

ISSUES REGARDING EAEU MEMBERS' PARTICIPATION IN THE WTO ACTIVITY

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Issues related to the use of the WTO instruments and mechanisms by CIS member states including the EAEU members remain one of the least studied problems regarding a comprehensive analysis not in Russia alone but also in other countries of the post-Soviet space. Activity in the WTO needs to be studied in two aspects: first – as an impact factor on the implementation of the national foreign economic policy and second – as a legal basis for creation of integration processes including within the CIS and EAEU.

In spite of current problems, the WTO remains a powerful organization under whose auspices multilateral rules designed to regulate foreign economic activity for the vast majority of countries are effective. These rules cover 98% of global trade in goods and services.

The majority of the post-Soviet countries are already members of the WTO. Three states – Azerbaijan, Belorussia and Uzbekistan are on different phases of accession to the WTO¹. Turkmenistan is an exception. It never became an observer in this organization owing to its understanding of the neutral state status. Having said that, it should be noted that candidates start to incorporate the WTO norms and rules in their national legislation and compliance practices at the accession phase.

It should be noted that particular terms for accession are different for all countries and in some cases these differences are rather significant (*Table 1*). This is determined by an economic potential of an applicant: the higher the potential the more requirements pop up from the WTO members, as well as the negotiations are more complicated and last longer.

We can acknowledge that the major part of the CIS economic space has already been incorporated in the sphere of multilateral trade system.

However, during the last 10-15 years the CIS delegations missed the opportunity to present themselves from the constructive point of view and, on the contrary, were highly passive both in the current WTO activity and in the framework of Doha round. Even in the Dispute Settlement Body (DSB) their activity was unnoticed, except for Russia and the Ukraine, and they figure in separate disputes where they are defendants.

Moreover, owing to the current geopolitical situation, the WTO is another platform for a public showdown between Russia and Ukraine². This is referred to not only mutual cases but to statements made during the discussion of national Trade Policy Reports (TPR), and discussions of various issues in the WTO committees and working groups. In the future, one can expect an escalation of the situation linked, in particular, to the new legal action of Ukraine against Russia regarding restrictions of free transit, which is one of the paramount WTO principles.

1 See in detail on the WTO activity and accession process: Pakhomov A.A. Uruguay Round Agreements and the WTO Evolution. *Voprosy Ekonomiki*. № 8, pp. 146–158.

2 It is characteristic that as of October 2016 out of 8 dispute cases involving Ukraine in DSB 6 refer to mutual cases involving Armenia, Moldova, Kirgizstan and Russia. Dispute cases involving Ukraine/www.wto.ru

Table 1

TERMS AND PARAMETERS OF SYSTEM OBLIGATION FOR CIS AND A NUMBER OF OTHER COUNTRIES ACCESSION WHO BECAME WTO MEMBERS AFTER 1995

| Country | Accession date | Total time of accession | Report*, pp. | Number of commitments in report |
|---|----------------|-------------------------|---|---------------------------------|
| Kirgizstan | 1998 | Under 3 years | 62 | 29 |
| Georgia | 2000 | 4 years | 57 | 29 |
| Moldova | 2001 | 7.5 years | 83 | 28 |
| China | 2001 | 15.5 years | 183 | 82 |
| Armenia | 2003 | Over 8 years | 80 | 39 |
| Saudi Arabia | 2005 | 12 years | 135 | 59 |
| Vietnam | 2007 | 12.5 years | 198 | 70 |
| Ukraine | 2008 | 14.5 years | 237 | 64 |
| Russia | 2012 | Over 19 years | 771 | 164 |
| Tajikistan | 2013 | Nearly 12 years | 135 | 40 |
| Kazakhstan | 2015 | Nearly 20 years | 447 | 118 |
| Afganistan* | 2016 | 14.5 years | 138 | 37 |
| Страны-наблюдатели в стадии присоединения | | | | |
| Azerbaijan | | 19.5 years | Advanced phase of negotiations | |
| Uzbekistan | | Nearly 22 years | Early phase of negotiations | |
| Belorussia | – | 23 years | Negotiations are frozen de facto since 2007 | |

*Working Party Report on accession to the WTO of a country applicant.

