

# BUSINESS GUIDE

## on Tajikistan's WTO Accession Commitments







## Trade Cooperation Programme in Tajikistan Component ONE: Policy Advice and Capacity Building

# **Business Guide on Tajikistan's WTO Accession Commitments**

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## **Preface**

On 2 March 2013, after 11 years of negotiations, Tajikistan became the 159<sup>th</sup> full-fledged member of the WTO.

Tajikistan's road to WTO began in 2001. Within this period the Republic of Tajikistan conducted 9 meetings of the Working Group, 4 of which were held in 2012.

The Republic of Tajikistan completed bilateral negotiations on market access for goods with 13 countries and market access for services with 6 countries. Relevant protocols were signed with each of these countries.

Besides, more than a hundred of regulatory acts had been adopted and amended in the process of multilateral negotiations.

The Business Guide of Tajikistan's obligations was prepared in course of the WTO accession process to familiarize Tajikistan business communities with WTO issues. It mainly aimed at both presenting the accession process and a review of the Republic of Tajikistan general conditions of accession to the WTO with respect to trade in goods and services. The Business Guide has also been designed so as to present the steps to be undertaken to ensure Tajikistan's integration into the multilateral trading system.

Accession of Tajikistan into this prestigious international organization is a positive fact. Membership in this organization can trigger radical reform of all sectors of the economy and promote Tajik goods and services to global markets.

**Sincerely,**

**Sharif Rahimzoda**  
**Minister of Economic Development and**  
**Trade of the Republic of Tajikistan**

## 1. The basic elements of the WTO system

### 1.1 Introduction to the WTO

The World Trade Organisation (WTO) is an international organisation established in 1995 regulating trade among its Members. The WTO is primarily concerned with the creation of an open, free and fair trade environment where all Members have equal access to wealth gains.

With its accession on 2 March 2013, Tajikistan has become the 159<sup>th</sup> Member of the organisation. A total of 128 countries joined the WTO at its inception in 1995. The remaining part (31 member countries) joined through WTO accession procedures. Within the WTO, Members multilaterally agree on the rules that apply to their trade relations, providing the right conditions of security and predictability for their business sectors to carry out their international economic transactions in a transparent, smooth and reliable manner. The agreements are negotiated and signed by governments, but their purpose is to help producers of goods and services, exporters, and importers conduct their business. Moreover, these rules allow countries to cluster efforts and face the challenges of economic globalisation in unison.<sup>1</sup>

### 1.2 Principles of the multilateral trading system

Despite its apparently complicated and entangled legal provisions, the WTO multilateral trading system is founded on a number of simple and basic principles, which apply throughout the agreements. These include, notably:

- The principle of non-discrimination;
- The achievement of progressive liberalisation through trade negotiations, resulting in the undertaking of commitments;
- The principle of transparency and the rule of law; and
- The principle of commercial predictability and legal certainty.

The principle of non-discrimination is central to the WTO multilateral trading system. It is twofold, in that it entails that in their trade relations, WTO Members cannot (i) discriminate between trading partners (the principle of Most-Favoured-Nation treatment, or MFN); nor (ii) favour domestic products *vis-à-vis* foreign competition (the National Treatment principle). The principle of non discrimination applies differently for trade in goods and services.<sup>2</sup>

The second principle reflects the basic idea that WTO Members advance together in the one-way process of furthering trade liberalisation. In the framework of trade negotiations, each government agrees to certain maximum tariff rates on particular products (*i.e.*, tariff “*bindings*”). A similar mechanism is in place for services trade, with WTO Members exchanging “*concessions*” in the form of market access and national treatment commitments in services sectors. This process takes place through the periodical launch of “*rounds*” of trade negotiations. In the context of these rounds, WTO Members also discuss and establish other rules and disciplines that apply to trade in goods and services. All decisions within the WTO are adopted largely by consensus.

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<sup>1</sup> P. Van den Bossche, *The Law and Policy of the World Trade Organisation*; Cambridge University Press, 2008.

<sup>2</sup> In the case of trade in services, the National Treatment obligation is subject to concessions. See, for more details, Section 3.5 below.

The obligations relating to transparency and rule of law allow business to plan their strategies and foresee the trading strategies of foreign rivals. Particular attention is to be paid to the transparency provisions included in the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures.<sup>3</sup>

Closely linked to the principle of transparency is the *principle of commercial predictability and legal certainty*. The legally binding nature of the WTO commitments contributes to creating the environment of stability and predictability that businesses need in order to develop their activities in optimal conditions. The commercial concessions exchanged in the context of trade negotiations are reflected as “commitments” in each WTO Member’s “*Schedule of Concessions and Commitments on Goods*” and “*Schedule of Specific Commitments on Services*”. WTO Members cannot raise the level of protection from that committed to without compensating any affected parties. Commitments are enforced through the WTO’s dispute settlement mechanism, which requires WTO Members found in violation of their obligations to bring their legislation in conformity with the rules or to offer compensation. If the parties to the dispute cannot agree on a mutually satisfactory level of compensation, the complaining Member can withdraw obligations that would otherwise be applied to imports from the Member in violation (*i.e.*, retaliation). The relevant rules require that the level of the retaliation must be equivalent to the impact of the original violation. In addition, a specific mechanism ensures periodic surveillance of trade policies enacted by WTO Members. The WTO dispute settlement system is an effective tool for protecting business and governments through effective application of WTO Agreements, and should be used as a main tool of protection of business interests.<sup>4</sup> This system is formally accessible to WTO Members (*i.e.*, governments) only. However, in the vast majority of cases, WTO Members bringing a WTO complaint do so upon request of, and in close coordination with, the domestic industry that is affected by the measure at stake.

### 1.3 The Marrakech Agreement Establishing the WTO

All these principles are reflected in the WTO agreements. The 1995 “*Marrakech Agreement Establishing the WTO*” is an umbrella agreement that incorporates, as annexes, numerous other agreements and understandings. These agreements set out the rules that Members need to respect in their trade relations covering goods, services and protection of intellectual property rights. Essentially, they are contracts, guaranteeing WTO Members important trade rights, with rights and obligations, as well as the permitted exceptions to them. In particular, the agreements include:

- The multilateral agreements on trade in goods, including notably the General Agreement on Tariffs and Trade (which, in force since 1948, has been modified and enlarged by a series of agreements and decisions, constituting the GATT 1994) and other agreements regulating specific aspects of trade in goods (contained in Annex 1A);
- The General Agreement on Trade in Services (GATS, contained in Annex 1B);
- The Agreement on Trade-Related Aspects of Intellectual Property (TRIPs Agreement, contained in Annex 1C);
- The Understanding on Rules and Procedures Governing the Settlement of Disputes (the DSU, contained in Annex 2); and
- The Trade Policy Review Mechanism (TPRM, contained in Annex 3).

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<sup>3</sup> International Trade Centre, “*Fostering Trade through Public-Private Dialogue – Business Implications of WTO Accession*”, p. 13

<sup>4</sup> *Id.*

All WTO Members are bound by these agreements. In addition, Members can choose to become bound by the Agreement on Government Procurement and the Agreement on Trade in Civil Aircraft, which are plurilateral agreements (not part of the “*single undertaking*”) binding only the Members that have signed up to them.

The *Marrakech Agreement* also established the WTO as an international organisation having legal personality.

## **2. The accession of Tajikistan to the WTO**

### **2.1 The framework of Tajikistan’s accession**

Tajikistan acceded to the *Marrakech Agreement* through its Protocol of Accession,<sup>5</sup> signed on 10 December 2012 and entered into force on 2 March 2013. As of that date, Tajikistan became a full Member of the WTO.

Tajikistan is now bound by all WTO Agreements included in Annexes 1, 2 and 3 to the *Marrakech Agreement*, which constitute one single undertaking. In addition, Tajikistan must also comply with the commitments reflected in the schedules annexed to its Protocol of Accession, which are, in some instances, more stringent than the rules accepted by other WTO Members. Tajikistan’s “*Schedule of Concessions and Commitments on Goods*” is annexed to the Protocol of Accession and reflects the country’s commitments in terms of tariff bindings.

Apart from the obligations arising from the multilateral agreements and their annexes, Tajikistan is also bound by any specific obligation it committed to and reproduced in paragraph 351 of the 2012 Working Party Report on the accession of Tajikistan (WPR), which reads as follows:

*351. The Working Party took note of the explanations and statements of Tajikistan concerning its foreign trade regime, as reflected in this Report. The Working Party took note of the assurances and commitments given by Tajikistan in relation to certain specific matters which are reproduced in paragraphs 46, 51, 59, 71, 76, 92, 97, 100, 105, 112, 124, 137, 146, 152, 155, 164, 165, 169, 181, 190, 191, 194, 199, 207, 209, 230, 231, 233, 239, 244, 248, 258, 326, 335, 336, 337, 338, 343, 344, and 350 of this Report. The Working Party took note that these commitments had been incorporated in paragraph 2 of the Protocol on the Accession of the Republic of Tajikistan to the WTO.*

To date, Tajikistan is not a party to the plurilateral Agreement on Government Procurement and to the Agreement on Trade in Civil Aircraft.<sup>6</sup> However, Tajikistan committed to submit an application to become a member of the Agreement on Government Procurement within one year of its accession to the WTO, and indicated that it intended to become a signatory to the Agreement on Trade in Civil Aircraft.<sup>7</sup>

In addition, like several WTO Members that have acceded to the WTO, Tajikistan is expected to be in full conformity with its obligations by the date of its accession and accept a timetable

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<sup>5</sup> Accession of the Republic of Tajikistan, Decision of 10 December 2012, WT/L/872.

<sup>6</sup> It is noted, however, that Tajikistan committed to submit an application to become a member of the Agreement on Government Procurement within one year of its accession to the WTO, and indicated that it intended to become a signatory to the Agreement on Trade in Civil Aircraft.

<sup>7</sup> See the Report of the Working Party on the Accession of the Republic of Tajikistan (WPR), paras. 244 and 258.

for the legislative and administrative action necessary to achieve this (the so-called “*legislative action plan*”).<sup>8</sup> Some rules are of more direct importance for business than others. In general, business is most directly affected by rules that regulate access to markets. Individual businesses are, of course, more affected by some rules than others.<sup>9</sup>

On the other hand, a number of issues having direct impact on business and affecting conditions of competition are not covered by the WTO, such as exchange rates, competition policy, investment protection, and innovation. In addition, the WTO does create opportunities, but it is up to governments and businesses to respond by taking advantage of these opportunities. Whereas governments are responsible for the implementation of the WTO provisions, business needs to develop markets. In this context, government-business dialogue is important. Lastly, WTO membership affects each country and each line of business differently. This is due to a number of factors, such as, *inter alia*, the targeted markets (*i.e.*, some businesses are export oriented while others operate only in their domestic market) and the nature of the products traded.<sup>10</sup> Each business needs to carefully assess the specific details and impact of the WTO agreements to find out how they impact them and to plan their strategy.<sup>11</sup> This Study will look at the general framework affecting the sectors of agriculture and food, light industry, metallurgy and construction services.

## 2.2 *Issues relating to trade in goods*

As a WTO Member, Tajikistan benefits from a number of rights ensuing from the relevant WTO Agreements. Tajikistan must also comply with the obligations established in the WTO framework *vis-à-vis* its trade relations with the other WTO Members.

As mentioned above, there is a number of agreements regulating different aspects on trade in goods. In particular, Annex 1A to the WTO Agreement includes the following agreements:

- The General Agreement on Tariffs and Trade 1994 (GATT);
- The Agreement on Agriculture;
- The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement);
- The Agreement on Technical Barriers to Trade (TBT Agreement);
- The Agreement on Trade-Related Investment Measures;
- The Agreement on Implementation of Article VI of the GATT 1994 (the Agreement on Customs Valuation);
- The Agreement on the Implementation of Article VII of the GATT 1994 (the Anti-dumping Agreement);
- The Agreement on Preshipment Inspection;
- The Agreement on Rules of Origin;
- The Agreement on Import Licensing Procedures (the Agreement on ILP);
- The Agreement on Subsidies and Countervailing Duties (the SCM Agreement); and
- The Agreement on Safeguard Measures.

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<sup>8</sup> The most updated legislative action plan is dated 27 September 2012 and is contained in document WT/ACC/TJK/7/Rev.8.

<sup>9</sup> International Trade Centre, see *supra*, p. 11.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*, p. 12.



WTO membership involves far-reaching rights and obligations, which impact business. The following description aims at summarising Tajikistan's most relevant rights under the WTO framework on trade in goods, with a particular emphasis on those issues that are of most impact to business.

WTO Members are bound by the tariff rates that they committed to in their schedules, and therefore are not allowed to apply any higher duties on the products for which commitments have been undertaken. Therefore, WTO Members cannot apply on Tajikistan's products import duties that are higher than the level that is bound in their "*Schedule of Concessions and Commitments on Goods*".<sup>12</sup> In addition, any other fee applied on the importation must not be higher than the rate in force on the date the product was incorporated into the *Schedule*.<sup>13</sup> All fees and charges imposed on, or in connection with, importation or exportation must be limited to the approximate cost of the services rendered.<sup>14</sup>

The MFN obligation prohibits WTO Members from discriminating between products imported from other WTO Members. For example, if a WTO Member imposes a customs duty, which is lower than the bound rate included in its *Schedule vis-à-vis* imports from a WTO Member, such more favourable treatment must be extended immediately and unconditionally to Tajikistan's "*like*" products. The MFN obligation applies in respect to:

- Customs duties and charges levied at the point of importation and exportation;
- The method of levying such duties;
- All rules and formalities in connection with the importation and exportation; and
- Internal measures.<sup>15</sup>

The GATT prohibits WTO Members from adopting or maintaining quantitative restrictions on imports or exports.<sup>16</sup> This obligation reflects the principle that, under the WTO system, tariffs are the only way in which WTO Members may protect their market. Tariffs are generally preferred by enterprises to other mechanisms, since they are transparent and produce predictable effects on prices. Conversely, quantitative restrictions may have uncertain effects on trade, since they give authorities the power to adjust their margins and undermine predictability in trade.<sup>17</sup> They are therefore prohibited under the GATT. This obligation means that a WTO Member cannot impose import restrictions on products originating from Tajikistan. They are also prevented from restricting exports. Quantitative restrictions may take the form of quotas, import or export licences or "*other measures*" restricting or prohibiting import or exports, all of which are equally prohibited. In those instances in which quantitative restrictions may be maintained, they must be applied in a non-discriminatory manner<sup>18</sup>, which in practice means that the allocation of quotas should roughly reflect the market share among WTO Members.<sup>19</sup>

Under the national treatment obligation, WTO Members cannot impose internal taxes and other regulations that discriminate imported products *vis-à-vis* locally produced competing products. This obligation ensures that products of Tajik origin once customs cleared, must be treated in the same conditions as "*like*" products of domestic origin. This obligation applies in relevant part respect to:

- Internal taxes; and

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<sup>12</sup> Article II of the GATT.

<sup>13</sup> Article II:1(b) of the GATT, second sentence.

<sup>14</sup> Article VIII of the GATT.

<sup>15</sup> Article I of the GATT. In respect to internal measures see Article I and Article III of the GATT.

<sup>16</sup> Article XI:1 of the GATT.

<sup>17</sup> International Trade Centre and Commonwealth Secretariat, "*Business Guide to the World Trading System*", 2003.

<sup>18</sup> Article XIII of the GATT.

<sup>19</sup> *Id.*

- Internal laws, regulations and requirements affecting internal sale, offering for sale, purchase, transportation, distribution or use.

The GATT foresees exceptions to these obligations that business should also be aware of. The most relevant examples of exceptions to these rules include:

- Article XI:2 lists the specific exceptions that apply *vis-à-vis* the general prohibition on quantitative restrictions.<sup>20</sup> This provision allows: (i) export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting country; (ii) import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade; and (iii) import restrictions on any agricultural or fisheries product necessary to the enforcement of certain governmental measures;
- Article XII, which allows exceptions to the obligations included in Articles II (tariff bindings) and XI (prohibition of quantitative restrictions) for balance-of-payment purposes;
- Article XIX and the agreement on Safeguard Measures, which allow safeguard measures in the form of tariff increases or quantitative restrictions to be imposed in presence of specific circumstances;
- Article XX, containing the general exceptions to the obligations under the GATT which are allowed, for example, for the protection of a number of crucial interests such as public morals, human, animal or plant life or health, national treasures, or exhaustible natural resources and for issues of national security. The application of these exceptions is subject to a number of conditions and requirements that ensure that they are not applied in a discriminatory manner or result in protectionism in disguise;
- Article XIX, containing the security exceptions;
- Article XXIV, which exempts from the MFN obligation preferences granted in the context of free trade agreements and customs unions;<sup>21</sup> and
- The Enabling Clause, exempting from MFN treatment non-reciprocal preferences granted to developing countries.<sup>22</sup>

The WTO framework includes disciplines on **subsidies**, which are aimed at ensuring that WTO Members do not unfairly subsidise their industries to the detriment of other Members' competing industries, and cater for specific remedies when this occurs. According to these rules, a WTO Member cannot impose a subsidy which is either contingent upon export performance or upon the use of domestic over imported goods.<sup>23</sup> These subsidies are

<sup>20</sup> Article XI:2(c) foresees that such certain governmental measures be directed (i) to restrict the quantities of the like domestic product permitted to be marketed or produced, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted; or (ii) to remove a temporary surplus of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted, by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level; or (iii) to restrict the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or mainly, on the imported commodity, if the domestic production of that commodity is relatively negligible.

<sup>21</sup> This provision would cover, *inter alia*, tariff preferences enjoyed and granted by Tajikistan within the framework of its free trade agreements, including the Commonwealth of Independent States (CIS) (which includes Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Ukraine, Uzbekistan) and the Eurasian Economic Community (concluded between Belarus, Kazakhstan, the Kyrgyz Republic, Russia and Tajikistan).

<sup>22</sup> The Enabling Clause is a decision adopted by the GATT Contracting Parties in 1979 as part of Tokyo Round to create a legal basis that permits trading preferences to the benefit of developing and least developed Contracting Parties. The decision served as a permanent legal basis for General System of Preferences (GSP) that exists since 1960s under the framework of the United Nations Conference on Trade and Development (UNCTAD). Pursuant to Paragraph 1(b)(iv) of Annex 1A incorporating GATT 1994 into the WTO, the Enabling Clause entered the WTO.

<sup>23</sup> Article 3 of the SCM Agreement.

particularly harmful and are prohibited under the WTO. Other types of subsidies that are found to cause certain adverse effects, such as injury to the domestic industry of another Member or “*serious prejudice*” to the interests of a WTO Member although not prohibited, may give rise to specific remedies. In more details, the **SCM Agreement** provides for three categories of subsidies:

- “*Prohibited subsidies*”: subsidies contingent in law or in fact upon export performance (export subsidies) or upon the use of domestic over imported goods (local content);<sup>24</sup>
- “*Actionable subsidies*”: subsidies that are specific (*i.e.*, granted to an enterprise or industry, or group of enterprises or industries<sup>25</sup>) and cause adverse effects to the interests of a WTO Member, such as injury to the domestic industry of another Member, nullification or impairment of the benefits accruing under the GATT or “*serious prejudice*”. Serious prejudice occurs in the following instances: displacement or impedance of imports of the “*like product*” into the market of the subsidising Member; displacement or impedance of exports of the “*like product*” into a third country market; significant price undercutting, price suppression or depression, or lost sales; in the case of a primary product, an increase over historical levels in the world market share of the subsidised product;<sup>26</sup> and
- The SCM Agreement also foresees the category of “*non-actionable*” subsidies, which are subsidies that are non-specific. This category also comprises subsidies that, although specific, involve assistance to industrial research, assistance to disadvantaged regions and certain type of assistance granted for adapting existing facilities to new environmental requirements.<sup>27</sup> However, the exception for such kind of subsidies expired in 2000 and was not renewed.

