

2017 Report on the Implementation and Enforcement of Russia's WTO Commitments



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

Contents

| | | |
|-------|---|----|
| I. | Introduction | 1 |
| II. | Executive Summary | 2 |
| III. | Russia and the Customs Union/Eurasian Economic Union | 6 |
| IV. | Russia in the World Trade Organization | 7 |
| V. | Import Regulation | 7 |
| A. | Tariffs and Border Fees | 7 |
| B. | Customs Fees | 10 |
| C. | Customs Valuation | 10 |
| D. | Trading Rights | 11 |
| E. | Quantitative Restrictions | 12 |
| F. | Import Licensing | 13 |
| G. | Trade Remedies | 14 |
| VI. | Export Regulation | 16 |
| VII. | Agriculture | 17 |
| A. | Sanitary and Phytosanitary Measures | 17 |
| B. | Domestic Supports and Export Subsidies | 24 |
| VIII. | Internal Policies Affecting Trade | 25 |
| A. | Non-Discrimination | 25 |
| B. | Industrial Policy, Including Subsidies | 27 |
| C. | State- Owned, Controlled, and Trading Enterprises | 29 |
| D. | Pricing Policies | 31 |
| E. | Standards, Technical Regulations and Conformity Assessments | 32 |
| F. | Government Procurement | 35 |
| IX. | Services | 36 |
| A. | Financial Services | 37 |
| B. | Telecommunications | 38 |
| C. | Computer and Related Services | 39 |
| D. | Distribution Services | 39 |

| | | |
|-------|---|----|
| E. | Audio-Visual and Media Services | 40 |
| X. | Intellectual Property Rights | 40 |
| A. | Legal Framework | 41 |
| B. | Enforcement | 43 |
| XI. | Investment..... | 46 |
| A. | Trade-Related Investment Measures | 46 |
| B. | Special Economic Zones | 49 |
| XII. | Rule of Law..... | 49 |
| A. | Eurasian Economic Union..... | 50 |
| B. | Transparency | 50 |
| C. | Judicial Review | 52 |
| XIII. | Conclusion..... | 53 |

I. Introduction

Russia became a Member of the World Trade Organization (WTO) on August 22, 2012, 19 years after first applying to join the *General Agreement on Tariffs and Trade 1947* (GATT 1947) in 1993.¹ During the years leading up to accession, Russia adopted numerous measures (laws, regulations, resolutions, decrees, and other directives) to modernize its economy and create a stable business environment. Through the WTO accession negotiation process, WTO Members worked with Russia to ensure that Russia's legal regime incorporated the key WTO principles of national treatment, most-favored nation (MFN) treatment, transparency, and, more generally, the rule of law. The *Report of the Working Party on the Accession of the Russian Federation to the World Trade Organization* (WPR), reflecting the results of Russia's work and the accession negotiations, discusses the process by which Russia became a WTO Member.²

This Report on the Implementation and Enforcement of Russia's WTO Commitments (the Russia WTO Report) for 2017 is prepared pursuant to section 201(a) of the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012 (P.L. 112-208) (the Act). This provision requires the U.S. Trade Representative, not later than one year after the United States extends permanent normal trade relations (PNTR) to the products of Russia, and annually thereafter, to submit a report to the Committee on Finance of the U.S. Senate and the Committee on Ways and Means of the U.S. House of Representatives assessing the extent to which Russia is implementing the WTO Agreement (including the Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Trade-Related Aspects of Intellectual Property Rights) and the progress Russia has made in joining the Information Technology Agreement (ITA) and the Agreement on Government Procurement (GPA). In addition, to the extent that the U.S. Trade Representative believes that Russia is not fully implementing its WTO commitments or not sufficiently progressing to join the ITA and the GPA, the Report is to describe the actions that USTR plans to take to encourage Russia to

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

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

improve its implementation of its commitments or increase its progress toward acceding, as the case may be.

The 2017 Russia WTO Report is also prepared pursuant to section 201(b) of the Act that requires that the U.S. Trade Representative submit annually a report to the Committee on Finance of the U.S. Senate and the Committee on Ways and Means of the U.S. House of Representatives describing the enforcement actions taken by USTR to ensure Russia's full compliance with its obligations as a Member of the WTO.³ The 2017 Russia WTO Report thus provides an assessment of the extent to which Russia is implementing its WTO commitments, an enumeration of the steps USTR has taken to enforce those commitments, and a description of the actions USTR plans to take in the coming year to press Russia to comply with its WTO obligations.

In the development of this Report, USTR has drawn on the expertise of numerous individuals who have studied and worked with Russia over the years. USTR solicited comments from interested parties, both throughout the year and in the preparation of this Report,⁴ and collected information from other U.S. Government agencies, particularly the U.S. Embassy in Moscow. USTR staff also called on their years of experience studying and analyzing Russia's economic policies, including negotiating Russia's WTO accession. In addition, on October 10, 2017, USTR hosted a hearing in Washington, DC, before the Trade Policy Staff Committee at which two parties testified.⁵

II. Executive Summary

Over the past year, Russia implemented its scheduled tariff reductions as required by the terms of the WPR. Russia has also notified many draft measures to the relevant WTO committees, and occasionally worked with the United States and other WTO Members to address concerns. Unfortunately, these few positive steps are the exception, not the rule. As shown in this report,

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

⁴ See Appendix 1 for list of parties who filed public comments.

⁵ See Appendix 2 for a list of witnesses that testified at the hearing.

Russia has done little in 2017 to demonstrate a commitment to the principles of the WTO or to many of the specific commitments that it made in the WPR.

Importing into Russia remains a difficult task. Notwithstanding some positive movement by Russia on tariffs, the United States continues to watch carefully how Russia applies the Eurasian Economic Union's (EAEU) tariff rates to ensure consistency with Russia's WTO bound tariff rates. Russia's import licensing regime is burdensome and opaque, and its import licensing regime for products with cryptographic capabilities, in particular, restrains U.S. exporters' ability to export many consumer electronic products to that market. The United States will continue to press Russia to address these concerns.

U.S. exports to Russia are likewise hampered by a less than transparent customs legal regime, a situation that may only be exacerbated as Russia implements the new EAEU Customs Code. The United States will review the EAEU Customs Code to determine the extent to which it may impact Russia's ability to implement its WTO commitments. Although Russia appropriately notified its trade remedy laws to the WTO upon accession, the United States will continue to track Russia's compliance with ongoing notification obligations and the Eurasian Economic Commission's administration of its trade remedy laws.

The United States has also raised concerns about Russia's export restrictions. Russia has imposed restrictions on exports by retaining export duties or export licenses on certain products, and maintaining a list of so-called "important" products that could become subject to export restrictions. The United States will continue to analyze Russia's export regulatory regime to ensure its consistency with WTO disciplines, and will pursue enforcement actions as appropriate.

The agricultural sector continues to be one of the most challenging sectors for U.S. exporters. In addition to the import ban on nearly all agricultural goods from the United States and other WTO Members, Russia continues to erect barriers to U.S. agricultural exports. For example, the United States has raised concerns that Russia's sanitary and phytosanitary requirements are not consistent with international standards or based on scientific justification, and require attestations in veterinary certificates that are not based on international standards. The United States has also voiced its concerns with Russia's listing requirement for export establishments, veterinary restrictions on low-risk products, and transit bans. The United States has also raised concerns

about Russia technical regulations, in particular those applicable to alcoholic products and the adoption of certain good regulatory practices. Russia's failure to follow WTO norms on these issues is very troubling.

The United States has raised concerns about many of Russia's industrial policies. Specifically, the United States has focused on certain discriminatory measures adopted by Russia, including the application of its recycling fee, the administration of its copyright levy system, and the collection of value-added tax on the distribution of movies. Russia provides subsidies to many of its producers, and the United States has pressed for information on those programs to ensure that they are consistent with the relevant WTO disciplines. The United States has also sought information from Russia about its pricing policies on natural gas and railway tariffs to ensure that Russia is not using such policies to protect its market.

The United States, in conjunction with other WTO Members, has repeatedly questioned the expansion and WTO consistency of Russia's import substitution policies. Even as initially applied only to government procurement, such policies do not bode well for Russia's dedication to the market-opening principles of the Government Procurement Agreement. Moreover, in the past few years Russia has expanded its localization requirements to its State-owned enterprises. The United States continues to press Russia on these practices in the WTO to ensure that Russia meets its WTO obligations.

Russia's localization policies have not been limited to goods and are beginning to impact exports of U.S. services to Russia. The United States has raised questions about Russia's data localization law and limits on foreign ownership in the audio-visual and media service sectors. The United States will continue to remind Russia of its national treatment obligations in various service sectors.

Russia's protection and enforcement of intellectual property has long been a concern for the United States. Russia strengthened its intellectual property rights (IPR) regime as part of its WTO accession, but reliable and effective implementation of those rules has stalled. The United States has concerns about Russia's implementation of its commitments on data exclusivity and patent protection, in addition to concerns with Russia's collective management regime.

Although Russia has improved somewhat its enforcement against online piracy, it does not

appear to have extended those enforcement efforts against the operators of the infringing websites. Finally, in 2017, the availability of pirated movies increased dramatically in Russia. The United States will continue to press Russia to improve its protection and enforcement of IPR.

Finally, although WTO accession has, in general, made the rules-making process in Russia more transparent, the United States continues to press Russia to notify the WTO about draft measures in a timely manner to give trading partners an opportunity to express their concerns before potentially WTO-inconsistent measures are passed into law.

