

UPDATE OF UNICE POSITION ON RUSSIA'S ACCESSION TO THE WTO¹
Executive summary

UNICE is a strong supporter of Russia's accession to the WTO. Membership in the WTO will be a key stage in Russia's progress towards a well-functioning market economy and further integration into the world economy.

However, accession to the WTO must take place under commercially sustainable terms that commit Russia to substantial liberalisation of investment and trade in goods and services. It must also be carried out in synergy with the new WTO round of multilateral trade negotiations, considering that, upon its accession, Russia will have to meet all the requirements which are addressed in the context of this round.

Although Russia has made significant progress in reforming its economy in recent years, European business still faces numerous trade and investment obstacles in this country. Based on the first-hand experience of European companies, this paper points to a wide range of reforms that would be advantageous if secured in the framework of the WTO accession negotiations.

UNICE calls in particular for:

- continued surveillance and trade defence to encourage compliance with market economy conditions in Russia,
- further tariff reductions,
- the abolition of export and import restrictions,
- the phasing out of all WTO-incompatible subsidies, in particular the dual pricing of energy and railway transport,
- the elimination of technical barriers to trade (i.e. alignment of Russian standards, product safety requirements, testing and certification systems on international norms),
- additional reforms of the Russian customs and taxation systems,
- the liberalisation of foreign investment and the immediate compliance with the WTO agreement on Trade Related Investment Measures (TRIMs),
- improved market access to Russia's services sector,
- stronger commitments on public procurement,
- improving the administration and enforcement of the protection of intellectual property rights including full compliance with the Trade Related Intellectual Property Rights (TRIPs) Agreement and, more generally,
- legal and administrative reform including more precise directives for the interpretation and enforcement of laws and regulations.

Finally, adequate capacity building and technical cooperation efforts are needed to support the reform process.

These views may be adjusted according to the progress of bilateral and multilateral negotiations.

UNICE and its experts look forward to pursuing dialogue on their recommendations with the parties involved in these negotiations.

¹ UNICE position on Russia's Accession to the WTO, 24 January 2002.



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European business has repeatedly expressed its support for Russia's accession to the WTO. Membership in the WTO will integrate the potentially large Russian market into the multilateral trade system after decades of Soviet-imposed isolation. Joining the WTO will also send a clear signal to the world political and business communities that Russia is firmly committed to restructuring its economy, implementing market economy reforms and a process of privatisation of its government-owned industry. Compliance with WTO law and the consolidation of domestic economic reforms are mutually supportive processes that benefit Russia and the world economy.

However, accession to the WTO must take place under commercially sustainable terms that commit Russia to substantial liberalisation of investment and trade in goods and services. It must also be carried out in synergy with the Doha Development Agenda multilateral trade negotiations, considering that Russia will have to meet all the requirements which are addressed in the context of this round upon its accession.

UNICE acknowledges that Russia has made significant progress in reforming its economy, notably in the last couple of years (new tax code, new tariff classification, utility reform etc.). However, European business would like to draw the European Commission's attention to the persisting competitive barriers and market distortions that it currently encounters in Russia and to the need for addressing them effectively.

UNICE's priorities in the negotiating process are:

- continued surveillance and trade defence to encourage compliance with market economy conditions in Russia,
- further tariff reductions,
- the abolition of export and import restrictions,
- the phasing out of all WTO-incompatible subsidies, in particular the dual pricing of energy and railway transport,
- the elimination of technical barriers to trade (alignment of Russian standards, product safety requirements, testing and certification systems on international norms),
- additional reforms of the Russian customs and taxation systems,
- the liberalisation of foreign investment and immediate compliance with the TRIMs agreement,
- improved market access to Russia's services sector,
- stronger commitments on public procurement,
- improving the administration and enforcement of the protection of intellectual property rights including full compliance with the TRIPs agreement and, more generally,
- legal and administrative reform, including more precise directives for the interpretation and enforcement of laws and regulations.

