



Legal Issues in the Food Industry in Russia in 2012

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This article summarizes the principal legal issues that food manufacturers, retailers and distributors in Russia are currently following, looking ahead to 2012. These issues include: (1) New Restrictions on Advertisements, (2) New Quality Compliance Requirements, (3) New Antitrust Regulatory Issues, (4) The Law on Trade, (5) Price Regulation, (6) Exemptions from Tax, (7) Intellectual Property Issues, (8) Tax Incentives, and (9) Tax planning for Importing Agricultural Equipment and Food Production Equipment, (10) Food labeling issues, (11) GMO issues (12) Upgrading of penalties, (13) Packaging, (14) On quality and safety of food products.

1. New Restrictions on Advertisements

Advertising food and drink products in Russia will be subject to substantial regulatory changes in 2012, with changes affecting advertising of certain kinds of products. Mostly the changes will affect the beer industry, and from July 1, 2012, beer will be classified as an alcohol product, while it has not been previously been classified as such¹. Consequently, all advertising restrictions applicable to alcohol will apply to beer.

Alcohol advertisements must contain a warning regarding the hazards of overuse, and such warnings must occupy not less than ten percent of the size of a printed advertisement and seven percent of the screen on television, and in movies and videos. The duration of health warnings in radio advertisements must not be less than three seconds, and five seconds in television advertisements, and there are restrictions on the hours during which alcohol advertisements may be broadcast.

Advertisements may not assert that consumption of alcohol is important for public recognition, for professional, athletic or personal success, or contributes to improvement of one's physical or emotional state. The law prohibits discouragement of abstinence from drinking alcohol products or claiming that alcohol products are harmless or beneficial for human health, or are a desirable way to satisfy thirst. Moreover it is prohibited to use images of people and animals, including animated images in advertisements to minors.

Alcohol advertisements may not be placed on the front and last pages of newspapers or magazines, on any kind of transportation, on roofs, exterior walls and other structural elements of buildings, in children's, educational, medical, health, military, theatrical, museums, residential, concert or exhibition halls. Such advertisements may not be closer than 100 meters from such buildings.

The Federal Law "On Advertising" also contains requirements for advertising of biologically active additive and nutritional supplements, as well as baby food products. The law contains requirements aimed at preventing misleading and unfair advertising².

2. New Quality Compliance Requirements

As of January 1, 2012, the requirements for declarations of compliance are set out in a new Russian State Standard ("GOST"), number GOST R 54008-2010. Commencing in 2012, a declaration of compliance may be registered in an electronic form within three days of its acceptance. The party submitting a declaration of compliance is required to retain evidence of the product's compliance for ten years. Only legal entities or individual entrepreneurs registered in accordance with Russian legislation may file declarations of conformity, and only if they are manufacturers or sellers of the products in question, or are carrying out such functions for a foreign manufacturer.³ Documents establishing conformity and research protocols and test protocols from locations outside Russia can be accepted in accordance with certain treaties of the Russian Federation.⁴

The manufacture and sale of defective products which diverge from their declared contents may constitute a criminal or administrative offence. Commencing in 2012, the sale of goods which do not conform to the required quality is subject to an administrative fines that increase if there are repeated violations, and non-conforming products may be seized. The manufacture and sale of defective products which diverge from their declared contents may also constitute a criminal⁵ or administrative offence.⁶

3. New Antitrust Regulatory Issues

The Russian Federal Antimonopoly Service ("FAS") currently plays a number of important roles as a regulator of various aspects of business activities. Some of the FAS issues considered below are typical for all businesses operating through distribution networks, while others are inherent to food industry. It becomes evident that antitrust clearance of both business practices and agreements is essential for most of the companies operating in Russia, and food industry is no exception.

Among the most common competition law violations that FAS is determined to repress are abuse of dominance, collusion and unfair competition. Producing companies may have a dominant position if they have more than a 50% share of a particular market, but in certain cases a company could be found to dominate with a smaller share⁷. If a manufacturer has a dominant position, it has to establish transparent rules for distribution of its product.⁸ A dominant manufacturer may not reject offers to purchase its products unless such rejection is economically or technologically determined. Conditions which a dominant producer applies in business relations with different partners must be equal, and discriminatory practices are prohibited.⁹ To avoid being held in violation of the aforementioned rules it is recommended that a company have an established commercial policy providing a framework for the company's relations with potential partners. The Law "On Protection of Competition" also allows submission of a draft of a company's distribution agreement to the FAS in order to receive advance approval from FAS¹⁰.

