

# Report on Russia's Implementation of the WTO Agreement



United States Trade Representative  
December 2014



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## Table of Contents

Introduction.....	1
Executive Summary .....	2
Russia and the Customs Union .....	6
Russia in the World Trade Organization (WTO).....	8
Tariffs & Border fees .....	8
Customs Fees.....	11
Customs Valuation .....	11
Trading Rights.....	12
Quantitative Restrictions .....	13
Import Licensing .....	13
Non-tariff Measures .....	15
Trade Remedies.....	16
Export Regulation .....	18
Agriculture .....	19
Sanitary and Phytosanitary Measures .....	19
Domestic Supports and Export Subsidies .....	24
Value-Added Tax .....	24
Services .....	24
Financial Services .....	25
Telecommunications .....	26
Computer and Related Services .....	26
Distribution Services .....	27
Audio-Visual Services.....	27
Media Services .....	28
Internal policies affecting trade .....	28
Non-discrimination.....	28
Industrial Policy, Including Subsidies.....	30
State-owned or –controlled Enterprises .....	32

Pricing Policies.....	33
Standards, Technical Regulations and Conformity Assessments .....	34
Government Procurement .....	37
Intellectual Property Rights .....	38
Legal Framework .....	39
Enforcement .....	41
Investment.....	43
Trade-Related Investment Measures .....	43
Special Economic Zones .....	45
Rule of Law.....	46
EurAsEC/Customs Union .....	46
Transparency .....	46
Judicial Review .....	48

## **Introduction**

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

This Report on Russia's Implementation of the WTO Agreement is the second annual Report prepared pursuant to section 201(a) of the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitskiy Rule of Law Accountability Act of 2012 (P.L. 112-208). This provision requires the U.S. Trade Representative not later than one year after the United States extends permanent normal trade relations (PNTR) to the products of Russia, and annually thereafter, to submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the 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 acceding to 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 accede to the ITA and the GPA, the Report is to describe the actions

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

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

the U.S. Trade Representative plans to take to encourage Russia to improve its implementation of its commitments or increase its progress toward acceding, as the case may be.<sup>3</sup>

In preparing this report, the Office of the U.S. Trade Representative (USTR) drew on its experience monitoring Russia's WTO compliance. USTR also drew on the expertise of the Departments of Agriculture, Commerce, Homeland Security, State and Treasury, among other agencies. In addition, USTR published a notice in the *Federal Register* on September 2, 2014, asking for written comments from the public and held a public hearing before the Trade Policy Staff Committee (TPSC) on October 10, 2014. A list of interested parties that submitted comments is set forth in Appendix 1, and the list of persons who testified before the TPSC is set forth in Appendix 2.

As noted in last year's Report, establishing laws and other measures to reflect the WTO rules does not guarantee Russia's WTO compliance or ensure that U.S. workers, farmers, ranchers and businesses will realize the full benefits of a Russia that has truly joined the global trading community. WTO compliance is not a static concept but rather is an ongoing process that requires sustained everyday effort by every WTO Member. As many of the events of the past year have demonstrated, after nearly twenty years of modernizing and internationalizing its economic legal regime, Russia has begun to show signs of backsliding on that progress. This Report focuses on those elements of Russia's trade regime that implicate its WTO obligations and that have the greatest systemic and commercial significance for U.S. interests.

## **Executive Summary**

In the first year of Russia's WTO membership, there were encouraging signs that Russia would continue its integration into the global trading community and become a constructive WTO Member. However, into the second year of Russia's WTO membership, that hope diminished.

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<sup>3</sup> P.L. 112-208 also requires the U.S. Trade Representative to submit annual reports to the Committee on Finance of the U.S. Senate and the Committee on Ways and Means of the House of Representatives describing the enforcement actions taken by Office of the U.S. Trade Representative (USTR) against Russia to ensure Russia's full compliance with its obligations as a Member of the World Trade Organization (WTO). The first such Report was submitted to the committees on June 18, 2013, followed by this year's Report on June 19, 2014. In addition, USTR 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.

Russia's use of unjustified and retaliatory trade measures against many of its neighbors, as well as against the United States, rejects the core principle of open trade based on the rule of law that sustains the WTO. In addition, many of Russia's protectionist tendencies appear to have gained momentum. Although the United States has restricted its bilateral engagement with Russia as a result of Russia's violations of Ukraine's sovereignty and territorial integrity Ukraine, we have continued, and will continue, to remind Russia of its WTO commitments, and the benefits to Russia and to other WTO Members of Russia complying with those commitments.

Under its Protocol of Accession, Russia committed to a staged reduction of tariffs. Russia made one round of tariff reductions upon accession, and made a second round of reductions in August 2014. Russia has also modified its tariffs pursuant to decisions of the Eurasian Economic Commission (EEC)<sup>4</sup>, some of which have raised concerns. The United States is monitoring the implementation of Russia's WTO tariff commitments. In addition, we await the notification of Russia's modification of its WTO tariff schedule to reflect its ITA commitments. Russia's moves to open its market and expand consumer choice, however, were undermined when, on August 6, 2014, Russia banned the importation of certain agricultural goods from the United States and other countries.

With regard to other border measures, Russia has reduced customs fees, amended its rules on customs valuation and eliminated some import licensing procedures consistent with its WTO commitments. Similarly, Russia has reduced export duties as required by its WTO commitments. The United States continues to monitor Russia's import licensing regime for products with cryptographic capabilities, as well as Russia's export licensing regime.

Although Russia appears to have complied with its commitments in the area of domestic support to the agriculture industry, we continue to have concerns about Russia's use of sanitary and phytosanitary (SPS) measures, including the possibility that Russia may be using them to restrict U.S. exports of agriculture goods to protect Russia's domestic industries. We are concerned, for example, that although Russia has issued guidelines for inspections of foreign meat processing and storage facilities, the process to approve facilities for export to Russia remains difficult if not

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<sup>4</sup> As described below, the EEC is the administrative body of the Customs Union of Russia, Kazakhstan and Belarus.

impossible to complete. In addition, Russia continues to maintain certain SPS measures that do not appear consistent with international standards and has not provided WTO Members with risk assessments for these measures that, for example, take into account available scientific evidence and risk assessment techniques developed by relevant international organizations. The United States continues to raise concerns about Russia's application of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).

In addition to SPS measures, Russia's WTO commitments address other non-tariff measures that can act as "behind the border" measures that favor domestically-produced products. For example, WTO rules prohibit discrimination against imported goods vis-à-vis the importing Member's domestically-produced goods ("national treatment"), as well as from discrimination vis-à-vis imports from other WTO Members ("most-favored-nation" or "MFN" treatment). Although Russia appears to have resolved national treatment concerns raised by its automotive "recycling fee", its increasingly protectionist postures in other areas have raised a number of WTO concerns. For example, Russia's application of a levy on products that can be used to reproduce copyrighted material for personal use, as well as its value added tax regime on royalties for cinema products, have raised concerns about potentially discriminatory treatment. The United States will continue to monitor these and other measures for consistency with Russia's WTO commitments.

The United States continues to monitor Russia's implementation of its commitments regarding various other internal policies. We continue to follow closely Russia's use of subsidies and price controls, especially as they relate to titanium and natural gas. With regard to technical barriers to trade (TBT), Russia has generally notified new measures consistent with its WTO obligations, but we remain concerned about the comprehensiveness of those notifications and the delay in establishing a single TBT inquiry point. We are paying increasingly close attention to Russia's introduction of domestic purchasing requirements that apply to state-owned and state-controlled enterprises, as well as to preference programs for government purchases of products such as automobiles, satellite navigation systems, software, medical devices and pharmaceutical goods. The goal of the U.S. efforts is to ensure Russia's conformity with its WTO commitments. We will continue to encourage Russia's move toward tabling an offer to join the Government Procurement Agreement within four years of its WTO accession (i.e., by August 2016).

