

# 2019 Report on the Implementation and Enforcement of Russia's WTO Commitments



United States Trade Representative  
February 2020



# Implementation and Enforcement of Russia's WTO Commitments

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## **I. Introduction**

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

This Report on the Implementation and Enforcement of Russia's WTO Commitments (the Russia WTO Report) for 2019 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 improve its implementation of its commitments or increase its progress toward acceding, as the case may be.

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

The 2019 Russia WTO Report is also prepared pursuant to section 201(b) of the Act that requires that the U.S. Trade Representative submit annually a report to the Committee on Finance of the U.S. Senate and the Committee on Ways and Means of the U.S. House of Representatives describing the enforcement actions taken by USTR to ensure Russia's full compliance with its obligations as a Member of the WTO.<sup>2</sup> The 2019 Russia WTO Report thus provides an assessment of the extent to which Russia is implementing its WTO commitments, an enumeration of the steps USTR has taken to enforce those commitments, and a description of the actions USTR plans to take in the coming year to press Russia to comply with its WTO obligations.

In the development of this Report, USTR has drawn on the expertise of numerous individuals who have studied and worked with Russia over the years. USTR solicited comments from interested parties, both throughout the year and in the preparation of this Report,<sup>3</sup> and collected information from other U.S. Government agencies, 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 8, 2019, USTR hosted a hearing in Washington, DC, before the Trade Policy Staff Committee at which two parties testified.<sup>4</sup>

## **II. Executive Summary**

U.S. trade in goods with Russia has fluctuated since Russia joined the WTO in 2012. Imports fell steadily from 2012 (when Russia joined the WTO) until 2016, rose from 2016 to 2018, but only to a level far below 2012 import levels. Imports of goods for the first nine months of 2019 have been at virtually the same level as imports in the first nine months of 2018. U.S. exports to Russia have been more varied: rising from 2012 to 2013, falling from 2013 to 2016, rising for a

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<sup>2</sup> In addition, the U.S. Trade Representative and the Secretary of State are required to submit annually to the same committees a report that describes the actions the agencies have taken to promote the rule of law in Russia and that discloses the status of any pending petition for espousal filed with the Secretary of State by a U.S. investor in Russia. That report will be submitted separately.

<sup>3</sup> See Appendix 1 for list of parties who filed public comments.

<sup>4</sup> See Appendix 2 for a list of witnesses that testified at the hearing.

single year, but then falling from 2017 to 2018. Exports continued to fall in the first nine months of 2019 compared to the same period in 2018.

In 2018, U.S. goods exports to Russia totaled \$6.7 billion, down 4.9 percent (\$344 million) from 2017 and down 28.7 percent from ten years ago. Top export categories included aircraft (\$1.9 billion), machinery (\$1.3 billion), vehicles (\$867 million), optical and medical instruments (\$534 million), and electrical machinery (\$384 million). In 2018, U.S. goods imports from Russia totaled \$20.9 billion, up 22.4 percent (\$3.8 billion) from 2017, but down 22.1 percent from ten years ago. Top import categories included mineral fuels (\$10 billion), iron and steel (\$2.8 billion), precious metal and stone (platinum) (\$1.6 billion), aluminum (\$964 million), and fertilizers (\$923 million). U.S. exports of services to Russia were an estimated \$4.9 billion in 2018, down slightly from 2017, but up 14.8 percent over the last decade. Leading services exports from the United States to Russia were in the financial services, travel, and intellectual property (industrial processes) sectors.

Seven years after its WTO accession, Russia has implemented nearly all of its final tariff bindings. In 2019, Russia implemented new final bound rates for 53 non-agricultural lines, leaving only 24 tariff lines to be reduced in 2020. Also in 2019, Russia confirmed that it had updated the legislation on customs valuation and implemented a ceiling on trade-distorting domestic support payments. Consistent with WTO transparency rules, Russia notified some measures to the relevant WTO committees. Aside from these few positive steps, however, Russia appears to have done little to foster an open market based on WTO disciplines.

As noted in last year's Report, Russia has imposed tariffs ranging from 25 percent to 40 percent on various industrial products imported from the United States in retaliation against the President's decision to adjust U.S. imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. The United States has challenged the WTO consistency of the retaliatory tariffs and will monitor the Eurasian Economic Commission's anti-dumping investigations to prevent the imposition of WTO-inconsistent tariffs.

Russia has also controlled exports, through tariffs or quantitative restrictions. In 2019, Russia restricted temporarily the export of ferrous scrap and waste as well as raw hides. The United

States will continue to analyze Russia's export regulatory regime to ensure its consistency with WTO disciplines and will pursue WTO options as appropriate.

The bulk of Russia's trade restrictive actions, however, are non-tariff barriers on imports. Russia maintains a cumbersome and opaque import licensing regime on products with cryptographic capabilities. It has begun to introduce a "track and trace" regime that will require an encrypted label on every product and raises the specter of a new tool to interrupt customs clearance. The United States will work with Russia, as permitted, to ensure the WTO consistency of this new regime and limit the adverse impact of the regime on U.S. exports.

Russia continues to protect its agricultural sector through a variety of measures. In addition to the import ban on nearly all agricultural goods from the United States and some other WTO Members, Russia maintains other unjustified non-tariff barriers to U.S. agricultural exports. Although Russia removed its transit ban on poultry bound for Kazakhstan, it introduced onerous reporting conditions. Russia also continues to reject exporting countries' guarantees on export establishments, maintain veterinary controls on low risk products, and refuse to engage constructively on new veterinary certificates. The United States continues to raise concerns about Russia's sanitary and phytosanitary requirements that are not consistent with international standards or based on scientific justification.

The United States has also raised questions about Russia's technical regulations, in particular those applicable to alcoholic products, medical devices, and the adoption of certain good regulatory practices. In the coming year, the United States will work to ensure Russia meets its transparency obligations and its commitment to rely on international standards.

One of the WTO's fundamental goals is the creation of a level playing field for all goods, most importantly through the GATT 1947 Article II national treatment obligation. The United States has questioned whether a number of Russia's policies and practices are consistent with its national treatment obligations, specifically how Russia implements its recycling fee, copyright levy system, value-added tax on movie distribution, and excise taxes on wine. Further tilting the playing field, Russia provides subsidies to many of its producers, and the United States has continued to press for information on those programs and to highlight any inconsistencies 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, working with other WTO Members, continues to question the expansion and WTO consistency of Russia's array of import substitution policies. Initially applied only to government procurement, Russia has expanded its general localization/domestic content policies well beyond government procurement to apply to its state-owned enterprises, and often by implication to the private sector. The continuation, and indeed expansion, of such policies suggest a rejection of the WTO's market-opening principles of the Government Procurement Agreement and the WTO as a whole. 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 just goods but are beginning to impact exports of U.S. services to Russia as well. 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 across the range of service sectors.

On the critical issue of protection and enforcement of intellectual property (IP) rights, the United States has questioned Russia's implementation of its commitments on data exclusivity and patent protection and has raised concerns with Russia's collective management regime. In addition, the United States is concerned about Russia's reliance on new provisions of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* to justify the issuance of compulsory licenses. Overall, Russia's IP enforcement efforts remain weak. The United States will continue its efforts to ensure that Russia meets its WTO obligations to protect and enforce IP rights.

