

Simplification of Procedures in International Trade – Promising Direction in Trade Negotiations within the WTO in 2012: Interest of Russia

The Eighth WTO Ministerial Conference (15-17 December 2011) stated that multilateral trade negotiations of the Doha Round opened in 2001 have reached a stalemate. However, the Conference recommended the continuation of them, first of all, in more carried forward directions. The ministers agreed to focus their efforts on those areas of the negotiations, where preliminary or final decisions can be reached based on consensus earlier than all the negotiations will be completed in the form of a single set.¹

In February 2012, the Trade Negotiation Committee of the WTO and the negotiating groups discussed possible ways, forms and methods of continuing the negotiations under the current Doha Round program. The Chairman of the Trade Negotiations Committee (being at the same time the Director General of the WTO) Pascal Lamy, speaking at the meeting of the General Council of the WTO (14 February 2012) drew attention to the fact that the Doha Round of the negotiations should continue in 2012, moving in small steps first in those directions of the negotiations, where a possibility of reaching agreements is already marked out. He outlined the negotiations on trade facilitation, as well as on the participation of the least developed countries in the existing WTO agreements as the priorities.²

P. Lamy pointed out that the Negotiating Group on Trade Facilitation has developed a detailed agenda of negotiations for 2012, has an advanced text of the Agreement on the facilitation of trade and can be considered as the most advanced negotiating group among other areas of multilateral negotiations.

¹ WT/MIN(11)11. Part I, Doha-Round Negotiations

² 14 and February 2012 General Council. WTO: 2012 News Items 14.02.12. Report of the Head of Trade Negotiations Committee

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As of the beginning of 2012, the text of the Agreement on measures to simplify the procedures in trade was prepared.³ The draft of this agreement is a consolidated text containing 15 articles and a detailed second part, which defines the differential and more favorable conditions for participation of the developing and least developed countries in this Agreement. Conceptual work at the text is completed. A list of articles, names of the articles and their contents are determined. Negotiations are becoming more technical. They are aimed at creation of compromise wordings and removal of yet many square brackets, containing not agreed wordings. The text of the Draft Agreement will be discussed in detail below; however, on a preliminary basis, it is necessary to say a few words about the place of the whole problem of simplification of procedures in the international trade in the WTO negotiations and in the international trading system.

Simplification of procedures in trade is a multi-faceted and complex issue which solution can provide substantial benefits to both, entrepreneurs and the bodies of state administration. According to the OECD estimates, the price of complicated procedures in the international trade catches up with 15% of the value of the goods circulated.⁴

This problem needs to be addressed at the multilateral level of political, administrative, commercial, technical and financial issues. Its discussion within the framework of the WTO is aimed at development, clarification and improvement of the provisions of the following articles of GATT-1994: Article V - Freedom of Transit, Article VIII - Fees and Formalities Connected with Importation and Exportation, Article X - Publication and Transparency of Trade Laws and Regulations. These three articles occupy a key position in the GATT, since their content directly determines the scope and character of the application of the procedures related to export, import and transit of the goods, including customs formalities. However, many countries have noted that these articles, formulated in 1946 yet, do not have a material effect on the elimination of outdated and obsolete bureaucratic barriers in the international trade⁵.

The subject of the negotiations was defined by the WTO as the simplification and harmonization of international trade procedures, covering practices and formalities involved in collecting, transmitting and processing the data required for the movement of goods, and the activity itself to ensure a prompt and smooth flow of goods across the customs borders, including the customs procedures.

The negotiations on simplification of procedures in trade take place within the framework of the WTO negotiating group. They differ from the negotiations on reduction of barriers in trade. Their goal is not an exchange of concessions and commitments, as in the case of the participants in the negotiations to reduce tariff and non-tariff barriers. Their goal is to prepare a common and binding agreement on the rules, which should

³ TN/TF/W/165/Rev.11. Draft Consolidated Negotiating Text

⁴ OECD Observer. The Costs and Benefits of Trade Facilitation. October 2005

⁵ For details see I.I. Dyumulen, World Trade Organization, Second Edition, Supplemented. 2012, Chapter XII

simplify the procedures for the circulation of the goods and services in foreign trade of the countries - members of the WTO and in the field of the international trade.

