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1. ISSUES AND RECOMMENDATIONS

OF FIAC WORKING GROUPS

Foreign Investment Advisory Council

1.1. Improvement of Customs Law

Issue 1. Adjustment of declarations after goods are released.

Following the FIAC Executive Committee meeting in Svetlogorsk on 24 May 2013, First Deputy Prime Minister Igor Shuvalov instructed that proposals be developed for amendments to Chapter 16 of the Administrative Offenses Code that would allow declarations to be adjusted without administrative liability after goods are released if violations are discovered independently during customs clearance.
The Federal Customs Service (FCS) prepared amendments to Article 16.2 of the Administrative Offenses Code that would eliminate administrative liability in cases where amendments and/or additions are made to a declaration after goods are released.

Federal Law No. 17 of 12 February 2015 amended part 2 of Article 16.2 of the Administrative Offenses Code, allowing declarations to be adjusted after goods are released.

The FCS proposed that these simplifications also be applied to part 1 of Article 16.2 ("non-declaration"). A draft law to amend the Administrative Offenses Code accordingly was submitted to the State Duma (No. 822516-6). After consideration, the law was adopted.

Recommendations

Resolved. The issue will be taken off the agenda based on the results of the 2016 Plenary Session.

Issue 2. Development and improvement of the institution of AEO. Simplification of the procedure for obtaining AEO status in the EEU.

Areas that are owned, leased or under operational management or economic jurisdiction may serve as AEO sites where customs operations and temporary storage are allowed. In addition, many foreign trade operators today successfully use third-party warehouses to store goods under secure-storage agreements (i.e. warehouses owned by third parties).

A legal evaluation shows that freight stored in an external warehouse still belongs to the AEO, as is the case, for example, with storage in a leased warehouse, where the AEO remains responsible for paying duties and taxes, without any increase in risk.

To enable foreign trade operators to use third-party warehouses and the full range of simplifications, organizations with secure-storage warehouses should be able to obtain AEO status.

Recommendations

Revise the Customs Code of the Customs Union to allow organizations engaged in warehouse storage to obtain AEO status.

Issue 3. Adjustment of requirements for completing customs declarations in the case of "Release before Submission".

Article 41 of the Customs Code of the Customs Union envisages a special simplification for authorized economic operators: they may be permitted to release goods before a customs declaration is submitted under Article 197 of the Customs Code.

The release date of such goods is that specified in the undertaking to submit a goods declaration. The final goods declaration thus indicates the release date specified in the undertaking.

"Release before Submission" means that goods under a single contract are imported within one month, and an undertaking in the prescribed format is submitted to the customs authorities for each truck. A goods declaration must be submitted by the tenth of the next month. When a single goods declaration is submitted for several undertakings with different dates, the release dates for such undertakings should be indicated under the appropriate numbers in Section C on the main and additional pages – something not envisaged by the instructions under the Customs Union Commission's **Resolution No. 257 (as amended by CUC 379, 617 and Resolutions 39 and 137 of the EEC Board)**. In fact, the software used for issuing goods declarations lacks this capability.

Recommendations

1. Add the following paragraph to Chapter XI of Resolution No. 257 of the Customs Union Commission concerning information to be entered under number 2:

   "If goods are released before a goods declaration has been submitted under Article 197 of the Code, the date of release in the undertaking (XXXXXX - day, month, last two digits of the year) should be indicated in the section, along with the release registration number, if this is stipulated by the laws of the Customs Union member state. "Release Permitted" or "Release Denied" should be marked (stamped), and an official's signature and a personal numbered seal should be affixed.

   If there are several undertakings for goods released before declarations are submitted, the release dates in the undertakings and the number of these goods in the first subsection of Section 32 of the goods declaration should be indicated (separated by a slash)."

2. Upgrade software to allow several dates to be indicated in Section 2.

Status

The Federal Customs Service is expected to issue a clarification (confirmation) allowing undertakings to be combined when the service's software has been upgraded. When an answer is received, this issue will be taken off the agenda.

Issue 4. Application of the procedure of processing for domestic consumption Creation of favorable conditions for processing in the customs territory to encourage the manufacture of non-commodity export goods and for processing for domestic consumption in order to develop domestic production capacity and import substitution.

The traditionally high share of imported goods in many segments of the Russian market – a result of low domestic supply and growing domestic demand – is a sure indicator of high growth potential for domestic production in terms of both consumer demand and import substitution.

Yet growth in production is hindered by a number of factors, one of the most important being the structural imbalance between import duty rates, with the rates for raw and other materials exceeding those for the finished products. This imbalance is an economic barrier to growth in domestic production, and additional investments become unprofitable because the costs involved in paying customs duties on raw and other materials are higher than the cost of importing finished products. The result is a decline in the competitiveness of domestic products on both domestic and foreign markets. The problem primarily involves raw and other materials that are not produced in Customs Union countries and cannot be replaced by other materials without a substantial loss in the final products' consumer properties.

The current situation:

3. Does not encourage the establishment and development of domestic production in Russia.
4. Holds back foreign investment in the high-tech innovation-based manufacture of goods requiring a high degree of processing.
5. Prevents companies from going ahead with plans to increase investments and expand production facilities in Russia.

The adjustment of customs duty rates for specific items in the Common Customs Tariff is a complicated, laborious and time-consuming process requiring a sophisticated analysis of all the economic implications. It may involve risks of false declaration and is thus not always an effective solution for this problem.

In our opinion, this situation can be resolved by making more active use of the special customs procedure of processing for domestic consumption (Article 264 of the Customs Code of the Customs Union) and the customs procedure of processing in the customs territory (Article 239 of the Customs Code of the Customs Union).

Under these procedures, raw and other materials used in processing for domestic consumption (processing in the customs territory) are fully exempt from import duties, taxes and non-tariff regulatory measures. Processed products are placed under the customs procedure of release for domestic consumption, subject to import duties at the relevant rates, or under the re-export procedure without the application of non-tariff regulatory measures.

Even so, Chapters 34 and 36 of the Customs Code of the Customs Union set clear, unambiguous and exhaustive requirements for foreign trade operators to ensure proper use of the procedures of processing in the customs territory and processing for domestic consumption and to prevent unfair declaration for purposes of evading import duties. This procedure may be used only on the basis of a special document

issued by an authorized body of the Customs Union member state and containing information on both the recipient and the conditions for application of the procedure.

There are also numerous requirements with respect to the manner, conditions, timing and volumes of processing as well as the identification of goods and processed products, including the requirement that processed products cannot be restored to their original condition in a cost-effective manner.

Thus, Chapters 34 and 36 of the Customs Code of the Customs Union establish and allow for the effective use of a customs procedure designed to attract, support and develop high-tech production in the Customs Union and develop the country's export potential, regardless of any imbalance in the customs duty rates for raw materials and finished products, while ensuring an appropriate level of control over the correct use of the procedure.

The greatest obstacles to the widespread application of these procedures are the following (notes attached):

1. The limited list of goods that qualify for the customs procedure of processing for domestic consumption.
2. Difficulties involved in verifying the means of identifying goods in processed products.

Notes

1. Under Article 265 of the Customs Code of the Customs Union, the customs procedure of processing for domestic consumption may be applied to only a limited number of goods determined by the national laws of Customs Union member states. In Russia's case, a list of such goods is established by Article 265 of Federal Law No. 311-FZ of 27 November 2010 "On Customs Regulation in the Russian Federation" and by Government Decree No. 565 of 12 July 2011. The list is limited to about 50 goods that are clearly intended for specific production efforts. As a result, the procedure of processing for domestic consumption is not used in practice, and this holds back the development potential of domestic high-tech production with high added value as well as new investment in such production.

It is important to note that the customs procedure of processing for domestic consumption is widely used throughout the world and is an effective means of developing local industry and attracting investments.

Under Belarusian law, the procedure of processing for domestic consumption may be applied to all goods in the Customs Union's Unified Goods Classifier for Foreign Economic Activity, except for goods that may not be imported into the customs territory of the Customs Union and/or that do not qualify for processing in the customs territory (a list of such goods was approved by Resolution No. 375 of the Customs Union Commission of 20 September 2010 "On Certain Issues Concerning the Application of Customs Procedures").

The infrequent practical implementation of this procedure in Russia is an obvious administrative barrier and reduces its investment appeal considerably.

The customs procedure of processing for domestic consumption may also be used in food industry. Mars has launched a sauce production line at its plant in Moscow Region. Sauce production requires semi-processed materials of a specific quality that are lacking on the domestic market. The ability to apply the customs procedure of processing for domestic consumption to materials needed for Mars sauces will make domestic products more competitive with imported products and help to attract additional investments for production and for new production lines.

The customs procedure of processing for domestic consumption is also economically attractive for Tetra Pak, a major producer of packaging for milk, dairy products, juices, nectars and juice-based drinks, including baby food in Russia.

Russian lacks the raw materials in the required volume, so Tetra Pak has to import these materials and pay customs duties, making production more costly.

Annually, Tetra Pak supplies more than 8 billion packages for fluid food products to Russian customers and EEU member states. Most of these packages are manufactured at a plant in Moscow Region.

In light of the Russian government's active and long-term healthful eating campaign, Tetra Pak is planning to expand its production capacity in Russia, but the company still has to import most of the stock for its Moscow Region plant, including paper substrate with qualities not found in Russia, polyethylene in primary forms and foil. Import duties on these materials raise costs and make it impossible to deal effectively with inflation in the food production sector. For us, as an international company, the advantages of localized production are thus reduced to zero.

Siemens Electroprivod is a joint venture between Siemens and REP Holding that produces electric motors, frequency converters and drive motors. Electric motors manufactured by Siemens Electroprivod are used

in the construction of electric trains and freight locomotives in Russia. Today most materials and components for this production are purchased from foreign suppliers. The company also wants to expand its network of Russian suppliers, but many components cannot currently be replaced with Russian analogues without losses in quality. Some of these materials and components have no Russian analogues at all. Siemens Electroprivod is less competitive than its foreign competitors because import duty rates for materials and components are generally higher than the prices for the finished goods. The procedure of processing for domestic consumption will help the company increase its competitive advantages on the Russian market and abroad, expand production and create new production capacities and jobs.

The procedure of processing for domestic consumption may also benefit Unilever Russia. The company has production sites in St. Petersburg, Tula, Omsk and Ekaterinburg and uses imported materials in FMCG production. There are no Russian analogues (or not in the required amounts) for the production of ice cream, sauces, ready-to-eat soups, tea, deodorants, cleansers and detergents, and customs duties on imported goods substantially increase the prices for finished products.

In addition, the finished goods produced by Unilever cannot be marketed without primary packaging. The company has to import much semi-finished primary packaging and ready packaging, as domestic analogues fail to meet Unilever's quality standards. Unilever cannot lower its quality requirements for materials and packaging, as this would affect the quality of the end products and have a negative impact on consumers.

Imports of goods for processing would help Unilever reduce the cost of end products, boost production and increase exports without losses in quality.

The customs procedure of processing for domestic consumption is thus attractive for companies investing in the Russian economy. However, this procedure is limited to the list of goods established by the Decree, making it impossible apply the procedure to certain goods.

2. Under Articles 242 and 267 of the Customs Code of the Customs Union, the following methods may be used to identify foreign goods in processed products:

1. Seals, stamps and digital and other labeling affixed on original foreign goods by the declarer, the processor or customs officials.
2. A detailed description, photographs or scaled-down representation of foreign goods.
3. A comparison of preselected specimens and samples of foreign goods and processed products.
4. Use of the current labeling of goods, including in the form of serial numbers.
5. Other methods, depending on the nature of the goods and processing operations, including a review of detailed information provided about the use of foreign goods in processing as well as about the processing technology used or by means of customs control over processing operations.

Unfortunately, for most industries, the methods indicated in 1)–4) are unacceptable because the raw materials used in manufacturing processes:

1. Do not or cannot have definite identifiers (chemical raw materials, food raw materials, small and spare parts).
2. Disappear during manufacture (evaporation, chemical transformation).
3. Are difficult to isolate and identify due to the specifics of the final product (food products, sophisticated equipment).

In Kaliningrad Region, active use has been made since 1 April 2016 of conclusions issued by the Kaliningrad Chamber of Commerce and Industry on the identification of foreign goods to which the free customs zone procedure is applied and that are contained in processed products. This procedure is set down in Decree No. 185 of the Russian Government of 12 March 2016 and by Order No. 30n of the Ministry of Finance of 21 March 2016. It would be advisable to consider a similar mechanism for the identification of foreign goods in processed products under the customs procedures of processing in the customs territory and processing for domestic consumption.

Recommendations

1.1. The Ministry of Industry and Trade, in cooperation with concerned government agencies and the business community, should consider extending the list of goods that may be processed for domestic consumption (approved by Government Decree No. 565 of 12 July 2011) in order to expand the application of the procedure of processing for domestic consumption.

2. The Ministry of Finance and the Federal Customs Service, in cooperation with concerned government agencies and the business community, should consider simplifying the verification of means of identification,

including for permission to apply the customs procedures of processing in the customs territory and for domestic consumption, by amending Federal Customs Service Orders No. 532 of 14 March 2011 and No. 1243 of 15 June 2011 to allow the following to be provided to concerned parties in verification of means of identification:

1. Engineering and manufacturing charts describing the manufacturing process involving foreign goods subject to processing in the customs territory and processing for domestic consumption and standards for the use of foreign goods and the output of processed products.
2. Engineering and manufacturing diagrams describing the manufacturing process involving foreign goods subject to processing in the customs territory and processing for domestic consumption and standards for the use of foreign goods and the output of processed products.
3. Conclusions of the chamber of commerce and industry on the identification of foreign goods in processed products.

Status

Pursuant to the Prime Minister's instruction based on the FIAC Plenary Session, the group sent Letter No. KS-2904-16-am, with a list of products to be included in the List, to the Ministry of Industry and Trade. An answer (No. 30174/07 of 18 May 2016 was received with a proposal that the list be optimized. Following an analysis, the list was shortened and submitted to the Ministry of Industry and Trade and the Industry for Economic Development.

Appendix 1.

List of codes to be included in the list of goods that may be processed for domestic consumption, as approved by Decree No. 565 of the Government of the Russian Federation of 12 July 2011, in accordance with the Unified Goods Classifier for Foreign Trade, with descriptions.

TN VED code	Description
Mars LLC	
0405 90 100 0	Butter and other fats and oils made of milk; dairy spreads: – other [apart from butter; dairy spreads] – with a fat content of 99.3% or more by mass and a water content of no more than 0.5% by mass. %
0402 21 190 0	Milk and cream, condensed or with added sugar or other sweeteners: – in powdered, granulated or other hard forms, with a fat content of over 1.5% by mass: – without added sugar or other sweeteners: – with a fat content of no more than 27% by mass: – other [not in immediate packings with a net weight of up to 2.5 kg] – with a fat content of over 11% but no more than 27% by mass.
0404 10 020 0	Whey, whether or not condensed, with or without added or other sweeteners; products made of natural dairy components, with or without added sugar or other sweeteners, that are not named or included elsewhere: – whey and modified whey, whether or not condensed, with or without added sugar or other sweeteners – in powdered, granulated or other hard forms – without added sugar or other sweeteners, with protein content (nitrogen content x 6.38) – no more than 15% by mass and with fat content – no more than 1.5% by mass
0402 10 190 0	Milk and cream, condensed or with added sugar or other sweeteners: – in powdered, granulated or other hard forms, with a fat content of no more than 1.5% by mass – without added sugar or other sweeteners – other [not in immediate packings with a net weight of up to 2.5 kg]
0710 80 610 0	Vegetables (raw, boiled in water or steamed), frozen: – other vegetables [apart from potatoes; pulses, whether or not shelled; spinach, New Zealand spinach and giant (garden) spinach; sweetcorn] – mushrooms – Agaricus
2103 90 900 9	Products for making sauces and prepared sauces; flavoring agents and mixed spices; mustard powder and prepared mustard: – other [apart from soy sauce; tomato ketchup and other tomato sauces; mustard powder and prepared mustard]

	– other [apart from liquid mango chutney; aromatic bitters with an alcohol content of 44.2%–49.2% by volume and 1.5%–6% by mass...] – other [apart from mayonnaise]
2004 90 910 0	Other vegetables, cooked or preserved without added vinegar or acetic acid, frozen, apart from products under commodity heading 2006: – other vegetables and vegetable mixes [apart from potatoes] – other, including mixes [apart from sweetcorn Zea mays vat. saccharata); sauerkraut, capers and olives; peas (Pisum salivum) and young beans (Phaseolus spp.) in the pods] – onion, thermally treated, not prepared in any other manner
2002 90 910 0	Tomatoes, cooked or preserved without added vinegar or acetic acid: – other [apart from whole tomatoes or tomato chunks] – with a dry matter content of over 30% by mass – in immediate packings with a net weight of over 1 kg
0710 80 950 0	Vegetables (raw, boiled in water or steamed), frozen: – other vegetables [apart from potatoes; pulses, shelled or otherwise; spinach, New Zealand spinach and giant (garden) spinach; sweetcorn] – Capsicum or Pimenta fruits – other (apart from olives; Capsicum or Pimenta fruits; mushrooms; tomatoes; artichokes; asparagus)
2004 90 980 0	Other vegetables cooked or preserved without added vinegar or acetic acid, frozen, apart from products under commodity heading 2006: – other vegetables and vegetable mixes [apart from potatoes] – other, including mixes [apart from sweetcorn Zea mays vat. saccharata); sauerkraut, capers and olives; peas (Pisum salivum) and young beans (Phaseolus spp.) in the pods] – other [apart from onion, thermally treated, not prepared in any other manner]
0710 80 510 0	Vegetables (raw or boiled in water or steamed), frozen: – other vegetables [apart from potatoes; pulses, shelled or otherwise; spinach, New Zealand spinach and giant (garden) spinach; sweetcorn] – Capsicum or Pimenta fruits – sweet peppers
LLC Nestle	
040900000	Natural honey
0402101900	Skimmed powdered milk
0511998599	Frozen chicken carcass
0511998599	Frozen liver
0712200000	Dried onion
0801110000	Coconut flakes

0813509100	Mixes of dried fruit and/or nuts
0901110001	Unroasted coffee with caffeine
0901210009	Roasted coffee with caffeine
0904220000	Dried paprika
1102903000	Oat flour
1102909009	Buckwheat flour
1104129000	Oat flakes
1104191000	Wheat flakes
1104193000	Rye flakes
1104196900	Flaked barley
1104199900	Buckwheat flakes
1106301000	Banana flakes
1109000000	Wheat gluten
1212940000	Dried chicory root
1501201000	Lard
1504209000	Refined and deodorized fish oil
1511901902	Confectionery fat from palm oil
1801000000	Cocoa beans
1804000000	Cocoa butter
1805000000	Cocoa powder without added sugar
1901901900	Malt extract
1904109000	Cereal flakes
1905321900	Chocolate-covered wafers
1905329900	Waffle cones
1905903000	Bread crumbs
2002903100	Tomato paste
2005994000	Carrot paste
2008191300	Roasted almonds
2008805000	Strawberry (flakes)
2008999900	Apple flakes

2101110098	Coffee oil
2101111112	Instant coffee
2106909803	Vitamin and mineral mixes
2106909809	Creamer
2301100000	Finely ground meat meal
2303101100	Corn gluten
2309904100	Other products used for animal feed
2309909900	Other products used for animal feed
2929900000	Cyclamate sodium
2936900002	Vitamin premix
3002905000	Probiotic mix
3203001009	Plant-based colorants
3204190000	Beta-carotene
3919108000	Wrapping film
3920202109	Biaxially oriented polypropylene film
LLC Unilever Russia	
0814 00 0000	Peel of citrus fruit or melons (including watermelons), fresh, frozen, dried or preserved for short-term storage in brine, sulfur water or other preservative solutions
0902100009	Green tea (unfermented), with or without added flavoring, in immediate packings with a net weight of up to 3 kg, not in disposable packaging
0910919000	Mixes of two or more of commodity items 0901-0904, except curry, crushed or ground
1101001500	Wheat flour of soft wheat and spelt
1105200000	Potato flakes and granules
1108 12 0000	Corn starch
1302198000	Other vegetable saps and extracts
1302329000	Gums and thickeners derived from Cyamopsis (guar) seeds, whether nor not modified
1512191000	Other fractions of sunflower and safflower oil for technical or industrial uses other than food production, except for raw oils
1515199000	Other flaxseed oil and its fractions, except for crude oils, whether or not refined, but not chemically modified, other than for industrial use

1515906000	Other oils and their fractions, except for crude oils, for technical or industrial uses other than the manufacture of foodstuffs for human consumption
1516 20 1000	Hydrogenated castor oil, so-called opal wax
1517909900	Other edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils in this chapter, other than edible fats or oils
1518003900	Fixed vegetable oils, except for crude oils, fluid, mixed, for technical or industrial uses other than the manufacture of foodstuffs for human consumption
1704909900	Other sugar confectionery not containing cocoa
1704906100	Sugared (sugar-coated) goods not containing cocoa
1806205000	Other products in blocks, slabs or bars or in liquid, paste, powder or granular form in packaging, weighing more than 2 kg, with a cocoa-butter content of at least 18% by weight
1806209500	Other finished products containing cocoa, in blocks, slabs or bars weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or packings of a content exceeding 2 kg
1905401000	Rusks
1905319900	Other sweet biscuits
2002903100	Other tomatoes with a dry matter content of at least 12% but not more than 30% by weight in immediate packings with a net weight exceeding 1 kg, prepared without added vinegar or acetic acid
2002903900	Other tomatoes with a dry matter content of at least 12% but not more than 30% by weight in immediate packings with a net weight not exceeding 1 kg, prepared without added vinegar or acetic acid
2002909100	Other tomatoes with a dry matter content of over 30% by weight in immediate packings with a net weight exceeding 1 kg, prepared or preserved without added vinegar or acetic acid
2007993500	Jams, fruit jellies, marmalades, purees or strawberry paste, with a sugar content exceeding 30% by weight, thermally treated
2007999300	Other finished products of tropical fruit and tropical nuts containing less than 13% by weight of sugar %
2008191900	Other nuts and seeds, including mixtures, in immediate packings with a net weight exceeding 1 kg, otherwise prepared or preserved, whether or not containing added sugar or other sweeteners or alcohol
2008994800	Tropical fruit, otherwise prepared or preserved, not containing added alcohol, containing added sugar, in immediate packings with a net weight exceeding 1 kg
2009393909	Fruit juices of a value not exceeding €30 per 100 kg net weight, with a degree of concentration higher than 20° brix but not exceeding 67, not containing added sugar
2101202000	Extracts, essences or concentrates of tea or maté, or Paraguayan tea
2106905900	Other flavored or colored sugar syrups

2208208900	Other spirits obtained by distilling grape wine or grape marc in containers holding more than 2 liters
2526200000	Natural steatite, crushed or powdered
2710198600	Light oils, liquid paraffin
2712109000	Petroleum jelly other than crude
2811220000	Silicon dioxide
2827499000	Other chlorides, chloride oxides and chloride hydroxides
2828900000	Other hypochlorites; chlorites; hypobromites
2833292000	Other sulphates of cadmium, chromium and zinc
2842908000	Salts, double or complex salts of selenic or telluric acids
2905170000	Dodecan-1-ol (lauryl alcohol), hexadecan-1-ol (cetyl alcohol) and octadecan-1-ol (stearyl alcohol)
2905299000	Other unsaturated monohydric alcohols
2905320000	Propylene glycol (propane-1,2-diol)
2905399500	Other diols
2905450009	Glycerol other than synthetic glycerol produced from propylene
2906110000	Menthol
2906210000	Benzyl alcohol
2915700000	Palmitic acid, stearic acid, their salts and esters
2915900000	Other saturated acyclic monocarboxylic acids and their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulphonated, nitrated or nitrosated derivatives
2918110000	Lactic acid, its salts and esters
2922131000	Triethanolamine
2922420000	Glutamic acid and its salts
2922498500	Amino-alcohols other than those containing more than one kind of oxygen function, their ethers and esters; salts thereof
2923200000	Lecithins and other phosphoaminolipids
2924190000	Other acyclic amides (including acyclic carbamates) and their derivatives; salts thereof
2931909009	Organo-inorganic compounds other than the above
2933210000	Hydantoin and its derivatives

2933299000	Compounds containing an unfused imidazole ring (whether or not hydrogenated) in their structure
2936240000	D- and dl-pantothenic acid (vitamin B3 or B5) and its derivatives
2936280000	Vitamins and their derivatives
2940000000	Sugars, chemically pure, other than sucrose, lactose, maltose, glucose and fructose
2942000000	Other organic compounds
3204120000	Acid dyes, whether or not premetalized, and preparations based thereon; mordant dyes and preparations based thereon
3301294100	Essential oils other than those of citrus fruit
3302909000	Other mixtures of odoriferous substances and mixtures based on one or more of these substances and used as industrial raw materials; other preparations based on odoriferous substances and used in beverage production
3402119000	Anionic organic surface-active agents, whether or not packaged for retail sale
3402130000	Non-ionic organic surface-active agents, whether or not packaged for retail sale
3402190000	Other organic surface-active agents, whether or not packaged for retail sale
3404900001	Other prepared waxes, including sealing waxes
3404900009	Other artificial waxes and prepared waxes, other than those used in aircraft engine production
3503001001	Gelatin (including gelatin in rectangular [including square] sheets, whether or not surface-worked or colored)
3824601900	Sorbitol other than that of subheading 2905 44, in aqueous solution
3824905500	Other mixtures of mono-, di- and tri-esters of fatty acid and glycerol (emulsifiers for fats)
382490970	Chemical products and preparations of the chemical or allied industries (including mixtures of natural products), not elsewhere specified or included
3905910000	Other copolymers
3906909009	Other acrylic polymers in primary forms not in organic solvent
3907 20 1100	Polyethylene glycols
3907202001	Other polyether alcohols in primary forms with a hydroxyl value not exceeding 100
3910000008	Other silicones in primary forms
3912310000	Carboxymethylcellulose and its salts
3919101500	Strips and tapes coated with unvulcanized natural or synthetic rubber, in rolls with a width of no more than 20 cm, of polypropylene

3920208000	Plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials of polymers of propylene with a thickness not exceeding 0.10 mm
3921 90 6000	Other plates, sheets, film, foil and strips of polyaddition productions
3921909000	Other plates, sheets, film, foil and strips of polymers
3923100000	Boxes, crates, baskets and similar items of plastic
3923210000	Sacks and bags (including cones) of ethylene polymers
3923299000	Sacks and bags (including cones) of other plastics
3923301090	Other carboys, bottles, flasks and similar articles of a capacity not exceeding 2 liters
3923501000	Plastic bottle caps and stoppers
3923509000	Other plastic stoppers, lids, caps, etc.
3923900000	Other plastic articles for transporting and packing goods
4421909800	Other articles of wood
4805400000	Other uncoated filter paper and paperboard in rolls and sheets
4805920000	Base paper and paperboard for roofing weighing more than 150 g/m^2 but less than 225 g/m^2
4811590009	Other coated, impregnated or laminated paper and paperboard
4811490000	Gummed or adhesive paper and paperboard
4819100000	Cartons, boxes and cases of corrugated paper or paperboard
4819400000	Other sacks and bags of paper, paperboard, cellulose wadding or webs of cellulose fibers; including cones
4823200009	Other filter paper and paperboard
4811600000	Paper and paperboard, coated, impregnated or covered with wax, paraffin wax, stearin, oil or glycerol
4819200000	Folding cartons, boxes and cases of non-corrugated paper or paperboard
5205420000	Cotton yarn (other than sewing thread) with a cotton content of 85% or more by weight, not packaged for retail sale, multiple (folded) or cabled yarn of combed fibers, measuring less than 714.29 decitex per single yarn, but not less than 232.56 decitex (exceeding a metric number of 14, but not exceeding a metric number of 43 per single yarn)
5407611000	Other woven fabrics containing 85% or more by weight of non-textured polyester filaments
5603111000	Coated nonwovens of man-made filaments, weighing not more than 25 g/m^2
7310291000	Other tanks, casks, drums, cans, boxes and similar containers of iron or steel, of a capacity of 50 liters or more, with a wall thickness of less than 0.5 mm

7612902000	Containers of a kind used for aerosols, aluminum, of a capacity not exceeding 300 liters, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment
7607199001	Aluminum foil, whether or not backed, of a thickness of not less than 0.021 mm but not more than 0.2 mm, self-adhesive
7607199009	Aluminum foil, whether or not backed, of a thickness of not less than 0.021 mm but not more than 0.2 mm, not self-adhesive
8309909000	Other stoppers, caps and lids, threaded stoppers, stopper covers, seals and other packing accessories of base metal
8413200000	Hand pumps for liquids, other than those of subheadings 8413 11 and 8413 19
9616101000	Toilet sprays
Tetra Pak LLC	
3901 10 900 0	Ethylene polymers in primary forms – Polyethylene with a specific gravity of less than 0.94 – Other
3901 90 900 0	Ethylene polymers in primary forms – Other: – Other
3921 90 900 0	Other plastic plates, sheets, film, foil and strips – Other: – Other
4804 39 510 0	Uncoated kraft paper and paperboard in rolls or sheets, other than that of headings 4802 and 4803: Other kraft paper and paperboard weighing 150 g/m^2 or less: – Other – Of which at least 80% by weight of the total fiber content consists of coniferous fibers obtained by the chemical sulphate or soda process: – Bleached uniformly throughout the mass
4804 59 100 0	Uncoated kraft paper and paperboard in rolls or sheets, other than that of heading 4802 or 4803: – Other kraft paper and paperboard weighing 225 g/m^2 or more: – Other – Of at least 80% by weight of the total fiber content consists of coniferous fibers obtained by the chemical sulphate or soda process:
4810 92 300 0	Paper and paperboard coated on one or both sides with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating, whether or not surface-colored, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size: – Other paper and paperboard:

	– Multi-ply: – With only one bleached outer layer
7607 11 190 9	Aluminum foil (whether or not backed with paper, paperboard, plastic or similar materials) of a thickness (excluding any backing) not exceeding 0.2 mm: – Not backed: – Rolled but not further worked: – Of a thickness of less than 0.021 mm: – Other: – Of a thickness of at least 0.0046 mm, but less than 0.021 mm
Siemens Elektroprivod LLC	
3917 29 000 9	Tubes, pipes and hoses, rigid, of other plastics, other than for civil aircraft
3917 32 000 1	Plastic tubes, pipes and hoses (not flexible, having a burst pressure of up to 27.6 MPa), not reinforced or otherwise combined with other materials, without fittings, seamless and of a length exceeding the maximum cross-sectional dimension, whether or not surface-worked, but not otherwise treated
3917 32 000 9	Other plastic tubes, pipes and hoses (not flexible, having a burst pressure of up to 27.6 MPa), not reinforced or otherwise combined with other materials, without fittings, for uses other than the industrial assembly of vehicles
3917 40 000 9	Other fittings
3919 10 120 0	Strips and tapes coated with unvulcanized natural or synthetic rubber, in rolls with a width of no more than 20 cm, of polyvinyl chloride or polyethylene
3919 10 190 0	Other strips and tapes coated with unvulcanized natural or synthetic rubber, in rolls with a width of no more than 20 cm
3919 90 000 0	Other self-adhesive plates, sheets, film, foil, tape, strips and other flat shapes of plastic
3919 90 000 0	Other self-adhesive plates, sheets, film, foil, tape, strips and other flat shapes of plastic
3926 90 920 0	Other articles of plastic and other materials of headings 3901 to 3914, made from sheet material
3926 90 970 9	Other articles of plastic and other materials of headings 3901 to 3914
4008 19 000 0	Other rods and profile shapes of vulcanized rubber, of cellular rubber
4008 29 000 0	Other plates, sheets, strips and tapes of vulcanized rubber
4009 11 000 0	Tubes, pipes and hoses of vulcanized rubber, not reinforced or otherwise combined with other materials, without fittings
4009 32 000 0	Tubes, pipes and hoses, reinforced or otherwise combined only with textiles
4016 10 000 9	Other articles of cellular rubber
4016 93 000 5	Other gaskets, washers and other seals of vulcanized rubber

4016 99 970 9	Articles of vulcanized rubber other than hard rubber, other than for motor vehicles of headings 8701-8705, other than the above
4811 41 900 0	Other paper and paperboard, gummed or adhesive, self-adhesive
4911 99 000 0	Other printed materials, except for print reproductions and photographs and advertising materials
7307 99 100 0	Other fittings of iron and steel, threaded
7318 15 410 0	Other screws and bolts without heads, with a tensile strength of less than 800 MPa, whether or not with nuts or washers
7318 15 590 0	Other screws, with cross-recessed heads, of iron and steel, whether or not with nuts or washers
7318 15 610 0	Other screws with hexagonal-socket heads, of stainless steel, whether or not with nuts or washers
7318 15 690 0	Other screws with hexagonal-socket heads, of iron and steel, whether or not with nuts or washers
7318 15 700 9	Other bolts with hexagonal heads, of stainless steel, whether or not with nuts or washers
7318 15 810 0	Other bolts with hexagonal heads, with a tensile strength of less than 800 MPa, whether or not with nuts or washers
7318 15 890 0	Other bolts with hexagonal heads, with a tensile strength of 800 MPa or more, whether or not with nuts or washers
7318 15 900 9	Other screws and bolts with heads, of iron and steel, threaded, whether or not with nuts or washers
7318 16 300 9	Other nuts of stainless steel
7318 16 910 9	Other nuts with an inside diameter not exceeding 12 mm, threaded, of iron and steel
7318 19 000 9	Other threaded articles of iron and steel
7318 21 000 9	Other spring washers and lock washers, non-threaded articles, of iron and steel
7318 22 000 9	Other non-threaded washers of iron and steel
7320 90 900 8	Other springs and shocks of iron and steel
7320 90 900 8	Other springs and shocks of iron and steel
7322 90 000 9	Air heaters and hot-air distributors, not electrically heated, incorporating a motor-driven fan or blower and their parts, of iron and steel, other than the above
7325 99 900 9	Other cast articles of iron and steel
7326 90 930 9	Other articles of iron and steel, stamped, other than for civil aircraft
7326 90 980 8	Other articles of iron and steel other than for aircraft engines and civil aircraft
7419 99 900 0	Other articles of copper

7616 10 000 0	Nails, tacks, staples (other than those of heading 8305), screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers and similar articles of aluminum
8301 40 900 0	Other locks for other purposes (key, combination or electrically operated), of base metal
8301 60 000 9	Other parts of locks and padlocks, bolts, frames with bolts, and combined bolts and locks, of base metal
8302 49 000 9	Other mountings, fittings and similar articles
8307 10 000 9	Flexible tubing of base metal, with or without fittings, of iron and steel, other than for civil aircraft
8310 0 000 0	Sign plates, nameplates, address plates and similar plates, numbers, letters and other symbols of base metal, excluding those of heading 9405
8414 59 200 0	Axial fans
8482 50 000 9	Other cylindrical roller bearings
8483 90 200 9	Other parts of bearings
8487 90 900 0	Machinery parts, not containing electrical connectors, insulators, coils, contacts or other electrical features, not specified or included elsewhere in this chapter, of other materials
8503 0 990 0	Parts for use solely or principally in machines of heading 8501 or 8502
8504 31 210 9	Measuring transformers with a capacity of no more than 1 kVA for measuring voltage, other than for civil aircraft
8504 34 000 0	Other transformers with a power capacity exceeding 500 kVA
8504 40 820 9	Rectifiers
8504 40 880 0	Inverters with a power capacity exceeding 7.5 kVA
8504 50 950 0	Other induction coil and chokes
8504 90 990 0	Other parts of static converters
8505 19 100 0	Permanent magnets of agglomerated ferrite
8505 19 900 0	Other permanent magnets and articles to become permanent magnets after magnetization
8532 25 000 0	Fixed capacitors with dielectric of paper or plastic
8534 0 900 0	Printed circuits consisting only of conductor elements and contacts, with other passive elements
8535 30 100 0	Isolating switches and make-and-break switches, for a voltage of less than 72.5 kV
8535 40 000 0	Lightning arresters, voltage limiters and surge suppressors

8535 90 000 9	Other electrical apparatus for switching or protecting electrical circuits or for making connections to or in electrical circuits, for a voltage exceeding 1,000 V, other than the above
8536 49 000 0	Other relays
8536 69 900 8	Other plugs and sockets for a voltage not exceeding 1,000 V
8536 90 010 0	Pre-assembled elements for electrical circuits for a voltage not exceeding 1,000 V
8536 90 100 9	Connections and contact elements for wire and cables, for a voltage not exceeding 1,000 V
8537 10 990 0	Other boards, panels, consoles, desks and bases for other electrical apparatus, equipped with two or more devices of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or devices of Chapter 90 and digital control devices, other than switching devices of heading 8517, for a voltage not exceeding 1,000 V
8538 90 910 0	Electronic assemblies for apparatus of headings 8535, 8536 or 8537
8541 10 000 9	Diodes other than photosensitive or light-emitting diodes
8543 70 900 0	Electrical machines and apparatus having individual functions, not specified or included elsewhere in this chapter
8544 42 900 7	Electric conductors for a voltage not exceeding 80 V, fitted with connectors, other than for aircraft engines and civil aircraft
8544 42 900 9	Other electric conductors fitted with connectors
8544 49 950 9	Other wire and cables for a voltage exceeding 80 V, but not exceeding 1,000 V, other than the above
8544 60 100 0	Copper electric conductors for a voltage exceeding 1,000 V
8546 90 100 0	Electrical insulators of plastics
8547 20 000 9	Other insulating fittings of plastics for electrical machines, appliances or equipment
Hamilton Standard-Nauka CJSC	

7609000000	Aluminum tube or pipe fittings (for example, couplings, elbows, sleeves)

7608208108 7608208907	Effective 1 September 2013 – other tubes and pipes of aluminum alloys, not further worked after extrusion, other than the above Effective 1 September 2013 – tubes and pipes of aluminum alloys, other than for aircraft engines and civil aircraft, other than the above
7608202009	Effective 1 September 2013 – tubes and pipes of aluminum alloys, welded, other than the above
7605290009	Other wire of aluminum alloys, with a maximum cross-sectional dimension not exceeding 7 mm
7506200009	Other plates, sheets, strips and foil of nickel alloys
7505120009	Other bars, rods and profiles of nickel alloys
7508900009	Other articles of nickel
7507200009	Other nickel tube or pipe fittings (for example, couplings, elbows, sleeves)
7507120000	Tubes and pipes of nickel alloys

7505220000	Wire of nickel alloys
7219908009	Other flat-rolled products of stainless steel, of a width of 600 mm or more
7222309709	Other bars and rods of stainless steel; angles, shapes and sections of stainless steel:
7325999009	– Other cast articles of iron or steel
7326909808	Effective 29 September 2012 – other articles of iron and steel, other than for aircraft engines and civil aircraft
7307299009	Effective 29 September 2012 – tube or pipe fittings of stainless steel, other than for civil aircraft
7307210009	Other flanges of stainless steel
7307239000	– Butt welding fittings

Issue 5. Simplification of the confirmation procedure for approval of 0% VAT on exports to foreign countries, including EEU member states.

The simplification of export procedures is one of the most important steps that can be taken to stimulate growth in production in Russia and attract investments.

Submitting an export confirmation to the tax authorities for the approval of 0% VAT is a very complex procedure. Exporters are required to submit hard-copy documents marked by the customs authorities when exporting goods outside the Customs Union. This takes up to a month and involves considerable human resources. Although Federal Law No. 452 of 29 December 2014 amended Article 165 of the Russian Tax Code to permit shipping documents, customs declarations and other documents to be submitted in the form of registers, including electronically, hard copies marked by the customs authorities may still be requested under Article 165.15.

We thus request that further amendments to the Tax Code be prepared to eliminate the possibility that such documents will be requested during an inspection.

There are difficulties with the export of goods to CU countries. Under Appendix No. 18, Part II, clause 3.3, to the EEU Treaty, exporters must provide the original statement of import and payment of indirect taxes, marked by the tax authority in the importer's country. This requirement is almost impossible to fulfill without a permanent and reliable contracting party in Customs Union countries that is willing to handle all these formalities for its Russian partner. As a result, many Russian enterprises simply turn down deals with Belarusian, Kazakhstani and Armenian companies, thereby reducing turnover in the Customs Union.

Proposals

To resolve these problems and simplify export procedures, the Working Group for the Improvement of Customs Law proposes the following steps:

1. Draft amendments to the Russian Tax Code to eliminate the requirement that documents be marked during inspection.
2. Draft amendments to Appendix No. 18 to the Agreement on the Formation of the EEU and/or a list of statements to eliminate the need for VAT payment statements marked by the tax authority of the importer's country and for copies of shipping documents bearing the seals of counterparties in Customs Union countries.
3. Introduce full electronic communication between the Federal Customs Service, the customs authorities of Belarus and Kazakhstan and the Federal Tax Service in order to verify exports without involving the exporter or paper documents, similar to the way cargo is exported via Kazakhstan.
4. Organize electronic communication between the tax authorities of Customs Union countries. Eliminate the requirement that payment of VAT in Customs Union countries be verified and that copies of shipping documents bearing the seals of counterparties in Customs Union countries be provided.

Issue 7. Imports of samples.

When importing samples of products subject to control and products subject to compliance assessment and verification, foreign trade operators encounter problems in obtaining permits and having shippers listed among those permitted to import to Russia.

The time involved in obtaining permits for samples is often similar to that involved in obtaining permits for finished products. Foreign trade operators wishing to import samples, including for production purposes (to determine whether such materials can be used in production), thus face additional time and administrative costs.

The greatest problems are involved in importing samples of controlled products subject to veterinary and phytosanitary control and products subject to compliance assessment (verification).

In the first quarter of 2016, the Ministry of Industry and Trade prepared amendments to Decision No. 294 of the Customs Union Commission of 25 December 2012 that would eliminate the need for documents on compliance assessment (verification) when products are imported for the sole use of the declarer.