In the food industry, collusion among retailers is commonly encountered, and is considered highly detrimental to competition and is, currently, one of the main targets of FAS regulation. Usually the purpose of such collusion is to fix prices for a certain product, which is prohibited under Clause 1 of Article 11 of the Law "On Protection of Competition". There have been a number of high-profile cases, such as the collusion of leading trade networks which led to fixing prices for flour and buckwheat in 2010, which ended with colluding retailers found in violation of the Competition Law and maximum statutory fines imposed.

Unfair competition, as laid down in the Law "On Protection of Competition", involves a range of issues, among which the food industry mostly encounters unauthorized use of intellectual property, and misrepresentation as to the qualities, quantities or the origin of the product. Regarding this latter issue it should be noted that FAS considers the slightest of inconsistencies in product's marketing.

For example, in a recent case, a dairy products company was fined for using the term ‘dairy butter’ on the product’s package, while, in fact, the product included vegetable butter as well.

The FAS also enforces the Law on Advertising which prohibits many types of activities that may apply to food products, such as claiming that a product has healing properties, unless it is advertised as a medical product¹¹, or indication that the product is approved by state or municipal authorities¹².

4. The Law on Trade

The Russian Trade Law¹³ establishes rules for the sale of food products, establishes rules for distributorship agreements and prohibits discrimination in business activity. The Trade Law limits the amount of bonuses payable by a supplier to a distributor to not more than 10% of the price of the food products.¹⁴ A distributor may not deduct more than this amount as a cost of sold goods.¹⁵ The price of food products should not include the amount of such bonuses.¹⁶ It is prohibited to include certain other kinds of bonuses connected to pricing of goods.¹⁷ The Trade Law does not restrict the manner of payment of bonuses, which may be paid in monetary form, by transfers of cash to bank accounts, as a set off, as a prepayment, through a reduction of debt, a discount on prices, or by the provision of additional goods.

The Russian Government has set up a list of “socially important goods” (staple foods) with regard to which payment of bonuses is prohibited. See Decree No. 530 of the Ministry of Industry and Trade of the Russian Federation, dated July 15, 2010 (hereinafter the “Decree No. 530”). This list includes “socially important goods with regard to which maximum allowable retail price limits may be established”. This list includes beef (other than boneless meat), pork (excluding boneless meat), lamb (except for boneless meat), chicken (except chicken drumsticks), frozen fish, butter, sunflower oil, drinking milk, chicken eggs, sugar, salt, black tea, wheat flour, rye bread, rye-wheat bread and bakery products made of wheat flour, milled rice, millet, buckwheat, vermicelli, potatoes, cabbage, fresh onion, carrots and apples.

The Trade Law fixes the term for payment for shipments, starting from the date of supply:¹⁸ If the shelf life of food product is less than 10 days, then payment is to be no later than 10 days later. If the shelf life of food products is about 10-30 days inclusive, then payment is to be no later than 30 days. For food products with shelf life of over 30 days, and for alcohol products manufactured in Russia payment is to be not later than 45 days later.

Trading networks should inform distributors of food products about the criteria for selecting distributors and conditions of the distributorship agreement through an Internet site or by providing information within 14 days upon request by the distributor. Such information should be provided free of charge. Failure to provide with such information is subject to fine in amount of 20,000 to 40,000 Roubles for officials and/or in amount of 300,000 to 500,000 Roubles for legal entities¹⁹.

The Trade Law prohibits a distributorship agreement for the supply of food products from requiring the buyer to provide services to promote the food products. Marketing, promotion and similar services are to be addressed in separate service agreements. Such expenditures may be recognized as expenses for corporate profit tax purposes if only such expenditures are made pursuant to a separate service agreement.²⁰

A substantial part of the Trade Law is dedicated to antitrust regulation of the food retail sector. Retail chains and food product suppliers are forbidden from obstructing access to the market or violate the procedures for establishing prices. Commission agreements in the wholesale trade of food products are forbidden. The following clauses are prohibited in distribution agreements:²¹

- a restriction on the execution of agreements with third parties conducting similar activities, on similar or other conditions;
- liability for failure to supply food products on terms more favorable than the terms provided to third parties conducting similar activities;
- a demand for disclosure of information on transactions with third parties conducting similar activities on similar or other conditions;
- entrance fees for the right to deliver food products to a retailer's sales facilities;
- listing fees for changing the assortment of food products;
- price discounts down to the level of the minimum sales prices established by other suppliers conducting similar activities;
- compensation of damages to the retailer in case of damage to goods after their delivery, except in the case of a supplier's responsibility;
- compensation of expenditures unrelated to supply agreements or the subsequent sale of a particular consignment; and
- the return of goods to suppliers if the goods were not sold within a certain time period.

