

# WORLD TRADE ORGANIZATION

RESTRICTED

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**Working Party on the Accession  
of the Russian Federation**

**DRAFT REPORT OF THE WORKING PARTY ON THE  
ACCESSION OF THE RUSSIAN FEDERATION  
TO THE WORLD TRADE ORGANIZATION**

Addendum

Attached are the consolidated list of comments, proposals and requests for specific information or clarification emanating from the first draft of the Working Party Report on the Accession of the Russian Federation to the WTO (document WT/ACC/SPEC/RUS/25 refers).

The Secretariat has given an individual number to each and every request. Please note that the second set of numbers, in bold, refer to the paragraph numbering found in the draft Working Report.

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## ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

### Economic Policies

#### - Monetary and Fiscal Policies (paras 7-10)

1. **7-10** This section moves quickly from the first meeting of the Working Party to the current situation, glossing over a lot of progress which has been accomplished in between. It is important in a Working Party Report to understand what changes have been made in the direction of meeting WTO commitments as a frame of reference following accession. Accordingly, this section should contain salient points showing the evolution of reform in this area since the accession process began. In P.8 details are needed on VAT administration including procedures relating to CIS countries. A consolidation of all tax references (VAT) in one area of the report would be useful.

2. **7** We welcome the listing at paragraph 7 of existing legislative instruments relating to internal taxation. At paragraph 7 it is stated that the introduction of a new Tax Code in 1998 and amendments to the Code have brought Russia's taxation regime into compliance with WTO requirements. However no information is provided on:

- how Russian legislation prior to the enactment and amendment of the Code was not in conformity with WTO requirements;
- how the enactment and amendment of the Code addressed lack of conformity with those provisions.

This information will need to be included in the draft Report.

3. **8** We welcome the acknowledgement provided at paragraph 8 that concerns have been raised by Members over discrimination in domestic taxation, including:

- whether all differential treatment in favour of Russia's imports from and exports to other CIS countries had been eliminated;
- whether taxation at sub-federal level was similarly consistent with WTO requirements;
- whether VAT was being applied on exported products.

At paragraph 8 it is claimed that Russia's indirect taxation regime was brought into conformity with WTO requirements with the enactment and amendment of the Tax Code.

- An explanation of the basis for this claim will need to be included in the draft Report.

Paragraph 8 also contains no response by Russia to concerns raised by Members on:

- whether all differential treatment in favour of imports from and exports to other CIS countries had been eliminated;
- whether taxation at sub-federal level was similarly consistent with WTO requirements;
- whether VAT was being applied on exported products.

Responses by Russia to these concerns will need to be included in the draft Report.

Paragraph 8 moreover provides no commitment language in relation to achievement of appropriate WTO conformity before accession and the maintenance of WTO conformity from the date of accession.

- Appropriate commitment language will need to be included in the draft Report.

4. **9:** We note that currently, notwithstanding the description in this paragraph, the Russian Central Bank appears to rely unduly on management of the exchange rate and foreign reserves and on depository operations to conduct monetary policy, rather than being able to use more standard tools, e.g., refinancing and interest rate management. We seek Russia's comment on this issue and on its plans to improve the situation, and we would appreciate reflection of these views in the draft Report text.
5. **10:** Russia should provide the information requested in this paragraph, e.g., information on the new package of banking laws (the "IMF package"), and on the banking reform policy recently signed by the Prime Minister. In particular, we seek elaboration of Russia's plans and priorities under the banking reform strategy of the new Central Bank Chairman. This information should be incorporated into the text.

- **Foreign Exchange and Payments System (paras 11-18)**

6. **11-18** In our view, this section requires more detail – especially P.18 which should provide the answers to the questions raised. If exchange restrictions remain to combat capital flight and money laundering, the report should say so and describe what measures are in place. The report should also state that multiple currencies have not been used since 1994.
7. **11:** At paragraph 11, it is disclosed that six foreign exchange restrictions are still in force. At paragraph 11, no details are provided of foreign exchange restrictions applied in the past, or of the reforms that led to their elimination.
  - Such details will need to be included in the draft Report.At paragraph 11, it is not stated what the exchange restrictions still in force are. No details are provided on:
  - the nature of the six foreign exchange restrictions
  - their legal basis
  - their purpose and WTO justification
  - the circumstances that led to their introduction, and whether those circumstances still exist
  - Russia's plans to eliminate those restrictions, if they have not been eliminated already.
  - Such details will need to be included in the draft Report.

At paragraph 11, it is claimed, but not proven, that the exchange restrictions in force are "of minor economic significance". The basis for any such claim will need to be clarified in appropriate detail in the draft Report.

If these exchange restrictions can be shown to be "of minor economic significance", Russia will need to explain in this section of the draft Report why it has failed to eliminate them, despite the circumstances which led to their introduction no longer prevailing. We note that Russia has used other arguments in an attempt to justify the continued use of such exchange restrictions.

We do not accept that such restrictions, which clearly target directly or otherwise adversely affect current transactions in a substantial way, are the only means available, appropriate means or preferred means for addressing capital flight or illegal capital flows. We strongly support Members' calls for Russia to address these problems by means other than the currently applied restrictions affecting current transactions.

8. **12.** At paragraph 12, there is acknowledgement of Members' concerns over existing requirements on foreign exchange acquisition and retention inhibiting trade. We appreciate

this. However it is not entirely accurate to say that Members were concerned that existing requirements on foreign exchange acquisition and retention might inhibit trade, as claimed at paragraph 12. It would be more accurate to say that Members were concerned that existing requirements on foreign exchange acquisition and retention actually inhibited trade. Members sought to register those concerns because the initial introduction of these measures by Russia was a factor in closing Russia's markets for a number of products of interest to them and these measures continue to impede market access.

- An appropriate correction will need to be included in the draft Report.

At paragraph 12, it is stated that Members requested information on existing requirements on foreign exchange acquisition and retention. It is not indicated at paragraph 12 or anywhere else in the draft Report in addition to what information already provided that Members had requested "additional information".

- If the term "additional information" is to be used in the draft Report, details of the initial information supplied by Russia will need to be included in the draft Report.

At paragraph 12 or anywhere else in the draft Report, it is not stated that, in relation to existing requirements on foreign exchange acquisition and retention, Members sought details of:

- the nature of the requirements
- their legal basis
- their purpose and WTO justification
- the circumstances that led to their introduction, and on whether those circumstances still exist
- Russia's plans to eliminate those restrictions, if they have not been eliminated already.

Such details will need to be included in the draft Report.

9. **13** Please specify the law that authorizes the 1 percent charge for foreign exchange and give information on the legislation under consideration in the Duma to eliminate it.

10. **13** At paragraph 13, it is disclosed that there is a tax of 1 per cent on the purchase of foreign currency in cash. We welcome this disclosure, even though we are disappointed by the measure.

The tax of 1 per cent on the purchase of foreign currency in cash is inconsistent with the non-discrimination provisions of GATT Article III and the requirement under GATT Article XI and Article 4 of the Agriculture Agreement to eliminate unjustifiable restrictions on importation.

The provision that purchases of foreign exchange for payments made 90 days prior to importation are subject to the tax, and all formalities, fees and requirements associated with the implementation of that provision, also discriminate against imports from more distant Members, and accordingly are inconsistent with the non-discrimination provisions of GATT Article I.

- We seek the elimination of these measures prior to accession.
- We seek the inclusion in the draft Report of text on the basis for Members concerns with these measures.
- We seek the inclusion in the draft Report of appropriate commitment language that Russia will eliminate all such measures by the date of accession and not have recourse to them after accession.

At paragraph 13, it is disclosed that there is a mandatory requirement applicable to exporters of products from Russia to convert 50 per cent of their foreign exchange earnings into domestic currency. We welcome this disclosure, even though we are disappointed by the measure.

The mandatory requirement applicable to exporters of products from Russia to convert 50 per cent of their foreign exchange earnings into domestic currency is inconsistent with the requirement under GATT Article XI to eliminate unjustifiable restrictions on exportation.

Insofar as this requirement impedes the use of foreign exchange earnings for subsequent importation, it is inconsistent with the non-discrimination provisions of GATT Article III and the requirement under GATT Article XI and Article 4 of the Agriculture Agreement to eliminate unjustifiable restrictions on importation.

- We seek the elimination of this requirement prior to accession.
- We seek the inclusion in the draft Report of the basis for Members concerns with this measure.
- We seek the inclusion in the draft Report of appropriate commitment language that Russia will eliminate all such measures by the date of accession and not have recourse to them after accession.

At paragraph 13, it is disclosed that residents are required to deposit, in domestic currency in an authorised bank, an amount equal in value to the foreign currency purchased for the purpose of prepayment for purchase of imports. We welcome this disclosure, even though we are disappointed by the measure.

The requirement to deposit, in domestic currency in an authorised bank, an amount equal in value to the foreign currency purchased for the purpose of prepayment for purchase of imports, is inconsistent with the non-discrimination provisions of GATT Article III and the requirement under GATT Article XI and Article 4 of the Agriculture Agreement to eliminate unjustifiable restrictions on importation.

- We seek the elimination of this requirement prior to accession.
- We seek the inclusion in the draft Report of the basis for Members concerns with this measure.
- We seek the inclusion in the draft Report of appropriate commitment language that Russia will eliminate all such measures by the date of accession and not have recourse to them after accession.

At paragraph 13, it is stated there are no restrictions on residents to buy foreign currencies on the domestic exchange market to meet their payments on current transactions.

- We consider that any such restrictions ought not to exist and, even though this statement appears to be contradicted by two of the three measures mentioned in this paragraph (and possibly all three measures), we would nonetheless welcome Russia's positive confirmation that such restrictions do not exist if this is true.

The statement at paragraph 13, that there are no restrictions on residents to buy foreign currencies on the domestic exchange market to meet their payments on current transactions, requires appropriate clarification in the draft Report. Does this mean:

- that the tax of 1 per cent on purchases of foreign currency in cash for payments made 90 days prior to importation, and any other restrictions on foreign currency purchases to pay for imports of goods or services, are not applicable to purchases by residents?
- that the tax of 1 per cent on purchases of foreign currency in cash for payments made 90 days prior to importation, and any other restrictions on foreign currency purchases to pay for imports of goods or services, are applicable only to purchases by non-residents?
- What is the criterion of residency that is applied?
- What is the rationale and WTO justification for excluding non-residents from purchases of foreign currencies on the domestic exchange market to meet their payments on current transactions, when residents are not excluded?



