

THE STUDY ON THE POSSIBILITIES FOR ESTABLISHING FTA BETWEEN MONGOLIA AND THE EAEU: ANALYSIS OF NON-TARIFF MEASURES

МОНГОЛ УЛС ЕВРО-АЗИЙН ЭДИЙН ЗАСГИЙН ХОЛБООТОЙ ЧӨЛӨӨТ ХУДАЛДААНЫ ХЭЛЭЛЦЭЭР БАЙГУУЛАХ БОЛОМЖИЙН СУДАЛГАА: ТАРИФЫН БУС ХОРИГ СААДЫН ШИНЖИЛГЭЭ

U.Nomintsetseg*

Хураангуй: 2016 онд Монгол улс Япон улсын эдийн засгийн түншлэлийн тухай хэлэлцээр байгуулагдсан ч цаашид манай улс эдийн засаг, нийгмийн хөгжлөө нэмэгдүүлэхийн тулд дэлхийн бусад бүс нутагтай интеграцид нэгдэхийг эрмэлзэж байна. Эдгээр оролдлогын нэг нь Евроазийн эдийн засгийн холбоо (ЕАЭЗХ)-той чөлөөт худалдааны хэлэлцээр хийх хамтарсан судалгааг эхлүүлэх явдал юм. Монгол улс болон ЕАЭЗХ-ны чөлөөт худалдааны хэлэлцээрийн боломжийн талаарх олон тоон судалгаа хийгдсэн байдаг ч чанарын талын судалгаа ялангуяа тарифын бус хориг саадын талаарх судалгаа хомс хэвээрээ байна. Тийм учраас уг судалгааны ажлаар хоёр талын чөлөөт худалдааны хэлэлцээрийг ирээдүйд байгуулахтай холбоотой тарифын бус хориг саадын талаар судлахаар зорьсон.

Түлхүүр үгс: Евроазийн эдийн засгийн холбоо, чөлөөт худалдааны хэлэлцээр, тарифын бус хориг саад

Abstract: Mongolia has recently concluded an Economic Partnership Agreement (EPA) with Japan in 2016; however the country further seeks to align with integration in other regions in order to accelerate its economic and social development. One of those efforts is that Mongolia requested to launch a joint study on possible FTA with the Eurasian Economic Union (EAEU). There have been number of studies aim to undertake quantitative analysis on the formation of a FTA between Mongolia and the EAEU. However, there is still lack of analysis on the qualitative side, namely non-tariff measures of the EAEU. Therefore, this study tries to shed some light on the non-tariff barriers when two sides forming possible FTA in the near future.

Key words: Eurasian Economic Union, Free Trade Agreement, Non-Tariff Measures

* Business School, National University of Mongolia (E-mail) nomintsetseg2014@gmail.com

Introduction

The EAEU is considered as a key player in the world trade arena, especially being as important exporter energy commodities, agricultural goods and machineries. The EAEU is taking largest share of (14.5 % in the world) oil extraction and taking second ranking in terms of gas production (19.3 %) and production of mineral fertilizers (4,3%). As to agriculture production EAEU plays a key role in the world production, especially it takes third ranking in terms of potato (11,3%), wheat production (10.5%) and representing 3.9% of the world meat production with 5th ranking. Concerning the infrastructure developments and machineries manufacturing (road and rail), metallurgical production and coal mining, the EAEU is taking the rankings at range of third to 8th places means that EAEU is being important player in the world economy. Therefore, there are growing interests among WTO members to establish FTA's with the EAEU in order to get an easy access to the Union market and negotiate the favorable conditions for their investments in the EAEU's minerals and metals production sectors, machineries manufacturing and agriculture production etc.

Looking at regional trading agreements of EAEU, the union Member-states have aligned with FTAs and CU and coverage is mostly concentrated on trade in goods. Further, the Union have launched the certain steps to expand its regionalisation with other countries and territories such as European Free Trade Agreement so called EFTA, Viet Nam and New Zealand from Oceania. Russian Federation, Belarus and Kazakhstan have started negotiations with EFTA and Viet Nam.

The Eurasian Economic Union (EAEU) and China signed the trade and economic cooperation agreement. The agreement is a non-preferential by nature and does not imply cancellation of duties or automatic reduction of non-tariff barriers. At the same time, the agreement will make possible to improve conditions for access of goods to the China market through norms for simplification of trade procedures present in the document, increase the transparency level and improve the level of interaction across all spheres of trade cooperation. Negotiations between the EAEU and China were held on the basis of the decision of the Supreme Eurasian Economic Council of May 8, 2015.

It is crucial for EAEU to pursue coordinated macroeconomic policy, as it will support their economic stability, it is necessary to pursue a coherent economic policy aimed at strengthening the competitiveness of the bloc's manufacturing sector. The implementation of directions for the development of a common economic space, the creation of unimpeded access to the markets of the EAEU countries made it possible to create conditions for increasing trade between countries, regardless of

external factors. The EAEU takes 35th place out of 190 an increase of five positions compared with 2017¹.

Global trade rules are experiencing tectonic changes, which are very often prejudiced against EAEU countries. It should be admitted that today the EAEU with its GDP of \$2 trillion and a population of 182 million people (including 93 million gainfully employed people) is not a self-sufficient market. It accounts for just 3.2% of global GDP. It is crucial to build up free trade areas network, and it is actually underway to negotiate FTA agreements between the EAEU and Israel, Serbia, and Singapore. Other potential partners include India, South Korea, Chile, Thailand, South Africa, and Iran (Table 1).

Table 1. Ongoing work on EAEU trade and Economic Agreements 2018

Active FTA	Vietnam (November 2015); Iran (May 2018)
Agreement on Trade and Economic cooperation	China (May 2018)
Negotiating Mandates	Singapore; Egypt; India; Serbia; Israel
Potential candidates (work teams, expression of interest, memorandums)	Cambodia; Chile; Greece; Jordan; Moldova Mongolia; Morocco; Peru

Source:www.theeconomictimes.com

The EAEU is in principle a customs union, with a common trade policy towards third country. The process of concluding trade agreements between the integration associations – the EAEU – on the one hand and its partner countries on the other is rapidly proceeding. Mongolia requested to launch a joint study on possible FTA during the second working group meeting held between Mongolia and EAEU in 2016. In February 2017, the Prime Minister of Mongolia stated that bilateral relations have been dynamically developing and that Mongolia is prepared to establish a joint working group for establishing a FTA with the EAEU.

