

On Trade Liberalization for Political Ends: The Case of the EAEU

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As evidenced by WTO theory and practice, even as exceptions regulated at Article XXIV GATT 1994 and Article V GATS, regional trade agreements (RTAs) or preferential trade agreements are an important legal tool to liberalize trade and strengthen economic or political cooperation. In recent years, notwithstanding the fiasco of TTIP and TPP, RTAs have proliferated in different regions of the world. Among them, the Eurasian Economic Union (EAEU) is a customs union established in 2015 which is institutionally similar to the European Union (EU) albeit unexplored in academic literature. Remarkably, during its first five years of existence as an international organization, the EAEU has become a trade entity capable of adopting common technical regulations and a uniform customs code regulating cross-border trade in the internal single market and with third parties. Moreover, the EAEU has been quite active in concluding international agreements with third States, setting the basis to make the EAEU a key player on the global arena. Is the EAEU an RTA with the purpose to liberalize trade and services, mindful of the WTO philosophy, or rather is it a mean to attract back in the Moscow's orbit some of the Post-Soviet States thus reaching precise geopolitical ends? What is its relevance for international business?

Keywords: Regional Trade Agreements, International Economic Law, Eurasian Economic Union, WTO, International Economic Organizations, Post-Soviet States, EAEU Customs Code, Russia, Common Market

1 INTRODUCTION

While the world is currently facing trade wars and the WTO is in an *impasse* after a never-ending Doha Round and criticism over its Appeal Body powers, regional trade agreements (RTA) have become a top priority in many countries' agendas.

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The U-turn on the TPP (Transpacific Partnership) by the US post-Obama administration and the lack of specific trade negotiations between the European Union (EU) and the EAEU in that regional context¹ have left an empty space in the fastest developing area of the globe, a political and economic space which has been quickly filled in by other countries: Russia and China.

In recent years, former Communist countries such as Russia and China have become the main key players on the Asian field. They have suddenly become the new champions of free trade and more reliable allies than the US and the EU who are still struggling with new forms of economic nationalism, unilateralism and sanctions.

By reinforcing the economic interdependence of States in the Asian region the new Asian RTAs may create, at the minimum, a *special relationships* among the participating countries under the *soft leadership* of China (*The Belt and Road Initiative*) or, at its height, they may produce a trade block unifying again the former USSR countries and establishing a new partnership with China capable to expand into the EU. As President Putin has often stated, the goal is a mega-trade agreement capable of unifying the entire Eurasian continent from Vladivostok to Lisbon.² As the region's state economies become increasingly intertwined, questions are arising about Russia's ultimate goal for the EAEU.

Is it just a free trade agreement designed only to liberalize trade, within the meaning of Article XXIV of GATT 94, or is it rather a full-fledged economic project with a political end, designed to allow Russia to expand its influence and its power over the entire Eurasian continent serving thus its own geopolitical agenda?

The focus of this article is on the Eurasian Economic Union (EAEU) and not on China's one belt one road project or geopolitical aspirations. Surprisingly enough, this topic has received so far little or no attention in academic literature outside Russia.

The EAEU is based on hard law, i.e., on a system of treaty rules coupled with an institutional structure. We will explore its nature, its purpose, its relationship with the WTO, the functioning of its institutions and its political end.

¹ The Supreme Eurasian Economic Council in its Decision no 19 'On the fundamental directives of the foreign activity of the EAEU for 2020' of 01 Oct. 2019, has put among its foreign policy priorities the establishment of an official dialogue with the EU. Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/en-us/01423307/err_02102019_19 (accessed 28 Sept. 2020).

² Russian President Vladimir Putin has openly spoken of a Free Trade Zone from Lisbon to Vladivostok a number of times since 2001 including during his State visit to Germany in 2010 when he openly mention a Free Trade Zone from Lisbon to Vladivostok (*Ot Lissabona do Vladivostoka: Vladimir Putin rasskazal o perspektivah sotrudnichestva Rossii i Evropy*, Rossijskaja Gazeta (26 Nov. 2010), <https://rg.ru/2010/11/26/putin.html> (accessed 28 Sept. 2020).

2 OF RTAS AND THEIR RELEVANCE TODAY

A RTA is a treaty between two or more governments that defines the rules of trade for all contracting Parties. RTAs have risen in number and reach over the years and the biggest user of that is the EU where at least 100 RTAs have been notified at the WTO.³ Even if non-discrimination among trading partners is a fundamental principle of WTO Law, RTAs, which are reciprocal preferential trade agreements between two or more partner countries, constitute one of the allowed exceptions and are normally authorized by the WTO, subject to a set of conditions.⁴

Well known examples of RTAs include the North American Free Trade Agreement (NAFTA) as well as the new United States–Mexico–Canada Agreement (USMCA) or the EU – Japan Free Trade Agreement. However, they may look ‘old style’ RTAs since the main driving factor behind their international rules is ‘only’ mutual trade advantage.⁵

A common market of goods, services, capital and information reinforces political, legal and cultural exchanges between partner countries. Organizations may promote strengthened cooperation and high degrees of harmonization between the participant States; eventually it may be a way to reach more integration between the Member States, such as the EU or the EAEU. The EAEU, which is the object of the present paper, embodies the latest stage of the regional

³ *Regional Trade Agreements*, WTO, https://www.wto.org/english/tratop_e/region_e/region_e.htm (accessed 28 Sept. 2020).

⁴ See among others, John H. Jackson, *The World Trading System. Law and Policy of International Relations* (2nd ed. 1997); Mitsuo Matsushita, Thomas J. Schoenbaum, Petros. C. Mavroidis & Michael Hahn, *The World Trading System* 507 ff. (3d ed. 2017); Dominique Carreau, Patrick Juillard, Régis Bismuth & Andrea Hamann, *Droit international économique* 262 ff. (6th ed. 2017); Matthias Herdegen, *Principles of International Economic Law* 319 ff. (2nd ed. 2016) as well as William J. Davey, *Non-discrimination in the World Trade Organization: The Rules and Exceptions* 183–440 (2011); Dominique Carreau & Fabrizio Marrella, *Droit International* 147 ff. (12 ed. 2018); Fabrizio Marrella, *Manuale di diritto del commercio internazionale* 196 ff. (2 ed. 2020).

⁵ Won M. Choi, *Legal Problems of Making Regional Trade Agreements With Non-WTO-Members*, 8(4) J. Int'l Econ. L. 825 (2005); Kostantinos Adamantopoulos & Maria Jesus. Pereyra-Friedrichsen, *EU Anti-Subsidy Law and Practice* (2nd ed. 2007); Petros C. Mavroidis, *WTO and PTAs: A Preference for Multilateralism?*, 44(5) J. World Trade 1145 (2010); *GATS 2000 – New Directions in Services Trade Liberalization* (Pierre Sauvé & Robert M. Stern eds, 1st ed. 2010); Henning Grosse Ruse-Khan, *The International Law Relation Between TRIPS and Subsequent TRIPS-Plus Free Trade Agreements: Toward Safeguarding TRIPS Flexibilities?*, 18(2) J. Intell. Prop. L.1 (2011); Jong Bum Kim, *The Evolution of Preferential Rules of Origin in ASEANs RTAs: A Guide to Multilateral Harmonization*, 46(4) J. World Trade 1343 (2012); Lorand Bartels, *Regional Trade Agreements*, Max Planck Encyclopedia of Public International Law (2013), <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1803?prd=EPIL> (accessed 2 Aug. 2020); David A. Gantz, *Liberalizing International Trade After Doha: Multilateral, Plurilateral, Regional and Unilateral Initiatives* (1st ed. 2013); *Preferential and Trade Agreements, a Law and Economic Analysis* (Kyle W. Bagwell & Petros C. Mavroidis eds, 2014); Joost Pauwelyn & Wolfgang Alschner, *Forget About the WTO: The Network on Relations Between PTAs and Double PTAs*, in *Trade Cooperation: The Purpose, Design and Effects of Preferential Trade Agreements: World Trade Forum* (A. Dür & M. Elsig eds 2015).

