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LEGAL ISSUES OF APPLYING PREFERENCES IN THE EXTERNAL TRADE RELATIONS: ANALYSIS OF CIS EXPERIENCE

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ABSTRACT

The present study focuses on examining the system of preferences in international trade relations development based on experience of the CIS countries. It highlights mostly contemporary development trends of International trade law as well as legal issues of applying preferences in international trade relations.

A significant part of the study is dedicated to legal issues of applying preferences in the CIS. In conclusion, the system of preferences is shown as a key point in liberalizing international trade law; moreover, it contributes to the harmonization of the national legislation of countries which participate in the agreements on preferential trade.

INTRODUCTION

Economy has always been of crucial importance for all the states. Governors always wanted to provide more prosperous economy for their citizens whether by wars, by stimulation and development of their national economies, or by making agreements with foreign countries to foster their economic growth.

Nowadays, the most developed industrial countries have decisive influence not only on global economic but also political processes, as they own fundamental economic, financial and technical resources.

Economic power is a very strong mechanism that can be used as an instrument to achieve political goals; moreover, it defines International Economic Law. The more powerful a country's economy is, the higher its role in international relations and in formation of most important international normsis. Industrialized countries occupy the central position in trade, finance, foreign investment, in the transfer of the results of scientific and technological progress. 'Their official legal positions, as well as the results of the work of these countries' press, covering the practice, are widely disseminated and reflected in scientific concepts and textbooks and, as a result, influenceprofessional approach to certain problems"[1]. Lawyers from industrially developed countries also note these moments.

Contemporary development trends of international trade law

Trade is perhaps the most dynamic area of social relations. Competition compels trade participants to create new products and services, to seek out and develop new markets, to expand contacts on the international level. Trade is usually associated with a high risk. Therefore, it requires clear, predictable, stable and fair rules that can be adapted to the changing economic situation in order to preserve the balance of interests of the parties. However, the differences between the regulations of business turnover by the national legislation often create unnecessary legal obstacles to cross-border trade. Many legal orders do not sufficiently take into account the current level of business turnover. As a result of applying different norms to the same type of relations, the rights of different states are subject to conflicts and discrepancies. Therefore, international transactions prove to be devoid of a reliable legal basis. Meanwhile, without the trade development there is no growth in welfare. Trade relations firmly connect states with common interests, thus contributing to the maintenance of peace, stability and progress much more effectively than political declarations, assurances, appeals and slogans. Realizing this primary role of international trade, the international community, since the end of the XIX century, took measures to jointly improve its rules in the interests not only of its participants but also of the whole society.

Since the end of the XIX century, international economic ties intensified. The number of foreign trade transactions grew significantly, and they became more diverse and complex. The need for international cooperation in the field of trade law arose, and the unified international trade law started forming between states. In some cases, model rules were applicable only to international transactions and in others to national ones as well. One of the most important events for the development of the international trade law was the establishment in 1893 of the Hague Conference on Private International Law, the main task of which was the development of model conflict of laws rules.[2] At the same time, the Conference was created with the expectation of a

[1] **Theory of International Law at the Threshold of the 21st Century, Essays in honour of KrystofSkubiszewski, Brill, The Hague, 1999. - P. 537.**
[2] **The Hague Conference on Private International Law, official website https://www.hcch.net/**

limited number of states that are similar in terms of economic, social, cultural and legal development and political structure. The attempts were made to unify the legal norms at the regional level: in Scandinavia in the middle of the 19th century and in America, where the Inter-American Council of Jurists developed model rules in the field of trade and transportation of goods.

In the XX century, the methods used were directed not only at the development of model conflict of laws rules[3], but also at the creation of model rules of substantive law.[4] It was achieved through the conclusion of international conventions, and the use of model contracts and general conditions of sale (supply). As a result of the growing interdependence of national economies and economic integration, a certain degree of unification in certain key areas (negotiable instruments, maritime transportation, and arbitration) was achieved through international conventions. The rules governing international trade in all national systems, regardless of politics and ideology, acquired considerable similarity. Such principles as autonomy of the will of the parties in concluding contracts, binding compliance with *pacta sunt servant*, and the settlement of disputes through negotiations and other procedures, as well as arbitration, became universally recognized.

