

# 2016 Report on the Implementation and Enforcement of Russia's WTO Commitments



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# Implementation and Enforcement of Russia's WTO Commitments

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## Introduction

Russia became a Member of the World Trade Organization (WTO) on August 22, 2012, 19 years after first applying to join the *General Agreement on Tariffs and Trade 1947* (GATT 1947) in 1993.<sup>1</sup> During the years leading up to accession, Russia adopted numerous measures (laws, regulations, resolutions, decrees, and other directives) to modernize its economy and create a stable business environment. Through the WTO accession negotiation process, WTO Members worked with Russia to ensure that Russia's legal regime incorporated the key WTO principles of national treatment, most-favored nation (MFN) treatment, transparency, and, more generally, the rule of law. The *Report of the Working Party on the Accession of the Russian Federation to the World Trade Organization* (WPR), reflecting the results of Russia's work and the accession negotiations, identifies the myriad steps Russia took to bring its legal regime governing international trade into conformity with the WTO Agreement.<sup>2</sup>

The "2016 Report on the Implementation and Enforcement of Russia's WTO Commitments" (the "2016 Russia WTO Report") consolidates two reports that had previously been submitted separately on an annual basis to Congress: (1) the "Report on Russia's Implementation of the WTO Agreement" and (2) the "Report on WTO Enforcement Actions: Russia". In order to improve reporting to Congress and the public, the Office of the U.S. Trade Representative (USTR) now provides a single annual Report on the Implementation and Enforcement of Russia's WTO Commitments, presenting the full picture of Russia in the WTO. This report provides an assessment of the extent to which Russia is implementing its WTO commitments, an enumeration of the steps USTR has taken over the past year to enforce those commitments, and a description of the actions USTR plans to take in the coming year to press Russia to comply with its WTO obligations.

The 2016 Russia WTO Report is prepared pursuant to section 201(a) of the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012 (P.L. 112-

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<sup>1</sup> In 1994, Russia's GATT Working Party was transformed into a working party on its accession to the WTO.

<sup>2</sup> The "WTO Agreement" comprises the Marrakesh Agreement Establishing the World Trade Organization as well as its annexed covered agreements.

208) (the Act). This provision requires the U.S. Trade Representative, not later than one year after the United States extends permanent normal trade relations (PNTR) to the products of Russia, and annually thereafter, to submit a report to the Committee on Finance of the U.S. Senate and the Committee on Ways and Means of the U.S. House of Representatives assessing the extent to which Russia is implementing the WTO Agreement (including the Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Trade-Related Aspects of Intellectual Property Rights) and the progress Russia has made in joining the Information Technology Agreement (ITA) and the Agreement on Government Procurement (GPA). In addition, to the extent that the U.S. Trade Representative believes that Russia is not fully implementing its WTO commitments or not sufficiently progressing to join the ITA and the GPA, the Report is to describe the actions that USTR plans to take to encourage Russia to improve its implementation of its commitments or increase its progress toward acceding, as the case may be.

The 2016 Russia WTO Report is also prepared pursuant to section 201(b) of the Act that requires that the U.S. Trade Representative submit annually a report to the Committee on Finance of the U.S. Senate and the Committee on Ways and Means of the U.S. House of Representatives describing the enforcement actions taken by USTR to ensure Russia's full compliance with its obligations as a Member of the WTO.<sup>3</sup>

## **Executive Summary**

In 2016, in some areas, Russia acted as a responsible member of the WTO community. It reduced its bound tariffs by the required deadline, notified new and draft measures to the appropriate WTO committees, eliminated a safeguard measure as scheduled, worked to implement the Trade Facilitation Agreement, and participated in its first Trade Policy Review. On the whole, however, Russia's actions continued to depart from core tenets of the WTO --

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<sup>3</sup> In addition, the U.S. Trade Representative and the Secretary of State are required to submit annually to the same committees a report that describes the actions the agencies have taken to promote the rule of law in Russia and that discloses the status of any pending petition for espousal filed with the Secretary of State by a U.S. investor in Russia. That report will be submitted separately.

liberal trade, transparency, predictability -- in favor of inward-looking, import-substitution economic policies.

Tariffs were a rare bright spot. In 2016, Russia implemented its tariff reductions in accordance with its commitments in its WTO Protocol of Accession. For example, Russia reduced tariffs on certain industrial products (e.g., civil aircraft, chemicals, textiles, wood products, paper products, and non-ferrous metals) and on certain agricultural products (e.g., cheese, milk, tea, sugars and sweeteners, alcoholic beverages including wine, fruit juices and fish products). Overall, Russia has now implemented final bound rates for approximately 90 percent of its tariff lines. In addition, Russia notified its modified WTO tariff schedule to reflect fully its ITA commitments.

Russia's application of non-tariff measures, however, has often undermined benefits expected from the application of lower tariffs. For example, the United States continues to raise concerns about opaque customs regulations on import valuation, burdensome import licensing requirements (particularly with regard to products with encryption capabilities), and the rules governing the importation of alcoholic products. In late 2016, a safeguard measure on combine harvesters was allowed to expire on schedule; nevertheless, USTR will continue to watch the treatment of this product closely, including the imposition of any new non-tariff measures. On the export side of the ledger, Russia maintains a list of products "of utmost importance for the domestic market" that could be subjected to export restrictions or prohibitions. In addition, the United States continues to monitor the evolution of the Russian and the Eurasian Economic Union's (EAEU) export regulatory regimes to ensure their consistency with the WTO Agreement.

Agricultural trade with Russia has long been troublesome, particularly with regard to Russia's use of sanitary and phytosanitary (SPS) measures to develop and protect its domestic market. In some cases, Russia does not appear to have based its SPS measures on international standards, or provided a science-based, objective risk assessment in those cases where it applied a more stringent standard. Russia has delayed approval of establishments, failed to remove veterinary control measures on certain products, and disrupted or prohibited the import and transshipment of a variety of U.S. agricultural products without justification. Beyond the application of often discriminatory SPS measures, Russia has imposed a general ban on imports from the United States of most agricultural products. The United States also continues to monitor Russia's

agricultural subsidies and tax regime to ensure their consistency with Russia's WTO commitments.

The United States also continues to monitor closely Russia's (and the EAEU's) technical barriers to trade (TBT). Although Russia has improved its transparency by notifying many TBT measures, USTR has concerns about many of the notified measures. Industries particularly affected by Russia's seemingly protectionist TBT measures include the alcohol, toy, processed food, pharmaceutical, and medical devices industries, as well as manufacturers of means of public transport that utilize satellite navigational systems. The United States will continue to monitor Russia's TBT regime to ensure its consistency with WTO obligations.

The United States also continues to monitor Russia's implementation of its industrial policies. For example, USTR is following closely Russia's use of subsidies and price controls, especially as they relate to titanium and natural gas. USTR is also paying close attention to Russia's growing use of domestic content requirements that apply to purchases by state-owned and state-controlled enterprises, as well as to preference programs for government purchases of domestically-produced products such as automobiles, satellite navigation systems, software, medical devices, and pharmaceutical goods. Although many of these preferences initially applied only to government procurement, in 2016, Russia began to extend its domestic purchasing requirements to state-owned enterprises outside of the procurement context. The United States has voiced its concerns in the WTO, and will continue to press Russia to act consistently with its WTO commitments, including those under the WTO Agreement on Trade-Related Investment Measures. It will also seek to gather further information on Russia's use of domestic preferences in government procurement during negotiations on Russia's accession to the Government Procurement Agreement.

Russia's WTO commitments impact not only exports of U.S. goods, but also exports of U.S. services to Russia. While Russia appears, for the most part, to be complying with its services commitments, protectionist tendencies continue to arise. Notably, Russia's data localization law appears to require that companies store personal data of Russian citizens on servers within Russia. The law is opaque and vague in many respects, but may implicate certain commitments on cross-border trade in services. USTR has similar concerns about the WTO consistency of legislation that limits foreign ownership of media in Russia.



The protection and enforcement of intellectual property rights (IPR) in Russia has been a long-standing concern. Although Russia made significant improvements in its IPR regime as it negotiated to accede to the WTO, as in other areas, that momentum has been lost. For example, Russia has amended certain IPR-related legislation, but then failed to issue final regulations necessary to implement the law. Although Russia has improved its enforcement efforts against online piracy, IPR enforcement in Russia in general continues to remain a significant problem. In fact, currently available information appears to indicate that overall enforcement of IPR has decreased recently. The United States will continue to monitor Russia's legislative framework and enforcement and, where appropriate, press Russia to implement fully its WTO commitments.

The United States continues to believe that having Russia in the rules-based system of the WTO benefits the United States, Russia, and the global trading system. However, reaping the benefits of Russia's WTO membership is becoming increasingly difficult as Russia rejects the trade-liberalizing tenets of the WTO in favor of inward-looking, import-substitution economic policies. Nevertheless, USTR continues to use tools in the WTO to stress to Russia the importance of its commitment to abide by, and participate in, the global rules-based trading system. Although the U.S. Government has curtailed its bilateral economic engagement with Russia in response to Russia's actions in Ukraine, USTR will continue to monitor Russia's trade and investment regime to ensure that Russia implements fully its WTO commitments. If Russia or the EAEU adopts or implements a measure that appears to be inconsistent with Russia's WTO obligations -- whether that measure implicates tariffs, behind-the-border measures, services or other obligations -- USTR will investigate and use all appropriate means to resolve the matter. These means encompass, as needed, the full panoply of WTO tools, including, where appropriate, WTO dispute settlement.

### **Russia and the Customs Union/Eurasian Economic Union**

Russia began its move toward closer economic ties with its neighbors Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan by signing the Treaty on the Establishment of the Eurasian Economic Community (EurAsEC) on October 10, 2000.<sup>4</sup> The purpose of EurAsEC was to promote mutual trade and investment on the basis of fundamental principles and norms of

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<sup>4</sup> Uzbekistan's membership in the EurAsEC was suspended in 2008.

international law, including WTO rules, and also to explore the creation of a free trade area and potentially a customs union.<sup>5</sup>

On January 1, 2010, Russia, Kazakhstan and Belarus began implementing a customs union (the Customs Union or CU) by adopting a common external tariff (CET). On July 1, 2010, a common CU Customs Code entered into force, and on July 1, 2011, the CU member states abolished all customs posts on their internal borders, allowing for the free flow of most goods among the CU member states. Also on July 1, 2010, the three CU member states established the CU Commission as the permanent regulatory body of the CU.

On May 19, 2011, the CU member states adopted the “Treaty on the Functioning of the Customs Union in the Framework of the Multilateral Trading System of 19 May 2011” (“Treaty on the Multilateral System”). According to this treaty, the provisions of the WTO Agreement, as set out in any CU member state’s (e.g., Russia’s) WTO Protocol of Accession and WPR, which fell within the competence of the CU, would become an integral part of the CU’s legal framework. Under the Treaty on the Multilateral System, CU member states would be obligated when making an international treaty in the framework of the CU to ensure that the treaty would be consistent with the WTO commitments of each CU member state. Similarly, when CU bodies adopted and applied CU acts, those CU acts had to comply with any CU member state’s WTO commitments. Finally, the CU member states were required to adopt measures to adjust the CU and decisions of CU bodies to comply with the WTO Agreement as set out in the Protocol of Accession and WPR of each CU member state. Until those measures were adopted, other CU treaties and decisions of CU bodies would apply only to the extent that they complied with the WTO Agreement. As a result, the rights and obligations of a CU member state under the WTO Agreement would override prior and future CU agreements and decisions of CU bodies.

In early 2012, the Eurasian Economic Commission (EEC) replaced the CU Commission as the supranational administrative and policy body charged with implementing external trade policy and regulation for the CU member states. The next significant event in the evolution of the CU was the entry into force on January 1, 2015, of the Eurasian Economic Union Treaty (the Treaty) creating the Eurasian Economic Union (EAEU), the successor to the CU. The following day,

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<sup>5</sup> See paragraph 1434 of Russia’s WPR.