The EAEU is an advanced form of the regional integration, featuring free trade between the member states (FTA), a common external tariff and suppression of internal customs controls (customs union), and further integration into a single market for all the ‘four freedoms’, for goods, services, labor and capital. However, de-facto, the trade policy integration of the EAEU is muddling through with features of a FTA and customs union. The commonality of its trade policy is significantly condensed by trade exemptions and divergences both within the union and in relations with the rest of the world.

Therefore, this study tries to shed light on the non-tariff measures. There has been a reduction of import tariffs in the multilateral trading system and an increase in the number of regional trade agreements involving tariff-free trade among

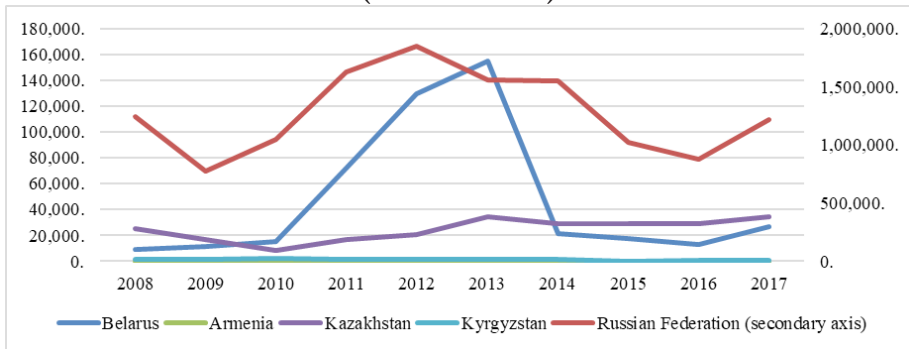
¹ The Doing Business 2018 rating

countries. A result of this is the increasingly important role of NTBs as barriers to the movement of goods and services. NTBs negate the positive effects of easier access to the market due to trade liberalization from the removal of tariff barriers. They can have a negative impact not only on trade flows within the existing export basket, but can also hinder the entry of new products, as well as the emergence of new trading partners.

2. Overview of Bilateral Trade and Economic Relations

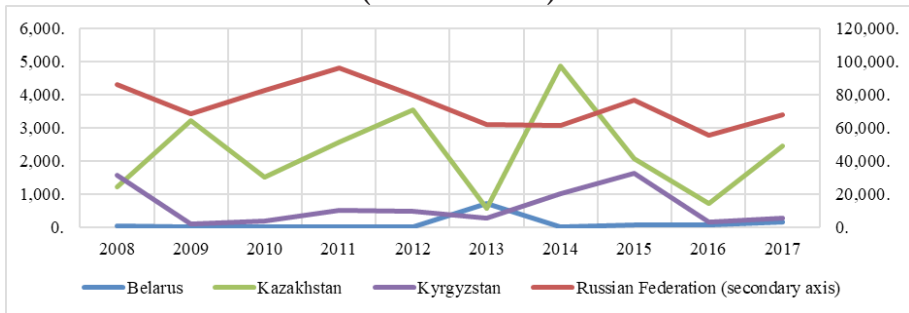
The EAEU market is one of the main trading partners of Mongolia. Russia and Kazakhstan are considered as the highest importers of Mongolian products and potential candidates for further market expansion (Figure 1). Exports to Russia, Kyrgyzstan and Kazakhstan have been rapidly increasing (Figure 2).

Figure 1. Evolution of imports between Mongolia and EAEU countries (in million USD)



Source: National Statistical Office of Mongolia

Figure 2. Evolution of exports between Mongolia and EAEU countries (in million USD)



Source: National Statistical Office of Mongolia

On the hand, the imports to Mongolia have a great diversity. Mongolia has imports from Germany, Japan, Korea, Turkey, Poland, and United Kingdom. Among all the importers, China and Russia has the largest share (Figure 4). Although, supplies from countries such as Japan, Korea, and Germany have a large share of import than Kazakhstan, the annual growth rather seems stable over the last years. Moreover, imports from Kazakhstan have been increasing lately relative to the other countries that Kazakhstan imports (WTO). It implies that Russia and Kazakhstan have potential for cooperation as supplying markets within EAEU.

In 2017, Mongolia's total bilateral trade with EAEU amounted to 1349 billion USD, while imports from EAEU countries amounted to 1279 billion USD (National Statistical Office of Mongolia).

Among EAEU countries, trade with Mongolia is concentrated with Russia with imports are bigger than exports. Trade with Kazakhstan has been increasing in later year, but the share of imports is larger than exports as well. There is no export to Belarus and Armenia. Mongolia's main export products are copper ore, gold, coal, travel and tourism, petroleum oil, crude.

Meat and processed meat products have a high potential for exporting to Russia, however, the tariffs are relatively high in this sector (IRIM, GIZ, 2016). As for trade with Kazakhstan, carpets and rugs, women's shirt, knit and cashmere products are most imported from Mongolia in the last year, while meat and edible offal of poultry is one of the top imported products of Kazakhstan (WTO). Thus, meat also has a potential for exporting. Mongolia's trade with Armenia, Belarus and Kyrgyzstan is relatively very small; almost zero in some countries, in some year.

The bilateral trade between Mongolia and the EAEU is presented in Table 2. Mongolia's total exports to the Member states of EAEU stood at USD 70,526.11 thousand (2017) which is low compared to the imports of total USD 1,278,557.12 thousand in the same year. The majority of exports is accounted by Russia (67,661.07 thousands of USD) followed by Kazakhstan (2437.07 thousands of USD), Kyrgyzstan (268.63 thousands of USD), and Belarus (159.34 thousands of USD). Mongolia did not export to Armenia for the last decade (NSO, 2018), but imported goods and services. As of the year 2017, the trade between Mongolia and Russia has been majorly accountable of the all trade between Mongolia and the EAEU.

The bilateral trade linkages with the EAEU member countries, except Russia and Kazakhstan, is currently very weak. From the Table 8 it is clear that Mongolia has trade deficit with all member countries of the EAEU. Given the great potential of exporting goods to the foreign market, Mongolia has a way to look forward to increase its exports to the EAEU.