The rules of international trade law were formulated by international governmental and non-governmental organizations: the International Institute for the Unification of Private Law (UNIDROIT), UN bodies and specialized agencies, including the Economic Commissions for Europe, Asia, Africa, Latin America, the United Nations Conference on Trade and Development, The International Bank for Reconstruction and Development, ICAO, WIPO, the Hague Conference on Private International Law, trade bodies (The International Chamber of Commerce, the International Maritime Committee), associations of international lawyers (the Association of International Law) and a number of others.

Each of the organizations that formulate the rules of international trade law conducted this activity in its own limited area and out of communication with others. This in many cases led to duplication of work; activities in the field of international trade law were uncoordinated. In addition, many conventions were only of regional importance[5], none of the standard-setting organizations had universal membership, and the rules developed by non-governmental organizations were subject to application only in case of non-contradiction to the imperative norms of law. As a result, the unification, security and predictability necessary for world trade were very limited. In this regard, there was need to address the issue of the development of international trade law at the universal level, namely, the level of the UN General Assembly. To accomplish this task, a special Commission on International Trade Law

[3] The Hague Convention on the Law Applicable to the International Sales of Goods of 1955. http://www.uncitral.org/uncitral/en/uncitral_texts/law_applicable/12309CISG.html

[4] United Nations Convention on Contracts for the International Sale of Goods of 1980. http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG.html

[5]The Geneva bill of exchange conventions of 1930 and 1931, http://www.jus.uio.no/english/services/library/treaties/09/9-03/bills-exchange-notes.xml, the Hague Conventions on international sales contracts of 1964, http://www.unidroit.org/instruments/international-sales/international-sales-ulis-1964

(UNCITRAL) was established and became the universal center for the joint development of norms that take into account the interests and characteristics of all common legal systems of the world.

In parallel with the activation of the different forms of international cooperation, the cooperation without the participation of governments started developing. For this purpose, standard contracts, the general principles of contract law, formulated by international organizations, and other instruments started being widely used. Chambers of commerce and business associations started working out the rules of international trade.

The era of globalization caused new problems associated with the processes of convergence of societies' lifestyle in different countries. It is becoming increasingly obvious: for sustainable development, the priority should be the preservation of the diversity of national cultural characteristics, along with the creation and application of model rules in a number of areas, primarily in the field of international commerce. In other words, there are those spheres of social relations where it is necessary to maintain diversity, preserve differences, and above all they are a field of culture. At the same time, there are those areas of social life in which unification is appropriate, desirable and even necessary – these are private law, especially trade law, as well as human rights. In the framework of trade law, it is also generally accepted to address the regulation of specific areas of trade rather than trying to cover the whole range of trade relations.

Describing the development of the international trade law in general, it is necessary to point out the inherent contradictions which do not indicate a crisis of international trade law but serve as a source of its development. There is a contradiction between the dynamism of international trade and the static nature of legal norms. The internationally-agreed method of unification is often criticized. It is noted that an international treaty is concluded at a certain qualitative and quantitative level of development of trade relations and technological progress, and if they significantly change, it already becomes an inadequate instrument of regulation. For example, the Convention on the Unification of Certain Rules on Bills of Lading of 1924 became obsolete by the middle of the XXth century, which was one of the reasons for the establishment of the 1978 Hamburg Rules. As a result, a new treaty or protocol is required (the Universal Copyright Convention of September 6, 1952, to which two protocols were adopted) or the modification of the old one[6]; then it often works for different states in different editions. To resolve this contradiction, the nonconventional method of unification (the development of codes of custom, such as the Principles of International Commercial Contracts, developed in 1994 by UNIDROIT, intended for use by mutual agreement of the parties, as well as model treaties) became

[6] The Berne Convention for the Protection of Literary and Artistic Works of 1886, was modified eight times: supplemented in Paris on May 4, 1896, revised To Berl And on November 13, 1908, supplemented in Berne on March 20, 1914, revised in Rome on June 2, 1928, in Brussels on June 26, 1948, in Stockholm on July 14, 1967 and in Paris on July 24, 1971 and amended September 28, 1979.

increasingly used. Such phenomenon as polycentrism of subjects of law-making in the field of international trade law was also observed.

