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## **Customs' Control on Genetically Modified Food Products Across the Border of the Eurasian Economic Union**

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O.V. Grechkina<sup>1</sup>, S.A. Agamagomedova<sup>2</sup>, S.M. Zyryanov<sup>3</sup>, L.A. Spector<sup>4</sup>

**Abstract:**

**Purpose:** *The purpose of the article is to determine the role of customs' control and directions of its improvement in the movement of genetically modified foods across the customs' border of the Eurasian Economic Union. In carrying out the study, the authors rely on the methods of theoretical modeling and interpretation of legal concepts and normative legal acts, which allowed to identify theoretical and applied problems of customs control in the conditions of Eurasian integration.*

**Design/Methodology/Approach:** *The authors define the concepts of genetically modified foods and their turnover, highlight the problems of customs control over the movement of genetically modified foods across the customs border of the Eurasian Economic Union, and propose ways to improve it.*

**Findings:** *The authors define the concepts of genetically modified foods and their turnover, highlight the problems of customs control over the movement of genetically modified foods across the customs border of the Eurasian Economic Union, and propose ways to improve it.*

**Practical Implications:** *The results may be implicated into a legal framework of Russian Federation and improve customs' regulation both in Russia and abroad.*

**Originality/Value:** *The main contribution of this article is the comprehensive analysis of legal and institutional background of genetically modified foods and their cross-border movement in EAEU countries as well as the measures of improving their customs' control.*

**Keywords:** *Customs' control, customs' border, Eurasian Economic Union, genetically modified food products, GMOs.*

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<sup>1</sup>Russian Presidential Academy of National Economy and Public Administration, Moscow.

<sup>2</sup>Penza State University, Penza, Russian Federation.

<sup>3</sup>Moscow University of the Ministry of Internal Affairs of Russia, Moscow.

<sup>4</sup>Institute of the Service Sector and Entrepreneurship, DonSTU in Shakhty, Shakhty, Russian Federation, [doc\\_kaftgp@sssu.ru](mailto:doc_kaftgp@sssu.ru)

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## **1. Introduction**

The aggravation of the international situation, the introduction of a «sanctions» regime in economic relations, the increasing threats to national security and, as a result, the expansion of the scope of activities controlled by the customs' authorities require the introduction of new approaches to the implementation of customs' control, ensuring the protection of the rights and legitimate interests of individuals and legal entities in the member States of the Eurasian economic Union (hereinafter - the EAEU) and at the same time stimulating the economic development of the EAEU member States.

A significant role of customs' control in the conditions of Eurasian integration is the need, on the one hand, to create conditions for the stable development of the EAEU member States in the common economic territory, on the other hand, to ensure the national interests of the Russian Federation in the face of increasing risks and threats to security in the modern world.

One of these potential threats is the threat of damage to the health and life of ordinary consumers of food products, their quality of life through the introduction of genetically modified foods. Without setting a goal to lead to a common denominator of the position of adherents and opponents of the use of genetically modified foods, we believe that at present the problem of forming an optimal and effective system of state regulation of the creation and use of such products, as well as control over its turnover in the domestic national territory, and in cross-border movement, is more urgent. The last aspect of control is directly related to the functions of customs authorities and in the conditions of Eurasian economic integration is subject to supranational (integration) regulation, that is, legal and organizational regulation at the level of the Eurasian Economic Union. This should ensure an optimal balance of both private interests (interests of business, manufacturers and suppliers of such products) and public interests (interests of ordinary buyers, consumers, civil society institutions, the state as a whole).

In the modern period, the level and quality of life of citizens, the issues of ensuring their security are positioned as basic indicators of economic development. In the context of globalization and international economic integration, the responsibility for ensuring these indicators is largely vested in the customs authorities, which, through customs control, are designed to allow and suppress the circulation of such products. All this predetermined a high level of relevance of the research topic. The authors of the study analyzed the current state of customs control over cross-border turnover of genetically modified foods in the Eurasian economic Union, on the basis of which highlighted the problems of its implementation and proposed solutions in modern conditions.