Proposals

1. Submit the agreed package of amendments to Resolution No. 294 to the Eurasian Economic Commission.

2. Add the following phrase to Note * (* In using this list, both the TN VED code and the name of goods should be taken into account) in the Unified List of Goods (Appendix No. 1 to Resolution No. 317 of the Customs Union Commission):

This list does not include samples of controlled goods imported into (exported from) the Common Customs Territory of the Customs Union individually (no more than 5 items under a single classification code of the Customs Union's Goods Classifier for Foreign Economic Activity) or in limited amounts (no more than 20 kg of commodities whose weight (net) is measured in kilograms according to the generally accepted rules of retail trade) for one of the below purposes, provided that the purpose of importation is indicated in the shipping documents and that the recipient of the goods gives a written undertaking to use them as intended and not to alienate them in the Customs Union.

1. Add the following phrase to Chapter XI of Resolution No. 371 of the Customs Union Commission:

11.4. For the import or transit of the following controlled goods, or when such goods are transported within the Customs Union from the territory of one Party to that of another Party, there is no need throughout the period of transport for veterinary supporting documents from officials of the Parties' authorized bodies or competent bodies of the exporting countries or for such documents to accompany the goods, nor is there any need for registration by the Parties' authorized bodies or for exporting companies to be entered in the Register of Organizations and Entities Engaged in the Manufacturing, Processing and/or Storage of Controlled Goods Imported into the Customs Territory of the Customs Union, provided that the epidemiological situation is favorable in the country of the exporting company (manufacturer of the controlled goods) and the exporting country:

Product samples for:

- Research and development;
- Laboratory and analytical research;
- Testing and comparison;
- Establishing internal controls (in accordance with GOST ISO 17025);
- State registration, certification or declaration of compliance;
- Calibration and adjustment of devices;
- Validation and refining of methods;
- Market research and samples not intended to be sold in the customs territory of the Customs Union.

Streamlined procedure for importing phytosanitary samples:

Extend the scope of Chapter VII of Resolution No. 318 of the Customs Union Commission to cover the entire list of products subject to quarantine and imported as samples, i.e.:

- samples do not need to be accompanied by phytosanitary documents (phytosanitary certificate, import quarantine permit). A phytosanitary quarantine control certificate may be made out after samples are visually examined by a quarantine inspector, which must not result in a violation of packaging integrity or a loss of value or the quantity of samples;
- packaging may be nonstandard and unsealed;
- samples must not exceed 20 kilograms/20 liters/50 pieces;
- samples may not be sold/distributed/commercially used in the Customs Union;
- samples are not required to bear the manufacturer's name (only the name of the shipper and the country of dispatch);
- the name of a sample may be encoded on the label, including digitally (the shipper, the recipient, content and purposes may be indicated in accompanying documents);
- if additional laboratory research/testing is required to assess the phytosanitary condition of imported samples, the goods may be released at the request of the recipient/importer, without the right to use/sell them, and stored in a place specified by the recipient until a report on the phytosanitary condition of the imported goods is received.

The following option may be considered to resolve the issue of import/export of product samples subject to quarantine:

Add the following phrase to Note * (* In using this list, both the TN VED code and the name of goods should be taken into account) in the List of Goods Subject to Quarantine (Appendix No. 1 to Resolution No. 317 of the Customs Union Commission):

This list does not include samples of controlled goods imported into (exported from) the Common Customs Territory of the Customs Union individually (no more than 50 items under a single classification code of the Customs Union's Goods Classifier for Foreign Economic Activity) or in limited amounts (no more than 20 kg of commodities whose weight (net) is measured in kilograms according to the generally accepted rules of retail trade) for one of the below purposes, provided that the purpose of importation is indicated in the shipping documents and that the recipient of the goods gives a written undertaking to use them as intended and not to alienate them in the Customs Union.

Add a clause 9.5. to Chapter IX or clause 7.3. to Resolution No. 318 of the Customs Union Commission as follows:

9.5. (or 7.3.) For the import or transit of the following quarantine goods presenting a high physotanitary risk, or when such goods are transported within the Customs Union from the territory of one Party to that of another Party, import quarantine permits and phytosanitary certificates are not required during the period of transport for purposes of quarantine phytosanitary control (oversight), provided that the epidemiological situation is favorable in the country of the exporting company (manufacturer of the controlled goods) and the exporting country:

Product samples for:

- Research and development;
- Laboratory and analytical research;
- Testing and comparison;
- Establishing internal controls (according to GOST R ISO 17025);
- State registration, certification or declaration of compliance;
- Calibration and adjustment of devices;
- Validation and refining of methods;
- Market research and samples not intended to be sold in the customs territory of the Customs Union.

Delete clause 1 of paragraph 3 of Directive No. 491 of the Russian Government of 4 September 2005.

"1. Stipulate that the Federal Service for Veterinary and Phytosanitary Supervision shall be responsible for:

the accreditation of testing labs (centers) engaged in verifying the quality and safety of grain, animal feed and its ingredients and the byproducts of grain processing as well as the inspection of such labs' activities to verify the conformity of such products and their certification as envisaged by Russian law

(as amended by Decree No. 305 of the Russian Government of 23 May 2006)

state control over the quality and safety of grain, animal feed and its ingredients and the byproducts of grain processing when they are purchased under government procurement contracts, supplied to (stocked in) state reserves, stored in state reserves or in transit;

Amend clause 2 of Article 7 of Federal Law No. 183-FZ of 5 December 1998 to read as follows:

"Article 7. Inspection of the quality of grain and processed grain products.

1. The quality of grain and processed grain products produced and transported by individuals and legal entities is inspected, in cases stipulated by federal laws and other regulations, by determining the quality of grain and processed grain products and is documented with certificates of quality.
2. Grain and processed grain products are imported into and exported from the Russian Federation in the manner and in cases stipulated by federal laws and other regulations of the Russian Federation.

Issue 8. Exports/imports of repair equipment.

Today manufacturing companies that export equipment purchased abroad may experience problems identifying such equipment if the integrity of identification numbers, labeling or nameplates has been violated during repair work or if special identification marks or labels cannot be applied for technological or safety reasons.

Proposal

The Federal Customs Service should issue a clarification stating that forms of identification other than identification numbers, labeling and nameplates are possible – e.g. photographs, technical diagrams and drawings.

Issue 9. Cancellation of customs duties on exported goods.

FIAC member companies are major exporters of goods produced in Russia.

Under clauses 7(3) and 7(4) of Government Decree No. 863 of 28 December 2004 "On the Rates of Customs Duties for Customs Operations," when goods exempt from export duties are exported from the Russian Federation, customs duties for customs formalities, regardless of the customs procedure applied to the exported goods, are to be paid at a rate of RUB 1,000 (RUB 750 in the case of electronic customs declarations), provided that only goods exempt from customs duties are declared in a single customs declaration.

The need to pay customs duties on exported goods places an additional administrative burden on major exporters involving the collection of payment documents for the customs authorities, the administration of customs cards and extra costs for their maintenance.

Recommendations

We suggest considering the possibility of canceling customs duties on exported goods that are not subject to export duties.

Issue 10. Simplification of seaport procedures.

Foreign trade operators that use seaports to ship and deliver goods currently encounter a number of problems, including:

1. The irregular schedule of the Leningrad Interregional Veterinary Laboratory (not open on holidays) limits the port clearance of phytosanitary freight.
2. The formats of electronic documents for cooperation between various authorities in connection with import containers have not been approved.
3. The transition to electronic documents has not been made for purposes of border, customs, veterinary and other controls.

Recommendations

1. Consider the possibility of having laboratories stay open on holidays at a higher tariff to avoid shipping delays.
2. Allow the use of electronic veterinary and phytosanitary documents.

Issue 11. Reports on expenditures.

Foreign trade operators have problems managing funds on customs accounts, since reports on expenditures are currently provided to foreign trade operators in hard copy only.

An electronic form of such reports has been developed and implemented, involving personal accounts of foreign trade operators and allowing the reports to be requested and obtained independently.

Such electronic reports still need to be legalized so that they can be used for legally significant actions.

Recommendations

1. Amend Federal Law No. 311-FZ to allow foreign trade operators to receive reports electronically for information purposes and for legally significant actions.

Issue 12. Simplification of cash refunds.

Pursuant to Articles 122.4 and 147.2 of Federal Law No. 311-FZ, a legal entity applying for a refund is to attach such documents as:

- a payment slip confirming the payment or collection of refundable customs duties and taxes;
- documents verifying the accrual of refundable customs duties and taxes;
- documents substantiating the claim for a refund of overpaid or over-collected customs duties and taxes;

- documents listed in parts 4-7 of Article 122 of said Federal Law, depending on the applicant's status and the status of the refundable amounts;
- a document confirming that the person who paid customs duties and taxes agrees that these amounts be refunded to the person who is obligated to pay such amounts and has claimed a refund;
- other documents that the applicant may present in support of its claim for a refund.

This list is clearly excessive, as some of the documents are in the existing databases of the customs authorities or other agencies or are otherwise available to them, while other documents (e.g. a notarized specimen signature of the application's signatory) may be difficult for a foreign economic operator to provide.

The words "other documents" allow the authorities to demand an unlimited quantity of additional information (a specimen company seal, specimen signature, etc.). This unnecessarily complicates the refund process and makes it difficult to administrate.

With the rapid development of digital technologies, foreign economic operators are communicating more effectively with customs authorities via personal accounts. Such online tools will be increasingly important in the years ahead. This paves the way for further improvements in customs law regulating refunds of overpayments.

At the same time, under current tax law, overpaid taxes are refunded (offset) on the basis of an application submitted by the taxpayer without any additional documents. Article 79 of the Russian Tax Code allows electronic applications and envisages a faster turnaround time (10 days in the Tax Code, as compared with one month in Law 311-FZ).

The Federal Customs Service has prepared a draft Federal Law "On Amendments to the Federal Law 'On Customs Regulation in the Russian Federation'" to shorten the list of documents that must be submitted along with an application for a refund of customs duties, taxes and other amounts and also to reduce the time involved in obtaining a refund.

This draft has not as yet been posted for public discussion (draft page: http://regulation.gov.ru/projects/List/AdvancedSearch#npa=44394). The draft was provided in due course to the FIAC Working Group and is generally in line with the group's proposals. Based on the FIAC Executive Committee meeting of 3 June 2016, Igor Shuvalov instructed that the draft be submitted to the Russian government by 1 October 2016.

Recommendations

1. Amend Articles 122.3, 122.4, 147. 2 and 147.3 of Federal Law No. 311-FZ of 27 November 2010 "On Customs Regulation in the Russian Federation" to limit the documents that must be provided by legal entities established under Russian law to the following two: (i) a refund application filed in hard copy or electronically, including via a personal account, and (ii) other documents that applicants may provide in support of their claim for a refund.
2. Reduce the turnaround time in Article 147.6 from one month to 10 days.

1.2. Technical Regulations and Elimination of Administrative Barriers

Issue 1. Introduction of extended producer responsibility and development of a system of recycling consumption waste in Russia (jointly with the Working Group for trade and consumer sector).

Federal Law No. 458-FZ "On Amendments to the Federal Law "On Production and Consumption Waste" and Certain Legislative Acts of the Russian Federation as Well as the Annulment of Certain Legislative Acts (Provisions of Legislative Acts) of the Russian Federation" (hereinafter, the "Law") entered into force on 1 January 2015. As of 2015, the Law requires producers and importers to recycle their product waste (including packaging waste) or, should they fail to do so, to pay an environmental fee to the federal budget. Producers of packaged goods are also responsible for recycling packaged waste, with the relevant responsibility established in clause 10 of Article 24.2 of the Law.

In 2015, during discussions on a moratorium for certain non-tax payments, the government decided that no environmental fees would be charged until 2019. However, a wide range of companies of different forms of ownership (including state companies) affected by the new regulation became obliged to pay the environmental fee as early as in 2016.

To implement this fundamentally new regulation, the Law calls for more than 20 regulatory legal acts to be adopted by the government. The analysis of the existing documents adopted by the Government suggests that they require significant revision to eliminate numerous gaps and omissions, which have already led to a handful of technical difficulties and misunderstanding on the part of producers and importers when they attempt to perform their declaring and reporting obligations.

The key issues include the following:

1. The List of Recyclable Goods does not contain recyclable packaging. Therefore, the new bylaws do not apply to those producers and importers of packaged goods that, in accordance with Law No. 458-FZ, are required to comply with recycling standards set for packaging.
2. The existing regulations do not provide for a mechanism to implement the extended responsibility of producers/importers of packaged goods when it comes to packaging waste.
3. It is legally and practically impossible to identify packaging in accordance with the KPES / TN VED codes based on the supporting documents relating to packaging as an individual item of goods released onto the market.
4. Unreasonable competitive advantages will be created for products imported from EEU or other countries due to counting the waste that is subject to recycling twice and applying the regulation to raw and other materials, which are used in the manufacture of local finished products.
5. There is confusion regarding reporting periods.
6. There is no clear and unequivocal definition of the term "release into circulation".

If unresolved, the aforementioned issues, in combination with other gaps in the existing regulatory framework, will have the following adverse effects:

- the waste that is subject to recycling may be either counted twice or not declared/recycled at all;
- the regulation will affect raw and other materials, which are used in the manufacture of local products and whose waste (including packaging) is classified as production waste, with a special procedure provided for recycling such waste;
- competitive advantages will be created for products imported from EEU or other countries;
- creating disincentives for independent recycling;
- discrediting the concept of extended producer responsibility, which is aimed at encouraging commercially sustainable waste recycling practices.

The solution for this problem was designed during the meeting of the Executive Committee of the Foreign Investment Advisory Council held on 3 June 2016, which required that a road map, which remains unapproved, be approved by 7 July 2016 to amend regulations on waste management.

The absence of provisions for separate waste collection in the regulatory documents is still an issue. The choice of "independent recycling" provided by law may therefore remain merely declarative, with the regulation having a purely fiscal objective, it being the collection of the environmental fee from producers/importers. Rather than stimulating the development of the waste recycling industry, the introduction of the extended producer responsibility (EPR) will create a major financial burden for all Russian producers forcing them to raise the selling prices by 3-15% to compensate for additional costs.

Recommendations

Urgent measures:

1. The Ministry of Natural Resources, the Ministry for Economic Development and the Ministry of Construction together with the business community should make the following amendments to existing Government laws and regulations governing enforcement of Federal Law No. 458-FZ as relating to recycling product and packaging waste:

- define, by type of material, a list of packaging, the responsibility for the recycling of which should be placed on producers and importers of the respective goods, include a separate Section II to the List of Goods to Be Recycled after the Loss of Their Consumer Properties;
- avoid assigning both the producer (importer) of packing qualifying as a finished good and the producer of goods packed therein with responsibilities for complying with packaging waste recycling standards: the producer (importer) of packing should be liable for recycling only that packing waste qualifying as a finished good that was released onto the market for retail sales/provision of services/performance of work;
- define that the responsibility to comply with recycling standards does not apply to producers/importers of those goods which are not finished goods, namely goods and packaging contained therein that are supplied as components or raw and other materials to be used in production of goods;
- do not set for 2016 material-based recycling standards for packing (Section II of the List), as there is no current statutory requirement for a wide segment of producers/importers of packed finished goods to comply with the standards set only for packing qualifying as a finished good, as well as it is practically impossible to retroactively comply with those standards by independent recycling in 2016;
- set for 2017 recycling standards and environmental fee rats for packing at a level not exceeding minimum standards and rates applicable to similar (material-wise) packing released onto the market as a finished good (from the current List of Goods);
- define that a reporting year (period) shall mean a calendar year during which the producer/importer shall comply with recycling standards set for that particular calendar year; standard compliance reports shall be submitted before 1 April of the year following the reporting year; declaration on the amount of goods released during the prior calendar year shall be submitted before 1 April of the reporting year (period).

2. The amendment plan will be executed as a road map indicating the responsible federal executive bodies and deadlines for amending each bylaws included in the plan.

3. Ensure that official clarifications on enforcement of extended liability of producers, that do not require any amendments to Government regulations and Federal Law No. 458-FZ, are published at official websites of the Ministry of Natural Resources of Russia and the Ministry of Natural Resources of Russia until 1 November 2016.

Strategic measures:

- make the separate on-site collection of public and similar waste a legally binding obligation;
- charge regional operators, municipalities and regional authorities with responsibility for separate waste collection and for failure to collect waste separately;
- require regional operators to transfer waste from recyclable products and packaging that have lost their consumer properties to producers, importers, associations of producers or importers, or municipal solid waste (MSW) management operators as well as provide mechanisms for meeting such requirements;
- introduce regulatory mechanisms to enable cooperation between producers, importers, associations of producers and importers, and MSW management operators;
- expedite the adoption of key by-laws, which are still pending;
- create incentives for households to collect waste separately and increase the levels of waste collected separately;
- allow MSW owners to enter into agreements with ordinary waste management operators.
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Issue 2. **Setting a minimum percentage of purchases that major private companies must make from small and medium-sized businesses (Draft Federal Law "On Amendments to the Federal Law 'On Competition' and the Administrative Offenses Code of the Russian Federation").**

In the end of October 2015, the FAS of Russia developed a draft federal law “On Amendments to the Federal Law 'On the Protection of Competition' and the Administrative Offenses Code of the Russian Federation.” This law requires that large private companies with annual revenues of over RUB 7 billion purchase at least 10% of goods and services from small and medium-sized businesses (SMBs).

FIAC member companies generally support the Russian government's initiatives to develop SMBs. Business's desire to enhance its efficiency can include participation in a system involving procurement of raw and other materials and services from enterprises with varying levels of turnover when this is dictated by business interests. However, FIAC members are committed to the principle of free market competition and believe that a required level of purchases from SMBs, without regard for industry specifics, will prove unrealizable in practice, as this is contrary to the Russian Constitution, fraught with risks, and may pose enforcement challenges.

- such a minimum level of purchases from SMBs means that the entire procurement system within companies will have to be restructured, including the terms of supply transactions within groups;
- the proposed changes do not stimulate new demand, but only redistribute orders, shifting them from medium and large companies to small businesses. New demand could be created by means of import replacement and by stimulating purchases of domestic goods and services;
- it is not possible to establish a unified approach and criteria for the level of purchases from SMBs in diverse economic spheres, due to the differing structures of purchases involved, and the retention of intermediary practices will neutralize any benefits from the proposed amendments.

In accordance with the revised Draft Law (version as of May 2016), legal entities who are recipients of budgetary investments and/or budgetary subsidies are obligated to procure from SMBs to the extent of 20% of such investments and/or subsidies. However, the regulation has no clear definition of the specified budgetary support.

FIAC member companies have formulated and propose revising the draft to encourage rather than prescribe the desired changes. The new version should motivate major private companies to increase their level of purchases from SMBs on a voluntary basis. This solution may help to avoid the problems and risks involved in a prescriptive approach, including the risk of restricting free competition as the basis of a healthy, developing market and economy (see Article 8 of the Russian Constitution), and to fully achieve the main regulatory goal: to stimulate the development of current SMBs and the creation of new SMBs.

Recommendations

- support the expert opinion of the Russian Government's Analytical Center that (i) the Ministry for Economic Development should be authorized to act as the principal developer of all measures to support SMBs, (ii) rather than taking a restrictive approach and setting minimum levels of purchases from SMBs, a dedicated infrastructure should be created to serve as a source of information on domestic SMBs and their potential offerings for large private companies, including the formation and maintenance of an SMB register and access to its data (product range, technologies, etc.) as well as the development of cooperation and subcontracting between large and small businesses;
- work concurrently with the SMB Corporation to develop a balanced and comprehensive approach to encouraging major companies to award contracts to SMBs on a voluntary basis (as part of the existing Road Map). This may include tax incentives and preferential terms of credit for SMBs, the promotion of big business's own social responsibility programs and similar initiatives, etc. Such an approach could form the basis for a new version of the Federal Law “On Amendments to the Federal Law 'On the Protection of Competition'” and the Administrative Offenses Code of the Russian Federation,” which would be essentially conducive to business.

Issue 3. Problems involved in implementing the Federal Law "On Water Supply and Drainage" and related laws.

3.1. Specific industry-related risks are associated with Section VII of the Rules of Cold and Hot Water Supply (approved by Government Decree No. 644 of 29 July 2013).

Section VII of these rules, which entered into force on 1 January 2014, sets excessive and unreasonably strict wastewater standards for 32 substances in order to “prevent negative impact on centralized drainage systems.”

The rules allow Vodokanal enterprises to charge users for "negative impact" without verifying the extent of damage or the expenses incurred in connection with wastewater discharged in excess of the new standards.

In violation of Federal Law No. 416-FZ, the rules unreasonably extend the list of cases in which a corporate user is required to have and operate its own treatment facilities (Appendix 4). An analysis of this list shows that the requirement applies to the vast majority of manufacturing enterprises of any size and profile.

In late 2014, Vodokanal enterprises began actively applying the rules to payments for "damage," leading to a sharp increase in fees charged to industrial enterprises (in some cases, charges by Vodokanal enterprises have grown ten times and more).

- small businesses: up to RUB 14 million per year;
- medium-sized businesses: up to RUB 50-70 million per year;
- large businesses: from RUB 100 million to 500 million per year and above.

In addition, both the levels set and the formula used to calculate payments do not further the stated goals of regulation. Many of these requirements (e.g., for sulfates, copper, zinc, arsenic and strontium) are far more stringent than those set by Sanitary Rules and Regulations (SanPiN) 2.1.4.1074-01.2.1.4 for the quality of potable water in centralized water systems, and the calculation of organic impurities results in multiple charges. Prohibited emissions are defined in a manner open to interpretation, and the necessary minimum tolerances are lacking.

The procedure for declaring wastewater quality fails to take into account the variability of values in certain ranges and does not in fact work.

In 2015 FIAC took this issue to the government level. Two instructions were issued - one in June by Igor Shuvalov (based on a meeting of FIAC's executive committee) and another in October by Dmitry Medvedev (based on FIAC's plenary session):

- to bring pollutant levels into line with scientifically based figures;
- to make it possible to achieve the required level of wastewater treatment under the service agreement with centralized drainage systems.

Amendments to the rules were developed by the Ministry of Housing and Construction, the Ministry of Natural Resources and the Ministry for Economic Development as well as by FIAC, the Russian Union of Industrialists and Entrepreneurs and the Glassmakers' Union on the part of industry and the Russian Water Supply and Drainage Association and the Housing Development Association on the part of Vodokanal enterprises. A special task force was formed under the Ministry for Economic Development. Following a series of meetings and consultations, the Ministry of Housing and Construction prepared a compromise version of the amendments and submitted them for approval to federal executive bodies in November 2015. In December 2015 the Russian Water Supply and Drainage Association came out strongly against the amendments and insisted that amendments to PP644 not affect the current level of incoming payments.

Status as of September 2016

Based on the meeting chaired by D.A. Kozak in August 2016, the Ministry of Construction submitted to the Government draft amendments to the Rules agreed with the federal executive bodies. According to the available information, the amendments are to be endorsed in the short term and will come into effect once published.

The final version is formulated in accordance with the "neither yours nor ours" principle.

The proposed draft fully or partially resolves only some of the problems with the current rules:

- two indicators are eliminated from the list of those regulated;
- several indicators are increased;
- for three groups – salts (3 indicators), organic impurities (5 indicators) and synthetic surfactants (2 indicators) – compensation payments are to be calculated for the maximum number of individual indicators;
- a tolerance range is introduced, involving a comparison of values obtained as a result of control and indicated in the declaration;
- an agreement may be concluded with a Vodokanal enterprise for advanced treatment of wastewater based on the performance indicators of treatment facilities;

- the construction of local treatment facilities is no longer the only means of meeting wastewater quality requirements
- a possibility to offset 50% of the payment of pollution charges while the plan for meeting requirements is being realized;
- domestic effluents released into a centralized drainage system via a user's system are exempted from payment;

In a number of cases, however, sanctions are increased for industrial enterprises or additional restrictions are introduced in connection with the above amendments:

- upward "impact factors" are applied to the formulas while reduction factors are practically absent;
- the payment repetition factor of 10 is eliminated;
- a factor of 2 is applied for failure to submit a wastewater quality declaration or for discrepancies between the declared and actual value that are greater than the established amount;
- in order to conclude an agreement for advanced treatment, the Vodokanal enterprise must have a technological conclusion;
- the description of prohibited discharges is still open to interpretation and lacks minimum tolerances, while the repetition factors are raised to 10 and 25 for the first and last violations, respectively.

Recommendations

- the amendments should be regarded as piecemeal as regards the problems identified by the industrial community;
- once the amendments become effective, their enforcement should be subject to monitoring, the results of which should be used to further improve the Rules and the procedure for calculating compensation payments by wastewater disposal organizations.

3.2. Federal Law No. 416-FZ "On Water Supply and Drainage" changed the legal status of companies that use central drainage systems by categorizing them as natural resource users (hereinafter, "corporate water-users"). Enterprises discharging over 200 m3 of water daily into centralized drainage systems have been placed under the direct supervision of the Federal Service for Natural Resource Management and are required to pay pollution charges and have the following documents available: permissible discharge levels, a discharge reduction plan, discharge limits.

The criterion of 200 m3 of discharged wastewater has no objective basis. All large and most medium-sized businesses meet that criterion, as do shopping centers and office buildings.

Effective 1 January 2014, the current system of standards for wastewater discharged into bodies of water was extended to include thousands of enterprises using central water-supply systems. This system is based on water quality standards for fishery purposes, which are much stricter than those for drinking water.

The federal law also requires users to build and operate their own local treatment facilities without giving them the option of additional wastewater treatment by Vodokanal enterprises and other organizations or the option of using such technologies as closed-cycle production and other conservation measures. The requirement to build local treatment facilities is financially unfeasible for many companies even if account is taken of the construction periods provided for by law. The construction of local treatment facilities designed to meet fishery-quality standards is unfeasible both financially and technically.

A number of food production facilities have already shut down due to problems with the regulation of drainage into centralized drainage systems in the current economic crisis.

In pursuance of decisions regarding the moratorium on non-tax payments by entrepreneurs and organizations until 2019, the transition period under Chapter 5 of Federal Law 416-FZ was postponed from 1 July 2015 to 1 January 2019. In December 2015 a separate amendment eliminated the requirement that local treatment facilities be built by 2019.

The Law has yet to be amended to create a clear division of responsibility for industrial wastewater treatment between central drainage systems and their users as well as realistic standards for discharges of pollutants into bodies of water and central drainage systems in view of international practice (clause 4 of Dmitry Medvedev's instructions of 27 October 2013).

Status as of September 2016

According to the available information (following the RIA procedure in March-April 2016, the version was not submitted for expert analysis by business community), the current version of the amendments to FZ-416 (Draft Law No.386179-6) prepared by the Russian Ministry of Construction in August 2016 still comprises all the developed solutions on a balanced division of powers and responsibilities between Vodokanal enterprises and users in connection with discharges of pollutants into centralized drainage systems.

The adoption of this version of Draft Law No. 386179-6 as amended by the Government will help:

- to eliminate situations in which requirements for water users are applied to users of centralized drainage systems: standards of wastewater composition instead of permissible discharge levels, and additional payments to a wastewater disposal organization instead of pollution charges;
- to reduce/eliminate expenses incurred by users of centralized drainage systems in preparing project documentation and setting individual standards of discharges of pollutants into bodies of water;
- to reduce the costs incurred by federal and regional executive bodies in regulating the wastewater of each user of centralized drainage systems and collecting pollution charges from such users;
- optimize expenses incurred by users in meeting wastewater quality requirements, including expenses for the construction of local treatment facilities.

Issues requiring further work:

- (1) elimination of the administrative barrier created by the requirement that local government bodies approve of the standards of the composition and properties of wastewater discharged into centralized drainage systems;
- (3) formulation of an open list of measures to prevent users of centralized drainage systems from violating regulations on the composition of wastewater;
- (4) clarification of Article 28, part 3, of Draft Law No. 386179-6, which allows an ambiguous interpretation of the term "pollution charge for pollutants discharged in wastewater into bodies of water" and Article 29, part 3, of Draft Law No. 386179-6 in regard to compensation for damage to a body of water;
- (5) introduction of a requirement that payments for discharges into centralized drainage systems be calculated taking into account process water received by the user from that centralized drainage system, similar to environmental law on the payments for the withdrawal of natural water and the discharge of wastewater from/to a single surface body of water.

Recommendations

- the amendments to Federal Law FZ-416 (as amended), as prepared by the Ministry of Housing and Construction, should be regarded as generally consistent with clause 4 of Dmitry Medvedev's instructions pursuant to the FIAC session and with thee industrial community's proposals for allocating and harmonizing relations between users and wastewater disposal organizations, provided that a number of provisions are refined;
- introduce an open list of measures to prevent users of centralized drainage systems from violating drainage regulations on the composition of wastewater;
- clarify Article 28, part 3, of Draft Law No. 386179-6, which allows an ambiguous interpretation of the term "pollution charge for pollutants discharged in wastewater into bodies of water" and Article 29, part 3, of Draft Law No. 386179-6 in regard to compensation for damage to a body of water;
- introduce provisions by which compensation to be paid to a centralized drainage system for the harmful effects of wastewater discharges takes into account the composition of the process water received by the user receives from that centralized drainage system.

Issue 4. Making products and services more competitive by improving the overall productivity per unit of output in Russia, based on the efficient regulation of human resources.

4.1. Regulating relations between employers, employment agencies and job seekers under staff leasing arrangements (Draft Federal Law No. 451173-5).

Federal Law No. 116-FZ of 5 May 2014 "On Amendments to Certain Legislative Acts of the Russian Federation" prohibits "leased labor" and restricts the use of staff leasing agreements in the Russian Federation. Following the law's entry into force on 1 January 2016, staff leasing agreements (i.e. the transfer of experienced and qualified employees from one company to another for a consideration) may be used only by private employment agencies on a temporary basis (up to nine months). Law No. 116-FZ envisages

the adoption of a special law on staff leasing for a limited group of legal entities that are not private employment agencies (affiliates and parties to a shareholder agreement). Such a law was drafted by the Ministry for Economic Development, but failed to receive government approval (from the office of Deputy Prime Minister Olga Golodets). The lack of clarity concerning the use of staff leasing agreements by legal entities that are not private employment agencies creates a whole range of risks for foreign investors doing business in Russia.

Major investment projects, both internationally and in Russia, are generally carried out by groups of investors who structure the relations between project participants in various ways: joint venture, consortium, operator agreement, etc. and highly qualified foreign specialists are frequently provided under agreements for the leasing of management personnel. The fact that Law No. 116-FZ limits the group of entities that can use staff leasing agreements makes it impossible for investors to engage qualified foreign personnel if their form of cooperation is one not stipulated in the law. The law drafted by the Ministry for Economic Development resolves this issue by introducing clearer formulations and broadening the group of entities that can use staff leasing agreements, which is consistent with the longstanding use of such agreements in Russia by major Russian and foreign businesses.
Meanwhile, certain regulatory bodies, citing the fact that the special law on legal entities envisaged by Law 116-FZ has not been passed, say that staff leasing agreements cannot yet be concluded even between affiliates and parties to a shareholder agreement. The proposed alternative is a direct hiring agreement between a foreign employer and the host company (often a joint venture), whereby foreign employees lose retirement and other benefits provided by the parent company in their country of permanent residence, since 100% of their pay must be provided in Russia. This creates a very risky situation in which many projects involving highly qualified foreign employees may be suspended because foreign investors won't transfer employees who might lose their pension and insurance benefits at home. If a foreign company continues to use staff leasing agreements (in the absence of an applicable law), there is a risk that such agreements will found invalid. The deduction of the host company's expenses under a staff leasing agreement could be denied, and the source company could be exposed to a permanent establishment risk (if it does not have a registered presence in Russia).
In June 2016 the revised draft law on secondment[1] was published at the website regulation.gov.ru (http://regulation.gov.ru/projects#npa=9931). Meanwhile the Draft Law is subject to agreement by the concerned agencies, therefore monitoring should continue. The law is expected to be adopted by the end of 2016.

Recommendations

The adoption of a special law regulating staff leasing by legal entities that are not private employment agencies would substantially lower the risks for foreign investors that structure their joint ventures with Russian partners in various ways.

4.2. Establishing a maximum vacation carryover period.

One current point at issue is an employer's obligation to compensate employees for vacation accumulated during their full period of employment. Employees do not always use their vacation, and the balance of accumulated vacation may be substantial. Compensation for unused vacation is calculated based on an employee's average annual salary for the last year (not the salary in effect when vacation became available).

Law enforcement practice concerning an employer's legal obligation to pay compensation for the entire period of employment is inconsistent. Under Article 127 of the Russian Labor Code, an employee, upon termination, is paid compensation for all unused vacation.
Under Article 9.1 of Convention No. 132 of the International Labor Organization "On Paid Vacation (Revised in 1970)" (adopted in Geneva on 24 June 1970 at the 54th Session of the ILO's General Conference), the continuous part of vacation should be used within one year, and the balance should be used within 18 months after the end of the year for which the vacation was provided.
In current judicial practice (Appellate Rulings of the Supreme Court of the Republic of Bashkortostan No. 33-3923/2013 of 26 March 2013 and No. 33-1020/2013 of 12 February 2013 and Ruling of the Supreme Court of the Republic of Komi No. 33-1867AP/2012 of 14 May 2012), an employee loses the right to vacation 18 months after the end of the working year for which such vacation is provided. Compensation for other periods cannot be claimed due to the deadline for appealing to the courts under Article 124 of the Russian Labor Code and Article 9 of Convention No. 132. Since, under Article 392 of the Russian Labor Code, employees are entitled to take an individual labor dispute to court within three months after they discover or should have discovered that their rights were violated, the period of limitation for claims concerning unused

[1] On the Temporary Transfer of Employees by an Employer That Is Not a Private Employment Agency to Other Legal Entities under Staff Leasing Agreements

additional vacation, unless part thereof was deferred under Article 9.2 of Convention No. 132, is 21 months (18 months + 3 months) after the end of the year for which vacation was accrued.
It is the position of the Russian Ministry of Labor that national law should apply in this case, as it provides broader guarantees of employees' rights.
In our opinion, this position:

- is legally unsound, as the ILO Convention should apply in view of the presumed supremacy of international agreements;
- creates a bias in favor of employees.

If the position of the ILO Convention is adopted, this will create incentives for employees to use their full vacation, which is generally consistent with the Labor Code's goal of ensuring sufficient leisure time for employees and with the interests of the state, as it encourages a healthier way of life and reduces the state's health care costs.

Recommendations

In view of the above and to avoid inconsistent interpretations of the Russian Labor Code and Convention No. 132 of the International Labor Organization "On Paid Vacation (Revised in 1970)," amend the Russian Labor Code to bring it into line with Convention No. 132.

Issue 5. Development of the technical regulation system: lifting administrative barriers to the market release and circulation of products.

5.1. Adoption of the new Administrative Offenses Code of the Russian Federation: amendments to enhance liability for violations related to technical regulation (Chapter 24).

The new version multiplies fines from 2 to 6 times and introduces sanctions involving suspension of production for up to 90 days and confiscation of the "objects of a violation." While we approve of regulatory initiatives to prevent bad-faith conduct by market players, this chapter contains a number of concepts that are open to interpretation and imposes sanctions in cases where the requirements are not defined by the laws and regulations of the Customs Union and the Russian Federation. Thus, for example, a number of articles (24.1, 24.3, 24.7) impose sanctions for "actions that pose a threat to the life or health of individuals," but this concept is not defined by any laws or regulations. Some of the terminology used to describe administrative violations is formulated ambiguously due to the lack of precise legal definitions of such concepts as "inaccurate declaration," "inaccurate information" (Article 24.1.) and "supporting documentation" (Article 24.2.).
FIAC representatives participated in the working group of the State Duma Committee on Constitutional Law and State-Building and in the working group of the Russian Ministry of Industry and Trade. The vote on the first reading in the Russian State Duma was postponed until the Duma's 2016 autumn session.
As a matter of principle, the FIAC working group supports systematic sanctions for such violations, including under the Administrative Offenses Code, but considers it unacceptable to supplement the code with unclear formulations and requirements that are open to interpretation and absent from Russian and Customs Union law. The current economic problems make it an inopportune time to increase the burden on business. It is not possible to review and systematize sanctions for administrative violations without reviewing and systematizing the requirements of current laws and regulations and revising a number of regulatory documents, including by bringing them into line with international laws and regulations in the framework of the Customs Union. Inconsistencies between current regulatory requirements make it extremely difficult to implement the new Administrative Offenses Code and pose unreasonable risks for business. Moreover, the definition of violations under Chapter 24 goes beyond the scope of technical regulation or duplicates it.

Recommendations

- if the text of the draft law is updated for the first reading, carefully analyze Chapter 24 "Administrative offenses in the area of technical regulation";
- participate in the working group and the discussion of Chapter 24 by concerned federal executive bodies;
- formulate amendments to the draft law and send them to the concerned federal executive bodies (the Ministry of Industry and Trade and the Ministry for Economic Development).

5.2. Lowering administrative barriers involved in verifying the compliance of means of communication.

Clause 12 of Government Decree No. 214 of 13 April 2005 "On the Approval of the Rules of the Organization and Conduct of Mandatory Verification of Compliance of Means of Communication" (as amended by Government Decree No. 761 of 13 October 2008) states that "evidentiary materials should include records

of own tests and tests performed in an accredited test laboratory (center) in an amount determined by the established requirements."
Manufacturers of cross-connect and telecommunications equipment, optical and copper cables, means of fixed and mobile communication, and household electronic devices that receive or transmit information are effectively required to provide two similar test records: internal and external, the latter having a higher degree of credibility due to the preparer's state accreditation. Many manufacturers don't have their own accredited local labs and are unable to do the required amount of "own testing."
The previous version of the document included an "and/or" alternative, which ensured the proper control, while maintaining flexibility in the inspection system. In the course of amending laws and regulations, this option was eliminated.

Recommendations

Clause 12 of the decree should be reworded as follows: evidentiary materials should include records of own tests and/or tests performed in an accredited test laboratory (center) in an amount determined by the established requirements."

Issue 6. Optimizing control and permission functions for industrial investment and construction projects to facilitate their design, construction and commissioning and ensure the safety of industrial facilities.

Inefficient and nontransparent state control procedures, at the early stages of pre-project planning and acquisition of title to land for purposes unrelated to residential construction as well as at the stages of obtaining construction permits and constructing and commissioning industrial facilities. Excessive state regulation in this area is a major administrative barrier to the creation of new production facilities in Russia. Current construction and industrial safety law must be thoroughly improved so that production and technology can develop rapidly in the Russian economy. Since the administrative barriers to the construction and commissioning of industrial facilities have a strongly negative impact on the Russian investment climate and are the main obstacles preventing Russia from improving its position in the World Bank's international "Doing Business" rating, FIAC makes the following recommendations:

Sanitation and epidemiological expert examinations and sanitary protection zones

Reduction in the number of procedures involved in assessing compliance with sanitation and epidemiological law during the construction/reconstruction of industrial facilities. For instance, the approval procedure for sanitary protection zones should be optimized in connection with the construction and operation of industrial enterprises, and the time limit for approval should be reduced to 30 days.

Note: There are numerous duplicating sanitation and epidemiological supervision procedures at practically every stage of construction – during the expert examination of project documentation, the delimitation of the sanitary protection zone and during the operation of an industrial facility. Under the Urban Development Code of the Russian Federation, project documentation is checked, among other things, for compliance with sanitation and epidemiological requirements at the expert examination stage.

Status as of September 2016

The Federal Consumer Rights and Welfare Service confirmed in its official letter that the sanitary protection zoning rules are currently under revision and that the new version accommodates most FIAC's comments. The adoption of the new rules depends on the continuing work on drafting amendments to the Law on Public Sanitary and Epidemiological Welfare, therefore the status of these regulatory legal acts should be continuously monitored.

Recommendations

- optimize the procedure for approving sanitary protection zones, depending on a facility's hazard class. The time it takes to approve the boundaries of industrial enterprises' sanitary protection zones should be reduced by drafting and implementing administrative regulations of the Federal Consumer Rights and Welfare Service that would eliminate the need for on-site measurements;
- eliminate the requirement that sanitary protection zones be developed for low-hazard facilities (hazard classes 3-5) that meet hygienic standards and where maximum permissible emissions and levels are within the accepted limits at the boundaries of the industrial site;
- further steps should include a meeting and a discussion of FIAC's proposals with the Federal Consumer Rights and Welfare Service.

Issue 7. Lowering administrative barriers in connection with the reform of state and municipal control (Draft Law "On the Principles of State and Municipal Control" and other legislative acts).

The Draft Law "On the Principles of State and Municipal Control (Oversight) in the Russian Federation" is being discussed by the Ministry of Economic Development, federal executive bodies and representatives of business community. This law, to supersede Federal Law No. FZ-294 "On the Protection of the Rights of Legal Entities and Individual Entrepreneurs," will introduce fundamentally new approaches to control/oversight functions and systematize the requirements established by applicable legislation. The draft law is an important part of the reform of state oversight in the Russian Federation and covers 200 types of federal, regional and municipal control (oversight). Government Decree No.806 was signed to officially approve the new approach to state control and to establish the rules of classifying the activities of legal entities and individual entrepreneurs and (or) operated production facilities into particular risk categories or hazard classes, and a list of state control (oversight) types based on risk-oriented model. The draft law will regulate the control/oversight function of the state, including the development of a transparent, reliable and effective system of relations between the authorities, individuals and business and reduction of the excessive burden on business. The new approach to state and municipal control (oversight) is based on a risk-oriented model.

Blankness in certain regulations, provided all significant provisions and indicators are established to determine key mechanisms, criteria and requirements in additional regulations (in particular, the provisions that the criteria for classifying the state control (oversight) targets into risk categories and hazard classes are established by the Government in separate provisions, and calculation methodologies are approved by federal executive bodies) is of concern to business because of related risks. These include:

- additional grounds for performing unscheduled audits;
- the possibility of more frequent scheduled audits by control bodies;
- unscrupulous use of publicly available information on control/supervision at enterprises;
- a heavier administrative and financial burden on business.

In autumn 2015 the draft federal law was rejected based on the RIA and sent back for revision.

