

Regulatory Support of Space Goods and Services Trade Growth in Eurasian Economic Union

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Abstract

The Eurasian Economic Union declared to raise competitiveness of remote sensing services, provision of geoinformation goods/services as a part of development strategy. Estimated economic effect is \$500m in 10 years. Presented study aims to reveal how legal instruments are used to enhance state cooperation and pool economic resources of partner states for economic growth.

Newly introduced regulatory framework is analysed through existing regulation of space goods/services provision (establishments of legal entities, licensing, provision of national regime, tariff preferences, financial services delivery, state procurement). The paper examines export and import benefits in trade with specific countries under Union-third countries free trade agreements. The work also demonstrates correlation of Union's regime with obligation of Union's member states in the World Trade Organization.

On the basis of the research conclusions are formulated on existing supportive legal base for future perspectives of trade growth in space goods/services within the Union and with third countries.

1. Introduction

Since the very beginning of the EAEU establishment space sphere was in focus of the organization. At the present time it seems that all legal barriers for free trade in goods and services in space sector are mostly eliminated between member states of the Union. Several third countries have preferential trade regimes with the EAEU based on FTA. This paper is focused on

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analysis of how much this legal impetus mean for development of space sector within the Union and which obstacles may prevent future trade growth.

We shall admit that specificity of trade in space goods and space services within the EAEU has not been studied much. Existing studies are mostly done by Russian authors. For example, M.V. Shugurov formulates the conclusion that in midterm perspective the crucial role of regulation of remote sensing sector will be played by program regulation.¹ V.S. Kichenina comes to the conclusion that in order to improve export of space vehicles special norms, which will allow for support of private initiatives based on local products, extension of credit instruments for support of business and usage of investment as a tool for international cooperation, shall be elaborated.² N. Sopilko and N. Navrotskaya conclude that investments in space sphere are necessary to enhance research and development of technological platforms.³

On the other hand, there is a plenty of works dedicated to various aspects of Union's integration, perspectives, FTA with third countries. N.N. Bolshova innumerates such obstacles for growth of common market as low level of intraregional trade, focus of member states on trade with third countries and low innovative trade.⁴

V.V. Vityuk draws a conclusion that there is significant unemployment of trade perspectives between the EAEU and its member states on one side and Union's trade partners (Viet Nam⁵ and Serbia⁶) on the other.

On the background of existing fragmented research our aim is to fill the gap in and study perspectives of future trade growth in space goods and space services within the Union. For these purposes, firstly, the legal framework for mentioned trade in the EAEU will be revealed (Section 2), including regime for member states (Section 3) and for FTA partners (Section 4). Then, analysis of correlation of EAEU regime with WTO obligations of member

1 М.В.Шугуров, Производственная и научно-технологическая интеграция государств-членов ЕАЭС в сфере дистанционного зондирования Земли: правовые и программные основы, *Международное право и международные организации* 2 (2021) 1-42.

2 В.С.Киченина, Правовое регулирование перемещения через таможенную границу ЕАЭС продукции высоких технологий, *Международное публичное и частное право* 3 (2020) provided by database «КонсультантПлюс».

3 Н.Ю.Сопилко, Н.А.Навроцкая, Проблемы продвижения инновационных технологий и высокотехнологичных товаров стран ЕАЭС, *International conference «Innovations in establishment and business management»*, 2018 18-20 October.

4 Н.Н.Большова, Торговля услугами и перспективы общего рынка услуг в ЕАЭС, *Международная аналитика* 3 (2018) 71-81.

5 В.В.Витюк *Тарифно-преференциальный режим свободной торговли между ЕАЭС и Социалистической Республикой Вьетнам и его содержание, Таможенная политика России на Дальнем Востоке* 1 (2020) 49-67.

6 В.В.Витюк, *Режим тарифно-преференциальных отношений в новом формате свободной торговли между ЕАЭС и Республикой Сербией, Инновации и инвестиции* 8 (2020) 54-59.

states will be provided (Section 5). Finally, conclusions on current legal regulation and its impetus for perspectives of trade growth are formulated (Section 6).

2. Legal Framework of the Union

The closest predecessor the Customs Union of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation of 2010 (the Customs Union) from which we will start the research of space cooperation and promotion of trade in space goods and services. The reason for this timeline is that 1) decisions of the Commission of the Customs Union form a part of EAEU law equally with decisions of the Eurasian Economic Commission⁷ (the EEC) and 2) international treaties, concluded during formation of the Customs Union and Common Economic Space, continue to apply unless they are terminated.

