

**IN THE NAME OF THE RUSSIAN FEDERATION**

**Constitutional Court of the Russian Federation**

**Judgment**

**of 9 July 2012 No. 17-II**

**In the case concerning the review of constitutionality of international treaty of the Russian Federation pending its entry into force – Protocol on the Accession of the Russian Federation to the Marrakesh Agreement Establishing the World Trade Organization**

The Constitutional Court of the Russian Federation composed of the President V.D.Zor'kin, Judges K.V.Aranovsky, A.I.Boitsov, N.S.Bondar', G.A.Gadzhiev, Yu.M.Danilov, L.M.Zharkova, G.A.Zhilin, S.M.Kazantsev, M.I.Kleandrov, S.D.Knyazev, A.N.Kokotov, L.O.Krasavchikova, S.P.Mavrin, N.V.Mel'nikov, Yu.D.Rudkin, N.V.Seleznev, O.S.Khokhryakova, V.G.Yaroslavtsev,

in the attendance of representatives of the group of deputies of the State Duma having appealed to the Constitutional Court of the Russian Federation – deputy of the State Duma N.V.Kolomeitsev, lawyer A.I.Muranov and PhD in Law A.V.Chuyev, Plenipotentiary Representative of the Government of the Russian Federation to the Constitutional Court of the Russian Federation M.Yu.Barshevsky, Plenipotentiary Representative of the State Duma to the Constitutional Court of the Russian Federation D.F.V'atkin, Plenipotentiary Representative of the Council of Federation to the Constitutional Court of the Russian Federation A.I.Alexandrov, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M.V.Krotov,

pursuant to Article 125 (Item “r” of Section 2) of the Constitution of the Russian Federation, Sub-Item “r” of Item 1 of Section 1, Sections 3 and 4 of Article 3, Section 1 of Article 21, Articles 36, 74, 86, 96, 97 and 99 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing considered the case concerning the review of constitutionality of international treaty of the Russian Federation pending its entry into force –Protocol on the Accession of the Russian Federation to the Marrakesh Agreement Establishing the World Trade Organization.

The reason for the consideration of the case was the request of a group of deputies of the State Duma. The ground for the consideration of the case was the discovered uncertainty of whether the international treaty of the Russian Federation pending its entry into force, contested in the request, is in conformity with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur S.P.Mavrin, statements by parties' representatives, interventions by the representatives invited to the hearing: M.Yu.Medvedkov for the Ministry of Economic Development of the Russian Federation, G.V.Kuz'min for the Ministry of Foreign Affairs of the Russian Federation, T.A.Vasilyeva for the Prosecutor General of the Russian Federation, having considered written submissions and other materials, the Constitutional Court of the Russian Federation

**e s t a b l i s h e d:**

1. On 16 December 2011 the Russian Federation and the World Trade Organization signed the Protocol on the Accession of the Russian Federation to the Marrakesh Agreement Establishing the World Trade Organization (concluded in the City of Marrakesh on 15 April 1994), in accordance with which the Russian Federation acceding to this Agreement (hereinafter referred to as “the Marrakesh Agreement”) becomes a Member of the World Trade Organization (hereinafter referred to as “the WTO”) (Item 1); this Protocol is an integral part of the Marrakesh Agreement (Item 2); the Russian Federation must fulfill obligations on multi-lateral trade agreements annexed to the Marrakesh Agreement (Item 3); this Protocol is open for acceptance by the Russian Federation within a period of 220 days from the approval (Item 7); signing of this Protocol has been done in a single copy in English, French and Spanish languages, each text being authentic, except

that a Schedule annexed thereto may specify that it is authentic in only one of these languages.

The decision on conducting negotiations and signing of the Protocol to the Marrakesh Agreement (hereinafter referred to as “the Protocol”) was taken by the Order of the Government of the Russian Federation of 13 December 2011 No. 2231-p. By the Resolution of 7 June 2012 No. 564 the Government of the Russian Federation, having approved the Protocol, submitted to the State Duma draft federal law on its ratification in the procedure envisaged for ratification of international treaties of the Russian Federation (Item 1 of Article 15 of the Federal Law of 15 June 1995 No. 101-Φ3 “On International Treaties of the Russian Federation”).

The petitioners in the present case – a group of deputies of the State Duma, having appealed to the Constitutional Court of the Russian Federation on 20 June 2012 on the ground of Article 125 (Item “r” of Section 2) of the Constitution of the Russian Federation (on 38 June 2012 the request was supplemented), request to recognize the Protocol as international treaty of the Russian Federation pending its entry into force and annexes thereto in the insoluble connection with the Marrakesh Agreement and all the multi-lateral trade agreements annexed thereto as not conforming to the Constitution of the Russian Federation and therefore not subject to entering into force and application in the Russian Federation.

The petitioners perceive violation of Articles 48 (Section 1), 55 (Section 3), 62 (Section 3), 68, 72, 101 (Section 4) and 118 (Section 1) of the Constitution of the Russian Federation in non-observance of the procedure of ratification (non-submission of the text of the Marrakesh Agreement with all annexes to the State Duma in Russian, as well as the texts of protocols on the accession to it by other States members of the WTO, submission of non-certified copy of the official text of the Protocol, breach of the terms of the submission of documents necessary for its ratification, non-observance of other requirements of the Rules of Procedure), as well as the requirements following from the division of authorities among bodies of State power of the Russian Federation and of the subjects of the Russian

Federation, provided for by the Constitution of the Russian Federation (absence of concordance of the Protocol with the subjects of the Russian Federation on the issues pertaining to the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation both at the stage of preparation and at the stage of submission to the State Duma of the draft law on its ratification). In the context of the question of ratification of the Protocol, the petitioners also point at the uncertainty of the WTO's status (is it an inter-governmental or inter-State organization).

In addition, the petitioners point at the need to assess the Protocol from the point of view of conformity to the Constitution of the Russian Federation of the content of the norms in their entirety, but they express their position in respect only of separate aspects of the contested regulation.

In the opinion of the petitioners, the provisions of Item II (1) (A) (a) of the Russia's Schedule of Specific Commitments on Services, defining categories of persons entitled to carry out representation in courts, included in Addendum I to the Protocol which is its integral part, does not conform to Article 48 (Section 1) of the Constitution of the Russian Federation, because their realization – with regard to the impossibility to extend to foreign citizens the requirements of the Russian legislation on presence of the status of Russian lawyer for persons wishing to appear as representatives of citizens and organizations in the Constitutional Court of the Russian Federation, – will entail cancellation of the existing guarantees of the constitutional right to qualified legal assistance. The same provisions as fixing the requirement of conducting case in arbitration tribunals only through a representative-lawyer mean, in the petitioners' opinion, inclusion of arbitration tribunals in the composition of the Russia's judicial system which does not conform to Article 118 (Section 1) of the Constitution of the Russian Federation, and in the part in which Russia assumes the obligation to admit foreign citizens into the sphere of rendering services by patent agents contradicts Article 55 (Section 3) of the Constitution of the Russian Federation in the inter-connection with its Article 62 (Section 3), because realization of this obligation may be

connected with access of foreigners to pieces of information constituting State secret or secrets of production which threatens the security of the State.