Recommendations

- supplement the draft law with a number of provisions preventing deterioration of the ability of entrepreneurs and legal entities to protect their rights (the lists of control measures, state control (oversight) types should be made exhaustive and final; during inspections, representatives of entities should have the right to participate in all types of control and oversight measures; the draft law should be supplemented by the principles that state and municipal control should have established deadlines and should be performed free of charge);
- FIAC Working Groups should participate in discussions of regulatory legal acts developed for the federal law purposes and establishing risk categories and requirements to business entities under departmental systems of risks management (in accordance with the risk-oriented models used in the law);
- the development of quantitative indicators for classifying enterprises by risk category should involve an assessment of the potential burden on business in terms of administrative barriers and financial outlays;
- there should be a transition period of at least three years before the law enters into force.

Issue 8. Enterprises' classification in terms of the level of the negative impact on the environment.

In 2013-2016, the Russian Federation government adopted a number of laws and regulations aimed at the reduction of the negative impact of the Russian industry on the environment. In 2016, the international companies investing in Russia that generally supported this legislative approach, which had demonstrated its efficiency in solving environmental problems in other countries, faced a risk of unreasonable attribution of their production facilities to the 1st category (extra-hazardous) as a result of adoption of the Russian Government Decree No. 1029 dated September 28, 2015.

The criteria for inclusion of certain industries in this category contradict the principles stipulated by the Federal Law No.7 "On the Environmental Protection". Thus, some companies have been put into unequal competitive circumstances. At the same time, the total level of the negative impact of Russia's enterprises on the environment is not reducing.

In particular, the Russian Government Decree No. 1029 dated September 28, 2015 "On the approval of criteria for classifying objects that have the negative impact on the environment as objects of the I, II, III, IV categories" attributes to the 1st category enterprises of the ferrous and non-ferrous metallurgy, pesticides production, pulp and paper mills that annually generate emissions, waste water and waste products totalling

dozens and hundreds of thousands tons. This category also includes enterprises, which total level of impact is thousand times lower than that specified below.

Production facilities classified as the 1st hazard category are as follows:

- glass-fibre insulation production;
- production of refractory ceramics and construction ceramic materials;
- production of ceramic and porcelain products, including sanitary ceramics, and others;
- food production facilities, for example – dairy and oil and fat industries.

In accordance with the Decree No. 1029, the sole criterion, under which the glass-fibre insulation production is classified as the 1st category object is the minimum level of production – 20 tons of molten glass a day. This fact contradicts the criteria specified by the Federal Law No. 7 "On the Environmental Protection" as follows.

1. In terms of the level of impact on the environment, insulation production based on glass fibre has the minimum negative impact both on the environment and on human health.
2. In terms of the toxic level of emissions and wastes, the technologies of glass-fibre insulation production obligatory include a 100% closed cycle of water resources utilization (the absence of industrial waste water discharge into water bodies), and advanced multi-stage gas cleaning systems.
3. In terms of the wastes hazard class and classification of industrial facilities and production, the industrial wastes of insulation production based on glass fibre are attributed to the 5th hazard class.

In addition, minor wastes and low concentration of pollutants at the stationary sources of emissions achieved through the installation of advanced modern pollution control equipment at the enterprises are not taken into account. The Working Party supposes that enterprises producing glass-fibre insulation must be excluded from the 1st category.

The Working Party also considers the classification of the dairy industry enterprises in the 1st category objects that have the negative impact on the environment to be unreasonable and inappropriate. In terms of the negative impact on the environment, enterprises of the dairy industry are united in one category with metallurgical, oil refining, chemical production and waste management facilities. However, pollutant emissions from the dairy industry are presented mostly by moderately hazardous substances of the 3d hazard class.

The same situation is observed at the enterprises of the oil and fat industry. Their attribution to the 1st category obliges to implement a number of additional requirements: obtaining a complex environmental permit, application of the best available technologies (BAT), compliance with the technology standards, development and application of eco-efficiency program. All these measures will require significant expenses to upgrade environmental equipment and production technologies. Implementation of additional requirements will increase financial and administrative burden of an enterprise. As a result, it will lead to increased prime cost of the finished products, which will certainly affect the prices for consumers under the low profitability of the sector. The Working Party sees no reasons to include enterprises of the oil and fat industry in the category of hazardous enterprises, as wastes of such plants are classified as the 5th and the 4th class – "non-hazardous or causing minimal harm to the environment" – in accordance with the Federal Classificatory Catalogue of Wastes. Their pollutant emissions are also account for substances of the 3d hazard class, and the major enterprises of the oil and fat industry usually have the local waste treatment facilities that provide purification of waste water in compliance with the established standards for environmental safety. Obscure and often unreasonable criteria for classifying the above-mentioned types of production in the first category of the negative impact on the environment will lead to significant extra costs, which undermine the production efficiency, and even threaten its entire existence. At the same time, the actual impact on the environment will not decrease. It greatly hinders attraction of new foreign investment in the development of these types of production due to lower profitability resulted from the introduction of these unjustified criteria.

Recommendations

To improve the Russian Government Decree dated September 28, 2015 by attracting independent experts and business representatives to discuss amendments to the criteria of production classification.

Issue 9. Legalizing parallel imports and protecting intellectual property rights.

Amending intellectual property law to switch from the national principle of exhaustion of trademark rights to the international principle will have adverse consequences. Experts should give more thorough study to the

diminution of Russia's appeal for investment and innovation projects, the growth in counterfeit products, and the sharp increase in consumer risks involving low-quality and dangerous goods.

As of today, there is no objective evidence that the legalization of parallel imports has had a favorable effect on consumer prices anywhere in the world. On the contrary, a number of surveys by such distinguished scientific and expert organizations as the London School of Economics, the Higher School of Economics and the NERA research center clearly show that the lack of restrictions on parallel imports has no impact on price competition and does not ultimately result in lower prices in the importing country.

Leading countries, such as the US and Japan, use various mechanisms to protect their domestic markets against parallel imports. The European Union (EU), for instance, applies the regional principle of exhaustion of trademark rights, whereby officially imported goods can circulate freely in the EU. Products cannot be imported into the EU without the rights holder's consent. A principle of exhaustion of rights similar to that applied in the EU has been introduced in the Customs Union.

At the meeting on 13 April 2016, leaders of EEU member-states decided to draft Protocol on Amendments to the Agreement on the Eurasian Economic Union to empower the Eurasian Intergovernmental Council to establish exemptions from the national principle of exhaustion of trademark rights for certain types of products.

In accordance with the existing procedures, the EEC will prepare the draft Protocol and commence the procedure of international agreement.

Recommendations

Resident investors that have localized their production facilities should be exempted from this legal regime, thus eliminating commodities manufactured in the Russian Federation.

Issue 10. Application of the Federal Law "On Amendments to Certain Legislative Acts of the Russian Federation to Clarify the Procedure for Processing Personal Data in Information and Telecommunication Networks" and the Federal Law "On an Amendment to Article 4 of the Federal Law 'On Amendments to Certain Legislative Acts of the Russian Federation to Clarify the Procedure for Processing Personal Data in Information and Telecommunication Networks.'"

This federal law substantially changes the regulation of personal data storage. For example, Article 16, part 4, of Federal Law No. 149-FZ of 27 July 2006 "On Information, Information Technologies and the Protection of Information" is supplemented with clause 7, making operators responsible for ensuring that databases used in collecting, recording, systematizing, aggregating, storing, modifying (updating, revising) and retrieving personal data of Russian citizens are located in the Russian Federation, and Article 18 of Federal Law No. 152-FZ of 27 July 2006 "On Personal Data" is supplemented with clause 5, requiring that operators collecting personal data, including via the Internet, ensure that the personal data of Russian citizens is recorded, systematized, aggregated, stored, modified (updated, revised) and retrieved using databases located in the Russian Federation. Article 4 of Federal Law No. 242-FZ of 21 July 2014 "On Amendments to Certain Legislative Acts of the Russian Federation to Clarify the Procedure for Personal Data Processing in Information and Telecommunication Networks" (Collected Legislation of the Russian Federation, 2014, No. 30, Article 4243) is worded as follows: "This Federal Law enters into force on 1 September 2015." The localization of personal data is a new concept, and business still has a number of questions about whether their actions comply with the legislative requirements that entered into force on 1 September 2015.

Recommendations

- meet with representatives of the Ministry of Communication and the Federal Service for Information Technologies and Mass Media to obtain practical recommendations on implementing the amendments so that companies will be prepared for checks of their compliance with legislative requirements.

Issue 11. Enhancing the competitiveness of Russian agricultural produce by providing Russian agricultural producers with innovative crop protection agents and amending the Draft Federal Law "On Amendments to Federal Law No. 109 'On the Safe Use of Pesticides and Agricultural Chemicals' and Other Regulatory Acts."

Overcoming current legislative barriers in the agro-industrial complex that adversely affect the competitiveness of Russian agricultural producers.

In Russia the use of pesticides (crop protection agents) is regulated by Federal Law No. 109 "On the Safe Use of Pesticides and Agrochemicals" of 19 July 1997 (as amended on 13 July 2015).

This law prevents Russian agriculture from becoming more competitive, because:

- the law defines a "developer" as "a person who obtains pesticides […] and studies their chemical activity, toxicological properties and impact on the environment" (Article 1), while prohibiting the turnover (Article 3) and production (Article 18) of unregistered pesticides;
- the law thus prohibits small-scale field testing of unregistered crop protection agents even for research purposes in order to refine the regulations for their use. Such tests are designed to maximally adapt crop protection agents to the soil and climatic conditions of a specific country and make their application as effective as possible;
- this makes it difficult to choose which crop protection agents to submit for costly state registration, since without pre-registration testing, it is unclear which agents are best suited to Russia's climatic conditions. While a developer (who is also the manufacturer of such agents) wrestles with this problem and then waits 4-5 years for state registration, Russian agricultural producers have a narrower range crop protection agents available (this is especially conspicuous in the case of small-scale cultivation);
- due to the specifics of registration in Russia, manufacturers have only limited information on the effects of recently registered agents in Russia's climatic conditions, and this further delays the introduction of new agents and reduces their effectiveness when they are introduced by agricultural producers;
- agricultural producers can familiarize themselves with new agents only after registration, which delays the broad application of such agents still further;
- as a result, end consumers in Russia put new crop protection agents into use several years later than agricultural producers in other countries (in the EU, for example, a procedure has already been legislated for pre-registration small scale field testing to refine the regulations for the use of crop protection agents).

It should be noted that issues involving crop protection agents are discussed at the supranational level in the Eurasian Economic Union (EEU).

Under Decision No. 131 of the Collegium of the Eurasian Economic Union of 6 October 2015, samples of unregistered crop protection agents can be imported into the EEU for scientific research, and this is an important step toward the legalization of pre-registration testing. Each country, however, is entitled to issue import permits under national legislation. In Russia, this is the previously mentioned Federal Law No. 109 "On the Safe Use of Pesticides and Agrochemicals."

Recent amendments to the legislation of Kazakhstan (the Law "On Crop Protection in the Republic of Kazakhstan of 6 April 2016), formally permit test samples of unregistered pesticides to be imported for research, provided that such samples are included in the plan for the testing of pesticides for registration purposes. According to the available information, similar amendments to Belarusian legislation are currently under preparation.

Recommendations

- wait for amendments to be made to Belarusian legislation on unregistered pesticides;
- take time to analyze amendments to the laws of Kazakhstan and Belarus so that these countries' practices with unregistered pesticides can be used as examples of a successful approach to pre-registration testing at the level of the EEC;
- initiate a letter to the Russian Ministry of Agriculture concerning amendments to the Draft Federal Law "On Amendments to Federal Law No. 109 'On the Safe Use of Pesticides and Agrochemicals' and Other Regulatory Acts," including a reference to the new provisions of EEC laws and the positive practice of Kazakhstan and Belarus.

Issue 12. Enhancing the regulatory framework for compensation and payments to employees working in harmful and hazardous conditions.

On 28 December 2013 the State Duma adopted Federal Laws No. 426-FZ "On the Special Assessment of Working Conditions" (hereinafter, the "Law") and No. 421-FZ "On Amendments to Certain Legislative Acts of the Russian Federation Following the Adoption of the Federal Law 'On the Special Assessment of Working Conditions'" (hereinafter, the "Accompanying Law").

The working group analyzed the practical application of the Law and the Accompanying Law as well as the related subordinate acts regulating working conditions.

The analysis revealed several problematic issues requiring the attention of the relevant agency as well as additional work:

- conflict between the Technical Regulations of the Customs Union "On the Safety of Means of Individual Protection" and the Law. Progressive regulations cannot be applied in creating economic incentives for employers to invest in personal protective equipment (PPE) to protect against one of the most common harmful factors (noise);
- retrospective claims for compensation. After the Law was adopted, an increasing number of employees applied to the labor inspectorates, the prosecutor's office and the courts, where a retrospective examination is made of the claims concerning the employers' failure to grant all three types of compensation to employees irrespective of the established sub-class of harm at certain workplaces and the need to compensate the employees for the harm done throughout the period from 2008;
- ambiguity of the transitional provisions. Social partners ambiguously interpret the provisions of the Law, under which, in the opinion of employers, Articles 92, 117 and 147 of the Russian Labor Code should apply to special assessments of working conditions after 1 January 2014, i.e., differentiated compensation should be provided for work in harmful and hazardous conditions, depending on the class of working conditions.

As a result, many key positive innovations and principles remain unrealized, and the Law has been unable to fully meet its stated goal of ensuring an optimum balance between the interests of employers and employees and of enhancing labor productivity by efficient management of human resources.

Recommendations

- ensure the rapid adoption of amendments to Federal Law No. 426-FZ, as prepared by the Russian Ministry of Labor and taking into account the proposals made by FIAC, in order to introduce "voluntary certification" of PPE and reduce the sub-class of harm;
- consider having the Ministry of Labor's official position sent to FIAC as regards retrospective claims for compensation of harmful and hazardous working conditions and on the Law's transitional provisions;
- Ministry of Economic Development should include Federal Law No.426-FZ into the Actual Impact Assessment Plan for 2017.

1.3. Financial institutions and Capital Markets

Issue 1. Forming the infrastructure of the Russian financial market and carrying on legislative activity in regulating it.

Recommendations: improvement of legislation (adoption of laws/amendments to laws):

- "On Stock Exchanges and Organized Trading"

- "On the Bankruptcy of Individuals"

- "On Economic Insolvency"

- Development of legislation to legitimize money transfers

- Preparation of a regulatory framework for the issue of foreign bonds in Russia / Russian depositary receipts

- Introduction of the "foreign nominal holder" concept into legislation

Issue 2. Recommendations for amendments to the Russian Civil Code.

The amendments to the Civil Code were drafted and introduced to the State Duma, which is considering them and adopting the amendments in parts.
According to the business community, the amendments should be adopted so that the Civil Code would clearly and unambiguously regulate and resolve the following aspects:

- fee for a loan (this is standard market practice, but currently it is rarely adhered to because of some of the latest court rulings in Russia);
- syndicated lending;
- agreements between lenders;
- agreements on subordinated loans;
- securitization and sale of loan portfolios;
- easing the regulation of bank guarantees;
- escrow accounts;
- possibility of executing contracts and passing payment documents through electronic means of communication (e.g., SWIFT);
- greater flexibility in relation to loan agreements and bank accounts: the parties to an agreement should be entitled to include various terms and obligations, which differ from the standard minimum set in the Civil Code, in it.
- the current draft amendments do not distinctly regulate the aforesaid lines and a few others. Hopefully, the draft amendments will be discussed with the business community and then sent to the State Duma.

Status

Presently stagewise amendments to the Civil Code are being implemented. Significant modifications and amendments has been already implemented to several Civil Code chapters such as general regulations of the Civil legislation, grounds for invalidity of legal transactions, powers of attorney and representation, regulatory activities for legal entities. A draft law with modifications to the Civil Code regulations on selected contract types will be prepared for the second reading. The most important for the banking sector will be amendments to the chapters on loan agreement, factoring agreement, bank deposit agreement and bank account agreement.

Status 2014-2015

Currently, there are phased amendments being introduced to the Civil Code of the Russian Federation (the Civil Code). Sections of the Civil Code covering general civil law provisions, transaction invalidity, power of attorney and representation, legal entity regulation, etc. have already been significantly amended and supplemented.

At the moment, the second reading of the draft law to modify the Civil Code provisions on certain types of contracts is being prepared. We believe amendments to chapters on loan agreement, factoring agreement, bank deposit agreement and bank account agreement to be the most essential. Some key changes worth mentioning are:

1) Regarding credit relations

- the creditor is stipulated to be entitled to refuse granting a loan because the borrower fails to perform conditions precedent, which is a very important provision setting forth the status of such conditions precedent;
- an option is established to envisage in the contract that the customer must pay the bank a certain fee (including a one-time commission) in addition to interest under the loan agreement; it is a very important provision designed to improve the negative situation with the banking fees that emerged several years ago when the Supreme Arbitration Court of the Russian Federation expressed their negative position on those fees;
- a special article on syndicated loans is added that:

Firstly, stipulates for the syndicated creditors obligation to grant the loan only to the extent of their share in the syndicate;

Secondly, specifies a rule that creditors' decisions are mandatory for all syndicated creditors;

Thirdly, it envisages an opportunity to charge the borrower with an obligation to pay a fee to the pledge manager and the facility agent.

Those are also important provisions that may bolster syndicated lending in Russia.

2) Regarding factoring agreement

Expanded opportunities to use factoring

- factoring agreement will be able to cover transfer of cash funds in the form of a loan or an advance payment;
- that agreement may provide for additional services to be provided by the factor (for instance, accounting and/or accounts receivable management and other services);
- it provides for an opportunity to partially assign receivables;
- an essential rule is introduced — modifications of the contract between the debtor and the original creditor do not apply to receivables that had been assigned before those changes were made.

3) Regarding bank deposit agreement

- an opportunity is envisaged to enter into a retail bank deposit agreement without the customer's right to accelerate deposit withdrawal. In this case, the draft law provides for the bank's obligation to offer the customer a deposit agreement that has an option for early withdrawal together with that contract.

4) Regarding bank account agreement

- one of the major amendments making the bank liable for writing the funds off the client's account even if the bank could not determine that the order to withdraw funds was given by an unauthorized person. It is necessary to find balance between interests of banks and their clients.

As mentioned, the draft law is now being prepared for the second reading, and it is very important that the legislators get to hear of the interests of the banking community take those into account. One of the platforms for such discussions is the Advisory Council on Banking and Audit Legislation at the State Duma Committee on Financial Markets. Public meetings of the Council will be an essential and indispensable element in the preparation of that draft law bill for further consideration and adoption by the Russian parliament.

Issue 3. Banking reform and the banking sector's development strategy – CBR's reports.

Bank regulation has sustained drastic changes in 2015. To change banking standards in Russia so as to align them with the preliminary findings of our evaluation, we have had to prepare more than 10 normative acts. Some of them are amended regulations, some have been designed from scratch.

The first documents to be adopted were amendments to Regulation 395-P dealing with capital measurement which removed the remaining departures from the Basel standard. The most important change is the possibility to retain, as part of capital, subordinated term loans with tenors in excess of 50 years received prior to January 1, 2013. Accordingly, term loans were removed from Tier 2 Capital, as Basel III permits only perpetual instruments to be included into Common Equity Tier 1 Capital. At the same time, we reduced capital adequacy ratios to levels stipulated by Basel agreements: 8% for Total Capital and 4.5% for Common Equity Tier 1 Capital.

The document also reduces the trigger for conversion or write-off of subordinated loans to cover losses from 5.5% to 5.125%, as required by Basel III. An important innovation is the introduction of capital adjustments, both up and down, by the difference between expected credit losses and actual credit reserves for banks authorized to apply the ARV approach set forth in Basel II. As of October, Russian banks can petition for the use of that approach to measure their credit risks and capital adequacy ratios. This is an important step ahead towards implementation of Basel II provisions. Currently, to be able to file that petition, the bank has to have assets of at least RUB 500 billion. An important feature of the ARV approach is adjustment of capital by the difference between credit reserves and expected credit losses. If the difference is negative, i.e. credit reserves exceed expected credit losses, excess reserves are eligible for inclusion in Tier 2 Capital to the extent they do not exceed 0.6% of credit risk-weighted assets. If the difference is positive, i.e. expected credit losses exceed credit reserves, it is deducted from Common Equity Tier 1 Capital.

Amendments have also been made to Regulation 346-P on measuring operating risk and its capital coverage. Then the Board of Directors of the Bank of Russia modified Instruction 139, which contains the key amendments designed to bring our credit risk and capital adequacy ratio standards into compliance with Basel requirements. The Common Equity Tier 1 Capital Ratio was preserved at 6%, as this has already been stipulated by Basel III. A number of risk weights have been revised, mostly upwards. Key changes: increase of the risk weight applied to FX-denominated credit claims against the Russian Federation and its sovereign borrowers and against the Central Bank due to the downgrade of our sovereign rating in the beginning of 2015 from 3 to 4 by OECD Scale. Another change is the cancellation of the 50% preferential ratio that we applied to natural monopolies.

We also separately designed previously unavailable provisions governing securitization transactions. Junior tranches will have to be fully covered by capital and weighted by 1,250%, both on standalone and consolidated basis. All other tranches, including junior and subsequent, if any, will have a uniform weight of 100%. By way of compensation for progressively more stringent regulations, we offered the banks some indulgences, including reduction capital ratios by 2% relative to their current levels, and introduction of two weights: 35% for best-rated mortgage loans with lowest risk exposure in terms of loan/security (≤50%) and income/payment (≥3%) ratios. Both ratios can be measured not only as of loan extension date, but also as of reporting date. A 75% weight has been introduced for small business loans which meet certain eligibility criteria – this is the lower small business segment close to the retail segment.

Another important change in accounting rules which came into effect on January 1, 2016, is introduction of special hedge accounting on the basis of IAS 39 pending implementation of IFRS 9 in two years from now.

Another equally important document is the draft amendment to Direction 2732-U regarding the criteria applicable to those depositaries where banks keep their securities. Compliance with those criteria will relieve banks from the need to create additional provisions to cover risks associated with such depositaries.

We removed the criterion related to the depositary's own credit rating or to the credit rating of the banking group to which such depositary belongs. However, we retained the possibility to recognize the depositary rating assigned by the Thomas Murray agency. In addition to that, minimum capital requirements for Russian depositaries were increased to RUB 300 million, while for foreign depositaries that figure stands at RUB 50 billion at the exchange rate in effect as of the reporting date.

Besides, the following documents were developed and adopted in the autumn of 2015: a new version of Direction 3090-U setting capital ratios for banking groups, adjustments to the procedures governing consolidation of insurance companies for the purpose of banking group capital measurement, and adjustments to the list of items to be deducted from capital. In addition to that, we introduced capital buffers at the consolidated level; this is a critically important Basel III component which comes into force in Basel Committee member states as of next year. This buffer (for which we use the term "surcharge") represents additional capital adequacy elements in excess of nominal ratios. We have three such buffers: the capital conservation buffer, the countercyclical buffer (it has already been announced that for the time being its value will be set at zero), and the GSIB surcharge. The ten global systemically important banks will have to comply with another Basel ratio, the Liquidity Coverage Ratio, or LCR.

Changes have also affected Direction 3624-U – this is the second Basel II component: requirements applicable to capital risk management systems of credit institutions comprising banking groups. Those requirements deal with measuring internal capital adequacy for purposes of interest risk and concentration risk coverage. Another document directly related to Direction 3624-U is the draft of a new direction dealing with credit institution and banking group capital adequacy and the quality of their risk and capital management systems. For now, this methodology will focus on remote evaluation of the bank compliance with the standards stipulated by Direction 3624-U. Initially, evaluation will be carried out for the largest banks with assets of RUB 500 billion or more as at the end of 2016. Accordingly, all other banks will be initially evaluated at the end of 2017, and the groups they comprise – in 2019 using 2018 year-end results.

Amendments were made to Direction 2005-U dealing with evaluation of economic position of banks subject to their concentration risk and interest risk exposures. This is also necessary to assure compliance with the Basel Committee requirements.

More changes were made to two related documents: in line with the third Basel II component (Disclosure of Risk Information), there were developed and adopted draft changes to Direction 3081-U On Disclosure of Operating Information by Credit Institutions and a new version of Direction 3080-U On Forms and Procedures Governing Disclosure by Head Credit Institutions of Banking Groups of Information on Existing Exposures, Risk Measurement Procedures, and Capital Risk Management Practices. Those documents will also come into effect as of January 1, 2016.

There were developed and adopted three directions setting forth procedures for notification of the Bank of Russia of creation of the bank holding and bank holding management company: Direction On Procedures for Risk Reporting and Disclosure of Other Risk-Related Information by Head Credit Institution of Bank Holding and Direction On Disclosure and Provision by Bank Holdings of Consolidated Financial Statements (such statements will be submitted to the Bank of Russia electronically).

Work is under way to develop a new version of Regulation 387-P on market risk measurement introducing the requirement to provide capital coverage for securitization transactions included into the bank's portfolio. The regulation also envisages imposition of additional requirements for capital coverage of option transactions, and introduces a new type of market risk – commodity risk, also to be covered by capital. Commodity risk relates to all precious metals, with the exception of gold. Of all non-FX items, currency risk will not relate only to gold. To reflect that, we have also prepared a new version of Instruction 124 On Measurement of Open Foreign Currency Position Limits. The document is currently being reviewed for eventual adoption.

Issue 4. Taxation.

4.1. Problem of FATCA in Russia and its application models.

The Foreign Account Tax Compliance Act (FATCA) (http://www.cticompliance.com/assets/pdf/FinalFATCAText.pdf) was enacted by the United States Congress in 2010. The Act is designed to make significant changes in the current tax treatment of payments made by US residents through foreign financial institutions.

The mechanism for applying FATCA requires that Russian financial institutions enter into a special agreement with the U.S. Internal Revenue Service (IRS); keep track of any accounts opened by U.S. taxpayers with Russian financial institutions and report these to the IRS; withhold 30 percent of the revenues from sources in the United States, including revenues earned by entities that fail to disclose the information required under FATCA or by non-participating foreign financial institutions, and remit the amount to the IRS.

The Association of Russian Banks (ARB) and National Payment Council Non-Profit Partnership (NPC) have repeatedly asked the Russian Government, the Ministry of Finance, the Federal Tax Service, the Ministry of Foreign Affairs, the Federal Financial Markets Service, the Federal Financial Monitoring Service and the Bank of Russia to consider the conclusion of a special intergovernmental agreement between the Russian Federation and the United States on the procedure for implementing FATCA.

In addition, to expedite the decision-making process on a model for implementing FATCA in Russia, NPC assessed Russian banks' costs in the first year after the adoption of FATCA in Russia. The findings were presented to Presidential Aide Elvira S. Nabiullina, the Bank of Russia and the Russian Ministry of Finance.

Unfortunately, no official information detailing the status of the negotiation process between the concerned state agencies of the Russian Federation and the United States and the selected mechanism for implementing FATCA in Russia has been released so far.

Since no information is available on the Russian Federation's official position and the effective date of FATCA is approaching, a number of financial institutions controlled by a foreign parent have to consider entering into agreements directly with the IRS, since under FATCA an international banking group may be considered compliant only if all its members comply with FATCA.

It should be also noted that Russian credit institutions that have correspondent banking relationships with European and U.S. partners are already getting questions from their foreign partners on how the new regime works in Russia, since a foreign correspondent bank may withhold 30 percent of all payments made to a correspondent account of a non-participating Russian credit institution held with such bank or may suspend or close such correspondent account.

The position of the Russian Ministry of Finance is that any agreements between Russian banks and the U.S. IRS and any related disclosure of information constituting a bank secret will be regarded as a violation

of Russian law (see the enclosed Letters No. 03-08-07 of 24 April 2012 and No. 03-08-05 of 20 August 2012).

At the same time, Russian financial institutions are seriously concerned about the possibility of partial withholding of payments made to them through the United States, should the Russian Federation decline to participate in FATCA.

Many countries are already actively negotiating with the United States to conclude bilateral agreements whereby any transfer of information under FATCA is made centrally through local government bodies, with the possible exchange of similar information in some cases by the United States (among countries planning to do this are Germany, France, the UK, Italy, Spain and the Netherlands). Switzerland and Japan intend to take a different approach to the information exchange with the United States under FATCA: local banks will provide information directly to the IRS along with an ad hoc exchange of information between the state agencies of these countries.

In view of what has been said and in order to avoid negative implications for Russian credit institutions, the Association of Russian Banks (ARB), the non-profit partnership National Payment Council (NPC) and the Association of European Businesses (AEB) strongly recommend that the Russian Ministry of Finance and the Bank of Russia inform credit institutions of the official position on the means of implementing FATCA.

On 10 February 2014, FIAC addressed official inquiry No. KS-1002-ib to the Bank of Russia, the Ministry of Finance and the Ministry for Economic Development, offering assistance in carrying out the following initiatives:

Providing information and recommendations in ensuring the inclusion of Russia in the list of countries which are regarded by the U.S. side as countries which entered into an information exchange agreement with the United States (taking account of the fact that less than three months remain until 25 April 2014);

Working out legislative acts and bylaws which would allow Russian financial institutions to apply the provisions of the Agreement in Russia.

In its reply No. 41-2-3-3/564 dated 11 March 2014, the Bank of Russia said:

If an agreement on the implementation of FATCA is entered into by Russia and the United States, the Russian financial institutions will not be obliged to register on the website of the US Tax Service within the same time limits as those set for the financial institutions of the countries which did not enter into such agreements.

Pursuant to §1.1471-3 (d)(4)(iv) of FATCA concerning payments made prior to 1 January 2015, US tax agents are not obliged to check the Global Intermediary Identification Number (GIIN) of the payees if the financial institution which is receiving payment reports to the US tax agent that it belongs to a country which signed an inter-governmental agreement on the implementation of FATCA.

Status 2014-2015

A) Requirements for Russian players on the financial market in connection with provisions of Law # 173-FZ dated June 28, 2014. At the present time, no intergovernmental agreement exists which could be instrumental in regulating the application of FATCA requirements. Russian banks, including Russian subsidiaries of foreign-based banks, have the opportunity to individually register with the IRS (USA tax authorities), and, under certain conditions, provide information to the IRS. In this case, the information provision format and obtaining consent of Russian competent authorities has not been developed so far.

FIAC recommendation: Persistence of the situation calls for a quickest possible additional comparative analysis of provisions of Federal Law # 173-FZ dated June 28, 2014, as well as FATCA requirements, so as to amend Law # 173-FZ accordingly, with a view to removing inconsistencies and providing opportunities for Russian banks to abide by law.

The FIAC working group sent recommendations to amend the Federal Law #173-FZ “On Specifics in Conducting Financial Transactions with Foreign Nationals and Legal Entities, on Amendments to the Russian Administrative Offences Code and Invalidation of Certain Provisions of Russian Legislative Acts” dated June 28, 2014 to the Bank of Russia to be considered on March 20, 2015.

List of proposals

1. The Law #173-FZ prevents Russian financial organizations from fully complying with the FATCA requirements, as law of the Russian Federation do not provide for an opportunity of direct debit of the 30-percent fine from the payment amounts intended for the clients as prescribed by the FATCA. The Russian financial institutions will have to impose that obligation on their payment counterparties. Moreover, the law does not stipulate for any mechanism that a bank may use to provide information regarding payment to the

withholding agent (and to identify that agent) in order to subsequently disclose the client information to the U. S. tax authorities.

Proposal

It is proposed to clarify Article 2, Part 1 of the Law #173 in order to include the following entities in the scope of the Law #173-FZ:

a) foreign taxpayers (individuals and legal entities);

b) financial organizations not registered with the IRS, i.e. non-compliant financial organizations under the FATCA (both Russian and foreign organizations);

c) organizations that failed to provide or provided incomplete set of documents to identify them but gave a waiver for disclosure of their information, i.e. “recalcitrant accounts”;

d) individual clients with foreign taxpayer indicators who failed to provide a complete set of documents to identify them but gave a waiver for disclosure of their information, i.e. “recalcitrant accounts”.

5. Pursuant to Articles 2 (Article 2, Part 7) and 4 (Article 4, Part 1) of the Law #173-FZ, in case of a reasonable assumption that the client falls into the foreign taxpayer category confirmed by documents, and if that client fails to provide the requested documents or a waiver (refusal to provide waiver) allowing disclosure of their information to a foreign tax authority, a financial market organization may decide to refuse signing a bank account (deposit) agreement with the client, refuse performance of operations for that client and/or, to the extent provided by the Law, to terminate a financial services agreement in their sole discretion by notifying the client about such a decision no later than on the day following that decision date.

It appears that a financial market organization will not have an opportunity to confirm their assumption with documents in cases when the client refuses to provide information regarding presence/absence of foreign taxpayer criteria.

Proposal

- to clarify the relevant articles order to enable financial market organizations to refuse service to foreign taxpayer and Russian Federation resident clients who refuse to provide information regarding presence/absence of foreign taxpayer criteria or criteria for any person regulated by a foreign law on foreign account taxation or a waiver allowing disclosure of information. In respect of organizations that are not registered with the IRS, assumption may only be verified by monitoring the IRS website.

6. Pursuant to the Law #173-FZ, a financial organization may terminate an agreement with a foreign taxpayer client only if they refuse to disclose their information, provide a waver allowing disclosure etc. If the client provides all the necessary information and waivers the financial organization may not refuse service to them.

Proposal

- to reinstate a provision in the Law #173-FZ that was previously part of Article 2 of the Federal Law #112-FZ dated May 5, 2014, namely, to provide for unconditional right of financial organizations to terminate/not enter into an agreement with any individual or legal entity that is a foreign taxpayer if the state of their tax residency demands the Russian financial organizations to enter into special agreement to control presence of accounts of taxpayers from that foreign state.

B) Obligatory disclosure by foreign-based players on the financial market of information on Russian corporate and individual accounts

The provisions of Article 6 of the Law are purely declarative and failing to provide for detailed understanding of requirements applying to foreign-based players on the financial market. Among the numerous unclear questions are:

- what entity is behind the definition of " foreign-based players on the financial market" for the purposes of the Law;
- what criteria underlie the list of individuals and entities whose accounts are earmarked for monitoring;
- what accounts categories are subject to the requirements;
- what kind of information on such accounts should be provided;
- what supervisory authority is to receive and in what format it is to receive information regarding clients’ accounts;

- what punitive measures are imposed under the Russian Federation law for non-compliance.

The tiresome experience of introduction of the USA FATCA provisions, in conjunction with elaborate designing and flexibility of introduction of the requirements in question, make European banking institutions concerned about the situation, caused by insufficient awareness in respect of provisions of Art. 6 of the Law, as well as the difficulties in the practical implementation thereof.

On 30 March 2015 CBR sent an official reply on FIAC's working group request from 18 February 2015.

There was also a draft of amendments to Law #173-FZ published that changed the criteria (it is not the final document). At the moment, this draft is discussed by the market participants. It was planned to finalize the discussions before the end of June. This draft may work out many issues, for example, regarding the identification.

A draft order of the Federal Tax Service on the reporting procedure for foreign financial institutions in respect of accounts of Russian citizens and organizations that was published on the website of the Government of Russia for publishing draft legislation (June 2015). This is what we call the Russian FATCA. It is the first additional information for the past 11 months. The point of the project is that the FNS provides a sufficiently detailed list of those foreign financial institutions that are required to submit information on accounts of Russian citizens and organizations; it must be done before September 30. This is a very wide range of institutions. Separately, the annex to the order mentions types of accounts, for which you need to do reporting, and it is also a wide-ranging list.

Recommendations

The situation calls for elaboration on the requirements and attitude of RF governmental authorities in respect of the application of Article 6 of Law # 173-FZ in so far as they relate to disclosure of information on Russian Federation citizens' accounts (deposits) with foreign-based players on the financial market.

Status 2016

Federal Law No. 173-FZ On Conducting Financial Operations with Foreign Citizens and Legal Entities, Amendments to the Administrative Offenses Code of the Russian Federation, and Invalidation of Certain Legislative Acts of the Russian Federation ("Law No. 173-FZ", effective date: June 30, 2014) stipulate the duty of foreign financial institutions to submit to Russian tax authorities reports on accounts opened with such institutions by citizens of the Russian Federation or by legal entities directly or indirectly controlled by citizens of the Russian Federation.

Foreign financial institutions are to submit such reports annually on or before September 30 of the year following the year during which such accounts were opened, using a form still to be developed and communicated to the stakeholders.

On December 7, 2015, there was published, on the official legal information internet portal pravo.gov.ru, Order of the Federal Taxation Service No. MMV-7-14/501@ dated November 9, 2015, On Approval of Forms to Be Used by Foreign Financial Market Institutions Situated Outside of the Russian Federation to Disclose the Details of Accounts (Deposits) Opened with Such Institutions by Citizens of the Russian Federation or Legal Entities Directly or Indirectly Controlled by Citizens of the Russian Federation (the "Order"). According to the Order, foreign financial institutions must furnish the Russian tax authorities with information about foreign accounts of citizens of the Russian Federation or legal entities directly or indirectly controlled by citizens of the Russian Federation. The Order took legal effect on December 18, 2015.

Problem

Russia has undertaken to engage in exchange of information in accordance with the Common Reporting Standard, or CRS, adopted within the framework of the Organization for Economic Cooperation and Development (OECD). However, emergence of the Order testifies to the fact that our government bodies seek to gain access to a proprietary "source" of information regardless of the CRS procedure, *inter alia*, on a unilateral basis, which, in our opinion, is difficult to accomplish, and will have pronounced adverse effect on business environment, foreign investments, and investment appeal of Russia as a member of international business relations.

We believe that it is difficult to implement such information disclosure within the assigned limited time for the following reasons:

- absence of an electronic / internet portal and an automated disclosure system;
- need to design a paper form in the Russian language for each account;
- tight disclosure implementation deadline;

- violation of local banking and other laws resulting from disclosure pursuant to the Order, and absence of relevant legal instruments, such as intergovernmental bank information exchange treaties;
- absence of clarifications or recommendations regarding the required disclosure (only the form has been published to date).

In our opinion, concurrent CRS reporting and Order reporting represents unreasonable duplication of efforts which is labor-intensive and costly both to the business community and the government bodies of the Russian Federation.

2016 Recommendations

- expediency and necessity of disclosure according to the Order using the existing form, taking into consideration implementation of CRS tax information exchange standards; and
- possibility of suspension of Article 6 of the Federal Law, taking into consideration implementation of CRS tax information exchange standards.

The above issue is critical for foreign financial institutions, *inter alia*, for the purposes of implementation of international best practices in the area of tax information exchange, and any discussions and meetings facilitating exchange of opinions on that matter will be greeted by all Foreign Investments Advisory Council members seeking to resolve the issues raised in this document.

On 15 April 2016 FIAC working group on Financial Institutions and Capital Markets sent repeated request on Minister of Economic Development Alexey Ulyukaev.

On 25 May 2016 Dmitry Volvach, Federal Tax Service, Standards and International Cooperation Division, took part in the FIAC banking working group meeting and informed that within the implementation of §6 of 173-FZ special forms in Russian and English have been issued. At this moment it's not clear how many companies will provide their reporting, because there are no penalties for non-providing information. That's why Federal Tax Service suggest to wait and observe how this reporting will function and if there will be a real need of online portal for this reporting. After implementing CRS in Russia there might be no need in §6 of 173-FZ and the FTS will support the deactivation of this §6.

Issue 5. Refinancing for SME. Forming the infrastructure of the Russian financial market and carrying on legislative activity in regulating it.

5.1. Developing the Refinancing instruments to facilitate access for Small and Medium-sized Enterprises to loans.

The cost of loans for enterprises is quite high, especially for small and medium-sized enterprises That is due to the high cost of loans for banks engaged in that segment. The cost of borrowings could be reduced for credit institutions and for the ultimate borrowers by developing the instruments of refinancing loans to small and medium-sized enterprises at the Bank of Russia and by introducing new programs, thereby promoting the development of the segment which is extremely important for economic stability.

Recommendations to resolve the problem:

Analyze the existing Instructions of the Bank of Russia which regulate that issue (work in progress) Work out and adopt the additions to them, thereby facilitating refinancing secured by instruments involving loans to small and medium-sized business enterprises.

Prepare a report and proposals at the Bank of Russia and the Ministry for Economic Development.

Ministries and bodies concerned: Ministry for Economic Development, Bank of Russia.

In late December 2013, letters were sent to the Bank of Russia with proposals on that issue.

On 17 February 2014, a report was made on that issue at the Bank of Russia.

Starting from 01.07.2014 it has been possible to close securitization deals in this segment, SME Bank acting as the investor. Currently, the deals on hand are valued at RUR 10 bn, with a view to 20 bn by 2016. The Agency of Credit Guarantees is also active, although not a single deal has been registered so far. Standardization of a credit facility agreement with an enterprise operating in the SMB sector also remains in the limelight.

Status 2014- 2015:

In the beginning of 2015 there is no progress in this issue, which is most likely related to the fact of small scale of business. In particular:

- ***MSP Bank (daughter company of VEB)*** *plans to invest up to RUB 20 bn in securitization of loans to SMEs annually after 2016. However, currently it is working on the two deals (RUB 5bn each), yet this job is in progress since early-2014.*

- ***Agency for credit guaranties to SME*** *got an injection of RUB 50 bn in its capital in June-2104, yet there is no information about deals completed. Moreover, the volume of loans to SMEs which have been guaranteed by the special state-owned funds has decreased by more than a quarter in 2014.*

The CBR's refinancing programs for SME are better than for other loans, but still not in active use due to high costs for banks.

Conclusions: The industry needs programs similar to "Funding for lending" and "Funding for growth": local monetary authorities provide local banks with purpose credit at symbolic 0.1% rate under two conditions:

1. This loans will be issued to finance needs of SMEs, with a possible highlight on investment needs; and
2. The margin that the bank is allowed to charge cannot exceed 500bps, so the ultimate rate cannot exceed ~5% annual rate with all the commissions on this loan.

The design of the scheme could be amended with details and changed to better reflect CBR needs and goals, the mentioned above could serve as a starting point.

Issue 6. Banking secrecy regulation.

