

Customs Regulation in the Cooperation Council for the Arab States of the Gulf*

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Abstract: Today, processes of regionalization are expressed, among other ways, in the establishment of various international regional organisations. Many of these organisations are aimed at economic and customs cooperation. Regulation of customs relations among states and international organisations is realized through the norms of international customs law, a branch of international public law. In this study, we investigate customs regulation in the Cooperation Council for the Arab States of the Gulf (GCC) from the point of view of international law. The main objective of this paper is to analyse concrete examples of the regulation of international customs cooperation in the GCC such as multilateral agreements, the GCC Customs Union and the GCC Free Trade Area. This paper attempts to cover the organisational and legal aspects of customs cooperation among the GCC States, both among themselves and with other countries.

Key words: GCC • International Customs Law • Customs Union.

INTRODUCTION

Modern political and scientific thought is increasingly analysing the processes occurring in the countries of the Arab world because it is one of the centres of global economic and political activity. Most of these studies concern economic and political relations, but the relationships between the countries of the Arab world are also deserving of study from the perspective of international customs law, with a focus on integration associations. One of these associations is the Cooperation Council for the Arab States of the Gulf (GCC).

Since 1981, the GCC has brought together six oil-producing states in the region: Bahrain, Qatar, Kuwait, the United Arab Emirates (UAE), Oman and Saudi Arabia. The creation of the GCC was due to various political and socio-economic factors and it has been facilitated by its inclusion of states that are similar to each other in many ways [1]. The GCC is an international intergovernmental multifunctional regional organisation. The GCC is viewed as the most advanced example of regional integration in the Middle East and North Africa and its purpose as the most ambitious in the developing world [2].

The Charter of the GCC indicated that the main purpose of the organisation is coordination, integration and cooperation between member states in all fields to achieve unity and to create unified regulations in matters involving the economy, finance, trade and customs. The area of cooperation that is the focus of this paper is customs.

International Customs Cooperation and International Law: Cooperation in international customs is carried out within the framework of international customs relations. There is more than one doctrine concerning the international customs relations and such relations are interpreted in different ways. Often, international customs relations are considered only in terms of external trade and economic relations. However, customs relations are not always related to foreign trade activity or actual economic relations; there is also a law enforcement aspect. The most broadly defined, cooperation in international customs is cooperation between states and intergovernmental organisations in all areas of customs and customs business, i.e., the regulation of the movement of goods across a customs border.

International law has taken on greater importance in modern times as a system of international treaties and

* Part of this research was presented at the international scientific conference "Actual problems of law enforcement and human rights advocacy in the Arab world" at Peoples' Friendship University of Russia, Moscow, 22 March 2013

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customary rules governing international relations. This increased importance is motivated by the desire among nations to promote peace and security, international cooperation and the strengthening of integration processes. As a result, the system of international law has become more complicated, encompassing relationships that previously were not regulated under international law or that did not even exist. The system of international law is divided into branches. There are many branches in contemporary international law, such as maritime, space, nuclear, environmental, health, economic, transport and, particularly, customs law.

International customs cooperation is realised through the norms of international customs law, which is a branch of international public law. International customs law is a system of rules and principles governing the relationships between states and intergovernmental organisations in their cooperation in customs affairs. The relative autonomy of international customs law gives it additional weight in matter of regulation, with its own principles and a considerable number of international-legal acts, reflecting the interest of the international community in the regulation of customs relations.

International customs cooperation, with its distinct forms, levels and directions, can be considered from different points of view. Some particular forms of cooperation are institutional entities and intergovernmental organisations. There are also non-institutional ways to achieve cooperation, such as meetings and workshops. Distinguishing levels (i.e., universal, regional and bilateral) allows observers to measure international customs cooperation by the number of participants. Directions define specific areas and spheres of activity that are involved in international customs cooperation. Additional characteristics of cooperation include the principles by which such cooperation is implemented and the intensity and effectiveness of cooperation.

