

ISSUES RELATING TO TRADE IN TOBACCO THAT SHOULD BE RESOLVED IN THE CONTEXT OF BELARUS ACCESSION NEGOTIATIONS TO THE WORLD TRADE ORGANIZATION

On 24 January 2017, Belarus announced that it is resuming the accession negotiations to join the World Trade Organization (“WTO”).¹ The negotiations had been frozen for almost 12 years, but Belarus now appears to consider that WTO membership is a priority, and that 2017 is a crucial year for the accession process. The WTO membership should work constructively to support Belarus’ accession to the global trading system. There are, however, certain measures governing importation and sale of tobacco products in Belarus that raise concern because of their WTO-inconsistent nature. The accession negotiations present the appropriate forum for addressing these concerns.

First, Belarus has a quota system for local tobacco production based on expected market demand and production capacities of Belarussian companies, including in particular a State-owned tobacco producer. Under this system, the low-price segment of the market is entirely allocated to domestic brands, which are wholly-owned by domestic producers.² In addition, State Enterprise “Belarustorg” has the exclusive right to import tobacco products.³ The result of the combination of the production quotas and the exclusive right to import is that foreign companies cannot compete in the low-price segment of the market. This situation of effectively prohibiting foreign competition and granting exclusive rights to a State-owned trader, which allows it to be involved as a market regulator, violates GATT Articles III, XI, XVII and the principle of the “right to trade”.

Second, Belarus’ tiered tax-system for tobacco products discriminates between “like” and “directly competitive or substitutable” products, effectively affording protection to domestic products. This is because the low-value segment is taxed at BYN 16.37, while high-value products are taxed at the disproportionately higher rate of BYN 47.32. Given that all low-value products are domestic and high-value products only imported, this differentiated tax system results in a significantly higher tax burden on imported products. As such, a less favorable tax treatment is afforded to imported products, so as to afford protection to domestic like products. This tax system violates therefore GATT Article III:2.

Third, several of Belarus’ neighboring countries are suffering from an influx of illicitly-traded tobacco products, which appear to originate from Belarus. The very low tax in Belarus on already low-value products, manufactured mainly by a State-owned producer, has resulted in such “cheap whites” finding their way into neighboring markets where they are sold illegally, without paying the higher, local taxes. As a result of the low tax rate for low-value products, cigarette prices in Belarus are the lowest in Europe. Belarus should be required to address this serious illicit trade issue before joining the WTO, for example by raising the discriminatory tax rate applied to the low-price segment and committing to fully comply with the WTO Trade Facilitation Agreement on customs procedure, control and cooperation.

In conclusion, it appears appropriate to seek specific commitments from Belarus in the context of these accession negotiations to address the above-referenced and related issues. In line with prior accessions, Belarus should be requested to make specific commitments to ensure the non-discriminatory treatment of foreign products and firms, and to allow free and fair competition, also in tobacco products.

¹ WTO, “Belarus resumes WTO membership negotiations”, 24 January 2017.

² Republic of Belarus, Council of Ministers Resolution, 2 December 2015, N 1003.

³ Republic of Belarus, Presidents Ordinance of 18 October 2007, N 4.