An interpretation with regard to the return of goods to the supplier has been published by the FAS. Where, according to Sanitary Regulations²², certain products such as bread and flour must be returned to the supplier after their expiry date, the FAS ruled that including such provisions in a supply agreement does not violate antitrust legislation²³.

Retail chains are banned from acquiring or leasing premises in a certain region, municipal region or city district if, after such acquisition, the market share of the retail chain would exceed 25%. All transactions made in violation of this rule will be held null and void upon the request of any interested party, including the antitrust authorities.²⁴

5. Price Regulation

The Federal Law on Trade allows the federal government to set maximum retail prices for “socially important goods” for up to 90 calendar days if there has been an increase in prices of thirty percent or more within thirty days.²⁵

A draft law “On Pricing Policy on the Food Market” is under consideration by the state Duma (the “Draft Pricing Law”). The Draft Pricing Law would establish a mechanism by which the government could regulate prices on the food market and, in particular, with regard to agricultural products, raw materials and food. The Draft Pricing Law would regulate the amount of price markup in the cost of food products. According to the Draft Pricing Law the government may be granted the right to establish (i) a maximum ratio between food retail prices and related wholesale prices of agricultural products and raw materials, and (ii) guaranteed prices at which agricultural products and raw materials may be bought from agricultural producers.

The Draft Pricing Law sets forth as well that, for the manufacturers of certain food products listed in Sub-Clause 1.2 of Article 164 of the Tax Code of the Russian Federation (the “Tax Code”) the price markup may not exceed 25% of the price at which the products were sold to the first wholesaler. The food products enumerated in Sub-Clause 1.2 of Article 164 of the Tax Code include, for example, meat and meat products, milk and dairy products, vegetable oil, fish, seafood and fish products, bread and bakery products, and other products.

6. Exemptions from Tax

Agricultural manufacturers enjoy certain tax incentives such as an exemption from corporate profit tax, corporate property tax and value added tax.²⁶ As discussed in more detail below in the Section 7 of this paper, in order to be recognized as an agricultural manufacturer allowed these tax benefits,

companies must comply with related requirements set out in Tax Code.²⁷ These requirements include that such companies must produce agricultural products and complete their initial and further industrial processing and sale. The share of profit from the sale of agricultural products should constitute not less than 70% of the entire profit of the business.

The tax authorities may refuse to grant an agricultural manufacturer's tax exemption if they can establish the company has failed to comply with these requirements. Affected companies may appeal against such decisions by the tax authorities in accordance with the following procedure.²⁸ Under the Tax Code²⁹ acts of the tax authorities, and their omissions, may be appealed to a higher tax body or to court. In some cases, appealing to a higher tax body should precede filing a claim with a court. In particular, administrative appeals must be completed with regard to decisions to hold a taxpayer liable for tax violations or a refusal to hold a taxpayer liable based upon the results of a tax audit.³⁰ Other acts, such as decisions to refuse to make an offset or to return taxes paid, or a demand for payment of a tax, penalty or fine may be appealed to a court without preliminary consideration by a higher administrative tax body.

On March 16, 2010, the Presidium of the Supreme Commercial Arbitration Court of the Russian Federation considered a case brought by OOO Dirol Cadbury against Tax Inspectorate No.9 of the Novgorodskaya District. The complaint alleged there was a decision on carrying out a repeat tax audit in connection with a specified tax declaration.³¹ In 2007, OOO Dirol Cadbury submitted to the tax inspectorate an adjusted tax declaration for income tax for 2005. According to the declaration, the sum of expenses connected with manufacture and sale of products increased by 280 million rubles due to correction of data on non-operational income and expenses, resulting in a larger loss for the period, which increased from 28.6 million rubles to 307 million rubles. Repeated tax audits were carried out with regard to the tax period. OOO Dirol Cadbury disagreed with the decision to carry out the repeat tax audit, and appealed to court. This case was considered by three levels of appeal before reaching the Supreme Commercial Arbitration Court.

