

Russia accedes to the WTO: problems and opportunities

On 22 August 2012, Russia's accession to the World Trade Organisation takes effect. This briefing summarises Russia's undertakings upon accession and the impact they may have on different sectors of the Russian economy.

Import and Export Regulations

Amongst other things, Russia has committed to lower its import and export duties. Based on the information from the Russian Ministry of Economic Development, approximately 50% of all Customs Tariff positions will be decreased, though around 30% will be decreased by less than 5%. Some duties will be lowered immediately, while in cases where an immediate decrease could adversely affect local producers, domestic industries or Russia's state budget, a transition period of two to eight years has been agreed. In particular, import duties for certain types of vehicles will only be set at the agreed level from 2019, with the rates to decrease annually.

The most substantial reduction in import duties will be on medicines (from 15% to 6.5%) and medical equipment (from 15% to 2%), chemical goods and cosmetics (from 15% to 6.5%), and high-tech equipment (to 0% in certain cases). Certain types of technological, scientific and measuring equipment will be exempt from import duties entirely. Russia will also decrease import duties on wide-body civil aircraft from 20% to 7.5%, and on narrow-body civil aircraft from 20% to 12.5% (in 2019). That said, Russia does already apply a zero rate or a total exemption from customs duties for most popular types of aircraft and civil aircraft engines.

Since accession to the WTO will mean a decrease in revenues from customs duties, the Russian Government has prepared certain compensatory measures. For example, a recycling fee payable by both importers and domestic manufacturers of vehicles will be introduced

starting from 1 September 2012 (the compatibility of this program with WTO principles has already raised questions).

In addition to tariff regulations, Russia has agreed to modify non-tariff measures such as licensing and quotas. For a limited period Russia will continue to enforce quotas on imports of meat (pork, poultry and beef), alcohol (although with simplified requirements) and certain other goods.

Given that Russia is a party to the Customs Union (Russia, Belarus and Kazakhstan), members of the Customs Union have agreed to cooperate to ensure Russia meets its commitments to the WTO. The WTO rules (if more favourable) will prevail over the Customs Union rules. Import tariffs will be harmonised with Russia's obligations upon entering the WTO, with certain limited exemptions for Belarus and Kazakhstan. The new Customs Tariff of the Customs Union will come into effect on the day Russia becomes a WTO member.

Financial Sector

Banking Services

The terms of the accession broadly maintain the status quo for the banking sector. Foreign banks may render banking services to Russian clients provided these services are carried out outside of Russia. As regards the provision of banking services on-shore, Russia has not agreed to allow foreign banks to provide services through branches. As has always been the case, foreign entities may participate in the Russian banking sector only through Russian licensed subsidiaries. Furthermore, Russia has reserved the right to limit foreign participation in its banking sector. It was agreed that the aggregate share capital of Russian banks that may be owned by non-residents is capped at 50%.

Insurance

It was agreed that foreign insurers are free to provide reinsurance and retrocession services, as well as services auxiliary to insurance and insurance intermediation services to any Russian person receiving these services outside of Russia and from outside of Russia to anyone in Russia on a cross-border basis.

As for direct provision of insurance services, generally there are no limitations for offshore and cross-border insurance of risks from international shipping and air transportation. In addition, within four years from the date of Russia's accession to the WTO, the same rules will apply in respect of insurance of risks associated with internal sea and air transportation (except for certain types of compulsory insurance).

As for the provision of on-shore insurance services, starting from 2021 Russia has agreed to allow foreign insurers to provide insurance services in Russia via branches, provided that the foreign insurer has (i) experience in providing insurance or reinsurance services in its home country (at least eight years in life insurance and five years in the field of non-life insurance); (ii) at least five years experience of operating a branch in foreign markets; (iii) total assets of at least U.S.\$5 billion; and (iv) its legal and actual address in one country. Similar rules will apply to branches of foreign reinsurers. Russia has also agreed to increase the quota for foreign participation in its insurance sector to 50% (the current cap of 25% was practically exhausted by 2011). However, in respect of insurance companies with foreign ownership greater than 51% and reinsurance companies with foreign ownership greater than 49% and established in Russia after the date of accession to the WTO, Russia has retained the right to impose limitations on the issuance of licences to provide life insurance/reinsurance and certain types of compulsory insurance/reinsurance. These restrictions will be lifted within five years of Russia's accession to the WTO. Also, in relation to subsidiaries of foreign insurance companies established after accession to the WTO, the Russian government has made no commitment to issue licenses for the provision of insurance and reinsurance services in the context of public procurement.

Securities Market

As has historically been the case, professional services in the securities market (which include the services of brokers, dealers, asset managers, clearing houses, organised

exchanges, depositaries, etc.) in Russia can only be provided by Russian licensed subsidiaries of foreign entities. It was agreed that Russia had the right to introduce a cap of 25% on foreign participation in the share capital of registrars and settlement depositaries. The same restriction will apply to foreign ownership of specialised depositaries providing services to Russian investment funds, mutual investment funds and non-state pension funds. However, in the latter case the 25% cap will be removed within three years of Russia's accession to the WTO.