Presently, banking secrecy issues are regulated by the provisions of Article 857 of the Civil Code of the Russian Federation and Article 26 of the Federal Law "On Banks and Banking Activities." Article 857 of the Civil Code provides for the following rule, "Information protected by banking secrecy may only be provided to customers themselves or to their representatives, as well as presented to a credit bureau on the grounds and in the manner prescribed by the law. Government authorities and their officers may only have such information provided in cases and according to the procedure prescribed by the law." Therefore, the current version does not enable transfer of banking secrecy data to other persons with the customer's consent.

This legal gap limits development of banking services in the Russian Federation due to the following reasons:

First of all, many customers (both foreign- and Russian-based) chose to centralize treasury functions within a group of companies. On the one hand, it enables greater cash flow manageability from the group's parent company, and, on the other hand, helps to cut corporate administrative costs to maintain individual treasuries for each company.

Secondly, for many structured bank products (for example, syndicated lending), it is necessary to transfer information protected by banking secrecy among entities participating in providing such products to the customer (for instance, between the bank servicing the borrower's account and the lender banks).

And, thirdly, in the current environment, many banks (both foreign- and Russian-based) strive to reduce their administrative costs to cut the cost of bank products for their customers, and they consider outsourcing some technical functions (for example, IT or archiving) to professional service companies.

We would like to draw your attention to the fact that the customer has information classified as banking secrecy in the meaning of the Federal Law "On Information, Information Technologies, and Information Protection", and that they should be entitled to dispose of that information at they think fit.

Recommendations

With this in mind, we suggest that it should be made possible to transfer any information protected by banking secrecy to other persons with the customer's consent or at the customer's request in the laws of the Russian Federation the ability, namely, to revise Article 857, clause 2 of the Civil Code to read as follows:

"Information protected by banking secrecy may only be provided by customers themselves or by their representatives, as well as presented to a credit bureau on the grounds and in the manner prescribed by the law. **Information protected by banking secrecy may also be provided to other parties with the consent of the customer.** Government authorities and their officers may only have such information provided in cases and according to the procedure prescribed by the law."

Issue 7. Changes in the legislation on Personal Data (Law № 242-FZ dated 21.07.2014).

Federal law 242-FZ – challenges for business.

Banking community expresses its concern with the adoption of the Federal Law "On Amendments to Selected Legislative Acts of the Russian Federation with Regard to Clarification of Data Processing of Personal Data across Information and Telecommunications Networks" # 242-FZ dated 21.07.2014 (hereinafter, the "**Law**"). The Federal Law # 152-FZ dated 27.07.2006 "On personal data" in its current versions covers all operators of personal data without any exceptions which effectively means that all Russian and foreign companies operating in the Russian Federation will have to company with the Law.

Moreover, Federal Law # 526-FZ dated 31.12.2014 "On amendments to clause 4 of the Federal law "On Amendments to Selected Legislative Acts of the Russian Federation with Regard to Clarification of Data Processing of Personal Data across Information and Telecommunications Networks" which entered into force on 31.12.2014 has sped up entering of the Law into force. According to the amended Law operators of personal data will have to comply with the new requirements to storage of personal data of Russian citizens from 1 September 2015 already.

We believe that these initiatives may result in deterioration of the investment climate in Russia due to a conflict with the requirements of common world market practices, infringement of the rights and interests of end-users (citizens of the Russian Federation), and significant logistical costs that are expected burden corporate investors. Following a number of meetings and discussions regarding the above-mentioned Law, many companies have highlighted a number of legal, economic and technical issues that may arise in connection with entering of the law into force on 1 September 2015.

We deem it necessary to clarify the procedure for and the scope of application of the Law. In case the legislator aimed to introduce specific requirements regarding personal data processing in Internet, then the Law requires certain amendments to limit its application to the designated purview. Also following the changes to the personal data protection legislation it may make sense to revise the definition of personal data which is currently formulated too broadly.

Status 2015

In February 2015 FIAC working group sent a request on Bank of Russia regarding the implementation of the Law for banking sector. On 3 March 2015 a meeting took place with Artem Sychev, Deputy Head of the Bank of Russia's Chief Directorate of Information Security and Protection. It was decided that banking community will provide with list of practical questions that will be forwarded to Roskomnadzor for further execution.

Roskomnadzor organized a meeting for foreign associations operating in Russia. AEB provided list of 54 questions regarding implementation of 242-FZ.

Status 2016

Pursuant to Federal Law 242-FZ, the Central Bank, subject to the provisions of Regulation 397-P, requires foreign banks to place and store their databases in the territory of the Russian Federation.

The Working Group of the European Business Association on enforcement of Federal Law 242-FZ has prepared a letter to the Central Bank requesting to elaborate on paragraph 1.2 of Provision 397-P, and hold a meeting with representatives of the banking community.

We received a reply letter from the Central Bank of the Russian Federation, signed by Alexey Yu. Simanovsky, exhorting strict compliance with existing legislative norms and Central Bank instructions.

We intend to hold a round of consultations within the banking community and, possibly, prepare another letter to the Central Bank of the Russian Federation requesting a meeting to discuss that matter.

7.1. Localization of Data basis.

Direction of the Bank of Russia No. 3753-U dated August 7, 2015, *On [Amendments to] Regulation of the Bank of Russia dated February 21, 2013, No. 397-P "On Procedures for the Creation, Maintenance and Storage of Electronic Databases* (the "Direction"), which came into effect in September 2015, instructs credit institutions that electronic databases containing information about the assets and liabilities of credit institutions and the movement of such assets and liabilities, as posted to analytical and synthetic account registers, should be maintained in the territory of the Russian Federation. The explanatory note to the Direction says that the amendment in question is necessitated by adoption of Federal Law dated July 21, 2014, No. 242-FZ, regarding localization of databases containing personal data of citizens of the Russian Federation.

Concurrently with that, implementation of the Direction (*in the absence of additional clarifications from the Bank of Russia*) may give rise to situations where credit institutions will be obliged to move databases to Russia even if such databases do not contain personal data of citizens of the Russian Federation, or if personal data localization demands do not apply based on clarifications provided by the Ministry of Communications of the Russian Federation and the Federal Service for Supervision of Communications, Information Technology and Mass Media of the Russian Federation. Therefore, the Direction imposes stricter demands on credit institutions that it does on the other parties to civil transactions.

Proposal: conduct a meeting and consider the possibility of issuing clarifications on application of paragraph 1.2 of Regulation No. 397-P dated February 21, 2013, as amended by Direction of the Bank of Russia No. 3753-U dated August 7, 2015.

On 25 May 2016 Larisa Mamolina, Central Bank, Credit Institutions Licensing and Financial Rehabilitation Department took part in the FIAC working group meeting and updated the group on CBR's position regarding Regulation 397-P. She clarified the term of database: § 41 of Law on Banks and Banking says that databases should reflect all completed operations and other transactions executed by the credit institution, any base of the credit institution that reflects all those operations. As for how banks maintain it, whether it is distributed, or whether there is only one database or there are several databases – there are no specific CBR regulations in that respect. Banks define what they understand by a "database". In CBR's understanding, it is about bases reflecting data stipulated by the existing legislation, first and foremost. After the meeting with foreign banking community representatives Bank of Russia is actively working on issuing of official interpretations. CBR is also considering publication of this document when ready. At the moment it's not clear in what form it will be provided, and if banks with foreign equity participation will enjoy any special terms – the document is at the stage of coordination of official explanations and all departments involved in their preparation are providing their comments. But on 13 July 2016 AEB received letter from CBR's deputy Chair Simanovsky with strict recommendations to follow the current version of Regulation 397-P.

The FIAC banking working group intends to raise this issue during FIAC ExCo in October and is preparing recommendation for final Communiqué.

Issue 8. Unilaterally Accounts Closure .

This issue was raised at the meeting of S.E. Naryshkin, Chairman of the State Duma of the Russian Federation, with the members of the Investment Council on 12 March 2015. On 29 April 2015 FIAC working group on Financial Institutions and Capital Markets sent an official request to the State Duma Chairman on regulations on accounts closure. On May 26, we received a reply from the Duma's Civil Law Committee. The Committee took note of our request and will take it into consideration while working on the changes to the second part of the Civil Code. We mentioned certain disadvantages, risks for the banking community due to the fact that the opportunities for unilateral closure of accounts were very limited. We can form a small banking sub-group regarding this issue for the purpose to prepare proposals.

There exists some uncertainty with respect to the current procedure for the closure of "inactive" bank accounts with non-zero balances, and with respect to the procedure in accordance with which the bank can exercise its right to unilaterally terminate a bank account agreement.

In particular, the current version of paragraph 1.1 of Article 859 of the Civil Code of the Russian Federation authorizes the bank to unilaterally repudiate a bank account agreement, if all of the following conditions are met at the same time:

(1) the balance of the customer account is equal to zero for a period of 2 years;

(2) no operations are conducted with the customer account for a period of 2 years;

(3) the customer has been notified in writing of the need to replenish its account;

(4) no funds have been credited to the account for a period of 2 months after such notice has been served.

Even though paragraph 1.1 of Article 859 of the Civil Code of the Russian Federation says that the parties may stipulate otherwise in the agreement, in practice there exists uncertainty as to the extent of freedom that the parties may enjoy in terms of contractual regulation of agreement termination procedures.

There are at least two different constructions of the wording of paragraph 1.1 of Article 859 of the Civil Code ("unless otherwise stipulated by the agreement"). One construction is that this provision only permits the parties to set a short period for repudiation of the bank account agreement and/or set a minimum account balance. The other construction is that the wording "unless otherwise stipulated by the agreement" forbids the bank to reduce the period for repudiation of the agreement or otherwise modify the terms of the agreement, but merely authorizes the bank to waive its unilateral repudiation right.

Therefore, there currently remains some uncertainty regarding the extent of freedom enjoyed by the parties in terms of contractual procedures governing unilateral termination of the bank account agreement at the initiative of the bank.

Recommendations

The current version of Article 859 of the Civil Code of the Russian Federation materially restricts the right of the credit institution to unilaterally terminate the bank account agreement, *inter alia*, with respect to "inactive" bank accounts where no operations are conducted, and the customers cannot be reached. According to the existing legislation, in such situations the bank continues to bear a public duty to service such accounts regardless of whether they generate any cash flows, which entails incurrence of unavoidable perpetual costs.

The amendments that we propose are designed to expand the freedom of contract in relations between the credit institution and its corporate customer. In particular, they authorize the parties to incorporate into the bank account agreement the right of the bank to unilaterally terminate such agreement on the terms set forth therein. There are separate procedures governing non-zero-balance accounts and protecting customer funds.

On October 27, 2015, the Banks and Financial Markets Group of the Foreign Investments Advisory Council sent to N. N. Gonchar, Chairman, State Duma Committee on Financial Markets, a letter with detailed proposals regarding amendments to be introduced to Article 859 of the Civil Code of the Russian Federation regarding termination of bank account agreements, and to Direction of the Bank of Russia dated July 15, 2013, No. 3026-U. Unfortunately, no response from the State Duma of the Russian Federation has been received to date.

On 18 May 2016 a meeting of FIAC banking group representatives with Russian Ministries took place in MinEc chaired by Igor Koval. The main topic was Accounts closure. Thereafter the discussion on modification of §859 of the Russian Civil Code continued on 25 May 2016 at the FIAC banking working group meeting attended by representatives of Russian Authorities. Deputy head of legal department of Central bank Andrey Borisenko commented on the working group’s proposals on modification of the §859 of the Russian Civil Code. After that meeting FIAC working group updated their proposals and sent new version to the State Duma, CBR, Ministry of Economic Development. On 3 June Annett Viehweg, chair of the banking working group, delivered a report on unilateral accounts closure. The list of instructions after the FIAC ExCo signed by First Deputy Prime-Minister of Russia Igor Shuvalov included following: on Russian Ministry of Finance (A.G. Siluanov) Russian Ministry of Economic Development (A.V. Ulyukaev) - Together with the Bank of Russia and the banking community, analyze whether it is advisable to simplify the procedure for the unilateral closure of accounts by credit institutions. Report the results to the Government of the Russian Federation by 1 October 2016.

This issue will be raised at the FIAC Plenary session on 17 October.

8.1. Closure of dormant accounts, limitations of operations imposed on that accounts by tax authorities.

As banks attempted to close "dormant" (inactive) legal entity accounts, there emerged a conflict between the right of the bank to close an account and operating restrictions imposed on such accounts by tax authorities in the form of suspension of operations.

We define "dormant" (inactive) accounts as legal entity accounts where no operations have been conducted for several years, the customer is not present at the location of its registered office (but the relevant record has not been deleted by tax authorities from the Uniform State Register of Legal Entities), the customer cannot be reached and does not furnish any updated information or documents, thereby committing a material breach of the bank account agreement and preventing the bank from fulfilling its public duty to identify its customers, *inter alia*, by establishing their location and updating their information from time to time, as provided by Federal Law No. 115-FZ *On Countering Money Laundering and Terrorism Financing* (the "Law").

In situations stipulated by the existing legislation, in particular, Article 859 of the Civil Code of the Russian Federation and paragraph 5.2 of Article 7 of the Law, and pursuant to the bank account agreement, the bank has the right to close a bank account.

If such account has a non-zero balance, its closure involves an expense operation, specifically, the transfer of such balance to the customer, to a special account with the Bank of Russia, as provided by paragraph 3 of Article 859 of the Civil Code of the Russian Federation and Direction No. 3029-U dated July 15, 2013, *On the Special Account with the Bank of Russia*, or to a deposit account with a notary public. However, completion of such expense operation in a situation where account operations have been suspended by a tax authority is a tax offense according to Article 134 of the Tax Code of the Russian Federation, and an

administrative offense according to Article 15.9 of the Administrative Offenses Code of the Russian Federation.

Pursuant to paragraph 9.1 of Article 76 of the Tax Code of the Russian Federation, suspension of operations with the bank account of a corporate taxpayer may be lifted in situations listed in paragraphs 3.1, 7-9 of the said article and in paragraph 10 of Article 101 of the Tax Code of the Russian Federation, specifically, following submission to the tax authority of a tax declaration or other documents, submission by the taxpayer of a request to lift the suspension due to balance overrun, submission by the taxpayer of other collateral to secure proper execution of the tax authority resolution imposing the suspension, and collection of appropriate taxes, penalties, or fines.

Taking into consideration the fact that the legal entities in question are not conducting any operations, nor can they be found at the locations stated as their registered offices, there is little, if any, probability that the taxpayer will present any of the documents described above. As for the tax authorities, they oftentimes fail to take active steps to collect taxes, initiate bankruptcy or liquidation proceedings, or strike the legal entity off the Uniform State Register of Legal Entities for reasons listed in Article 21.1 of Federal Law *On State Registration of Legal Entities*, limiting themselves to suspension of taxpayer account operations.

As a result of inactivity on the part of both representatives of such legal entities and tax authorities, the bank finds itself in a situation where it has the right to close the account held by such customers, and is interested in doing so as to be able to discharge its KYC obligations and reduce its operating costs, but it cannot do that, as several years ago it was instructed by the tax authority to suspend account operations, but that instruction was not followed by any further action by such tax authority. If the bank exercises its right, it will be in violation of tax legislation, and may be held liable in accordance with such legislation.

Recommendations

In our opinion, this situation needs to be resolved at the legislative level.

According to Article 76 of the Tax Code of the Russian Federation, the resolution to suspend account operations is designed to enable the tax authority to duly perform its tax supervision functions. We believe that the following reason for the lifting of the suspension, if introduced to the Tax Code of the Russian Federation, will not in any way prejudice those functions, while enabling banks to eliminate "dormant" accounts:

1. If more than three years have passed since the tax authority originally resolved to suspend account operations, and during that time the bank has not received from the tax authority any collection orders instructing it to debit funds from the customer account with a view to pay taxes or effect other mandatory payments, or by way of penalties in connection with imposition of tax or administrative liability (the period of limitations for tax liability is 3 years, as stipulated by Article 113 of the Tax Code of the Russian Federation; the period of limitations for administrative liability for tax offenses is 1 year, as stipulated by Article 4.5 of the Administrative Offenses Code of the Russian Federation; the maximum period covered by a field tax audit is 3 years, as stipulated by Article 89 of the Tax Code of the Russian Federation).

If for some reason the running of the period of limitations for tax or administrative liability was suspended, and the tax authority intends to renew withdrawal of funds from the customer account to pay taxes or effect other mandatory payments, the court may order return of the cash funds deposited with a notary public.

Status: On March 14, 2016, the FIAC working group on Financial Institutions and Capital Markets sent an official enquiry, complete with specific proposals, to the Ministry of Finance of the Russian Federation. On April 18, 2016, a formal response was received from the Tax and Customs Tariff Policy Department of the Ministry of Finance of the Russian Federation.

On 25 May 2016 the FIAC working group meeting Dmitry Volvach, Federal Tax Servises representative recommended to send to MinFin concrete proposal to implement a mechanism where the suspension matter will be classified as urgent. On 6 September 2016 the FIAC working group sent an official request to MinFin (Moiseev).

Issue 9. Ban for state-owned companies to keep liquidity in non-state banks.

The banking community is concerned with the discussions held at the level of the Russian government in respect of selection criteria for banks authorized to accept deposits from some of the state-controlled companies. The Association of European Businesses and the FIAC calls for the Russian government to avoid any discrimination of the Russian banks with foreign capital.

Foreign banks participating in the FIAC working group, as well as members of the Association of European Businesses also worry that they may be left out of that list regardless of the fact that they have the highest credit ratings among the banks operating within the Russian Federation.

As experience confirms, stable and uniform rules both for national and foreign banks operating in a country are a key to successful long-term foreign direct investments and clients' confidence in banking. Actually, Russian subsidiaries of major global companies need both local and foreign partner banks to pursue full-fledged activities in the country.

The Association of European Businesses and the FIAC calls for the Russian government to avoid any discrimination of the Russian banks with foreign capital that would adversely affect the development plans of FOREIGN investors in Russia.

It is worth mentioning that the volume of loans granted by foreign-based banks and their Russian subsidiaries to the Russian state-owned companies BY far exceeds the volume of liabilities ATTRACTED FROM the same category of clients. Global banks' ability to support Russian companies with credit resources on favourable terms will be significantly impacted by removing Russian subsidiaries of global banks from the list of authorized providers of such services.

In October 2015 Association of European Business sent an official letter to First Deputy Prime-Minister I.Shuvalov regarding the intention of the Government to forbid state-owned companies to keep their liquid funds in foreign banks. On 19 November 2015 in its response to the query initiated by the AEB and banking community the Financial Policy Department of the Ministry of Finance said that requirements applicable to credit institutions where business companies strategically important for the defense industry complex and national security of the Russian Federation and companies directly or indirectly controlled by the state may keep their accounts are stipulated by Federal Law dated July 21, 2014, No. 213-FZ. Pursuant to part 3 of Article 2 of Federal Law 213-FZ, the Central Bank publishes on its web site a list of credit institutions which meet the requirements set forth in Federal Law 213-FZ. The list includes subsidiary credit institutions of foreign banks. The Federal Law does not envisage any restrictions on the financial operations with foreign banks.

Issue 10. Improvement of access to finance to SMEs.

In the context of the overall situation with small business in the country, we encounter figures and declarations, and measures undertaken by various structures. Generally, small business must develop in accordance with a strategy which has not yet been adopted, but has been circulating in the public domain for quite some time. And the figures mentioned there are optimistic: SME turnover is to grow two and a half times relative to 2014, while by 2030, fifteen years from now, the share of SMEs involved in processing industries is to go up to 20%, while the share of SME employees in total workforce should increase to 35%. Another strategic target is the doubling of the GDP share attributable to SMEs from 20% to 40%. Let us not forget that those enterprises employ an impressive percentage of total population – eighteen million people. There are many proposals as to how we can improve the situation for small businesses – reduce the number of audits and examinations, streamline laws and regulations, grant access to guarantee arrangements. There was a report delivered by Boris Titov, and The Book of Complaints and Suggestions of Russian Business now lists 231 systemic problems and 440 proposals as to how those problems can be resolved. However, actual small business lending figures for 2014 and 2015 still do not show any headway. Thus, in 2014 the total amount of small business loans went down by 5%, in 2015 by another 27% – and that does not include individual entrepreneurs. Total loans extended to individual entrepreneurs last year plummeted by 47%.

Now, what would be suggest, given this background? We met with all key stakeholders, including the Central Bank, the Ministry of Economic Development, and the Small Business Development Corporation. And we suggested that they use our experience, as all documents that we have tried to examine contain plans regarding development of various small business lending standards that would make it easier for small businesses, and individual entrepreneurs to access financial resources offered by banks.

We joined the Ministry of Economic Development Working Group so as to gain a better understanding of the situation and offer them our insights. In June the Central Bank plans to issue directions regarding the list of mandatory standards for microfinancing organizations. We are prepared to help develop standards for microfinancing organizations by lending a system-wide perspective.

Then they will create a group comprising SROs (there are two of them now), representatives of microfinancing organizations and the Ministry of Economic Development, and we will be happy to become a part of that group and design those standards. So if any of our members, our experts is willing to take a more active part, we, naturally, will be happy to share our expertise and invite those people. And we will keep you posted about our progress.

1.4. Improvement of Tax Law

In 2015 and 2016, the working group for the improvement of tax law focused on two issues. Moreover, the group has received a number of new issues for consideration recently.

Issue 1. Centralized cost allocation for multinational corporations.

The working group proposed that a provision be entered in the Russian Tax Code allowing expenses transferred under a cost allocation agreement from a foreign company to a related Russian legal entity, classified as a major taxpayer, to be treated as costs for profits tax purposes. This will enhance Russia's investment appeal, improve its investment climate and contribute to higher tax revenues due to the emergence of a large number of subdivisions of major foreign companies in Russia.

Recommendations

The working group drafted amendments to the Russian Tax Code.

Status

The issue is currently under review by the Ministry of Finance and the Ministry for Economic Development. A number of meetings with the representatives of the Ministry of Finance and the Ministry for Economic Development was held in 2015 and the opinion of FIAC members was outlined in detail. Proposals on phased implementing of such practice in respect of the transactions performed in Russia are currently being considered.

A possibility of implementing a similar mechanism through the Russian transfer pricing legislation is currently on the agenda.

Issue 2. Assets tax.

Federal Law No. 366-FZ of 24 November 2014 introduced clause 25 to Article 381 "Tax Exemptions" whereby organizations are exempt from taxation of movable property registered as fixed assets from 1 January 2013, except for movable property registered as a result of asset transfer between entities deemed to be interrelated in accordance with the provisions of clause 2 of Article 105.1 of the Russian Tax Code.

Many corporations and/or group holdings have specialized companies whereby technological equipment is acquired for all the companies of a group.

Under the new legislative provisions, all equipment acquired from such related companies of a group beginning from 1 January 2013 should be deemed subject to assets tax as of 1 January 2015.

Hence, that provision worsens the taxpayers' position if manufacturing equipment is acquired from such a specialized company of a group.

Recommendations

Introduce amendments to Article 381 so as to exclude that provision from the Russian Tax Code.

Status

The issue is currently under review by the Ministry of Finance and the Ministry for Economic Development.

Proposals from the companies

Issue 1. Trend towards tightening tax control over transactions performed by Russian subsidiaries of international companies.

Recent amendments to the Russian tax legislation are a big step forward as they have introduced a number of new concepts and institutions, including rules on controlled foreign companies, tax residency rules for legal entities and the concept of a beneficial owner, as well as transformed the national transfer pricing rules and more. In addition, there are extensive opportunities for Russian subdivisions of foreign companies to drive their inorganic growth strategies through acquiring novel or upgraded plants that have innovative capabilities. As multinational corporations with subdivisions in Russia have grown bigger in scale and more complex, Russian assets are increasingly viewed as an essential component of a global supply chain.

However, the tax authorities tend to believe that transactions are entered into primarily for the purposes of reducing the tax burden. It is a common practice for the tax authorities to assess additional taxes after challenging the economic substance of transactions. In certain cases, the tax authorities make such decisions relying on approaches that are not stipulated in the Russian tax legislation but are only recommended by the OECD or other regulators. This gives rise to tax risks that cannot be taken into account by investors and have an adverse effect on the investment environment.

Recommendations

Develop a special regulatory document containing simple and clear rules for the tax treatment of business activities associated with integration processes across different areas (including, but not limited to, sales and distribution, logistics and supplies, human resources, outsourcing and corporate actions) with a focus on the economic inexpediency rules.

Issue 2. VAT refund in exports of agricultural products.

Difficulties with the refund of value added tax (VAT) represent a major obstacle encountered by almost all agricultural processors and exporters. The problem is that agricultural producers applying a simplified taxation scheme (Unified agricultural tax (UAT)) are not considered as VAT payers. Taking into account that the UAT application represents a right, rather than an obligation, of agricultural producers, two tax schemes are used in practice whereby UAT payers are exempt from VAT. Initially, it was assumed that since VAT is included in the selling price, farms will transfer to UAT to sell grain, meat, etc. exclusive of VAT, i.e. at prices that are lower by 10% (VAT rate for agricultural products), and their counterparties (processors) will pay VAT only on additional value generated in the course of processing. However, in practice agricultural producers applying UAT do not reduce the selling price by the VAT amount. Therefore, processors and exporters purchasing raw materials directly from a UAT payer at a price effectively overcharged by 10% are not entitled to input VAT offset and should pay this tax twice: for themselves and for suppliers of raw materials.

Under these circumstances, the introduction of UAT in 2004 gave rise to a scheme of settlements with the assistance of fly-by-night companies acting as intermediaries that do not produce anything and only buy raw materials from farms for the purpose of reselling them. Technically, VAT should be paid by these intermediaries, but in practice they operate during one agricultural season and disappear without paying VAT to the budget. As a result, processors and exporters risk to never receive VAT refund after buying raw materials from such a reseller, given that their capabilities of running checks on counterparties are limited and incomparable with those of the tax and law enforcement authorities.

Moreover, even detailed checks on counterparties cannot safeguard processors and exporters against disputes with the tax authorities with regard to VAT refund, as the tax authorities give increased scrutiny to each VAT refund application due to the mentioned risk and often VAT is refunded only based on the court decision. Additional VAT charges may amount to tens of millions of rubles.

This situation has an extremely adverse effect on the development of agriculture and agricultural processing, significantly takes away from the investment appeal of these economy sectors and leads to apparent budget losses. The problem has been repeatedly brought up by agricultural producers, processors and exporters. President of the Russian Federation has given a number of instructions with regard to this issue, but unfortunately, it still persists. On 25 March 2016, in follow-up to the 7th Congress of the Chamber of Commerce and Industry, President of the Russian Federation gave another instruction to ensure the introduction of amendments to the Russian legislation providing for a simplified VAT deduction procedure for the taxpayers exporting goods other than raw materials.

Recommendations

To resolve this problem and simplify the VAT payment verification procedure throughout the chain of counterparties, foreign investors operating in the agricultural processing and export industries suggest considering amendments to the Tax Code of the Russian Federation in order to recognize companies paying UAT as VAT payers. This will help to rule out the possibility of any VAT manipulations by unfair dealers and ensure consistent VAT assessment and payment throughout the supply chain, from agricultural producers to final consumers.

Issue 3. Need for stable legislation and predictable rules of changing the tax burden on foreign investors in Russia, including excises.

We are currently witnessing attempts to increase the tax burden on business, including a higher excise tax on brewery production and its subcategories, as a means of boosting state revenues. One example is the ongoing discussion of a possible increase in the excise rate for beer-based beverages to RUB 32 per liter of finished product (the current rate is RUB 20) as well as a rise in the rate for beer by 30%.

Such a pressure on entrepreneurial activities is not only a heavy additional financial burden on business in a period of economic instability, making long-term planning impossible for business entities due to the unpredictability of such increases, but also goes against the promise President Putin made in his address to the Federal Assembly in December 2014 not to increase the tax burden before 2018.

An increase in excise tax on brewery production and its subcategories would inevitably deal a blow at scrupulous manufacturers and would create more favorable conditions for the “shadow” production of

excisable goods, invariably putting transparent legal businesses that always pay taxes at a disadvantage. The excise system suffers from sharp and significant increases in rates and requires long-term planning.

Because of unpredictable regulation and the disproportionate growth of the excise rate, only the brewery industry lost 61,000 jobs (another 1.51% of unemployed population), with GDP decreasing by RUB 59 bln or by 0.09 pp. The negative indirect effect (related industries) amounts to around RUB 38 bln (according to a study of the Gaidar Institute for Economic Policy).

Such a negative effect is actually attributed to the fact that the decision to tighten regulations for beer production and to increase the excise rate was not adequately analyzed. Between 2007 and 2015, the excise rate on beer increased by a factor of ten, and beer production in Russia between 2007 and 2014 has fallen 40%, from 1,147 mln dal to 816 mln dal. And the trend persists. Consumers are switching to surrogates and cheap hard alcohol, and the state is losing billions in excise revenues. Production volumes are coming down, while budget revenues have decreased at all levels. Budget losses with regard to the brewery industry have amounted to tens of billions of rubles.

Recommendations

Do not support proposals to increase the tax burden, including an increase in the excise tax rate for brewery production and its subcategories. Keep the excise tax rates for brewery production in 2017 and 2018 at the 2016 level in order to improve and stabilize the development trends of the brewery industry and boost tax revenues while addressing the public health concerns.

1.5. Health care and pharmaceuticals

Issue 1. Protection of intellectual property (IP) rights to brand-name (reference) pharmaceuticals.

1.1. Violation of intellectual property rights to brand-name (reference) pharmaceuticals as a result of the premature release of generics onto the market.

Actions taken by a manufacturer of generics to prepare for market entry (not on an industrial scale), including the submission of documents to the Russian Ministry of Health to register a generic before the patent expires, do not constitute infringements of exclusive rights. Russia's Supreme Arbitration Court has ruled that preparations for registration, including state registration, of a generic drug are not a patent violation (Ruling No. 2578/09 of the Presidium of the Supreme Arbitration Court of the Russian Federation of 16 June 2009).

Unscrupulous manufacturers of generic drugs may thus freely enter their drug in the state register, and then, if the drug is listed as a vital and essential drug (VED), register the maximum manufacturer's price (Article 61 of the Federal Law "On the Circulation of Drugs") and release the drug onto the market at their own risk before the patent expires, taking advantage of the judiciary system's imperfection in the area of patent litigation.

Such actions by unscrupulous manufacturers have to do, among other things, with the unavailability of information on the state registration of drugs, meaning that rights holders cannot obtain the relevant information in time to file suit at an early stage if the registration of new drugs violates their patent rights. At the same time, Article 37 of the Federal Law "On the Circulation of Pharmaceuticals" requires an authorized federal executive body to post information on the state registration of drugs, including expert examinations, on its official website. Literally, it means that the information on the state registration of medical drugs should be accessible to all on the Internet, like the database on registered medical drugs. However, under clause 7 of Order No. 747n of the Ministry of Health and Social Development of 26 August 2010 "On Approval of the Procedure and Time Limits for Posting Information on the Official Website of the Ministry of Health and Social Development of the Russian Federation," the drug registration database can be accessed only by applicants, which we believe is contrary to the letter of the law.

Recommendations

1. Certain information must be made available during the stages of registration in order to protect intellectual property rights. For this purpose, amendments should be made to Order No. 747n of the Ministry of Health of 26 August 2010, which determines what information is to be made available during registration. Part 3 of the order should be amended as follows to give access to <u>all</u> concerned parties:

<u>Current version</u>

3. The registration database for pharmaceuticals is used to provide automated information support at each stage in the state registration of pharmaceuticals and also to provide up-to-date information to pharmaceutical developers or legal entities authorized thereby that have applied for the state registration of pharmaceuticals (hereinafter, "applicants").

Proposed amendments:

3. The registration database for pharmaceuticals is used to provide automated information support at each stage of the state registration of pharmaceuticals and also to provide up-to-date, publicly available information to pharmaceutical developers or legal entities authorized thereby that have applied for the state registration of pharmaceuticals (hereinafter, "applicants") as well as to other concerned parties.

In addition, Part 4 (e) should be amended as follows to include draft instructions on the use of pharmaceuticals in the list of available information:

e) the international generic name or chemical name of a pharmaceutical as well as draft instructions on the use of a pharmaceutical being registered (for generics);

Since such instructions become public after registration, the availability of drafts should not raise any objections on grounds of confidentiality. Such instructions include an "ingredients" section and other sections that may be needed to determine whether a patent has been violated.

2. Additional measures

Note: The proposed mechanism should apply, first and foremost, to "primary" patents (i.e. patents for a molecule, substance or combination of substances).

Step 1. Create a registration database (giving all concerned parties access to information on registration applications and their current status).

Step 1a. Developers of brand-name (reference) drugs shall notify the Ministry of Health of existing patents (such notification may be sent when applying for registration or later).

Step 2. If an application is submitted for the registration of a generic, and the generic's release on the market could violate the developer's patent, the developer shall notify the Ministry of Health of a potential patent violation.

Step 2a. The Ministry of Health shall ask a company registering a generic to verify that registration will not violate the drug's patent. The company shall submit its conclusion (attaching such evidence as the opinion of a patent attorney or the Federal Service for Intellectual Property, Patents and Trademarks). This verification shall be sent to the Ministry of Health and, where possible, to the developer (or only to the ministry, with the concerned parties being subsequently notified). This request may be made at the stage when the Ministry of Health instructs a federal state-funded institution to do an expert quality (risk-benefit) analysis.

Step 3. When the expert quality (risk-benefit) analysis has been completed, the Ministry of Health shall make a decision on registration (within five days). A generic cannot be registered without the verification stipulated in clause 2a. If a developer initiates court proceedings, registration may be suspended for up to six months (or less if a court decision is handed down).

3. For the purpose of developing an effective mechanism for protection of intellectual property rights to pharmaceuticals, Health Care and Pharmaceuticals Working Group of the Foreign Investment Advisory Council under the Government of the Russian Federation proposes to supplement Federal Law No. 61-FZ "On the Circulation of Pharmaceuticals."

Actions taken by a manufacturer of generics to prepare for market entry, including the submission of documents to the Russian Ministry of Health to register a generic before the patent expires, do not constitute infringements of exclusive rights. Russia's Supreme Arbitration Court has ruled that preparations for registration, including state registration, of a generic drug are not a patent violation (Ruling No. 2578/09 of the Presidium of the Supreme Arbitration Court of the Russian Federation of 16 June 2009).

Consequently, unscrupulous manufacturers of generic drugs may thus freely enter their drug in the state register, and then, if the drug is listed as a vital and essential drug (VED), register the maximum manufacturer's price, and then release the drug onto the market at their own risk before the patent expires, taking advantage of the judiciary system's imperfection in the area of patent litigation.

In many countries, the registration of a drug is not a patent violation, while all subsequent actions, such as price registration, entry in a preference list, etc., are patent violations.

Proposed solution:

- establish that an applicant's state registration of the maximum manufacturer's price of VEDs is regarded as putting into public circulation.

1.2. Improvement of the rules for protecting the findings of pre-clinical and clinical studies. Unlawful commercial use of the findings of pre-clinical and clinical studies submitted by an applicant for drug registration.

In acceding to the WTO, Russia made a commitment not to allow a generic to be released on the market for six years after a brand-name (reference) drug is first registered, unless an applicant for the registration of a generic can provide either its own data meeting the requirements for the registration of a brand-name (reference) drug or the consent of the holder of the brand-name (reference) drug's registration certificate. This commitment is reflected in Article 18.18 of Federal Law No. 61-FZ "On the Circulation of Pharmaceuticals." However, the Ministry of Health's subordinate acts, which establish the procedure for the state registration of drugs, fail to consider this article.

According to Federal Law No. 61-FZ "On the Circulation of Pharmaceuticals", the state register of pharmaceuticals should be amended to include a line with information about the date of putting a drug into public circulation (Article 33.x introduced by Federal Law No. 429-FZ of 22 December 2014). Supplementing the state register with information about the date of putting a drug into public circulation can be regarded as a mechanism that ensures the compliance with the overall data exclusivity period if the registration of a generic or a biosimilar is completed before six years expire from the registration date of the brand-name (reference) drug, and is supposed to ensure greater data transparency for the regulator and market players. The provision became effective on 1 July 2015 but so far has not been implemented.

Recommendations

Include an analysis of data exclusivity status in the procedure for registering pharmaceuticals.

Amend regulatory documents of the Ministry of Health – in particular, the Administrative Regulation on the provision of the public service of registering pharmaceuticals for medical use – to ensure proper legal protection of the findings of pre-clinical and clinical studies for six years after a brand-name (reference) drug is registered for the first time.

a) Require that data exclusivity status be analyzed when generics are registered, and suspend or terminate the registration process if data exclusivity has been violated (the Ministry of Health should be vested with the appropriate powers).

b) Add to the pharmaceutical register a section for information on the data exclusivity of brand-name (reference) drugs.

c) Information on drugs being registered should be made publicly available so that the mechanism for legal protection of data will be transparent (the database of drugs being registered should be made public).

d) Implement the requirement of Article 33.x of Federal Law No. 61-FZ "On the Circulation of Pharmaceuticals", to include into the state register a line with information about the date of putting a drug into public circulation.

1.3. The working group is also very concerned about the possibility of legislative amendments that would introduce compulsory licensing and parallel imports for pharmaceuticals and medical equipment/goods.

Those behind this initiative say that parallel imports can reduce pharmaceutical prices for end consumers by means of imports from countries where prices are substantially lower than on the Russian market. Research and EU experience show that parallel imports are advantageous only for intermediaries, while the price difference for patients is negligible. For example, parallel imports account for almost 20% of the European market, and intermediaries have made profits up to twenty times higher than the savings for patients.

In the case of VEDs, the state limits the maximum selling price for imported pharmaceuticals by comparing the relevant prices in twenty-one reference countries and choosing the minimum price. With the introduction of parallel imports, the procedure for registering maximum selling prices for drugs will become irrelevant. It will make economic sense to import pharmaceuticals not from Europe and North America, but from countries where prices are the lowest. These are largely countries where state control over production quality is not up to world standards and the state fails to give due attention to the development of the pharmaceutical industry. There is a high risk that poor-quality and counterfeit pharmaceuticals will be imported and circulate on the Russian market. The proposed differential approach involving parallel imports only from certain countries entails additional risks that international commitments under the Paris Convention for the Protection of Industrial Property and commitments that Russia assumed when it acceded to the WTO (violation of the most-favored-nation clause in GATT) will not be honored.

From early 2012 through the end of 2014, the exchange rate of the ruble fell by more than half against the main currencies of drug-exporting countries. According to the Russian Central Bank, in the period from 1 January to 15 December 2014 alone, the euro rose 61% against the ruble, reaching 76.51 rubles to the euro, and the US dollar rose 79% against the ruble, reaching 64.88 rubles to the dollar. Thus, if the registered maximum manufacturer's price in rubles is recalculated in foreign currency, we can say that in Russia today the cost of pharmaceuticals produced in accordance with the rules of good manufacturing practices and imported in accordance with the rules of good distribution practices are the lowest among all countries used in comparing pharmaceutical prices.

Even if parallel imports yield macroeconomic advantages, they will be limited and short-term. The medium-term effects will be negative for direct foreign investments, localization of production and the development of domestic production. In the short term, there will be additional risks for end consumers in connection with a surge in counterfeit products as well as deteriorating quality and safety.

The working group's members are working hard to stabilize the prices of pharmaceuticals sold in Russia in the face of a fluctuating ruble exchange rate, including by fixing prices in rubles.
International pharmaceutical manufacturers recognize the social significance of pharmaceuticals and their responsibility to the public and plan to do what is necessary so that high-quality pharmaceuticals and medical goods will continue to be available to the Russian public. Localization of manufacturing of pharmaceuticals and medical goods and greater depth of pharmaceutical processing in Russia are among measures

designed to reduce the effect of exchange rate fluctuations on Russian pharmaceutical prices. It is also important that the working group's members are good taxpayers in Russia.

We believe that if parallel imports of pharmaceuticals are legalized, investments in the Russian economy may decline. Worse yet, projects for localizing the production of pharmaceuticals in Russia could be frozen and existing facilities shut down. From an economic standpoint, long-term capital investments in Russia – for example, the construction and equipping of production facilities – are substantial at the initial stage and lack economic sense if sales of localized products and a return on investments cannot be guaranteed, since some market players in the country will be in a more advantageous position – investing nothing in the country's economy, paying no taxes or levies in Russia and assuming no responsibility for the quality of products supplied.

Proper protection of intellectual property rights is fundamental to a successful development of innovation-based economy and long-term investment. There is a direct correlation between the intellectual property protection index and the venture capital & private equity country attractiveness index. The Federal Antimonopoly Service's initiative to amend Federal Law No. 135-FZ "Law on the Protection of Competition" and the Civil Code in order to broaden the application of compulsory licensing (CL) appears to be counterproductive for the implementation of the national policy of modernizing and diversifying Russian economy that seeks to lay the ground for a sustainable social and economic development and attracting foreign investment. The current regulation (Articles 1360 and 1362 of the Civil Code) contains the legal provisions needed to apply compulsory licensing, subject to conditions stipulated in legislative documents.

Global experience shows that proposals for compulsory licensing should be considered very carefully in view of the risks encountered by the governments of Thailand, Brazil, India, Indonesia, Malaysia and other countries. In particular, these risks include an ambiguous effect on price; inability, in many cases, to reduce the price of a generic copy made under a compulsory license, resulting in generics being purchased at prices only slightly different from, or even higher, than those of brand-name drugs; and inability to quickly bring to market a drug manufactured under a compulsory license, with the ensuing risk of the drug being less available to patients.

The application of the CL instrument is sure to hinder current investment projects and new investment under the Pharma-2020 federal target program, and slow down the innovation-based development of the pharmaceutical industry by eliminating incentives to develop and register innovative products in the country that uses compulsory licensing.

As regards the draft law "On Amendments to the Federal Law "On the Protection of Competition" and the Civil Code of the Russian Federation", the Working Group suggests considering the criteria and methods for determining breaches of antimonopoly law (such as high monopolistic price, unjustified reduction or interruption of production, economically or technologically unjustified refusal or evasion to sign a contract with individual buyers/customers) in more detail for the purpose of applying compulsory licensing.

Issue 2. Enhancement of the regulatory environment for medical goods.

