

**UNICE PRELIMINARY POSITION ON
RUSSIA'S ACCESSION TO THE WTO**

Executive summary

UNICE is a strong supporter of Russia's accession to the WTO. Membership of the WTO will be a key stage in Russia's progress towards a market economy and further integration in the world economy. UNICE therefore welcomes Commissioner Lamy's commitment to quickly specifying the Community's negotiating requests, in order to accelerate negotiations at multilateral level.

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. Russia's transformation into a well-functioning market economy must be actively pursued through the process of accession. The examination of Russia's accession to the WTO must further be carried out in parallel to and in synergy with the new comprehensive three-year WTO round of multilateral trade negotiations. Upon accession, Russia will have to meet all the requirements which are raised in the context of this new round.

Even though Russia has made some marked progress in reforming its economy in recent years, European business still faces numerous trade and investment obstacles in dealing with Russia. Based on the first-hand experience of European companies with Russia, this paper points to a wide range of preliminary priority reforms to be negotiated in the framework of the WTO accession negotiations.

UNICE presses in particular for:

- continued surveillance and trade defence to encourage compliance with market economy conditions in Russia,
- further tariff reductions,
- abolition of export and import restrictions,
- phasing out of all WTO-incompatible subsidies,
- 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 system,
- liberalisation of foreign investment,
- improved market access to Russia's services sectors,
- stronger commitments on public procurement,
- improving the administration and enforcement of the protection of intellectual property rights and, more generally,
- legal and administrative reform.

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

These preliminary views may be complemented and/or revised as bilateral and multilateral negotiations progress.

UNICE and its experts look forward to pursuing dialogue on its recommendations with the parties involved in the WTO accession negotiations, with a view to substantial market access in Russia.

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INTRODUCTION

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

UNICE therefore strongly supports Commissioner Lamy's commitment, on 3 October 2001 EU-Russia Summit, to quickly specifying the Community's negotiating requests with a view to intensifying accession negotiations at WTO level. **The accession of Russia to the WTO must take place under commercially sustainable terms that commit Russia to substantial investment and trade liberalisation of goods and services. Russia's transformation into a well-functioning market economy must be actively pursued through the process of accession.** The examination of Russia's accession to the WTO must further be carried out in parallel to and in synergy with the new comprehensive three-year WTO round of multilateral trade negotiations. Upon accession, Russia will have to meet all the requirements which are raised in the context of this new round.

UNICE acknowledges that Russia has made remarkable progress in reforming its economy, notably in the last couple of years (licensing law, new tariff classification etc.). However, European business would like to draw the European Commission's attention to the persisting competition barriers and market distortions that it currently encounters in Russia, and the need to press for priority reform thereof. UNICE's preliminary priorities¹ in the negotiating process are:

- continued surveillance and trade defence to encourage compliance with market economy conditions in Russia,
- further tariff reductions,
- abolition of export and import restrictions,
- phasing out of all WTO-incompatible subsidies,
- 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 system,
- liberalisation of foreign investment,
- improved market access to Russia's services sectors,
- stronger commitments on public procurement,
- improving the administration and enforcement of the protection of intellectual property rights and, more generally,
- legal and administrative reform.

¹ This succinct list of priority areas expands on UNICE 21 March 2001 Statement on the EU-Russia relationship. 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. 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 **its acceptance and implementation of the principles and practices of a market economy**. During the past two years Russia has made substantial progress towards a market economy. Membership of the WTO will be a key stage in Russia's development in that direction. However, past experience with economies in transition goes to show 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 which is necessary to ensure a well-functioning market economy. Customs clearance, certification of goods, government licensing, commercial court proceedings etc., must be carried out in an effective and non-discriminatory manner, so that foreign economic operators are guaranteed effective access to the Russian market in non-discriminatory conditions.

Recommendations

In its negotiations with Russia on conditions for Russia's entry into the WTO, the EU should demand that economic, legal and administrative reforms are 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 trade-distorting subsidies and market practices in EU-Russian trade.

