

# 2021 Report on the Implementation and Enforcement of Russia's WTO Commitments



United States Trade Representative  
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# Implementation and Enforcement of Russia's WTO Commitments

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## **I. 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, discusses the process by which Russia became a WTO Member.

This Report on the Implementation and Enforcement of Russia's WTO Commitments (the Russia WTO Report or the Report) for 2021 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. 112-208) (the Act). This provision requires the U.S. Trade Representative to 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 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 2021 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

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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.

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>2</sup> The 2021 Russia WTO Report thus provides an assessment of the extent to which Russia is implementing its WTO commitments, an enumeration of the steps USTR has taken 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.

In the development of this Report, USTR has drawn on the expertise of numerous individuals who have studied and worked with Russia over the years. USTR solicited comments from interested parties, both throughout the year and in the preparation of this Report,<sup>3</sup> and collected information from other U.S. Government agencies. USTR staff also called on their years of experience studying and analyzing Russia's economic policies, including negotiating Russia's WTO accession.

## **II. Executive Summary**

U.S. bilateral trade with Russia continues to follow a variable path. U.S. goods imports from Russia fell steadily from 2012 (\$29.5 billion) to 2016 (\$14.5 billion), then increased steadily to 2019 (\$22.3 billion), before falling in 2020 (\$16.9 billion). In the first nine months of 2021, goods imports from Russia increased 82 percent compared to the first nine months of 2020 from (\$12.4 billion to \$22.6 billion). In 2020, the top categories of U.S. imports from Russia included mineral fuels (\$8.9 billion), precious metal and stone (platinum) (\$2.6 billion), iron and steel (\$897 million), fish and seafood (crabs) (\$891 million), and inorganic chemicals (\$730 million). U.S. goods exports to Russia rose from 2012 (\$10.7 billion) to 2013 (\$11.1 billion), fell steadily to 2016 (\$5.8 billion), and have continued to fluctuate, but generally trending

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<sup>2</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.

<sup>3</sup> See Appendix 1 for list of parties who filed public comments. Because of the COVID-19 pandemic, the Trade Policy Staff Committee (TPSC) did not host a public hearing, but provided public participation through a written exchange of questions and answers instead.

downward, landing at \$4.9 billion in 2020.<sup>4</sup> In 2021, however, goods exports rebounded slightly, increasing from \$3.6 billion in the first nine months of 2020 to \$4.8 billion in the first nine months of 2021. Top export categories of U.S. goods to Russia in 2020 included machinery (\$1.1 billion), vehicles (\$612 million), optical and medical instruments (\$513 million), pharmaceuticals (\$392 million), and electrical machinery (\$387 million).

Trade in services with Russia (exports and imports) totaled an estimated \$5.3 billion in 2020. U.S. exports of services to Russia were an estimated \$4.0 billion in 2020, 23.6 percent (\$1.2 billion) less than 2019, but 1 percent less than 2010 levels. Leading services exports from the United States to Russia were in the financial services, technical and other services, and intellectual property (franchises and trademarks) sectors. U.S. imports of services from Russia were an estimated \$1.3 billion in 2020, 25.3 percent (\$447 million) less than 2019, and 43 percent less than 2010 levels. Leading services imports from Russia to the United States were in the financial services, transportation, and technical and other services sectors.

Over the past year, Russia has continued its trajectory of an economy moving away from the guiding principles of the WTO: non-discrimination, freer trade, predictability, transparency, and fair competition. Rather, Russia maintains restrictive at-the-border measures, institutes behind-the-border measures to inhibit trade, and implements an industrial policy seemingly driven by the guiding principles of import substitution and forced localization.

Russia maintains tariffs ranging from 25 percent to 40 percent on various industrial products imported from the United States in retaliation against tariffs imposed on U.S. imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. Russia also maintains a near complete ban on imports of agricultural goods from the United States and other WTO Members. Russia also continues to apply quantitative restrictions or outright bans on certain agricultural exports.

In addition to these border measures, Russia maintains various behind-the-border measures that interrupt the smooth flow of global trade, such as outmoded import licensing requirements and a mandatory labeling regime. In 2021, Russia introduced yet another regime to monitor products,

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<sup>4</sup> The decline in U.S. exports to and imports from Russia in 2020 was consistent with global trade trends attributable to the COVID-19 pandemic.

a traceability regime, that requires tracking consignments of goods (as opposed to individual goods subject to the mandatory labeling regime) through the chain of commerce in Russia. In the agriculture sector, Russia maintains non-science-based import restrictions and refuses to recognize other countries' guarantees on exporting facilities.

Compounding these at-the-border and behind-the-border restrictions, Russia continues to adopt and implement localization measures to provide preferential treatment to both domestically produced goods and services. In response, the United States, often working with other WTO Members, has raised concerns about Russia's import substitution plans, subsidies (including those contingent on use of domestic over imported content), preferential taxes, preferential pricing mandates, prohibitions on purchasing imported goods and services, and domestic purchasing requirements, among others.

The United States has also continued to raise concerns about Russia's lack of transparency, manifested, for example, in its refusal to notify a single state trading enterprise and its delay (or complete refusal) to provide written answers to questions about its import substitution policies. The United States, joined by other WTO Members, will continue to remind Russia of its transparency obligations.

The United States has urged Russia to meet its commitments with regard to the protection and enforcement of intellectual property rights. In particular, the United States has reviewed Russia's implementation of WTO commitments on data exclusivity, pharmaceutical patent protection, and collective management organizations. Moreover, Russia's record on enforcement remains weak.

Since early 2014, the U.S. Government has curtailed its bilateral engagement with Russia in response to Russia's actions in Ukraine, limiting USTR's ability to raise directly with Russia our concerns about the trajectory of its trade policies. The sequestration resulting from the COVID-19 pandemic further limited engagement with Russian officials. Nevertheless, the interagency team of Russia specialists in the U.S. Government continued to monitor and evaluate Russia's trade and investment policies and practices, and where and when possible, USTR continues to raise concerns in WTO meetings and on the margins of committee and council meetings to hold Russia accountable for its actions. As it has to date, if the United States finds that Russia's



actions appear to be inconsistent with its WTO commitments. The United States will investigate and use all appropriate means to resolve the matter and keep Russia's markets open to U.S. exports.

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

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), following the introduction of a variety of preferential trading arrangements among the three countries over a number of years. 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.

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 move toward greater economic integration was the entry into force on January 1, 2015, of the Eurasian Economic Union Treaty (the Treaty) creating the EAEU, the successor to the CU.<sup>5</sup> The following day, January 2, 2015, Armenia joined the EAEU, and on August 12, 2015, Kyrgyzstan became the fifth country to join the EAEU. Moldova became an EAEU observer in 2018 and Cuba and Uzbekistan became EAEU observers in 2020.

The EAEU is larger than the CU in terms of both geographic and substantive scope. The Treaty expanded 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.

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<sup>5</sup> For ease of reading, references to the EAEU in this Report generally include the CU.

Russia and the EAEU have established a legal framework that would allow an EAEU member state to comply fully with its WTO commitments. Moreover, 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”) requires that EAEU measures comply with the WTO Agreement<sup>6</sup> as well as all commitments set forth in the Protocol of Accession and working party report of each EAEU member state; that the rights and obligations of an EAEU member state under the WTO Agreement override prior and future EAEU agreements and decisions of EAEU bodies; and that any treaty signed by the EAEU be consistent with the WTO commitments of each EAEU member state. When Russia joined 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 sanitary and phytosanitary (SPS) measures. As a result, many of Russia’s WTO commitments are implemented through EAEU measures. In such cases, Russia’s WPR specifically provides that Russia’s WTO commitments apply whether the Russian government or the competent bodies of the EAEU are responsible for implementation of the relevant commitment.

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

On August 22, 2012, following 19 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 permanent normal trade relations (PNTR) to the products of Russia, the United States and Russia both filed letters with the WTO withdrawing

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<sup>6</sup> The “WTO Agreement” comprises the Marrakesh Agreement Establishing the World Trade Organization as well as its annexed covered agreements.

their notices of non-application and consenting to have the WTO Agreement apply between them.

## **V. Import Regulation**

### ***A. Tariffs and Border Fees***

As part of its WTO accession, Russia agreed to bind all 11,170 tariff lines in its tariff schedule and as of January 1, 2020, Russia had implemented all of those bindings. As a result, its simple average final bound rate for all goods is approximately 7.5 percent; 7.1 percent for industrial goods and 10.7 percent for agricultural goods.<sup>7</sup>

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 final bound tariff rate of 6 percent on steel products; previously, Russia applied an average tariff rate of 8.9 percent. In the chemical sector, Russia's final bound tariff rates average 5.2 percent. Previously, Russian tariffs on chemicals averaged 6.7 percent and ranged as high as 20 percent. In the technology goods sector, Russia has completed the process of joining the ITA, and has eliminated its tariffs on computers, semiconductors, and other information technology products consistent with its ITA obligations.