Russia's accelerating withdrawal from the market-opening rules of the WTO is creating barriers to U.S. exports of goods and services. Since early 2014, the U.S. Government has curtailed its bilateral engagement with Russia in response to Russia's actions in Ukraine, limiting USTR's ability to raise directly with Russia our concerns about the adverse impact of its trade policies. Nevertheless, the United States will continue to examine and evaluate Russia's trade and investment actions, and to hold Russia accountable for those action in the WTO and other international forums. If the United States finds that Russia is not acting consistent with its WTO commitments, it will investigate and use all appropriate means to resolve the matter and keep Russia's markets open to U.S. exports.

It has now been more than five years since Russia joined the WTO. In joining the WTO, Russia accepted the challenge of compliance with WTO commitments and developing open, freely competitive markets. A properly functioning WTO system depends upon each Member taking seriously its commitments and permitting markets to foster reciprocal and mutually advantageous trade. So far, Russia's actions strongly indicate that it has no intention of complying with many of the promises it made to the United States and other WTO Members. This trend is very troubling. The United States will continue to press Russia for compliance, and will take any and all opportunities to address the many problems raised in this report. These efforts, as a practical matter however, cannot make up for the lack of interest by a major economy in living up to WTO expectations and in pursuing a full commitment to true, market-based principles. It was a mistake to allow Russia to join the WTO if it is not fully prepared to live by WTO rules.

III. Russia and the Customs Union/Eurasian Economic Union

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

In early 2012, the Eurasian Economic Commission (EEC) replaced the CU Commission as the supranational administrative and policy body charged with implementing external trade policy and regulation for the CU member states. The next significant event in the move toward greater economic integration was the entry into force on January 1, 2015, of the Eurasian Economic Union Treaty (the Treaty) creating the EAEU, the successor to the CU.⁶ The following day, January 2, 2015, Armenia joined the EAEU, and on August 12, 2015, Kyrgyzstan became the fifth country to join the EAEU. Moldova became an EAEU observer in 2017.

The EAEU is larger than the CU in terms of geographic and substantive scope. The Treaty expanded the competence of the EEC into a number of new policy areas, including financial services, government procurement, intellectual property rights, industrial subsidies, and agricultural support measures. Beyond these areas, the Treaty commits the member states to harmonize national policies over time in the areas of financial regulation, monetary policy, macroeconomic policy, competition, transportation and rail policy, labor migration policy, and policies regulating their markets for oil, gas, and electricity.

Russia and the EAEU have established a legal framework that would allow an EAEU member state to comply fully with its WTO commitments. Moreover, the “Treaty on the Functioning of the Customs Union in the Framework of the Multilateral Trading System of 19 May 2011” (“Treaty on the Multilateral System”) requires that EAEU measures comply with the WTO Agreement as well as all commitments set forth in the Protocol of Accession and working party report of each EAEU member state; that the rights and obligations of an EAEU member state

⁶ For ease of reading, references to the EAEU in this Report generally include the CU.

under the WTO Agreement override prior and future EAEU agreements and decisions of EAEU bodies; and that any treaty signed by the EAEU be consistent with the WTO commitments of each EAEU member state. When Russia joined the EAEU, it nominally transferred authority over many aspects of its foreign trade regime to the EAEU, including import tariff rates, trade in transit rules, non-tariff import measures (*e.g.*, tariff-rate quotas, import licensing, and trade remedy procedures), customs policies (*e.g.*, customs valuation, customs fees, and country of origin determinations), border enforcement of intellectual property rights, establishment and administration of special economic and industrial zones, and the development of technical regulations and SPS measures. As a result, many of Russia's WTO commitments are implemented through EAEU measures. In such cases, Russia's WPR specifically provides that Russia's WTO commitments apply whether the Russian government or the competent bodies of the EAEU are responsible for implementation of the relevant commitment.

IV. Russia in the World Trade Organization

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

V. Import Regulation

A. Tariffs and Border Fees

As a result of bilateral goods market access negotiations with the United States and 54 other WTO Members, Russia agreed to bind all 11,170 tariff lines in its tariff schedule. According to the WTO, after all of its tariff bindings are implemented (by 2020), Russia's simple average final

bound rate for all goods will be approximately 7.6 percent; 7.1 percent for industrial goods and 11.0 percent for agricultural goods.⁷

In industrial sectors, Russia agreed to bind its tariffs on wide body aircraft at 7.5 percent; Russia's previously applied tariffs on these products were as high as 20 percent. Russia also committed to an average final bound tariff for plastics of 6.2 percent; Russia previously applied an average tariff of 10 percent. Russia agreed to an average final bound tariff rate of 6 percent on steel products; previously, Russia applied an average tariff rate of 8.9 percent. In the chemical sector, Russia's final bound tariff rates will average 5.3 percent. Previously, Russian tariffs on chemicals averaged 6.7 percent and ranged as high as 20 percent. In the technology goods sector, Russia has completed the process of joining the ITA, and has eliminated its tariffs on computers, semiconductors, and other information technology products consistent with its ITA obligations.

In 2016, Russia implemented its final bound tariff of 12.5 percent for wine; previously, Russia applied a tariff of 20 percent. For pears and other fresh fruit, Russia implemented its final bound tariff of 5 percent in 2015, in contrast to its previous applied tariff rate of 10 percent. As a result of U.S. efforts, Russia agreed to expand access to its market for U.S. meat products, liberalizing the tariff rate quotas (TRQs) for both pork and beef, including additional access for High Quality Beef with a 15 percent tariff outside of the TRQ for beef. Finally, Russia has committed to a maximum final bound tariff of 5 percent for live animals, with tariff lines for some live animals bound at zero percent. Russia previously applied up to a 40 percent tariff on live animals.

In August 2017, Russia implemented the fifth round of annual tariff reductions as required by its WTO commitments. In bringing an additional 148 tariff lines to their final bound rates, Russia reduced tariffs on certain refrigerators (from a bound rate at accession of 20 percent down to 12 percent), salmon (from a bound rate at accession of 20 percent down to 3 percent), and a variety of apparel products (from a bound rate at accession of 20 percent down to 6.5 percent). Overall,

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

Russia has implemented final bound rates for over 99 percent of its tariff lines. Russia cannot legally apply EAEU CET tariffs above these tariff bindings.⁸

Russia's tariff reductions initially contributed to improved market access for U.S. goods exports, with U.S. goods exports to Russia increasing nearly 20 percent in the first year following Russia's accession.⁹ However, U.S. exports to Russia declined from 2015 to 2016 – by 11 percent – due to a variety of political and economic factors.

Russia's implementation of certain tariff commitments has raised concerns. One source of concern has been Russia's implementation of decisions of the EEC (the EAEU body responsible for administering the EAEU CET). In particular, pursuant to those decisions, Russia appears to have changed the type of duty on certain lines by augmenting the applied *ad valorem* rates with an additional minimum specific duty (thereby creating a "combined tariff"). Under WTO rules, the resulting combined tariff must not exceed Russia's bound tariff commitments. However, Russia has not informed WTO Members whether, for those goods subject to a combined tariff, the *ad valorem* equivalent of the specific duty is within the WTO *ad valorem* bound duty rate. In 2015, the European Union challenged Russia's application of the EAEU CET on certain tariff lines (paper products, refrigerators, and palm oil), asserting that the applied duty exceeded Russia's bound rate for those lines. The United States, as a third party, supported claims by the European Union that Russia was applying duties in excess of Russia's bound rates. On August 12, 2016, the panel circulated its report, agreeing with the EU that Russia had applied tariffs in excess of its WTO bound rates and recommending that Russia bring its tariff measures into conformity with WTO rules. The Dispute Settlement Body (DSB) adopted the report on September 26, 2016. In June 2017, Russia reported to the DSB that it amended the measures to implement the DSB's recommendations.

⁸ As a customs union, the EAEU applies a common external tariff. Russia's WTO tariff schedule commitments, for the most part, bind the entire EAEU CET, with some temporary (lower) exceptions for Kazakhstan, Armenia, and Kyrgyzstan due to existing WTO tariff commitments.

⁹ Export data are based on data from the Global Trade Atlas. Russia has not provided import data for 2015.

B. Customs Fees

Upon becoming a WTO Member, Russia agreed to comply with Article VIII of the GATT 1994, which requires that fees and charges imposed on or in connection with importation (other than tariffs) be limited to the approximate cost of the service provided. Russia amended its system of customs clearance fees to reduce those fees and establish fixed minimum and maximum fees for customs clearance of goods using electronic format or other simplified procedures for filing customs declarations. Russia's implementation of these commitments is reflected in Article 72 of the CU Customs Code, which limits the amount of customs fees to the approximate cost of the service rendered.

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

C. Customs Valuation

The WTO *Agreement on Implementation of Article VII of the GATT 1994* ("Customs Valuation Agreement" or CVA) is designed to ensure that determinations of the customs value for the application of duty rates to imported goods are conducted in a neutral and uniform manner, precluding the use of arbitrary or fictitious customs values. Adherence to the CVA is an important issue for U.S. exporters, particularly to ensure that market access opportunities provided through tariff reductions are not negated by unwarranted and unreasonable increases in the customs value of goods to which tariffs are applied. Russia agreed to implement its obligations under the CVA, including the interpretative notes, upon accession to the WTO, without any transition period.¹⁰ In addition, Russia took a specific commitment in the WPR, *inter alia*, not to use reference prices or fixed valuation schedules as a means for determining customs value and to provide for the right to appeal decisions that were based on a minimum value, fixed valuation schedule, or reference price.¹¹

Russia and its EAEU partners have integrated the CVA's basic provisions into the EAEU legal framework. Specifically, the hierarchy of the six methods of customs valuation in the CVA, as well as most, but not all, of the provisions of the interpretative notes, are reflected in Russia's

¹⁰ WPR, ¶514.