Russia's WTO commitments increased market access not only for exports of U.S. goods, but also for the export of U.S. services to Russia. While Russia appears, for the most part, to be complying with its services commitments, protectionist tendencies are beginning to appear. Russia's introduction of the requirement that companies store personal data of Russian citizens on servers within Russia may implicate certain commitments allowing cross-border services. Similarly, the new legislation limiting foreign ownership of media in Russia may raise concerns about WTO consistency.

The protection and enforcement of intellectual property rights (IPR) in Russia has been a long-standing concern. As described below, Russia has made significant improvements to its IPR legal regime, including in areas of particular importance to U.S. rightsholders. The United States continues to monitor Russia's legislation, especially with regard to Internet piracy, to ensure that Russia implements fully its WTO commitments. Our greatest concern, however, remains Russia's inadequate enforcement, especially with regard to on-line piracy and sales of counterfeit goods. In fact, information currently available suggests that overall enforcement of IPR has decreased, rather than increased, in the past two years. Enforcement is particularly important at the border, and the United States will continue to encourage Russia to work with its partners in the Customs Union (Kazakhstan and Belarus) to increase enforcement. We will also work to encourage Russia to improve the transparency of its collective management regime.

In light of Russia's increasing promotion of domestic production, the provisions of the WTO Agreement on Trade-Related Investment Measures (TRIMS Agreement) are becoming increasingly pertinent in this context. The TRIMS Agreement seeks to prohibit trade-distortive investment requirements, such as those that require the use of domestically-produced inputs, and hence may be an important tool to address Russia's efforts to support domestic producers at the expense of imports. The United States will continue to monitor these programs to ensure their consistency with Russia's WTO obligations.

The United States and other WTO Members expended significant resources supporting Russia's effort to join the WTO. The United States continues to believe that having Russia in the rules-based system of the WTO benefits the United States, Russia and the global trading system. As a result of Russia's WTO membership, U.S. businesses have a greater degree of transparency and

predictability with regard to Russia's economic legal regime, as well as a forum in which Russia can be held accountable for adherence to those rules.

However, as Russia's actions in the past year have shown, there is much work to be done. Although the United States Government has curtailed bilateral engagement with Russia on these issues in response to Russia's actions in Ukraine, we will continue to work through the WTO to monitor Russia's trade and investment regime to ensure that Russia implements fully its WTO commitments. As noted in USTR's two prior Enforcement Reports, if Russia or the Customs Union (or the Eurasian Economic Union after January 1, 2015) adopts or implements a measure that appears to be inconsistent with its WTO obligations, whether that measure implicates tariffs, behind the border measures, services or other obligations, USTR will investigate and use all appropriate means to resolve the matter. These measures encompass, as needed, the full panoply of WTO tools, including, where appropriate, WTO dispute settlement.

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

Russia began its move toward closer economic ties with its neighbors Belarus, Kazakhstan, Kyrgyzstan and Tajikistan by signing the Treaty on the Establishment of the Eurasian Economic Community (EurAsEC) on October 10, 2000.<sup>5</sup> The purpose of EurAsEC was to promote mutual trade and investment on the basis of fundamental principles and norms of international law, including WTO rules, and also to explore the creation of a free trade area and potentially a customs union.<sup>6</sup>

On January 1, 2010, Russia, Kazakhstan and Belarus began implementing a customs union (the Customs Union or CU) by adopting a common external tariff (CET). On July 1, 2010, a common CU Customs Code entered into effect, 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.

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<sup>5</sup> Uzbekistan's membership in the EurAsEC was suspended in 2008.

<sup>6</sup> See paragraph 1434 of Russia's WPR.

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

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

On May 29, 2014, the Presidents of Russia, Kazakhstan and Belarus took the next step in the economic integration of the region, signing the Eurasian Economic Union Treaty (the Treaty), creating the Eurasian Economic Union (EEU), the successor to the CU. Having been ratified by

all three Parties, the Treaty will enter into force on January 1, 2015. The Treaty expands the competence of the EaEC 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 Parties 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. The Treaty is also broadening its geographical reach: Armenia is poised to join the EEU on January 2, 2015 and Kyrgyzstan has approved a “Roadmap” to join the EEU.

### **Russia in the World Trade Organization (WTO)**

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

### **Import Regulation**

#### *Tariffs & Border fees*

As a result of bilateral goods market access negotiations with the United States and 54 other WTO Members, Russia agreed to bind all 11,170 tariff lines in Russia’s tariff schedule. After all of its tariff bindings are implemented, Russia’s average final bound rate for industrial goods will be approximately 7 percent, a decrease from the applied average tariff rate of 10 percent at the time of Russia’s accession. According to the WTO, the average final bound rate for agricultural goods will drop gradually to 10.8 percent, compared to the applied average tariff rate of 13.2 percent at the time of accession.<sup>7</sup> In August 2014, Russia implemented the second round of

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<sup>7</sup> Because of the difficulty in calculating average tariff rates for agriculture products due to the presence of combined tariffs (e.g., x% but not less than y rubles per piece), USTR has not calculated a single average tariff for all agriculture products, but we have provided the WTO’s data for context.

annual tariff reductions as required by its WTO commitments, and as a result, Russia has implemented final bound rates for approximately 54 percent of Russia's tariff lines. Russia cannot legally raise the CU CET above these tariff bindings, bringing a greater degree of predictability to businesses exporting to Russia.<sup>8</sup>

In the process of binding its tariffs as part of its WTO accession, Russia reduced many tariffs in sectors important to U.S. exporters. In industrial sectors, Russia agreed to bind its tariffs on wide body aircraft at 7.5 percent; Russia's previously applied tariffs on these products were as high as 20 percent. Russia also committed to an average final bound tariff for plastics of 6.2 percent; Russia previously applied an average tariff of 10 percent. Russia agreed to an average final bound tariff rate of 6 percent on steel products; previously Russia applied an average tariff rate of 8.9 percent.

Russia also agreed to final bound rates on chemical products that are generally consistent with the rates specified under the Chemical Tariff Harmonization Agreement, resulting in an average final bound rate of 5.3 percent. Previously, Russian tariffs on chemicals averaged 6.7 percent and ranged as high as 20 percent. With its most recent round of tariff reductions, Russia has implemented 73 percent of the final bound rates for chemicals.

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

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<sup>8</sup> Because Russia, Kazakhstan and Belarus apply a common external tariff, Russia's WTO tariff schedule effectively binds the CU CET, with some temporary exceptions for Kazakhstan.

These tariff reductions, and others, have improved market access for U.S. exports. Overall, U.S. exports to Russia increased by 13.8 percent from 2013 to 2014. For example, aerospace sector U.S. exports to Russia increased by 52 percent from 2013 to 2014, while U.S. automotive exports increased by more than 25 percent during the same period. In addition, U.S. metals exports to Russia increased by 26 percent from 2013 to 2014.<sup>9</sup>

A significant aspect of Russia's WTO accession was its commitment to take the steps necessary to join the Information Technology Agreement (ITA), which requires the elimination of tariffs on computers, semiconductors and other information technology products within five years. On September 13, 2013, Russia became the 78<sup>th</sup> participant of the ITA Committee. However, Russia has yet to notify the WTO of modifications to its WTO tariff schedule to reflect these reductions.

In August 2014, Russia implemented the second round of annual tariff reductions as required by its WTO commitments. Included in those reductions were tariffs on various products of importance to U.S. exporters. For example, Russia reduced tariffs on 257 agricultural tariff lines (including tariff lines on certain fish products, live plants, oils and margarines, rice, flour, sugar and sugar confectionary, processed vegetables, fruits and nuts and miscellaneous processed foods). On the industrial side, Russia reduced tariffs on 1,315 products (including tariffs on certain civil aircraft, chemical, construction equipment, agricultural equipment, textiles, and hi-tech goods included in the ITA).