The petitioners also consider that the provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes, constituting an integral part of the Marrakesh Agreement, which provide for setting up and activity within the framework of the WTO of the Dispute Settlement Body for settlement of disputes handed over for consideration on the basis of respective provisions of agreements, enumerated in Annex I to the Understanding, allow to make actions of the Russian Federation the subject of binding interference of an international organization, thus infringing upon the sovereignty of the Russian Federation and the constitutional principle of the division of power, create threat to national security of the Russian Federation and, consequently, contradict Articles 4 (Section 1), 10, 55 (Section 3) and 79 of the Constitution of the Russian Federation.

Besides, the petitioners raise the question of socio-economic consequences of Russia's accession to the WTO, including in the part of its influence on the internal, external and transit tariffs for freight rail transportations, tariffs on gas, conditions of export of the production of non-ferrous metallurgy, conditions of access to natural resources etc.

2. As follows from Article 125 (Item "r" of Section 2) of the Constitution of the Russian Federation and the provisions of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" ( Sub-Item "r" of Item 1 of Section 1 of Article 3, Articles 86, 89 and 90) rendering it concrete, the Constitutional Court of the Russian Federation reviews constitutionality of an international treaty of the Russian Federation pending its entry into force, subject to ratification by the State Duma or approval by other federal body of State power, including with regard to the content of the norms, the procedure of the conclusion of a treaty, in particular in respect of observance of the competence of bodies of State power participating in its conclusion, the form of the treaty, from the point of view of the division of authority and powers among bodies of State power of the

Russian Federation and bodies of State power of the subjects of the Russian Federation.

According to Section 3 of Article 74 of the abovementioned Federal Constitutional Law, the Constitutional Court of the Russian Federation adopts judgment solely on the subject stated in the petition and only in relation to that part of the act, the constitutionality of which is brought into question in the petition; while passing the decision the Constitutional Court of the Russian Federation is not bound by the grounds and arguments stated in the petition.

Herewith, by virtue of Section 3 of Article 3 of the abovementioned Federal Constitutional Law, the Constitutional Court of the Russian Federation rules exclusively on matters of law and, consequently, does not assess political and economic expediency of conclusion of an international treaty of the Russian Federation, subject to ratification by the State Duma or approval by other federal body of State power, including from the point of view of the consequences of its operation for some or other branches of economy or for the income part of budgets of the budgetary system of the Russian Federation having influence on realization of human and civil social rights.

2.1. In accordance with the Vienna Convention on the Law of Treaties of 23 May 1969, to which the Russian Federation is a State-party, the consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed (Article 11); the consent of a State to be bound by a treaty is expressed by accession when: (a) the treaty provides that such consent may be expressed by that State by means of accession; (b) it is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession; or (c) all the parties have subsequently agreed that such consent may be expressed by that State by means of accession (Article 15).

The Marrakesh Agreement, defining the status and fundamentals of the WTO's activity, provides that the contracting parties to General Agreement on Tariffs and Trade (GATT), concluded on 30 October 1947, and the European

Communities which meet the requirements, put forward in respect of the original WTO members in accordance with Article 11 of the Marrakesh Agreement, shall become original members of the WTO as of the date of entry into force of the Marrakesh Agreement; any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in the Marrakesh Agreement and Multilateral Trade Agreements may only accede to this Agreement, moreover, on terms to be agreed between it and the WTO; accession to the Marrakesh Agreement means simultaneous accession to all Multilateral Trade Agreements annexed thereto; decision on accessions shall be taken by the Ministerial Conference which is the WTO agency (Articles 11, 12 and 14).

Consequently, the consent of the Russian Federation, not being an original member of the WTO, to be bound by the Marrakesh Agreement and thus to the implementation of this Agreement and the WTO law as a whole to the legal system of Russia may be expressed exclusively by means of accession to the Marrakesh Agreement on the terms to be agreed with the WTO and subject to legal consolidation in a separate international treaty, such is the Protocol contested in the Constitutional Court of the Russian Federation. Accordingly, the Marrakesh Agreement itself and Multilateral Trade Agreements annexed thereto – by virtue of the term of entry of a State to the WTO – do not pertain to international multilateral agreements (treaties) of the Russian Federation which are directly subject to signing, approval by the Government of the Russian Federation and ratification by the State Duma or approval by other federal body of State power.

Thus, within the meaning of Article 125 (Item “r” of Section 2) of the Constitution of the Russian Federation, Sub-Item “r” of Item 1 of Section 2 of Article 3, Articles 86, 89 and 90 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Marrakesh Agreement and the Multilateral Trade Agreements annexed thereto (the WTO law) in themselves can not be a subject of review in constitutional judicial proceedings from the point of

view of their conformity with the Constitution of the Russian Federation, including as to the form and content.

At the same time the Protocol, should it be ratified, will on the ground of Article 15 of the Constitution of the Russian Federation enter the legal system of the Russian Federation as an international treaty of the Russian Federation. Herewith it becomes an integral part of the Marrakesh Agreement and through the system of norms having referential (blank) character – legal ground for application of the Marrakesh Agreement and the WTO law as a whole on the territory of the Russian Federation. Therefore, although exactly the Protocol as the international treaty of the Russian Federation pending its entry into force is directly the subject-matter of the review by the Constitutional Court of the Russian Federation in the present case, such review as to the content of the norms from the point of view of conformity with the Constitution of the Russian Federation contemplates assessment of the Protocol in indissoluble normative unity with annexes thereto, as well as with the Marrakesh Agreement and annexes thereto, but only to the extent to which corresponding claims of the petitioners do not disagree with the prescriptions of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”.

2.2. Section 3 of Article 74 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, by virtue of which the Constitutional Court of the Russian Federation, being not bound by the grounds and arguments stated in the petition, it adopts judgments solely on the subject stated in the petition and only in relation to that part of an act, the constitutionality of which is brought into question, is in the inter-connection with Item 8 of Section 2 of its Article 37, obliging the petitioner to adduce in the petition his/her position on question raised and give its legal substantiation with reference to corresponding norms of the Constitution of the Russian Federation.

The petitioners in the present case, formulating in the petition and supplements thereto claims addressed to the Constitutional Court of the Russian Federation, insist on verification of constitutionality of the Protocol and annexes

thereto in their indissoluble unity with the Marrakesh Agreement and all annexes thereto as to the content of the norms in their entirety. Herewith, however, apart from arguments linked to the economic and political expediency of Russia's accession to the WTO, the assessment of which does not fall within the competence of the Constitutional Court of the Russian Federation, they adduce as a substantiation of the non-constitutionality of the legal regulation as a whole arguments, concerning only some of its aspects. Meanwhile, by virtue of the prescriptions of Articles 37 and 74 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" in respect of the subject of the review and the requirements to the petition, the Constitutional Court of the Russian Federation is not entitled to admit for consideration normative provisions, if they are not directly indicated in the request as contradicting, in the petitioners' opinion, the Constitution of the Russian Federation and, accordingly, the necessary argumentation is absent in the request. Other, contrary to these prescriptions, would mean unlawful extension of the amount of the review and, taking into account that the party having signed and approved the Protocol would have been forced to dispute its position having no opportunity to familiarize itself with the position of the opposite party, violation of such constitutional principles of judicial proceedings as controversy and equality of the parties.