Source: Authors compiled from Technical Note on the accession process. Note by the Secretariat, WT/ACC/10/Rev.4, 11 January 2010, p.11–12; Reports of corresponding Working groups; WTO official site: www.wto.org.

Table 2

EUEA MEMBERS RATING AND THEIR SHARE IN WORLD TRADE OF GOODS AND SERVICES IN 2014

| | Russian Federation | Kazakhstan | Belorussia | Kirgizstan | Armenia | EAEU |
|--------------------|--------------------|------------|------------|------------|------------|-----------|
| Export of goods | 11 / 2.62 | 45 / 0.41 | 60 / 0.19 | 141 / 0.01 | 143 / 0.01 | 6 / 3.24 |
| Import of goods | 17 / 1.61 | 60 / 0.22 | 61 / 0.21 | 125 / 0.03 | 132 / 0.02 | 15 / 2.09 |
| Export of services | 22 / 1.31 | 70 / 0.13 | 62 / 0.16 | 133 / 0.02 | 113 / 0.03 | 19 / 1.65 |
| Import of services | 11 / 2.49 | 57 / 0.16 | 74 / 0.12 | 131 / 0.03 | 119 / 0.04 | 9 / 2.84 |

Note. First figure – place in WTO rating; second – share (%) along this indicator.

Source: compiled on no WTO Trade profiles. Geneva. 2015. 208 p.

Moreover, one should bear in mind the fact that Russia's position and that of her partners in the EAEU, in world economy and global trade are rather weak and fragile (Table 2). However, precisely macroeconomic indicators create initial negotiation position (weight) of each WTO member (or groups of countries in this case). That is why, consolidation of all EAEU members in the World Trade Organization is of paramount priority.

Furthermore, even moderate positions of the EAEU members in world trade, whose volumes in 2015 contracted by nearly one third, are formed mainly by the turnover of Russia and Kazakhstan who are exporters of energy

products and raw materials, which currently is not a qualitative indicator of participation in the world trade.

One should underline a very low level of mutual trade between the EAEU members (nearly 8% of their total trade turnover), which is actually the lowest indicator among similar integration organizations in the world according to the UNCTAD statistical data¹, which shows a low performance of integration processes within “five”.

In this context, one should keep in mind the fact that in the current environment of globalization there is a change of trends inherent not only to the global economy but to the world trade as well. For example, annual growth rates of global trade turnover have decreased sharply and its sectoral structure has significantly changed in the post-crisis period². That is why, extensive factors of foreign economic activity development are losing effectiveness and the ability to professionally use the WTO instruments and mechanism comes to the fore as a way of feasible integration into global economy on a new level.

In view of this, one of the overriding priorities of national delegations in the WTO is search and attraction of allies and followers for the promotion and protection of their interests, which directly or indirectly coincide. Therefore, it is obvious that it is necessary to switch from a passive role and confrontation to coordination of the CIS members activity in the WTO.

Russian Federation has failed to consolidate and even informally coordinate positions of its CIS partners, including EAEU members (it is no good talking about delegations of other countries) during the discussion of issues at Doha-round and current WTO activity. This work could have been done, for instance, within the group of recently acceded countries (the so-called group of “Article XII”³), which includes 22 members of the WTO who became members after 1995. These countries in their turn are divided into three sub-groups according to the level of economic development, one of which comprises all eight CIS countries.

Moreover, even the accession process and terms of membership of CIS and EAEU partners were far from being coordinated, although formal multilateral and bilateral consultations were held as well as public statements iterated. As a result, this incoordination harmed not only the economy and foreign economic complex of Russia but emerging Eurasian Economic Union as well.

For example, one of the real menace for the Russian economy is connected with the terms of Kazakhstan’s membership (regarding tariff concessions) in the WTO. Essentially, this represents not only a possibility for uncontrolled import (reexport) into the Russia’s territory of goods from China and a number of other far abroad countries, but also an erosion of the Common Customs Tariff (CCT) of the EAEU.

It should be taken into consideration that commitments of Kazakhstan in the WTO regarding access to the merchandise markets (so-called tariff con-

1 UNCTAD statistical data base http://unctadstat.unctad.org/wds/ReportFolders/reportFolders.aspx?sCS_ChosenLang=en

2 See in detail: Makarov A., Pakhomov A. Results of World Trade of Goods and Services in 2014. Russia’s Economic Development. 2015, T. 22. № 5. pp. 27–34.