January 2, 2015, Armenia joined the EAEU and on August 12, 2015, Kyrgyzstan became the fifth country to join the EAEU.

The EAEU is larger than the CU, not only in terms of geography but also in terms of substantive scope. The Treaty expands the competence of the EEC into a number of new policy areas, including financial services, government procurement, intellectual property rights, industrial subsidies, and agricultural support measures. Beyond these areas, the Treaty commits the member states to harmonize national policies over time in the areas of financial regulation, monetary policy, macroeconomic policy, competition, transportation and rail policy, labor migration policy, and policies regulating their markets for oil, gas, and electricity.

When Russia joined the CU (and later the EAEU), it nominally transferred authority over many aspects of its foreign trade regime to the EAEU, including import tariff rates, trade in transit rules, non-tariff import measures (e.g., tariff-rate quotas, import licensing, and trade remedy procedures), customs policies (e.g., customs valuation, customs fees, and country of origin determinations), border enforcement of intellectual property rights, establishment and administration of special economic and industrial zones, and the development of technical regulations and SPS measures. As a result, many of Russia's WTO commitments are implemented through EAEU measures. In such cases, Russia's WTO commitments specifically provide that they apply whether the Russian government or the competent bodies of the EAEU are responsible for implementation of the relevant commitment.

### **Russia in the World Trade Organization**

On August 22, 2012, following 18 years of negotiations with the United States and other WTO Members, Russia became a Member of the WTO. At that time, however, the United States and Russia each invoked non-application of the WTO Agreement with respect to the other. On December 21, 2012, following the termination of the application of the Jackson-Vanik Amendment to Russia and the extension of PNTR to the products of Russia, the United States and Russia both filed letters with the WTO withdrawing their notices of non-application and consenting to have the WTO Agreement apply between them.

In September 2016, Russia underwent its first Trade Policy Review (TPR) at the WTO. The TPR is a "peer review" that every WTO Member undergoes. A TPR focuses on the Member's

trade policies and practices, while also looking at the Member's wider economic and developmental needs, economic policies and objectives, and the external economic environment. In practice, the reviews have two broad results: they enable outsiders to understand a Member's policies and circumstances, and they provide feedback to the reviewed Member on its performance in the system. During the TPR, the United States posed questions to Russia that reflected concerns about a broad range of issues, including trade relations within the EAEU, the development and implementation of SPS and TBT rules, localization requirements, intellectual property rights, and services. The United States pressed for greater transparency, encouraged reliance on international standards, expressed regret at the growth of import substitution policies, and urged stronger enforcement and protection of intellectual property rights.

## **Import Regulation**

### *Tariffs and Border Fees*

As a result of bilateral goods market access negotiations with the United States and 54 other WTO Members, Russia agreed to bind all 11,170 tariff lines in its tariff schedule. After all of its tariff bindings are implemented, Russia's average final bound rate for industrial goods will be approximately 7 percent, a decrease from the applied average tariff rate of 10 percent at the time of Russia's accession. According to the WTO, the average final bound rate for agricultural goods will drop gradually to 10.8 percent, compared to the applied average tariff rate of 13.2 percent at the time of accession.<sup>6</sup>

In the process of binding its tariffs as part of its WTO accession, Russia has reduced many tariffs in sectors important to U.S. exporters. In industrial sectors, Russia agreed to bind its tariffs on wide body aircraft at 7.5 percent; Russia's previously applied tariffs on these products were as high as 20 percent. Russia also committed to an average final bound tariff for plastics of 6.2 percent; Russia previously applied an average tariff of 10 percent. Russia agreed to an average

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<sup>6</sup> Because of the imprecision inherent in calculating average tariff rates for agriculture products due to the presence of combined tariffs (e.g., x% but not less than y rubles per piece), USTR has not calculated a single average tariff for all agriculture products, but has instead provided the WTO's data for context.

final bound tariff rate of 6 percent on steel products; previously, Russia applied an average tariff rate of 8.9 percent.

Russia also agreed to final bound rates on chemical products that are generally consistent with the rates specified under the Chemical Tariff Harmonization Agreement, resulting in an average final bound rate of 5.3 percent. Previously, Russian tariffs on chemicals averaged 6.7 percent and ranged as high as 20 percent. With its most recent round of tariff reductions, Russia has implemented 94 percent of the final bound rates for chemicals.

In the agriculture sector, Russia committed to a final bound tariff of 12.5 percent within four years for wine; previously, Russia applied a tariff of 20 percent. For pears and other fresh fruit, Russia committed to a final bound tariff of 5 percent, in contrast to its previous applied tariff rate of 10 percent. As a result of U.S. efforts to expand access to Russia's market for American meat products, Russia now applies zero tariffs on pork products imported within the tariff rate quota (TRQ); Russia's previously applied tariff on these products was 15 percent. Likewise, Russia expanded in-quota access to its beef market from 41,700 to 60,000 tons through a U.S. country-specific TRQ, with a 15 percent in-quota tariff. In addition, Russia has established access for High Quality Beef with a 15 percent tariff outside of the TRQ for beef. Finally, Russia has committed to a final bound tariff of 5 percent for live animals, with some tariff lines bound at zero percent. Russia previously applied up to a 40 percent tariff on live animals.

In August 2016, Russia implemented the fourth round of annual tariff reductions as required by its WTO commitments. Russia reduced tariffs on industrial products such as civil aircraft, chemicals, textiles, wood products, paper products, non-ferrous metals, and fish products. For agricultural products, in 2016, Russia brought over 300 agricultural tariff lines to their final bound rates, most recently lowering tariffs on such products as cheese, milk, tea, sugars and sweeteners, alcoholic beverages including wine, and fruit juices. In fact, Russia has reduced some of its agricultural tariffs below the 2016 bound rates. Russia has now implemented 100 percent of its bound rates for agricultural equipment, steel products, and construction equipment, and implemented 93 percent of the bound rates for civil aircraft. Overall, Russia has implemented final bound rates for approximately 90 percent of its tariff lines. Russia cannot

legally apply EAEU CET tariffs above these tariff bindings, bringing a greater degree of predictability to businesses exporting to Russia.<sup>7</sup>

Russia's tariff reductions initially contributed to improved market access for U.S. exports, with U.S. exports to Russia increasing nearly 20 percent in the first year following Russia's accession.<sup>8</sup> However, U.S. exports to Russia declined from 2014 to 2015 -- by 34 percent -- due to a variety of political and economic factors.

A significant aspect of Russia's WTO accession was its commitment to take the steps necessary to join the Information Technology Agreement (ITA) and eliminate tariffs on computers, semiconductors and other information technology products within five years. On September 13, 2013, Russia became the 78<sup>th</sup> participant of the ITA Committee. On August 5, 2016, Russia notified its modified WTO tariff schedule to reflect fully its ITA commitments.<sup>9</sup>

Despite its many market opening tariff reductions, Russia's implementation of certain tariff commitments has raised concerns. One source of concern has been Russia's implementation of decisions of the EEC (the EAEU body responsible for administering the EAEU CET). In particular, pursuant to those decisions, Russia appears to have changed the type of duty on certain lines by augmenting the *ad valorem* rates with an additional minimum specific duty (thereby creating a "combined tariff"). Under WTO rules, the resulting combined tariff must not exceed Russia's bound tariff commitments. However, Russia has not informed WTO Members whether, for those goods subject to a combined tariff, the *ad valorem* equivalent of the specific duty is within the WTO *ad valorem* bound duty rate. In 2015, the European Union challenged Russia's application of the EAEU CET on certain tariff lines (paper products, refrigerators, and palm oil), asserting that the applied duty exceeded Russia's bound rate for those lines.<sup>10</sup> On August 12, 2016, the Panel circulated its report, agreeing with the EU that Russia had applied tariffs in excess of its WTO bound rates and recommending that Russia bring its tariff measures

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<sup>7</sup> As a customs union, the EAEU applies a common external tariff. Russia's WTO tariff schedule commitments, for the most part, bind the entire EAEU CET, with some temporary (lower) exceptions for Kazakhstan, Armenia, and Kyrgyzstan due to existing WTO tariff commitments.

<sup>8</sup> Export data are based on data from the Global Trade Atlas. Russia has not provided import data for 2015.

<sup>9</sup> Russia had, however, been applying the tariff-elimination commitments pursuant to the ITA since its accession in 2012.

<sup>10</sup> The United States is participating in the dispute as a Third Party.

into conformity with WTO rules. The Dispute Settlement Body adopted the report on September 26, 2016. Russia has indicated its intention to implement the panel's recommendations as adopted by the Dispute Settlement Body.

### *Customs Fees*

Upon becoming a WTO Member, Russia agreed to comply with Article VIII of the GATT 1994, which requires that fees and charges imposed at the border (other than tariffs) be limited to the approximate cost of the service provided. Russia amended its system of customs clearance fees to reduce those fees and establish fixed minimum and maximum fees for customs clearance of goods using electronic format or other simplified procedures for filing customs declarations.

Russia's implementation of these commitments is reflected in Article 72 of the CU Customs Code, which limits the amount of customs fees to the approximate cost of the service rendered. In addition, Russia revised its fee schedule for customs clearance fees in conformity with its WTO commitments, including providing a lower rate when goods are declared electronically.

U.S. officials are not currently aware of any areas of concern with respect to Russia's implementation of these commitments since becoming a WTO Member.

### *Customs Valuation*

The WTO Agreement on the Implementation of GATT 1947 Article VII (also known as the Customs Valuation Agreement or CVA) is designed to ensure that determinations of the customs value for the application of duty rates to imported goods are conducted in a neutral and uniform manner, precluding the use of arbitrary or fictitious customs values. Adherence to the CVA is an important issue for U.S. exporters, particularly to ensure that market access opportunities provided through tariff reductions are not negated by unwarranted and unreasonable increases in the customs value of goods to which tariffs are applied. Russia agreed to implement its obligations under the CVA, including the interpretative notes, upon accession to the WTO, without any transition period. In addition, Russia took a specific commitment in the WPR, *inter alia*, not to use reference prices or fixed valuation schedules as a means for determining customs value and to provide for the right to appeal decisions that were based on a minimum value, fixed valuation schedule, or reference price.

Russia and its EAEU partners have integrated the CVA's basic provisions into the EAEU legal framework. Specifically, the hierarchy of the six methods of customs valuation in the CVA, as well as most, but not all, of the provisions of the interpretative notes, are reflected in Russia's domestic law and implemented by reference in the CU Customs Code. However, industry reports that Russia continues to lack clear regulations governing import valuation, creating uncertainty and increasing the paperwork load. In addition, importers have, on occasion, raised concerns that Russia's Federal Customs Service (FCS) is continuing to use reference prices that seem inconsistent with the invoice valuation. In response to these concerns, the United States has raised questions in the WTO Committee on Customs Valuation, urging Russia to provide copies of legislation related to customs valuation, and seeking clarification as to where in Russia's, or the EAEU's, legislation certain commitments of the CVA can be found. The United States will continue to monitor Russia's valuation practices and work with the FCS to ensure full implementation of Russia's commitments on customs valuation.

### *Trading Rights*

The right to import and export (e.g., to declare goods at the border for import and meet relevant requirements, such as payment of any customs duties, SPS measures, technical standards, and IPR protection ) without having to invest in the importing country or employ a customs broker to facilitate market access, is critically important, especially for small and medium-sized enterprises that may not be able to afford to establish an office in each market or that, for commercial reasons, need to be the importer of record for the goods. In 1991, Russia eliminated its state monopoly on foreign trade. However, prior to its WTO accession, Russia had not only limited the right to import and export goods to Russian enterprises, but it also required an "activity license" to engage in the business of importing or exporting (in addition to requiring import licenses on select products). As part of its WTO accession commitments, Russia eliminated the requirement for an activity license to import and export goods. Following Russia's accession, the only requirement to engage in the business of importing and exporting is registration in Russia, and Russia has committed to employing an expeditious and transparent registration policy.