¹¹ WPR, ¶527.

domestic law and implemented by reference in the CU Customs Code. However, U.S. stakeholders report that Russia continues to lack clear regulations governing import valuation, creating uncertainty and increasing the paperwork load. In addition, U.S. stakeholders have, on occasion, raised concerns that Russia's Federal Customs Service (FCS) is continuing to use reference prices that seem inconsistent with the invoice valuation. In response to these concerns, the United States has raised questions in the WTO Committee on Customs Valuation, urging Russia to provide copies of legislation related to customs valuation, and seeking clarification as to where in Russia's, or the EAEU's, legislation certain commitments of the CVA can be found. The United States will continue to meet with and solicit information from U.S. stakeholders concerning Russia's valuation practices and work with the FCS to ensure full implementation of Russia's commitments on customs valuation.

D. 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, sanitary and phytosanitary measures, technical standards, and intellectual property rights protection) without having to invest in the importing country or employ a customs broker to facilitate market access, is critically important, especially for small and medium-sized enterprises that may not be able to afford to establish an office in each market or that, for commercial reasons, need to be the importer of record for the goods. In 1991, Russia eliminated its state monopoly on foreign trade.¹² However, prior to its WTO accession, Russia had not only limited the right to import and export goods to Russian enterprises, but it also required an "activity license" to engage in the business of importing or exporting (in addition to requiring import licenses on select products). As part of its WTO accession commitments, Russia eliminated the requirement for an activity license to import and export goods. Following Russia's accession, the only requirement to engage in the business of importing and exporting is registration with the appropriate authorities in Russia, and Russia has committed to employing an expeditious and transparent registration policy.¹³

¹² WPR, ¶216.

¹³ WPR, ¶227.

Although an activity license is still required as a precondition for obtaining an import license for some products (*e.g.*, alcohol, encryption products, and pharmaceuticals), following accession, the importer of record (declarant) is permitted to pay the relevant customs duties, fees and charges in connection with the importation of the goods, and meet other import requirements, without presenting an import license. The person withdrawing the goods from the customs checkpoint for distribution in Russia is now responsible for presenting the requisite import or activity license.

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

E. Quantitative Restrictions

Article I of the GATT 1994 requires that WTO Members accord MFN treatment to imports from all other WTO Members. In addition, Article XI of the GATT 1994 generally prohibits the imposition of restrictions or prohibitions (other than tariffs, taxes, or other charges) on imports, except if justified under an applicable WTO provision. Notwithstanding these obligations, on August 6, 2014, Russia issued an order banning certain agricultural imports from the United States, the EU, Canada, Australia, and Norway for one year. The list of banned food included certain beef, pork, poultry, fish and seafood products; fruits and nuts; vegetables; some sausages; and most prepared foods. In 2015, Russia amended the list of products covered by the ban and expanded the list of countries for which products were banned, adding Ukraine, Albania, Montenegro, Iceland, and Liechtenstein.¹⁴ In June and October 2017, Russia made further minor amendments to the list of products covered by the ban and extended the ban for another year, until December 31, 2018. Russia claims the current ban is justified on the basis of national security concerns. The United States intends to press Russia on the stated justification for these troubling quantitative restrictions.

¹⁴ The ban initially did not apply to agricultural products from Ukraine, but those goods became subject to the ban as of January 1, 2016, the date on which Ukraine implemented the Deep and Comprehensive Free Trade Agreement with the EU.

F. Import Licensing

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

To implement the rules of the Import Licensing Agreement, Russia amended aspects of its import licensing regime to liberalize and simplify the process of importing certain products subject to import control.¹⁵ 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.¹⁶

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

¹⁵ See WPR, ¶¶456-457.

¹⁶ WPR, ¶460.

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.¹⁷

On December 31, 2009, Russia implemented an import licensing regime for encryption products, reducing the procedural hurdles for importing encryption products into Russia.¹⁸ However, following discussions with U.S. stakeholders and review by USTR staff, the United States has identified certain aspects of the regime that raise concerns with regard to Russia's implementation of its commitments in this area. For example, the list of products subject to notification does not appear to reflect the definition of products that Russia agreed in the WPR would be subject to notification. In addition, U.S. electronics exporters report that Russia is not implementing properly the "mass market" category for products subject to notification. U.S. electronics exporters also continue to raise concerns about the seemingly inconsistent application of the import licensing regime, absence of a written explanation when licenses are denied, issuance of licenses only for individual shipments rather than for all shipments of the "product family," requirement that information be submitted on a product-specific basis, rather than on a family-specific basis, and delays in issuing a license. The United States plans to examine further this problematic licensing regime, and will continue to press the Russian government to address U.S. concerns regarding Russia's implementation of its commitments on import licensing of encryption products.

G. 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

¹⁷ See WPR, ¶¶471-486.

¹⁸ Russia's import licensing regime for encryption products was adopted *in toto* by the EAEU.

material injury (“anti-dumping duties”); (2) actions taken to offset countervailable subsidies on imports that are causing or threatening to cause material injury (“countervailing duties”); and (3) measures that address an increase in imports that is causing or threatening to cause serious injury to a domestic industry (“safeguard measures”). Russia committed that, as of the date it became a Member of the WTO, any trade remedy measure in place or any trade remedy measure investigation launched before the date of accession would be consistent with the relevant WTO agreements on trade remedies, namely the *Agreement on Implementation of Article VI of the GATT 1994*, the *Agreement on Subsidies and Countervailing Measures*, and the *Agreement on Safeguards*.¹⁹

As a member of the EAEU, Russia has transferred responsibility for administering its trade remedy laws to the EEC. Importantly, however, Russia made a commitment that any trade remedy investigation or measure would be consistent with its WTO commitments regardless of whether the investigation had been commenced by, or the measure had been put in place by, Russia’s investigating authority or the EAEU investigating authority.²⁰ 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 reflected the procedural requirements of the WTO agreements, including the authorities’ need to disclose findings and reasoned conclusions on pertinent issues of fact and law; the requirement that an authority determine the accuracy of the information submitted by domestic and foreign parties; and the right of interested parties to submit comments during the investigation. In addition, the EAEU member states adopted several agreements to implement the WTO requirements on the use of trade remedy laws.

When Russia joined the WTO, it notified its trade remedy laws and procedures (and those of the CU) as required under the transparency provisions of the WTO Agreement and the WPR. It also provided notifications concerning the safeguard investigations that were in process when it joined the WTO and those initiated after it joined the WTO. In 2014, the European Union commenced a WTO challenge to Russia’s anti-dumping duties on light commercial vehicles from Germany and Italy. In 2017, the panel issued its report finding that Russia had acted

¹⁹ WPR, ¶620.

²⁰ WPR, ¶620.

inconsistently with its obligations under the Antidumping Agreement. Russia's appeal of the panel's report is pending. The United States has participated actively before the panel and Appellate Body as a third party in this dispute. In this dispute, the United States presented arguments on the appropriate legal interpretation of provisions in the AD Agreement that apply to an authority's injury determination. In particular, the United States offered arguments on the appropriate definition of the domestic industry, the requisite level of scrutiny on the price effects of dumped imports, the authority's examination of the impact and effect of dumped imports, and other procedural obligations in the AD Agreement. The United States will continue to assess Russia's compliance with its notification obligations and the EEC's administration of its trade remedy laws.

VI. Export Regulation

When it acceded to the WTO, Russia agreed to reduce or eliminate export duties on a large number of products, including ferrous scrap and copper cathode, and bound the tariff levels of the remaining products on which it applied export tariffs. Russia also committed to adhere to Article XI of the GATT 1994, which generally prohibits WTO Members from maintaining export restrictions (other than duties, taxes, or other charges) except those that can be justified under applicable WTO provisions.²¹ Consistent with that commitment and the relevant EAEU agreements, Russia eliminated an export ban on grain imposed in 2010. Russia also confirmed that any export restraints imposed to ensure essential materials to domestic producers would not operate to increase the exports or the protection of that processing industry.²²

Russia has amended its national regulations to replace the export licensing regime for precious stones, diamonds, and metals with an automatic licensing regime in order to reduce the number 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.²³ Also, consistent with the commitments on ferrous scrap and copper

²¹ WPR, ¶646.

²² WPR, ¶668.

²³ WPR, ¶¶648-655.

cathode contained in the WPR, Russia has reduced its export duties on those products as provided in its tariff schedule.²⁴ Russia continues to maintain an export duty on wheat, but temporarily reduced the duty rate to zero (until July 1, 2018) to encourage exports.

During Russia's WTO accession negotiations, the United States raised concerns about the conformity of Russia's and the EAEU's export licensing provisions with WTO disciplines, and Russia recognized that work needed to be done in this area.²⁵ For example, Russia maintains, and regularly updates, a list of products "of utmost importance for the domestic market" the export of which could be subjected to export restrictions or prohibitions. In 2017, Russia expanded the list of products, including ferrous steel and non-ferrous scrap, which could be subject to export restrictions. Although not all listed products are subject to export controls, Russia has, for example, banned the export of raw hides intermittently since 2014 in order to protect its leather processing industry. The United States has worked with other WTO Members to question Russia's use of export controls, in particular their consistency with Russia's WTO commitments. The United States will continue to scrutinize the evolution and implementation of the Russian and EAEU export regulatory regime to ensure its consistency with WTO disciplines.