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.

Overall, Russia's accelerating withdrawal from the market-opening rules of the WTO erects unwarranted 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 actions in the WTO and other international forums. If the United States finds that Russia's actions are not consistent with its WTO commitments, the United States will investigate and use all appropriate means to resolve the matter and keep Russia's markets open to U.S. exports.

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

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

In early 2012, the Eurasian Economic Commission (EEC) replaced the CU Commission as the supranational administrative and policy body charged with implementing external trade policy and regulation for the CU member states. The next significant event in the move toward greater economic integration was the entry into force on January 1, 2015, of the Eurasian Economic Union Treaty (the Treaty) creating the EAEU, the successor to the CU.<sup>5</sup> The following day, January 2, 2015, Armenia joined the EAEU, and on August 12, 2015, Kyrgyzstan became the fifth country to join the EAEU. Moldova became an EAEU observer in 2017.

The EAEU is larger than the CU in terms of both geographic and substantive scope. The Treaty expanded the competence of the EEC into a number of new policy areas, including financial services, government procurement, intellectual property rights, industrial subsidies, and agricultural support measures. Beyond these areas, the Treaty commits the member states to harmonize national policies over time in the areas of financial regulation, monetary policy,

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

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<sup>6</sup> as well as all commitments set forth in the Protocol of Accession and working party report of each EAEU member state; that the rights and obligations of an EAEU member state under the WTO Agreement override prior and future EAEU agreements and decisions of EAEU bodies; and that any treaty signed by the EAEU be consistent with the WTO commitments of each EAEU member state. When Russia joined the EAEU, it nominally transferred authority over many aspects of its foreign trade regime to the EAEU, including import tariff rates, trade in transit rules, non-tariff import measures (*e.g.*, tariff-rate quotas, import licensing, and trade remedy procedures), customs policies (*e.g.*, customs valuation, customs fees, and country of origin determinations), border enforcement of intellectual property rights, establishment and administration of special economic and industrial zones, and the development of technical regulations and SPS measures. As a result, many of Russia’s WTO commitments are implemented through EAEU measures. In such cases, Russia’s WPR specifically provides that Russia’s WTO commitments apply whether the Russian government or the competent bodies of the EAEU are responsible for implementation of the relevant commitment.

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

On August 22, 2012, following 19 years of negotiations with the United States and other WTO Members, Russia became a Member of the WTO. At that time, however, the United States and Russia each invoked non-application of the WTO Agreement with respect to the other. On December 21, 2012, following the termination of the application of the Jackson-Vanik Amendment to Russia and the extension of PNTR to the products of Russia, the United States

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

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.<sup>7</sup>

In industrial sectors, Russia agreed to bind its tariffs on wide body aircraft at 7.5 percent; Russia's previously applied tariffs on these products were as high as 20 percent. Russia also committed to an average final bound tariff for plastics of 6.2 percent; Russia previously applied an average tariff of 10 percent. Russia agreed to an average final bound tariff rate of 6 percent on steel products; previously, Russia applied an average tariff rate of 8.9 percent. In the chemical sector, Russia's final bound tariff rates 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.

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

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

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 2019, Russia reduced a further 53 non-agricultural tariff lines to their final bound rates (Russia was not scheduled to reduce any agricultural tariff lines in 2019). These reductions include tariffs on certain automobiles (from 17 percent to 15 percent) as well as on a variety of automotive parts; in addition, the bound rate for specific aircraft lines dropped from 13.6 percent to 12.5 percent (however, the applied rate for some aircraft lines is actually zero). Overall, Russia has implemented final bound rates for nearly all of its tariff lines, with only 24 tariff lines (on pork products) remaining to be lowered in 2020. In addition, on January 1, 2020, Russia is scheduled to eliminate its TRQs on certain pork products and apply a MFN tariff rate of 25 percent. Russia cannot legally apply EAEU CET tariffs above these tariff bindings.<sup>8</sup>

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.<sup>9</sup> Notwithstanding the greater market access created by Russia's WTO access, U.S. exports to Russia started to decline in 2014, due to a variety of political and economic factors. Since 2016, U.S. exports have fluctuated, with a downward trend in 2019.

Although Russia has implemented its scheduled bindings, some concerns remain. For example, Russia has not informed WTO Members whether, for those goods subject to a combined tariff, the *ad valorem* equivalent of the specific duty is within the WTO *ad valorem* bound duty rate. In addition, U.S. stakeholders inform USTR that Russia plans to increase tariff rates on certain telecommunications equipment in order to protect its domestic industry.

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

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

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

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

### ***B. Customs Fees***

Upon becoming a WTO Member, Russia agreed to comply with Article VIII of the GATT 1994, which requires that fees and charges imposed on or in connection with importation (other than tariffs) be limited to the approximate cost of the service provided. Russia amended its system of customs clearance fees to reduce those fees and establish fixed minimum and maximum fees for customs clearance of goods using electronic format or other simplified procedures for filing customs declarations. Russia’s implementation of these commitments is currently reflected in Article 47 of the EAEU Customs Code, which limits the amount of customs fees to the approximate cost of the service rendered. U.S. officials are not currently aware of any areas of concern with respect to Russia’s implementation of these commitments since becoming a WTO Member.

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

The WTO *Agreement on Implementation of Article VII of the GATT 1994* (“Customs Valuation Agreement” or CVA) is designed to ensure that determinations of the customs value for the application of duty rates to imported goods are conducted in a neutral and uniform manner, precluding the use of arbitrary or fictitious customs values. Adherence to the CVA is an important issue for U.S. exporters, particularly to ensure that market access opportunities provided through tariff reductions are not negated by unwarranted and unreasonable increases in the customs value of goods to which tariffs are applied. Russia agreed to implement its obligations under the CVA, including the interpretative notes, upon accession to the WTO,

without any transition period.<sup>10</sup> In addition, Russia took a specific commitment in the WPR, *inter alia*, not to use reference prices or fixed valuation schedules as a means for determining customs value and to provide for the right to appeal decisions that were based on a minimum value, fixed valuation schedule, or reference price.<sup>11</sup>

Russia and its EAEU partners have integrated the CVA's basic provisions into the EAEU legal framework. Specifically, the hierarchy of the six methods of customs valuation in the CVA, as well as most, but not all, of the provisions of the interpretative notes, are reflected in Russia's domestic law and implemented by reference in the EAEU Customs Code. However, U.S. stakeholders report that Russia continues to lack clear regulations governing 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, and continues to urge Russia to provide copies of legislation related to customs valuation, and seeks clarification as to where in Russia's, or the EAEU's, legislation certain commitments of the CVA can be found. The United States will continue to meet with and solicit information from U.S. stakeholders concerning Russia's valuation practices and will work with the FCS to ensure full implementation of Russia's commitments on customs valuation.

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

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

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<sup>10</sup> WPR, ¶514.

<sup>11</sup> WPR, ¶527.

In 2019, Russia submitted notification under Article 22 of the CVA that it had updated the legislation that applies to evaluating the value of imported goods for the assessment of customs duties. The new legislation was adopted by the EAEU on October 16, 2018, and came into force in Russia on July 1, 2019. The United States has engaged Russia in a discussion on various provisions of its legislation through the WTO Committee on Customs Valuation.