Table 2. Bilateral trade between Mongolia and the EAEU, 2017 (USD thousand)

	Armenia	Belarus	Kazakhstan	Kyrgyzstan	Russia	EAEU Total
Mongolia's Exports	0	159.34	2437.07	268.63	67661.07	70526.11
Mongolia's Imports	48.79	26715.83	34152.71	378.43	1217261	1278557.12
Trade Deficit	-48.79	-26556.5	-31715.6	-109.8	-1149600	-1208031

Source: National Bureau of Statistics of Mongolia

According to the International Trade Center, Mongolia has exported overall 30 types of products to the EAEU in 2017, exporting 30 types to Russia, 9 types to Kazakhstan, 4 types to Kyrgyzstan, and 2 types to Belarus. There are exports of top 10 products from Mongolia to the EAEU member countries. Products of mining origin or natural resource origins such as salt and stones (26499 thousands of USD) is dominant in the exports, followed by meat and edible meat offal's (7491 thousands of USD), Articles of Apparel and clothing (3080 thousands of USD) and so on. As Mongolia did not export Armenia in the last ten years, we should take into consideration the other four countries in the EAEU.

Although some type of product export value was high, we should look into the products that were exported to all four countries or to multiple member states. Products of non-mining origin such as Articles of apparel and clothing accessories (to four countries) and carpets (to three countries) were exported to multiple member states of EAEU. This shows the potential to expand the exports of these products. From the products of Agriculture origin meat and wool products were exported to Russia and Kazakhstan respectively.

3. Qualitative Analyze on the Non-Tariff Measures

According to the latest UNCTAD research, tariffs have become less restrictive as a result of tariff liberalization taking place multilaterally, via bilateral and regional trade agreements, or unilaterally. However, the use of non-tariff measures has a steady growth. Under non-tariff measures are understood policy measures, other than ordinary customs tariffs, that can potentially have an economic impact on international trade in goods, changing quantities traded, or price or both (UNCTAD, 2010). Therefore, many argue that there is necessity to study those measures before joining any regional trade integration.

There are developed and approved 46 technical regulations, of them 39 had come into force November 2018. They regulate about 85% of all products being

traded. These are technical regulations in the field of food safety, consumer goods, safety equipment, electrical engineering and mechanical engineering, energy resources.

The development of 12 technical regulations of the Union is in progress, five of which are at the final stage of readiness. These are technical regulations that establish requirements for the energy efficiency of household electrical appliances, main pipelines, civil defense products, alcoholic beverages, poultry meat and products of its processing.

There are several sources of NTMs database. One of them is a WTO notion. The Integrated Trade Intelligence Portal provides a single entry point for information compiled by the WTO on trade policy measures. It covers as tariff measures, as non-tariff measures which affect trade in goods and services. I-TIP Goods database includes information on some NTMs: Anti-dumping (ADP), Countervailing (CV), Quantitative Restrictions (QR), Safeguards (SG), Sanitary and Phytosanitary (SPS), Special Safeguards (SSG), Technical Barriers to Trade (TBT), Tariff-rate quotas (TRQ), Export Subsidies (XS).

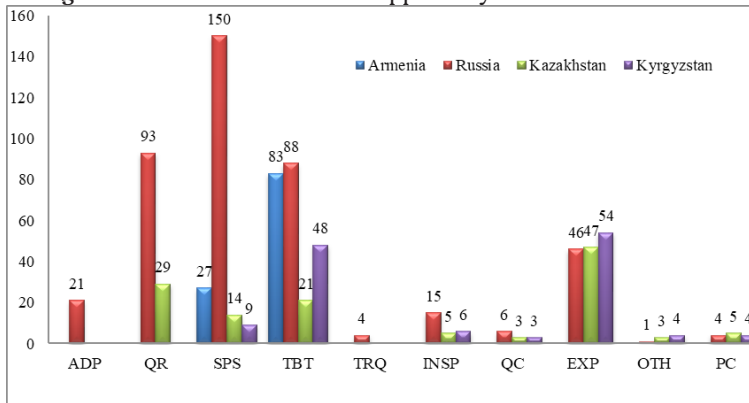
According to notifications, among EAEU and WTO members, Kyrgyzstan imposes the fewest NTMs: only 9 SPS and 48 TBTs; the highest number of NTMs is imposed by Russia: 21 ADPs, 93 QRs, 150 SPSs, 88TBTs and 4 TRQs. Because Belarus is not WTO member yet and has negotiation process for becoming a WTO member, there is no data on NTMs imposed by this state.

Table 3. Number of non-tariff measures of the EAEU

EAEU	ADP	CV	QR	SG	SPS	SSG	TBT	TRQ	XS
Armenia	-	-		-	27	-	83	-	-
Kazakhstan	-	-	29	-	14	-	21	-	-
Kyrgyzstan	-	-		-	9	-	48	-	-
Russia	21	-	93	-	150	-	88	4	-

Source: Integrated Trade Intelligence Portal

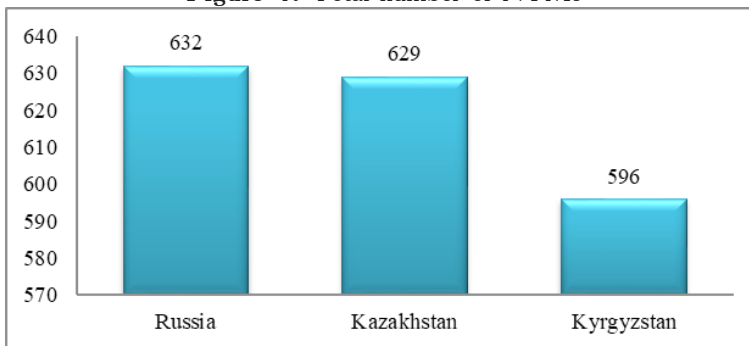
Data collection of non-tariff measures for the TRAINs database is still in progress and it does not include information on NTMs in Armenia despite it has been the WTO member since 2003.

Figure 3. Number of NTMs applied by the EAEU countries

Source: Authors' compilation. Integrated Trade Intelligence Portal, <http://i-tip.wto.org> ; TRAINS UNCTAD, <http://trains.unctad.org>

The biggest number of NTMs is imposed by Russian Federation, 632 measures, while Kazakhstan imposed by 3 measures less, 629 measures and Kyrgyzstan imposed 596 measures.

As Kazakhstan, Kyrgyzstan and Russia are members of one union and try to unify technical regulations, standards and label requirements, types of non-tariff measures are the same as in other EAEU member-states where amount of SPS measures and TBTs is relatively the same. The same relates to price control measures, quantity control, export-related measures and other measures, with the exception of contingent trade protective measures, imposed only by Russia.

