Agreement on the Introduction and Application of Measures Affecting Foreign Trade in Goods on a Common Customs Territory to Third Countries

The Government of the Republic of Belarus, the Government of the Republic of Kazakhstan and the Government of Russian Federation, hereinafter referred to as the Parties,

based on the Treaty on establishing united customs territory and creation of the customs union of October 6, 2007 and the Treaty on the Customs Union Commission of October 6, 2007,

in order to implement the Agreement on united non-tariff regulation measures against third countries of January 25, 2008 and the effective operation of the customs union,

guided by the generally recognized principles and norms of international law,

agreed as follows:

Article 1

General conditions

1. This Agreement defines the procedure for the introduction and application on a united customs territory against third countries of united non-tariff regulatory measures, measures affecting goods foreign trade and being applied according to the national state interests of Parties, as well as special kinds of bans and restrictions on goods foreign trade (hereinafter - regulatory measures).

2. From the date of granting the supreme authority of the Customs Union the Commission of the Customs Union (hereinafter - Commission) is empowered to enforce regulatory measures against third countries. Regulatory measures are introduced on the Commission's decision, except the measures specified in Articles 8 and 9 of this Agreement.

3. The goods subject to the regulations are included in a united list of goods which are subject to prohibitions or restrictions of the import or export of states - parties of the Customs Union within the Eurasian Economic Community on trade with third countries (hereinafter - the united list). United list is approved by the Commission on the date of providing it with the appropriate authority to take decisions on the application of control measures.

4. After the Commission's decision to implement control measures against a particular type of product, it is included by the Commission in a common list.

Article 2

Decision-making on the introduction, application and cancellation of united non-tariff regulation by the Commission

1. The Commission takes decisions on the introduction, application and cancellation of united non-tariff regulation measures (hereinafter - the non-tariff measures), in conformity with Articles 3 - 6 of the Agreement on united non-tariff regulation measures against third countries of January 25, 2008.

2. The Commission is considering a proposal to introduce non-tariff regulation measures against the particular type of goods on the basis of documents that contain:

name of the product and its code in conformity with the United Commodity Nomenclature for Foreign Trade, approved by the supreme body of the Customs Union (UCNFT);

proposed non-tariff measures:

prohibition of exports;

quantitative restrictions on export and (or) imports;
granting exclusive right to export and (or) import;
licensing in the sphere of foreign trade;
monitoring the export and (or) import;
validity of the proposed measures of non-tariff regulation (start and end dates of the measures);
justification of the introduction of non-tariff regulation measures in conformity with the conditions of Articles 3 - 5 of this Agreement.

Proposal may be submitted on the initiative of the Party (ies) and the Commission.

3. The Commission is to take decision to impose non-tariff regulation measures within 30 days from the date of a submission of the proposal by a Party (Parties).

4. Decisions of the Commission on the introduction, application and cancellation of non-tariff measures are published in conformity with the Rules of Procedure of the Commission of the customs union of December 12, 2008 and shall come into force within than 45 days from the date of publication.

Article 3

Prohibitions or quantitative restrictions

1. Justification of the necessity to introduce quantitative restrictions, including prohibition of the export of goods, should include:

a) in respect of export of goods:

information on production volumes and demand for goods in the customs union (in physical and value terms), statistics, financial and economic calculations and other information to justify the amount of goods allowed to be exported that will prevent or reduce the critical shortage of this commodity on the inner market of the customs union, in the cases specified in Article 3 of the Agreement on united non-tariff regulation measures against third countries from January 25, 2008;

information on the volume of export of goods from a united customs territory;

b) in respect of import of goods:

information on production volumes and sales of goods (in physical and value terms), statistics, financial and economic calculations and other information justifying the need to restrict imports of agricultural products or aquatic biological resources, imported in any form, in the cases specified in the Article 3 of the Agreement on united non-tariff regulation measures against third countries of January 25, 2008;

information on volume of import of goods on to the united customs territory.