However, it does not mean that the conventional method of unification is obsolete. Within its framework, the necessary flexibility of regulation can be ensured: a number of conventions provide that parties to commercial contracts may exclude certain provisions thereof[7]; the customs of business turnover and the business occurrences established between the parties are recognized as binding.[8] In addition, none of the unification methods are without flaws. Although the codes of customs, produced by non-governmental organizations and other non-compulsory codes of state, introduce greater legal certainty, their disadvantage is the possibility of contradiction with their peremptory norms of internal law, excluding the application of their norms. In addition, such sets of principles, as well as standard contracts, themselves need regular updating. In some cases, a more acceptable instrument for regulating international trade relations is the document adopted by the state or states, a convention or law, and in others, it is rules developed by international organizations in terms of participants in business turnover.

Significant contribution to the harmonization of international trade is made by the national codification of private international law due to the fact that they usually take into account the content of international treaties and other international legal instruments and they help eliminate gaps in legal regulation, which eliminates obstacles to international business. Moreover, due to their integrity and wide scope of application, they ensure the certainty and predictability of the legal regulation of international private-legal turnover. Legal unification, as practice shows, is achieved only in limited areas, and most of the social relations, at least if we consider the near future, remain in the sphere of regulation of national laws.

There is also contradiction between the need to preserve the diversity of lifestyles and the achievement of uniform sustainable business rules. At the present stage, this contradiction is solved by the fact that, as noted above, not all areas of social relations are the proper subject of unification. However, certain issues of family, inheritance law, citizenship issues became the subject of international legal regulation.[9] With regard to uniform trade law, it is now recognized that by eliminating obstacles to international trade, it promotes greater diversity of international business turnover, its sustainable growth and enrichment through the adoption of advanced foreign experience. In other words, in the uniformity of trade law there is a variety of trade relations.

The last contradiction analyzed in the present study is between the special interests of countries and the need for universally recognized rules. This

[7] In Article 6 of the Vienna Convention on Contracts for the International Sale of Goods of 1980 http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG.html

[8] Clause 3, Article 8 and Article 9 of the Vienna Convention on Contracts for the International Sale of Goods of 1980 http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG.html

[9] Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, Minsk, 22.01.1993, http://www.customs.gov.by/ru/sng-ru/

contradiction deepens due to the unequal level of development of many countries. In the work "On the Spirit of the Laws", S. Montesquieu noted that the laws should be adapted for the country for which they are created, correlated with its governance, territory, climate, population, traditions, and morality.[10]To resolve this contradiction, reservations in conventions are traditionally applied; however, they are not enough to solve the problem completely. In this regard, together with unification, there are activities to harmonize the law when the laws do not become the same and differences remain, but those differences that significantly damage international trade relations are eliminated. To harmonize the law, along with the conventions, the work of UNCITRAL resulted in the application of uniform laws and legislative guidelines (sets of general principles on which laws should be based). The Uniform Law allows the adoption of the national law taking into account the national specifics, and the legislation admits a wide range of instruments to achieve its goals. It should be noted that, similarly, in the European Union (i.e. at the regional level), conventions and regulations are applied as a means of rigid unification, as well as directives in which the participating states set certain goals and each state uses their methods of achievements. Here, however, it is necessary to pay attention to a significant difference: EU legal certificates are mandatory for member countries, whereas documents produced by international organizations are adopted by states at their discretion. This is due to a higher level of economic integration and legal unification among the EU countries.

Concerning the trends in the development of international trade law, we should note that despite the desire of businessmen to maximally autonomously regulate their relations and reduce state participation to a minimum, the importance of 'traditional' methods of uniform legal regulation, such as international treaties and internal laws, remains. In addition, the development of international legal instruments does not preclude the development of national legislation in the field of trade law. It does not mean that conflict rules and internationally-contractual methods of international trade law are being withdrawn – they are just being modified with new legal instruments of a different nature. In the variety of means of legal regulation, the uniformity of the regulation is concluded, and this is the main consistent pattern of the development of the modern international trade law.