The function of the Union is *to create conditions* for promotion of coordinated policy of member states in order to develop their economies and provide for free movement of goods, services, capital and labour. Consequently, the EAEU does not finance joint projects of states. The Union's bodies approve decisions on precise projects, which already state amount of contribution and national authority for project implementation. Afterwards respective entities receive financial resources for implementation from their Governments.

Currently the Union is comprised of *five member states*: the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan the Kyrgyz Republic and the Russian Federation⁸; *three observers*: the Republic of Cuba, the Republic of Moldova and the Republic of Uzbekistan.⁹

Observers are eligible to be present at meetings of the EAEU bodies upon invitation, but do not have a right to participate in decision-making process and are obliged to refrain from "any action that could harm the interest of the EAEU and its member States, the object and purpose" of the Treaty (paras 3-5 Article 109 of the Treaty on the Eurasian Economic Union¹⁰ (EAEU Treaty)).

Nowadays only Belarus, Kazakhstan and Russia have own satellites.¹¹

7 О действии решений Комиссии таможенного союза https://courteurasian.org/court_cases/P-1.18/.

8 EAEU member states <http://www.eaeunion.org/?lang=en#about-countries>

9 О статусе государства-наблюдателя при ЕАЭС https://eec.eaeunion.org/comission/department/dep_razv_integr/mezhdunarodnoe-sotrudnichestvo/o-statuse-gosudarstva-nablyudatelya.php.

10 Treaty on the EAEU https://www.un.org/en/ga/sixth/70/docs/treaty_on_ceu.pdf.

11 Online Index of Objects Launched into Outer Space https://www.unoosa.org/oosa/soindex/search-ng.aspx?lf_id=.

3. Trade Regime for Member States of the EAEU

Sources of law within the Union are comprised of the EAEU Treaty itself, international agreements within the Union and international agreements of the Union with third countries, decisions and resolutions of the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council and the EEC (Article 6 of the EAEU treaty).

Previous decisions under the Customs Union created a solid part of Union's current law by:

- using the Common Customs Tariff¹² (the Decision #130);
- special customs procedure¹³ (the Decision #329) and customs import duty exemption for goods (crew vehicles, software for space systems, food for astronauts, etc.),¹⁴
- imported within the framework of international cooperation in the field of exploration and use of outer space¹⁵ (the List, Decision #727);
- concluding the Treaty on the Functioning of the Customs Union in the Framework of the Multilateral Trading System dated 19 May 2011¹⁶ (the Treaty 2011) to provide for a mechanism of compliance of member states with their WTO obligations (in force since 22 August 2012 further will be discussed in Section 5).

Nevertheless, formally, cooperation in aerospace sphere was declared only in 2013 as a part of industrial policy¹⁷ and in 2014 space goods were exempted from customs duties, taxes, prohibitions and restrictions¹⁸ under the condition of provision of documents, certifying intended use of products, planned term of launch, quantity and costs of products.

In other words, much on elimination of tariffs and declaration of cooperation in space sphere was done before the signature of the EAEU Treaty, which

12 Решение Комиссии Таможенного союза (КТС) от 27 ноября 2009 г. No 130 https://docs.eaeunion.org/docs/ru-ru/0154711/cuc_30082012_130.

13 Решение КТС от 20 мая 2010 г. No 329 http://www.tsouz.ru/kts/kts16/pages/r_329.aspx.

14 Перечень товаров, ввозимых на таможенную территорию Таможенного союза в рамках международного сотрудничества в области исследования и использования космического пространства, в том числе оказания услуг по запуску космических аппаратов, утвержденный Решением КТС от 22 июня 2011 г. No 727 https://docs.eaeunion.org/docs/ru-ru/0025441/cuc_17082011_727.

15 Решение КТС от 22 июня 2011 г. No 727 https://docs.eaeunion.org/docs/ru-ru/0055441/cuc_17082011_727

16 Договор о функционировании Таможенного союза в рамках многосторонней торговой системы https://docs.eaeunion.org/docs/ru-ru/0154796/itot_17052013.

17 Решение Высшего Евразийского экономического совета (ВЕЭС) от 31 мая 2013 г. No 40 https://docs.eaeunion.org/docs/ru-ru/0044058/icd_06062013_40.