cooperation and integration processes, which have been going on in the post-Soviet space since 1991 and represents one of the key directions of Russian foreign policy.⁶

It should be noted that, at the current stage, Russia, despite the tensions experienced in relations with the US and the EU, keeps pursuing its foreign policy objectives on improving political and economic cooperation with other countries in different regions of the world through participation in international regional organizations. Therefore, the EAEU looks like a masterpiece of Russia's foreign policy.⁷

3 THE BIRTH OF THE EAEU

The origins of the EAEU can be traced back to the dissolution of the USSR in 1991. All the newly independent post-Soviet States have been sharing economic, social and political structures for almost a century and most of them, in 1991, sought to maintain those economic, social, political and also cultural ties by establishing the Commonwealth of Independent States.⁸ Such a process of integration of States, which were once merged into a single international entity is known as 'holding-together integration' and characterizes the most recent cooperation projects in the post-Soviet space, such as the EAEU.⁹ In 1994, the former Kazakh President Nursultan Nazarbaev addressed the audience of Lomonosov University in Moscow calling for an 'Eurasian Union'.¹⁰ In 1996, Belarus, Kazakhstan, Kyrgyzstan and the Russian Federation signed the Agreement on strengthened cooperation, which set the basis for the Treaty on the Customs Union and the

⁶ Alexander Libman & Anastassia V. Obydenkova, *Regional International Organizations as a Strategy of Autocracy: The Eurasian Economic Union and Russian Foreign Policy*, 94 Int'l Aff. 1037 (2018); Anastassia V. Obydenkova & Alexander Libman, *Authoritarian Regionalism in the World of International Organizations: Global Perspective and the Eurasian Enigma* (1st ed.2019); Tom Ginsburg, *Authoritarian International Law?*, 114 Am. J. Int'l L. 221, 245–247 (2020).

⁷ A crucial role in Russian foreign policy is also played by the Commonwealth of Independent States (CIS), BRICS (Brazil, Russia, India, China and the Republic of South Africa), the Organization of the Black Sea Economic Cooperation (BSEC) and the Shanghai Cooperation Organization (SCO, an international organization, established in 2001 by the leaders of China, Russia, Kazakhstan, Tajikistan, Kyrgyzstan and Uzbekistan. On 9 June 2017, India and Pakistan became official members of the SCO).

⁸ The three basic legal acts on which was based the Commonwealth of independent States are: Declaration of the heads of State of the Republic of Belarus, the RSFR and Ukraine, 9 Dec. 1991, <http://cis.minsk.by/reestr/ru/index.html#reestr/view/text?doc=3447> (accessed 28 Sept. 2020); Agreement on establishment of the Commonwealth of Independent States, 9 Dec. 1991, <http://cis.minsk.by/reestr/ru/index.html#reestr/view/text?doc=1> (accessed 28 Sept. 2020); Almaty Protocol, 21 Dec. 1991, <http://cis.minsk.by/reestr/ru/index.html#reestr/view/text?doc=4> (accessed 28 Sept. 2020).

⁹ Alexander Libman & Evgeny Vinokurov, *Holding-Together Regionalism* 12–13 (1st ed. 2012).

¹⁰ Nursultan Nazarbaev speech at Moscow State University, 29 Mar. 1994, http://www.eaeunion.org/upload/iblock/006/1994_1_1.jpg (accessed 28 Sept. 2020).

Common Economic Space of 1999,¹¹ which led to the establishment of the Eurasian Economic Community (EurAsEC) in 2000.¹² Within the EurAsEC, Belarus, Kazakhstan and the Russian Federation signed a Treaty in order to strengthen integration¹³ by establishing a brand-new customs union, in 2010,¹⁴ and a single economic space in 2012.¹⁵ The achievements within the EurAsEC were taken to a new level when the project to move forward integration and to establish the EAEU was fixed in the Declaration on Eurasian Economic Integration, adopted by the presidents of Russia, Belarus and Kazakhstan on 18 November 2011.¹⁶ It highlighted the objectives of the Eurasian economic integration for the long-term period, including the task to establish the EAEU by 1 January 2015, moving to the next integration stage after the Customs Union and the Single Economic Space.

This first phase of the integration process in the post-Soviet space was not easy. However, thanks to long-standing traditions developed during the Soviet time, coupled with economic pragmatism some of the difficulties have been overcome. All in all, a feature of the first phase has been the progressive decrease of participant States: out of twelve States that participated in the CIS in 1999, only five participate today in the EAEU.

On 29 May 2014 Belarus, Kazakhstan and the Russian Federation signed the Treaty on the EAEU in Astana (today Nur-Sultan).¹⁷ The establishment of the EAEU marks a second stage in the integration processes in the post-Soviet area. It is the stage of awareness of insufficiency of exclusively economic integration levers and the need to engage new mechanisms and tools capable of countering external challenges and influencing the quality and effectiveness of integration processes in the region. Changes in the balance of forces between world centres of

¹¹ Treaty on the Customs union and the Common economic space, 26 Feb. 1999, Eurasian Economic Commission Legal Portal, http://www.eurasiancommission.org/ru/act/trade/catr/nontariff/Pages/Dogovor_26021999.aspx (accessed 28 Sept. 2020).

¹² Treaty on the Establishment of the Eurasian Economic Community, 10 Oct. 2000, Eurasian Economic Commission Legal Portal, http://www.tsouz.ru/Docs/IntAgrmnts/Pages/Dogovor_EvrAzES.aspx (accessed 28 Sept. 2020).

¹³ Agreement on the establishment of a common customs space and the creation of the customs union, 6 Oct. 2007, Eurasian Economic Commission Legal Portal, http://www.tsouz.ru/Docs/IntAgrmnts/Pages/D_sozdETTiformTS.aspx (accessed 28 Sept. 2020).

¹⁴ Decision of the Interstate Council of the EurAsEc no 24 of 27 Nov. 2009, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/en-us/0146795/ic_26112009_24 (accessed 28 Sept. 2020).

¹⁵ Decision of the Supreme Eurasian Economic Council no 9 of 19 Dec. 2011, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/en-us/0044316/scd_22122011_9 (accessed 28 Sept. 2020).

¹⁶ Declaration on the Eurasian economic integration, 18 Nov. 2011, <http://kremlin.ru/supplement/1091> (accessed 28 Sept. 2020).

¹⁷ Treaty on the Eurasian Economic Union, 29 May 2014, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/en-us/0043610/itia_05062014 (accessed 28 Sept. 2020). [hereinafter Treaty on the EAEU].

development and the emergence of new geopolitical and global economic challenges have encouraged Russia and the EAEU Member States to look for new effective tools for more efficient integration processes.

The EAEU is an international organization of economic integration that has international legal capacity and was established by the aforementioned EAEU Treaty, which entered into force on 1 January 2015.¹⁸ Currently, the area of the EAEU countries is more than 20 million square kilometres (14% of the world firm land), the total population of the EAEU countries is 182.7 million people. The area and population results from those of the Member States, which are Armenia (since 2 January 2015), Belarus, Kazakhstan, Kyrgyzstan (since 12 August 2015) and Russia. Initially, the EAEU was established on the basis of the Customs Union of Russia, Kazakhstan and Belarus, and the Single Economic Space. The Union aims to provide for the free flow of goods, services, capital and human resources, as well as coordinated, harmonized and single policy in key economic sectors. The Treaty sets the main objectives of the EAEU as: creating conditions for sustainable development for the benefit of advance in living standards of their populations; aiming at formation of a single market of goods, services, capital and human resources within the Union; comprehensive modernization, cooperation and raising competitiveness of the national economies under the conditions of global economy.