Russia has also implemented tariff reductions in the agricultural sector since its accession. For pears and other fresh fruit, Russia implemented its final bound tariff of 5 percent in 2015, down from its previous applied tariff rate of 10 percent. In 2016, Russia implemented its final bound tariff of 12.5 percent for wine. In 2018, Russia implemented its final bound tariff rate for beer (from a bound rate at accession of 0.6 € per liter to 0.18 € per liter) and for prepared, preserved meat (from 20 percent, but not less than 0.5 € per kg, to 17 percent, but not less than 0.43 € per kg). As a result of U.S. efforts, Russia agreed to expand access to its market for U.S. meat products, liberalizing the tariff-rate quotas (TRQs) for both pork and beef, including additional

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<sup>7</sup> By contrast, the comparable figures for the United States are 3.4 percent for all goods; 3.2 percent for industrial goods; and 4.8 percent for agricultural goods. In other words, Russia's commitments with respect to tariffs are significantly weaker than those made by the United States.

access for High Quality Beef with a 15 percent tariff outside of the TRQ for beef. Finally, when Russia joined the WTO, it committed to a maximum final bound tariff of 5 percent for live animals. Russia had previously applied up to a 40 percent tariff on live animals.

On January 1, 2020, Russia eliminated its TRQs on certain pork products and replaced them with a MFN tariff rate of 25 percent. With this step Russia implemented the last stage of tariff reductions to which it committed when it joined the WTO. Russia cannot legally apply EAEU CET tariffs above its WTO bound tariff rates.<sup>8</sup>

U.S. total goods imports from Russia for the first nine months of 2021 (January-July) increased 82 percent to \$22.6 billion. Imports of mineral fuels from Russia comprised 60 percent of total imports; the next largest category of imports (accounting for approximately 11 percent) was precious stones and metals (especially platinum). If mineral fuels are excluded, imports from Russia rose approximately 55 percent in the first nine months of 2021 compared to the first nine months of 2020. U.S. goods exports to Russia for the first nine months of 2021 increased 33 percent to \$4.8 billion. The largest increase in exports were fur skins and artificial fur, tin, live animals, and clocks and watches. The overall largest categories of exports were aircraft, machinery, and motor vehicles and parts. Russia's tariff reductions initially contributed to slightly improved market access for U.S. goods, with U.S. exports to Russia increasing 4 percent in the first year following Russia's accession.<sup>9</sup> Notwithstanding the initial greater market access created by Russia's WTO accession, and despite the increase in exports in the first seven months of 2021, U.S. exports to Russia have generally declined since 2013 and in 2020 were less than half those in 2013.

Although Russia has implemented its scheduled bindings, some concerns remain. For example, 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.

Of greatest concern, however, was Russia's decision in July 2018 to adopt tariffs ranging from 25 percent to 40 percent on various industrial products imported from the United States, in

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<sup>8</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>9</sup> Export data are based on data from the Trade Data Monitor.

retaliation against the U.S. decision to adjust U.S. imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. The United States has urged Russia to work with the United States to address the common problem of excess capacity in the global steel and aluminum sectors, rather than engage in unjustified retaliation designed to punish American workers and companies. The United States will take all necessary actions to protect U.S. interests in the face of such retaliation. In this regard, on August 27, 2018, the United States launched dispute settlement proceedings against Russia at the WTO. Following unsuccessful consultations in November 2018, a WTO dispute panel was established on December 18, 2018 and composed on January 25, 2019. The panel proceedings are ongoing but have been delayed due to the COVID-19 pandemic.

### ***B. 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 on or in connection with importation (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 currently reflected in Article 47 of the EAEU Customs Code, which limits the amount of customs fees to the approximate cost of the service rendered. 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.

### ***C. Customs Valuation***

The WTO *Agreement on Implementation of Article VII of the GATT 1994* ("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.<sup>10</sup> 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 rather than on the CVA principles and methods incorporated into Russian law.<sup>11</sup>

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 EAEU Customs Code. However, U.S. stakeholders report that Russia continues to lack clear regulations governing customs valuation, creating uncertainty and additional paperwork. In response to these concerns, the United States has raised questions in the WTO Committee on Customs Valuation and continues to seek 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 meet with and solicit information from U.S. stakeholders concerning Russia's valuation practices and will work with Russia's Federal Customs Service (FCS) to ensure full implementation of Russia's commitments on customs valuation.

#### ***D. Trade Facilitation***

The Trade Facilitation Agreement (TFA) entered into force February 22, 2017. The TFA builds on earlier related provisions in the GATT and further expedites the movement, release, and clearance of goods, including goods in transit. It is the first WTO agreement in which these WTO Members can determine their own implementation schedules and in which progress in implementation is linked explicitly to capacity. Developed countries have committed to implement the Agreement immediately upon its entry into force. Russia ratified the TFA on April 22, 2016, and has implemented its commitments as a developed country.

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<sup>10</sup> WPR, ¶514.

<sup>11</sup> WPR, ¶527.

In 2019, Russia began to implement pilot programs in selected industry sectors of a mandatory labeling system (the labeling regime) that requires the application of an encrypted label to products in an ever-widening list of industry sectors. Data on the progress of a product through the chain of commerce are provided to a public-private Russian company, the Center for the Development of Advanced Technologies (CRPT), allowing it to monitor/track goods through Russia's entire distribution chain (i.e., from production/import to the final retail customer). In 2021, the Russian government continued to expand the universe of products covered by the labeling regime, even as it postponed implementation deadlines for some products (with longer deadlines sometimes granted to domestic products than to imported products) and uncertainty remained surrounding the regime's practicality. Stakeholders report that customs clearance of products subject to the mandatory labeling requirement is more complex and time-consuming; moreover, the mandatory labeling requirement diminishes the flexibility and benefits Russia had offered under its Authorized Economic Operator Status. These additional steps and costs impose particular burdens on small and medium-sized enterprises.

In 2021, Russia introduced another system to trace goods through the chain of commerce in Russia (the traceability regime). The traceability regime monitors the circulation of an entire consignment of goods and is operated by the Federal Tax Service whereas the labeling regime is operated by a public-private Russian company.

The United States is concerned that implementation of these regimes is duplicative and will create additional burdens at the border, contrary to the goals of the TFA. The United States will continue to raise concerns with Russia and work to ensure that the regime does not create a barrier to U.S. exports.

### ***E. 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 intellectual property rights 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.<sup>12</sup> 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 with the appropriate authorities in Russia, and Russia has committed to employing an expeditious and transparent registration policy.<sup>13</sup>

Russia still requires an activity license as a precondition for obtaining an import license for some products (*e.g.*, alcohol, encryption products, and pharmaceuticals). However, pursuant to Russia’s WTO commitments, 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, without presenting this license. The person withdrawing the goods from the customs checkpoint for distribution in Russia is now responsible for presenting the requisite import or activity license.

As described above, Russia has begun to introduce its labeling regime in stages by industry sector or product category, with the ultimate goal of bringing all products into the labeling regime sometime in the future. In addition to the concern that the regime could introduce new barriers at Customs, the United States is concerned that the process appears to provide better access to the labels to companies that have a Russian legal presence (such as domestic producers and some importers with a local presence) than companies that do not have a presence in Russia (such as small and medium-sized U.S. exporters). The United States will continue to investigate whether this seemingly disparate treatment is consistent with Russia’s commitments under the WTO.

#### ***F. Quantitative Import Restrictions***

Article I of the GATT 1994 requires that WTO Members accord MFN treatment to imports from all other WTO Members. In addition, Article XI of the GATT 1994 generally prohibits the

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<sup>12</sup> WPR, ¶216.

<sup>13</sup> WPR, ¶227.



imposition of restrictions or prohibitions (other than tariffs, taxes, or other charges) on imports, except if justified under an applicable WTO provision. Notwithstanding these obligations, on August 6, 2014, Russia issued an order banning certain agricultural imports from the United States, the European Union (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. Russia has since amended the list of products covered by the ban and expanded the list of countries for which products were banned, adding Ukraine, Albania, Montenegro, Iceland, and Liechtenstein.<sup>14</sup> In September, 2021, Russia extended the ban until December 31, 2022; no changes were made to the list of covered products. Russia claims the ban is justified on the basis of national security concerns.

### ***G. 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 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.<sup>15</sup> 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

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<sup>14</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 Area with the EU.