The SCM Agreement provides for specific remedies that can be triggered where a WTO Member is found to subsidise its domestic industry in a manner that is inconsistent with the provisions of the agreement. It also deals with the use of countervailing measures on subsidised imported goods, setting out disciplines on the initiation of countervailing cases, investigations by national authorities, rules of evidence to ensure that all interested parties can present information and argument, timeframes for the investigations, and the need that a causal link be established between the subsidised imports and the alleged injury.<sup>28</sup>

Specific rules apply for subsidies granted to agricultural production under the provisions of the **Agreement on Agriculture**. Members are allowed to subsidise their agricultural production and exports within the levels bound and specified in the “*Schedule of Concessions and Commitments on Goods*”.<sup>29</sup> Subsidies, which are not considered harmful, are not subject to reduction commitments,<sup>30</sup> but must be notified to the WTO.

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<sup>24</sup> *Id.*

<sup>25</sup> Pursuant to Article 2 of the SCM Agreement, a subsidy is specific if its access is explicitly limited to certain enterprises. However, if the eligibility of beneficiary enterprises is based on objective criteria and neutral conditions, of an economic nature and horizontal application, specificity does not exist. In any event, subsidies that appear non specific according to these principles may still be specific in their implementation. To that end, Article 2.1(c) illustrates other factors that may be considered and that may reveal that a subsidy is *de facto* specific. These factors are: the use of a subsidy programme by a limited number of certain enterprises, the predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy.

<sup>26</sup> See Article 5(c) and 6(3) of the SCM Agreement.

<sup>27</sup> Article 8 of the SCM Agreement.

<sup>28</sup> International Trade Centre, see *supra* p. 15.

<sup>29</sup> Articles 3, 7, 8 and 9 of the Agreement on Agriculture.

<sup>30</sup> These subsidies, called “*green box*” subsidies, are described in detail in Annex 2 of the Agreement on Agriculture.

The **Agreement on Customs Valuation** contains rules of major interest for Tajik exporters. Broadly, it requires that, for the determination of the dutiable value, customs authorities accept the price actually paid by importers in their transactions and not base their calculation on other unreasonable methods. In addition, it also provides for a hierarchy of methods for the customs valuation of goods. The methods for valuations are five and are: (i) the transaction value of the goods; (ii) the transaction value of identical goods; (iii) the transaction value of similar goods; (iv) the deductive value; and (v) the computed value. The Agreement on Customs Valuation also requires that the right of appeal *vis-à-vis* the decisions taken by the customs authorities be granted.

Where import licensing procedures apply, WTO Members are required to have in place rules for the issuance of **import licenses** that are transparent, neutral in application and administered in a fair and equitable manner. These provisions aim at ensuring that imports are not halted by an unreasonable, unfair and trade-restrictive administration of import licensing, to the benefit of exports and traders. In general terms, under the **Agreement on ILP**, WTO Members' administrations must:

- Publish the relevant rules and import licensing requirements at least 21 days prior to the effective date of the application of the requirement;
- Ensure that application forms and procedures are as simple as possible; and
- Ensure that applications are not refused for minor documentation errors or other minor variations in value, quantity or weight from the amount designated on the licences.<sup>31</sup>

There are a number of more specific obligations under the Agreement on ILP, which are different for automatic and non-automatic import licensing.<sup>32</sup> In relevant part, WTO Members cannot administer automatic import licensing in such a manner as to have restricting effects on imports subject to automatic licensing. Non-automatic licensing shall not have trade distortive or trade-restrictive effects on imports additional to those caused by the imposition of the restriction.

Of great relevance to Tajik exporters are also the rules concerning the application of trade remedies (*i.e.*, anti-dumping duties, countervailing measures and safeguard measures). **Article VI of the GATT and the Anti-dumping Agreement** provide for the right of WTO Members to apply anti-dumping measures against imports of a product that are being "*dumped*" (*i.e.*, sold at less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, the so-called "*normal value*"). No anti-dumping duties may be imposed by other WTO Members on imports from Tajikistan without the mandatory prior investigation having concluded that Tajik exports are being dumped, and that such practice is causing injury to the domestic industry of the importing country. The Anti-dumping Agreement sets the rules in relation to the method of determining that a product is dumped, the criteria to be taken into account in a determination that dumped imports cause injury to a domestic industry, the procedures to be followed in initiating and conducting anti-dumping investigations, and the implementation and duration of anti-dumping measures.

It is noted that the assessment on the existence of dumping requires a comparison between the export price and the price of the product in the domestic market of the exporting country

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<sup>31</sup> Article 1 of the Agreement on ILP.

<sup>32</sup> Automatic import licensing is defined as import licensing where approval of the application is granted in all cases (Article 2.1 of the Agreement on ILP). Non automatic import licensing comprises all licensing procedures not meeting the definition of automatic import licensing. In particular, it relates to those procedures where approval of the application is not automatically granted in all cases.

(i.e., “normal value”). In consideration of Tajikistan's status as a non-market economy, in determining the price comparability between the export price and normal value required for the calculation of the dumping margin, WTO Members are allowed to resort to comparable third country prices or costs, unless it can be shown that market economy conditions prevail in the industry producing the product concerned. The determination of the existence of market economy conditions is done on a case-by-case basis, according to criteria that are specified in each WTO Member's relevant legislation. When the investigating authority considers that market economy conditions are not present, it will resort to third-country prices and costs. This means, in practice, that Tajik's exports will be subject to higher anti-dumping duties.

Inasmuch as WTO Members are required to allow all interested parties to make their representations in the course of the proceedings and to be heard, and to the extent that the application of anti-dumping duties can severely affect their exports to third country markets, Tajik exporters should carefully monitor these initiatives and ensure to fully participate in these proceedings.

The special rule on price comparability applies for WTO Members that have not granted to Tajikistan the status of market economy and in any event not beyond the year 2028. After such date, Tajikistan must be recognised as a market economy by all WTO Members and price comparability will be conducted with reference to prices and costs occurring in Tajikistan.

Similar rules (but for price comparability) apply in respect of **countervailing duties**. No WTO Member can impose countervailing duties on imports from Tajikistan without a mandatory prior investigation having concluded that Tajik exports are being subsidised and that such subsidisation is causing injury to the domestic industry of the importing country.

According to the provisions of **Article XIX of the GATT** and the **Agreement on Safeguard Measures**, WTO Members can apply safeguard measures only where a product is being imported in such increased quantities and under such conditions as to cause or threaten to cause “*serious injury*” to the domestic industry producing the like or competitive product. The Agreement on Safeguard Measures sets out the criteria for establishing “*serious injury*” and the factors that must be considered in determining the impact of imports. Safeguard measures may take the form of tariff increases or quantitative restrictions and can be applied to the extent necessary to prevent or remedy serious injury. Safeguard measures cannot be applied for a period exceeding 4 years, which may be extended up to a maximum of 8 years.

The adoption of safeguard measures is relatively rare and, in any case, it requires WTO Members to conduct an investigation as to the existence of the conditions warranting the application of the measure. A reason for this might be that the agreement foresees that Members are to consult on compensation for the application of safeguard measures. If consultations are not successful, the affected Members may withdraw equivalent concessions or other obligations under the GATT. However, this type of action cannot be undertaken for the first three years of the safeguard measure, provided that the measure conforms to the provisions of the agreement.<sup>33</sup>

Safeguard measures must, in principle, be imposed on an MFN basis, which means that they cannot apply to Tajikistan's products only. Where a quota is allocated among supplying countries, the Member applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other Members having a substantial interest in supplying the product concerned.<sup>34</sup>

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<sup>33</sup> Article 8 of the Agreement on Safeguard Measures.

<sup>34</sup> Article 5.2(a) of the Agreement on Safeguard Measures.



Some WTO Members have also reserved the possibility to apply the special safeguard measures on agricultural products (SSG), envisaged under Article 5 of the Agreement on Agriculture. This is a separate instrument that allows WTO Members to impose, under certain conditions, additional duties on imports of agricultural products for which they have expressly reserved their right to do so. The SSG act as an exception to the rules on tariff bindings, and are subject to strict requirements.

WTO rules allow Members to require that imported products conform to mandatory product standards aimed at (*inter alia*) protecting health and safety of their people, as well as the preservation of the environment, under the **TBT Agreement** and the **SPS Agreement**. This means that, while Tajikistan is allowed to require that imported products conform to certain standards, exporting companies in Tajikistan need to conform to the standards in place in foreign countries if they want to offer their products for sale. However, the SPS Agreement ensures that no restrictions based on human, animal or plant life or health reasons may be imposed on Tajik exports of agricultural goods unless the importing Member has identified the particular pest or disease that such exports could carry, and such measure is either based on a relevant international standard, or on a risk assessment conducted on the basis of scientific evidence showing that there is a scientific justification for the adoption of such measure. In the application of their SPS measures, Members must avoid arbitrary or unjustifiable distinctions in the levels they consider to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade.

Comparable rules are foreseen for technical regulations in the TBT Agreement. Other WTO Members cannot adopt or maintain mandatory technical regulations that: (i) discriminate competing products of domestic origin or imported from any other third country;<sup>35</sup> and (ii) are more restrictive than necessary to achieve the specific regulatory objective.<sup>36</sup> Technical regulations include, for the purposes of the TBT Agreement, mandatory standards concerning products characteristics, including labelling requirements, packaging and marking.<sup>37</sup>

The TBT and the SPS Agreements encourage WTO Members to use international standards where appropriate, but do not require them to base their level of protection on the relevant standard, provided that there is a scientific justification and that the measures are based on a risk assessment. Harmonisation, as well as the negotiation of mutual recognition and equivalency agreements, also encouraged, are trade-facilitation rules that are intended to support businesses in complying with the mandatory standards imposed by different WTO Members and minimise obstacles to trade created by SPS and TBT measures.

## 2.3 Trade in services

Trade in services is covered in the WTO by the General Agreement on Trade in Services (GATS). This agreement is based on the GATT, but differs from it by recognizing that, unlike trade in goods which is mainly controlled at the border, trade in services is affected by national regulatory frameworks for services that operate behind the border.

### Scope

The GATS applies to “all measures by [WTO] Members affecting trade in services” and defines “measures” as those taken by central, regional or local governments and authorities, as well as those taken by non-governmental bodies “in the exercise of powers delegated by [governmental bodies]”.

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<sup>35</sup> Article 2.1 of the TBT Agreement.

<sup>36</sup> Article 2.2 of the TBT Agreement.

<sup>37</sup> Annex 1 of the TBT Agreement.

“Services” are not defined as such but includes “any service in any sector except services supplied in the exercise of governmental authority”, which the GATS defines as “any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers”.

There has been no legal interpretation of these terms. Put simply, the GATS is intended to apply to measures taken by governments in relation to trade in services provided commercially and in competition with other service suppliers.

Trade in services is defined as the supply of a service by four **modes of supply**. While these may not be how business thinks about its trading arrangements, it is nonetheless a helpful way of classifying and listing trade restrictions for services. An understanding is therefore necessary in order to interpret a WTO Member’s Schedule of Specific Commitments (see below). The modes of supply are:

Mode of supply	Description	Definition	Example
Mode 1	Cross-border supply	From the territory of one Member into the territory of any other Member	Tajikistan computer services supplied over the Internet to a consumer in Kyrgyzstan
Mode 2	Consumption abroad	In the territory of one Member to the service consumer of any other Member	A Tajikistan consumer visiting Russia and consuming tourism services locally by staying in a hotel
Mode 3	Commercial presence	By a service supplier of one Member, through commercial presence in the territory of any other Member	A Tajikistan transport company setting up a subsidiary in China
Mode 4	Movement of natural persons	By a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member	A manager of the Tajikistan transport company transferring to the subsidiary in China temporarily to set up the subsidiary

### *General obligations*

The GATS contains a number of general obligations as well as specific commitments. General obligations apply whether or not specific commitments have been taken in any particular service sector. The obligations are similar to those found in the GATT. The main ones are:

- Article II, which contains the MFN principle that obliges a WTO Member to treat all services and services suppliers of any other WTO Member no less favourably than those of any other country. In other words, a WTO Member must extend the same treatment to all other WTO Members, without discriminating between them;

A WTO Member may maintain exceptions to the MFN principle, but these must be listed alongside the Member’s Schedule of Specific Commitments. Tajikistan has listed MFN exemptions in relation to regional economic integration agreements within the CIS, certain audiovisual services, and bilateral, plurilateral and international investment promotion agreements;

- Article III, which obliges a WTO Member to publish promptly all measures of general application relating to trade in services, as well as laws, regulations or administrative guidelines that significantly affect trade in services that have been covered in its Schedule of Specific Commitments. Members are also required to establish contact points for regulatory and market access information;
- Article VII, which notes that a Member may recognise education and experience obtained by service suppliers, as well as requirements, licences or certification, and obliges the Member to give adequate opportunity to other WTO Members to negotiate comparable arrangements. The article does not refer specifically to mutual recognition agreements, but these are often the way that countries extend recognition;
- Articles VIII and IX, which require a WTO Member to ensure that any suppliers that have a monopoly or exclusive service supply arrangement in a relevant market do not abuse their dominant position, and to enter into consultations with any other Member with regard to anti-competitive business practices;
- Articles XI and XII, which prohibit restrictions on international transfers and payments for current transactions relating to its specific commitments, except where this is necessary in the event of serious balance of payments and external financial difficulties;
- Articles XIV and XIV bis, which set out the general and security exceptions (similar to the GATT).

In addition, there is one general obligation that only applies in relation to sectors where specific commitments have been taken:

- Article VI, which obliges a WTO Member to ensure that all domestic regulatory measures of general application are administered in a reasonable, objective and impartial manner.

Two other articles concern preferential treatment for certain groups of countries:

- Article IV, which obliges WTO Members to facilitate the participation of developing countries, giving special priority to the least developed country Members;
- Article V, which exempts from the MFN obligation preferences granted in the context of economic integration agreements. Unlike GATT Article XXIV, however, which requires an agreement to cover “substantially all trade” in order to qualify, Article V requires a qualifying agreement to have “substantial sectoral coverage” and provides for “the absence or elimination of substantially all discrimination”.

Finally, it should be noted that three articles remain incomplete and contain temporary provisions (despite the existence of the GATS for nearly 20 years). These are Article X, which covers the question of emergency safeguard measures and includes a temporary procedure *pro tem*; Article XIII, which excludes MFN, market access and national treatment from government procurement measures affecting trade in services; and Article XV, which excludes general obligations on subsidies from the application of the GATS.

### *Specific commitments*

The area where most trade in services negotiations focus concerns specific commitments. The key outcome of these negotiations is the Schedule of Specific Commitments. This

Schedule lists the sectors or sub-sectors where a WTO Member has taken commitments, and the terms, limitations or conditions that have been agreed in negotiations. There are two main aspects to this: market access and national treatment.

- Article XVI covers **market access**, which concerns the terms under which a foreign service supplier may provide services into or in another WTO Member. There are six areas where limitations may be scheduled. These are:
  - (a) limitations on the number of service suppliers;
  - (b) limitations on the total value of service transactions or assets;
  - (c) limitations on the total number of service operations or on the total quantity of service output;
  - (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service;
  - (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
  - (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.
- Article XVII covers **national treatment**, which concerns the terms under which a foreign service or service supplier will be treated the same as the Member's own "like" services and service suppliers.
- Article XVIII is also relevant to specific commitments, as this provides for Members to negotiate **additional commitments** not otherwise covered. This article has not been used much, and has so far featured only in the area of basic telecommunications services.

For business, it is important to understand the negotiating process, which is referred to as the "request and offer" process. The process begins with interested WTO Members sending requests to the Member from which they are seeking commitments. The Member considers the regulatory implications of the requests, consulting its own regulatory authorities, as well as the business implications and the interests of other stakeholders, ideally through consultation. The Member will then table an initial conditional offer. Through the process of negotiation, improvements in the offer may be agreed. The process continues until agreement has been reached.

#### *Interpreting a Schedule of Specific Commitments*

For business to understand how this works in practice, it is best to take an example. The following table sets out Tajikistan's commitments in tourism services:

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
<b>9. TOURISM AND TRAVEL-RELATED SERVICES</b>			
A. Hotels and restaurants (including catering) (CPC 641-643)  B. Travel agencies and tour operators services (CPC 7471)	(1) None. (2) None. (3) None, except the following: - commercial presence is allowed only in the form of a juridical person of the Republic of Tajikistan. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
C. Tourism Guide Services	(1) None. (2) None. (3) None, except the following: - commercial presence is allowed only in the form of a juridical person of the Republic of Tajikistan. - Natural persons providing guide (guide-interpreter) services must be citizens of the Republic of Tajikistan. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	

The sectors or sub-sectors covered by the Schedule are listed. If a sector or sub-sector is not listed, the WTO Member has taken no binding commitment and remains free to introduce new, possibly more restrictive regulations. The Member is said to be “unbound”.

In both the **market access** and **national treatment columns**, for each sector or sub-sector where commitments have been taken, the four modes of supply are listed. If a full commitment with no limitations has been taken, the Schedule shows the word “None”. In this case, the Member has guaranteed that it will not impose any discriminatory measures on foreign service suppliers. Conversely, if the Member wished to retain the possibility to do so, the word “unbound” would appear against that mode of supply. If a Member wishes to maintain certain limitations in any particular mode, the limitation is set out. In the above example, Tajikistan has maintained a limitation that any foreign service supplier in tourism services that wishes to set up a commercial presence in Tajikistan must do so by establishing a “juridical person”, i.e. a subsidiary or a joint venture with a Tajikistan partner. In the case of the latter, for some sectors the limitation may be extended to stipulate the maximum foreign capital participation that Tajikistan would allow, e.g. 49%.

The importance of a country making binding commitments is that it encourages foreign investment in a market. Businesses need transparency and predictability in regulatory requirements to persuade them to invest or enter a market. If investment rules can be changed overnight, investments can become more risky, and a business is likely to turn to



other, less risky markets. This is one of the values of WTO membership to Tajikistan business. Through the bindings that other WTO Members have made, business in Tajikistan can make its own assessments of which export markets to focus on. To benefit from this, Tajikistan has also made commitments of its own, responding to requests from other WTO Members.

The existence of the WTO dispute settlement process, which is reflected in Articles XXII and XXIII of the GATS, provides Tajikistan business with the right to report to its own Government infringements by another WTO Member of that country's bound commitments, so that the Government of Tajikistan can consider requesting consultations that could lead to formal dispute settlement.

## **2.4 Trade-related aspects of intellectual property rights**

The protection of intellectual property rights is laid down in the "*Agreement on Trade-Related aspects of Intellectual Property Rights*" (TRIPs Agreement). Unlike in the cases of the GATT and the GATS, the TRIPs Agreement merely sets out the minimum level of protection of intellectual property rights (IPRs). In practical terms, this means that Tajikistan is required to have effective legislation in place to secure such level of protection. At the same time, WTO Members must also ensure to have legislation in place to prevent IPRs' infringements that may prejudice Tajikistan's goods.

The areas covered by the TRIPs Agreement include copyrights, trademarks, geographical indications, industrial designs, patents, integrated circuits layout designs, undisclosed information, and control of anti-competitive practices in contractual licenses, as well as enforcement procedures, remedies, and dispute resolution procedures. Apart from establishing the minimum level of protection to be granted to IPRs, the TRIPs Agreement requires that, whatever the level of protection that WTO Members' laws establish for their own nationals, this has to be granted also to nationals of other WTO Members.<sup>38</sup>

## **3. Impacts and implications on Tajikistan's WTO accession on priority sectors**

### **3.1 General overview of Tajikistan's commitments in trade in goods**

Tajikistan is now bound by the WTO Agreements affecting trade in goods included in Annex 1A to the *Marrakech Agreement*. In addition, Tajikistan must also comply with the commitments reflected in the schedules annexed to its Protocol of Accession and with any specific obligation it committed to under the WPR. This Section will focus on how WTO obligations will limit the ability of Tajikistan to use certain trade policy instruments as a method for increasing the price of imports or to protect its domestic industry. It will also touch upon the obligations that Tajikistan needs to abide by in respect of measures taken pursuant to values such as human, animal and plant life or health, consumer information and the environment.

#### *Obligations with respect to tariff bindings*

Tajikistan's bound tariff levels are contained in the "*Schedule of Concessions and Commitments on Goods*" annexed to the Protocol of Accession.<sup>39</sup> Under the *Schedule*, transition periods are foreseen in respect of a significant number of goods, in that a specific rate is bound at the date of accession, and a lower rate is bound as of a later moment,

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<sup>38</sup> Article 3 of the TRIPs Agreement.