As noted, the international legal regulation of customs relations is carried out at two different levels: the universal, affecting all the parties of international customs relations and the regional, affecting only some states. The GCC is one of the most successful regional intergovernmental organisations in the developing world today and its experience with legal regulation of customs cooperation can be useful for developing economies.

Organisation and Management of Customs Cooperation:

The GCC countries engage in customs cooperation primarily through the framework of universal intergovernmental organisations, such as the World

Customs Organisation (WCO) and the World Trade Organisation (WTO), of which all the GCC countries are members. Accordingly, GCC countries participate in multilateral international agreements and conventions developed under the auspices of the WCO. Saudi Arabia acceded to the WCO in 1973; it was the first of the Persian Gulf States to do so and the last one was Bahrain, in 2001.

The WCO includes the Political Commission, which is convened to consult on important policy issues and act as a dynamic steering group. With a growing worldwide membership, the WCO has divided its membership into six regions, with each represented by a regionally elected Vice-Chairperson to the WCO Council. One of these regions is the North of Africa, the Near East and the Middle East. In this framework, cooperation between the customs bodies of the states of a particular region and of regional organisations involved in customs activities is ensured.

In accordance with the GCC's Charter, the governing bodies of the organisation are the Supreme Council, the Ministerial Council and the Secretariat General. The supreme policy-making body of the GCC is the Supreme Council, which is composed of heads of member states. The Supreme Council lays down the higher policy for the Cooperation Council and the basic lines it should follow; approves the principles for dealing with other states and international organisations; reviews the recommendations, reports, studies and joint ventures submitted by the Ministerial Council for approval; and approves or rejects the proposals of the Ministerial Council or the Secretariat General, including the changes to the Charter. Each member of the Supreme Council has one vote. Resolutions of the Supreme Council in substantive matters are accepted by unanimous approval of the member states participating in the vote, whereas resolutions on procedural matters are accepted by majority vote. Beneath the Supreme Council is the Dispute Settlement Commission which is constituted by the Supreme Council for each dispute arising out of the interpretation of the terms of the Charter. The Supreme Council also has a Consultative Commission, which is composed of thirty members, five members from each of the Member State, who are chosen for their expertise and competence and who serve for a term of three years. This body considers matters referred to it by the Supreme Council of the GCC.

The Ministerial Council is composed of the foreign ministers of all the member states or other ministers deputising for them. The functions of the Ministerial Council include formulating policies and making recommendations for promotion of cooperation among the

member states, achieving coordination among the member states for implementation of ongoing projects and transmitting of recommendations for some form of co-operation to the one or more technical or specialised committees so that committee members may study the recommendations and make proposals regarding them. The Ministerial Council submits its decisions in the form of recommendations to the Supreme Council for its approval. The Ministerial Council is also responsible for preparing meetings of the Supreme Council, including drafting agendas.

The Secretariat General ensures the Cooperation Council's ongoing work and is the main coordinating and administrative-technical body of the GCC. The Secretariat General has responsibility for preparing materials related to the development of cooperation and to be considered at meetings of the Supreme and Ministerial Councils and oversees the implementation of Supreme and Ministerial Councils' decisions and recommendations. The Secretary-General is appointed by the Supreme Council and is directly responsible for the work of the Secretariat General and for the smooth flow of work in its various organisations. The Secretary-General represents the Cooperation Council with other organisations and with states within the limits of the authority vested in him.

The Main Directions and Stages of Customs Cooperation: The Unified Economic Agreement between the Countries of the Gulf Cooperation Council, signed in 1981, is the first legal document to lay the foundation for common customs regulation in the GCC. In the field of trade exchange, the Agreement provided that the member states permit the importation and exportation of agricultural, animal, industrial and natural resource products that are of national origin. All products that are of national origin are exempted from reciprocal charges. For products of national origin to qualify as national manufactured products, the value added during their production in member states shall be not less than 40% of their final value at the end of the production phase. In addition, member states citizens' shall have an ownership share in the production plant of not less than 51%.