Figure 4. Total number of NTMs

Source: TRAINS UNCTAD, <http://trains.unctad.org>.

Further, this section briefly develops the non-tariff measures such as rules of origin, customs procedures, SPS and TBT, importing license and trade remedies within the union.

3.1 Rules of Origin

The Rules of Origin are important in the context of making an assessment on the application of preferential tariff under an FTA. Hence, without the rules of origin, the preferential tariffs under an FTA cannot be implemented. The rules of origin are enforced through a certificate of origin that is issued by authorized agencies of the trading partner. An exporter cannot avail the customs tariff preferences under the FTA without submitting the certificate of origin from the authorized agency.

The Trade Policy Department of the Commission is responsible for elaboration together with EAEU Member States of preferential rules of origin. The preferential rules of origin are applied by the EAEU Member States in external preferential trade. In preferential trade with the CIS states (except the Republic of Uzbekistan) the EAEU Member States apply rules of origin adopted by the Agreement on rules of origin applicable in the CIS signed on November 20, 2009.

Within the framework of preferential trade with the Republic of Serbia, the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation apply their own bilateral rules of origin which were unified after the establishment of the Customs Union. EAEU-Vietnam FTA from 29.05.2015 also contains Rules of Origin which are applied by all EAEU Member States. The EAEU Member States apply the principle according to which an originating status of goods can be conferred upon importation of goods when they are either “wholly obtained or produced” or undergo “substantial transformation process” in the parties to the FTA.

In order to determine whether a good undergoes a substantial transformation process, origin criteria should be based on change of tariff classification (usually), value-added content, specific operations and processes or any combination of the mentioned criteria. Additionally, the EAEU Member States apply the lists of insufficient operations performance, which do not confer the originating status in the production of final products.

The EAEU Member States FTAs also stipulate the additional compulsory requirements for granting preferential treatment to originating goods upon importation such as direct consignment, direct purchase and submission of certificate of origin. Therefore, a product is granted tariff preferences provided that the product meets the origin criteria and:

- is exported under an agreement/ contract between the residents of exporting and importing parties to the agreement;

- is transported directly from the territory of the exporting party to the territory of the importing party;
- is supported by an appropriate documentary proof of origin.

As a documentary proof of origin the EAEU Member States apply certificates of origin and declaration of origin in respect of low-value consignments.

Due to the establishment of economic union and to the absence of customs declaration at the internal borders, a certificate of origin is not required within mutual trade between the EAEU Member States.

Within the EAEU, preferential certificates of origin are issued by Chambers of Commerce and Industry of the Republic of Armenia, the Kyrgyz Republic, the Russian Federation, and the Republic of Belarus. In the Republic of Kazakhstan, the National Chamber of Entrepreneurs is responsible for issuing the preferential certificates of origin.

In addition, in some FTAs within the framework of Rules of Origin the development and application of the electronic system of verification may be set forth. For instance, in the CIS where the legal basis for the implementation of such system was specified in the CIS rules of origin from 20.11.2009 and in the EAEU-Vietnam FTA from 29.05.2015.

If the central customs authority of the importing party and the central competent authority of the exporting party agree to implement and develop an electronic system to verify origin of goods, wherein the possibility and features of using of such a system should be formalized under a separate protocol, the original copy of the certificate of origin (hard copy) is not obligatory to be submitted to the customs authorities of the importing party during electronic declaration of goods. However, the details of such certificate must be identified in the customs declaration for goods.

3.2 Customs Procedures and Trade facilitation within EAEU

Customs procedures and trade facilitation as an important part of promoting the development of trade facilitation process can be considered as a priority for trade cooperation between the EAEU Member States and its FTA partner countries. That is why the possible FTA between the EAEU Member States and FTA partners should contain provisions on trade facilitation in order to reduce costs and minimize unnecessary bureaucratic measures restricting free movement of goods. Moreover, the provisions of the potential FTA relating to customs procedures and trade facilitation should be based on existing standards which are used by the WCO, as well as reflect the arrangements reached in the WTO Trade Facilitation Agreement (TFA).

The Department of the customs legislation and law enforcement practice² and Department of Customs Infrastructure³ are responsible for the application of customs procedures. Customs regulation of the EAEU Member States means legal regulation connected with movement of goods across the customs border of the EAEU, their transportation within the common customs territory of the EAEU under customs control, temporary storage, customs declaration, release or use of goods in accordance with the applicable customs procedures. The Customs Code of the Customs Union⁴ is the common customs law which regulates the key issues in customs area, sets general customs procedures and operations, rights and obligations for customs officials and declarants, and authorizes the EAEU Member States to designate domestic regulations in the particular customs areas.

Customs regulation in the EAEU is implemented in accordance with the customs law of the EAEU and, to the extent not covered by such law, by the national legislation of the EAEU Member States until appropriate legal relations are established at the level of the customs law of the EAEU. The Customs Code of the Customs Union is formed to meet the standards of the Kyoto Convention of May 18, 1973. The common customs territory of the EAEU Member States is the territory of the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation, as well as artificial islands, installations, structures and other objects that are situated outside the territory of the EAEU Member States, but subject to their exclusive jurisdiction.

Regarding the customs legislation of the EAEU, goods are released by the customs authority within 1 working day after the date of registration of customs declaration, unless otherwise is provided by the Customs Code of the Customs Union.

The time for release of goods can be extended by the time needed to undertake or complete operations of customs controls subject to written consent of the head or authorized deputy head of the customs authority or their alternates and does not exceed 10 working days from the date of registration of customs declaration.

Goods that are not subject to export duties or placed under the customs procedure of export or temporary export, with the list of such goods determined by the Commission, are released by the customs authority within 4 hours after registration of customs declaration for such goods.

All appropriate customs payments shall be paid at the time of customs declaration

² Eurasian Economic Commission, Department of Customs Legislation, and Law Enforcement Practice http://www.eurasiancommission.org/en/act/tam_sotr/dep_tamoj_zak/Pages/default.aspx

³ Eurasian Economic Commission, Customs Infrastructure Department http://www.eurasiancommission.org/en/act/tam_sotr/dep_tamoj_infr/Pages/default.aspx

⁴ Treaty on the Customs Code of the Eurasian Economic Union http://www.eurasiancommission.org/en/act/tam_sotr/dep_tamoj_zak/SiteAssets/Customs%20Code%20of%20the%20EAEU.pdf

procedure that can be made as optional at the place of entrance or at the place of destination. Customs representatives (brokers, agents) declare goods to customs on behalf and by order of the declarant. This service is not mandatory in the EAEU Member States.