2. The introduction of the quantitative restrictions by the Commission on a united customs territory involves exports and (or) import quotas. Quantitative restrictions are applied:

for export - only in respect of goods originating from a united customs territory;

for import - only in respect of goods originating from third countries.

Quantitative restrictions are not applied to import of goods from the territory of any third country or the export of goods to the territory of a third country, unless such quantitative restrictions do not apply to import from all third countries or export to all third countries. This condition does not preclude compliance with the obligations of States-Parties in conformity with international treaties on free trade zone.

Goods in respect of which may be imposed quantitative restrictions on exports, should be included in the list of goods that are essential for the domestic market of the customs union in respect of which in exceptional cases may be imposed temporary restrictions or export prohibitions (hereinafter - the list of essential goods).

The list of essential goods is approved by the Commission within 30 days from the date of providing it with the appropriate authority to sanction non-tariff regulation against third countries on the basis of proposals of the Parties.

3. The Commission distributes volumes of export and (or) import quotas between States-Parties and determines the way of distribution of shares of export and (or) import quotas among the participants of foreign trade of the States Parties, as well as the volumes of import quotas between third countries.

The distribution of volumes of export and (or) import quotas between States-Parties shall be conducted by the Commission on the basis of the tasks that need to be resolved by introducing quantitative restrictions after examination of proposals of the Parties and production volumes and (or) the consumption of goods in each of the States-Parties.

4. The Commission after taking decision on the application of export and (or) import quotas ensures:

establishment of export and (or) import quotas (irrespective of whether they will be distributed between third countries or not) for a specified period;

information of all interested third countries on the amount of import quota available to them, if the import quota is shared between third countries;

publication of information on the application of export and (or) import quotas, their amounts and timing of actions, as well as on the distribution of import quotas between third countries.

5. Distribution of import quotas between third countries is executed, as a rule, by the Commission on the basis of consultations with all major suppliers from third countries.

In this article, a significant supplier of third-country suppliers is understood as having a share of 5 percent or more in the import of the goods on a united customs territory.

6. If the distribution of import quotas can not be executed on the basis of consultations with all major suppliers from third countries, the decision on the distribution of quotas between third countries should be taken by the Commission after taking into consideration the volume of deliveries of goods from these countries during the preceding period.

7. The Commission can not impose any conditions or formalities which can prevent any third country fully utilize its import quota, provided that the delivery of the goods will be made during the period of import quota.

8. The choice of the preceding period for the goods in respect of which the export and (or) import quotas are applied is made by the Commission. As a rule, this period involves any previous 3 years, for which there is available information reflecting the real exports and (or) imports. If there is no possibility to choose preceding period export and (or) import quotas are distributed on the basis of assessing the most likely distribution of actual volumes of exports and (or) import.

In this article, under the real volume of exports and (or) imports are understood export and (or) import without any restrictions.

9. At the request of any third country interested in the delivery of goods, the Commission should consult with the country on:

redistributing the import quota;

changing the selected preceding period;

abolishing the conditions, formalities or any other provisions established unilaterally concerning the distribution of import quota or its unrestricted use.

10. Distribution of the shares of export and (or) import quotas among the participants of foreign trade is executed by the Parties by means determined by the Commission, and is based on the

principles of equality of participants of foreign trade in respect of receipt of shares of export and (or) import quotas and non-discrimination on grounds of form of ownership, place of registration or the market.

11. Customs clearance of goods under the export and import quotas is made under license for export and (or) import of such goods issued by the authorized executive power authorities of the States-Parties.

12. The Commission should not require that the license will be used for export (import) of goods in any particular country and (or) from any particular country, except when the import quota is distributed among third countries.

13. In connection with the use of export and (or) import quotas, the Commission should:

provide the third countries interested in trade with the specified product with information regarding the order of distribution of export and (or) import quotas, the mechanism of their distribution among the participants of foreign trade and the volume of licensed quotas;

publish information on the total quantity or value of goods export and (or) import of which will be resolved within a certain time in the future, as well as the dates of start and stop of the export and (or) import quotas and any changes therein.