Although an activity license is still required as a precondition for obtaining an import license for some products (e.g., alcohol, encryption products, and pharmaceuticals), following accession, the



importer of record (declarant) is permitted to pay the relevant customs duties, fees and charges in connection with the importation of the goods, and meet other import requirements; however, it is not required to present an import license. The person withdrawing the goods from the customs checkpoint for distribution in Russia is now responsible for presenting the requisite import and/or activity license.

U.S. officials are not currently aware of any areas of concern with respect to Russia's implementation of these commitments since becoming a WTO Member.

### ***Quantitative Restrictions***

As noted above, Article I of GATT 1994 requires that WTO Members accord MFN treatment to imports from all other WTO Members. In addition, Article XI of GATT 1994 prohibits the imposition of restrictions or prohibitions (other than tariffs, taxes, or other charges) on imports, except under certain circumstances or if a GATT 1994 exception applies. Notwithstanding these obligations, on August 6, 2014, Russia issued an order banning certain agricultural imports from the United States, the EU, Canada, Australia, and Norway for one year. The list of banned food included certain beef, pork, poultry, fish and seafood products; fruits and nuts; vegetables; some sausages; and most prepared foods. In 2015, Russia amended the list of products covered by the ban and expanded the list of countries whose products were banned, adding Ukraine, Albania, Montenegro, Iceland, and Liechtenstein.<sup>11</sup> In June 2016, Russia extended the ban a further 18 months, until December 31, 2017. Russia claims the current ban is justified on the basis of national security concerns. The United States will continue to monitor Russia's administration of the ban.

### ***Import Licensing***

The Agreement on Import Licensing Procedures (Import Licensing Agreement) establishes rules for all WTO Members that use import licensing procedures requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the

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<sup>11</sup> The ban initially did not apply to agricultural products from Ukraine, but those goods became subject to the ban as of January 1, 2016, the date on which Ukraine implemented the Deep and Comprehensive Free Trade Agreement with the EU.

importing Member. The Import Licensing Agreement serves to ensure that the procedures used by Members in operating their import licensing systems do not, in themselves, form barriers to trade. An important objective of the Import Licensing Agreement is to increase transparency and predictability with respect to import licensing procedures and to establish disciplines to protect against unreasonable requirements or delays associated with such procedures.

To implement the rules of the Import Licensing Agreement, Russia amended aspects of its import licensing regime to liberalize and simplify the process of importing certain products subject to import control. For example, Russia agreed to eliminate the non-automatic import license requirement for sugar. In addition, when Russia became a WTO Member, it eliminated its non-automatic import licensing requirements for spirits and alcohol products and replaced them with an automatic licensing requirement.

Russia also agreed to liberalize its import licensing regime for products with cryptographic capabilities (encryption products). Prior to 2010, Russian law provided that any encryption product required an import license, and that the receipt of an import license was predicated on receiving an import permit from the Federal Security Service (FSB). In practice, however, many products with low-level encryption entered Russia without a license. In the WPR, Russia agreed to establish three categories of encryption products with corresponding levels of control:

(1) encryption products that can be imported with no customs formalities related to encryption; (2) encryption products that require only a one-time notification; and (3) encryption products that require an “import permission” and an import license. In addition, Russia agreed that, although an activity license to distribute encryption products would be required to obtain an import license for encryption products, encryption products covered by the first two categories would be exempt from the distribution activity license requirement. Russia also committed to integrate certain procedural safeguards into its licensing regime for encryption products, such as confirming that source code would not be required to obtain an import license and that once an import permission was obtained for an encryption good, the same good or a good used for the same purpose with identical encryption could be imported under an automatic license.

On December 31, 2009, the EAEU implemented an import licensing regime for encryption products, reducing the procedural hurdles for importing encryption products into Russia. However, certain aspects of the regime raise concerns with regard to Russia’s commitments in

this area. For example, the list of products subject to notification does not accurately reflect the definition of products to which Russia agreed in the WPR would be subject to notification. Furthermore, in response to U.S. concerns regarding the establishment of a category of encryption products that can be imported with “no customs formalities,” Russia has asserted that a “notification” is not a customs formality and that the rules governing the importation of encryption products are more liberal than they were prior to WTO accession. In addition, U.S. electronics exporters continue to raise concerns about the seemingly inconsistent application of the import licensing regime, absence of a written explanation when licenses are denied, issuance of licenses only for individual shipments rather than for all shipments of the “product family,” refusal to accept products designated as “mass market” for notification purposes, and requirement that information be submitted on a product-specific, rather than a family-specific, basis. The United States will continue to press the Russian government to address U.S. concerns regarding Russia’s implementation of its commitments on import licensing of encryption products.

Although Russia eliminated the general requirement for an activity license to import and export, and shifted to an automatic import licensing regime for alcoholic beverages, it has retained the requirement that an importer have an activity license to produce, warehouse, or distribute alcohol in order to obtain a license to import alcoholic products and to purchase the required excise stamps. Alcohol distributors have asserted that Russia’s requirements that must be met in order to obtain a warehousing license are onerous and arbitrary (e.g., the requirements that different spirits be stored at different temperatures and that different types of spirits be kept on different pallets). USTR has raised concerns in the WTO TBT Committee about Russia’s requirements for the storage of alcoholic beverages. The United States will continue to work to ensure that alcohol warehouse licensing provisions are transparent and not unnecessarily burdensome.

### *Non-Tariff Measures*

During Russia’s WTO accession negotiations, there was significant discussion about Russia’s regulation of alcoholic beverages. As part of the terms for its accession, Russia agreed to apply its regulatory regime for alcohol products in a non-discriminatory manner, consistent with WTO rules. Among other improvements, Russia agreed to eliminate duplicative bank guarantees (meant to cover import duties, VAT, and excise taxes) collected on alcohol imports, and

committed to ensure that such guarantees would not significantly exceed the total amount of fees actually due.

Nevertheless, the EAEU has established a bank guarantee requirement to demonstrate full payment of taxes and tariffs. The EAEU rules appear to allow the FCS to accept Russia-specific bank guarantees as evidence of full payment of the EAEU guarantee. Some Russian customs posts, however, have interpreted these EAEU rules to require both the EAEU bank guarantee as well as the Russian bank guarantee, effectively re-establishing the double bank guarantee. In addition, Russia's FCS often requires bank guarantees far in excess of the actual tax liability of the covered goods. Russian law permits the FCS to set the bank guarantee at the highest amount that could be due if the actual amount due cannot be calculated. Industry claims that the FCS has access to the information necessary to calculate a more accurate (and usually lower) bank guarantee amount. The United States will continue to monitor Russia's regulation of the alcohol market to ensure that its customs control measures are consistent with its WTO commitments.

### *Trade Remedies*

Binding tariffs and applying them equally to all trading partners are key WTO requirements that contribute to the efficient flow of trade in goods. The WTO Agreement, however, permits Members to refrain from applying these requirements in certain limited circumstances. Trade remedy measures comprise three such circumstances: (1) actions taken to remedy the effect of imports of goods that are sold below normal value and are causing or threatening to cause material injury ("anti-dumping duties"); (2) actions taken to offset countervailable subsidies on imports that are causing or threatening to cause material injury ("countervailing duties"); and (3) measures that address an increase in imports that is causing or threatening to cause serious injury to a domestic industry ("safeguard measures"). Russia committed that, as of the date it became a Member of the WTO, any trade remedy measure in place or any trade remedy measure investigation launched before the date of accession would be consistent with the relevant WTO agreements on trade remedies, namely the Agreement on Implementation of Article VI of the GATT 1994, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards.

As a member of the EAEU, Russia has transferred responsibility for administering its trade remedy laws to the EEC. Importantly, however, Russia made a commitment that any trade remedy investigation or measure would be consistent with its WTO commitments regardless of whether the investigation had been commenced by, or the measure had been put in place by, Russia's investigating authority or the EAEU investigating authority. To implement these commitments, prior to becoming a WTO Member, Russia revised its trade remedy law (covering anti-dumping, countervailing duty and safeguard measures). The new law established the procedural requirements of the WTO agreements, including for the disclosure of findings and reasoned conclusions on pertinent issues of fact and law, the determination of the accuracy of the information submitted by domestic and foreign parties, and the rights of interested parties to submit comments during the investigation. In addition, the EAEU member states adopted several agreements to implement the WTO requirements on the use of trade remedy laws.

When Russia joined the WTO, it notified its (and the EAEU's) trade remedy laws and procedures as required under the transparency provisions of the WTO Agreement and the WPR. It also provided notifications concerning the safeguard investigations that were in process when it joined the WTO and those initiated after it joined the WTO. The United States will continue to monitor Russia's compliance with its notification obligations and the EEC's administration of its trade remedy laws.

### **Export Regulation**

During its WTO accession negotiations, Russia agreed to reduce or eliminate export duties on a large number of products, including ferrous scrap and copper cathode, and bound the tariff levels of the remaining products on which it applied export tariffs. Russia also committed to adhere to Article XI of the GATT 1994, which generally prohibits WTO Members from maintaining export restrictions (other than duties, taxes, or other charges) except those that can be justified under applicable WTO provisions. Consistent with that commitment and the relevant EAEU agreements, Russia eliminated an export ban on grain imposed in 2010. Russia also confirmed that any export restraints imposed to ensure essential materials to domestic producers would not operate to increase the exports or the protection of that processing industry.

Russia has amended its national regulations to replace the export licensing regime for precious stones, diamonds, and metals with an automatic licensing regime, to reduce the number of goods subject to export licensing, and to remove export bans and other quantitative restrictions on the export of certain types of goods. In addition, Russia has eliminated restrictions on the export of raw materials for pharmaceuticals and reduced the number of pharmaceuticals subject to export licensing. Also, consistent with its specific WTO commitments on ferrous scrap and copper cathode, Russia has reduced its export duties on those products as provided in its tariff schedule. In September 2016, Russia removed temporarily the export duty on wheat (until July 1, 2018) to encourage exports.

The United States is concerned with the conformity of Russia's and the CU's export licensing provisions with WTO disciplines, and Russia has recognized that work still needs to be done in this area. For example, Russia maintains, and regularly updates, a list of products "of utmost importance for the domestic market" the export of which could be subjected to export restrictions or prohibitions. Although not all listed products are subject to export controls, Russia has, for example, banned the export of raw hides intermittently since 2014 in order to protect its leather processing industry and since 2015 has imposed an export duty on certain chemicals and anodes of the platinum group of metals. The United States continues to monitor the evolution of the Russian and EAEU export regulatory regime to ensure its consistency with the WTO Agreement.

## **Agriculture**

Upon its accession to the WTO, Russia assumed the obligations of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), as well as the WTO Agreement on Agriculture, which contains commitments in three main policy areas for agricultural products: market access, domestic support and export subsidies. Russia also made a number of additional agriculture-related concessions on its level of financial support for agricultural production, as specified in the WPR.

### ***Sanitary and Phytosanitary Measures***

The SPS Agreement establishes rules and procedures regarding the formulation, adoption and application of SPS measures, i.e., measures taken to protect against risks associated with plant- or animal- borne pests and diseases, additives, contaminants, toxins, and disease-causing

organisms in foods, beverages, or feedstuffs. The SPS Agreement requires that SPS measures address legitimate human, animal and plant health concerns; do not arbitrarily or unjustifiably discriminate between WTO Members' agricultural and food products; and are not disguised restrictions on international trade. The SPS Agreement requires that SPS measures be based on scientific principles and evidence. It also requires that SPS measures be based on relevant international standards or appropriate assessments of risk. At the same time, the SPS Agreement preserves each Member's right to choose the level of protection it considers appropriate with regard to sanitary and phytosanitary risks.