This fully relates also to the inadmissibility of extension of the claims made earlier in the course of hearings of the case, including in the present event – by way of raising in the interventions of the petitioners' representative a question, concerning operation in time of the obligations assumed by the Russian Federation on the basis of Item 3 of the Protocol.

2.3. The Protocol on the Accession to the Marrakesh Agreement as an international treaty of the Russian Federation, in accordance with the Federal Law "On International Treaties of the Russian Federation" and Articles 14 and 15 of the Vienna Convention on the Law of Treaties, becomes an integral part of the Marrakesh Agreement and at the same time normative legal ground of inclusion of the Marrakesh Agreement into the legal system of Russia and its application on its

territory in the outcome of completion of the whole process of its acceptance (conclusion), i.e. expression of the consent of the Russian Federation to be bound by the international treaty by means of its appropriate signing, ratification, signing of the instrument of ratification, after which the treaty is considered accepted and from the moment indicated in it enters into force.

In the present case the ratification of the international treaty is carried out in the form of legislative process, including, among others, submission by the Government of the Russian Federation to the State Duma of a respective draft law, its discussion by the deputies and adoption of a federal law on ratification of the international treaty of the Russian Federation (or voting down the draft law), then – should the federal law be adopted – its consideration and approval (or declination) by the Council of Federation, as well as signing and promulgation (or declination) by the President of the Russian Federation (Article 84, Item “д”; Articles 104 and 105; Article 106, Item “г”; Article 107 of the Constitution of the Russian Federation; Articles 16 and 17 of the Federal Law “On International Treaties of the Russian Federation”).

The petitioners request to give appraisal to the Protocol as an international treaty of the Russian Federation pending its entry into force not only with regard to the procedure of its signing and approval by the Government of the Russian Federation and the content of the norms, but also with regard to the procedure of its acceptance in the procedure of ratification in connection with submission of a respective draft law to the State Duma, i.e., in essence, insist on the review of constitutionality of a non-adopted federal law on ratification of an international treaty with regard to the procedure of its adoption, which the Constitutional Court of the Russian Federation, by virtue of Article 125 (Items “а”, “г” of Section 2) of the Constitution of the Russian Federation and the provisions of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” rendering it concrete, is not entitled to do. At the same time, verification of accordance to the requirements of the Constitution of the Russian Federation of such an aspect of passing of the draft law in the State Duma as its concordance

with the subjects of the Russian Federation on the issues pertaining to their joint jurisdiction with the Russian Federation is not excluded in the present case, since it can take place not only at the stage of consideration of the draft law by the State Duma, but at the preceding stages of working with it too.

This does not place in doubt the obligation of the federal legislator to proceed from the requirements of the Constitution of the Russian Federation when adopting the ratification act. Besides, although the review of international treaties of the Russian Federation having entered into force is not carried out by the Constitutional Court of the Russian Federation, the possibility of the review of constitutionality of a federal law on ratification of this international treaty, should it be adopted, is not excluded – with regard to the requirement of Section 4 of Article 3 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, according to which the Constitutional Court of the Russian Federation shall rule exclusively on matters of law.

2.4. Thus, proceeding from the requirements of Sub-Item “r” of Item 1 of Section 1 of Article 3, Items 1 and 3 of Section 1 of Article 86, Articles 89 and 90 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” in the inter-connection with Item 8 of Section 2 of its Article 37 and Section 3 of Article 74, in the present case the Constitutional Court of the Russian Federation establishes conformity to the Constitution of the Russian Federation of the Protocol on the Accession of the Russian Federation to the Marrakesh Agreement Establishing the World Trade Organization as an international treaty of the Russian Federation pending its entry into force with regard to the procedure of its acceptance – at the stage of its signing and approval by the Government of the Russian Federation, as well as with regard to the content of the norms – with respect to its individual provisions which are directly pointed at in the request and in respect of which the petitioners have expressed the position, substantiating their non-conformity to the Constitution of the Russian Federation.

3. The need, means and limits of the Russian Federation’s integration into world economy, her participation in the international economic cooperation based

on the recognition and observance of equal and inalienable human rights, their protection and creation of conditions for realization, are determined by the sovereign will of the multi-national people of Russia, striving to ensure her well-being and prosperity and recognizing itself to be a part of the world community (the Preamble of the Constitution of the Russian Federation), which is expressed by the bodies of State power according to their competence defined in conformity with the Constitution of the Russian Federation.

One of the means of peaceful co-operation among nations, including in economic field, are international treaties which also exercise the function of the sources of international law (the Preamble of the Vienna Convention on the Law of Treaties) and as such fix the rights and duties of the State-parties as the subjects of international relations (Judgment of the Constitutional Court of the Russian Federation of 27 March 2012 No. 8-II).

Side by side with universally recognized principles and norms of international law, international treaties of the Russian Federation are subject to inclusion to the legal system of the Russian Federation (Article 15, Section 4, of the Constitution of the Russian Federation) and therefore are the subject of constitutional norm-control carried out by the Constitutional Court of the Russian Federation which, assessing in the procedure of Article 125 (Item “r” of Section 2) of the Constitution of the Russian Federation constitutionality of an international treaty of the Russian Federation pending its entering into force, orientates itself at to what extent it ensures observance of human and civil rights and freedoms and whether it breaks the fundamental principles of the constitutional order of the Russian Federation, other its provisions as having within the framework of the legal system of the Russian Federation supreme legal force and direct effect and applicable on its entire territory.

Accordingly, so far as in the legal system of the Russian Federation based on the supremacy of the Constitution of the Russian Federation, the rules of an international treaty, if they contradict its provisions, can not find application; in the course of implementation of international treaties into the legal system of the

Russian Federation, contemplating, among other things, correlation of the Russian Federation's legislation with her obligations according to an international treaty, recognition, observance and protection of human and civil rights and freedoms and non-admission of breaches of the fundamental principles of the constitutional order is the obligation of bodies of State power. Other would contradict the constitutional principles of power of the people and sovereignty of the Russian Federation, as well as the requirement of Article 15 (Section 1) of the Constitution of the Russian Federation, according to which legal acts adopted by the Russian Federation must not contradict the Constitution of the Russian Federation.

3.1. At present the World Trade Organization, members of which are 154 States and the European Union, as an instrument of the world economy occupies one of the central places in it. According to the Marrakesh Agreement, the relations of the States-parties in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development; herewith the States-parties seek both to protect and preserve the environment and to enhance the means for doing so, they recognize the need to create an integrated, more viable and durable system of multilateral norms ensuring liberalization of trade (the Preamble).