As with China, WTO members should be allowed to carry on their treatment of Russia as a non-market economy until such time as it becomes a fully operational market economy. This should not prevent the EU from continuing to demonstrate flexibility vis-à-vis individual Russian operators in the framework of trade defence.

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

2. Further tariff reductions

Russian tariffs remain high. Russia uses tariffs as its main trade policy instrument. The trade-weighted average level of Russian tariffs is in the range of 11.5 to 15 per cent. In addition, value-added taxes (VAT) are applied to virtually all imports, and excise taxes are applied to a small selection of goods. The Russian government continues to apply prohibitive rates in the automobile, aircraft and alcoholic beverage sectors. Products which are considered to be related to the country's national security have not been subject to binding offers.

Recommendations

Tariffs, as supported by economic evidence, are ineffective remedies to address market failures. The European Commission should request further bound commitments. Russia should set tariffs at lower uniform levels. Peak tariffs should not exceed 15%.

3. Abolition of export and import restrictions

Export restrictions by means of **export taxes / duties** or other measures discouraging exports (export of metal scrap limited to a few listed border-crossings only, etc.) must be eliminated. Export taxes as applied on commodities/raw materials create trade and market distortions at both national and international level. By constraining Russian manufacturers to revert to more profitable non-tradable goods, export restrictions adversely affect Russia's domestic production structure. Export restrictions ultimately impede Russia's industrial development and create the conditions for an adverse macroeconomic environment.

Import restrictions are also applied in some sectors. There is, for instance, no automatic import licensing on alcohol and pharmaceutical products. Another example is the geographically restricted customs clearance allowed for textile and clothing items from the Far East.

Recommendations

Russia should abolish its export and import restrictions.

4. Phasing-out of prohibited subsidies

The Russian government's industrial policy guidelines emphasise export promotion and import substitution. General subsidies cover such measures as direct transfers from the federal budget to specific industries (e.g. coal), loans or deferred payments to companies, grants to regions and State financing of specific programmes. Preferential access for some companies to raw materials, energy or other inputs at below market prices also distorts market conditions.

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 before accession, without any transition period permitted thereafter.

5. Elimination of technical barriers to trade: alignment of Russian standards, product safety requirements, testing and certification systems on international norms

Standards, product safety requirements, testing and certification procedures have become 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 majority of all products on the Russian market are over-prescriptive and rigid and go beyond the essential market economy goal of ensuring that essential health and safety requirements are fulfilled. In Russia almost all separate products have to be certified individually, while system certification is used in most cases in the Western countries. Many European companies report significant additional costs incurred in conforming with Russian certification standards. Difficulties in obtaining certification are particularly acute with respect to the telecommunications equipment, construction materials and oil and gas equipment sectors. In the case of new food products, Russia has just introduced a new registration system (to come into effect in 2003) which duplicates the certification conditions and its above-mentioned costly requirements. Finally, time-limited and/or quantity-related certification fees, which are not normal in Western market economies, constitute an additional problem in Russia. In a WTO context, such fees should be considered as the equivalent of tariffs or licence fees, and they should 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 should be administered separately as they are in the European Union and most other market economies. Foreign testing results against international or Russian standards should be recognised by 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 system

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 effectively in their implementation. Decentralised Russian customs authorities are left with a broad power of discretion in interpreting and implementing customs regulations, thus leading to arbitrary and inconsistent decisions. Furthermore, customs rules change 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, unclear implementation mechanisms of export restrictions). The result is a **customs and clearance system which clearly lacks impartiality, consistency, transparency and efficiency.**

Recommendations

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

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

7. Liberalisation of foreign investment

The level of foreign investment in Russia is a fraction of what it could be. According to company evidence, 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 quasi State-owned **monopolies** (e.g. Gazprom). 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, beverage, aerospace etc.), which prevent new comers 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 a right to sell products in Russia. A further very important restriction is that land may not be sold to foreign corporations or individuals.