<sup>15</sup> See WPR, ¶¶456-457.

them with an automatic licensing requirement.<sup>16</sup> Industry stakeholders have informed USTR that Russia has simplified its licensing regimes in many, but not all, areas.

Russia also agreed to liberalize its import licensing regime for products with cryptographic capabilities (encryption products) to allow certain consumer electronic products to enter Russia “with no customs formalities related to encryption,” low-encryption products to enter with only a notification, and other (stronger) encryption products to enter with an import permission and an import license. Russia agreed further that an activity license to distribute encryption products would be required only for those products that required an import license; 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.<sup>17</sup> Finally, Russia agreed to review its import licensing regime in consultation with interested WTO Members and confirmed that it would add to Bucket 1 (*i.e.*, allow into Russia without a license or notification) those products de-controlled in the future under Category 5, Part 2 “Information Security” of the Wassenaar Arrangement.<sup>18</sup>

On December 31, 2009, Russia implemented an import licensing regime for encryption products, reducing the procedural hurdles for importing encryption products into Russia.<sup>19</sup> However, after further review and following discussions with U.S. stakeholders, the United States has identified certain aspects of the regime that raise concerns with regard to Russia’s implementation of its commitments in this area. For example, the list of products subject to notification does not appear to reflect the definition of products that Russia agreed in the WPR would be subject to notification. In addition, U.S. electronics exporters report that Russia is not implementing properly the “mass market” category for products subject to notification, nor is Russia allowing any encryption products to enter Russia “with no customs formalities related to encryption”. Moreover, Russia has not updated its import licensing regime to reflect amendments to the Wassenaar Arrangement which released numerous encryption products and functionalities from control. U.S. electronics exporters have confirmed that there has been no improvement in the

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<sup>16</sup> WPR, ¶460.

<sup>17</sup> See WPR, ¶¶471-486.

<sup>18</sup> WPR ¶¶478 and 483.

<sup>19</sup> Russia’s import licensing regime for encryption products was adopted *in toto* by the EAEU.

import licensing regime: the import licensing regime is applied inconsistently; no written explanation is provided when licenses are denied; licenses are issued for individual shipments only, rather than for all shipments of the “product family;” information is required on a product-specific basis, rather than on a family-specific basis; the issuance of licenses continue to be delayed; and activity licenses are required for a broad array of common consumer electronics. The United States proposed opening discussions on reviewing the import licensing regime for encryption products, but the government of Russia has failed to respond to repeated outreach. We will continue to press the government of Russia for these discussions, consistent with Russia’s WTO commitments.

#### **H. 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*.<sup>20</sup>

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

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<sup>20</sup> WPR, ¶620.

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.<sup>21</sup> To implement these commitments, prior to becoming a WTO Member, Russia revised its trade remedy law (covering anti-dumping and countervailing duties and safeguard measures). The new law reflected the procedural requirements of the WTO agreements, including the authorities' need to disclose findings and reasoned conclusions on pertinent issues of fact and law; the requirement that an authority determine the accuracy of the information submitted by domestic and foreign parties; and the right 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 trade remedy laws and procedures (and those of the CU) 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.

## **VI. Export Regulation**

When it acceded to the WTO, 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.<sup>22</sup> 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.<sup>23</sup>

Russia has amended its national regulations to replace the export licensing regime for precious stones, diamonds, and metals with an automatic licensing regime in order to reduce the number

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<sup>21</sup> WPR, ¶620.

<sup>22</sup> WPR, ¶646.

<sup>23</sup> WPR, ¶668.

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.<sup>24</sup> Also, consistent with the commitments on ferrous scrap and copper cathode described in the WPR, Russia reduced its export duties on those products as provided in its tariff schedule (but has since raised some export duties, as discussed below.)<sup>25</sup> Russia continues to maintain an export duty on wheat, but extended the temporary zero export duty rate until July 1, 2021 to encourage exports.

During Russia's WTO accession negotiations, the United States raised concerns about the conformity of Russia's and the EAEU's export licensing provisions with WTO disciplines, and Russia recognized that work needed to be done in this area.<sup>26</sup> 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. In 2017, Russia expanded the list of products, including ferrous steel and non-ferrous scrap, which could be subject to export restrictions. On August 1, 2021, Russia introduced new or higher export duties on 340 steel and non-ferrous metal products, duties which will, purportedly, remain in place until only December 31, 2021. However, because steel and non-ferrous metals are global commodities, even short-term restrictions can distort trade flows.

In 2020, Russia implemented temporary export restrictions on sunflower seeds, soybeans, rice, millet, buckwheat, meslin, cereal and cereal pellets, crude flour, barley, rye, corn, onions, garlic, and turnips. Although the export restrictions on some of these products have been lifted, the export duties on wheat, barley, rye and corn were lifted only to be replaced by "floating duties" based on benchmarks. The export duties on sunflower seeds and soya beans were increased in July 2021 and extended until August 2022. In addition to the potential market distortions caused by these export measures, the United States is concerned that Russia has failed to notify the

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<sup>24</sup> WPR, ¶¶648-655.

<sup>25</sup> WPR, Schedule CLXV, Part V.

<sup>26</sup> See WPR, ¶¶665 and 666.

WTO of these and other similar measures, as it committed to under the Agreement on Agriculture. The United States is further concerned that export duties on sunflower seeds and soya beans appear to be above those agreed in Russia's schedule and were increased without explanation.

In July 2021, Russia introduced temporary export duties on certain types of timber (unprocessed wood of conifer and oak) and increased the export duties on beech and ash. In November 2021, Russia increased further the export duties on oak, beech and ash as well as on certain softwood timber exports, and extended the duties through December 31, 2022. In November 2021, Russia also implemented quantitative restrictions on certain types of fertilizers, effective from December 1, 2021 until May 31, 2022.

The United States has worked with other WTO Members to question Russia's use of export controls, in particular their consistency with Russia's WTO commitments. The United States will continue to scrutinize the evolution and implementation of the Russian and EAEU export regulatory regime to ensure its consistency with WTO disciplines.

## **VII. 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.

### **A. Sanitary and Phytosanitary Measures**

The SPS Agreement establishes disciplines 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, *inter alia*, that SPS measures are applied only to the extent necessary to protect human, animal or plant health; do not arbitrarily or unjustifiably discriminate between WTO Members' agricultural and food products; and are not

disguised restrictions on international trade. The SPS Agreement further requires that SPS measures be based on scientific principles and evidence and 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.

According to the WPR, Russia assumed each of these obligations together with the other obligations of the SPS Agreement as part of its accession. Moreover, Russia explicitly committed to the Working Party that it would ensure that all of its SPS measures, whether adopted by it or the competent bodies of the CU (now 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.<sup>27</sup> Russia also confirmed that all SPS measures, whether adopted by Russia or by the competent bodies of the CU (now EAEU), would comply with the non-discrimination provisions of the SPS Agreement.<sup>28</sup> 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 reflected 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 or justify more stringent requirements with a risk assessment that conforms to international standards; and to ensure that any actions that are taken by Russian or EAEU authorities in response to non-compliance by importers with Russian or EAEU requirements are proportional to the non-compliance.<sup>29</sup>

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<sup>27</sup> WPR, ¶1009.

<sup>28</sup> WPR, ¶1033.

<sup>29</sup> WPR, ¶¶ 895, 901, 926, 1009, 1033, and 1062.

At the time of its accession, Russia confirmed the criteria for “de-listing” or “temporarily suspending” an establishment (an action which has the effect of prohibiting imports from that establishment) and 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 or temporarily suspending an approved establishment 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.<sup>30</sup>

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 a website with detailed conditions for the importation of specific products.<sup>31</sup>

Because Russia transferred authority over many SPS matters 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 international standards, recommendations, and guidelines, Russia and the EAEU amended existing legislation and adopted new measures. The EAEU adopted decisions

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<sup>30</sup> WPR, ¶¶923, 926, 927, 932, and 908.

<sup>31</sup> WPR, ¶¶1051 and 1055.



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 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 SPS measures that interested parties believe are inconsistent with 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 from any third country. During Russia's accession negotiations, 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 requirements 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.<sup>32</sup>

To implement Russia's commitments with regard to inspections, the EEC established the basis for joint inspections, systems audits, and acceptance of an exporting country's guarantees. In addition, the EEC adopted inspection guidelines for meat processing and storage establishments, 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

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<sup>32</sup> WPR, ¶¶893 and 890.

corrective measures. To implement Articles 4 and 5 of the SPS Agreement concerning equivalence and risk assessment, respectively, the EEC established the basis for determining equivalence and conducting risk assessments in accordance with international standards.<sup>33</sup> The United States, other WTO Members, and U.S. industry stakeholders have expressed concern about the veterinary requirements adopted by the EEC, which included a requirement that all veterinary controlled products come from an establishment approved by all EAEU member states.

