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## Problems of Harmonization of the Legislation of Kazakhstan and China - Participants of Strategy «A Silk Way»

**Abstract.** Given article is devoted to the problems of unification of the legislation of Kazakhstan and China on the question of transnational transaction of products and services. Also analyzing main conditions of Kazakh-Chinese relations and their legal regulation is conducted. As a foundation of given relations are taken conditions of the realization of the strategy «One Belt and One Road». As a feature of the development of Kazakh-Chinese relations, their realization in the frames of Eurasian Economic Community is discussed. Authors analyze activity of this EEC, customs and emigrational policy, economic relations. In addition, they set down possibilities of realization of the given scheme in the frames of strategy «One Belt and One Road».

**Keywords:** Kazakh-Chinese relations, customs policy, migration policy, international agreements and contracts, unification of legislation.

### Introduction

From the moment of gaining independence the Republic of Kazakhstan (hereinafter RK) is building an economy of open type. During more than twenty years the world's largest companies in mining, oil and gas sectors, hundreds of foreign corporations and enterprises in metallurgical, construction and other fields have entered the market of Kazakhstan and successfully continue their business. Our government creates new integration forms of international formation and collaboration by stimulating own economic interests.

Understandably, the economic cooperation of Kazakhstan is primarily regional. Therefore, the relationships with Russia, the states in central Asia (Kyrgyzstan, Uzbekistan, Tajikistan, Turkmen) and certainly with People's Republic of China (hereinafter PRC) are country's principal ones. Each direction besides economic connections raises issues of political alliance and should have the legal foundation. The features of such relationships are that the multipolar policy compels the RK to consider reciprocal influence of the countries not only on Kazakhstan, but also with each other (PRC-Russia, PRC-Kyrgyzstan, and PRC- Uzbekistan).

### Methods

In our research, we use regulatory impact analysis as a systematic approach to critically assessing the positive and negative effects of proposed and existing legislative and non-legislative alternatives. The analysis encompasses a range of methods but is intended to be an evidence-based approach to policy analysis.

### Main body

Between the Republic of Kazakhstan and People's Republic of China diplomatic relations are established on January 3, 1992.

Since February 2015. The ambassador of RK in the People's Republic of China is Sh. Nuryshev.

Since December 2014. The ambassador of the People's Republic of China in RK – Zhang Hanghui.

In the territory of the People's Republic of China except Embassy of RK in Beijing (since December, 1992) consulate Generals of RK in Hong Kong (since August, 2003) and Shanghai (since May, 2005), Passport and visa service in Urumqi function (since March, 1995).

In the territory of RK works the Embassy of the

People's Republic of China in Astana and Consulate General of the People's Republic of China in Almaty (since August 2007).

The main political achievements during diplomatic relations: granting safety guarantees by China (The statement of the Government of the People's Republic of China of February 8, 1995), final settlement of a boundary question (The joint communiqué of November 23, 1999, the Agreement between PK and People's Republic of China on the Kazakhstan-Chinese frontier of April 26, 1994, the Protocol on demarcation of the line of the Kazakhstan-Chinese frontier of May 10, 2002 and the Agreement between PK and People's Republic of China on the mode of the Kazakhstan-Chinese frontier of December 20, 2006) [1].

There are about 100 international agreements between Kazakhstan and PRC. The next ones should be mentioned:

1. Agreement between the Government of the RK and the Government of PRC on opening of crossing points across the state border, August 10, 1992;

2. Agreement between the RK and PRC on legal assistance in civil and criminal issues;

3. Agreement between the Government of the RK and the Government of PRC on air traffic;

4. Agreement between the Government of the RK and the Government of PRC on procedure for issuing visas for mutual trips of citizens;

5. Protocol on making amendments and additions to the Agreement between the Government of the RK and the Government of PRC on crossing points across Kazakh-Chinese border and their regime of work, June 6, 2012 [2].

Mention may also be independent of the agreement in the field of energy, environmental protection, the use of different modes of transport. In fact, today the Republic of Kazakhstan and China take agreement, which should strengthen trade relations between our countries.