Guided exactly by these goals, the Russian Federation has signed the Protocol on the Accession to the Marrakesh Agreement, having thus expressed its intention to become a Member of the WTO. Proceeding from the idea that international treaties, constituting the legal base of establishment and functioning of the WTO, are called upon to ensure predictability and certainty of the economic and trade policy of the States composing it, and the accession to the WTO, in its turn – to encourage that a State in the course of realization of its foreign policy has a possibility to use lawful means of resolution of its economic problems, recognized by this international organization, neither the Marrakesh Agreement itself, nor the

Protocol contemplate entrance of restrictions of rights and freedoms of the citizens of the Russian Federation and reconsideration of the fundamentals of her constitutional order.

Besides, accessing to the WTO, a State obtains additional opportunities for legitimate entrance into international legal and economic expanse and simultaneously – access to the means of international law protection guaranteed by the WTO law, such as the regime of most favourable treatment and national regime for goods and services, protection against discriminatory domestic taxes, excises and customs duties, freedom of transit, protection against discriminatory application of the gamut of technical, sanitary and phyto-sanitary barriers, as well as guarantees against arbitrary use of other trade-political means, including quota allocation, anti-dumping and compensatory measures.

In this sense Russia's joining the WTO, meaning her orientation in the economic development toward the requirements of the world market and aiming at the growth of national competitiveness and integration into the world community, is an act pertaining, mainly, to the field of economic policy which, as any principal State decision, broaches the interests of many subjects of social relations and the consequences of which, both positive and negative, are subject to correlation and assessment, including with consideration of the need of commensuration of inevitable risks, as well as from the point of view of sufficiency and adequacy of the measures taken by the State for the protection of national interests in the course of exercise of respective powers connected with the conclusion of the international treaty of the Russian Federation – the Protocol on the Accession to the Marrakesh Agreement, including its signing, approval and ratification, by the supreme bodies of State power – the Government of the Russian Federation and the Federal Assembly, as well as the President of the Russian Federation.

Herewith all obligations, following from the Protocol and annexes thereto which, in the event of Russia's accession to the WTO, become her international obligations and the number of which exceeds 23 150, are subject to assessment with the object of economic and political expenses and advantages. According to

Paragraph 1450 of the Working Party Report on Russia's accession to the WTO, reference to which is included in the Protocol, its individual items stipulate for 160 obligations. Annex I to the Protocol includes the Schedule of Commitments of the Russian Federation on tariffs, Part 1 of which, in its turn, contains 11256 codes of the range of goods, description of products on every code, bound rate on every product at date of accession, bound rate at date of expiry of interim period, date of expiry of interim period, the list of the WTO Members, to whom original negotiation rights were granted, bound rates of other taxes and duties; Part 2 relates to preferential tariffs, Part 3 – to non-tariff concessions, Part 4 – commitments on support of agriculture and export subsidies; Part 5 contains commitments on export duties with enumeration of 466 codes of the range of goods, description of products on every code, bound rate on every product at date of accession, bound rate at date of expiry of interim period; Annex 1 to Part 1 concerns the matrix of application of commitments on tariffs, including the code of the range of goods, and contains the parameters of tariff reduction over the years on approximately 7 000 tariff lines; the Schedule of Russia's Specific Commitments on Services extends to 116 sectors (on the WTO classification), everyone of which consists of three or (in some cases) four commitments, depending on the way of delivery of services to the Russian market.

3.2. The Constitution of the Russian Federation, introducing international treaties of the Russian Federation into the legal system of the Russian Federation and determining in Article 15 (Section 4) common approach which should be guided by when applying the rules of international treaty in the event of their disagreement with the rules stipulated for by the national law and based on the principle of conscientious fulfillment of international obligations (*pacta sunt servanda*), does not directly determine the procedure and conditions of conclusion, fulfillment and termination of international treaties of the Russian Federation and places resolution of these questions on the federal legislator (Article 71, Item "к"; Article 72, Item "о" of Section 1; Article 76, Sections 1 and 2) which, as is pointed out in the Judgment of the Constitutional Court of the Russian Federation of 27

March 2012 No. 8-II, possesses significant discretion when carrying out respective legal regulation and at the same time must follow the requirements of the Constitution of the Russian Federation following, in particular, from Articles 15 (Section 4), 46 (Section 3), 62, 63 (Section 2), 79, 86 (Items “б”, “в”), 106 Item “г”) and 125 (Item “г” of Section 2; Section 6), containing direct references to the international treaties of the Russian Federation.

Besides, the federal legislator is bound by the international obligations of the Russian Federation, including those following from the Vienna Convention on the Law of Treaties. With regard to these circumstances, provisions are fixed in the Federal Law “On International Treaties of the Russian Federation”, according to which international treaties of the Russian Federation are concluded, fulfilled and terminated in accordance with universally recognized principles and norms of international law, the provisions of a treaty itself, the Constitution of the Russian Federation and the present Federal Law (Item 1 of Article 1).

As follows from Item 2 of Article 3 of the Federal Law “On International Treaties of the Russian Federation”, inter-State treaties with foreign States, as well as with international organizations and other entities are concluded on behalf of the Russian Federation. Herewith, from the point of view of the Russian law, possible characteristics of the WTO as an inter-State or inter-governmental association is of no importance for the determination of actions necessary for registration of accession to the Marrakesh Agreement and, accordingly, of entering the WTO membership, if according to its statutes such actions are necessary for the accession to happen, and are within the framework of both the law on international treaties and domestic legislation.

3.3. In accordance with Article 114 of the Constitution of the Russian Federation (Items “б”, “д” of Section 1), ensuring of the implementation of a uniform financial, credit and monetary policy, as well as implementation of the foreign policy of the Russian Federation fall within the competence of the Government of the Russian Federation.

Developing the adduced constitutional provisions, the Federal Constitutional Law of 17 December 1997 No. 2-ФКЗ “On the Government of the Russian Federation” stipulates, in particular, that the Government of the Russian Federation: in accordance with the Constitution of the Russian Federation, federal constitutional laws, federal laws, normative decrees of the President of the Russian Federation carries out regulation of economic processes; ensures the unity of economic expansion and freedom of economic activity, free flow of goods, services and financial resources; works out the State structural and investment policy and undertakes measures for its implementation; elaborates and implements the State policy in the field of international economic, financial, investment cooperation; carries out general direction of customs matter; undertakes measures on protection of interests of domestic producers of goods, performers of works and services; within the limits of its powers organizes implementation of internal and external policy of the Russian Federation; carries out measures to ensure implementation of the foreign policy of the Russian Federation; ensures representation of the Russian Federation in foreign States and international organizations; within the limits of its powers concludes international treaties of the Russian Federation, ensures fulfillment of the Russian Federation with regard to international treaties, as well as watches the fulfillment of their obligations by other parties to the indicated treaties; fights for the geo-political interests of the Russian Federation, protects citizens of the Russian Federation beyond the bounds of her territory; carries out regulation and State control in the field of foreign economic activity, in the field of international scientific and technological and cultural cooperation (Articles 13, 14 and 21).