4 THE CURRENT EAEU INSTITUTIONAL FRAMEWORK

A key element for the functioning of the EAEU is its internal structure, which is provided by the Treaty on the EAEU in Section III.¹⁹ The EAEU *governance* structure, at a first glance, strongly recalls that of the EU, even if a more detailed analysis shows some noticeable differences. The main institutions are the Supreme Eurasian Council, the Intergovernmental Eurasian Council and the Eurasian Economic Commission. In addition to these, there is also a judicial body, the Court of the EAEU.²⁰

The Supreme Eurasian Council (Supreme Council) consists of the Head of State of the Member States, similarly to what happens with the European Council in the EU. It meets at least once per year and has the task of deciding the EAEU strategy and the political direction to follow in order to promote the development of the Union. Furthermore, the Supreme Council approves the budget of the EAEU, on a proposal of the Intergovernmental Eurasian Council. To exercise its

¹⁸ *Ibid.*

¹⁹ *Ibid.*, s. III.

²⁰ *Ibid.*, Art. 8.

functions, the Supreme Council issues binding decisions and orders.²¹ For what concerns the foreign activities of the EAEU, the Supreme Council decides the main directions of international cooperation and decides, in the name of the EAEU, whether to enter negotiations, including who should be empowered to conduct negotiations, and eventually to conclude international treaties with third parties²² and to express the consent to be bound by a treaty.²³ All the decisions and the orders issued by the Supreme Council are to be taken by consensus.²⁴

The Eurasian Intergovernmental Council (Intergovernmental Council) consists of the Heads of Government of the Member States, meets at least twice a year and has the task of implementing and controlling on the performance of the Treaty, of treaties within the EAEU and of the decisions of the Supreme Council. More generally, it can be said that the main task of the Intergovernmental Council is to implement and control on the performance of the EAEU Law. To do so, the Intergovernmental Council issues binding decisions and orders.²⁵ Within the powers the Treaty gives to the Intergovernmental Council there is the approval of the draft budget of the Union, which is to be submitted to the Supreme Council for final approval.

The Eurasian Economic Commission is the permanent regulating and executive body of the EAEU and it is the evolution of the Commission established at the time of the Customs Union within the EurAsEC. It plays a primary role in strengthening integration and in developing the EAEU.²⁶ As a permanent body, the Commission carries the supranational nature of the EAEU, similarly to what happens in the EU with the European Commission. Nevertheless, the EAEU presents structural differences making this body less independent from its Member States than the Commission, a real watchdog in the case of the EU.

The EAEU is in fact built on a two-tier structure. The upper tier, the Council of the Commission (the *Soviet* of the Commission), consists of one deputy Prime Minister per each Member State²⁷ and is in charge for ‘the general regulation of integration processes in the EAEU, as well as general management of the Commission’ activities.²⁸ In practice, it has powers of control and supervision

²¹ *Ibid.*, Arts 12–13.

²² The way to negotiate and conclude international agreements with third parties was standardized through the signature of the Agreement on International Treaties of the EAEU with third States, International Organizations or International Integration Unions on 14 May 2018, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/en-us/01417799/itia_16052018 (accessed 28 Sept. 2020).

²³ Treaty on the EAEU, *supra* n. 17, Art. 12.5.

²⁴ *Ibid.*, Art. 13.2.

²⁵ *Ibid.*, Arts 14–16.

²⁶ *Ibid.*, Art. 18.

²⁷ *Ibid.*, Annex 1, Art. 23.

²⁸ *Ibid.*, Annex 1, Art. 22.

over the activities of the lower tier. The lower tier, the Board (or College) of the EAEU Commission, is the executive branch of the same Commission²⁹ and it is the one that is truly 'Eurasian' in its nature. Its members are appointed in equal numbers for each Member State³⁰ and they are intended to be independent from the appointing national authorities or officials of each Member State.³¹ In order to perform its duties, the EAEU Commission issues binding decisions, orders with administrative character and non-binding recommendations.³² The same Commission plays a fundamental role in managing and implementing the customs union, including the drafting and the implementation of the technical regulation, and the single economic space, which means that this body is in charge for what concerns the common macroeconomic and monetary policy, the energy policy (including the management and the regulation of natural monopolies), financial, services and investment markets, free movement of labour and the development of EAEU transport network.³³ In addition, the EAEU Commission may be empowered by the Supreme Council to sign treaties with third parties. All the treaties signed by the EAEU with third parties are signed by the Commission along with the Member States.³⁴ Hence, even on common trade policy issues, there is a predominance of the intergovernmental dimension over the supranational structure thereby weakening the powers of the Commission of the EAEU which is not truly independent from EAEU Member States. Furthermore, in the EAEU there is no democratically elected Parliament. This is another big difference with what happens in the EU since 1976. Here, the European Parliament is directly elected and shares the EU legislative power with the Council of the EU.³⁵

Finally, the Court of the EAEU represents the judicial body of the Union. The Court is located in Minsk³⁶ and even if it is the evolution of the Court of the EurAsEC, it has been established as a new body together with the establishment of the EAEU. The Court consists of two judges per Member States and it has the objective to ensure the uniform application of the EAEU law.³⁷ It clarifies the law of the EAEU through advisory opinions on legal questions on request of a Member State³⁸ and decides, in accordance with EAEU law, disputes of a legal

²⁹ *Ibid.*, Annex 1, Art. 31.

³⁰ *Ibid.*

³¹ *Ibid.*, Annex 1.

³² *Ibid.*, Annex 1, Art. 13.

³³ *Ibid.*, Annex 1, Art. 3.

³⁴ *See supra* n. 22.

³⁵ *See Consolidated Version of the Treaty on European Union* Art. 14, 9 May 2008 and *Consolidated Version of the Treaty on the Functioning of the European Union* Arts 20, 22 and 223, 9 May 2008, 2012 O.J. (C326) [hereinafter TFEU].

³⁶ *Treaty on the EAEU*, *supra* n. 17, Art. 19.

³⁷ *Ibid.*, Annex 2, Art. 2.

³⁸ *Ibid.*, Annex 2, Art. 47.

nature that are submitted to it by States (jurisdiction in contentious cases)³⁹ as well as of an economic entity, which might be either a juridical or a natural person.⁴⁰

However, the EAEU Court presents three major weaknesses: first, the absence of a procedure of *preliminary ruling*,⁴¹ which results in only a partial integration of the Court with the system of national courts; second, the impossibility of deciding on material compensation, which makes the Court a less efficient dispute resolution centre; and last, the lack of possibility for the Commission to address the Court for supposed non-compliance of the Member States to the EAEU law.

Such institutional framework reflects the complex domestic governmental architecture of the founding Member States. As a matter of facts, Belarus, Kazakhstan and the Russian Federation are all characterized by a government centred around a strong Presidency. Such features are reflected in the EAEU institutional framework where, besides any tautology, most of the legislative power is in the hands of the Supreme Council, i.e., the Heads of State of Member States. In turn, the Supreme Council is assisted in the dialogue with the Commission by the Intergovernmental Council – which is formed by the Heads of Government of the Member States – who, at the domestic level, are strongly dependant on the Heads of State. For the EAEU, this means that the most important decisions (if not all of them) are negotiated and taken at the Heads of State level with a consensus voting.⁴² This is particularly relevant in the case of Russia, being the Member State which is by far the most influential and therefore the one with the most bargaining power within the EAEU. In this perspective, one may wonder whether the recent amendments to the Russian Constitution, adopted on 4 July 2020, provide now even an extra leverage since the new constitutional provisions allow to challenge the enforcement of decisions based on International Law before the Russian Constitutional Court.

