

ANNEX 5
to the Treaty on the
Eurasian Economic Union

PROTOCOL
of Enrollment And Distribution Procedure of Import Customs Duties (Other Duties, Taxes
And Charges Having Equivalent Effect), Their Transfer to the Budgets of Member States

I. General Provisions

This Protocol has been developed in accordance with Article 26 of the EU Treaty and determines the computation and distribution procedures among the member States of the import customs duties, in which respect obligation to pay for the goods imported to the customs territory of the EU emerged on the 1st of September 2010

This Protocol shall also be applied in respect of late payment charges (interest) accrued on the import customs duties in the cases and manner prescribed in accordance with the customs legislation regulatory agreements and acts constituting EU rights.

2. Definitions used in this Protocol are as follows:

“joint account of authorized body” - an account opened for authorized body in the national (central) bank or an authorized body, which has correspondent account in the national (central) bank for computation and distribution of revenues between the budgets of this member State;

“accounting day” – business day of the member State for transfer of the import customs duties to a joint account of the authorized body;

“late charge” - the amount to be transferred by the member State to another member States’ accounts for violation of this Protocol provisions causing non-fulfillment, incomplete and (or) late fulfillment of the member State’s obligations on transfer of import customs duties distribution amounts;

“foreign currency account” - an account opened for the authorized body of a member State in the national (central) bank in the currency of another member State so that other member State could receive import customs duties distribution amount;

“current day” - a business day after accounting day of a member State when procedures on distribution of import customs duties amount are carried out for the accounting day;

“authorized body” - a government body of member State carrying out cash servicing of that member State budget.

Other terms used in this Protocol shall be applied in the definitions determined by the EU Treaty and Customs Code of the EU.

II. Import Customs Duties Amount Computation and Distribution Procedure between Member States

3. Import custom duties amount shall be transferred in the national currency to the joint account of the member State’s authorized body where it is payable in accordance with the customs legislation regulatory agreements and acts constituting the EU rights, including collection of import duties.

Import duties are paid on a joint account of authorized body according to separate settlement (payment) documents (instructions).

Import custom duties may be counted against taxes and fees, as well as other payments (excluding special, antidumping and countervailing duties) payable in accordance with the legislation of the member State transferred to a joint account of the authorized body.

In accordance with Provision on computation and distribution of special protective, anti-dumping and countervailing duties (Appendix to the Appendix 8 to the EU Treaty) special anti-dumping and countervailing duties may be counted against debt repayment of taxpayers on import customs duties.

Return (offset) of the import customs duties amount shall be applied in accordance with the legislation of the member States, unless otherwise stipulated by the custom

legislation regulatory agreements and acts constituting EU rights, subject to the provisions of this Protocol.

Import custom duties amounts may not be counted against the payment of other fees, except against debt repayment of taxpayers on customs fees, special, antidumping and countervailing duties, as well as late charges (interest) (hereinafter – counted against debt repayment).

4. Funds held on a joint account of the authorized body cannot be recovered in an execution of judicial acts or otherwise, except for debt repayment of taxpayers on customs fees, special, antidumping and countervailing duties, as well as late charges (interest).

5. Authorized bodies of member States separately account the following revenues:

In payments (refunds, offset against debt repayment) of import custom duties on a joint account of the authorized body;

amounts of distributed import custom duties transferred to the foreign currency accounts of other member States;

amounts of income credited to the budget of the member State on distribution of the import custom duties of that member State;

amounts of import duties transferred to the budget of the member State by other member States;

late charges transferred to the budget of the member State established by this Protocol;

amounts of the import customs duties distribution, which transfer to the foreign currency accounts of other member States has been suspended.

Given amounts of income shall be separately reflected in the performance report of each member State.

6. Amounts of import customs duties transferred to the joint account of the authorized body of a member State for the last business day of the calendar year shall be reflected in the performance report of the member State for the financial year.