Also in 2019, Russia began to implement pilot programs in selected industry sectors for its “track and trace” program that will monitor/track goods through Russia’s entire distribution chain (from production/import to the final retail customer). The United States is concerned that implementation of this program will create additional burdens at the border, contrary to the goals of the TFA. The United States will continue to raise concerns with Russia and work to ensure that the regime does not create a barrier to U.S. exports.

### ***E. Trading Rights***

The right to import and export (*e.g.*, to declare goods at the border for import and meet relevant requirements, such as payment of any customs duties, SPS measures, technical standards, and intellectual property rights protection) without having to invest in the importing country or employ a customs broker to facilitate market access is critically important, especially for small and medium-sized enterprises that may not be able to afford to establish an office in each market or that, for commercial reasons, need to be the importer of record for the goods. In 1991, Russia eliminated its state monopoly on foreign trade.<sup>12</sup> However, prior to its WTO accession, Russia had not only limited the right to import and export goods to Russian enterprises, but it also required an “activity license” to engage in the business of importing or exporting (in addition to requiring import licenses on select products). As part of its WTO accession commitments, Russia eliminated the requirement for an activity license to import and export goods. Following Russia’s accession, the only requirement to engage in the business of importing and exporting is registration with the appropriate authorities in Russia, and Russia has committed to employing an expeditious and transparent registration policy.<sup>13</sup>

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<sup>12</sup> WPR, ¶216.

<sup>13</sup> WPR, ¶227.

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

As described above, Russia has begun to introduce its track and trace regime, starting with pilot programs in certain industry sectors. In addition to the concern that the regime could introduce new barriers at Customs, the United States is concerned that the process appears to provide better access to the track and trace labels to companies that have a Russian legal presence (such as domestic producers and some importers with a local presence) than companies that do not (such as small and medium-sized U.S. exporters). The United States will continue to investigate whether this seemingly disparate treatment is consistent with Russia's commitments under the WTO.

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

Article I of the GATT 1994 requires that WTO Members accord MFN treatment to imports from all other WTO Members. In addition, Article XI of the GATT 1994 generally prohibits the 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. Russia has since amended the list of products covered by the ban and expanded the list of countries for which products were banned, adding Ukraine, Albania, Montenegro, Iceland, and Liechtenstein.<sup>14</sup> In June 2019, Russia extended the ban for another

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

year, until December 31, 2020; no changes were made to the list of covered products. Russia claims the current ban is justified on the basis of national security concerns.

### ***G. Import Licensing***

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

To implement the rules of the Import Licensing Agreement, Russia amended aspects of its import licensing regime to liberalize and simplify the process of importing certain products subject to import control.<sup>15</sup> For example, Russia agreed to eliminate the non-automatic import license requirement for sugar. In addition, when Russia became a WTO Member, it eliminated its non-automatic import licensing requirements for spirits and alcohol products and replaced them with an automatic licensing requirement.<sup>16</sup> Industry stakeholders inform USTR that Russia has, in fact, continued to simplify its licensing regimes in many, but not all, areas.

Russia also agreed to liberalize its import licensing regime for products with cryptographic capabilities (encryption products). 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 (or “Buckets”) 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

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<sup>15</sup> See WPR, ¶¶456-457.

<sup>16</sup> WPR, ¶460.

products that require an “import permission” and an import license. In addition, Russia agreed that, although an activity license to distribute encryption products would be required to obtain an import license for encryption products, encryption products covered by the first two categories would be exempt from the requirement to obtain an activity license to distribute encryption products. 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.<sup>17</sup> Finally, Russia agreed to review its import licensing regime in consultation with interested WTO Members and confirmed that it would add to Bucket 1 (*i.e.*, allow into Russia without a license or notification) those products de-controlled in the future under Category 5, Part 2 “Information Security” of the Wassenaar Arrangement.<sup>18</sup>

On December 31, 2009, Russia implemented an import licensing regime for encryption products, reducing the procedural hurdles for importing encryption products into Russia.<sup>19</sup> However, after further review and following discussions with U.S. stakeholders, the United States has identified certain aspects of the regime that raise concerns with regard to Russia’s implementation of its commitments in this area. For example, the list of products subject to notification does not appear to reflect the definition of products that Russia agreed in the WPR would be subject to notification. In addition, U.S. electronics exporters report that Russia is not implementing properly the “mass market” category for products subject to notification. Furthermore, according to industry, Russia does not allow any encryption products to enter Russia “with no customs formalities related to encryption” (*i.e.*, no recognition of Bucket 1). Moreover, Russia has not decontrolled (included in Bucket 1) any products that have been released from control under the Wassenaar Arrangement. 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

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<sup>17</sup> See WPR, ¶¶471-486.

<sup>18</sup> WPR ¶¶478 and 483.

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

United States proposed to the government of Russia that we begin discussions on reviewing the import licensing regime for encryption products, but was initially rebuffed. We will continue to press the government of Russia for these discussions, consistent with Russia's WTO commitments.

#### **H. Trade Remedies**

Binding tariffs and applying them equally to all trading partners are key WTO requirements that contribute to the efficient flow of trade in goods. The WTO Agreement, however, permits Members to refrain from applying these requirements in certain limited circumstances. Trade remedy measures comprise three such circumstances: (1) actions taken to remedy the effect of imports of goods that are sold below normal value and are causing or threatening to cause material injury ("anti-dumping duties"); (2) actions taken to offset countervailable subsidies on imports that are causing or threatening to cause material injury ("countervailing duties"); and (3) measures that address an increase in imports that is causing or threatening to cause serious injury to a domestic industry ("safeguard measures"). Russia committed that, as of the date it became a Member of the WTO, any trade remedy measure in place or any trade remedy measure investigation launched before the date of accession would be consistent with the relevant WTO agreements on trade remedies, namely the *Agreement on Implementation of Article VI of the GATT 1994*, the *Agreement on Subsidies and Countervailing Measures*, and the *Agreement on Safeguards*.<sup>20</sup>

As a member of the EAEU, Russia has transferred responsibility for administering its trade remedy laws to the EEC. Importantly, however, Russia made a commitment that any trade remedy investigation or measure would be consistent with its WTO commitments regardless of whether the investigation had been commenced by, or the measure had been put in place by, Russia's investigating authority or the EAEU investigating authority.<sup>21</sup> To implement these commitments, prior to becoming a WTO Member, Russia revised its trade remedy law (covering anti-dumping and countervailing duties and safeguard measures). The new law reflected the procedural requirements of the WTO agreements, including the authorities' need to disclose

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<sup>20</sup> WPR, ¶620.

<sup>21</sup> WPR, ¶620.

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 March 2019, the EEC commenced a safeguard investigation on microwave ovens. That investigation was terminated one month later due to the withdrawal of the petition from the domestic industry producer who filed it. The EEC also commenced a safeguard investigation on welded tubes of stainless steel. That investigation is ongoing and the United States will continue to monitor to ensure Russia's compliance with WTO obligations. Finally, the EEC determined to impose a TRQ measure on imports of certain flat-rolled steel products. The measure consists of quota amounts allocated to each EAEU member state, with an out-of-quota duty rate of 20 percent. The measure will be in effect for one year, starting on December 1, 2019.