The lack of laws and established procedures for shareholder protection constitutes an additional deterrent, 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 payment of debts through bankruptcy and seizure procedures, repatriate funds abroad after payment of duties and taxes and receive compensation for expropriation, etc.

Movement of key personnel is also an issue. At the moment, federal and regional authorities share responsibility in a number of areas, for instance related to the establishment of quotas for employment of foreigners.

Recommendations

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

This would entail inter alia:

- ***establishment and enforcement of property rights. Land ownership is of primary importance to foster foreign investment.***
- ***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 of shareholders. The right of minorities to representation on the board and against discriminatory treatment should be safeguarded.***
- ***at minimum, Russia should comply with WTO rules on Trade-Related Investment Measures (TRIMs) – ie 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 to market economy structures, including restructuring State monopolies, removal of 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. Foreign **market access to service sectors remains largely restricted** in important sectors such as banking, life insurance, architectural, construction, retailing and telecommunications services, *inter alia*.

Recommendations

Further foreign market access and national treatment commitments are needed in the services sectors, notably in the banking and telecommunications industry which are fundamental to the country's economic development. Such commitments should include a date for market liberalisation and removal of foreign ownership restriction. Russia must meet all the requirements which emerge in the context of the GATS.

9. Stronger commitments on public procurement

The volume of government procurement is significant in Russia: according to Russian estimates, federal budget allocations for purchases to meet State needs 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, regulation and State practices.

Recommendations

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

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 TRIPs compliance and efficient administration and enforcement of rights covered remain highly problematic.** Inappropriate approximation and implementation of relevant legislation favour intellectual property rights and product piracy, which is of serious concern to European industry. Weaknesses in the compliance and enforcement mechanisms include: insufficient education and training of officials and judges on intellectual property issues; conflicting interpretation 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 TRIPs; lack of a legal basis for customs confiscation; insufficient competence of judicial courts (as opposed to administrative authorities) in procedures regarding trademark violations and contesting trademarks registrations; 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).

Recommendations

The EU should require Russia to apply fully all the provisions of the TRIPs Agreement upon accession but also to provide evidence of 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 through the 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 on the part of the competent authorities (e.g. judges, administrative bodies, customs authorities).

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

11. Legal and administrative reform

Unpredictable and inconsistent implementation of economic laws and regulations, as well as 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 and effective courts and court-room procedures must be established. Small and medium-sized companies are often deterred by the general uncertainty, as well as by difficulties with the local bureaucracy. As projects generally require federal, regional and local approval, the vagueness of existing laws causes different interpretations and conflicting requirements at different levels. Exemption possibilities to ensure national defence, state security, protection of public order and protection of the internal market also remain extensive.

Recommendations

A stable, transparent, reliable and consistent legal and administrative framework which fosters the development of 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

Before Russia can accede to the WTO, important legal and administrative reforms are to be carried out to remove the numerous barriers to trade and investment. UNICE is confident that bringing Russian regulations in conformity with WTO rules will help to **address the lack of an effective enforceable legal system with transparent, uniform and predictable laws**, provided that the reforms are supported by **adequate capacity-building exercises**.

Russia must further acknowledge the important role that **business organisations** can play as a **key factor for structuring civil society and contributing input to accession negotiations**. **Cooperation between business organisations in the EU and Russia should be reinforced**, notably in the area of WTO. The EU-Russia Industrialists Round Table would need to mainstream WTO accession in its agenda.

The above-mentioned issues **do not constitute the full range of challenges facing European business in Russia**. This position aims at providing a **preliminary compilation** of the investment and trade obstacles faced by European companies in their dealings with Russia. UNICE will monitor closely the evolution of the EU-Russia trade and investment relations in the framework of WTO accession and **may complement and/or revise its preliminary views as and when bilateral and multilateral negotiations progress**.

On the basis of those preliminary views, **UNICE looks forward to pursuing dialogue with the parties involved in the WTO accession negotiations, with a view to substantial progress in market access in Russia.**