The growing number of national laws regulating trade turnover that are of international origin[11] is another important trend of the development of international trade law. In addition, in the international regulations there is an increase of provisions on the relationship between actions in case of a contradiction with provisions of other international normative documents. This is a consequence of the intersection of the scope of such acts. The complementary effect of codes of customs, general conditions and principles (the so-called *lexmercatoria*) in relation to international conventions is closely

[10] Official site of Fordham University https://sourcebooks.fordham.edu/mod/montesquieu-spirit.asp

[11] The laws on international commercial arbitration are adopted on the basis of the relevant UNCITRAL Model Law of 1985 in more than forty states, legislation based on the provisions of the Model Law on Electronic Commerce 1996 was adopted in more than twenty states.

related to the noted regularity. Often, *lexmercatoria* is used when a particular issue in the convention is not resolved or resolved insufficiently clearly. For example, the 1994 Principles of International Commercial Contracts are often applied by courts and arbitration as general principles on which the 1980 Vienna Convention on Contracts for the International Sale of Goods is based. Thus, such documents replace the effect of national laws which may be more adequate for international traffic due to the international character of *lexmercatoria*.

In a number of cases, international documents indicate the results that should be achievedwithout the strict prescription of the means to achieve them. This remark refers to international treaties and other regulations, such as the EU directives where only binding obligations are established. It is also true for reference documents, such as the Legislative Guide on Privately Financed Infrastructure Projects of 2001 and the Legislative Guide on Insolvency Laws of 2004, which outlines possible options for achieving harmonization goals.

Notably, there is a tendency to increase the participation of States in conventions on international trade law developed by international organizations and the growing number of states that adopted legislation on the basis or in accordance with the provisions of the model laws prepared by UNCITRAL. However, the entry of such conventions into force still requires considerable time. Many states, for different reasons, are slow to adhere to international documents – even if they participate in the development; they still prefer to observe application by other states. However, it is necessary to take into account that often the states not participating in a certain convention actually bring their legislation in line with its provisions.

There is also a consistent pattern when the unification and harmonization of law is accompanied by its modernization, and this is becoming more evident, especially with regard to new regulations, such as e-commerce, and also to the old regulations emerging on a new level of social relations, such as conciliation. Uniform norms are developed not by simply mixing existing national legal norms but by formulating new, modern ones.

It is important to note that the gradual expansion of the unification and coherence of private law is a reflection of the increased mutual influence of states, even those which are very distant from each other. Larger mutual impact, including in the legal sphere, lets the importance of comparative jurisprudence remain and even increase. It allows getting acquainted with the existing models of legal regulation, critically comprehending and adapting them on protection of national interests and aligning them with the interests of the international community.

Finally, it is important toobserve the following: for the long-term global development of international trade it is not enough to adopt close or even identical legal norms – a coordinated, interrelated development of national legal system is needed. This requires closer cooperation between all countries

within the framework of international organizations and consideration of the jointly developed principles of law-making in their legislative activities.

Concept, features and role of tariff preferences in international trade law

Simplifying the system of foreign trade relations and providing the benefits to other states leads to increased volume of foreign trade and to transformation of the structure of imports and exports in a more effective way. For liberalization of international trade law, tariff preferences are the key point. Legal norms that regulate tariff preferences are reflected not only in international and national legislations but also in regional integration agreements.

Tariff preferences can be defined as a lower (or zero) tariff on a product from one country that is applied to imports from other countries.[12]

The system of tariff preferences is realized within the framework of:
1. Preferentialregimes;
2. Agreements on free trade areas;
3. AgreementsofCustomUnions.