Decisions on conducting negotiations and on signing of the international treaties, being concluded on behalf of the Russian Federation on the issues pertaining to the jurisdiction of the Government of the Russian Federation, are adopted by the Government of the Russian Federation (Sub-Item “a” of Item 1 of Article 11 of the Federal Law “On International Treaties of the Russian

Federation”). The powers for signing of such international treaties are granted also by the Government of the Russian Federation.

To execute these powers, the Government of the Russian Federation, with the aim to ensure the process of accession of the Russian Federation to the WTO at the decisive stage, in the course of which working out proposals on concrete conditions of future membership in this organization and conducting negotiations with interested parties – members of the WTO, and subsequently ensure Russia’s full participation in its activity lay ahead, by Resolution 28 August 1997 No. 1072 abolished the Inter-Departmental Commission, created earlier (by Resolution of the Council of Ministers – Government of the Russian Federation of 22 February 1993 No. 141, in connection with preparation for negotiations on the accession of the Russian Federation to the General Agreement on Tariffs and Trade (GATT) the Inter-Departmental Commission on GATT was created which by Resolution of the Government of the Russian Federation of 12 January 1996 No. 17 was renamed as the Inter-Departmental Commission on the Questions of the World Trade Organization), and formed the Commission of the Government of the Russian Federation on the Questions of the WTO.

In sessions of the Government of the Russian Federation the course of the negotiations process on accession of the Russian Federation to the WTO was periodically considered and further measures were planned, including elaboration and realization of the plans of law-drafting works, ensuring consideration of the requirements of the Marrakesh Agreement and multi-lateral trade agreements in the national legislation. The outcome of this activity was Order of the Government of the Russian Federation of 13 December 2011 No. 2231-p, by which the Ministry of Economic Development of the Russian Federation was commissioned to sign the Protocol on the Accession of the Russian Federation to the Marrakesh Agreement on behalf of the Russian Federation. After its signing by the Minister of Economic Development of the Russian Federation, which was held on 16 December of the same year, and approval by the Government of the Russian Federation (Resolution of 7 June 2012 No. 564), as it is stipulated for by Item 3 of

Article 16 of the Federal Law “On International Treaties of the Russian Federation”, the Protocol was submitted to the Federal Assembly for ratification in accordance with Item 1 of Article 15 of the same Federal Law.

Thus, the international treaty of the Russian Federation pending its entry into force – the Protocol on the Accession of the Russian Federation to the Marrakesh Agreement Establishing the World Trade Organization has been signed and approved in the procedure not contradicting constitutional fundamentals of activity of bodies of State power of the Russian Federation in the international field.

3.4. In accordance with Article 71 of the Constitution of the Russian Federation, establishment of the basic legal principles for the unified market, financial, currency, credit and customs regulation, foreign policy and international relations of the Russian Federation, international treaties of the Russian Federation, foreign economic relations of the Russian Federation, civil legislation fall within the jurisdiction of the Russian Federation (Items “ж”, “к”, “л”, “о”).

Developing constitutional prescriptions on the division of authority between the Russian Federation and subjects of the Russian Federation, the Federal Law “On International Treaties of the Russian Federation” establishes in Item 1 of Article 3 that in accordance with the Constitution of the Russian Federation conclusion, termination and suspension of operation of international treaties of the Russian Federation is within the jurisdiction of the Russian Federation, but in addition envisages in Article 4 that an international treaty of the Russian Federation, broaching issues pertaining to the jurisdiction of a subject of the Russian Federation, is concluded upon concordance with bodies of State power of the interested subject of the Russian Federation, which respective function is placed on (Item 1); basic provisions or a draft of the international treaty broaching the powers of a subject of the Russian Federation on issues of joint jurisdiction of the Russian Federation and the subjects of the Russian Federation are sent by the federal bodies of executive power or by authorized organizations to bodies of State power of the interested subject of the Russian Federation, which respective function is placed on; the proposals received are considered in the course of

preparation of the draft treaty (Item 2); when carrying out concordance of the questions of conclusion of an international treaty of the Russian Federation, bodies of State power of an interested subject of the Russian Federation, which respective function is placed on, are notified by the federal bodies of executive power or by authorized organizations about the time-limits of sending proposals, amounting to no less than two weeks (Item 3); the questions of participation of representatives of bodies of State power of a subject of the Russian Federation in the preparation of the draft international treaty, broaching issues pertaining to the jurisdiction of the subject of the Russian Federation or its powers on the issues of joint jurisdiction of the Russian Federation and subjects of the Russian Federation, as well as in the negotiations and the procedure of its signing are decided by the federal bodies of executive power or by authorized organizations upon concordance with bodies of State power of the interested subject of the Russian Federation, which respective function is placed on (Item 4).

Since any international treaty, broaching key issues of economic policy of the Russian Federation, can not but broach interests of subjects of the Russian Federation, too, and all of them, the assumption that every time in such a case the conduction of conciliatory procedures with all subjects of the Russian Federation is necessary would contradict the legal nature of the Russian Federation as solely possessing State sovereignty (Judgment of the Constitutional Court of the Russian Federation of 7 June 2000 No. 10-II), which contemplates the possibility to determine both the internal economic policy and positioning of the country in the world economic expanse, even if some legal or actual consequences for the subjects of the Russian Federation are accompanying products of such positioning. Herewith the Federal Law “On International Treaties of the Russian Federation” itself coordinates the concordance of an international treaty with subjects of the Russian Federation with placing of a certain function on them, confirming by this that it implies concordance with bodies of State power of the concrete subjects of the Russian Federation those international treaties which broach by functional encumbrances exactly these subjects of the Russian Federation.

As fixed by Article 14 of the Federal Law “On International Treaties of the Russian Federation”, in accordance with the Constitution of the Russian Federation ratification of international treaties of the Russian Federation is carried out in the form of a federal law. According to the Constitution of the Russian Federation, federal laws are adopted by the State Duma (Article 105, Section 1); federal laws on the questions of ratification of international treaties of the Russian Federation, adopted by the State Duma, are subject to compulsory examination by the Council of Federation (Article 106, Item “r”). Herewith members of the Council of Federation as representatives of the subjects of the Russian Federation (Article 95, Section 2, of the Constitution of the Russian Federation), with regard to the fact that the Constitution of the Russian Federation directly fixes independence of bodies of State power in carrying out their functions and powers (Article 10), may ensure consideration of the position of the subjects of the Russian Federation in respect of international treaties of the Russian Federation on issues broaching their interests.

4. Sovereignty of the Russian Federation as a democratic federative law-governed State extending to the entirety of her territory is fixed by the Constitution of the Russian Federation as one of the fundamentals of the constitutional order (Article 4, Section 1). The bearer of sovereignty and the sole source of power in the Russian Federation, according to the Constitution of the Russian Federation, is her multi-national people (Article 3, Section 1) which, preserving the historically established State unity, proceeding from universally acknowledged principles of equality and self-determination of peoples and reviving the sovereign statehood of Russia, has adopted the Constitution of the Russian Federation (the Preamble).