This list is by no means exhaustive. It draws upon the experience of UNICE's national federations, European sectoral associations and European companies in dealing with Russia. It may be complemented and/or revised as WTO accession negotiations progress.

¹ UNICE position on Russia's Accession to the WTO, 24 January 2002.

1. Continued surveillance and trade defence to encourage compliance with market economy conditions in Russia

Russia's accession to the WTO should be directly related to the acceptance and the effective implementation of market economy principles and practices.

Over the past two years Russia has made substantial progress towards a well-functioning market economy. This has been acknowledged by the EU and the USA, which granted Russia market economy status in 2002. Membership in the WTO will be a key stage in Russia's commitment to develop further in that direction. However, past experience with economies in transition indicates that it takes time for a new legislative framework to settle into place and, more importantly, to have it translated into operative reality. Special vigilance should be exercised so as to identify and eliminate direct and indirect subsidies, such as access to local raw materials, energy or other inputs at below market prices, or special exemptions from taxes or government fees. Particular attention should also be paid to the legal and administrative framework and its proper implementation, which are essential to the proper functioning of a market economy. For instance, customs clearance, product safety certification, government licensing and commercial court proceedings must be carried out in an effective and non-discriminatory manner, so that foreign economic operators are guaranteed effective access to the Russian market on a non-discriminatory basis.

Recommendations

In its negotiations on conditions for Russia's entry into the WTO, the EU should require that economic, legal and administrative reforms be completed by the time of Russia's entry into the WTO. In the meantime special vigilance should be exercised by the European Commission to guard against the use of trade-distorting subsidies and market practices that may affect EU-Russian trade. WTO members should be allowed to treat Russia as a not fully operational market economy until such time as it becomes one.

Russia, for its part, should bring its anti-dumping law into line with WTO standards or, preferably EU standards, in order to make anti-dumping proceedings against foreign companies more predictable.

2. Further tariff reductions

Russian tariffs have been reduced but remain relatively high. The average level of tariffs in the latest Russian offer of November 2002 is 8.7 percent. The Russian government continues to apply prohibitive rates in the automobile, aircraft, alcoholic beverage and metal sectors, however, and it seems to be caving in too readily to pressure from its domestic industry to raise tariffs in an opportunistic manner (e.g. furniture, aluminium foils).

Recommendations

There should be an immediate and absolute standstill for increases of existing tariffs and peak tariffs should not exceed 15%. The European Commission should request further tariff reductions where the Russian offer remains prohibitive.

3. Abolition of export and import restrictions

Export restrictions by means of export taxes/duties or other measures discouraging exports, such as those applied on non-ferrous metals and raw materials, scrap metal, oil and wood, create trade and market distortions at both the national and international level.

Import restrictions are also seriously disrupting the operation of some sectors (import bans or excessively burdensome import procedures for precious metal materials and products, non automatic licensing for alcohols and pharmaceuticals, import quotas for meat).

Import/export restrictions hinder and even inhibit trade as well as industrial cooperation and investment. They create a domestic economic environment which is completely disconnected from international markets and which may result in the development of industrial structures with no consideration for the international market balance. They ultimately have a detrimental impact on business on both sides.

Recommendations

Russia should abolish export and import restrictions without delay as required by WTO law.

4. Phasing-out of prohibited subsidies, as well as dual pricing on energy and railway transport

The Russian government's industrial policy guidelines emphasise export promotion and import substitution. In support of these guidelines, general subsidies remain widely used in the form of direct transfers from the federal budget to specific industries (e.g. coal), loans or deferred payments to companies, grants to regions or State financing of specific programmes. Dual pricing and/or preferential access for Russian companies to raw materials, energy or other inputs at below market prices also distort competition and risk constituting subsidies that are incompatible with WTO rules.

Recommendations

Russia's subsidy system and its effect on trade need to be subject to further examination by the members of the WTO Working Party. Russia must undertake the elimination of prohibited subsidies, including dual pricing practices, before accession to the WTO and without any transition period.