Trade facilitation refers to the simplification, modernization, rationalization and harmonization of trade procedures that a trader is required to follow in importation or exportation. This includes simplifying trade-related laws and regulations and also ensuring their transparent administration. This also requires creation of essential infrastructure for enabling smooth and hassle free movement of goods across the international borders.

Once implemented, the TF Agreement⁵ would result in further transparency in trade administration; enhanced coordination among the border agencies; faster release and clearance of goods; and international cooperation in the areas of trade facilitation and compliance.

It has been removed the customs posts between the EAEU member countries in 2011, and this has reduced trade costs for exporters and importers operating in the three countries. But duplication of SPS inspections and trade disputes among the members has reduced the efficiency of trading across borders, and the imposition of delays at customs has also been used.

In the following table, it shows the efficiency of trading across borders within the union. Belarus shows relatively remarkable decrease between 2011 and 2014 in terms of cost of importing or exporting a container. The decrease in the costs of importing and exporting a container into Belarus is so dramatic and constant (with costs falling to about 20-25 percent of their 2011 values in 2014). It suggests that domestic reform independent of the union is likely a significant contributor to the cost reduction. Most likely due to the cost of importing and exporting a container, Belarus also shows a significant improvement in the “distance to the frontier” measure between 2011 and 2014.

The time to export or import has fallen by about 10 percent between 2012 and 2015 in Russian Federation. However, causality is difficult to assess, since Russia joined the WTO in 2012, the reduction in the time to export and import is consistent with compliance with WTO procedures rather than the formation of the Customs Union in 2010⁶. Or possibly other independent actions are the cause, such as the World Bank–Government of the Russian Federation Customs

⁵ During the Ninth Ministerial Conference of WTO, held on 3-7 December 2013 at Bali, Indonesia, members decided to conclude the trade facilitation negotiations and enter into an Agreement. On 27th November 2014 the General Council of WTO adopted the Protocol to insert the agreement into Annexure 1A of WTO Agreement. The Trade Facilitation Agreement (TFA in short) will enter into force in accordance with Article X: 3 of the WTO Agreement once two third members ratify the same.

⁶ David G. Tarr (2016).

Modernization project, which was committed specifically to this objective.

Table 4. Efficiency of Trading Across Borders (EAEU)

Measure	Year	Armenia		Belarus		Kazakhstan		Kyrgyz Rep		Russia	
		export	import	export	import	export	import	export	import	export	import
Time(days) to Exp/Imp	2010	16	18	15	30	76	62	63	72	24	23
	2011	16	18	15	30	76	62	63	72	24	23
	2012	16	18	15	30	81	69	63	75	24	23
	2013	16	18	15	30	81	69	63	75	21	20
	2014	16	18	15	30	79	67	63	73	21	19
	2015	16	18	15	30	79	67	63	73	22	20
Cost to Exp/Imp in USD per container, deflated	2010	2556	2984	7034	8396	4699	4777	3010	4899	3706	3834
	2011	2557	2974	7716	9163	4094	4303	3210	4683	3179	3292
	2012	2471	2852	3045	4725	5212	5190	4160	5209	2963	3147
	2013	2503	2889	1742	2702	5185	5163	4360	5215	2461	2616
	2014	1885	2175	1460	2265	5285	5265	4760	6000	2401	2595
	2015	1885	1885	1460	2265	5285	5265	4760	6000	2705	2920
Distance to Frontier (on trade)	2010	64.0		35.2		11.5		13.9		38.8	
	2011	63.9		35.2		15.1		15.1		45.4	
	2012	64.7		46.1		8.1		12.6		46.6	
	2013	64.5		56.8		8.2		12.7		53.0	
	2014	68.8		59.1		7.9		9.7		50.5	
	2015	64.5		56.8		8.2		12.7		51	

Source: World Bank, Doing Business Survey (various years).

The scale is 0-100, with higher scores indicate better performance.

Kazakhstan showed some improvement in 2010. Although since then the costs of exporting or importing a container have actually increased. Given that Armenia and the Kyrgyz Republic joined only in 2015, the data will not show the impact of joining the EAEU.

3.3 Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT)

Trade within the EAEU is basically duty free for both import and export duties. While national governments have remained responsible for the establishment of export duties vis-a-vis third countries, export duties are not applied to intra-EAEU trade. Moreover, unlike in earlier years, the member states are not obliged to compensate export duty receipts to the originating country in the case of their re-export to third countries (Knobel, 2015). The EAEU is moving towards a 'deep FTA' by harmonizing technical standards and regulations for industrial (TBT) and agri-food products (SPS). However, the member states still have significant

non-tariff barriers in intra-union trade. It means that EAEU members not only have non-tariff barriers been increasingly applied as trade restricting measures, but they also have had a significant import reducing effect. NTMs are used substantially more often than trade defense measures, which include anti-dumping, anti-subsidy and safeguard measures.

There are both econometric and descriptive evidences that non-tariff barriers are a significant problem in the EAEU. If the EAEU could make substantial progress on reducing these barriers, it would be a significant accomplishment. Unfortunately, so far the EAEU does not appear to *have made any progress on non-tariff barriers*. The trade policy integration of the EAEU is muddling through with features of a FTA and customs union. The harmony of its trade policy is significantly shortened by trade exemptions and divergences both within the union and in relations with the rest of the world. This leads to the question whether the EAEU is an 'optimal customs union area', or even an advantageous one, and what conceivable next step beyond the status quo is⁷.

Table 5. Non-tariff measures

Non-tariff measures (NTMs) are policy measures - other than ordinary customs tariffs - that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both.

Examples of NTMs:

Sanitary and Phytosanitary Measures (SPS): Measures that are applied to protect human or animal life from risks arising from: additives, contaminants, toxins or disease-causing organisms in food.

- Geographical restrictions on eligibility: Imports of dairy products from countries.

Technical Barriers to Trade (TBT): Measures referring to technical regulations, and procedures for assessment of conformity with technical regulations and standards.