2.1. Restricted access to the government procurement system for foreign-made medical goods.

In the last few years, the Russian Government has made increasing efforts to introduce incentives/restrictions to promote the localization of medical goods in Russia. The basic documents reflecting these government efforts are "The Development Strategy for the Russian Medical Industry until 2020"[2] (the "Strategy") and the Russian State Program "Development of the Pharmaceutical and Medical Industry in 2013-20.".[3] These documents' key targets are:

1. An increase in the share of domestic medical items for domestic consumption to 40%.
2. A 120% production index for medical goods in cash terms by 2020.
3. Pharmaceutical exports should reach RUB 38 bln by 2020.

These targets are to be attained by **large-scale stimulation of demand for local products**. In recent years, the Russian government has given high priority to accessible, high-quality medical aid, new medical technologies and R&D. However, the percentage of local manufacturers of medical goods is steadily declining on the domestic market, the competitiveness of local products is low, and Russian companies are incapable of meeting demand for health care innovations. The Strategy envisages, among other things, the following support for local manufacturers of medical goods:

[2] Approved by Order No. 118 of the Ministry of Industry and Trade of 31 January 2013 "On the Approval of the Development Strategy for the Russian Medical Industry until 2020"

[3] Approved by Decree No. 305 of the Government of the Russian Federation of 15 April 2014 "On Approval of the Russian State Program 'Development of the Pharmaceutical and Medical Industry' in 2013-20"

1. Preparation and implementation of measures to ensure that such goods are given priority when purchases are made with funds from budgets at all levels and compulsory medical insurance funds.
2. Targeted support of Russian companies which offer niche solutions.
3. The practice of *prohibiting/restricting goods originating in a foreign state or group of foreign states*, and work or services performed by foreign individuals when orders are placed for goods, work and services for the country's defense and state security under Article 13, part 4, of Federal Law No. 94-FZ of 21 July 2005 "On Orders for Goods, Work and Services for State and Municipal Needs," including those unrelated to the subject of the contract, when major state contracts are concluded for equipment for federal needs as well as the needs of Russian constituent entities or municipal needs under long-term contracts that are conditional on switching to Russian components within a few years' time.

To promote those goals, the Ministry of Industry and Trade prepared several draft decrees (the Ministry for Economic Development issued a negative regulatory impact analysis summarizing detailed comments by business on the proposed documents), which ultimately found expression in Government Decree No. 102 of 5 February 2015 "On Restrictions on Certain Medical Goods Originating in Foreign States for Purposes of Purchases for State and Municipal Needs" (the "Government Decree") in accordance with Presidential Instruction No. Pr-3308 of 6 December 2012 and clause 8 of Protocol No. 36 of a Meeting of the Presidium of the Russian Presidential Council for Priority National Projects and Demographic Policy of 20 December 2013. The adoption of the Government Decree was expedited by the Plan of Priority Measures to Ensure Sustainable Economic Development and Social Stability in 2015 as a means of promoting import replacement and exports for a wide range of non-commodity (including high-tech) goods.

The Government Decree regulates state and municipal purchases of medical goods by means of a list of foreign products that are prohibited if there are two Russian equivalents, but permitted if there are less.

For these purposes, the Government Decree sets criteria for a local medical product:

a) the country of origin of goods is the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan or the Republic of Armenia;

b) the country of origin of listed medical goods is verified by a certificate of origin from an authorized body (organization) of the Russian Federation, the Republic of Armenia, the Republic of Belarus or the Republic of Kazakhstan as prescribed by the Rules for Determining the Country of Origin of Goods, which form an integral part of the Agreement on the Rules for Determining the Country of Origin of Goods in the Commonwealth of Independent States of 20 November 2009, and in accordance with the criteria set forth in these rules for determining the country of origin of goods.

The list of categories of medical goods on which the list of restricted goods is based was discussed to the very last behind closed doors, and a number of manufacturers were thus unsure whether their goods were listed.

After the Government Decree was adopted, a Medical Goods Working Group was set up under the Information Analysis Center for Foreign Trade (IAC) of the Russian Ministry of Industry and Trade to draft a regulatory act that sets criteria for "domestic" goods for government procurement purposes. After lengthy discussions, IAC's work culminated in the adoption of Government Decree No. 719 of 17 July 2015 "On Criteria for Classifying Industrial Products as Lacking Equivalents Produced in the Russian Federation," from which the section on medical goods was eliminated. Nevertheless, consideration is being given to restoring this part of the text and thus setting requirements for industrial products that can be regarded as manufactured in the Russian Federation. Such criteria may also include the location of certain stages of the production process in Russia, compliance with ad valorem rules, the possession by a Russian legal entity of intellectual rights to products, etc. Only medical goods that meet the listed criteria will be regarded as Russian.

In order to facilitate the implementation of the Government Decree, the wording of the Decree was amended on 22 April 2016 to enact the provision prohibiting to include in tender documents any goods from the list of restricted goods and goods not included in that list.

In addition, codes were aligned with the All-Russian Classifier of Products by Type of Economic Activity (OKPD) OK 034-2007 and All-Russian Classifier of Products by Type of Economic Activity (OKPD2) OK 034-2014.

While generally supporting incentives for the localization of medical goods and transfers of high technology to Russia, we must note the simplistic nature of this restrictive approach as well as the existing 15% price preference for government procurement of local medical products. At this stage, the needs of Russian health care cannot be fully met by the existing level of (Russian and, in some cases, foreign) technology on the

Russian market, and a more finely tuned adjustment is required for the system of access, circulation and transfer of technologies and cutting-edge manufacturing/product solutions. These may include tax incentives, price preferences, greater transparency of procedures involved in government procurement, creation of a clear and comprehensive classification of medical goods, expedited registration procedures for localized medical goods, tariff incentives, the development of domestic suppliers of raw materials and components, etc.

Based on the practice of implementing the Government Decree, the Ministry of Industry and Trade proposed to increase the number of medical goods prohibited for government and municipal procurement to a hundred. This major extension of the list did not meet with the approval of the prime minister, the medical community or patients. Nevertheless, backdoor efforts to extend the list continue.

Recommendations

1. Introduce a system for the expedited issue (within one month) of registration certificates by the Federal Service for the Oversight of Health Care and Social Development as part of a system of incentives for medical companies entering into SPICs in order to accelerate the localization of low-risk products.
2. Work on the issue of state financial support for modernizing and expanding the production capacities of small and medium-sized Russian suppliers of raw materials and components to meet the requirements of international companies in exchange for long-term orders for products.

2.2. Simplified procedure for registering medical goods.

The new state registration procedure (Decree No. 1416 of the Russian Government of 27 December 2012), which entered into force on 1 January 2013, introduces additional measures for assessing the quality, safety and efficacy of medical goods for which permits are to be issued. The new rules rely on the following principles: The primary instrument for assessing the efficacy and safety of medical goods and their modifications on the Russian market is still the system of assessing the findings of tests (technical, toxicological, clinical) performed as part of the state registration procedure. Such tests, however, are often technically impossible in Russia due to a lack of the required equipment and specialists, and they are a mere formality without practical or clinical value. There is no practice of total tests for access to the market in any developed country. In view of the short life cycle of medical goods and the rapid appearance of improved products, clinical tests to assess clinical efficacy are unnecessary for most goods, which do not involve fundamentally new technology.

- these assessments are the responsibility of federal expert institutions that lack the essential resources and expertise to carry out this work properly and in full (there are only two such institutions, each with a small staff and little experience with large-scale expert analysis).
- Bottlenecks form because:

  experts and applicants are unable to communicate directly with one another. When experts are unable to talk to an applicant (in real time) about documents submitted, they lose time in obtaining clarifications and additional documents from the applicant.
- It is also unclear why all registration certificates previously issued for medical goods (previously, "goods for medical purposes" and "medical equipment") need to be replaced due to the introduction of the new combined term "medical goods." This measure is unjustified, as it involves the replacement of 30,000 registration certificates by 1 January 2017. It seems unreasonable, simply because a new term has been introduced, to require that all market participants apply for new registration certificates for all medical goods previously registered with the Federal Service for the Oversight of Health Care and Social Development in compliance with all rules and requirements in force at the time of registration. According to the new requirements, composite medical items, which were registered earlier as a "set" or "system", would have to be "broken down" into multiple registration certificates (producers of intricate high-tech complexes would be obliged to apply for several registration certificates, and sometimes for tens of them, instead of one registration certificate for the "system"). This circumstance enormously increases the burden on the applicants themselves and on the experts from the Federal Service for Oversight of Health Care and Social Development, makes it difficult to use the codes of the Russia-wide Classifier of Products and the Goods Classifier for Foreign Economic Activity and apply tax further for each item at the phase of import as well as the phase of sale within Russia, and to register business entities (health care facilities). This pertains to medical items and equipment, which have been successfully used in Russian health care facilities for many years now.

Hence, for applicants to replace the certificate form, they will be obliged to go through a procedure which, by its time and effort, is comparable to the re-registering process, and to collect and provide additional information (e.g., the results of clinical tests for goods of all risk classes), and also to face both the inability to classify the manufactured products according to the system proposed and the risk of being denied registration.

In addition, later (2017 through 2021) manufacturers will have to go through a reregistration procedure once again – to comply with the uniform circulation rules of the EAEU – which makes the reregistration at the national level irrelevant.

There have also been positive changes in the registration procedure, such as the long-awaited passage of amendments to Order No. 1353n of the Russian Ministry of Health of 21 December 2012 "On Approval of the Procedure for Organizing and Conducting Expert Examinations of the Quality, Efficacy and Safety of Medical Goods," which streamlined the procedure for registering medical goods in Risk Class 1 by excluding clinical tests.

Recommendations

Improve the system of registering medical goods and bring it into line with international practice by means of the following urgent measures:

1. Develop a mechanism for pre-registration advice on the preparation of documents to be submitted for state registration of medical goods.
2. Simplify the registration procedure for certain medical goods in Risk Class 2a, subject to their potential application risk, and goods for in-vitro diagnostics.
3. Amend Decree No. 1416 of the Russian Government of 27 December 2012 "On Approving the Rules of State Registration for Medical Goods" to postpone until 31 December 2021 the deadline for replacing indefinite registration certificates for medical goods because of a transition to EAEU uniform principles and rules for the circulation of medical goods after that date.
4. Elaborate the procedure to be applied to amend documents in the registration files depending on the nature of changes, and provide, among other things, for a 'notice filing' of changes that do not affect the efficacy, quality and safety of pharmaceuticals and medical goods.
5. Consider differentiating the amount of state duty for the examination of medical goods based on a risk class, and also by identifying objective differences in requirements for a state registration procedure, by taking into account expert man-hours required to perform an examination, and by applying a reduction factor to state duties for the examination of the efficacy, quality and safety of goods used in in-vitro diagnostics.

2.3. Establishment of general rules and requirements for the circulation of medical goods in the Eurasian Economic Space.

Work has been finalized to develop the rules of circulation of medical goods at the levels of Russia and the Common Economic Space. For instance, the Agreement on Uniform Principles and Rules for the Circulation of Medical Goods (Goods for Medical Purposes and Medical Equipment) in the Eurasian Economic Union, approved by Decision No. 146 of the EEC Board of 25 August 2014, introduces a number of requirements with respect to medical goods' labeling and release into circulation. Pursuant to the approved documents, the Agreement entered into force on 1 January 2016. That will automatically lead to the expected changes in the registration procedure and the need to issue new registration certificates, thus conflicting with the reregistration of medical goods that is currently under way in Russia.

The working group held a meeting with representatives of the Ministry of Health and the Federal Service for the Oversight of Health Care and Social Development at which they implied that most barriers in approval procedures would be eliminated after the adoption of a fundamental document: the Federal Law "On the Circulation of Medical Goods." Work on this document is carried out by the Russian Ministry of Health. The first version of the draft law was submitted to the Russian government and has long remained pending the agreement and approval of all ministries and agencies concerned. It should be noted that the publicly available version of the draft fails to take account of work done to simplify the registration procedure for low-risk medical goods and other FIAC proposals.

In the meantime, the EEC Board and Council have adopted a number of documents of the Eurasian Economic Commission, which regulates all aspects of the circulation of medical goods on the common EAEU market. In particular, they address new registration rules that do not conform to the current Russian procedure and do not fully take account of the proposals to simplify it. On 12 December 2014, the working group received a reply to its inquiry about FIAC involvement in discussing acts that regulate the medical goods market. The letter invites FIAC member companies to participate in discussions on the health

ministry's official website and portal (www.regulation.gov.ru), but this is clearly an inadequate channel for the expression of foreign investors' views.

Recommendations

1. Amend Decree No. 1416 of the Russian Government of 27 December 2012 "On Approving the Rules of State Registration for Medical Goods" to postpone until 31 December 2021 the deadline for replacing indefinite registration certificates for medical goods because of a transition to EAEU uniform principles and rules for the circulation of medical goods after that date.
2. Include FIAC representatives in the working groups for further development of legal documents regulating the circulation of medical goods.

Issue 3. Localization and import substitution.

In order to implement of the policy aimed at setting up production of competitive industrial goods in the Russian Federation, on 31 December 2014, Federal Law No. 488-FZ "On Industrial Policy in the Russian Federation" was adopted, and Article 16 thereof provides for a special investment contract (SPIC) as an instrument to support investors.

Among other things, the purpose of this instrument is "to encourage investments in the establishment and modernization of production through provision investors with industry benefits and preferences and ensuring stable business environment."

Currently, however, there is a number of obstacles preventing the SPIC instrument from becoming attractive and effective for pharmaceutical and medical companies. Primarily, it is due to poor consideration given to the industry specifics.

In this regard, we suggest considering the possibility to improve the existing measures and develop additional ones to encourage investors, which take into account specifics of the pharmaceutical industry and production of medical goods, as well as the needs of the Russian health care system. These support measures will ensure effectiveness of the SPIC instrument for improvement of investment climate and greater access to modern innovative pharmaceuticals and medical goods for Russian patients.

In particular, it is recommended to consider the following measures.

- Status of the Russian product for pharmaceuticals and medical goods.

An effective measure to support an investor is establishing an accelerated and simplified procedure for obtaining the status of a Russian product for goods produced under SPIC in order to gain access to government procurement.

A part of the legal framework to facilitate the implementation of this measure has already been developed (Government Decree No. 719 of 17 July 2015 "On Criteria for Classifying Industrial Products as Lacking Equivalents Produced in the Russian Federation", Order No. 3568 of the Russian Ministry of Industry and Trade of 20 November 2015 "On Approval of the Procedure to Confirm Localization of Production of Industrial Goods in the Russian Federation..." ("Order No. 3568 of the Russian Ministry of Industry and Trade"). However, the developed documents do not take into account the main objective of determining the country of origin of goods, which is gaining access to government procurement.

In addition, in order to gain access to government procurement for VEDs and medical goods, a separate mandatory mechanism to confirm the country of origin of a product is in effect (the company has to obtain ST-1 certificate). It is due to restrictions imposed on procurement of VEDs for state and municipal needs by Government Decree No. 1289 of 30 November 2015 "On Restrictions on and the Terms of Access of Vital and Essential Drugs Originating in Foreign States When Purchased for State and Municipal Needs" ("Decree No. 1289") and Government Decree No. 102 of 5 February 2015 "On Restrictions on and the Terms of Access of Certain Medical Goods Originating in Foreign States for Purposes of Purchases for State and Municipal Needs" ("Decree No. 102").

Thus, in accordance with paragraph 2 of Decree No. 1289, in order to participate with VED in government procurement on general terms, the applicant shall confirm the product's country of origin by ST-1 certificate. The certificate is issued pursuant to Order No. 93 of the Chamber of Commerce and Industry of 21 December 2015 "On Regulation on Procedure for Issuance of ST-1 Certificates Confirming the Origin of Products for Purposes of Purchases for State and Municipal Needs (as Regards Vital and Essential Drugs)" (Order No. 93 of the Chamber of Commerce and Industry). However, the procedure of receiving ST-1 certificate does not imply any preferences to SPIC investors. Similar conditions are introduced by Decree No. 102.

Moreover, the existing practice shows that ST-1 certificate is also required under Order No. 155 of the Ministry for Economic Development of 25 March 2014 "On the Terms of Access of Goods Originating in Foreign States When Goods, Work and Services Are Purchased for State and Municipal Needs" ("Order No. 155 of the Ministry for Economic Development") when applying for a 15% preference for the contract price. Considering the amendments introduced to this order on 13 November 2015, in 2016, the bidders, who applied for supplying goods produced in EEU member states, are provided with a 15% preference for the contract price if EEU origin of the product is confirmed by ST-1 certificate.

In view of the above, we recommend introducing a stimulating measure that implies similar treatment of conclusion of The Russian Ministry of Industry and Trade concerning the country of origin of a product issued to a SPIC investor and ST-1 certificate. It will secure access to state and municipal procurement for a SPIC investor, who assumed obligation to localize production of goods.

For the purpose of effective implementation and practical application of this measure, we suggest considering the possibility to introduce the respective amendments to Government Decrees No. 1289 and No. 102, as well as to Order No. 155 of the Ministry for Economic Development. Therein, we recommend implementing similar treatment of conclusion of the Russian Ministry of Industry issued based on Decree No. 719 and Order No. 3568 of the Russian Ministry of Industry considering SPIC, and ST-1 certificate.

- Concluding a long-term government contract with an investor.

According to the Plan of Priority Measures to Ensure Sustainable Development of the Economy and Social Stability in 2015 (the "Anti-Crisis Plan"), approved by Resolution No. 98-r of the Russian government of 27 January 2015, one of the Government's key efforts in the coming months will be to support import substitution for a broad range of non-commodity (high-tech) goods and to ensure social stability, including in the area of health care and pharmaceuticals, by placing restrictions on purchases for state for government and municipal needs of pharmaceuticals and medical goods originating in foreign countries. The Anti-Crisis Plan's stabilization measures include proposals for amendments to federal law providing for long-term government contracts that are conditional on the establishment and development of production in Russia.

The investors believe that, by entering into long-term government contracts for pharmaceuticals and medical goods, manufacturers will be able to plan their production processes for the duration of such contracts and adopt pricing models that are beneficial for both the contracting authority and the manufacturer. The mechanism of long-term government contracts will also motivate foreign manufacturers to localize their production in Russia.

In addition, we should specify that a possible application of a fixed priced under a long-term government contract is very significant. It can guarantee an investor a certain level of demand for the goods, which production is localized, and secure stable environment for business operations and planning in the Russian Federation.

- Recognition of a SPIC investor as a sole supplier of goods produced under SPIC.

In early July, the amendments to Federal Law No. 44-FZ of 5 April 2013 "On the Contract System for the Procurement of Goods, Work and Services for Public and Municipal Needs" ("Federal Law No. 44-FZ"), which grant the Government of the Russian Federation the right to recognize a SPIC investor as a sole supplier of goods produced under SPIC if certain criteria are met.

However, the contractual liabilities are deemed poorly balanced since the current version of the amendments does not guarantee that an investor will be recognized as a sole supplier of produced goods even if all the criteria are met.

In view of the above, we recommend correcting the basis for recognition of a SPIC investor as a sole supplier, so that conclusion of SPIC on the terms specified in Federal Law No. 44-FZ is deemed as basis for recognition of this investor as a sole supplier of the produced goods. If several brands of products are manufactured under SPIC, we believe it reasonable to make decisions for each individual brand.

These corrections will ensure that an investor is guaranteed with a stable demand for the produced goods, and, thus, a stable environment for business operations and planning in the Russian Federation will be secured.

- Accelerated and simplified registration of pharmaceuticals and medical goods in the Russian Federation.

The reduction of registration period of pharmaceuticals could provide a significant support to pharmaceutical companies, which are SPIC investors. It should be noted that the issue was further addressed by Decisions of the Government Commission on Import Substitution of 8 July 2016.

The registration procedure may be accelerated and simplified by joining (parallel implementation) stability testing period and registration period of pharmaceuticals or by excluding stability testing period on condition GMP certificate is provided.

Changing the registration procedure in that manner will allow reducing registration period of pharmaceuticals, at least, by 12 months (currently, the aggregate period for preparation and performance of stability test and the registration itself is approximately 24 months and more).

The positive effect of the measure is as follows:

- greater access to necessary pharmaceuticals for patients;
- increased competitiveness among companies of the health care industry;
- optimized costs of the health care system;
- increased interest of VED manufacturers in SPIC.

In view of the above, international FIAC member pharmaceutical companies suggest considering the possibility to amend the effective legal framework in order to implement measures to support investors, which are parties to SPICs, and introduce the following:

- guaranteed recognition of an investor as a sole supplier of goods produced under SPIC, by the Government of the Russian Federation;
- same treatment of conclusion confirming the country of origin of a product issued to a SPIC investor pursuant to Order No. 3568 of the Russian Ministry of Industry and Trade and ST-1 certificate issued pursuant to Order No. 93 of the Chamber of Commerce and Industry for the purposes of Decrees of the Russian Government No. 1289 and No. 102;
- guaranteed conclusion of a long-term government contract for goods produced under SPIC for up to three years with an option to be extended;
- granting a possibility for an accelerated and simplified pharmaceutical registration period by changing the requirements to stability testing.

International FIAC member pharmaceutical companies believe that the above measures to encourage investors, which are parties to SPIC, will make SPIC more attractive to pharmaceutical manufacturers, ensure additional inflow of foreign investments in the economy of the Russian Federation, create favorable conditions to reorient production facilities localized in Russia to export, and, thus, serve as an additional driver for economic growth in the whole country.

1.6. Trade and Consumer Sector

Issue 1. Introduction of extended producer responsibility and development of a system of recycling consumption waste in Russia *(jointly with the Working Group on Technical Regulation and Elimination of Administrative Barriers)*

Federal Law No. 458-FZ "On Amendments to the Federal Law "On Production and Consumption Waste" and Certain Legislative Acts of the Russian Federation as Well as the Annulment of Certain Legislative Acts (Provisions of Legislative Acts) of the Russian Federation" (hereinafter, the "Law") entered into force on 1 January 2015. As of 2015, the Law requires producers and importers to recycle their product waste (including packaging waste) or, should they fail to do so, to pay an environmental fee to the federal budget. Producers of packaged goods are also responsible for recycling packaged waste, with the relevant responsibility established in clause 10 of Article 24.2 of the Law.

In 2015, following discussions on the moratorium for certain non-tax payments, the Government decided that no environmental fee will be charged up until 2019. However, a wide range of companies of different forms of ownership (including state companies) affected by the new regulation became obliged to pay the environmental fee as early as in 2016.

To implement this fundamentally new regulation, the Law envisages more than twenty bylaws, nine of which have been adopted by the Government. The analysis of the existing documents adopted by the Government suggests that they require significant revision to eliminate numerous gaps and omissions, which have already led to a handful of technical difficulties and misunderstanding on the part of producers and importers when they attempt to perform their declaring and reporting obligations.

The key issues include the following:

1. Recyclable packaging is not in the List of Goods to Be Recycled. Therefore, the new regulations do not apply to those producers and importers of packaged goods that, in accordance with Law No. 458-FZ, are required to comply with recycling standards set for the packaging of their goods.
2. The existing regulations do not provide for a mechanism to implement the extended responsibility of producers/importers of packaged goods when it comes to packaging waste.
3. It is legally and practically impossible to identify packaging by the KPES / TNVED codes based on the supporting documents relating to packaging as an individual item of goods released into circulation.
4. Unreasonable competitive advantages will be created for products imported from EEU or other countries due to counting the waste that is subject to recycling twice and applying the regulation to raw and other materials which are used in the manufacture of local finished products.
5. There is confusion regarding reporting periods.
6. There is no clear and unequivocal definition of the term "release into circulation".

If unresolved, the aforementioned issues, in combination with other gaps in the existing regulatory framework, will have the following adverse effects:

- the waste that is subject to recycling may be either counted twice or not declared/recycled at all;
- the regulation will affect raw and other materials, which are used in the manufacture of local products and whose waste (including packaging) is classified as production waste, with a special procedure provided for recycling such waste;
- competitive advantages will be created for products imported from EEU or other countries;
- creating disincentives for independent recycling;
- discrediting the concept of extended producer responsibility, which is aimed at encouraging commercially sustainable waste recycling practices.

The solution for this problem was designed during the meeting of the Executive Committee of the Foreign Investment Advisory Council held on 3 June 2016, which required that a road map, which remains unapproved, be approved by 7 July 2016 to amend regulations on waste management.

The absence of provisions for separate waste collection in the regulatory documents is still an issue. The choice of "independent recycling" provided by law may therefore remain merely declarative, with the regulation having a purely fiscal objective, it being the collection of the environmental fee from producers/importers. Rather than stimulating the development of the waste recycling industry, the

introduction of the extended producer responsibility (EPR) will create a major financial burden for all Russian producers forcing them to raise the selling prices by 3-15% to compensate for additional costs.

Recommendations

Urgent measures

1. The Ministry of Natural Resources of Russia, the Ministry for Economic Development of Russia and the Ministry of Construction of Russia together with the business community should make the following amendments to existing Government laws and regulations governing enforcement of Federal Law No. 458-FZ as relating to recycling product and packaging waste:

- define, by type of material, a list of packaging, the responsibility for the recycling of which should be placed on producers and importers of the respective goods, include a separate Section II to the List of Goods to Be Recycled after the Loss of Their Consumer Properties;
- avoid assigning both the producer (importer) of packing qualifying as a finished good and the producer of goods packed therein with responsibility for complying with packaging waste recycling standards: the producer (importer) of packing qualifying as a finished good should be liable for recycling only the waste of that packaging that was released into circulation for retail sales/provision of services/performance of work;
- define that the responsibility to comply with recycling standards does not apply to producers/importers of those goods which are not finished goods, namely goods and packaging that is part of those goods which are supplied as components or raw and other materials to be used in production of goods;
- do not set material-based recycling standards for packing (Section II of the List) for 2016, as there is currently no statutory requirement for a wide segment of producers/importers of packed finished goods to comply with the standards set for packing qualifying as a finished good only, as well as it is practically impossible to retroactively comply with those standards by independent recycling in 2016;
- set recycling standards and environmental fee rates for packing for 2017 at a level not exceeding minimum standards and rates applicable to similar (material-wise) packing released into circulation as a finished good (from the current List of Goods);
- define that a reporting year (period) shall mean a calendar year during which the producer/importer shall comply with recycling standards set for that particular calendar year; standard compliance reports shall be submitted before 1 April of the year following the reporting year; declaration on the amount of goods released during the prior calendar year shall be submitted before 1 April of the reporting year (period).

2. The amendment plan should be executed as a road map indicating the responsible federal executive bodies and deadlines for amending each bylaws included in the plan.

3. Ensure that official clarifications on enforcement of extended liability of producers, that do not require any amendments to Government regulations and Federal Law No. 458-FZ, are published at official websites of the Ministry of Natural Resources of Russia and the Ministry of Natural Resources of Russia until 1 November 2016.

Strategic measures:

- establish a legally binding obligation in respect of the separate on-site collection of municipal or similar waste;
- charge regional operators, municipalities and regional authorities with the responsibility for separate waste collection, including the responsibility for failure to do so;
- establish the regional operator’s obligations to transfer waste from the use of recyclable products and packaging, which have lost their consumer properties, to producers/associations of producers, importers/associations of importers or municipal solid waste (MSW) management operators, as well as provide for the relevant enforcement mechanisms;
- introduce regulatory mechanisms to empower cooperation between producers/associations of producers, importers/associations of importers and MSW management operators;
- expedite the adoption of key by-laws, which are still pending;
- create the right incentives for households to promote separate waste collection and increase the levels of waste collected separately;
- allow MSW owners to enter into agreements with ordinary waste management operators.

Issue 2. Basic principles of regulating retail trade in Russia.

2.1. The effect of amendments to the Law "On Trade" on the structure of relations between suppliers and retailers.

These amendments involve a radical structuring of the entire system of relations between suppliers and retailers, seriously complicating the operations of all market players. In conditions of falling consumer demand, suppliers are no longer able to make flexible use of retail networks for promotion and logistics.

When retail and supply relations are switched to the front margin model and price competition intensifies, limiting the ability to promote goods on the market, we believe it is small and medium businesses, both retailers and food suppliers, that will face the most difficulties.

It also should be noted that the time frame was radically reduced in the final draft, with the law entering into force after only 10 days, and the transition period effectively shortened to five and a half months. In practice, as the new legal provisions were not officially clarified for the first several weeks after the law entered into force, retail companies were forced to suspend work with new suppliers and work to adapt their contracts.

The new law, in our opinion, is a flag signaling that the Russian government intensifies state regulation of the economy. The FIAC's position in this regard is that any further toughening of trade law, especially the tougher state regulation of prices/markups, will not only create serious complications for the consumer market, but will inevitably be perceived as a retreat by the Russian leadership from market principles.

Recommendations

1. To determine the real impact that this law will have on the market in the course of regulatory impact assessment in 2017.
2. To consider revising the law to include:

a) an extended transition period for bringing current contracts into line with the new law as soon as possible;

b) accelerated development and statutory formalization of self-regulatory mechanisms on the Russian consumer market. These mechanisms should provide specific incentives for market participants in the form of specific exemptions, and the new law should not apply to good-faith market players.

3. With market players to switch to the front margin model of interaction, the current restrictions on markups for baby food should be promptly eliminated.

2.2. Regulating trade markups on the prices of baby food sold in various constituent entities of the Russian Federation.

Federal Law No. 273-FZ of 23 July 2016 "On Amendments to the Federal Law "On the Basic Principles of the State Regulation of Trade in the Russian Federation" enters into force on 15 July 2016 (hereinafter, "Federal Law No. 273-FZ"). One of the key amendments included limiting the fee payable to trade enterprises for promoting goods and providing logistics services to the 5% of the price. Changes in how trade is regulated were intended to improve the position of suppliers and customers; however, one of their logical effects included compromising the affordability of baby food for Russian consumers.

Based on Russian Government Decree No. 239 "On Measures to Improve the State Regulation of Prices (Tariffs)" of 7 March 1995, executive bodies have limited markups on baby food in many constituent entities of the Russian Federation.

Replacing retro bonuses and fees payable to trade enterprises by prospective rebates (front margin) will reduce the product cost chain, which, combined with the limited retail (and, in certain regions, wholesale) markup, means that baby food sellers will almost no longer be able to achieve a positive margin. Given the limited markup, a significant (by more than 1.5 times) increase in baby food prices would be required to keep the current segment margin. However, it is more likely that, as the segment becomes less attractive, sellers will be forced to significantly cut the supply of those products.

The limitations will inevitably affect specialized food products for babies with special nutritional needs. This segment does not bring as much revenue as the regular baby food segment, so if and when the Law enters into force, those products will become the least appealing to trade enterprises, which will surely result in substantial reduction of their supply. However, the specialized baby food is of considerable importance, the most important being the food for prematurely born and low birthweight babies. Every year, from 6% to 12% babies in Russia are born preterm, and long-term prescription of specialized food products is vital for most of them.

Specialized food products are important for full-term babies alike: according to the modern research data, posseting and baby colicky are common for up to 25% and 20% of children up to one year of age, respectively, while up to 70% of children of this age suffer from a mix of various forms of functional indigestion. In case of bottle babies, the only way to improve those conditions, which can negatively affect their health in the future, is to prescribe specialized formula milk. Another remarkable example is food allergy, which steadily becomes more common among children worldwide. Cow's milk protein intolerance is most frequent with children up to one year of age: from 6% to 8% of infants are allergic to cow milk. Being a severe chronic disease, cow's milk protein intolerance requires prescription of specialized hydrolyzed protein and amino acid-based milk formulas that also fall within the scope of the new draft Law. The modern pediatric approaches to in-patient treatment also rely on prescribing specialized dietary food, which remains relevant even after the infant is discharged from hospital.

The limited markup accompanied by lack of mechanisms for adequate and manageable compensation to trade organizations, as well as mechanisms for covering advertising, display and delivery costs incurred by sales network and distributors, entails the risk of considerably narrowing the product line (to the extent that certain players will be forced to leave the market), as well as may result in reduced competition.

Remote Russian markets, for which the logistics cost component is substantial, are even more discriminated. However, they too have been subject to severe restrictions imposes by Federal Law No. 273-FZ. In conditions of a limited markup on baby food, retailers and distributors operating in this segment are no longer able to compensate for logistics costs either by using a supplier's discount or by adjusting the selling or retail price.

The reduction in supply with result in limited choices of, first of all, specialized food products for babies with special health and development needs, such as allergy, growth retardation, malnutrition, special diet or ingredient needs. In the event of regulated retail prices, the products with a special formula and more expensive production technology will be in a less advantage position than mass products.

A retail price analysis carried out across Russian regions showed that the regulation of trade markups by the constituent entities of Russia does not produce any statistically significant effect on baby food prices. The price of baby food is determined by other objective factors, first and foremost by the general price level and public income. Cancellation of markup limitations will not act as a retail price driver, as, in fact, it will merely finalize the current price mechanism and make it more transparent for the regulators.

Recommendations

1. Exclude baby food from the scope of markup limitation.

Issue 3. Reforming veterinary law in the Russian Federation and the Customs Union.

3.1. Concerning the new veterinary certification system, including extending its scope to the finished food products, and its impact on commodity distribution networks.

Summary of issue:

In July 2014, the Russian Ministry of Agriculture approved Order No. 281 "On Approval of the Rules for the Processing of Supporting Veterinary Documents" and the Procedure for Processing Supporting Veterinary Documents in Electronic Form (the "Order"). The Order entered into force in September 2015.

This document has provoked a storm of criticism in the business community, including FIAC member companies.

A major collaborative effort between the business community and the Ministry for Economic Development helped to understand the dramatic consequences of the new rules: a cumbersome administrative process of obtaining supporting veterinary certificates (SVC), a significantly longer list of regulated goods transported within Russia, and the market's inability to adapt to the proposed changes. As a result, the Ministry of Agriculture approved two orders: No. 70 of 20 February 2015 and No. 78 of 26 February 2015. In combination with the amendments to the current Federal Law "On Veterinary", these orders partially delayed the dramatic consequences of the new regulation until 1 January 2018.

Effectively, it was decided not to expand the list of products requiring supporting veterinary certificates with a significant volume of finished food products until the full-scale implementation of electronic veterinary certificates (EVC); according to its developers, the new system will not be cumbersome for market participants.

The transition provisions, however, have not proved effective in addressing a handful of issues, which led to major disruptions across domestic retail and production sites in 2016, with retail chains running the risk of being cut off from a substantial portion of their diary product supplies. Among issues deserving attention is the mandatory veterinary certification of individual production batches, the certification of controlled goods

when title thereto is transferred to another owner, the classification of goods based on the Unified Goods Classifier of Foreign Economic Activity (TNVED) and many others.

At the same time, the decision to keep the list of products requiring supporting veterinary certificates unchanged until 2018, is piecemeal and does not address the wider issue.

The EVC system proposed by the Federal Service for Veterinary and Phyto-Sanitary Oversight (Rosslekhoznadzor) in order to ensure traceability of finished food products has a lot in common with the Unified State Automated Information System: it is extremely expensive for the market, poses significant logistics risks, and impedes the development of trade and the production of food products. The patchy implementation of the EVC regime, which today targets only a limited number of companies in designated regions, does not make it possible to realistically assess the effects of its potential country-wide rollout.

In 2014-2015, when analyzing the perspective deployment of the EVC regime in a number of food segments, including dairy products, a group of experts found that the new system is yet too undeveloped. Among numerous system deficiencies mentioned were the inability of correcting technical errors in an EVC, the absence of a comprehensive directory for finished and semi-finished dairy products, discrepancies between product directories used by dairy producers and retailers, the inability of issuing an EVC for fermented products (cheese, etc.), the lack of SLA-based support (including response time and developer technical support), the absence of backward compatibility with older versions of the system.

Another major stumbling block making the implementation of the EVC regime for finished food products virtually impossible is the inability to create a strong link between certificates for raw materials and components (ingredients) and certificates for finished products in electronic systems (such as SAP or Oracle). With the existing food production technologies requiring continuous-flow production and mixing a large number of ingredients, many food producers are unable to trace the source of raw materials for each batch of finished products.

It is neither possible to use the EVC system with manual data inputs due to a wide range of finished food products (up to 600 products per plant) that are produced typically in batches, as well as due to the cyclical nature of production.

Preliminary CAPEX estimates suggest that the integration of the EVC system into the existing electronic systems will cost food producers over RUB 200 million per plant and may take up to five years, provided that the aforementioned deficiencies have been rectified.

The country-wide rollout, though, remains problematic, as the majority of industry players (small and medium-sized businesses, such as cooperative farmers and private producers of controlled products (raw materials), small wholesalers and retailers, unorganized traders, etc.) have no electronic systems of their own.

FIAC member companies believe that in a period of prolonged economic decline it would not make sense to introduce new processes, which are focused on continuous administration, rather than being directly intended to develop manufacturing or increase tax revenues, where such processes are expected to entail major additional expenses for business and state budgets at various levels.

Note also that veterinary certification may not be regarded as an effective tool for tracing finished food products, and is not used for that purpose in other countries.

It is commonly held that a traceability system should be both economically efficient and practically effective. It may integrate custom solutions for market participants, but it is never the only legal or mandatory option. Nowhere in the world, such systems require any additional shipping documents while veterinary certificates are never used as a tool to trace goods.

Claims that the EVC system is an excellent detector for counterfeit products or their producers are also false. This system does not capture raw materials movements through the production cycle and as such cannot give answers as to whether a producer has mixed animal and non-animal ingredients or strictly followed a recipe or complied with material consumption rates.

The FIAC repeatedly articulated this issue both at plenary sessions and Executive Committee meetings. As a result of our collaborative effort, Russian Prime Minister Dmitry Medvedev and First Deputy Prime Minister Igor Shuvalov gave instructions (No. DM-P13-8001 of 25 October 2014 and No. ISh-P13-3888 of 15 June 2015) to the Ministry of Agriculture, including an instruction to revise the list of products requiring supporting veterinary certificates. These instructions have not been fulfilled to date.

In March 2016, the Ministry of Agriculture drafted Order No. 106 of 21 March 2016, which was submitted for registration with the Ministry of Justice. The new document substitute Order No. 281 “On Approval of the Rules for Organizing Work in Drawing up Supporting Veterinary Certificates and the Procedure for Drawing up Electronic Supporting Veterinary Certificates”; the document is awaiting adoption. Earlier, in December

2015, the Ministry of Justice registered another order, No.648 "On Approval of the List of Controllable Goods Requiring Supporting Veterinary Certificates" of 18 December 2015. A closer review of these documents has revealed that they fail to resolve a number of key issues such as the lengthy list of products requiring supporting veterinary certificates, the need to certify individual batches, the incorrect classification of goods based on TNVED codes, etc. Food producers and retailers still face an imminent risk of having to bear huge extra costs and to deal with supply-chain issues.

On 24 August 2016, pursuant to decisions made in June by FIAC's Executive Committee, a trilateral meeting was held at which FIAC member companies, officials of the Ministry for Economic Development and representatives of Rosselkhoznadzor discussed removing finished (processed) products from the list of those requiring supporting veterinary documents as well as other EVC implementation issues. Despite differences on a number of issues (including the cost of integrating electronic systems and their legal status), the sides reached an understanding that "composite products" in which raw materials of animal origin make up less than 50% should be removed from the list of products requiring EVCs. Rosselkhoznadzor is willing to consider proposals for resolving this issue.

The FIAC believes that expanding the EVC regime to finished food products may only be possible once its country-wide implications on all stakeholders (raw material suppliers, organized and unorganized retailers, logistics companies, warehouses and distribution centers) have been carefully assessed, and provided that the trial use of the new regime has proved effective to the point that users in all regions will not have to bear significant extra costs or run the risk of supply-chain disruptions.

Status:

The issue is still under consideration. Our repeated proposals, which are mainly aimed at reducing the list of products requiring supporting veterinary certificates, have been rejected by the Ministry of Agriculture.

Recommendations

To resolve the existing issues, FIAC member companies recommend the following:

1. Make major revisions to draft Orders No. 106 and No. 108 of the Ministry of Agriculture so as to exclude most of finished food products from the list of products requiring electronic veterinary certification in Russia, and to address other formalities involving the introduction of the EVC regime.
2. Analyze the potential effects of the EVC's country-wide rollout, including implications on all stakeholders and the effects of pilot introduction, in order to understand a potential cost burden on businesses, and logistical and operational risks involved.

3.2. Draft Federal Law "On Veterinary Medicine".

The draft Federal Law "On Veterinary Medicine" (the "draft law") has been in the pipeline for several years. The most recent development notice was published at the website www.regulation.gov.ru in January 2016 to hold public hearings on the draft law.

The FIAC's trade and consumer sector working group has to state that all drafts submitted for consideration inevitably contained provisions that could worsen business conditions and introduced excessive administrative barriers for business.

For example, the draft law established that "meat, meat products and other products of animal slaughter (processing), milk, dairy products, eggs, and other products of animal origin" are subject to veterinary and sanitary expert examination in order to determine whether they can be used as food. The above products cannot be sold or used without expert veterinary and sanitary examination. However, a significant portion of finished (processed) food products are of animal origin and, in relation to control and oversight of their quality and safety, an overlap of veterinary supervision and sanitary and epidemiological oversight may be observed. By Decree No. 1009 of 14 December 2009, the Government of the Russian Federation redistributed the functions in food production safety and quality control and the organization of this control between the Ministry of Health Care of the Russian Federation, the Federal Service for Oversight of the Protection of Consumer Rights and Human Welfare, the Ministry of Agriculture of the Russian Federation, and the Federal Service for Veterinary and Phytosanitary Oversight. The latter is assigned veterinary oversight only in relation to raw materials of animal origin which did not undergo processing or heat treatment (subsection "b" of clause 1).

The draft laws did not resolve those issues.

The draft laws lacked the definition of "unprocessed food products of animal origin." At the same time, the Technical Regulations of the Customs Union "On Food Safety" adopted by Resolution No. 880 of the Customs Union Commission stipulates that the products subject to declaration of compliance include food products released into circulation within the customs territory of the Customs Union, excluding unprocessed

food products of animal origin, while unprocessed food products of animal origin are subject to veterinary and sanitary expert examination prior to release into circulation on the customs territory of the Customs Union (unless otherwise stipulated by the technical regulations of the Customs Union on fish products and the supporting document which confirms safety), while processed food products of animal origin are not subject to veterinary and sanitary expert examination.