Particular negotiations in this area began in 2004. They covered the majority of the WTO members. Already in 2008, the main parameters of the future agreement were identified. In 2010, active work on creation of an acceptable to all participants text of the Agreement started. Currently, the negotiations are conducted on the text of the eleventh variant of the Draft Agreement. As noted above, the negotiations have moved to the stage of the drafting the text of the Agreement.

Russia did not participate in the preparation of the Draft Agreement, but the provisions and the specific wording of the text of the Agreement directly affect the interests of many Russian agencies, especially the Federal Customs Service of Russia. Once Russia becomes a WTO member, it will be able to take part in specific negotiations. The Russian negotiators have to be ready to analyze the draft agreement from a perspective of our country's interests and be willing to actively participate in the work on creation of a consensus text of the Agreement. Moreover, adoption of the Agreement may require some legal adjustments of some Russian laws on the federal and local levels. One should be prepared to this. In this perspective the basic provisions of the Draft Agreement as of the beginning of 2012 should be considered.⁶

Article I of the Draft Agreement (hereinafter - the "Agreement") contains the obligation of each party to immediately publish any detailed information on the procedures for import, export and transit, forms of documents, rates of duties and taxes, the rules of classification and customs valuation, on agreements with other countries concerning import, export and transit and the rules of appeal against the decisions taken. It is recommended to publish this information in the national language, as well as in one of the official languages of the WTO. Information should also be available through the Internet. The cost of obtaining of such information must comply with the cost of the services rendered.

It is evident that the implementation of this provision will be associated with a significant improvement in the information service in the Russian Federation on this set of issues and with establishment of centers where such information can be obtained. This will require additional funding, administrative decisions and training of the necessary staff.

Article II of the Agreement contains the obligations of each WTO member to provide an opportunity for the participants of foreign trade activity to become familiar in advance with the upcoming legislative acts in the field of trade regulation and submit their comments to the competent authorities prior to their entry into force. The implementation of this provision will be linked with the adoption of regulations in Russia to govern the organization of this process.

⁶ Here and elsewhere the comments are based on the text of the Draft Agreement. (Draft Consolidated Negotiating Text. TN/TF/W/165/Rev.11. 2011)



Article III of the Agreement contains a very important provision that the parties to the Agreement (the competent authorities of the WTO members) will be obliged to issue preliminary decisions at the request of the participants of foreign trade. Preliminary decision should apply in particular to the issues such as tariff classification, applicable rate of customs duty, the method of determining the customs value of the goods and the country of origin. This is an important provision. It will help accelerate the customs clearance of the goods and will eliminate any errors and conflicts. But its implementation is not an easy task. Its solution will be associated with a significant increase in staff development of the Russian customs service and the customs authorities of the Customs Union of Belarus, Russia and Kazakhstan.

Article IV of the Agreement clearly defines the procedure concerning the right of appeal on the issues covered by the Agreement. This system may require the organization of specialized court sessions (the customs courts).

Article VI of the Agreement provides that the rate of any fees and charges associated with the importation and exportation (excluding customs duties and taxes) should correspond to the approximate cost of services rendered. This question was at one time the subject of proceedings under the GATT due to the fact that the U.S. government has established the amount of the fees in the form of ad valorem rates to the price of imported goods. The arbitral group that considered this dispute recommended to the United States that the government establish the fixed fees by determining their size in accordance with the cost of their collection. The U.S. government has implemented the recommendation, but since there were a lot of proceedings related to the fact that the payment of such fees in some countries exceeded the value of the services rendered within the framework of the WTO. This article provides a clearer definition of what should be included in the cost of services rendered.

It seems that this issue may arise as to the customs authorities of Russia and the Customs Union of Belarus, Russia and Kazakhstan, in terms of specification of the customs legislation.

Article VII of the Agreement relates to release of the goods and customs clearance procedures. First of all, it recommends to the participants to submit the trade documents in electronic form before the arrival of the cargoes to the customs office in order to speed up the process of release of the goods upon their arrival. This article recommends dividing the process of release of the goods and the process of payment of customs duties, taxes and fees when deciding whether to release the goods. It is offered to each participant to the Agreement to establish a procedure for release of the goods on bail until the final determination and payment of customs duties, taxes and fees. It contains two versions of this practice. One option makes this system to be a common practice of the customs service, and another option provides it only if the final determination of the customs duties delayed. For Russia, it will be connected, first of all, with the step-by-step transition to the electronic methods of conducting the customs operations - an area in which we are still far behind from many countries of the world.