Article 4

The exclusive right to export and (or) import certain types of goods

1. The Commission's decision to impose restriction on foreign trade by providing the exclusive right to export and (or) import of certain goods is adopted on the proposal of the Parties (Party).

Justification of the need to impose the exclusive right to export and (or) import of certain goods should include statistical data, financial and economic calculations and other necessary information, confirming the usefulness of this non-tariff regulation measure.

2. Certain types of goods for export and (or) import of which the exclusive right is granted, as well as the procedure of determining an organization which is granted the exclusive right to export and (or) import of certain goods shall be determined by the Commission.

The participants of foreign trade, which are granted by the Parties the exclusive right to export and (or) import of certain goods, do business on export and (or) import of certain goods basing on the principle of non-discrimination, and guided only by commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale, and provide organizations of other States-Parties with adequate opportunity (in conformity with usual business practice) to compete for participation in such purchases or sales.

The list of goods for export and (or) import of which the exclusive right is granted as well as the list of organizations who are granted the exclusive right to export and (or) import of certain goods are to be published in conformity with the decision of the Commission.

3. The goods subject to the restrictions by granting the exclusive right to export and (or) import are included in a united list.

4. The exclusive right to export and (or) import of certain goods is carried out under licenses issued by authorized state bodies of executive power of the States-Parties to the participants of foreign trade specified by the Parties in conformity with the decision of the Commission in conformity with the paragraph 2 of this article.

Article 5

Monitoring the export and (or) import certain types of goods

1. The decision of the Commission on the introduction of monitoring the export and (or) import of certain goods is adopted in order to monitor the dynamics of export and (or) import of certain goods.

Justification of the need to impose the monitoring of export and (or) import of certain goods is introduced on the initiative of the Party (ies) and the Commission. The justification should contain information about the inability to track down quantitative indicators of export and (or) import of certain goods and its changes by other means.

2. The list of goods for which monitoring is introduced, as well as its terms are set by the Commission. Goods being monitored are included in a united list.

3. Export and (or) import of certain goods, for which monitoring is introduced, is made by permission of authorized state bodies of executive power of the States-Parties.

4. Licenses are issued according to the procedure determined by Agreement on the rules for licensing in the sphere of goods foreign trade.

5. The absence of license will be a reason for refusal to carry out customs clearance of goods.

Article 6

Measures affecting goods foreign trade and being introduced on the base of national interests of the States-Parties

1. On the base of the national interests of States-Parties and in conformity with the Article 7 of the Agreement on united non-tariff regulation measures against third countries of January 25, 2008 on the proposal of the Party (ies) the Commission may introduce the following non-economic measures affecting goods foreign trade:

prohibition of export and (or) import;

quantitative restrictions of export and (or) import;

granting the exclusive right to export and (or) import;

permitting procedure of export and (or) import;

other regulatory measures.

2. The Commission considers the proposal of the Party (ies) to introduce the measures specified in Paragraph 1 of this Article based on national interests of States-Parties in respect of a particular type of product on the base of documents that contain:

name of the product and its code in conformity with the United Commodity Nomenclature for Foreign Trade;

proposed measures;

term of validity of the proposed measures (start and end dates of the measures, if necessary, the end of the measures may be not indicated);

justification of the introduction of measures, including information that confirms the necessity of their introduction.

3. The decision to impose the measures specified in Paragraph 1 of this Article is taken by the Commission on the base of national interests of the Parties within 30 days from the date of introduction of the proposal by the Party (ies).

4. The measures specified in Paragraph 1 of this Article shall not be taken or applied in a way that are means of arbitrary or unjustifiable discrimination of third countries, or is disguised restriction on goods foreign trade.