Russia assumed each of these obligations together with the other obligations of the SPS Agreement as part of its accession. In the WPR, Russia specifically committed to ensure that all of its SPS measures, whether adopted by it or the competent bodies of the EAEU, would be based on international standards, guidelines, and recommendations unless a more stringent measure is justified by a risk assessment. Russia further explicitly committed that measures which were not based on international standards, guidelines, or recommendations would not be applied in Russia without providing Members a scientifically-based justification of the measures, in accordance with the SPS Agreement. Russia also confirmed that all SPS measures, whether adopted by Russia or by the competent bodies of the EAEU, would comply with the non-discrimination provisions of the SPS Agreement. SPS measures would not, Russia agreed, be used in such a way as to constitute a disguised restriction on international trade.

Russia, in addition, undertook the following specific obligations in the WPR: to negotiate and sign veterinary certificates that comply with World Organization for Animal Health (OIE) requirements for Bovine Spongiform Encephalopathy attestations; to base its requirements for goods subject to veterinary control on international standards; to ensure that its measures do not discriminate between imports from WTO Members or between Russia's products and imports; to accept international standards regarding certain antibiotic residues; and to ensure that any actions that are taken in response to non-compliance with Russian or EAEU requirements are proportional to the non-compliance.

At the time of its accession, Russia confirmed the criteria for "de-listing" an establishment (an action which has the effect of prohibiting imports from that establishment), and in particular, committed to notify the exporting Member and give the exporting Member time to propose

corrective measures. With regard to emergency measures, Russia confirmed that its decisions and procedures for de-listing would be in accordance with the SPS Agreement. Russia further confirmed that, by the time of accession, specific inspection guidelines would be developed that reflected the principles of equivalence and that were based on international standards, guidelines, and recommendations. Russia also agreed to remove certain veterinary control measures, such as the requirement that establishments (e.g., processing plants or storage facilities) be approved in order to export selected products to Russia, and confirmed that veterinary control measures applied to animal products would be modified only in accordance with the SPS Agreement.

To ensure compliance with WTO rules on transparency, Russia confirmed that all Russian normative legal acts relating to SPS measures would be published in Russia's two official journals and that EEC Decisions and other EAEU legal acts relating to SPS measures would be published on the EEC website. Russia further committed that drafts of SPS technical regulations and other mandatory requirements would be made publicly available for comment and that interested persons would have at least 60 days to provide comments on the drafts. Finally, Russia has established an SPS inquiry point and established a website with full detailed conditions for the importation of specific products.

Because the authority over many SPS matters was transferred to the EAEU, most of the measures necessary to implement Russia's WTO SPS commitments must be adopted at the EAEU level. However, Russia's national SPS measures continue to apply to the extent that they do not conflict with EAEU measures.

In order to assure WTO Members that Russia would implement its commitments regarding harmonization with the international standards, recommendations, and guidelines, Russia and the EAEU amended existing legislation and adopted new measures. The EAEU adopted decisions that committed Russia to three key principles: in the absence of EAEU or Russian requirements, the relevant international standards would apply; if there are stricter EAEU or Russian requirements that lack scientific justification, the international standards would apply; and lastly, that Russia and/or the EAEU would align its standards with the relevant international standards or provide a scientific justification following a request from an interested party, including foreign governments. In addition, Russia established a process for reviewing those SPS measures that interested parties believe are inconsistent with the international standards. Through this process,



interested persons can request that specific SPS measures that are inconsistent with international standards be brought into conformity with the relevant international standard.

By 2011, the EAEU had established common veterinary requirements and 40 common forms of veterinary certificates for imports into the EAEU territory from any third country. The United States and other Members expressed concern that many of the common veterinary requirements appeared to be more stringent than the relevant international standards and did not allow the conditions in an exporting country to be taken into account. To allow exporting countries the opportunity to address these concerns with regard to some of the requirements in the pre-existing common veterinary certificates, the EEC extended the validity of bilateral veterinary certificates and provided Russian officials with the authority to negotiate certificates with exporting countries with terms that differ from EAEU common requirements. In addition, the EEC confirmed the EAEU member states' right to amend the EAEU certificates and the requirement to reflect international standards established by the OIE and Codex Alimentarius (Codex), allowing the United States to negotiate certificates with the EAEU member states that may differ from the EAEU common form, and which better reflect the conditions of trade between the United States and Russia.

The United States and other WTO Members also expressed concern about the veterinary requirements adopted by the EAEU, which included a requirement that all veterinary controlled products come from an establishment approved by the EAEU member states. In order to address concerns regarding the extension of this requirement to many products, the EEC removed the establishment requirement for certain products including dairy and pet food.

To implement Russia's commitments with regard to inspections, the EEC established the basis for joint inspections, systems audits, and acceptance of exporting country's guarantees. In addition, Russia adopted inspection guidelines for meat processing and storage facilities, fish and fish products, and dairy and dairy products in accordance with the relevant international standards and confirmed that it would not suspend imports from establishments based on the results of on-site inspections before it had given the exporting country the opportunity to propose corrective measures. To implement Articles 4 and 5 of the SPS Agreement concerning equivalence and risk assessment, the EEC established the basis for determining equivalence and conducting risk assessments in accordance with international standards.

Although Russia has put in place the legal framework to allow it to comply with its WTO commitments, its implementation of these commitments remains problematic. For example, there are concerns that Russia does not appear to have implemented fully its commitments to base measures on international standards, or, where it applies a more stringent standard, to provide a science-based, objective risk assessment. Moreover, in those cases where Russia has provided the United States with a risk assessment purporting to justify its SPS measures, there are concerns that those assessments do not appear to have been conducted taking into account risk assessment techniques of relevant international organizations. For example, Russia has adopted a zero tolerance for both ractopamine and trenbolone acetate, standards more stringent than Codex's maximum residue levels (MRL) for pork and beef, but does not appear to have provided risk assessments that conform to Codex guidelines. In addition, Russia has a near zero tolerance for tetracycline residues, a standard more stringent than Codex's MRL, but again appears to have failed to provide WTO Members with a risk assessment that conforms to international guidelines.

The United States remains continued with various Russian measures that disrupt or prohibit imports of U.S. agricultural products. One example is a May 2015 decision to prohibit the importation of all U.S. peanuts due to the detection of low levels of cadmium (too low to present a human health risk) in some shipments from the United States. In addition, in August 2015, Russia's Federal Supervisory Service for Protection of Customers' Rights and Human Well-Being (Rosпотребнадзор) ordered the removal of certain lots of American wines from store shelves, alleging excessive levels of phthalates and bifenazate, even though Russia has no standards for phthalates or bifenazate in wine. Although the action was never justified, a total ban was not imposed and exports of American wine to Russia have continued. In February 2016, the Russian Federal Veterinary and Phytosanitary Surveillance Service also announced a "temporary" suspension of imports of U.S. soybeans and corn (popcorn), without providing a strong scientific justification for the suspension.

Of similar concern was Russia's decision in December 2014 to ban the import of all poultry products and hatching eggs from the United States. The stated justification for the ban was a disease outbreak that was limited to flocks in certain U.S. states. Russia imposed a ban on products from all parts of the United States notwithstanding the existence of OIE guidelines that

contemplate regionalized application of trade restrictions related to the disease in question. In June 2015, Russia extended the import ban to cover transit of poultry and poultry products from the United States through Russian territory, and retains a ban on U.S. poultry despite the United States being declared free of Highly Pathogenic Avian Influenza on April 22, 2016. Russia has not responded to repeated U.S. efforts to resolve this issue.

Russia's interference with the transit of U.S. poultry products was not a singular occurrence. Russia continues, at times, to interfere with the transit of other agriculture products through its territory. The United States has supported other WTO Members' requests in various WTO committees for further information on, and a justification for, such transit bans.

Another practice that has raised WTO concerns is the difficulty of obtaining Russia's acceptance of an exporting country's guarantees concerning the process for approving establishments as eligible to export to Russia. Notwithstanding Russia's commitments regarding inspections and establishment approvals described above, securing acceptance by Russia of U.S. guarantees concerning U.S. procedures for approving establishments has become more difficult. In many cases, Russia has taken many months before issuing approvals; in some cases, Russia has refused, without any apparent reason, to approve a facility until after an on-site inspection has been conducted by the EAEU member state veterinary services. The United States continues to raise this issue with Russia.

The United States is also concerned with Russia's implementation of obligations to remove certain veterinary control measures for lower risk products. In 2011, the EAEU adopted a decision removing such veterinary control measures. However, days before Russia became a WTO Member, Russia's veterinary service proposed a temporary measure that would maintain the establishment listing requirement for all veterinary products until after a successful audit has been completed. Despite strong objections by the United States and other WTO Members, Russia is still implementing this requirement.

In order to meet its WTO commitments, Russia agreed to negotiate veterinary certificates with the United States that differ from EAEU certificates after receiving substantiated requests from the United States. However, Russia and its EAEU partners insist on including attestations in the certificates that do not appear to be based on the relevant international standards and have

offered no risk assessment in support of its alternative attestations notwithstanding Russia's commitments to conform its attestations to such standards unless a more stringent measure is justified through risk assessment. Engagement on new certificates has been difficult, with inconsistent participation by the EAEU member states' experts and a lack of coordination among the EAEU member states. In addition to continuing to work through multiple forums to engage on certificate negotiations, USTR and the U.S. Department of Agriculture will continue, where possible, to work at the technical level with Russia to improve engagement in this area.

### ***Domestic Supports and Export Subsidies***

When Russia joined the WTO, it was still restructuring its agriculture sector to recover from decades of central planning and an imbalance in prices and revenue. To support development and employment in the rural territories, and to encourage agricultural production, Russia had in place numerous subsidy programs. Nevertheless, Russia committed to a \$9 billion aggregate measure of support binding for 2013 and an \$8.1 billion figure for 2014 -- short-term increases over its current trade-distorting spending. Importantly, however, Russia has committed to a reduction of its domestic agriculture support payments to \$4.4 billion by 2018, a level below its spending level at the time of accession. Moreover, Russia has accepted an obligation to ensure that the sum of all product-specific support does not exceed 30 percent of the non-product specific support. Finally, Russia agreed to eliminate all of its export subsidies.

Russia's "Plan of Priority Measures to Ensure Sustainable Economic Development and Social Stability in 2015" outlines a number of steps to be taken by the Russian government to sustain economic development, including specific steps to support the agriculture industry. In the WTO Committee on Agriculture, the United States has pressed Russia for information on its agricultural support programs to ensure their transparency and WTO consistency. The United States will continue to monitor Russia's support for the agriculture sector to ensure transparency and consistency with WTO obligations.

### ***Value-Added Tax***

To further level the playing field between imported agriculture products and domestically-produced agriculture products, Russia agreed in its WTO Protocol to eliminate the exemption from VAT payments for certain domestic agriculture products. Although the Russian

government submitted legislation to the Duma, the Duma has postponed indefinitely consideration of the legislation. In 2016, the government amended a list that identifies categories of entities eligible for the VAT exemption, potentially expanding the list of agricultural entities that can avoid paying VAT. The United States continues to monitor Russia's implementation of its VAT regime and this commitment.

## **Internal Policies Affecting Trade**

### *Non-Discrimination*

In its WPR, Russia agreed to assume the obligations of GATT 1994, the WTO agreement that establishes the core disciplines that constrain and guide WTO Members' policies relating to trade in goods. Two core disciplines of the GATT are the Most-Favored Nation (MFN) treatment -- referred to in certain U.S. legislation as "normal trade relations" -- and national treatment. The GATS contains parallel MFN and national treatment obligations with respect to services.

The MFN rule for goods (Article I of GATT 1994) attempts to put the imported goods of a WTO Member's trading partners on equal terms with one another. Article I of GATT 1994 generally provides that if a WTO Member grants one WTO Member's goods a benefit or advantage, it must immediately and unconditionally grant the same benefit or advantage to like goods imported from all WTO Members. This rule applies to customs duties and charges of any kind imposed in connection with importation and exportation, as well as to internal taxes and charges, and other internal measures. The MFN rule with regard to services (Article II of the GATS) imposes comparable obligations.