VII. Agriculture

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

A. Sanitary and Phytosanitary Measures

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

²⁴ WPR, Schedule CLXV, Part V.

²⁵ See WPR, ¶¶665 and 666.

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

In the WPR, 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 (now EAEU), would be based on international standards, guidelines, and recommendations unless a more stringent measure is justified by a risk assessment. Russia further explicitly committed that measures which were not based on international standards, guidelines, or recommendations would not be applied in Russia without providing Members a scientifically-based justification of the measures, in accordance with the SPS Agreement.²⁶ Russia also confirmed that all SPS measures, whether adopted by Russia or by the competent bodies of the CU (now EAEU), would comply with the non-discrimination provisions of the SPS Agreement.²⁷ SPS measures would not, Russia agreed, be used in such a way as to constitute a disguised restriction on international trade.

Russia, in addition, undertook the following specific obligations in the WPR: to negotiate and sign veterinary certificates that comply with World Organization for Animal Health (OIE) requirements for Bovine Spongiform Encephalopathy attestations; to base its requirements for goods subject to veterinary control on international standards; to ensure that its measures do not discriminate between imports from WTO Members or between Russia's products and imports; to accept international standards regarding certain antibiotic residues or justify more stringent requirements with a risk assessment that conforms to international standards; and to ensure that

²⁶ WPR, ¶1009.

²⁷ WPR, ¶1033.

any actions that are taken by Russian or EAEU authorities in response to non-compliance by importers with Russian or EAEU requirements are proportional to the non-compliance.²⁸

At the time of its accession, Russia confirmed the criteria for “de-listing” or “temporarily suspending” an establishment (an action which has the effect of prohibiting imports from that establishment), and committed to notify the exporting Member and give the exporting Member time to propose corrective measures. With regard to emergency measures, Russia confirmed that its decisions and procedures for de-listing or temporarily suspending an approved establishment would be in accordance with the SPS Agreement. Russia further confirmed that, by the time of accession, specific inspection guidelines would be developed that reflected the principles of equivalence and that were based on international standards, guidelines, and recommendations. Russia also agreed to remove certain veterinary control measures, such as the requirement that establishments (*e.g.*, processing plants or storage facilities) be approved in order to export selected products to Russia, and confirmed that veterinary control measures applied to animal products would be modified only in accordance with the SPS Agreement.²⁹

To ensure compliance with WTO rules on transparency, Russia confirmed that all Russian normative legal acts relating to SPS measures would be published in Russia’s two official journals and that EEC Decisions and other EAEU legal acts relating to SPS measures would be published on the EEC website. Russia further committed that drafts of SPS technical regulations and other mandatory requirements would be made publicly available for comment and that interested persons would have at least 60 days to provide comments on the drafts. Finally, Russia has established an SPS inquiry point and established a website with full detailed conditions for the importation of specific products.³⁰

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

²⁸ WPR, ¶¶ 895, 901, 926, 1009, 1033, and 1062.

²⁹ WPR, ¶¶ 923, 926, 927, 932, and 908.

³⁰ WPR, ¶¶ 1051 and 1055.

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

By 2011, the EAEU had established common veterinary requirements and 40 common forms of veterinary certificates for imports into the EAEU territory from any third country. During Russia's accession negotiations, the United States and other Members expressed concern that many of the common veterinary requirements appeared to be more stringent than the relevant international standards and did not allow the conditions in an exporting country to be taken into account. To allow exporting countries the opportunity to address these concerns with regard to some of the requirements in the pre-existing common veterinary certificates, the EEC extended the validity of bilateral veterinary certificates and provided Russian officials with the authority to negotiate certificates with exporting countries with terms that differ from EAEU common requirements. In addition, the EEC confirmed the EAEU member states' right to amend the EAEU certificates and the requirement to reflect international standards established by the OIE and Codex Alimentarius (Codex), allowing the United States to negotiate certificates with the EAEU member states that may differ from the EAEU common form, and which better reflect the conditions of trade between the United States and Russia.³¹

The United States and other WTO Members have also expressed concern about the veterinary requirements adopted by the EAEU, which included a requirement that all veterinary controlled products come from an establishment approved by all the EAEU member states. In order to

³¹ WPR, ¶¶893 and 890.

address concerns regarding the extension of this requirement to many products, the EEC removed the establishment requirement for certain products including dairy and pet food.

To implement Russia's commitments with regard to inspections, the EEC established the basis for joint inspections, systems audits, and acceptance of exporting country's guarantees. In addition, the EEC adopted inspection guidelines for meat processing and storage establishments, fish and fish products, and dairy and dairy products in accordance with the relevant international standards and confirmed that it would not suspend imports from establishments based on the results of on-site inspections before it had given the exporting country the opportunity to propose corrective measures. To implement Articles 4 and 5 of the SPS Agreement concerning equivalence and risk assessment, the EEC established the basis for determining equivalence and conducting risk assessments in accordance with international standards.³²

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, Russia does not appear to have implemented fully its commitments to base measures on international standards, or, where it applies a more stringent standard, to provide a science-based, objective risk assessment. Moreover, in those cases where Russia has provided the United States with a risk assessment purporting to justify its SPS measures, it is the judgment of U.S. government experts that those assessments do not appear to have been conducted taking into account risk assessment techniques of relevant international organizations. For example, Russia has adopted a zero tolerance for both ractopamine and trenbolone acetate, standards more stringent than Codex's maximum residue levels (MRL) for pork and beef, but does not appear to have provided risk assessments that conform to Codex guidelines. In addition, Russia has a near zero tolerance for tetracycline residues, a standard more stringent than Codex's MRL, but again appears to have failed to provide WTO Members with a risk assessment that conforms to international guidelines. The United States raised these concerns directly with Russia prior to 2014 without a constructive response from Russia. Despite requests to Russia from the United States for adequate risk assessments based on Codex guidelines, none have been forthcoming.

³² See, WPR, ¶¶1022-1031.

The United States is also concerned about various Russian measures that disrupt or prohibit imports of U.S. agricultural products. For example, in December 2014, following a disease outbreak that was limited to poultry flocks in certain U.S. states, Russia imposed a ban on poultry products from all parts of the United States notwithstanding the existence of OIE guidelines that contemplate regionalized application of trade restrictions related to the disease in question. In May 2015, Russia extended the import ban to hatching eggs and live poultry; and in June 2015, Russia extended the import ban to cover transit of poultry and poultry products from the United States through Russian territory, and retains a ban on U.S. poultry despite the United States being declared free of Highly Pathogenic Avian Influenza on April 22, 2016. Russia has not responded to repeated U.S. efforts (e.g., letters and meeting requests) to resolve this issue. Also in May 2015, Russia issued a decision to prohibit the importation of all U.S. peanuts due to the detection of low levels of cadmium (too low to present a human health risk) in some shipments from the United States. In February 2016, the Russian Federal Veterinary and Phytosanitary Surveillance Service announced a “temporary” suspension of imports of U.S. soybeans and corn (popcorn), without providing a strong scientific justification for the suspension.

Russia’s interference with the transit of U.S. poultry products was not a singular occurrence. Russia continues, at times, to interfere with the transit of other agriculture products through its territory (e.g., hatching eggs and agricultural products subject to its import ban). The United States has supported other WTO Members’ requests to Russia in various WTO committees for further information on, and a justification for, such transit bans.

Another practice that has raised WTO concerns is the difficulty of obtaining Russia’s acceptance of an exporting country’s guarantees concerning the process for approving establishments as eligible to export to Russia. Notwithstanding Russia’s commitments regarding inspections and establishment approvals described above, securing acceptance by Russia of U.S. guarantees concerning U.S. procedures for approving establishments has become very difficult. Since July 2014, Russia has refused, without any apparent reason, to approve an establishment until after an on-site inspection or a systems audit has been conducted by the EAEU member states’ veterinary services. In 2017, Russia’s Federal Veterinary and Phytosanitary Surveillance Service (VPSS) informed the United States and other WTO Members of a proposed measure that would prohibit

imports of certain agricultural goods from establishments that did not submit responses to detailed questionnaires. Importantly, the proposed measure does not appear to meet either of the only two criteria that Russia agreed in the WPR would lead to de-listing: a request by the relevant establishment, or a request by the competent authority of the exporting country. Rather, this process appears to be another effort by Russia to reject the SPS regime for certain agricultural products to which it agreed in its WTO accession. To the extent permitted, the United States has raised concerns about this proposed measure with the Russian government.

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

In order to meet its WTO commitments, Russia agreed to negotiate veterinary certificates with the United States that differ from EAEU certificates after receiving substantiated requests from the United States. However, Russia insisted on including attestations in the new proposed certificates that do not appear to be based on the relevant international standards and have offered no risk assessment in support of the alternative attestations, notwithstanding Russia's commitments to conform its attestations to such standards unless a more stringent measure is justified through risk assessment. Engagement on new certificates has been difficult, with inconsistent participation by the EAEU member states' experts and a lack of coordination among the EAEU member states. Moreover, there was limited incentive for the U.S. Government to engage because, but for Russia's import ban, U.S. exporters could have exported under existing bilateral certificates. USTR and the U.S. Department of Agriculture will continue, where possible and permitted, to request technical level meetings with Russian counterparts in an effort to negotiate new certificates.