5. Elimination of technical barriers to trade

Standards, product safety requirements, testing and certification procedures are a significant obstacle to market access in Russia.

About half of all Russian standards still differ from international ones. Russian procedures for certifying imports are expensive, time-consuming, non-transparent, cumbersome and often beset by administrative overlaps. Mandatory certification requirements for a very wide range of products on the Russian market are over-prescriptive and rigid and they go beyond the legitimate concern of ensuring that essential health and safety requirements are fulfilled. Many European companies have reported significant additional costs incurred in conforming to Russian certification standards – that are often not in line with international standards. Difficulties in obtaining certification are particularly acute in the telecommunications equipment, pharmaceutical products, construction materials and oil and gas equipment sectors. In the case of food products, sanitary and phytosanitary measures are excessively

complex for reasons that are not related to health or safety. Dairy and meat products require multiple veterinary certificates and imports may be banned even if there is no scientific evidence of a health risk. Finally, time-limited certification fees, which are not a common practice in market economies, constitute an additional problem in Russia. Such fees would be considered the equivalent of tariffs or licence fees in the WTO and should therefore be abolished.

Recommendations

Russian standards, product safety requirements, testing and certification systems should be brought into line with international norms. Harmonisation with European standards should be encouraged. Russia must comply fully with the provisions of the WTO Technical Barriers to Trade (TBT) and the Sanitary and Phytosanitary (SPS) Agreements to prevent unnecessary barriers to trade and discrimination against foreign suppliers. Standardisation, testing and certification procedures should be administered separately as they are in the European Union and most other market economies.

Foreign testing results for meeting international or Russian standards should be recognised by the Russian certification authorities. For consumer products, Russia should be encouraged to move from a pre-market registration/certification system to product liability legislation and in-market control systems.

6. Trade facilitation – further reform of Russia’s customs and taxation systems

Companies regularly list difficulties with customs procedures as a major hindrance to doing business in Russia. Despite improvements brought about by the 1993 rules for customs valuation, there is still a significant gap between customs legislation and practice: whereas most customs regulations are not far from WTO rules, the problem lies in their effective implementation. The lack of interpretative provisions and broad discretionary powers left to the decentralised Russian Customs Authorities lead to arbitrary and inconsistent decisions (including the possible banning of imports of certain materials under the pretext of national security).

Furthermore, customs rules have changed frequently and communication, if any, by the relevant authorities is not always timely enough to enable foreign companies to adapt to this changing regulatory environment.

Finally, customs clearance procedures are reported to be highly bureaucratic, time-consuming and unduly restrictive (e.g. unnecessary pre-shipment inspection requirements, arbitrary customs valuation, compulsory assaying by customs of some imported materials, unclear implementation mechanisms of export restrictions). The result is a customs clearance system, which clearly lacks impartiality, consistency, transparency, efficiency and predictability.

Taxation in Russia has improved significantly due to the new tax code. This concerns both legal entities as well as Russian and foreign citizens. The VAT refund system is, however, slow and often the refund must be obtained through costly arbitration. The costs for delays, including those caused by exchange rate fluctuations, fall on companies.

The absence of preliminary rulings in taxation cases makes calculating the final amount of taxes to be paid highly unpredictable and may add unexpected costs for companies, especially in construction and other big projects which last several years.

Recommendations

In order to accede to the WTO, Russia must commit to the full application of WTO provisions on customs procedures including customs valuation with no transition period.

UNICE recommends that technical assistance be targeted at streamlining and reinforcing central administrative control over customs procedures, so as to avoid disparities in their implementation.

Improvement and uniform application of the tax code throughout the country should be pursued and preliminary rulings in taxation should be made available.