The Agreement requires member states to establish uniform minimum customs tariffs on the products of countries other than GCC member states. One of the objectives of the establishment of uniform customs tariffs was the protection of national products from foreign competition. The introduction of unified customs tariffs was to occur gradually over a period of five years from the date that the Agreement took effect. The Agreement

provided for a free trade area, although this is not stated directly in the document. As a first step towards economic integration, free trade zone was established in 1983 and common customs duties on goods imported from third countries were introduced.

In 2001, the Unified Economic Agreement was revised and replaced by the new Economic Agreement, Article 1 of which established the customs union of member states. The customs union should have started functioning no later than 2003 and it provides for a common external customs tariff, common customs regulations and procedures, a single entry point for the collection of customs duties, the elimination of all tariff and non-tariff barriers in mutual trade, national treatment of all goods produced in the member states.

The establishment of the customs union of the GCC required a significant time. There were obstacles to the creation of the customs union. There was a serious conflict between Saudi Arabia and the United Arab Emirates concerning the model of the customs union. Moreover, Saudi Arabia's status as the keeper of the most important shrines of Islam could not be reconciled with the fact that the goods crossing over the border into the GCC may not be subjected to inspection and verification at the border of the Kingdom [3].

The establishment of a customs union assumes a common customs territory; a common customs tariff; and common customs, financial and administrative procedures and rules relating to the movement of goods across the customs border. The customs union operates in accordance with common customs legislation. The main act regulating customs relations in the GCC is the Common Customs Law (hereinafter sometimes "the Law").

A draft of the Law has been worked on extensively since 1992. The technical committee, assigned by the directors general of customs to undertake this task, held seventeen meetings for this purpose, which ended with the approval of the Law. To ensure that the Law is in line with the provisions of international customs agreements, the Secretariat General dispatched English versions of it to both the WCO and the WTO for their comments. The Secretariat General received those comments and gave them to the proper technical committee for consideration and for proposals on appropriate action.

The Common Customs Law of the GCC States was adopted in the 20th Session of the Supreme Council. Held in Riyadh during 27-29 November 1999, the 20th Session of the Supreme Council declared that the Common Customs Law would be implemented as a reference law for one year from the date of its adoption by the Supreme Council. At that time, the Supreme Council also stated

that the Law would be revised in light of comments from member states that were received by the Secretariat General in an attempt to make the Law's implementation by all the Customs Administrations of the GCC States mandatory by 2002. To complete the steps necessary for the Law's implementation in the customs administrations of the GCC States and to review the comments of the member states and finalise the preparation of the Rules of Implementation and the Explanatory Notes, the Supreme Council, in its 21st Session held in Manama, Bahrain 30-31 December 2000, decided to extend the period of the reference implementation of the Law. The period was extended for one more year, provided that all the Customs Administrations of the GCC states be required to implement it in January 2002 [4]. In 2001, at the 22nd Session of the Supreme Council, the Law was finally adopted. At the same time, the Rules of Implementation and the Explanatory Notes were also adopted.

The Law includes 179 articles that are divided into 17 sections and it provides definitions for more than 40 terms used in customs practices. The Law describes the customs procedures, the principles for the application of the customs tariff and customs duties, prohibitions and restrictions, the declaration and control of goods and the status of customs brokers and customs officials. Material and procedural norms for customs offences occupy almost one-third of the Law. The relatively short length of the Law has resulted in the delegation of many issues to the member states and the heads of national customs.

There are a small number of normative documents in the GCC customs union. In addition to the Common Customs Law, there are the Common Customs Tariff and the General Law on anti-dumping, countervailing and safeguard measures. The volume of regulations is significantly less than customs regulations in ASEAN countries [5], to say nothing of the Eurasian Economic Union.