As a WTO Member, Russia must notify any new or modified SPS measures that affect international trade. In turn, as a member of the EAEU, Russia is also responsible for notifying

changes to SPS measures adopted by the EEC. In 2017, however, Russia has failed to notify a variety of SPS measures, for example, those concerning sampling of food products, rules for registering genetically engineered organisms, and amendments to its veterinary surveillance rules. The United States will continue to intervene in the WTO SPS Committee to highlight Russia's failures to meet this critical transparency obligation. As explained above, the United States' bilateral work with Russia since 2014 on these issues has been limited due to Russia's actions in eastern Ukraine. Moreover, because Russia's ban on imports of many agricultural products from the United States has dramatically reduced U.S. exports, engagement in the WTO has been limited. Nevertheless, the United States government will continue to meet and consult with industry stakeholders to discuss their concerns and strategies to remove these trade barriers.

B. Domestic Supports and Export Subsidies

When Russia joined the WTO, it was still restructuring its agriculture sector to recover from decades of central planning and an imbalance in prices and revenue. To support development and employment in the rural territories, and to encourage agricultural production, Russia had in place numerous subsidy programs. Nevertheless, Russia committed to a reduction of its domestic agriculture support payments to \$4.4 billion by 2018, down from \$9 billion aggregate measure of support binding in 2013. Moreover, Russia accepted an obligation to ensure that the sum of all product-specific support does not exceed 30 percent of the non-product specific support. Finally, Russia agreed to eliminate all of its export subsidies. Russia has met both these obligations.

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

VIII. Internal Policies Affecting Trade

A. Non-Discrimination

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

The MFN rule for goods (Article I of the GATT 1994) prohibits a Member from discriminating against imported goods of one trading partner in favor of the imported goods of another trading partner. Accordingly, if a WTO Member grants one WTO Member's goods a benefit or advantage, it must immediately and unconditionally grant the same benefit or advantage to like goods imported from all WTO Members. This rule applies to customs duties and charges of any kind imposed in connection with importation and exportation, as well as to internal taxes and charges, and other internal measures. Article II of the GATS provides for a comparable MFN obligation for services.

The national treatment rule with respect to goods (Article III of the GATT 1994) complements the MFN rule. It prohibits discrimination against imported goods vis-à-vis the importing Member's own goods. Generally, a WTO Member may not subject imported goods from another WTO Member to internal taxes or charges in excess of those applied to like domestic goods. Similarly, with regard to measures affecting the internal sale, offering for sale, purchase, transportation, distribution or use of goods, a WTO Member may not treat imported goods less favorably than like domestic goods. The national treatment rule applies in a similar manner to services under Article XVII of the GATS. This provision requires a WTO Member, in sectors in which it has taken commitments in its schedule, to accord no less favorable treatment to services and service suppliers of other WTO Members than it accords to its own like services and service suppliers.

The WPR elaborates on Russia's commitment to apply both Articles I and III of the GATT 1994, as well as Articles II and XVII of the GATS. Throughout the 18 years of accession negotiations,

Russia reviewed its laws and regulations and made an effort to revise those that conflicted with its WTO MFN and national treatment obligations, *e.g.*, measures governing prices charged for railway transport, application of internal taxes, subsidies for new automobiles, and the right to import and export. In addition, Russia, in conjunction with its EAEU partners, reviewed the EAEU agreements, regulations, and decisions to ensure their conformity with the MFN and national treatment provisions of the WTO Agreement.

However, since Russia's WTO accession, national treatment concerns have been raised in connection with the imposition of a number of Russian measures and policies. Although Russia amended its "recycling" fee on motor vehicles in response to concerns about its discriminatory application (by removing the exemption for motor vehicles manufactured in the EAEU), Russia has now adopted a Waste Management Law that imposes a "disposal fee" on waste products (*e.g.*, plastic containers and paper packaging) as well as on agricultural and forestry machinery (known as a "utilization fee") to be paid by importers and domestic producers to cover the recycling, salvage, reclamation, and disposal of those products. U.S. stakeholders contend that although the utilization fee appears non-discriminatory because it must be paid by both importers and domestic producers, in fact, Russia has introduced subsidies that effectively reimburse domestic producers for having to pay the utilization fee. The United States will consult with U.S. stakeholders affected by this fee to evaluate its impact on U.S. exports. Moreover, USTR will scrutinize the implementation of the law and the introduction of any new fees and subsidies and take appropriate action in the WTO necessary to press Russia to comply with its WTO commitments and not discriminate against U.S. exports.

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

industry representatives. USTR's WTO delegate has met with Russia's WTO delegate to seek an explanation about this seemingly discriminatory practice, and will continue to press Russia to eliminate any discriminatory practices.

The United States also has concerns regarding national treatment with regard to taxation of distribution services on motion pictures. Russia applies an 18 percent VAT on payments for the "right to use" (*i.e.*, payments for distribution services) cinema products. However, the recipient of the payment can apply for a VAT rebate if the cinema product is "Russian." A "Russian" cinema product is defined as a movie in which the producer is Russian; a majority of authors are Russian residents; at least 30 percent of the cast and crew are Russian residents; the movie is in the Russian language; at least 50 percent of the movie is financed by Russian residents; or the movie is produced under special international agreements. In other words, the VAT collected on payments for the "right to use" a "Russian" movie (as defined in the Russian Tax Code) can be reimbursed whereas the VAT collected on payments for the "right to use" a U.S. or other non-Russian movie cannot be reimbursed. This discriminatory tax regime raises concerns about Russia's implementation of its national treatment commitments. USTR has reviewed information provided by U.S. stakeholders and studied the relevant Russian laws and regulations. With this information in hand, USTR's WTO delegate initiated a discussion with Russia's WTO delegate and will continue to press Russia for a satisfactory resolution of the seemingly discriminatory tax regime.

B. Industrial Policy, Including Subsidies

Upon its accession to the WTO, Russia assumed obligations under the *WTO Agreement on Subsidies and Countervailing Measures* (SCM Agreement), which addresses the use of subsidies and countervailing duty measures by WTO Members. In the WPR, Russia committed that it would eliminate, by the time of its accession, all subsidy programs prohibited under Article 3 of the SCM Agreement, *i.e.*, subsidies contingent on export performance (export subsidies) and subsidies contingent on the use of domestic over imported goods (import substitution subsidies).³³ In addition, Russia took a specific commitment to extend subsidies for

³³ WPR, ¶698.

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.³⁴

With regard to its transparency commitments, both during its accession negotiations and as a Member, Russia has provided subsidy notifications to the WTO Committee on Subsidies and Countervailing Measures (Subsidies Committee). The United States has pressed Russia to provide complete information about its subsidy programs, particularly those that appear to be prohibited export subsidies. The United States continues to assess Russia's compliance with its commitments under the SCM Agreement to ensure full transparency.

During Russia's WTO accession negotiations, Members raised concerns about specific subsidy programs related to automobiles, civil aircraft, and agricultural equipment. Since then, Russia has eliminated some support programs for its automotive and civil aircraft industries. USTR has gathered information from U.S. stakeholders and other sources concerning a program benefitting agricultural equipment, under which Russia disburses financial support to producers of agriculture equipment that may be contingent on a certain level of local production. In the coming year, the United States will continue to meet with interested U.S. exporters as well as other adversely affected foreign producers to discuss the implementation and operation of these programs. In addition, USTR will review carefully Russia's next subsidy notification. The United States will not hesitate to take appropriate action in the WTO if it determines that Russia has failed to meet its transparency obligations or is providing WTO-inconsistent subsidies to its manufacturers.

USTR has received information with respect to certain benefits provided to manufacturers in the "Titanium Valley" Special Economic Zone (SEZ) in the Sverdlovsk region. According to a U.S. stakeholder, the primary beneficiary of these programs is Verkhne Saldinskoye Metallurgical Production Association (VSMPO), currently the only titanium producer in Russia. VSMPO exports 70 percent of the titanium it produces. Russia has notified its SEZ programs, and the United States has sought additional information on these programs. Another possible subsidy to the Russian titanium industry (*i.e.*, VSMPO) may have occurred in the form of the allegedly below-market price paid by Nordcom (a joint venture created by VSMPO and

³⁴ WPR, ¶1200.

Gazprombank) in its purchase of VSMPO from the Russian government. USTR will seek further information about these subsidy programs and take any appropriate action in the WTO to redress any countervailable subsidies.

The Russian government has in place a growing number of initiatives aimed at supporting various domestic industries, particularly as imports decline in response to Russia's import substitution policies. Recent programs include subsidies that appear to compensate local manufacturers for paying the "utilization fee" (see above) and proposed subsidies to support clinical trials abroad to encourage the export of medicines. The United States will continue to examine Russia's subsidy notifications and work with U.S. stakeholders to study and assess the impact on U.S. exports of Russia's subsidy policies and programs, with particular attention to the aviation industry as well as the agriculture and agricultural equipment industry. If the United States concludes that Russia is administering any countervailable subsidies, it will take appropriate action in the WTO.