Amounts of distributed import duties for the last business day of the calendar year of the member States shall be transferred no later than on the second business day of the member States current year to the budget of that member State and to the foreign currency

accounts of other member States, and shall be also reflected in the performance report for the financial year.

Amount of income from import customs duties distribution transferred to the member State budget of the authorized body by other member States for the last business day of the calendar year of other member States shall be reflected in the performance report for the current year.

7. Refund of import customs duties amounts to the taxpayer, it shall be counted against debt repayment transferred from the authorized body account in the current day within the amounts of import customs duties received on a joint account of the authorized body and counted against import customs duties payment for the accounting day, taking into account the amount of the refunded import custom duties failed to be executed by the national (central) bank during the accounting day.

Refund of import customs duties amounts to the taxpayer shall be counted against debt repayment transferred from a joint account of the authorized body of the Republic of Kazakhstan during the accounting day within the amounts of import customs duties received (credited) to the joint account of the authorized body on the day of return (offset).

8. Import customs duties to be returned and (or) counted against debt repayment during the current day prior to the distribution of the received import customs duties between member States.

9. In case of insufficient funds to refund the import customs duties and (or) to be counted against debt repayment in accordance with paragraph 7 of this Protocol, it shall be refunded (offset) by member State during the following business days.

Late charges (interests) for the late refund to the payer of import customs duties amounts shall be paid to the payer from the budget of that member State and shall not be included to the amount of import custom duties.

10. Import customs duties shall be distributed by the authorized body of a member State between member States on the next business day of a member State after the accounting day when import customs duties have been transferred to the account of the authorized body.

Import customs duties amounts shall be distributed by the authorized body of the Republic of Kazakhstan between member States during the accounting day when import customs duties amounts have been transferred to a joint account of the authorized body.

11. Import custom duties to be transferred from a joint account of the member State authorized body to the budget of the member States, as well as to the foreign currency accounts of another member States shall be calculated by multiplying the total amount of import customs duties to be distributed between member States on the distribution standards set in percentage.

In this case total amount of import customs duties to be distributed between member States shall be determined by subtracting the amount of import customs duties received (counted by the authorized body) during the accounting day taking into account settlement (payment) documents (instructions) that failed to be executed by the national (central) bank to transfer refunded import customs duties amounts in the accounting day, import customs duties amount to be refunded to the payers and counted against debt repayment during the current day.

In case if settlement (payment) documents (instructions) on import customs duties amounts refunded to be executed during the current day failed to be executed by the national (central) bank, this amount shall be distributed among member States during the next business day of the member State. In this case, import customs duties amounts which have not been transferred to the foreign currency accounts of other member States in accordance with this paragraph shall be considered as one day overdue.

12. Distribution standards of import customs duties amount for each member State established as follows:

Republic of Belarus - 4.70 percent;

Republic of Kazakhstan - 7.33 percent;

Russian Federation - 87.97 percent.

13. Import customs duties amounts transferred to member States is carried out by the authorized bodies of the member States to the foreign currency accounts of other member States on the next business day of a member State after the day of transfer to the joint account of the authorized body.

Settlement (payment) documents (instructions) on transfer of the import customs duties amounts to the member States shall be sent to the national (central) bank by the authorized body for further transfer to the foreign currency accounts of other member States no later than every 14 hours according to the local time. This settlement (payment) documents (instructions) shall state the date of import customs duties distribution and the amount to be distributed among member States in the national currency.

In case if specified settlement (payment) documents (instructions) have been sent to the national (central) bank of the member States during the current day before 14 pm according to the local time, corresponding payment shall be considered as one day overdue.

14. Transfer procedures to the member State budget of import customs duties received from the authorized bodies of the member States to the foreign currency account is regulated by section III of this Protocol.

15. Account of import customs duties distributed and transferred to the budgets of the member States shall be carried out by the authorized bodies of the member States.

16. Authorized body of the member State shall no later than in 10 calendar days before the beginning of the next calendar year notify authorized bodies of other member States about holidays established in accordance with the legislation of the member State.

