



INTERNATIONAL TRADE UPDATE

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The Customs Union between Russia, Kazakhstan and Belarus: How Will It Affect Your Business?

Russia, Kazakhstan and Belarus currently operate a Customs Union (CU).¹ Since 1 January 2010, these countries apply a Common Customs Tariff. But the CU is still transitional. It will not become fully operational until 1 July 2010, when a Common Customs Code with harmonized procedures takes effect and even then there will be a transitional period for some issues.

For companies active in Russia, Kazakhstan and Belarus, the transition to a CU offers both challenges and opportunities. While the CU will simplify many operations, companies face uncertainty about implementation and transitional periods. The basic principles of the CU seem to be in place and the primary trade mechanisms are about to be implemented, but there are many exceptions and differences in interpretation between the three countries. Moreover, the devil will be in the detailed harmonization of the relevant domestic laws. It also remains to be seen how soon the countries, united under the CU banner, will be able to come to a common denominator that would underpin their trade relations. At issue are tariff and non-tariff barriers and the willingness of the CU member states to balance the CU interests with the interests of their respective economies.

Opportunities

It will become easier and more predictable to do business in Russia, Belarus and Kazakhstan after they become a Common Customs Territory. Envisioned are one set of procedures, one set of customs rules (origin, valuation, and classification) and one set of documents for importing into the three countries. Thus, once products have entered one country, they will be free to move to the other two. Moreover, the CU

¹ This CU is the first stage of a Common Economic Space based on the example of the European Union, meaning, among other things, free movement of goods, services, capital, and labor, as well as a coordinated agricultural, taxation and monetary policy, including common anti-monopoly legislation.

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members have pledged to implement common standards, such as sanitary and phytosanitary rules, quota and intellectual property protection.

Challenges

The planned harmonization is not without some, however gray areas. First, import tariffs will not easily be unified, especially since no mechanism is in place for this and because of different national interests. For example, at present, certain automotive manufacturers in Russia are having problems shipping new vehicles to Kazakhstan.

Second, the countries may not always agree on common standards. This could complicate existing discussions which for instance the EU already has with Russia with respect to the increase in duties on timber. The disagreement may also affect discussions of non-tariff controls.

Third, the three countries will have to review their respective trade agreements and trade defense laws to make them compatible with the rules of the CU. This means that existing anti-dumping duties, safeguard measures, quota or restrictions of the three individual countries may be changed.

Thus, many questions remain. How do the new rules define “domestic industry” within the scope of the CU trade regime? Do existing external trade policies still apply as of 1 January 2010 for all three countries, or will there be a review since the market has changed? If not, how do the countries plan to avoid circumvention without internal border control?

Conclusion

It is imperative that companies doing business in the new CU re-evaluate their terms of engagement with the market both short-and long-term. While the local markets remain attractive, the access rules may have changed dramatically. Therefore, companies should determine which rules apply to them; identify the changes they have to make to their operations; and engage in discussions concerning implementation. A good first step would be performing an impact assessment. This would map out current operations and the current laws; provide a comparative overview of the old and new laws and their relevant effects; and identify the operational changes necessary for compliance and advisable for the future.

If you have questions about any of these items, please contact your regular Sidley Austin LLP contact.

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