C. State-Owned, -Controlled, and -Trading Enterprises

In addition to the disciplines in the WTO Agreement on the activities of state-owned and state-controlled enterprises (SOEs), and state-trading enterprises (STEs), Russia agreed in the WPR to additional disciplines. In particular, Russia agreed that state-owned and state-controlled enterprises, when engaged in commercial activity, would make purchases that were not intended for governmental use and sales in international trade in a manner consistent with the WTO Agreement.³⁵ Such enterprises would make purchases and sales of goods and services in accordance with commercial considerations, such as price, quality, marketability, and availability, and afford enterprises of other WTO Members the opportunity to compete for participation in such purchases and sales. These commitments covered all goods, as well as services for which Russia has taken commitments in its services schedule, taking into account the limitations set out in its services schedule, the rights and obligations of Russia under the GATS, and the regulatory measures of Russia otherwise covered by the WTO Agreement.

³⁵ WPR, ¶199.

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.

Since Russia's WTO accession, U.S. government officials have studied Russia's growing control over its broad state-owned sector. It is evident that, over the past several years, Russia has imposed a growing number of import substitution requirements on SOEs. For example, the Russian government has assumed the authority to establish for SOEs procurement plans and tender rules for the procurement of specific goods, works, and services and established the Government Import Substitution Commission with responsibility for approving procurement of machinery and equipment for large investment projects by SOEs, state corporations, or certain private businesses, as well as foreign procurement of certain industrial products. Moving to support specific industries, the government has banned certain companies in which the government owns more than 50 percent of the shares from purchasing imported automobiles, metal products, and heavy machinery; ordered all federal agencies and funds to transition to domestically-produced software; formally recommended that regional and municipal authorities and SOEs switch to domestically-produced software; and restricted to domestic manufacturers the procurement of 11 types of equipment used by SOEs for projects co-funded or guaranteed by government funds unless a waiver was obtained from the Government Commission on Import Substitution. In 2016, the government of Russia established a 15 percent price preference for goods of Russian origin and to works and services performed and rendered by Russian entities.

In response to Russia's continued reliance on policies directing the purchase of Russian-made goods and services, especially with regard to SOEs, USTR has met with and discussed the impact and ramifications of these policies with a broad array of U.S. stakeholders, foreign government officials, and other experts. The United States, in conjunction with other interested WTO Members, has repeatedly raised questions in the WTO Committee on Trade Related Investment Measures (TRIMS Committee) about the consistency of these programs with Russia's WTO commitments and sought additional information. The United States will continue to scrutinize and analyse the adoption and operation of these measures to ensure that Russia implements its WTO commitments and does not discriminate against U.S. exports.

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

D. 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 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. In 2017, WTO Members raised concerns in the Committee on Agriculture about Russia's introduction of a discount on railway tariffs for exported grains from certain regions of Russia.

With regard to natural gas, Russia was allowed under its WTO commitments to continue its domestic price regulatory regime. Russia committed that producers and distributors of natural gas in Russia (including Gazprom, but also independent producers Rosneft and Novatek) would operate – within the relevant regulatory framework – consistent with normal commercial considerations to recover their costs and make a profit. However, Russia's progress in meeting this commitment appears to be modest and uneven. In 2007, Russia started a long-term process

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

E. Standards, Technical Regulations and Conformity Assessments

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

Russia's standards-related measures are implemented through EEC and EAEU measures and Russian domestic requirements. In the WPR, Russia committed to comply with all provisions of the TBT Agreement, including those relating to transparency and predictability.³⁶ In addition, Russia has taken specific commitments with regard to technical regulations affecting the telecommunications equipment and civil aviation sectors.³⁷

³⁶ See WPR, ¶¶ 712, 714, 715, 728, 738 and 739.

³⁷ WPR, ¶¶ 738 and 744.

As Russia has begun to move from national regulations to regional (EAEU) regulations, it has begun to notify those regional regulations. During the past year, Russia notified several regional technical regulations to the WTO's TBT Committee. Russia has not, however, notified its new registration requirements for alcohol products, despite repeated requests by the United States in the WTO TBT Committee that it do so. It has also failed to notify other legislative acts establishing technical standards and regulations governing the required installation in civil aircraft of navigational systems compatible with Russia's global navigation system (GLONASS).

USTR and other U.S. government officials have met with representatives of the U.S. spirits industry to discuss Russia's regulation of its alcoholic beverage sector. U.S. stakeholders have raised a number of concerns about consistency of Russia's regulatory regime with the substantive and procedural requirements of the TBT Agreement. Following some investigation and analysis by USTR and other U.S. Government officials of the legal measures governing Russia's regulation of this sector, U.S. officials raised concerns in the WTO TBT Committee about the EAEU's draft regulation on alcoholic product safety, in particular with regard to the conformity assessment requirements, traceability requirements, certain wine and beer definitions, aging requirements for whisky, and the requirement for an expiration date on certain alcoholic beverages (a requirement not in keeping with international standards). The EEC continues to work on a draft regulation governing alcoholic beverages, but without further input from interested parties. The United States has stressed the importance of Russia implementing its obligations consistent with the TBT Agreement, including its transparency obligations. In the coming year, the United States will study Russia's response to our concerns, watch for new measures, and seek resolution of any remaining or new issues.

In addition, USTR and other U.S. government officials have held many discussions with representatives of the U.S. toy industry concerning mandated pre-market evaluations required in draft amendments to the EAEU's regulation "On Safety of Toys." According to the U.S. toy industry, the draft regulation does not provide any details concerning how the pre-market evaluations would operate, the standards for approval, or how the experts making the evaluation would be selected. U.S. Government representatives met with officials of the government of Kazakhstan (the initiator of the measure) to solicit information, raise concerns and discuss the importance of international standards. In addition, U.S. Government officials worked with

Russia's WTO delegates to deliver similar messages concerning the importance of international standards and WTO obligations. The United States will continue to study and analyze the development of the EAEU's toy regulation, and work with Russia and other EAEU member states to ensure that the EAEU regulation is consistent with Russia's TBT commitments and does not block U.S. exports.

Similarly, Russia has introduced a compulsory requirement that producers of pharmaceutical products must be certified for compliance with good manufacturing practices (GMP); the regime went into effect in 2016 for new drugs and into effect in 2017 for renewals. USTR and other U.S. Government officials have held many conversations about this new regime with U.S. stakeholders. Although the introduction of GMP is not necessarily problematic, Russia did not notify this measure to give other WTO Members an opportunity to review. More importantly, U.S. stakeholders have explained that Russia's GMP regime accords differential treatment to foreign versus Russian manufacturers, and that Russia has not put in place the inspection infrastructure necessary to certify expeditiously manufacturing sites for compliance with GMP provisions in such a way as to avoid market and trade disruptions and to ensure that the measures do not, in practice, disproportionately adversely impact imports. U.S. officials have met bilaterally with Russian officials on the margins of the TBT Committee to discuss these concerns, and Russia has agreed that previously issued pharmaceutical certificates will be valid until 2025. The United States will continue to press Russia to respond to the needs and concerns of U.S. stakeholders to ensure that Russia's market remains open to U.S. exports of pharmaceutical products.

U.S. officials have also engaged with Russia concerning Russian and EEC technical regulations governing medical devices. U.S. officials have met and spoken with U.S. stakeholders about their concerns, and collaborated with other WTO Members to develop strategies to counter Russia's efforts to exclude U.S. exports for medical devices from its market. On many occasions, the United States has raised concerns in the WTO about unclear device classifications, lack of consistency with international best practices in market approvals, long processing times for market authorizations, and onerous labeling requirements. U.S. officials have also noted the inadequate comment period provided by the EEC. In response, the EEC extended the transition period through 2021 (after which the Russian registration system will be replaced by the EEC

system) and the Russian Ministry of Health extended the re-registration period for current devices until 2021 in Russia. U.S. officials will continue to work with the U.S. medical devices industry to ensure that Russia complies with its WTO obligations and does not discriminate against U.S. exports.

U.S. officials continue to urge the Russian delegation to notify new measures and amendments to the WTO TBT Committee, and to provide responses to inquiries posed by U.S. stakeholders, and to emphasize the importance of stakeholder input during the drafting process.

The United States will continue to review closely Russia's and the EEC's technical regulations and work to ensure their consistency with the requirements of the TBT Agreement. In addition, the United States will continue to remind Russia of its transparency obligations. If the United States determines that Russia is not meeting its WTO obligations, it will take the necessary and appropriate action to ensure that Russia does not use its technical regulations to create unnecessary obstacles to U.S. exports.

F. Government Procurement

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

In the WPR, Russia committed to request observer status in the GPA and to begin negotiations to join the GPA within four years of its WTO accession.³⁸ Russia became a GPA observer on May 29, 2013, and on June 2, 2017, circulated its initial GPA market access offer. Russia's initial offer falls short in a number of areas including entity coverage (central, sub-central and SOEs), goods and services coverage, and general notes.

According to research undertaken by USTR and other parts of the U.S. Government, since joining the WTO, Russia has introduced a number of measures that establish preferential

³⁸ WPR, ¶1143.

treatment for domestically or EAEU produced goods in public procurement such as a 15 percent price preference for goods of EAEU origin in purchases for government use. In some cases, Russia has banned government procurement of certain imported products if such products are available from manufacturers in the EAEU, including a wide range of machinery (particularly those used in construction and in raw materials extraction), vehicles, medical devices or pharmaceutical products, computer hardware and software, a broad array of light industrial goods, construction and building materials, and a variety of agricultural products. In addition, in meetings with U.S. stakeholders, they have reported that Russia's procurement rules mandate not only that Russian government entities must purchase Russian-made products, but that private contractors must use only Russian-made products. The United States is assessing whether the buy local policy applied to the purchases of private contractors is consistent with Russia's WTO obligations.