18 Решение Совета Евразийской экономической комиссии (ЕЭК) от 19 февраля 2014 г. No 8 https://docs.eaeunion.org/docs/ru-ru/0143907/cncd_21022014_8.

provided for next range of benefits for trade in goods and services for member states:

tariff preferences for goods, originating from developing (75% of Common Customs Tariff) and least developed countries (0%) (Article 36 EAEU Treaty). In 2017 list of developing and least developed countries, lists of goods, to which tariffs under Article 36 apply, were introduced;¹⁹

import customs duty exemption for goods, imported “within the framework of international cooperation in research and exploration of space, including services in spacecraft launch” under the List under the Decision #727 (subpara. 2 para. 3 Annex 6 EAEU Treaty);

national regime for registration of legal entities (para. 24 Annex 16 EAEU Treaty) (in Russia only Russian entities may conduct space activities and only Russian citizens may be appointed as a commander of Russian manned space objects);

national regime and most favoured nations regime for trade in services, investments (paras 21, 24, 27 and 69 Annex 16 EAEU Treaty);

national regime for insurance of commercial space launches and freights, including satellites (subpara. 1 para. 4 Annex 17 of the EAEU Treaty) (national limitations on foreign participation in insurance companies, necessity of licensing procedures are listed in Annex 2 to Annex 17 EAEU Treaty);

national regime in state procurement (para. 30 Annex 25 EAEU Treaty) (a single source purchasing in relation to services of cosmonauts’ preparation and organization of their flight to space, services on design, construction and testing of space objects (para. 54 Annex 3 to Annex 25 EAEU Treaty) and an auction sale for spacecrafts (para. 27 Annex 4 to Annex 25 EAEU Treaty));

Annex 31 of the EAEU Treaty regulates functioning of the Union within the multilateral trading system (peculiarities will be discussed in Section 5).

Meanwhile licensing of space activities is not directly regulated. Based on liberalization plans or interministerial negotiations, when substantive equivalence is present, permissions (licenses) may be recognized (paras 53-55 Annex 16 EAEU Treaty).

Nevertheless, the EAEU Treaty has a number of options for member states to introduce exemptions within the Union (para. 27 Annex 16 EAEU Treaty). National schedules in respect of services and investments were adopted by the Decision #112²⁰ (was amended to include respective exemptions for Armenia and Kyrgyzstan).

In 2016 Eurasian Technological Platform “Space and Geoinformation Technologies – Products of Global Competitiveness” (the Platform) was established²¹ to create, among other, unified automatic database on space products and services of member states, construction and incorporation of

19 Решение Совета ЕЭК от 13 января 2017 г. No 8 https://docs.eaeunion.org/docs/ru-ru/01417576/cncd_28022017_8.

20 Решение ВЕЭС от 23 декабря 2014 г. No 112 https://docs.eaeunion.org/docs/ru-ru/0127056/scd_26122014_112

21 Распоряжение Совета ЕЭК от 18 октября 2016 г. No 32 https://docs.eaeunion.org/docs/ru-ru/01414433/cnco_06032017_32.

innovative high-tech space products and services, based on remote sensing. That is worth to mention that commercialization of space products and services is among Platform's aims and precisely the Platform proposed the idea to develop Union's programme in space sphere.

Afterwards space services were declared as "industry of the future" in 2017²² and backed up with regulation of exemption from duties, taxes, special anti-dumping, compensatory duties for goods, used for purposes of international cooperation in exploration of space, including launches (Article 253 Customs Code of the EAEU²³).

At the same time the process of development of the Union's space cooperation project took almost three years of proposals²⁴ and approvals,²⁵ resulting in adoption of the programme "An Integrated System of the Eurasian Economic Union Member States on Production and Provision of Space and Geoinformation Products and Services based on National Sources of Earth's Remote Sensing" (the Programme) in 2020,²⁶ which is planned to be implemented by Belarus, Kazakhstan and Russia, as a part of so-called multispeed integration.

After the Programme was approved, several more long-term decisions were taken:

- implementation of projects with integration component in space sphere was stated as one of strategic directions of the Union's development under Strategic Directions for Developing the Eurasian Economic Integration until 2025²⁷;
- the Plan for realization of mentioned Directions was approved²⁸;
- space technologies were declared as priority type of economic activities.²⁹

Mentioned acts form the core basis for implementation of space activities.

22 Распоряжение Евразийского межправительственного совета (ЕМС) от 7 марта 2017 г. No 2 https://docs.eaeunion.org/docs/ru-ru/01415075/ico_09032017_2.