The national treatment rule with respect to goods (Article III of GATT 1994) complements the MFN rule. It prohibits discrimination against imported goods vis-à-vis the importing Member's own goods. Generally, a WTO Member may not subject imported goods from another WTO Member to internal taxes or charges in excess of those applied to like domestic goods. Similarly, with regard to measures affecting the internal sale, offering for sale, purchase, transportation, distribution or use of goods, a WTO Member may not treat imported goods less favorably than like domestic goods. The national treatment rule applies in a similar manner to services under Article XVII of the GATS. This provision requires a WTO Member, in sectors in which it has

taken commitments in its schedule, to accord no less favorable treatment to services and service suppliers of other WTO Members than it accords to its own like services and service suppliers.

Russia's WPR elaborates on Russia's commitment to apply both Articles I and III of GATT 1994, as well as Articles II and XVII of GATS. Throughout the 18 years of accession negotiations, Russia reviewed its laws and regulations and made an effort to revise those that conflicted with its WTO MFN and national treatment obligations, e.g., measures governing prices charged for railway transport, application of internal taxes, subsidies for new automobiles, and the right to import and export. In addition, Russia, in conjunction with its EAEU partners, reviewed the EAEU agreements, regulations, and decisions to ensure their conformity with the MFN and national treatment provisions of the WTO Agreement.

However, since Russia's WTO accession, national treatment concerns have been raised in connection with the imposition of a number of Russian measures and policies. Soon after it became a WTO Member, Russia adopted a "recycling" fee on motor vehicles, purportedly to cover the cost of recycling the vehicle at the end of the vehicle's life and to develop a recycling industry in Russia. The United States and other WTO Members raised concerns about the potentially WTO-inconsistent nature of this program because domestic producers, as well as imports from Kazakhstan and Belarus, were exempt from paying the fee if they agreed to assume the cost of recycling the vehicle at the end of its life. The law has since been amended to require payment from domestic automobile manufacturers, regardless of any producer's commitment to recycle its vehicles. Russia has now adopted a Waste Management Law that imposes a "disposal fee" on waste products (e.g., plastic containers and paper packaging) to be paid by importers and domestic producers to cover the recycling, salvage, reclamation, and disposal of those products. Whereas the disposal fee will not be imposed on consumer products until January 1, 2017, it is already being imposed on agricultural and forestry machinery (known as a "utilization fee"). Industry contends that although the fee appears non-discriminatory because it must be paid by both importers and domestic producers, in fact, Russia has introduced subsidies that effectively reimburse domestic producers for having to pay the utilization fee. The United States will continue to monitor the implementation of the new law and the introduction of any new fees and subsidies to ensure Russia's compliance with its WTO commitments.

Similarly, Russia's copyright levy system continues to raise national treatment concerns. Russia collects a levy on both domestically-produced and imported products that can be used to reproduce copyrighted material for personal use (e.g., video recorders, voice-recorders, photocopy machines). However, the list of domestically produced products on which the levies are paid appears to differ from the list of imported products on which the levies are paid. In addition, the reporting and payment systems appear to differ. The FCS provides information on imports to the Ministry of Culture, which in turn provides the information to the collecting society to verify the payment of the levies, whereas domestic manufacturers pay based on sales and self-notify. U.S. officials have raised concerns regarding these practices with Russia and will continue to work to address these concerns.

The United States also has concerns regarding national treatment with regard to taxation of distribution services on motion pictures. Russia applies an 18 percent VAT on payments for the "right to use" (i.e., payments for distribution services) cinema products. However, the recipient of the payment can apply for a VAT rebate if the cinema product is "Russian." A "Russian" cinema product is defined as a movie in which the producer is Russian; a majority of authors are Russian residents; at least 30 percent of the cast and crew are Russian residents; the movie is in the Russian language; at least 50 percent of the movie is financed by Russian residents; or the movie is produced under special international agreements. In other words, the VAT collected on payments for the "right to use" a "Russian" movie (as defined in the Russian Tax Code) can be reimbursed whereas the VAT collected on payments for the "right to use" a U.S. (or other non-Russian) movie cannot be reimbursed. This practice raises concerns about Russia's implementation of its national treatment commitments. The United States will work to ensure that Russia collects VAT on royalties consistent with its WTO commitments.

### ***Industrial Policy, Including Subsidies***

Upon its accession to the WTO, Russia assumed obligations under the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement), which addresses the use of subsidies and countervailing duty measures by WTO Members. In the WPR, Russia committed that it would eliminate, by the time of its accession, all subsidy programs prohibited under Article 3 of the SCM Agreement, i.e., subsidies contingent on export performance (export subsidies) and subsidies contingent on the use of domestic over imported goods (import

substitution subsidies). In addition, Russia took a specific commitment to extend subsidies for the purchase or lease of aircraft to include the purchase or lease of foreign-made aircraft that had previously been available only for the purchase or lease of Russian-made aircraft.

With regard to its transparency commitments, both during its accession negotiations and as a Member, Russia has provided subsidy notifications to the WTO Committee on Subsidies and Countervailing Measures (Subsidies Committee). The United States has raised questions about the comprehensiveness of those filings, and requested additional information with respect to several other programs which Russia has not notified. As a result of those questions, Russia provided additional information on its subsidy programs. The United States continues to monitor Russia's compliance with its transparency commitments and, where appropriate, continues to raise questions regarding the comprehensiveness of Russia's filings, both in terms of additional programs and the level of detail provided.

During Russia's WTO accession negotiations, Members raised concerns about specific subsidy programs related to automobiles, civil aircraft, and agricultural equipment. Since then, Russia has eliminated some support programs for its automotive and civil aircraft industries. In the latter, although Russia had terminated the program that provided subsidies only with respect to Russian-made planes (although a few existing contracts were grandfathered), in July 2015 the government announced a new program to provide financial support for lessors of Russian-made aircraft. Linking benefits under the program to use of domestic aircraft could raise concerns about discrimination against imported products, including under the SCM Agreement. Similar concerns exist with regard to a program that applies to agricultural equipment, under which Russia disburses financial support to producers of agriculture equipment that may be contingent on a certain level of local production. The United States will continue to discuss the potential implementation and operation of these programs in the coming year in the context of Russia's transparency obligations under the SCM Agreement, and will review carefully Russia's next subsidy notification, due in June 2017.

Concerns have also been raised with respect to certain benefits provided to manufacturers in the "Titanium Valley" Special Economic Zone (SEZ). According to industry sources, the primary beneficiary of these programs is Verkhne Saldinskoye Metallurgical Production Association (VSMPO), currently the only titanium producer in Russia. VSMPO exports 70 percent of the



titanium it produces. Russia has notified its SEZ programs, and the United States is seeking additional information on these programs. Another possible subsidy to the titanium industry (i.e., VSMPO) may have occurred in the form of the allegedly below-market price paid by Norcom in its purchase of VSMPO from the Russian government.

The Russian government has in place a growing number of initiatives aimed at supporting various domestic industries, particularly as imports decline in response to Russia's import substitution policies. Recent programs include subsidies that appear to compensate local manufacturers for paying the "utilization fee" (see above) and proposed subsidies to support clinical trials abroad to encourage the export of medicines. The United States will continue to examine Russia's subsidy notifications and to monitor Russia's subsidy policies and programs, with particular attention to the aviation industry as well as the agriculture and agricultural equipment industry, to ensure Russia complies with its commitments under the SCM Agreement.

#### *State- Owned, Controlled, and Trading Enterprises*

In addition to the disciplines in the WTO Agreement on the activities of state-owned and state-controlled enterprises (SOEs), and state-trading enterprises (STEs), Russia also agreed to disciplines in the WPR. In particular, Russia agreed that state-owned and state-controlled enterprises, when engaged in commercial activity, would make purchases that were not intended for governmental use and sales in international trade in a manner consistent with the WTO Agreement. Such enterprises would make purchases and sales of goods and services in accordance with commercial considerations, such as price, quality, marketability, and availability, and afford enterprises of other WTO Members the opportunity to compete for participation in such purchases and sales. These commitments covered all goods, as well as services for which Russia has taken commitments in its services schedule, taking into account the limitations set out in its services schedule, the rights and obligations of Russia under the GATS, and recognizing the regulatory measures of Russia covered by the WTO Agreement.

As confirmed in the WPR, Russia has many state-owned enterprises and state-controlled enterprises that operate in the commercial sphere. Prior to becoming a WTO Member, Russia took various steps to eliminate special privileges for most of those companies. For example, in

2002, Russia abolished the exclusive right of Alrosa, or any other exporter, in the activities of diamond production and export. In 2005, Russia abolished the law under which only certain companies in which the government owned more than 51 percent were allowed to import or export ethyl spirits (provided they had the appropriate license). Similarly, in 2009, Russia abolished the exclusive rights of Almazymvelir Export Foreign Trade Association with respect to operations in raw materials containing platinum and platinum group metals.

One industry with state involvement that raised concerns during Russia's WTO accession negotiations was the civil aircraft industry. As discussed above, Russia agreed to eliminate its WTO-inconsistent subsidies for the aircraft industry. In addition, during its WTO accession negotiations, Russia confirmed that its majority ownership in Aeroflot, the national airline, would not accord it undue influence in that company's commercial activity. The United States continues to monitor closely the Russian government's participation in, and assistance to, the civilian aviation industry.

In the past several years, Russia has continued to impose import substitution requirements on SOEs. In 2014, the Russian government adopted a measure that banned certain companies in which the government owned more than 50 percent of the shares from purchasing imported automobiles, metal products and heavy machinery. In 2015, the government assumed the authority to establish for SOEs procurement plans and tender rules for the procurement of specific goods, works, and services, and established the Government Import Substitution Commission with responsibility for approving procurement of machinery and equipment for large investment projects by SOEs, state corporations, or certain private businesses, as well as foreign procurement of certain industrial products. In July 2016, in a government order setting forth a plan to shift all federal agencies and funds to domestically-produced software, the Government also "recommended" that regional and municipal authorities and SOEs switch to domestically-produced software. Furthermore, in December of 2015, the government of Russia issued an order restricting the procurement of 11 types of equipment used by SOEs to complete any project co-funded or guaranteed by government funds (unless a waiver was obtained from the Government Commission on Import Substitution). The restricted items include gas and steam turbines, generators, certain types of passenger boats, and many similar products.

In response to Russia's continued reliance on policies directing the purchase of Russian-made goods and services, especially with regard to SOEs, the United States raised questions in the WTO Committee on Trade Related Investment Measures (TRIMS Committee) about the consistency of these programs with Russia's WTO commitments. The United States will continue to monitor the implementation of these measures to ensure that Russia implements its WTO commitments.

With regards to STEs, Russia has a biennial obligation to notify its STEs to the WTO's Working Party on State Trading Enterprises (STE Working Party). Russia twice missed the biennial deadline to make the required notification, mostly recently in June 2016. The United States has raised this issue in multiple STE Working Party meetings. In response, Russia has informed WTO Members that the notification was being finalized in Moscow and would be presented "very soon." Of particular concern is Russia's failure to notify state-owned Gazprom, which owns and controls all of the gas pipelines in Russia. In 2013, Russia granted Rosneft and Novatek the right to export liquefied natural gas, but Gazprom retains a monopoly of pipeline gas exports. The United States will continue to press Russia on this issue.

### ***Pricing Policies***

In the WPR, Russia agreed that it would not use price controls to restrict the level of imports of goods or services, or for the purpose of protecting the production of domestic goods or impairing its services commitments. In addition, Russia listed in the WPR the limited number of products and services remaining subject to price control or government guidance pricing, and it provided detailed information on the procedures used for establishing prices.