Sovereignty of the Russian Federation contemplating, within the meaning of Articles 3, 4, 5, 67 and 79 of the Constitution of the Russian Federation, supremacy, independence and self-sufficiency of the State power, fullness of the legislative, executive and judicial power of the State on its territory and independence in the international relations, is a necessary qualitative sign of the Russian Federation as a State, characterizing her constitutional law status

(Judgment of the Constitutional Court of the Russian Federation of 7 June 2000 No. 10-II). At the same time, the Constitution of the Russian Federation stipulates for the possibility of Russia's participation in the inter-State associations and transfer some of her powers to those associations in accordance with international treaties provided that this does not entail restrictions of human and civil rights and freedoms and does not conflict with the basic principles of the constitutional order of the Russian Federation (Article 79).

The principle of the performance of international obligations in good faith fixed by Article 26 of the Vienna Convention on the Law of Treaties does not eliminate the possibility of creation by an international treaty a body for settlement of disputes in the event of their rise in connection with realization by the States-parties to the international treaty of the rights and duties following from it. The decisions of such a body may have compulsory character for the States-parties which, as a general rule, in itself is not limitation of sovereignty, if a State admitted exercise of such a power in respect of itself on conditions of reciprocity. The principle of respect of State sovereignty in the present case manifests its effect in the fact that such international obligation is accepted by way of concordance of positions of sovereign States, the wills of which are legally equal, in connection with which an international treaty does not create either obligations or rights for a third State without its consent (Preamble and Article 34 of the Vienna Convention on the Law of Treaties).

The Constitution of the Russian Federation not only does not forbid the creation by the international treaty of bodies for settlement of disputes arising in connection with fulfillment by the Russian Federation of obligations following from an international treaty, whose decisions may have obligatory character for its participants, but also directly recognizes the possibility of the Russian Federation's participation in such international agreements, providing for accession of the Russian Federation to the inter-State associations and other international, inter-governmental organizations, to which points its Article 46 (Section 3), according to which everyone is guaranteed the right in accordance with international treaties of

the Russian Federation to appeal to inter-State bodies for the protection of human rights and freedoms if all available internal means of legal protection have been exhausted.

Proceeding from this, international treaty providing for the activity of a body for settlement of disputes which arise in connection with the realization by the States-parties of the rights and duties following from this international treaty, in itself can not be regarded as breaking the provisions of Articles 4 (Section 1) and 10 of the Constitution of the Russian Federation which fix sovereignty of the Russian Federation and the principle of the division of authorities as the fundamentals of the constitutional order and as creating, in violation of its Articles 55 (Section 3) and 79, additional risks for the State and social security, rights and freedoms of citizens.

Thus, the Protocol on the Accession of the Russian Federation to the Marrakesh Agreement – in the part in which it entails extension to the Russian Federation of the Understanding on Rules and Procedures Governing the Settlement of Disputes which stipulates for establishment and operation within the framework of the WTO of a Dispute Settlement Body to settle disputes handed over for consideration on the basis of respective provisions of agreements, enumerated in Annex 1 to the Understanding, annexed to the Marrakesh agreement and being its integral part, does not contradict the Constitution of the Russian Federation.

5. The Constitution of the Russian Federation, fixing the right of everyone to protect his/her rights and freedoms by all means not prohibited by law (Article 45, Section 2), names as one of such means protection in court which is guaranteed to everyone and the right to which belongs to basic inalienable human and civil rights and freedoms (Article 17, Sections 1 and 2; Article 46, Section 1).

The institution of court representation, ensuring to the interested person receipt of qualified legal assistance, and in case of impossibility of immediate (personal) participation in the judicial proceedings – access to court, serves for realization of the right to court protection, together with other legal means (Article

48, Section 1; Article 52 of the Constitution of the Russian Federation). Herewith the right of everyone to protect his/her rights by all means not prohibited by law does not mean the possibility of admittance of any citizen to participation in the judicial proceedings as a representative, – respective grounds, as applied to individual types of judicial proceedings, are established by federal constitutional laws and federal laws.

5.1. The circle of persons who may be admitted to constitutional judicial proceedings as representatives of citizens and organizations is determined by Section 2 of Article 53 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, whose provisions are aimed at ensuring the right of everyone to qualified legal assistance and have the purpose of the most full ensuring of the protection of the rights of a party in the constitutional judicial proceedings; they take into account also the specific legal nature of the Constitutional Court of the Russian Federation, authorized to rule only on matters of law (rulings of the Constitutional Court of the Russian Federation of 18 July 2006 No. 337-O, of 21 February 2008 No. 149-O-O and of 21 October 2008 No. 717-O-O).

Item II (1) (A) (a) of Russia’s Schedule of Specific Commitments on Services, included in Annex I to the Protocol, defines that in the part of rendering legal services, with the exception of notarial services, on the issues of international public, international private law, as well as on the issues of the law of a State in whose jurisdiction the staff of the provider of services received qualification, the Russian Federation does not establish restrictions of admittance to the market and restrictions of national regime as applied to foreign persons, with the only exception in respect of carrying out lawyers’ activity: the lawyers may carry out lawyers’ activity only through law office, law bureau, bar association and legal advice office.

There is a footnote to the term “lawyer” used in this context, which explains that a lawyer is a physical person, having got the status of a lawyer in accordance with Russian legislation; his/her functional destination is coordinated with

performance of the functions of a representative in criminal courts and Russian courts of arbitration, as well as with the possibility to appear in the civil judicial proceedings and in the judicial proceedings on cases on administrative offences (as representative of organizations, Government bodies, bodies of local self-government).

Literal interpretation of the adduced provision of the Protocol allows to come to the conclusion that the Russian Federation does not assume any international obligations in respect of categories of persons, entitled to carry out representation in the Constitutional Court of the Russian Federation, because this provision does not enclose such a sphere of rendering legal services as representation in the Constitutional Court of the Russian Federation. Accordingly, the ratification of the Protocol by the Russian Federation will not entail changes in respect of determination of categories of persons wishing to appear as representatives of citizens and organizations in the Constitutional Court of the Russian Federation, to whom, in accordance with Article 53 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, belong lawyers and persons with an academic degree in law, whose powers are confirmed by relevant documents.

Thus, the provision of the Protocol determining the sphere of legal services in respect of which the Russian Federation establishes no restrictions of admittance to the market and no restrictions of the national regime as applied to foreign persons, as not broaching the question of the categories of persons vested with the right to carry out representation in the Constitutional Court of the Russian Federation, may not be regarded as contradicting Article 48 of the Constitution of the Russian Federation in the aspect indicated by the petitioners.