The Supreme Commercial Arbitration Court stated that carrying out a repeat tax audit in case of processing an adjusted tax declaration is possible, but such an audit should not be a full audit. In particular, repeat audits may only be carried out with regard to information contained in an adjusted tax declaration which entails reduction of taxes calculated earlier. In addition, the results of a repeat audit may not overrule a court decision delivered earlier on a claim by a taxpayer on appeal of an initial tax audit.

This decision of the Supreme Commercial Arbitration Court is significant because many companies are forced to file an adjusted declaration every month and do so unwillingly, since this fact may entail a repeat audit. By this decision, the Supreme Commercial Arbitration Court has provided some authority for taxpayers to avoid unending bureaucratic inspections.

7. Intellectual Property Issues

Two options that may be used in order to protect trademarks used in the food industry, administrative proceedings and court proceedings. Article 14 of the Antitrust Law states that the sale of goods is not allowed if the product involves illegal use of intellectual property, or the means of identifying a legal entity, products, works or services, such as by company names, commercial names, and trademarks.

“Unfair competition” is defined to include the fraudulent acquisition and use of exclusive rights to means of identification. Misleading consumers with regard to goods or their manufacturer is also banned.³² The latter provision allows manufacturers, even if they do not possess registered trademarks, to commence administrative proceedings against the use of similar names by competitors, if such actions may be shown to be unfair.³³

The power to protect rights to intellectual property that are violated through unfair competition is vested in the FAS. The FAS is authorized to investigate violations of the law on competition independently by means of its own inspections. However, in most instances, such cases alleging infringement on intellectual property rights are initiated by aggrieved individual or companies.

The FAS may issue specific instructions to rectify violations or to restore the state of affairs existing prior to a violation. The FAS may impose a fine in an amount from 100,000 to 500,000 rubles for legal entities³⁴ or, in the event goods are introduced into a market unlawfully in violation of another party's intellectual property rights, in an amount from 0.01% to 0.15% of the infringer's revenue from sales of the goods in question.³⁵ The officials of a company found to be competing unfairly involving unauthorized usage of intellectual property may be fined for 20 000 rubles or disqualified for 2 years. Right now there is an initiative at FAS to penalize both the legal entity and the officials in charge in case of violations.

The FAS used these powers, for example, and imposed fines on the Slavyanka Confectionary Plant, which was fined by FAS in an amount over 3.5 million rubles for using another company's trademark on the packaging of a chocolate product.³⁶

Defendants may seek to reduce a fine by appealing a decision of the FAS to court. In the Slavyanka case, the amount of fine was reduced on appeal to approximately 700,000 rubles.³⁷

After obtaining a FAS decision recognizing the use of intellectual property rights as unfair competition, an applicant may file an objection against a trademark registered with Rospatent, the Russian patent authority.³⁸ When examining the substance of objections to a registered trademark, Rospatent determines whether FAS has established the fact of a violation of law involving a fraudulent registration of a trademark. Rospatent is not authorized to disregard a decision by FAS.

As an example, Starbucks Corporation fought to defend its Starbucks trademark in Russia for almost four years. In particular, Starbucks Corporation initially filed its objection to the registration with Rospatent of a trademark for the name "Starbucks". The registration of the trademark "Starbucks" by the Russian company was acknowledged as invalid by Rospatent based on the grounds that this registration could mislead consumers with regard to the manufacturer of goods.³⁹ This position of Rospatent was upheld by the courts at the first and second levels of appeal.⁴⁰

In such cases, the aggrieved party must provide, as evidence, samples of goods of the infringer, and evidence of the fact that infringing goods were distributed on the Russian market, in advertising catalogs, and photographs of goods. Additionally, public opinion polls and expert opinions may be provided as evidence.⁴¹

Practitioners are of the view that FAS acts more efficiently on behalf of aggrieved parties than the courts. Administrative procedures at FAS may require approximately four months, though this term may be extended to a year. According to the Arbitration Procedural Code of the Russian Federation,⁴² the consideration of a case in the court of first instance should take no more than three months. However, due to the large workload of courts, in practice, it often takes more time to receive a court decision.

8. Tax Incentives

8.1 General

Important tax incentives for the food industry include a decreased corporate profit tax rate of 20% , as compared to 24%;⁴³ an increased rates at which loan payments can be deducted for corporate profit tax purposes;⁴⁴ an increase in allowable amortization amount of 30%, as compared to 10%;⁴⁵ and an acceleration of VAT offset providing, for non-monetary forms of accounts, the monetary VAT payment is not compulsory.⁴⁶

There are also other special tax incentives in Russia which can be used by certain kinds of food manufacturers and distributors, mostly those operating in the agricultural sector, in planning their business in Russia, including a special Uniform Agricultural Tax⁴⁷ allowing agricultural manufacturers to be exempt from the generally applicable corporate profit tax and VAT, with some exceptions.⁴⁸ The Uniform Agricultural Tax may be used by taxpayers with at least 70% share of income derived from the sale of the agricultural goods they produce, or fish they breed.