It is noted that "the majority of customs unions of developing countries cannot be considered fully completed in force remaining exceptions from the free trade regime, incomplete coverage by the commodity nomenclature of the common external tariff, the application of non-tariff measures of regulation of foreign trade, the lack of harmonization of trade policy instruments, etc." [6]. An additional means of achieving convergence is through political integration or the creation of supranational institutions that would subordinate national interests for the regional interests. This will be possible only if individual countries are willing to surrender some of their political and policy prerogatives [7].

All these observations can be attributed to the GCC Customs Union; additionally, there is an absence of supranational bodies able to make binding and self-executing decisions. By 2010, supranational agencies had begun to acquire a measure of policy-making authority over sectors of the regional economy that had previously been governed exclusively by individual states [8]. The decision to establish a special body of the Customs Union of the GCC (GCC Customs Union Authority) was adopted at the 32nd session of the Supreme Council in December 2011. In June 2012, the GCC Customs Union Authority held its first session. The internal structure and functions of the Authority were approved by the Economic and financial Committee. The GCC Customs Union Authority is a meeting of the heads of customs administrations of the GCC member states and it is planned that the meeting will be held four times a year in the country of the Secretary General or in the country of the Chairman. The Authority will address the unresolved issues of the Customs Union, particularly the problem of the distribution of customs duties. The Authority is supposed to submit these questions to the session of the Supreme Council in 2014 and to create a final version of the Customs Union in 2015.

Cooperation in Law Enforcement: One of the main objectives of international customs cooperation is cooperation in law enforcement. International customs law has a law enforcement function that is expressed in the detection and suppression of customs offences. Customs offences received special attention in Annex H.2 of the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto, 18 May 1973), which concerns customs offences; it states that "customs offence" means any violation or attempted violation of customs laws. This provision sets standards and guidelines for national customs administrations concerning the investigation and establishment of customs offences, the arrest of individuals or the detention of goods, the means of transport and other matters. The signatories of the Kyoto Convention are Qatar, the UAE and Saudi Arabia.

The most significant international legal instrument in this sphere is International Convention on Mutual Administrative Assistance for the prevention, investigation and repression of customs offences (Nairobi, 9 June 1977). The Convention consists of a preamble, six chapters and annexes. The preamble states that the goals of the Convention's adoption are the unification of and cooperation between the customs services of various countries to handle offences against

customs law that are prejudicial to the economic, social and fiscal interests of states and to the legitimate trade interests. The preamble states that action against customs offences can be rendered more effective by cooperation between customs administrations. Accordingly, the Contracting Parties of the Convention have agreed that their customs offices will provide each other with assistance in the prevention, investigation and elimination of customs offences. Of all member states of the GCC, only Qatar (2003) and Saudi Arabia (1985) have signed the Convention.

To assist its members in improving the effectiveness of their enforcement efforts and achieving a balance between control and facilitation, the WCO has established the Regional Intelligence Liaison Offices (RILOs). The RILOs are supported by a global database, the Customs Enforcement Network (CEN), a global data- and information-gathering, analysis and communication system for intelligence purposes, to facilitate the exchange and use of information. The RILO is a regional centre for collecting, analysing and supplementing data as well as disseminating information on trends, modus operandi, routes and significant cases of fraud. The aim of this mechanism is to enhance the effectiveness of global information and intelligence exchange as well as co-operation between all the customs services tasked with combating transnational crime. The Regional Centre for the Middle East is located in the capital of Saudi Arabia, Riyadh. The Regional Centre supports the exchange of information between Bahrain, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Syria, the UAE and Yemen. The GCC, as an international organisation, is a member of the Financial Action Task Force (FATF). According to experts of the FATF and the Middle East and North Africa Financial Action Task Force, all international cooperation in the area of customs is through the WCO [9].

Analysis of the participation of the GCC countries in the international instruments relating to law-enforcement activity of customs bodies allows us to conclude that most of this activity is regulated at the regional level. The Customs Union also takes a unified approach to customs offences. Section XIII of the Common Customs Law of the GCC States is dedicated to customs offences.