## **VI. Export Regulation**

When it acceded to the WTO, Russia agreed to reduce or eliminate export duties on a large number of products, including ferrous scrap and copper cathode, and bound the tariff levels of the remaining products on which it applied export tariffs. Russia also committed to adhere to Article XI of the GATT 1994, which generally prohibits WTO Members from maintaining export restrictions (other than duties, taxes, or other charges) except those that can be justified under applicable WTO provisions.<sup>22</sup> Consistent with that commitment and the relevant EAEU agreements, Russia eliminated an export ban on grain imposed in 2010. Russia also confirmed

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<sup>22</sup> WPR, ¶646.

that any export restraints imposed to ensure essential materials to domestic producers would not operate to increase the exports or the protection of that processing industry.<sup>23</sup>

Russia has amended its national regulations to replace the export licensing regime for precious stones, diamonds, and metals with an automatic licensing regime in order to reduce the number of goods subject to export licensing and to remove export bans and other quantitative restrictions on the export of certain types of goods. In addition, Russia has eliminated restrictions on the export of raw materials for pharmaceuticals and reduced the number of pharmaceuticals subject to export licensing.<sup>24</sup> Also, consistent with the commitments on ferrous scrap and copper cathode contained in the WPR, Russia has reduced its export duties on those products as provided in its tariff schedule.<sup>25</sup> Russia continues to maintain an export duty on wheat, but extended the temporary zero export duty rate until July 1, 2021 to encourage exports.

During Russia's WTO accession negotiations, the United States raised concerns about the conformity of Russia's and the EAEU's export licensing provisions with WTO disciplines, and Russia recognized that work needed to be done in this area.<sup>26</sup> For example, Russia maintains, and regularly updates, a list of products "of utmost importance for the domestic market" the export of which could be subjected to export restrictions or prohibitions. Although not all listed products are subject to export controls, Russia has, for example, banned the export of raw hides intermittently since 2014 in order to protect its leather processing industry. In 2017, Russia expanded the list of products, including ferrous steel and non-ferrous scrap, which could be subject to export restrictions, and in 2019 introduced temporary (through the end of 2019) quantitative restrictions on exports of ferrous scrap and waste to countries outside the EAEU. In 2019, however, Russia allowed the bans on exports of birch logs and raw hides to lapse. 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.

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<sup>23</sup> WPR, ¶668.

<sup>24</sup> WPR, ¶¶648-655.

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

<sup>26</sup> *See* WPR, ¶¶665 and 666.

## VII. Agriculture

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

### A. *Sanitary and Phytosanitary Measures*

The SPS Agreement establishes disciplines regarding the formulation, adoption, and application of SPS measures, *i.e.*, measures taken to protect against risks associated with plant- or animal-borne pests and diseases, additives, contaminants, toxins, and disease-causing organisms in foods, beverages, or feedstuffs. The SPS Agreement requires, *inter alia*, that SPS measures 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 further requires that SPS measures be based on scientific principles and evidence and on relevant international standards or appropriate assessments of risk. At the same time, the SPS Agreement preserves each Member's right to choose the level of protection it considers appropriate with regard to sanitary and phytosanitary risks.

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 explicitly 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.<sup>27</sup> Russia also confirmed that all SPS

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<sup>27</sup> WPR, ¶1009.

measures, whether adopted by Russia or by the competent bodies of the CU (now EAEU), would comply with the non-discrimination provisions of the SPS Agreement.<sup>28</sup> SPS measures would not, Russia agreed, be used in such a way as to constitute a disguised restriction on international trade.

Russia, in addition, undertook the following specific obligations in the WPR: to negotiate and sign veterinary certificates that comply with World Organization for Animal Health (OIE) requirements for Bovine Spongiform Encephalopathy attestations; to base its requirements for goods subject to veterinary control on international standards; to ensure that its measures do not discriminate between imports from WTO Members or between Russia's products and imports; to accept international standards regarding certain antibiotic residues or justify more stringent requirements with a risk assessment that conforms to international standards; and to ensure that any actions that are taken by Russian or EAEU authorities in response to non-compliance by importers with Russian or EAEU requirements are proportional to the non-compliance.<sup>29</sup>

At the time of its accession, Russia confirmed the criteria for "de-listing" or "temporarily suspending" an establishment (an action which has the effect of prohibiting imports from that establishment), and committed to notify the exporting Member and give the exporting Member time to propose corrective measures. With regard to emergency measures, Russia confirmed that its decisions and procedures for de-listing or temporarily suspending an approved establishment would be in accordance with the SPS Agreement. Russia further confirmed that, by the time of accession, specific inspection guidelines would be developed that reflected the principles of equivalence and that were based on international standards, guidelines, and recommendations. Russia also agreed to remove certain veterinary control measures, such as the requirement that establishments (*e.g.*, processing plants or storage facilities) be approved in order to export selected products to Russia, and confirmed that veterinary control measures applied to animal products would be modified only in accordance with the SPS Agreement.<sup>30</sup>

To ensure compliance with WTO rules on transparency, Russia confirmed that all Russian normative legal acts relating to SPS measures would be published in Russia's two official

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<sup>28</sup> WPR, ¶1033.

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

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

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.<sup>31</sup>

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

In order to assure WTO Members that Russia would implement its commitments regarding harmonization with international standards, recommendations, and guidelines, Russia and the EAEU amended existing legislation and adopted new measures. The EAEU adopted decisions 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 international standards. Through this process, interested persons can request that specific SPS measures that are inconsistent with international standards be brought into conformity with the relevant international standard.

By 2011, the EAEU had established common veterinary requirements and 40 common forms of veterinary certificates for imports into the EAEU from any third country. During Russia's accession negotiations, the United States and other Members expressed concern that many of the common veterinary requirements appeared to be more stringent than the relevant international standards and did not allow the conditions in an exporting country to be taken into account. To allow exporting countries the opportunity to address these concerns with regard to some of the

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<sup>31</sup> WPR, ¶¶1051 and 1055.

requirements in the pre-existing common veterinary certificates, the EEC extended the validity of bilateral veterinary certificates and provided Russian officials with the authority to negotiate certificates with exporting countries with terms that differ from EAEU common requirements. In addition, the EEC confirmed the EAEU member States' right to amend the EAEU certificates and requirements to reflect international standards established by the OIE and Codex Alimentarius (Codex), allowing the United States to negotiate certificates with the EAEU member states that may differ from the EAEU common form, and which better reflect the conditions of trade between the United States and Russia.<sup>32</sup>

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 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 an exporting country's guarantees. In addition, the EEC adopted inspection guidelines for meat processing and storage establishments, fish and fish products, and dairy and dairy products in accordance with the relevant international standards and confirmed that it would not suspend imports from establishments based on the results of on-site inspections before it had given the exporting country the opportunity to propose 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.<sup>33</sup>

Although Russia has put in place a legal framework to allow it to comply with its WTO commitments, its implementation of these commitments remains problematic. For example, Russia does not appear to have implemented fully its commitments to base measures on international standards, or, where it applies a more stringent standard, to provide a science-based, objective risk assessment. Moreover, in those cases where Russia has provided the United States

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<sup>32</sup> WPR, ¶¶893 and 890.

