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**LEGAL STATUS OF THE RUSSIAN FEDERATION
AS A MEMBER OF THE WTO**

Legal status of the Russian Federation as a member of the WTO

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Alleged that the Federal Law "On Self-regulatory Organizations" has formed a corporate conspiracy of major market players to eliminate competitors, and in conditions of Russia's entry into the WTO the rules established by self-regulatory organizations become the mechanism of crowding out domestic participants of market.

The author notes a reduction in the possibility of state planning, as well as the fact that membership in the WTO restricts the ability of the state to support domestic producers.

Here are given five elements of the legal status of Russia as a member of the WTO: the rights and duties of the Russian Federation, Russia's powers to participate in a dispute resolution procedure, law-creating powers and enforcement powers.

Keywords: the WTO, objects of public administration, rights and duties of a member of the WTO, dispute settlement in the WTO.

Recently, it has become generally accepted that Russia needs a new model of economic growth and that it is necessary to abandon the current model of economic growth based on the increase in raw material prices. For the formation of the new model an important role is played by Russia's entry to the WTO. In a recent review the IMF explicitly states that the implementation of Russia's obligations under the WTO is an important tool for the implementation of the structured program for the realization of growth potential of Russia [5].

Russia's membership in the WTO, which obliges the state to ensure equal conditions for market participants, requires abandoning some traditional views on public administration, its essence and legal grounds.

First, the abandoning of branch priorities in public administration is inevitable. Branch ceases to be a priority of national economic policy. This is due to the fact that the subjects of the market, branch participants begin to focus not on their national contracting parties, but on more profitable partners with other state affiliation. Branch as an object of public administration ceases to exist, since participants of branches enter into international production chains and break relations with their sectorial "adjacent" partners. Examples of this have already occurred for a small period of Russia's membership in the WTO. Waiver of branch priorities is also indirectly confirmed by the country's leadership. Dmitry Medvedev, in his speech at the Gaidar's Forum in January 2013, as the seventh task of the Government of the Russian Federation called strengthening the international position of the Russian economy, including adaptation to the WTO conditions, increasing the level of integration of Russian companies in the international chain of additional value creation, improving the structure of our exports [3].

Second, self-regulation as a way to organization of market participants also loses its significance. FL "On Self-regulatory Organizations" [1] has led to the restriction of competition, deterioration of the position of small and medium-sized businesses. This is due to the fact that the policy of the self-regulatory organizations is primarily aimed at protecting the interests of large producers that play a leading role in the activities of these organizations. This law led to increase in encumbrances for market participants, which proved to be the most painful for small and medium-sized businesses. In fact the law formalized a corporate conspiracy of large market players to eliminate competitors. Negative effect on economy from various forms of legislation on self-regulation has been long known. In 1776, Adam Smith pointed out: "The representatives of one and the same kind of trade and craft rarely get together even for entertainment and fun without their conversation that leads to conspiracy against the public or any agreement to raise prices" [6, 174]. In

1933, the creators of “New Course” passed a law on the recovery of national industry. It gave to industrialists the right to cooperate not only in setting prices for their products, but also in the calculation of wages and determining the length of working day. The leading players in each industry, from steel and coal production to manufacture of yarn and dog food, were offered to get together and write “codes of fair competition”, which would had been required for each industry. More than 450 codes that were included in the law set a clear trend of rising prices, rising wages, reduction of working hours and elimination of competition, and at the same time innovations in industrial production. Effective businessman introducing innovations and lowering prices represented an evil, because it was believed that its activities led to lowering wages and, hence, to a decrease in the purchasing power. The new law, by promoting the codes of “fair competition”, gave to all entrepreneurs the opportunity to make profit, pay high salaries and resist those who reduced prices or entered innovations. The traditional American model of free market with competition and innovation that providey the difference in prices and quality of products for customers with different tastes was overthrown. After the adoption of this law in every branch most firms approved by the state got legal right to determine what should be the extent of the expansion of this or that factory, workers wages, working hours and prices for all produced products. The law did not oblige all employers to participate in writing the codes, however, fines and prison sentences were provided for violating articles of an industry code [2, 59-61]. The policy of fixing high prices and wages led the easier capture of small businesses by big companies, increased unemployment and exacerbated crisis. Two years later, the United States Supreme Court declared this Law unconstitutional.