Despite its many market opening tariff reductions, Russia's implementation of some of its tariff commitments has raised concerns.<sup>10</sup> One source of concern stems from Russia's implementation of decisions of the EEC (the CU body responsible for administering the CU CET). In particular, pursuant to those decisions, Russia appears to have changed the type of duty on certain lines by augmenting the *ad valorem* rates with an additional minimum specific duty (thereby creating a "combined tariff"). Under WTO rules, the resulting combined tariff must not exceed Russia's

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<sup>9</sup> The periods of comparison were January 2013 – July 2013 and January 2014 – July 2014 because data for 2014 are available only through July.

<sup>10</sup> The EU appears to share such concerns. In October 2014, the EU requested WTO dispute settlement consultations with Russia concerning the tariff treatment of certain goods in both the agricultural and manufacturing sectors.

bound tariff commitments. However, Russia has not informed WTO Members whether, for those goods subject to a combined tariff, the *ad valorem* equivalent of the specific duty is within the WTO *ad valorem* bound duty rate.

### *Customs Fees*

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

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

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

### *Customs Valuation*

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

value as well as to provide for the right to appeal decisions that were based on a minimum value, fixed valuation schedules or reference price.

Russia (and its CU partners) have integrated the basic provisions of the CVA into the CU legal framework. Specifically, the hierarchy of the six methods of customs valuation in the CVA, as well as most, but not all, of the provisions of the interpretative notes, are reflected in Russia's domestic law and implemented by reference in the CU Customs Code. On occasion, importers have raised concerns that Russia's Federal Customs Service (FCS) is continuing to use reference prices that seem inconsistent with the invoice valuation. The United States will continue to monitor Russia's valuation practices and work with FCS to ensure full implementation of Russia's commitments on customs valuation.

### ***Trading Rights***

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

While an activity license is still required as a precondition for obtaining an import license for some products (e.g., alcohol, encryption products and pharmaceuticals), following accession, the importer of record (declarant) is permitted to pay the relevant customs duties, fees and charges in connection with the importation of the goods, and meet other import requirements, but is not

required to present an import license. The person withdrawing the goods from the customs checkpoint for distribution in Russia is now responsible for presenting the requisite import and/or activity license.

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

### ***Quantitative Restrictions***

As noted above, 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 GATT 1994 prohibits the imposition of restrictions or prohibitions (other than tariffs, taxes or other charges) on imports, except under certain circumstances or if a GATT 1994 exception applies. Notwithstanding these obligations, on August 6, 2014, Russia issued an order banning certain agricultural imports from the United States, the EU, Canada, Australia, and Norway for one year. On August 7, the list was released and included certain beef, pork, poultry, fish and seafood products, fruits and nuts, vegetables, and some sausages and most prepared foods. The text of the Order indicates that Russia contends that the ban is justified on the basis of national security concerns. Russia claims the current ban is justified on the basis of national security concerns. The United States will continue to monitor Russia's administration of the ban.

### ***Import Licensing***

The Agreement on Import Licensing Procedures (Import Licensing Agreement) establishes rules for all WTO Members that use import licensing procedures requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing Member. The Agreement serves to ensure that the procedures used by Members in operating their import licensing systems do not, in themselves, form barriers to trade. An important objective of the Import Licensing Agreement is to increase transparency and predictability with respect to import licensing procedures and to establish disciplines to protect against unreasonable requirements or delays associated with such procedures.

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

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

- 1) encryption products that can be imported with no customs formalities related to encryption;
- 2) encryption products that require only a one-time notification; and
- 3) encryption products that require an “import permission” and an import license.

In addition, Russia agreed that although an activity license to distribute encryption products would be required to obtain an import license for encryption products, encryption products covered by the first two categories would be exempt from the distribution activity license requirement. Russia also committed to integrate certain procedural safeguards into its licensing regime for encryption products, such as confirming that source code would not be required to obtain an import license and that once an import permission was obtained for an encryption good, the same good or a good used for the same purpose with identical encryption could be imported under an automatic license.

On December 31, 2009, the CU implemented an import licensing regime for encryption products, reducing the procedural hurdles for importing encryption products into Russia. However, certain aspects of the regime raise concerns with regard to Russia’s commitments in this area. For example, the list of products subject to notification does not accurately reflect the definition of products to which Russia agreed in the WPR would be subject to notification. Furthermore, in response to U.S. concerns regarding the establishment of a category of encryption products that can be imported with “no customs formalities,” Russia has asserted that a “notification” is not a customs formality and that the rules governing the importation of

encryption products are more liberal than they were prior to WTO accession. In addition, U.S. electronics exporters have raised concerns about the seemingly inconsistent application of the import licensing regime and noted that import licenses have, on occasion, been limited to individual shipments, rather than issued for all shipments of the “product family.”

Although Russia eliminated the general requirement for an activity license to import and export and shifted to an automatic import licensing regime for alcoholic beverages, it has retained the requirement that an importer have an activity license to produce, warehouse or distribute alcohol in order to obtain a license to import alcoholic products and to purchase the required excise stamps. Alcohol distributors have raised concerns about Russia’s seemingly onerous and arbitrary requirements to obtain a warehousing license (including a license to expand an existing beverage alcohol warehouse) issued by Russia’s Federal Service for Regulation of the Alcohol Market’s (FSR) governing the technical condition for storage of alcoholic beverages.

The United States continues to press the Russian government to address U.S. concerns regarding Russia’s implementation of its commitments on import licensing of encryption products. U.S. officials have encouraged the FSB to provide greater transparency as well as to engage in frequent dialogue with the private sector. The United States will also continue to work to ensure that alcohol warehouse licensing provisions are transparent and not unnecessarily burdensome.

### *Non-tariff Measures*

During Russia’s WTO accession negotiations, there was significant discussion about Russia’s regulation of alcoholic beverages. As part of the terms for its accession, Russia agreed to apply its regulatory regime for alcohol products in a non-discriminatory manner, consistent with WTO rules. In particular, Russia committed to ensure that bank guarantees (meant to cover import duties, VAT and excise taxes) would not significantly exceed the total amount of fees actually due. Russia also agreed to apply its excise stamp regime consistent with WTO rules.

To implement these WTO commitments, Russia amended its laws to make all domestic alcohol producers and importers subject to the same reporting requirements for excise stamps on alcoholic beverages. As a result, Russia now requires importers and domestic manufacturers to report their use of excise stamps at the same level of detail, thereby eliminating the differential treatment applied in this respect prior to accession.

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

### ***Trade Remedies***

Binding tariffs, and applying them equally to all trading partners, are key WTO requirements that contribute to the efficient flow of trade in goods. The WTO Agreement, however, permits Members to refrain from applying these requirements in certain limited circumstances. Trade remedy measures comprise three such circumstances: 1) actions taken to remedy the effect of imports of goods that are sold below normal value and are causing or threatening to cause material injury ("anti-dumping duties"), 2) actions taken to offset subsidies on imports that are causing or threaten 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.

At the time of its accession, Russia was in the midst of transitioning from a Russia-based trade remedy regime to a CU-based trade remedy regime. During the transition period, national regulations governing trade remedy investigations applied to the extent that they did not conflict

with the CU regime, but the final decision to impose, extend, review or terminate a measure would be taken by the CU Commission. The CU regime was based on several agreements adopted to implement the WTO requirements on the use of trade remedy laws. Upon the expiration of the transition period on August 1, 2012, national regulations were abolished.

