

# PROBLEMS OF HARMONIZATION OF LEGISLATION OF KAZAKHSTAN AND CHINA IN THE CONDITIONS OF THE WTO

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## ABSTRACT

*The purpose of this article is to consider the problems of harmonizing the laws of Kazakhstan and China in the conditions of the World Trade Organization rules (WTO). For this, the author used general theoretical and specific scientific methods of investigation. As a result of the analysis, the author argues that the principles that are determined by multilateral agreements of the WTO member countries will be met by each new member when reforming the national trading system and its legal regulation. Actions of participants should correspond to all complexes of the WTO agreements regulating legal relations of its participants. In turn, in case of the relevant agreements' conclusion within the framework of the WTO, their expression is found in the state legislation of the participating country. This is, in fact, the final stage in the beginning of the WTO rules.*

**Keywords:** WTO, Foreign Economic Activity, Harmonization of Legislation, EAEU, International Treaty, Customs Tariff.

## INTRODUCTION

According to T. Webster, compliance with treaties also reflects the "subtle" internal legal chapter of China. The revision of laws and regulations in China means less than in Western liberal democracies with strong legal institutions. The Chinese legal system can change its direction a little, without undergoing a deep and democratic discussion. Within the framework of a one-party government and a unitary management structure, the Chinese state dictates the adoption of laws and regulations and coordinates changes between branches of government with minimal institutional frictions (Webster, 2013).

From the position of the indicated author, it is possible to explain the results obtained in the article. The results of the research, stated in the article, refer to the constitutional law and are aimed at its improvement both from the theoretical and practical point of view. And these results can also be used to provide for the legislation's harmonization, making changes to it.

The article discusses the problems of harmonization of the legislation of Kazakhstan and China in the conditions of the WTO rules. The authors consider the results of this study to be justified from the theoretical and practical point of view. The development of the economy depends primarily on its legal regulation, both at the national level and at the international level. Changes in legislation, full harmonization of legislation within the framework of international organizations and between partner countries contribute to the rapid development of legal

relations, the opening of markets and the increase in trade between countries, the formation of healthy competition, the opening of the economy for foreign investment (Engvall & Cornell, 2015). The article proposes to harmonize its legislation with WTO rules, without linking it to any country or association.

## METHODOLOGY

During the research, the author used both general theoretical and specific scientific methods of cognition. The evolution of legislation, as well as certain problems of legislation harmonization, is viewed as part of an objective process conditioned by the development and change in economic relations. The research is based on a historical method, a formal dogmatic (special-legal) method, a method of concrete legal research, a method of logical analysis and other methods and techniques. The author used statistical data and sociological research data, which concern the issues of harmonization of the legislation of Kazakhstan and China under the conditions of the WTO. The sociological method was used to study the problems of harmonization of the legislation of Kazakhstan and China under the WTO, as it allows assessing the adequacy of legislation. A comparative-legal (comparative) method was also used. In combination with other methods, it allowed to solve problems posed by the author in assessing the problems of harmonization of the legislation of Kazakhstan and China under the conditions of the WTO.

## RESULTS AND DISCUSSION

Some scholars believe that Kazakhstan's accession to the WTO is a matter of both foreign and domestic policy. The role of the WTO in the world economy is quite global and it cannot be underestimated. Otherwise, in foreign trade, you can lose to the buyer, that is, not to support the tariff aggression of the WTO member countries. According to Kalimbek and Alimzhanov, the policy of open international trade is objectively necessary for Kazakhstan with a small internal market and the need for access to the world market (Kalymbek & Alimzhanova, 2013). Sikhinbaeva says that Kazakhstan's accession to the WTO is relevant for a number of reasons. The need and relevance of Kazakhstan's accession to the WTO is dictated by the on-going structural changes in the economy (Sikhinbaev, 2016).

Khil indicates that Kazakhstan's accession to the WTO in the future will bring long-term benefits to the economy and will become a strong signal of adherence to economic reform and opening. The accession of Kazakhstan to the WTO will bring additional rights with respect to trade guarantees, such as anti-dumping and countervailing investigations. Greater openness to imports of goods and, ultimately, services, will also increase economic competitiveness, improving the variety of imports and increasing productivity. Other significant benefits will be of a longer-term nature and will be associated with a reduction in corruption and liberalization of foreign investment (Heal, 2014).