- Labeling requirements: Refrigerators need to carry a label indicating their size, weight and electricity consumption level
-

Source: Non- tariff measures, UNCTAD, <https://unctad.org/>

The Centre for Integration Studies of the Eurasian Development Bank conducted a survey of exporters in Belarus, Kazakhstan, and Russia and estimated econometric analysis of non-tariff barriers faced by exporters. It has been found that Kazakhstan faced the highest barriers among the three countries. In particular, Kazakhstan faces about 39.8 percent of the value of their exports to Belarus and 14 percent of the value of their exports to Russia. But the ad valorem equivalents of the barriers faced by other exporters are significant, ranging from 6.3 percent by Belarusian exporters in Russia to 16.3 by Belarusian exporters in Kazakhstan.

Another survey, conducted in Belarus in 2015, reveals that about 17% of survey respondents declare the intra-EAEU market access as having significant

⁷ Movchan, V. and Emerson, M. (2018).

restrictions, and 33% as having medium accessibility (Tochytskaya, 2015). About 50% of Belarusian firms claim that they cannot freely compete on the EAEU market naming non-tariff barriers (NTBs) such as TBT and SPS as the third most important factors deterring competitiveness after limited financial resources and high production costs⁸.

There have been standards based trade disputes between Belarus and Russia on several products, including milk, meat, buses, pipes and beer. Russia declared that Belarusian meat and dairy products contain antibiotics, salmonella and listeria. Russia imposed an import ban on these products. Belarusian authorities failed to confirm these findings, and responded by increasing customs checks on Russian vehicles entering their territory, arguing this is a smuggling prevention action.

Meanwhile, Kazakhstan suspended Russian fuel and gas imports to protect its domestic market from a “surplus of Russian oil products.” The depreciation of the Russian ruble has significantly increased competition from Russian producers in the markets of Kazakhstan; but this is obviously a breach of the single market. Kazakhstan also banned five tons of Russian meat products from its market in March, 2015, saying that Russia was in violation of quality standards⁹. Russia argued that Kazakhstani producers do not fulfill the same quality rules and imposed counter-restrictions¹⁰.

The EAEU is major market for Kyrgyz exporters. Around 74% of exporters of manufactured goods and 70% of exporters of agricultural goods see the EAEU as the main export market. It is also in this market that Kyrgyz exporters encounter the greatest number of NTM obstacles. A survey of 310 companies¹¹ on non-tariff measures (NTMs) found 58% of Kyrgyz exporters to be facing challenges with various regulatory and procedural obstacles to trade. Inadequate testing and certification facilities in the country are a major challenge making compliance with technical requirements difficult – especially those of the Eurasian Economic Union and the European Union¹². Moreover, 81% of the burdensome NTM cases reported by Kyrgyz exporters are technical measures. Technical measures are the specific technical requirements, such as quality standards, safety, production processes and sanitary requirements, and the proof or certification that these requirements have been met, the conformity assessment.

⁸ Movchan, V. and Emerson, M. (2018).

⁹ Standards are often used as non-tariff barriers, but recognizing their legitimate regulatory role, and also the importance of reducing trade costs more broadly, global experts in the field of non-tariff measures, trade facilitation and services recommend establishing an effective regulatory review and improvement mechanism

¹⁰ David G. Tarr (2016).

¹¹ Some 70% of the companies interviewed are involved only in export business, another 26% are involved in both export and import business and just 4% only import.

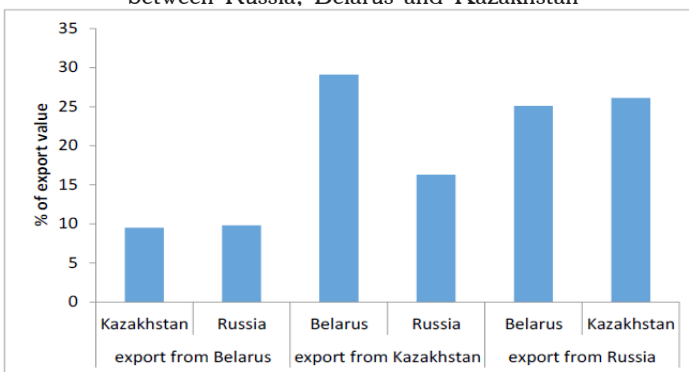
¹² International Trade Centre Report (2018).

In Kyrgyzstan, 72% of the examples of NTMs exporters considered burdensome are difficult solely because of procedural obstacles, such as time delays, insufficient facilities and administrative hurdles or high fees. Most of these procedural obstacles occur inside Kyrgyzstan. In contrast, in only 12% of the examples were the NTM regulations themselves the problem.

According to the study of ITC, farm producers' exports are affected most by NTMs. For example, 79% of agri-food exporters are affected by NTMs while 47% of exporters of manufactured goods affected by NTMs. In general, fresh food and agricultural products are highly regulated for reasons of human health and safety, and environmental protection. Most of the difficulties faced by agricultural exporters are technical measures applied by importing partner countries. EAEU technical requirements tend to be more stringent than Kyrgyz ones. These include requirements related to food safety issues, such as limits for residues or contamination by certain substances, hygiene practices, transportation and storage conditions (ITC, 2018). Most companies are not able to meet major international quality standards, such as HACCP and ISO 22000. Complying with these standards requires significant upgrades to companies' production infrastructure and changes in quality management systems. The small scale of most Kyrgyz exporters and their limited resources makes this difficult to do.

The following survey of EAEU shows that ad-valorem equivalents of intra-EAEU non-tariff barriers have been quite high varying from 10% to almost 30% of exports' value for different pairs of countries. Key NTBs include measures affecting competition, technical barriers to trade, price control measures, and public procurement issues (Movchan & Emerson, 2018).