23 Таможенный кодекс ЕАЭС https://docs.eaeunion.org/docs/ru-ru/01513569/itia_12042017.

24 Распоряжение ВЕЭС от 11 октября 2017 г. No 4 https://docs.eaeunion.org/docs/ru-ru/01415207/sco_10112017_4.

25 Распоряжение ВЕЭС от 6 декабря 2018 г. No 6 https://docs.eaeunion.org/docs/ru-ru/01426260/sco_07122018.

26 Решение ЕМС от 17 июля 2020 г. No 4 https://docs.eaeunion.org/docs/ru-ru/01429463/err_20072020_4.

27 Решение ВЕЭС от 11 декабря 2020 г. No 12 https://docs.eaeunion.org/docs/ru-ru/01428320/err_12012021_12.

28 Распоряжение Совета ЕЭК от 5 апреля 2021 г. No 4 https://docs.eaeunion.org/docs/ru-ru/01429229/err_17052021_4.

29 Решение ЕМС от 30 апреля 2021 г. No 5 https://docs.eaeunion.org/docs/ru-ru/01429192/err_30042021_5.

Meanwhile there is no definition of “space good/product/service”. We shall assume that for goods the guide is the List while for services that is mainly launching and remote sensing.

As space industry in EAEU member states is mostly concentrated in public domain, for its development that is vital to receive respective support. We share the point of view that the programme as a form of cooperation has many benefits for executing organizations: it is document of planning and normative importance, it contains government obligations to finance specific areas and projects.³⁰ At the same time financing the Programme on the background of lack of national resources may become an obstacle and may lead to extension of implementation terms.³¹ Support from the Eurasian Development Bank is viewed as a solution.³² Nevertheless, based on legal regime of investments in the EAEU, we may assume that foreign investments, if are considered to be beneficial, may form extra financial source for the Programme.

Another issue is demand for remote sensing services and data. The Union consistently promotes digitalization of business. However, readiness of private entities to use such opportunities is under discussion. That is why one of Programme’s tasks is to form demand on remote sensing within national markets and by this way provide for digitalization growth.

The goal of the Programme is to create *integrated* system, competitive to such market leaders as “Maxar Technologies” and “Airbus Defense and Space” and able to provide for import substitution for EAEU member-states. With planned 13 satellites and respective coverage demand for produced images shall be considerable.

Development of integrated, but not common system is explained by the high threshold for entering the market, lack of national resources and high technological level of remote sensing activities. Combination of all available resources and filling gaps by cooperation with partners by the Union is the solution.

Under this integration umbrella we need to mention that in accordance with part VIII of the Programme each member state of the EAEU finances and creates or modernizes its own material or immaterial assets within integrated system. In other words, all property rights on each created asset belong to the state, which financed appropriate project, creation of joint material assets is not provided by the Programme. Let us notice that it is planned that two satellites with 0,35m resolution will be constructed jointly by Belarusian and Russian sides, while three satellites with 0,6m resolution – by Kazakhstan.

One more financial question is duration of the Programme, which may be prolonged up to 3 years due to technical complexity. In light of this necessity of extra financial resources may pose a challenge.

30 See *Шызыпов* supra note 1.

31 Ibid.

32 Ibid.

The Programme is aimed not only to provide for import substitution, but also to raise export trade in remote sensing services. While the document does not state precise partners, EEC officials reveal that among perspective markets are South America, Africa, Near and Middle East.³³ Taking into consideration global coverage of perspective system we may conclude that mentioned plans have high chances for implementation.

We also suppose that EAEU members and observers, as well as FTA partners, which do not have own satellites, will be interested in EAEU system and will form priority customers.

On the basis of mentioned above we conclude that all legal measures, targeted at facilitation of trade in space goods are taken. The only restriction for trade in services is access to national market, which is in force for one among five EAEU member states. Thus perspectives of trade growth depends on industry and available resources, as legal foundation is fully supportive.

4. FTA with Third Countries

As of 2021 the Union has three FTA: with Viet Nam,³⁴ Singapore³⁵ (both are countries, which have their own satellites³⁶) and Serbia.³⁷ An interim agreement is concluded with Iran.³⁸ Currently negotiations on full FTA with Iran, Egypt, India and Israel are ongoing.³⁹

33 Главы правительств стран ЕАЭС обсудили ход реализации космической межгоспрограммы <http://zaomkt.ru/news/glavy-pravitelstv-stran-eaes-obsudili-hod-realizacii-kosmicheskoy-mezhgosprogrammy>.