<sup>33</sup> See, WPR, ¶¶1022-1031.

with a risk assessment purporting to justify its SPS measures, there are concerns that those assessments do not appear to have been conducted taking into account risk assessment techniques of relevant international organizations. For example, Russia has adopted a zero tolerance for both ractopamine and trenbolone acetate, standards more stringent than Codex's maximum residue levels (MRLs) for pork and beef, but does not appear to have provided risk assessments that conform to Codex guidelines. In addition, Russia has a near zero tolerance for tetracycline residues, a standard more stringent than Codex's MRL, but again appears to have failed to provide WTO Members with a risk assessment that conforms to international guidelines. Russia also maintains non-science based microbial standards, such as a zero tolerance for salmonella, and requires that imports be tested in Russia (rather than in the United States prior to export). Russia's testing standards, however, are not clearly defined. The United States raised these concerns directly with Russia prior to 2014 but have not received a constructive response. Despite requests to Russia from the United States for adequate risk assessments based on Codex guidelines, none have been forthcoming.

The United States is also concerned about various Russian measures that disrupt or prohibit imports of certain U.S. agricultural products, including poultry products. For example, 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. Although Russia lifted this transit ban in February 2018 following concerted U.S. efforts, a new ban on U.S. poultry shipments transiting Russia for Kazakhstan was imposed in November 2018. After Russia removed this second transit ban for product transiting to Kazakhstan in January 2019, Russia imposed new burdensome conditions to ensure traceability of transportation. For example, Russia requires importers to enter information into the Russian electronic notification system (the Mercury Notification system). The importer must use the Mercury Notification system for the transit of poultry products through the Russian Federation, and Russia requires that any re-loading and transit of poultry products take place at European Union establishments

accredited by the EEC for the storage of products of animal origin. Furthermore, importers must now verify establishment accreditation prior to shipment.

Another practice that has raised WTO concerns is Russia's reluctance to accept an exporting country's guarantees concerning the process for approving establishments as eligible to export to Russia. Notwithstanding Russia's commitments regarding inspections and establishment approvals described above, securing acceptance by Russia of U.S. guarantees concerning U.S. procedures for approving establishments has become very difficult. Since July 2014, Russia has 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.

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 imposed 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.

Russia agreed that, in order to meet its WTO commitments, it would negotiate veterinary certificates with the United States (or any other WTO Member) that differ from EAEU certificates after receiving substantiated requests from the United States (or other WTO Member). However, Russia insisted on including attestations in the new proposed certificates that do not appear to be based on the relevant international standards and have offered no risk assessment in support of the alternative attestations, notwithstanding Russia's 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.<sup>34</sup> USTR and the U.S. Department of Agriculture will continue, where possible

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<sup>34</sup> See, WPR, ¶1009.

and permitted, to request technical level meetings with Russian counterparts in an effort to negotiate new certificates.

As a WTO Member, Russia must notify new or modified SPS measures that affect international trade. In turn, as a member of the EAEU, Russia is responsible for notifying new or changed EEC SPS measures applicable in Russia if they would be notifiable had Russia adopted them directly. In 2019, Russia notified a number of SPS measures imposed by it and/or the EEC. However, Russia has still not notified SPS measures (both Russian measures and EEC measures) concerning sampling of food products, rules for registering genetically engineered organisms, and amendments to its veterinary certificates and 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. As part of its WTO accession, Russia agreed to a limit on trade-distorting domestic support, referred to as the Aggregate Measurement of Support or AMS, of \$4.4 billion, down from \$9 billion in 2013. Russia's most recent notification to the WTO for the year 2017 reported an AMS of only \$0.055 billion in agricultural support payments. Russia also 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 notified the WTO that it has met both these obligations.

In the WTO Committee on Agriculture, the United States closely reviews Russia's notifications on its domestic agricultural programs to ensure their transparency and WTO consistency. In

2019, the United States again raised concerns about Russia’s subsidization of railway freight to compensate for part of the cost transporting grains and various food and agricultural products to ports of potential export to anywhere in the world. 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 19 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. In 2018, Russia expanded the list of vehicles subject to the recycling fee to include certain construction and agricultural equipment.

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, treatment is not equal because Russia provides subsidies that effectively reimburse domestic producers for having to pay the utilization fee. In 2018, Russia updated those subsidy programs, extending the subsidies and amending the qualifications in ways that continue to exclude imports or products made in Russia by foreign-owned companies. 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 raised this issue with Russia's WTO delegate, but received no adequate explanation. USTR will continue to press Russia to respond to our concerns, and to eliminate any discriminatory practices.

The United States also has concerns regarding national treatment with regard to taxation of distribution services on motion pictures. Russia applies an 20 percent VAT on payments for the "right to use" (*i.e.*, payments for distribution services) cinema products. However, the recipient of the payment can apply for a VAT rebate if the cinema product is "Russian." A "Russian" cinema product is defined as a movie in which the producer is Russian; a majority of authors are Russian residents; at least 30 percent of the cast and crew are Russian residents; the movie is in the Russian language; at least 50 percent of the movie is financed by Russian residents; or the movie is produced under special international agreements. In other words, the VAT collected on payments for the "right to use" a "Russian" movie (as defined in the Russian Tax Code) can be reimbursed whereas the VAT collected on payments for the "right to use" a U.S. or other non-Russian movie cannot be reimbursed. This discriminatory tax regime raises concerns about Russia's implementation of its national treatment commitments. USTR has reviewed information provided by U.S. stakeholders and studied the relevant Russian laws and regulations. With this information in hand, USTR's WTO delegate initiated a discussion with Russia's WTO delegate and will continue to press Russia for a satisfactory resolution of the seemingly discriminatory tax regime.

For many years, Russia also applied a discriminatory tax regime to imported wine and sparkling wine. Wines and sparkling wines with a “protected geographical indication” (PGI) – a designation available only to Russian wines - faced a significantly lower excise tax rate. (For example, in 2019, PGI sparkling wine faced an excise tax rate of 14 rubles per liter whereas non-PGI sparkling faced in excise tax of 36 rubles per liter.) Beginning January 1, 2020, the excise tax for all sparkling wines, regardless of origin, will be 40 rubles per liter; the excise tax for all wines, regardless of origin, will be 31 rubles per liter. However, we understand that Russia plans to provide subsidies to Russian wine producers that use Russian grapes to compensate for the higher excise taxes. The United States will monitor the development of any such subsidy program.

### ***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 goods over imported goods (import substitution subsidies).<sup>35</sup> In addition, Russia took a specific commitment to extend subsidies for the purchase or lease of aircraft to include the purchase or lease of foreign-made aircraft that had previously been available only for the purchase or lease of Russian-made aircraft.<sup>36</sup>

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

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<sup>35</sup> WPR, ¶698.

<sup>36</sup> WPR, ¶1200.

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, but introduced others. For example, according to U.S. stakeholders, Russia plans to eliminate a program providing subsidies to domestic producers of agriculture equipment and replace it with a program to support leasing of domestic equipment. Stakeholders have also described a preferential leasing program for domestically-produced construction equipment, a plan to increase tariffs on telecommunications equipment and provide discounted loans for purchases of domestically produced telecommunications equipment, and revised "Special Investment Contracts" program that provides benefits to manufacturers in Russia if they use domestically-produced inputs. 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.