Today in society there is concern that the accession of the Russian Federation to the Marrakesh Agreement will lead to increased foreign participation in the various segments of the domestic market. These negative expectations have been reflected in the Decision of the Constitutional Court of the Russian Federation dated No. 17-D from July 09, 2012 “On the check of constitutionality of a not entered into force international treaty of the Russian Federation – the Protocol on the Accession of the Russian Federation to the Marrakesh Agreement on Establishing the World Trade Organization”, in which two provisions deal with the possibility of providing specific services by foreign entities (legal services and services provided by patent attorneys). Therefore, it appears that the toughening of requirements to the participants of various professional communities, which is allowed by the Federal Law “On Self-regulatory Organizations”, will play into the hands of foreign suppliers of goods, works and services and contribute to the crowding out of domestic

market participants. Various forms of professional self-regulation lead to collusion of major market participants against representatives of small and medium-sized businesses, and restriction of competition. This is especially dangerous during big integration processes, when a lot of competitive players of foreign origin come to the market. In this situation, the rules established by self-regulatory organizations become the mechanism of crowding out of domestic participants from the market.

Third, possibilities of state planning fundamentally decrease. Because planning involves active state influence on economic relations, it is inconceivable without serious distributive policy, without state support of industries and manufacturers. In turn, membership in the WTO limits the ability of the State to support domestic producers.

All this indicates serious discrepancies between the traditions of the state economic management and conditions of international economic integration. These circumstances explain the interest in the study of the legal status of Russia as a member of the WTO. The content of this category allows us to see the degree of compliance of the national legal system of the Russian Federation with its international obligations in this area.

Russia as a WTO member has a special legal status, which contains obligations of the Russian Federation to comply with the basic provisions of the Marrakesh Agreement on Establishing the World Trade Organization, as well as the powers of the public authorities of the Russian Federation, with the help of which the compliance with the terms of the Marrakesh Agreement is ensured. They include three groups of powers: power to participate in the resolution of disputes between Russia and the WTO; law-creating powers expressed in the adoption of normative acts that meet the requirements of the Protocol on the accession of the Russian Federation to the Marrakesh Agreement; enforcement powers aimed at compliance with the WTO requirements in functioning of the market of goods, works and services.

Thus, it can be concluded that the legal status of Russia as a member of the WTO includes five elements.

1. *Rights of the Russian Federation.* These include the rights of Russia to enjoy the benefits provided by the various trade agreements contained in the annexes to the Marrakesh Agreement from April 15, 1994. In addition, it is the right to demand from the other contracting parties to comply with these agreements. Also – the right to require protection from the WTO and its bodies in case of violation of its own interests by other participants to the agreement.

2. *Obligations of the Russian Federation.* Obligations of Russia are of general and specific nature. General obligations are contained both in the Marrakesh Agreement

and in the General Agreement on Tariffs and Trade 1994, General Agreement on Trade in Services, Agreement on the Aspects of Trade-related Intellectual Property, Agreement on Agriculture, Agreement on the Application of Sanitary and Phytosanitary Measures and other agreements. One of the main, general obligations of WTO members is to provide preferential treatment to each other in mutual trade and waiver of discriminatory measures against other participants. "Discrimination in terms of WTO law is of two types. First – discrimination of foreign goods from one country compared to foreign goods from another country. This is prohibited by paragraph 1.1 of the GATT. This paragraph says about the so-called regime of the most preferential treatment, which WTO members should provide each other in mutual trade in goods: "...any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties". Second – discrimination of foreign goods compared to the national goods. It is prohibited by article 3 of the GATT, which provides for the granting of national treatment by members of the World Trade Organization in mutual trade of foreign goods. Paragraph 2 of the said article extends national treatment on internal taxes and fees: "the products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products" [4, 4].