7. Liberalisation of foreign investment

The level of foreign investment in Russia is a fraction of what it could be. According to company experience, the lack of appropriate legal protection of economic rights, combined with the lack of transparency, and unpredictable and inconsistent implementation of economic laws and regulations constitute major impediments to increased foreign (and domestic) investment in Russia.

The regulatory regime unduly restricts business activity. Many key markets remain dominated by state-owned or state-controlled monopolies. Some activities can only be carried out by state enterprises (e.g. processing of precious metals, ores, etc.). There are also restrictions imposed on foreign investors in a number of sectors (gas, banking, insurance, hard liquor, aerospace etc.), which prevent new players from competing effectively in the market. In some cases, manufacturers are required to establish a local entity and qualify for the status of “national manufacturer” to have the right to sell products in Russia.

The absence of laws and established procedures for shareholder protection constitutes an additional deterrent to investing in Russia - particularly to entering into joint ventures with Russian companies. The Russian investment regime does not codify the national treatment principle with regard to the right to purchase securities, transfer property rights, secure the payment of debts through bankruptcy and seizure procedures, repatriate funds abroad after payment of duties and taxes and receive compensation for expropriation, etc.

The movement of key personnel is also an issue. At the moment, federal and regional authorities share responsibility in a number of areas, such as the establishment of quotas for employment of foreigners.

Recommendations

Russia should be encouraged to complete its privatisation process. The EU should continue to request the establishment of a stable, transparent, reliable and consistent legal and administrative framework for investment and to press for further investment liberalisation in Russia.

This would entail inter alia:

- ***the establishment and enforcement of property rights, in particular land ownership,***
- ***the protection of shareholders' rights in a non-discriminatory and transparent way,***
- ***shareholders' rights should be guaranteed and protected through a transparent and reliable system for registration. The right of minorities to representation on the board and non-discriminatory treatment should be safeguarded,***
- ***at the very least, Russia should comply with the WTO Trade-Related Investment Measures (TRIMs) – i.e. no violation of GATT article III (national treatment) and article XI (prohibition on the use of quantitative restrictions) by the time it joins the WTO,***

- *many sectors would need to open up to market economy operating modes which involve restructuring state monopolies, removing dual pricing and improving possibilities for foreign companies to invest in Russia,*
- *Russia needs to facilitate intra-corporate movement of key personnel.*

8. Improved market access for services

Direct investment by foreign service providers is needed to modernise the Russian economy.

Market access to service sectors remains largely restricted in important sectors such as banking, insurance, architectural, construction, retailing and telecommunications services, *inter alia*.

Recommendations

Further market access and national treatment commitments are needed in services sectors, notably in banking, insurance and telecommunications industries which are fundamental to economic development. Such commitments should include a date for market liberalisation and the removal of foreign ownership restrictions.

Russia must meet all the requirements of the GATS upon acceding to the WTO.

9. Stronger commitments on public procurement

According to Russian estimates, federal budget allocations for government procurement range between 7 and 12 per cent of Russia's GNP. The government procurement system, however, eliminates foreign competition from a number of key economic sectors in Russia. More specifically, public procurement seems to suffer from a general lack of transparency and a traditionally poorly developed corpus of laws, regulations and state practices.

Recommendations

Stronger commitments on transparency in government procurement are needed. Public procurement should be based on most favoured nation and national treatment principles. At the very least, Russia should be required to adhere to the Government Procurement Agreement (GPA) upon or promptly after accession.

Enhanced technical assistance and capacity building are needed in this area.