- Is it actually the case that non-residents holding Russian currency may be impeded from engaging in the importation of goods or services into Russia on account of being forbidden under Russian law to exchange Russian currency for foreign currency on the domestic exchange market?
11. **14** At paragraph 14, it is acknowledged that Members sought information on a number of concerns arising out of measures applied by Russia. We welcome this acknowledgement of Members' requests, in particular the use by Russia of methods other than exchange restrictions which adversely affect current transactions to avoid capital flight and the provision by Russia of information on the legislative basis for authorising exchange and payments restrictions and requirements. Russia has failed to address anywhere in the Report the substance of a number of Members' requests at paragraph 14, in particular the request for Russia to provide information on the legislative basis for authorising exchange and payments restrictions and requirements. We ask that the substance of Members' requests be addressed in the draft Report, including the provision of information on the legislative basis for authorising exchange and payments restrictions and requirements.
12. **15** At paragraph 15, it is acknowledged that measures relating to monetary policy, and foreign exchange and payments are coordinated with the IMF.
- We ask Russia to provide a detailed explanation in the draft Report of how, through its WTO accession commitments, its discriminatory and trade-restrictive measures relating to foreign exchange and payments coordinated with the IMF, including all such measures described in the section of the Report on Foreign Exchange and Payments System, will be made to reflect certain key principles of the WTO Ministerial Declaration of 15 December 1993 on the Contribution of the World Trade Organization to Achieving Greater Coherence in Global Economic Policymaking, in particular:
    - the liberalisation of trade and expansion of market access
    - conduct of trade policy in a transparent manner
    - creation of an open trade environment.
- 16:** Please list the measures "designed to combat illegal transfer of capital and to maintain the integrity of the financial system..." so that we may know which of these measures is being defended in the paragraph.
- Notwithstanding the description in this text, foreign companies invested in Russia often complain that the regulations for capital transactions from the Central Bank are not clear or not workable in practice. The Central Bank permit process remains burdensome. Criteria for granting licenses are not clear and subject to bureaucratic discretion due to vaguely worded regulations. In addition, the ability of foreigners to buy local government debt was limited.
- We would appreciate information on what Russia is doing to address these issues. In addition we understand that recent statements by Russia's new Central Bank chairman indicate that there are plans to gradually eliminate all currency controls. We would appreciate a statement for the WP report confirming Russia's plans to do this, and within what timeframe.
13. **16** At paragraph 16, it is claimed that Russia's policies of currency regulation and control:
- were non-discriminatory
  - did not constitute restrictions of trade in goods and services.
- The experiences of the exporters of this Member and relevant trade data following the introduction by Russia of measures described in the section of the draft Report on Foreign

Exchange and Payments System contradict claims that such measures are non-discriminatory and do not restrict trade. This Member also considers any claim that restrictions on acquiring or using the financial means for purchasing imports and on determining the form in which exporters retain their export earnings do not restrict, divert or distort trade, to be totally without merit. We ask that the views of this Member in response to the claim at paragraph 16 be recorded in the draft Report.

14. **17** At paragraph 17, certain provisions and changes to measures relating to foreign exchange and payments are described. We welcome any liberalisation that may have taken place. In addition to the changes to measures described at paragraph 17, we seek the inclusion in the draft Report of a detailed description of Russia's plans to eliminate by the date of accession all of the measures described in the section on Foreign Exchange and Payments System that any Member may have identified during the course of the negotiations as restricting trade or as discriminating against the products of particular Members.

15. **17:** What does "prolonging delays" mean in this context?

In addition, the text indicates that export surrender requirements have been selectively relaxed for "some exported machinery and equipment and up to five years for payments related to construction and sub-contracting works carried out abroad as well as for payments connected with insurance and reinsurance of these projects." Why have the export surrender requirements been differentiated in this manner?

We understand that transfers in foreign currencies by residents and purchases of other foreign assets by residents are subject to annual limitations of \$75,000. Please address the reasons and plans for these restrictions.

Notwithstanding the assertions in the text, the restrictions on foreign exchange retention, on foreign exchange acquisition or retention for payments, on the right of residents to acquire and hold foreign exchange, pre-payment requirements for imports, deadlines for shipment of goods, and the acquisition charge of 1 percent have a demonstrated or potential negative trade impact, and constitute a non-tariff barrier to imports that undermines market access. Particularly in light of its favorable balance of payments position, Russian should confirm its plans for eliminating the use of these measures upon accession, if not earlier.

16. **18** We do not agree that S accounts are of "minor economic significance." We wish to underscore the importance of liberalizing S accounts, which currently amount to \$3.2 billion, and we understand that it is the intent of the Central Bank to liberalize these accounts by the end of 2002. We also note with concern current customs rules regarding currency declarations by residents and non-residents when entering or exiting the Russian Federation, as these rules are restrictive and burdensome, and the penalties are harsh.

Please indicate, as requested in para 18, how and when Russia intends to remove the requirements.

We understand that recent statements by Russia's new Central Bank chairman indicate that there are plans to gradually eliminate all currency controls. We would appreciate a statement for the WP report confirming Russia's plans to do this, and within what timeframe.

17. **18** We agree with paragraph 18. We ask Russia to respond to Members' requests for information on the elimination of all remaining exchange restrictions and multiple currency practices.

- **Investment Regime (paras 19-21)**

18. This section should be amplified. Russia should inform the WP of the evolution of the regime concerning Production Sharing Agreements and on changes in sectoral investment regimes (eg for the alcoholic drinks, aircraft and vehicles industries), as well as other relevant developments affecting the investment regime (eg implementation of the new Land Code).
19. **19-21** This member supports Russia's initiatives to attract Foreign Direct Investment. Foreign Direct Investment into the Russian Economy would be most effectively encouraged by providing investors and their investments a stable, predictable and transparent investment climate through improvement of its domestic laws, policies and institutions and its bilateral investment relations with trading partners. We support the call in P.21 for a descriptive summary of provisions to protect investors, including those legislative provisions that exist or are proposed to protect foreign investors in Russia from arbitrary or discriminatory expropriations or to compensate investors for expropriations.
20. **19-20** These paragraphs, while incorporating useful background, do not deal adequately with (a) restrictions in place on investment; (b) the concerns raised by delegations concerning Russia's investment policies, or (c) proposals for future restrictions currently under consideration.

In particular, we understand that key implementing provisions of the current law are absent, thus limiting Russia's ability to provide national treatment to foreign investors. The resulting inconsistent implementation of existing laws has created barriers to investment. Other chronic problems for foreign investors in Russia include frequent changes to the regulatory and tax regime without transparency, weak corporate governance and shareholders rights, and weak contract law. These issues may need to be addressed by legislation, and we would like to have Russia's views on them, and see these views reflected in the text.

21. **21** Please provide, as requested in this paragraph, information on how and when Russia will remove the WTO-inconsistent measures identified in this area.
22. **21**
- We seek the inclusion in this section of the draft Report a description of how Russia's foreign investment regime works, a point acknowledged at paragraph 21 even though such a description has not been provided.
  - We wholeheartedly welcome Russia's statement at paragraph 21 that all measures not in conformity with the WTO TRIMS and Subsidies Agreements will be phased out prior to accession.
  - We seek the inclusion in this section of the draft Report a summary of Russia's legislative plans and timetables for implementation of the elimination of all measures not in conformity with the WTO TRIMS and Subsidies Agreements, as foreshadowed at paragraph 21.
  - More detailed descriptions of these plans and timetables, and appropriate commitment language, will need to be included in other sections of the draft Report.
  - A response needs to be provided to Members' concerns relating to Federal Law 171-FZ on ethyl alcohol.

- **State Ownership and Privatization (paras 22-37, tables 1-6)**

23. **22-37** Russia's efforts to privatize its economy form an important component of a market based system. The report should provide transparency in the conduct of privatization, as well

as in its progress. More elaboration of the approval process by local authorities in privatization of facilities and enterprises engaged in trade would be beneficial

We welcome the information provided in the section of the draft Report on State Ownership and Privatisation.

This section of the draft Report however says virtually nothing about Russia's reasons for engaging in the privatisation process and the expected benefits, which are surprising omissions given that the end-point of transition to market economy will presumably be a market economy.

- We ask that Russia use this section of the draft Report to chart (and advertise) its movement away from non-market economy status.
  - We request that paragraph 23 be expanded to include a summary of Russia's policy.
24. **29** Please clarify what state-owned sectors are excluded from foreign participation in privatization.
- Concerning approval of foreign participation by local authorities, what are "public catering and consumer services?" Does the reference to "trade" mean all retail outlets, or is it some other type of firm/enterprise? How is authorization provided?
25. **33** Please clarify whether the firms in this paragraph are all of the remaining state-owned enterprises or just those whose privatization is possible or pending. What part of these enterprises, if any, are still slated for privatization?
- In addition, please explain the meaning of "unitary" enterprises and distinguish these from the commercial companies with state federal participation. Please supply information on what type of enterprises these are.
26. **35** We note that of the 3,524 commercial enterprises referred to in para 33, only about one-sixth are majority state owned. Yet para 35 states that "Wholly or majority state owned enterprises were responsible for 14 percent of the total production of goods and services." As close to 3000 of the commercial firms remaining unprivatized are not "majority" state-owned, this statistic is somewhat misleading.
- Please clearly identify which types of firms are included in the 14 percent. For example, are Gazprom, UES, or Alrosa? Are "unitary enterprises" included in this total? What would the percentage be if all firms with state owned shares, e.g. all 3,524 or those with "golden share or larger" were included?
  - In addition, somewhere in the text should be an approximation of the number and type of state owned firms remaining that are slated for eventual privatization.
27. **Table 1** We thank Russia for the information supplied in Table 1, Progress in Privatisation of State Enterprises, under paragraph 31 of the Report.  
We request that Table 1 be augmented (or a new table be included in the Report) to show over the same run of years the number of remaining state-owned and municipal enterprises, broken down into the categories of municipal, Russian Federation subjects and Federal property.
28. **Tables 2-5** We thank Russia for the information supplied in Tables 2, 3, 4, 5:
- We request that a third column be added to Table 2 showing the number of state-owned and municipal enterprises remaining in each sector.