Although Russia has put in place a legal framework to allow it to comply with its WTO commitments, its implementation of these commitments remains problematic. For example, 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 (MRLs) 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. Russia also maintains non-science based microbial standards, such as a zero tolerance for salmonella, and requires that imports be tested in Russia (rather than in the United States prior to export). Russia's testing standards, however, are not clearly defined. The United States raised these concerns directly with Russia prior to 2014 but has not received a constructive response. Despite requests to Russia from the United States for adequate risk assessments based on Codex guidelines, none have been forthcoming. Of particular concern to industry stakeholders, Russia is pushing the use of EAEU-wide harmonized veterinary certificates and a unified list of eligible facilities – all of which are based on Russian standards and criteria.

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<sup>33</sup> See, WPR, ¶¶1022-1031.

The United States is also concerned about various Russian measures that disrupt or prohibit imports of certain U.S. agricultural products, including poultry products. For example, since 2015, Russia has imposed various bans on both the importation and transit of certain poultry and poultry products into and through Russian territory. In January 2019, Russia lifted its transit ban for poultry shipments transiting Russia to Kazakhstan, but left in place traceability requirements (the Mercury Notification system) applicable to shipments of certain U.S. animal-based products transiting Russia. Russia has not, however, provided the WTO with a risk- or science-based justification for the Mercury Notification system.

In 2021, Russia banned imports of U.S. animal feeds, feed additives, and pet food alleging detection of unregistered and unapproved biotechnology traits in shipments from U.S. industry. This ban appears to be based on an unnotified technical regulation that establishes new, and lengthy, procedures for registration and approval of new and previously approved biotechnology traits. The United States will continue to request notification of this technical regulation, and for technical discussions with Russian competent authorities regarding the ban on the import of U.S. animal feeds and feed additives. Another practice that has raised WTO concerns is Russia's reluctance to accept 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 very difficult. Since July 2014, Russia has required, without providing any scientific justification, an on-site inspection of each establishment by the EAEU member states' veterinary services before approval is granted.

The United States is also concerned with Russia's apparent failure to implement its obligation to remove certain veterinary control measures for lower risk products. In 2011, the EEC adopted a decision removing such veterinary control measures. However, days before Russia became a WTO Member, Russia's veterinary service imposed a so-called "temporary" measure to maintain the establishment listing requirement for lower risk products imported into Russia until after a successful audit has been completed. Despite strong objections by the United States and other WTO Members, both in the WTO and bilaterally prior to 2014, Russia has refused to withdraw

this listing requirement. Moreover, industry representatives assert that the onerous mandatory audits suggest that Russia is using the listing requirement to create a non-tariff barrier to trade.

Russia also agreed that, in order to meet its WTO commitments, it would negotiate veterinary certificates with the United States (or any other WTO Member) that differ from EAEU certificates after receiving substantiated requests from the United States (or other WTO Member). However, Russia insisted on including attestations in the new proposed certificates that do not appear to be based on the relevant international standards and have offered no risk assessment in support of the alternative attestations, notwithstanding Russia's WTO commitments to conform its attestations to such standards unless a more stringent measure is justified through risk assessment.<sup>34</sup> USTR and the U.S. Department of Agriculture will continue, where possible and permitted, to request technical level meetings with Russian counterparts in an effort to negotiate new certificates.

As explained above, since 2014, the United States' bilateral work with Russia on agricultural trade issues has been limited due to Russia's actions in eastern Ukraine. Moreover, because Russia's ban on imports of many agricultural products from the United States has dramatically reduced U.S. exports, USTR's engagement in the WTO to resolve compliance-related market access barriers has been limited. Nevertheless, the U.S. Government will continue to meet and consult with industry stakeholders to discuss their concerns and strategies to remove these trade barriers.

### ***B. 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. As part of its WTO accession, Russia agreed to a limit on trade-distorting domestic support, referred to as the Aggregate Measurement of Support or AMS, of \$4.4 billion, down from \$9 billion in 2013. Russia's most recent domestic support notification to the WTO Committee on Agriculture for the calendar year 2019 reported an AMS of only \$94.2 million in agricultural support payments. Russia also accepted an obligation to ensure that

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<sup>34</sup> See, WPR, ¶1009.

the sum of all product-specific support does not exceed 30 percent of the non-product specific support. Finally, Russia agreed to not provide export subsidies. Russia notified the WTO that it has met both these obligations.

Recently, however, Russia has introduced programs that allow for export subsidies to promote agricultural exports and for transportation subsidies contingent on exports, as well as other export measures that can distort market prices. For example, Russia has amended its Budget Code to allow for subsidies for alcoholic products intended for export and has issued a decree to provide subsidies that compensate organizations for their costs associated with seeking certification of agriculture products in foreign markets. As noted above, Russia has also introduced export restrictions or duties on a variety of grains. In addition, Russia approved a long-term grain industry development strategy to strengthen its position as a global grain market producer and supplier and adjusted its support program (administered by the Russian Export Center, a State supported export institution established in 2015 to encourage exports) for the transportation of agriculture and foods products.

In the WTO Committee on Agriculture, the United States reviews closely Russia's notifications on its domestic agricultural programs and carefully monitors government programs that support agriculture to ensure that Russia is transparent and meeting its WTO domestic support and export subsidy commitments. In addition, the United States has reviewed various agricultural support measures that have not been notified, and, where appropriate, raises concerns about those measures and reminds Russia of its transparency obligations. Further, the United States has repeatedly raised concerns about Russia's subsidization of railway freight to compensate for part of the cost transporting grains and various food and agricultural products to ports of potential export to anywhere in the world and reminded Russia of its obligation to notify market price supports. The United States will continue to track Russia's support for the agriculture sector to ensure transparency and consistency with WTO obligations.

## VIII. Internal Policies Affecting Trade

### A. *Non-Discrimination*

According to the WPR, Russia agreed to assume the obligations of the 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 1994 are the Most-Favored Nation (MFN) treatment – referred to in certain U.S. legislation as “normal trade relations” – and national treatment. The *General Agreement on Trade in Services* (GATS) contains parallel MFN and national treatment obligations with respect to services.

The MFN rule for goods (Article I of the GATT 1994) prohibits a Member from discriminating against imported goods of one trading partner in favor of the imported goods of another trading partner. Accordingly, 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. Article II of the GATS establishes a comparable MFN obligation with respect to services and service providers of other WTO Members.

The national treatment rule with respect to goods (Article III of the 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.

The WPR elaborates on Russia's commitment to apply both Articles I and III of the GATT 1994, as well as Articles II and XVII of the GATS. Throughout the nineteen 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 a number of Russian measures and policies. Although Russia amended its "recycling" fee" (also known as a "utilization fee") on motor vehicles in response to concerns about its discriminatory application (by removing the exemption for motor vehicles manufactured in the EAEU), the fee applies to a variety of motor vehicles, including automobiles, agricultural and forestry machinery, and certain construction equipment. Moreover, Russia has consistently increased the recycling fee, most recently in 2021 by as high as 600 percent on some equipment. U.S. stakeholders contend that although the utilization fee appears non-discriminatory because both importers and domestic producers must pay it, in fact, treatment is not equal because Russia provides subsidies that effectively reimburse domestic producers (except foreign-owned producers) for having to pay the utilization fee. In 2019, the Russian government approved a new program to replace the utilization fee with subsidies. Under the new program, automobile manufacturers will accumulate points based on the level of localization – the greater the localization, the higher the number of points and the higher the level of subsidization.

Also in 2020, the Russian government amended the Tax Code to exempt royalties paid on domestic software from VAT and to lower domestic technology firms' corporate tax rate and social security contribution rate. According to U.S. stakeholders, these differential tax rates change the conditions of competition and discriminate against the imports used by foreign owned technology firms and against foreign service providers.

The United States will continue to consult with U.S. stakeholders affected by these programs to evaluate their impact on U.S. exports. Moreover, USTR will scrutinize the implementation of these measures and the introduction of any new fees and/or subsidies and take appropriate action

in the WTO necessary to press Russia to comply with its WTO commitments and not discriminate against U.S. exports.

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 royalties based on sales and self-notify. U.S. officials have reviewed Russia's copyright levy regime and discussed with industry representatives. USTR's WTO delegate has raised this issue with Russia's WTO delegate, but received no response. USTR will continue to press Russia to respond to our concerns, and to eliminate any discriminatory practices.