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. One long-standing program provides benefits to titanium manufacturers in the "Titanium Valley" Special Economic Zone (SEZ) in the Sverdlovsk region. More recent programs include subsidies that appear to compensate local manufacturers for paying the "utilization fee" (see above) and subsidies to reimburse costs to obtain foreign patents for Russian inventions, 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 actionable 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.<sup>37</sup> Such enterprises would make purchases and sales of goods and services in accordance with commercial considerations, such as price, quality, marketability, and availability, and afford enterprises of other WTO Members the opportunity to compete for participation in such purchases and sales. These commitments covered all goods, as well as services for which Russia has taken commitments in its services schedule, taking into account the limitations set out in its services schedule, the rights and obligations of Russia under the GATS, and the regulatory measures of Russia otherwise covered by the WTO Agreement.

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

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 procurement plans for SOEs and tender rules for SOEs procurement of specific goods, works, and services. Russia established the Government Import Substitution Commission with the responsibility for approving procurement of machinery and equipment for large investment projects by SOEs, state corporations, or certain private businesses, as well as foreign procurement of certain industrial products. Moving to support specific industries, the government has banned certain companies in which the government owns more than 50 percent of the shares from purchasing imported automobiles, metal products, and heavy machinery; banned SOEs from purchasing imported software and machinery; and restricted to domestic manufacturers the procurement of 11 types of equipment

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<sup>37</sup> WPR, ¶99.

used by SOEs for projects co-funded or guaranteed by government funds unless a waiver was obtained from the Government Commission on Import Substitution. The government of Russia applies a 15-30 percent price preference for goods of Russian origin and to works and services performed and rendered by Russian entities;

In 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 missed the biennial deadline to make the required notification three times, most recently in June 2018. The United States has raised this issue in every STE Working Party meeting for the past four years (i.e., in ten consecutive meetings); in 2019, the United States also raised Russia's failure to meet its transparency commitments in the Committee on Agriculture concerning export credits for agricultural exports. Russia has not fulfilled a single STE notification obligation since joining the WTO. In response to questions from the United States, Russia initially committed to provide the required notification by the end of 2018; however, no notification has been made to date. Russia also initially indicated that it was going to notify JSC United Grain Company as a STE; however, in a July 2019 meeting of the Working Party on State Trading Enterprises, Russia reversed itself on this commitment, stating that the state enterprise should not be notified. Russia gave no explanation this change in position. The United States will continue to press Russia on these notification issues and urge Russia to abide by its WTO obligations.

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

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.<sup>38</sup> In addition, Russia has taken specific commitments with regard to technical regulations affecting the telecommunications equipment and civil aviation sectors.<sup>39</sup>

As Russia has begun to move from national regulations to regional (EAEU) regulations, it has begun to notify those regional regulations. 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).

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

<sup>39</sup> WPR, ¶¶ 738 and 744.

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). In 2018, the EEC finalized its work on the draft regulation governing alcoholic beverages, due to come into force in January 2021, 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 expressed similar concerns to Russia's WTO delegates regarding 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, including veterinary drugs, must be certified for compliance with good manufacturing

practices (GMP); the regime went into effect in 2016 for new drugs and in 2017 for renewals. USTR and other U.S. Government officials have held many conversations about 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 discriminates against foreign manufacturers in the implementation of its GMP regime for medicines. For example, U.S. industry representatives assert that Russian inspectors deny GMP certification of foreign manufacturers in significantly higher numbers than domestic manufacturers, a result of the lack of inspection infrastructure necessary to certify (or recertify) expeditiously manufacturing sites for compliance with GMP provisions in such a way as to avoid market and trade disruptions and to ensure that the measures do not, in practice, disproportionately adversely impact imports. 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 EAEU technical regulations governing medical devices. U.S. officials have met and spoken with U.S. stakeholders about their concerns, and collaborated with WTO Members to develop strategies to counter Russia's efforts to exclude imports of medical devices, including those from the United States, 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 obligations, including with regard to transparency. If the United States determines that Russia is not meeting its WTO obligations, it will take the necessary and appropriate action to ensure that Russia does not use its technical regulations to create unnecessary obstacles to U.S. exports.

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

The *WTO Agreement on Government Procurement* (GPA), a plurilateral agreement, which currently includes 48 WTO Members (including the United States), applies to government procurement of goods and services. The GPA requires GPA members to provide national treatment for covered procurement to the goods, services, and suppliers of other GPA members and to adhere to detailed procedures designed to ensure fairness, predictability, and transparency in the procurement process.

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.<sup>40</sup> Russia became a GPA observer on May 29, 2013, and on June 2, 2017, circulated its initial GPA market access offer. On January 8, 2018, Russia circulated its response to the Checklist of Issues that provided detailed information about the Russian procurement system. In May 2018 the United States submitted questions and comments on Russia's initial market access offer reflecting the U.S. view that Russia's initial offer falls short in a number of areas including entity coverage (central, sub-central, and SOEs), goods and services coverage, and general notes. Also in May 2018, the United States submitted questions on Russia's response to the checklist to understand better how the Russian

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<sup>40</sup> WPR, ¶1143.

procurement system functions and whether it would satisfy GPA obligations.<sup>41</sup> Russia submitted a written response to these questions in October 2018.

According to research undertaken by USTR and other parts of the U.S. Government, since joining the WTO, Russia has introduced a number of measures that establish preferential treatment for domestically or EAEU produced goods in public procurement, such as a 15 percent price preference for goods of EAEU origin in purchases for government use; in late 2017, a proposal was put forward to increase that pricing preference to 25 percent. 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 that 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 2019, Russia expanded the limits on public procurement to cover certain foreign-made electronics, building on its previous order that all federal agencies and funds transition to domestically produced software and formal recommendation that regional and municipal authorities switch to domestically produced software. In addition, U.S. stakeholders have raised concerns about Russia's preferences for domestic products in procurement of essential medicines and have described various Russian proposals for future preferences for domestic production in government procurement, such as a proposed 50 percent set aside for Russian made goods in public procurement by 2021. U.S. stakeholders have also reported that Russia's procurement rules mandate not only that Russian government entities must purchase Russian-made products, but that private contractors must use only Russian-made products. The United States is assessing whether the buy local policy applied to the purchases of private contractors can be consistent with Russia's WTO obligations.

The United States, joined by other Members, has raised concerns in numerous WTO committee meetings about Russia's adoption of policies that appear to discriminate against imports in public

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

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

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

Russia also took "horizontal" (cross-sectoral) commitments related to its regulatory processes and structure. During the years of Russia's WTO accession negotiations, it undertook a series of steps to improve the business environment in Russia, including streamlining the processes for company registration and reducing the number of activities subject to licensing. To address concerns of WTO Members about its activity licensing regime, Russia committed to make publicly available its measures affecting trade in services, as well as the names of the competent authorities 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

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

business visas for executives and professionals, and allow service companies to transfer vital employees to their operations in Russia.

### *A. Financial Services*

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

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

In 2016, Russia established a state-owned re-insurance company and mandated that Russian insurance companies 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 continues to follow developments in this sector to ensure that U.S. interests are not adversely affected.