Paragraph 3 of the Article of the Agreement regulates in detail the risk management system. It makes the recommendations to the participants to the Agreement to concentrate the customs control on consignments with a high level of risk in order to speed up the release of the goods with low risk. When determining the level of risk it is recommended to use criteria such as product code, country of origin, the cost of goods, means of transport, good standing of the commercial parties, and the nature of the goods. The risk management system is provided by the customs legislation of the Customs Union of Belarus, Russia and Kazakhstan. However, it should be improved.

Paragraph 4 of this article recommends the use of an audit after the release of the goods as one of the possible methods to accelerate the release of goods. Obviously, in this case, the agreement recommends a prompt release of the goods with low risk, transferring the verification of compliance with customs and other regulations on the spot checks after the release. Russia will have to significantly bring together their practices with rules that can arise within the framework of the WTO.

An important innovation is contained in *paragraph 5* of the same article. The parties to the Agreement shall define and publish the data on average timing of the goods release. In case of delay in release of the goods in excess of these average figures it is recommended to inform the participants of foreign trade activities in writing of the reasons of the delay.

The speed of release of the goods is an important criterion for the efficiency of the customs authorities. Therefore, the aforesaid recommendation of the Agreement will make it possible to establish a very important method of evaluating the performance of the customs authorities of the WTO members, to compare them with each other and to create an incentive to improve their efficiency. Obviously, this criterion should find a place in the customs legislation of our country.

Paragraph 6 of Article VII introduces a concept of an authorized operator. Authorized operators are the participants of foreign trade activities, who proved themselves worth as bona fide participants of foreign trade activities for a long time, complying with customs and financial rules. At that, the authorized operators can be both natural and legal persons of the country as well as foreigners. The authorized operators will have a number of advantages that will facilitate the customs clearance. In particular, they should exercise the right to provide a single customs declaration for import and export operations for a specified period of time. For them the requirements for the provision of documents and data should be reduced. They can use the deferred payment of duties, taxes and fees. Time of release of the goods should be reduced. Russia will have to significantly strengthen the law and practice in this area.

Paragraph 7 of this article establishes a system of expedited release of the goods delivered by air for people who claim for that. For this, the participant of foreign trade needs to use the necessary infrastructure, to provide the required documents prior to the arrival of cargo, to pay the fees for customs procedures, to accept the obligation



to pay all duties, taxes and charges; to perform other requirements associated with the release of cargo. This system is of great importance for a particular category of goods (medicaments, organ transplants, flowers, fresh fruits and vegetables, critical parts for urgent repairs, etc.). Russia will have to create the necessary legal framework for this and provide the administrative conditions for the accelerated release of the goods.

Article VIII of the Agreement provides for the abolition of consular formalities when releasing the goods. Russia does not apply these formalities.

Article IX of the Agreement defines the rules for interaction and cooperation of border agencies responsible for transit of goods. This article regulates in detail the ways in which the customs authorities and other agencies that control the admission of goods across the border should unify or integrates its working methods. In particular, it is provided for the establishment of the common time of their work mode, the establishment of the same procedures and formalities, the use of common premises and technical equipment, the creation of conditions for accelerated processing and transit of the cargoes coming in transit. Russia will have to improve significantly the conditions for cross-border cooperation of customs authorities. This may require establishing joint checkpoints in some parts of the customs border of the Russian, the necessary technical infrastructure, and training of the staff that could carry out such work, including training in language.

Article IX bis of the Agreement concerns the matters of internal customs transit. It should be noted that the Customs Code of Russia of 2004 uses the terms «domestic customs transit» and «international customs transit».

In the Customs Code of the Customs Union of Russia, Belarus and Kazakhstan, this difference was leveled out. Meanwhile, any internal transit is a customs operation on the movement of goods between customs agencies within one customs territory. This operation is not profitable. International transit is a foreign activity operation. It provides for movement within the customs territory of foreign goods from a border and to a border. Like any foreign activity operation, it generates income, sometimes very significant. The fulfillment of the conditions provided for in this article would require Russia to restore the categories of domestic and international transits.

Article X of the Agreement defines the rules for the formalities applicable to the export and import operations. This article requires a regular review of the existing formalities for exportation, importation and transit for the purpose of simplifying and reducing the requirements for the required documents.