In case if days-off have been changed, authorized body of the member State, where such changes occur, shall notify authorized bodies of other member States on such changes no later than 2 days prior to its entry into force.

17. In case of account details change in the foreign currency, according to which import customs duties amounts shall be transferred, authorized bodies of the member State shall not later than in 10 calendar days prior to the date when these changes entry into force, notify authorized bodies of other member States on updated account details.

In case if any other data necessary for the implementation of this Protocol have been hanged, the authorized body shall no later than 3 days prior to the date when these changes come into force, communicate to the authorized bodies of other member States information on such changes.

18. In case of absence of the import customs duties amounts to be distributed between member States, authorized body of the member State within the period prescribed by this Protocol on submission to the national (central) bank of the settlement (payment) documents (instructions) on transfer of funds to the foreign currency accounts of other member States shall transmit relevant information to the authorized bodies of other member States in electronic format using integrated information system of the EU, and prior to the date when this system comes into force - via electronic communications in form of graphical soft copy of the document with this information.

19. Central customs authorities of member States shall ensure application of uniform accounting principles for import customs duties on an accrual basis in accordance with the rules approved by the Commission.

20. In case of failure to transfer or incomplete transfer of funds to the foreign currency accounts of any member State within the time established by this section and non-delivery of information from the authorized body of the member State on absence of the import customs duties to be distributed, authorized body of the member State, which has not received funds on its foreign currency accounts, shall notify authorized bodies of the member States and the Commission on not transferred or incomplete transfer of funds.

21. Member State that did not transfer to any other member States distributed import customs duties amounts shall pay to these other member States late charge for the entire amount of existing indebtedness at a rate of 0.1 percent for each calendar day of delay, including the day when distributed import customs duties were not transferred to another member State (member States).

22. In case if member State submits information on absence of the import customs duties to be distributed under the conditions of the actual availability of these amounts, and in case of incomplete transfer of funds from a joint account of the authorized body to the foreign currency accounts of another member States, member State that incurred such violation shall transfer no later than within next business day to other member State import customs duties, subject to the budgets of other member States in accordance with this section, based on the amount that was not transferred to the foreign currency accounts of other member States.

At this member State incurred such violation shall pay default interest at the rate established by paragraph 21 of this Protocol, for each calendar day of delay, which is recognizes as the period starting from the date on which the violation occurred, not including the day of the funds transfer to member States in accordance with this paragraph.

23. In case of non-delivery (partial delivery) of the funds from a member State without notification of the authorized body of the member State on the absence of the import customs duties to be distributed among member States, authorized body of the member State that did not receive funds in the foreign currency is not received funds on the third business day of a member State after the date of such non-delivery (partial delivery) may suspend the transfer of import customs duties amounts from the joint account to the foreign currency account of the first member State.

24. In the event if a member State decides to suspend transfers of import customs duties amounts funds to an account in a foreign currency of another member State, shall be credited to the budget of the first member State prior to cancellation of the suspension and transfer separately accounted in the budget of that member State.

Authorized body of a member State suspending transfer of import customs duties amounts to a foreign currency account of another member State shall immediately inform on such decision authorized body of other member States and the Commission.

25. The Commission not later than the business day following after the day when decision to suspend the transfer of import customs duties amount was taken, consult with executive authorities of the member States with a view to execute early resumption of the import customs duties amounts distribution mechanisms in full.

26. In case if as the results of the consultations referred to in paragraph 25 of this Protocol, the decision to resume import customs duties amounts distribution mechanisms has not been taken, this issue shall be presented for consideration of the Commission.

In case of the Commission's failure to take the decision on resumption of the import customs duties amounts distribution mechanisms, this issue shall be presented for consideration of the Intergovernmental Council.

27. When resuming the transfer of import customs duties amounts specified in paragraph 24 of this Protocol, it shall be transferred no later of the business day of a member State following the day of the notification receipt on such decision to the foreign currency accounts of those member States to which they were intended to be transferred in accordance with this Protocol, and default interests on that amount shall not be calculated.