3 Article XII “Joining” of the Marrakesh Agreement on creation of the World Trade Organization (1994) determines general principles of accession to the WTO of new members. In essence, the only element of this group position is the demand to account their increased commitments at the accession as a contribution to liberalization of world trade in Doha-round.

cessions) of more than 3 thousand positions were below the level of previously coordinated rates out of 11,000 of effective customs tariff number (FEACN) of the EAEU¹. As a result, the Eurasian Economic Union has taken a compromise decision, according to which starting from 1 December 2016 the number of Kazakhstan's exemptions from the Common Customs Tariff of the EAEU will come to 1,911 tariff lines of FEACN (more than 16%).

It should be added that upon a mutual agreement of the Customs Union parties on the Common Customs Tariff is formed and changes on the basis of Russian tariff Kazakhstan's exemptions reasons and transition period commitments to the WTO. That is why the EAEU members must provide explanation and transition period regarding Kazakhstan's exemptions, at the end of which they will adopt a reduced rate.

It meant that the remaining third of the problematic rates would be settled at the bilateral level between Kazakhstan and Russia in the framework of a special Protocol². In this case it meant that goods eligible for nearly 1,000 reduced positions, would be shipped to Kazakhstan according to standard procedures, but while moving to the territory of Russia, they will be subject to special administrative procedure, which envisages surcharge of corresponding duties, taxes and dues according to the Russian law.³ However, it is unclear the way this procedure will be implemented at the border between the two countries, where there are no customs points.

This being said, similar unclear situation in the sphere of Common Customs Tariff exists and regarding 770 reduced tariff positions within Armenian commitments in the WTO and nearly Kirgiz 170 rates⁴. While joining the EAEU Armenia and Kirgizstan promised to settle this issue in the WTO by conducting negotiations (so-called renegotiations⁵) with interested WTO members regarding making amends to the previously raised coordinated import rates.

According to the available information, Armenia (by the end of 2014) and Kirgizstan (in mid-2015) submitted to the WTO notifications according to Article XXIV, GATT-94 on their intention to conduct such negotiations. However, since then solely informal consultations on this issue were conducted and the launch of negotiations on compensation was put off for an indefinite period⁶. In the meantime, judging by procedures and practice of GATT and WTO, achievement of the sought outcome is unlikely, because the question is about the revision of barely several dozen positions (for certain period of time), but not of several hundred.

1 According to the Kazakh version, these rates were coordinated with the WTO partners in 2009, i.e. prior to the creation of the Customs Union. Kazakhstan officially became 162 member of the WTO on 30 November 2015.

2 Federal Law of 30 December 2015 № 417-ФЗ "On Ratification of Protocol on Certain Issues of Entry and Circulation of Goods on the Customs Territory of the Eurasian Economic Union."

3 Exemptions from the CCT of the EAEU and "traceability system" of goods regarding which Kazakhstan applies reduced duty rates became an instrument of realization of Kazakhstan's commitments in the WTO in the sphere of customs and tariff regulation. See: Decision of the Union's Committee of 14 October 2015 № 59 on the list of exemptions from the CCT of the EAEU.

4 See: Annex 4 to the Agreement on Accedence of the Republic of Armenia to the Treaty on Eurasian Economic Union of 29 May 2014 (Signed in Minsk on 10.10.2014); see Article 1 to the Agreement of Accedence of the Republic of Kirgizstan to the Treaty on the EAEU of 29 May 2014 (in edit. of 2 March 2015).

5 According to the provisions of Article XXVIII "Change of lists" and Article XXVIII bis "Tariff negotiations" GATT-94 there is a negotiated order for conducting such negotiations and terms for changing tariff rates with further compensation according to agreement of the parties.

6 EEC website: www.eurasiancommission.org

Taking into consideration the fact that the Common Customs Tariff (CCT) was finalized in the framework of the Customs Union embracing three countries anyway not fully, the situation puts under threat a key condition for the creation of a “classic” customs union according to the WTO rules – availability of a real and effective CCT (harmonized by no less than 85-90% of all tariff rates)¹. However, currently the number of those indicated above unfinalized import duties in the CCT of the EAEU constitutes at least a quarter of merchandise nomenclature positions.