- We request that the coverage of “Industry” and “Agriculture” be clarified in a note under Table 2. This note should provide information indicating whether mining is included in “Industry”, whether fishing and forestry are included in “Agriculture”, and whether “Other areas are the economy” are other services or inclusive of non-service sector activities such as mining, fishing and forestry.

We note that the same coverage issues in relation to mining, fishing and forestry arising in Tables 1 and 2 also arise in Tables 4 and 5 under paragraph 35.

- We request that separate percentages be provided for mining, fishing and forestry in Tables 4 and 5.
29. **Tables 4, 5, and 6** Please clarify if all state-owned enterprises included in the statistics, or only those that are majority owned. For example, are Gasprom, UES, or Alrosa? Are “unitary enterprises” included in this total?
30. **Table 6** Please clarify the coverage of the term “state owned enterprises.” Does it include agricultural production facilities owned by state owned firms, e.g., Gasprom, Lukoil, or Interros? What portion of meat (poultry, beef, and pork) is produced and/or processed by state-owned, or partially owned, enterprises?
31. **Table 6** We thank Russia for the information supplied in Table 6, Most Important Types of Agricultural Products Produced by State-Owned Enterprises in Specific Areas in 2000, under paragraph 35 of the Report. The title of Table 6 is ambiguous, and would more appropriately read, “Shares of State-Owned Enterprises in the Production of Most Important Agricultural Products in 2000”.
- We request that such a title appropriate to the contents of the table be provided.
  - We request that the basis for ranking the agricultural products included in Table 6 be clarified in a note under the table.
  - We request that the number of agricultural products in Table 6 be increased to include meat and wool.
32. **37** We noted that according to para 37 draft commitment the Russian Federation would provide annual reports on the issues related to economic reforms while still in the process of reforming its economy. This member would like to see a concrete timeline included in the draft report, as it would provide more predictability of this commitment. This member asks for further information, whether the new Customs Code would eliminate the possibilities to reduce the fees for customs services? If this not the case, then we expect the Russian Federation to bring some clarification to the rationale for such exceptions. Namely, who can benefit from the reduction and what are the grounds when taking such a decision?
- **Pricing Policies (paras 38-51, tables 7-9)**
33. **38-51** This members requests detailed information with respect to pricing differences in the areas of railway transportation, gas, electricity and oil. Subsidized inputs into fertilizer production is a particular problem requiring further elaboration in para 46. The first sentence of P.45 on contract prices raises the question of how these are arrived at based on market conditions if such prices are controlled. The concept of “natural monopoly” as understood by the Russian federation needs to be fully articulated. This member considers this section needs greater clarity.

In previous submissions, this member sought information that is not provided in the text of WT/ACC/SPEC/RUS/25.

- Please confirm in the text that the lists of goods and services subject to price controls in Tables 7 and 8 are comprehensive. Please give the effective dates of the information in the tables.
34. **40 and Table 7** On previous occasions, we have noted that Russia's use of the terms "electric" and "electronic" communication services to mean telecommunications is confusing and we have not received a direct reply to our request for clarification.
- If, as it seems, it is Russia's contention in para 40 that all telecommunications services, including value-added networks and cellular services, are part of a "natural monopoly," we must take issue with this assertion. There is widespread private sector provision of both basic and value-added network services in many other countries
  - Are gas liquids and condensate, e.g., like those used for petrochemical feedstocks" included in the prices controls?"
35. **44 and Table 8** Please give the legal citations for Federal regulation of the authority of sub-central entities to apply price controls.
- Could Russia provide an example of how regional regulation of natural monopoly pricing works in practice?
  - It is noted that "prices for electrical energy provided by regional electrical power-plants were also regulated" at the regional government level. Does this include power to firms as well as to homes?
  - To what extent are prices determined by bilateral agreements between electric companies and regional governments?
36. **45** This paragraph refers to "contract prices" for goods and services delivered within Russia as being "subject to market conditions." We seek clarification of what this means, in light of the fact that the prices at which the sale is made are controlled by the state.
37. **45** This paragraph should include a clearer and more comprehensive explanation of the operation of the regimes governing state regulation of prices, both for domestic and export markets. Given the regulatory structure described elsewhere in this section, it is difficult to see how the statements that contract prices for goods and services are fixed by enterprises independently or depending on market conditions can be substantiated. We would invite Russia to submit additional information to explain this.
38. **46 Table 7** lists energy prices (natural gas, electricity) as commodities under federal price control. Such controls applied to federal and regional "natural monopolies" can affect the competitiveness of domestic production and may act as subsidies.
- Please expand the description in this paragraph of the Federal Energy Commission's pricing of energy sales to domestic industries, such as fertilizer, aluminum, and other energy-intensive, export-oriented industries, relative (a) to world prices and (b) to the prices charged to other sectors of the economy, including households. Please indicate the reasons for this pricing structure.
  - Please explain whether gas distribution costs are fully reflected in all gas prices charged throughout Russia.
  - Please outline the role of the Unified Tariff Authority in energy (e.g., natural gas and electricity) pricing, and its relationship to the Federal Energy Commission.
  - Please identify and describe any Orders or other legislation (e.g., like the cancelled Order No. 12/1 of the Federal Energy Commission of March 24, 1999 on Granting a

50 Percent Reduction of Prices of Gas to Enterprises Which Produce Chemical Fertilizers, Chemical Protections for Plants, and Raw Materials for Production Thereof, in 1999" (as amended on June 4, 1999)) that provide for price reductions for inputs to the fertilizer or other industries.

- Please provide a citation in the text of the legal instrument repealing FEC Order 12/1of March 24, 1999. We have been advised by our domestic industry representatives that this Order remains in effect.
39. **48** We understand that the 1 March 2002 deadline for eliminating discriminatory pricing for railway freight transportation was missed. Russia should confirm its revised timetable for this measure.
40. **48** Referring to the para 48 on the discriminatory pricing policies on railway freight we note that this practice was not brought into compliance with the WTO rules as of 1 March 202 as indicated earlier by the Russian authorities. We therefore continue to have serious concerns over this issue and expect further clarifications from Russia.
41. **48, 49 and 50** Paragraphs 48 and 49 include Members' concerns relating to dual pricing for transportation and energy.
- These issues will need to be addressed, and we ask that responses be provided to the concerns raised by Members in these paragraphs.
  - We agree with paragraph 50, subject to the rectification of a number of typographical errors. We ask that the typographical errors be rectified.
- The provisions of GATT Article III to which a direct reference is made in paragraph 50 of the Report are found under paragraph 9 of GATT Article III, not paragraph 5 of that Article.
- We ask that this reference be rectified.
42. **49:** The paragraph should include illustrations of the extent of dual pricing. The following text should be added after the third sentence:
- "For example, the price of natural gas to domestic industry was around \$15 per 1000 cubic metres, compared to an average export price at Russia's western borders in 2001 of \$116 per 1000 cubic metres. Even in the oil market, which was more deregulated, the price of crude oil on the domestic spot market was around \$5 per barrel in January-March 2002 when the prevailing world price was around \$20. These price comparisons were independent of any price variations resulting from differences in internal taxation rates. The negative effects of the price differential were also potentially amplified by other factors such as non-payment by domestic consumers."
- It should also be noted that some members do not expect the process of regulatory reform in the energy sector in Russia to be completed overnight, contrary to the impression given in the paragraph. The last three sentences of the paragraph should refer to the views of "these members" rather than "this member".
43. **49** Russia's statement in this section of the draft Report does not address the concerns raised by members at the previous two Working Parties regarding potential trade distortions caused by the subsidization of downstream industries provided through the gas, electricity, and oil sectors.
- We are concerned over the impact on trade of Russia's price controls on energy products, in particular natural gas and electricity, supplied to enterprises. We believe these controls hold prices below the level they would rise to if the controls were eliminated.

- We have noted on several occasions, that Russia's price controls on natural gas used in the production of nitrogen fertilizers have promoted exports in volumes and at values that are causing severe disruption in markets receiving Russia's exports.
  - We would like to see these views reflected in the draft Working Party report.
  - This issue will need further attention and action as the Working Party process evolves.
44. **51** This member considers that the inclusion of commitment language on the issue of dual pricing, additional to that already found in this paragraph, will be called for in future versions of the report.
45. **Tables 7, 8 and 9** We thank Russia for the information set out in the lists of goods and services for internal consumption for which prices are regulated by the federal government and federal executive bodies (Table 7), by the federal government and sub-federal executive bodies (Table 8), and by sub-federal executive bodies in respect of regional regulations over prices and mark-ups (Table 9).
- We request that Tables 7, 8 and 9 be augmented to provide full details of the type of price regulation used in relation to each good or service (e.g., price cap, price floor, profitability control, price stabilisation measure), and of the legal instruments governing their use.
- If the price regulations relating to HS headings 7101-7103 cover all products falling to these headings, then the product description will need to include pearls, as well as diamonds and precious stones.
- We ask that this be done.
- We note that precious metals are not included in Tables 7 and 8.
- Is it the case that the prices of precious metals for sale in Russia are not regulated? We seek clarification of this point.
  - We request that a table be included in the draft Report setting out information on goods for internal consumption for which prices are regulated by sub-federal executive bodies in respect of regional legal instruments.
  - We request that tables be included in the draft Report providing details of all regulations maintained by any federal or sub-federal body on prices of goods and services for external sale or consumption.
  - We request that all legal instruments governing the use of controls on the prices of goods and services for internal consumption or external sale or consumption be submitted by Russia for examination in the Working Party.
- **Competition Policy (paras 52-58)**
46. **57** The Ministry of Antimonopoly Policy (MAP) regulates the securities market and banking and services markets subject to the Law "On Protection of Competition in the Financial Services Market" in conjunction with other federal authorities.
- Please provide more information, for inclusion in the WP report text, on the actual implementation and enforcement of this law.