5 THE EAEU, ITS MEMBER STATES AND THE WTO

The relationship between Post-Soviet States committed in Eurasian integration and the WTO has been long and complex. Belarus, Russia and Kazakhstan, applied for WTO membership during the 1990s. Nevertheless, none of these countries had achieved membership by 2007, when they signed the Treaty that

³⁹ *Ibid.*, Annex 2, Art. 39.

⁴⁰ *Ibid.*

⁴¹ In EU Law, this procedure is open to all Member States' national judges. They may refer a case already underway to the European Court of Justice in order to question it on the interpretation or validity of European Union Law. See TFEU Art. 267.

⁴² Treaty on the EAEU, *supra* n. 17.

set the basis for the customs union which would have lately evolved into a pillar of the EAEU.⁴³ Based on Article 12 of the Agreement establishing the WTO, the Russian Federation suggested in June 2009 that negotiations on the accession to the WTO of the customs union formed then by the three States as a unique subject should be open,⁴⁴ in order to join the WTO in as it had been done by the EU.⁴⁵ The Russian proposal remained a dead letter and eventually all the three States continued the accession process separately. The Russian Federation joined the WTO on 22 August 2012,⁴⁶ followed by Kazakhstan on 30 November, 2015⁴⁷ (when the EAEU had already been in place for almost one year). Belarus, for its part, has not completed the process so far. Negotiations were suspended in 2005⁴⁸ and resumed them in 2017 spurred on by the membership to the EAEU.⁴⁹ As things stand today, four out of five EAEU Member States are also WTO members (Armenia and Kyrgyzstan, that were not originally involved in the mentioned customs union project, have been part of the WTO respectively since 2003⁵⁰ and

⁴³ *Supra* § 3.

⁴⁴ In his declaration at the XXIII intergovernmental summit of the EurAsEC, the then Prime Minister of the Russian Federation V. V. Putin stated that the Heads of Government of the Member States decided: 'Уведомить Всемирную торговую организацию о намерении начать переговорный процесс по присоединению к ВТО Таможенного союза Республики Беларусь, Республики Казахстан и Российской Федерации как единой таможенной территории'. ('to inform the World Trade Organisation about the intention to start a negotiation process on the access to the WTO of the Customs Union of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation as a single customs territory'). Full text, http://www.tsouz.ru/AboutETS/Pages/news_id=21.aspx (accessed 28 Sept. 2020).

⁴⁵ The European Union is a WTO member since 1 Jan. 1995, https://www.wto.org/english/thewto_e/countries_e/european_communities_e.htm (accessed 28 Sept. 2020).

⁴⁶ Notification of acceptance and entry into force of the Protocol on the Accession of the Russian Federation to the Marrakesh Agreement establishing the World Trade Organisation done at Geneva on 16 Dec. 2011. WT/LET/860, https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=35466,53455&CurrentCatalogueIdIndex=0&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True (accessed 28 Sept. 2020).

⁴⁷ Notification of acceptance and entry into force of the Protocol on the Accession of the Republic of Kazakhstan to the Marrakesh Agreement establishing the World Trade Organisation done at Geneva on 27 July 2015. 2011WT/LET/1093, https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=229753,229654,225926,225927,135658,133630,131324,130101,124929,121223&CurrentCatalogueIdIndex=4&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True (accessed 28 Sept. 2020).

⁴⁸ Belarus accession status, WTO, https://www.wto.org/english/thewto_e/acc_e/a1_belarus_e.htm#status (accessed 28 Sept. 2020).

⁴⁹ Vice-minister for Foreign Affairs of Belarus H.E. Andrej Eudačenko, opening speech at the eight meeting of the working group on the accession of Belarus, Geneva, 24 Jan. 2017, https://www.wto.org/english/news_e/news17_e/acc_blr_24jan17_e.pdf (accessed 28 Sept. 2020).

⁵⁰ Notification of acceptance and entry into force of the Protocol on the Accession of the Republic of Armenia to the Marrakesh Agreement establishing the World Trade Organisation done at Geneva on 10 Dec. 2002, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/LET/434.pdf> (accessed 28 Sept. 2020).

1998⁵¹) and have been all involved in WTO disputes. Currently, the country most involved in WTO dispute settlement is the Russian Federation, that has eight open cases as a complainant and nine as a respondent,⁵² most of which involve the EU. Among the mentioned cases, one is of particular interest in appraising the actual weight the EAEU already has in international trade and international relations. In fact, case DS479, stemmed from the Russian implementation of a 2013 decision of the Eurasian Economic Commission,⁵³ an executive body which has played a primary role in Eurasian integration since its inception.⁵⁴

The impact of the EAEU acts on the relations of its Member States within the WTO is not the sole driving factor highlighting the need for a direct EAEU membership to the WTO in the near future. At the moment of drafting the Treaty on the EAEU, the Parties, through Annex 31 to the Treaty on the EAEU provided that all relations within the EAEU are to be regulated 'by the Treaty on Functioning of the Customs Union within the Multilateral Trade System'.⁵⁵ Said Treaty was signed by Belarus, Kazakhstan and the Russian Federation within the framework of the customs union in 2011⁵⁶ foreseeing the accession of the customs union to the WTO. The Treaty on the Functioning of the Customs Union within the Multilateral Trade System provides that once the Parties have become members of the WTO, the WTO provisions and the conditions negotiated by the Parties for the accession, become part of the legal system of the customs union.⁵⁷ Thus, WTO provisions have priority over the former customs union's rules.⁵⁸ Following the establishment of the EAEU and its notification to the WTO on 12 December 2014,⁵⁹ the Parties have remarked that most of the EAEU legal framework is already aligned to the WTO and that the alignment has been done prior to the establishment of the EAEU, when the Russian Federation

⁵¹ Notification of acceptance and entry into force of the Protocol on the Accession of the Kyrgyz Republic to the Marrakesh Agreement establishing the World Trade Organisation done at Geneva on 11 Nov. 1998, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/LET/245.pdf> (accessed 28 Sept. 2020).

⁵² The full list of the cases involving Russia and the other EAEU Member States can be found at https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm (accessed 28 Sept. 2020).

⁵³ Decision of the Board of the Eurasian Economic Commission no 113 of 14 May 2013, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/ru-ru/0145698/clcd_16052013_113 (accessed 28 Sept. 2020).

⁵⁴ See *supra* § 4.

⁵⁵ Treaty on the EAEU, *supra* n. 17, Annex 31.

⁵⁶ Treaty on Functioning of the Customs Union within the Multilateral Trade System, 19 May 2011, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/ru-ru/0144796/itot_17052013 (accessed 28 Sept. 2020).

⁵⁷ *Ibid.*, Art. 1.

⁵⁸ *Ibid.*, Art. 2.

⁵⁹ Notification of Regional Trade Agreement WT/REG358/N/1 <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/REG/358N1.pdf> (accessed 28 Sept. 2020).

joined to the WTO.⁶⁰ Such a position was once again underlined at the meeting for the factual presentation of the EAEU, when the renegotiation of the tariff commitments to the WTO of Armenia, Kyrgyzstan and Kazakhstan was discussed.⁶¹ At the meeting, the Member States emphasized how the EAEU already complies with the WTO principles and rules.⁶²

6 THE EAEU AND ITS RELEVANCE FOR INTERNATIONAL BUSINESS

Along with the institutional framework and its limited law-making powers, key instruments for the functioning of the EAEU are technical regulations and the Customs Code. Said instruments can be considered the core legal tools that allow the EAEU to function as a unique entity for what concerns international trade.