Russia also specifically committed to unify the rail transportation charges to ensure that, by July 1, 2013, products imported into, and products destined for exportation or sold for export from, Russia would face the same transportation charges. Russia further committed that regulated railway tariffs would be published before they entered into force. In December 2012, Russia's Federal Tariff Service did issue an order governing its tariff policy on rail freight and published draft measures and orders on its website. Industry, however, asserts that Russian Railway continues to charge higher railway tariffs on goods destined for export and has failed to publish information on its differential freight tariffs.

With regard to natural gas, Russia was allowed under its WTO commitments to continue its domestic price regulatory regime. Russia committed that producers and distributors of natural gas in Russia (including Gazprom, but also independent producers Rosneft and Novatek) would operate -- within the relevant regulatory framework -- consistent with normal commercial considerations to recover their costs and make a profit. However, Russia's progress in meeting this commitment appears to be modest and uneven. In 2007, Russia started a long-term process to equalize the return on domestic gas sales as compared to the return on international gas sales. Russia has continued to delay the date by which Russia will achieve equal profitability of export and domestic industrial sales, including through cancellation in 2014 of a planned tariff increase. As a result, it appears that the domestic price for industrial users may be below export prices. The United States will continue to monitor the pricing of natural gas in the Russian market.

### ***Standards, Technical Regulations and Conformity Assessments***

As a WTO Member, Russia has assumed the obligations of the Agreement on Technical Barriers to Trade (TBT Agreement), which establishes rules and procedures regarding the development, adoption and application of standards, technical regulations, and conformity assessment procedures (such as testing or certification) used to determine whether a particular product meets such standards or regulations. The TBT Agreement applies to all products, including industrial and agricultural products, and establishes rules that help eliminate unnecessary obstacles to trade; its aim is to prevent the use of technical regulations as unnecessary barriers to trade. Furthermore, the TBT Agreement requires, among other things, that standards-related measures be developed and applied transparently and on a non-discriminatory basis by WTO Members and be based on relevant international standards and guidelines, when appropriate. To comply fully with the WTO's transparency requirements for technical regulations and conformity assessment procedures, Russia must notify to the WTO all technical regulations and conformity assessment procedures that are not based on relevant international standards and that may have a significant effect on trade of other WTO Members, and ensure that other Members have adequate time to submit comments and to have those comments taken into account.

Russia's standards-related measures are implemented through EEC and EAEU measures and Russian domestic requirements. In the WPR, Russia committed to comply with all provisions of the TBT Agreement, including those relating to transparency and predictability. In addition,

Russia has taken specific commitments with regard to technical regulations affecting the telecommunications equipment and civil aviation sectors.

As Russia has begun to move from national regulations to regional (EAEU) regulations, it (and occasionally its EAEU partners) has begun to notify those regional regulations. As a result of U.S. engagement during the past year, Russia notified several regional regulatory proposals, including on medical devices and pharmaceuticals, to the WTO's TBT Committee. Russia has not, however, notified its new registration requirements for alcohol products, despite repeated requests by the United States in the WTO TBT Committee that it do so. It has also failed to notify other legislative acts establishing technical standards and regulations governing the required installation of GLONASS-compatible navigational systems in civil aircraft.

Regulation of Russia's alcoholic beverage sector has raised a number of concerns about consistency with the substantive and procedural requirements of the TBT Agreement. For example, U.S. officials have raised concerns about Russia's (and the EEC's) use of technical regulations to erect barriers to U.S. exports. USTR has sought clarification in the WTO TBT Committee on Russia's treatment of specific distilling techniques such as different practices for the aging of whiskey and the requirement for an expiration date on certain alcoholic beverages (a requirement not in keeping with international standards). The EEC continues to work on a draft regulation governing alcoholic beverages, with limited input from industry. Throughout its engagement, the United States has reiterated to Russia the importance of implementing its obligations consistent with the TBT Agreement, including its transparency obligations. In the coming year, the United States will continue to monitor closely the situation and seek resolution of any remaining or new issues.

In addition, the toy industry has raised concerns regarding mandated pre-market evaluations required in draft amendments to the EAEU's regulation "On Safety of Toys." According to the toy industry, the draft regulation does not provide any details concerning how the pre-market evaluations would operate, the standards for approval, or how the experts making the evaluation would be selected. The United States will continue to monitor the EAEU's regulations concerning toys to ensure their consistency with Russia's TBT commitments.

Another sector in which the regulatory regime has raised concerns is food labeling. EEC regulations on food product labeling impose numerous labeling requirements. Among other concerns, the regulations appear to differ from the labeling requirements for allergens and nutritional components established in the Codex General Standard for the Labelling of Prepackaged Foods. Russia has not provided an explanation of the rationale for deviating from the established international standard. In addition, the United States has sought clarification on the threshold requirements in the EEC's regulations on food product labeling that require warning statements for products containing certain sweeteners. In 2016, the United States submitted comments on draft amendments to the EEC's food labeling regulation, and it awaits information regarding whether and how those comments are considered by the EEC.

Other TBT issues of concern include measures governing Russia's satellite navigation system, the Global Navigational System (GLONASS). In 2012, Russia issued a decree requiring that most aviation satellite navigational systems used in Russia be GLONASS (or GLONASS/GPS enabled) over the next several years, with foreign manufactured equipment being given two additional years to comply. Similar requirements have been published for most forms of public transport, with plans announced requiring private vehicles to begin using GLONASS features (although press reports indicate that the deadline for mandatory installation has been postponed). Notably, Russia has failed to notify these requirements. Furthermore, the mandate that certain forms of transportation use a specific technology, as opposed to any technology with the same function, raises questions about the measure's consistency with the TBT Agreement.

Similarly, Russia has introduced a compulsory requirement that producers of pharmaceutical products must be certified for compliance with good manufacturing practices (GMP); the regime went into effect in 2016 for new drugs and will go into effect in 2017 for renewals. Although the introduction of GMP is not problematic, Russia did not notify this measure to give other WTO Members an opportunity to review. More importantly, industry has raised concerns about the differential treatment accorded to foreign versus Russian manufacturers under Russia's GMP regime, and that Russia has not put in place the inspection infrastructure necessary to certify expeditiously manufacturing sites for compliance with GMP provisions in such a way as to avoid market and trade disruptions and to ensure that the measures do not, in practice, disproportionately adversely impact imports. The United States has met bilaterally with Russian

officials on the margins of the TBT Committee to discuss U.S. stakeholder concerns regarding Russia's failure to notify all of its TBT measures, and in particular, technical regulations governing medical devices. U.S. officials have also urged the Russian delegate to notify certain amendments to the Law on the Circulation of Medicines to the WTO TBT Committee. The U.S. delegation also emphasized the importance of stakeholder input during the drafting process.

The United States will continue to monitor Russia's and the EEC's technical regulations and work to ensure their consistency with the requirements of the TBT Agreement. In addition, the United States will continue to remind Russia of its transparency obligations.

### ***Government Procurement***

The WTO Agreement on Government Procurement (GPA), a plurilateral agreement, which currently includes 47 WTO Members (including the United States), applies to government procurement of goods and services. The GPA requires GPA members to provide MFN and national treatment for covered procurement to the goods, services, and suppliers of other GPA members and to adhere to detailed procedures designed to ensure fairness, predictability, and transparency in the procurement process.

In its WTO Protocol, Russia committed to request observer status in the GPA and to begin negotiations to join the GPA within four years of its WTO accession. Russia became a GPA observer on May 29, 2013, and on August 19, 2016, informed GPA Members of its intent to initiate negotiations to join the GPA.

Since joining the WTO, Russia has introduced a number of measures that establish preferential treatment for domestically produced goods in public procurement such as a 15 percent price preference for goods of EAEU origin in purchases for government use. In some cases, Russia has banned government procurement of certain imported products if such products are available from manufacturers in the EAEU, including a wide range of machinery (particularly those used in construction and in raw materials extraction), vehicles, medical devices or pharmaceutical products, computer hardware and software, a broad array of light industrial goods, and construction and building materials. Industry sources report that Russia's procurement rules mandate not only that Russian government entities must purchase Russian-made products, but that private contractors must use only Russian-made products. The United States is assessing

whether the buy local policy applied to the purchases of private contractors is consistent with Russia WTO obligations.

The United States, joined by other Members, has raised concerns in the WTO about Russia's adoption of policies that appear to discriminate against imports in public procurement. As USTR negotiates Russia's accession to the Government Procurement Agreement, these measures and policies will be a significant focus.

## **Services**

The General Agreement on Trade in Services (GATS) provides a legal framework for addressing barriers affecting trade in services. The GATS contains general obligations, such as MFN and transparency, which apply to all service sectors; in addition, under the GATS, Members undertake specific commitments to provide market access and national treatment in particular sectors. These commitments are contained in a Member's services schedule, just as a Member's tariff commitments are set out in a schedule. One of the objectives of the GATS is progressive liberalization, and toward that end it provides for further negotiations to open services markets around the world.

In its services schedule, Russia committed to substantial openness in a broad range of services sectors, including through the elimination of many existing limitations, particularly in service sectors of importance to the United States, such as financial services, telecommunications, distribution, energy, express delivery, professional services, and audio-visual services.

Russia also took "horizontal" (cross-sectoral) commitments related to its regulatory processes and structure. During the years of Russia's WTO accession negotiations, it undertook a series of steps to improve the business environment in Russia, including streamlining the processes for company registration and reducing the number of activities subject to licensing. To address concerns of WTO Members about its activity licensing regime, Russia committed to make publicly available its measures affecting trade in services, as well as the names of the competent authorities responsible for issuing licenses. Russia undertook specific commitments to ensure transparency in the process for granting and denying licenses and to ensure that the relevant regulatory authority would not be accountable to any service supplier that it regulates in sectors where Russia had taken specific commitments. Russia further committed to instituting notice-



and-comment requirements to ensure transparency in the development of the regulatory regime governing those same sectors. Russia's services commitments also establish the rules for business visas for executives and professionals, and allow service companies to transfer vital employees to their operations in Russia.

### *Financial Services*

Russia undertook significant market opening commitments in the financial services sector, including allowing 100 percent foreign ownership of certain non-insurance financial services firms, including banks, broker dealers, and investment companies. Russia agreed that foreign companies can own and trade the full range of securities (including state securities, bullion and new instruments, once they are approved), lead-manage Russian securities issuance, and participate in financing the privatization of government-owned firms. Russia also agreed to allow important cross-border services such as financial leasing, financial information, and data processing, as well as credit cards and other types of payments. U.S. officials are not currently aware of any areas of concern with respect to Russia's implementation of its WTO GATS commitments with regard to non-insurance financial services.

With regard to insurance, Russia has agreed to provide a significant level of market access and national treatment for U.S. insurance companies, including 100 percent foreign ownership of non-life insurance firms. Russia has also committed to phase out its existing restrictions on foreign insurance firms. Limits on the number of life insurance licenses granted to foreign insurance firms, as well as foreign participation in a small number of mandatory insurance lines, are to be phased out over five years from the date of Russia's accession. Russia committed to allow foreign insurance companies to open direct branches for life and non-life insurance, reinsurance, and services auxiliary to insurance nine years from the date of its accession.

In 2016, Russia established a state-owned re-insurance company and mandated that Russian insurance companies must place ten percent of their reinsurance business with the new state-owned company. Because Russia did not take any reservations or limitations to its insurance services commitments, this mandatory placement of business with a specific company could raise questions about its WTO consistency. The United States will seek clarification from Russia regarding this new insurance venture and monitor its development.

### *Telecommunications*

Russia agreed to open its market for telecommunication services, both on a facilities and non-facilities basis, to all WTO suppliers as of the date of its accession to the WTO. Sectoral coverage is comprehensive, and Russia committed to allow telecommunications companies to operate as 100 percent foreign-owned enterprises. Importantly, Russia eliminated the requirement that a fixed satellite operator must establish a commercial presence in Russia in order to provide capacity to a Russian telecommunications company. Russia also accepted the pro-competition WTO Basic Telecommunications Reference Paper that requires the establishment of an independent regulator, the prevention of anti-competitive behavior by dominant suppliers, and the introduction of transparency obligations and interconnection requirements. U.S. officials are not currently aware of any concerns with respect to Russia's implementation of its WTO GATS commitments in this area since it became a WTO Member, but will continue to monitor Russia's implementation of these commitments.