Importantly, Russia made a commitment that any trade remedy investigation or measure would be consistent with its WTO commitments regardless of whether the investigation had been commenced by, or the measure had been put in place by, Russia's investigating authority or the CU investigating authority. To implement these commitments, prior to becoming a WTO Member, Russia revised its trade remedy law (covering anti-dumping, countervailing duty and safeguard measures). The new law established the procedural requirements of the WTO agreements, including for the disclosure of findings and reasoned conclusions on pertinent issues of fact and law, the determination of the accuracy of the information submitted by domestic and foreign parties, and the rights of interested parties to submit comments during the investigation. In addition, the CU 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 as required under the transparency provisions of the WTO Agreement and the WPR. It also notified those safeguard investigations that were in process when it joined the WTO, as well as those initiated after it joined the WTO. As the investigations initiated after it became a Member progressed, Russia provided notifications before taking a provisional measure (including the opportunity to consult with interested parties) and notifications of a decision to apply a final safeguard measure. However, Russia has failed to notify six safeguard measures resulting from investigations initiated prior to Russia becoming a WTO Member, even though some of the proceedings ended afterward. They involve stainless steel flatware, certain fasteners, activated carbon, caramel, graphite electrodes, and corrosion-resistant (stainless steel) pipe and tube. The United States has asked Russia both during the regular WTO Committee on Safeguards meetings and bilaterally to notify these measures to the WTO. Russia has failed to do so, asserting that it is only required to provide notifications for safeguard proceedings that were subject to WTO rules from the outset. The United States has reserved its right to counter-notify these measures to the WTO if Russia continues to fail to act.

The United States and the European Union have expressed particular concern about the WTO conformity of the EEC's decision to impose a safeguard measure on combine harvesters. The United States and the EU have consulted with Russia on several occasions regarding whether, consistent with Russia's WTO obligations, the EEC was justified in finding that imports had increased and were causing serious injury to Russia's producers of harvesters. Nevertheless, on October 15, 2013, the EEC imposed a quota on imported combine harvesters, from January 1, 2014 to August 21, 2016.

The United States will continue to monitor Russia's notification obligations and the EEC's administration of its trade remedy laws, and in particular, Russia's implementation of the safeguard measure on combine harvesters.

### **Export Regulation**

During its WTO accession negotiations, Russia agreed to reduce or eliminate export duties on a large number of products, including ferrous scrap (an important steel input) and copper cathode, and bound the tariff level on the remaining products on which it applied export tariffs. Russia also committed to adhere to Article XI of the GATT 1994, which generally prohibits WTO Members from maintaining export restrictions (other than duties, taxes or other charges) except those that can be justified under applicable WTO provisions. Consistent with that commitment, and the relevant CU 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 of or the protection of that processing industry.

The United States has concerns with respect to the conformity of Russia's and the CU's export licensing provisions with WTO disciplines, and Russia has recognized that work still needs to be done in this area. Russia has amended its national regulations to replace the export licensing regime for precious stones, diamonds and metals with an automatic licensing regime, to reduce the number of goods subject to export licensing, and to remove export bans and other quantitative restrictions on the export of certain types of goods. In addition, Russia has eliminated restrictions on the export of raw materials for pharmaceuticals and reduced the number of pharmaceuticals subject to export licensing. Also, consistent with its specific WTO

commitments on ferrous scrap and copper cathode, Russia has reduced its export duties on those products as provided in its tariff schedule. However, in August 2014, Russia introduced a ban on exports of raw hides, apparently to support its leather processing industry. The United States continues to monitor the evolution of the Russian and CU export regulatory regime to ensure its consistency with the WTO Agreement.

## **Agriculture**

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

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

The SPS Agreement establishes rules and procedures regarding the formulation, adoption and application of sanitary and phytosanitary (SPS) measures, i.e., measures taken to protect against risks associated with plant- or animal- borne pests and diseases, additives, contaminants, toxins and disease-causing organisms in foods, beverages or feedstuffs. The SPS Agreement requires that SPS measures address legitimate human, animal and plant health concerns, do not arbitrarily or unjustifiably discriminate between WTO Members' agricultural and food products, and are not disguised restrictions on international trade. The SPS Agreement requires that SPS measures be based on scientific principles and evidence and based on relevant international standards or developed through risk assessments, while at the same time it preserves each Member's right to choose the level of protection it considers appropriate with regard to sanitary and phytosanitary risks.

Russia assumed each of these obligations together with the other obligations of the SPS Agreement as part of its accession. In the WPR, Russia specifically committed to ensure that all of its SPS measures, whether adopted by it or the competent bodies of the CU, would be based on international standards, guidelines and recommendations unless a more stringent measure is justified by a risk assessment. Russia further explicitly committed that measures which were not

based on international standards, guidelines or recommendations would not be applied in Russia without providing Members a scientifically-based justification of the measures, in accordance with the SPS Agreement. Russia also confirmed that all SPS measures, whether adopted by Russia or by the competent bodies of the CU, would comply with the non-discrimination provisions of the SPS Agreement. SPS measures would not, Russia agreed, be used in such a way as to constitute a disguised restriction on international trade.

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

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

To ensure compliance with the 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 CU Commission (and EEC) Decisions and CU legal acts relating to SPS measures would be published on the EEC website. Russia further committed that drafts of SPS technical regulations and other mandatory requirements would be made publicly available for

comment and that interested persons would have at least 60 days to provide comments on the drafts. Finally, Russia has established an SPS inquiry point and established a website with full detailed conditions for import of specific products.

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

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

By 2011, the CU had established common veterinary requirements and 40 common forms of veterinary certificates for imports into the CU territory from any third country. The United States and other Members expressed concern that many of the common veterinary requirements appear 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 CU Commission 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 CU common requirements. In addition, the CU Commission confirmed the CU Member States' right to amend the CU certificates and requirements to reflect international standards established by the OIE and Codex Alimentarius

(Codex), allowing the United States to negotiate certificates with the CU Member States that may differ from the CU common form, and which reflect better the conditions of trade between the United States and Russia.

The United States and other WTO Members also expressed concern regarding the veterinary requirements adopted by the CU, which included a requirement that all veterinary controlled products must come from an establishment approved by the CU Member States. In order to address concerns regarding the extension of this requirement to many products, the CU Commission removed the establishment requirement for certain products including dairy and pet food upon Russia's accession.

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

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

failed to provide WTO Members with a risk assessment that conforms to international guidelines. We continue to raise our concerns about Russia's risk assessments both bilaterally and at the WTO.

Related to the inspections issue is the difficulty of obtaining Russia's acceptance of an exporting country's guarantees for approving establishments. Notwithstanding Russia's commitments regarding inspections and establishment approvals described above, acceptance of guarantees and approval of establishments has become more difficult. In many cases, Russia has taken many months before issuing approvals or, in some cases, Russia has refused, without any apparent reason, to approve a facility until after an on-site inspection has been conducted by the CU Member State veterinary services. The United States continues to raise this issue with Russia as well as with Kazakhstan.

The United States is also concerned with Russia's implementation of obligations to remove certain veterinary control measures for lower risk products. In 2011, the CU adopted a decision removing such veterinary control measures. However, days before Russia became a WTO Member, Russia's veterinary service proposed a temporary measure that would maintain the establishment requirement for all veterinary products until after a successful audit has been completed. Despite strong objections by the United States and other WTO Members, Russia is still implementing this requirement. The United States has raised this issue bilaterally with Russia on the margins of the SPS committee and continues to strongly encourage Russia to address U.S. concerns regarding Russia's implementation of the CU decision and its compliance with its obligations to remove certain veterinary controls.

In order to meet its WTO commitments, Russia agreed to negotiate veterinary certificates with the United States that differ from the CU certificates after receiving substantiated requests from the United States. However, Russia and its CU partners insist on including attestations in the certificates that do not appear to be based on the relevant international standards, notwithstanding Russia's commitments to conform its attestations to such standards unless a more stringent measure is justified through risk assessment. Engagement on new certificates has been difficult, with inconsistent participation by the CU Member States' experts and a lack of coordination among the CU Member States. In addition to continuing to work through multiple

fora to engage on certificate negotiations, USTR and USDA continue to work with Russia and Kazakhstan to improve the engagement in this area.