## FRAMEWORK FOR MAKING AND ENFORCING POLICIES

### Powers of executive, legislative and judicial branches of governments

- **Branches of State Power, Federal Structure and Delimitation of Jurisdiction between Federal and sub-Federal Authorities (paras 59-79)**
47. **59-79** This member would wish this section to be carefully scrutinized by experts in Russia's constitution so as to ensure an accurate description of the hierarchy and order of precedence of the various levels of laws. Phrases like "should be applied" in P.66 raises questions of precedence which need to be clarified.
  48. **60, 66, 68** All three paragraphs make reference to Federal legislative supremacy over "subjects" of the RF. We seek consolidation of these references with further clarification and description on the authority for this, e.g., what Article of the Constitution, what other laws? In para 66, please clarify whether, in cases of conflict with regional law that federal law "should" or "shall" be applied.
  49. **63** How does the court system exercise the right of legislative initiative, i.e., through what instruments?
  50. **64** Are State Fees ever charged for appeals covered by WTO?
    - Concerning the right of administrative and judicial appeal on matters covered by the WTO, please cite the legal authority for administrative appeals on WTO matters and the right of appeal to a court.
    - Please indicate specifically which courts, e.g., arbitration courts or commercial courts, are involved in reviewing WTO issues, including customs and licensing issues, SPS and TBT requirements applied to imports, and intellectual property issues.
  51. **65** Please describe for the WP text the hierarchy of legislative acts in Russia, i.e., the relationship and role of Codes, Laws, Governmental Resolutions, Presidential Decrees, Decisions, Orders, and Letters, as other forms of legislation that implement WTO.
    - In addition, please indicate where prior publication of enacted laws for public comment is provided for in Russian law.
  52. **70** Can the legal primacy of international treaties over domestic law can be enforced without the need for complainants to seek a judgement of a court?
  53. **70** As it is stated in the paragraph 70 of the draft Report: "the norms of international law and international treaties to which the Russian Federation is party are constituent part of its legal system". We do welcome this statement. However, we should say that we need not only the recognition of this fact, but also the commitment to be taken by the Russian Federation, with reflection in the draft Report, that it will strictly observe the principles of international law and international treaties. This is mainly caused by the fact that we are witnessing numerous violations of commitments undertaken by the Russian Federation under bilateral and multilateral arrangements affecting trade in goods and services.
  54. **71** Please identify the WTO-relevant aspects of the draft Law on the Regulation of Foreign Trade, slated for enactment this year, as well as provisions of the new Customs Code

that address the issues in this section, e.g., transparency, publication for prior comment, right of appeal.

55. **72** The paragraph 72 states that the federal subjects of the Russian Federation have the right to negotiate and conclude Agreements with their partners on international and foreign economic ties. Besides the phrase "such agreements could not contradict federal legislation" the second sentence of paragraph 72, we would insist on insertion of the phrase which would explicitly state that: "such Agreements that should fully respect the national legislation of partners' countries should not harm the economic interests of these countries". We would also wish to insert in the last sentence of paragraph 72 the phrase, which would specify that the subjects of the Russian Federation do not represent the subjects of international law.

Georgia feels that the main provisions of the Federal Law to which the reference is made in paragraph 72 are being constantly violated by the subjects of the Russian Federation. In this respect we would like to note that there is a huge difference between existing reality and conditions stated in the paragraph 72. That is why we need explanations from the Russian Federation how it intends to ensure full observance of this law by its subjects. We also seek commitment from the Russian Federation that its federal or sub-federal entities will act strictly in conformity with the above-mentioned law fully respecting national legislation and interests of partners' countries.

56. **73** In what way do the Russian Federation and its subjects (sub-central entities) have "joint jurisdiction" over "the fulfilment of the Russian Federation's international treaties?"
- In addition, please clarify what is meant by the sentence "the Law established that federal bodies of executive power should send the main provisions or the draft of a prospective treaty to the state power bodies of the interested subject of the Federation." Does it mean that the Federal Government will be required to submit the protocol package to sub-central entities for approval in the ratification process, or is this more a form of consultation?
  - Please indicate how the consultation mechanism for international agreements works with the regions, and would work in the case of adoption of the WTO accession package.
57. **76** Please clarify if the description in this paragraph is intended to state that there are some issues covered by WTO that are not appealable to an independent tribunal. In addition, Please indicate where in the Tax Code and the Customs Code there are procedures outlined for administrative appeal.
58. **77** This paragraph should reflect the concerns raised by this member in relation to the "right to appeal". An additional paragraph should be included in which Russia should provide the full description requested by Members (eg concerning the appropriate appeals/judicial process and procedures in any given situation where WTO-inconsistencies might arise).
59. **77** We seek more information on the Duma Experts Committee with a short description of the Committee's mandate and status of current work, the work of this Committee in the accession process and, as relevant, the role this Committee will continue to play in Russian legislative developments after accession. In this regard, please include information on plans for a Duma Commission to replace the Experts Committee, and on the role the Commission is intended to play in ensuring WTO-consistency of Russian legislation.
60. **78** We seek explanations what is meant by the phrase: "other territories under the Russian Federation's control". We propose either to simply delete it from the draft Report or

if there is a necessity to retain such wording in the draft Report, just to add after the word "control" the words – "within its state border".

61. **79** This member considers that appropriate commitment language would include a commitment as to the right to appeal administrative rulings on matters subject to WTO provisions to an independent tribunal or other independent body.

## **POLICIES AFFECTING TRADE IN GOODS**

### **Trading Rights (the right to import and export) (pages 80-93 and Table 10)**

62. **80-93** This member wishes to have more information regarding “activity licensing” requirements relative to pharmaceuticals, alcohol and precious stones and supports the call for a clear understanding about how they work. We look forward to an explanation of the steps being taken to bring these practices into consistency with GATT requirements.

The drafting of this section is clearly at an early stage. A useful feature of the text is it makes clear that the veracity of Russia’s claims to WTO conformity will depend in part on whether or not all substantive and procedural aspects of “registration requirements” or “activity licensing”, which determines the registered scope of business, are in conformity with WTO rules. The clarity provided on the need for further clarification provides a starting point for the detailed examination that now needs to take place.

We are pleased that this discussion may now proceed on the understanding that the evaluation of any such activity licensing against WTO provisions will be integral to deciding whether or not the WTO’s guarantees on the right to trade under GATT Articles III:4 and XI:1 are satisfied, and to clarifying reforms in this area required for accession.

Russia should update information relating to the current regulatory regimes and proposed initiatives to eliminate WTO-inconsistencies relating to the ability to trade in individual products such as alcoholic drinks, pharmaceuticals, precious metals and stones, including by reference to specific legislative measures.

63. **81** Please elaborate on the statement on the elimination of the State monopoly in foreign trade in light of State restrictions on who may trade in natural gas, electricity, alcoholic beverages, precious stones and metals, and pharmaceuticals, and any planned restrictions of this sort in other sectors. Reference should also be made to the trading activities of the State-trading enterprises identified later in the Report.
- We understand that Russian agencies, e.g., the Ministry of Agriculture and the State Customs Committee, have made efforts to limit the number of both importing and exporting firms conducting international trade in certain products. We would appreciate an explanation for why these efforts are being made and the legal basis upon which such approaches are made, for both domestic and foreign trading firms.
64. **84** Please list the forms of commercial association that can be registered, and provide citations for the laws that establish their legal status, including sole proprietorships and branches of firms.
65. **Para 84** The Federal law No 129-FZ of 8 August 2001 "On state registration of juridical persons" which will enter into force from 1 July 2002 is not mentioned in Annex 1. As this is an important law This member requires the transmission of a translation of this law to the Working Party.

66. **85-86** We would appreciate receiving more information on the criteria and fees applied to receive activity licenses for importation or exportation of alcoholic beverages, precious metals, or pharmaceuticals, with emphasis on identified WTO-inconsistencies in the availability, fee structure, and procedures, and on Russia's plans to address these deficiencies.
- Please indicate the relationship of these laws and decrees to the new Activity Licensing Law.
67. **86, 90-91, 92-93** Members have expressed several concerns about the three exceptions regarding the right to undertake foreign trade activity (alcoholic beverages, precious metals and stones, and pharmaceutical products). As Federal Law FZ-86 of 22 June 1998 on Medicines states that the right to export and import pharmaceuticals is enjoyed by Russian participants, we first request that a translation of the said law be transmitted to the Working Party. A more precise answer from the Russian Federation is needed on these three issues and paragraphs 92 and 93 should be further elaborated to address the concerns expressed by the Members.
68. **88-91** Members have raised a number of legitimate concerns in paragraphs 88-91. We ask that these concerns be fully addressed.
- We seek the inclusion in this section of the draft Report full descriptions of the restrictions maintained on the right of any natural or legal person to engage in the importation and exportation of precious stones and precious metals, ethyl alcohol, pharmaceutical products and any other products. The descriptions provided will need to include details of:
    - the nature of the restrictions;
    - the products affected by them;
    - their purpose and WTO justification;
    - the formalities, requirements and eligibility criteria that need to be satisfied, and the relevant procedures associated with their application, in order for a legal or natural person to be able to engage in importation or exportation of the product concerned, including those relating to obtaining activity licenses;
    - their legal basis, including in the area of activity licensing.
- We note that in paragraphs 85 and 86 there are brief descriptions of the first and third exceptions, but no description of the second exception.
- We ask that such a description be included in this section of the draft Report. Russia will need to make available copies of English translations of all relevant legal instruments, including those related to activity licensing, for examination in the Working Party.
  - We request that English translations of all such legal instruments be provided for examination in the Working Party as soon as possible.
  - If English translations of these legal instruments cannot be provided before the meeting of the Working Party scheduled to be held during the week, 17-21 June 2002, we seek a positive indication of the date by which they will be submitted.
69. **89** reference should be made to the expectation that Russia will make a commitment to ensure full national treatment in respect of all laws, regulations and requirements concerning the internal sale, offering for sale, purchase, transportation, distribution or use of imported alcoholic beverages and ethyl alcohol.
70. **89** During Russia's accession talks, Georgian delegation on several occasions expressed its concern over the restrictive results of the current system of licensing in Russia for the sale of alcoholic beverages. Georgia feels that there is a significant difference between the rates of the fees charged by the Russian Federation for the right to import, storage and wholesale of alcoholic beverages and those charged for domestic distribution or export, which represents

the violation of paragraph 1 of Article III of the GATT. In this respect we urge the Russian Federation to make the appropriate adjustments in its legislation in order to comply with the WTO relevant provisions and to insert the relevant commitment language in the draft Report.