6.1 TECHNICAL REGULATIONS

EAEU Technical regulations have been introduced in order to set common standards in terms of quality and safety for the goods that enter the common market.⁶³ The official list of goods to which the standards apply is compiled and kept up to date by the Commission.⁶⁴ The purpose of technical regulations is to overcome national standards such as GOST-R (Russian Federation), GOST-K (Kazakhstan) or BelST (Belarus) by creating a common EAEU standard. Nevertheless, if a product is in the list of the Commission but the correspondent EAEU technical regulation is not in force yet, national standards and regulations are to be applied.⁶⁵ In fact, the issue of technical regulations is gradual and not all goods are covered yet. So far, there are over 40 technical regulations already in force or already approved and due to enter in force in the coming years.⁶⁶ The

⁶⁰ Eurasian Economic Commission, *WTO, Integration in Eurasia and Eurasian Economic Union*, The third China Round Table on WTO Accessions: Post Accession: 'Maximizing the Benefits of WTO Membership and Global Economic Integration', 2 to 5 June 2015, https://www.wto.org/english/thewto_e/acc_e/Session1AndreyTochinEurasianEconomicIntegration.pdf (accessed 28 Sept. 2020).

⁶¹ *WTO Members Review Regional Trade Agreements Covering EU, Ghana and EAEU, November 19th, 2018*, World Trade Organisation, https://www.wto.org/english/news_e/news18_e/rta_19nov18_e.htm (accessed 28 Sept. 2020).

⁶² *Ibid.*

⁶³ Treaty on the EAEU, *supra* n. 17, Art. 52.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*, Annex 9, point 3.

⁶⁶ The full list of the EAEU Technical Regulations is available at the Eurasian Economic Commission official website. <http://www.eurasiancommission.org/ru/act/tehnreg/deptexreg/tr/Pages/%D0%A2%D0%B5%D1%85%D0%BD%D0%B8%D1%87%D0%B5%D1%81%D0%BA%D0%B8%D0%B5%20%D1%80%D0%B5%D0%B3%D0%BB%D0%B0%D0%BC%D0%B5%D0%BD%D1%82%D1%8B%20%D0%A2%D0%B0%D0%BC%D0%BE%D0%B6%D0%B5%D0%BD%D0%BD%D0%BE%D0%B3%D0%BE%20%D1%81%D0%BE%D1%8E%D0%B7%D0%B0.aspx> (accessed 28 Sept. 2020).

Commission and its specialized agencies are working on more technical regulations for the future. All the goods crossing the EAEU customs, need to be conform to technical regulations and this is to be assessed in form of declaration of conformity, certification of conformity or State registration.⁶⁷ Once a good has been proved compliant, it necessarily has to bear the EAC mark (that can be seen as the EAEU equivalent of the CE mark of the EU).⁶⁸ There is not a common procedure for all the goods, but the type of certification required and the assessment mode for a given product are stated in each technical regulation.⁶⁹ Nevertheless, a common trait is that an authorized representative must represent the applicant, who might be either a physical or a juridical person registered on the territory of the EAEU,⁷⁰ which means that in order to enter the EAEU market a local business partner is necessary.

6.2 THE EAEU CUSTOMS CODE

The EAEU Customs Code (CC), to which the Treaty on the EAEU refers in Section VIII,⁷¹ was adopted after long negotiations. It was signed in Moscow on 11 April 2017,⁷² and it was ratified by all Parties by the end of the same year entering into force on 1 January 2018.⁷³ Up to that date, the old code of the Eurasian Economic Community⁷⁴ was still in force. The CC was drafted in order to leave national customs regulations with only a residual space while the CC is endowed with as much direct applicability as possible.⁷⁵ One of the main distinctive features of the code is the introduction of a single window mechanism. Such a system, based on a research of the EAEU Commission requested by the Supreme Council in 2012,⁷⁶ has been intended to be one of the key principles of

⁶⁷ Treaty on the EAEU, *supra* n. 17, Annex 9, point 5.

⁶⁸ *Ibid.*, Annex 9, point 6.

⁶⁹ *Ibid.*, Annex 9, point 5.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*, Art. 32.

⁷² Treaty on the Customs code of the Eurasian Economic Union, 11 Apr. 2017, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/ru-ru/01413569/itia_12042017 (accessed 28 Sept. 2020). The Customs Code of the EAEU [hereinafter CC EAEU] is attached to the Treaty on the Customs code of the Eurasian Economic Union as Annex 1.

⁷³ *Novyj tamožennyj kodeks vstupit v silu s 1 janvarija 2018 goda*, Eurasian Economic Commission (14 Nov. 2017), http://www.eurasiancommission.org/ru/nae/news/Pages/14_11_17.aspx (accessed 28 Sept. 2020).

⁷⁴ Treaty on the EAEU, *supra* n. 17, Art. 101.

⁷⁵ *Tamožennyj kodeks EAES ratificirovan vsemi stranami Sojuza*, Eurasian Economic Commission (30 Dec. 2017), <http://www.eurasiancommission.org/ru/nae/news/Pages/30-12-2017-1.aspx> (accessed 28 Sept. 2020).

⁷⁶ Decision of the Supreme Eurasian Economic Council no 21 'On the realisation of the fundamental directions of integration' of 19 Dec. 2012, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/ru-ru/0044374/scd_20122012_21 (accessed 28 Sept. 2020).

the customs union since its inception. The implementation process of the EAEU mechanism lasted five years⁷⁷ and it is based on national single windows whose electronic information is mutually recognized and connected to the EAEU integrated information system. The EAEU single window works through the extensive use of new IT technologies, which are fundamental for the common customs procedures: customs declarations are to be done electronically⁷⁸ and are registered automatically as it happens also for what concerns the clearance of goods, which takes place in no more than four hours.⁷⁹ There might be cases in which clearance time is extended as, for instance, if there is a suspicion of an infringement of intellectual property rights or customs regulations.⁸⁰ Another distinctive trait and novelty introduced by the CC – in parallel with what happens with the 2016 Customs Code of the EU⁸¹ – is the regulation for the authorized economic operators (AEO), which simplifies international business with the EAEU. The AEOs are juridical persons established within a Member State,⁸² which must be compliant to a series of conditions⁸³ and be registered in a dedicated registry.⁸⁴ Following the registration, the Commission adds the AEO to the common EAEU registry and the AEO receives a certification. There exist three types of certification, which allow them to operate under different conditions and enjoying different advantages.⁸⁵ The most relevant advantages the AEO enjoys are, among the others, the release of goods before the presentation of the declaration and easier customs controls for those AEOs that have a first-type certification.⁸⁶ AEOs that have a second-type certification can store goods at their warehouses and have them controlled at their own warehouse, under the most favourable conditions for the AEO.⁸⁷ The third-type certification allows the AEO to enjoy both the benefits granted under the first- and the second-type certifications.⁸⁸ Moreover, the code is open for mutual recognition of the AEOs with third Parties, on the basis of international agreements between the Union and third Parties.⁸⁹ Such a provision

⁷⁷ Decision of the Supreme Eurasian Economic Council no 19 ‘On the means of implementation of the fundamental directions of development of the “single window” mechanism in the system of regulation of the foreign trade activities’ of 8 May 2015, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/ru-ru/0147689/scd_12052015_19 (accessed 28 Sept. 2020).

⁷⁸ CC EAEU, *supra* n. 72, Art. 104.3.

⁷⁹ *Ibid.*, Art. 119.

⁸⁰ *Ibid.*, Art. 124.

⁸¹ For analogies with the EU Customs Code, see Fabrizio Marrella & Pasquale Marotta, *Codice doganale dell’Unione europea commentato* (1st ed. 2019).

⁸² CC EAEU, *supra* n. 72, Art. 430.

⁸³ *Ibid.*, Art. 433.

⁸⁴ *Ibid.*, Art. 431.

⁸⁵ *Ibid.*, Art. 432.

⁸⁶ *Ibid.*, Art. 437.2.