### *Domestic Supports and Export Subsidies*

When Russia joined the WTO, it was still restructuring its agriculture sector to recover from decades of central planning and an imbalance in prices and revenue. To support development and employment in the rural territories, and to encourage agricultural production, Russia had in place numerous subsidies. Nevertheless, Russia committed to a \$9 billion aggregate measure of support (AMS) binding for 2013 and an \$8.1 billion AMS for 2014 -- short-term increases over its current trade-distorting spending. Importantly, however, Russia has committed to phase down its domestic agriculture support payments to \$4.4 billion by 2018, a level below its spending level at the time of accession. Moreover, Russia has accepted an obligation to ensure that the sum of all product-specific support does not exceed 30 percent of the non-product specific support. Finally, Russia agreed to eliminate all of its export subsidies. U.S. officials are not currently aware of any issues with respect to Russia's implementation of its WTO obligations regarding agricultural subsidies since it became a WTO Member.

### *Value-Added Tax*

To further level the playing field between imported agriculture products and domestically-produced agriculture products, Russia agreed to eliminate the exemption from VAT payments for certain domestic agriculture products. Although the Government of Russia submitted legislation to the Duma, the Duma has postponed indefinitely consideration of the legislation. The United States is monitoring Russia's implementation of this commitment.

### **Services**

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

liberalization, and toward that end it provides for further negotiations to open services markets around the world.

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

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

### *Financial Services*

Russia undertook significant market opening commitments in the financial services sector, including allowing 100 percent foreign ownership of certain non-insurance financial services firms, including banks, broker dealers, and investment companies. Russia agreed that foreign companies can own and trade the full range of securities (including state securities, bullion and new instruments once they are approved), lead-manage Russian securities issuance, and participate in financing the privatization of government-owned firms. Russia also agreed to allow important cross-border services such as financial leasing, financial information, and data processing, as well as credit cards and other types of payments.

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

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

### ***Telecommunications***

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

### ***Computer and Related Services***

Russia committed to not limit market access and to extend national treatment to all computer and related services, including on a cross-border basis. This latter commitment is particularly important, given the growth of cloud computing, which is covered by Russia's WTO commitments. An ongoing challenge is how this commitment will be implemented in light of

Russia's 2001 Data Protection law, which includes an "adequacy" standard to ensure privacy protection of the data, but has yet to provide alternative mechanisms to allow for the transfer of personal information outside of Russia without the consent of the data subject. In addition, in July 2014, the Russian Duma adopted a law requiring that personal data of Russian citizens be stored in data centers beginning on September 1, 2016. This requirement may implicate a number of commitments Russia made to allow cross-border services. The United States will monitor Russia's implementation of this commitment.

### *Distribution Services*

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

### *Audio-Visual Services*

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

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

### *Media Services*

A new Russian law limits foreign ownership of Russian media assets to 20 percent. This measure may raise concerns about Russia's commitments to allow WTO Members to establish a commercial presence for both "printing and publishing" as well as "news agency services" without restrictions on ownership. The United States will monitor the status of this legislation and urge Russia to ensure its consistency with its WTO obligations.

## **Internal policies affecting trade**

### *Non-discrimination*

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

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

The national treatment rule with respect to goods (set forth in Article III of GATT 1994) complements the MFN rule. It protects against discrimination against imported goods vis-à-vis the importing Member's own goods. Generally, an importing WTO Member may not subject imported goods 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, the importing WTO Member may not treat imported goods less favorably than like domestic goods. The national treatment rule applies in a similar

manner to services under Article XVII of the GATS. This provision requires a WTO Member, in sectors in which it has taken commitments in its schedule, to accord no less favorable treatment to services and service suppliers of other WTO Members than it accords to its own like services and service suppliers.

Russia's WPR elaborates on Russia's commitment to apply both Articles I and III of GATT 1994, as well as Articles II and XVII of GATS. Throughout the 18 years of accession negotiations, Russia reviewed its laws and regulations and made an effort to revise those that conflicted with its WTO MFN and national treatment obligations, e.g., regarding 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 CU partners, reviewed the CU agreements, regulations and decisions to ensure their conformity with the MFN and national treatment provisions of the WTO Agreement.

However, national treatment concerns have been raised in connection with the imposition of a number of Russian measures and policies. Soon after it became a WTO Member, Russia adopted a "recycling" fee on motor vehicles, purportedly to cover the cost of recycling the vehicle at the end of the vehicle's life and to develop a recycling industry in Russia. Domestic producers, however, were exempt from paying the fee on domestically-produced vehicles if they agreed to assume the cost of recycling the vehicle at the end of its life. Vehicles imported from Kazakhstan and Belarus were also exempted from paying the fee. The United States, as well as other WTO Members, raised concerns about the potentially WTO-inconsistent nature of this program. The EU and Japan sought consultations with Russia regarding this fee under the WTO dispute settlement mechanism, and the United States participated in both of those consultations. On October 10, 2013, the EU requested the establishment of a WTO dispute settlement panel. Shortly thereafter, Russian President Putin signed a law extending the recycling fee to domestic automobile manufacturers, regardless of any producer's commitment to recycle its vehicles. Vehicles imported from Kazakhstan and Belarus are also now subject to the recycling fee. Some concerns remain, however, concerning the overall level and calculation of the fee. The United States will continue to monitor the implementation of the new law to ensure its compliance with Russia's WTO commitments.

National treatment concerns have also been raised in connection with Russia's copyright levy system. 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, etc.) 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 also appear to differ. FCS provides information on imports to the Ministry of Culture, which in turn provides the information to the collecting society to verify the payment of the levies, whereas domestic manufacturers pay based on sales, and self-notify. U.S. officials have raised concerns regarding these practices with Russia and will continue to work to address these concerns.

The United States also has concerns regarding national treatment with regard to taxation of royalties on motion pictures. Russia applies an 18 percent VAT on payments for "right to use" (i.e., licensing royalties) cinema products. However, the recipient of the royalty can apply for a VAT rebate if the cinema product is "Russian" (defined as movies with a Russian producer; 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 film is produced under special international agreements). In other words, the VAT collected on royalties paid to show a "Russian movie" (as defined in the Russian Tax Code) can be reimbursed whereas the VAT paid on royalties to screen a U.S. (or other non-Russian) movie cannot be reimbursed. This practice raises concerns about Russia's implementation of its national treatment commitments. The United States will work to ensure that Russia collects VAT on royalties consistent with its WTO commitments.

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

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

aircraft to include the purchase or lease of foreign-made aircraft that had previously been available only for the purchase or lease of Russian-made aircraft.

With regard to its transparency commitments, both during its accession negotiations and as a Member, Russia has provided subsidy notifications to the WTO Committee on Subsidies and Countervailing Measures (Subsidies Committee). The United States has raised questions about the comprehensiveness of those filings, and requested additional information with respect to several other programs which Russia has not notified.

The first round of questions from the United States prompted Russia to submit a revised subsidies notification that not only provided additional information on the programs Russia initially notified but also included numerous additional programs, increasing the number of federal subsidy programs notified by Russia from nine to thirty one. The United States continues to monitor Russia's compliance with its transparency commitments and, where appropriate, continues to raise questions regarding the comprehensiveness of Russia's filings, both in terms of additional programs and regarding the level of detail provided.

During Russia's WTO accession negotiations, Members raised concerns about specific subsidy programs related to automobiles, civil aircraft and agricultural equipment. Russia has eliminated its "cash for clunkers" program, which offered vouchers toward a new Russian-built car to people who turned in a car more than 10 years old; and in the civil aircraft industry, Russia terminated the program which provided subsidies only with respect to Russian-made planes (although a few existing contracts were grandfathered). In addition, with regard to agricultural equipment, questions remain about the WTO consistency of the program under which Russia disburses financial support to producers of agriculture equipment which may be contingent on a certain level of local production.

Concerns have also been raised with respect to certain benefits provided to manufacturers in the "Titanium Valley" Special Economic Zone (SEZ). According to industry sources, the primary beneficiary of these programs is Verkhne Saldinskoye Metallurgical Production Association (VSMPO), currently the only titanium producer in Russia. VSMPO exports 70 percent of the titanium it produces. Russia has not notified its Titanium Valley SEZ programs to the Subsidies Committee. Another possible subsidy to the titanium industry (i.e., VSMPO) may have

occurred in the form of the allegedly below-market price paid by Norcom in its purchase of VSMPO from the Russian government.