For successful implementation of the actions of these agreements and the development of new solutions protocol between Kazakhstan and China is organized and operates permanent Kazakh-Chinese Cooperation Committee in the composition, which includes a number of sub-committees in particular in customs co-operation, which was established in May 2004, the specialized authority has been developing strategic directions of cooperation between China and Kazakhstan in all possible issues from economics to cultural relations. He developed cooperation strategy in the XXI century, as well as the Joint Declaration on the Establishment and Devel-

opment of Strategic Partnership (July 2005, Astana); Cooperation Strategy in the XXI century. The concept and development of economic cooperation (December 2006, Beijing); The program of cooperation in non-oil sectors of the economy (in August 2007, Astana); Joint Declaration on the development of comprehensive strategic partnership (June 2011, Astana).

Each area in addition to economic ties raises questions of a political alliance should have deep legal basis. A feature of these relations is that building up a lot of vector policy of Kazakhstan is part of the ideological component of the concept of «Silk Road» is the special status of the territory on which will move the goods and services of States Parties «Silk Road». Strategy «One Belt One Road» is a more detailed legal education, the United States uniform legislation in such important areas as the customs system, the system of foreign trade and law, the legal system of foreign direct investment, legal freedom currency transactions and monetary and financial operations. As part of this strategy «One Belt One Road» should be addressed a wide range of issues such as the standard controls, procedures, measures, in terms of trade in goods, such as the licensing system and procedures, rules concerning the origin of goods, in terms of the arrival of foreign investment, part of the monetary system and the cash flows. To this we must add the project financing of the construction, the organization of labor and wages of foreign nationals, policies that may affect foreign direct investment; judicial systems, in terms of the decision of arbitration of disputes of foreign legal entities.

It should be understood that creating a special regime of the territory «One Belt One Road» it is necessary to improve legislation, not only in Kazakhstan but also all the countries located in this territory. It is also necessary to study the experience of inter-state economic entities, which includes Kazakhstan.

Meanwhile, to develop the legal basis for a special mode of Sino-Kazakh relations, it is necessary to present Kazakhstan as independent in this process, whether he has obligations to other States, ie must take into account the mutual influence of these states not only in Kazakhstan, but also the relationship with each other (China - Russia, China - Kyrgyzstan, China - Uzbekistan).

One of the forms of interstate economic cooperation is the Eurasian Economic Community (EAEC), which began operations on January 1, 2015 and which is a member of the Republic of Kazakhstan.

We know that the creation of the EAEC was preceded by a long work approbation of economic relations between Russia, Belarus and Kazakhstan within the framework of EurAsEC. This period has taken almost 15 years. The Customs Union was formed at this time, has been created and operates the Eurasian Economic Commission. Although the activities of the EAEC has a lot of questions, in general, this form of economic integration should yield positive results.

The idea of creating a common space of the interstate, with a single customs-free zone of passport movement, a single inter-state currency is not new. It is well implemented in the European Union's activities. European Union - is a unique inter-state education, which in a relatively short period of time was able to build a pan-European system of legislative, executive and judicial bodies of power and administration. A general system of laws, a common market, established rules guaranteeing freedom of movement, the abolition of passport controls, free flow of goods, capital and services.

The European Union passes laws (directives, laws and regulations) in the field of justice and home affairs, as well as develop a common policy on trade, agriculture, fisheries and regional development.

In fact, the European Union is the subject of public international law and has the authority to participate in the international relations and the conclusion of international agreements. Formed common foreign and security policy, calls for a coherent foreign and defense policy. Around the world, the EU established permanent diplomatic missions, there are offices in the United Nations, the WTO, the Group of Eight and Group of Twenty. The EU delegation was led by EU ambassadors.

Today the European Union has become the first and only in the world of the regional inter-state union, which has consistently implemented the steps of economic and political integration:

- total free trade zone;
- the total area of the customs union;
- common market;
- zone single passport regime and freedom of movement;
- area of the single European currency.

In recent years, the Republic of Kazakhstan is actively involved in economic integration processes with the Russian Federation and the Republic of Belarus. This is not a simple process influenced by political factors, internal and external. Despite the difficulties, the integration of the development is progressive. In fact, in the period from 2000 to

2014, conditions were created for the formation of the Eurasian Economic Community (EurAsEC). From a legal point of view, this resulted in the adoption of the Customs Code, which came into effect on the entire territory of the Customs Union of 6 July 2010 [3]. From 1 July 2011 at the borders of Russia, Kazakhstan and Belarus abolished customs controls, which was moved to the outer contour of the borders of the Customs Union.