## ***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 data protection laws, most importantly the core requirement that personal data of Russian individuals be stored and processed on servers located in Russia. Further, in December 2019, Russia adopted a law requiring the pre-installation of Russian software on certain consumer electronic products (e.g., smartphones, computers, tablets, and smart TVs) sold in Russia. The Russian government has not yet identified the specific applications that will be required for pre-installation, but has identified categories, including search engines, mapping and navigation software, anti-virus software, software that provides access to e-government infrastructure, instant messaging and social network software, and national payment software. Both the data localization requirement and the mandatory software pre-installation requirement raise concerns with respect to 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. The United States continues to monitor developments in the market to help ensure that Russia is in compliance with its commitment to allow direct sales of such products.

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

Russia made strong commitments related to its dynamic film, television, and media sectors, including in motion picture distribution and projection services, the sale of programming to television and radio stations, printing and publishing, and news agency services. Russia also agreed to allow foreign audio-visual companies to operate as 100 percent foreign-owned enterprises. Since 2015, however, Russia has banned advertisements on pay cable and satellite channels. It is unclear whether the law applies to state-owned television channels, but because those channels are subsidized by the state and hence rely little, if at all, on advertising revenue, the ban is likely to have little, if any, practical impact on them. Further, in 2017, Russia adopted a law limiting foreign ownership of large online streaming companies (*i.e.*, over 100,000 daily

views Russia-wide per month) to 20 percent. Russia has not, however, issued any implementing legislation, resulting in significant uncertainty to the market. Also in 2017, Russia began enforcing a law (adopted in 2014) that limits foreign ownership of Russian media assets to 20 percent. The United States will consult with U.S. stakeholders regarding the impact of these measures on U.S. interests and will ensure Russia acts consistently with its WTO obligations.

## **X. Intellectual Property Rights**

Upon joining the WTO, Russia assumed all the obligations of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS Agreement) and the additional commitments on IPR issues contained in the WPR. The TRIPS Agreement sets minimum standards for protection of copyrights and related rights, trademarks, geographical indications, industrial designs, patents, integrated-circuit layout designs, and undisclosed information. The TRIPS Agreement also establishes minimum standards for the enforcement of IPR in administrative and civil actions and, at least in certain cases involving copyright piracy and trademark counterfeiting, in criminal actions and actions at the border. Furthermore, the TRIPS Agreement requires that, with very limited exceptions, WTO Members provide national and MFN treatment to the nationals of other WTO Members with regard to the protection and enforcement of IPR 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<sup>43</sup>, withdrawing exceptions to copyright protection for works that existed prior to 1995,<sup>44</sup> reviewing and improving the operation of its collecting society regime, and updating law enforcement procedures to address certain issues related to digital piracy of materials protected by copyright.<sup>45</sup>

### **A. Legal Framework**

Prior to its accession to the WTO, Russia amended its IPR laws to integrate WTO commitments into its legal regime and with the objective of implementing the 2006 United States-Russia bilateral IPR agreement. Russia improved its civil protections for IPR by amending Part IV of

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<sup>43</sup> WPR, ¶1295.

<sup>44</sup> WPR, ¶1224.

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

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.<sup>46</sup> 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.<sup>47</sup> Russia also standardized its patent fees to apply in the same manner to Russian and non-Russian entities.<sup>48</sup>

In recent years, reflecting commitments in the WPR, Russia has made progress toward implementing controls on unlawful optical media production, notably through amendment of its Law on Activity Licensing, to ensure that copyright infringers cannot renew a license to engage in optical media production. However, the extension of such controls to other forms of unlawful media production is still yet to be confirmed. Consistent with a commitment 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,

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

<sup>47</sup> WPR, ¶1253.

<sup>48</sup> WPR, ¶1226.

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). According to stakeholders, these laws have hampered or blocked access to major infringing websites and services. However, implementation of the laws has been directed only against infringing activities that target users in Russia. The United States continues to study closely Russia’s evolving laws and practices related to online piracy.

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.<sup>49</sup> Accordingly, Russia amended its Criminal Code to establish fines and to reflect adjustments to the threshold for the application of criminal procedures and penalties for willful counterfeiting or commercial-scale piracy. For example, administrative fines for criminal trademark violations had been extremely low. In August 2013, Russia implemented a method of calculating such fines, replacing an arbitrarily low and fixed fine with a fine calculated based on the value of the counterfeits being produced or sold. This method should result in penalties that have a stronger deterrent effect. In addition, as called for in the WPR commitments, Russia ensured that its Civil Code does not predicate protection of a well-known trademark on its inclusion in Russia’s List of Well-Known Trademarks.

Russia’s customs law also required alteration to strengthen IPR protection. In December 2010, Russia adopted the Law “on Customs Regulation” to provide *ex officio* authority for its 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

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<sup>49</sup> See WPR, ¶1350.

subsequent applicants seeking marketing approval for the same pharmaceutical product. These amendments came into force the day Russia became a WTO Member, but Russia still has not implemented final regulations necessary to ensure implementation of such protection. In 2015, Russia again amended the Law on the Circulation of Medicines, including the regulatory data protection (RDP) provision, to provide four years of data exclusivity and two years of marketing exclusivity (as it relates to generic drug registration) and three years of data exclusivity and three years of marketing exclusivity (as it relates to biosimilar drug registration). However, a 2016 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 appropriate instruments of the WTO to ensure that Russia meets its WTO commitments.

Most recently, the pharmaceutical industry has expressed some concerns about Russia's potential implementation of the Protocol that amended the TRIPS Agreement to insert a new Article 31*bis* into the Agreement. Article 31*bis* provides for WTO Members, under certain limited conditions, to issue compulsory licenses for the production of patented pharmaceutical products, without authorization from the patent owner, for export to "eligible" WTO Members (*i.e.*, least-developed countries or those that demonstrate insufficient or no manufacturing capacities in the pharmaceutical sector for the product in question). The industry submitted comments to the government of Russia, some of which were incorporated into a new draft law pertaining to revisions of the Russian Civil Code implementing TRIPS Article 31*bis* regarding obligations that are necessary to issue a compulsory license. Nevertheless, pharmaceutical companies fear that Russia plans to implement TRIPS Article 31*bis* in such a way as to exceed the narrow circumstances under which patented pharmaceutical products may be manufactured or shipped under a compulsory license. The potential implications of this draft legislation and proposed implementing regulations, which would give the government broad discretion to issue compulsory licenses, are troubling. The pharmaceutical industry has also expressed concern about a court decision upholding the grant of a compulsory license for an innovative drug under patent protection. The United States will work with industry to monitor legislative developments in Russia and remind Russia of its TRIPS obligations.

## **B. Enforcement**

Russia committed, upon becoming a WTO Member, to apply fully the WTO provisions for enforcement of IPR, without a transitional period.<sup>50</sup> In the WPR, Russia also committed to take “expeditious action” against acts of infringement on the basis of complaints lodged by right holders and through other means with the objective of eliminating such acts in Russia.<sup>51</sup> Russia made specific commitments for authorized officials to conduct unannounced inspections of plants licensed to produce optical media bearing content protected by copyright or related rights. Although Russia conducted such raids initially, piracy has now largely moved online, making optical media disk piracy a small portion of the infringing content market. Russia also established a specialized court for intellectual property disputes, which began operating in the summer of 2013.