5.2. Formulating their position in substantiation of non-constitutionality of Item II (1) (A) (a) of the Russia’s Schedule of Specific Commitments on Services in the request, the petitioners interpret it as establishing requirement on conducting cases in the arbitration tribunals only through professional legal representative (lawyer), thus supposing that the expression “Russian arbitration tribunals” used in this Item means exactly non-State arbitration tribunals, created on the base of

agreement between parties to the dispute for its settlement in cases not contradicting the law.

Meanwhile, if one proceeds from the meaning context in which this expression is used, even with regard to different variants of its admissible translation, one should come to the conclusion that in this case the question is of specialized State courts (State courts of arbitration), because the particularity of cases considered by them (analogous to the particularity of criminal cases considered by courts of general jurisdiction) can be laid in substantiation – under certain conditions and taking into consideration the aims of the World Trade Organization – of compulsory participation of a professional representative of a party – a lawyer – in the case. And interpretation of the respective provision of the Protocol as establishing the requirement of compulsory participation of a lawyer in examination of cases in the arbitration tribunals would contradict the nature of arbitration examination, contemplating maximum freedom of the parties in determining both the composition of the court and its competence and of the procedure of examination of cases in such courts.

When assessing Item II (1) (A) (a) of the Russia's Schedule of Specific Commitments on Services and, accordingly, in the context of its provisions, the translation of the expression "Russian arbitration tribunals", the Constitutional Court of the Russian Federation has no grounds not to take into consideration the position of other parties of constitutional judicial proceedings which is based, apart from other things, on the principle of controversy and equality of the parties, namely, the argument of the Government of the Russian Federation as a body which directly carried out the preparation of the Protocol for acceptance and signing, as well as concordance of its provisions, that the expression "Russian arbitration tribunals" was understood by the participants of the negotiations process exactly as "State courts of arbitration".

Asserting that the consequence of establishing the requirement of conducting cases in the arbitration tribunals only through a representative-lawyer will be their inclusion in the judicial system of the Russian Federation, the petitioners do not

take into account that the expression “Russian arbitration tribunals” is understood by the supreme bodies of State power of the Russian Federation and the bodies having participated in the process of preparation of Russia’s entering the WTO (preparation and signing of the Protocol) as “courts of arbitration”, resolving economic disputes on behalf of the State and staying within the judicial system of the Russian Federation (Article 127 of the Constitution of the Russian Federation) which, in particular, found reflection in the intervention of the Plenipotentiary Representative of the Government of the Russian Federation to the Constitutional Court of the Russian Federation in the course of hearings on the present case, as well as in the text of the Protocol translated into Russian, including Russia’s Schedule of Specific Commitments on Services, which is placed on the official site of the State Duma. In the context of the same understanding – with reference to corresponding provision of the Arbitration Procedure Code of the Russian Federation on powers of the courts of arbitration of Russia – this expression is used also in official documents of the WTO, adopted earlier and concerning the regime of foreign trade of the Russian Federation (World Trade Organization WT\ACC\RUS\6. 25 October 1995 (95-3248). L\7410/B (IV).

Given that the understanding of the expression “Russian arbitration tribunals” as the “State courts of arbitration” agrees with the legal construction of the regulated relations in their entirety and that both the need to submit a translation of an international treaty notarially-certified and obligatoriness of other mechanisms of its gaining the status of official translation do not follow from the Constitution of the Russian Federation, the Constitutional Court of the Russian Federation neither has grounds to proceed from other understanding of it.

Besides, even in the event of acceptance of the variant of translation of the expression “Russian arbitration tribunals” suggested by the petitioners, i.e. meaning non-State arbitration tribunals, possible introduction of additional requirements to the representation in these tribunals, irrespective of its possible assessment from the point of view of guarantees of the constitutional right to qualified legal assistance and inter-relation with general principles of carrying out

arbitration examination, in itself would not mean their inclusion in the system of State courts, because the judicial system of the Russian Federation is established by the Constitution of the Russian Federation and can not be changed by the provisions of an international treaty of the Russian Federation.

As the Constitutional Court of the Russian Federation pointed out in the Judgment of 26 May 2011 No. 10-II, legislative provisions establishing the procedure of arbitration examination, guaranteeing the necessary procedural rights to the participants of arbitration examination, are aimed at ensuring the principle of just judicial proceedings which, within the meaning of Articles 46 (Section 1) and 118 (Section 1) of the Constitution of the Russian Federation in the inter-connection with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, extends both to examination in a State court and to the arbitration examination. At the same time this does not mean identification of the arbitration form of protection of rights with court protection as such, carried out by State courts, and of arbitration tribunals as institutions of the civil society – with courts of the Russian Federation, which in accordance with Articles 10, 11 (Section 1) and 118 of the Constitution of the Russian Federation and the Federal Constitutional Law of 31 December 1996 No. 1-Φ3 “On Judicial System of the Russian Federation” within the framework of the division of State powers into legislative, executive and judicial carry out judicial authority and form the judicial system of the Russian Federation.

Thus, when assessing the provision of the Protocol where the expression “Russian arbitration tribunals” is used, one should proceed from the translation of this disputable expression which is adequate to the notion “Russian State courts of arbitration”.

6. The Constitution of the Russian Federation maintains the priority of human and civil rights and freedoms as one of the fundamentals of the constitutional order of the Russian Federation as law-governed and democratic State (Article 1, Section 1; Article 2) and establishes that foreign citizens and stateless persons enjoy rights and bear obligations in the Russian Federation on a par with citizens of the Russian

Federation, except in those cases envisaged by federal law or by an international treaty of the Russian Federation (Article 62, Section 3). The provisions of Article 4 (Section 1 and 3) of the Constitution of the Russian Federation on the sovereignty of Russia, integrity and inviolability of her territory also belong to the fundamentals of the constitutional order of the Russian Federation.

Constitutionally-approved purposes of protection of the indicated constitutional values, as well as of ensuring the defence of the country and the security of the State contemplate, as follows from Articles 17 (Section 3), 19, 55 (Sections 2 and 3) and 56 (Section 3) of the Constitution of the Russian Federation, the possibility, on the basis of the principles of reasonableness, proportionality and with observance of the balance of public and private interests, of restrictions of human and civil rights and freedoms, at the same time not admitting disparagement of these rights, i.e. distortion of their very essence; accordingly, the federal legislator, determining means and ways of such protection, must use only those of them which for a concrete law-applying situation exclude the possibility of disproportionate restriction of human and civil rights and freedoms, and proceed from the idea that public interests enumerated in Article 55 (Section 3) of the Constitution of the Russian Federation justify legal restrictions of rights and freedoms only if they are adequate to socially-necessary result and, not being excessive, are necessary and determined by exactly these public interests (judgments of the Constitutional Court of the Russian Federation of 18 February 2000 No. 3-II, of 14 November 2005 No. 10-II, of 26 December 2005 No. 14-II, of 16 July 2008 No. 9-II, of 7 June 2012 No. 14-II and others).