Legal documents and individual studies show that often the concept of tariff preferences is identified with that of tariff benefits, although these two are not the same, which is confirmed in the international custom law and practice of tariff regulations. The distinctive features of tariff preferences are as follows:

- Provision of tariff preferences does not imply reciprocity, they are applied on a unilateral basis. A state that is providing preferences determines the rates, volumes and nomenclature of preferential export and can also change their level after a certain period in a unilateral way without any participation of a beneficiary state;

- Tariff preferences are granted depending on rules of origin of the goods; this aspect limits the number of their users to a certain circle of states. The list of such states is made by each country individually,taking into account the priorities of its foreign economic policy and the interests of national producers. The principle of economic well-being of the nation is the most important criteria for being included to the list of beneficiaries. This is also reflected in the rules of GSP in relation to the goods, whether they originate from a developing country or least developed country. Preferential importation of goods is also possible when there are agreements between states or their unions on a free trade area, the Customs Union or other bilateral and multilateral agreements in the field of foreign trade. Here the level of economic development of the country does not matter. Despite the various grounds for a state to be included to the system of preferences, their provision in both the first and second cases depends on the country of origin of the goods. This could mean that the goods should not only be fully produced or processed enough but also delivered from the territory of the beneficiary state;

[12]**BorisovK. International Customs Law. – M.: RUDN, 2001. P.616.**

this is called the principle of direct delivery. In the practice of regulating international trade, this is reflected in the rules of origin which are divided into preferential and non-preferential;

- tariff preferences are used mainly with respect to imported goods. This is a consequence of the fact that they are provided without any obligations of reciprocal concessions, thereby excluding the possibility of preferential export to the territory of the beneficiary country. It should also be taken into account that export operations from the position of the foreign trade balance are active, and consequently, their implementation in the framework of tariff preferences contributes to the growth of the economic well-being of the state, which becomes particularly important when they are used for goods imported from developing and least developed countries;

- the system of tariff preferences has a selective character. Their individualization is manifested not only in a limited number of beneficiaries depending on their economic development or interstate agreements but also in the scale of granting tariff preferences to certain states or groups of countries. At the same time, political motives may dominate economic expediency; in this case, we can see a certain element of discrimination towards other beneficiaries. Thus, within the framework of the GSP of the EU, the countries of the Andean Community are given an expanded volume of preferences without any quantitative restrictions due to their active position in the fight against drug trafficking in the South American region.[13] At the same time, there is a strict restriction in the European Union's preferential system towards China, although China and the Andean countries according to the World Bank's classification are developing countries, which implies the same level of preferences before applying the 'protective clauses'. There is also a practice when, under certain economic conditions, a country can be excluded from the list of beneficiaries, and goods can be withdrawn from the preferential treatment.[14]

Currently, the principles of the Generalized System of Preferences (GSP) are the most widespread in the international practice of customs and tariff regulation. The initiative for its creation belongs to the Group of 77, which in 1968, at the second session of UNCTAD, declared the need for developed countries to provide tariff preferences in the form of zero rates of customs duties for all exports of finished products and processed agricultural and industrial raw materials from developing countries. This scheme of preferences assumed a unified character for all developed countries and was to be provided without any demands of mutual concessions. Developed countries considered the 'principle of community' to be unacceptable in the proposed scheme of preferences and insisted that each industrially developed state would grant tariff preferences autonomously while coordinating the specificity of the preferences on a bilateral basiswith each developing country. Along with this, the developed countries demanded the right to use various

[13] **European Union Law: Trade Regulation. – M.: Zersalo, 2012. P.400.**
[14] **GSP Regulation No 732/2008 – Electronic text data. – Mode of access: http://eurlex.europa.eu/LexUriServ/LexUriServ.do**

restrictions, reservations and exceptions in preferential schemes in order to protect their national economic interests, as well as the right to determine the list of preferential goods for each case individually.

These polar approaches to the formation of the system of preferences were the subject of heated discussions, because of which the UNCTAD Special Committee on Preferences adopted the following main principles of GSP: the use of GSP presupposes unrestricted and duty-free access of all finished and semi-finished products from developing countries to the markets of developed countries; the possibility of using protective clauses by developed states that entitles them to grant special treatment to the least developed countries; finished and semi-finished products that go under tariff preferences should include all processed and semi-processed commodities from developing countries; developed countries are obliged to grant such preferences to all developing countries.
These principles guarantee developing countries tariff preferences on a non-discriminatory and non-reciprocal basis. At the same time, the interests of developed countries are also taken into account:

- no‘principle of community’, meaning that the system is a set of autonomous preferential schemes agreed on a bilateral basis, which makes the use of selective approach of each developed country possible to protect its national market from the import of goods from the beneficiary countries;

- The list of preferential goods is set by each developed country unilaterally, which excludes the possibility of beneficiary countries participating in the process;

- The right to unilaterally apply measures restricting the preferential import from developing countries of goods that could damage domestic production.