Customs Union EAEC - a form of trade and economic integration of Belarus, Kazakhstan, Russia, Armenia and Kyrgyzstan, which provides a single customs territory, within which customs duties and restrictions of economic nature, with the exception of special protective, antidumping and countervailing measures are not applied in goods in mutual trade.

Unification of States in the framework of a single customs area entails, in the - first of all, economic goals. This strengthening and comprehensive development of economic and commercial ties between our two countries.

It should be noted that the characteristics of the States members of the EurAsEC are qualitatively different. Thus, the Russian territory - 17125187 km<sup>2</sup>, population - 146 270 033 people, per capita GDP - 14591 USD The territory of Belarus - 207 600 km<sup>2</sup>, population - 9,466,000 people, the GDP per capita of \$ 7664 the population of the territory of Kazakhstan - 2,724,902 km<sup>2</sup> and population.. -17417447 people, GDP per capita of \$ 12456 of the population in Kyrgyzstan -.. 198 500 km<sup>2</sup>, population - 5,776,570 people, per capita GDP of \$ 1160 Territory News -.. 29743 km<sup>2</sup>, population - 3 017 100 pers., per capita GDP of \$ 3351.63 population. [4].

Consolidation into a common customs and economic space, management believes that our States should create very favorable conditions for a sharp economic growth. Legal integration of states - members of the Eurasian Economic Community resulted in the adoption of a single normative act - the Customs Code. But this fact can be seen only as the beginning.

September 23, 2011 the Council of Ministers of Justice states - EurAsEC member states adopted a historic, on the right and a political point of view, the decision. «This decision was taken as the basis of the concept of development of the civil legislation of the EurAsEC member states and instructed the Justice Commission of the Council of Ministers to start the drafting of the Principles of Civil Legislation states - members of the Eurasian Economic Community (hereinafter -Osnoy civil law)» [5].

That is, we see how our state, including the Republic of Kazakhstan, on the basis of the integration process, taking an active part in the creation of a unified legal framework for the Customs Union states.

The general laws of development of the legal system have common patterns. It is impossible to develop a branch of law without corresponding changes in other areas of law. In our opinion, if the state of the Customs Union to create a unified civil law - this law will not be able to function effectively if it is not backed up by criminal, administrative and other legislation. You can give an example, with the agreement of the action of free warehouses, adoption of which is to ensure the development and adoption of unified customs tariffs in the three states - EurASEC members. It is not difficult to assume that the Russian capital will also be actively involved in the sphere of subsoil use in the Republic of Kazakhstan. Perhaps the appearance of any new forms of participation of the Russian natural resources in the territory of Kazakhstan and Kazakhstani companies on the territory of Russia. In this case a single overall environmental legislation, which is characteristic for all three countries will contribute to the effective operation of these processes.

Continuing the integration process, the leaders of our states May 29, 2014 in Astana signed the Treaty establishing the Eurasian Economic Union (EAEC), which takes effect from 1 January 2015. Union members are Armenia, Belarus, Kazakhstan, Kyrgyz Republic (from May 1, 2015), Russia [6].

What ideas laid EAEC creators?

In our opinion, here are the following:

- Creation of a single customs area;
- Creation of a single trading space;
- Creating interstate bodies and interaction;
- Creation of a single collective security zone of armed conflict;
- Creation of a single regional currency.

This list is, of course, could be continued on the basis of political ambition, economic feasibility and the realities of our lives. According to this author, there is no negative points, if it does not touch the fundamentals of statehood of Kazakhstan.

It must be said that the events in the Republic of Ukraine to a large extent influenced the decrease in the activity of integration processes. Thus, the Republic of Moldova, Azerbaijan, Tajikistan does not consider the question of speech in the EAEC.

December 8, 2011 President of Uzbekistan Islam Karimov stated that «in the post-activated forces that ... strive by various fictions excite nostalgia for the Soviet past, while forgetting about the totali-

tarian nature of the Soviet empire», and Uzbekistan will join international associations, if the ratio of these «is not excluded that they will go beyond economic interests and gain political color and content, which in turn could adversely affect the already established communication and collaboration with other members of gluttony external partners [7].

It should be noted that the position of the President of Uzbekistan since then have not changed much.

The political confrontation between Russia and the West's impact on the economic situation of the Member States EAEC. August 6, 2014, Russian President Vladimir Putin signed a decree «On the application of certain special economic measures in order to ensure the security of Russia» [8]. The decree came into force on the date of its signing. It prohibits or restricts the importation of agricultural products a year, raw materials and food EU countries, USA, Canada, Japan, Australia and some other countries.