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

IX. Services

The *General Agreement on Trade in Services* (GATS) provides a legal framework for addressing barriers affecting trade in services. The GATS contains general obligations, such as MFN and transparency, which apply to all service sectors; in addition, under the GATS, Members undertake specific commitments to provide market access and national treatment in particular sectors. 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 of other WTO Members.

In its services schedule, Russia committed to substantial openness in a broad range of services sectors, including through the elimination of many existing limitations, 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.³⁹

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.

A. Financial Services

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

³⁹ See WPR, Part II – Schedule of Specific Commitments on Services.

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

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

B. Telecommunications

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

C. Computer and Related Services

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

Russia's "16-point Plan" for the information technology sector also raises additional national treatment and import substitution concerns. USTR has reviewed the relevant laws (and the few subsidiary measures and explanatory documents available) and consulted with a wide variety of U.S. stakeholders and trading partners impacted by this law. The United States continues to consult with U.S. stakeholders and foreign interlocutors on these issues, and to scrutinize closely Russia's information technology sector policies and the implementation of its commitments in this area to ensure that U.S. interests are not adversely impacted.

D. Distribution Services

Russia committed to liberalize its wholesale, retail, and franchise sectors by allowing foreign distributors to operate as 100 percent foreign-owned enterprises upon its accession to the WTO. Therefore, U.S. distributors are to be allowed to engage in the distribution of most products, including nutritional supplements, with minimal limitations and on terms comparable to those of domestic distributors. Russia's WTO commitments for distribution services also provide for direct sales by individual commission agents.

However, U.S. stakeholders have told USTR that rules that require that sales of specialized dietary products containing biologically active substances be sold only through pharmacies and specialized stores remain in effect. 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.

E. Audio-Visual and Media Services

Russia made strong commitments related to its dynamic film, television, and media sectors, including in motion picture distribution and projection services, the sale of programming to television and radio stations, printing and publishing, and news agency services. Russia also agreed to allow foreign audio-visual companies to operate as 100 percent foreign-owned enterprises. Since 2015, however, Russia has banned advertisements on pay cable and satellite channels. It is unclear whether the law applies to state-owned television channels, but because those channels are subsidized by the state, it is likely to have little, if any, practical impact on them. Further, in 2017, Russia adopted a law limiting foreign ownership of large online streaming companies (*i.e.*, over 100,000 daily views Russia-wide per month) to 20 percent; also in 2017, Russia began enforcing a law (adopted in 2014) that limits foreign ownership of Russian media assets to 20 percent. The United States will consult with U.S. stakeholders regarding the impact of these measures on U.S. interests and will ensure Russia acts consistently with its WTO obligations.

X. Intellectual Property Rights

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

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

In the WPR, Russia undertook additional commitments on IPR protection and enforcement, such as clarifying how undisclosed information and test data will be protected in Russia, withdrawing exceptions to copyright protection for works that existed prior to 1995,⁴⁰ 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.⁴¹

A. Legal Framework

Prior to its accession to the WTO, Russia amended its IPR laws to integrate WTO commitments into its legal regime and with the objective of implementing the 2006 United States-Russia bilateral IPR agreement. Russia improved its civil protections for IPR by amending Part IV of its Civil Code, which relates to protection of various forms of IPR, including patents, trademarks, and copyrights and related rights, updating its civil enforcement procedures and adopting the legal framework for Russia's implementation of the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty, referred to collectively as the WIPO Internet Treaties.⁴² 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 with law enforcement agencies about the proper scope and procedures for enforcement of copyright and related rights, including those protected by the TRIPS Agreement. Russia also amended its Civil Code to clarify that an existing Internet domain name would not serve as a ground for refusal to register a third party's trademark or service mark for that name.⁴³ Russia also standardized its patent fees to apply in the same manner to Russian and non-Russian entities.⁴⁴

⁴⁰ WPR, ¶1224.

⁴¹ WPR, ¶¶1208, 1294, 1295, and 1339.

⁴² WPR, ¶¶1208, 1224, 1303, 1312, 1338, 1339, 1350, and 1353.

⁴³ WPR, ¶1253.

⁴⁴ WPR, ¶1226.

In recent years, reflecting commitments in the WPR, Russia has made progress toward implementing controls on unlawful optical media production, notably through amendment of its Law on Activity Licensing, to ensure that copyright infringers cannot renew a license to engage in optical media production. However, the extension of such controls to other forms of unlawful media production (*e.g.*, audio disks) is still yet to be confirmed. Consistent with a commitment in the WPR, Russia revoked its reservation to Article 18 of the Berne Convention for the Protection of Literary and Artistic Works in 2013. As a result, Russia now provides copyright protections for works that existed prior to 1995 and originated from the United States or any other party to the Berne Convention or the WTO Agreement.

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

In the WPR, Russia also committed to ensure that the thresholds for the application of criminal procedures and penalties with regard to cases of willful trademark counterfeiting or copyright piracy on a commercial scale would be set and applied in a manner that reflected the realities of the commercial marketplace.⁴⁵ Accordingly, Russia amended its Criminal Code to establish fines and to reflect adjustments to the threshold for the application of criminal procedures and penalties for willful counterfeiting or commercial-scale piracy. For example, administrative fines for criminal trademark violations had been extremely low. In August 2013, Russia implemented a method of calculating such fines, replacing an arbitrarily low and fixed fine with a fine calculated based on the value of the counterfeits being produced or sold. This method should result in penalties that have a stronger deterrent effect. In addition, as called for in the

⁴⁵ See WPR, ¶1350.

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

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

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

B. Enforcement

Russia committed, upon becoming a WTO Member, to apply fully the WTO provisions for enforcement of IPR, without a transitional period.⁴⁶ In the WPR, Russia also committed to take

⁴⁶ WPR, ¶1353.

“expeditious action” against acts of infringement on the basis of complaints lodged by right holders and through other means with the objective of eliminating such acts in Russia.⁴⁷ Russia made specific commitments for authorized officials to conduct unannounced inspections of plants licensed to produce optical media bearing content protected by copyright or related rights. 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.

USTR and other U.S. officials meet on a regular basis with U.S. stakeholders to discuss Russia’s IPR enforcement record. Based on those discussions, and USTR’s ongoing observations, it is evident that, as a general matter, the current IPR enforcement environment in Russia remains weak.⁴⁸ End-user software piracy and sales of counterfeit goods are two particular concerns. Additionally, online piracy (including unlicensed streaming services, pay-per-download websites, videogame hacking sites, cyberlockers, BitTorrent sites, private servers bypassing official videogame servers, and others) has been, and remains, a significant problem in Russia. In the WPR, Russia committed to take enforcement measures against online piracy and to ensure that existing law is applied to prevent certain types of devices or services from circumventing technical protection measures protecting content, but notorious pirate websites continue to proliferate. Since its WTO accession, Russia has enacted legislation providing a framework to combat certain types of online piracy in cases where an action is initiated by right holders. Starting in October 2015, in response to right holders’ complaints, courts in Russia have issued permanent injunctions against 162 pirate websites, including the high-traffic Russian torrent website RuTracker.org, which has been listed in the USTR’s *Special 301 Out-of-Cycle Review of Notorious Markets (Notorious Markets List)*.⁴⁹ In 2016, the Moscow City Court issued more than 700 preliminary injunctions against various Russian infringers disseminating pirated films

⁴⁷ WPR, ¶1313.

⁴⁸ In 2017, Russia remained on USTR’s Special 301 Priority Watch List.

⁴⁹ Notwithstanding the permanent injunction against RuTracker.org imposed by the Moscow City Court, sophisticated Internet users still manage to access the website, undermining the effectiveness of the court’s decision. Moreover, the website has launched several mirror websites, including RuTracker2.org, RuTracker-pro.org, and RuTracker.net. In June 2017, Russia passed a law that permits action against mirror versions of any website that is already subject to a permanent injunction. This law came into force on October 1, 2017 and may significantly reduce response times to taking action against “mirror sites.”

online. It does not appear, however, that the government of Russia has prosecuted those who operate these sites and profit from this piracy. Nor has the government of Russia acted on those sites that, while located in Russia, target users outside of Russia.

Poor enforcement in Russia has also led to a sharp increase in the distribution and availability of pirated movies. Through unauthorized camcording, pirates obtain illicit copies of films and then upload them onto the Internet (and sell them in hard copy). According to U.S. stakeholders, Russia is home to some of the most prolific criminal enterprises for the release of pirated movies. The United States will continue to review and analyze Russia's enforcement of IPR, and whether those actions result in combatting the commercial scale online piracy of the type identified in the USTR's *Notorious Markets List*.

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

In fact, currently available information continues to indicate that overall enforcement of IPR has decreased, rather than increased, over the past few years. Criminal enforcement, in particular, has been lacking. An 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. Furthermore, U.S. stakeholders have informed us that when they attempt to enforce their IPR rights through civil litigation, administrative and procedural hurdles prevent them from doing so.

Russia's size and geographic location make enforcement of IPR at its borders an essential component of IPR protection. 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, based on the provisions of the TRIPS Agreement. Russia needs to work with the other EAEU member states to ensure that the regulatory principles adopted in the EAEU Treaty are executed in a manner that most effectively

protects IPR and are consistent with Russia's WTO commitments. The United States will continue to scrutinize Russia's progress in this regard.