The Russian government has in place a variety of initiatives aimed at supporting various domestic industries, with particular focus on agriculture and agriculture equipment. The United States will continue to examine Russia's subsidy notifications and to monitor Russia's subsidy policies and programs, with particular attention to the aviation industry as well as the agriculture and agricultural equipment industry, to ensure Russia implements its commitments under the SCM Agreement.

### *State-owned or –controlled Enterprises*

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

As confirmed in the WPR, Russia has many state-owned enterprises and state-controlled enterprises that operate in the commercial sphere. Prior to becoming a WTO Member, Russia took various steps to eliminate special privileges for most of those companies. For example, in 2002, Russia abolished the exclusive right of Alrosa, or any other exporter, in the activities of diamond production and export. In 2005, Russia abolished the law under which only certain companies in which the government owned no less than 51 percent were allowed to import or export ethyl spirits (provided they had the appropriate license). Similarly, in 2009, Russia

abolished the exclusive rights of Almazyuvelir Export Foreign Trade Association with respect to operations in raw materials containing platinum and platinum group metals.

One industry with state involvement that raised concerns during Russia's WTO accession negotiations was the civil aircraft industry. As discussed above, Russia agreed to eliminate its WTO-inconsistent subsidies for the aircraft industry. In addition, during its WTO accession negotiations, Russia confirmed that its majority ownership in Aeroflot, the national airline, would not accord it undue influence in that company's commercial activity. In the oil and gas sector, the only company with an exclusive right to export gas at the time of Russia's accession was the state-owned company Gazprom, which controlled all exports of natural gas from Russia. However, Russia has begun to permit other companies (Rosneft and Novatek) to export liquefied natural gas, while retaining Gazprom's monopoly of pipeline gas exports to Europe. In late 2014, the Government of Russia adopted a measure banning the purchase of imported automobiles, metal products and heavy machinery by certain companies in which the government owned more than 50 percent of the shares. This ban may implicate Russia's commitment that state-owned/state-controlled entities act in a commercial manner, as described above. The United States will monitor the implementation of this measure to ensure that Russia implements its WTO commitments.

### ***Pricing Policies***

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

Russia also specifically committed to unify the rail transportation charges to ensure that, by July 1, 2013, products imported into, and products destined for exportation or sold for export from, Russia would face the same transportation charges. Russia further committed that regulated railway tariffs would be published before they entered into force. In December 2012, Russia's Federal Tariff Service issued an order governing its tariff policy on rail freight and published draft measures and orders on its website.

With regard to natural gas, Russia was allowed under its WTO commitments to continue its domestic price regulatory regime. Russia committed that producers/distributors of natural gas in Russia (including Gazprom, but also so-called 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. However, Russia has continued to delay the date by which Russia will achieve equal profitability of export and domestic industrial sales, including through a rate ("tariff") freeze for domestic utility consumers adopted in September 2013. As a result, it appears that the domestic price for industrial users may be below export prices. The United States will continue to monitor the pricing of natural gas in the Russian market.

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

As a WTO Member, Russia has assumed the obligations of the Agreement on Technical Barriers to Trade (TBT Agreement), which establishes rules and procedures regarding the development, adoption and application of standards, technical regulations and conformity assessment procedures (such as testing or certification) used to determine whether a particular product meets such standards or regulations. The TBT Agreement's aim is to prevent the use of technical regulations as unnecessary barriers to trade. The TBT Agreement applies to all products, including industrial and agricultural products, and establishes rules that help eliminate unnecessary obstacles to trade. The TBT Agreement requires, among other things, that standards-related measures be developed and applied transparently and on a non-discriminatory basis by WTO Members and be based on relevant international standards and guidelines, when appropriate.

Russia's standards-related measures are implemented through EEC and CU measures as well as through Russian domestic requirements. In the WPR, Russia committed to comply with all provisions of the TBT Agreement, including those relating to transparency and predictability. In addition, Russia has taken specific commitments with regard to technical regulations affecting the telecommunications equipment and civil aviation sectors.

As a new WTO Member, Russia is taking action to comply with the TBT Agreement's transparency obligations by notifying to the WTO proposed technical regulations. However, Russia still lacks a fully transparent, standardized system for notifying TBT measures. In the WPR, and through its required notifications (particularly that made pursuant to Art. 15.2 of the TBT Agreement), Russia pledged to use a single "inquiry point". Russia's TBT inquiry point procedure, however, appears to be deficient because its functions are split between two different government ministries, leading to confusion and inadequate transparency. The United States will continue to encourage Russia to create a single TBT inquiry point in order to establish a regularized, comprehensive notification system and better ensure consistency with the TBT transparency requirements.

Although Russia has notified many technical regulations to the WTO, those notifications appear to be less than comprehensive. Russia appears to be taking a narrow view regarding the types of measures that need to be notified. For example, Russia has not notified its new registration requirements for alcohol products. It has also failed to notify a decree and registration procedures concerning medical devices, as well as various other legislative acts establishing technical standards and regulations governing the required installation of GLONASS-compatible navigational systems in civil aircraft. Additionally, Russia has failed to notify revisions to amendments to the EEC's regulations governing food labeling published in October 2012. In order to comply fully with the WTO's transparency requirements for technical regulations and conformity assessment procedures, Russia must notify to the WTO all technical regulations and conformity assessment procedures that are not based on relevant international standards and that may have a significant effect on trade of other WTO Members, and ensure that other Members have adequate time to submit comments and to have those comments taken into account.

Regulation of Russia's alcoholic beverage sector has raised a number of concerns about consistency with the substantive requirements of the TBT Agreement. At the national (i.e., Russian government) level, there has been a long-standing requirement to register alcoholic beverage products with the Federal Supervisory Service for Protection of Customers Rights and Human Well-Being (Rospotrebnadzor). Effective October 1, 2013, the Russian Federal Service for the Regulation of the Alcohol Market (FSR) introduced new additional procedures establishing a notification requirement for both existing and new-to-market alcoholic beverages

to be sold in the Russian market. Much of the information required by FSR in its notification appears duplicative of information already provided to Rospotrebnadzor in the registration process. Furthermore, FSR provided a transition period of only four months between publication and implementation. (In addition, the EEC is considering yet another level of registration, further duplicating in large part the registration and notification procedures already applied at the national level.) U.S. officials have raised concerns with the Russian government about these duplicative notification measures and the short timeframes for implementation (as well as the warehouse licensing practices discussed above), and have requested that Russia notify these measures to the WTO. Some of these new regulations may not be consistent with international standards and may be more burdensome than necessary. The United States will continue to work with Russia to ensure its alcohol control regime is consistent with its WTO commitments.

The possibility of duplicative requirements has also arisen in the toy industry where conformity certifications or declarations of conformity for toys from non-CU accredited laboratories are apparently not accepted. As a result, toys must undergo duplicative testing procedures. Moreover, elements of the CU regulation “On Safety of Toys” may not be based on international standards.

Another sector in which the regulatory regime has raised concerns is food labeling. Recent amendments to the EEC’s regulations on food product labeling impose numerous labeling requirements. Among other concerns, the revised regulations appear to expand labeling requirements for genetically engineered products, allergens and nutritional components beyond the recommended guidelines established in the Codex General Standard for Food Labeling without providing any scientific justification or reasoning. In addition, the revisions appear to require that products containing sweeteners carry warning statements that may not be based on the latest scientific research and may not be consistent with Codex.

In 2012, Russia issued a decree requiring that most aviation satellite navigational systems used in Russia be GLONASS (Global Navigational System – Russia’s satellite navigation system) or GLONASS/GPS enabled over the next several years, with foreign manufactured equipment being given two extra years to comply. Similar requirements have been published for most forms of public transport, with plans announced requiring private vehicles to begin using GLONASS features. Russia has failed to notify these requirements. Furthermore, the mandate

that certain forms of transportation use a specific technology, as opposed to any technology with the same function, raises questions about the measure's consistency with the TBT Agreement.