6.1. To legal services, in respect of which the Russian Federation establishes no restrictions of admittance to the market and no restrictions of the national regime as applied to foreign persons in accordance with the Protocol on the Accession to the Marrakesh Agreement, belong legal services conforming to Code 861 of the Provisional Central Product Classification, such as services on legal advice and representation on the questions of criminal law, services on legal advice and representation in judicial procedures on questions of other branches of law,

services on legal advice and representation in the procedures of quasi-judicial tribunals and committees envisaged by law, legal escort and services on certification of documents, as well as other legal consultative and information services.

The content of respective provisions of Item II (1) (A) (a) of Russia's Schedule of Specific Commitments on Services, contained in Annex I to the Protocol, enclose, in particular, the activity of the patent agents on the territory of the Russian Federation, as it is defined in the legislation of the Russian Federation. For instance, according to the Federal Law of 30 December 2008 No. 316-Φ3 "On Patent Agents" recognized as patent agents are citizens, having received the status of a patent agent in the procedure established by this Federal Law and carrying out activity connected with legal guarding of the results of intellectual activity and means of individualization, protection of intellectual rights, acquisition of exclusive rights on the results of intellectual activity and means of individualization, disposal of such rights (Section 1 of Article 2). In accordance with the Civil Code of the Russian Federation (Item 3 of Article 1247) and the abovementioned Federal Law (Section 2 of Article 2), a citizen of the Russian Federation permanently residing on the territory of the Russian Federation and meeting other requirements established by the Federal Law "On Patent Agents" may be registered as a patent agent in the federal body of executive power on intellectual property.

6.2. Defining the powers of patent agents in respect of conducting cases connected with legal guarding of the results of intellectual activity and means of individualization, the Federal Law "On Patent Agents" obliges them, when sending demands for issuing of patents on secret inventions, to have respective admittance to pieces of information, constituting State secret (Item 3 of Section 1 of Article 4), to which the Law of the Russian Federation of 21 July 1993 No. 5485-I "On State Secret" ascribes information in the field of military, foreign political, economic, intelligence, counter-intelligence and operational and search activity, protected by

the State, the dissemination of which can cause damage to the security of the Russian Federation (Paragraph 2 of Article 2).

The abovementioned Law of the Russian Federation, regulating relations arising in connection with ascribing information to State secret, their classifying or declassifying and protection in the interests of ensuring the security of the Russian Federation, establishes the list of information as applied to each of the indicated fields of State activity (Article 5), as well as the list of information not subject to ascribing to State secret and classifying (Article 7) and envisages three degrees of secrecy of information constituting State secret (Article 8) and, accordingly, three forms of admittance to State secret of officials and citizens of the Russian Federation, which is carried out voluntarily and envisages assumption of obligations before the State not to disseminate the trusted information constituting State secret and agreement to partial, temporary restrictions of rights in accordance with this Law (Sections 1, 3 and 9 of Article 21).

Admittance of persons with double citizenship, stateless persons, as well as persons from the number of foreign citizens, emigrants and re-emigrants to State secret is carried out, according to Section 2 of Article 21 of the Law of the Russian Federation "On State Secret", in the procedure established by the Government of the Russian Federation. Realizing the power vested in it, the Government of the Russian Federation by Resolution of 22 August 1998 No. 1003 approved the Statute on the Procedure of Admittance of Persons with Double Citizenship, Stateless Persons, as well as Persons From the Number of Foreign Citizens, Emigrants and Re-Emigrants to State Secret, in accordance with Item 6 of which foreign citizens are admitted to the State secret on the basis of an international treaty stipulating for obligations of a foreign State or an international organization on the protection of information handed over to them and constituting State secret, and only to those pieces of information, in respect of which the procedures have been fulfilled stipulated for by the Statute on Preparation and Transmission of Information Constituting State Secret to Other States or International

Organizations, approved by Resolution of the Government of the Russian Federation of 2 August 1997 No. 973.

Bearing in mind that the adduced legal regulation is aimed at protection of such constitutionally-significant values as the sovereignty of the Russian Federation, integrity and inviolability of her territory, ensuring the defence of the country and the security of the State, and at the same time envisages the possibility of admittance of persons from the number of foreign citizens to information constituting State secret, the adoption of international obligations which will allow foreign citizens to carry out activity of patent agents on the territory of the Russian Federation, by the Russian Federation in itself does not entail threat to information security of the State.

Admittance of foreign citizens to the activity of patent agents contemplates no possibility of their access to information constituting State secret without observance of the procedure established by the legislation of the Russian Federation in force, containing sufficient guarantees of the protection of information, the dissemination of which can cause damage to the security of the Russian Federation. Rendering services other than sending demands for issuing patents on secret inventions by the patent agent is carried out within the framework of private law relations and is connected with the realization of private interests of the authors of the results of intellectual activity, including those constituting the secret of production. Envisaging in respect of these services no restrictions of admittance to the market and no restrictions of national regime as applied to foreign persons, the State widens for potential users the possibilities of choosing their performers, possessing special knowledge, which can not only be regarded as breach of Articles 55 (Section 3) and 62 (Section 3) of the Constitution of the Russian Federation but, on the contrary, creates pre-requisites for facilitation of access of citizens of the Russian Federation to legal assistance on the questions of acquisition, realization and protection of the rights on the results of intellectual activity and disposal of them according to the law of foreign States and international private law, including on the basis of agreements being integral part

of the Marrakesh Agreement, i.e. grants them additional guarantees of realization of the right to qualified legal assistance fixed in Article 48 (Section 1) of the Constitution of the Russian Federation.

Thus, the Protocol on the Accession of the Russian Federation to the Marrakesh Agreement does not contradict the Constitution of the Russian Federation also in the part in which its provisions contemplate access of foreign citizens to the activity as patent agents on the territory of the Russian Federation.

Concluding from the above and pursuant to Section 2 of Article 71, Articles 72, 74, 75, 78, 79 and 91 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

**h e l d:**

1. To recognize the international treaty of the Russian Federation pending its entry into force – the Protocol on the Accession of the Russian Federation to the Marrakesh Agreement Establishing the World Trade Organization conforming to the Constitution of the Russian Federation as to the procedure of its acceptance at the stage of its signing and approval by the Government of the Russian Federation

2. To recognize the international treaty of the Russian Federation pending its entry into force – the Protocol on the Accession of the Russian Federation to the Marrakesh Agreement Establishing the World Trade Organization conforming to the Constitution of the Russian Federation as to the content of the norms, in the part in which its provisions entail extension to the Russian Federation of the Understanding on Rules and Procedures Governing the Settlement of Disputes annexed to the Marrakesh Agreement and being its integral part, which envisages setting up and activity within the framework of the World Trade Organization of the Disputes Settlement Body, as well as in the part in which they establish specific commitments of the Russian Federation in respect of admittance to rendering of legal services on the territory of the Russian Federation.

3. The present Judgment shall be final, not subject to any appeal, it shall come into force immediately upon pronouncement, it shall be directly applicable and shall not require confirmation by other bodies and officials.

5. The present Judgment shall be subject to immediate publication in Rossiyskaya Gazeta and the Collection of Laws of the Russian Federation. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

The Constitutional Court  
of the Russian Federation.

No. 17-II