⁸⁷ *Ibid.*, Art. 437.3.

⁸⁸ *Ibid.*, Art. 437.4.

⁸⁹ *Ibid.*, Art. 437.8.

opens interesting perspectives in case of a future agreement between the EAEU and the EU.

7 THE TRADE ACHIEVEMENTS OF THE EAEU

The EAEU, being a real operating entity, is an international organization that, as well as many other international economic organizations,⁹⁰ is not insured against the negative impact of a number of external factors. Thus, the first years of work since the formation of the EAEU have proved to be the most difficult in the entire history of the post-Soviet countries. Difficult political situations, international economic sanctions due to international tensions, and the development of the economic crisis could not but affect the performance of the EAEU. However, having overcome the difficulties of its formation and the negative trends in economic development, the union subsequently showed its viability.

When the EAEU was established, the whole area was experiencing a general shrinking in terms of GDP. Nevertheless, recovery started during 2016, and growth signs were recorded in the following years.⁹¹ For what concerns foreign trade, the EAEU has since 2016 recorded a trade surplus, and the overall balance of trade the EAEU recorded for 2018 was 753.5 billion dollars, with a total surplus of 227.9 billion dollars.⁹² Data for 2019, confirmed the positive trend for what concerns the overall balance, recording a surplus of 185.5 billion dollars; nevertheless, the total trade turnover amounts to 97.3% of the total trade turnover recorded in 2018.⁹³

One of the priorities of the EAEU Member States is to promote import substitution through mutual trade in order to mitigate the negative impact of international sanctions⁹⁴ and, more in general, in order to diversify and transform the general structure of the economies of the EAEU, today based on the oil & gas sector, which is especially true for what concerns the founding members. Under the umbrella of the EAEU the mutual trade of the Member States has increased

⁹⁰ See Dominique Carreau & Fabrizio Marrella, *Diritto internazionale* (2nd ed. 2018).

⁹¹ Eurasian Economic Commission, *Evrazijskij ekonomičeskij sojuz v. cifrah – kratkij statističeskij sbornik* 17 (2019).

⁹² Data show that there was a strong decrease of international trade between 2014 and 2015, a stabilization of the general trend between 2015 and 2016, year in which recovery started, and steady growth in 2017. Eurasian Economic Commission, *Vnešnjaia trgovlja tovarami. Statistika Evrazijskogo ekonomičeskogo sojuza. 2018 god* 22 (2019), http://www.eurasiancommission.org/ru/act/integr_i_makroec/dep_stat/tradestat/publications/Documents/Ext_2018.pdf (accessed 28 Sept. 2020).

⁹³ Eurasian Economic Commission, *Ob itogakh vnešnjaia trgovli tovarami Evrazijskogo ekonomičeskogo sojuza. Janvar'-Dekabr' 2019*, http://eec.eaeunion.org/ru/act/integr_i_makroec/dep_stat/tradestat/analytics/Documents/2019/Analytics_E_201912.pdf (accessed 28 Sept. 2020).

⁹⁴ *Prospects of Import Substitution for Agricultural and Food Products in the EAEU Reviewed at St. Petersburg International Forum*, Eurasian Economic Commission (6 June 2016), <http://www.eurasiancommission.org/en/nae/news/Pages/06-06-2016-1.aspx> (accessed 28 Sept. 2020).

and has become more and more relevant for their economies: under growing GDP and foreign trade trends, the organization has shown an increasing impact on the mutual trade of the Member States since its establishment. In fact, following an initial decrease in 2015 due to a context of general recession, the mutual trade in goods has constantly grown,⁹⁵ which confirms the declarations of officials of the Member States which suggesting that the rising trend would have continued.⁹⁶

The increase of GDP and both external and mutual trade, and its positive effects on the economies of the Member States, in the general context of economic recovery, is a solid signal of the success for what concerns the economic dimension of the EAEU in its first years of existence.

8 THE 'FOREIGN POLICY' OF THE EAEU

Important results have also been achieved by the EAEU in the field of foreign policy. The EAEU has the power to conclude international treaties with third parties⁹⁷ and since its establishment, the EAEU has been quite active in developing its international relations, despite such activities receiving little notice in the EU. The EAEU and the Member States signed a free trade agreement with the Socialist Republic of Vietnam on 29 May 2016 (which entered in force on 5 October 2016),⁹⁸ followed by an extensive agreement on economic cooperation signed with the People's Republic of China on 17 May 2018,⁹⁹ and, on the same day, an interim agreement with the Islamic Republic of Iran, concluded in the light of the ongoing negotiations on an FTA.¹⁰⁰ During 2019, the EAEU and the Member States concluded two agreements with Singapore, following years of

⁹⁵ Eurasian Economic Commission, *Ob itogakh vzajmnoj trgovli tovarami Evrazijskogo ekonomičeskogo sojuza. Janvar'-Dekabr' 2019* (2020), http://eec.eaeunion.org/ru/act/integr_i_makroec/dep_stat/trade_stat/analytics/Documents/2019/Analytics_I_201912.pdf (accessed 28 Sept. 2020).

⁹⁶ Russian Prime Minister Dmitrij A. Medvedev, at the meeting of the Intergovernmental Council held in Minsk on 27 Nov. 2018, stated: 'В первые три квартала внутрисоюзная торговля выросла приблизительно на 13,5–14 per cent. [...] ' (During the first three quarters mutual trade within the Union increased of about 13.5–14 per cent'), <http://government.ru/news/34850/> (accessed 28 Sept. 2020).

⁹⁷ Treaty on the EAEU, *supra* n. 17, Art. 7.

⁹⁸ Free Trade Agreement between the Eurasian Economic Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part, 29 May 2015, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/en-us/0147849/iatc_02062015 (accessed 28 Sept. 2020).

⁹⁹ Agreement on economic and trade cooperation between the Eurasian Economic Union and its Member States, of the one part, and the People's Republic of China, of the other part, 17 May 2018, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/ru-ru/01417817/iatc_21052018 (accessed 28 Sept. 2020).

¹⁰⁰ Interim Agreement leading to formation of a free trade area between the Eurasian Economic Union and its Member States, of the one part, and the Islamic Republic of Iran, of the other part, 17 May 2018, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/ru-ru/01417815/iatc_21052018 (accessed 28 Sept. 2020).

negotiations: on 1 October 2019 in Erevan, the EAEU and its Member States concluded a framework on comprehensive economic cooperation¹⁰¹ and an FTA.¹⁰² However, the agreements with Singapore are not the most significant of 2019 for the EAEU, at least for what concerns its geopolitical meaning. Prior to the signature of the agreements with Singapore, on 6 June 2019, in Saint Petersburg the EAEU and its Member States and the People's Republic of China signed an agreement on the exchange of information on goods and transportation crossing the border between the EAEU and the PRC, in order to ease customs procedures and in order to tie the EAEU to the 'One belt one road' project.¹⁰³ Such agreement represents a strong geopolitical and strategic achievement since it openly involves the EAEU as a single player into the 'One belt one road project'. Such deals reflect the Russian foreign policy interest in deepening cooperation with China through the EAEU framework. In this light, the EAEU serves the double function of strengthening ties with China and with Chinese global projects, such as the 'One belt one road', while maintaining Russian influence over the post-Soviet central Asian States.¹⁰⁴

A second agreement of great geopolitical importance was signed on 25 October 2019, with Serbia.¹⁰⁵ Since it is taking years in Bruxelles to decide about the admission of Serbia into the EU, the EAEU has already arrived in Serbia. The FTA between the EAEU and the Balkan State, poses a strategic challenge to the EU, being Serbia a candidate to EU-full membership since 2014.¹⁰⁶

Despite all odds, the EU does not even have formal official relations with the EAEU. As for the US, the EU and its Member States for the moment are simply pretending that the EAEU does not exist. The risk, however, is that the EU and

¹⁰¹ Framework Agreement on comprehensive economic cooperation between the Eurasian Economic Union and its Member States, of the one part, and the Republic of Singapore, of the other part, 1 Oct. 2019, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/ru-ru/01423214/iatc_03102019 (accessed 28 Sept. 2020).