Starting from January 1, 2008, and until December 31, 2014, agricultural producers which do not use the Uniform Agricultural Tax may use a lower corporate profit tax rate. The lower rate on corporate profit varies depending on the period when the tax is to be paid. For the years 2004 to 2012, the rate of 0% is applicable. For 2013 to 2015, the rate of 18% is established. Starting from 2016 such taxpayers shall pay profit tax at the generally applicable rate, which is today 20%.⁴⁹

In addition, if a food manufacturer buys equipment for technical re-equipment or for improving power consumption in a production process, it is entitled to receive an investment tax credit in the amount of up to 100% of the cost of such equipment.⁵⁰ The investment tax credit is granted to a taxpayer if such taxpayer files an appropriate application with the appropriate documents attached and an agreement is concluded to this effect between a respective authority and the taxpayer.

8.2 10% VAT rate, or exemption

For the producers of certain kinds of products, the Tax Code provides , instead of the general 18% VAT rate, provides a 10% VAT rate. The lower rate applies to the production of meat and meat products, milk and dairy products, margarine, sugar, spaghetti, pasta products, fish and seafood products, food products for children and diabetics, vegetables, and certain other products.⁵¹

The 10 % VAT rate also applies to rendering leasing services connected with transfer of pedigree cattle and poultry with the lessee's right to buy them out.⁵² The import of pedigree cattle and related products is not subject to VAT until January 1, 2012 if the taxpayer is an agricultural manufacturer⁵³ or a leasing company which supplies these pedigree cattle and related products to an agricultural manufacturer.⁵⁴

8.3 Justification of Sales Expenses

The Russian tax service takes the view that a retailer, and not a wholesaler, should bear all expenses for merchandising activity aimed at deriving income. In general, the Russian courts uphold wholesalers' expenditures and wholesalers are able to deduct expenditures for merchandising for corporate profit tax purposes if such expenses are duly documented.⁵⁵

The tax authorities often allege a taxpayer's expenditures on marketing services provided by an outside firm are not justified for corporate profit tax purposes if a taxpayer has its own in-house marketing staff. The tax authorities believe that in-house marketing staff must service the

company's purposes in their entirety, i.e. without the need for any other expenditure for marketing purposes.

Notwithstanding the position of the tax authorities, the courts typically uphold the deductibility of such expenditures.⁵⁶ To justify such expenditures, a taxpayer should meet certain requirements:

- Document and demonstrate the commercial marketing goals that have been planned and achieved;
- Document and demonstrate the differences between commercial marketing functions and its own marketers' duties; and
- Document and demonstrate how the taxpayer has actually used the commercial marketing results for the performance of activity aimed at deriving income.

If such requirements are met, the courts typically hold that a taxpayer has justified its expenditures for commercial marketing services, even though it has its own marketers on staff.

If a business experiences losses, the tax authorities assume that the taxpayer's expenditures connected with such activity should not be deductible, being unjustified for corporate profit tax purposes. Generally, Russian courts nonetheless allow such deductions and the taxpayer is able to decrease the corporate profit tax base by the amount of such expenditures in spite of the overall losses.⁵⁷ In all these cases the taxpayers must carefully document such expenses.

9. Tax planning for Importing Agricultural Equipment and Food Production Equipment

When importing agricultural and food production equipment to Russia, there are several ways to document such transactions, each having different tax consequences. Generally, tax planning is connected with VAT. Since July 2009, the import of equipment that has no analogues manufactured in Russia is not subject to VAT.⁵⁸ The transaction chain has to be properly created under the optimal scheme; otherwise the supplier will probably need to pay 18% VAT to Russian state budget.

The import of equipment through customs, and the sale of the equipment are considered different actions for VAT purposes.⁵⁹ If the import chain is not set up in an optimal manner, then there is a risk that a taxpayer will need to pay the 18% VAT normally due for imports and an additional 18% VAT on sale of the equipment within Russia.