USTR and other U.S. officials meet on a regular basis with U.S. stakeholders to discuss Russia’s IPR enforcement record. Based on those discussions, and USTR’s ongoing observations, it is evident that, as a general matter, the current IPR enforcement environment in Russia remains weak.<sup>52</sup> End-user software piracy and sales of counterfeit goods are two particular concerns. Additionally, online piracy (including unlicensed streaming services, pay-per-download websites, videogame hacking sites, cyberlockers, BitTorrent sites, private servers bypassing official videogame servers, and others) has been, and remains, a significant problem in Russia. In 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 the control access or protect 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. Since 2015, in response to right holders’ complaints, courts in Russia have issued permanent injunctions against numerous pirate websites, including the high-traffic Russian torrent website RuTracker.org, which has been listed in the USTR’s *Special 301 Out-of-Cycle*

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<sup>50</sup> WPR, ¶1353.

<sup>51</sup> WPR, ¶1313.

<sup>52</sup> In 2019, Russia remained on USTR’s Special 301 Priority Watch List.

*Review of Notorious Markets (Notorious Markets List)*.<sup>53</sup> Likewise, the Moscow City Court has issued hundreds of preliminary injunctions against various Russian infringers disseminating pirated films online. It does not appear, however, that the government of Russia has prosecuted those who operate these sites and profit from this piracy. In particular, the government of Russia has not acted against individuals located in Russia that operate the sites that target users outside of Russia. Nor has the government of Russia taken action against individuals located in Russia operating websites that publish pirated books and scientific, technical, and medical journals.

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

In fact, currently available information continues to indicate that overall enforcement of IPR has decreased, rather than increased, over the past few years. Criminal enforcement, in particular, has been lacking especially against owners or operators of the large enterprises that propagate commercial scale piracy. An ongoing barrier to Russia's adequate and effective enforcement of

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<sup>53</sup> Notwithstanding the permanent injunction against RuTracker.org imposed by the Moscow City Court, sophisticated Internet users still manage to access the website, undermining the effectiveness of the court's decision. Moreover, the website has launched several mirror websites, including RuTracker2.org, 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."

IPR is not only a lack of political will, but also the lack of resources devoted to hiring and training law enforcement personnel to investigate and prosecute IPR crimes. Furthermore, U.S. stakeholders have informed us that when they attempt to enforce their IPR through civil litigation, administrative and procedural hurdles prevent them from doing so.

Russia's size and geographic location make enforcement of IPR at its borders an essential component of IPR protection. 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. right holders. Russia also stated that it intended to phase out non-contractual license management within five years of Part IV of the Civil Code entering into force (which happened in 2013), but does not yet appear to have taken steps to meet that deadline. Russia's legislature adopted a new law in 2017 (which entered into force in May 2018) to address problems of state accreditation and governance of collecting societies. However, the new law does not allow right holders to be involved in the selection and management of the organization, and fails to provide sufficient transparency to determine what royalties are being collected and to whom they are being paid. The United States will press Russia to accelerate its reform efforts to improve the transparency and effectiveness of these organizations, and, in particular, to ensure that U.S. right holders receive equal treatment with respect to Russia's domestic right holders.

The United States had been engaging on a bilateral basis on these issues through the United States-Russian Federation Intellectual Property Rights Working Group and other means.

However, due to the current political situation, bilateral engagement with Russia has been put on hold since early 2014, including the bilateral IPR dialogue. Nevertheless, the United States continues to press Russia on its WTO commitments, including through the Special 301 Report. The United States will continue, in appropriate settings, to press Russia for full implementation of its WTO commitments.

## **XI. Investment**

### ***A. Trade-Related Investment Measures***

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

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

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

Since Russia became a WTO Member, in response to concerns raised by the United States and other Members in TRIMS Committee meetings, Russia eliminated the program under which the Ministry of Agriculture provided loans to farmers at an interest rate below the market rates for the purchase of farm machinery manufactured in Russia.<sup>54</sup> The United States continues to watch for possible local content requirements in a preferential leasing program implemented by a government-owned agricultural equipment leasing company, RosAgroLeasing.

Other initiatives that USTR is reviewing for compliance with Russia's TRIMS obligations include a program to support automotive leases of only Russian-made automobiles; efforts by the Government Import Substitution Commission to limit the goods and services that may be sourced outside of Russia by government entities and SOEs; a proposal to establish a minimum target for procurement by SOEs of "hi-tech and innovative products," including from small and medium businesses; and a requirement to pre-install Russian software in certain consumer electronic products sold in Russia. 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.

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<sup>54</sup> See WPR, ¶698.

Although Russia provided some responses, they were vague and did not address all of 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.

### ***B. Special Economic Zones***

Upon accession to the WTO, Russia undertook to apply the provisions of the WTO Agreement throughout its territory, including in its special economic zones (SEZs), which were established to encourage investment through the extension of certain incentives.<sup>55</sup> 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. The United States will continue to monitor 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

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<sup>55</sup> WPR, ¶1124.

rule of law in Russia's economy and help to address pre-WTO accession practices that have made it difficult for U.S. and other foreign companies to do business and invest in Russia.

### ***A. Eurasian Economic Union***

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

### ***B. Transparency***

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

Russia agreed in the WPR to submit all of the required initial notifications by the date of its accession, with the exception of five notifications which were to be submitted within specified deadlines following its accession.<sup>56</sup> In addition, Russia committed to establish formal notice and comment procedures for proposed measures pertaining to or affecting trade in goods, services,

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<sup>56</sup> WPR, ¶1430.

and intellectual property;<sup>57</sup> to provide WTO Members and interested parties with decisions in writing setting out reasons for the decision;<sup>58</sup> and to institute new rights of appeal of decisions.<sup>59</sup> These obligations apply to measures that the EEC adopts and that are applied in Russia and to Russia's domestic laws, regulations, and other measures. Russia has also undertaken specific commitments regarding transparency on issues ranging from application of price controls to fees charged for engaging in importing or exporting goods.

To implement Russia's transparency commitments at the EAEU level, the EEC established procedures for publication and public comment on proposed EAEU legal acts, including a requirement that draft decisions shall be published no fewer than 45 calendar days before the 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

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<sup>57</sup> WPR, ¶1427.

<sup>58</sup> *See, e.g.*, WPR, ¶1418.

<sup>59</sup> *See, e.g.*, WPR, ¶¶189-202.

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 Agreement. 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. Yet the failure to notify negatively affects other Members that would benefit from understanding Russia's trading system, while also damaging the WTO as an institution. 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 measures 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.<sup>60</sup>

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

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

### **XIII. Conclusion**

In 2012, the United States and others welcomed Russia into the WTO's rules-based system with the hope of expanding the benefits of open and freely competitive markets. As described above, those hopes remain unrealized. Russia has not embraced the responsibility as a WTO Member to implement its commitments and to permit reciprocal and mutually advantageous trade. Rather, in 2019, Russia continued to raise barriers to imports and exports and maintained policies that limit its economic growth. Despite Russia's continued reliance on inward-looking, protectionist economic policies, the United States will continue to press Russia to comply with its WTO commitments and pursue market-based principles. At the end of the day, Russia must decide its future and take responsibility for its actions and the impact of those actions on its citizens.

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<sup>60</sup> See WPR, ¶ 215.

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

**Appendix 2**

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

Washington, D.C.

October 8, 2109

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