28. Distributed import customs duties amounts not transferred by any member State to the foreign currency accounts of other member States, as well as the amounts not fulfilled by the national (central) banks of the member States obligations on funds transfer in U.S. dollars under Section III to this Protocol shall be applied as the national debt.

III. Transfer Procedure of the Import Customs Duties to the Member State Budget Received from the Authorized Bodies of the Member States to the Foreign Currency Accounts

29. National (central) bank of the single (first) member State is obliged to sell to the national (central) bank of the other (second) member State the funds in U.S. dollars for the amount of the national currency of the first member State, equal to the amount of the first member State's national currency transferred in accordance with this Protocol to the foreign currency account of the authorized body of the second member State. Amount of U.S. dollars to be sold shall be determined in accordance with the official exchange rate of the first member State set by national (central) bank of the first member State on the business day following the date of funds transfer in the national currency of the first member State to a foreign currency account of the second member State.

Obligations on the funds sale in U.S. dollars shall be performed by national (central) bank of the first member State not later than within the next business day after the date of transfer of the equivalent amount in national currency of the first member State to a foreign currency account of the second member State.

At this, obligation on selling funds in U.S. dollars shall be performed by national (central) banks of each member State, regardless of the similar rights enforcement and obligations execution between the other member States.

National (central) banks of these two member States may determine by separate agreements that the execution of mutual obligations on funds transfer in U.S. dollars, including not-fulfilled obligations within the period prescribed in the second part of this paragraph and the obligations on late charges payment in accordance with paragraph 31 of this Protocol, shall be executed by means of the national (central) bank transfer, if obligations value in U.S. dollars exceeds counter obligations in U.S. dollars of another national (central) bank in U.S. dollars to another national (central) bank in the amount equal to the difference between the values of these mutual obligations.

Fulfillment of the monetary obligations in U.S. dollars referred to in this paragraph shall be performed in the following order:

- at first, obligations on late charges payment in accordance with paragraph 31 of this Protocol;

- at second, requirements fulfillment on obligations, which time of performance has come and are not overdue;

- at third, requirements fulfillment on obligations not fulfilled within the period prescribed in the second part of this paragraph.

According to the specified obligations herewith of the national (central) bank of the first member State to sell funds in U.S. dollars to the national (central) banks of the second member State, the first member State with the national (central) bank of the first member State shall be jointly and severally liable before the second member State.

30. For the purpose of further settlement between the first member State and the second member State in the event of non-performance or improper performance of obligations specified in paragraph 29 of this Protocol, the obligations of the national (central) bank of the first member State on the funds sell in U.S. dollars to the national (central) bank of the second member State, requirements for the national (central) banks of the first member State are recorded in U.S. dollars at the official rate set by the national (central) bank of the first member State on the business day following the date of funds transfer in the national currency of the first member State to the foreign currency account of the second member State.

31. For non-performance or improper performance of the obligations specified in paragraph 29 of this Protocol of the national (central) bank of the first member State on the funds sale in U.S. dollars to the national (central) banks of the second member State, national (central) bank of the first member State or the first member State shall pay late charges, which shall be calculated according to the following formula:

$$\text{Late charge} = \text{Amount}_{\text{USD}} \times \frac{\text{LIBOR}_{\text{USD, a / m}} + 2\%}{360} \times \text{Days}$$

where:

Amount USD– amount (in U.S. dollars) to be transferred to the national (central) bank of the first member State to the national (central) bank of the second member State;

- a day LIBOR rate for U.S. dollars (in annual interest rate) established by British Bankers Association (BBA) for the day of failure to perform or improper performance of obligations;

Days - number of calendar days, counted from the date of failure to perform or improper performance of the obligations (inclusively) before the date of proper performance of obligations (excluding the date of the proper performance of obligations).