An analysis of the Law shows that it distinguishes between customs offences and smuggling. Article 141 of the Law identifies customs offences, which are punishable by a fine. Customs offences include offenses relating to importation, exportation and re-exportation; customs declarations; transit; warehouses; and temporary

admission. Article 142 of the Law defines smuggling as bringing or attempting to bring goods into or out of the country in contravention of the applicable laws without payment of the customs taxes "duties", in whole or in part, or in contradiction of the provisions on prohibition or restriction provided for in the Law or in other laws.

In particular, smuggling is considered to be the movement of goods other than at border crossing points and by routes intended for importation or exportation of goods; loading or unloading of ships and aircraft outside the designated areas; failing to declare imported or exported goods to the customs office; concealing transferred goods; removing goods from free zones and duty-free shops, customs warehouses, stores or customs zones without finalisation of customs procedures; producing false, fraudulent or fabricated documents or lists or affixing false marks with the intention of evading customs taxes "duties", in whole or in part, or of avoiding the provisions on prohibition and restriction; transporting or acquiring prohibited or restricted goods without submitting evidence supporting their legal importation; and other activities.

Punishment for the crime of smuggling requires the presence of intent. Those who may be deemed responsible are offenders directly involved in the act, partners in the offence, inciters and interferers, possessors of contraband, owners of the means of transport used for smuggling, drivers and assistants who are involved with the contraband, owners or tenants of the shops and places where contraband are kept or the beneficiaries who are aware of the presence of contraband in their shops or places.

The Law establishes the penalties for violations of customs laws. Sanctions include a fine, which is calculated according to the amount of customs duties and taxes payable on goods transported when the violation occurred or according to the value of the goods; imprisonment; and the confiscation of smuggled goods and the vehicles by which the goods were moved in addition to other items used for smuggling. The size of the penalty depends on the characteristics of the smuggled goods, such as their exemption from customs duties or taxes, the imposition on them of high customs duties and taxes and their status as prohibited or allowed goods. The amount of the fine may not be less than ten per cent of the value of the goods and not more than three times the value of the goods. Imprisonment may be imposed for a period of one month to three years. A fine and imprisonment may be imposed simultaneously. The

penalty may be doubled if the offence is repeated. Customs authorities are not free to confiscate the goods; they can keep them only temporarily and the issue of confiscation is decided by the court.

Chapter VI, Section XIII of the Law contains procedural rules governing some of the administrative and criminal investigations, as well as judicial review of cases involving the violation of customs regulations and smuggling. Among the rules that have attracted interest is the so-called conciliatory settlement (compromise) procedure set forth in Articles 151-153 of the Law. The conciliatory settlement procedure applies when a written request is received by the alleged offender from the director general or his authorised representative. The Law does not regulate in detail the grounds for the use of conciliatory settlement, but the relevant ministers or other competent authorities of member states of the GCC are required to issue instructions for the use of these procedures.

Law enforcement activity of the customs bodies of the GCC is not confined to the customs sphere. They cooperate in providing security and in fighting against international terrorism. The GCC States have signed the GCC Counter-Terrorism Agreement in 2004. In 2006, a Permanent Anti-Terrorism Committee was formed. The Permanent Anti-Terrorism Committee holds annual meetings as one of the specialised security committees. The current security agreement was signed by the Ministers of Internal Affairs in November 2012.

Customs Cooperation with Other Countries: GCC customs relations with other countries are regulated mainly within the framework of the free trade zones. The Agreement of Facilitating and Developing Commercial Exchange between the Arab Countries in 1981 is considered the legal ground for forming GAFTA as an initiative to achieve the Arab Economic Integration. In February 1997, the Arab League decided to create an Arab Free Trade Area, by 2008, also known as the Greater Arab Free Trade Area (GAFTA) or the Pan-Arab Free Trade Area. This would be achieved through a 10% reduction in customs fees each year as well as the gradual elimination of trade barriers. Eighteen of the 22 Arab League states signed on to this agreement, which came into force on 1 January 1998. In March 2001, the Arab League states decided to speed up the liberalisation process and on 1 January 2005, the elimination of most tariffs among the GAFTA members was enforced. All GCC countries are members of GAFTA, but not the GCC as a whole. Bilateral

free trade agreements with outside countries have been signed even if they violate GCC collective agreements [10].

