

ClientAlert

International Trade

July 2013

European Union Requests Consultations in First WTO Case Against Russia

On 9 July 2013, the European Union (EU) formally challenged Russia on its recycling fee for imported vehicles by requesting consultations under the WTO dispute settlement system.¹ This is the first WTO dispute initiated against Russia after less than one year of membership.

On 1 September 2012, Russia introduced a recycling fee, that is imposed on cars, trucks, buses and other motor vehicles. The amount of the fee is determined on the basis of the year of production, weight and other physical characteristics that may affect the disposal costs. It can range from approximately €420 to €2,700 for “new” vehicles and from about €2,600 to €17,200 for vehicles older than three years.² For mining trucks, the fee amounts to €147,700.³

Under Russian law, domestic car manufacturers and companies that assemble cars in Russia are exempted from the fee if they commit to establish procedures designed to dispose of a vehicle at the end of its useful life. Exemptions also apply to cars imported from Kazakhstan and Belarus, which form a customs union with Russia. No such exceptions apply to cars imported from other countries.

The EU claims that Russia’s measures are discriminatory and violate several provisions of the *General Agreement on Tariffs and Trade* (GATT) and the *Agreement on Trade-Related Investment Measures* (TRIMS). Among others, the EU considers the recycling fee to be inconsistent with the national treatment principle (GATT Article III:4), which requires Russia to accord to imported vehicles “treatment no less favourable” than it accords to like vehicles of national origin and the most-favoured nation principle (GATT Article I:1), which prohibits discrimination among like vehicles imported from different countries. The EU is also of the view that the measures are WTO-inconsistent trade-related investment measures.⁴



Moscow

Hermann Schmitt
Partner
+ 7 495 787 3005
hschmitt@whitecase.com

Natalia Bayurova
Associate
+ 7 495 787 3091
nbayurova@whitecase.com

Kamilla Shikhametova
Associate
+ 7 495 645 4922
kshikhametova@whitecase.com

Washington, DC

Yohai Baisburd
Counsel
+ 1 202 626 3645
ybaisburd@whitecase.com

Geneva

Brendan McGivern
Partner
+ 41 22 906 9804
bmcgivern@whitecase.com

Saskia Seeger
Associate
+ 41 22 906 9815
sseeger@whitecase.com

¹ *Russian Federation – Recycling Fee on Motor Vehicles*, Request for Consultations by the European Union, WT/DS462/1, G/L/1033, G/TRIMS/D/37, 9 July 2013.

² http://europa.eu/rapid/press-release_MEMO-13-671_en.htm

³ http://europa.eu/rapid/press-release_MEMO-13-671_en.htm

⁴ Other legal provisions cited in the EU’s request for consultations are GATT Article II:1(a) and (b), which prohibit treatment less favourable than that provided for in Russia’s Schedule of tariff concessions, in particular duties and charges on importation in excess of those set forth in the schedule, and GATT Article III:2 which prohibits internal charges in excess of those applied to like domestic products.

Russia has defended the recycling fee arguing that it serves to address environmental concerns. However, in the course of negotiations with some of the concerned trading partners, Russia agreed to revise the relevant legislation. The draft law amending provisions on the vehicle utilization fee⁵ envisages extension of the fee to three categories of vehicles currently excluded from its scope.⁶

The draft law was included in the agenda of the autumn session of the State Duma (lower chamber of the Russian Parliament), and is expected to pass the first reading by October 2013.⁷ However, it may take a few months until these amendments become effective, while the EU has reportedly given the deadline for Russia to resolve this issue until July 1, 2013.⁸

Other countries that have questioned the WTO consistency of the recycling fee are Japan and the United States though they have not yet formally requested consultations.⁹

A request for consultations is the first step in a WTO dispute. If the parties do not reach an agreement within 60 days, the European Union can request the establishment of a panel.

The EU's request for consultations is available [here](#).

This Client Alert is provided for your convenience and does not constitute legal advice. It is prepared for the general information of our clients and other interested persons. This Client Alert should not be acted upon in any specific situation without appropriate legal advice and it may include links to websites other than the White & Case website.

White & Case has no responsibility for any websites other than its own and does not endorse the information, content, presentation or accuracy, or make any warranty, express or implied, regarding any other website.

This Client Alert is protected by copyright. Material appearing herein may be reproduced or translated with appropriate credit.

Moscow

White & Case LLC
4 Romanov Pereulok
125009 Moscow
Russia
+ 7 495 787 3000

Washington, DC

White & Case LLP
701 Thirteenth Street, NW
Washington, DC
20005-3807
United States
+ 1 202 626 3600

Geneva

White & Case LLP
82 Rue de Lausanne
CH-1202 Geneva
Switzerland
+ 41 22 906 9800

5 The Draft Law N 289157-6 "On Introduction of Amendments to Article 241 of the Federal Law 'On Consumption and Industrial Wastes'".

6 These categories include: vehicles assembled or manufactured by entities undertaking to safely dispose of the cars once they are no longer used; vehicles imported to Russia from the territory of the members of the Customs Union within the Eurasian Economic Community and have the status of the goods of the Customs Union; and certain vehicles placed under the customs regime of free customs zone on the territory of special economic zone in the Kaliningrad Region prior to 1 April 2016.

7 For the text of the draft and its progress through the legislative process, see [http://www.asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=289157-6](http://www.asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=289157-6).

8 See, for instance, <http://online.wsj.com/article/BT-CO-20130531-704948.html>.

9 See Minutes of the Meeting of the Council for Trade in Goods 26 November 2012, G/C/M/112, para. 8.6 and 8.7.