32. In case of non-performance or improper performance of the obligations by the first member State set forth in paragraph 29 of this Protocol, national (central) bank of the second member State, in respect of which such failure to perform or improper performance of the obligations occurred, has rights to transfer on a reimbursable basis requirement for non-performance or improper fulfillment of obligations, including requirement on penalties payment in accordance with paragraph 31 of this Protocol to the second member State without the consent and notification of the first member State and national (central) bank of the first member State.

33. National (central) bank of member State shall not be liable to the Government or authorized body of member State for failure to fulfill or improper fulfillment of obligations of another member State, including for non-fulfillment or improper fulfillment of obligations by national (central) bank of another member State

34. The costs and losses arising in front of the national (central) bank of the first member State in connection with calculations stipulated in this section including costs and

losses arising from changes of exchange rates, non-performance or improper performance of the obligations by other member States and national (central) banks of other member States, and are not recoverable by other member States. Conditions and reimbursement procedure of the costs and losses referred to hereinto the national (central) bank of the first member State are established by the first member State.

35. For the purposes of this section, business day when these settlements between two member States (including transactions between national (central) banks of these two member States) are carried out is considered as a business day for these two member States and for the United States of America.

36. Correspondent account in the national (central) bank of single (first) member State, opened at the national (central) bank of another (second) member State for the payments according to this Protocol, as well as funds held at this correspondent account, cannot be seized, blocked or fall under other security prohibitive or restrictive measures of judicial and other authorities of the second member State, that do not allow to use the funds of this correspondent account.

37. Debiting correspondent account at the national (central) bank of a single (first) member State opened in the national (central) bank of another (second) member State to make payments in accordance with this Protocol without the consent of the national (central) bank of the first member State is not permitted, unless otherwise provided by the contract of correspondent account.

38. In case if obligations on money sale in U.S. dollars specified in paragraph 29 of this Protocol have not been fully or partially executed by the national (central) bank of the first member State within 30 calendar days, national (central) bank of the second member State shall be entitled to use the funds without any restrictions in the national currency of the first member State until full execution of its obligations by the national (central) bank of the first member State, that are currently at the correspondent account at the national (central) bank of the first member State and intended to be calculated in accordance with this Protocol at the national (central) bank of the second member State.

39. National (central) bank of a single (first) member State implements the rights and fulfill obligations on a gratuitous basis under the contracts concluded with the national

(central) bank of the other (second) member State pursuant to this Protocol and in accordance herewith.

IV. Information Exchange Procedure between Authorized Bodies of the Member States

40. Authorized body of a member State no later than 4 p.m. (according to the local time for the Republic of Belarus - Minsk time, for the Republic of Kazakhstan - Astana time, the Russian Federation - Moscow time) of the current day shall submit to the authorized bodies of other member State the following information for the accounting day:

- 1) import customs duties amounts credited to a joint account of the authorized body of the member State;
- 2) amount executed by the authorized body for the accounting day counted against import customs duties payment;
- 3) import customs duties amounts credited during the accounting day counted against debt repayment, as well as import customs duties accounted separately and transferred during the current day for the debt repayment;
- 4) import customs duties amounts refunded during the accounting day and import customs duties amounts to be refunded separately during the current day;
- 5) refund amount of import customs duties that failed to be fulfilled by the national (central) bank during the accounting day;
- 6) import customs duties amounts to be distributed among member States;
- 7) distributed import customs duties amounts transferred to the foreign currency accounts of other member States;
- 8) amount of budget revenues of the member State from distribution of import customs duties transferred from a joint account of authorized body of that member State;
- 9) amount of budget revenues of the member State from distribution of import customs duties transferred to the foreign currency accounts of the authorized body;
- 10) amounts of the import customs duties distribution, which transfer to the foreign currency accounts of other member States has been suspended;

11) amount of late charges received by the member State from other member States for non-proper fulfillment of its obligations stipulated by this Protocol.

41. On the fifth business day of every month following the accounting day authorized body of the member State shall send information to the authorized bodies of other member States and to the Commission established by paragraph 40 of this Protocol reflecting cumulative total from the beginning of the calendar year in electronic format using integrated information system of the EU, and prior to the date when this system comes into force - via electronic communications in form of graphical soft copy of the document with this information.