The purpose of the article is to propose ways to improve customs' control over the movement of genetically modified food products across the customs' border of the

Eurasian economic Union based on the analysis of the current state and problems of such movement. The purpose of the study involves the following tasks:

- definition of concepts in the field of customs' control over the movement of genetically modified foods: «genetically modified foods», "turnover of genetically modified foods»;
- characteristics of the regulatory legal framework of customs' control over the movement of genetically modified foods in the EAEU;
- highlighting the problems of customs' control over the movement of genetically modified foods in the EAEU;
- proposal of ways to improve customs' control over the movement of genetically modified foods in the EAEU.

The object of the research is the sphere of creation and circulation of genetically modified foods. The subject of the study is the legal and organizational basis of customs control over the movement of genetically modified foods in the Eurasian economic Union.

## **2. Materials and Methods of Research**

The theoretical basis of the study consists of the works of various authors in the field of legal regulation of customs' control, the general order and forms of its implementation in the context of customs' administration, among which are the works of Agamagomedova (2015), Matvienko (2011) and Novikov (1999). The research is based on the works of modern scientists devoted to certain types of customs' control; customs' control after the release of goods, in the field of security, etc. We use materials of different representatives of economic science on the issues of customs' control as a whole and its separate areas (Cheremukhin, 2013; Sleptsov, 2011).

The literature review showed that, despite the fact that customs control as a social and legal phenomenon is actively studied by scientists from various positions, a comprehensive and systematic analysis of customs control, taking into account the laws and problems of its movement of genetically modified foods in the development of integration processes is currently absent. Highlighting the customs' control of genetically modified food products as one and the types of customs control in general, we consider it necessary to conduct a comprehensive study aimed at improving customs control over the movement of genetically modified food products across the customs border of the Eurasian Economic Union.

The information and analytical base of the study consists of information from the official websites of the Eurasian Economic Commission, the FCS of Russia and its territorial bodies, as well as scientific and practical articles about the work. In addition, the authors studied and used the official documents of the European Commission in order to apply the positive experience of the European Union on the

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regulation and control of the movement of genetically modified foods. The study is conducted within the framework of the concept of customs control in the conditions of Eurasian integration, based on the consistent development in the theory of law of the Institute of state control (supervision) and a comprehensive approach to the essence and content of customs control. The methodological base of the research consists of general scientific and special methods and methods of cognition. The methods of system analysis and synthesis, theoretical modeling, formal logical method, method of legal hermeneutics, comparative legal methods were used in the framework of the assessment of the theory and practice of customs control.

### **3. Discussion and Results**

The spread of genetically modified food products, as well as the ongoing disputes about the harm, and sometimes the need for such food makes the issue of customs' control over their movement across the customs border of the EAEU relevant. At the same time, the purpose of this article is not to defend one of the points of view on genetically modified food products, but to consider the existing problems of customs control over the movement of such food products across the customs border of the EAEU, as well as to propose ways to improve it. Of course, it is necessary to determine what is meant by genetically modified foods and on what basis the customs authorities control their movement across the customs' border of the EAEU.

According to the Guidelines 2.3.2.1935-04, food products are products in natural or processed form, human consumption (including baby food, diet foods), bottled drinking water, alcoholic beverages (including beer), soft drinks, chewing gum, as well as food raw materials, food additives and dietary supplements (Guidelines, 2004).

Genetically modified organism (GMO) is an organism or several organisms, any non-cellular, unicellular or multicellular formations capable of reproduction or transmission of hereditary genetic material other than natural organisms obtained using genetic engineering methods and containing genetically engineered material, including genes, their fragments or a combination of genes. Genetically modified food sources are food products (components) obtained from genetically modified plants used by humans in their natural or processed form. Turnover of food products is purchase and sale (including export and import) and other ways of transfer of food products (further - realization), their storage and transportation.

The decision of the Commission of the Customs Union of May 28, 2010 № 299 approved a Single list of goods subject to sanitary and epidemiological surveillance (control) at the customs border and the customs territory of the Eurasian Economic Union, section I of which contains a list of goods subject to sanitary and epidemiological surveillance (control) (hereinafter-the List).