As can be noted, Russia alone holds trade sanctions on European countries. But being a member of the Customs Union, it indirectly affects the customs regulations of Kazakhstan and Belarus. Thus, products imported from Europe to Kazakhstan can not get into the territory of Russia.

So customs restrictions between the two countries all - still exist? So, to avoid these restrictions, the sovereign Republic of Kazakhstan should carry out trade restrictions imposed by Russia.

Another example, 25 November 2014 Russia banned the import of almost all of the Belarusian meat in Russia - about 400 tons tychyach [9]. At the same time the Russian side announced to tighten control of goods, interdict (Belarus) border, despite the fact that the Customs Union formally apply simplified rules of transportation of cargoes.

Observers point out that the mechanism of the customs union and the mechanism of re-export of prohibited goods Evplova very well together. For example, according to RBC, in 2014 fish imports to Russia from Belarus, which has no outlet to the sea, grew by 98%.

December 2, 2014: President of Belarus AG Lukashenko expressed indignation customs restrictions on the part of Russia: Lukashenko also called the ban the transit of goods (from Evplova through Belarus) «violation of all norms of international law» [10]. Observers have also noted that the agreement on the ratification of the Eurasian Union there is a clause, according to which Belarus can not abide by the contract, if Russia does not remove restrictions on trade and movement of goods.

January 1, 2015: in violation of the EAEC treaty, Israel returned the border control on the Russian border. The Belarusian authorities have announced plans to abandon the ruble and the calculations with Russia and come back to US dollars. According to Russian experts, such a development could put regional integration under attack.

Ministry of Energy of the Republic of Kazakhstan from March, 2015, «energy security objectives associated with the possibility of stopping the largest oil refineries due to having a surplus of oil, imported from the Russian Federation» Conventional introduced a ban on imports of petroleum products from Russia [11]. By this measure, the Republic of Kazakhstan prevents gasoline from entering the Russian Federation, which is cheaper than the cost of gasoline and Kazakh is a competitor for the oil refineries in Kazakhstan.

If the Kazakh government may take similar measures for gasoline, then why can not it make Russian Government or the Government of Belarus on the other product, service or issue? And if so, why raise the question of a single customs union, a common trade area, which may no longer be a single, if one of the parties is not profitable.

We believe that all the economic and political risks, as well as their legal implications, the parties participating EAEC had to determine before signing the treaty establishing the EAEC.

These facts show difficult and unpredictable process of integration. And despite the fairly visible economic viability, due to the political ambitions of all developed, adopted, agreed and approved by the EAEC uniform legal system may not be feasible. In addition, leverage and methods of influence on the parties to implement the Agreement EAEC are only contractual nature.

Another direction of development of bilateral cooperation of Kazakhstan has set itself the PRC. If we consider the state of the import-export trade between the states of data, we can see the constant growth of relations between China and the ROK. In 2010, China became the third largest trade partner of Kazakhstan. In 2012, China rose to second place in sales volume. For example, the value of turnover between Kazakhstan and China in 2005 amounted to 824.7 million. US dollars.

Two-way trade between Kazakhstan and China in 2014 reached 2.8 billion figure. US dollars. At the same time, the same rate in 2014 between Kazakhstan and Russia reached 5.85 billion. US dollars.

In the field of economic relations, China ranks 4th among the biggest investors in Kazakhstan

economy. In 2015, between Kazakhstan and China signed more than 150 different documents, including 129 with the announcement of economic totaling 65 billion. USD In 2010, 22.5% in oil and gas sector share of Chinese companies in oil production. Chinese workers in Kazakhstan has doubled. In the 1st half of 2015 work permits received more than 38.3 thousand. Foreigners. Kazakhstan legislation does not limit the number of work permits for Chinese citizens. All of the above said and the Republic of Kazakhstan and China are ready to cooperate in the political, economic and cultural-humanitarian spheres.

For a more detailed analysis is necessary to consider the structure of foreign trade between Kazakhstan and China.

Despite the dynamic improvement in bilateral trade figures between Kazakhstan and China, there are many problems: the social sphere, in the cross-border trade, investment and international transport, etc. Let us dwell on the problems.