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

The United States had been engaging on a bilateral basis on these issues through the United States-Russian Federation Intellectual Property Rights Working Group and other means. However, due to the current political situation, bilateral engagement with Russia has been put on hold since early 2014, including the bilateral IPR dialogue. Nevertheless, the United States continues to press Russia on its WTO commitments, including through the Special 301 Report. The United States will continue, in appropriate settings, to press Russia for full implementation of its WTO commitments.

XI. Investment

A. Trade-Related Investment Measures

The *Agreement on Trade-Related Investment Measures* (TRIMS Agreement) prohibits trade-related investment measures that are inconsistent with a Member's obligations under Article III (national treatment) and Article XI (general elimination of quantitative restrictions) of GATT 1994. The TRIMS Agreement thus requires elimination of measures such as those that require or

provide benefits for the use of domestically-produced goods (local content requirements), or measures that restrict a firm's imports to an amount related to its exports or related to the amount of foreign exchange a firm earns (trade balancing requirements).

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

In the WPR, Russia agreed that, except for measures subject to a specific transition period, all of its laws, regulations, or other measures concerning matters covered in the TRIMS provisions of the WPR, whether adopted by it or the competent bodies of the EAEU, would be consistent with its WTO commitments, and in particular with the TRIMS Agreement, as of the date of Russia's membership in the WTO. WTO Members agreed to provide Russia with a transition period to bring two programs that comprise Russia's automotive assembly investment incentive regime into WTO compliance. The first program, introduced in 2005, allows for the duty-free entry of auto parts used in the production of vehicles that contain a certain level of Russian content. In December 2010, Russia initiated a second automotive industry investment incentive program that increased the production volume significantly as well as the domestic content requirement to qualify for duty-free entry of auto parts. In the WPR, Russia committed to cap the requirement to purchase or use domestically produced parts and components at 25 percent of the ex-factory price of the automobiles. Russia also agreed to eliminate the elements of both of its investment incentive programs that are inconsistent with TRIMS by July 1, 2018, and to begin consultations

in July 2016 with the United States and other WTO Members on WTO-consistent measures it could take in this sector.⁵⁰

Since Russia became a WTO Member, in response to concerns raised by the United States and other Members in TRIMS Committee meetings, Russia eliminated the program under which the Ministry of Agriculture provided loans to farmers at an interest rate below the market rates for the purchase of farm machinery manufactured in Russia.⁵¹ The United States continues to watch for possible local content requirements in a preferential leasing program implemented by a government-owned agricultural equipment leasing company, RosAgroLeasing.

Other initiatives that USTR is reviewing for compliance with Russia's TRIMS obligations include a program to support automotive leases of only Russian-made automobiles; efforts by the Government Import Substitution Commission to limit the goods and services that may be sourced outside of Russia by government entities and SOEs; and a proposal to establish a minimum target for procurement by SOEs of "hi-tech and innovative products," including from small and medium businesses. To obtain information regarding these initiatives, in particular concerning their consistency with Russia's WTO commitments, USTR has met with relevant stakeholders and consulted with foreign interlocutors. In the WTO, the United States has repeatedly posed written questions about these programs in the TRIMS Committee. Although Russia provided some initial oral responses, they were vague and did not address the issues raised. Russia has not provided written replies. The United States will continue to press Russia for complete responses.

Furthermore, in light of Russia's focus on local content, the United States has sought, and will continue to seek, information in the TRIMS Committee and the Council on Trade in Goods on programs that support domestic production at the expense of imports to supplement information provided by U.S. stakeholders and USTR's independent research. The goal is to ensure Russia's compliance with its commitments under the WTO Agreement and the WPR. In addition, the United States will analyze Russia's implementation of its automotive industry investment programs for compliance with its WTO accession commitments and will work with Russia to

⁵⁰ WPR, ¶1090.

⁵¹ See WPR, ¶698.

bring its automotive industry investment incentive program into conformity with its WTO obligations by July 1, 2018. USTR has already solicited information on steps Russia has taken to eliminate the WTO-inconsistent aspects of the programs.

B. *Special Economic Zones*

Upon accession to the WTO, Russia undertook to apply the provisions of the WTO Agreement throughout its territory, including in its special economic zones (SEZs), which were established to encourage investment through the extension of certain incentives.⁵² Russia has transition periods to implement this commitment for the Kaliningrad and Magadan SEZs. To implement that commitment, Russia adopted a new law on SEZs which did not impose any export performance or local content requirements on operations in SEZs. In addition, all customs duties, VAT, and excise taxes due on goods imported into the SEZs were to be paid when those goods were released into the chain of commerce in Russia whether or not those goods were further processed. Moreover, Russia agreed to apply all EAEU agreements governing SEZs in a manner consistent with its WTO obligations and to work with its EAEU partners to amend any EAEU measures to ensure their consistency with Russia's WTO commitments. As noted above, the United States continues to seek additional information on Russia's "Titanium Valley" SEZ to ensure its consistency with Russia's WTO commitments.

XII. Rule of Law

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

⁵² WPR, ¶1124.

A. Eurasian Economic Union

As noted above, Russia has transferred authority for many aspects of its trade regime to the EAEU. The administrative bodies of the EAEU include the EAEU Court, which has competence, *inter alia*, over disputes of an economic nature arising from the implementation of decisions of the EAEU bodies and treaties. The Court of the EAEU does not have jurisdiction to opine directly on the member states' WTO obligations nor can the EAEU Court rule on a member state's compliance with such obligations. However, after the Treaty on the Multilateral Trading System was adopted in 2011, the EAEU Court received the legal authority to provide advisory opinions on whether an EAEU measure violates WTO rules. The right to bring a case to the EAEU Court is not limited to the EAEU member states or the bodies of the EAEU; individuals with a specific interest can also challenge EAEU acts in the EAEU Court. USTR continues to study and analyze the workings of the EAEU to understand better its rules and procedures and their compliance with Russia's WTO obligations.

B. Transparency

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

Russia agreed in the WPR to submit all of the required initial notifications by the date of its accession, with the exception of five notifications which were to be submitted within specified deadlines following its accession.⁵³ 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;⁵⁴ to provide WTO Members and interested parties with decisions in writing setting out reasons for the decision;⁵⁵ and to institute new rights of appeal of decisions.⁵⁶

⁵³ WPR, ¶1430.

⁵⁴ WPR, ¶1427.

⁵⁵ *See, e.g.*, WPR, ¶1418.

⁵⁶ *See, e.g.*, WPR, ¶¶189-202.

These obligations apply to measures that the EEC adopts and that are applied in Russia and to Russia's domestic laws, regulations, and other measures. Russia has also undertaken specific commitments regarding transparency on issues ranging from application of price controls to fees charged for engaging in importing or exporting goods.

To implement Russia's transparency commitments at the EAEU level, the EEC established procedures for publication and public comment on proposed EAEU legal acts, including a requirement that draft decisions shall be published no fewer than 45 calendar days before the EEC meeting at which the decision will be considered. The EEC provided additional details concerning SPS quarantine and veterinary-sanitary measures, including requiring that draft decisions and recommendations be published for no fewer than 60 calendar days prior to adoption of such measures. This mechanism appears to provide that these EAEU measures will not become effective prior to their publication.

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

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

As made clear throughout this report, the United States has serious concerns about the completeness of Russia's notifications made pursuant to the WTO Agreements. Notifications are intended to provide basic factual information regarding each Member's application or implementation of the relevant commitment. Currently, if Russia or any other Member fails to make the required notifications, there is no consequence for that failure. To encourage compliance, the United States believes that consideration should be given to tangible benefits for compliance and negative consequences for non-compliance. To that end, in October 2017, the United States circulated to WTO Members a Draft Ministerial Decision on "Procedures to Enhance Transparency and Strengthen Notification under WTO Agreements," which would allow for the imposition of administrative consequences where a Member does not fulfill notification commitments. The United States believes that such administrative steps will encourage compliance by Russia and other WTO Members. The United States will continue to analyze the comprehensiveness of Russia's notifications, as well as the availability of adequate opportunities to comment on those notifications.

C. Judicial Review

The right to prompt and effective judicial review of economic matters by an independent tribunal is a fundamental component of the WTO Agreement and, in fact, is explicitly required in many of the covered agreements comprising the WTO Agreement. Russian law appears to ensure the right of appeal on customs-related matters (both actions and inactions), tax issues, and the protection of IPR and technical regulations, including SPS issues. Moreover, Russia has specifically committed that it will provide the right for independent review consistent with its WTO commitments.⁵⁷

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

⁵⁷ See WPR, ¶ 215.

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

XIII. Conclusion

In 2017, notwithstanding a few tariff reductions, Russia increasingly appeared to turn away from the principles of the WTO, instead turning inward through the adoption of local content policies and practices. Russia continued to rely on arbitrary behind-the-border-measures and other discriminatory practices to exclude U.S. exports. In response, the United States has repeatedly used the tools of the WTO to voice concerns with these practices and to remind Russia of its WTO commitments.

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

Appendix 1

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

1. ACT | The App Association
2. Coalition of Service Industries
3. Information Technology Industry Council
4. International Intellectual Property Alliance
5. National Milk Producers Federation and the U.S. Dairy Export Council
6. Pharmaceutical Research and Manufacturers of America
7. Precision Castparts Corp.
8. Steel Manufacturers Association and the American Iron and Steel Institute
9. 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.
September 30, 2016

1. Randi Levinas, Executive Vice President & Chief Operating Officer, US-Russia Business Council
2. Eric J. Schwartz, Counsel, International Intellectual Property Alliance