### *Computer and Related Services*

Russia committed not to limit market access and to extend national treatment to all computer and related services, including on a cross-border basis. This latter commitment is particularly important, given the growth of cloud computing, which is covered by Russia's WTO commitments. An ongoing concern is how this commitment will be implemented in light of Russia's 2001 Data Protection law, which includes an "adequacy" standard to ensure privacy protection of the data, but has yet to provide alternative mechanisms to allow for the transfer of personal information outside of Russia without the consent of the data subject. In addition, on September 1, 2015, Russia's so-called Data Localization Law entered into force. The provisions of the law are vague, but the core requirement appears to be that the collection of personal data of Russian citizens must be done on servers located in Russia. Even though the law has been in effect for over a year, Russia still has not issued any implementing regulations, creating enormous uncertainty among both domestic and foreign companies as to the actual requirements of the law. The core requirement that personal data on Russian citizens be collected using servers in Russia appears to implicate a number of commitments Russia made to allow cross-border services. The United States is monitoring Russia's implementation of these commitments.

### *Distribution Services*

Russia committed to liberalize its wholesale, retail, and franchise sectors by allowing foreign distributors to operate as 100 percent foreign-owned enterprises upon its accession to the WTO. U.S. distributors will be allowed to engage in the distribution of most products, including nutritional supplements, with minimal limitations and on terms comparable to those of domestic distributors. In addition, Russia's WTO commitments for distribution provide for direct sales by individual commission agents. However, rules that require that sales of specialized dietary products containing biologically active substances be sold only through pharmacies and specialized stores remain in effect. These restrictions may raise questions with regard to Russia's compliance with its commitment to allow direct sales of such products. The United States will urge Russia to revise these measures in order to clarify the legal status of such sales.

### *Audio-Visual Services*

Russia made strong commitments in its dynamic audio-visual sector, including in motion picture distribution and projection services, and the sale of programming to television and radio stations. Russia has also agreed to allow foreign audio-visual companies to operate as 100 percent foreign-owned enterprises.

U.S. officials are not currently aware of any areas of concern with respect to Russia's implementation of its WTO GATS commitments in this area since it became a WTO Member, but will continue to monitor Russia's implementation of these commitments.

### *Media Services*

A 2014 Russian law requires that, by February 1, 2017, foreign ownership of Russian media assets be limited to 20 percent. This measure may undermine Russia's commitments to allow WTO Members to establish a commercial presence for both "printing and publishing" as well as "news agency services" without restrictions on ownership. The United States will monitor the status of this legislation and urge Russia to ensure its consistency with its WTO obligations.

## **Intellectual Property Rights**

Upon joining the WTO, Russia assumed all the obligations of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and the additional commitments on IPR issues contained in the WPR. The TRIPS Agreement sets minimum standards for protection of copyrights and related rights, trademarks, geographical indications, industrial designs, patents, integrated-circuit layout designs, and undisclosed information. The TRIPS Agreement also establishes minimum standards for the enforcement of intellectual property rights in administrative and civil actions and, at least in regards to copyright piracy and trademark counterfeiting, in criminal actions, and in actions at the border. Furthermore, the TRIPS Agreement requires that, with very limited exceptions, WTO Members provide national and MFN treatment to the nationals of other WTO Members with regard to the protection and enforcement of IPR rights.

In the WPR, Russia undertook additional commitments on IPR protection and enforcement, such as clarifying how undisclosed information and test data will be protected in Russia, withdrawing exceptions to copyright protection for works that existed prior to 1995, reviewing and improving the operation of its collecting society regime, and updating law enforcement procedures to address certain issues related to digital piracy of materials protected by copyright.

### ***Legal Framework***

Prior to its accession to the WTO, Russia amended its IPR laws to integrate WTO commitments into its legal regime and with the objective of implementing the 2006 United States-Russia bilateral IPR agreement. Russia improved its civil protections for IPR by amending Part IV of its Civil Code, which relates to protection of various forms of IPR, including patents, trademarks, and copyrights and related rights, updating its civil enforcement procedures and adopting the legal framework for Russia's implementation of the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performance and Phonograms Treaty, referred to collectively as the WIPO Internet Treaties. Russia has not yet fully harmonized Part IV of the Russian Civil Code (i.e., the IPR portion thereof) with the WIPO Copyright Treaty. This legislative uncertainty appears to have generated uncertainty in law enforcement about the proper scope and procedures for enforcement of copyright and related rights, including those protected by the TRIPS Agreement. Russia also amended its Civil Code to clarify that an existing Internet

domain name would not serve as a ground for refusal to register a third party's trademark or service mark for that name. Russia also standardized its patent fees to apply in the same manner to Russian and non-Russian entities.

In recent years, reflecting commitments in the WPR, Russia has made progress toward implementing controls on unlawful optical media production, notably through amendment of its Law on Activity Licensing, to ensure that copyright infringers cannot renew a license to engage in optical media production. However, the extension of such controls to other forms of unlawful media production (e.g., audio disks) is still yet to be confirmed. Russia also revoked its reservation to Article 18 of the Berne Convention for the Protection of Literary and Artistic Works. As a result, Russia now provides copyright protections for works that existed prior to 1995 and originated from the United States or any other party to the Berne Convention or the WTO Agreement.

In the WPR, Russia committed to take action against websites that promote illegal distribution of content protected by copyright or related rights. In June 2013, Russia approved its first law specifically dedicated to decreasing online piracy of television and film. In November 2014, the Duma adopted amendments to extend the scope of the law to cover more categories of copyrightable material, as well as to provide additional court-ordered remedies for copyright infringement, including permanent injunctions with respect to repeated copyright infringement, which came into force as of May 1, 2015. The United States continues to monitor closely Russia's evolving laws and practices related to online piracy.

In the WPR, Russia also committed to ensure that the thresholds for the application of criminal procedures and penalties with regard to cases of willful trademark counterfeiting or copyright piracy on a commercial scale would be set and applied in a manner that reflected the realities of the commercial marketplace. Accordingly, Russia amended its Criminal Code to establish fines and to reflect adjustments to the threshold for the application of criminal procedures and penalties for willful counterfeiting or commercial-scale piracy. For example, administrative fines for criminal trademark violations had been extremely low. In August 2013, Russia implemented a method of calculating such fines, replacing an arbitrarily low and fixed fine with a fine calculated based on the value of the counterfeits being produced or sold. This method should result in penalties that have a stronger deterrent effect. In addition, as called for in the

WPR commitments, Russia ensured that its Civil Code does not predicate protection of a well-known trademark on its inclusion in Russia's List of Well-Known Trademarks.

Russia's customs law also required alteration to strengthen IPR protection. In December 2010, Russia adopted the law "On Customs Regulation" to provide for *ex officio* authority for customs officials and strengthened the *ex officio* provisions contained in the CU Customs Code. The law also updated procedures for registering certain intellectual property rights with the Russian Customs IPR Register. However, Russia has yet to harmonize fully its IPR regime with the regulatory principles adopted under the EAEU. The United States will follow this issue closely as the EAEU develops its new Customs Code to ensure compliance with Russia's WTO commitments.

In 2010, Russia passed amendments to the Law on the Circulation of Medicines to protect undisclosed test or other undisclosed data generated to obtain marketing approval for pharmaceutical products, including six years of protection for such data from reliance by subsequent applicants seeking marketing approval for the same pharmaceutical product. These amendments came into force the day Russia became a WTO Member, but Russia still has not implemented final regulations necessary to ensure implementation of such protection. In 2015, Russia again amended the Law on the Circulation of Medicines, including the regulatory data protection (RDP) provision, to provide four years of data exclusivity and two years of marketing exclusivity (as it relates to generic drug registration) and three years of data exclusivity and three years of marketing exclusivity (as it relates to biosimilar drug registration). However, a recent judicial interpretation of the RDP provision raised issues with respect to unfair commercial use of pharmaceutical data and how Russia addresses its TRIPS obligations in this area. The United States will continue to monitor whether the application of this law is consistent with Russia's WTO commitments.

### ***Enforcement***

Russia committed, upon becoming a WTO Member, to apply fully the WTO provisions for enforcement of IPR, without a transitional period. In the WPR, Russia also committed to take "expeditious action" against acts of infringement on the basis of complaints lodged by rights holders and through other means with the objective of eliminating such acts in Russia. Russia

made specific commitments to conduct unannounced inspections of plants licensed to produce optical media bearing content protected by copyright or related rights; although Russia conducted such raids initially, piracy has largely now moved online, making optical media disk piracy a small portion of the infringing content market. Russia also established a specialized court for intellectual property disputes, which began operating in the summer of 2013.

As a general matter, the current IPR enforcement environment in Russia remains weak.<sup>12</sup> End-user software piracy and sales of counterfeit goods are two particular concerns. Additionally, online piracy (including unlicensed streaming services, pay-per-download websites, videogame hacking sites, cyberlockers, BitTorrent sites, private servers bypassing official videogame servers, and others) has been, and remains, a significant problem in Russia. In its WPR, Russia committed to take enforcement measures against online piracy and to ensure that existing law is applied to prevent certain types of devices or services from circumventing technical protection measures protecting content, but notorious pirate websites continue to proliferate. In the past two years, Russia enacted legislation providing a framework to combat certain types of online piracy in cases where an action is initiated by rights holders. In 2016, the Moscow City Court issued a number of injunctions against various Russian websites disseminating pirated films. Starting October 2015, in response to rights holders' complaints, courts in Russia have issued permanent injunctions against 33 pirate websites, including the high-traffic Russian torrent website Rutracker.org, which has been listed in the USTR's Notorious Markets Report.<sup>13</sup> It does not appear, however, that the government of Russia has prosecuted those who operate these sites and profit off of this piracy. The United States will continue to monitor whether Russia's actions result in combatting the commercial scale online piracy of the type identified in USTR's Notorious Markets Report.

Further, currently available information continues to indicate that overall enforcement of IPR has decreased, rather than increased, over the past few years. One ongoing barrier to Russia's

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<sup>12</sup> In 2016, Russia remained on USTR's Special 301 Priority Watch List.

<sup>13</sup> Notwithstanding the permanent injunction against Rutracker.org imposed by the Moscow City Court, sophisticated Internet users still manage to access the website, undermining the effectiveness of the court's decision. Moreover, the website has launched several mirror websites, including [rutracker2.org](http://rutracker2.org), [rutracker-pro.org](http://rutracker-pro.org), and [rutracker.net](http://rutracker.net).

adequate and effective enforcement of IPR is the lack of resources devoted to hiring and training law enforcement personnel to investigate and prosecute IPR crimes.

Russia's size and geographic location make enforcement of IPR at its borders an essential component of IPR protection. In the WPR, Russia committed that, from the date of its accession, it would encourage its customs officials to use their *ex officio* authority to strengthen enforcement against acts of infringement at the border, enforcement based on the provisions of the TRIPS Agreement. Russia needs to work with the other EAEU member states to ensure that the regulatory principles adopted in the EAEU Treaty are executed in a manner that most effectively protects IPR and are consistent with Russia's WTO commitments. The United States will continue to monitor Russia's progress in this regard.

Russia's collecting society regime remains nontransparent and burdensome, making it difficult for rights holders to be fairly compensated for the use of their intellectual property. Russia committed in the WPR to review its system of collective management of rights, and this review seems to have resulted in a 10-year re-appointment term of the existing collecting societies, which are unable or have failed to properly represent and compensate U.S. rights holders. Russia also stated that it intended to phase out non-contractual license management within five years of Part IV of the Civil Code entering into force (which happened in 2013), but has not yet done so. Russia's legislature is considering further amendments to its IPR legal regime, and it appears that the Russian Ministry of Culture is currently making another attempt to reorganize the collecting society regime system in Russia, although draft legislation has not been circulated. The United States will monitor these efforts and whether reforms improve the transparency and effectiveness of these organizations, and, in particular, whether U.S. rights holders receive equal treatment with respect to domestic rights holders.