As Onyusheva notes, the main difficulty of Kazakhstan's accession to the WTO was the harmonization of the conditions for tariffing the agreements with the WTO members on access to the market and tariffs of the Customs Union (CU). The head of the state Nazarbayev in his address to the people of Kazakhstan stressed that during the negotiations it was possible to combine the demands of the WTO and the EAEU, proceeding from national interests. After three years, when Kazakhstan complies with the charging conditions adopted during negotiations with

WTO members, a new stage of negotiations will be held on the approximation of the level of duties within the framework of the Unified Energy System with the subsequent tariff unification (Onyusheva, 2015).

Khil writes about the problems of Kazakhstan's accession to the WTO in connection with membership in the Customs Union, noting that during the negotiations on Kazakhstan's accession to the WTO additional problems arose in connection with Kazakhstan's membership in the Customs Union with the Russian Federation and Belarus in 2010. In particular, there were disagreements over the harmonization of tariff rates previously discussed at bilateral agreements on market access with new tariffs of the Customs Union in Kazakhstan (Heal, 2014; Efimchuk & Utebayeva, 2016).

Researchers Akimbai and Moldashev confirm the fears of the countries participating in the EAEU. They believe that Kazakhstan's accession to the WTO can lead to an increase in non-tariff barriers between the EAEU countries and will make it more difficult for trade unions to liberalize within the integration association (Akimbay & Moldashev, 2016).

At present, Kazakhstan introduces import duties in accordance with the Unified Customs Tariff (UCT) of the EAEU, the common external customs tariff applicable to goods imported into any of the member states of the EAEU from outside the EAEU. It is expected that within five years of joining the WTO, Kazakhstan will reduce import duties on certain goods to the level determined by its obligations to join the WTO (associated tariff rates in Kazakhstan). In fact, with the accession to the WTO, the rates of duty in Kazakhstan are lower than the rates provided for by the UCT of the EAEU (Karmys, 2016; Ianchovichina, 2014).

Scientists are united in the opinion that China's accession to the WTO in 2001 was one of the most significant economic events in the newest world history. The liberalization of trade that it has generated has had profound and far-reaching consequences both inside China and around the world. The Chinese economy flourished during the decade that followed China's accession to the WTO, despite concerns at the time that Chinese firms could not compete with external goods and services that were expected to intensify as a result of liberalization measures that China committed to implement (Hu & Liu, 2014).

Elmesov, when speaking about the problems of harmonization of the legislation of Kazakhstan and China, says that now the producers of meat products of Kazakhstan are oriented mainly to China, as in Russia they are not competitive. It provides itself with meat products in the required amount. But when it comes to supplies for China, the question of volumes is just emerging. Manufacturers are accustomed to giving meat of the first freshness processing, the semi-finished product is exported. But many manufacturers are not ready to switch to 3-4 processing and the Chinese need exactly it, besides they have their own meat cutting technologies that are very different from local standards (Elmesov, 2014).

Given the global leap in the development of economic relations, business economic activity of Kazakhstan and China in relation to each other has also gained momentum in recent years and is developing rapidly. The states intend to improve cooperation in the economic sphere with a view to developing and improving trade activities between countries and most importantly to simplify the procedures for such activities, to increase the trade turnover between the countries' markets to 80 billion US dollars by 2020, where favorable added value is established for own production. This entails the improvement of the legal framework of the countries' legislation in this field.

As in most international organizations, the legal framework of the WTO is based on two sub-sectors of the law. So, on one hand, an organization cannot exist without its own constituent

documents, which determine the legal basis of the organization's activities, its rights and obligations, as well as the rights and duties of its members. The constituent documents of the organization regulate the relations, both individual membership of a particular country and the relations of collective membership of all countries together, which allows solving economic issues more globally, taking into account the different features and economic level of all participating countries. On the other hand, between the member states and the organization in the implementation of cooperation, various economic international treaties are concluded, aimed at clear regulation of the local activities of the corresponding territory. All types of legal regulation of activities and legal relations of the WTO and its participants are expressed in the national legislation of each participant.