As for the special obligations of the Russian Federation, they are contained in the Protocol on the accession of the Russian Federation to the Marrakesh Agreement on Establishment the World Trade Organization from December 16, 2011. Special obligations are especial terms of the Russia's accession to the Marrakesh Agreement and have the highest legal force in relation to the general obligations.

3. *The powers of Russia's participation in the procedure for resolving disputes.* Procedure for resolving disputes between WTO members is provided for in Annex 2 of the Marrakesh Agreement on Establishment the World Trade Organization, "Agreement on Rules and Procedures Governing the Settlement of Disputes". These norms have already been applied to the Russian Federation. So, the first dispute with Russia emerged with regard to the payment of the utilization fee for wheeled vehicles. Request for conducting consultations regarding this fee European Union sent to Russia July 09, 2013. The law of WTO provides for the mandatory pre-trial friendly settlement of a dispute by means of consultations. Otherwise, the dispute is not reviewed by the Arbitration group created by the Body for the resolution of

disputes. The request from the European Union was later supported by the United States, China, Turkey, and Ukraine. The essence of the request for consultations was that the vehicles of local production were exempt from fee in case of compliance with certain conditions. The exemption was also provided for vehicles imported from certain countries, such as Belarus and Kazakhstan. However, there was no exemption for vehicles imported from the countries of the European Union. As a result, vehicles imported from the EU were provided less favorable treatment than vehicles of domestic production or vehicles imported from Belarus and Kazakhstan. That is, the European Union accused Russia of violating several articles of the General Agreement on Tariffs and Trade (GATT 1994), which include the prohibition of discrimination of goods.

That is, a feature of the WTO dispute settlement system is an obligatoriness of the stage of formal negotiations for purpose of amicable settlement of disputes. This allows maximal account of the interests of all parties to a conflict.

4. *Law-creating powers of the Russian Federation.* Law-creating powers of the public authorities of the Russian Federation are the most important means to ensure compliance of the national legal regime with the conditions of accession to the Marrakesh Agreement. Paragraph 4 article 3 of the GATT extends national treatment on domestic laws and regulations pertaining to international trade in goods: "...products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use".

The most important normative-legal acts that provide equality of participants of market relations, regardless of their state of origin, are such federal laws as "On the Contract System of the Procurement of Goods, Works and Services for Securing State and Municipal Needs", "On Protection of Competition". These acts enshrine the general idea of equal treatment of public authorities both to domestic market entities and to foreign market entities. Equal preferential treatment with respect to certain types of obligations may be also secured by special normative acts. So, the above described dispute between Russia and the European Union was resolved with the help of the Federal Law "On Amendments to Article 24.1 of the Federal Law "On Production and Consumption Waste"", which was signed by the RF President in October 2013. In accordance with this law Russian automakers from January 2014 will pay disposal fee on a general basis. According to the law, disposal fee from the specified date will also apply to vehicles imported from Kazakhstan and

Belarus, on equal terms with the vehicles of Russian manufacturers and third countries. The law covers the cars placed in the Kaliningrad region under the procedure of free customs zone.

5. *Enforcement powers.* This kind of powers should ensure compliance with the conditions of the Marrakesh Agreement by public authorities and market entities. Holders of these powers are courts, as well as bodies of control (supervision), which are entrusted with the duty to provide equal preferential treatment to all market participants. These bodies should include, first and foremost, antimonopoly authorities.

The above analysis leads to the conclusion that the legal status of Russia as a WTO member is an important and fundamentally new category for the national legal system, which requires a detailed study. This legal phenomenon characterizes the compliance of the national legal regime of Russia with its international obligations, discloses the mechanism of public administration of exercising the terms of the Marrakesh Agreement.

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