71. **90** this paragraph should include a fuller description of the concerns earlier expressed in relation to the regimes applicable to trade in alcohol, pharmaceuticals, precious metals and stones. This member expects Russia to undertake the following commitments in respect of trading rights:

“Russia will guarantee that no restrictions are placed on the right to trade in goods and services except as would be consistent with WTO provisions and that all laws and regulations relating to trading rights will be applied in a manner consistent with relevant WTO obligations. Specifically, Russia confirms that no restrictions will be placed on the right of individuals and enterprises, including those with foreign participation, to import and export goods into Russia’s customs territory, except as would be consistent with provisions of the WTO Agreements. Nor will individuals and firms be restricted in their ability to import or export based on their registered scope of business. The criteria for registration and enrolment in the State Register of legal persons will be generally applicable and published, along with any future changes to them.

Without prejudice to other relevant provisions of the WTO, Russia will ensure that any laws and regulations relating to the right to trade in goods will not restrict imports of goods in violation of the general prohibition on quantitative restrictions contained in GATT Article XI:1, nor should they discriminate against imported goods in violation of the non-discrimination provisions of GATT Article III:4. Any associated fees, taxes and charges will also be limited to the approximate cost of services rendered and their application will not lead to discrimination in favour of like domestic products.

Russia will ensure full national treatment in respect of all laws, regulations and requirements concerning the internal sale, offering for sale, purchase, transportation, distribution or use of imported alcoholic beverages and ethyl alcohol.”

This language should be included in the draft report and paragraphs 92/93 amended accordingly.

72. **90** mentions Members’ concerns relating to import requirements for precious stones and precious metals.

- We seek inclusion in this paragraph acknowledgement of the fact that Members have concerns in relation to Russia’s export requirements for precious stones and precious metals.
- We seek inclusion in this section of the draft Report Russia’s responses to Members’ concerns in relation to its export requirements for precious stones and precious metals.

We note previous advice provided by Russia which seems to imply that once an activity license has been obtained by a legal or natural person to engage in the importation or exportation of precious stones and precious metals, ethyl alcohol and pharmaceutical products, any import or export licenses that may apply to these products are issued automatically, in the sense of automaticity criteria set out under Article 2 of the Agreement on Import Licensing Procedures, in respect of exportation as well as importation.

- We request details of all import and export licensing applicable to these products, over and above activity licensing, including inter alia information on where and how the automaticity criteria set out under Article 2 of the Agreement on Import Licensing

Procedures are not satisfied (including in cases of export licensing) and the reasons why those automaticity criteria are not satisfied.

73. **92-93** The commitment in paragraph 93 will ultimately be acceptable but Russia has not yet demonstrated that it can achieve WTO conformity in practice.
- Until the issues raised by Members on trading rights are satisfactorily addressed and appropriate reforms enacted, we will not be ready to accept the claims made at paragraph 92, nor will we be prepared to accept that Russia will be ready to maintain appropriate WTO conformity as foreshadowed at paragraph 93.

### Import Regulations

#### - Customs Regulations and Customs Tariff (para 94)

74. In relevant with the session of Other Customs formalities, members would like to seek clarification on the Customs Order Number 25, dated 25 January 2001 and other related orders of the State Customs Committee of the Russian Federation, which limit the numbers of customs land checkpoints for goods imported from 14 countries, including a number of ASEAN countries. It should be also mentioned that 10 out of 14 are the WTO members.

- It is clear to us that this is the “systemic issue”. The Order, naturally, is contravention and non-compliance with the WTO’s non-discriminatory principle and also definitely constitutes a non-tariff barrier.
- We have raised this particular issue several times both in bilateral and in Working Party. Unfortunately, we have not received any response from the Russian side.
- We need to see commitment from the Russia that this particular order and other related orders will be resolved and will not be reintroduced in the future.
- Finally, these members would like to see our concern, as well as the Russian response to the commitment, reflecting in the Report.

75. **94** pending enactment of the new Customs Code and Chapter 27 of the Tax Code and their notification to the WP, it is not possible to assess whether the provisions of these measures are indeed in full conformity with WTO requirements. Russia should supply the WP with updated information on these legislative initiatives, outlining the changes that are intended to improve the level of WTO-consistency, and provide copies of the legislation to the WP in due course.

76. **94** Please provide a short description of the WTO-relevant provisions of the new Customs Code and Chapter 27 of Part II of the new Tax Code, and describe how, after enactment, Russia plans to amend existing and develop new regulations.

We understand that there are proposals before the Duma for revision of the Law on Customs Tariff. If this is true, we would appreciate receiving information on how this relates to the new Customs Code and Chapter 27 of Part II of the new Tax Code.

77. **94** provides a brief description of changes to customs regulations and the customs tariff. The section of the draft Report on customs regulations and customs tariff is very thin, but we are assuming that it is intended only as brief background to the following sections that deal with duties, quotas, fees, charges, customs formalities, requirements and practices, etc., in more detail.
- It might be useful however to include here a description of the changes to customs regulations, procedures and practices pursuant to enactment of the new Customs Code and amendment of the Tax Code, the reasons for their introduction, and how

they have been designed to address concerns raised by Members in relation to the application of Russia's customs regulations. We ask that this be done.

- We request that Russia make available copies of English translations of all relevant legal instruments in this area, including any regulations and other legal instruments to implement the new or amended legislation as well as the new Customs Code and the Tax Code as amended, for examination in the Working Party.
- If English translations of these legal instruments cannot be provided before the meeting of the Working Party scheduled to be held during the week, 17-21 June 2002, we seek a positive indication of the date by which they will be submitted.

- **Ordinary Customs duties (paras 95-100, Tables 11-12)**

78. **95-100** Substantive comments on this section will need to be deferred until Members see an English translation of Chapter 27 of the new Tax Code which, we understand, replaces the current Law On Customs Tariff.

Most of this section is acceptable. We seek inclusion of a reference in this section of the draft Report to Russia undertaking bilateral market access negotiations leading to the Schedule of Concessions attached to the draft protocol of accession.

78. **96 and 98** This member has a question in regards to the paragraphs 96 and 98 of the document WT/ACC/SPEC/RUS/25. We ask the Russian delegation to clarify whether the changes in the customs legislation mentioned in these paras would exclude the possibility to apply double MFN – tariff rates on the goods originating from a WTO member country. This member has a question in regards to the paragraphs 96 and 98 of the document WT/ACC/SPEC/RUS/25.

This member raised a similar question in the previous submission, which was based on the documents WT/ACC/SPEC/RUS/20/Rev.1 and WT/ACC/SPEC/RUS/21/Rev.1 and was presented for the inclusion in the first Draft Working Party Report. As this question was not reflected in the first draft report and as we continue to have a concern on this particular topic we expect that this issue will be reflected in future drafts.

We ask the Russian delegation to clarify whether the changes in the customs legislation mentioned in these paragraphs would exclude the possibility to apply double MFN - tariff rates on the goods originating from a WTO member country, i.e. whether these new legislative acts would bring the Russian practices in compliance with the Article I of GATT 1994?

79. **97** says: A new commodity description and classification system entered into force on 1 January 2002 based on HS 2002. Please provide your new customs tariff based on HS 2002 to the WP.
80. **98** Please provide a list of Russia's non-MFN trading partners and GSP recipients.
81. **100** Russia needs to respond to the questions raised by Members in paragraph 100. We ask responses to these questions be included in this section of the draft Report.
82. **100** After 100 a new paragraph containing the answer of the Russian Federation and its commitments should be added

- **Tariff Quotas, Tariff Exemptions (paras 101-105)**

83. **101-105** The report should note that several members expressed preference that Russia not use TRQs, particularly where they do not currently exist. It should also note that some

members considered that the introduction of TRQs would be a step backward from the trade liberalization that is expected from accession to the WTO. The view should be reflected that if TRQs were to be introduced, they must ensure that existing levels of trade are preserved, provide for annual growth, and are time limited. Transparency in allocation would also be essential.

The text of this section of the draft Report should reflect the views of Members on the issue of establishing TRQs, in particular, Members' opposition to the imposition of TRQs to limit imports into Russia in areas currently subject to tariff-only regulation., and that they do not consider this issue to be resolved.

We are opposed to Russia's proposals to introduce tariff quotas to restrict market access. Whether and how tariff quotas might be applied is subject to bilateral negotiation at present, and we reserve the right to return to the issues raised in this section of the draft Report later in the negotiations in the light of agreed terms of bilateral settlement.

84. **102** The statement of Members in para 102 rejecting Russia's contention that license or quota auctioning is WTO consistent or a fee for services should be expanded to include reference to the fact that any fees charged or revenues collected in this regard must not exceed the bound rate of duty established.
- We also seek a commitment from Russia to this effect, i.e., that any fees charged or revenues collected must not exceed the bound rate of duty established.
85. **102** We are unable to accept Russia's claim at paragraph 102 that the auctioning method of tariff quota allocation conforms with WTO requirements, and we note that we are not the only Member to hold this view.
- If these claims are retained in the draft Report we will wish to see an additional paragraph included that sets out the contrary view of a number of Members in more detail than is current contained in the final sentence of para 102.
86. **102** Could the RF inform about the fees paid for the auctions of the raw sugar auctions of the GSP TRQ (Gov. Res. 572, 27/7/2000 and 622, 23/8/2001), as well as the fill rate.
- This member prefers that the RF does not apply any TRQs in this accession. If, in any case, this would be so, This member maintains that the auctioning method of TRQs is not fully consistent with GATT94 and discriminates against members that do not provide export subsidies.
87. **104** We seek the inclusion in paragraph 104 of Russia's response to the concern raised.
- We seek the inclusion in this section of the draft Report of the following text:
- "A Member noted that the Law on Customs Tariff prohibited access under tariff quotas from being accorded to the products of most-favoured-nation suppliers. In response, the representative of the Russian Federation indicated that the Russian Federation would repeal this Law and would enact amendments to the Tax Code to eliminate this prohibition, and that the necessary amendments to Tax Code would become effective no later than 1 January 2003. The Working Party took note of these Commitments."
88. **105:** Please clarify whether the limitation noted that only "Russian participants of foreign economic activities" participated in TRQ auctions includes foreign-owned firms established as Russian juridical persons. Can foreign firms and individuals not invested in Russia be the importer of record for goods administered by TRQs?