After years of long negotiations, December 2001 became a historical period for China in which it joined the WTO. All the time until this moment, China was seen as a developing country. China's interest in joining the WTO is due to its intentions to enter international trade, to strengthen its influence in the international arena. The main task for China's accession to the WTO was the initiation of the procedure for bringing the national legislation into line with the already developed WTO legislation, which included a significant array of legal norms, agreements and treaties.

In connection with China's accession to the WTO, the level of the economy has skyrocketed. Significant foreign investments began to be attracted to the country. In practice, the experience of China's accession to the WTO has shown that not only the economic but also the social sphere has improved. The procedure of harmonization of national legislation facilitated mass reforms in the economic spheres of the country, which gave a positive result and which resulted in legal regulation to new realities and requirements of economic activity.

At the same time, brand identity is important for Chinese customers. China has become the largest market for Rolls-Royce cars. The Apple Company's product market has grown six-fold in six years and luxury designers such as Cartier, Louis Vuitton and Gucci use huge markets in China. Nevertheless, all high-quality products are faced with a constant and real threat of the trademarks' rules violation. While the market for high-quality products with foreign trademark is strong, the market for imitation products with a counterfeit trademark is equally strong (Swamidass & Swamidass, 2014).

In connection with the availability of such a low-quality legal protection of intellectual property in China, the WTO member countries have long expressed concern about this phenomenon. At the end of 2012, finally, there have been shifts towards a possible improvement of this sphere's legal regulation. Thus, the Law on Trademarks of China was substantially revised and the new Law on Trademarks was adopted by the legislative body of the country based on the new principles of relations in the field of trademark protection and which is in accordance with the provisions of the WTO legislation.

As for Kazakhstan, it should be noted that, before joining the WTO, Kazakhstan faced higher tariff barriers to wheat exports as a result that it was not a member of the WTO. For example, China's tariff charged 180% on wheat imports from non-WTO countries. China also introduced non-tariff barriers, requiring that agricultural imports from Kazakhstan be repackaged at the border (Pomfret, 2014).

Article XII of the Agreement on the Establishment of the WTO became the beginning of negotiations on Kazakhstan's accession to the WTO. The state faced a complex procedure to bring its national legislation, especially in the field of external economic legislation, in line with the provisions of agreements and treaties related to the existence and activities of the WTO.

One can agree with the opinion that accession to the WTO means for Kazakhstan to implement strict rules insofar as it relates to its competence, but they are very broad (regulation of the level of state support, foreign trade policy, openness of the market, implementation of numerous rules of a technical nature by standards, which entails a change in the technology of production, etc.) (Tireuov et al., 2013).

Kazakhstan applies exemptions from the Unified Customs Tariff of the Eurasian Economic Union (UCT EAEU) to about 3000 tariff lines, for which Kazakhstan's tariff obligations are lower than the corresponding rates of the UCT EAEU. Kazakhstan will apply lower rates until negotiations on the harmonization of tariff obligations between Kazakhstan and the Russian Federation between the EAEU member states and the affected WTO members are completed (WTO Accession, 2016).

Kazakhstan retained the right to continue to levy export duties on certain goods that are currently subject to export duty in Kazakhstan (for example, crude oil and petroleum products, remains and scrap of ferrous and non-ferrous metals, locomotive rolling stock elements, wool, animal skins and others). In accordance with its schedule of WTO concessions, Kazakhstan began calculating export duties on crude oil and petroleum products using special formulas (instead of the previously applied fixed rates) (Karmys, 2016).

## CONCLUSION

With the accession to the WTO, China pledged to carry out reforms in its legislation and legal regulation of state policy. The main task was to open an international trade market for all enterprises and not just for state-owned companies. For China, as a leader in the production of goods, the international market opened the territory of the WTO member countries, which increased the country's exports. At the same time, China is still trying to contain the influence of international organizations on the country's state policy.

In turn, WTO membership for Kazakhstan contributed to attracting foreign investment to the national economy. The legislation of Kazakhstan has been significantly improved and undergone significant changes, in some cases the norms of WTO legislation have already been the priority norms. A legal approach to the priority framework of the country's economy was revised, which became more open for international trade. As a result, Kazakhstan began to be considered at the international level among developed countries as a subject-partner of foreign economic activity.

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