The United States also has concerns regarding national treatment with regard to taxation of distribution services on motion pictures. Russia applies a 20 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 discriminatory tax regime raises concerns about Russia's implementation of its national treatment commitments. USTR has reviewed information provided by U.S. stakeholders and studied the relevant Russian laws and regulations. With this information in hand, USTR's WTO delegate has attempted to initiate a discussion with Russia's WTO delegate but Russia has refused to respond. USTR will continue to press Russia for a satisfactory resolution of the seemingly discriminatory tax regime.



## **B. 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. According to 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 goods over imported goods (import substitution subsidies).<sup>35</sup> 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.<sup>36</sup>

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 pressed Russia to provide complete information about its subsidy programs, particularly those that appear to be prohibited export subsidies. The United States continues to assess Russia's compliance with its commitments under the SCM Agreement to ensure full transparency.

During Russia's WTO accession negotiations, Members raised concerns about certain 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, but introduced numerous other programs. In 2021, Russia introduced a variety of subsidies, including subsidies to reimburse high-tech exporters for part of the costs associated with after-sales services for their exported products and for costs associated with homologation of products for foreign markets and R&D expenses; subsidized interest rates on loans to Russian companies with export-oriented production facilities in Russia; subsidies to Russian agricultural engineering entities for certain export cost; subsidies to ROSEXIMBANK to compensate for lost income on loans issued to finance projects that promote the export of high-tech products;

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<sup>35</sup> WPR, ¶698.

<sup>36</sup> WPR, ¶1200.

and transportation subsidies for Moscow-based small and medium-sized enterprises that export products and/or services to foreign markets.

In addition, according to U.S. stakeholders, Russia subsidizes the leasing of domestically produced agricultural and construction equipment, the mining and processing of titanium, the launch and sale of medicines, the costs to obtain foreign patents for Russian inventions, the payment by local manufacturers of the “utilization fee” (see above), the purchase of domestically produced telecommunications equipment, and the production of an array of industrial products (e.g., automotive, forestry, metallurgical, oil/gas, pharmaceutical, and machine tool products) if the manufacturers sign a “Special Investment Contract” and use domestically produced inputs. Stakeholders have further noted that through the Corporate Competitiveness Program (CCP), administered by the Russian Export Center, the Russian government subsidizes bank loans for exports that meet certain performance-based criteria (such as individual export targets). CCP contracts have been signed with companies in the automotive, pharmaceutical, railway, chemical, timber, agricultural, and metallurgical industries. In another effort to increase exports, Russia has amended its Budget Code to permit subsidies for wine and other alcoholic products intended for export. USTR will monitor Russia’s implementation of this provision to ensure any subsidies are consistent with the WTO rules.

In addition to subsidizing exports, the Russian government has in place a growing number of initiatives aimed at supporting various domestic industries to implement its import substitution policies. For example, Russia has in place a State Program “Development of Industry and Increasing Competitiveness” under which it adopted the “Strategic Plan for Promoting Import Substitution in Industry” in 2014. Since then, the Russian government has adopted numerous Action Plans for import substitution, including in the heavy engineering industry, non-ferrous metallurgy industry, ferrous metal industry, oil and gas engineering industry, shipbuilding industry, and the chemical industry.

In 2020, the Russian government identified the IT sector as a priority sector, with a focus on digital transformation of the economy. In 2021, Russia adopted an IT development framework which proposed 62 measures to support the domestic IT sector, including fiscal and tax incentives to manufacture hardware and develop software in Russia and purchase domestic

hardware and software, as well as restrictions on the use of foreign hardware and software by certain entities. These new measures supplement long-standing local content requirements, domestic purchasing quotas, and import bans imposed by Russia as part of its broader import substitution strategy.

The United States will continue to meet with interested U.S. exporters as well as other adversely affected producers to discuss the implementation and operation of these programs. In addition, USTR will review carefully Russia's next subsidy notification. The United States will not hesitate to take appropriate action in the WTO if it determines that Russia has failed to meet its transparency obligations or is providing WTO-inconsistent subsidies to its manufacturers.

### *C. 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 agreed in the WPR to additional disciplines. 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.<sup>37</sup> 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 the regulatory measures of Russia otherwise 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. U.S. stakeholders assert, however, that the government of Russia continues to protect SOEs in certain industry sectors (e.g., uranium) through price controls, price preferences, and the absence of a profit motive. Since Russia's WTO accession, U.S. government officials have studied Russia's

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<sup>37</sup> WPR, ¶99.

growing control over its broad state-owned sector as that sector's share in the economy has expanded. In 2020, Russia's Federal Antimonopoly Service estimated that the state's share in the economy reached approximately 70 percent.

It is evident that, over the past several years, Russia has imposed a growing number of import substitution requirements on SOEs. For example, the Russian government has assumed the authority to establish procurement plans for SOEs and tender rules for SOEs procurement of specific goods, works, and services. Russia established the Government Import Substitution Commission with the 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. Moving to support specific industries, the government has banned certain companies in which the government owns more than 50 percent of the shares from purchasing imported automobiles, metal products, and heavy machinery; banned SOEs from purchasing imported software and machinery; and restricted to domestic manufacturers the procurement of eleven types of equipment used by SOEs for projects co-funded or guaranteed by government funds unless a waiver was obtained from the Government Commission on Import Substitution. Moreover, Russia applies a 15-30 percent price preference for goods of Russian origin and to works and services performed and rendered by Russian entities. In late 2020, Russia imposed on SOEs minimum shares of Russian goods that must be purchased, with quotas ranging from 40 percent to 90 percent.

In response to Russia's continued reliance on policies directing the purchase of Russian-made goods and services, especially with regard to SOEs, USTR has met with and discussed the impact and ramifications of these policies with a broad array of U.S. stakeholders, foreign government officials, and other experts. The United States, in conjunction with other interested WTO Members, has repeatedly raised questions in the WTO Committee on Trade Related Investment Measures (TRIMS Committee) about the consistency of these programs with Russia's WTO commitments and sought additional information. In fact, the United States has submitted numerous sets of written questions about these programs dating back to 2016, but Russia has responded to only the first set of questions. The United States will continue to scrutinize and analyse the adoption and operation of these measures to ensure that Russia

implements its WTO commitments and does not discriminate against U.S. exports, and to press Russia for written answers to our questions.

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 has missed the biennial deadline to make the required notification five times, most recently in June 2020. The United States has raised this issue in every STE Working Party meeting for the past ten years (*i.e.*, in thirteen consecutive meetings) and since joining the WTO, Russia has not fulfilled a single STE notification obligation. In response, Russia has promised to provide the required notifications, claiming the need for more time, but no notification has been made to date. Russia also initially indicated that it was going to notify JSC United Grain Company as a STE; however, in a July 2019 meeting of the Working Party on State Trading Enterprises, and repeated in subsequent meetings, Russia reversed itself on this commitment, stating that the state enterprise should not be notified. Russia gave no explanation this change in position.

The United States will continue to press Russia on these notification issues and urge Russia to abide by its WTO obligations.

#### ***D. Pricing Policies***

According to 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 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 issued an order governing its tariff policy on rail freight and published draft measures and orders on its website. Since 2017, WTO Members have repeatedly raised concerns in the Committee on Agriculture about Russia's introduction of a discount on railway tariffs for exported grains from certain regions of Russia.

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 it will achieve equal profitability of export and domestic industrial sales, including through cancellation in 2014 of a planned domestic tariff increase. Based on information obtained from U.S. stakeholders in meetings and written communications, it appears that the domestic price for industrial users may be below export prices. The United States will continue to work with U.S. stakeholders to investigate the pricing of natural gas in the Russian market.

#### ***E. 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. Furthermore, the TBT Agreement requires, among other things, that such 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. The WTO’s transparency requirements for technical regulations and conformity assessment procedures provide that, in addition to other requirements, Russia must notify to the WTO all technical regulations and conformity assessment procedures that are not based on relevant international standards or where a relevant international standard does not exist, 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. According to the WPR, Russia committed to comply with all provisions of the TBT Agreement, including those relating to transparency and predictability.<sup>38</sup> In addition, Russia has taken specific commitments with regard to technical regulations affecting the telecommunications equipment and civil aviation sectors.<sup>39</sup>

As Russia has begun to move from national regulations to regional (EAEU) regulations, it has begun to notify those regional regulations. In recent years, Russia notified several regional technical regulations to the WTO's TBT Committee. Russia has not, however, notified the 2018 final technical regulation governing the safety of alcoholic beverages. It has also failed to notify other legislative acts establishing technical regulations governing the required installation in civil aircraft of navigational systems compatible with Russia's global navigation system (GLONASS).