- Please confirm that there were no eligibility requirements to participate in TRQ auctions that would favor local production, such as requirements to enter into contracts to purchase domestic product or to provide domestic producers with inputs.
89. **105** The fundamental issue raised at paragraph 105 relates to the qualifications that enterprises need to have in order to receive tariff quota allocations under whatever system is used by Russia to allocate tariff quota.
- We ask that information be provided that clarifies the qualifications that enterprises need to have in order to receive tariff quota allocations. As part of this, we would also like to know whether foreign-owned firms established as Russian juridical persons may qualify to receive tariff quota allocations.
  - We ask that it be noted in this paragraph that the WTO conformity of the qualifications that enterprises need to have in order to receive tariff quota allocations is a separate issue from that of the WTO conformity of the type of allocation method used, and that we do not consider that the auctioning method conforms with WTO requirements.
90. **105** After 105 a new paragraph containing the answer of the Russian Federation and its commitments should be added.
- **Other Duties and Charges (paras 106-108)**
91. **106-108** This member would wish to see the elimination of all other duties and charges other than the customs duty and have this reflected in Russia's tariff schedule.

We seek Russia's confirmation that it will bind ODCs at zero in its Goods Market Access Schedule.

92. **106-108** The substance of the section of the draft Report on Other Duties and Charges, including the proposed commitment language at paragraph 108, is close to acceptable, and we assume that the brackets around the text of this paragraph do not indicate the existence of a dispute as to the substance of the issue.
- However it is not appropriate to include textual references to fees and charges for services rendered in the section of the Report on Other Duties and Charges.
- We welcome that Russia does not apply any Other Duties and Charges (ODCs) within the meaning under GATT Article II:1(b), and expect that Russia will have no difficulty committing to bind ODCs at zero on all tariff positions as is required.
- We accordingly request that existing text in this section of the draft Report be replaced with the following text which specifies the factual situation and Russia's commitments:  
 "The representative of the Russian Federation stated that the Russian Federation did not apply other duties and charges (ODCs) within the meaning of Article II:1(b) of GATT 1994 and that such ODCs would not be applied after accession. Noting these statements, a number of Members asked the Russian Federation to commit to bind at zero all such ODCs in its Schedule of Concessions and Commitments for Goods. The representative of the Russian Federation replied that the Russian Federation so agreed. The Working Party took note of these Commitments."
93. **108** please confirm the commitment mentioned in § 108 in order to remove the square brackets. = bind other duties and charges at zero.

### **Fees and Charges for Services Rendered (paras 109-115 and Tables 13-14)**

94. **109-115** This member expects Russia to meet the obligations of the GATT 1994 regarding the costs for services rendered. This member seeks transparency in how fees are calculated and the elimination of ad valorem methodology in favour of recovery of the costs for the services rendered. We would also seek the opportunity to review the new Customs Code before commenting further.

We seek more information on the scope and nature of the new unified customs fees in this section and a response to the questions in the paragraph.

- This description should also include when the new fee structure will come into force, how these fees will be applied, the rates, the trade covered or exempted, the use to which the revenues collected will be put and the relationship of the revenues collected to the cost of providing the services for which the fee is charged.
- Please provide information on how the revenues collected in applying the customs clearance charges will be used solely for customs clearance, and how Russia will ensure that none of the revenues collected by this charge are used for the customs clearance of exempted imports or exports. Will they replace all other Customs charges on imports? If not, please provide updated information on other charges that will continue.
- Fees that are applied only to imports for requirements normally applied to both imports and domestic products, e.g., for standards certification or vehicle taxes, are not consistent with Article III. We seek Russia's confirmation that such fees will be revised or eliminated prior to accession.

95. **109-111 and Table 13** We note that Table 13 contains no reference to fees for the service of conducting tariff quota auctions (paragraph 102 refers). We do not agree that, under GATT Article VIII, tender premiums imposed at auction can represent a fee for a service, as the level of the tender premiums cannot be determined at auction in a way that reflects the cost of providing the service and would normally far exceed such a cost. (It is in the nature of auctions, properly conducted, that their outcomes cannot be fixed.) There is therefore an inconsistency in Russia's position. In paragraph 102 Russia claims that the tender premium is a fee for a service. However in paragraph 109 Russia correctly does not claim the tender premium as a fee for a service.

- We seek an explanation from Russia.

We welcome Russia's recognition at paragraph 111 of the need to modify its fees and charges to eliminate their ad valorem form and thereby fulfil one important condition for ensuring that such imposts will be limited to the cost of the service, i.e., not being made to depend on the customs value of the goods. This will be needed for appropriate conformity with Article VIII:1(a) of GATT 1994.

- We request that reforms be undertaken by Russia to ensure appropriate conformity with the provisions of Article VIII:1(a) of GATT 1994, including through the replacement of ad valorem imposts with appropriate specific imposts, and that Table 13 under paragraph 109 of the draft Report be amended to reflect these changes.

96. **109 Table 13** In the footnotes 4 and 6 on page 37 it is stated that custom authorities may reduce charges for customs services. This member asks for further information, whether the new Customs Code would eliminate the possibilities to reduce the fees for customs services? If this not the case, then we expect the Russian Federation to bring some clarification to the rationale for such exceptions. Namely, who can benefit from the reduction and what are the grounds when taking such a decision?

97. **111** On the basis of the information contained in §111 and as soon as the new draft Customs Code will be adopted table 13 should be amended to reflect the reduction to two types of fees and charges.
98. **112** stamp tax: Please explain what you mean by "performance of legally valid actions" in the last sentence of para 112.
99. **112-113 and Table 14** Leaving aside the question of whether the fee relates to the service, paragraph 113 raises a number of issues relating to the nature of the service and the types of documents that attracted a stamp tax, and whether these are valid requirements. Russia has not responded to the questions raised. Russia has also not responded to the question concerning the ad valorem nature of the Stamp Tax, nor has it indicated that Table 14 would be amended appropriately.
- We ask that responses be provided to the issues raised by Members in paragraph 113.
100. **113 + table 14** Stamp tax: for some stamp taxes the rate is ad valorem. Members have questioned how it relates to the cost of service rendered. As an ad valorem rate is not consistent with art. VIII GATT, please amend table 14 in a WTO consistent way.
101. **Tables 13, 14, 15, and 16** Please confirm that these tables are comprehensive or provide the additional information to make them so. Please distinguish stamp taxes from State Duties in terms of their purpose, incidence, and application.
- **Consular Fees (paras 116-119 and Table 15)**
102. **115** Please provide information on the issues addressed in this paragraph, focusing on the key WTO-relevant issues—to what extent are any of these fees applied to import or export documents, i.e., to any of the documents listed in Table 15, or in connection with the act of importing or exporting? If so, which documents requiring the fee are trade-related and is their use in importation and exportation optional or mandatory?
- Please confirm that the authorization for the measures noted in the first and third “notes” to Table 13 has been eliminated.
103. **Para 115** please confirm the commitments of para 115.
104. **Para 117** "Heads of consular offices had the power to decrease fees or not to collect them at all from individual persons in view of their applications, if the reasons specified by them were considered to be valid". This paragraph needs to be elaborated. In particular a more elaborated answer is needed to explain in which cases the heads of consular offices do so and what reasons are considered to be valid ?
105. **116-119** This section appears generally acceptable subject to two points of clarification.
- The commitment paragraph (119) is in brackets indicating that there is an issue to be resolved. We would like to ascertain the extent to which commercial documents require consular certification.
  - Is consular certification required of commercial bills, certificates of origin, etc? If the answer is yes, could Russia explain how this would be WTO-consistent, as the measure would represent a burden on imports not applied to domestic goods.
106. **118** Table 15 provides a fee table for various consular services, showing how the fee charged differs between the CIS and Baltic countries and all other countries. This list includes a number of consular fees of potential significance for trade, in particular (1) fees for

certification and notarisation of documents, (2) fees for notarisation of agreements subject to evaluation, (3) fees for notarisation of authentication of signature, (4) fees for consular service of sea- or aircraft, including for issuing certificates of loading or unloading, for notarisation of various certificates and applications, including the cargo certificate, and for notarisation of sanitary certificates.

Russia needs to respond either (a) to demonstrate that in fact these fees are in no way connected with trade and therefore are not covered by GATT Article VIII requirements, or (b) to specify what steps it is taking to ensure that such fees are levied on a non-discriminatory and WTO-consistent basis.

107. **119** These members consider the following to be appropriate commitment language in respect of consular fees:  
 “Russia will ensure that all consular fees connected with imports or exports of goods or services are levied in a manner consistent with WTO obligations, including Article I and Article VIII of the GATT and accordingly would apply the same fee scale to all foreign companies on a non-discriminatory basis and ensure that fees will reflect the actual cost of services rendered.”
108. **Para 119** needs to be confirmed
109. **Table 15** needs to be modified to be WTO compliant in particular with art. I GATT. Presently there is discrimination between CIS and Baltic countries towards Other countries (rate of consular fee 10 times higher for other countries)
- **Other Fees (paras 120-121 and Tables 16 (a) and 16 (b))**
110. **121** The report should include updated information on steps taken by Russia to eliminate discriminatory port user fees.
- **Import Surcharge (paras 122-123)**
111. **122-123** At the end of P.123 the last two words “that Article” should be replaced with “the Balance of Payments Provisions of the GATT 1994”.
112. **122** Please indicate the No of the Government resolution of 27 February 1999 that eliminated the import surcharge as from March 1999.
113. **122** Could the RF inform about the circumstances in Law 63-FZ, art. 15, that trigger the use of an import surcharge measure? What type of measure could be used?
114. **123** a new paragraph containing the commitments of the Russian Federation about a separate legislation on trade remedies consistent with the relevant WTO provisions should be added after §123.
115. **123** We seek the inclusion in the draft Report of responses to the concerns raised by Members in paragraph 123. We seek the inclusion of commitment language.
116. **122-123** Are import surcharges authorized under any of Russia’s new customs laws (e.g., the amendments to the Customs Tariff Law, the new Customs Code, and Chapters 26 and 27 of Part II of the new Tax Code), and if so, where?  
 - We seek a commitment from Russia confirming that after accession the application of any such measures authorized, either for BOP or other purposes, will be in conformity with WTO provisions.

## Application of Internal Taxes on Imports

### - Excise Taxes (paragraphs 124-128, Table 17)

117. We welcome progress made towards WTO conformity through the progressive elimination of discriminatory rates and application of excise.