<sup>39</sup> See WTO document, WT/ACC/TJK/30/Add.1.

usually between 2016 and 2018. On average, Tajikistan's bound tariffs for all products are set at 8%. This average is 10.4% for agricultural products and 7.6% for non-agricultural products.<sup>40</sup> Tajikistan also committed not to apply other duties and charges to all products included in its *Schedule*.

The most relevant impact of the tariff bindings and other commitments regarding other duties and charges is that, as of the date of its accession, Tajikistan is no longer able to apply duties and charges higher than the bound levels and raise the level of protection. Where the applied rates of duties are above the level of the bound rates, tariff bindings will make imports cheaper in the domestic market. This will result in a better level of predictability for importers about the price levels of their inputs, but also increase competition in the domestic market, to the benefit of consumers. Tajikistan will retain the possibility to lower the level of such tariffs to the benefit of importers and domestic processors, if it so wishes, given that the tariff bindings operate as maximum ceilings. If Tajikistan lowers its tariffs, it must do so on an MFN basis, with no discrimination *vis-à-vis* WTO Members (without prejudice to the preferential treatment granted according to its free trade agreements).

#### *Obligations with respect to customs duties exemptions*

Under Tajikistan's legislation, *inter alia* the following items are exempted from customs duties:

- Certain agricultural equipment and components, as listed by the Government;
- Goods for the construction of "*objects of special importance*" for Tajikistan's development; and
- Manufacturing or technological equipment and essential components, used directly in the production of goods, works and services available to all new or refitted enterprises in accordance with the procedures set by the Government Decree No. 591 of 30 November 2007.<sup>41</sup>

The latter two exemptions have caused concerns of the WTO Members, which are reported in the WPR. Tajikistan clarified that the "*objects of special importance*" had high economic and social significance. These are construction materials for building special facilities (e.g., presidential and ministerial buildings, national museums, industry facilities and factories), and are exempted from customs duty and VAT. According to Tajikistan, the designation of the goods involved no discrimination against imports or goods produced domestically by foreign firms, it was not based on any export criteria and did not involve any particular industry. In relation to the exemption for manufacturing or technological equipment and essential components, Tajikistan clarified that these exemptions were available on non-discriminatory terms to all domestic and foreign enterprises, regardless of the country of origin, and that they were not associated with local content or export performance.

In effect, it is recalled that, from the date of its WTO accession, Tajikistan is bound by the provisions of the GATT and the SCM Agreement. In particular, these agreements prevent Tajikistan from providing fiscal advantages (i) to favour its domestic industry or products of certain WTO Members *vis-à-vis* competing products of other Members, and (ii) that are contingent upon export performance or the purchase of locally-produced goods, or in a manner that causes adverse effects to the interests of other WTO Members.

#### *Obligations in respect to customs valuation and fees*

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<sup>40</sup> WTO 2012 news items: "*Working Party seals the deal on Tajikistan's accession negotiations*", available at: [http://www.wto.org/english/news\\_e/news12\\_e/acc\\_tjk\\_26oct12\\_e.htm](http://www.wto.org/english/news_e/news12_e/acc_tjk_26oct12_e.htm) (last visited on 23 May 2013).

<sup>41</sup> See WPR, para. 10. Goods subject to excise tax are not covered by this exemption.

As of the date of its accession, Tajikistan must comply with the Agreement on Customs Valuation, which requires that customs duties be calculated on the actual value of the imported goods. Tajikistan's Customs Code was amended in 2004 so as to bring it into line with the provisions of the Agreement on Customs Valuation. Further amendments had been approved by the Government in May 2012 and, at the time in which the WPR was being drafted, they were awaiting Tajikistan's Parliament's vote. Tajikistan confirmed that the Customs Code prohibited the use of valuation practices such as minimum import values and reference prices.<sup>42</sup> Tajikistan also stated that, from the date of its accession, it would not use any form of minimum value, such as reference prices of fixed valuation schedules for customs valuation purposes. Where the customs service could not determine the proper customs value or disputed the transaction value offered, it would release the goods subject to the posting of a bond or other security for the maximum amount of the customs duties that could be owed (as provided in the Agreement on Customs Valuation).<sup>43</sup> Tajikistan's Customs Code also permits the right of administrative appeal against any decision taken by the Customs Bodies and the final right of appeal to a judicial authority, as required by the Agreement on Customs Valuation.

Methods of customs valuation that cannot be applied by Tajikistan (or by other WTO Members) include:

- The selling price in the country of importation of goods produced in such country;
- A system which provides for the acceptance for customs purposes of the higher of two alternative values;
- The price of goods on the domestic market of the country of exportation;
- The cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 6;
- The price of the goods for export to a country other than the country of importation;
- Minimum customs values; and/or
- Arbitrary or fictitious values.<sup>44</sup>

Tajikistan must also ensure that any fees for services in connection with importation are commensurate to the services rendered. Concerns were raised by WTO Members in relation to Tajikistan's customs clearance fee structure, which is based on *ad valorem* rates, with a minimum (USD 10) and a maximum (USD 450). This fee replaced the 0.15% *ad valorem* customs clearance fee as of March 2011. According to Tajikistan, the minimum and maximum levels ensured that the fee would approximately be in line with the cost of the service rendered. In any event, the representative of Tajikistan indicated that Tajikistan would, from the date of its accession, ensure that any fees and charges for services rendered imposed on or in connection with importation and exportation would be applied in conformity with the WTO.<sup>45</sup>

#### *Obligations with respect to internal taxes*

A new Tax Code has been adopted in Tajikistan on 17 September 2002. Under the WPR, this code is set to replace, as of 1 January 2013, the previous Tax Code of 3 December

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<sup>42</sup> See WPR, para. 140.

<sup>43</sup> See WPR, para. 146.

<sup>44</sup> Article 7 of the Agreement on Customs Valuation.

<sup>45</sup> WPR, para. 112.

2004. As reported in the WPR, under the new tax code, imports and domestically-produced goods are subject to excise taxes and value added tax (VAT) and no other tax applies to imported goods.

The excise duty regime is based on Decree No. 126 “*On Excise Tax Rates for Particular Goods Manufactured and Imported in the Territory of the Republic of Tajikistan*” of 2 April 2005. As of 1 May 2003, identical duty rates are being levied on domestically-produced and imported goods. The excise tax applies to a range of goods, including food and beverages, tobacco products, raw oil and oil products, rubber and goods and cars.

Some WTO Members noted that a different excise tax was levied on brown spirits relative to other distilled spirits. Tajikistan clarified that the previous excise tax levied on brown spirits and other distilled spirits on the basis of their colour had been amended by Decree No. 348 of 30 June 2012, and that the discrepancy has been addressed.<sup>46</sup> The WPR does not provide further details as to the structure of the original measure or of its amendment. However, in this respect it must be kept in mind that the National Treatment obligation included in Article III of the GATT prevents Tajikistan from applying internal taxes so as to discriminate imported products. This is the case also in respect of internal taxes that appear formally “*origin neutral*” if the effect of the taxation is to *de facto* discriminate imported products *vis-à-vis* “*like*” or “*directly competitive or substitutable*” domestically-produced products in respect of the tax treatment applied. This occurs, for example, where, as a result of the measure, a higher percentage of imported products are subject to the tax.

The VAT applies to goods (and services) at a single rate of 20%. VAT exemptions apply to a number of items, including precious metals and precious stones, jewellery made of precious metals and precious stones, primary aluminium, metal concentrates, ore, ferrous and non-ferrous metals and other metals manufactured in the Republic of Tajikistan, cotton fibre, cotton yarn and cotton. Imported agricultural equipment are also VAT exempted.

It is understood that a 2010 amendment of the previous Tax Code extended the VAT exemption to imports of primary aluminium and cotton fibre and subjected such products to a sales tax. In fact, domestically-produced primary aluminium and cotton fibre were exempted from VAT and subject to a sale tax of, respectively, 3% and 10% of product sold in the domestic market or exported.<sup>47</sup> Following concerns expressed by WTO Members as to the discriminatory nature of the VAT exemption and the incompatibility with the National Treatment obligation, the VAT exemption and the sale tax were extended to imported primary aluminium and cotton fibre. Tajikistan committed to apply this new tax treatment as of 1 January 2013. As to the VAT exemption for agricultural equipment and components, this is relevant under the provisions of the Agreement on Agriculture (see below, Section 3.2).

#### *Prohibition to remove restrictions other than duty or charges under Article XI of the GATT*

Article XI:1 of the GATT prevents WTO Members from imposing import or export restrictions or prohibitions other than a duty or a tax. The prohibition covers import or export restrictions made effective through quotas, import or export licenses or other measures. A number of exceptions to this rule are allowed, of which the most frequently applied are those for measures to protect human, animal or plant life or health under Article XX of the GATT. In addition, the SPS Agreement contains rules for measures affecting agricultural products to protect against entry of a pest or a disease. The TBT Agreement covers technical measures which prescribe mandatory technical regulations or non mandatory-standards.

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<sup>46</sup> WPR, para. 115.

<sup>47</sup> WPR, para. 121.

### *Import restrictions*

According to the WPR, Tajikistan maintains import restrictions to a range of goods, which include, of particular relevance, certain foodstuffs and food additives, pharmaceutical products and medical goods, tobacco and ethyl alcohol and alcoholic beverages.<sup>48</sup> These restrictions are maintained through import licensing requirements, certificates, import permissions and government decisions.

Where restrictions are imposed on the basis of Article XX of the GATT, they must fit within one of the exceptions listed within the article and they must be (i) non-discriminatory, which means in practice that comparable restrictions must be applied to domestic production of such goods; and (ii) proportionate, which means that they must not be more trade-restrictive than necessary to fulfil the legitimate objective (e.g., human, animal and plant health and safety) that such measures are aimed at. For example, WTO Members noted that the import licensing requirement applied to alcoholic products appeared to concern solely foreign-produced products and were too trade-restrictive than necessary to achieve the health objective pursued. In response, Tajikistan stated that restrictions concerning ethyl alcohol and alcoholic beverages had been removed with the adoption of Presidential Decree No. 1270 of 18 April 2012. On the basis of the new legislation, any company had the rights to engage in the production of alcohol and alcoholic beverages, including foreign investors.

With its accession to the WTO, Tajikistan committed to these principles. Tajikistan also explained that legislative amendments brought to its licensing systems had reduced the number of licenses applicable and brought the regulation of its import licensing systems in line with WTO requirements. Tajikistan committed to eliminate and refrain from reintroducing or applying quantitative restrictions on imports or other non-tariff measures such as licensing (but also quotas, permits, bans, etc) that could not be justified under the provisions of the WTO. With respect to licensing requirements, Tajikistan also committed to apply its licensing requirements according to the provisions and transparency obligations foreseen in the Agreement on ILPs.

Upon accession, Tajikistan became bound also by the provisions under the SPS and the TBT Agreements. These agreements establish principles that apply to mandatory and voluntary product standards as well as and sanitary and phytosanitary measures and will limit the way in which Tajikistan applies restrictions on foodstuffs for the purposes of protecting against the entry of pests, diseases and contaminants, as well as from other technical requirements related to consumer protection and consumer information (e.g., labelling requirements).

### *Tajikistan's obligations in respect to the SPS Agreement*

The SPS Agreement will limit the way in which Tajikistan applies restrictions on agricultural products for the purposes of protecting against the entry of pests, diseases and contaminants. The application of the SPS Agreement implies that Tajikistan is to remove or modify the restrictions it imposed until its accession and may make it more difficult to impose such restrictions for this purpose in the future.

In relevant part, the SPS Agreement provides that no restrictions based on human, animal or plant life or health reasons may be imposed on imports of agricultural goods unless Tajikistan has identified the particular pest or disease that such exports could carry, and such measure is either based on a relevant international standard, or on a risk assessment conducted on the basis of scientific evidence showing that there is a scientific justification for the adoption of such measure. Therefore, where a stricter level of protection than the

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<sup>48</sup> WPR, para. 125.



relevant international standard is applied and there is a good scientific justification for such measure, it will be possible to impose a restriction. Where scientific evidence is insufficient, Tajikistan may still maintain stricter SPS measures for a reasonable period of time while the scientific risk is further investigated (on the basis of the so-called precautionary principle). Moreover, when a SPS measure is not based on a relevant international standard, Tajikistan must avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations and ensure that such measure is not more trade-restrictive than required to achieve the appropriate level of sanitary or phytosanitary protection, taking into account technical and economic feasibility. Tajikistan committed to implement its obligations under the SPS Agreement as of its accession, without transitional period. It also stated that, from the date of accession to the WTO, Tajikistan would base its SPS measures on international standards (*i.e.*, Codex Alimentarius, OIE and IPPC standards). This will make it easier for Tajikistan to establish that its SPS measures conform to the provisions of the SPS Agreement. Where this is not the case, a measure must be justified on scientific evidence based on an assessment of the risks. Therefore, any agricultural producer asking the Government to impose restrictions on imports on the basis that the import restrictions are necessary to prevent entry of the pest or disease is likely to find that the Government will be seeking robust evidence about the risks involved before accepting the request to impose import restrictions.<sup>49</sup>

In addition, in the adoption of such measures, Tajikistan needs to abide by a number of transparency rules aimed at securing that other WTO Members are kept abreast of any new measures being adopted. To that end, Tajikistan needs to notify WTO membership the adoption of specific measures at an early stage, so to allow sufficient time for comments to be made. Tajikistan also needs to ensure that such measures do not become effective until a sufficient period of time has elapsed since their publication, in order to allow private entities to get familiar with the measures, as well as the methods of compliance with them. Furthermore, Tajikistan needs to establish an enquiry point, where interested members can address their questions and requests for further information regarding SPS measures in force in Tajikistan. Tajikistan stated that work was underway to address the notification and transparency obligations under the SPS Agreement.

#### *Tajikistan's obligations in respect to the TBT Agreement*

Tajikistan embarked in a legislative reform to bring its standard and certification regime in conformity with the TBT Agreement. In relevant part, according to the reform, the previously mandatory standards had either been transformed into technical regulations or into voluntary standards. Under the new legislative framework, new technical regulations are to replace the mandatory standards by 1 January 2017. Notwithstanding the transitional phase, Tajikistan committed not to apply parts of its mandatory standards that are inconsistent with the provisions of the TBT Agreement as of its accession to the WTO.

In relevant part, the TBT Agreement allows the adoption of technical regulations needed for the protection of legitimate objectives. These include national security requirements, the prevention of deceptive practices, the protection of human, health or safety, animal or plant life or health, or the environment. However, it requires that such technical regulations be non-discriminatory, no more trade-restrictive than necessary to fulfil the objective concerned and based on an assessment of the risk that non fulfilment would entail. The practical implications of this regulation are that:

- Tajikistan may not apply technical regulations unless on the basis of legitimate concerns;

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<sup>49</sup> International Trade Centre, *"The trade policy implication of the WTO accession commitments of Samoa: opportunities and challenges for the private sector"*, p. 31.

- Tajikistan must apply technical regulation non a non-discriminatory way, *vis-à-vis* imported and domestic products;
- In adopting technical regulations Tajikistan must respect the principle of proportionality, which means that its technical regulations may not be more restrictive than necessary to fulfil the legitimate objective concerned; and
- Technical regulations may not be applied for protectionist purposes.

#### *Tajikistan's obligations in respect to State-trading enterprises*

As a non-market economy in transition, Tajikistan is undertaking fundamental market reforms. Part of such reforms include privatisation of State-owned enterprises. Before the WTO, Tajikistan stated that 91% of all State-owned agricultural enterprises had been privatised, covering all types of agricultural activity. Tajikistan also provided information on the other enterprises that were undergoing the process of privatisation. The largest State-owned entities operated in the energy, communication, industry or transport sectors. The State retains a significant stake in the energy sector, with the enterprise “*Barki Tojik*”, producing electricity and providing energy transmission services, which is wholly state-owned but also subject to a privatisation process to be implemented in three phases by 2018. In addition, Tajikistan confirmed that the property of the aluminium processing plant “*Tajik Aluminium Company*”<sup>50</sup> was not subject to privatisation. Another State-owned enterprise, which is relevant for the purposes of WTO rules, is the “*Khurokvoli Food and Processing Industry Corporation*”.

Tajikistan committed to ensure that any State-trading enterprise in the country operate in a manner that is consistent with the principles of non discrimination, and base its decisions regarding purchases and sales, whether domestic or international, on strictly commercial considerations. In addition, Tajikistan is required to notify all WTO Members of the existence of State-trading enterprises within its territory.<sup>51</sup>

This is relevant for Tajik companies inasmuch as they are in competition with State-trading enterprises and operate simultaneously within the same industrial sectors. Ensuring that State-trading enterprises function on the basis of commercial criteria grants private entities some degree of security and predictability, to the extent that they can foresee that such enterprises will not engage in unexpected and unlawful practices, which could jeopardise the position of private companies in the market.

The activities of State-owned and State-trading enterprises are also relevant *vis-à-vis* the obligations on subsidisation.

#### *Subsidies*

As mentioned above, the WTO provides for detailed rules concerning subsidisation, limiting Members' ability to grant support to their domestic industry. These rules apply to Tajikistan from the moment of its accession to the WTO. However, such rules also leave some latitude to Tajikistan's Government to apply certain types of assistance.

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<sup>50</sup> The “*Tajikistan Aluminium Company*” (abbreviated as TALCO, and formerly known as TadAZ), constituted the largest aluminium smelter former Soviet Central Asia. Construction of its headquarters, located in Tursunzoda, started in 1972, while the first pouring of aluminium took place on 31 March 1975.

<sup>51</sup> Article XVII of the GATT.

The types of subsidies that are relevant for purposes of the WTO are those that are “*specific*”, in the sense that they are granted to specific industries or industry sectors. These include subsidies that are contingent upon export performance and/or upon the use of local goods (these are the “*prohibited subsidies*”, which are deemed to be specific). Other than those, subsidies that are “*specific*” are subject to certain remedies if they create adverse effects to the interest of other Members. Subsidies provided to State-owned enterprises will be viewed as specific if, *inter alia*, State-owned enterprises are the predominant recipients of such subsidies or State-owned enterprises receive disproportionately large amounts of such subsidies.

Before the WTO, Tajikistan stated that its industrial policy was not geared towards the protection of specific economic activities. It also indicated that it did not apply any prohibited subsidies or any indirect subsidies (*i.e.*, those granted through “*entrustment*” or “*direction*” to a private body). An overview of the types of support currently granted is included in the draft subsidies notification.<sup>52</sup> According to this document, the support currently granted by Tajikistan includes:

- Subsidies for the “*Tajik Aluminium Plant*” in the form of preferential rates established for electric energy; and
- Fiscal incentives to cotton processing enterprises.

Other subsidies include the incentives granted for investments in the Free Economic Zones; the incentives granted to “*Tajik Azot*”, a mineral fertilisers producer; and those granted to “*Tajik Iron*” for the production of agricultural tractors.

The incentives granted for investments in the Free Economic Zones may also present issues of compatibility *vis-à-vis* Tajikistan’s WTO obligations if it is shown that they are contingent upon export performance or the use of domestic products (local content requirements).<sup>53</sup>

The subsidies granted to “*Tajik Azot*” and “*Taj Iron*” included: reduced VAT applied on imports and sale (*Tajik Azot*); preferential rates of services of natural gas and electricity (*Tajik Azot*); VAT and customs duty exemptions for imports and VAT exemptions for supplies (*Taj Iron*). According to the draft notification to the WTO, it appears that only the VAT exemptions for “*Tajik Azot*” are to apply after 1 January 2013. However, Tajikistan clarified that, currently, “*Tajik Azot*” is idle and is not manufacturing fertilizers.

Subsidies which are “*specific*” may trigger the following responses from WTO Members:

- Recourse to WTO dispute settlement procedures. Where the subsidy concerned is not a “*prohibited*” subsidy, the complaining Member concerned must prove that “*serious prejudice*” has occurred, which means in practice that it must prove either (i) that Tajikistan’s sales displace or impede imports of the “*like product*” into the market of the subsidising Member or a third country market; (ii) significant price undercutting, price suppression or depression, or lost sales; (iii) in the case of a primary product, an increase over historical levels in the world market share of the subsidised product. Dispute settlement proceedings may lead, in case of a positive finding as to the existence of the illegal subsidy, to a request for the removal of the subsidy programme concerned or authorisation to the complaining Member to retaliate against Tajikistan, in case the latter refuses to comply with the ruling or to offer compensation;

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<sup>52</sup> WTO document WT/ACC/TJK/25.