10. Food labeling issues

Around 70 new State standards with respect to food products entered into force starting from January 1, 2012, 4 state standards were amended, 7 state standards will enter into force starting from July 1, 2012 and around 21 state standards expired (please see attached table of state standards). Contents of the state standards could be found on the official web sites of the Federal Agency on Technical Regulating and Metrology: <http://www.gost.ru/wps/portal/>. State standards contain labeling requirements with respect to the certain food products.

Please note that several requirements regarding excise labels for labeling alcohol products were amended as the result of adoption of the Resolution of the Government of the Russian Federation on December 30, 2011⁶⁰. Amendments related to the size, color, materials (label stationery) of the labels.

It should be noted that in order to prevent misinformation of the consumers two draft laws⁶¹ related to the labeling requirements for biologically active food supplements are under consideration by the

State Duma, these draft laws would prescribe certain detailed requirements for labeling in order to emphasize that biologically active food supplements are not medication.

11. GMO issues

As of the present time according to the information⁶² of the Federal Service on Consumer's rights Protection and Human Well-being Surveillance (Rosпотребнадзор) there are 16 types of the vegetable-based food products obtained with use of transgenic technologies registered and permitted for use in the food industry: 3 cultivars of soya, 7 cultivars of corn, 4 cultivars of potatoes, 1 cultivar of sugar beet, and 1 cultivar of rice and 5 types of genetically modified microorganisms.

List of feed additive for animals with GMO could be found on the official web-site⁶³ of the Federal Service for Veterinary and Phytosanitary Surveillance and contains around 60 items that are currently permitted by the authorities⁶⁴.

Since labeling of GM food products is mandatory in Russia (if a product contains more than 0.9% of GMO it shall be labeled⁶⁵) violation of this requirement entails sanctions depending on elements of such violation⁶⁶. It should be noted that penalties for such kind of violation are upgraded (please see section 12 below).

It should be noted that draft amendments to the Federal law "On quality and safety of food products" related to banning GMOs in baby food is under consideration by the State Duma, the date of the first reading is not defined yet⁶⁷.

In addition, it should be noted that two draft laws are under consideration by the State Duma that would require indication of information in respect to GMO even less 0.9%⁶⁸ on the food labels and creation of buffer zones, i.e. land zones between land parcels with GMO plants and land parcels without GMO plants (in order to avoid cross-pollination)⁶⁹.

12. Upgrading of penalties

On January 19, 2012 amendments to the Russian Code on Administrative Offences entered into force. These amendments exacerbate administrative penalties for violations of the laws on technical regulation. Several elements of the violation appeared for the first time in the Code and several were significantly extended. Thus, the following elements of the violations (*corpus delicti*) appeared in the Code:

- violation of the technical regulations requirement by the producer, executor, seller⁷⁰;
- misleading conformity declaring of products⁷¹;
- violation of products realization procedure that are subject to mandatory confirmation of conformity⁷²;
- violation of products labeling procedure which are subject to mandatory confirmation of conformity⁷³;
- violation of rules on execution of certification works⁷⁴;
- presentation of misleading results of examination (testing) of the products⁷⁵;

- violation of mandatory requirements with respect to defense products (executed works, rendered services)⁷⁶;
- failure to comply with requirements on submission of sample of products, documents or information necessary for exercising of state control in the sphere of technical regulation⁷⁷.

In addition it should be noted that sanctions for the violations prescribed as significantly high depending on the violation from RUR 100,000 to administrative suspension of activities (for several elements of violations).

Article 14.4 of the Code was amended and now it stipulates the following violation: “Selling goods, rendering services or carrying out works of improper quality or in violation of the Russian legislation requirements”⁷⁸. Starting from January 19, 2012 there is no such penalty as warning for such violation.

13. Packaging

In order to unify certification requirements for member countries of the Customs Union (Russia, Belarus and Kazakhstan) new Technical Regulations for the Customs Union were approved on August 16, 2011⁷⁹. The Technical Regulations “On safety of packaging” will come into force starting from July 1, 2012⁸⁰.

The conformity document (Certificate or Declaration) issued according to these Technical Regulations will be valid in all three countries.

Products covered by Certificates or Declarations issued before July 1, 2012 will be allowed to circulate within the Customs Union market until February 15, 2014⁸¹ for packaging.

Products certified according to country-specific requirements have to be labeled with the mark of Conformity of the country they have been certified for. Labeling of these products with the Customs Union mark of Conformity is not allowed.

According to the Technical Regulations “On safety of packaging” compliance of packaging is only supported by the Declaration of Conformity⁸².