Paragraph 2.1 of this article says that “WTO members must ensure that the formalities and documentation requirements would be applied in such a way that they do not create unnecessary obstacles to trade. WTO members should consider the possibility of achieving the legitimate goals through the application of less restrictive formalities and requirements to trade”.⁷

⁷ TN/TF/W/165/Rev. 11. Draft Consolidated Negotiating Text Section I, Article 10. p.17

Paragraph 3 of this article recommends the use of international standards as a basis for the establishment of national formalities and requirements.⁸ Implementation of this provision will require a transition, especially of the Russian customs service, to the generally accepted international forms of documents, including electronic documents. This also applies to the activities of the customs services of the Customs Union of Belarus, Russia and Kazakhstan.

Paragraph 4 of this article requires the creation of a “single point of contact”. The system of “single point of contact” opens a possibility to provide all documents and information required for the registration of export, import or transit operation to one agency only. This system enables to focus the exchange of information and documents between the various parties involved in the operation in one center. Russia will have to significantly upgrade the existing rules for filing and exchange of the information. Creating a “single point of contact” requires personnel solutions (training of staff), administrative decisions (definition of an institution that will take over the functions of a single point of contact) and related financial solutions. Creating a “single point of contact” will ultimately mean a reduction in time and costs for registration of foreign trade operations.

Paragraph five of this article contains obligations of cancellation of the pre-shipment inspection. For Russia, this would mean an amendment to the Federal law on state regulation of foreign trade.

Paragraph six of this article concerns the use of customs brokers. Their mandatory use is prohibited and their rights are equated with other forms of brokerage services. Implementation of this provision in Russia and the Customs Union would obviously require an adjustment of the existing legislation.

Article XI of the Agreement proclaims the freedom of transit as defined in Article V GATT-1994. The article establishes the most favorable treatment in respect of formalities, duties, regulations and environmental requirements in respect of the goods transported on the international transit routes. It is established that the costs, rules and formalities in respect of transit should not be more restrictive than necessary for the normal performance of transit. The use of any discriminatory measures is prohibited. It is established that transit shall not be charged with any customs duties. Transit fees should be set only to cover the direct services related to transit. However, they should not be imposed on an ad valorem basis. The provisions of Article greatly facilitate the formalities and requirements for documents relating to any transit operations.

⁸ For details see I.I. Dyumulen. International Trade. Economy, Politics, Practice, 2010, Chapter VII. These international standards are given, first of all, in the following documents: Convention on Simplification and Harmonization of Customs Procedures (Kyoto Convention), United Nations Rules for Electronic Data Interchange for Administration, Commerce and Transport (EDIFACT), Guidelines for the Application of the UN Layout Key.



Paragraph nine of the article states that “the formalities, requirements to the documentation and customs control of any transit operations will not be more burdensome than as it is necessary to identify the goods and ensure that the requirements relating to the transit are met”.⁹ The recommendation to make processing of transit documents before arrival of the goods in transit is important.

Paragraphs twelve and thirteen of this article establish that the goods which are in transit will be subject to customs inspection, subject to the necessary fees only at the border crossing point at the start of the transit operation. Upon reaching the completion point of the transit operation the necessary formalities, fixing the end of the transit operation, must be performed in a short period of time. The provision that the parties to the Agreement will not require the organization of customs convoys for the goods in transit, except for products with a high degree of risk, is of great importance.

The rules in this area must be published.¹⁰ The problems of domestic and international transit are not sufficiently worked out in the Russian customs legislation and in the legislation of the Customs Union. At the same time, being widely developed within Europe, the transit operations have led to the creation of accurate, but at the same time simple rules and formalities for transit operations. It is clear that Russia will have to seriously modify the border and customs legislation governing the transit operations. Russia, due to its geographical position, has a great potential for the development of water transit route (the Baltic and the Black Sea - Caspian Sea), for the development of ground-based transit traffic between Europe and the Far East and Central Asia. Apart from the transit airways and possible transit by sea along the Northern Sea Route. The Russian legal norms regarding transit and especially law enforcement practices are behind the international standards. In the case of the WTO Agreement on this issue in Russia, as it is known, the WTO rules will operate. The relevant services, personnel and their funding must be prepared to this.