<sup>53</sup> In its draft notification, Tajikistan has confirmed that this is indeed not the case and that such subsidies are not “*prohibited*” subsidies. Inasmuch as a review of the relevant legislation could not be conducted no conclusion can be reached as to the compatibility of such scheme with Tajikistan’s obligations.

- Apply countervailing duties on exports from Tajikistan, following an investigation by competent authorities confirming the existence of a subsidy causing injury to the domestic industry. In such instance, WTO Members are bound to follow the rules of Part V of the SCM Agreement. These provide, *inter alia*, that:
  - Countervailing duties can only be imposed following an investigation finding the existence of a subsidy which is specific and which has caused injury to the domestic industry; and
  - Investigations must be conducted respecting *due process* requirements, which include that exporters must be granted certain the possibility to present their evidence and put forward their arguments throughout the proceeding.

Countervailing duties cannot be imposed where the amount of the subsidy is less than 1% *ad valorem* or where the volume of subsidised imports, or the injury, is negligible. This may, in practice, render difficult that this instrument be used against Tajikistan's exports, at least in the short term. Similarly, it may be difficult for a WTO Member to prove that Tajikistan's subsidised products cause trade displacement or price undercutting.

A separate discipline is foreseen for subsidies affecting agricultural production. These subsidies are reviewed below, in Section 3.2.

#### *Tajikistan's obligations in respect to export duties and export restrictions*

Tajikistan specifically acknowledged that it has currently no export duties in place, meaning that Tajik companies are allowed to carry out their export activities without paying any specific tax on exports. In this respect, Tajikistan committed not to introduce any such duties in the future, with a number of exceptions. Indeed, Tajikistan reserved its right to apply export duties to around 300 tariff lines and only up to certain "*ceilings*", in the future. *Inter alia*, goods potentially subject to export duties include agricultural products such as natural honey, sweet corn and tobacco; electrical energy; raw silk; certain types of cotton and cotton products; certain aluminium and aluminium products; and antiques of particular characteristics.

Under Article XI:1 of the GATT, Tajikistan is prohibited from applying export restrictions and prohibitions. Tajikistan has maintained exports restrictions through licensing procedures on, *inter alia*, foodstuffs, animal and vegetable products, alcohol and ethyl alcohol, medical goods, ferrous and non-ferrous scrap. Whereas a number of these requirements are being, or have been abolished, export licensing requirements are maintained on metal scrap. Tajikistan confirmed that such licensing requirements were automatic, which means that they should not trade-restrictive.

Tajikistan also maintained an export prohibition on wool and skin (raw hide), introduced on a temporary basis since 2011 and abolished upon Tajikistan's accession. The ban was introduced because the absence of raw materials, which had been exported at an unprecedented scale, had brought Tajikistan's processing industry (*i.e.*, garments and footwear manufacturers) to a virtual halt. Indeed, Article XI of the GATT prevents the adoption and maintenance of export prohibitions. Restrictions of this kind could, however, still be allowed under the exceptions provided under Article XI:2(a) of the GATT and Article 12 of the Agreement on Agriculture or Article XX(j) of the GATT.

### 3.2 Agriculture and food industry

#### 3.2.1 General overview and market access

Agricultural production in Tajikistan increased steadily by around 7.8% a year between 2000 and 2011, boosted mainly by an increase in non-cotton agricultural production.<sup>54</sup> The table below shows the figures on the production and yields of major agricultural crops for the years 2009-2011.

Production and yields of major agricultural crops in thousands of tonnes, 2009-2011<sup>55</sup>

Major Agricultural Crops	2009		2010		2011	
	Production	Yield	Production	Yield	Production	Yield
Raw cotton	296	1780	310	1930	416	2041
Grain	1294	2520	1261	2410	1098	2571
Sweet corn	143	3780	151	4060	155	12123
Feed corn	699	12640	915	13450	794	35654
Rice	63	3070	77	3440	77	5819
Potatoes	691	22310	760	22970	863	23504
Vegetables	1047	20800	1143	20580	1242	26491
Fruits	214	2920	225	3040	263	3395
Grapes	139	4410	124	4080	155	4956
Hay	397	1800	409	2189	350	2661

The table below shows the value of exports of major agriculture products:<sup>56</sup>

Value in thousand USD

Product/Product Harmonised System (hereinafter, HS) code	Exported Value 2011	Exported Value 2012	Growth
Total All products	130,441	104,844	
Raw cotton / HS 52	143,598	125,562	-12.56%
Grain (Oil seed, oleagic fruits, grain, seed, fruit, etc.,) / HS 12	2,592	2,048	-20.99%
Hay	-	-	
Edible vegetables and certain roots and tubers / HS 07	22,628	15,099	-33.27%
Sweet corn	-	-	
Feed corn	-	-	
Potatoes / HS 0701	26	N/A	
Vegetables / HS 0709	55	32	
Cereals / HS 10	109,779	183,282	
Rice / HS 1006	2,160	298	-86.20%
Fruits Edible fruit, nuts, peel of citrus fruit, melons / HS 08	48,003	37,353	-22.19%
Grapes (Grapes, fresh or dried) / HS 0806	2,329	1,456	-37.48%

<sup>54</sup> FAO, "Eastern Europe and Central Asia agro-industry development country brief. Tajikistan". Available at: [http://www.fao.org/fileadmin/user\\_upload/Europe/documents/Publications/AI\\_briefs/AI\\_briefs2012/fao\\_tajikistan.pdf](http://www.fao.org/fileadmin/user_upload/Europe/documents/Publications/AI_briefs/AI_briefs2012/fao_tajikistan.pdf) (last visited on 28 May 2013).

<sup>55</sup> See <http://www.stat.tj/en/analytical-tables/real-sector/>, (retrieved on 22 May 2013).

<sup>56</sup> ITC Trade Map, see <http://www.trademap.org/SelectionMenu.aspx> (retrieved on 22 May 2013). The choice of products reflected on this table is based on data sourced from Tajstat (see table "Production and yields of major agricultural crops in thousands of tons, 2009-2011", <http://www.stat.tj/en/analytical-tables/real-sector/>, retrieved on 22 May 2013).



According to these tables, the major agricultural export commodity is cotton, followed by cereals, fruits and vegetables. Cotton is exported mainly to Turkey and Russia. These tables are from mirror statistic data in ITC Trade Map (trade statistic for International business development) developed by the International Trade Centre (ITC). The mirror statistics are indicative of the trade data on the basis of data reported by partner countries.

According to other statistics obtained, the following products are domestically produced and exported (cotton is not included):

Value in US thousand dollars

<b>Agriculture</b>	<b>2012</b>	<b>2011</b>	<b>2010</b>	<b>2009</b>
Alive animals/ HS 01	173	232	45	26
Meat and meat made products/ HS 02	6	0	58	20
Milky products and eggs/ HS 04	43	44	231	115
Vegetables/ HS 07	8,257	14,816	19479	14653
Not processed animal skin/ HS 41	3,038	4,097	3,085	3,704
Tobacco goods/ HS 24	1 058	227	88	41
Fruits and nuts/ HS 08	32,164	30,415	34767	35,808

Enterprises active in the food industry produce tinned goods, different types of oil, margarine, oilseeds, wine and other alcoholic drinks, tobacco goods, salt, meat and milk processing, flour-milling, baking, fruit drying and brewing. Enterprises sell mainly to the domestic market.

Value in US thousand dollars

<b>Food Industry</b>	<b>2012</b>	<b>2011</b>	<b>2010</b>	<b>2009</b>
Oils	2	48	6	24
Margarine				
Wine and other alcoholic drinks/HS 22	310	407	405	148
Salt	2 478	3 111	1 974	2,644
Products made out of flour/HS 11	53	203	566	759
Oil seeds/HS 12	2 304	1 907	3 469	3,606
Ready products made out of grain/HS19	6	73	31	117
Tinned goods/20	693	1 121	2687	4,636

According to these sources, the main export markets in 2012 for agricultural and food products were Afghanistan, Kazakhstan and Russia for oilseeds and vegetables; Turkey for animal skin; Kazakhstan, Pakistan, Russia and Ukraine for fruits and nuts.

Statistics from the Food and Agriculture Organisation, which are based on those of the ITC, indicate that the top destinations for food and beverage products include Algeria (60.2%), Kazakhstan (22.2%), Russia (11%) and Kyrgyzstan (2%) in 2011.<sup>57</sup>

### *Impact on the domestic industry*

Tajikistan is an import-dependent country in terms of food. Main imported agricultural products include cereals (wheat, corn and rice), products of the milling industry (wheat flour), oils (palm oil, other vegetable oils and margarine), sugar and confectionary. The Food and Agriculture Organisation reports that Tajikistan imports more than 50% of the wheat and

<sup>57</sup> FAO, see *supra*.

wheat products that it consumes domestically. Nearly ¾ of all vegetable oil and almost all sugar is imported. Imports originate from a number of countries, which, in 2011, included Algeria, Kazakhstan, Russia and Kyrgyzstan.

The tariffs agreed by Tajikistan on agricultural products do not differ substantially in structure from those bound on industrial goods. Agricultural products are not subject to special duties. The WTO reports that the average of Tajikistan's "*bound*" tariffs, for all products, is 8.0%. For agricultural products, the average of Tajikistan's "*bound*" tariffs is 10.4%.<sup>58</sup> The simple average of import duties for agricultural goods applied in 2011 (*i.e.*, before accession) was 11.2%. No commitments in the form of TRQs have been undertaken by Tajikistan.

The WTO accession will make imported products cheaper in Tajikistan's domestic market. It is noted, however, that bound tariffs are relevant only *vis-à-vis* WTO Members. Tajikistan remains free to apply other levels of tariffs in its trade with non-WTO Members (such as Kazakhstan and Algeria). Trade with non-WTO Members may also be regulated by bilateral agreements, particularly with CIS countries.

#### *Market access benefits for Tajikistan's exporters*

Tajikistan's products already enjoyed MFN tariffs before accession<sup>59</sup> (as well as preferential market access due to GSP and preferences granted within the CIS FTA framework). The advantage of WTO accession consists in that, for those trading partners that are WTO Members, the MFN tariffs are now bound and enforceable. WTO Members cannot apply higher tariffs than the MFN rates. WTO Members are also prevented from applying non-tariff measures (such as quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through state-trading enterprises, voluntary export restraints, and similar border measures) on agricultural products, as required by Article 4.2 of the Agreement on Agriculture. If WTO Members violate these obligations, they are exposed to WTO challenge.

Tajikistan's main export markets include also countries that are currently not WTO Members, such as Algeria, Afghanistan, Kazakhstan and Iran. In the framework of the WTO accession procedures of these countries, Tajikistan will be able to request that tariffs on products of its interest be lowered as a condition for accession. WTO accession negotiations are ongoing for these countries. For example, Tajikistan may be able to obtain that Iran reduces its very high import tariff on cotton, currently set at almost 47% *ad valorem*.

#### *Market access constraints*

It is noted that certain WTO Members reserved the rights to apply special safeguard measures (SSGs) on agricultural products. For the products for which the rights has been reserved, WTO rules allow the imposition of an additional tariff where certain criteria are met, such as a specified surge in imports (volume trigger), or, on a shipment by shipment basis, a fall of the import price below a specified reference price (price trigger). The EU and the US are currently entitled to impose SSGs on certain products of interest to Tajikistan. In particular, the EU is entitled to apply SSGs on products such as:

- Fruit, vegetables and food preparations (255 tariff lines within 46 HS Code):
  - edible vegetables and certain roots and tubers (54 tariff lines within 17 HS code Chapter 0755); and

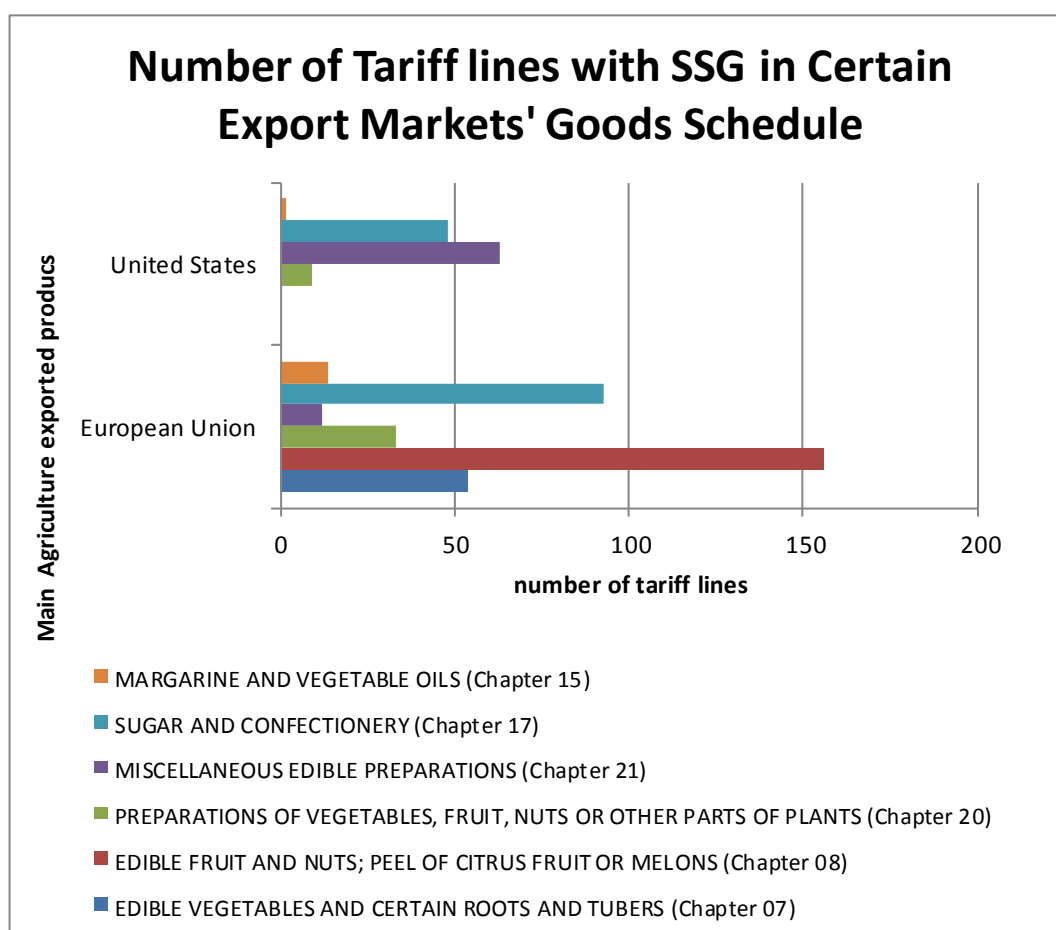
<sup>58</sup> See WTO, [http://www.wto.org/english/news\\_e/news12\\_e/acc\\_tjk\\_26oct12\\_e.htm](http://www.wto.org/english/news_e/news12_e/acc_tjk_26oct12_e.htm), (last visited on 28 May 2013).

<sup>59</sup> M. Lücke, "*Tajikistan's WTO Accession and Trade Policy*", Contribution to the World Bank's Tajikistan Trade Diagnostic Study.

- edible fruit and nuts, peel of citrus fruit or melon (156 tariff lines within 17 HS code Chapter 08;
- Preparations of vegetables, fruit, nuts or other parts of plants (33 tariff lines within 9 HS Code Chapter 20);
- Miscellaneous edible preparations and its subheadings (12 tariff lines within 3 HS Code Chapter 21);
- Sugar and Confectionery products under chapter 17, there are a total number of 93 tariff lines with SSG within 18 HS Code; and
- For margarine and vegetable oils under chapter 15 and its subheadings, there are 14 tariff lines within 8 HS code with SSG.

The United States reserved its right to apply SSGs on:

- Preparations of vegetables fruits nuts or other parts of plants (9 tariff lines within 3 HS code);
- Miscellaneous edible preparations (63 tariff lines within 10 HS code);
- Sugar and Confectionery (48 Tariff lines within 14 HS code); and
- Margarine and Vegetable oils (2 tariff lines within 2 HS code).



Russia and Turkey, on the other hand, have not reserved such right and cannot resort to this additional protection. SSGs must be applied on an MFN basis.

*Key benefits of WTO accession vis-à-vis market access constraints arising from SPS and TBT measures*

Tajikistan's exports of food and agricultural products may encounter difficulties in accessing third-country markets due to strict SPS and TBT regulations. These are the regulatory obstacles to trade which most frequently affect trade in agricultural products. As an example of such measures, the EU rejected in August 2009 a shipment of pistachios from Tajikistan and dispatched from Turkey, on the grounds that the accompanying health certificate was inadequate. As a consequence, the shipment was rejected at the EU border.

In the particular case of measures enacted for the protection of human or animal and plant life and health, the requirement that WTO Members ensure that any measure is unequivocally based on scientific evidence, either because it is based on a relevant international standard,<sup>60</sup> or on a risk assessment that justifies that the adoption of the particular measure is necessary to secure the desired level of protection,<sup>61</sup> applies even more stringently.

Therefore, other WTO Members cannot apply a quarantine measure against agricultural products exported from Tajikistan unless they have identified the particular pest or disease which they allege could arise from importing the product from Tajikistan and have either:

- Based their quarantine measure on an international standard relating to that particular pest or disease; or
- Assessed the risk on the basis of scientific evidence and have determined that there is scientific justification for the particular measure that they are applying.<sup>62</sup>

Similarly, with respect to technical regulations, other Members cannot apply mandatory technical regulations to imports from Tajikistan if the measures at stake: (i) discriminate Tajikistan's products *vis-à-vis* domestic products or products from other countries; or (ii) are more restrictive than necessary to achieve the specific regulatory purpose warranting the measure.

If Tajikistan's exporters come across, in their international commercial transactions, measures in force in another WTO Member that do not conform to these principles, they have at their disposal a number of WTO instruments that they can trigger. In particular, they can request Tajikistan's Government to raise a specific matter in the context of the WTO technical committees (Committee on Sanitary and Phytosanitary Measures and Committee on Technical Barriers to Trade), and as a last resort, ask the Government to challenge the measure before the WTO dispute settlement system (for further details on WTO remedies, see Section 4).

Apart from undergoing all mandatory export requirements in Tajikistan, products from the food industry will only be successfully offered for sale abroad if they comply with import requirements in force in their export markets, which must be imposed in compliance with the aforementioned principles that they must not create unnecessary obstacles to trade nor be discriminatory, need to be adopted for the attainment of a legitimate objective, and be based on a relevant international standard or on scientific evidence.

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<sup>60</sup> Article 3.1 of the SPS Agreement.

<sup>61</sup> Article 3.3 of the SPS Agreement.

<sup>62</sup> International Trade Centre, report on Samoa's WTO accession, p.7.

### 3.2.2 Domestic agricultural support measures<sup>63</sup>

#### *General*

The Agreement on Agriculture contains detailed rules on the domestic support that can be granted by WTO Members to their agricultural and food industry. These rules are *lex specialis*, in that they prevail over other WTO rules, notably those of the SCM Agreement. In practical terms, WTO Members are allowed to subsidise their agricultural production, provided that they do so in accordance with the provisions of the Agreement on Agriculture. The basic principle of the Agreement on Agriculture is to “cap” the level of harmful subsidies that WTO Members can provide to their agricultural production. There are, however, exceptions to this rule.

In relevant part, the Agreement on Agriculture allows WTO Members to grant domestic subsidies that are not considered harmful or minimally trade-distortive. These are the “*green box*” subsidies. The general criteria of “*green box*” subsidies are that they must have no, or at most minimal, trade-distorting effects or effects on production; be provided through a publicly-funded government programme (including government revenue foregone) not involving transfers from consumers; and must not have the effect of providing price support to producers.<sup>64</sup> The full list of “*green box*” subsidies is included in Annex II to the Agreement on Agriculture.