The implementation of the GSP began in 1971 within the framework of the European Economic Community and was initially limited to a ten-year period.

Most developed countries introduced this system very slowly, including a significant number of reservations in national legislation. Therefore, unlike Western European countries, the USA joined only in 1976. At the initial stage, the practical implementation of the system of preferences was ineffective, since developed countries excluded from the list of preferential goods over 60% of customs-imposed imports, which severely narrowed the range of products falling under general preferences. Along with this, developed countries liberalized their own foreign trade relations, having lowered the level of customs duties in mutual trade.

This led to significant reductions of benefits received by developing countries within the system of tariff preferences – the so-called erosion of the system of preferences. Subsequently, these minuses were taken into account in the subsequent editions of the GSP. Periodic correlation of autonomous

preferential schemes of developed countries within the framework of a general system allows taking into account the changing realities of the world economy.

Legal issues of the appliance of preference provided by the CIS

During the collapse of the USSR, the countries, that used to be a part of itrealized the need of an organization where they could cooperate in the spheres like law-making, security, finance and trade. Thus, the Commonwealth of Independent States promoted cooperation in the most important spheres.

As we know, the USSR consisted of union republics, different in area and population, in terms of socioeconomic development, ethno-cultural characteristics, scientific, technical and educational potential. From the point of view of social and economic development, the Republics, being in a single legal field of the USSR, were at different times: from the predominance of the agrarian forms of the economy and social life in the Central Asian republics to the highly industrialized Russia, the Baltic republics, Ukraine, and Belarus. The political system of the USSR allowed designing the geography of the economy and interregional integration, proceeding solely from national interests formulated by a narrow circle of persons of the highest bureaucratic party. In the USSR, there was one center of economic decision-making, and the rest of the space was the object of its activity, an extremely centralized form of centrally-peripheral relations. When the state constituted of such different republics, a high level of centralization was seen as an important advantage to ensure the unity and integrity of the country.

At the same time, the union republics, due to the strict specialization (in fact, the monopoly production of a particular product) were closely linked with each other. Most of them accounted for more than 90% of the interstate exchange and more than 70% of all imports (including export and import respectively). The exception was Russiawhich had much higher export and import share. In the USSR as a whole, in 1989, 55% of the total volume of republican trade relations accounted for the share of interstate trade, and 45% for foreign trade relations. In 1989, the share of Russia accounted for 2/5 of interstate commodity exchange, 71.4% of exports and 69.7% of USSR imports. The republic gave more than 60% of the GNP of the USSR. It was the financial donor of most of the Union republics and through itself integrated the entire economic space of the union. According to the calculations of A. Granberg and V. Suslov, Russia in 1986-1990 had a stable positive balance of the interstate exchange, while the Central Asian republics, including the Republic of Uzbekistan, had a steadily negative balance. However, the collapse of the USSR fundamentally changed the situation. Establishing the CIS in 1993, its member-countries agreed to create a free trade area (FTA) in 1994, but the agreements were never signed. The 1994 agreement would have covered all the twelve then CIS members except Turkmenistan. In October 2011, the new free trade agreement was signed by eight of the eleven CIS

prime ministers: Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, and Ukraine at a meeting in St. Petersburg. As of 2013, it was ratified by Ukraine, Russia, Belarus, Moldova, and Armenia, and is in force only between those states. The Republic of Uzbekistan joined the agreement in 2013 but has yet not ratified it.