¹⁰² Free Trade Agreement between the Eurasian Economic Union and its Member States, of the one part, and the Republic of Singapore, of the other part, 1 Oct. 2019, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/ru-ru/01423247/iatc_04102019 (accessed 28 Sept. 2020).

¹⁰³ Agreement on exchange of information on goods and vehicles involved in international transportation across the customs border of the Eurasian Economic Union (EAEU) and the People's Republic of China (PRC), 06 June 2019, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/ru-ru/01422104/iatc_17062019 (accessed 28 Sept. 2020).

¹⁰⁴ Libman & Obydenkova, *supra* n. 6, at 1037.

¹⁰⁵ Free Trade Agreement between the Eurasian Economic Union and its Member States, of the one part, and the Republic of Serbia, of the other part, 25 Oct. 2019, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/ru-ru/01423624/iatc_28102019 (accessed 28 Sept. 2020).

¹⁰⁶ EU-Serbia Negotiating Framework, Ministerial meeting opening the Intergovernmental Conference on the Accession of Serbia to the European Union, AD1/14. CONF-RS1/14, Brussels, 9 Jan. 2014, <http://register.consilium.europa.eu/doc/srv?!=EN&t=PDF&gc=true&sc=false&f=AD+1+2014+INIT> (accessed 28 Sept. 2020).

the US sphere of influence may be squeezed and contained on a world scale by Russia and China.

The EAEU has called a number of times¹⁰⁷ for normalizing relations and to change the EU Common commercial policy approach aimed at reaching separate deals with each one of the EAEU Member States. Still, the EU represents the main trade partner for the EAEU: about 50% of EAEU exports are headed towards the EU and the EU supplies about 40% of EAEU imports.¹⁰⁸ While calling for deeper relations, at the same time, the Russian Federation sees the EAEU as a tool of foreign policy which allows to countervail the influence played by the EU on those States that have been part of the Soviet Union and which might seek deeper integration with the EU.¹⁰⁹ This is the case of Belarus and Armenia and to a certain extent of Ukraine or Serbia.

9 FUTURE PROSPECTS AND CHALLENGES

The future prospects and challenges of the EAEU follow two directions, an internal and an external one, and they somehow reflect some of the considerations drawn to this point.

On the internal level the process of building the single common market is still ongoing. A first challenge is posed by the creation of the common energy market. Oil and gas represent the main exports of the EAEU but also those areas in which more negotiation between the EAEU Member States is required in order to arrive to a single market. A first step was intended to be the creation of the Common electric power market, which was planned to be launched by 1 July 2019.¹¹⁰ Nevertheless, the creation was postponed and a new framework was set by the Member States by amending the Treaty on the EAEU,¹¹¹ and the new deadline for the establishment of the Common electric power market is now set on 1 January 2025.¹¹² The establishment of Common markets of oil, gas and oil products is set

¹⁰⁷ Normalization of relations was asked, e.g., by the Minister of Integration and Macroeconomics of the Eurasian Economic Commission Ms Tatyana Valovaya during the forum 'The First Dialogue: Connecting Eurasia – from the Atlantic to the Pacific' held in Brussels in Mar. 2019, <http://www.eurasiancommission.org/en/nae/news/Pages/19-03-2019-4V.aspx> (accessed 28 Sept. 2020).

¹⁰⁸ Banca Intesa, *EAEU Trade and Geopolitics Amidst a Slowing Global Economy and the Rearrangement of International Relations* 6 (2019).

¹⁰⁹ See *supra* n. 107.

¹¹⁰ Treaty on the EAEU, *supra* n. 17, Arts 104.2 and 104.3.

¹¹¹ Protocol on the amendments to the Treaty on the Eurasian Economic Union of 29 May 2019 (in respect to the formation of the common electric power market of the Eurasian Economic Union), 29 May 2019, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/en-us/01421952/itia_31052019 (accessed 28 Sept. 2020).

¹¹² *EAEU Common Electric Power Market to Be Launched on January 1, 2025 at the Latest*, Eurasian Economic Commission (16 Aug. 2019), <http://www.eurasiancommission.org/en/nae/news/Pages/16-08-2019-2.aspx> (accessed 28 Sept. 2020).

by the Treaty on 1 January 2025¹¹³ (as the new deadline for electric power market). The development plan for both markets was approved by the Supreme Council on 6 December 2018,¹¹⁴ which confirmed the will to meet the deadline established by the Treaty. If the deadline will be met, all the three markets related to energy will be established at the same time. Speaking about the formation of common markets for gas, oil and oil products, the President of the Russian Federation noted that, according to experts, the implementation of these plans will boost the GDP of the EAEU countries up to 9 billion US dollars.¹¹⁵

A second challenge on the internal level is the establishment of the common financial market. The Supreme Council of the EAEU asked to start working on the establishment in late 2016.¹¹⁶ The whole process involves not only the Member States but also all those regulatory and governance institutions such as central banks.¹¹⁷ The common financial market is to be built following the principles of liberalization and harmonization, which should finally result into unification¹¹⁸ and once completed it would allow non-discriminatory access to the financial markets of the Member States with free movement of capital within it.¹¹⁹ A few days before the establishment of the EAEU, on 23 December 2014, the Member States signed an agreement on common principles to share financial information,¹²⁰ which is one of the key issues in order to make the common market real and to make it work effectively.¹²¹ Following the establishment of the EAEU on 1 January 2015, most of the efforts of the Member States were oriented towards the building of the common market of goods and the customs union and it

¹¹³ Treaty on the EAEU, *supra* n. 17, Arts 104.5 and 104.7.

¹¹⁴ Decision of the Supreme Eurasian Economic Council no 18 'On the formation of the common market of gas of the Eurasian Economic Union' of 6 Dec. 2018, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/en-us/01422604/scd_07122018 (accessed 28 Sept. 2020); Decision of the Supreme Eurasian Economic Council no 23 'On the formation of the common markets of oil and oil products of the Eurasian Economic Union' of 6 Dec. 2018, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/en-us/01420205/scd_07122018_23 (accessed 28 Sept. 2020).

¹¹⁵ *V Sankt-Peterburge prošel sammit EAES*, Mir Peremen (Dec. 2018), <http://mirperemen.net/2018/12/v-sankt-peterburge-proshel-sammit-eaes/> (accessed 28 Sept. 2020).

¹¹⁶ Order of the Supreme Eurasian Economic Council no 6 'on the development of a Concept on the establishment of the common financial market of the Eurasian Economic Union' of 26 Dec. 2016, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/ru-ru/01415483/sco_11042017_6 (accessed 28 Sept. 2020).

¹¹⁷ Treaty on the EAEU, *supra* n. 17, Annex 17, points 21–26.

¹¹⁸ Bank of Russia, *Stroitel'stvo formirovaniya obščego finansogo rynka Evrazijskogo ekonomičeskogo sojuza: osnovy, sposoby dostiženija i ožidaemye rezul'taty* 7 (2015), <http://www.cbr.ru/content/document/file/36566/fr.pdf> (accessed 28 Sept. 2020).

¹¹⁹ Treaty on the EAEU, *supra* n. 17, Art. 70.

¹²⁰ Agreement on the exchange of information, including confidential, in the financial sphere in order to create the conditions on the financial markets for free movement of capitals, 23 Dec. 2014, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/ru-ru/0147212/itia_13012015 (accessed 28 Sept. 2020).