- We ask that Russia eliminate the differential rates of excise on exported natural gas and to respond to this issue in the context of **paragraph 128** of the draft Report.
- We ask that Russia respond to the questions raised in **paragraph 127** about discrimination against imports.
- We ask that a commitment paragraph be included.

118. **124-128 In Table 17** suggest that the box for “Wines (except for natural wines)” be reworded to either “Wines to which alcohol has been added” or “Fortified wines”.

119. **Table 17** Please revise the table to indicate where “wine coolers” are covered. Please clarify the difference between “natural wines” and “wines”? Why is the excise tax on “natural wines” so much lower?

- Are the “excise taxes” applied to exported natural gas the only excise taxes applied to exports? Are excise taxes exempted for other exports?

We seek response to our previous questions on the issue of “credit” given on the excise tax bill for imports into Russia from other CIS countries for excise taxes paid in their home markets. This constitutes discriminatory treatment and is a violation of MFN treatment. Is this measure still applied? If so, how, and what is the timetable for its elimination?

120. **Table 17** why is a tax rate of 0 Rubble per litre for beer with normative (standard) volume of fraction of ethyl alcohol up 0,5% inclusive on the list ?

121. **128** a new paragraph containing the answers and the commitments of the Russian Federation should be added after §128 to address the concerns expressed in § 127 and 128.

### - Value Added Tax (paras 129-135, Table 18)

122. **129 – 135** The text would benefit from a description of the “country of destination principle” in para 130. Item 5 of Table 18 regarding fish caught by fishing enterprises of the Russian Federation requires explanation to avoid the impression that these products are not eventually subject to VAT.

123. **Table 18:**

- Please update the information in the table on VAT exemptions to reflect the additions or changes implemented in January 2002.
- Please describe the content of Article 149 of the Tax Code and indicate how it relates to the provisions of the new Tax Code..
- Please clarify the meaning of the clause “land lots begin the territory of a foreign site covered by the Russian Federation’s right of land use on the basis of an international treaty”.

124. **130-131** Russia should harmonize its VAT policy with Belarus with the destination principle as soon as possible and no later than upon accession.

125. **130-131** We seek clarification of when the destination principle will be adopted in the application of VAT to products imported from Belarus (paragraphs 130 and 131).

126. **131 + 135** members requested a more precise timetable for unifying application of VAT on all products on the basis of the country of destination. § 135 should be amended to address this request. Please confirm the commitment in § 135.
127. **133** Please explain how the exemption of domestic agricultural output from the VAT is justified under GATT Article III.
128. **133** We welcome progress made towards WTO conformity through the progressive elimination of discriminatory rates and application of value added tax.
- We seek a response to the concern expressed in paragraph 131 regarding the unification of VAT on oil and gas imports.
- The exemption of the products of certain agricultural and fish producers from VAT (paragraph 133) creates uncertainty as to how national treatment will be accorded to imported like products, and raises doubts as to whether this aspect of Russia's VAT system is in conformity with Article III:2 of GATT 1994.
- We seek clarification of whether imports of agricultural and fishery products are exempt from VAT and, if not, details of Russia's plans to achieve appropriate WTO conformity by the date of accession.
  - We seek clarification of how it is possible in a VAT system presumably based on the destination principle for VAT exemptions to be accorded to the products of some agricultural producers, but not to the like-products of other agricultural producers (including of the like-products of foreign agricultural producers), given that VAT is presumably levied at the point of sale under Russia's destination principle.
  - We presume that the exemption is for producers rather than products. Is this correct? What is the legal basis for this?
  - Are such exemptions provided at the point of sale? If so, how are the products of certain agricultural producers distinguished at the point of sale from the like-products of other agricultural producers so that the exemption may be provided? What are the processes involved in applying the VAT exemption criteria in this way, and their legal basis?
  - Are Russian producers of certain products all deemed to automatically satisfy the criteria for exemption (e.g., producers of sugar beets) as all producers of such products are presumed to be "small"? If so, we seek full details of these products, and the legal basis for such products being deemed to satisfy the relevant criteria for VAT exemption.
  - Is this provision for VAT exemption for certain agricultural producers applied where output is bartered for goods or services or used as payment in kind for discharging financial obligations to financial institutions or other creditors, given the difficulty of enforcing, and establishing a basis for, VAT (and other indirect tax) obligations in the case of such non-monetised transactions? If so, we seek full details, including the legal basis for bartered products and products provided in kind in order to discharge financial obligations being deemed to satisfy the relevant criteria for VAT exemption.
  - More generally, is there any provision for VAT exemption for producers in any sector that is applied where goods or services are bartered for goods or services, or provided in kind for discharging financial obligations to financial institutions or other creditors? If so, we seek full details, including the legal basis for such goods or services being deemed to satisfy the relevant criteria for VAT exemption.
  - Is VAT applied at source in relation to any domestically produced agricultural products (where imported like-products are however subject to the destination principle), so that the authorities provide exemptions where they are able to directly distinguish exempt Russian agricultural producers from non-exempt Russian agricultural producers? If so, we seek details of this "dual" VAT system, and the

legal basis for applying VAT at source for certain exempted producers of agricultural products.

129. **135** It is appropriate to complete paragraph 135 as follows: "..., without exceptions, regardless of regional destination of goods. The Working Party took note of this commitment."

#### **Quantitative import restrictions (paras 136-138)**

130. **136** Please provide updated information concerning the elimination of the ban on imports of alcohol.
131. **138** Please provide updated information on the status of other nontariff restrictions on the importation of alcoholic beverages.
132. **136-138** Russia should provide further information on the latest legislative developments and its intentions for the future import regime for ethyl alcohol, alcoholic drinks and alcohol-containing products and confirm that the existing legislation, which restricts imports of distilled spirits to no more than 10% of alcohol sales in Russia and, within this quota, requires that no less than 60% of imports must contain 15% of alcohol or less, will be repealed or otherwise not implemented.

We seek a response to Members' concerns in relation to the measures and legal instruments mentioned in **paragraphs 137 and 138**.

133. **139** a new paragraph should be added after §139 containing the answers and commitments of the Russian Federation.

#### **Import Licensing Systems (paras 139-152 and Tables 19 (a) and (b))**

134. **139– 152** This section would benefit from greater organization and clarity, based on the new law being drafted. The justifications offered in a number of instances would need to be substantiated. Clarity is required concerning the relationship between licensing of pharmaceuticals, food products, electrical devices including encryption devices with SPS/TBT requirements. Further discussion of the revised legislation awaiting presentation to the Duma will be necessary.

The information included in the this section of the Report is not laid out in a systematic fashion that will allow the WP to follow the evolution of Russia's policies and legislation towards WTO consistency.

- Please provide up to date information based on the Import-Export Licensing provisions of the new Regulation of Foreign Trade Activities law.
- Please provide information, including a description of their provisions, on recent orders issued by the veterinary service of the Ministry of Agriculture (i.e., #13-8-01-/3150, 13-8-01/3403, and 13-8-01/3231) that effectively act as discretionary import licenses. Please provide information on how these orders were issued and how they are applied. Are there domestic equivalents of the requirements in these orders, i.e., to address the same veterinary issues? If so, please describe them and provide information on their intended effects.
- Please provide Information on licensing criteria and fees, for each product subject to import licensing, including poultry imports. Please indicate how these requirements are applied consistently with the WTO Agreements on Technical Barriers to Trade

and Sanitary and Phytosanitary Measures, and in a manner no less favorable than that to similar domestic products.

- Please respond to the request for a revised WT/ACC/RUS/10, based on the provisions of the new law, and including information on the proposals for the Law “On Medicines.”

It remains unclear whether key aspects of Russia’s current regime relating to import licensing systems are in appropriate conformity with WTO requirements.

We support concerns raised by Members regarding the scope for justifying controls under GATT Article XX, as well as those being justified under Article XX rather than the SPS or TBT Agreements (e.g., pharmaceutical products, drugs etc., products for plant protection, sturgeon species of fish). We ask Russia to address the substance of those concerns.

While import licensing may be the appropriate mechanism for administering certain controls, the justification for controls needs in all cases to be fully in accordance with applicable WTO rules, as much as the specifics of the import licensing procedures used to administer those controls.

We also expect that all measures imposed by Russia (e.g., fees and charges, SPS measures and other technical regulations and conformity assessment procedures, licensing and approval requirements and procedures) will be applied equally and uniformly to Russian legal and natural persons and Russian products as they are to foreign legal and natural persons and foreign products.

- We ask that Russia to provide positive confirmation of national treatment being accorded to foreign legal and natural persons and foreign products, in respect of where intending traders are subject to activity licensing requirements and/or import/export licensing requirements.
- We request full details of all respects in which foreign legal and natural persons and foreign products are subject to different requirements from those applicable to Russian legal and natural persons and Russian products, in relation to substantive and procedural aspects of activity licensing and in relation to import and export licensing.
- Russia needs to respond in a substantive way to the concerns expressed by Members in paragraph 146 (relating to alcohol), paragraph 147-149 (pharmaceuticals), paragraph 150 (precious stones and metals).
- We seek inclusion in the Report of detailed responses to Members’ requests in relation to the matters raised at paragraphs 146-150.
- We seek inclusion in the Report of a response to the request at paragraph 151 that details of Russia’s current and proposed procedures for import licensing, whether automatic or non-automatic, be clarified.
- The draft undertaking in paragraph 152 is in bracketed text and will need to be agreed once the substantive issues are resolved.
- We ask that the second sentence make clear that “The import licensing regime from the date of accession would be ...”, rather than the present formulation that refers to “Amendment ... after accession would be ...”.

135. **139** a new paragraph should be added after §139 containing the answers and commitments of the Russian Federation.

136. **140** Members have indicated on several occasions that they do not agree that the current Russian legislation is consistent with WTO provisions, and this issue will need resolution as the Working Party report evolves. These points should be reflected in the text.

137. **Table 19 a +142+144 +145 +148 + 149** (consistency to impose a non automatic import LIC on pharma?): members have expressed many concerns and questions about licensing requirements for pharmaceutical products.