At the same time it should be mentioned that a draft Federal law “On safety of packaging” is under consideration by the State Duma and adopted at the first reading; the committees responsible for work on the draft law shall be assigned until February 20, 2012⁸³ (for preparations for the second reading). The draft shall establish requirements that comply with the provisions of the international legislation, i.e. international agreements to which the Russian Federation is a participant. Introduction of these technical regulations would allow reducing expenses connected with the presence of the poor quality packaging on the market.

14. On quality and safety of food products

It should be mentioned that on January 19, 2012 the Head of the Rospotrebnadzor issued a Letter No. 01/330-12-32 “On abolition of obligation on drawing up a certificate of quality and safety of food products”⁸⁴. It is clarified that starting from October 21, 2011 due to new amendments of the Federal Law “On technical regulations”⁸⁵ provision on obligation of a producer to draw up certificate of quality and safety of food products is excluded. Although Trade rules⁸⁶ prescribe a requirement to introduce consumers with the certificate of quality and safety of food products

produced at the territory of the Russian Federation or copy of it, violation of such requirement does not entail administrative violation under the Russian Code of Administrative Offences.

- 1 Article 1 of the Federal Law on alteration of the Federal Law “Concerning the State Regulation of the Production and Circulation of Ethyl Alcohol and Alcoholic and Alcohol-Containing Products” and certain legislative acts of the Russian Federation and recognition invalid of the Federal Law “On restrictions on the retail sale and consumption (drinking) beer and beverages, manufactured on the basis thereof” dated July 18, 2011 No. 218-FZ.
- 2 Article 25 of the Federal Law “On Advertising” dated March 13, 2006 No. 38-FZ.
- 3 Article 24 of the Federal law “On technical regulation” dated December 27, 2002 No. 184-FZ.
- 4 Article 30 of the Federal law “On technical regulation” dated December 27, 2002 No. 184-FZ.
- 5 Articles 236-238 of the Criminal Code of the Russian Federation dated December 27, 2002 No.184-FZ.
- 6 Article 14.4 of the Code of Administrative Offences of the Russian Federation.
- 7 Article 5 of the Law “On Protection of Competition”
- 8 Point 5 of Clause 1 of Article 10 of the Law “On Protection of Competition”
- 9 Point 8 of Clause 1 of Article 10 of the Law “On Protection of Competition”
- 10 Article 35 of the Law “On Protection of Competition”
- 11 Point 5 of Clause 5 of Article 5 Law “On Advertising”
- 12 Point 2 of Clause 5 of Article 5 Law “On Advertising”
- 13 See Federal Law No.381-FZ of the Russian Federation “On the Fundamental Principles of State Regulation of Trade Activity in the Russian Federation” dated December 28, 2009.
- 14 Clause 4 Article 9 of the Law.
- 15 Letter No.03-03-06/1/85 of the Ministry of Finance of the Russian Federation dated February 19, 2010.
- 16 Clause 4 Article 9 of the Law.
- 17 Clause 6 Article 9 of the Law.
- 18 Clause 7 Article 9 of the Law.
- 19 Clause 1 Article 14.41 of the Russian Code of Administrative Offences dated December 30, 2001
- 20 Letter No.03-03-06/1/85 of the Ministry of Finance of the Russian Federation dated February 19, 2010.
- 21 Clause 1 Article 13 of the Law.
- 22 Sanitary Regulations 2.3.4.545-96. 2.3.4. “The food processing industry. Production of bread, bakery and confectionery products. Sanitary rules and norms”
- 23 Letter of Federal Antitrust Service N ИА/22313 dated July, 15, 2010
- 24 Article 14 of the Law.
- 25 Clause 5 Article 8 of Federal Law No.381-FZ of the Russian Federation “On the Fundamental Principles of State Regulation of Trade Activity in the Russian Federation” dated December, 28, 2009.
- 26 Clause 3 Article 346.1 of the Tax Code of the Russian Federation.
- 27 Clause 2 Article 346.2 of the Tax Code of the Russian Federation.
- 28 Resolution No.A35-5079/08-C8 of the Federal Arbitration Court dated May 4, 2009 and Resolution No.A12-12645/2007 of the Federal Commercial Arbitration Court dated April 30, 2008.
- 29 Clause 1 Article 138 of the Tax Code of the Russian Federation.
- 30 Article 101.2 of the Tax Code of the Russian Federation.
- 31 Decision of the Supreme commercial Arbitration Court of the Russian Federation under the case No.A44-23/2009 dated March 16, 2010.
- 32 Clause 2 Article 14 of the Law “On Protection of Competition”.
- 33 Clause 3 Article 14 of the Law “On Protection of Competition”, Clause 6 Article 1252 of the Civil Code of the Russian Federation.
- 34 Clause 1 Article 14.33 of the Administrative Code of the Russian Federation.
- 35 Clause 2 Article 14.33 of the Administrative Code of the Russian Federation.
- 36 Decision of the Federal Antitrust Service No.1 14.33/481-08 dated December 11, 2008.
- 37 Decision No.A08-10298/2009-27 of the Arbitration Court of Belgorodskaya Region dated November 16, 2009.
- 38 Clause 3 Article 14 of the “On Protection of Competition”, Clause 6 Article 1252 of the Civil Code of the Russian Federation.
- 39 Decision No.2004713075/50 (986922) of the Chamber on patent disputes of the Federal Service on intellectual property, patents and trademarks dated July 11, 2005, approved by the Head of Rospatent on November 16, 2005.
- 40 Case No.A40-11022/06-26-113.
- 41 Please see the article at: http://www.themoscowtimes.com/business/business_for_business/article/anti-monopoly-authorities-for-monopoly-rights/401136.html.
- 42 Article 152 of the Arbitration Procedural Code of the Russian Federation.
- 43 Article 284 of the Tax Code.
- 44 Article 4 of Federal Law No.368-FZ dated 27.12.2009 “On entering amendments to the Tax Code”.
- 45 Article 258 of the Tax Code.