Developing countries can also maintain certain developmental measures designed to encourage agricultural and rural development and that are an integral part of the development programmes of developing countries, such as investment subsidies which are generally available to agriculture in developing country Members, agricultural input subsidies generally available to low-income or resource-poor producers in developing country Members, and domestic support to producers in developing country Members to encourage diversification from growing illicit narcotic crops.<sup>65</sup>

In addition, the Agreement on Agriculture requires WTO Members to cap the level of domestic support that is deemed trade-distortive. These are the so-called “*amber box*” subsidies, which can be product-specific or non product-specific. A notable example of these types of subsidies are direct payments or market price support measures. These subsidies can be granted up to the level committed in the *Schedule*, plus a *de minimis* level which, for developing countries, amounts to 10% of (i) the total value of production of a basic agricultural product (product-specific support) and (ii) of the total value of agricultural production (non product-specific support).

Lastly, the Agreement on Agriculture also requires WTO Members to cap the level of export subsidies.

#### *Impact on Tajikistan’s ability to subsidise its agricultural sector*

During 2008 to 2010, Tajikistan provided “*green box*” subsidies averaging USD 7,9 million per year. These concerned mainly infrastructure services, pest and disease control,

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<sup>63</sup> Pursuant to Annex 1 of the Agreement on Agriculture, products covered by the disciplines of such Agreement include not only basic agricultural products, such as wheat, milk and live animals, but also products derived from them such as bread, butter and meat, and processed food products. In addition, the provisions of the Agreement on Agriculture also apply to wines, spirits and tobacco products, fibres such as cotton, wool and silk, and raw animal skins destined for leather production. Fish and fish products, as well as forestry products, are excluded from the scope of the Agreement on Agriculture.

<sup>64</sup> See Annex II of the Agreement on Agriculture.

<sup>65</sup> See Article 6.2 of the Agreement on Agriculture.

structural adjustment assistance provided through investment aids and assistance of structural changes through investment stimulation.<sup>66</sup>

In addition, Tajikistan's agricultural sector may continue to benefit from investment subsidies and other support measures qualifying as "*development programmes*" under Article 6.2 of the Agreement on Agriculture. For the period from 2008-2010, Tajikistan granted such types of subsidies as government expenditures to foreign funded assistance programmes.<sup>67</sup>

Tajikistan bound the total level of "*amber box*" subsidies to USD 182 million.<sup>68</sup> From the information notified by Tajikistan to the WTO, this level corresponds to the average level of support granted to the cotton industry in the years 2008-2010. "*Amber box*" product-specific subsidies were also granted to potatoes, corn, wheat and honey. However, the level of subsidies granted to these products did not reach the *de minimis* threshold of 10% of the total value of production. According to Tajikistan's notification, other subsidies falling within the category of "*amber box*" included: (i) the VAT exemption granted under Article 211 of the Tax Code, Article 345 of Customs Code and Government Resolution No. 489 of 1 October 2007 imports agricultural machinery and spare parts; (ii) the VAT exemption granted to imports of feed for poultry under the Law on State Budget of the Republic of Tajikistan for 2010; and (iii) the seasonal discount rates of electricity supply were introduced for water pumping stations for irrigation under Government Resolution No. 259 of 19 May 2010.

Increasing the production of agricultural products is one of the prioritised objectives of the Government of Tajikistan, as indicated in the Economic Development Programme of Tajikistan. For example, according to the programme, by 2015 the production of wheat must be increased by 1.2 million tonnes (in 2005 the total wheat production amounted to 1 million tonne). Before the WTO, Tajikistan stated that its current agricultural policy was directed at the improvement of people's well-being, the development of rural areas, and the provisions of food safety. It added that the Government's strategy is aimed at: (i) the creation of a favourable investment climate and business environment by harmonizing the legislative base with international legislation; (ii) membership in international organisations; (iii) the simplification of export-import procedures; and (iv) the development of infrastructure to promote foreign trade and scientific capacity. Priority areas included cotton growing, the fruit-and-vegetable complex, animal industry, poultry farming, and the industrial processing of agricultural products.<sup>69</sup>

Following its WTO accession, Tajikistan will not be able to provide support of the kind that falls within the "*amber box*" category for an amount higher than the committed level of USD 182 million per year, plus the *de minimis* level, which is not computed within. Certainly this commitment limits Tajikistan's ability to provide "*amber box*" subsidies to its agricultural production above such amount in the future. However, this does not appear to impact tremendously on the level of "*amber box*" subsidies applied before accession: in fact, with the exception of cotton in the year 2009, the "*amber box*" support granted in the period 2008-2010 is either zero or covered under the *de minimis* exemption.

In addition, Tajikistan will be able to maintain "*green-box*" subsidies. However, it must abide by the obligations of transparency and notify its "*green box*" measures to the WTO. It will also be able to continue granting investment subsidies generally available to agriculture, which, under the Agreement on Agriculture, for developing countries are also exempted from reduction commitments.

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<sup>66</sup> See WTO, document WT/ACC/SPEC/TJK/3/Rev.5.

<sup>67</sup> See WTO, document WT/ACC/SPEC/TJK/3/Rev.5.

<sup>68</sup> See Part IV of Tajikistan's Schedule, WTO document WT/ACC/TJK/30/Add.1.

<sup>69</sup> WPR, para. 255.

With respect to export subsidies, it noted that, like several countries that have acceded to the WTO, Tajikistan bound the level of export subsidies on agricultural products to zero. This means that Tajikistan may no longer subsidise its agricultural exports. For the period 2008-2010, Tajikistan provided subsidies to the export of fruit and vegetable products, in an average amount of USD 968,000 per year.

#### *Impact of the obligations under the Agreement on Agriculture for Tajikistan's exporters*

It is noted that similar provisions and reduction commitments apply to all WTO Members. All WTO Members had to cap their level of domestic subsidisation, and several WTO Members are prevented from applying export subsidies.

Agricultural subsidies that are in line with the reduction commitments, and exemptions thereof, are also compatible with the provisions of the Agreement on SCM. However, subsidies exceeding the committed levels are inconsistent with WTO rules and may trigger WTO dispute settlement procedures and the remedies explained more in detail in Chapter 4.

A notable example of a dispute involving subsidies to agricultural products that may be of interest to Tajikistan's domestic industry is provided by the US-Cotton case.

In September 2002, Brazil started proceedings before the WTO against a number of subsidy programmes granted by the US to domestic upland cotton farmers. According to Brazil, these subsidies, which amounted to USD 12.9 billion, supported the production, use and export of US upland cotton in a manner that led to suppression in world cotton prices and a subsequent loss of revenue by Brazilian, African and overall world cotton producers.

In its report, circulated in September 2004, the panel largely agreed with Brazil. It established that the US price-contingent subsidies amounted to trade distorting measures causing significant price suppression in world cotton market, and that the so-called "Step 2" local content and export subsidies were prohibited under WTO rules. The panel found that the US had wrongly classified certain direct payments to farmers as "*green box*" subsidies, which therefore were not covered by the peace clause in the Agreement on Agriculture and were instead subject to challenge. In addition, the panel further agreed with Brazil that the US measures caused "*serious prejudice*" to Brazil's interests, and recommended that the US withdrew its "*prohibited*" subsidies, and removed any adverse effects caused by the trade distortion. Although the US appealed the panel's findings, those were largely confirmed by the Appellate Body, whose report was circulated on 3 March 2005.

Following the adoption of such findings and recommendations by the WTO Dispute Settlement Body (hereinafter, DSB), the US was given six months to comply. Although the US somehow modified its subsidies, it did not make any substantial changes. As a consequence, a compliance panel and afterwards, the Appellate Body, found that the "*prohibited subsidies*" had not been withdrawn, and that US measures continued to cause "*serious prejudice*" to Brazil's interests and significant price suppression in world cotton market.

In light of the US failure to comply with the recommendations adopted by the DSB, Brazil requested authorisation to retaliate against the US, which was granted in November 2009. In March 2010, Brazil announced that it would start to apply increased import duties on a number of goods imported from the US. However, such countermeasures were never applied, inasmuch as the US and Brazil engaged in a dialogue that concluded with a "*Framework for a Mutually Agreed Solution to the Cotton Dispute*", proving parameters for consultations between the two trading partners.

### 3.3 Light and textile industry

#### 3.3.1 General overview and market access

Tajikistan's light and textile industry is largely based on the processing of raw materials. Products are destined both for exportation and for sale in the domestic market. The Tajik industry is particularly active in the processing of natural silk and cotton, carpets and carpet goods, as well as in the production of other goods such as yarn, fabrics, clothing, footwear and hosiery. It is noted that there are spinning, weaving, and knitwear factories in the country, as well as enterprises specialising on the production of clothing, footwear, fancy goods, porcelains, and furniture.

The table below gives an overview of Tajikistan's light industry's exports:

Value in US thousand dollars

<b>Light industry</b>	<b>2012</b>	<b>2011</b>	<b>2010</b>	<b>2009</b>
Fabrics and textile goods/ HS 52	245 064	209 383	209 020	107,881
Carpets and carpets goods/ HS 57	90	41	57	8
Special woven fabrics; tufted textile fabrics, lace, tapestries; trimmings; embroidery/ HS 58	24	600	783	4
Spinning,				
Weaving				
Stockinet/ HS 60	588	585	573	411
Knitwear/ HS 61	62	286	300	20
Knitwear				
Clothing/ HS 62	17 106	24 369	20 046	16,738
Footwear/ HS 64	121	28	298	1
Fancy goods/ HS 71	90 711	57 166	33 194	21,917
Porcelains				
Furniture/ HS 94	91	1 722	235	638
Clothing/ HS 63	504	524	723	447
Silk/ HS 50	1,702	1,678	1,467	1,830
Wool/ HS 51	105	43	184	138

The main export markets for cotton and cotton products are Turkey, Russia and China, with Kazakhstan and Italy remaining significant trading partners. With the exception of Kazakhstan, all Tajikistan's main trading partners are WTO Members. As a consequence, Tajik businesses can rely on WTO rules for its trade with such countries (and bilateral agreements, where applicable).

It is noted that, in order to make the light and textile industry more autonomous and less dependent on raw materials, and eventually more competitive *vis-à-vis* competing products from other countries, a development programme is being implemented in Tajikistan since 2006.<sup>70</sup> In 2015, once fully implemented, the programme is expected to result in an increase in cotton production from 550,000 tonnes to 660,000 tonnes. In addition, the programme envisages that facilities be set up to extend the processing of goods so as to cover the entire manufacturing cycle of final products. It is foreseen that such facilities, strategically located in highly populated areas of cities and districts in the cotton cropping regions, will have a

<sup>70</sup> Program of development of light industry of Tajikistan for 2006-2015. Approved by Decree of Government of Republic of Tajikistan dated 31 October 2005, # 422.



processing capacity of at least 5,000 tonnes of cotton fibre per annum. In particular, these developments are targeted towards a number of key areas within the light industry, notably the processing of cotton yarn, cotton fabric, knitwear, hosiery, carpets and carpet-made products, and footwear.

### *Impact of tariff bindings on Tajikistan's business*

Main products of the light and textile industry are classified under chapters 50 to 63 of the HS nomenclature, including clothing articles.<sup>71</sup> Tajikistan committed to apply *ad valorem* tariff rates approximately between 15% and 20% at the date of accession, and final rates around 10% *ad valorem* to most raw materials. These commitments are slightly higher for cotton and significantly higher for carpets (rates around 30% *ad valorem*). Conversely, a number of vegetable textile fibres may be imported at remarkably low tariff rates (flax yarn is subject to a final 0% rate, and man-made filaments to a 5% *ad valorem* rate). Imports of processed products, as well as clothing articles, are generally bound at a tariff rate set around 15% *ad valorem*.

These commitments appear in line with Tajikistan's policy plans to upgrade its domestic textile industry, and to foster its activity in the higher segment of the production chain.

### *3.3.2 Further implications for Tajikistan's domestic producers and exporters*

#### *Main issues concerning internal taxation and subsidisation in Tajikistan*

Within the framework of Tajikistan's internal tax regime outlined in Section 3.1, there are a number of tax exemptions that are relevant for companies operating in the light and textile industry in Tajikistan, most notably:

- A subsidy consisting of various tax exemptions (VAT and others) provided to newly established enterprises engaging in full-cycle processing of cotton (*i.e.*, from yarn to garments), notified by Tajikistan to the Working Party on its accession<sup>72</sup>; and
- A VAT exemption granted to newly established enterprises processing, *inter alia*, leather products incorporated into Tajikistan's 2012 Tax Code.

Such exemptions can be reasonably placed within the framework of the ongoing programme aimed at the promotion and development of the light and textile industry in Tajikistan. However, they stand to have further implications, including arguable inconsistencies with WTO rules on subsidies.

In particular, the notified exemption to newly established enterprises engaging in full-cycle processing of cotton may eventually be problematic under the SCM Agreement, inasmuch as it may be considered to be "*specific*".<sup>73</sup> However, and in order to be eventually found illegal, such subsidy programme would also have to be found to cause adverse effects to the interest of another WTO Member.<sup>74</sup> Also relevant under the WTO disciplines on subsidies might be the VAT exemption granted to newly established enterprises involved in leather

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<sup>71</sup> It is noted, however, that certain goods covered under HS Chapters 50, 51, 52 and 53 are covered by the disciplines of the Agreement on Agriculture. These products are, most notably, raw silk and silk waste, wool and animal hair, raw cotton, waste cotton and cotton carded or combed, and raw flax and raw hemp.

<sup>72</sup> Document WT/ACC/TJK/25.

<sup>73</sup> It is noted that the notification was made under article 25 of the SCM Agreement, which requires that Members notify any subsidy granted within their territories, and which is specific.

<sup>74</sup> Article 5 of the SCM Agreement.

processing, inasmuch as it could be found to qualify as a “specific” subsidy within the meaning of the SCM Agreement, and therefore be subject to examination against the provisions it contains. As mentioned above, the concept of “adverse effects” is connected to injury and trade displacement. On the basis of the current level of trade, it might be improbable that exports of textiles from Tajikistan are found to cause “adverse effects”.

*Tajikistan’s exports may be subject to anti-dumping and countervailing duties*

Tajikistan’s trading partners may also unilaterally resort to anti-dumping or countervailing duties on imports of textile products originating from Tajikistan. Such measures are frequently imposed on products from the light industry that are ready for final consumption.

Tajikistan’s processed products that are or may be exported to third-country markets may potentially be vulnerable to such measures (particularly anti-dumping duties) due to Tajikistan’s nature of economy in transition and the low cost of inputs and energy sources. However, one of the benefits of WTO accession stands precisely in that there are rules that must be respected in respect of these trade remedies. In particular:

- Anti-dumping and countervailing duties may only be imposed following an investigation finding the existence of dumping or subsidisation causing injury to the domestic industry;<sup>75</sup>
- Authorities responsible for the investigations must abide by the provisions of the Anti-dumping Agreement and the SCM Agreement. These involve procedural requirements and due process guarantees to allow exporting producers to make their representations, present evidence and express their views. There are also substantive requirements that must be followed, which relate to the finding of dumping/subsidisation and injury, to avoid unreasonable determinations by the investigating authorities; and
- Investigating authorities need to conclude their proceedings without the imposition of duties if they find that the dumping margin or the amount of the subsidy is below the *de minimis* threshold, or that the inferred injury is negligible.

If these rules are not respected, Tajik exporters should coordinate with their Government and ensure that the issue be brought to the WTO, including through dispute settlement procedures.

According to statistics, WTO Members activating most trade defence mechanisms against textile products are India, the EU and Turkey, followed by Bulgaria, Colombia, the Philippines and South Africa. Other products of the light industry, such as footwear, headgear and umbrellas are far less commonly targeted by anti-dumping measures. For example, while the US imposed anti-dumping measures in 14 occasions between 1995 and 2010 on textile products, it did not impose any on the aforementioned other products of the light industry. Concerning the EU, it imposed anti-dumping measures in 43 occasions against textile products between 1995 and 2010, while it only imposed them in 9 occasions in respect of other goods of the light industry during the same period.<sup>76</sup> In this respect, the EU imposed, *inter alia*, by anti-dumping measures on footwear imports in 2 occasions in 2005, concerning imports from China and India, and imports from China and Vietnam. In addition, it is noted that in 2011, the EU adopted anti-dumping duties against ceramic tiles imported from China.<sup>77</sup>

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<sup>75</sup> Article VI of the GATT, Article 1 of the Anti-dumping Agreement, and Article 10 of the SCM Agreement.

<sup>76</sup> Statistical data based on the semi-annual reports of WTO Members to the Committee on Anti-Dumping Practices, see [http://www.wto.org/english/tratop\\_e/adp\\_e/adp\\_e.htm](http://www.wto.org/english/tratop_e/adp_e/adp_e.htm), (retrieved on 25 May 2013).

<sup>77</sup> European Commission, DG Trade.

In the event that Tajik producers find their products targeted by anti-dumping or anti-subsidy investigations in their export markets, it is strongly recommended that they participate to the proceeding and make their representations to the competent investigating authorities. Participation will provide interested parties an opportunity to submit relevant evidence and minimise the impact of the duties. In cases of non-market economies, like Tajikistan, participation to the proceedings will also give an opportunity to companies to request and obtain “*market economy treatment*” which will substantially ensure that the authorities will use the prices and costs as applied to the company, and not those of a third country and lead to significantly lower duties.

### *Impact of foreign regulations on exporters*

Other than trade defence instruments, measures which typically affect the importation and placing on the market of products of the light and textile industry are mandatory technical regulations (e.g., labelling requirements, product-composition requirements) and voluntary standards compliance with which is necessary to access third-country markets. For example, in the EU, imports of textile products are required to bear a label indicating the precise textile fibres contained in the products, according to a list of fibres elaborated by the EU.<sup>78</sup> In addition, the EU’s REACH Regulation<sup>79</sup> requires that information on the chemicals involved throughout the products’ supply chain be provided upon importation. In particular, it lays down a number of rules aimed at ensuring that the handling of chemicals at the industrial level is not carried out in a way that poses risks for human health or the environment. It also incorporates a list of restrictions on the manufacture, placing on the market and use of certain dangerous chemical substances, mixtures and articles, and of particular interest for textile products, on persistent organic pollutants.

Tajikistan exporters may rely on WTO rules against mandatory technical regulations imposed by other Members that:

- Apply more favourably to domestic products or products from other countries; and/or
- Are overly restrictive.

In the event that Tajik exporters are required to comply with technical specifications that are not in accordance with the provisions of the TBT Agreement, they should address the Tajik Government, and request that it refers the matter to the WTO, through the different available *fora*. In particular, the matter may be raised at the meetings of the technical committees, as well as eventually constitute the basis for a WTO dispute (further details of the different WTO *fora* are provided in Section 4).

### *Possibility to resort to trade defence instruments*

Tajikistan’s domestic light industry may request that anti-dumping or countervailing duties be imposed against imports that are allegedly being dumped or subsidies and that cause injury. This procedure is explained in more details in Section 4 below.

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<sup>78</sup> Regulation (EU) No. 1007/2011 of the European Parliament and of the Council of 27 September 2011 on textile fibre names and related labelling and marking of the fibre composition of textile product, OJ L 272, 18.10.2011, p. 1–64.

<sup>79</sup> Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals, OJ L 396, 30.12.2006, p. 1–849.

### 3.4 Metallurgy

#### 3.4.1 General overview and market access

In Tajikistan, metallurgy is largely based on the production of aluminium, 98.8% of which is exported. A state-trading enterprise operates within Tajikistan's aluminium sector. In fact, the "*Tajik Aluminium Company*" (TALCO, formerly TadAZ) exports 90% of its output. Production of aluminium by the "*Tajik Aluminium Company*" is reported to have amounted to 97,863 tonnes between January and April 2012, which accounts for an 11.6% decline in respect of the previous year.<sup>80</sup>

Although aluminium clearly constitutes Tajikistan's the major export, the table below shows that the country also exports other metals, including ferrous metal, iron and copper:

Value in US thousand dollars

Metallurgy	2012	2011	2010	2009
Aluminium / HS 76	544,449	680,242	750,975	601,113
Ferrous metal/ HS 72	9 409	3 752	2735	1,267
Products made from iron/ HS 73	936	683	1 656	995
Copper and copper products/ HS 74	979	386	1 066	422
Nuclear reactors, boilers, equipment and mechanical devices/ HS 84	7 154	14 351	9 413	8,734

According to the statistics obtained, the major export markets for Tajikistan's aluminium are Turkey and China.