In accordance with item 1 of the List, sanitary and epidemiological surveillance (control) is subject to food products (products in natural or processed form, consumed by humans), including those obtained using genetically modified (transgenic) organisms (from the following groups of the unified Commodity nomenclature of Foreign Economic Activity of the Eurasian economic Union (CN FEA EAEU: 02 - 05, 07 - 25, 27 - 29, 32 - 34, 35).

Considering the current national legislation and the legislation of the EAEU, we believe that genetically modified food products are food products obtained using genetically modified (transgenic) organisms (GMOs). Given that each of these groups of CN FEA of the EAEU is divided into subgroups, commodity items, subitems, sub-subitems and commodity codes, sanitary and epidemiological surveillance (control) and simultaneous customs control is subject to an extensive range of food products.

Already at this stage, there are problems of customs control over the movement of food products across the customs border of the EAEU, including the need to identify genetically modified food products and determine the possibility of their release into free circulation. Of course, we are talking about an independent kind of customs control, which has its own specifics, due to the peculiarities of the definition and use of genetically modified foods, as well as the ratio of customs and sanitary-epidemiological control in the cross-border movement of such products. The criterion for distinguishing this type of customs control is the object of control (Agamagomedova, 2016).

Emerging problems can be divided into General and private. Common problems of customs control are equally manifested in the movement of almost any goods across the customs border of the EAEU, these include the problems of the effectiveness of customs control in conjunction with the need to be limited to forms of customs control that are necessary and sufficient to ensure compliance with the customs legislation of the EAEU and the legislation of the EAEU member States, control over the implementation of which is entrusted to the customs authorities. Taking into account the tasks of the customs authorities, the obvious problem is the lack of physical ability to conduct a complete control of all goods transported across the customs border, which is partially solved with the use of risk management system and the application of the principle of selectivity of customs control. The principle of selectivity implies:

- the choice of customs' authorities subject to the application of forms of customs' control;
- selection (usually based on a risk management system) of goods and vehicles for international transport subject to separate verification activities (e.g. customs' inspection);
- the choice of customs' authorities of measures providing carrying out of customs' control.

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An important problem when passing customs' control is the presence of administrative barriers for controlled persons. Despite the tendency to reduce administrative barriers when passing customs control in the customs legislation of recent decades, business representatives note their presence, mainly at the level of departmental regulation of customs control.

Taking into consideration that the risk-based approach is the basis of selectivity of customs control, its legal regulation should be carried out at the legislative level. Currently, such regulation takes place at the departmental level, which poses a real threat to the protected interests of controlled persons. there Is a discrepancy: customs control procedures are established at the legislative level, and the main method, «lever» in the implementation of control «is established» by the service itself, that is, the subject of control. A factor in improving the efficiency of public administration through the optimization of the control and Supervisory function of the state is the transition in the organization and implementation of control measures to the use of risk-based approach, which is used in most developed countries.

World practice shows that the degree of control influence on controlled entities when using a risk-based approach is significantly reduced not to the detriment of the level of security, protection of the rights and interests of controlled persons and other social, economic and other results of the control activities of the state. The risk management system in the implementation of customs control is a modern method of customs control, in which the choice of object, form and measures to ensure customs control is determined by the level (degree) of probability of non-compliance by the controlled entity of the customs legislation of the EAEU and the legislation of the Russian Federation on customs regulation.

Regarding customs control over the movement of genetically modified food products, the risk management system is designed to ensure the selectivity of customs control in relation to certain categories of products. Such selectivity should be based on the approved list of genetically modified food products allowed in the EAEU and developed by the customs authorities of the EAEU member States risk profiles. Since the general problems are widely known and have been repeatedly discussed in scientific publications, it seems necessary to focus on the problems of customs control over the movement of genetically modified foods. The problems, which are certainly interrelated with the General ones, include the following:

- impossibility of detection of genetically modified food products without special research, including during customs control;
- the need for specialists in the state of forensic services of customs authorities with the necessary knowledge and skills, documented;
- the need for special equipment to control and identify signs that characterize the goods as genetically modified foods;
- the need to reduce the time of customs control, given that we are talking primarily about foods that can be genetically modified;