¹²¹ Treaty on the EAEU, *supra* n. 17, Annex 17, point 27.

took almost four years to see considerable developments on the building of the common financial market. On 6 November 2018, the Member States signed a protocol on harmonization of regulation on the financial sector,¹²² which sets the basis to take those steps that still require efforts: these include mutual recognition of banking, insurance and financial operators' licenses.¹²³ Member States are supposed to complete the common financial market of financial services by 2025, and this allows banks, insurances and financial operators to provide their services on the whole territory of the EAEU. To regulate the common financial market, the Member States must create a supranational regulatory body, which will be located in Almaty and that will have the powers and the functions Member States will be willing to confer.¹²⁴

Actually, a decisive moment for the EAEU will be the beginning of 2026, when common markets for the electric power, oil and gas (2024–2025) will have been established, as well as the EAEU financial centre in Almaty. In other words, in 2015, the ten-year period of the formation of the EAEU as an effective economic union had just begun. Therefore, transitional provisions and stages of removing the remaining barriers are enshrined in the Agreement on the creation of the EAEU. By 2025, the GDP of the EAEU countries should increase by 20% only due to the integration effect. This will certainly contribute to the targeted development of inner-Eurasian competition on the basis of creating equal economic conditions for business structures and workers of the EAEU Member States.¹²⁵ In order to improve integration processes throughout the Eurasian space, on 6 February 2020, members of the Council of the Eurasian Economic Commission held a meeting to finalize the draft Strategic Directions for the Development of Eurasian Economic Integration until 2025. At the meeting, measures and mechanisms were clarified that would allow in the future to complete the formation of the regulatory framework for cooperation among the EAEU states, increase the executive discipline of supranational and national institutions of the Union, ensure harmonization and synchronization of the approaches of the Member States to identification and regulation of new areas of cooperation.¹²⁶ The

¹²² Agreement on harmonization of legislation of the Member States of the Eurasian Economic Union in the sphere of financial markets, 6 Nov. 2018, Eurasian Economic Commission Legal Portal, https://docs.eaeunion.org/docs/ru-ru/01419538/itia_07112018 (accessed 28 Sept. 2020).

¹²³ Treaty on the EAEU, *supra* n. 17, Annex 17, point 37.

¹²⁴ *Ibid.*, Art. 103.

¹²⁵ *Contradictions and Challenges of Eurasian Integration: Ways to Overcome* 19–20 (Leonid Slutsky ed. 2018).

¹²⁶ *Members of the ECE Council Agreed on Several Positions of the Strategic Directions for the Development of Eurasian Integration*, Eurasian Economic Commission (6 Feb. 2020), <http://www.eurasiancommission.org/ru/nae/news/Pages/06-02-2020-3.aspx> (accessed 28 Sept. 2020).

so-called ‘Strategy 2025’ received general approval on 19 May 2020 at the meeting of the Supreme Council.¹²⁷

On the external level, the EAEU will keep on developing its net of international relations with several countries. On this regard, EAEU officials attended meetings with representatives of Thailand,¹²⁸ Cuba,¹²⁹ Indonesia¹³⁰ and Mongolia.¹³¹ Concerning the international relations of the EAEU it is also interesting to notice that the expression ‘international integration unions’ has been expressly used in the aforementioned Treaty, in which Member States and the EAEU agreed on a standard procedure to negotiate and conclude international treaties.¹³² In fact, the EAEU, as mentioned earlier,¹³³ is willing to be perceived by the EU as a single partner and not as five separate smaller Member States as it happens today. To do so, part of the EAEU strategy is to involve European businesses by organizing forums on the territory of the EU and by inviting delegations of European entrepreneurs to participate in events in the EAEU in order to promote relations between the EAEU and private European businesses. A significative private-led initiative, albeit with still limited impact, is the Lisbon-Vladivostok working group, which involves a number of important corporations and business associations from both the EU and the EAEU and calls for closer cooperation between the two regional integration organizations.¹³⁴

10 CONCLUSION

As anticipated at the beginning of this article, the EAEU is a trade deal with a political end. Following a troubled century, which began with the Russian

¹²⁷ *Itoqi vysshego Evrazijskogo ekonomičeskogo soveta*, Eurasian Economic Commission (19 May 2020), <http://www.eurasiancommission.org/ru/nae/news/Pages/19-05-2020-6.aspx> (accessed 28 Sept. 2020).

¹²⁸ *Thailand Is Interested in Cooperation with EEC*, Eurasian Economic Commission (30 Oct. 2019), <http://www.eurasiancommission.org/en/nae/news/Pages/30-10-2019-4.aspx> (accessed 28 Sept. 2020).

¹²⁹ *EAEU and Cuba Strive to Deepen Cooperation in All Formats*, Eurasian Economic Commission (12 Nov. 2019), <http://www.eurasiancommission.org/en/nae/news/Pages/12-11-2019-2.aspx> (accessed 28 Sept. 2020).

¹³⁰ *EEC and Indonesia Work Out Further Collaboration Plans*, Eurasian Economic Commission (28 Nov. 2019), <http://www.eurasiancommission.org/en/nae/news/Pages/28-11-2019-1.aspx> (accessed 28 Sept. 2020).

¹³¹ *EAEU and Mongolia Continue Developing Cooperation*, Eurasian Economic Commission (30 Oct. 2019), <http://www.eurasiancommission.org/en/nae/news/Pages/30-10-2019-3.aspx> (accessed 28 Sept. 2020). *EAEU and Mongolia Develop Cooperation*, Eurasian Economic Commission (3 Dec. 2019), <http://www.eurasiancommission.org/en/nae/news/Pages/03-12-2019-3.aspx> (accessed 28 Sept. 2020).

¹³² See *supra* n. 22.

¹³³ See *supra* n. 1 as well as n.107.

¹³⁴ *Lisbon-Vladivostok: A Common Economic Space*, <https://lisbon-vladivostok.pro/> (accessed 28 Sept. 2020).

Revolution, the Cold War and the transition to the market economy, Russia aims to establish herself again as a leading player on a global scale. By pushing forward a regional economic integration project such as the EAEU, Russia is retaking her hegemonic role in the Post-Soviet space – which is the size of a continent – by undertaking the role of the ‘majority shareholder’ of a project, which so far is economic in nature. If, on the one hand, the Ukrainian and the Crimean crises (which are still at the core of the tense US and EU–Russia relations) may be analysed through the prism and ideologies of XXth century, on the other hand the challenge posed by Russia in XXI century is no longer only a military or ideological one; it is instead a global economic challenge under the new flag of free trade. Up until a few years ago, nobody thought that the EAEU might become real. This is shown by the little, if any, analysis on the subject done by western academic scholars. Nevertheless, today the EAEU is an active and dynamic economic reality with which world businesses will have to deal more and more often. It is a geopolitical project centred on Russia and which establishes a single economic space on a continental scale which is pivotal for the Chinese ‘One belt, one road’ project. The EAEU, through its growing cooperation agreements with States such as Iran or China, could eventually shake the current system of restrictive measures (embargo) set up by the EU and the USA towards said countries, bringing about serious geopolitical changes.

Among those changes, the relations between the EU and the EAEU must be taken into serious consideration. To counterbalance the growing influence of China, through its ‘One belt, one road’ project, Russia proposes a mega-treaty between RTAs as a long-term goal: the establishment of a huge free trade area between the EAEU and the EU, the first step towards a single economic space spanning from Lisbon to Vladivostok.

As Henry Kissinger recently observed ‘A reconstruction of the international system is the ultimate challenge to statesmanship of our time. The penalty for failing will be not so much a major war between states ... as an evolution into spheres of influence identified with particular domestic structures and forms of governance’.¹³⁵ The case of the EAEU fits perfectly into this picture.

¹³⁵ Henry Kissinger, *World Order* 371 (2014).