Article XII of the Agreement defines the terms of cooperation between the customs authorities of different countries. First of all, it is established that, in cases where the authorities of one country to the Agreement doubt about the accuracy of the information provided to the participants of foreign trade in respect of the declared customs value, the other party to the Agreement should assist in providing the necessary information. This article contains detailed rules for applying for such assistance, and also lists the data by which it may be requested such information. The request for such information shall be made in one of the official languages of the WTO or the language acceptable to specific parties to the Agreement. The implementation of the provisions contained in this article will require training of staff, creation of the necessary transmission and processing of

⁹ TN/TF/W/165/Rev. 11. Draft Consolidated Negotiating Text Section I, Article 10. p.22

¹⁰ Ibid, Article 10 , p. 23

data between agencies that regulate the foreign trade and the corresponding adjustment of legislation in this area.

Articles XIII and XIV of the Agreement relate to the organizational issues and suggest creation of the Committee on Trade Facilitation in the WTO and national committees for the facilitation of trade in the countries - WTO members. The Committee on Trade Facilitation in the WTO should be open to the participation of WTO members; it should be convened, at least, once a year to discuss any issues that may arise within the framework of the Agreement on the facilitation of trade.

It is stipulated that the Committee will work closely with other international organizations acting in the area of trade facilitation. The National Committee for trade facilitation should contribute to the implementation of the provisions of the Agreement within the national framework of WTO members.

The second part of the Agreement contains the detailed provisions on the application of special and differential treatment for developing and least-developed countries - members of the WTO. This is part of a seven-page content contains a very detailed conditions of application of the provisions of the Agreement on simplification of the procedures in trade in this group of the states, determine their duties and their limits, as well as favorable terms which may be established for developing countries for the adoption of the provisions of the Agreement. Developing countries are divided into three categories, for each of which there is set the term for implementation of the provisions of the Agreement. Provision of technical assistance by the developed countries and international institutions is defined as a precondition for the implementation of the Agreement by developing and least developed countries. However, the second part of the Agreement is still less developed and almost all its wordings are in square brackets, i.e. not consistent among the members of the Negotiating Group. The crudity of the second part of the Agreement, as compared with the first part, may delay work on the text of the Agreement.

A brief analysis of the Draft Agreement on the simplification of the procedures in trade says that the work at the Agreement will continue in 2012 and probably in 2013. It is still not clear which will be the final format of the Agreement and its status within the WTO agreements. The fact is that agreements of Uruguay Round are binding on all WTO members in the WTO. The Uruguay Round agreements with a limited number of participants, which create obligations for the signatory countries only (Agreement on Government Procurements, Agreement on Civil Aviation). Later on, the third type of agreement appeared in the WTO - the Agreement on Information Technologies. This agreement creates obligations for the signatory parties. However, its provisions are open to other WTO members. It is possible that the Agreement on Trade Facilitation can go on this third way, but that's just a guess. Work in the Negotiating Group on the Doha Round of trade facilitation is aimed at creating an agreement common to all WTO members.



Next year probably will show which way the negotiations on establishing the agreement will go.

Russia, having become a member of the WTO, should be involved in the Doha Round negotiations and the work of the Negotiating Group on Trade Facilitation. The problem of simplifying procedures in trade is important for our country. First of all, for the reason that customs procedures and formalities in Russia are still far from perfect. They do not comply fully not only with the rules of the WTO, but with other international obligations of the country: Russia is a member of the World Customs Organization, Russia ratified Kyoto Convention two years ago, our country is an active participant of the work performed by the UN European Committee on the facilitation of trade. This issue has been repeatedly raised in a number of important areas discussed at the APEC summit. Therefore, Russia should define its position in relation to the existing draft agreement on trade facilitation in the WTO.

As noted above in this article, the work at the preparation of the Agreement is the most promising direction to continue the multilateral trade negotiations, the Doha Round. Here, a possibility to create a real Agreement appears. The appearance of such Agreement will result in removal or reduction of a number of hidden barriers to international trade. This will undoubtedly improve the position of Russia in the world market and increase the competitiveness of its exporters. Therefore, from this point of view, Russia's active participation in the negotiations will promote the development of foreign trade activity of the country.

The WTO is a tool of multilateral trade diplomacy, and simplification of procedures in trade is a multilateral issue where this diplomacy can produce a positive result. Russia's participation in the negotiations on trade facilitation affects the interests of many departments. Obviously, regarding this issue an inter-departmental committee, which includes the representatives of federal agencies, the business community, as well as the scientists dealing with these issues, should be established. The immediate task of such committee is to develop a negotiating position of Russia. It is necessary to take into account the experience gained by just completed negotiations on Russia's accession to the WTO. There is very little time to prepare. It is, therefore, important to try to see the future and be ready for it.