In general, Tajikistan committed to bind imports of metals and their products to 5% or 10% *ad valorem* rates. Iron and steel are bound to final bound rates of 5% *ad valorem*, while products of iron and steel are bound to tariff rates between 5% and 10% *ad valorem*. It is noted that a number of tubes and pipes of iron and steel are bound to final duty rates of 0% after 2018. Tajikistan generally committed to bind copper and lead, as well as articles made thereof, to 5% *ad valorem* duty rates.

Aluminium and goods made of aluminium, which are classified under chapter 76 of the HS nomenclature, are generally bound to a tariff rate of 20% at the date of accession, and a final bound rate of 10% after 2016. A number of aluminium goods are subject to tariff rates of 10% at the date of accession, and to 0% duty rate after 2017 or 2018. These include goods classified within the HS Code 7608.10.10 and 7608.20.10, which consist in certain types of aluminium tubes and pipes suitable for gas and liquids, for use in civil aircraft. A lower tariff on processed products entails more competition in Tajikistan on this higher segment of the market.

#### 3.4.2 Further implications for Tajikistan's domestic producers and exporters

##### *Main issues concerning internal taxation and subsidisation in Tajikistan*

As indicated above, a State-trading enterprise operates within the aluminium sector in Tajikistan. Indeed, the State maintains the ownership of the aluminium processing plant "*Tajik Aluminium Company*", which was excluded from privatisation pursuant to Decision No.

<sup>80</sup> <http://www.satrapia.com/news/article/tajik-aluminium-output-falls-116/>, (last visited on 24 May 2013).

705 of 30 December 2009.<sup>81</sup> Tajikistan is committed to ensure that the “*Tajik Aluminium Company*” operates in accordance with the principles of non discrimination and decides its purchases and sales, including imports and exports, on the basis of strictly commercial criteria. It is also committed to ensuring that any restrictions on exports of materials to ensure essential quantities of such materials would not operate to increase the exports or the protection of such domestic industry. These commitments are aimed at securing that private entities operating in the sector of aluminium in Tajikistan are not prejudiced by the presence of a State-trading enterprise, inasmuch as it respects their interests and it operates according to predictable criteria.

The “*Tajikistan Aluminium Company*” benefits from a subsidy in the form of rebates on the price of electricity that it is supplied by the state-owned enterprise and National Electricity Company - “*Barki Tojik*”. The subsidy is included in the draft notification that Tajikistan tabled at the WTO.<sup>82</sup> Although Tajikistan notified such subsidy as fully compatible with the disciplines of the SCM Agreement, this scheme may pose issues of compatibility *vis-à-vis* the obligations of the SCM Agreement. In the context of discussions within the WPR, it was noted that approximately 90% of the aluminium manufactured by this company was exported. The subsidy could arguably be considered a prohibited subsidy, if conditionality upon export performance can be shown<sup>83</sup> (note that the mere circumstance that the recipient of the subsidy exports in such quantities does not appear sufficient to prove contingency). Otherwise, it could still constitute an actionable subsidy, and challengeable if “*adverse effects*” are proven.

#### *Tajikistan’s exports may be subject to anti-dumping and countervailing duties*

Statistics show that goods within the metallurgy sector are traditionally among the most sensitive *vis-à-vis* the imposition of trade remedies in importing countries. Often these measures intend to counterweight subsidies and support schemes granted by the exporting country.

The US and the EU are particularly active in initiating trade defence investigations against metallurgy products, followed by Argentina, Canada, India and South Africa. In a number of cases, such investigations led to the imposition of anti-dumping duties. India, the US and the EU are the WTO Members that imposed most anti-dumping measures on products of metallurgy between 1995 and 2010, followed by Argentina, Brazil, China, South Africa and Turkey. Turkey, a market of relevance to Tajikistan’s exports, imposed a total of 149 anti-dumping measures against imports of metallurgy between 1995 and 2010.<sup>84</sup>

The EU imposed 30 anti-dumping and countervailing measures against products of metallurgy in 36 occasions between 2007 and 2011. Of these, 30 referred to iron and steel products, while only 6 targeted other metals. During the year 2012, the EU conducted 5 anti-dumping and 2 countervailing investigations against products of metallurgy but, unlike in the 5 previous years, most proceedings concluded without the imposition of any measures.<sup>85</sup> Since the beginning of 2013, the EU has launched an anti-dumping investigation against seamless pipes and tubes from China, and 2 interim reviews have been initiated concerning

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<sup>81</sup> WPR, para. 44.

<sup>82</sup> Draft notification contained in document WT/ACC/TJK/25.

<sup>83</sup> Article 3 of the SCM Agreement prohibits, *inter alia*, subsidies “contingent [...] upon export performance”. Pursuant to Article 2.3 of the SCM Agreement, “specificity” of this kind of subsidies is presumed.

<sup>84</sup> Statistical data based on the semi-annual reports of WTO Members to the Committee on Anti-Dumping Practices, see [http://www.wto.org/english/tratop\\_e/adp\\_e/adp\\_e.htm](http://www.wto.org/english/tratop_e/adp_e/adp_e.htm), (retrieved on 25 May 2013).

<sup>85</sup> European Commission, DG Trade.

anti-dumping measures imposed on ferro-silicon from Egypt, Kazakhstan, China, Russia and Macedonia; as well as against steel fasteners from China and Malaysia.<sup>86</sup>

The information obtained so far does not clarify whether exports of metallurgy products from Tajikistan are processed or semi-processed products, and thus whether they are exported for final consumption or for further processing. This information is important to assess the potential implications of trade defence measures. In this regard, it is noted that, since the year 2000, the EU has imposed anti-dumping measures on steel and steel products, as well as on aluminium and aluminium products at different processing stages. In particular, anti-dumping measures have been adopted on aluminium foil (against imports from China and Russia in 2004, and from Armenia, Brazil and China in 2009), on aluminium foil in small rolls (from China in 2013), and on aluminium road wheels and aluminium radiators (from China in 2010 and 2012, respectively).<sup>87</sup>

In any event, Tajikistan's products of metallurgy could be particularly vulnerable to trade defence remedies due to its nature of economy in transition and the low cost of inputs and energy sources, in addition to the support granted to domestic producers and described above. Affected industries in key export markets are likely to request their authorities to initiate anti-dumping and/or countervailing procedures if they believe that exporters from Tajikistan are engaging into injurious dumping or subsidisation.

As stated above, the possibility for Tajik exporters to rely of the rules of the Anti-dumping Agreement and the SCM Agreement is among the benefits of WTO accession. These rules pose precise obligations and due process requirements that authorities responsible for the investigations must respect, if they do not want to expose the importing country to a WTO challenge. In a number of cases, anti-dumping duties applied on products from the metallurgy industry have been challenged at the WTO.

The same considerations made above in Section 3.3.2 in respect to the opportunities and advantages for Tajik exporters to participate in anti-dumping and anti-subsidy investigations concerning their products are repeated in respect to proceedings targeting metallurgy products.

Products from the metallurgy industry have also been the target of safeguard measures. Notably, in 2002, a number of WTO Members requested consultations with the US in relation to its safeguard measures it imposed on imports of certain steel products, including flat steel, hot-rolled bar, cold-finished bar, rebar, certain welded tubular products, carbon and alloy fittings, stainless steel bar, stainless steel rod, tin mill products and stainless steel wire. The WTO eventually found that the SU was in violation of a number of requirements imposed by WTO rules on the adoption on the adoption and maintenance of safeguard measures.

#### *Possibility to resort to trade defence instruments*

Tajikistan's domestic metallurgy industry may request that anti-dumping or countervailing duties be imposed against imports that are allegedly being dumped or subsidies and that cause injury. This procedure is explained in more details in Section 4 below.

### **3.5 General overview of Tajikistan's commitments in trade in services**

Tajikistan's commitments in trade in services have been based on the following broad approaches:

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

- **Mode 1:** Tajikistan has taken a relatively open approach to the cross-border supply of services, recognising that the growth of Internet-based trade in services is a modern phenomenon that would be difficult to stop. Provided consumers are aware of the risks of trading electronically, there is no reason to limit this trade into Tajikistan, except to protect public security, public morals, etc. Tajikistan has scheduled a few limitations in this mode of supply, covering architectural services, technical testing and analysis services, audiovisual projection and entertainment services, insurance services (except marine, aviation and space launch insurance services), certain banking services and road freight and pipeline transport services.
- **Mode 2:** In this mode, relevant restrictions would be those imposed on Tajikistan citizens preventing them from consuming foreign services abroad. The only such limitations are in the area of accountancy (mandatory audits) as well as technical testing and analysis services. A limitation on settlement and clearing services for financial assets such as securities, derivatives and other negotiable instruments will be removed after 5 years from the date of WTO accession.
- **Mode 3:** For almost all services, Tajikistan has scheduled a requirement that foreign service suppliers can only establish a commercial presence through the establishment of a Tajikistan legal entity ("juridical person"), i.e. subsidiary or joint venture. The only exceptions are in relation to legal services, where direct branches will be allowed with effect from 10 years after accession, direct branching in financial services (5 years after accession) and removal of this establishment requirement for construction services. The horizontal part of the Schedule makes clear that foreign representative offices are not allowed in Tajikistan, nor is the acquisition of non-commercial organisations. Some limitations on foreign capital participation have been scheduled in relation to road transport services (51%, to be eliminated 5 years after accession) and architectural services (49%, elimination after 3 years). Some local employment requirements have been scheduled for auditing services, construction services, retailing services and transport services.
- **Mode 4:** Tajikistan has followed similar commitments to many other WTO Members by scheduling conditional commitments covering the temporary movement of intra-corporate transferees (i.e. employees of firms that are executives, managers or specialists) and business visitors (see below). These are horizontal commitments that apply across all sectors where specific commitments have been taken.

Category	Definition	Entry and stay
Intra-corporate transferees	Employees of firms that provide services within Tajikistan through a branch or subsidiary, or affiliate established in Tajikistan (executives, managers, specialists or graduate trainees):	Employed by it or employed by their firm outside of Tajikistan or have been a partner in it (or as a majority shareholder) for at least a year immediately preceding the date of admission.
Executives	Persons within an organisation who primarily direct the management of the organisation, establish the goals and policies of the organisation, exercise wide latitude in decision making, and receive only general supervision or direction from higher level executives, the board of directors or stockholders of the business.	Entry and stay is limited to a 3 year period (which may be extended).

Managers	Persons within an organisation, who primarily direct the organisation or a department or sub-division of the organisation; supervise and control the work of other supervisory, professional or managerial employees; and have the authority to hire and fire.	Entry and stay is limited to a 3 year period (which may be extended).
Specialists	Persons within an organisation, who possess knowledge at an advance level from expertise and who possess proprietary knowledge of the organisation's services, research equipment, techniques or management.	Entry and stay is limited to a 3 year period (which may be extended).
Graduate trainees	Persons within an organisation who possess a university degree and are temporarily transferred to an establishment of the juridical person in the territory of Tajikistan, for career development purposes or to obtain training in business techniques or methods.	Entry and stay is limited to a 1 year period.

Business visitors	<p>a) Persons not based in the territory of Tajikistan, receiving no remuneration from a source located within Tajikistan, who are engaged in activities related to representing a service supplier for the purpose of negotiating for the sale of services where:</p> <ul style="list-style-type: none"> <li>i. such sales are not directly made to the general public and</li> <li>ii. the salesperson is not engaged in supplying the services; and</li> </ul> <p>b) Persons who have been employed by an entity described in (a), receiving remuneration from that source, who occupies a managerial or executive position with that entity and is entering the territory of Tajikistan for the purpose of establishing an entity described in Section A.</p> <p>Permitted activities include the supply of after sale and after lease services.</p>	Entry and stay is limited to 90 days.
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### *Horizontal commitments (except Mode 4)*

Tajikistan has also scheduled the following horizontal commitments that apply to scheduled services:

- **Subsidies and other forms of State support:** These are reserved for citizens and juridical persons of Tajikistan.
- **Land ownership:** The Schedule lists the restrictions on land ownership by foreigners land for lifelong inherited (not allowed), perpetual (only in a joint venture with a Tajik national), or term use (maximum 50 years, but may be extended).
- **Participation in privatised companies:** The Schedule lists a number of activities that are exempt from privatisation under Decision No. 705 of 30 December 2009.

### *Sector specific commitments*

The following is a summary of the commitments taken by Tajikistan in each of the main sectors. For full details, it is necessary to consult the Schedule of Specific Commitments. The broad limitation relating to the legal form of foreign commercial presence (Mode 3) referred to above applies in all cases except where otherwise noted.

#### **1. Business services**

<b>Sub-sector</b>	<b>Services covered</b>	<b>Comments</b>
Professional services	Legal, accounting, taxation, architectural, urban planning and landscaping, engineering, medical and dental services	<ul style="list-style-type: none"><li>• Foreign <b>legal</b> service suppliers are limited to advisory services on foreign law and international law</li><li>• Mandatory <b>audits</b> are unbound; no less than 75% of the staff of an auditing company must be Tajik citizens; persons engaged in auditing cannot provide any other service</li><li>• Cross-border <b>architectural and urban planning</b> services must be provided jointly with a Tajik architect or architectural company; foreign capital participation limited to 49% (to be eliminated after 3 years)</li></ul>
Computer and related services	All sub-sectors	<ul style="list-style-type: none"><li>• Full commitments made</li></ul>
Research and development services	R&D on natural sciences and engineering, social sciences and humanities, and interdisciplinary R&D services	<ul style="list-style-type: none"><li>• Full commitments made</li></ul>
Rental/leasing services	Relating to ships, aircraft, other transport equipment, machinery, studio equipment and video tape rental	<ul style="list-style-type: none"><li>• Full commitments made</li></ul>

Other business services	Advertising, market research, management consulting, sporting hunting, provision of fishing equipment and repair, mining, technical testing and analysis, scientific and technical consulting, maintenance and repair of equipment (other than jewellery and transport), packaging, convention, translation and interpretation and printing and publishing services	<ul style="list-style-type: none"> <li>• Commitments in <b>mining</b> limited to consultancy services</li> <li>• Broad commitments, with limitations in <b>technical testing and analysis</b></li> </ul>
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## 2. Communications services

Sub-sector	Services covered	Comments
Courier services	Handling of addressed parcel and packages, addressed press products, express delivery services	<ul style="list-style-type: none"> <li>• Full commitments made</li> </ul>
Basic tele-communication services	All sub-sectors	<ul style="list-style-type: none"> <li>• Full commitments made</li> <li>• Reference Paper on pro-competitive regulatory principles committed</li> </ul>
Value-added tele-communication services	All sub-sectors	<ul style="list-style-type: none"> <li>• Full commitments made</li> </ul>
Audiovisual services	Motion picture and video-tape production and distribution, cinema projection, sale of TV and radio programmes to TV and radio stations	<ul style="list-style-type: none"> <li>• Excludes <b>broadcasting</b></li> <li>• Excludes government endorsed film festivals</li> <li>• Unbound with respect to state subsidies for <b>audiovisual services</b>; restrictions on content for certain segments of the population</li> </ul>

Commitments do not cover **postal services**, which are reserved to the State. As regards **basic telecommunications**, the adoption of the Reference Paper commits Tajikistan to:

- Make any criteria for licences publicly available;
- Maintain appropriate measures so that any major supplier which is in a position to affect participation by others in a market for a particular service will:
  - Make available technical information about access to essential facilities that are necessary for the provision of services;
  - Provide interconnection at any technically feasible point;
  - Provide interconnection on non-discriminatory terms, conditions and rates;
  - Make publicly available its procedures for connection;
  - Be prevented from engaging in anti-competitive practices;
- Provide a mechanism for a foreign supplier to bring a dispute to an independent domestic body about terms, conditions and rates for interconnection.

### 3. Construction services

Sub-sector	Services covered	Comments
Construction and related engineering services	Construction of buildings, civil engineering, installation and assembly, building completion and finishing and other services	<ul style="list-style-type: none"> <li>• Legal form limitation to be removed after 5 years</li> <li>• No less than 80% of the workforce must be Tajik citizens</li> </ul>

The commitments in this sector will help encourage development through construction while protecting employment for the Tajik labour force.

### 4. Distribution services

Sub-sector	Services covered	Comments
Distribution services	Commission agents, wholesale trade, retail trade, and franchising services	<ul style="list-style-type: none"> <li>• In <b>retailing</b>, foreign suppliers can only establish outlets with a commercial surface of 6,000 m<sup>2</sup>; no less than 70% of the workforce must be Tajik citizens</li> </ul>

The retail sector is particularly sensitive for Tajikistan. The commitments allow Tajikistan to restrict new entrants to establishing large retail stores and are intended to protect small Tajik retail outlets.

### 5. Educational services

Sub-sector	Services covered	Comments
Privately funded educational services	Primary, secondary, higher adult and other education services	<ul style="list-style-type: none"> <li>• Full commitments made</li> </ul>

### 6. Environmental services

Sub-sector	Services covered	Comments
Environmental services	Sewage, refuse disposal, sanitation, cleaning of gases, noise and vibration abatement, environmental risk analysis services	<ul style="list-style-type: none"> <li>• Public services unbound, except that where exclusive rights are awarded through a competitive tender, foreign suppliers may apply</li> </ul>

### 7. Financial services

Sub-sector	Services covered	Comments
Insurance services	Life, non-life, reinsurance, intermediation, brokerage and agency, consultancy, actuarial, risk assessment and claims settlement services	<ul style="list-style-type: none"> <li>• Mode 1 unbound except for marine, aviation and transport services</li> <li>• Foreign direct branching to be allowed after 5 years</li> <li>• Restrictions on authorisation, capital assets, composition of the Board</li> </ul>

		<ul style="list-style-type: none"> <li>• Reinsurance through the Tajik reinsurance company (eliminated after 5 years)</li> <li>• Qualification certificate and employment contract required for actuarial services</li> </ul>
Banking and other financial services	Deposit, lending, payment and money transmission, guarantees and commitments, trading on own account, participation in securities, money broking, asset or portfolio management, settlement and clearance for financial assets, financial information and advisory, intermediation and other auxiliary services	<ul style="list-style-type: none"> <li>• Limitations on services that will be allowed via Mode 1</li> <li>• Mode 2 limitation on <b>settlement and clearance services</b> to be eliminated after 5 years</li> <li>• Restrictions on legal form for banks, asset and business volume requirements</li> <li>• Foreign direct branching to be allowed after 5 years</li> </ul>

Financial services represented over 10% of Tajikistan's imports in 2008-2009, but fell back to 7.44% in 2010, according to the World Bank (World Development Indicators, 2012). As Tajikistan seeks economic growth through tourism, it is essential that this is accompanied by modernisation of the financial services system.

## 8. Health and related services

Sub-sector	Services covered	Comments
Hospital services	Hospital services	<ul style="list-style-type: none"> <li>• Limitation on the number of foreigners who may be directors of a hospital (one third)</li> <li>• More than one third of directors should be medical practitioners</li> </ul>

## 9. Recreational, cultural and sporting services

Sub-sector	Services covered	Comments
Entertainment services	Cinema theatre operation services	<ul style="list-style-type: none"> <li>• Unbound in Mode 1</li> <li>• Unbound in Mode 2 with regard to national treatment</li> <li>• Unbound regarding subsidies and other forms of state support</li> </ul>
News agency services	News agency services	<ul style="list-style-type: none"> <li>• Founders of mass media agencies must be Tajik citizens</li> <li>• Unbound regarding subsidies and other forms of state support</li> </ul>

## 10. Tourism services

Sub-sector	Services covered	Comments
Hotels and restaurants services	Includes catering services	<ul style="list-style-type: none"> <li>• Full commitments made</li> </ul>
Travel agencies and tour operators	Travel agencies and tour operators	<ul style="list-style-type: none"> <li>• Full commitments made</li> </ul>
Tourism guide services	Tourism guide services	<ul style="list-style-type: none"> <li>• Broad commitments made</li> <li>• Guide-interpreter services must be provided by Tajik citizens</li> </ul>

## 11. Transport services

Sub-sector	Services covered	Comments
Air transport services	Maintenance and repair of aircraft, selling and marketing, computer reservation system services	<ul style="list-style-type: none"> <li>• Full commitments made</li> </ul>
Rail transport services	Maintenance and repair of rail transport equipment	<ul style="list-style-type: none"> <li>• Full commitments made</li> </ul>
Road transport services	Freight transport, maintenance and repair of road transport equipment, support services for road transport (bus station, parking, etc)	<ul style="list-style-type: none"> <li>• Unbound in Mode 1 for <b>freight transportation</b></li> <li>• Vehicles engaged in transportation must be registered in Tajikistan, except for companies providing <b>express delivery</b> services</li> <li>• Drivers engaged in delivery between points located within Tajikistan must be Tajik citizens</li> <li>• Foreign participation in <b>support services for road transport</b> is limited to 51% (eliminated after 5 years)</li> <li>• No less than 80% of the workforce must be Tajik citizens</li> </ul>
Pipeline transport services	Transportation of fuels	<ul style="list-style-type: none"> <li>• Unbound in Mode 1</li> </ul>
Auxiliary transport services	Cargo-handling, storage and warehousing, freight transport agency services	<ul style="list-style-type: none"> <li>• No less than 70% of the workforce must be Tajik citizens</li> </ul>

### *MFN exemptions*

Finally on trade in services, Tajikistan has taken the following exemptions from the MFN principle:

- **Economic integration:** Tajikistan has exempted from MFN a number of economic integration agreements, notably: the CIS Free Trade Zone, the Customs Union, United Economic Space, Euro-Asian Economic Community and the UEU Charter. Although GATS Article V could exempt these agreements if

they meet the conditions set out in the article (notably, “substantial sectoral coverage”, “elimination of substantially all discrimination”), Tajikistan has listed these exemptions in any case.