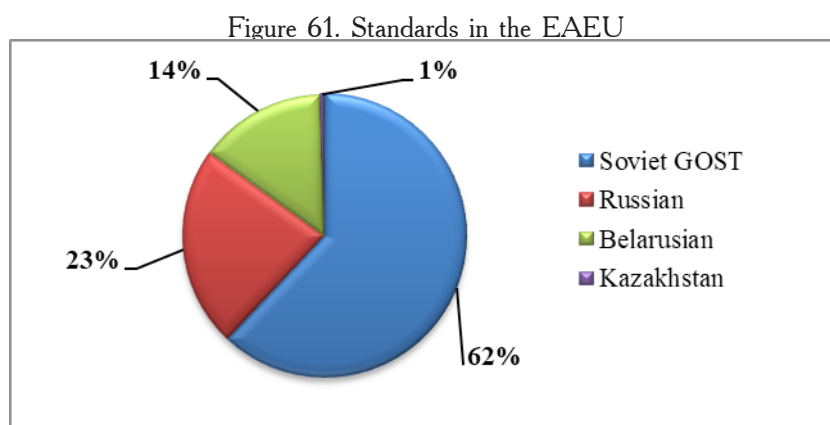
Figure 5. Ad valorem equivalent of non-tariff barriers (NTBs) in trade between Russia, Belarus and Kazakhstan



Source: Movchan and Emerson (2018)

Vakulchuk and Knobel (2018)¹³ studied that impact of non-tariff barriers on trade within the EAEU. They utilize empirical approach on the Haveman and Thursby disaggregated model. The estimates show that various trade-growth effects can be observed in different trade groups if non-tariff barriers are reduced or fully eliminated. Agriculture and the food industry have the highest growth potential: around 40% growth with a 50% reduction of barriers. The highest growth potential is found for trade between Belarus and Kazakhstan. The most significant effects are observed for member-states that are small in terms of the size of the economy and for which the internal trade share is large.

Another big problem in reducing standards as a non-tariff barrier in the EAEU is that standards regulation is still based primarily on the Soviet system of standards regulation, known as GOST. There are about 20,000 standards that apply in the union. They remain heavily dominated by those developed by the Soviet Union (referred to as GOSTs, they account for 62 percent of standards), followed by Russian (23 percent) and Belarusian (14.5 percent) standards¹⁴



Source: Shymulo. T. (2012).

According to the Asian Development Bank indicated that SPS standard in Azerbaijan and the Asian countries of the Commonwealth of Independent States: “Indeed, the most significant technical barriers to adherence to SPS principles, apart from being a trade barrier itself, is the GOST system.”¹⁵ The WTO states that the GOST system is not compatible with the SPS Agreement. The WTO does not consider the technical regulations in the GOST system to be SPS measures but a

¹³ Vakulchuk, R. and Knobel, A. (2018).

¹⁴ Shymulo-Tapiola (2012).

¹⁵ Asian Development Bank (2013).

mixture of TBT-related regulations and SPS measures.

Table 6. Difference between GOST and International Standards

Area of Responsibility	GOST system	International Standards
Food safety	Public sector	Private sector
Focus of control	Product “end of pipe”	Process “chain”
Nature of requirements	Highly descriptive and mandatory	Safety is mandatory Quality is voluntary
Inconsistent procedures		
Incompatible laboratory procedures, equipment, and tests		

Source: Asian Development Bank (2013)

The system of technical regulation of the EAEU aims to carry out coordinated policy in the field of technical regulation, Free Trade Agreement between Eurasian Economic Union and India 75 harmonize the legislation of the EAEU Member States in this sphere and establish common mandatory requirements for products in the territory of the EAEU with a view to create conditions for free movement of products (goods) and to decrease technical barriers to mutual and international trade. The Department for Technical Regulation and Accreditation¹⁶ of the Eurasian Economic Commission is in charge of technical regulation at the supranational level.

The countries agreed on a strategy for the development of a common system of technical regulation and the application of SPS measures of the customs union for 2011–2015, and established a schedule for the development of 38 technical regulations of high priority. However, the implementation of these measures is slow. Diverging technical regulations, including SPS standards, remain the biggest barrier to intra-union trade and enable the union’s members to engage in trade wars with one another.

The EAEU authorities recognize the NTBs as a problem. According to the Eurasian Economic Commission (EEC), there are over 450 trade barriers in the intra–EAEU trade, of which 80% consist of exemptions and limitations foreseen in the EAEU Agreement.

In the CIS FTA the issues of technical regulation are covered by a separate article which stipulates that when applying technical measures, including technical regulations, standards and procedures for assessment of compliance, the parties shall be guided by the rules and principles of the WTO Agreement on Technical Barriers to Trade. At the same time the EAEU Member States are the parties of the international agreements on TBT adopted within CIS. There are also specific

¹⁶ Eurasian Economic Commission, Technical Regulation and Accreditation Department
<http://www.eurasiancommission.org/en/act/tecreg/deptexreg/Pages/default.aspx>

articles on technical regulation in the FTAs with the Republic of Serbia and also the Federal Republic of Yugoslavia. These articles contain provisions to promote information exchange and to realize and implement the provisions of the Agreement by concluding ad hoc agreements. The FTA with Vietnam has specific chapters addressing issues on technical regulation. The aim of these chapters is to generate the mechanism of consultations, information exchange and cooperation between the parties. The basic principle is the implementation of the WTO TBT Agreement provisions by the parties.

The current situation with the FTA provisions of the EAEU is quite conventional. Trade is conducted duty-free, but there are still non-tariff barriers that allow countries to protect their markets effectively. The progressive convergence of TBT and SPS regulatory framework on international and European norms will reduce non-tariff barriers within the union, deepening the FTA.

3.4 Importing License and Quantitative Restrictions

The principles of common non-tariff regulation for the EAEU are set out in the Treaty on the EAEU, and in supplement agreements and decisions applied by the Commission. The important issues on import licensing and quantitative restrictions in the EAEU have been outlined in Article 46 and Annex 7 to this Treaty.

Foreign trade licensing applies in the accompanying cases:

- Introduction of temporary quantitative restrictions on export or import of certain types of commodities;
- Granting an exclusive right to export and (or) import certain types of commodities;
- Permitting procedure of imports (exports);
- Tariff quotas;
- Import quotas in case of safeguard measure.

Authorized agencies of the EAEU's members issue import and export licenses in accordance with the procedures defined by the Treaty on the EAEU. Those licenses that have been issued by an authorized agency in any Member State of the EAEU are recognized by the other Members States of the EAEU.

Import and export licensing of goods included in the list of goods subject to import and export restrictions and constraints is carried out in accordance with the rules provided by the Annex 7 to the Treaty. Authorized agencies in the Members States of the EAEU issue the following import and export licenses, such as individual license, general license, and exclusive license.

Quantitative restrictions may be levied in case of temporary bans or temporary quantitative restrictions on exports in order to prevent or reduce the critical scarcity

in the domestic market main products; bans and quantitative restrictions of exports and imports, necessary in the application of standards or rules of classification; restricting imports of aquatic biological resources in some cases.

Quantitative restrictions may be imposed by means of quotas or prohibitions regarding exclusive export and/or import rights with respect to certain goods, which may be granted by the provision of special privileges to certain foreign trade participants in the form of special licenses issued by a duly authorized agency of the EAEU's members.