The United States had been engaging on a bilateral basis on these issues through the United States-Russian Federation Intellectual Property Rights Working Group and other means. However, due to the current political situation, bilateral engagement with Russia has been put on hold, including the bilateral IPR dialogue. Nevertheless, the United States continues to press Russia on its WTO commitments, including through the Special 301 Report. The United States will continue, in appropriate settings, to press Russia for full implementation of its WTO commitments.



## **Investment**

### ***Trade-Related Investment Measures***

The Agreement on Trade-Related Investment Measures (TRIMS Agreement) prohibits trade-related investment measures that are inconsistent with a Member's obligations under Article III (national treatment) and Article XI (general elimination of quantitative restrictions) of GATT 1994. The TRIMS Agreement thus requires elimination of measures such as those that require or provide benefits for the use of domestically-produced goods (local content requirements), or measures that restrict a firm's imports to an amount related to its exports or related to the amount of foreign exchange a firm earns (trade balancing requirements).

During the 18 years it was negotiating its WTO accession, Russia worked to bring its investment-incentive programs into compliance with the TRIMS disciplines. For example, prior to its WTO accession, Russia had in place a law that required production sharing agreements (PSAs) to include the obligation to purchase a certain percentage of Russian technical equipment for natural resource extraction and to employ a certain percentage of Russian citizens. In preparation for WTO membership, Russia amended its law governing PSAs to provide that, for all PSA contracts signed after Russia's WTO accession, any WTO-inconsistent provisions in such contracts would be invalidated or brought into conformity with the WTO Agreement. In addition, Russia has stopped concluding PSA agreements. Similarly, in the aircraft sector, in August 2001, Russia eliminated the exemption from customs duties and taxes for temporary import for aircraft, aircraft parts and engines, and simulators which were imported under investment agreements.

In the WPR, Russia agreed that, except for measures subject to a specific transition period, all of its laws, regulations, or other measures concerning matters covered in the TRIMS provisions of the WPR, whether adopted by it or the competent bodies of the EAEU, would be consistent with its WTO commitments, and in particular with the TRIMS Agreement, as of the date of Russia's membership in the WTO. WTO Members agreed to provide Russia with a transition period to bring two programs that comprise Russia's automotive assembly investment incentive regime into WTO compliance. The first program, introduced in 2005, allows for the duty-free entry of auto parts used in the production of vehicles that contain a certain level of Russian content. In

December 2010, Russia initiated a second automotive industry investment incentive program that increased the production volume significantly as well as the domestic content requirement to qualify for duty-free entry of auto parts. In the WPR, Russia committed to cap the requirement to purchase or use domestically produced parts and components at 25 percent of the ex-factory price of the automobiles. Russia also agreed to eliminate the elements of both of its investment incentive programs that are inconsistent with TRIMS by July 1, 2018, and to begin consultations in July 2016 with the United States and other WTO Members on WTO-consistent measures it could take in this sector.

Since Russia became a WTO Member, in response to concerns raised in the TRIMS Committee by the United States and other Members, Russia eliminated the program under which the Ministry of Agriculture provided loans to farmers at an interest rate below the market rates for the purchase of farm machinery manufactured in Russia. The United States is monitoring possible local content requirements in a preferential leasing program implemented by a government-owned agricultural equipment leasing company, RosAgroLeasing.

Other initiatives that the United States is reviewing for compliance with Russia's TRIMS obligations include a program to support automotive leases of only Russian-made automobiles; efforts by the Government Import Substitution Commission to limit the goods and services that may be sourced outside of Russia by government entities and SOEs; and a proposal to establish a minimum target for procurement by SOEs of "hi-tech and innovative products," including from small and medium businesses. To obtain information regarding these initiatives, in particular concerning their consistency with Russia's WTO commitments, the United States raised questions about these programs in the TRIMS Committee.

Furthermore, in light of Russia's focus on local content, the United States has sought, and will continue to seek, information in the TRIMS Committee and the Council on Trade in Goods on programs that support domestic production at the expense of imports to ensure Russia's compliance with its commitments under the WTO Agreement and the WPR. In addition, the United States is monitoring Russia's implementation of its automotive industry investment programs for compliance with its WTO accession commitments and will work with Russia to bring its automotive industry investment incentive program into conformity with its WTO

obligations by July 1, 2018. USTR has already solicited information on steps Russia has taken to eliminate the WTO-inconsistent aspects of the programs.

### ***Special Economic Zones***

Upon accession to the WTO, Russia undertook to apply the provisions of the WTO Agreement throughout its territory, including in its special economic zones (SEZs), which were established to encourage investment through the extension of certain incentives. Russia has transition periods to implement this commitment for the Kaliningrad and Magadan SEZs. To implement that commitment, Russia adopted a new law on SEZs which did not impose any export performance or local content requirements on operations in SEZs. In addition, all customs duties, VAT, and excise taxes due on goods imported into the SEZs were to be paid when those goods were released into the chain of commerce in Russia whether or not those goods were further processed. Moreover, Russia agreed to apply all EAEU agreements governing SEZs in a manner consistent with its WTO obligations and to work with its EAEU partners to amend any EAEU measures to ensure their consistency with Russia's WTO commitments. As noted above, the United States continues to seek additional information on Russia's "Titanium Valley" SEZ to ensure its consistency with Russia's WTO commitments.

### **Rule of Law**

In order to address major concerns raised by WTO Members during its lengthy WTO accession negotiations, Russia committed to broad legal reforms in the areas of transparency, uniform application of laws, and judicial review. Implementation of these reforms would strengthen the rule of law in Russia's economy and help to address pre-WTO accession practices that have made it difficult for U.S. and other foreign companies to do business and invest in Russia.

### ***Eurasian Economic Union***

As noted above, Russia has transferred authority for many aspects of its trade regime to the EAEU. The administrative bodies of the EAEU include the EurAsEC Court, which has competence, *inter alia*, over disputes of an economic nature arising from the implementation of decisions of the bodies of the EurAsEC and of the EurAsEC treaties. When the EurAsEC Court was originally created it did not have jurisdiction to opine directly on Russia's WTO

commitments nor could it rule on Russia's compliance with those commitments. After the Treaty on the Multilateral Trading System was adopted, the EurAsEC Court received the legal authority to provide advisory opinions on whether an EAEU measure violates WTO rules. Furthermore, the right to bring a case to the EurAsEC Court is not limited to the EAEU member states or the bodies of the CU; individuals with a specific interest can also challenge EAEU acts in the EurAsEC Court.

### *Transparency*

One of the core principles of the WTO Agreement reflected throughout Russia's WPR is transparency. Transparency permits markets to function effectively and reduces opportunities for officials to engage in trade-distorting practices behind closed doors. Many of the constituent WTO agreements contain initial and annual notification requirements to ensure that other WTO Members are aware of any new measures being implemented and have the opportunity to raise questions and concerns with regard to those measures.

Russia agreed in the WPR to submit all of the required initial notifications by the date of its accession, with the exception of five notifications which were to be submitted within specified deadlines following its accession. In addition, Russia committed to establish formal notice and comment procedures for proposed measures pertaining to or affecting trade in goods, services, and intellectual property; to provide WTO Members and interested parties with decisions in writing setting out reasons for the decision; and to institute new rights of appeal of decisions. These obligations apply to measures that the EEC adopts and that are applied in Russia and to Russia's domestic laws, regulations, and other measures. Russia has also undertaken specific commitments regarding transparency on issues ranging from application of price controls to fees charged for engaging in importing or exporting goods.

To implement Russia's transparency commitments at the EAEU level, the EEC established the procedures for publication and public comment on proposed EAEU legal acts, including that draft decisions shall be published no fewer than 45 calendar days before the EEC meeting at which the decision will be considered. The EEC provided additional details concerning SPS quarantine and veterinary-sanitary measures, including requiring that draft decisions and recommendations be published for no fewer than 60 calendar days prior to adoption of such

measures. This mechanism appears to provide that these EAEU measures will not become effective prior to their publication.

During the 18 years of its accession negotiations, Russia provided the required initial notifications as part of the WTO review of its trade regime. Russia has also provided to the WTO all the notifications which it committed to provide in the WPR. As described above, Russia has notified many modifications and updates to its trade regime (e.g., TBT measures, SPS measures, or trade remedy actions) as required under its transparency commitments. Russia has also implemented its commitment to provide trade data to the WTO's Integrated Data Base.

The United States has used a variety of WTO committee meetings to identify instances in which Russia has not notified measures, as well as to seek additional information and provide comments on certain measures that have been notified. As a result, Russia notified to the WTO the six safeguards measures resulting from investigations initiated prior to Russia becoming a WTO Member, as well as legislation related to its intellectual property rights regime, import licensing regime, and customs valuation regime. Russia also notified the EAEU to the Committee on Regional Trade Agreements. In addition, the United States has submitted multiple rounds of questions, prompting Russia to provide further details on certain investment incentive programs and certain subsidy programs, including numerous subsidy programs identified by the United States that Russia did not notify, giving the United States a greater understanding of these measures.

The United States will continue to monitor the comprehensiveness of Russia's notifications, as well as the availability of adequate opportunity to comment on those notifications.

### ***Judicial Review***

The right to prompt and effective judicial review of economic matters by an independent tribunal is a fundamental component of the WTO Agreement and, in fact, is explicitly required in many of the covered agreements comprising the WTO Agreement. Russian law appears to ensure the right of appeal on customs-related matters (both actions and inactions), tax issues, and the protection of IPR and technical regulations, including SPS issues. Moreover, Russia has specifically committed that it will provide the right for independent review consistent with its WTO commitments.

Because many aspects of Russia's trade regime have been transferred to the EAEU, Russia has worked, and continues to work, with its EAEU partners to adopt the legal acts necessary to ensure that WTO Members and their nationals have recourse to the EurAsEC Court which has jurisdiction over EAEU issues, including whether Russia or the other EAEU member states have effectively implemented EAEU acts related to WTO issues.

U.S. officials are not currently aware of any areas of concern with respect to Russia's implementation of these commitments since becoming a WTO Member.

### **Conclusion**

During 2016, Russia continued to implement local content policies and practices, and to adopt other measures that appear intended to build walls around its market, and that of the EAEU, rather than move to open its markets and integrate itself into the global trade system. In responding to this trend, the United States has used the tools of the WTO to remind Russia of its commitments and of the benefits of liberal trade.

In the coming year, USTR, working closely with other U.S. government agencies, will continue its mission of enforcing U.S. trade agreements to support U.S. workers and businesses. USTR will monitor Russia's implementation of its WTO commitments and if it is found that Russia, or the EAEU, acts in ways that appear not to be consistent with Russia's WTO commitments, USTR will investigate and use all appropriate means, including, as warranted, dispute settlement, to ensure that Russia's and the EAEU's measures conform to Russia's WTO obligations.

## **Appendix 1**

### **List of Written Comments Submitted in Response to Request for Public Comment on Russia's Implementation of its WTO Commitments by the Trade Policy Staff Committee**

1. American Iron and Steel Institute and Steel Manufacturers Association
2. Covington & Burling on behalf of a coalition of shareholders of the former Yukos Oil Company
3. Information Technology Industry Council
4. National Milk Producers Federation and the U.S. Dairy Export Council
5. Pharmaceutical Research and Manufacturers of America
6. Precision Castparts Corp.
7. U.S.-Russia Business Council
8. Wine Institute

**Appendix 2**

**List of Witnesses Testifying at the Public Hearing  
on Russia's Implementation of its WTO Commitments  
before the Trade Policy Staff Committee**

Washington, D.C.  
September 30, 2016

1. Randi Levinas  
US-Russia Business Council