- the need to ensure special conditions of storage, transportation, delivery, including samples and samples, through the study of which it is possible to confirm or refute the ratio of food to genetically modified;
- the absence of a list of authorized genetically modified food products in the EEU;
- differences in the level and content of legislation on genetically modified foods in the EAEU member States;
- interaction of customs authorities and Russian Consumer Supervision bodies in the implementation of state control (customs control and sanitary-epidemiological control (supervision)) over the movement of genetically modified food products across the customs border of the EAEU and others.

From this incomplete list of problems that arise in the customs control of the movement of genetically modified foods, some of them are purely technical, organizational. In particular, the decision of one of them is the development and approval of the list of genetically modified foods permitted in the EAEU, by analogy with the list existing in the European Union (EU Register of authorized GMOs, 2003).

Some steps in this direction are already underway, but mainly at the national level of regulation. The interest of the state power to this problem appears in the middle of 90-ies of the last century and is expressed in the development and adoption of the Federal law «On state regulation in the field of genetic engineering» (Federal law, 1996). Later, the Government of the Russian Federation adopted resolutions on the state registration of genetically modified organisms (GMOs) and feed derived from genetically modified organisms.

At the same time, it should be noted that similar normative acts in some EAEU member States appear later, for example, the Law «On safety of genetic engineering activities» in the Republic of Belarus was adopted in 2006, in others – are absent at the present time (for example, the Republic of Kazakhstan), which entails additional difficulties in regulating the turnover of such products within the EAEU.

In 2017, the Government of the Russian Federation adopted a Resolution «On the procedure for the Federal service for supervision of consumer rights protection and human well-being to monitor the impact on humans and the environment of genetically modified organisms and products obtained with the use of such organisms or containing such organisms, and control over the release of such organisms into the environment» (Decree of the Government of the Russian Federation, 2017). It was developed in order to implement the Federal law of July 3, 2016 №358-FL (Federal Law) «On amendments to certain legislative acts of the Russian Federation in terms of improving state regulation in the field of genetic engineering».

Monitoring and control in this area is entrusted to the Federal service for supervision of consumer rights protection and human welfare (Russian Consumer Supervision).

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The Federal service will use information from the state registration of GMO and GMO products, the results of studies conducted within the framework of sanitary and epidemiological surveillance and supervision in the field of consumer protection, information will come from the bodies and organizations of the EAEU States, other countries and international organizations.

In addition, Russia has introduced administrative liability for violations in this area. Thus, the current administrative Code provides for several formulations in the field of genetic engineering: Violation of the legislation of the Russian Federation in the field of genetic engineering (article 6.3.1.); violation of mandatory requirements for labeling of food products obtained with the use of genetically modified organisms or containing such organisms (article 14.46.1.) (CAO, 2001).

As for the labeling of food products obtained with the use of genetically modified organisms or containing such organisms, specific progressive steps have been taken in this direction at the level of the EAEU. The Council of the Eurasian economic Commission on December 20, 2017 approved the decision on the mandatory application of the label of products obtained with the use of genetically modified organisms on food packaging. The necessary changes were made to the technical regulations of the Customs Union in 2011 «Food products in terms of its labeling».

Marking is provided for the content of genetically modified organisms in the food product in the amount of more than 0.9%. In addition, this technical regulation contains a requirement to inform customers about the content of GMOs by manufacturers of relevant products, while informing is carried out in a way that ensures its easy readability and visibility throughout the service life (shelf life) of the product. The relevant documents of the Eurasian Economic Commission regulating the procedures and control of food product labeling come into force in December 2018 and April 2019 (Decision of the EEC Council, 2017; Decision of the EEC Council, 2018).