- **Audiovisual services:** Tajikistan has listed measures relating to broadcasting, coproduction agreements and support programmes for audiovisual works in order to give space to bilateral cultural development with any other country with whom cultural cooperation may be desirable. These arrangements are typically bilateral or plurilateral in nature.
- **Investment promotion:** This MFN exemption allows Tajikistan to maintain preferential arrangements for the promotion of investment and trade in services under bilateral investment promotion and protection agreements.

### 3.6 *Construction services*

- **General**

As the WTO notes<sup>88</sup>, the construction sector has a major impact on virtually every aspect of daily life. It provides the facilities needed for the production and consumption of almost all goods and services, from mining and power generation, to manufacturing and services facilities, and to general housing. The sector provides both the buildings and the infrastructure that links them together. Construction is closely related to the process of industrialisation and urbanisation. There is therefore a strong link between construction, economic growth and economic development. The output of the construction sector is a response to the demand for new investment and, as such, is a major determinant of growth and economic development.

As a supplier of physical infrastructures, the sector has links to many different markets and activities: for example, mining, petroleum and petrochemicals, power generation including renewable energy, manufacturing, water and utility distributions systems, sewerage and waste, transportation, telecommunications, and public health. Some of these key sectors have traditionally been subject to substantive government involvement and intervention.

As reflected in many national stimulus packages implemented during economic downturns, governments often consider construction spending, in particular on public works (infrastructure construction programmes), as a strategic economic stimulant. Furthermore, public infrastructure – notably transportation infrastructure such as highways, airports, bridges and other facilities that often are the focus of public spending programs – are critical to attracting investment generally and, eventually, to ensuring the competitiveness of user industries.

The Government of Tajikistan has stated<sup>89</sup> that it is attracting essential investments in road construction, development of the energy sector and mining industry, with significant attention being paid to civil construction, services and trade. It is expected that foreign investments will lead to economic growth in the major sectors of economy, enabling diversification of Tajikistan’s export potential, which at present heavily depends on aluminum and cotton industries.

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<sup>88</sup> WTO Background Paper, Construction Services, 2009.

<sup>89</sup> Tajikistan: Investment Opportunities, Government of Tajikistan, December 2010.

In recent months the Government of Tajikistan has signalled its desire to move ahead with a number of important infrastructure projects. During his visit to China in September, President Rahman discussed acceleration of the construction of Line D of the China-Central Asia gas pipeline, as well as other possible areas of cooperation with China in such fields as mineral resources exploitation, agriculture and transport infrastructure. Construction of another gas pipeline from the Sheberghan gas field in Afghanistan to Tajikistan was the subject of a meeting between Tajik Minister of Energy and Industry Sherali Gul and a high-level government delegation headed by Afghan Minister of Finance Hazrat Omar Zakhilwal (as reported by Downstream Today, 16 August 2013). Earlier, in June, President Rahman attended a ceremony in Turkmenistan to mark the official launch of the construction of the Turkmenistan-Afghanistan-Tajikistan railway.

- **Housing**

The United Nations Economic Commission for Europe (UNECE) notes<sup>90</sup> that the availability of housing has been one of Tajikistan's key challenges. The issues facing the country are a rapidly growing population, but limited land resources due to the mountainous landscape, high seismicity and soils prone to landslides. Reform of the housing sector started in 2009 following a Presidential Decree on improvement of the administrative procedures related to construction. A new Urban Code was adopted in 2012; and procedures have been streamlined for administrative tasks associated with construction. The Government also issued a decree on energy efficiency in housing and communal services. As a result of these reforms, housing construction doubled after 2009, with almost 100 thousand square metres of new construction each year. The main challenges now for the Government are to put in place effective management of multi-apartment houses, establish working mechanisms for the housing financing, ensure an effective investment policy, create conditions for supporting homeowners, and fund the rehabilitation of the water supply and sewerage system.

- **Policy issues**

In 2010 the Association of Builders of Tajikistan identified the most pressing issues for the sector as including the conduct of the tenders, licensing, pricing and inspections of the construction businesses. To consider these issues the Consultative Council ordered the Agency for Construction and Architecture of the Republic of Tajikistan to study the problems of the construction sector and prepare recommendations for their resolution. A working group, comprising relevant ministries, agencies, scientific and research institutes, the Secretariat of the Consultative Council, private sector and international organizations, concluded that these problems hindered the development of the construction sector – which is the engine of the economy – and should be resolved through improvements of the existing legislation and implementation of the current laws. Problems existed with regard to the application of standards and requirements which were not consistent with the principles of a modern market economy, especially in the area of tendering procedures.

In other areas the Association of Builders of Tajikistan has formed a forum of the builders of Tajikistan to establish an open dialogue between private sector and public institutions with the view to study the existing problems and agree to eliminate them for the achievement of mutually beneficial cooperation. Its main aim is to create an investment climate for the normal and transparent development of the sector, including the creation of employment and improvements in general living standards.

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<sup>90</sup> UNECE, Country Profile on the Housing Sector, Tajikistan, 2012.

- **Government procurement / tenders**

Public procurement is highly relevant to the construction sector and in Tajikistan is regulated by the Law of the Republic of Tajikistan on Public Procurement of Goods, Works and Services, adopted in March 2006. The Tajik legal framework was originally based on the 1994 UNCITRAL Model Law on Public Procurement.

According to a survey by the European Bank for Reconstruction and Development<sup>91</sup>, the Tajik public procurement law compares less favourably on compliance with international standards than other countries in the region, for example in areas such as regulation of public procurement processes. While the law provides for open tender as the primary procurement procedure and establishes rules for tender solicitation and evaluation, public procurement planning and contract management are not regulated. As preferential treatment of domestic tenderers is allowed, the public procurement sector in Tajikistan is generally closed to international trade. There are also no independent regulatory and review institutions. The EBRD has recommended a general overhaul of the legislative framework.

- **Construction permits**

Since independence, Tajikistan's procedures for obtaining construction permits have been very long, bureaucratic and not as transparent as they should be compared with other former Soviet republics. In order to improve the administrative procedures in the construction sector, the Government initiated a reform process in 2009. The significant improvements can be seen in Table X, and in 2010 Tajikistan was ranked as one of the world's top ten reformers, according to the World Bank *Doing Business* report, following involvement by the Association of Builders of Tajikistan. Despite this, however, the country still has 24 procedures to be followed and the average time to obtain a permit is 228 days.

**Table X: Reform of construction permit procedures in Tajikistan**

Year	Procedures (number)	Time (days)	Cost (% of income per capita)
2013	24	228	638.5
2012	26	228	849.9
2011	30	228	996.1
2010	32	250	1022.9
2009	32	351	1420.7
2008	32	191	1991.9

**Source:** World Bank, *Doing Business Reports 2008-2013*. See also Annex which explains the 24 procedures referred to for 2013.

- **WTO issues**

None of these are WTO issues *per se*, since with the possible exception of government procurement (which is anyway excluded from GATS commitments on services) none of these requirements appear to be discriminatory, and hence would not need to be scheduled as market access or national treatment limitations. Accordingly, it suits both the Government's policy to attract investment in the construction sector and improve

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<sup>91</sup> Commercial laws of Tajikistan, April 2012, an assessment by the EBRD



infrastructure development in Tajikistan to encourage the participation of foreign construction companies in building up the Tajikistan market. The main concern of the Government, which has been reflected in Tajikistan's services commitments, has been to ensure that the majority (80%) of the labour force used by foreign companies are Tajikistan citizens. This requirement relates to the general workforce but excludes executives, managers and specialists (as defined elsewhere in these guidelines) that a foreign construction company may wish to bring to Tajikistan on a temporary basis.

In the area of relevant professional services, the most important sectors are architectural, urban planning, engineering and integrated engineering services. Tajikistan's commitments encourage the use of foreign architectural and engineering companies and there are no discriminatory qualifications requirements.

### Procedures for Dealing with Construction Permits in Tajikistan

NO.	PROCEDURE	TIME TO COMPLETE	ASSOCIATED COSTS
1	<p>Request and obtain project design permit</p> <p>BuildCo must write a letter to Chukumat (Municipality) of Dushanbe city explaining that it would like to receive the land for construction of a warehouse. The request is passed on to a special committee which will review the request for allocation of land to BuildCo for the purpose. At the same time the request is forwarded to the Department of Architecture and Construction of Dushanbe City which prepares Decision on the Project (literal translation from Russian "reshenie po proektu"), or "Project design permit."</p> <p>The Department of Architecture and Construction of Dushanbe City sends its Decision on the Project back to Chukumat. At this point, BuildCo will need to coordinate/receive approvals from a number of agencies, for example, electricity company, water company, fire safety, i.e. all the organizations which will be approving your project at later stages.</p> <p><i>Agency: Local Authority-Hukumat of Dushanbe</i></p>	30 days	no charge
2	<p>Request and obtain Architecture Planning Assignment</p> <p>According to rules construction companies should get the Assignment at this stage. A site visit might be required to prepare the Assignment. However, in most of the cases no representative of a construction company has to be present during the site visit.</p> <p>Documents which have to be submitted to get the Assignment are:</p> <ul style="list-style-type: none"> <li>• The Act on the Selection of the Land Plot and the Decision on the Project</li> <li>• Sale and purchase agreement</li> <li>• Assignment for the project put together by a project design firm hired by the client and the client himself</li> </ul>	3 days	TJS 3,500

	<p>There are no official charges at the moment, some payments are made but there is no official mechanism. The official who issues Assignments said that the rule of thumb is 10% -- 13% of the project design cost (in our case about TJS 2,000.00 - - TJS 5,000.00 for the project design).</p> <p><i>Agency: Barqi Tajik</i></p>		
* 3	<p>Request and obtain technical conditions for water connection from the Water and Sewage Agency</p> <p>While the Assignment is being prepared technical conditions for water connection have to be obtained. Water services are requested in writing by filling out the application form.</p> <p><i>Agency: Dushanbe Water and Sewerage Company</i></p>	1 day	no charge
4	<p>Request and obtain fire safety project clearance from state anti-fire agency under the Ministry of Domestic Affairs</p> <p>The approval is granted with technical requirements to be complied with. Although official tariffs have been adopted and collected, they are not published, disclosed in full to applicants, or registered with the Ministry of Justice as required by law.</p> <p>The applicable legislation is Article 9 of the Law on Fire Safety, No. 995 (dated July 21, 1994) and Section 4.8 of the Regulation on State Fire Control, No. 726 (dated December 7, 1995). This Law was abrogated by a new Law №363 "On fire Safety" as of 20 March 2009.</p> <p><i>Agency: State Anti-Fire Agency (Ministry of Domestic Affairs)</i></p>	7 days	TJS 150
* 5	<p>Request and obtain environmental project clearance from the Environmental Protection Agency (Environmental Protection Ministry)</p> <p>BuildCo must obtain a permit for air pollutant emissions and waste disposal after environmental clearance has been obtained. Although official tariffs have been adopted and collected, they are not published, disclosed in full to applicants, or registered with the Ministry of Justice as required by law.</p> <p>The statutory time limit is now 45 days. The applicable legislation is Articles 17, 19, 30, and 31 of the Law on Ecological Expertise, No. 20 (dated April 22, 2003).</p> <p><i>Agency: Environmental Protection Agency (Environmental Protection Ministry)</i></p>	45 days	TJS 200
* 6	<p>Request and obtain Sanitary Hygienic Service project clearance from State Sanitary Hygienic Service under the Ministry of Health</p> <p>Although official tariffs have been adopted and collected, they are not published, disclosed in full to</p>	10 days	TJS 150

	<p>applicants, or registered with the Ministry of Justice as required by law.</p> <p>The applicable legislation is Articles 9, 13, 25, and 26 of the Regulation of the Government on the Order of Registration, Drawing and Issuing of Sanitary Hygienic Conclusion, No. 139 (dated March 31, 2004).</p> <p><i>Agency:</i> State Sanitary Hygienic Service (Ministry of Health)</p>		
* 7	<p>Request and obtain project clearance from the Water and Sewerage Agency Unitary Enterprise, "Water and Sewerage Agency", of Dushanbe</p> <p>The applicable legislation is the Code of Norms and Rules of the Republic of Tajikistan (dated November 11, 2005), Structure and the Order of Development, Concordance and Approval of Project Estimates on Construction of Buildings, registered in the Ministry of Justice, No. 199 (dated April 25, 2006); Water Code of the Republic of Tajikistan No. 34 (dated November 29, 2000).</p> <p><i>Agency:</i> Water and Sewerage Agency</p>	10 days	TJS 100
8	<p>Request and obtain approval of project design drawings by the State Department Expertise of Construction Projects</p> <p>Approval is granted in the form of a Consolidated Expert Approval of the Project.</p> <p>The tariffs have been approved by the State Committee on Construction and Architecture under the Government in June 14, 2007 under which payment for the expertise is calculated based on the design estimate. In our case, it is calculated as 10.8% of the value of design project. We can assume that the design project cost is 10% of the value of the warehouse, thus the total would be TJS 22,890.00.</p> <p>The applicable legislation is the Code of Norms and Rules of the Republic of Tajikistan, Structure and the Order of Development, Concordance and Approval of Project Estimates on Construction of Buildings, registered in the Ministry of Justice, No. 199 (dated April 25, 2006); Valuation of Works on Holding State Expertise of Design Estimates, on Major and Current Repairs of Objects Irrespective the Sources of Finance and Forms of Enterprise Property, approved by the Chairman of the Committee on Architecture and Construction under the Government (dated September 20, 2002).</p> <p>Government Resolution #282 on May 6, 2009 changed statutory time to 20 working days for constructions over 1,000 cubic meters. However, in practice it takes more than stipulated time.</p> <p>The agency involved is the Construction and Architecture Department of the State Committee on</p>	30 days	TJS 22,474

	<p>Construction and Architecture.</p> <p><i>Agency:</i> Department of Architecture and Construction of Dushanbe City</p>		
9	<p>Request and obtain final project clearance from the Construction and Architecture Department (State Inspection Department over Construction and Architecture)</p> <p>On June 14, 2007 a new normative legal act "Prices for State Expertise and Project Design Estimates" was approved upon which 0.15% is reduced to 0.11%. Previously, the 0.15% of the design project value was not registered within the Ministry of Justice and therefore was not applied legally. The rate of 0.11% is applied on the design project value. The design project value in our case is 10% of overall construction cost TJS 208,096.00. The Construction and Architecture Department of the State Committee on Construction and Architecture, after considering all the clearances from the above agencies, issues a permit for the start of construction work.</p> <p>The applicable legislation is the Regulation of the Government of Republic of Tajikistan, Provision on Agencies Involved in State Construction Inspection, No. 553 (dated December 25, 1997); Articles 1.1, 2.6, 2.7, and 2.9 of the Regulation of the Chairman of Dushanbe City, On Applying a Simple Mechanism of Receiving and Reviewing of Applications Submitted by Legal Entities and Physical Persons with Regard to Construction, Architecture, and Land Allocation.</p> <p><i>Agency:</i> Construction and Architecture Department under State Committee on Construction and Architecture</p>	20 days	TJS 229
10	<p>Receive a periodic inspection from the Sanitary Hygienic Service</p> <p>Periodic inspections occur during construction at the discretion of the authority and without prior notice. BuildCo does not request these inspections.</p> <p>The applicable legislation is Regulation of the Government of Republic of Tajikistan on Approving the Order of Registration, Drawing and Issuing of Sanitary Hygienic Conclusion, No. 139 (dated March 31, 2004); Provision on State Sanitary Hygienic Services of Republic of Tajikistan, Regulation of the Government of Republic of Tajikistan, Provision on Agencies Involved in State Construction Inspection, No. 553 (dated December 25, 1997).</p> <p><i>Agency:</i> Sanitary Hygienic Service</p>	1 day	no charge
11	<p>Receive a periodic inspection from the Fire Safety Agency</p> <p>Periodic inspections occur during construction at the discretion of the authority and without prior notice. BuildCo does not request these inspections.</p>	1 day	no charge

	<p>The applicable legislation is the Law on Fire Safety, No. 995 (dated July 21, 1994), Regulation on State Fire Control, dated December 1, 1995; Regulation of the Government of RT, Provision on Agencies Involved in State Construction Inspection, No. 553, dated December 25, 1997.</p> <p><i>Agency: Fire Safety Agency</i></p>		
* 12	<p>Receive inspection from water services</p> <p>Periodic inspections may occur several times at the discretion of inspecting bodies. There is no legal fee, though there is a penalty for violations.</p> <p><i>Agency: Barqi Tajik</i></p>	1 day	no charge
* 13	<p>Connect to water</p> <p>The applicable legislation is Code of Norms and Rules of the Republic of Tajikistan, Structure and the Order of Development, Concordance and Approval of Project Documents with Regard to Construction of Buildings and Erections, No. 199 (dated April 25, 2006); Water Code of the Republic of Tajikistan No. 34 (dated November 29, 2000).</p> <p><i>Agency: Dushanbe Water and Sewerage Company</i></p>	29 days	no charge
14	<p>Receive a periodic inspection from the Ministry of Environmental Protection</p> <p>Periodic inspections occur during construction at the discretion of the authority and without prior notice. BuildCo does not request these inspections.</p> <p><i>Agency: Ministry of Environmental Protection</i></p>	1 day	no charge
15	<p>Receive a periodic Inspection from the State Architecture Inspection - Dushanbe city</p> <p>The applicable legislation is the Regulation of the Chairman of Dushanbe City on Applying a Simple Mechanism of Receiving and Reviewing of Applications Submitted by Legal Entities and Physical Persons with Regard to Construction, Architecture, and Land Allocation.</p> <p>Law no 194, as of June 28, 2006 "On Inspections of Business Entities in Republic of Tajikistan" was amended through List of Inspection Authorities, approved by Resolution (№38/on) as of 23 May 2008 and registered in Ministry of Justice №426.</p> <p>According to these changes in case if inspection is conducted by one controlling entity (district, city, province or national level) then the other entities of the same controlling authority are not allowed to inspect the same business within next two years.</p> <p><i>Agency: State Architecture Inspection Dushanbe city</i></p>	1 day	no charge
16	<p>Receive a periodic inspection from the Labor Authority</p> <p>There is no legal basis for the inspection by this agency, but it occurs in practice.</p> <p><i>Agency: Prosecutor's Office</i></p>	1 day	no charge