USTR and other U.S. Government officials have engaged with representatives of the U.S. spirits industry and wine industry to discuss Russia's regulation of its alcoholic beverage sector. U.S. stakeholders have raised a number of concerns about the consistency of Russia's (and the EAEU's) regulatory regime with the substantive and procedural requirements of the TBT Agreement. Following some investigation and analysis by USTR and other U.S. Government officials of the legal measures governing Russia's regulation of this sector, U.S. officials raised concerns in the WTO TBT Committee about the EAEU's draft regulation on alcoholic product safety, in particular with regard to the conformity assessment requirements, traceability requirements, certain wine and beer definitions, aging requirements for whisky, and the requirement for an expiration date on certain alcoholic beverages (a requirement not in keeping with international standards). In 2018, the EEC finalized its work on the draft regulation governing alcoholic beverages, due to enter into force in January 2022, but without further input from interested parties. In 2021, the United States requested that, as Russia and the EEC consider amendments to the regulation, Russia notify a draft revision of the regulation to the WTO.

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<sup>38</sup> See WPR, ¶¶ 712, 714, 715, 728, 738, and 739.

<sup>39</sup> WPR, ¶¶ 738 and 744.

In 2020, the United States submitted comments on Russia's wine law, noting that the law had not been notified even though it would have a wide-reaching effect on trade. In those comments, the United States sought clarification on certain definitions and on provisions that could create barriers to U.S. wine exports, such as limitations placed on wine exported in bulk, restrictions on the use of certain ingredients and restrictions on the use of protected denominations of origin for imported wines. In 2021, the United States submitted comments on Russia's amendments to the wine law, which also had not been notified to the WTO. The United States sought clarification on provisions concerning geographical indications or appellations of origin protection and on labeling requirements. The United States continues to stress the importance of Russia implementing its obligations consistent with the TBT Agreement, including its transparency obligations. In the coming year, the United States will study Russia's response to our concerns, watch for new measures, and seek resolution of any remaining or new issues.

Similarly, Russia has introduced a compulsory requirement that producers of pharmaceutical products, including veterinary drugs, must be certified for compliance with good manufacturing practices (GMP); the regime went into effect in 2016 for new drugs and in 2017 for renewals. USTR and other U.S. Government officials have held many conversations about the regime with U.S. stakeholders. Although the introduction of a GMP regime is not necessarily problematic, Russia did not notify this measure to give other WTO Members an opportunity to review. More importantly, U.S. stakeholders have raised concerns that Russia treats domestic and foreign manufacturers differently in the implementation of its GMP regime for medicines. For example, U.S. industry representatives assert that current Russian legislation outlines different GMP procedures for local and foreign sites. In addition, they contend that Russian inspectors deny GMP certification of foreign manufacturers in significantly higher numbers than domestic manufacturers, a result of the lack of inspection infrastructure necessary to certify (or recertify) 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. Industry stakeholders report that Russia is finalizing new measures that will require GMP certificates for imported veterinary drugs beginning in 2023, potentially closing the Russian market to exports of U.S. veterinary drugs. U.S. officials have met bilaterally with Russian officials on the margins of the TBT Committee to discuss these concerns, and Russia has agreed that previously issued pharmaceutical



certificates will be valid until 2025. The United States will continue to press Russia to respond to the needs and concerns of U.S. stakeholders to ensure that Russia's market remains open to U.S. exports of pharmaceutical products.

A growing concern voiced by U.S. stakeholders is the lack of harmonization of regulatory measures between Russia and the EAEU. At times, Russian regulatory measures and EAEU regulatory measures govern the same industry sector, but create different, and sometimes contradictory requirements. Industry representatives have raised concerns about such conflicts between Russian and EAEU measures governing medical devices, wine, and potentially the labeling regime. Such divergent rules can introduce significant unpredictability into these markets.

U.S. officials continue to urge the Russian delegation to notify new measures and amendments to the WTO TBT Committee, and to provide responses to inquiries posed by U.S. stakeholders, and to emphasize the importance of stakeholder input during the drafting process. Moreover, the United States will continue to review closely Russia's and the EEC's technical regulations and work to ensure their consistency with the requirements of the TBT Agreement, including with regard to transparency. If the United States determines that Russia is not meeting its WTO obligations, it will take the necessary and appropriate action to ensure that Russia does not use its technical regulations to create unnecessary obstacles to U.S. exports.

#### ***F. Government Procurement***

The WTO *Agreement on Government Procurement* (GPA), a plurilateral agreement, which currently includes 48 WTO Members (including the United States), applies to government procurement of goods and services. The GPA requires GPA members to provide 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.

According to the WPR, Russia committed to request observer status in the GPA and to begin negotiations to join the GPA within four years of its WTO accession.<sup>40</sup> Russia became a GPA

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<sup>40</sup> WPR, ¶1143.

observer on May 29, 2013, and on June 2, 2017, circulated its initial GPA market access offer. On January 8, 2018, Russia circulated its response to the Checklist of Issues that provided detailed information about the Russian procurement system. In May 2018, the United States submitted questions and comments on Russia's initial market access offer reflecting the U.S. view that Russia's initial offer falls short in a number of areas including entity coverage (central, sub-central, and SOEs), goods and services coverage, and general notes. Also in May 2018, the United States submitted questions on Russia's response to the checklist to understand better how the Russian procurement system functions and whether it would satisfy GPA obligations.<sup>41</sup> Russia submitted a written response to these questions in October 2018 and in October 2020 indicated that it was working to identify areas to improve its initial market access offer.

According to research undertaken by USTR and other parts of the U.S. Government, since joining the WTO, Russia has introduced a number of measures that establish preferential treatment for domestically or EAEU produced goods in public procurement, such as a 15 percent price preference for goods of EAEU origin in purchases for government use and a 30 percent pricing preference for radio-electronic products of EAEU origin. In some cases, Russia has banned government procurement of certain imported products if such products are available from at least one manufacturer in the EAEU, including a wide range of machinery (particularly that used in construction and in raw materials extraction), vehicles, medical devices or pharmaceutical products, computer hardware and software, a variety of consumer electronics, a broad array of light industrial goods, construction and building materials, and a variety of agricultural products. The government of Russia has also recommended that regional and municipal authorities switch to domestically produced software. Furthermore, according to U.S. stakeholders, the Russian government has proposed measures that would limit the ability of foreign-controlled entities to provide IT services for so-called Critical Information Infrastructure (CII) and would require CII entities to migrate toward using only domestic software and hardware. In addition, U.S. stakeholders have raised concerns about Russia's preferences for domestic products in procurement of essential medicines and have described various Russian proposals for future preferences for domestic production in government procurement, such as a

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<sup>41</sup> As part of its response, the United States objected to Russia's treatment of Crimea as part of the Russian Federation.

proposed 50 percent set aside for Russian made goods in public procurement by 2021. U.S. stakeholders have also reported 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 can be consistent with Russia’s WTO obligations.

The United States, joined by other Members, has raised concerns in numerous WTO committee meetings about Russia’s adoption of policies that disadvantage imports in public procurement. As the United States considers Russia’s possible accession to the GPA, these measures and policies will be a significant focus.

## **IX. 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 as set out in each Member’s schedule to the GATS. One of the objectives of the GATS is progressive liberalization, and toward that end it provides for further negotiations to open services markets of other WTO Members.

In its services schedule, Russia committed to substantial openness in a broad range of services sectors, including through the elimination of many existing limitations in service sectors of importance to the United States, such as financial services, telecommunications, distribution, energy, express delivery, professional services, and audio-visual services.<sup>42</sup> 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

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<sup>42</sup> See WPR, Part II – Schedule of Specific Commitments on Services.

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.

#### ***A. 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, were 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. The

United States will continue to monitor Russia's insurance regime to ensure its consistency with its WTO insurance services commitments.

### ***B. 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. Russia also accepted the pro-competition WTO Basic Telecommunications Reference Paper, which 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. As part of its WTO accession commitments, 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. However, consistent with its import substitution strategy, Russia has, since 2017, required that a telecommunications operator wishing to rent capacity from a foreign satellite operator must first demonstrate that Russian satellite providers do not have such capacity. U.S. officials have raised concerns at the WTO about this mandate and will continue to review Russia's implementation of its WTO commitments.