Metals & Mining, Natural Resources

Russia's accession to the WTO will also have an impact on the natural resources sector and related industries. It is expected that the sector will benefit from the accession because the current quota limits and tariffs on a range of products (such as machined steel) will be lifted. In particular, the highest increase in production due to the lowering or elimination of tariffs is expected to be seen in the non-ferrous metals, ferrous metals, chemical and petrochemical industries. In addition, duties on the main types of equipment for the oil and gas industry will be reduced and on average should amount to 6.4%, as compared to the existing tariffs which can be as high as 20% for some types of product.

Russia has undertaken to eliminate subsidies to industries which are dependent on whether the finished products are exported or whether Russian equipment is used in the production process. For example, the Federal Law "On Production Sharing Agreements" No. 225-FZ dated 30 December 1995, which establishes obligations to procure Russian mining equipment, stipulates that any provisions of the law that contravene the principles of the WTO will cease to be effective in the event of Russia's accession to the WTO, or must be brought into conformity with such principles within the time frames and through the procedure specified in the WTO's documents and the agreement on Russia's accession to the WTO.

With regard to the existing provisions regulating the export of raw hydrocarbons set out in Russian legislation, which stipulate that the organisation that owns the unified system of gas supply or a subsidiary thereof has the exclusive right to export gas, Russia's representatives confirmed in the working group's report that, with effect from the date Russia accedes to the WTO, quantitative restrictions on exports or restrictions on sales of goods at export which cannot be

justified by the provisions of the WTO agreement will be eliminated. Therefore, it is expected that the necessary changes to the relevant Russian legislation will soon be enacted.

Agriculture

The permitted value of domestic support which may be provided to the agricultural sector shall be fixed at US\$9 billion in 2012, followed by a decrease to US\$4.4 billion in 2018. The Ministry of Economic Development has specifically clarified that the existing scope of support is in line with WTO requirements and that the agreed threshold levels are in excess of the support volumes provided as of 2012.

Pharmaceuticals

In addition to the decrease in import duties for pharmaceuticals, the following regulatory changes shall apply to the pharmaceuticals industry:

- Upon Russia's accession to the WTO, the data exclusivity provision introduced by the Federal Law "On the Circulation of Pharmaceuticals" No. 61-FZ dated 12 April 2010 shall take effect restricting third party use of clinical trials data within a six year term upon state registration of the relevant pharmaceutical product. This provision is introduced in line with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).
- The price regulation regime applicable to pharmaceuticals on the list of 'vital and most important medicines' shall remain in effect. At the same time, price regulation measures shall not be used for the protection of local production.
- Russia's public procurement regime shall not be affected by Russia's accession to the WTO. The existing preferences for locally produced pharmaceuticals will possibly remain in existence during the next several years, subject to Russia joining the WTO Agreement on Government Procurement, the negotiations on which are expected to start within the next four years. Hence, one may conclude that in the short to medium term incentives for the localisation of pharmaceuticals production in Russia will remain.

Intellectual Property

Russia's intellectual property legislation has undergone substantial reform over the last decade and has generally been brought into compliance with the principles of the TRIPS agreement. However, Russia has committed to modify the system of administration of collective rights to IP and to introduce stricter liability for violation of IP rights to ensure adequate enforcement of existing IP protection.

Dispute Resolution

Russia's accession to the WTO will give the country and the other members of the WTO an opportunity to resolve disputes under the WTO dispute settlement system (the "DSS") set out in the Understanding on Rules and Procedures Governing the Settlement of Disputes (Annex 2 to the Marrakesh Agreement) (the "DSU"). The main peculiarities of the DSS are as follows:

- The DSS is applicable only to disputes arising out of the "covered" WTO agreements listed in Appendix 1 to the DSU.
- The DSS is open only to the governments of WTO members. Companies and other institutions desiring to eliminate trade barriers imposed in breach of WTO agreements need to persuade their governmental bodies to initiate proceedings under the DSS.
- The DSS has strict deadlines for proceedings (on average it is 11 months).

There are three main stages in the DSS:

- Consultation. This is a compulsory and confidential stage.
- Adjudication, i.e. consideration of a dispute before a panel and, if applicable, an Appellate Body. Panellists are well-qualified individuals. The parties have a limited ability to influence their nomination. Reports (i.e. decisions) of the panel and/or Appellate Body must be adopted by a special political institution, the Dispute Settlement Body (the "DSB"), in order to become binding on the parties.
- Implementation. Failure of a party to implement a report within the specified time period may result in the suspension of concessions or other obligations by the complaining party if authorised by the DSB.

Experts assume that Russia's accession to the WTO could possibly lead to an avalanche of cases from and against Russia. However, Russia appears to consider the DSS an extraordinary measure, and some government officials have noted that Russia does not intend to apply the DSS extensively.

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