34 FTA between the EAEU and Its Member States, of the One Part, and the Socialist Republic of Viet Nam, of the Other Part http://www.eurasiancommission.org/ru/act/trade/dotp/sogl_torg/Documents/Вьетнам/EAEU-VN_FTA.pdf.

35 FTA between the EAEU and Its Member States, of the One Part, and the Republic of Singapore, of the Other Part http://www.eurasiancommission.org/ru/act/trade/dotp/sogl_torg/Documents/Сингапур/EAEU-Singapore%20FTA_Main%20Agreement.pdf.

36 See note 11.

37 FTA between the EAEU and Its Member States, of the One Part, and the Republic of Serbia, of the Other Part http://www.eurasiancommission.org/ru/act/trade/dotp/sogl_torg/Documents/Сербия/Agreement.pdf.

38 Interim Agreement leading to Formation of a FTA between the EAEU and its Member States, of the One Part, and the Islamic Republic of Iran, of the Other Part http://www.eurasiancommission.org/ru/act/trade/dotp/sogl_torg/Documents/Interim%20Agreement%20EAEU-Iran_final.pdf.

39 Проводимые переговоры по заключению соглашений о свободной торговле между ЕАЭС и третьими странами http://www.eurasiancommission.org/ru/act/trade/dotp/sogl_torg/Documents/Статус%20по%20переговорным%20трекам/Проводимые%20переговоры%20сст_сайт_0921.pdf.

REGULATORY SUPPORT OF SPACE GOODS AND SERVICES TRADE GROWTH IN EURASIAN ECONOMIC UNION

Besides this, an agreement on trade cooperation is concluded at EAEU-China level⁴⁰ and memorandums of understanding are concluded between the EEC and respective bodies of China, Ecuador, South Korea, MERCOSUR.⁴¹

FTA provide for additional tariff preferences under framework of WTO obligations of states (each FTA has precise provisions on acting and evolving WTO rules).

All EAEU FTAs have more or less common structure and provisions and regulation, what is summarized in Table below.

Table 1. FTA regulation for EAEU trade with third countries (references are given to countries' FTA)

Sphere	Viet Nam	Singapore	Serbia
Elimination of duties	Art. 2.3	Art. 2.6	Art. 4*
Quantitative restrictions	Art. 2.9	Art. 2.10, Art. 2.11	Art. 7
Protective measures	Art. 3.1- Art. 3.4	Art. 3.1- Art. 3.17	Art. 18-19, Art. 21
Preferential trade regime	Art. 4.23- 4.25	Art. 4.27- Art. 4.28	Annex 3
Trade in services, establishment of legal entities	Chapters 8bis**	8, —	—
State procurement	Chapter 10***	Chapter 10***	—

* Para. 1 Article 4 provides for elimination of import duties while para. 4 Article 4 for regulation of export duties refers to legislation of EAEU member states and Serbia and their WTO obligations

** Applies only in relations between Russia and Viet Nam

*** Regulates provision of information regarding state procurement, direct access on national treatment or most favoured nation treatment conditions is not granted

Preferential regime in trade applies to products, fulfilling certain criteria, among which are rules of origin. FTAs with Viet Nam and Singapore consider “goods produced in outer space on board a spacecraft provided that the same *spacecraft is registered in a Party*” as wholly obtained or produced goods in a country (para. j) Article 4.4 FTA with Viet Nam; para. l) Article

40 Agreement on Economic and Trade Cooperation between the EAEU and Its Member States, of the One Part, and the People's Republic of China, of the Other Part http://www.eurasiancommission.org/ru/act/trade/dotp/sogl_torg/Documents/Соглашение%20с%20Китаем/Текст%20английский%20%28EAEU%20alternate%29%20final.pdf.

41 Меморандумы ЕЭК с третьими странами и международными организациями <http://www.eurasiancommission.org/ru/act/trade/dotp/memorandymi/Pages/default.aspx>.

4.4 FTA with Singapore), while Serbian FTA has the wording “goods produced in outer space on board spacecrafts *that belong to a Party or are leased (chartered) by it*” (para. j) Article 4 of Annex #3 FTA with Serbia). We may assume that this distinction is done on the basis of space sector development in EAEU member states and FTA partners.