The United States has raised transparency concerns (failure to notify and inadequate comment opportunity) both in meetings of the WTO Committee on Technical Barriers to Trade as well as in bilateral meetings. Often Russia responded by subsequently notifying the regulations in a reasonable period of time to the TBT Committee. The United States will continue to monitor Russia's technical regulations and work with Russia and the EEC to ensure that these measures meet the requirements of the TBT Agreement. In addition, the United States will continue to remind Russia of its transparency obligations.

### ***Government Procurement***

GATT 1994 and the GATS do not cover the purchase of goods and services "for government use" (i.e., government procurement). The rules governing international trade in government procurement are instead found in the WTO Agreement on Government Procurement (GPA), a plurilateral agreement which currently includes 43 WTO Members (including the United States). The GPA applies to government procurement of goods and services, and requires GPA members to provide MFN and national treatment 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. At present, Russia is not a GPA member.

Russia committed to request observership in the GPA upon its WTO accession, and in May 2013, it became an observer. Russia also committed to initiating negotiations to become a member of the GPA by tabling an offer within four years from its accession to the WTO.<sup>11</sup> In light of this commitment, the United States has concerns about certain of Russia's policies that establish preferential treatment for domestically produced goods in public procurement. For example, Russia's Ministry of Economic Development has established a 15 percent price preference for goods (including pharmaceutical) of Russian or Belarussian origin in purchases for government use. In addition, in 2014, Russia adopted a resolution banning states and municipalities from purchasing foreign-made cars, vehicles and other machinery. Foreign-brand cars that meet the localization requirements are not restricted. The Russian Government has also

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<sup>11</sup> See, section 201(a)(1)(B)(ii) of the Act.

banned the purchase of a broad array of imported light industrial goods unless such goods are not made in Russia or the CU member-states.

Local content requirements appear to be growing in Russia. In 2014, the Ministry of Industry and Trade proposed 1) a draft resolution which would restrict pharmaceutical manufacturers from submitting foreign made drugs for government drug tenders if two equivalent drugs are produced in Russia or CU member-States, 2) a draft resolution limiting state and municipal government purchases of a specified list of medical devices to devices produced in the CU when domestic supply is sufficient to meet national demand, and 3) a draft resolution banning procurement by major state-owned enterprises of imported automobiles, metal products, and heavy machinery, unless those goods have no equivalent made in Russia. Similarly, the Ministry of Communications has proposed restricting government procurement of foreign software products to only those purchased from companies listed on special register of Russia or CU firms and establishing mandatory quotas for domestically-produced software. In addition, the Ministry of Economic Development proposed amending the Federal Public Procurement Law to prohibit government procurement of foreign-made goods and services if there are two or more domestic producers also bidding for the contract; this prohibition is in addition to the aforementioned 15 percent price preference already provided to Customs Union firms. The United States will continue to monitor measures introduced by the government of Russia that may favor domestically-manufactured products in its public procurement tender processes, particularly as Russia approaches the deadline for starting its GPA accession negotiations.

### **Intellectual Property Rights**

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

MFN treatment to the nationals of other WTO Members with regard to the protection and enforcement of IPR rights.

In the WPR, Russia undertook additional commitments on IPR protection and enforcement, such as clarifying how undisclosed information and test data will be protected in Russia, withdrawing exceptions to copyright protection for works that existed prior to 1994, reviewing and improving the operation of its collecting society regime, and updating law enforcement procedures to address certain issues related to digital piracy of materials protected by copyright.

### *Legal Framework*

Prior to its accession to the WTO, Russia amended its IPR laws to integrate WTO commitments into its legal regime and with the objective of implementing the 2006 United States-Russia bilateral IPR agreement. Russia improved its civil protections for IPR by amending Part IV of its Civil Code, which relates to protection of various forms of IPR, including patents, trademarks, and copyrights and related rights, updating its civil enforcement procedures and adopting the legal framework for Russia's implementation of the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performance and Phonograms Treaty, referred to collectively as the WIPO Internet Treaties. However, it should be noted that Russia has not yet fully harmonized Part IV of the Russian Civil Code (i.e., the IPR portion thereof) with the WIPO Copyright Treaty. This legislative uncertainty appears to have generated uncertainty in law enforcement about the proper scope and procedures for enforcement of copyright and related rights, including those protected by TRIPS. Russia also amended its Civil Code to clarify that an existing Internet domain name would not serve as a ground for refusal to register a third party's trademark or service mark for that name. Russia also standardized its patent fees to apply in the same manner to Russian and non-Russian entities.

In recent years, reflecting commitments in the WPR, Russia has made progress toward implementing controls on unlawful optical media production, notably through amendment of its Law on Activity Licensing, to ensure that copyright infringers cannot renew a license to engage in optical media production. Russia also revoked its reservation to Article 18 of the Berne Convention for the Protection of Literary and Artistic Works. As a result, Russia now provides

copyright protections for works that existed prior to 1995 and originated from the United States or any other party to the Berne Convention or the WTO Agreement.

In the WPR, Russia committed to taking action against operation of websites that promote illegal distribution of content protected by copyright or related rights. In June 2013, Russia approved its first law specifically dedicated to decreasing online piracy of television and film. In November 2014, the Duma adopted amendments to extend the scope of some aspects of the law to more categories of copyrightable material. It is unclear how the bill will work in practice, particularly in light of the fact that very little, if any, enforcement actions against these websites has taken place, and Russia continues to be a haven for pirate sites. The United States will monitor closely evolving laws and practices related to online piracy.

In the WPR, Russia also committed to ensure that the thresholds for the application of criminal procedures and penalties with regard to cases of willful trademark counterfeiting or copyright piracy on a commercial scale would be set and applied in a manner that reflected the realities of the commercial market place. 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 violation had been extremely low. In August 2013, Russia implemented a method of calculating such fines, replacing an arbitrarily low and fixed fine with a fine calculated based on the value of the counterfeits being produced or sold. This method should result in penalties that have a stronger deterrent effect. In addition, as called for in the WPR commitments, Russia ensured that its Civil Code does not predicate protection of a well-known trademark on its inclusion in Russia's List of Well-Known Trademarks.

Russia's customs law also required alteration to strengthen IPR protection. In December 2010, Russia adopted the law "On Customs Regulation" to provide for *ex officio* authority for customs officials and strengthened the *ex officio* provisions contained in the CU Customs Code. The law also updated procedures for registering certain intellectual property rights with the Russian Customs IPR Register. Russia, however, has yet to fully harmonize its IPR regime with the regulatory principles adopted under the CU.

In 2010, Russia passed amendments to the Law on the Circulation of Medicines to protect undisclosed test or other undisclosed data generated to obtain marketing approval for pharmaceutical products, including six years of protection for such data from reliance by subsequent applicants seeking marketing approval for the same pharmaceutical product. These amendments came into force the day Russia became a WTO Member. However, we have yet to see final regulations that include the detailed provisions necessary to ensure implementation of such protection. The United States will continue to monitor this situation closely.

### ***Enforcement***

Russia committed, upon becoming a WTO Member, to apply fully the WTO provisions for enforcement of IPR, without recourse to any transitional period. In the WPR, Russia also committed to take “expeditious action” against acts of infringement on the basis of complaints lodged by rights holders and through other means with the objective of eliminating such acts in Russia. Russia made specific commitments to conduct unannounced inspections of plants licensed to produce optical media bearing content protected by copyright or related rights; although Russia conducted such raids initially, piracy has largely now moved online, making optical media disk piracy a small portion of the infringing content market. Russia also established a specialized court for intellectual property disputes, which began operating in the summer of 2013.