10. Improved administration and enforcement of intellectual property rights

Despite Russia's progress in enacting WTO-consistent legislation to protect intellectual property, effective compliance with TRIPs rules and efficient administration and enforcement of the rights covered by the TRIPs agreement remain highly problematic. Inappropriate approximation and implementation of relevant legislation do not adequately protect intellectual property rights and encourage counterfeiting and product piracy. A large number of weaknesses should be addressed: insufficient education and training of officials and judges on intellectual property issues; conflicting interpretations of laws due to the co-existence of two different court systems (civil courts of general jurisdiction and "arbitration"/commercial courts); lengthy and costly judicial procedures; unclear identification of the competent authorities for recognising well-known trademarks; lack of a uniform "effective action" against infringement with respect to Article 41 of the TRIPs; lack of a legal basis for customs confiscation; the insufficient competence of judicial courts (as opposed to administrative authorities) in procedures regarding trademark violations and contesting trademark registrations; the inadequate protection of defendant rights (e.g. rights against the

use of undisclosed information; rights of receiving timely notice of hearings; right for a party to substantiate its claims and present all relevant evidence). It should be recalled that the abuse of intellectual property rights is not only an issue of economic concern. In some areas, abuse can raise wider issues of public policy concern, as is often the case with counterfeit pharmaceutical products which are harmful to human health.

Recommendations

The EU should require Russia to fully apply all of the provisions of the TRIPs Agreement upon accession and to provide evidence of the enforcement of rules related to the protection of intellectual property. As in other WTO accession protocols, this must be done without recourse to a transition period.

To this end, European business calls upon the Commission to pursue its close monitoring of Russia's full and complete compliance with the TRIPs agreement through existing EU technical assistance programmes.

UNICE further stresses the need to improve the administrative and judicial system in this area, together with enhancing awareness of intellectual property rights among the competent legal and administrative authorities (e.g. judges, administrative bodies, customs authorities).

This could be done inter alia via enhanced capacity-building efforts.

11. Legal and administrative reform

The unpredictable and inconsistent implementation of economic laws and regulations, as well as the lack of transparent and reliable information about economic activity parameters and operators, still constitute major impediments to increased foreign and domestic investment in Russia. Improved administrative procedures are of fundamental importance for business, foreign as well as domestic, including open registration of real estate, shares and other property of importance in business transactions, speedy debt collection, seizure and bankruptcy procedures, consistent implementation of fiscal policy, antitrust legislation, shareholder protection and transparency clauses in company law, etc. Free profit repatriation and payments for foreign services need to be guaranteed. Confidence in the civil law code and an effective court system and courtroom procedures must be established. Small and medium-sized companies are often deterred by the general uncertainty, as well as by difficulties in dealing with local bureaucracies. As projects generally require federal, regional and local approval, the vagueness of existing laws can lead to different interpretations and conflicting requirements at different levels. Exemptions for reasons of national defence, state security, the protection of public order and the protection of the internal market also remain extensive and discretionary. These exemptions should be reduced to an absolute minimum and should be least trade restricting.

Recommendations

A stable, transparent, reliable and consistent legal and administrative framework which encourages investment along the above-mentioned lines should be established. TACIS and other EU programmes should be increasingly focused on improving the functioning of the legal and administrative framework in view of facilitating Russia's accession to the WTO and the further development of EU-Russian co-operation within the framework of the 1994 Partnership and Co-operation Agreement.

CONCLUSION

UNICE is confident that bringing Russian regulations in conformity with WTO rules will help develop a transparent, uniform and predictable regulatory framework, provided that the reforms are supported by adequate capacity-building exercises. However, before Russia can accede to the WTO, important legal and administrative reforms should be adopted to remove the numerous barriers to trade and investment. In a number of areas, as identified by this paper, it would be useful if the reform process went further than strictly required by WTO rules.

Russia must further acknowledge the key role that business organisations can play for structuring civil society and contributing input to accession negotiations. Cooperation between business organisations in the EU and Russia should be reinforced, notably for WTO issues. The EU-Russia Industrialists Round Table should give higher priority to WTO accession issues in its agenda to reinforce the activities of UNICE member federations and their own bilateral activities with Russia.

UNICE will closely monitor the evolution of the EU-Russia trade and investment relations in the framework of WTO accession negotiations. It may complement and/or revise its views, as and when bilateral and multilateral negotiations progress, and looks forward to pursuing dialogue with the parties involved.