applied to the imported goods, as well as non-tariff regulation (antidumping duties, quantitative restrictions, tax policy measures, import prohibitions, etc.) . With help of TARIC, importers can explore all possible financial and administrative consequences connected to import of certain goods into the customs territory of the EU. The integrated tariff is periodically published in official publications of the Community and since recently is accessible through the Internet. It appears that establishment of a similar tool in the Russian Federation would render essential information support to foreign trade operators.

System of the customs fees. Both Russian customs law and the one of the European Union as regards of customs fees, apart customs duties proper and indirect taxes, stipulates the collection of the custom fees. However, the basis for collection of such fees in Russia and the EU differs. Article 357.1

of the RF Customs Code qualifies the following as customs fees: (1) customs clearance fees procedure; (2) fees for customs support; (3) fees for storage of goods in a warehouse for temporary storage or customs warehouse. The legislation of the European Union allows independent regulation by Member States of the collection of customs fees proceeding from the general principle forbidding application by the states of fees having equivalent effect to the one of customs imposts. According to this principle, any fee collected by a Member State upon crossing by the goods of customs frontier and not being the proper customs duty can be declared illegal as contradicting to fundamental principles of the customs union. The exception is granted to the fees collected by customs as service fees from importers/exporters, and the ones various kinds of control and inspection measures required upon import or export of goods by statutory acts of the Community or its international obligations. It is obvious, that collection of customs clearance fees not connected with provision of any services to importers (exporters) would contradict to the of the EU law (customs processing of goods cannot be considered as a service; it is a duty of customs bodies).

In case of emergence of a free trade area between Russia and the European Union, the most part of mutual commodity circulation, according to the terms set forth in Art. XXIV GATT should be free from taxation by customs and from application of other trade barriers. Collection of fees for customs clearance for imports of goods from the EU to Russia (while no such fee is charged for imports of Russian goods to the EU) from the point of view of the Union looks as application of fees having equal effect with the customs duties, and thus as unilateral infringement by Russia of principles of free movement of goods within the framework of the free trade area. In order to prevent such contradictions it would make sense to approximate the provisions of the Russian law on the issue of customs fees with similar rules of the European Union.

The proposals on harmonisation of the customs law of Russia and the EU discussed above represent but a few possible areas to be tackled for approximation of the legislation of both parties. Many issues concerning implementation of individual kinds of customs treatment and procedures, information and operational cooperation between customs agencies, application of antidumping and other trade protection measures and quantitative restrictions, could be added to the list of areas for legal harmonisation. Moving on to real work for establishing a free trade area between Russia and the European Union will inevitably entail the need of even deeper and more detailed harmonisation.