42. Information format required by paragraphs 40 and 41 of this Protocol shall be agreed by authorized bodies and approved by the Commission.

43. Authorized bodies of the member States shall rapidly reconcile the data obtained in accordance with paragraphs 40 and 41 of this Protocol.

In case of differences it shall be protocolled and member States shall take measures to resolve these discrepancies.

44. Information provided for the authorized body of a member State to the authorized body of other member States and the Commission in accordance with paragraphs 40 and 41 of this Protocol, signed by the head of these authorized body or authorized person.

V. Information Exchange Procedure Related to the Payment of Import Customs Duties

45. Central customs authorities of the member States shall provide information for each other as well as for the Commission in electronic form on a regular basis related to the payment of import customs duties and not related to the information constituting state secrets (state secrets).

46. Information related to the payment of import customs duties shall be formed on the basis of the following sources:

1) soft copies database of declarations for the goods furnished by customs duties authorities of the member States;

2) soft copies database of customs receipt vouchers issued by the customs authorities of the member States, if the customs receipt is applied by member State to reflect the payment of import customs duties;

3) database of personal accounts, registers and other documents containing information on import customs duties paid and transferred to the revenue budgets of the member States issued by customs authorities of the member States in accordance with the uniform accounting principles of import customs duties on an accrual basis in accordance with the rules approved by the Commission.

47. Information specified in paragraph 46 of this Protocol does not include data on goods import and customs payments by individuals transporting goods for personal use.

48. Information related to the payment of import customs duties (unit - U.S. dollars, to convert amounts from the national currency to U.S. dollars it is necessary to use average U.S. dollar exchange rate in respect of the currency of the national (central) bank in member State for the accounting month) shall be provided on a non-repayable basis in Russian language (it is allowed to use Latin alphabet for some separate positions) and include the following information for the reporting period:

1) amount of carryover import customs duties at the beginning and end of the reporting period;

2) amounts of import customs duties reflected in the customs clearance documents (collection);

3) amount of import customs duties counted against debt repayment;

4) amount of import customs duties returned to payers;

5) amount of granted indulgence and payment by installment for import customs duties;

6) other information relating to the payment of import customs duties.

49. Technological regulations on exchange of information related to the payment of import duties shall be developed and approved by the Commission.

These production schedules shall determine the structure and format specified in paragraph 48 of this Protocol, as well as procedure, terms and means of information distribution.

50. Electronic exchange of information between central customs authorities of the member States, as well as its submission to the Commission shall be carried upon provision of technical availability of customs authorities and the Commission, as they shall notify each other in the written form. Upon realization of the EU integrated information system information shall be exchanged between central customs authorities of the member States and submitted to the Commission electronically only by means of specified system.

51. Prior to the approval of process regulations on information exchange related to the payment of import customs duties, central customs authorities of the member States shall no later than the last day of the month following after the reporting period, provide information to each other and to the Commission specified in paragraph 48 of this Protocol in the form, approved by the Commission.

52. Central customs authorities of the member States and the Commission shall take necessary measures against unauthorized dissemination of information received in accordance with this section.

Central customs authorities of member States provide limited number of people who have access to such information and protect it in accordance with the laws of the member States.

The Commission uses information received in accordance with this section in order to implement paragraph 54 of this Protocol.

VI. Monitoring and Control

53. State Control Committee of the Republic of Belarus, Account Committee for Control over Execution of the Republican Budget of the Republic of Kazakhstan and Accounts Chamber of the Russian Federation within the framework of joint audits shall

annually verify the compliance with provisions of this Protocol by authorized bodies of member States.

54. The Commission shall submit an annual report to the Intergovernmental Council on computation and distribution of import customs duties amounts.

55. According to its decision the Commission may establish special committee consisting of authorized employees, customs and other state bodies of the member States, as well as specialists in order to control (audit) the compliance with computation and distribution procedures of the transferred import customs duties by member States.