We see that FTAs are focused on trade in goods, while trade in services is extremely limited. V.V. Vityuk notices that despite preferences, provided by international treaties, level of trade between EAEU member states and Viet Nam and Serbia is low and all potential is not used.⁴²

May we expect growth in trade in services (non-regulated) in circumstances when preferential trade in goods is not widely used? We suppose that remote sensing data is specific product, demanded at certain level of economy digitalization and development, that is why it may not be widely demanded. On the other hand, on the background of green economy trends and ongoing digitalization of all spheres of human activities, by 2035 when integrated EAEU remote sensing system will be fully operational, FTA partners may have more interest in such products as they may have now.

Moreover, the essence of remote sensing (whether it is a service or a good – remote sensing data) is under discussion, that is why there are no obstacles to use preferential trade regime for remote sensing data as a product produced in outer space on spacecraft of a Party.

5. WTO vs. EAEU Obligations

Not all EAEU member states are WTO members. On this background it is necessary to examine general correlation of WTO and EAEU obligations of members (Subsection 5.1), such possible obstacles for trade as divergence in intellectual property protection (Subsection 5.2) and security clauses (Subsection 5.3).

5.1. General Overview of WTO-EAEU Regimes Correspondence

WTO is the leading trade organization of the world having 164 members.⁴³ Currently Belarus (member of the EAEU) and Uzbekistan (observer of the EAEU) are not WTO members.

At the time of EAEU Treaty conclusion only Russia was WTO member.⁴⁴ Afterwards Kazakhstan acceded to the WTO in 2015, Armenia and Kyrgyzstan entered the EAEU already being WTO members.⁴⁵

According to Annex 31 of the EAEU Treaty relations with the WTO are regulated by the Treaty 2011. In practice that means that EAEU member

⁴² See *Витюк* supra note 5, p.66-67; *Витюк* supra note 6, p. 59.

⁴³ Members and Observers of the WTO https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm.

⁴⁴ Ibid.

⁴⁵ Ibid.

states obligations are mostly similar to Russian ones: most vividly as Russian obligations are implemented into the Common Customs Tariff of the EAEU. In relation to Kazakhstan compliance with WTO obligations is provided by exemptions from the Common Customs Tariff of the EAEU and product traceability system, while for Armenia and Kyrgyzstan the EEC helps to conduct revision of tariff commitments. The EEC is responsible for coordination of work and sending notifications to WTO bodies on trade related measures, taken or proposed to be taken in accordance with the Recommendation # 8 in 2017.⁴⁶

Discussion about goods is easier as trade is governed by tariffs, some of which are already implemented and some of which are under renegotiation. On the other side situation with trade in services seems to be more difficult. The WTO does not regulate provision of services as elements of governmental capacity⁴⁷ and as many space services still are conducted by public agencies, they are mostly exempted from WTO regulation. In the doctrine we may see ongoing discussions on possibility of extension WTO regulation to such services, based on space applications, as space launching, satellite communications, satellite remote sensing, satellite navigation, space mining and private commercial spaceflight.⁴⁸

In terms of services we focus solely on remote sensing and perspectives of its regulation under WTO.

Competitiveness of remote sensing market is tightly connected with possibility of private participation in such activities. Here, there are two mentioned before obstacles: this sphere is traditionally public-dominated and is sensitive.

On the other hand, there are examples of private participation in selling images from remote sensing activities.⁴⁹

The Programme does not clarify which entities will be entitled for trade in remote sensing data. According to part VIII of the Programme terms of usage of created within the project assets will be dealt with in organizational and technical documents, drafted during the Programme. Taking this into consideration and the fact that the Programme is implemented by public entities of the EAEU member states we cannot assume much private participation.

46 Рекомендация Коллегии ЕЭК от 21 марта 2017 г. No 8 https://docs.eaeunion.org/docs/ru-ru/01413323/clcr_24032017_8.

47 S. Fitzmaurice, GATS Regulation for Launch Services: Resolving the United States-India Conflict, *Minnesota Journ. of Int. Law* 27:1 (2018) 283-311, p.307-308; F. von der Dunk, International Trade Aspects of Space Services in: F. von der Dunk, F. Tronchetti (Eds.), *Handbook of Space Law*, Edward Elgar Publishing, Cheltenham, 2017, pp. 814-873, p. 826.

48 See *Fitzmaurice* supra note 47; von der Dunk supra note 47, p. 836; Eng Teong See, Commercialization of Space Activities – The Laws and Implications, *Journ. of Air Law & Com.* 82 (2017) 145-168.