The legislation of the EAEU establishes a list of goods subject to import/export restrictions and restraints. This list is represented in the Decisions of the Board of the Eurasian Economic Commission¹⁷. This includes 8 categories of goods that are not allowed for import/export, and 29 categories of goods subject to limitations in their import/export across the EAEU customs border. For example, those are precious metals, precious stones, some types of mineral raw material, pharmaceuticals, radio electronic equipment, high-frequency devices, encryption/cryptographic facilities, cultural values, etc.

3.5 Trade Remedies

Anti-dumping, countervailing and safeguard measures are applied with regard to imports from third countries at the EAEU international level. The EAEU trade remedies regime is regulated by Articles 48, 49, 50 of the Treaty on the EAEU, and the provisions of Annex 8 to the Treaty on the EAEU¹⁸ which are fully along with the relevant WTO Agreements.

Trade Remedies under WTO Agreements

Anti – dumping: An anti-dumping measures is a counter measure taken against a dumping action of an exporter. It is considered that dumping takes place when a product is introduced into the commerce of an importing country at less than its normal value, i.e. if the export price of the product exported is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

Countervailing duties: Countervailing duties are intended to offset any direct or indirect subsidy granted by authorities in the exporting country. These may take the form of extra duty (“countervailing duty”) or price undertakings against subsidized imports that are found to be hurting domestic producers.

Safeguard: A WTO member may take a safeguard measures (i.e., restrict imports of a product temporarily) to protect a specific domestic industry from an increase in imports of any product which is causing, or which is threatening to cause, serious injury to the industry (Source: ITC – Market Access Map).

¹⁷ The Decisions of the Board of the Eurasian Economic Commission N° 134 of 16.08.2012 and N° 30 of 21.04.2015.

¹⁸ Protocol on the Application of Safeguard, Anti-Dumping and Countervailing Measures to Third Countries

The Department for Internal Market Defense (DIMD)¹⁹ of the Commission is the investigating authority of the EAEU. DIMD is responsible for commencing and conducting of anti-dumping, countervailing and safeguard investigations. An investigation is initiated upon an application by or on behalf of the EAEU industry that is filed directly to the DIMD. The DIMD prepares a report of the investigation result. It contains the conclusions based on relevant evidence collected during the course of the investigation. In addition, DIMD recommends whether or not to impose or prolong the application of trade remedies.

The Board of the Commission adopts a decision to impose safeguard, anti-dumping and countervailing measures after consulting with the EAEU Member States in an Advisory Committee. An Advisory Committee represents a working body composed of the representatives of the interested public authorities of the EAEU Member States. The decisions on application of trade remedies may be challenged in the Court of the EAEU in accordance with the provisions of Annex 2 to the Treaty on the EAEU (Statute of the Court of the EAEU).

Conclusion

The analysis of non-tariff measures applied by members of the Eurasian Economic Union in respect to as other countries as to each other shows that sometimes these measures are imposed for protection of health, environment and safety and they are necessary, like prohibition of import ban on ozone-depleting substances and products containing ozone-depleting substances prohibited for import and export, instruments of extraction (fishing) of aquatic biological resources prohibited for import, plant protection products and other persistent organic pollutants prohibited from being imported and others.

In other cases, NTMs are imposed by other reasons: protection of domestic industry, elimination of the amount of imported goods, especially when imported commodities are more popular than domestic ones and other defensive reasons. The work on NTMs gathering and analysis should be continued as it might help us to make these measures more transparent, see the cases of rude violation of legislation and commitments like WTO, EAEU, and some kind of “success” measures, which are helpful in sustainable development achievement: protection of health, safety and environment.

Many scholars argue that non-tariff barriers remain a serious problem within the EAEU, and it is difficult to conclude that the EAEU has led to a reduction of the costs of exporting and importing due to a reduction of the costs of the non-tariff

¹⁹ Eurasian Economic Commission, Department of Internal Market Defense
<http://www.eurasiancommission.org/en/act/trade/podm/Pages/default.aspx>

barriers. We have seen that there are several trade disputes between Belarus, Russia and Kazakhstan due to standards. Primary concern of EAEU member countries is the complex issue of what exactly constitute 'standards' in SPS context. Indeed, the most significant technical barrier to adherence to SPS principles, apart from being a trade barrier itself, is the GOST system, the Soviet State Standards system, which was replicated in the CIS countries (e.g., the UzStandart in Uzbekistan). Therefore, Mongolia needs to pay attention to issues on tariff measures in the union before it integrates with the union.

References

- [1] Asian Development Bank (2013). *Modernizing Sanitary and Phytosanitary Measures to Facilitate Trade in Agricultural and Food Products: Report on the Development of an SPS Plan for the CAREC Countries*, Manila: Asian Development Bank.
- [2] Heal, A. and Mladenovic, T. (2014). *Kazakhstan's Membership of the Eurasian Customs Union: Implications for Trade and WTO Accession*. ARTNet Policy Brief.
- [3] Knobel, A. (2015). Eurasian Economic Union: Prospects and Challenges for Development. *Voprosy Ekonomiki*, 2015, No. 3, pp. 87—108.
- [4] Tochytskaya, I. (2015). Evaluation of Consequences of SES and EAEU Integration by Belarus SMEs. Discussion Material IPM, PDP/15/05.
- [5] Movchan, V. and Emerson, M. (2018). "The Eurasian Economic Union's problematic customs union" The Swedish International Development Agency (Sida).
- [6] International Trade Centre (2018). *Kyrgyzstan: Company Perspectives. An ITC Series on Non-Tariff Measures*. ITC, Geneva.
- [7] Popescu, N. (2014). Eurasian Union: The Real, The Imaginary and The Likely, *European Union Institute for Security Studies*.
- [8] Shymulo, T. (2012). The Eurasian Customs Union: Friend of Foe of the EU? *The Carnegie Papers*, Carnegie Endowment for International Peace.
- [9] Tarr, D. (2016). The Eurasian Economic Union of Russia, Kazakhstan, Armenia, and the Kyrgyz Republic: Can It Succeed Where Its Predecessor Failed? *Eastern European Economics*, 1-22.
- [10] Vakulchuk, R. and Knobel, A. (2018), "The Impact of Non – Tariff Barriers on Trade within the Eurasian Economic Union", *Post – Communist Economies*, Vol. 30, No.4, 459-481.