17	<p>Receive a periodic inspection from the Ministry of Transportation and Communications / State Body on Automobile Activity Management</p> <p>The applicable legislation is the Law on Motor Road and Road Activity (dated May 10, 2002); Regulation of the Government on Approving the Rules of Usage of Wayside of Automobile Roads of the Republic of Tajikistan, No. 214 (dated May 2, 2005).</p> <p><i>Agency:</i> Ministry of Transportation and Communications</p>	1 day	no charge
18	<p>Request and receive a decision by Review Commission</p> <p>The Review Commission includes representatives from the customer (BuildCo), general contractors and subcontractors, the general designer, the City Land Committee's senior architect, the Fire and Sanitary Station, the electric power agency, the Environment Ministry, the rayon Khukumat (district authority) the water agency, and other interested state agencies.</p> <p>The applicable legislation is the Regulation of Construction and Architecture Committee under the Government of the Republic of Tajikistan on Approving Code of Rules and Norms of the Republic of Tajikistan (dated January 3, 2001); Accepted to Put into Operation of Objects, Basic Provisions, No. 1 (dated January 4, 2002).</p> <p><i>Agency:</i> Review Commission</p>	15 days	no charge
19	<p>Request State Acceptance Commission decision</p> <p>A request is made through the local authority.</p> <p><i>Agency:</i> State Acceptance Commission</p>	1 day	no charge
20	<p>Receive inspection by the State Acceptance Commission</p> <p><i>Agency:</i> State Acceptance Commission</p>	1 day	no charge
21	<p>Obtain decision of the State Acceptance Commission/ final decision of the Mayor</p> <p>The Chairman of the State Acceptance Commission acts as the representative of the city. The decision of the mayor is made based on the commission's decision. The State Acceptance Commission includes representatives from the city, the rayon, the customer (the builder), general contractors and subcontractors, the general designer, the senior architect of the city, the Fire and Sanitary Station, the electric power agency, the Environment Ministry, the water agency, and other interested state agencies.</p> <p>The applicable legislation is the Regulation of the Committee on Architecture and Construction under the Government of the Government of the Republic of Tajikistan on Approving Code of Norms and Rules (dated January 3, 2004); Accepted to Put into Operation of Objects, Basic Provisions No. 1 (dated</p>	30 days	no charge

	<p>January 4, 2002); and Articles 1.1., 2.6., 2.7., and 2.9 of the Regulation of the Chairman of Dushanbe City on Applying of a Simple Mechanism of Receiving and Reviewing of Applications Submitted by Legal Entities and Physical Persons with Regard to Construction, Architecture and Land Allocation, No. 264 (dated June 12, 2006).</p> <p>The Law No: 380 “On Architecture, Urban Construction and Construction Activities” as of March 2008, introduced two time frames for obtaining final decision of the State acceptance Commission. Depending on the type of the construction it should take: 30 days for objects with commercial purposes, and 10 days for residential purposes.</p> <p><i>Agency: State Acceptance Commission</i></p>		
* 22	<p>Receive inspection from the Department of Project Adjustment and Technical Inspection of Dushanbe Telephone Service (station) of the open joint stock company Tajiktelecom and connect to telephone line</p> <p>Activation of telephone service can occur during construction but often occurs after construction. Unlike other utility connections, the connection procedure is separate from the inspection during construction.</p> <p><i>Agency: Tajiktelecom</i></p>	5 days	no charge
23	<p>Obtain approval of the Bureau on Technical Inventory (BTI) on acceptance of building and issuance of technical passport</p> <p>The pricelist for the technical passport is approved by the Ministry of Economic Development and Trade of the Republic of Tajikistan on the November 12, 1999, N3/1-382 and approved by the State Company “TajikUtilityServices on the 26th of November 1999, N262/4 and implemented on the January 1, 2000. The price list is indexed to the inflation rate. According to the price list the calculation is done according to the surface area and number of rooms and additional work completed based on worker hours.</p> <p><i>Agency: Bureau on Technical Inventory (BTI)</i></p>	15 days	TJS 312
24	<p>Registration of the right to the building</p> <p>Registration of constructions is completed by the Bureau of Technical Inventory. Required documents for submission: Act on the Allocation of Land for the construction and the Construction Acceptance Act.</p> <p>According to the law after registration at the Bureau of Technical Inventory a notary gives a certificate certifying the right to property. This certificate is issued for immovable property newly constructed. The following documents are required to submit to the notary: Land Allocation Permit for Construction, Decision of the local authorities on the acceptance of</p>	1 day	TJS 24

	the constructed object as finished, Acceptance Act, Note of registration at the Bureau of Technical Inventory. The cost of the certificate is 2 calculation indices (35). <i>Agency: Bureau on Technical Inventory (BTI)</i>		
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\* Takes place simultaneously with another procedure.

Source: World Bank, *Doing Business Report 2013*

## 4. Rights and remedies under the WTO system

### 4.1 Introduction

As highlighted above, the WTO framework provides for a number of *fora* where Members can engage in a variety of actions to enforce their rights. As a WTO Member, Tajikistan enjoys full access to these mechanisms. The sections below address, on the one hand, multilateral remedies, including participation in the WTO technical committees, recourse to WTO dispute settlement, the trade policy review mechanism, and trade negotiations; and on the other hand, unilateral remedies.

### 4.2 Multilateral remedies

#### 4.2.1 Raising concerns at the WTO technical committees

The institutional organisation of the WTO provides for a number of technical committees that oversee the implementation of the various agreements concerning trade in goods, trade in services, and trade-related aspects of intellectual property rights. Tajikistan has recourse to these committees, inasmuch as they provide WTO Members with an opportunity to consult on issues related to the fulfilment of their commitments under the various WTO Agreements.

Members make notifications to the committees concerning measures adopted under the relevant agreements. *Inter alia*, Members notify to the Committee on Agriculture<sup>92</sup> their export restrictions and export subsidies; while mandatory technical regulations, standards and conformity assessment procedures are notified to the Committee on Technical Barriers to Trade<sup>93</sup> and any such measures concerning food safety and animal and plant health are notified to the Committee on Sanitary and Phytosanitary Measures.<sup>94</sup>

The possibility of raising concerns on other WTO Members' measures within the technical committees is one of the key advantages of the WTO membership. As a form of exercising pressure on the Member implementing the measure, the same concern can be raised in subsequent meetings of the committees. Moreover, technical discussions within these *fora* allow the Members raising the issue to gather support from other WTO Members *vis-à-vis* particular trade concerns.

Although only Members (*i.e.*, governments) have access to these committees, concerns raised are normally the result of inputs provided by the domestic exporters, which are affected by the specific measure(s) to be questioned. In this light, Tajikistan's companies need to ensure that the interests and concerns of the industry are heard in capital by the

<sup>92</sup> The procedures for the Committee on Agriculture were set out at its meeting of 28 March 1995.

<sup>93</sup> The procedures for the TBT Committee were set out at its meeting of 22 June 1995.

<sup>94</sup> The procedures for the SPS Committee were set out at its meeting of 4 April 1995.



relevant governmental stakeholders, so that they can be, if necessary, transformed into specific questions or STCs to be raised by Tajikistan's representative at the meetings of the relevant WTO committees in Geneva.

#### 4.2.2 *Enforcing rights through WTO dispute settlement*

WTO Members may resort to the WTO dispute settlement to settle their commercial disputes and seek redress of the alleged violations of their rights under WTO law. Disputes are formally brought by the governments, but are supported by the industry affected by the measure concerned.

WTO disputes start with a pre-adjudicatory phase of so-called "*consultations*", where parties are given the opportunity to discuss the matter and exchange relevant information. If negotiations fail, one of the parties involved, usually the complaining Member, may resort to adjudication by filing a "*request for the establishment of a WTO panel*". The procedure before the panel of experts is structured on the basis of a number of steps, including, *inter alia*, the exchange of written submissions by the parties involved and oral hearings before the panel. The report of the panel may be appealed by the complaining, the responding party, or both, by filing a "*notification of an appeal*" before the WTO Appellate Body. Panel and Appellate Body reports are almost automatically adopted by the entire WTO Membership gathered in the WTO Dispute Settlement Body (hereinafter, DSB), unless the DSB decides, by consensus, not to adopt the report. A WTO dispute may take around 20 months as of the filing of the request for consultations if the panel report is not appealed, and 23.5 months, with the appeal stage.

If Tajikistan lodges a WTO complaint against a measure imposed by a WTO Member, and if the WTO makes a finding in Tajikistan's favour, then the respondent Members need to bring its legislation into compliance and remove the inconsistent measure. If it fails to do so it must offer compensation to Tajikistan or face retaliatory measures by Tajikistan in the form of suspension of concessions or other obligations (e.g., tariff increases above the bound level and/or quantitative restrictions). No right to seek payment or reparation for losses is foreseen by the WTO system. The offer for compensation or the possibility of applying retaliatory measures are the only remedies foreseen by the WTO in case of non-compliance with the ruling. Yet, the system has provided to be effective and compensation and retaliation are seldom resorted to, inasmuch as they imply higher costs (also political) for the Member that is subject to such measures.

The WTO dispute settlement system also gives the possibility to WTO Members to "*join efforts*" in WTO disputes, either as a third party or as co-complainants. There are important differences among these two positions: as a third party Tajikistan will be able to present its views and make arguments *vis-à-vis* the issues at stake; as a co-complainant Tajikistan will gain a right to retaliate if the claims are successful.<sup>95</sup> Tajikistan's participation will depend on the impact that the specific measure has on its business. Where the disputed measure stands to have an adverse impact on Tajikistan's exports, the interests of Tajikistan will be to join as a co-complainant. On the other hand, Tajikistan may be interested in joining as a third party where the dispute may have implications, also of systemic nature, on its policies and trade.

#### 4.2.3 *Trade Policy Review Mechanism*

Tajikistan's and all other WTO Members' trade policies are periodically reviewed under the Trade Policy Review Mechanism (hereinafter, TPRM), which serves to find out to what extent countries are implementing their WTO obligations. The aim of such procedure is not to provide a basis for the enforcement of Members' obligations, nor to trigger WTO dispute

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<sup>95</sup> International Trade Centre, report on Samoa's WTO accession, p. 55.

settlement, although these periodic reviews have often the effect of “*shaming*” countries that maintain measures in discordance with their obligations.<sup>96</sup> In addition, trade policy reviews contribute to greater transparency and provide Members with a deeper understanding of each other’s trade policies in place.<sup>97</sup>

The review is based on a report supplied by the Member whose trade policy is being reviewed and a report elaborated by the WTO Secretariat, taking into account any available data and any information provided by the Member concerned. The reports are discussed by the Trade Policy Review Body (hereinafter, TPRB) and, after the review, both reports of the Member and the Secretariat, as well as the minutes of the discussions within the TPRB, are published.

The frequency of the reviews depends on every WTO Member’s share in world trade. While the EU, the US, Japan and Canada undergo the review every two years, the next sixteen countries face it every four years. The rest of Members, including Tajikistan, undergo review of their policies every six years, while longer intervals are foreseen for least-developed countries.

Review of Tajikistan’s trade policy, especially the first one,<sup>98</sup> is relevant for Tajikistan’s business, inasmuch as it stands to constitute a sort of “*presentation*” of Tajikistan’s compliance with WTO disciplines before the WTO Membership.

On the other hand, reviews conducted on other WTO Members’ trade policies also constitute valuable tools for Tajikistan and its business. A good understanding of the various trade policies in place in Tajikistan’s trading partners may help Tajik businesses understand eventual malfunctions in their international commercial transactions, and hint whether those malfunctions may be due to other Members’ WTO-inconsistent practices. The TPRM also provides another way to find out more about the laws and policies of the other WTO Members, as well as an additional mechanism to question WTO Members’ policies. Therefore, it may constitute a primary basis for future considerations of whether resorting to any of the available WTO *fora* is necessary.

Lastly, it is noted that TPRM reports are available on the WTO website and can be viewed by private businesses. This is particularly advantageous, inasmuch as they provide an extremely useful source of information about the laws and policies put in place by other WTO Members.<sup>99</sup>

#### 4.2.4 Trade negotiations

The first WTO negotiations Tajikistan engaged into were those aimed at the country’s WTO accession. Far from being an automatic process, WTO accession is made on the terms negotiated agreed between the acceding government and the WTO. Indeed, the final “*accession package*”, which includes the WPR and Tajikistan’s “*Schedule of Concessions and Commitments on Goods*” and “*Schedule of Specific Commitments on Services*”, are the results of an arduous negotiating process conducted on the basis of both bilateral and multilateral talks.

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<sup>96</sup> By evidencing incompliance with their WTO obligations, these reviews seek to bolster domestic opposition against practices that may be WTO-inconsistent (P. Van den Bossche, see *supra*).

<sup>97</sup> Plus, it would help Tajikistan identify specific needs, especially in terms of technical assistance (P. Van den Bossche, see *supra*).

<sup>98</sup> Tajikistan is expected to undergo its first trade policy review in 2019.

<sup>99</sup> International Trade Centre, report on Samoa’s WTO accession, p. 56.

The WTO provides for a *forum* of discussions and continuous negotiations for its Members, with the aim of further advancing in the process of trade liberalisation. A number of agreements foresee that negotiations be conducted periodically in order to review and improve their provisions, where necessary. In addition, WTO Members have thus far engaged in 8 rounds of trade negotiations, the ninth (Doha Round) being underway.<sup>100</sup> In fact, the WTO as we know it today is the result of the eighth round of negotiations (the Uruguay Round), held between 1986 and 1995. As of its accession to the WTO, Tajikistan will be able to fully participate in coming negotiating rounds. Although negotiations are restricted to Members' Governments, it will be in the benefit of private entities to secure that their interests are duly represented in the trade talks.

Moreover, through negotiations WTO Members are allowed to individually modify their tariff concessions (e.g., negotiations under Article XXVIII of the GATT). This means that Tajikistan could modify or withdraw its tariff bindings to raise the level of protection by renegotiating with those other WTO Members that stood to be mostly affected by such modifications.<sup>101</sup> In the course of negotiations, Tajikistan would be expected to compensate its trading partners by cutting tariff rates in other products. If Members could not reach an agreement on such compensatory concessions, Tajikistan could still modify or withdraw its concessions but in return, Members with negotiating rights would be allowed withdraw substantially equivalent concessions to those initially negotiated upon Tajikistan's accession.

#### 4.3 Available unilateral remedies

The WTO also provides for Members to unilaterally impose trade remedies when their domestic industries are injured as a result of unfair trade practices engaged into by other WTO Members.

Tajikistan's industrial sector may request the Government to unilaterally adopt anti-dumping or countervailing measures when distorted conditions of competition are injuring a particular sector of the industry. Similarly, the Government may adopt safeguard measures to restrict imports, when its domestic industry is injured by a sharp surge of imported products.

In particular, if a sector in Tajikistan is suffering the negative consequences of dumped or subsidised imports, it can request that an anti-dumping or countervailing investigation be conducted by Tajikistan's competent authority. Investigative proceedings need to be carried out according to a set of rules<sup>102</sup> and in conformity with an established timeframe,<sup>103</sup> as well as grant all interested parties the opportunity to be heard. Anti-dumping or countervailing duties can eventually only be imposed if the investigation concludes that:

- Imports of goods in that sector access Tajikistan's market at dumped prices or benefit from subsidies in the exporting country;
- A sector of Tajikistan's domestic industry is suffering material injury or threat thereof, or material retardation; and

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<sup>100</sup> The Doha Round was launched in 2001, with the aims of achieving a major reform of the international trading system through the introduction of lower trade barriers and revised trade rules.

<sup>101</sup> Article XXVIII of the GATT lays down the procedure for renegotiating tariff concessions and establishes which member countries have negotiating rights, i.e. member countries with which the concession was initially negotiated, and member countries having a principal supplying interest. Moreover, consultations need to be held with member countries having a substantial interest in the concessions.

<sup>102</sup> Article 5 of the Anti-dumping Agreement and Article 11 of the SCM Agreement.

<sup>103</sup> *Id.*

- There is a causal link between the dumping or subsidisation practices and the injury suffered by the industry.

Provisional duties can also be imposed if, at least 60 days after the initiation of the proceedings, the investigating authority preliminarily determines that the three necessary requirements are met, and that the imposition of duties is deemed necessary to prevent further injury to Tajikistan's domestic industry during the course of the investigation.

The precise amount of the definitive anti-dumping or countervailing duties, if imposed, is calculated according to a set of parameters.<sup>104</sup> In principle, such duties are in place for as long as necessary during a maximum period of 5 years, unless a review of the circumstances concludes that the termination of duties after such period would lead to a continuation of the dumping or subsidisation practices, and the subsequent injury for Tajikistan's domestic industry.

Furthermore, Tajikistan may also implement safeguard measures to temporarily restrict imports, when its domestic industry is injured as a consequence of a sharp and unexpected increase of imports. After the necessary prior investigation, Tajikistan could impose tariff raises, quantitative restrictions, or licensing systems for a maximum of 8 years.<sup>105</sup> The substantive requirements warranting the application of safeguard measures are stricter than those that apply *vis-à-vis* antidumping and countervailing duties investigations. In addition, inasmuch as the application of safeguard measures may require compensation to be granted, or possibly retaliation, safeguard measures imply additional costs that Tajikistan's authorities may prefer avoiding.

As reflected in the 2012 WPR, Tajikistan committed to not apply any anti-dumping, countervailing or safeguard measures until it has notified and implemented internal legislation in accordance with WTO rules on trade defence mechanisms.<sup>106</sup>

A good understanding of the available unilateral trade defence mechanisms is essential for Tajik businesses. The imposition of anti-dumping or countervailing measures, although decided on the basis of the competent authority's findings after the investigation, is ultimately triggered by the industry. When alerting the Government that competition in a particular sector of the market is distorted, possibly due to unfair trade practices engaged into by foreign producers or governments, Tajikistan's industry needs to ensure that it speaks with a single voice *vis-à-vis* its Government, and that the broad interests of the entire industry are taken into account when a complaint is filed.

## 5. Conclusions

There are certainly a number of advantages connected to WTO accession that Tajikistan and its industry will stand to benefit from. WTO rules establish a clear and predictable framework for business to operate, and provide for the possibility for such rights to be enforced by WTO Member Governments.

WTO accession should not be expected to deliver immediate market access benefits to Tajikistan's exporters. This is because Tajikistan already enjoyed MFN-based access to the markets of all trading partners and it benefits by virtue of trade preferences granted within the Generalised System of Preferences.<sup>107</sup> Market access benefits will be felt in the medium-longer term, with Tajikistan's participation in multilateral negotiations and with the possibility

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<sup>104</sup> Article 9 of the Anti-dumping Agreement and Article 19 of the SCM Agreement.

<sup>105</sup> Article 9.2, in connection with Article 7 of the Agreement on Safeguards.

<sup>106</sup> WPR, para. 165.

<sup>107</sup> M. Lücke, see *supra*, p. 14.

for Tajikistan to resort to the WTO dispute settlement when it considers that its rights have been nullified or impaired.

The obligation of non-discrimination, as well as the requirements affecting non-tariff measures, subsidisation, customs valuation practices and anti-dumping and countervailing duties will have a significant impact on Tajikistan's exporters. The relevant WTO Agreements prescribe the way in which non-tariff measures can be imposed, customs valuation needs to be conducted, trade defence instruments need to be used, and the conditions on the basis of which SPS and TBT requirements need to be applied and maintained, fostering transparency and predictability to the benefit of Tajik domestic manufacturers and exporters. If these rules are not respected and if Tajikistan's trading partners that are WTO Members expose Tajikistan's exports to unreasonable and WTO-inconsistent practices, recourse to WTO dispute settlement and other available remedies is possible and should be pursued by Tajikistan.

WTO membership will also offer Tajikistan the possibility of shaping future multilateral rules and requirements through participation to the negotiations.

On the other hand, WTO rules will constraint Tajikistan's capacity to protect its domestic industry from foreign competition and to use industrial policy tools (e.g., subsidies). It will also prescribe the way in which regulatory requirements having effects on trade are to be adopted and maintained. Another implication of accession is related to the losses in the State budget connected to the lower level of duties.

There are both advantages and disadvantages connected with WTO accession. As it happened with other countries in transition, accession implied that Tajikistan had to embark in a series of economic reforms. Optimisation of the advantages and minimisation of the disadvantages may be achieved through well-thought and well-designed economic policies, the creation of institutional structures fostering and maintaining private-public dialogue, and the involvement of all stakeholders.<sup>108</sup> Knowledge of the multilateral agreements and procedures will go a great length in supporting Tajikistan's integration into the multilateral trading system and in allowing its industry and stakeholders to take advantage of the opportunities.

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<sup>108</sup> International Trade Centre *"Russia's accession to the WTO: major commitments, possible implications"*, p. 25