5. If the Commission rejects the proposal of the Party (ies) to introduce the measures specified in Paragraph 1 of this Article on the base of national interests of States-Parties (Party), the Party that has submitted a proposal of their introduction, may decide to impose such measures unilaterally in conformity with articles 8 - 10 of this Agreement.

Article 7

Specific types of prohibitions and restrictions on goods foreign trade

1. According to the decision of the Commission the import of the goods may be limited by regulatory measures, including measures that derogate from the conditions of Articles 3 and 4 of the Agreement on common non-tariff regulation measures against third countries of January 25, 2008, if it is necessary to protect the external financial position and maintain the balance of payments. The Commission is considering a proposal Party (ies) to impose such measures on the base of documents that contain:

name of the product and its code in conformity with the UNCFT;

proposed measures;

terms of validity of the proposed measures (start and end dates of the measures);

justification of the introduction of measures.

If the Commission rejects the proposal, the Party (ies) may decide to impose such measures unilaterally in conformity with Articles 8 - 10 of this Agreement.

2. According to the decision of the Commission the goods foreign trade may be limited by measures whose adoption is necessary for the participation of States - participants of the Customs Union within the Eurasian Economic Community in international sanctions in accordance with the Statute of the United Nations. The Commission introduces such measures on the basis of decision of the supreme authority of the customs union.

Article 8
Unilateral introduction of measures affecting goods foreign trade

1. Parties can unilaterally introduce non-economic measures affecting goods foreign trade (hereinafter - the temporary measures), if they are aimed at:

observance of public morality, law and order;

defense and security;

protection of life or health of the citizens, environment, life or health of animals and plants;

protection of cultural values and cultural heritage;

protection of intellectual property;

prevention of the exhaustion of irreplaceable natural resources;

prevention or reduction of the critical shortage in the domestic market of food or other goods that are essential for the domestic market;

protection of the external financial position and maintaining the balance of payments.

2. Party which introduces temporary measures in accordance with this Agreement in advance but no later than 3 days before they are imposed notifies the Commission of the introduction and apply for its consideration a proposal of introduction of the temporary measures by other Parties.

3. Proposal of introduction of the temporary measures should contain:

name of the product and its code in conformity with the UNCFT;

measures specified in Article 6 of this Agreement;

information on suppliers of goods, identification characteristics of goods, known methods of transportation, and other information to identify the goods in respect of which it is proposed to introduce temporary measures;

date of commencement of the temporary measures;

justification of the use of temporary measures.

Justification must include:

the legal basis of temporary measures (the name of the normative legal act of the Party);

information confirming the necessity to introduce temporary measures

information confirming the adverse effects of these products in national security, life or health of citizens, property of natural or legal persons, state or municipal property, environment, life or health of animals and plants - to impose the export and (or) import permitting procedure;

the size of quota - for the introduction of quantitative restrictions on export and (or) import;

list of participants of foreign trade, who were granted the exclusive right - in the case of granting the exclusive right to export and (or) import.

4. The Commission considers the proposal of the Party (ies) within 30 days from the date of its application.

5. After consideration of proposals of the Party (ies) the Commission may decide to impose temporary measures on a united customs territory.

Terms of validity of the temporary measures in this case is decided by the Commission.

6. If the decision to impose temporary measures on a united customs territory is not adopted, the Commission informs the Party (ies), which imposed temporary measures, and customs authorities of the States-Parties that temporary measures are valid not more than 6 months from the date of their introduction.

Article 9
The application of temporary measures unilaterally

1. After receiving a notification from the Parties on the introduction of unilateral temporary measures the Commission shall immediately inform the customs authorities of the States-Parties of the introduction by one Party of the unilateral temporary measures. Information also includes:

name of the legal normative act or the Party, under which temporary measures are imposed;

name of the product and its code in conformity with the UNCFT;

information on suppliers of goods, identification characteristics of goods, known methods of transportation, other information that identify the goods in respect of which the temporary measures are introduced;

date of commencement of the temporary measures and the term of validity.