An important step in this direction, carried out at the supranational level, is the adoption of the interstate standard « State Standard of the Russian Federation 34150-2017. Interstate standard. Biological safety. Raw materials and food. Method of identification of genetically modified organisms (GMOs) of plant origin using a biological microchip», which comes into force on January 1, 2019. This document is included in the List of standards containing rules and methods of research (testing) and measurements, including the rules of sampling necessary for the application and fulfillment of the requirements of the technical regulations of the Eurasian economic Union «On the safety of fish and fish products» (TR EAEU 040/2016) and the conformity assessment of objects of technical regulation (State All-Union Standard 34150-2017, 2017).

Regarding problems of a different nature, the following should be noted. Despite the fact that The customs code of the EAEU provides for the participation of a specialist

in customs control (art. 346), the involvement of experts and experts from other state bodies to assist in customs control (art. 347), as well as the appointment and conduct of customs examination during customs control (Chapter 53), which can be equally successfully used in customs control over the movement of genetically modified food products across the customs border of the EAEU (Customs code of the EAEU, 2017), in practice, officials whose competence includes customs control, there are difficulties of various nature. At the same time, the difficulties are mostly associated with the lack of necessary knowledge about the controlled product, at best limited to the Philistine idea of genetically modified foods. In the modern period, the expert units of the Federal customs service carry out such examinations. As of 25.09.2018 in respect of food products, the Central Forensic Department of the FCS of Russia provides for the possibility of carrying out the following types of examinations: identification examination of products of animal and plant origin; alcoholic and non-alcoholic beverages, natural, mineral waters, beer, tobacco and tobacco products, as well as the determination of the market value of such a category of goods (cost expertise) (Expert capacity of the units of the CFSD (Central Forensic Science Department, 2018).

These problems indicate the need to create organizational and technical conditions for the expert units of the customs authorities of the EAEU member States to carry out examinations of food products obtained using genetically modified (transgenic) organisms, as well as examinations to determine food products potentially related to genetically modified.

#### **4. Conclusion**

As a result of the study, it was found that the problem of cross-border movement of genetically modified foods across the customs' border of the EAEU exists. It was originally designated at the level of individual member States of the EAEU (in the mid-90s of the last century), has now acquired a supranational (integration) character, which led to the formation and development of a number of areas for the regulation of cross-border turnover of such products in the EAEU.

Customs' control of cross-border movement of genetically modified food products acts as a kind of customs' control in General, the specifics of which are determined by the peculiarities of the creation (registration) and use of such products in civil circulation. The identified problems of implementation of such a direction of customs control require solutions in terms of organizational, legal and information technology regulation. We highlight the following areas of improvement of customs control over cross-border movement of genetically modified foods:

1. Different levels of regulatory and legal regulation of genetic engineering in the EAEU member States require the early adoption of a model legal act in this area at the EAEU level, establishing a single concept of the apparatus, principles and procedures for the creation and use of such products.

2. It is necessary to develop and adopt a list (register) of genetically modified foods allowed in the EAEU, like the list existing in the European Union.
3. The specificity of the ratio of customs and sanitary measures in cross-border turnover of genetically modified foods requires the development and adoption of technological schemes of customs and sanitary-epidemiological control (supervision) in relation to this type of product (it can be approved in the form of Administrative regulations at the level of the EAEU).
4. It is necessary to unify the labeling of genetically modified foods in the EAEU. Currently, food labeling must comply with the legislation of the EAEU member States (Decision of the Customs Union Commission of 28.05.2010).
5. It is required to include in the list of examinations carried out by expert services of customs authorities of the EAEU member States, examination of genetically modified food products with the condition of material and technical support of such laboratories and training of necessary experts.
6. As part of the risk-based approach to the implementation of the selected type of customs control, it is necessary to develop and approve risk profiles at the level of the EAEU, considering real and potential threats in the creation, use and circulation of genetically modified food products.
7. It is necessary to unify the measures of administrative responsibility in the sphere of turnover of genetically modified food products in the EAEU member States in order to equalize the rights of participants in such turnover in the common economic territory of the EAEU.

The implementation of these areas of improvement of customs control over cross-border movement of genetically modified foods will improve its efficiency and ensure the protection of the rights of citizens of the EAEU member States, the necessary level of biological and other safety in the single territory of the Eurasian economic Union.

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