The Economic Agreement of the GCC of 2002 recommended following the principle of collective negotiation between the GCC, other countries and economic organisations. The GCC and the Republic of Singapore signed an agreement on 15 December 2008 to establish a free trade zone between them, which was considered the first free trade agreement signed by the GCC with another country. Chapter 4 of the Economic Agreement applies to customs procedures required for the clearance of goods traded between the parties. As the objectives of the Economic Agreement may be promoted by the simplification of customs procedures, the parties agreed that their customs cooperation will be based on the principles of transparency, a risk management approach, paperless communications, unified record keeping requirement, cooperation in origin verification, the sharing of best practices and confidentiality of information.

The Free Trade Agreement between the Gulf Cooperation Council for the Arab States of the Gulf and the European Free Trade Association (EFTA) States was signed in Hamar, Norway on 22 June 2009. The Free Trade Agreement covers a broad range of areas including trade in goods, trade in services, government procurement and competition. The EFTA-GCC Joint Committee, established by the Free Trade Agreement, will supervise the application of this agreement, which also provides for dispute settlement through arbitration. In addition, bilateral arrangements on agricultural products between three individual EFTA States and the GCC form part of the instruments establishing the free trade area between each of these states and the GCC. According to the Free Trade Agreement, no new customs duties shall be introduced on trade between the EFTA States and the GCC and all customs duties on imports of products originating from EFTA States and the GCC shall be abolished, with the exception of some goods. The European Union and the GCC signed the 1989 Cooperation Agreement, which set the stage for cooperation in various fields and for negotiations on a free trade agreement, which continues to be unrealised until now.

Gcc States and Russia: Cooperation of the GCC States with Russia in this sphere is very limited and is carried out on a bilateral basis. Apart from the occasional exchange of information between the RILO-Moscow and the

RILO-Riyadh, it may be noted that an agreement between the government of the Russian Federation and the government of the United Arab Emirates to cooperate in combating crime was signed on 10 September 2007. This agreement provides for, among other things, cooperation in the prevention, detection, suppression and disclosing of illegal traffic in firearms, ammunition, explosives, poisonous substances and radioactive materials, narcotic drugs and psychotropic substances and their precursors; and of the theft and smuggling of items of cultural and historical value and vehicles. The existing agreement between the USSR and Qatar on trade, economic and technical cooperation signed in 1990 is very general in nature. It sets forth the mutual treatment of the most favoured nation, encouraging export and import of goods from one country to another in accordance with their national laws and regulations. Similar agreements were concluded between Russia and Oman in 1994 and between Russia and Bahrain in 1999. The agreement between Russia and Oman on cooperation in the field of culture, science, education, tourism and youth was signed in 2000. It establishes that the parties, in accordance with international law and domestic legislation, will take the necessary measures to prevent the illicit transfer of items of both countries that have cultural value and to ensure the cooperation of the competent authorities to exchange information on these cultural items and to take measures for their return. There is no agreement on cooperation and mutual assistance in customs matters between the Russian Federation and the GCC States. Such an agreement is desirable, if not with the GCC as a whole, then with Saudi Arabia, taking into account the considerable number of Russian pilgrims to the Muslim holy sites.

CONCLUSION

The GCC is an international intergovernmental regional organisation. Various GCC agreements and other documents constitute GCC law, which is both international and regional. Customs cooperation between GCC countries is a necessary condition for the economic and social development of member states of the GCC. It is possible that the finalisation of the Customs Union of

the GCC will transform the traditional role of customs from collecting revenue to facilitating legitimate trade and guaranteeing that imported goods are safe and through deterring the illegal entry of goods. Using the experience of international legal regulation of customs relations in the GCC may be useful for further improvement of the customs unions of developing countries and the Eurasian Economic Union.

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