As a general matter, the current IPR enforcement environment in Russia remains weak. 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. Russia committed to take enforcement measures against online piracy and to ensure that existing law is applied to prevent certain types of devices or services from circumventing technical protection measures protecting content. But no significant actions against infringing sites have been taken in Russia, and notorious pirate websites continue to operate unhindered. Russia recently enacted legislation providing a framework to combat certain types of online piracy (as discussed above), and the United States will continue to monitor whether the recent legislative changes and any additional

amendments of the law result in taking appropriate action against web sites of the type identified in USTR's Notorious Markets Report.<sup>12</sup>

Furthermore, the information currently available appears to indicate that overall enforcement of IPR has decreased, rather than increased, over the past few years. One ongoing barrier to Russia's adequate and effective enforcement of IPR is the lack of resources devoted to hiring and training law enforcement personnel to investigate and prosecute IPR crimes. The number of police IPR raids began to decline in 2010, and by 2012 the overall level of enforcement dropped almost to the 2005 level. Similarly the number of civil and criminal prosecutions fell significantly in 2013 compared to the previous year.

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

Russia's collecting society regime remains nontransparent and burdensome, making it difficult for rights holders to be fairly compensated for the use of their intellectual property. Although not required under the TRIPS Agreement, Russia committed in the WPR to reviewing its system of collective management of rights, and this review seems to have resulted in a 10-year re-appointment term of the existing collecting societies, which are unable or have failed to properly represent and compensate U.S. rights holders. Russia also stated that it intended to phase out non-contractual license management within five years of Part IV of the Civil Code entering into force. Part IV of the Civil Code entered into force on January 1, 2008, yet Russia has not yet

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<sup>12</sup> USTR publishes an annual report on notorious markets as part of its Special 301 review, which identifies examples of prominent physical and online markets in which pirated copyright or counterfeit trademark goods are reportedly available.

phased out its non-contractual management system. Russia's legislature is considering further amendments to these IPR provisions.

The United States had been engaging on a bilateral basis on these issues through the United States-Russian Federation Intellectual Property Rights Working Group (IPR WG) and other means. However, due to the current political situation, all bilateral engagement on intellectual property issues with Russia has been put on hold, although the United States continues to press Russia on its WTO commitments in the WTO (*e.g.*, through TRIPS Council). In the past, the United States has engaged intensively with Russia on a broad spectrum of IPR issues, including TRIPS, through the United States-Russia IPR WG, which is co-chaired by USTR for the United States and the Ministry of Economic Development for Russia. In December 2012, the United States and Russia agreed to an Intellectual Property Rights Action Plan under the auspices of this Working Group. The Plan endorses action to address a number of IPR priorities, including increased enforcement actions against counterfeit goods and effective prosecution of persons responsible for IPR crimes. The IPR WG has discussed enforcement of intellectual property laws, initiatives to combat the sale of counterfeit pharmaceuticals online, improving procedures in criminal legal proceedings, and other topics of mutual concern. The United States will continue, in appropriate settings, to press Russia for full implementation of its WTO commitments.

## **Investment**

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

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

During the 18 years it was negotiating its WTO accession, Russia worked to bring its investment-incentive programs into compliance with the TRIMS disciplines. For example, prior

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

In the WPR, Russia agreed that, except for measures subject to a specific transition period, all of its laws, regulations or other measures concerning matters covered in the TRIMS provisions of the WPR, whether adopted by it or the competent bodies of the CU, would be consistent with its WTO commitments, and in particular with the TRIMS Agreement, as of the date of Russia 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 and the domestic content requirement to qualify for duty-free entry of auto parts. In the WPR, Russia committed to cap the requirement to purchase or use domestically produced parts and components at 25 percent of the ex-factory price of the automobiles. Russia also agreed to eliminate the elements of both of its investment incentive programs that are inconsistent with TRIMS by July 1, 2018, and to begin consultations in July 2016 with the United States and other WTO Members on WTO-consistent measures it could take in this sector.

Since Russia became a WTO Member, in response to concerns raised by the United States and other Members in the TRIMS Committee, 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. However, the United States is

monitoring possible local content requirements by a government-owned agricultural equipment leasing company, RosAgroLeasing.

The United States has sought, and will continue to seek information on programs that support domestic production at the expense of imports to ensure Russia's compliance with its commitments under the TRIMS Agreement and the WPR. In addition, the United States is monitoring Russia's implementation of its automotive industry investment programs for compliance with its WTO commitments and will work with Russia to bring its automotive industry investment incentive program into conformity with its WTO obligations by July 1, 2018. USTR has already solicited information on steps Russia was taking to eliminate the WTO-inconsistent aspects of the programs.

### *Special Economic Zones*

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

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

### **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.

#### ***EurAsEC/Customs Union***

As noted above, Russia transferred authority for many aspects of its trade regime to the CU. The administrative bodies of the CU include the Court of the EurAsEC, which has competence, *inter alia*, over disputes of an economic nature arising from the implementation of decisions of the bodies of the EurAsEC and of the EurAsEC treaties. When the EurAsEC Court was originally created it did not have jurisdiction to opine directly on Russia's WTO commitments nor could it rule on Russia's compliance with those commitments. However, after the Treaty on the Multilateral Trading System was adopted, the EurAsEC Court received the legal authority to provide advisory opinions on whether a CU act violates WTO rules. Furthermore, the right to bring a case to the EurAsEC Court is not limited to the CU Member States or the bodies of the CU. Additionally, individuals with a specific interest can also challenge CU acts in the EurAsEC Court.

#### ***Transparency***

One of the core principles of the WTO Agreement reflected throughout Russia's WPR is transparency. Transparency permits markets to function effectively and reduces opportunities for officials to engage in trade-distorting practices behind closed doors. Many of the constituent WTO agreements contain initial as well as annual notification requirements to ensure that 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 the required initial notifications by the date of its accession, with the exception of five notifications which were to be submitted within specified deadlines following its accession. In addition, Russia committed to establish formal notice and comment procedures for proposed measures pertaining to or affecting trade in goods, services, and intellectual property; to provide WTO Members and interested parties with decisions in writing setting out reasons for the decision; and to institute new rights of appeal of decisions. These obligations apply to measures that the EEC adopts and that are applied in Russia as well as to Russia's domestic laws, regulations and other measures. Russia has also undertaken specific commitments regarding transparency on issues ranging from application of the price controls to fees charged for engaging in importing or exporting goods.

To implement Russia's transparency commitments at the CU level, the CU Commission established the procedures for publication and public comment on proposed CU legal acts, including that draft decisions shall be published no fewer than 45 calendar days before the Commission meeting at which the decision will be considered. The EEC provided additional details concerning sanitary and phytosanitary 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 CU measures will not become effective prior to their publication.

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

Pursuant to its WTO commitments, Russia has established an SPS inquiry point where information about its SPS regime can be readily found. As noted above, Russia's TBT inquiry point, however, remains problematic because its functions are split between different government ministries, leading to confusion and inadequate transparency.

Notwithstanding Russia's many notifications, the United States has identified certain measures (e.g., technical regulations and subsidies) which Russia has not notified. In addition, Russia has not yet notified Gazprom as a State-trading-enterprise, despite a specific commitment in the WPR to do so. Finally, the United States has asked Russia to notify its regional trade arrangements, including the CU and the EEU, to the WTO. The United States will continue to monitor the comprehensiveness of Russia's notifications, as well as the availability of adequate opportunity to comment on those notifications.

### ***Judicial Review***

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

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

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

## **Appendix 1**

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

1. American Iron and Steel Institute and Steel Manufacturers Association
2. Distilled Spirits Council of the United States
3. International Intellectual Property Alliance
4. PhRMA
5. Telecommunications Industry Association
6. U.S. –Russia Business Council

**Appendix 2**

**List of Witnesses Testifying at the Public Hearing  
on Russia's Implementation of its WTO Commitments  
before the Trade Policy Staff Committee  
Washington, D.C.  
October 10, 2014**

1. Eric Schwartz  
International Intellectual Property Alliance
2. Eric Holloway  
Telecommunications Industry Association
3. Randi Levinas  
US-Russia Business Council