As a result, lack of coordination of a significant part of tariff positions (registered as exemptions from the CCT) represents one of a shining example of negative tendency towards ignoring work on the previous phases in the EAEU on the consolidation of commitments in the WTO of the EAEU members. First of all, this refers to incoordination in the course of their negotiations on accession and lack of complex comparative analysis (inclusive of being in line with the basic WTO criteria for the creation of the Customs Union and later of the Eurasian Economic Union).

Herewith, in this case even current differences of the EAEU countries on other WTO commitments related to liberalization of access to the services markets, agriculture, and the most important – on so-called systemic issues, etc., which requires not only a detailed study but a special methodology of analysis.

On the whole, search for informative studies on comparison of terms of accession of the EAEU countries and proposals on their harmonization have not produced any results so far. For example, the Accession Department of the WTO Secretariat does not plan to issue updated releases of such documents as WTO/ACC/10, and WTO/ACC/11², dedicated to the legal expertise and structural analysis of accession of new members and other WTO materials on this subject.

CIS countries boast of various quality level studies, which analyze terms of accession of governments to the WTO and the consequences for national economies. However, apparently there will be no comparative and analytical materials regarding the EAEU development and shaping of a single foreign economic policy of the Union in the near future. It would seem that the situation is due to the fact that these countries lack specialists and experts on the WTO agenda.

Terms of accession to the WTO can anyway be compared by using, for example, methodology from the WT/ACC/10 Report, however it is a huge work (first of all of technical character) on studying a packet of documents on accession of certain countries to the WTO, which can be of interest for young researchers. In the end, take as a basis Working Groups Reports on accession of the Russian Federation and Republic of Kazakhstan as well as Annexes to them on tariffs' concessions, access to the markets of services, support of agricultural sector, etc.

1 Agreement on interpretation of Article XXIV GATT-94 is dedicated to the terms of creation of integration associations including Customs unions. Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994 (on regional trade agreements).

2 World Trade Organization: WT/ACC/11/Rev.10, 28 February 2012, Geneva, Technical note on the accession process, Note by the Secretariat: State of Play and Information on Current Accessions; WT/ACC/10/Rev.4, 11 January 2010. Technical note on the accession process. Note by the Secretariat: Revision.

Table 3

BASIC TERMS OF ACCESSION OF THE EAEU MEMBER STATES TO THE WTO

| Country | Final level of binding of import customs tariffs (average weighted. %) | | | Final level of support of agriculture (subsidies) | Commitments on services (number of subsectors) | Commitments of systemic issues in WG Report (number of commitments) |
|------------------------|--|-----------------------|--------------------|---|--|---|
| | All goods | Agricultural products | Manufactured goods | | | |
| Kirgiz Republic | 7.5 | 12.6 | 6.7 | De minimis – 5% | 136 | 29 |
| Republic of Armenia | 8.5 | 14.7 | 7.6 | De minimis – 5% | 106 | 39 |
| Russian Federation | 7.6 | 11.2 | 7.1 | 4.5 млрд. долл. в год | 122 | 163 |
| Republic of Kazakhstan | 6.1 | 7.6 | 5.9 | De minimis – 8.5% | 116 | 118 |

Notes. De minimis according to the WTO Agreement procedures on agriculture is determined in percent of the total cost of produced agricultural products (gross products of agricultural sector).

Sources: compiled by authors on the WTO Trade profiles. Geneva. 2015. 208 p.; WT/ACC/10/Rev.4. 11 January 2010. Technical note on the accession process. Note by the Secretariat: Revision; materials taken from the official WTO website: www.wto.org and Working Groups Reports on accession of certain countries.

The above mentioned document collection should be added to the parameters of all commitments made by the Republic of Armenia and the Republic of Kirgizstan and eventually those of the Republic of Belarus. If ever this huge work is completed, then it will be a large qualitative contribution in the determining of further EAEU development and shaping of a single foreign economic policy of the Union.

Achievement of the main EAEU goal, ensure free movement of goods, services, capital and labor as well as conducting coordinated and unified policy in sectors of economy, is impossible without completing such work. As an example of such approach, authors have compiled a combined comparative table with basic parameters of terms and commitments of the EAEU members in the WTO (*Table 3*).