As a general rule issues of interaction is characterized by the imperfection of the laws of both countries. China greatly simplifies the customs rules for goods of Chinese manufacturers and manufacturers of Kazakhstan. The Kazakh side is observed more stringent rules to the Chinese enterprises. This is due to the fact that the exchange of goods commensurate and Chinese goods, their volume is much greater. Solving these issues between the two countries have disputes on the use of natural resources especially the issues of transboundary rivers, where China takes a considerable amount of water.

In the field of investment cooperation between the volume of Chinese investment in Kazakhstan's economy great, but it still falls short of the investment of European countries and the United States.

Trade and economic cooperation between Kazakhstan and China is complementary characteristics. However, these complementary advantages are not used in full, while the investment climate needs to be improved. Duties of government departments poorly executed, information is constantly changing market is absent, the investment climate is deteriorating, Law enforcement agencies are working effectively. A feature of the foreign trade between Kazakhstan and China is quite a large amount of cross-border trade. At the same time in connection with creation of customs union between Russia, Kazakhstan and Belarus, a number of border policy, concluded between Kazakhstan and China will change.

### Conclusion

Despite the active development of economic relations between Kazakhstan and China there are many problems. So China is pursuing a policy aimed at simplifying customs procedures and visa rules. Kazakhstan has not yet joined the WTO and many of the issues the movement of goods and finance need to be improved.

The same situation with bank calculations, arbitration, insurance and lending to import and export, etc., which led to a large number of outstanding contracts and trade disputes and disagreements. In addition, the financing of entities limited, the low level of management companies, international trade experience is not enough, etc. All these factors have a negative impact on economic and trade cooperation between the two countries.

One of the problems in the sphere of international transportation is an imperfect mechanism of cooperation and poor infrastructure.

Although between China and Kazakhstan opened a two-way road transport, but with Russia, Tajikistan and Uzbekistan does not yet have direct access, it is connected with the mechanism of multilateral cooperation. At present, the Chinese did not coincide with the track rails Kazakhstan, causing the train can not directly go abroad, creates certain difficulties in the transportation and retention time.

Some cooperation agreements on carriage have not been met. Although signed bilateral and multilateral intergovernmental agreement of the SCO member-countries have already laid the foundations for international traffic, but in practice a number of agreements have not done that seriously hampers cooperation. According to relevant agreements between China and Kazakhstan, loaded the car on both sides with a license can get to your destination on the specified routes, however, the Kazakh side require unloading of vehicles at the border, then delivery to the destination Kazakh machines, resulting in ascertained the fact that bilateral agreements practice lost power.

The idea of «One Belt One Road» must determine the movement of China's economic interests in other countries and the actual RC in this idea is a transit country. However, Kazakhstan also plans to implement its own economic interests. Joining the strategy of «one way» it can ensure the movement of their goods, and economic interests in China, and through China. Therefore, for the regulations necessary to develop the successful implementation of these tasks, this will operate on the borders of China and Kazakhstan, Kazakhstan and Russia and other countries of the Silk Road.

### References

1. The Delimitation and Demarcation of the State Border of the Republic of Kazakhstan Neighboring Countries. <http://studopedia.ru/>, April 30, 2015
2. In 2015, Kazakhstan and China signed 129 agreements for 65 billion USD. Retrieved from:<http://www.inform.kz/> December 28, 2015
3. The Customs Union: History of Development. Retrieved from:<http://www.news.ivist.kz>, November 29, 2012
4. <https://ru.wikipedia>
5. Suleimenov M.K. Problems of Unification of the Civil Legislation of the Customs Union // Civil law: Challenges of the Time, Collection of articles of the conference - Almaty, 2011
6. The Agreement on the establishment of the Eurasian Economic Union was signed in Astana <http://tengrinews.kz>, May 29, 2014
7. EAEC Customs Union, Internal conflicts. Retrieved from:<http://www.ru.wikipedia>.
8. The President of Uzbekistan Islam Karimov spoke out against the integration process initiated by Russia // International news agency «Fergana», December 14, 2011
9. Why Russia Banned Belarusian Meat? Retrieved from:<http://www.bbc.co.uk>, November 26, 2014
10. Lukashenko: Moscow Violates the Rules of the Customs Union. Retrieved from:<http://www.bbc.co.uk>, December 3, 2014
11. Kazakhstan March Introduce a Ban on the Import of Petroleum Products from Russia // [Kapital.kz](http://Kapital.kz), March 2, 2015