The agreement was drafted by the Russian Ministry of Economic Development. It absorbed all the main principles of international trade law: "recognizing the generally accepted norms of international law and drawing attention to the norms of WTO agreements, in particular GATT 1994, including Article XXIV of GATT 1994"[15] says the preamble of the Agreement. The 2011 CIS FTA came into force following the ratification of three signatories. The agreement is comprehensive across agricultural, fishery, and forestry goods, with the exception of maintaining import duties on sugar and export duties on several products. For Russia, the Agreement is a complex balance of political and economic costs and benefits, exposing Russian agriculture to greater competition from the CIS but allowing it to gain greater geopolitical and economic influence in the region. It provided for "minimizing exceptions of the nomenclature of goods to which import duties are applied," and export duties must also be fixed at a certain level and subsequently phased out. The agreement replaced more than one hundred bilateral documents regulating the regime of free trade on the Commonwealth space.

In addition to tariffs, bans and restrictions in mutual trade, the FTA also covers such issues as rules of origin, national treatment, government procurement, freedom of transit, special safeguard, antidumping and countervailing measures, subsidies, technical barriers to trade, sanitary and phytosanitary measures, money transfers, customs administration, agreements on customs unions, free trade and border trade, and dispute settlement. The Agreement stipulates that interested parties shall start negotiating a draft protocol on regulating government procurement within three months from the date of the FTA's entry into force with the goal of concluding such negotiations in three years.

Most articles of the FTA contain references to various provisions of GATT 1994 and other WTO agreements. In particular, according to the 2011 CIS FTA:

1) subsidies shall be granted in accordance with the provisions of Articles VI and XVI of GATT 1994, and the WTO Agreement on Subsidies and Countervailing Measures;

2) when applying technical measures, including technical regulations, standards and procedures for assessment of compliance, the parties shall be guided by the rules and principles of the WTO Agreement on Technical Barriers to Trade;

[15] **Commonwealth of Independent States Free Trade Area Treaty 2011, http://cis.minsk.by/reestr/ru/printPreview/text?id=3183**

3) when applying sanitary and phytosanitary measures, the parties shall be guided by the rules and principles of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

The states participating in the CIS free trade zone do not apply customs duties, as well as other payments having an equivalent effect with them, as well as quantitative restrictions with respect to goods originating in the customs territory of one participating State and imported into the customs territory of other participating States.[16] At the same time, Annex 1 to the Treaty systematizes the lists of goods for which individual member states apply export and import customs duties in mutual trade.

In the context of implementing legal mechanisms for the application of the free trade regime, the Rules of origin were developed and are in force.

Currently, there are three such documents in the trade relations within the CIS:
1.24.09.1993, applied in trade relations with Turkmenistan and the Republic of Uzbekistan;
2.30.11.2000 applied in mutual trade with the Georgia left in the editorial office operating for the state Parties from whose territory the goods are exported;

3.20.11.2009 applicable to goods originating in the Republic of Azerbaijan, the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Moldova, The Russian Federation, the Republic of Tajikistan and the Ukraine.[17]

Rules of origin of goods, which are an integral part of the Agreement on Rules of origin of goods in the Commonwealth of Independent States, signed on November 20, 2009 in Yalta meeting of CIS Council of Heads of Governments (hereinafter –the Regulations) replaced Rules for determining the country of origin of goods. This is in accordance with the Decision of the Council of Heads of Government of the Commonwealth of Independent States of 30.11.2000 (hereinafter –the Rules).

The practice of applying the Rules requires correcting and clarifying a number of provisions in order to unambiguously interpret and apply them. Moreover, a large number of amendments and additions introduced to the Rules made it difficult for both customs authorities and business entities to practically implementthem. Another difficulty is the ambiguity of the legal status of the decisions taken by the Council of CIS Heads of Government in those Commonwealth states whose legislation does not consider such decisions as international treaties (for example, the Russian Federation). A working group of experts of CIS member states functioning within the framework of the CIS Executive Committee prepared a draft of a new Agreement on the Rules for Determining the Country of Origin of Goods in the Commonwealth of

[16] **Official site of the Customs of Belarus, http://www.customs.gov.by/ru/sng-ru/**
[17] **http://tamojinfo.by/yurlica/strana_proishojdenija_tovarov_voprosy_primenenija_preferencial_nyh_rejimov/SNG.html**

Independent States. The Republic of Azerbaijan, the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Moldova, the Russian Federation, the Republic of Tajikistan and Ukraine signed the Agreement on November 20, 2009.