2. After receiving the information specified in Paragraph 1 of this Article customs authorities of the States-Parties do not allow:

export of goods listed in Paragraph 1 of this Article and originating from the customs territory of a State Party which has unilaterally applied the temporary measures without a license issued by the authorized body of executive power of the state of specified Party;

import of goods specified in Paragraph 1 of this article for the State Party which has unilaterally applied the temporary measures without a license issued by the authorized state body of executive power of the state of specified Party. The Parties which do not apply temporary measures are to take the necessary efforts to prevent import of these goods into the territory of a State Party which has applied temporary measures.

Article 10
Licensing in foreign trade

1. The use of regulatory measures affecting goods foreign trade included in a united list as well as the application of tariff quota are implemented, as a rule, through the licensing of export and (or) import of goods.

2. The issuance of licenses for export and (or) import of goods is executed on the base of declarations of participants of foreign trade of the States Parties.
3. Licenses are issued according to the procedure determined by Agreement on the rules of licensing in goods foreign trade.
4. Absense of a license is a reason for refusal to carry out the customs clearance of goods.

Article 11
Exceptions

The present Agreement shall not apply to relations between the Parties concerning the export control issues, cooperation in the field of military technique, technical regulations, the application of sanitary, veterinary and phytosanitary requirements and measures, as well as special protective, antidumping and compensating measures.

Article 12
Transparency in the development of regulatory measures

1. When preparing decision of the Commission on introduction, application and withdrawal of regulative measures The Commission invites organizations and entrepreneurs to the States Parties, whose economic interests may be affected by such action (interested persons), to submit comments and suggestions on the matter to the Commission.
2. The Commission shall decide on the manner and form of consultations, as well as the manner and form of communicating information about the progress and results of consultation to the interested persons, who have submitted their comments and suggestions.
3. In case, if it follows from the international treaties of the States Parties, the competent authorities of other states (groups of states) are invited to submit their views in the manner provided in the provisions of relevant international treaties of the Parties. Foreign organizations and entrepreneurs are also invited to submit their views in the manner provided in the provisions of relevant international treaties of the States Parties.
4. The Commission may decide not to hold consultations in accordance with paragraph 2 of this article provided any of the following conditions exist:
measures under the draft decision concerning the right to conduct foreign trade activities, should not be known until its entry into force and consultation would or could result in failure to reach the goals of such a decision;
consultations will delay a decision affecting the right of foreign trade activity, which could lead to material injury the interests of the Parties;
granting exclusive rights to export and (or) import of certain types of goods;
unilateral introduction of regulatory measures by the Party (ies).
5. Lack of consultation cannot be considered as the basis for the recognition of the Commission's decisions, affecting the right to conduct foreign trade activities, as invalid.

Article 13
Dispute Resolution

Disputes between the Parties concerning the interpretation and (or) the application of this Agreement shall be settled through consultations and negotiations.
If the dispute is not resolved by the Parties within 6 months from the date of receipt of a formal written request for consultations and negotiations, sent by one of the Parties to the other Party, in

the absence of any other agreement between the Parties concerning the method of resolving the dispute, either party shall refer the dispute to the Court Eurasian Economic Community.

Article 14
Changes

By agreement of the Parties this Agreement may be amended, and the amendments are drawn as the separate protocols.

Article 15
Final Provisions

The order of entry into force of this Agreement, joining it and withdrawal from it is defined by the protocol on the order of entry into force of international agreements aimed at forming the legal basis of the customs union, withdrawal from them and joining them on 6 October 2007.

Done in Moscow on 9 June 2009 in one original copy in Russian.

The original copy of this Agreement shall be kept by the depositary, which is the Commission. The depositary will send to each party a certified copy of this Agreement.

For Government of the Republic of Belarus

For the Government of the Republic of Kazakhstan

Fro the Government of the Russian Federation