The effect of the draft law overlaps the legislation on technical regulation as regards establishing veterinary rules and requirements, and therefore they should be clearly delimited.

Pursuant to Federal Law No. 184-FZ "On Technical Regulation" of 27 December 2002, technical regulations may contain the minimally required sanitary and phytosanitary measures for products originating in certain countries and/or places, including import restrictions, use, storage, transport, sale and recycling, which ensure biological safety.

Veterinary and sanitary measures may establish requirements for products, their processing and production methods, product testing procedures, inspection, compliance confirmation, quarantine requirements, including transportation requirements necessary to ensure the life and health safety of animals and plants during transportation, requirements for raw materials, as well as sampling methods and procedures, methods of risk research and assessment, and other requirements contained in the technical regulations.

If the technical regulations establish product requirements, they should also establish the forms and schemes of conformity assessment. Certification is one such form of conformity assessment. Veterinary certification is a form of conformity assessment. However, the draft law specifies that the procedure of drawing up and issuing veterinary certificates and related requirements are approved by the federal executive body, which develops governmental policy and the regulatory framework in the area of veterinary medicine. The issue in question is to determine the correlation between a veterinary certificate issued in accordance with this draft law and a compliance certificate issued in accordance with technical regulations and the Federal Law "On Technical Regulation".

The aforesaid ambiguities and discrepancies in the draft laws give rise to concerns that they will actually result in duplicated control and oversight procedures, a heavier administrative burden and higher costs for business entities, and will lead to the fact that veterinary issues will be resolved at the discretion of officials of different levels.

Status

The issue is still under consideration. However, multiple FIAC WG's proposals, mainly aimed at eliminating the duplication of veterinary oversight as well as sanitary and epidemiological oversight in the Russian Federation and creating correct and transparent conditions for veterinary and sanitary expert examination and veterinary certification, have been rejected by the Ministry of Agriculture.

Recommendations

1. Establish in the draft law a clear distribution of functions concerning food product safety and quality control between the Ministry of Health Care and Social Development of the Russian Federation, the Federal Service for Oversight of the Protection of Consumer Rights and Human Welfare, the Ministry of Agriculture of the Russian Federation and the Federal Service for Veterinary and Phytosanitary Oversight.
2. Take into account the feasibility of establishing the list of products subject to veterinary and sanitary expert examination and veterinary certification in the draft law according to the Technical Regulations of the Customs Union "On Food Safety".
3. In the draft law, define the term "traceability" (taking into account the definition provided in the Technical Regulations of the Customs Union "On Food Safety"), and reflect the specific features of veterinary certification for animals and unprocessed raw materials of animal origin in it.
4. In the draft law, define and establish the transparent conditions and criteria for veterinary and sanitary expert examination and specify its relationship with veterinary certification.

Issue 4.Reforming phytosanitary law in the Russian Federation and the Customs Union.

Position regarding the development of bylaws in connection with the enforcement of Federal Law No. 206-FZ of 21 July 2014 "On Plant Quarantine".

Federal Law No. 206-FZ "On Plant Quarantine" of 21 July 2014 ("206-FZ"), whose main provisions entered into force on 1 January 2015, is an important regulatory document directly affecting virtually all companies involved in agro-processing and the food industry.

To implement provisions of the law correctly, it is necessary to develop and adopt 27 bylaws, but so far the majority of them have not been adopted, which results in obvious regulatory gaps and incorrect application

of the plant quarantine provisions of the Law by the authorized bodies in Russian regions. In turn, this does serious economic harm to agricultural producers as well as the food and processing enterprises.

Companies participating in the FIAC trade and consumer sector working group note positive developments in joint work with the Russian Ministry of Agriculture. The Ministry established and launched a special-purpose working group to develop and discuss 206-FZ bylaws; clarifications were provided for the key challenges that businesses face due to the absence of such bylaws. FIAC WG members express satisfaction with meetings held, which saw the exchange of opinions on a number of essential draft bylaws and the harmonization of positions on some of them.

We have to note, however, that the list of unresolved issues remains long, while the approval process for draft bylaws is extremely slow and a number of the FIAC WG's proposals, which were earlier rejected, deserve closer attention and detailed discussion with experts. Industry experts' analysis of the mentioned documents identified a series of issues that could have a strong negative impact through both formalizing or even increasing the excessive administrative burden on entrepreneurs and hampering the protection of plants and Russian territories from exposure to, and the spread of, infectious diseases and the prevention of damage caused by them.

The key issues are as follows

1. The unsubstantiated inclusion of an excessively wide base of quarantine objects and quarantine products in the draft documents without first analyzing the phytosanitary risk. (Lists of quarantine objects and quarantine products.)
2. The legalization of old practices and the introduction of new ones which are non-transparent and thereby potentially corrupt.
3. A substantial (not directly provided by Law) expansion of the control and oversight functions of the Federal Service for Veterinary and Phytosanitary Oversight, the abuse of the monopoly position on the service market and the use of phytosanitary measures for purposes other than ensuring plant quarantine. (Procedures for delivery notification and reliable storage, and for maintenance of the register of enterprises that have a devitalization technology applicable to quarantine objects, etc.)

For example, the proposed draft List of Quarantine Products for which a quarantine certificate is to be issued, contains no links to either TNVED codes or national product classifiers. This makes it impossible to identify products reliably and thus may give rise to corrupt law enforcement practices; the draft List also does not meet the requirements established for it by 206-FZ, namely, there are no links between each type of quarantine products and the respective quarantine object.

The proposed draft List of Quarantine Products is excessively broad, particularly where it relates to pelleted feeds, in comparison with the list of quarantine products (quarantine cargo, quarantine materials, quarantine goods) that are subject to quarantine phytosanitary control (oversight) at the customs border and in the customs territory of the Customs Union (approved by Resolution No. 318 of the Customs Union Commission of 18 June 2010).

The procedure proposed by the draft puts local manufacturers of pelleted feeds on an unequal footing compared with companies importing similar products from third countries, including members of the Customs Union. This inconsistency makes products manufactured in Russia less competitive than similar products manufactured in other countries, and thus creates excessive administrative barriers and additional costs for businesses.

In addition, many provisions of Federal Law No. 206-FZ became effective without transitional provisions, which results in clear conflicts of laws. For example, there is legal uncertainty around "quarantine phytosanitary area" (a concept introduced before Federal Law No. 206-FZ came into effect) that requires official clarifications.

For reference:

Article 19 of 206-FZ establishes direct regulation of the decision-making procedure for imposing or lifting a quarantine phytosanitary regime. This article contains an exhaustive list of conditions for imposing or lifting a quarantine phytosanitary area ("QPA") and does not provide for the adoption of any bylaws. Therefore, any bylaws that were adopted before 206-FZ came into force and provide for a different procedure and/or additional conditions for imposing/lifting a QPA not stipulated by 206-FZ, should either (i) apply only to the extent that they are not in conflict with 206-FZ or (ii) be brought in line with 206-FZ or (iii) be repealed.

In particular, in order to implement Federal Law No. 99-FZ of 15 July 2000 "On Plant Quarantine" ("99-FZ"), the Russian Ministry of Agriculture adopted Order No. 43 of 13 February 2008 "On Introducing and Removing a Quarantine Phytosanitary Area, Establishing and Canceling Quarantine Phytosanitary Regime, and Imposing and Lifting Quarantine." 99-FZ ceased to be in force as of 1 January 2015 and businesses,

therefore, believe that all bylaws adopted to implement that law must be repealed as well, or must apply only to the extent that they do not contradict the new law. Thus, FIAC WG members are of the opinion that Order No. 43 of the Russian Ministry of Agriculture of 13 February 2008 has come into conflict with the later regulation having a greater legal force.

It its clarifications on applying Federal Law No. 206-FZ "On Plant Quarantine" of 21 July 2014 in anticipation of the adoption of relevant bylaws, the Ministry of Agriculture indicates that the procedure for introducing and removing a QPA, establishing and canceling a quarantine phytosanitary regime, and imposing/lifting quarantine is applicable to the extent that it is not in conflict with 206-FZ (the full text of the clarifications is available in the ConsultantPlus database). This effectively proves that, when it comes to removing a QPA, the Ministry's Order No. 43 of 13 February 2008 falls in conflict with the provisions of Federal Law No. 206-FZ "On Plant Quarantine" of 21 July 2014. The clarifications provide no express guidance as to which procedure should be currently followed when removing a QPA.

In the absence of clarity in the legislation, the regional agencies of the Federal Service for Veterinary and Phytosanitary Oversight often deny the removal of QPAs on formal grounds, ignoring completely the results of actual phytosanitary risk assessments.

In view of the aforesaid reasons, the proposed phytosanitary regulation will require businesses to make huge but ineffective investments in arranging and performing additional administrative functions and building more warehouse facilities, thereby freezing significant funds for increased warehouse inventory and, as a result, adversely affecting final production cost and ultimately the competitiveness of the products. Consequently, as business processes slow down, economic activity in the industry will decrease, tax revenue will drop and Russia's investment appeal will diminish.

The Federal Law and relevant bylaws, when implemented in practice, will lead to much greater regulatory scrutiny and a significantly higher cost burden on the Government as the number of inspections and inspectors will rise exponentially.

Recommendations

1. Continue a focused effort with the Ministry of Agriculture toward the development and approval of subordinate legislation deriving from Federal Law No. 206-FZ of 21 July 2014 "On Plant Quarantine".
2. When drafting the list of quarantine products, pay particular attention to proper product classification (based on TNVED and/or OKVED) and matching such list with quarantine objects typical for the contamination and/or infestation of these products, as provided by 206-FZ (clause 1 of Article 21; clause 3 of Article 18).
3. Allow for quarantine products made by producers, which hold the technology to devitalize the quarantine objects and which are registered in a dedicated register of producers, to be classified as low risk products that may be released from phytosanitary quarantine without a quarantine certificate.
4. Ensure the legal alignment of laws and regulations dealing with the procedure for lifting quarantine phytosanitary areas introduced before 206-FZ entered into legal force.

Issue 5. Product control on the consumer market.

Harsher business conditions: excessive inspections and increased liability.

The business community is interested in effective and transparent control on the consumer market irrespective of the federal executive body to which the relevant functions are assigned.

The business community believes that the following issues should be taken into account:

FIAC member companies are concerned about the fact that companies in the consumer sector and retail trade have recently come under much closer scrutiny by both control bodies and lawmakers. That relates above all to the permission to conduct unscheduled inspections without approval by the prosecutor's office and without notifying the entity to be audited, the proposal to change the approach to the exhaustion of trademark rights, legislative initiatives to protect competition, numerous initiatives affecting product marking, etc.

Thus, in late 2014 the Russian Criminal Code (Article 171.1, section 3) was amended to impose criminal liability – potentially involving incarceration for up to three years – in cases where food packaging is not marked and/or gives inaccurate information.

What is more, criminal liability does not depend on the extent of harm to consumers, but is applied when the value of the incorrectly marketed goods reaches RUB 250,000, i.e., a level quite acceptable for a major

company in the consumer sector with a large turnover. Packaging violations may be due to an unintentional error made by a production operator or an equipment disruption and do not necessarily constitute willful misconduct causing moderate or severe harm to health.

For reference:

«...3. Production, acquisition, storage, transportation for selling purposes or sale of foodstuffs without marking and/or the application of information envisaged by Russian legislation, if such marking and/or the application of such information is mandatory (except for products indicated in part five of this article), performed on a major scale shall be subject to a fine up to four hundred thousand rubles or a salary or other income of the convict up to two years or forced labor for a term up to three years, or imprisonment for a term up to three years with a fine of eighty thousand rubles or a salary or other income of the convict up to six months.

Note. 1. In parts three and four of this article, a large amount is deemed to be the value of unmarked foodstuffs which exceeds two hundred fifty thousand rubles, and an especially large amount, one million rubles."

At the initiative of FIAC WG member companies, the Ministry of Economic Development of Russia included this issue in the plan of measures to decriminalize economic violations devised in line with instructions of the President of Russia. This has resulted in adoption of Federal Law No. 325-FZ "On Introducing Amendments to the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation" dated 3 July 2016. According to the new draft of Note 1 to Article 171.1 of the Criminal Code, the threshold value of incorrectly marked goods has been raised from RUB 250,000 to RUB 400,000 and in case of large and extra large amounts – from RUB 1,000,000 to RUB 1,500,000 for a matter to be dealt with as a criminal offense. As specified in the explanatory note, the number of criminal proceedings initiated under this Article is rather low (according to data provided by the Judicial Department of the Supreme Court of Russia, 31 persons were convicted under Article 171.1 of the Criminal Code in 2014, of which 1 person was imprisoned). Thus, this issue can apparently be considered irrelevant.

Members of the FIAC WG are positive about the decisions, although they have to note that the slightly increased liability thresholds by themselves are insufficient to solve the systemic problem described above for major producers and importers, and in the absence of large-scale court practice the only available resources are administrative and manual controls.

It should be noted that such a violation presupposes punishment under the Administrative Offenses Code. Article 14.43 of the Administrative Offenses Code of the Russian Federation, for instance, stipulates liability for failing to comply with the requirements of the technical regulations of the Customs Union (hereinafter, "CU Technical Regulations"), including failure to meet the marking requirements set forth in the CU Technical Regulations. Under that article, minimum liability is a fine of RUB 300,000 for companies and RUB 20,000 for an executive offender. Liability is even greater, i.e., up to the suspension of a company's activity, in the event of violations entailing damage to the health of individuals or a threat of such damage or a repeated violation. FIAC WG members believe that liability for the same violation stipulated in both Codes puts more pressure on business, brings uncertainty to law enforcement practice, and contains an element of corruption.

Such measures greatly complicate business, making its less attractive and less predictable in a difficult economic period, and negatively affect the investment attractiveness of Russia.

While FIAC member companies appreciate the importance of control and oversight functions in such an important sector of the economy, they urge a well-considered approach to be made so as not to create additional barriers for business in times of crisis.

Recommendations

Since the Administrative Offenses Code already imposes very effective sanctions for product-marking violations, we believe that criminal liability in this case as envisaged by clauses 3 and 4b is excessive and should be excluded.

Issue 6. Excluding corporate and professional advertising publications that specialize in (focus on) advertising and educational matters from the scope of the law on mass media.

Federal Law No. 305-FZ of 14 October 2014, "On the Introduction of Amendments to the Law of the Russian Federation on Mass Media," established a restriction, effective as of 1 January 2016, on foreign capital ownership of Russian mass media: a foreign state or international organization and any organization under their control, a foreign legal entity, a Russian legal entity with foreign participation, a foreign citizen, a stateless person, a citizen of the Russian Federation holding citizenship in another country, collectively or

individually, may not act as a founder (participant) of a mass medium, editorial board of a mass medium, or a broadcasting organization (legal entity).

It means that all Russian offices of international companies, Russian legal entities with foreign participation (including all FIAC members) as well as many Russian listed companies whose shares are traded on the open market will not be allowed to publish advertising booklets and corporate publications.

However, advertising and marketing materials designed to promote suppliers' goods to customers have particular importance in the current business model of trading companies. On the one hand, they serve to inform customers (including those in the SME segment), on the other hand, they are an effective means of increasing sales of advertised products.

These publications are registered as mass media because they have a print run of a million copies or more (Article 2 of the Law "On Mass Media"). The violation of this requirement entails administrative liability under Article 13.21 of the Russian Code of Administrative Offenses. In addition, expenses for publishing information on goods in publications with a 'mass medium' status can be recognized by suppliers and manufacturers as deductible advertising expenses.

The options under consideration for adapting to these requirements, such as outsourcing the publication of marketing materials to Russian publishing houses, will substantially increase the costs incurred by both trading companies and suppliers, and decrease the effectiveness of such materials because they will not be updated promptly. There will also be additional difficulties due to the use of retail chains' and manufacturers' commercial information and trademarks by third parties.

Note also that registering a corporate product of a company with foreign participation (hereinafter, the "client") in the name of a Russian legal entity will not resolve the issue in principle, as the client will continue to manage the "holder's" activities and to control the publication of such a "quasi" corporate product – a blatant conflict with the Law "On Mass Media". On the other hand, the proposed solution would distort the competition on the market, paving the way for the emergence of numerous legally published print media mentioning, in their titles, the brand names of clients which, however, will be unable to control their contents.

To be fully compliant with the new requirements, companies with more than 20% foreign ownership would have to cease the publication of their corporate materials, with the ensuing drop in publishing market revenue along with a sharp decline in orders for quality print paper, which are projected to shrink by RUB 12–17 billion.

This would lead to job cuts both with the clients and with publishing and printing houses. As a result, taxes and social contributions would decrease along with the decline in the spending power of certain groups of population involved in the production of print media or their raw materials and components (paper, paint, etc.). With a weaker pipeline of new orders, printing houses would have to embark on cost-cutting initiatives, which would inevitably affect both the quality and cost of print media.

The aforementioned risks undermine the attempts to improve the country's investment climate – a top issue on the Government's agenda.

Recommendations

1. Propose introducing the concept of advertising booklets and corporate publications into the Law "On Mass Media".
2. Consider removing specialized mass media, such as advertising booklets and corporate publications designed for educational and other special purposes, from the scope of Article 19.1 of the Law "On Mass Media" (as amended by Federal Law No. 305-FZ of 14 October 2014).

Issue 7. The strategy of increasing the food quality in Russia until 2030.

The strategy of increasing the food quality in Russia until 2030 (hereinafter, the "Strategy") is one of drivers of "The Basic Principles of the State Policy of the Russian Federation on Healthful Eating Until 2020". The Strategy is aimed at ensuring proper nutrition and preventing diseases, as well as prolonging the span and improving the quality of life of the Russian population.

The Strategy has been devised in lined with Instruction No. Pr-1259 of the President of Russia of 26 June 2015 and approved by Decree No. 1364-r of the Government of Russia of 29 June 2016.

FIAC member companies have welcomed the initiative to improve the quality of food products and other objectives declared by the Strategy. However, most of the measures envisaged by the Strategy and Strategy road Map are inconsistent with those objectives and, to a large extent, contradict them, namely:

1. Most of the regulatory improvement and development measures envisaged by the Strategy need to be discussed within the EEU rather than at the national level.

Introduction of individual national food regulatory requirements will contradict the EEU Agreement, e.g., concerning voluntary adoption of standards (Article 51.1.10 of the EEU Agreement) or prohibition of excessive barriers to entrepreneurial activities (Article 51.1.16 of the EEU Agreement). It also should be noted that the proposed measures may conflict with the WTO's Agreement on Technical Barriers to Trade, including non-discrimination of individual countries and avoidance of unnecessary obstacles to international trade.

2. Numerous provisions of the draft Strategy road map (hereinafter, the "Road Map") conflict with the norms of the current Customs Union Technical Regulations.

   For example, the requirement to approve shelf lives with state authorities (Article 2.2 of the Road Map) is in conflict with CU Technical Regulation No. 021 "On Food Safety", which contains the definition of and requirements to the shelf life as well as establishes the producer's responsibility for setting the shelf life (Article 7.6). Introducing new producer's responsibilities as well requirements to agree shelf lives with state authorities will in no way improve the food quality but will definitely create additional bureaucratic barriers.

   In addition, Article 2.3 of the Road Map requires that the name of the standard or technical document in accordance with which the food was produced or can be identified be shown on the food label. However, food identification is currently regulated by Article 6 of CU Technical Regulation No. 021 "On Food Safety" and we see no reason to doubt the effectiveness or sufficiency of the existing rules. Moreover, today almost any product produced or distributed within the Customs Union is subject to nearly 20 Technical Regulations; thus, it is virtually impossible to comply with Article 2.3 of the Road Map.

   The main objective of the technical regulation framework is solely the state regulation of food safety, whereas responsibility for the quality of safe products lies with the producer. However, the Strategy suggests "providing for food quality parameters in technical regulations for certain types of food products".

   The suggestion to set food quality parameters in corporate standards and technical requirements at the level not below the statutory minimum, including that set by national standards for similar products (Article 1.3 of the Road Map), is not feasible, as it has not been defined which food quality parameters are above and which are below the statutory standards and what are the criteria for a product to classify as similar. Moreover, if and when those requirements are imposed, it will no longer be feasible to develop innovative foods products, introduce new production technologies and improve the existing products.

3. The term "food quality" as defined in the Strategy mixes the concepts of food quality and food safety. Please note the two criteria of food products provided for in the Codex Alimentarius (GENERAL PRINCIPLES OF FOOD HYGIENE (CAC/RCP 1-1969)): food safety defined as "assurance that food will not cause harm to the consumer when it is prepared and/or eaten according to its intended use" and food suitability defined as "assurance that food is acceptable for human consumption according to its intended use".

4. The definitions provided for in the Codex correlate with the definitions of food quality and food safety provided for in the Federal Law "On Quality and Safety of Food Products".

   The food quality regulation framework envisaged by the Road Map, which implies creating a unified product quality traceability system (Article 18 of the Road Map) and application of state-of-art technologies for marking food products with control (identification) marks (Article 1.8 of the Road Map), has nothing to do with product quality as it implies monitoring the product turnover process, while product properties are created during the production process and do not change throughout the turnover process, provided the transportation and storage requirements are complied with. The traceability is currently ensured by both the existing food labeling requirements, including indicating the production date and batch number, and requirements for the food safety system imposed by CU Technical Regulation No. 022/2011 "Food Product Labeling" (Article 4.1 and Article 4.2) and CU Technical Regulation No. 021/2011 "On Food Safety" (Chapter 3, Article 5.3, etc.). This is the only best international practice available.

   Introduction of a full-fledged traceability system for all categories of food products will require 1) significant budget funds to develop and purchase state electronic systems for processing massive amounts of information resulting from tremendous output of consumer food items, 2) significant capital investments by turnover chain participants to implement, where currently unavailable, technical capabilities for marking food products with control (identification) marks, and 3) continual costs to purchase those control marks, which are estimated at RUB 15-22 per each food item sold (please refer to Decree No. 787 of the Russian Government of 11 August 2016).

5. The Strategy suggests that a new food quality management system be developed (Article 1.9 of the Road Map). We do not see why to develop a new unique food quality management system when numerous quality management systems (including multipurpose (e.g., ISO9000) and specific ones) have already been developed and are available for use.
6. It would not make sense to go back to state registration of food additives, including complex food additives, flavoring agents, etc. (Article 2.5 of the Road Map), after the industry has for some years been transitioning from state registration to declaration of compliance.
7. The Strategy's aim to create tailored food products and promote healthful eating is covered by Article 64 of the Road Map, which suggests developing criteria to classify food products as "products with excessive content of free sugars, sodium, saturated fatty acids and trans-isomers of fatty acids". According to CU Technical Regulation No. 022/2011 "Food Product Labeling", the concentration of nutrients in food products is classified as information on distinctive features of food products. Consumers rely on that information to make an informed choice of a particular food product.

   However, we find it reasonable that the concepts of "insufficient" or "excessive" content of nutrients be excluded from legislation as those are subjective consumer judgments about a specific food product made based on the consumer's individual diet.

   A scientific approach to assessing the composition of a diet, including assessing the food impact on human health, is based on determining the optimal amount of certain nutrients in one's diet, rather than selecting optimal food products depending on their content.

Moreover, developing nutrient excessiveness criteria that would be universal to all categories of food products without taking into account the consumption specifics, social and economic factors and cultural differences will cause unfair discrimination of certain product categories.

We believe that product quality enhancement requires a series of efforts, including raising consumer awareness, increasing controls, creating programs for professional development of inspection and certification personnel, as well as improving instrumental capabilities of certified laboratories. The quality enhancement process should be primarily driven by market mechanisms, such as consumer demand and willingness to pay more for those products.

It should be noted, however, that the Road Map contains certain reasonable suggestions as well, such as measures for developing production of food supplements in Russia and measures for raising awareness of eating healthily.

Thus, the Road Map should be primarily focused on educating the public and promoting a healthy lifestyle, including healthful eating, which is its integral part.

We also believe that measures should be avoided that can cause discrimination of safe food products which consumers are used to and bring in front other, supposedly "better quality", products, since those are the products that mid- and low income households, which account for a large share of Russian population, rely on.

We do not believe that issues of food adulteration, both in terms of composition and labeling, should be included in the Road Map: while admitting the importance of the issue, which to some extent but not fully is similar to quality issues, we believe it needs to be regulated separately, including through the Administrative Offenses Code.

Recommendations

1. Harmonize provisions of the Strategy with the requirements of the CU Technical Regulations.
2. Clarify the terminology used to define the product quality.
3. Eliminate Articles from the Strategy and Road Map that provide for the creation of a unified product quality traceability system and application of state-of-art technologies for marking food products with control (identification) marks.
4. Eliminate the Article from the Strategy and Road Map that provides for state registration of food additives.

1.7. Localization

Issue 1. Implement the principle of "localization in exchange for support," including special investment contracts (SPICs). Determine the level of localization that can be achieved by various industries and products.

1.1. Pharmaceutical and medical industry.

According to the Plan of Priority Measures to Ensure Sustainable Development of the Economy and Social Stability in 2015 (the "Anti-Crisis Plan"), approved by Resolution No. 98-r of the Russian government of 27 January 2015, one of the Government's key efforts in the coming months will be to support import substitution for a broad range of non-commodity (high-tech) goods and to ensure social stability, including in the area of health care and pharmaceuticals, by placing restrictions on purchases for state for government and municipal needs of pharmaceuticals and medical goods originating in foreign countries.

The Anti-Crisis Plan's stabilization measures include proposals for amendments to federal law providing for long-term state contracts that are conditional on the localization and development of production in Russia. Long-term contracts provide guarantees of stable demand for pharmaceuticals and medical goods for an extended period, and the large purchase volume will help stabilize prices and so optimize budget expenditures for pharmaceuticals and medical goods. Such long-term contracts will provide an additional incentive for foreign investors to localize production in Russia.

Another stabilization measure in the Government's Anti-Crisis Plan is limited state purchases of foreign-made pharmaceuticals and medical goods if offers are made by two or more producers in EEU countries.

Decrees to implement this measure were adopted by the Government on 5 February 2015 (for medical goods) and on 30 November 2015 (for pharmaceuticals). The working group is concerned that these documents fail to set criteria for local products and take no account of the investment efforts already made by foreign investors to develop the pharmaceutical and medical industry in Russia.

The Government's decree of 30 November 2015 allows pharmaceuticals that are only packaged in Russia to be purchased until the end of 2015, and additional criteria for the period after 2015 are lacking. As a result, foreign pharmaceutical manufacturers that have begun localizing their production in Russia risk losing the opportunity to be full trading participants, and localization thus loses its appeal for potential investors.

To keep foreign investors interested in the Russian health care industry, we recommend the use of state investment agreements guaranteeing that the production of an agreed amount of medical items will be localized within an agreed period, while the government guarantees demand for the localized pharmaceuticals.

In our opinion, several additional measures to stimulate localization should also be considered. For example, medical goods covered by investment agreements and planned for localization should qualify for the expedited issue (within one month) of a registration certificate from the Federal Service for Oversight of Health Care and Social Development.

Another important contributor to localization should be an improved procedure for applying the 15% discount factor to "contract prices" for state and municipal purchases (Order No. 155 of the Ministry for Economic Development of 25 March 2014 "On the Terms of Access of Goods Originating in Foreign States When Goods, Work and Services Are Purchased for State and Municipal Needs"). This preference is currently applied in only a limited number of cases, because customers do not always divide goods into auction lots, and the price preference cannot be applied when a lot includes both localized and unlocalized goods.

There have been some positive developments resulting in an accelerated registration procedure for localized medical goods and pharmaceuticals that are worth mention. For example, following a board meeting of the State Council, which was held on 25 November 2015 to discuss mechanisms for encouraging local production, the President signed a list of instructions (No. Pr-2654GS) that includes a proposal to reduce the time required to complete all registration formalities for high-tech products, including product certification and obtaining a license to produce such products, primarily medical goods and pharmaceuticals.

This issue was further addressed by decisions of the Government Commission on Import Substitution of 8 July 2016. The Russian Ministry of Industry and Trade, the Ministry of Health and the Ministry for Economic Development were instructed to consider developing pharmaceutical and medical companies involving SPICs and to create an expedited procedure to bring pharmaceuticals and medical goods to the market.

1.2. Food sector.

Today there is no system of incentives for investing in localization or finding local suppliers of raw materials for the food industry.

Under current law, preferences apply only to some categories of goods, largely in the area of machine building, but food manufacturers are interested in localizing certain raw materials and ingredients (by switching from imports). Existing regulatory documents do not provide for such localization.

1.3 Machine building.

Companies in the machine-building sector today are having trouble finding suppliers that can provide the required quantity and quality of raw materials. In some cases, suppliers operating on the Russian market are not motivated to develop production due to the comparatively low volumes and strict standards involved. As a result, even companies that have engaged in technology transfers and created centers of excellence in Russia are forced to rely wholly or partially on imported raw materials and are thus unable to achieve the desired level of localization.

Recommendations

1.1. Pharmaceuticals

- The Russian Ministry of Industry and Trade, jointly with the Ministry of Health, in developing incentives for medical companies involving SPICs, is to provide for the expedited issue (within one month) of registration certificates by the Federal Service for the Oversight of Health Care and Social Development.
- The Russian Ministry for Economic Development is to develop methodological instructions recommending that state and municipal customers make purchases in lots in order to take full advantage of the 15% discount off the "contract price" for localized products.
- The Russian Ministry of Industry and Trade is to give priority consideration to FIAC member companies' projects involving SPICs.

1.2. Food industry

- The Russian Ministry of Agriculture is to provide incentives for agro-processing to meet the consumer sector's current needs and provide support for the creation of integrated systems of modern storage and transportation of agricultural raw materials and semi-finished products (regional storage and processing clusters):
- The Russian Government is to develop a mechanism for the payment of import duties (reimbursement of paid import duties) by (to) importers carrying out localization projects in Russia.
- The Russian Ministry of Agriculture is to develop and approve criteria for localization (import substitution) applicable to companies that switch from imports to long-term relations with Russian suppliers of raw materials and ingredients.
- The Russian Ministry of Agriculture, in quantifying achievable levels of localization, is to take into account limitations due to the fact that the food industry uses agricultural raw materials that cannot always be produced in Russia for climatic reasons.
- The Russian Ministry of Agriculture, jointly with the Ministry of Industry and Trade, is to consider using SPICs to provide incentives for localizing the production of raw materials and ingredients in the food industry, including support for infrastructure projects for the primary processing, storage and transportation of agricultural raw materials.

1.3 Machine building

- The Russian Ministry of Industry and Trade, in quantifying achievable levels of localization, is to take into account limitations due to the fact that raw materials needed for production cannot always be produced in Russia in the required quality and quantity.

1.4 Chemical industry

- The Russian Ministry of Industry and Trade is to formulate a priority list of products whose localization qualifies for state support.
- The Russian Ministry of Industry and Trade is to consider establishing a public tender system for access to state support for potential investors.
- The Russian Ministry of Industry and Trade, in developing specific state incentives for innovative chemical plants, is to ensure compensation of costs incurred by an investor in creating the manufacturing infrastructure required in the investor's chosen location as well as in purchasing laboratory equipment and training employees.

Issue 2."Integrate Russian producers and companies involved in agro-processing into the supply chains of food industry players among FIAC members and increase the export potential of Russian agricultural products."

Foreign companies are ready to increase the share of Russian enterprises in their procurement system. This would both encourage local production and reduce costs. In particular, the food industry offers ample opportunities for developing primary agro-processing.

It should also be noted that cooperation with major companies has a number of key advantages, such as receiving regular orders, gaining experience in complying with the current stringent requirements, or improving the supplier's reputation and status. As agribusiness begins to grow, such cooperation not only allows support for demand for domestically produced agricultural products, but also prepares producers for exporting by introducing them to the requirements applied to international trade.

However, further cooperation with Russian suppliers may be hindered by certain obstacles, including:

1. A lack of information about market niches for Russian products that meet international requirements.
2. A lack of international certification or only formal compliance with the existing requirements. In practice, documents evidencing certification do not always mean that the requirements are actually met or the procedures are followed. Thus, companies interested in cooperation with major customers that are members of FIAC should apply for certification to an authorized international company, such as SGS, Intertek or Bureau Veritas. Information on the most important standards (i.e., ISO 22000, FSSC 22000) may be summarized by the concerned FIAC members.
3. Underdeveloped primary agro-processing. The absence of a consistent approach to encouraging investment in technology and equipment for primary processing of agricultural raw materials at farms is holding back their supply and slowing the pace of full localization of food-processing enterprises (including entirely Russian ones). In order to supply their Russian production facilities today major international companies are ready to purchase various products, including dried vegetables/herbs, powdered milk, milk fat and dry whey, raw materials for juice products (apple puree and apple juice concentrate), malt and other products.
4. A lack of understanding of the major companies' requirements for suppliers (apart from technological). Among the key criteria for selecting a supplier are reliability of supplies and a solid financial standing.

Recommendations

The integration of Russian producers and companies involved in agro-processing into the supply chains of food industry players among FIAC members may be achieved through implementing new or modifying existing measures to support agribusinesses and SMEs.

1. In order to address this issue, it is necessary, among other items, to communicate information about the potential of primary agro-processing to agribusinesses and regional authorities. For that purpose, we suggest summarizing information from FIAC members about the following:

- the range of products they are ready to purchase in Russia;
- requirements for products, including standards and certification systems.

We suggest communicating this data to Russian regional authorities and agribusinesses via channels of the Russian Ministry of Agriculture.

2. To comply with the requirements for the products purchased, it is necessary to provide for subsidies covering suppliers' costs of international certification (including personnel training to meet certification requirements). This measure also contributes to developing the industry's export potential. Jointly with the Russian Ministry for Economic Development and development institutes, we recommend analyzing the effectiveness of and demand for existing support mechanisms used to recover costs of the certification of production.
3. We suggest that the Russian Ministry of Agriculture and the Ministry for Economic Development consider developing recommendations for changing the regional support programs for agribusiness and SMEs to include criteria for selecting companies that will receive support. For instance, companies which implement projects to develop an agro-processing business or upgrade existing processing capacity in order to obtain international certification should have an additional advantage during the selection process.

Issue 3. Enhance state measures to support the processing of goods for domestic consumption and stimulate exports of finished goods outside Russia (jointly with the FIAC working group for improvement of customs law).

In addition to the production of components in Russia for the domestic market (or conversion to Russian raw materials), localization may also involve production for the global market (expansion of exports from Russia). Incentives for localizing production may include lower administrative barriers for exports of finished goods.

Many goods segments of the Russian market today are characterized by a consistently high share of imported goods, driven by poor domestic supply and constant growth in domestic demand. This creates a high potential for domestic production capacity in terms of both consumer demand and import substitution. Russian exports are competitive, especially with the higher rates of key world currencies against the Russian ruble.

Yet production development is blocked by certain factors, an interesting one being the structural imbalance between the import duty rates, with those for raw materials and other materials exceeding those for the finished products made from them. This imbalance constitutes an objective economic barrier to developing domestic production: importing finished products is cheaper than producing them in Russia. The result is a drop in the competitiveness of domestic products on both domestic and foreign markets. The main problem is with raw materials and other materials that are not manufactured in EEC countries or cannot be replaced without a significant loss of the finished products' consumer properties.

A review of customs duty rates for specific items in the Common Customs Tariff is a complex, laborious and lengthy process requiring a sophisticated analysis of all the economic implications. It involves risks of false declaration and thus cannot always be applied in a timely manner to resolve the problem under consideration.

In our opinion, this situation can be resolved by more actively using the special customs procedure for processing for domestic consumption provided by Article 264 of the Customs Code of the Customs Union and the customs procedure for processing in the customs territory provided by Article 239 of the Customs Code of the Customs Union. These procedures would contribute to import substitution (the customs procedure for processing for domestic consumption) and stimulating exports (the customs procedure for processing in the customs territory).

Under these procedures, raw materials and other materials used in processing are fully exempt from import duties, taxes and non-tariff regulation. The processed products are subject to:

1. The customs procedure for release for domestic consumption involving the payment of import duties at the rates applied to such processed goods without the application of non-tariff regulation (in case of using the procedure for processing for domestic consumption).
2. The export customs procedure (in case of using the customs procedure for processing in the customs territory).

At the same time, Chapters 34 and 36 of the Customs Code of the Customs Union set unambiguous and exhaustive requirements for cross-border operators, ensuring that the procedure for processing for domestic consumption is used as intended and preventing the use of false declarations to evade import duties. This procedure may be used only on the basis of a special document issued by an authorized body of the EEU member state and containing information on both the recipient and the conditions for the procedure's use.

There are, moreover, numerous requirements with respect to the manner, conditions, timing and volumes of processing as well as the identification of goods and processed products, including the requirement that processed products cannot be restored to their original condition in a cost-effective manner.
Consequently, Chapters 34 and 36 of the Customs Code of the Customs Union determine and enable effective application of a customs procedure specially designated for attracting, maintaining and developing high-tech production in the Eurasian Economic Union irrespective of a possible imbalance between the customs duty rates for raw materials and finished products, while ensuring proper control over the correct application of the procedure.
Cross-border operators note two main hindrances to wider use of these procedures:

1. Lack of criteria that would allow an authorized body to determine whether a means of identifying foreign goods in processed products is acceptable.
2. The limited list of goods subject to the customs procedure for processing for domestic consumption.

The following should be noted in connection with the identification of foreign goods in processed products.

Under Articles 242 and 267 of the Customs Code of the Customs Union, the following methods may be used to identify foreign goods in processed products:

1. Seals, stamps, digital and other forms of labeling affixed on the original foreign goods by the declarer, the person who processes the goods or a customs official.
2. Detailed description, photographing, representation within the scope of foreign goods.
3. Comparison of preselected specimens and samples of foreign goods and processed products.
4. Use of the current labeling of goods, including in the form of serial numbers.
5. Other methods that could be used depending on the nature of the goods and processing operations, including a review of detailed information on the use of foreign goods in processing and on the processing technology as well as customs control during processing operations.

Unfortunately, for most industries, the methods indicated in 1)–4) are unacceptable because the raw materials used in processing:

1. Do not or cannot have definite identifiers (chemical raw materials, food raw materials, small components and spare parts).
2. Disappear during manufacturing (due to shrinkage or chemical transformation).
3. Are difficult to isolate and identify due to the nature of the finished products (food products, sophisticated equipment).

In Kaliningrad Region, active use has been made since 1 April 2016 of conclusions issued by the Kaliningrad Chamber of Commerce and Industry on the identification of foreign goods to which the free customs zone procedure is applied and that are contained in processed products. This procedure is set down in Decree No. 185 of the Russian Government of 12 March 2016 and by Order No. 30n of the Ministry of Finance of 21 March 2016. It would be advisable to consider a similar mechanism for the identification of foreign-produced goods in processed products under the customs procedures for processing in the customs territory and processing for domestic consumption. The following should be noted in connection with the list of goods that qualify for the customs procedure for processing for domestic consumption.

Under Article 265 of the Customs Code of the Customs Union, the customs procedure for processing for domestic consumption may be applied only to a limited list of goods determined by the national laws of the CU member-states. As for Russia, this list is determined by Article 265 of Federal Law No. 311-FZ of 27 November 2010 "On Customs Regulation in the Russian Federation" and by Decree No. 565 of the Russian Government of 12 July 2011 (the "Decree"). The list is limited to about 50 goods designated for specific production. As a result, the processing for domestic consumption procedure is not used in practice, which holds back the development potential of domestic high-tech production with high added value and, consequently, new investment in such production.

It is worth noting that the customs regime of processing for domestic consumption is an effective mechanism widely used worldwide for developing local production and attracting investment.

Thus, for example, under Belarusian and Kazakh legislation, all goods included in the Customs Union's Unified Goods Classifier for Foreign Economic Activity may qualify for the customs procedure for processing for domestic consumption, except for those goods forbidden for import into the customs territory of the Customs Union and (or) those included in the List of Goods Forbidden for the Customs Procedure for Processing in the Customs Territory approved by Decision No. 375 of the Customs Union Commission "On Certain Issues with Respect to the Application of Customs Procedures" of 20 September 2010.

Therefore, the customs procedure for processing for domestic consumption is attractive for those companies investing in the Russian economy. However, the application of this procedure is limited to the list of goods established by the Decree, making it impossible to place certain goods under this procedure.

Recommendations

1. The Ministry for Economic Development in cooperation with concerned agencies and the business community should consider revising the procedure for determining the list of goods that may be processed for domestic consumption, as approved by Decree No. 565 of the Russian Government of 12 July 2011, by determining the list of goods that may not be processed for domestic consumption in order to expand application of the customs procedure for processing for domestic consumption.
2. The Ministry of Finance and the Federal Customs Service, in cooperation with concerned agencies and the business community, should consider a simplified means of identification, including for

purposes of approving the customs procedures for processing in the customs territory and processing for domestic consumption, and submit a draft decree to the Russian Government that would allow the conclusions of regional chambers of commerce and industry to be used to identify foreign goods in processed products.

Issue 4. Mechanisms to involve Russian investment resources in developing domestic suppliers of raw materials for international companies in order to increase their level of localization.

Localization and import substitution are promoted in part by improved relations and more active engagement of domestic suppliers of raw materials and components for foreign companies. The involvement of Russian companies in the supply chain, their training and the inculcation of standards of quality are currently a focus of attention.

One example is EY's recent survey "Investment Climate in Russia – Foreign Investor Perception," which includes a section on working with Russian business partners. While foreign investors were generally satisfied with their interaction with Russian partners, they also noted certain difficulties, including the short-term focus of Russian partners, complex internal approval processes (lack of internal coordination), inconsistent and non-transparent decision making and lack of accountability for commitments to foreign partners.

Respondents nonetheless said that the Russian business environment has improved markedly over the last five to six years. In a number of industries this has been made possible by partners' willingness to adapt to the corporate standards of major foreign companies, requiring additional financial investments on the part of these partners. Investors contribute to such adaptation by introducing systems of training, certification, inspection and performance monitoring as well as external control functions.