### ***C. 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. An ongoing concern is how Russia's data protection laws, most importantly the core requirement that personal data of Russian individuals be stored and processed on servers located in Russia, relate to its computer and related services commitments. Further, in December 2019, Russia adopted a law requiring the pre-installation of listed Russian software on certain consumer electronic products (*e.g.*, smartphones, computers, tablets, and smart TVs) sold in Russia. The Russian government has identified categories covered by the pre-installation mandate, including search engines, mapping and navigation software, anti-virus software, software that provides access to e-government infrastructure, instant messaging and social network software, and national payment software. Every year the

Russian government identifies specific software within each category that must be pre-installed, unless the software is incompatible with the device's operating system. U.S. stakeholders are concerned about various operational aspects of the mandate, such as who determines whether a particular software application is incompatible with the operating system and whether there is an obligation to remedy the incompatibility. In addition, U.S. stakeholders remain concerned about the apparent competitive advantage the measure gives to domestic software, as well as the plans to amend the list annually. U.S. officials have raised questions in the WTO and look forward to Russia's written responses to those questions.

In 2020, the Russian government adopted domestic tax policies that appear to lower the tax rates for domestic firms in the IT sector. As mentioned above (see discussion on "*Non-discrimination*"), the Russian government amended the Tax Code to lower the domestic corporate tax rate and social security contribution rate for Russian IT firms and exempted royalties on domestic software from the payment of VAT. According to U.S. stakeholders, these differential tax rates could result in higher taxation levels on foreign service providers because the conditions to be considered a "Russian organization" and "Russian software" are effectively impossible for foreign companies to meet. Russia's import substitution strategies for the IT sector, such as the "Digital Economy of the Russian Federation," also raise additional national treatment and import substitution concerns. USTR continues to review the relevant laws (and the few subsidiary measures and explanatory documents available) and consult with a wide variety of U.S. stakeholders and trading partners impacted by these strategies.

In 2021, Russia adopted a law that requires "IT companies" with a daily Russian audience of more than 500,000 people to establish a presence in Russia. To implement this law, the Ministry of Digital Development, Communications and Mass Media published a draft resolution that would give Roskomnadzor (RKN), the Russian communications watchdog, the authority to set up a "blacklist" of foreign IT companies with more than 500,000 Russian daily viewers that have not established local offices in Russia and to prohibit any electronic payments to those companies. U.S. officials have raised questions in the WTO and will continue to press Russia to maintain an open services market for computer and related services. The United States will continue to scrutinize closely Russia's information technology sector policies and the

implementation of its commitments in this area to ensure that U.S. interests are not adversely impacted.

#### ***D. 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. Therefore, U.S. distributors are to 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. Russia's WTO commitments for distribution services also provide for direct sales by individual commission agents.

However, U.S. stakeholders have told USTR that rules that require that sales of specialized dietary products containing biologically active substances be sold only through pharmacies and specialized stores remain in effect. The United States continues to monitor developments in the market to help ensure that Russia is in compliance with its commitment to allow direct sales of such products.

#### ***E. Audio-Visual and Media Services***

Russia made strong commitments related to its dynamic film, television, and media sectors, including in motion picture distribution and projection services, the sale of programming to television and radio stations, printing and publishing, and news agency services. Russia also agreed to allow foreign audio-visual companies to operate as 100 percent foreign-owned enterprises. Since 2015, however, Russia has banned advertisements on pay cable and satellite channels. It is unclear whether or not the law applies to state-owned television channels, but because those channels are subsidized by the state and hence rely little, if at all, on advertising revenue, the ban is likely to have had little, if any, practical impact on them. Further, in 2017, Russia adopted a law limiting foreign ownership of large online streaming companies (*i.e.*, over 100,000 daily views Russia-wide per month) to 20 percent. Russia has not, however, issued any implementing legislation, resulting in significant uncertainty to the market. Also in 2017, Russia began enforcing a law (adopted in 2014) that limits foreign ownership of Russian media assets to 20 percent. The United States will consult with U.S. stakeholders regarding the impact of

these measures on U.S. interests and will ensure Russia acts consistently with its WTO obligations.

## **X. 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 intellectual property rights (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 IPR in administrative and civil actions and, at least in certain cases involving copyright piracy and trademark counterfeiting, in criminal actions and 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.

According to 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,<sup>43</sup> withdrawing exceptions to copyright protection for works that existed prior to 1995,<sup>44</sup> 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.<sup>45</sup>

### **A. 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,

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<sup>43</sup> WPR, ¶1295.

<sup>44</sup> WPR, ¶1224.

<sup>45</sup> WPR, ¶¶1208, 1294, 1295, and 1339.



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 Performances and Phonograms Treaty, referred to collectively as the WIPO Internet Treaties.<sup>46</sup> Russia has not yet fully harmonized Part IV of the Russian Civil Code with the WIPO Copyright Treaty. This legislative inaction appears to have generated uncertainty with law enforcement agencies 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.<sup>47</sup> Russia also standardized its patent fees to apply in the same manner to Russian and non-Russian entities.<sup>48</sup>

In recent years, reflecting commitments described 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 is still yet to be confirmed. Consistent with a commitment contained in the WPR, Russia revoked its reservation to Article 18 of the Berne Convention for the Protection of Literary and Artistic Works in 2013. 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.

According to the WPR, Russia committed to take action against websites that facilitate 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. Further amendments extended the law

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<sup>46</sup> WPR, ¶¶1208, 1224, 1303, 1312, 1338, 1339, 1350, and 1353.

<sup>47</sup> WPR, ¶1253.

<sup>48</sup> WPR, ¶1226.

to cover “mirror” websites (websites with the same infringing content moved to a different URL). According to stakeholders, these laws have helped combat illicit trade facilitated by infringing websites and services. However, implementation of the laws has been directed only against infringing activities that target users in Russia. The United States continues to study closely Russia’s evolving laws and practices related to online piracy.

According to 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.<sup>49</sup> 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 express authority to its customs authorities to take *ex officio* action 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 review the newly adopted EAEU Customs Code to ensure Russia is complying with its 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

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<sup>49</sup> See WPR, ¶1350.

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). The EAEU rules for the registration of new medicines went into effect in early 2021, superseding Russia’s Law on the Circulation of Medicines. According to U.S. stakeholders, the EAEU rules do not include RDP provisions equivalent to those found in the Law on the Circulation of Medicines and Russia’s WPR, raising concerns about Russia’s willingness to continue applying a six-year RDP term in considering follow-on marketing applications, consistent with its WTO obligations. USTR continues to engage actively and often with U.S. stakeholders on Russia’s protection and enforcement of IPR, and will use the appropriate instruments of the WTO to ensure that Russia meets its WTO commitments.

### ***B. Enforcement***

Russia committed, upon becoming a WTO Member, to apply fully the TRIPS provisions for enforcement of IPR, without a transitional period.<sup>50</sup> According to the WPR, Russia also committed to take “expeditious action” against acts of infringement on the basis of complaints lodged by right holders and through other means with the objective of eliminating such acts in Russia.<sup>51</sup> Russia made specific commitments for authorized officials to conduct unannounced inspections of plants licensed to produce optical media bearing content protected by copyright or related rights.<sup>52</sup> Although Russia conducted such raids initially, piracy has now largely 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.

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<sup>50</sup> WPR, ¶1353.

<sup>51</sup> WPR, ¶1312.

<sup>52</sup> WPR, ¶1338.

USTR and other U.S. officials meet on a regular basis with U.S. stakeholders to discuss Russia's IPR enforcement record. Based on those discussions, and USTR's ongoing observations, it is evident that, as a general matter, the current IPR enforcement environment in Russia remains weak.<sup>53</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.

According to the WPR, Russia committed to take enforcement actions against online piracy<sup>54</sup> and to ensure that existing law is applied to prevent certain types of devices or services from circumventing technical protection measures that control access or protect content,<sup>55</sup> but notorious pirate websites continue to proliferate. Since its WTO accession, Russia has enacted legislation providing a framework to combat certain types of online piracy in cases where an action is initiated by right holders. In 2018, right holders and online platforms in Russia signed an anti-piracy memorandum to facilitate the removal of links to infringing websites. This memorandum may be implemented as legislation that would cover all copyrighted works and apply to all Russian platforms and search engines. Furthermore, although right holders are able to obtain court-ordered injunctions against infringing websites, additional steps must be taken to target the root of the problem, namely, investigating and prosecuting the owners of the large commercial websites distributing pirated material, including software. In particular, the government of Russia continues to fail to act against individuals located in Russia that operate infringing sites that target users outside of Russia.

Poor enforcement in Russia has also led to a sharp increase in the distribution and availability of pirated movies. Through rampant unauthorized camcording, pirates reproduce unauthorized copies of films and then upload them onto the Internet for illegal streaming and illegal downloading (and sell them as counterfeit DVDs). According to U.S. stakeholders, Russia is home to some of the most prolific criminal enterprises for the release of pirated movies. The United States will continue to review and analyze Russia's enforcement of IPR, and whether

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<sup>53</sup> In 2021, Russia remained on USTR's Special 301 Priority Watch List.