There are some issues related to the appliance of the norms of the Agreement. In accordance with Clause 5.1 of Section 5 of the Rules, the goods go under the free trade regime in the customs territories of the member states if they meet the criteria of origin established by these Rules, and also if the goods, in particular, do not leave the territories of the member states. Exceptions can be made for cases when the goods are located or moved through the territories of the third countries under customs control documented by the customs authorities of the countries through territories of which delivery of the goods was made.[18] In this case, the goods must be in the same condition, and any operations should not be carried out except for those made to ensure the safety and congestion. Thus, the declarant must prove (by submission of the relevant document) the fact that the goods were transported through the territories of third countries under customs control. In the absence of such documentary evidence, the free trade regime cannot be applied to these goods. The requirements of tariff and non-tariff regulation of the importing country should be applied to such goods in accordance with Section 5.3 of the Rules. This norm should be taken into account while working out or implementing logistics solutions, in particular, with the simultaneous deliveries (including delivery by air transport) of goods intended for recipients of different countries and while forming the route of the vehicle, since obtaining a documentary confirmation in the thirdcountry that the goods were really under customs control is often very difficult.

Thus, the Free Trade Agreement of the Commonwealth of Independent States is a document which covers such issues as rules of origin, national treatment, government procurement, freedom of transit, special safeguard, antidumping and countervailing measures, subsidies, technical barriers to trade, sanitary and phytosanitary measures, money transfers, customs administration, agreements on customs unions, free trade and border trade, and dispute settlement. It absorbed all the main principles of international law that can be found in documents of the United Nations, United Nations Conference on Trade and Development, World Trade Organization and others. As mentioned above, it replaced more than hundred agreements between CIS countries. Based on this document, regional economic relations between CIS countries became very tight, developing countries of the CIS gained more beneficial economic and financial opportunities through more access to the markets of developed country like Russia. On the other hand, for Russia the CIS FTA is a complex balance of political benefits and economic costs. Thus, while the agreement is beneficial for most Russian industries as it offers greater market access in the CIS countries, some industries in Russia, in particular, agriculture faced greater competition from CIS goods. Russia's budget loses

[18] **Agreement on the Rules for Determining the Country of Origin of Goods in the Commonwealth of Independent States. 20.11.2009, the 5th section. https://gain.fas.usda.gov**

due to tariff reduction in trade with the CIS countries, but in return, Russia becomes the center of a potentially powerful economic union, gains geopolitical influence and strengthens economic ties in the region.

CONCLUSION

The system of preferences is a complex mechanism formed by the international community to contribute to the global development, especially to increase global trade by assisting developing and least developed countries in entering the national markets of developed countries on preferential terms. This helps developing and least developed countries gain economic and financial benefits increase and diversify their exports and participate more actively in the international division of labor and global trade. As a result, economic levels of the states become closer, and it also contributes to the eradication of hunger and poverty and ensuring prosperity for all, which is one of the goals on the Agenda of Sustainable Development of the United Nations[19].

The system of preferences is a key point inliberalizing international trade law, moreover, it contributes to the harmonization of the national legislation of countries which participate in the agreements on preferential trade.

Today, the main problem of CIS countries development in the sphere of the regulation of foreign trade relations is the high level of tariff and non-tariff protectionism in relation to imports. At the theoretical level, high tariff and non-tariff barriers established for the purpose of restricting imports adversely affect the development of exports due to an increase in real exchange rates. High trade barriers limit the import not only of consumer goodsbut also of intermediate goods necessary for the development of national productions oriented both to exports and to the domestic market. Moreover, the restriction of external competition in the domestic market creates incentives for inefficient allocation of economic resources and increases the interest of national agents of the market in search of ‘rental income’; therefore, in the long term, the relative competitiveness of the sectors protected from imports decreases, and this is the reason why the authors of the present study believe that these barriers and restrictions should be gradually lifted.

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