Despite the overall positive trend in relations between Russian suppliers and foreign companies, there are still a number of problems to be dealt with:

- lack of a system (database) for finding and engaging small and medium-sized domestic suppliers in a situation where publicly available information is largely on major companies, which often have little motivation to adapt to the needs of foreign business;
- low motivation on the part of Russian suppliers to make additional investments in production in order to meet international companies' requirements in exchange for long-term orders for products;
- lack of cooperation between foreign companies and Russian business associations with regional representatives (the Russian Union of Industrialists and Entrepreneurs, the Chamber of Commerce and Industry, Opora Rossii and Delovaya Rossiya) in finding and engaging local suppliers of raw materials and components.

The working group had several meetings with the representatives of the Russian Ministry of Industry and Trade, the Industry Development Fund and the Russian Ministry for Economic Development to discuss the progress of a State Industry Information System currently developed by the Fund, and the input that the working group can provide. Proposals put forward by the working group were included in the list of instructions (No. Pr-2654GS) signed by the President following a board meeting of the State Council, which was held on 25 November 2015 to discuss mechanisms for encouraging local production. In particular, the Government should, no later than 1 December 2016, make the following updates to the State Industry Information System:

- the current progress on import substitution initiatives;
- information about technical and other specifications for locally manufactured industrial products;
- information about companies and organizations, which supply or produce raw materials, components or equipment;
- information about imports of goods, work or services (including industrial products lacking locally produced equivalents) planned by federal, regional or local government bodies or state-owned companies.

The meeting with the representatives of the Industry Development Fund in August 2016 revealed that the State Industry Information System would be aimed at the provision of new services. Furthermore, it will become possible to search for suppliers of certain components or products. However, the State Industry Information System does not currently include food enterprises. In order to rectify this, an official communication to the Ministry of Agriculture was prepared with a request to discuss the participation of food enterprises in the State Industry Information System with the Ministry of Industry and Trade.

One of the barriers to the development of local suppliers is limited opportunities for investing in purchasing equipment and establishing production in accordance with international standards. It would thus be advisable to consider the tripartite collaboration mechanism to support local suppliers. The parties to such collaboration can be the state, a local supplier and a major company that is ready to purchase products produced (or to be produced) by the supplier. An example of such engagement could be as follows: after making sure that the supplier is acting in good faith, the major company (the customer) confirms its interest in expanding/upgrading the supplier's production facilities to increase purchase volumes or extend the types of products being purchased. Based on the anticipated demand, the local supplier prepares a business plan for expanding/upgrading the existing production. The state provides financial support for the project (in the form of compensation for interest expenses, provision of government guarantees or other support).

Recommendations

- The Russian Ministry of Industry and Trade is to develop a procedure for supporting the search for suppliers of raw materials for production in Russia.
- Fine-tune the concept of a unified public database of suppliers of industrial and agricultural products to meet the needs of foreign and major Russian companies.
- The Russian Ministry of Agriculture together with the Ministry of Industry and Trade is to ensure possibility for using the State Industry Information System by the food enterprises and agribusinesses.
- The Russian Ministry for Economic Development is to ensure cooperation between FIAC and the Russian Union of Industrialists and Entrepreneurs, the Chamber of Commerce and Industry, Opora Rossii and Delovaya Rossiya in finding and engaging small and medium-sized domestic suppliers to meet the needs of international companies.

1.8. Energy efficiency

Issue 1. Reduction of energy consumption in residential, public and industrial buildings.

Russia's energy efficiency per square meter remains among the worst in the world. Annual energy consumption in residential buildings, for example, averages 350 kWh per square meter. Energy consumption in Russia is substantially higher than in countries with a similar climate (up to 50% higher, depending on the type of building). Residential buildings account for 23% of all primary energy consumption in Russia.

The experience of recent years shows that the sector responds well to state policy designed to improve energy efficiency. For example, power consumption per square meter of living space was reduced 13% in comparable conditions – largely due to regional building regulations to ensure energy efficiency and prevent heat loss (1994-2003) and Construction Standards and Regulations 23-02-2003 "Prevention of Heat Loss in Buildings" (from 2003) as well as the increasing use of meters, more efficient lighting and electrical appliances and the intensification of capital repair programs in 2008-09. Power consumption for heating purposes was reduced 12% per square meter in state-owned buildings.

The period of 2014-15, however, has seen stagnation in key areas of energy efficiency policy. State programs on capital repairs of buildings are episodic in nature and the economic incentives for constructing buildings with the higher class of energy efficiency have not yet been implemented. If this situation is projected forward, energy consumption, instead of continuing to stabilize, will start to rise in the period of 2015-50. By 2050, energy consumption in all buildings will grow 34% - from 245 million tons of reference fuel in 2013 to 330 million in 2050 - and consumption for heating and ventilation will grow 50%.

The working group and the Efficient Energy Consumption Center did a joint study showing that measures to promote energy efficiency in buildings could yield savings of 379 million tons of reference fuel in 2014-50 - 54% of final energy consumption in all sectors of the Russian economy in 2013 and half of the annual production of natural gas. Energy efficiency requirements to be introduced in 2025 will yield figures 60% below the base level of 2003 for energy efficiency and 68% for heating and ventilation - additional savings of 2 million tons of reference fuel by 2030 and a further 12 million by 2050. Total energy savings for 2014-50 will grow by a further 164 million tons of reference fuel. The analysis included specific calculations of costs and their economic effects. Ten scenarios were analyzed for implementing the policy for enhancing energy efficiency in buildings, including various packages of technical and economic incentives for increased energy efficiency.

At the proposal of the Energy Efficiency Working Group, the list of orders of the Russian Prime Minister following the 29th session of the Foreign Investment Advisory Council held on 19 October 2015 (Resolution No. DM-P13-7296 dated 26 October 2015) included an order for the Russian Ministry of Construction, Housing and Utilities to prepare a road map to enhance the energy efficiency of buildings and submit it to the Russian government in accordance with the standard procedure before 22 March 2016.

In its Resolution No. 1853-r of 1 September 2016, the Russian government approved the road map to enhance the energy efficiency of buildings, structures and facilities by eliminating technical, regulatory, informational and other barriers to increased energy efficiency, while establishing appropriate energy efficiency levels for the design, construction, use and capital repairs of buildings, structures and facilities.

Recommendations

We suggest establishing a working group at the Ministry of Construction, Housing and Utilities involving foreign investment experts in order to implement the approved road map steps, with account taken of the following proposals:

1. Improve the regulatory framework for energy efficiency parameters in buildings, including approval of the draft Code of Rules "Energy efficiency of buildings. Calculation of energy consumption for heating and cooling, ventilation and hot water supply (EN ISO 13790:2008)," and eliminate inconsistencies in the draft, including with respect to the mandatory energy consumption parameters for single-family detached houses and townhouses. Review the regulatory requirements for energy efficiency in buildings at least once every five years.
2. Develop codes of rules for energy conservation and enhanced energy efficiency in industrial buildings and structures, and harmonize them with European standards.
3. Create a system for monitoring compliance with construction rules and regulations.
4. Provide economic incentives for constructing low-energy and passive buildings. Introduce a system of tax benefits and interest rate subsidies for bank loans obtained for the construction of energy-efficient buildings.

5. Create a system of bank guarantees for loans granted for capital repairs of residential buildings, including by forming energy conservation funds.
6. Take export gas prices into account in analyzing life cycle costs when determining the feasibility of measures to enhance energy efficiency in buildings.
7. Improve the rules for determining a building's energy efficiency class, ensure that energy efficiency is marked as required by Article 12 of Federal Law No. 261-FZ, and improve the means by which a developer indicates the energy efficiency class on the facade of a building being commissioned. Apply the requirements for energy efficiency certification to single-family detached houses and townhouses.
8. Develop a system of statistical monitoring of energy efficiency levels in buildings.
9. Formulate recommendations and technical solution albums for measures to enhance energy efficiency when standard residential and public buildings undergo capital repairs.
10. Bring the annual level of capital repairs of residential buildings up to 3% of their total area and that of service sector buildings up to 2% of their total area. Capital repair programs should be coordinated with ESCO's comprehensive energy conservation programs and projects.

Issue 2. New tariff regulation policy. Uncertainty about the tariff containment policy.

In September 2013, the Russian Ministry for Economic Development drew up a comprehensive socioeconomic plan providing for zero indexation (from 1 July 2014 through 1 July 2015) and limiting the growth of Gazprom tariffs and tariffs of other natural monopolies. The plan reflects the basic principles of Russia's socioeconomic forecast for 2014-16, which was approved by the government in September 2013 and envisages zero tariff indexation for natural monopolies, subsequently indexing tariffs to the level of inflation (CPI). In September 2014, the Ministry for Economic Development published its Russian Socioeconomic Forecast for 2015 and the Planning Period of 2016-17, which envisages the following rates of indexation of natural monopoly tariffs:

- wholesale gas prices for industrial enterprises in July (as compared with the preceding year): 7.5% and 5.5% in 2015 and 2016, respectively (CPI of the preceding year) and 3.6% (0.8% of the preceding year's CPI) in 2017;
- heating tariffs: 8.5% (CPI + 1%) in 2015, 5.5% (CPI) in 2016 and 4.2% (0.93% of CPI) in 2017.

In October 2015, the Ministry for Economic Development published its Russian Socioeconomic Forecast for 2016 and the Planning Period of 2017-18, which envisages the following rates of indexation of natural monopoly tariffs:

- wholesale gas prices for industrial enterprises, in July (year on year): 2% in 2016 (the CPI was 112.9% in 2015) and 3% in 2017 and 2018. It should be noted that in July 2016 the tariffs were not in fact indexed;
- the combined utilities bill for households: 4% in 2016, 5.1% in 2017, and 4.7% in 2018.

In May 2016, the Ministry for Economic Development published the key provisions of its Russian Socioeconomic Forecast for 2017 and the Planning Period of 2018-19, which envisages the following rates of indexation of natural monopoly tariffs:

- wholesale gas prices for industrial enterprises, in July (year on year): 2% in 2017, 2018 and 2019 (in 2016 the CPI was 103,9% compared to December 2015);
- the combined utilities bill for households: 4.4% in 2017, 4.6% in 2018, and 4.2% in 2019.
- heating tariffs: 3.5% (base case CPI -1.4%) in 2017, 4.1% (CPI-0.3%) in 2018 and 3.8% (CPI-0.2%) in 2019.

The constant (in fact, annual) change in pricing principles on the gas market in recent years adversely affects the investment programs and capitalization of gas producers and electric power companies. The volatility of tariff regulation in the gas sector affects the electric power sector, where spot prices are closely tied to regulated gas prices.

The new tariff policy thus involves a substantial risk of reduced profit for wholesale generation companies, making it hard for them to maintain the free cash flow needed to support current investment projects. When gas tariffs are artificially frozen or contained by indexing them at a level far below inflation, generation companies become less profitable, and there are less funds available for important investment projects. The tariff freeze and limitation of tariff growth may have an effect opposite to that intended: zero or negligible annual growth in tariffs will reduce natural incentives for enhancing energy efficiency among consumers and

make it less attractive for generation companies to invest in the modernization of existing generation capacities. As a result, power generation equipment may age more rapidly and power consumption in most industries may increase.

The new tariff policy may cause GDP to grow more slowly, mainly due to the gas and energy industries' large share in the country's GDP.

Recommendations

- the period of zero growth or limited growth of tariffs should be as short as possible. Regulators should return to the policy of indexing wholesale gas tariffs for industrial consumers to "actual CPI + minimum of 5%";
- create natural incentives for energy efficiency and energy conservation in all categories of gas and electric power consumers;
- maintain the gas sector at a sustainable level that is acceptable to private investors, and ensure (by indexing gas tariffs) the cash flows needed to develop new key capital-intensive gas fields;
- restore the energy industry's investment appeal and long-term stability by stimulating generation companies to raise their efficiency and so profit from wholesale power sales;
- take account of the difference between forecast and actual inflation since 2014 in determining the rates of indexation for 2015.

Now and in the foreseeable future, a steady increase in gas tariffs is one of the state's most important means of maintaining a long-term balance and investment appeal in the gas and electric power industries.

To compensate for generation companies' reduced marginal profit due to the freezing/containment of tariff growth, regulators should consider introducing mechanisms to restore generation companies' profitability in the period prior to the freeze and to restore the energy industry's investment appeal.

Issue 3. Formation of the gas market.

Gas exchange

Gas trading on the electronic trading platform of Gazprommezhregiongaz LLC in 2007-08, using a trading mechanism synchronized with the unified gas supply system, was a means of forming price signals and diversifying gas sources and was a potential basis for liberalization of the gas market.

Gas trading on the electronic platform was suspended after the onset of the economic crisis in 2008.

The lack of market signals formed on an independent exchange/trading platform limited price transparency and prevented the creation of additional incentives for price competition.

Government Decree No. 566 "On Amendments to Certain Acts of the Russian Government Concerning Gas Sales in the Russian Federation," designed to promote sales of natural gas on commodity exchanges and in electronic trading systems, was approved on 19 June 2014.

The St. Petersburg International Commodity Exchange has held monthly trading sessions for the supply of gas a month in advance since 24 October 2014. The trading on a day-in-advance delivery terms was launched in October 2015 and is held each working day. 7.8 billion cubic meters of gas were sold on this exchange in 2015 - about 2% of total gas supplies to the domestic market in 2015.

Recommendations

- expand the list of supply bases in order to diversify the supply geography and create more localized price signals;
- allow amounts purchased on the exchange to be swapped and resold during a trading session;
- expand the use of trade mechanisms with a wide range of delivery periods (a week in advance, etc.), and then introduce financial derivatives;
- create more attractive conditions for independent gas suppliers in order to raise the level of competition among suppliers and form more variable prices for gas;
- reduce the requirements on the obligatory advance payments for a buyer under the contract for the supply of gas a month in advance (from 100% to 50% of the amount of a contract).

Issue 4. Electric power industry. Effective operation of Russia's Unified Energy System.

On 27 August 2015, Russia's government adopted Decree No. 893 that introduces a new model of the long-term capacity market in the Russian electric power industry. The improved model, which provides for capacity takeoff for four years, rather than one year, in advance, will enhance the investment climate in the industry; improve the forecasting of capacity prices for consumers, generation companies, and tariff regulators; facilitate long-term planning of operating and investing activities by suppliers and consumers; and generally contribute to a better operation of the market.

Currently, there is substantial surplus capacity in the Russian energy system, resulting in lower efficiency indicators, such as installed capacity utilization factor and reference fuel consumption per unit of electricity or heat produced.

According to the System Operator, the capacity selected in excess of a minimum demand requirements amounted to 17.4 GW for 2016, 17.8 GW for 2017, 18.6 GW for 2018 and 18.6 GW for 2019. Consumers will have to pay for this massive spare capacity and efficient electricity generators will not be able to receive adequate capacity payment required for development and upgrade due to the significant price reduction resulting from the excessive capacity arising after competitive capacity selection.

One of the main reasons for this is the lack of incentives for investment in modernization of the generation equipment and the existence of 'forced mode' generators.

The primary sources of power generation continue to age and grow obsolete, and the number of emergency situations continues to grow. Today, thanks to the reserve created through introduction of new capacities, there is a unique opportunity to technically upgrade, reconstruct and replace inefficient power generation equipment (electricity and thermal power) without having to limit consumption. These measures will determine the quality of the economy’s power supply as well as its stability and security in the future. A comprehensive and serious approach to these efforts will allow large-scale energy savings and open up the enormous opportunities that this sector offers for enhanced energy efficiency.

To turn the current situation around, substantial investments are required to upgrade current capacity, which may be achieved by refining the model of long-term capacity market.

Currently, a substantial part of the existing generation plants cannot be decommissioned due to both objective factors and those that are not quite objective. These generation plants can be classified into two categories: really efficient and really inefficient. Generators from the first category perform very well in technical and economic terms and, being aware of their "indispensability," request the status of a 'forced mode' generator only to recover their investments. In this case, their commercial risks are covered by consumers although there was no preliminary agreement with the latter to this effect as was the case when capacity supply agreements ("CSAs") were signed. Generators from the second category incur constant losses but cannot be shut down because their owners have no funds to upgrade them or improve their efficiency or carry out substitution measures.

The situation has improved slightly in 2015 after the capacity takeoff model was modified. Currently, ineffective generators do not squeeze effective generators out during the competitive capacity takeoff ("CCT") although they do push the price down substantially. Unfortunately, the government has abandoned the regulation it adopted in 2014 which restricts, as of 1 July 2015, the Government Commission's authority to make decisions to supply capacity in a 'forced mode' under certain heating conditions. Such departure from previous decisions sends a negative signal to investors and a positive signal to participants of the wholesale electricity and capacity market ("WECM") that manipulate the 'forced mode.'

Besides, errors made in the preparation of the General Power Generation Deployment Scheme resulted in excessive concentration of the effective inexpensive generating capacity in the UES of Ural (for example, in the Tyumen region). Inability to transmit such capacity to the neighboring power areas due to network restrictions lead to the forced downtime of the effective generation and calls for the need to assign a 'forced mode' generator status to ineffective equipment. We believe that the investment program of the Federal Grid Company (Rosseti) shall be analyzed and amendments shall be introduced to eliminate bottlenecks and optimize the utilization of inexpensive capacity.

Recommendations

1. Develop an approach for determining the parameters of the elastic demand curve for long-term competitive selection of generating capacity in order to stimulate investments in upgrade and renovation of generating facilities after 2020, taking into account the introduction of new power facilities under CDAs.
2. Analyze the investment program of the Federal Grid Company (Rosseti) and make amendments to eliminate bottlenecks and optimize the utilization of inexpensive capacity.

3. Formalize the procedure for obtaining the status of a 'forced mode' generator. The 'forced mode' should be granted only on the basis of a decision of the Russian Ministry of Energy at the request of the System Operator, taking into account the reliability of power supply to consumers, and only for a limited period.
4. Develop and implement a WEC market mechanism for decommissioning power generation plants that would provide for:

- the assessment of a possibility to continue operating the specific power plant on arm's length terms;
- the purchase of the power plant;
- the development, evaluation and implementation of substitution measures;
- the sources of financing

We suggest the following approach: if an owner decides to decommission any power generation plant, it should notify the System Operator accordingly. If the System Operator cannot approve the decommissioning of the power plant due to power supply reliability considerations, the owner should put the power plant up for sale. The purpose of this approach is to make sure that the power plant is really unprofitable and it is really impossible to continue its operation in the current market context. This will help exclude participants that manipulate the 'forced mode' in order to obtain excess profits. The absence of potential buyers for a power generation plant put up for sale will mean that nobody really needs this plant and it should be shut down. The next step will be a competitive bidding procedure to select substitution measures through comparison of alternative options. The lowest-cost substitution measures should be selected as the winner.

Only this market approach will allow the decommissioning mechanism to operate as expected, improve the efficiency of the electric power industry and send investment signals. Only this market approach will allow the decommissioning mechanism to operate as expected, improve the efficiency of the electric power industry and send investment signals.

Issue 5. On changes to the approach for determining the volume of capacity shortfalls.

Among measures to make generation companies keep their equipment in good order and repair are penalty coefficients that are designed to lower the volume of capacity payable by consumers.

Coefficients are currently set at the lower end of the range established by the Wholesale Market and Capacity Rules, but from 1 January 2017, under clause 55 of the Wholesale Market Rules, values at the higher end of the range will be used – an increase of 7-13 times and in some cases as high as 25 times.

We believe that the existing system of the availability coefficients is fully balanced in terms of creating incentives to maintain availability of generation equipment. Further increase in coefficients will result in reduced economic incentives among owners to maintain availability of generation equipment and, therefore, is not reasonable. Not only generating companies adhere to this position, but also Ministry of Energy, JSC SO UPS and Association "NP Market Council".

Recommendations

1. Revise the Wholesale Market Rules to eliminate the increase in coefficients over the current level.

Issue 6. Heating industry.

Work on the heating reform done by FIAC's Energy Efficiency Working Group in the most recent period (2014-16) involved the development and approval of a road map: "Implementation of the Target Model of the Heating Market" (Regulation No. 1949-r of the Russian government of 2 October 2014).

The road map sets the following key parameters of the target model of the heating market:

- the deadline for implementation of the model: 2020-23;
- free prices for steam from collectors beginning in 2015;
- the target model: transition to open market pricing;
- a concept of reference rates has been introduced for heat transmission in cases where the parties have not agreed on a price;
- for centralized heating systems where the tariff is already higher than the 'alternative boiler' price, tariffs are fixed. The specifics of operating these centralized systems will be determined;
- the target model is mandatory throughout the Russian Federation.

As one-step in implementing the road map, Federal Law No. 190, "On Heating," has already been amended to allow unregulated agreements for the supply of steam from collectors.

Working group members are actively involved, as part of the Government Commission for the development of an 'alternative boiler' tariff calculation model, in drafting the Federal Law "On Amendments to the Federal Law 'On Heating' and Other Federal Laws to Improve the System of Relations in the Heating Industry."

In implementing the road map, an essential goal for 2016 is to agree the parameters of this model and approve the 'alternative boiler' tariff calculation methodology.

Working group members have also consistently called for transparent tariffs in the industry, and the Lahmeyer Group, at the request of Fortum, did research and prepared a methodology for determining reference rates for heat transmission. The results of this work have been considered by generation companies that use heating networks and have yet to be reviewed by the Russian Ministry of Energy.

Fortum also takes an active part in meetings of the working group attached to the Government Commission for the development of an 'alternative boiler' tariff calculation model.

Artificially low tariffs is not the only key problem of the heat supply sector at the moment. The problem is that the industry is heavily regulated making heat suppliers unable to offer customers standard services that have been provided in Nordic countries for a long time. Therefore, heat suppliers are not able to ensure the required quality of heat supply at an acceptable price.

Heat supplier may not construct a heating main in order to redistribute the load from expensive to inexpensive source for the benefit of consumers unless it is allowed by the heat supply scheme, which is developed by municipality. If the heat supply scheme developed by municipality includes a completely absurd procedure, a heat supplier will be forced to follow it on penalty of fines, thus diverting resources from other projects despite the fact that the prescribed procedure may be senseless for consumers.

The primary concern is that the Alternative Boiler House Model is planned to be initially implemented in the pilot regions.

The criteria for selecting experimental-pilot regions are blurred and nontransparent. Duration of such experiments and criteria for measuring their success are totally unclear. We believe that the adoption of the pilot scheme is unreasonable as it is clear that the majority of regions are in need of prompt private capital flows for upgrading heat supply systems and delay in heat energy market liberalization along with pilot schemes and experiments will lead to further degradation of heat supply systems. This will have an adverse effect on consumers due to declining quality of heat supply and inevitably rising tariffs to compensate for additional losses and repairs.

Recommendations

1. Accelerate the adoption of the model parameters and approve the 'alternative boiler' tariff calculation methodology. The model should also be aimed at limiting the influence of the regional regulators on business activities of the heat supply market players.
2. Decide to implement Alternative Boiler House Model instead of nontransparent selection of pilot regions.
3. Arrange, at the Russian Ministry of Energy, the discussion of the coordinated position developed by the noncommercial partnership "Council of Power Producers" on the methodology of calculating reference rates for heat transmission.
4. Adopt amendments to the Federal Law "On Heating" in accordance with the road map for implementing the target model.

Issue 7. On the issue of systematic non-payments by North Caucasus power supply companies.

Systematic non-payments by the power supply companies (guarantee suppliers) of the North Caucasus Federal District for electricity and capacity supplied by generation companies gave rise to extremely unfavorable situation related to the above-mentioned settlements.

As of August 2016, the aggregate amount owed by these companies to wholesale market generators was RUB 36 billion (about 64% of the total debt of the wholesale market customers for the period). Foreign investors contributing substantial funds to the Russian power industry are seriously concerned about this fact.

It should be noted, however, that even with the payment collection from dishonest consumers of the North Caucasus region being the area of concern, the above mentioned power supply companies (guarantee suppliers) still manage to collect and accumulate significant amounts of payments for electricity and capacity

supplied and consumed. Even these amounts are not used to pay for the goods supplied by the wholesale market generators.

The situation may be improved if the function of payment collection from the retail consumers of electric power and the function of reallocating the collected funds among wholesale market players and power grid companies will be performed by the structure (operator) independent from the power supply companies (guarantee suppliers) of the North Caucasus Federal District.

We believe that such structure shall be established at the federal level with involvement of the federal executive authorities and shall be controlled entirely at the federal level in order to minimize corrupt practices in the problem regions.

In order to implement this recommendation in the regions where the debtors concerned perform their business activities, special rules shall be established for collecting and distributing payments received from power consumers in the retail markets. The above mentioned federal authority shall also be responsible for executing control over the compliance with the established rules. This will require amending Basic Rules for Retail Electricity Market Functioning

Recommendations

1. Develop special rules for collecting and distributing among entities of the electric power industry of payments received from retail electricity market consumers in the North Caucasus Federal District. The rules shall stipulate that the power supply companies (guarantee suppliers) in the North Caucasus Federal District shall be deprived of access from the cash flows received from retail electricity market consumers.
2. Establish an administrative structure (an operator) at the federal level with involvement of the federal executive authorities that will be independent from the power supply companies (guarantee suppliers) of the North Caucasus Federal District and will be responsible for collecting and distributing payments received from consumers of the respective regions.
3. Amend Basic Rules for Retail Electricity Market Functioning as appropriate.

Issue 8. On improving the bankruptcy procedure for power supply companies.

The existing arbitrary court practice improperly applies legislative provisions on the bankruptcy of subjects of natural monopolies to distressed power supply companies (guarantee suppliers) of the North Caucasus Federal District.

These provisions (Article 197.3 of Federal Law "On Insolvency (Bankruptcy)") establish higher requirements in consideration of a corporate debtor's bankruptcy as compared to the general bankruptcy rules. In particular, debtor's obligation shall be six months instead of three months overdue and the amount of debt shall be RUB 1 million instead of RUB 300 thousand.

Moreover, the creditor has additional responsibility to provide evidence that the debt cannot be repaid in full through repossession of the debtor's property. This evidence can be established only upon completion by the officer responsible for judicial acts compulsory enforcement of the whole range of procedures in order to identify the debtor's property that can be repossessed, arrested, or with the view of assessing the market value of such property, or its sale and distributing proceeds from the sale of such property among the creditors. Each procedure performed or act adopted by the officer responsible for judicial acts compulsory enforcement can be challenged and are, in fact, actively challenged by debtors.

As a result, the procedure for declaring dishonest power supply companies (guarantee suppliers) bankrupts becomes substantially complex, thus making it virtually impossible to deprive such dishonest suppliers of the status of the wholesale electricity and capacity market players, as well as of the access to cash flows received from the consumers of the subject regions for electricity and capacity.

Addressing this situation and improvement of payment discipline in the problem regions of North Caucasus require amending the existing bankruptcy laws removing the possibility that the special criteria for declaring subjects of natural monopolies bankrupts will be applied to the power supply companies (guarantee suppliers).

Recommendations

1. Amend Article 197.1 of the Federal Law "On Insolvency (Bankruptcy)" as follows: "For the purpose of this Federal Law, a subject of natural monopoly is an organization, engaged in production and (or) sale of goods (works, services) in natural monopoly conditions. Provisions of this Federal Law regulating bankruptcy procedures for subjects of natural monopolies shall not be applied to business entities holding a dominant (but not a monopolistic) position on a particular commodity market and guarantee suppliers of electric energy."

Issue 9. On updating mechanism for determining CDA price.

9.1 On delays in adopting methodology for reflecting share of profit on the day-ahead market in determining CDA price (Methodology of C_{RSV})).

Investments under CDAs may be returned both through capacity and electricity market. Therefore, the formula for determining capacity price under the CDA contains coefficient (C_{RSV}) reflecting the share of investments returned from the electricity market. In other words, the lower the coefficient, the more costs related to CDAs are reimbursed from electricity market (for example, C_{RSV} of 0.75 constitutes that 75% of investments are returned through the payment for capacity under the CDA and 25% - through the profit received from sale of electricity).

The base values of C_{RSV} are provided in the Rules for determining the CDA price. Deviations of base values from the actual profit on electricity market are established through recalculation of C_{RSV} upon expiry of three and six years from the date of capacity supply using the special Methodology approved by the Ministry of Energy of the Russian Federation. Pursuant to Decree No. 238 of the Russian Government of 13 April 2010, Methodology of C_{RSV} ("Methodology") shall be developed by 1 January 2012. However, the Methodology was issued four years later on 2 November 2015.

Delayed Methodology has the following considerable shortcomings:

1. Lack of adjustment for deviation of profit, laid down in calculating of the base value of CRSV, from the actual amount of profit generated on the electricity market for the first three years of the capacity supply.
2. CRSV on facilities put into operation before 2013 has not been updated. CRSV on certain facilities (sixth years supply period for which ended prior to the issue of the Methodology) will not be revised within the term of the CDAs.
3. CRSV is calculated using the incorrect values resulting in non-existing profit being imposed to generation companies.

As a result, investor represented by generation company does not have a full return on investments in construction under the CDA.

Delay in adoption of the Methodology resulted in the total loss of cash approximating RUB 100 billion.

We suggest amending the Methodology of C_{RSV} to ensure correct calculation of C_{RSV} and return on investments, guaranteed by the state.

9.2. Update of operating expenses in determining CDA price.

In accordance with the approved calculation methodology, the CDA price include capital expenditures and operating expenses accounting for rate of return and other factors.

The base values of operating expenses were established in 2010. Macroeconomic and regulative changes occurred in 2010-16 (changes in currency exchange rates and, consequently, increased costs related to servicing contracts; changes in Russian legislation) must have been considered when applying values of operating expenses for determining the CDA price. In particular, changes in currency exchange rates resulted in significantly increased costs related to servicing contracts and changes in Russian legislation.

Recommendations

1. Amend Rules for the wholesale electricity and capacity market stipulating that a four years delay in issue of the Methodology of CRSV shall be considered in determining the CDA price.
2. Amend Decree No. 238 of the Russian Government "On Establishing Pricing Parameters for Capacity Trading on Wholesale Electricity and Capacity Markets" of 13 April 2010 pertaining to update operating costs used in determining CDA price.

Issue 10. Localization requirements in the renewable energy support scheme in the Russian Federation.

In 2013, the Russian Government approved incentives for using renewable energy sources at the capacity market through the mechanism of CDA. One of the key peculiarities of such mechanism is the requirement to provide localization of equipment under agreements for the delivery of renewable energy capacity.

With respect to the wind power generation, these requirements (40-65%) make reaching target parameters of established capacity using the renewable energy by 2024 extremely difficult due to the absence of suppliers possessing the equipment that meets localization requirements of the Russian Government.

The absence of such suppliers is a significant constraint for development of wind power generation in the Russian Federation and for attracting new investments to the sector.

Therefore, we consider it essential to establish transition period of 2-4 years during which the current level of localization of wind power generating equipment will be reduced to the level reflecting the current state of the respective equipment manufacturing industry. Upon expiry of this period, there will be enough grounds to turn back to target parameters of equipment localization initially envisaged by the state policies related in the field of renewable energy.

Recommendations

1. Amend the renewable energy support scheme by reducing localization requirements for wind power generating equipment to the levels reflecting the current state of the respective equipment manufacturing industry.

Issue 11. IDGC privatization and revision of limitations on combination of business activities.

Over the last several years, the Russian government has repeatedly discussed the possibility of privatizing distribution grid companies and bringing qualified investors into this area of the Russian power industry.

The current legislation prohibits from engaging in both power production (purchase/sale) and transmission within a single price segment on the wholesale market. This prevents investors already involved in the power generation sector and/or the retail market from investing in grid companies.

Bringing qualified investors into power grid sector would improve their performance. The current legislation should become more flexible to permit engaging in both power production and transmission within a single price segment at least as part of pilot projects.

Recommendations

1. Consider launching pilot projects on IDGC privatization and bringing qualified investors into this industry sector.
2. Amend legislative acts by reconsidering the restrictions preventing from engagement in several activities of the energy sector within a single price segment (for pilot projects).

1.9. Efficient use of Natural Resources in Russia

Issue 1. Making amendments and supplements to the existing legislation, aimed at improving the investment climate in subsoil use (Law of the Russian Federation No. 2395-I of 21 February 1992 "On Subsoil", Federal Law No. 57-FZ of 29 April 2008 "On the Procedure for Making Foreign Investments into Business Entities of Strategic Significance for National Defense and State Security").

1.1. Exploration and Production.

Foreign investors may only participate as minority partners of the companies controlled by the Russian Federation in development of subsoil areas of federal significance in the continental shelf. As for other subsoil areas of federal significance, foreign companies may only participate in their development with special permits issued in each particular case. It appears that in reality, these permits will only be granted to joint ventures of Russian and foreign companies set up in accordance with legislation of the Russian Federation. In principle, this practice is in place in many oil-producing countries and it is acceptable for large international oil and gas companies. Foreign investors generally welcome effective winning cooperation with Russian companies in development of subsoil of the Russian Federation, but this cooperation is impeded in practice by a number of legislative provisions.

- Business practices of international oil and gas companies implies their participation in field development both as investors and as project operators. Most of large oil and gas development projects are implemented through special purpose vehicles specially set up by the project participants for implementation of this project. Such a company is normally a new legal entity.
- In view of the above, a provision in the Subsoil Law for a subsoil user of a subsoil area of federal significance in the continental shelf to have mandatorily at least five year experience in development of subsoil areas of the continental shelf of the Russian Federation makes it impossible to implement such projects through a special purpose vehicle, since a newly registered joint venture set up by government-controlled Russian companies with foreign investors' participation will be a new legal entity that is set up specially for implementation of a project and that cannot have relevant experience by definition. One of possible solutions is to take account of the experience of the project joint venture's incorporators and/or their subsidiaries in developing subsoil areas of the continental shelf. Both experience in developing the Russian continental shelf and expertise obtained by companies in various parts of the world could be taken into account. It is also practical for the operator's legal status to be formalised legislatively, i.e. an operator being a subsoil user. A company set up by project participants through a special purpose company would then be able to have the operator's status.

Recommendations

Amend the Subsoil Law allowing to include in the five-year experience in development of subsoil areas of the Russian continental shelf that a legal entity being a subsoil user of the Russian continental shelf has, the experience of operating in the Russian and foreign continental shelf obtained by the companies incorporating this legal entity or by other companies that are subsidiaries of the incorporators of such legal entity that is a subsoil user of the Russian continental shelf.
To make amendments in the Subsoil Law, clarifying what development of subsoil areas of the continental shelf means, and specifying what types of subsoil use or activities in the Russian continental shelf will be taken into account as the necessary experience.
To make amendments in the Subsoil Law, providing a definition and legal status of an operator as a subsoil user.

1.2. Geological Studies.

A possibility for taking a decision to terminate the right of using a subsoil area where a field of federal significance was discovered, enjoyed by legal entities with foreign participation or by foreign investors, seriously discourages foreign investors from investing into geological exploration in Russia.
Reimbursement of expenses for prospecting and appraisal of discovered fields is not a workable mechanism, as the reimbursement amount would not cover expenses for other projects in the event of unsuccessful prospecting of new fields (for instance, dry wells). Oil and gas and mining companies invest into exploration of a number of subsoil areas that may be located in different regions and even in different countries, and it is not everywhere that commercial reserves of natural resources are discovered. Large companies have extensive investment programmes involving many subsoil areas. These investments are by definition risky from the geological viewpoint; other risks related to possible termination of the right of using a subsoil area where a discovery was made, make these investments extremely risky. Moreover, international oil and gas companies' investments into exploration are always motivated by a prospect of participating in development of newly discovered fields.

While there is a definition of a foreign investor in Federal Law No. 57-FZ of 29 April 2009 “On the Procedure for Making Foreign Investments into Business Entities of Strategic Significance for National Defense and State Security” the wording of the Subsoil Law does not make it clear what exactly is meant by a subsoil user being a legal entity with participation of foreign investors.
While Federal Law No. 57 uses the word “control”, the Subsoil Law uses the term “participation”. While there is a regulatory definition of control and criteria for such control are set, a definition of participation and any criteria are lacking. Thus, this notion may be interpreted even as holding only one share, because neither the law nor subordinate legislative acts set a threshold of such participation (unlike Federal Law No. 57-FZ of 29 April 2009).

Recommendations

To include a provision in the Subsoil Law, ruling out a possibility to deny the right of developing a discovered field of federal significance or to terminate this right due to a possible threat for national Defense and state security, with regard to subsoil users, including those with foreign participation, that are controlled by the Government of the Russian Federation directly or through companies controlled by the Government of the Russian Federation. This provision would be similar to the provision regarding the government-controlled companies, that is laid down in Federal Law No. 57-FZ of 29 April 2009 “On the Procedure for Making Foreign Investments into Business Entities of Strategic Significance for National Defense and State Security”.

To include a provision in the Subsoil Law that prior to announcing a competitive tender or auction for the right to subsoil exploration, including exploration under a combined licence, the Government of the Russian Federation or its authorised body should conduct a survey and issue a statement of existing (nonexistent) threat to national defense and state security if the subsoil user is a company with foreign capital participation and if upon exploration this subsoil user discovers a natural resource field whose parameters meet criteria of Article 2.1 Part 3 of the Subsoil Law. A respective statement of the Government of the Russian Federation or its authorised body should be published as part of the official announcement of a tender or auction for the right to subsoil use. If at the time of holding a tender or auction, the Government of the Russian Federation or its authorised body comes to the conclusion that there is no threat to national defense or state security in the above instance, and the respective information is published as part of the announcement of the tender or auction, the Government of the Russian Federation may not take a decision denying the right of using a subsoil area for natural resource exploration and production in this subsoil area to a subsoil user with participation of foreign capital, or may not take a decision terminating the right of using the subsoil under a combined licence.
Other options can also be considered for providing a guarantee to a foreign investor participating in a joint venture set up for development of a newly discovered field.

1.3. Improving the procedure for reviewing tenders (claims) for obtaining a geological exploration license (“declarative procedure”).

The Government of the Russian Federation has set as a priority the efficient replacement of the mineral reserve base in Russia based on an inflow of private investments, including foreign investment. The creation of a favorable legal framework regulating the granting of mineral exploration licenses is a key component of this objective.
A number of steps have already been taken to improve subsoil exploration licensing system. In particular, early in 2014, certain amendments were introduced in the procedure for consideration of applications for obtaining a geological exploration license other than on subsoil plots of federal significance (refer to Order of the MNR of Russia No. 61 of March 15, 2005, as amended on January 27, 2014), hereinafter "the Procedure".
The essence of the amendments is to provide an opportunity to obtain, by way of exception from the general rule, a geological exploration license under the first favorably considered application, without going through the tender or auction procedure applicable under the general rule, when two or more applications for participation in the auction are filed. This new opportunity is only available for plots for which there is no data regarding mineral reserves and probable resources of P1 and P2 types, and for those deposits that were not included in the programs or lists of deposits previously offered for auction. Under the new rules, claims staked and approved for geological exploration, including the search and assessment of deposits of solid minerals, must be undertaken at the expense of the subsoil users. Moreover, these claims are to be effected using the simplified procedure without including such subsoil plots in the existing auction lists (described in detail in Chapter 6 of the Procedure).
As is generally known, P3 probable resources under the Russian classification system are characteristic of extremely poor exploration maturity. P3 resources are “…estimated only as a potentiality of discovery of a mineral deposit relying on a favorable geological and paleogeographic environment identified in the estimated region in the course of medium- and small-scale geologic-geophysical surveys, satellite image interpretations, and also based on data from geophysical and geochemical surveys" (as described in item

20 of "Classification of reserves and probable resources of solid minerals" approved by Order of the MNR No. 278 of December 11, 2006). Such resources cannot be defined as resources containing mineral occurrences, and are even outside the scope of the restrictions established by other restrictive regulations such as the legislation on subsoil areas of federal significance.
The restriction of claim-staking for geological exploration licenses only for areas indicating P3 resources considerably narrows the scope of application of the new initiative and accordingly diminishes the positive effect for market players considering a possible investment in geological exploration. Moreover, the new claim staking procedures compare unfavorably to other leading mining jurisdictions that allow claims to be staked on a first-come, first-served basis, without any restrictions as to whatever reserves (if any) might have been previously registered in a particular area.

Recommendations

Consider lifting the restrictions established by the Procedure in regard to probable resources of P1 and P2.

It is believed that any first applicant meeting the eligibility criteria established by the Procedure be allowed to stake a claim for geological exploration without any additional encumbrances or restrictions (such as the mere existence of a prospective area in any lists or programs).

Implementation of the proposed amendments and supplements to the Procedure will not entail adoption, modification, suspension of nullification of any other regulatory acts.

1.4. Classification of Fields of Federal Significance.

The following tendencies are true for the current development of the mineral base of solid natural resources:

- depletion of easy-to-discover fields inventory;
- fields of rich and easy-to-concentrate ores are replaced with fields of lean difficult-to-dress ores;
- exploration operations tend to drift toward remote areas with harsh geological and climatic conditions and barely developed infrastructure.

This makes it necessary to encourage subsoil users for prospecting new large fields that will be developed because of their economic attractiveness, which would not only bring real investments into the Russian economy and create jobs in remote regions but would promote introduction of new, more advanced technology in the industry.
However, the existing laws and regulations contain a number of provisions that preclude increasing investments into exploration activities and enhancing their efficiency. For instance, criteria for regarding subsoil areas as subsoil areas of federal significance were set up in the Subsoil Law in connection with the enactment of the Federal Law “On the Procedure for Making Foreign Investments into Business Entities of Strategic Significance for National Defense and State Security”. Currently, subsoil areas of federal significance include subsoil areas containing more than fifty tons of vein gold reserves, more than 500,000 tons of copper reserves; there are certain solid natural resources whose mere showings make subsoil areas regarded as those of federal significance. In view of the above description of the mineral base and a tendency for reduction of valuable concentration of noble metals in ores, these subsoil areas are not so promising in terms of economic viability of their separate development. A legislative regime does not encourage companies for discovery or detailed exploration of medium-size and large fields, which has a poor effect on the state of the country’s mineral base.
In view of the above, it makes sense to review limitations for sizes of subsoil areas of federal significance so that they are indicative of their real strategic importance and encourage investments into exploration.