49 See von der Dunk supra note 47, p. 855-856.

Based on the current extent to which private participation is allowed in satellite remote sensing activities we shall not expect rapid regulation of the sphere by the WTO either.⁵⁰

Consequently, as no new obligations may appear for EAEU members, there shall be no obstacles in realization of Union's space sector projects.

5.2. Intellectual Property (IP) Regulation for the WTO and the EAEU

Space goods and services rely on high-tech technologies, which are demanded to be fully protected under respective IP regulation for the sake of very existence of competitiveness and trade benefits.

There may be a discussion on whether remote sensing is only a service or whether created databases of remote sensing images shall be viewed as a good in order to apply the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).⁵¹ However, implementation of the Programme is sought in construction of several satellites, what also imposes the question of TRIPS applicability to such created assets.

Part XVIII of the Programme declares that EAEU member states provide for protection on their territories of IP in conformity with their national legislations and with international treaties, to which they are party. Armenia, Kazakhstan, Kyrgyzstan and Russia are parties to TRIPS as WTO members, that is why even in a case of extension of states, involved in Programme implementation, there will be no obstacles for due protection of intellectual property. While Belarus is in negotiation process on WTO accession, we may assume that respective measures are taken in order to smoothly accede to TRIPS agreement as well.

5.3. Concordance of Security Exemptions in the WTO and the EAEU

Besides the format of stating exceptions in national schedules there is always a possibility to decline realization of certain initiatives on the basis of security clause.

The closest analogy here is space launches services, which upon decision of a state may be banned from export due to a security-clause of Article XIV General Agreement on Trade in Services⁵² (GATS).⁵³ We would like to consider mentioned GATS exception in line with Article XXI of the General Agreement on Tariffs and Trade (GATT)⁵⁴ for remote sensing images. We will not go into details of the essence of remote sensing data as it is not the

50 Ibid; *Eng Teong* See supra note 48, p. 166-167.

51 See von der Dunk supra note 47, p. 860-862.

52 General Agreement on Trade in Services https://www.wto.org/english/docs_e/legal_e/26-gats.pdf.

53 See *Fitzmaurice* supra note 47, p. 308.

54 General Agreement on Tariffs and Trade https://www.wto.org/english/docs_e/legal_e/gatt47.pdf.

purpose of the present paper. Instead we will deal with both treaties and will analyse their correlation to EAEU security exceptions.

Article XIV GATS allows to introduce and enforce measures, directed *inter alia* for protection of public morals and maintenance of public order, protection of human, animal or plant life or health, necessary to secure compliance with laws, relating to safety.

Article XXI GATT states a possibility not to disclose information or not to take actions, which would be contrary to security interests of a state.

The EAEU Treaty provides for exceptions from internal market of goods for protection of human life and health, public morals and public order, animal and plant species protection, security (Article 29) and allows for non-furnishing of information, disclosure of which is considered to be contrary to essential security interests of a state, as well as taking measures, in order to protect essential security interests (Article 65).

As we see the wording of all mentioned treaties is very similar one to another and provides for similar exceptions. Based on this we shall conclude that within EAEU and WTO framework states are eligible to prevent dissemination of remote sensing data, which they consider sensitive.

6. Conclusions

One of the EAEU trends of development is multispeed integration, which also is present in space sector. Currently only three out of five member states conduct space activities, using national satellites. Nevertheless, remaining two members consider space sector as a perspective way for development.

The Union law forms solid basis for member states space activities: all legal measures (elimination of duties, taxes, restrictions), targeted at facilitation of trade in space goods are taken and the only restriction for trade in services remains for one state among five EAEU member states.

FTAs with third countries focus mostly on trade in goods, providing for special set of preferences. In addition special measures are taken to observe WTO obligations of Union's member states.

However, while space sector in the EAEU is mostly concentrated in public domain, usage of space technologies shall be supported and encouraged. The adoption of the Programme is a significant step as will serve for marketing purposes, provide for construction and modernization of national space satellites and facilities, create integrated remote sensing system. Consequently, the perspective of trade growth as the result of the Programme implementation will fully depend on industry and available resources, as legal foundation is fully supportive.

There shall be no obstacles for trade in remote sensing as service or remote sensing data as good. The later will provide for preferential regime under FTAs as product produced in outer space on spacecraft of a Party.