46 Article 168 of the Tax Code.
47 Peculiarities of the Uniform Agricultural Tax are stipulated by Chapter 26.1 of the Tax Code.
48 Article 346.1 of the Tax Code.
49 Article 2.1 of Federal Law No.110-FZ “On entering amendments to the Tax Code” dated 06.08.2001
(amendments from 24.07.2009).
50 Article 67 of the Tax Code.
51 Article 164 of the Tax Code.
52 Article 26.3 of Federal Law No.118-FZ “On entering amendments to the Tax Code” dated 05.08.2000
(amendments from 24.06.2008).
53 An Agricultural manufacturer’s features are stipulated by Article 346.2 of the Tax Code.
54 Article 26.1 of Federal Law No.118-FZ “On entering amendments to the Tax Code” dated 05.08.2000
(amendments from 24.06.2008).
55 Resolution No.F-04-4721/2008(9200-A46-40) of Federal Commercial Arbitration Court of West-Siberian region
dated 06.08.2008.
56 Resolution No.A49-1429/2009 of Federal Commercial Arbitration Court of Povolzhskiy region dated
22.10.2009.
57 Resolution No.A56-6623/2008 of Federal Commercial Arbitration Court of North-Western region dated
09.06.2009.
58 Article 150 of the Tax Code; Resolution of the Government of the Russian Federation No.372 dated 30.04.2009.
59 Article 146 of the Tax Code
60 Resolution of the Government of the Russian Federation No.1230 “On introduction of amendments to the
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62 Draft Law No. 295616-5 <http://asozd2.duma.gov.ru/main.nsf/%28Spravka%29?OpenAgent&RN=295616-5&02>
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66 Federal Law No. 234-FZ dated October 25, 2007 “On amendments to the Russian Federation Law “On
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67 The Russian Code of Administrative Offences dated December 30, 2001.
68 Draft law No.322318-5 <http://asozd2.duma.gov.ru/main.nsf/%28Spravka%29?OpenAgent&RN=322318-5&02>
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70 Draft Law No. 331562-5 <http://asozd2.duma.gov.ru/main.nsf/%28Spravka%29?OpenAgent&RN=331562-5&02>
71 Article 14.43 of the Russian Code of Administrative Offences dated December 30, 2001.
72 Article 14.44 of the Russian Code of Administrative Offences dated December 30, 2001.
73 Article 14.45 of the Russian Code of Administrative Offences dated December 30, 2001.
74 Article 14.46 of the Russian Code of Administrative Offences dated December 30, 2001.
75 Article 14.47 of the Russian Code of Administrative Offences dated December 30, 2001.
76 Article 14.48 of the Russian Code of Administrative Offences dated December 30, 2001.
77 Article 14.49 of the Russian Code of Administrative Offences dated December 30, 2001.
78 Article 19.33 of the Russian Code of Administrative Offences dated December 30, 2001.
79 Article 14.4 of the Russian Code of Administrative Offences dated December 30, 2001.
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