Table 3 provides composite indices on all four blocks of each EAEU country before the WTO. However, if we take a more detailed level, for example, the sphere of non-tariff regulation where linear comparisons are feasible, then we observe a rather complex picture. This refers to additional comparison of share of non-ad valorem tariff rates, quantity and parameters of tariff quotas, number of so-called sectoral initiatives, differentiated breakdown of minimum and maximum duty rates, etc.

Regarding Belorussia (the only EAEU member that is not a WTO member), there is a complex of systemic issues. Accession process of this country sparks interest and concern because in the current situation of *zugzwang* most likely accession of this country to the WTO on imbalanced terms (though no fault of Belorussia) will exacerbate functioning of the EAEU as well as prospects of its further development. Actually all work on Belorussia's accession was frozen since 2006 for more than 10 years on political grounds (introduction of trade and political sanctions by EU and US). Only several meetings between Belorussian delegation and certain WTO members have been chartered in the near future. Thus, practically all work on Belorussia's accession needs to be launched anew.

In the current circumstances, most likely, effective commitments of Russia and Kazakhstan and not planned national policy of Belorussia will be taken as a basis for the negotiation position (as a EAEU member). This fact considerably simplifies the negotiation process for leading WTO members and obtaining by them desired concessions and results on expansion and deepening of Belorussia's commitments and correspondingly, all EAEU countries.

There one more serious systemic issue – conformity of the Customs Union and “unfolding” Eurasian Economic Union to the basic norms and rules of the WTO, as well as special interpretation in agreements of the organization regarding creation and performance of integration organizations¹.

In particular, the first Trade Policy Review released in September 2016 contains statements made by many WTO members on Russia's trade policy regarding low transparency of the EAEU activity, nucleuse scope of regulation on the national and subnational levels (the EAC powers) as well as other issues (SCT, draft of new Customs code, negotiations on creation of free economic zones, procedures for analysis and implementation of protection measures)².

In this context, the question is not so much about traditional references to Article XXIV GATT-94 “Spatial application – border trade, customs unions, and free economic zones” but Agreements on interpretation of Article XXIV GATT-94 and other WTO basic documents. This complex issue also requires a separate investigation and implementation of special measures.

The Eurasian Commission authorities declare their intention to move in this direction. Corresponding action plan has even been drafted³. For example, according to legal documents, commitments of the Union members in the WTO become an inseparable part of the EAEU legal base. Moreover, it is stated that measures aimed at bringing the legal system of the Union and decisions of its bodies in line with the WTO Agreement. However, specific agreements on aims and tasks of joint actions in the WTO and single EAEU trade policy are absent.

The same issue, inconsistency with the WTO norms, applies, although to a lesser degree, to a hot issue of creation of free trade zones with third countries. The first such Agreement between EAEU and Vietnam became effective on 5 October 2016. Around a dozen drafts with various countries (groups of countries) are in different stages (from frozen status of negotiations to activity of so-called study groups).

Apparently, strategic task of the Eurasian Commission regarding the World Trade Organization consists in obtaining status of permanent observ-

1 Previously, the Russian Federation notified the WTO Secretariat on its participation in integration processes within CIS, EurAsEC, Common Economic Space, and EAEU. Similar notifications were made by other EAEU countries members of the WTO. However, these notifications have been reviewed for a long time and the mentioned organizations have not been recognized in the WTO as corresponding to norms and rules of the WTO.

2 WTO Trade policy review: Russian Federation, 28 and 30 September 2016, Concluding remarks by the Chairperson; «Russia Hits Back At U.S., EU During Its First WTO Trade Policy Review» / Inside U.S. Trade, Vol. 34, No. 39 – October 7, 2016, Wash., p. 9.

3 Annex № 31 «On Functioning of the Eurasian Economic Union within the Multilateral Trade System» to the Agreement on the Eurasian Economic Union (Signed in Astana on 29 May 2014) (revised on 08 May 2015). Within the Union corresponding themes entail application of the Agreement on functioning of the Customs Union within the multilateral trade system of 19 May 2011

er in the organization (as a form of achievement by the EAEU of international legal standing) remains difficult to accomplish, including because of political reasons. In addition, without obtaining such status many comprehensive issues of joint actions of the Union countries in the WTO are practically impossible. ●