Recommendations

Article 2.1 Clause 2 - to read as follows:
“2) that are located in a constituent of the Russian Federation or in constituents of the Russian Federation and that contain, based on the state balance sheet of natural resource reserves starting from 1 January 2006:

- recoverable oil reserves of 70 million tons or more;
- gas reserves of 50 billion cubic meters or more;
- vein gold reserves of 250 tons or more;
- copper reserves of 7 million tons or more”.

1.5. Proposals for Federal Law No. 57-FZ of 29 April 2009 "On the Procedure for Making Foreign Investments into Business Entities of Strategic Significance for National Defense and State Security".

Clause 4, Article 4 of this Law reads that a preliminary approval is not required for transactions with shares (stakes) of a business entity of strategic significance if prior to these transactions a foreign investor or a group of persons already commands, directly or indirectly, more than fifty percent of the total number of votes pertaining to the voting shares (stakes) that constitute the charter capital of such business entity, and/or the foreign investor intending to make the transaction is controlled by an entity that controls such business entity. This provision is fair and justified. However, a reservation "except a business entity having strategic significance and using a subsoil area of federal significance" makes transactions with such business entities' shares unreasonably complicated.

This provision may be interpreted in such a manner that a preliminary approval would be required for purchase and sales of shares (stakes) within one group of persons that controls more than fifty percent of a Russian company having strategic significance and using subsoil areas of federal significance. It seems unnecessary to obtain an approval for transferring shares from one participant of the group to another.

It makes it difficult to study the Russian continental shelf comprehensively if geological survey is regarded as one of strategic types of activities. This seems unreasonable, especially in the light of recent proposals to reinstate geological survey as a separate type of subsoil use in the continental shelf and to make it possible for all interested parties, including foreign ones, to obtain a license for this type of subsoil use. Taking out geological survey from the list of strategic types of activities would promote geological (including multi-client) operations, particularly in the continental shelf, carried out jointly by Russian and foreign companies, and would make advanced geological techniques available to Russian companies.

Pursuant to Clause 2, Article 6 of Federal Law No. 57-FZ, types of activities of strategic significance for national defense and state security include "operations for active influence on geophysical processes and phenomena". The working group experts believe that geological survey does not fall within this wording, but the paragraph needs clarification to avoid any misunderstanding. If, because of the size of the text, it is not possible to clarify the above wording, a reference to a subordinate legislative act should be included into the above Clause.

Recommendations

1. Article 4, clause 4: - delete "(except a business entity that has strategic significance and uses a subsoil area of federal significance)".
2. Article 6, clause 39 – modify to read as follows:

"natural resource exploration and production in subsoil areas of federal significance".

The above amendments would help foreign investors to assess their risks correctly, which should in turn increase attractiveness of investments into the natural resource sector and in particular into the energy sector of the Russian Federation.

1.6. Proposals regarding the draft law "On Making Amendments in the Law of the Russian Federation "On Subsoil" establishing a possibility of granting the right of using a subsoil area to a single participant of an auction and creating a ban for affiliated persons to participate in competitive bidding.

The draft law "On Making Amendments in the Law of the Russian Federation "On Subsoil" that is available on the federal portal of draft regulatory legal acts deals with a possibility of granting the right of using a subsoil area to a single participant of an auction and establishes a ban for related persons to participate in competitive bidding.

In our view, it may be more sensible instead of introducing a complete ban for affiliates to participate in an auction or competitive tender to establish a requirement for mandatory advance disclosure of information about such affiliation to the authorised government body (currently Rosnedra).

In terms of protection of government/public interests, disclosure of affiliation prior to the bidding should help to resolve the issue of the antimonopoly ban on collusive bidding more effectively than a complete ban because Rosnedra and other bidders would be aware of affiliation and nobody would expect any special collusion of two affiliated companies (that are often regarded as a single entity from the viewpoint of antimonopoly legislation).

While, pursuant to the draft law, a company can participate in an auction/competitive tender and obtain a licence if there are no other participants, participation of two affiliated companies in the bidding and one of them being the winner would have a similar economic effect and would not offend the interests of the government and community – provided, of course, that complete transparency be ensured.

Equally, the proposed amendment would help to address a very important issue of possible participation of a joint venture (JV), including the one with foreign participation, along with the JV's individual members/shareholders, in an auction/competitive tender.
So-called joint bidding agreements are frequently used in the international oil and gas practice, whereby parties to the existing or future JV can agree on a joint application for participation in an auction/competitive tender for the right to subsoil use within an area of mutual interest.
Such an agreement would normally mention a maximum cap that the JV cannot exceed. The JV's participants (or just parties to the joint bidding agreement), though, may still obtain a respective licence if, during the bidding process, the auction price exceeds the cap agreed by the parties.
It is this situation that is problematic in the draft law under review, i. e. if the draft law were to be passed in its current shape, members of a JV would have to choose between a joint application and individual participation in the bidding because they would not be able to do both. In reality, this would cause unnecessary limitations for such a JV in terms of possible applications for participation in an auction/competitive tender, which, in our opinion, is not reasonable. However, if our proposal were accepted, the problem would be resolved, which would make it possible for a JV to participate in an auction / competitive tender along with the JV's members.

Recommendations

Instead of the amendments to Article 17 of the Russian Federation Law "On Subsoil" which are proposed in the draft law creating a ban for affiliated persons to participate in competitive bidding we propose to add the following part 3 and part 4 in Article 17 of the Russian Federation Law "On Subsoil":
"Related persons announced as affiliates pursuant to antimonopoly legislation of the Russian Federation may participate in an auction or competitive tender for the right to subsoil use only if information about this affiliation was disclosed to the authorised government body prior to the auction or competitive tender.
A procedure for disclosing the information about affiliation of an auction or competitive tender for the right to subsoil use participates shall be prescribed by the federal body for management over the state subsoil fund."

Issue 2. Liberalization of Geological Information Export.

A necessity to obtain a license for "export" of even unrestricted geological data has been a real issue.
The Eurasian Economic Commission's Decision No. 134 of 16 August 2012 approved the Comprehensive List of Goods That Are Subject to Bans or Restrictions for Import or Export by the Customs Union Member States within the Eurasian Economic Community in the Trade with Third Countries (hereinafter referred to as "the Comprehensive List") and the Regulation on Application of Restrictions. The title of the Comprehensive List reads that it is a list of goods. However, it has Clause 2.23 - Subsoil Information Grouped by Regions and Fields of Energy and Mineral Resources, That Is Restricted for Export from the Customs Union's Customs Territory. The internal logics seems upset here because, based on the analysis of the notion "information" in Article 2 of Federal Law No. 149-FZ of 27 July 2006 "On Information, Information Technology and on Protection of Information", one can draw a clear conclusion that information is not a commodity. A review of Federal Law No. 164-FZ of 8 December 2003 "On Fundamental Principles of Government Regulation of Foreign Trade Activities" proves the above conclusion. Pursuant to Article 2 Clause 26 of this Law, goods mean "movable property, immovable property including air-, sea crafts, inland waterways vessels, combined navigation (river - sea) vessels, space crafts, as well as electric energy and other types of energy, that are commodities of foreign trade activities". It is obvious that information does not fall within this definition, which is supported by the fact that no code for information is provided in the Integrated Commodity Classifier of Foreign Economic Activities.
Licensing of export of geological information that is not state secret makes it extremely difficult to implement joint projects dealing with geological survey and mineral development of the Russian Federation and to operate using advanced methods. Using state-of-the-art techniques for effecting transactions, for instance, an electronic access to the partner's documents (Electronic Due Diligence Room), results in breach of legislation. For information to be processed in foreign data processing centres, a company has to obtain a licence, which often causes suspension of work for quite a long time.

Recommendations

Foreign investors appreciate as a positive step, that information about balance-sheet reserves of natural resources was taken out of the list of information regarded as state secret. Based on government bodies' replies, the main aim of licencing of geological information export is to check if it contains information regarded as state secret. To this end, for effective lowering of administrative barriers, it seems necessary for information that a priori cannot be regarded as state secret pursuant to Clause 67 of the List of Details Regarded as State Secret (approved by Decree of the President of the Russian Federation No. 1203 of 30 November 1995, as amended in Decree of the President of the Russian Federation No. 90 of 11 February

2006), to be taken out of the Comprehensive List, i.e. information obtained during joint works engaging foreign states' individuals and legal entities in particular natural resource fields or in their parts.

Issue 3. Preparation, Review, and Endorsement of Mining Development Plans and Schemes by Types of Minerals (hereinafter, the Plans).

Preparation, review and endorsement of the Plans is prescribed by Article 24 of the Subsoil Law # 2395-1 and the Government Decree # 814 Regarding Approval of the Rules for Preparation, Review, and Endorsement of Mining Development Plans and Schemes by Types of Minerals (hereinafter, Decree # 814). The RTN is authorized to review and endorse the Plans.

At present, the subsoil users including oil companies are required to develop the Plans and have them endorsed. The development and endorsement process takes 5 months and longer. However, in practical terms, hydrocarbon field development is based on the Field Development Plan (Tekhschema), field facilities design documentation, and well construction program. It is valid to say that oil companies prepare Mining Development Plans just in order to fulfill the formal requirement of the subsoil legislation and to avoid administrative violations / prescriptions in case of an audit.

Meanwhile, the RTN authorities check hazardous facilities for industrial safety compliance on a regular basis and as part of continued oversight, wherever it is required by applicable legislation. On the other hand, the RPN authorities provide geological oversight including compliance with detailed field development plans. Therefore, given the requirement for the subsoil users to have several design documents at the same time (for field development, for field facilities construction, for well construction), as well as regular state oversight by the RTN and RPN authorities, the requirement to develop another, duplicating document appears excessive and creates an extra administrative barrier. In our opinion, the Plan is unnecessary, as it repeats other documents.

Recommendations

In view of the above, initiate cancellation of the requirement for mining development plans preparation and endorsement for hydrocarbon resources, as being excessive and creating an extra administrative barrier.

- add the following wording (highlighted in blue) to Article 24 part 6 of the Subsoil Law:

The measures providing compliance with the basic requirements for the subsoil use operations safety shall be included in the mining development plans and schemes subject to endorsement by the state mining oversight authority. The procedure for preparation, review, and endorsement of mining development plans and schemes by types of minerals (excluding hydrocarbons) shall be established by the Russian Federation Government.

- add the following wording (highlighted in blue) to the title of the Government Decree # 814 Regarding Approval of the Rules for Preparation, Review, and Endorsement of Mining Development Plans and Schemes by Types of Minerals:

The Government Decree # 814 *Regarding Approval of the Rules for Preparation, Review, and Endorsement of Mining Development Plans and Schemes by Types of Minerals (excluding Hydrocarbons)*

Issue 4. Providing Unified Regulatory Requirements for OSR Plans for the Onshore and Offshore Facilities.

The current laws related to OSR include different requirements to the content and different approval procedures of approval for OSR Plans for offshore vs onshore facilities, resulting from RF Government Resolutions #1188 and #1189 of November 14, 2014, which forces companies to develop different OSR Plans while there are no criteria established for classing facilities as onshore or offshore.
The projected amendments to Art.46 of Federal Law FZ-7 "On Protection of Environment", which are intended to vest the RF Government with the authority to establish the Rules for organizing of prevention of and response to oil and petroleum product spills on the territory of the Russian Federation, will allow providing requirements for onshore facilities, similarly to the offshore facilities, the OSRP structure requirements for which already exist and enacted by Government Resolution #1189.
It is recommended that these be harmonized with the requirements to OSR Plans for onshore facilities in the subordinate regulations to be issued by the RF Government after the above amendments to Federal Law FZ-7 "On Protection of Environment" become effective.

4.2. Cancellation of SEER for OSR Plans.

The requirement of conducting SEER of an OSR Plan as a separate expert review target creates additional administrative barriers in the OSR Plan approval process, which would require extra effort, time and expense from the subsoil reserve user, due to the following:

- pursuant to Federal Law #174-FZ “On Environmental Expert Review” the documentation subject to SEER (OSR Plan) shall include the environmental impact assessment materials, but the contents of OSR Plans, prescribed by MChS Order #621, do not include development of such section in an OSR Plan;
- development of a separate EIA in OSR Plans for the single purpose of meeting the requirements of Federal Law #174-FZ is not just one more administrative barrier; it presents an additional financial burden on business, which impairs projects’ economics. EIA’s in OSR Plans do not introduce any new information in the assessment of emergency situations, included in the SEER and the State Expert Review (SER) Conclusions on the design documentation for construction and upgrade of hazardous industrial facilities;
- the technologies and materials referenced in an OSR Plan itself already have their independent SEER Conclusions. Thus, an OSR Plan, as an operational document, does not include any other information that could be a target of the environmental expert review;
- pursuant to the requirement of Federal Law FZ-7 “On Protection of Environment”, an environmental impact assessment is performed in relation to the intended economic or other activities. The operational information in OSR Plans is sooner a measure for mitigation and prevention of such impacts;
- in a SEER Conclusion, the expert panel is to make a conclusion on permissibility or impermissibility of the environmental impact from the reviewed activities. It appears impossible to make a conclusion on impermissibility of the impact from oil spill containment and response operations as these inherently are a measure for mitigation and prevention of such impact;
- the law does not include methodology guidelines for an unambiguous identification of those kinds of OSR activity which are to be subject to the impact assessment. The period of emergency response readiness is addressed in the design documentation. Such uncertainty of the regulatory requirements carries unacceptable risks for subsoil user companies whose activities are thus dependent on arbitrary interpretations by SEER experts;
- the methods of calculation of various kinds of damage, used for the intended economic activities, are inapplicable to the assessment of damage in case of emergency situations, which complicates development of the EIA’s in terms of the methods used and leaves open the possibility of arbitrary interpretation of the damage assessment’s sufficiency and level;
- the procedure for amending OSR Plans is not addressed as pursuant to Federal Law #174-FZ an OSR Plan is subject to a repeat SEER in the case of any changes, which could result in the majority of the OSRP losing their legitimate status and in overloading the SEER panels as they would have to conduct the repeat review of the plans (for instance, in case of a replacement of a member of the Commission on Emergency Situations, or a replacement of an OSR vessel included in the SEER Conclusion, by another vessel). Previously, the repeat OSRP approvals were required only in the cases when the changes necessitated increases of the OSR personnel and equipment.

Recommendations

- promote prompt approval of the Draft Federal Law “On Introduction of Amendments to Article 46 of Federal Law FZ-7 “On Protection of Environment” of January 10, 2002” (concerning vesting the RF Government with the authority to establish the Rules for development of measures for prevention of and response to oil and petroleum product spills on the territory of the Russian Federation except the internal sea waters and the territorial sea)” and any subsequent subordinate Acts of the RF Government (for example, draft Government Decree Concerning Amendments to the RF Government Decree 240 of April 15, 2002 with supplemental item 4(2) (except for internal marine waters), complete with words “… and the continental shelf”;
- develop and establish a uniform approach to the requirements for development and approval of OSR Plans for offshore and onshore facilities;
- exclude OSR Plans from separate SEER targets and amend Federal Laws 187-FZ and 155-FZ accordingly;
- consider application of an integrated approach for planning OSR measures: mechanical oil spill recovery, burning, use of dispersants. Choice of the measures should be based on the net environmental benefit analysis (NEBA) results;
- -refine the regulations related to the EIA (Goscomecologiya (RF Environment Protection Committee) Order # 372) and amend it to include mandatory requirements for review of

environmental impact of emergency situations related to oil spills and the associated response activities. For information: in current practice, all documents submitted for SEER include such sections and assessments but requirements for such sections are not established by law;

- completely rework the draft "Guidelines for Methods of Assessment of Facility and Regional OSR Plans in Marine Water Areas Subject to SEER" as being contrary to existing law and creating additional administrative barriers.

Issue 5. Classifying Facilities Which Have Adverse Impact on Environment as Facilities of Categories I, II, III, and IV.

5.1. Classification of facilities.

According to RF Government Resolution # 1029 of September 29, 2015 "On Approval of the Criteria for Classing Facilities Adversely Impacting Environment as Facilities of Categories I, II, III, and IV" the facilities are classed through categorization of individual process units, their parts and types of activities. This does not take into account the actual levels of the environmental impacts, the hazard levels of the generated pollutants, or classifications of facilities and process units in the previously approved RF laws and regulations.

Specifically, Article 4.2 (Item 4) of the Federal Law "On Protection of Environment" permits changing of a facility's category upon update of the actual reportable data on the facility.

Article 4.2 (Item 1) and an analysis of the pollutant indicators allow to conclude that, due to the specificity of the process technologies, oil and gas production facilities do not make significant impact on the environment and cannot be classed as Category I facilities:

- no Hazard Classes 1-2 wastes are generated in the process of oil and gas production;
- the discharged wastewater does not contain substances of Hazard Classes 1-2;
- emissions of substances of Hazard Classes 1-2 at oil and gas production facilities amount to less than 0.01 of the gross emissions, while their sources are welding operations, operation of diesel electric power stations and other ancillary processes;
- indicators for flaring of the associated petroleum gas are substantially reduced through its beneficial use and do not exceed the limits approved by the RF regulations;
- according to the sanitary-hygienic classification of enterprises, oil and gas production facilities are Hazard Class III (except production facilities with associated emission of hydrogen sulphide and high content of volatile hydrocarbons).

Pursuant to amendments in Federal Law #174-FZ of November 23, 1995 "On Environmental Expert Review", starting from January 1, 2018, the design documentation on capital construction projects classed Category I according to the degree of the adverse environmental impact, will be subject to SEER. Based on RF Government Resolution # 1029 of September 29, 2015, all crude and gas production facilities are classed as Category I.

Differentiation of the categories for oil and gas production facilities and cancellation of SEER for all oil and gas production facilities would remove the administrative barrier that leads to cost and time expenditure by oil and gas production companies, many-fold work load increase for federal executive bodies in organizational matters related to SEER, and to delays of startup of new facilities, entailing the corresponding economic losses.

5.2 Integrated Environmental Permit

Federal Law #219-FZ "On Making Amendments to the Federal law "On Protection of Environment" and to Certain Regulatory Acts of the Russian Federation (as amended and supplemented by June 2016)" provides that an Integrated Environmental permit (IEP) be released by the Operation phase of a facility. It remains unclear though what sort of permits will be covering the Construction phase.

Recommendations

- based on the analysis of facilities' environmental impact and comparison of the existing classifications for industrial facilities and process units, RFG Resolution # 1029 of September 29, 2015 needs to be amended in line with Article 4.2 Item 2 of Federal Law #7-FZ "On Protection of Environment";
- it would be advisable to consider the possibility of classing as Category I only such oil and gas production facilities which are classed as Hazard Category I in accordance with Item 3 of the

classification established in Schedule #2 to Federal Law #116-FZ of July 21, 1997 “On Industrial Safety of Hazardous Industrial Facilities”.

1.10. Innovation Development

Issue 1. Leveraging the technical competences of FIAC member companies to drive Russia's economic growth, promote innovative business models, facilitate cooperation and support the development of Russia's innovation policies. Participation of the FIAC in the activities of the National Technological Initiative (NTI). Delivering sustainable solutions for identifying key technologies. Expansion of FIAC cooperation with the existing advisory councils on innovation development and state innovation development programs (Strategic Council for Investment in New Industries, Russian Technology Agency, Skoltech etc.). Use of the FIAC member companies' competences in innovative development of the Far East.

FIAC member companies are the largest repositories of scientific, technological and engineering knowledge that is vital for the modernization of the Russian economy. However, their expertise is not fully used to develop, update and improve Russia's innovation policy or increase the efficiency of governmental agencies which are responsible for the country's innovation growth.

Solutions

1. Over the last period, the Innovation Development Working Group (ID WG) has achieved more significant involvement in preparation and realization of the country's innovative development strategy. In particular, the Group has prepared the proposals for new revision of this strategy. High emphasis was placed on the question of localization and import substitution of high-tech production and industry. The meetings were held with corresponding agencies devoted to development of support tools for localization of high-tech production of foreign companies in Russia.
2. The technical experts of FIAC member companies were connected to work in existing advisory councils on innovation development, including the National Technological Initiative (NTI). The FIAC Innovation Development Working Group took active part in discussion, evaluation and presentation of recommendations on realization of NTI activity plans together with the participants of expert accompaniment of 'road maps' development and implementation (at Open Government).
3. The ID WG took active part in work of Strategic Council for Investment in New Industries under the chairmanship of the RF Minister of Industry and Trade Manurov D.V.
4. The ID WG also took part in the priority project of the RF Ministry of Economic Development and Trade "Development of Innovative Clusters – World Leaders of Investment Attractiveness", in particular, in evaluation of project-applications from clusters of different regions, bidders for participation in the project.
5. The FIAC ID WG active participation in preparation of new revision of the RF Long-term Innovative Development Strategy should also be mentioned. The proposals for new revision of this Strategy were prepared and presented. The Working Group experts were directly involved in activities of different topical working groups for development and preparation of the RF research and technology development forecasts: "Formation of high-tech industries", "Target future of Russia: research and technology aspect". Participation in inquiry of key experts for prospects of innovative development in "Advanced manufacturing technologies" (Skoltech, Higher School of Economics).
6. The experts of FIAC technological member companies also participated in panels and organizations to conduct foresight studies (Research and technology foresight, Higher School of Economics).

Recommendations

1. In his message to the Federal Assembly Vladimir Putin has defined the National Technological Initiative (NTI) one of the priorities of the RF state policy. It is necessary to consider the possibility of the FIAC's more active and expanded participation in the activities of the National Technological Initiative (NTI), integration in the Inter-departmental Working Group on the Development and Implementation of the NTI and decision-making on identifying key technologies, as well as the coordination of participation in the development of a framework for the NTI's cooperation with foreign partners.

FIAC member companies expertise is not fully used to develop NTI. FIAC member companies are the largest repositories of scientific, technological and engineering knowledge, world leaders in corresponding segments, and they are able to use their research and technology potential to determine the competitive ability of proposed technology directions in a global aspect and for solution of other matters of this initiative.

2. The RF President has suggested to start realization of the energy super grid project, which would connect together Russia, China, South Korea, Japan. FIAC may become, in its own way, a "mediator" between the global strategic partners in creation of the energy supergrig. It is also

proposed to effectively consolidate forces and experience of FIAC member companies in the activity of the intergovernmental working group for energy super grid creation.

3. Continue development of proposals for improving the integrated evaluation system for Russia's innovation development programs. The integrated system is essential to determine the competitiveness of innovative solutions and international practices on the global market.
4. Continue conduction of a series of expert exercises involving FIAC member companies and organizations that provide research methodology support for the technological forecasting system with the participation of federal-level governmental agencies, technological platforms, companies in the real sector, innovative territorial clusters and organizations engaged in industry-specific research and technology development forecasting. Further partnering with FIAC member companies to conduct an analysis of the global market for successful innovative production technologies, products and services.

Issue 2. The development of recommendations for amending the legal framework (particularly, Decree of the Government of the Russian Federation No. 218 of 9 April 2010) to stimulate innovation development. The improvement of the tax regime for innovative companies with the participation of foreign companies in Russia's innovation development programs and joint R&D. Expert support of priority directions of government innovative activity in the Far East, among which is the realization of the energy super grid project in Asia, including law development and improvement.

It is essential to improve further the tax regime in order to stimulate innovation and keep in place tax credits and incentives for innovative companies.

Considerable progress has been made in the development of mechanisms for the exchange of information between FIAC member companies and development institutes, ministries and agencies under innovation development programs, but in conditions of geopolitical situation change, additional steps are required to improve such mechanisms in order to tap the potential of global leaders.

Solution

- based on international leading practices, develop recommendations for improving the law on offset transactions, but further work is required for improvement of the existing legislation (offset transactions are usually unique and one-off deals but have their own structure and methodology (Law No. 44-FZ “On Procurement for State Needs”);
- partner with FIAC member companies to determine conditions that meet business interests, international leading practices, regulations and the objectives of Russia's innovation development programs.

Recommendations

- in order to support the priority directions of the government innovative activity in the Far East, it is proposed to consolidate forces and experience of FIAC member companies in the activity of the intergovernmental working group for energy super grid creation in Asian countries. The regulatory base of energy sector in the countries involved in this project, differs a lot. For more dynamic realization of the energy super grid project, the regulatory procedures and laws of the participating countries shall be unified. FIAC may become, in its own way, a “mediator” between the global strategic partners in creation of the energy super grid in the field of law unification;
- FIAC may render support of other priority directions, specific for the government innovative activity in the Far East, including law development and improvement, as well as assistance in solving of foreign investors problems during their communication with the federal authorities and executive authorities in the regions.
- continue review of the effectiveness of tax credits and incentives for stimulating innovation in cooperation with the expert community, development institutes, the Open Government, etc. For example, it is clear now that foreign companies prefer not to use such support measures, as Government Regulation (ПП) No. 218, in which connection it is essential to determine possibility to change and improve the existing legislation.

Issue 3. Despite the recent geopolitical and macroeconomic developments, the commercially viable policy of stimulating the localization of high-tech production in Russia remains an effective import substitution tool and a key business driver in the current economic environment.

Localization of high-tech production differs greatly from the processes developing in consumers' sector, which, in particular, is connected with production volumes. These issues are the highest priority, most important, and most pressing objectives for implementing an industrial modernization program in the context

of a government policy that is being carried out. In this connection, special attention must be paid to measures that support suppliers though a local supply development system in order to help local manufacturers reach the indicators necessary to integrate into the global supply chain and achieve the required level of localization.

The localization of high-tech production is helping Russian producers close the gap on global leaders, driving the industrial output of both the region and the enterprise. These are sustainable benefits that foster the regional economic growth as technology advances. The localization of R&D in the country is a key priority amid tight competition on the international high-tech market.

Solution

The FIAC Innovation Development Working Group took active part in draw up proposals for improving Special Investment Contract mechanisms for high-tech manufacturing activities. In particular**,** the Working Group took active part in discussion and presentation of recommendations on realization of proposal on amendment of RF Government Regulation No. 719, on determination of new criteria of "Russianness", including by obligation of companies to create totally localized manufacture of high-tech products (within Special Investment Contract mechanisms). It is planned that as a result of the obligation fulfillment by the company, a unique export-oriented high-tech enterprise will be created with totally localized Russian product.

Recommendations

To encourage the localization of high-tech, short-series and technology intensive production in Russia (the relocation of high value-added activities to the country), the following steps are recommended:

- continue promotion of implementation of the best European practices and utilize the experience of FIAC member companies in the areas of high-tech production, sustainable development, management, quality control, compliance, logistics, and continuous improvement of local subcontractors in order to integrate into the global supply chain. Continue interaction between FIAC member companies to prepare proposals on improving the supplier support mechanism for the systematic development of local suppliers in the field of high-tech production;
- continue taking measures necessary for continued development of legislative initiatives in order to apply and introduce a corporate approach into legislation to define a Russian supplier;
- pursue a consistent policy of stimulating the localization of high-tech production in Russia with the focus on the optimal production cost of finished products. The policy of stimulating the localization of high-tech production should be robust and outline support measures "in exchange for" the localization decision that will depend on the size of the market, the existing production capabilities and cost structure.;
- draw up proposals for other mechanisms of stimulating the localization of high-tech producers or providers of services, including small-sized enterprises;
- -determine criteria for a favorable environment that ensures strong demand for localized high-tech products;
- place an increased focus on the localization of R&D and the development of cutting-edge, knowledge-intensive technologies amid tight competition on the global high-tech market;
- propose incentives for the development of the R&D infrastructure meeting international standards (including technology engineering hubs, laboratories and centers for pre-clinical and clinical research in the pharmaceutical industry) which are essential to attract the R&D divisions of major international corporations, as well as for the growth of domestic high-tech companies;
- develop promotion measures for IP protection. The acquisition of new technologies, including patent rights and licenses to use inventions or industrial prototypes, and effective IP protection mechanisms also play a key role in stimulating the localization of companies and the development of knowledge-intensive economy. Without a robust IP protection framework, there is little incentive to engage in R&D.

Issue 4. Promotion of sustainable development principles.

Harnessing cutting-edge environmentally friendly technologies and international best practices to bolster Russia's economy and improve its efficiency.

The conceptual framework for the transition of Russia to sustainable development requires a balanced approach to environmental protection and the management of natural resources to meet the needs of current and future generations. Advanced and environmentally friendly technologies are the foundation of

environmentally sustainable development. The further promotion of environmentally sustainable transport and renewable energy, plays a central role in achieving sustainable development objectives.

Advanced manufacturing technologies (AMT) for clean production is a production process that will increase performance (production speed, processing accuracy, energy and material capacity) and/or improve waste management throughout the life cycle. The objective of AMT is to drastically improve the performance, eco-friendliness and energy efficiency of production and customize products under market requirements.

It is essential to create conditions for purposeful integration of the expertise and technical competencies of foreign companies to address complex issues such as boosting business safety and security, reducing energy consumption, cutting emissions and improving operational performance.

Solution

1. The ID WG took part in the discussion and development of proposals for a federal-level government program outlining comprehensive measures to promote environmentally sustainable transport. Coordination of this question with state agencies is continued, in particular, cooperation with SC "RosAtom" is being conducted in the sphere of electric transport development, work on realization of environmentally sustainable transport strategy (communication with McKinsey, the Ministry of Industry and Trade) is being carried out.
2. The technical experts of FIAC member companies were connected to work on formation of information and methodology base for development of Agroindustrial Complex (AIC) research and technology development forecast (this forecast is developed by the RF Ministry of Agriculture). The WG took part in a number of activities, organized by Higher School of Economics (discussions, expert sessions), in order to clarify the perspective products, technology packages and priority spheres of AIC scientific research.

Recommendations

1. Continue work under the federal-level government program outlining comprehensive measures to promote environmentally sustainable transport (including light commercial vehicles). Create favorable conditions and develop a legal framework for environmentally sustainable transport

- continue development of recommendations and draft regulatory acts on development and installation of EV charging points at prospective EV parking places and existing filling stations;
- continue coordination of question of environmentally sustainable transport promotion with state agencies. Government support for electric and hybrid vehicle initiatives is required, through:

1. Existing zero rate of customs duty on EVs.
2. Reduced customs duty on plug-in hybrids.
3. Tax credits for the purchase of EVs/ plug-in hybrids (e.g., a lower rate of VAT).
4. Tax incentives and subsidies for the use of EVs / plug-in hybrids.
5. Non-monetary benefits for users of EVs / plug-in hybrids (the use of public transport lanes or parking privileges).
6. Develop clear standards on environmentally sustainable motor vehicles in Russia with a focus on measures to support light vehicle producers, as well as link tax and other incentives for vehicles users to the environmental class of the vehicles.
7. Restrictions on non-electric vehicles (restrictions on entering the city center, etc.).

2. Whereas the renewable energy sources (RES) play a central role in achieving sustainable development objectives, continue promotion of further development and construction of RES facilities (subject to localization requirements):

- improve further the business climate and legal framework for the development of renewable energy technologies in Russia through drafting and adopting relevant regulations;
- continue work on improvement of recommendations of draft laws in the field of RES;
- accelerate work on the development and promotion of accessible and more environmentally friendly technologies to increase energy efficiency;
- utilize foreign experience, particularly the experience of FIAC companies in order to develop ways to promote the development of wind power generation, for example: tax incentives, low-interest loans, R&D funding; support to create new jobs.

3. Continue preparation of recommendations and draft regulations for the development and implementation of new safety standards to increase environmental sustainability:

- recommendations on simplification of certification procedures for new, environmentally friendly technologies and goods;
- propose recommendations for adaptation of international quality standards for related imports into Russia;
- eliminate additional certification requirements for such goods and technologies in Russia.

4. Continue connection of the technical experts of FIAC member companies to work formation of information and methodology base for development of Agroindustrial Complex (AIC) research and technology development forecast, in order to clarify the perspective products, technology packages and priority spheres of AIC scientific research.

Issue 5. Human capital plays an important role in the country's investment attractiveness. It is essential to ensure cooperation between educational institutions and FIAC member companies in training specialists who will engage in the development and commercialization of innovative technologies, as well as in conducting advanced R&D and increasing the competitiveness of Russia's higher education system. Through cooperation between higher education institutions and international technological companies, FIAC-members, it is critical to create the right conditions for Russia's leading higher educational institutions to improve their reputation in the global arena and increase their international profile.

The shortage of skilled engineering workers is a major concern today. This can adversely affect the investment attractiveness of projects involving modern production, engineering and research.

Retaining and improving the knowledge potential is a key to Russia's sustainable development. It is critical to stimulate knowledge sharing through supporting both young researchers and senior academicians

Knowledge-intensive industries, including high-tech, play a leading role in improving the life of communities and driving economic growth. The size of the knowledge-intensive sector and the role of high-tech in the economy are indicators of the country's R&D and economic potential.

A new generation of engineers must be prepared in technical universities. In particular, engineering workers are the force shaping the process to create technological innovation; specifically, companies changing the face of the industry are emerging in the engineering environment.

Solution

1. The Innovation Development WG also takes part in activities conducted to improve system of qualified personnel training for high-tech industries and technology intensive production, for example, in preparation of National Championship of employees with open professions of high-tech industries using WorldSkills method (together with Union “Agency for development of professional communities and regular labor force “Worldskills Russia”).
2. Work on consulting and expert services and FIAC companies' cooperation with Russian scientific organizations and higher education institutions continues, including participation in the Higher School of Economics' activities, cooperation with the Far Eastern Federal University under the program for innovative development of companies.

Recommendations

1. Engineering training: Continue (in collaboration with the Ministry of Education and Science) development of recommendations for “New Engineering Training” programs (providing training in multi-disciplinary skills, developing “clouds” of related competencies under basic education programs and introducing new degrees such as engineer/entrepreneur and engineer/product manager etc.). The key is further development of centers of excellence and competence centers in the field of science and technology, increasing the potential for implementing complex scientific and technological projects that require participation from various organizations and multidisciplinary and intersectoral cooperation.
2. It is necessary to improve the corresponding legislation on taxation and provide tax incentives to companies that make contributions to education, for instance, teaching, providing laboratory equipment, conducting R&D projects, etc. (For example, the equipment cost is deducted from profits, etc.).
3. University-industry knowledge transfer: Sum up best practices of FIAC member companies and develop recommendations for the efficient forms of university-industry cooperation (basic

departments at higher education institutions, internships, learning and certification centers, including distance learning and on-line consulting, innovation centers using technological platforms, rapid prototyping centers, small-scale production, etc.). Adapt and implement best practices of international experience in innovative development in Russia, support integration in global process flows, and turn toward globalization. It is necessary to form a project team that includes an industry representative, department faculty member, and undergraduate and graduate students.

4. Develop and continue work on consulting and expert services and FIAC companies' cooperation with Russian scientific organizations and higher education institutions continues, including participation in the Higher School of Economics' activities, cooperation with the Far Eastern Federal University under the program for innovative development of companies.
5. Continue development (jointly with the Ministry of Education and Science) of recommendations for training in multi-disciplinary skills. The key is further development of centers of excellence and competence centers in the field of science and technology, increasing the potential for implementing complex scientific and technological projects that require participation from various organizations and multidisciplinary and intersectoral cooperation.
6. In order to promote innovative entrepreneurship practicing, continue development (in collaboration with the Russian Ministry of Education and Science) of recommendations for setting up learning centers to train students, researchers and engineers in innovative entrepreneurship skills, including business management and entrepreneurship, technology marketing and sustainable development planning. Develop additional professional training programs for the new generation of administrators and researchers at higher education institutions based on international best practices in organizing of training processes, as well as applied and fundamental breakthrough research programs in cooperation with industry and in line with its interests.
7. Promote development of postgraduate professional education system. It is critical to develop, in collaboration with the Ministry of Science and Education, mechanisms of encouraging integration between international companies, higher education institutions and the academic community through the establishment of new centers and other measures to enhance postgraduate training. It is essential to implement new postgraduate training models based on international best practices.

A number of measures are proposed to improve cooperation between high education institutions, FIAC member companies and the Ministry of Education and Science, including:

- create special funds that will provide employment and develop the most talented undergraduate and graduate students (possibly through cooperation with companies, transition to an "effective contract" system). Raise the standards for financing academic programs in higher education. These measures are necessary to create motivational mechanisms that prevent the outflow of scientists and college graduates to other countries.
- continue formation of a regulatory framework in order to expand participation from businesses in the management and financing of higher education institutions. Develop a form and model to present/open companies to first-year students. Set up internship and apprenticeship programs, including industrial and other training, for undergraduates and other students;
- provide for the creation of regulatory framework to form activity centers\interest centers ("hubs") for specific objectives following the path "Customer - Institute- Company";
- establish expert councils on research and education with the participation of businesses, partner with companies to assess the quality of learning programs and the efficiency of training;
- organize further training and internship programs for the academic and administrative staff of higher education institutions at the premises of companies and provide joint training for highly qualified research personnel in line with business interests;
- institute scholarships for students and grants for young instructors;
- promote science and technology competitions organized jointly by leading higher education institutions and businesses in the companies' innovation areas to award grants to winners for the development of technological solutions.

The further elaboration of these proposals may be critical to make interactions more efficient and improve cooperation between FIAC member companies and high education institutions in driving innovation development.

Issue 6. Driving the innovation growth of Russia's regions to increase their investment attractiveness

According to numerous expert reports and Russian economic development forecasts, Russia's regions will play an increasing role, with a rapid growth in investment inflows to become their main priority. Innovative production, science, education and research will be among the key areas for investment. However, favorable conditions need to be created to attract investment into these sectors - the investment climate and conditions in the processing industry may have a low appeal for high-tech investors.

Solution

1. The Innovation Development Working Group together with Association of Innovative Regions of Russia (AIRR) took active part in development of system for evaluation of attractiveness factors for innovation activities and the criteria impacting the decision to locate FIAC company offices/representatives in different Russian regions. Identify and determine the key factors impacting the attractiveness of innovation activities of FIAC-participating companies in Russia (taking into account any factors in the choice between several regions) using questionnaires.
2. The Innovation Development Working Group also took part in the priority project of the RF Ministry of Economic Development and Trade “Development of Innovative Clusters – World Leaders of Investment Attractiveness", in particular, in evaluation of project-applications from clusters of different regions, bidders for participation in the project.

Recommendations

- continue development of criteria for evaluating the investment attractiveness of Russia's regions for high-tech companies;
- identify and analyze the causes and impact of uneven distribution of foreign companies' innovative technologies across Russia;
- identify in collaboration with the local authorities, the regions that are potentially most attractive for investment into high-tech sectors;
- develop recommendations / a list of measures to attract investment into a region's innovative sectors;
- create conditions for the successful adoption and adaptation of international leading practices in driving regional innovation growth;
- Russia's regions should adapt best practices of local successful innovative businesses to improve the infrastructure for innovations;
- expert the existing cluster chains of enterprises, coordinate, cooperate and optimize their activities.

1.11. Development of the Far East and Siberia

Report on the working group's activities in 2016 and plans for 2016

Promote foreign investments in the Far East and Siberia, and provide guidance for foreign investors by demonstrating successful, positive investment experience on the part of the FIAC member companies:

1) In 2015-2016, top officials from Sakhalin Region, Magadan Region, Omsk Region, Novosibirsk Region and Kamchatka well as officials from the Offices of the Plenipotentiary Envoys of the Russian President in Siberia and the Far East, the Ministry for Economic Development and the Ministry for the Development of the Far East addressed FIAC members at the working group's Investment Sessions, and gave information on the investment advantages and projects of their regions.

In 2010 – 2016, working-group members were addressed by top officials from the Republic of Sakha (Yakutia), Primorsky Territory, Amur Region, Magadan Region, Irkutsk Region, Krasnoyarsk Territory, Sakhalin Region, Khabarovsk Territory, Tuva, Buryatia, Chukotka, Kamchatka, Jewish Autonomous Region, Novosibirsk Region, Zabaikal Territory, Altai Republic, Tomsk Region, Altai Territory, Kemerovo Region and Omsk Region, and by representatives of the Offices of the Russian Presidential Envoys to the Far East and Siberia, the Ministry for Economic Development and the Ministry for the Development of the Far East.

2) In 2016, major corporations, banks and organizations which are currently not FIAC members have been invited to attend the working group's Investment Sessions (possibly with its subsequent membership). A number of major global corporations, organizations and banks that have a wealth of investment experience throughout the world are poorly informed about what FIAC does and how effective its efforts have been.

Representatives of several companies – JBIC (Japan Bank for International Cooperation), Nomura Research Institute, Japan External Trade Organization (JETRO) and JOGMEG (Japan Oil, Gas and Metals National Corporation) – regularly take part in the Investment Sessions in 2012 – 2016 and are keen to do so in the future.

The involvement of such companies and organizations should give FIAC new momentum.

This issue should be continuously coordinated with the Russian Ministry for Economic Development.

3) The working group annually meets with the leadership of the Ministry for the Development of the Far East, where they discuss joint work and set out further steps to attract foreign investments into the Russian Far East. An international expert study of the situation in the regions based on the company's global business experience and providing information on topical issues in the Russian Far East in order to promote the area’s development and help attract foreign investments.

4) In coordination with Roscongress, to assist in preparation of Eastern Economic Forum in Vladivostok and to ensure that foreign companies will participate. The purpose of the Eastern Economic Forum – the only large, high-level annual forum in the Russian Far East – is to provide an expert opinion on investment climate issues in the Far East and to help give foreign investors a better understanding of the priorities of state policy in the Far East and measures to bring foreign investments into the region. That fact that CEOs of foreign companies attend the forum promotes dialog between business and government and contributes to a correct assessment of the Far East’s potential and development priorities. The forum has become a key information and advisory venue, where the country's leaders and top managers of foreign companies that operate and invest, or are planning to invest, in Russia can discuss the investment climate in the Far East.

Work plan for 2016

Cooperate and promote relations with the Ministry for the Development of the Far East and the Offices of the Plenipotentiary Envoys of the Russian President in the Far Eastern and Siberian federal districts.

Continue to hold Investment Sessions with officials representing the regional authorities of the Far East and Siberia, as well as the Offices of the Plenipotentiary Envoys of the Russian President in the Far Eastern and Siberian federal districts.

Invite major corporations, banks and organizations which are currently not FIAC members to attend the working group's Investment Sessions. This issue should be continuously coordinated with the Russian Ministry for Economic Development.

Cooperate with Roscongress in respect of hosting Eastern Economic Forum in Vladivostok.