<sup>54</sup> WPR, ¶1339.

<sup>55</sup> WPR, ¶1232.

those actions result in combatting the commercial scale online piracy of the type identified in the USTR's *Notorious Markets List*.

Another area in which enforcement appears inadequate is with respect to patent enforcement. According to stakeholders, Russia does not appear to have an effective mechanism for the expeditious resolution of patent infringement disputes involving pharmaceutical products. For example, because Russian courts do not grant preliminary injunctions in pharmaceutical patent infringement cases, alleged patent infringing follow-on products are allowed to enter the market prematurely.

In fact, currently available information continues to indicate that overall enforcement of IPR has decreased, rather than increased, over the past few years. Criminal enforcement, in particular, has been lacking especially against owners or operators of the large enterprises that propagate commercial scale piracy. An ongoing barrier to Russia's adequate and effective enforcement of IPR is not only a lack of political will, but also the lack of resources devoted to hiring and training law enforcement personnel to investigate and prosecute IPR crimes. Furthermore, U.S. stakeholders have informed us that when they attempt to enforce their IPR through civil litigation, administrative and procedural hurdles prevent them from doing so.

Russia's size and geographic location make enforcement of IPR at its borders an essential component of IPR protection. According to 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, based on the provisions of the TRIPS Agreement.<sup>56</sup> 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 scrutinize Russia's progress in this regard.

Based on information gathered by USTR from U.S. stakeholders, it appears that Russia's collecting society regime remains nontransparent and burdensome, making it difficult for right holders to be fairly compensated for the use of their intellectual property. Russia committed in

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<sup>56</sup> See WPR, ¶1331.

the WPR to review its system of collective management of rights,<sup>57</sup> 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. right 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 does not yet appear to have taken steps to meet that deadline. Legislation intended to address problems of state accreditation and governance of collecting societies does not allow right holders to be involved in the selection and management of the organization and fails to provide sufficient transparency to determine what royalties are being collected and to whom they are being paid. The United States will press Russia to accelerate its reform efforts to improve the transparency and effectiveness of these organizations, and, in particular, to ensure that U.S. right holders receive equal treatment with respect to Russia's domestic right 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 since early 2014, 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.

## **XI. Investment**

### ***A. 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

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<sup>57</sup> WPR, ¶1218.

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 that were imported under investment agreements.

According to 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. Russia notified the WTO that it had terminated these automotive investment incentive programs as of July 1, 2018. However, the Ministry of Industry and Trade later announced a program to support automotive manufacturers that met certain production quotas and local content requirements. The United States will seek further information about these new state support programs to ascertain their consistency with Russia's WTO commitments.

Since Russia became a WTO Member, in response to concerns raised by the United States and other Members in TRIMS Committee meetings, 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.<sup>58</sup> The United States continues to watch for possible local content requirements in a preferential leasing program implemented by a government-owned agricultural equipment leasing company, RosAgroLeasing.

Other initiatives that USTR 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; a proposal to establish a minimum target for procurement by SOEs of "hi-tech and innovative products," including from small and medium-sized businesses; proposals to link investment incentives for certain electronic products to local sourcing; the requirement to pre-install Russian software in certain consumer electronic products sold in Russia; and the requirement that most foreign Internet platforms establish a legal presence in Russia. Of additional concern to U.S. industry stakeholders is the requirement that those companies install special software that allows the Government of Russia to track the number of users. To obtain information regarding these initiatives, in particular concerning their consistency with Russia's WTO commitments, USTR has met with relevant stakeholders and consulted with foreign interlocutors. In the WTO, the United States has repeatedly posed written questions about these programs in the TRIMS Committee. Although Russia provided some oral responses, they were vague and did not address all of the issues raised. Russia has not provided written replies. The United States continues to press Russia for complete responses.

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, the Market Access Committee, the Council on Trade in Goods and the Council on Trade in Services on programs that support domestic production at the expense of imports to supplement information provided by U.S. stakeholders and USTR's independent research. The goal is to ensure Russia's compliance with its commitments under the WTO Agreement and the WPR.

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<sup>58</sup> See WPR, ¶698.



## **B. *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.<sup>59</sup> Russia has a 10-year transition period, from the date of accession, 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. The United States will continue to monitor Russia's SEZs, including the "Titanium Valley" SEZ, to ensure its consistency with Russia's WTO commitments.

## **XII. 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.

### **A. *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 EAEU Court, which has competence, *inter alia*, over disputes of an economic nature arising from the implementation of decisions of the EAEU bodies and treaties. The Court of the EAEU does not have jurisdiction to opine directly on the member states' WTO obligations nor can the EAEU Court rule on a member state's compliance with such obligations. However, after the Treaty on the Multilateral

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<sup>59</sup> WPR, ¶1124.

Trading System was adopted in 2011, the EAEU Court received the legal authority to provide advisory opinions on whether an EAEU measure violates WTO rules. The right to bring a case to the EAEU Court is not limited to the EAEU member states or the bodies of the EAEU; individuals with a specific interest can also challenge EAEU acts in the EAEU Court. USTR continues to study and analyze the workings of the EAEU to understand better its rules and procedures and their compliance with Russia's WTO obligations.

## **B. *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 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.<sup>60</sup> 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;<sup>61</sup> to provide WTO Members and interested parties with decisions in writing setting out reasons for the decision;<sup>62</sup> and to institute new rights of appeal of decisions.<sup>63</sup> 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 procedures for publication and public comment on proposed EAEU legal acts, including a requirement that draft decisions shall be published no fewer than 45 calendar days before the

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<sup>60</sup> WPR, ¶1430.

<sup>61</sup> WPR, ¶1427.

<sup>62</sup> *See, e.g.*, WPR, ¶1418.

<sup>63</sup> *See, e.g.*, WPR, ¶¶189-202.

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 initial notifications which it committed to provide in the WPR (although, as noted above, it has failed to provide subsequent notifications). 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. Although Russia provides tariff data to the WTO's Integrated Data Base, there are gaps in Russia's reporting of its MFN rates and it has not provided import data or data on its *ad valorem* equivalents of specific tariffs. In addition, as noted above, Russia has refused to meet the transparency obligation to notify its STEs to the STE Working Party.

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. For example, the United States has submitted multiple rounds of questions, prompting Russia to provide further details on certain investment incentive programs and certain subsidy programs giving the United States a greater understanding of these measures. The United States has also raised concerns for a number of years regarding Russia's lack of transparency in the WTO Committee on Agriculture with respect to export credits for agricultural exports. Russia has yet to provide adequate information on those export credits.

As made clear throughout this report, the United States has serious concerns about the completeness of Russia's notifications made pursuant to the WTO Agreement. Notifications are intended to provide important factual information regarding each Member's trade regime and practices. Russia's failure to notify affects negatively Members that would benefit from understanding Russia's trading system, while also damaging the WTO as an institution. To encourage compliance, the United States and 20 co-sponsors support a draft General Council

decision on *Procedures to Enhance Transparency and Improve Compliance With Notification Requirements Under WTO Agreements*, which would reform the operation and effectiveness of notifications, offer tangible benefits for all WTO Members, and provide enhanced trade predictability and trust between Members. The proposal continues to include administrative measures for Members who do not comply with their notification commitments. The United States believes that this important reform will encourage and enable Russia and other WTO Members to comply with their notification obligations. The United States will continue to analyze the comprehensiveness of Russia's notifications, as well as the availability of adequate opportunities to comment on those notifications.

### ***C. 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.<sup>64</sup>

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 EAEU Court that 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.

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<sup>64</sup> See WPR, ¶ 215.

### **XIII. Conclusion**

As economies around the world were forced to retract and retrench in response to the COVID-19 pandemic, the government of Russia exacerbated those trends by extending its control over the Russian economy and tightening restrictions on trade. The WTO is premised on the belief that an open and fair multilateral trading system is built and sustained on transparency, predictability and the rule of law. The United States believes in that system, and that trade is a force for good that encourages a race to the top and addresses global challenges as they arise. Russia appears to be taking a divergent path, erecting barriers and stifling competition. The United States views this path as counterproductive – for Russia, the Russian people, and for the global economy. The United States will continue to encourage Russia to embrace the letter and the spirit of the WTO. At the end of the day, however, Russia, and Russians, must make that decision.

## **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. The App Association
2. International Intellectual Property Alliance
3. Pharmaceutical Research and Manufacturers of America
4. U.S.-Russia Business Council
5. U.S. Meat Export Federation