For instance in § 145. the 0.05% fee on the contract value of goods is not compliant with article VIII GATT. In para 144 the applicant must have an activity licence to import pharmaceuticals and para 145 mentions a preliminary permit for imports delivered by the Ministry of Health. Please explain the rationale of such a preliminary permit and how is it consistent with the Import licensing Agreement (article 1.6 Agreement on import licensing says that the application procedures shall be as simple as possible). As for pharmaceutical products are non-Russians also allowed to import and export pharmaceutical products ? Under which conditions ? Do the same conditions apply to Russians and foreigners ? If a foreign company exports pharmaceuticals to Russia and the importer is a Russian company, do both companies need a special activity licence or only the Russian company ?

138. **144** The statement in this paragraph that “that the Russian Federation had no intention to limit the quantity and value of imports, except as provided for in international conventions such as the Montreal Protocol or Basel Convention” is clearly not correct. The current application of licensing requirements for imports pharmaceuticals, sugar, alcoholic beverages, and precious stones and metals restricts imports. Russia should ensure that the report reflects a strong presentation on how these restrictions will be modified or eliminated to meet WTO requirements.
139. **144** The paragraph 144 of the draft Report states that the purpose of the licensing regime is to monitor and control imports of goods and that the Russian Federation does not intend to limit the quantity and value of imports. If it is so, then why is the import of ethyl alcohol subject to non-automatic licensing in the Russian Federation? If the purpose of the licensing regime is that mentioned in paragraph 144, then we urge the Russian Federation to make a stronger commitment that would ensure that any import licence on ethyl alcohol and other alcoholic drinks is granted automatically on the principles compatible with the WTO requirements.
140. **145** In its paper of 20 March, these members already invited Russia to explain how the 0.05% administrative fee charged by the Ministry of Health for issuing permits to import pharmaceutical products is consistent with GATT Article VIII requirements. We invite Russia to respond on this point.
- Russia should provide updated information on its import licensing regime and relevant legislative initiatives. These members are also interested in receiving further information relating to the import regime for cryptographic products, an issue which was raised at the 24/25 April meeting.
141. **149** We seek Russia’s substantive response to the concerns expressed in paragraph 149, including specific reference to its plans for legislative revision of the current regime.
142. **Table 19(a)** The justifications for some of Russia’s licensing provisions, as currently applied, are questionable, e.g., for pharmaceutical products, products for plan protection, ethyl alcohol, vodka and other strong alcoholic beverages, and raw sugar. In addition, we need additional specificity on the criteria for non-automatic licensing of imports of “equipment for unauthorized receipt of information” and further refinement of the HS numbers identifying “encryption” devices” under import license. Finally, we cannot find HS 854380 in Russia’s tariff schedule.
143. **150** Please indicate what have been undertaken to amend or repeal Law No 86 concerning pharmaceuticals. Has the new draft Foreign trade and Import Export Licensing Law been adopted yet ? What will be the main changes introduced by this law ?

144. **151** As mentioned in this paragraph please provide an updated description of your import licensing regime and the specific criteria for the application of the various licensing requirements.

145. **152** this paragraph should be further elaborated to address all the inconsistencies mentioned by the members and to include the commitments of the Russian Federation on the issue of import licensing for pharmaceuticals.

- **Customs Valuation (paras 153-161)**

146. **153 – 161** This member joins calls for more clarity in the text and agrees with the expressed need to study Chapter 27 of the Tax Code which contains requirements ensuring consistency of customs valuation procedures with WTO requirements before offering more substantive comments. We will, however, be looking for clarity in areas such as valuation of transactions between related parties, methodologies as they relate to the interpretive notes, and full implementation of Article 13 of the Agreement providing for pre-release pending final determination of value.

147. **153-154** This part of the text should be expanded to include the oft expressed views of WTO members that Russia's current legislation, as described in para 154, does not/not conform to WTO provisions.

148. **155-157** If the term "special technique" is to be used, the text of para 155 should be expanded to include description of what the "special technique" is, operationally, and how and when it is used.  
Russia's assertion that it is simply a tool to combat under-invoicing should be balanced with the views of U.S. and other delegations that it constitutes use of minimum and arbitrary values, which are prohibited by the WTO Valuation Agreement, but not by Russia's current customs valuation laws and regulations.

149. **156** this paragraph should provide a fuller description of the concerns of members as regards the "special technique of customs control".

150. **158** Please describe the improvements in Russia's customs valuation regime that will be implemented by Chapter 27 of the Part II of the Tax Code.

151. **159** Members mentioned that presently there is no guarantee system allowing an importer to withdraw goods from customs pending final determinations of the customs value if he provided sufficient guarantee. Please indicate where in the new tax Code or draft customs Code such a system is foreseen.

152. **159** We ask that a response to the concern raised in paragraph 159 regarding the guarantee system required under the Agreement on the Implementation of Article VII of GATT 1994 be included in the draft Report.

153. **160** Russia needs to provide updated information on legislative and other initiatives to ensure WTO conformity in this area.

154. **160** We support and seek a response to Members' calls for further information on the amended Tax Code and the draft Customs Code to ensure meaningful discussions on conformity with WTO requirements.

155. **161** should be further elaborated with information on the new tax code and the draft customs code dealing with customs valuation. Please confirm the commitments in square brackets.

- **Rules of Origin (paras 162-171)**

156. **163** We refer to the reference in paragraph 163 to country quotas and “other methods for regulation of foreign economic activities”.

- We seek the inclusion in the draft Report of explanations of the circumstances under which these two measures are applied.

157. **166** it is stated that goods of which the origin has not been clearly established are cleared through customs only after payment of customs duties at non-MFN tariff rates (ie at a rate double that of MFN rates). Can Russia clarify whether in such cases it is possible to submit a certificate of origin subsequent to custom clearance and if origin is subsequently satisfactorily established in this manner, duties are then refunded?

158. **167 and 168** these paragraphs should contain a fuller description of the criteria applied for determining preferential origin both from CIS countries and under Russia’s GSP scheme and their legal basis. In addition, do the customs procedures include any guarantee system which allows release of goods pending determination of preferential origin? How does any associated rectification procedure (subsequent refund or recovery of customs duties) operate?

159. **169-170** Please provide specific and updated information on the new Rules of Origin provisions in, e.g., new Customs Code and Chapter 27 of Part II of the new Tax Code. Do Russia’s preferential rules of origin for the CIS reflect the interim rules of the WTO Agreement in Annex II of the Agreement?

160. **169 and 170** We seek the inclusion in the draft Report of a response to the substance of the issues raised in paragraphs 169 and 170.

161. **171** in the second sentence of this draft commitments paragraph, the phrase “the requirements of Article 2(h) and of Annex II, paragraph 3(d)” is left hanging.

- **Other Customs Formalities (paras 172-176)**

162. **172-176** these members consider that in due course an appropriate commitment paragraph should be introduced at the end of this section.

163. **172 – 176** A comprehensive list of all Orders restricting entry points by commodity and by country of origin should be provided. Such restrictions should be removed unless they can be justified under the WTO.

164. **173, 174** At the beginning of our meeting, the delegation of Georgia expressed its appreciation to the Secretariat for accurate drafting of the Report. I would like to reiterate the importance of problems described in paragraphs 173 and 174 regarding the customs regulation and simplification of border control measures and necessity of bringing all these inconsistencies under the WTO legal umbrella.

In our opinion, the problems listed in paragraph 174 of the draft Report still remain unresolved and open. Therefore, we seek the commitment from the Russian Federation to prevent the illegal flow of smuggled goods from its territory. We also urge the Russian

Federation side to remove all customs formalities, which represent hidden barriers to trade and major trade distorting measures, prior to its accession to the WTO.

165. **175** This member expects the Russian Federation to undertake the commitments mentioned in para 175 regarding the publication of all regulations, formalities and requirements connected with the importation of goods and to eliminate the inconsistencies between the general legislative framework and subsidiary regulations and administrative guidance issued by the Russian Federation government bodies.
166. **175-76** Statements made by WTO Members at the January and April 2002 meetings of the WP, concerning specific problems with Russia's customs regime should be elaborated in the draft Working Party report text. Russia's use of restricted customs entry ports on a country-specific and product specific basis and other efforts to limit the scope of trade are clearly inconsistent with GATT Article IX unless they can be otherwise justified under WTO provisions.
- Please describe all such measures in place, listing countries and products covered. Please provide copies of all SCC Orders in this regard.
  - Please explain the reasons for the efforts of Russia's customs service to narrow the ability of WTO members to trade with Russia and how this type of initiative will be regulated after WTO accession, i.e., will the authority of the SCC to order such restrictions be reduced or eliminated?
167. **176** A paragraph should be added after para176 containing the commitments of the Russian Federation addressing the concerns expressed by members.

We seek the inclusion in this section of the draft Report meaningful responses to all of the concerns raised by Members on customs formalities (**paragraphs 173, 174, 175 and 176**), including aspects of these and other issues raised in Working Party discussions.

168. **176 bis** A Member said that it had concerns about the practice of authorisation of very limited number of customs check-points designated for exportation of certain products, and also about the practice to close promptly certain customs check-points, thus creating serious trade barrier. He had concerns about the Order of the State Customs Committee issued on 27 December 2000 stating that non-ferrous and ferrous metal scrap can be exported only through the seaports of the Russian Federation. This Member requested Russian Federation to ensure that these and other measures related to exportation would be brought in full conformity with the WTO provisions.

*This addition concerns exportation, but the problems are essentially of the same type as those referred to in this Section, which is a part of the larger Chapter "Import Regulations". It is also acceptable if this language is inserted in the Chapter "Export Regulations" as subchapter "Other Customs Formalities", which then would be paragraph 198 bis.*

- **Pre-shipment Inspection (paras 177-178)**

169. Have there been any new developments that require further expansion of these paragraphs? If so, please provide information on them..
170. **178** We are concerned that the bracketed text in paragraph 178 suggests that Russia may implement preshipment inspection in the future. While recognising that the WTO does not preclude such a step, subject to meeting a range of requirements, we believe this would be a backwards step, and we would far prefer to see Russia engage customs reforms that would address problem areas.

- Why does Russia consider it might be necessary to implement preshipment inspection?
171. **178** Please confirm the commitments mentioned in this paragraph.
- **Anti-Dumping, Countervailing Duties and Safeguard Regimes (paras 179-184)**
172. **179 – 184** the penultimate sentence in P.179 will need to take into account that there are additional requirements in each of the three Agreements concerning the duration of measures. It will be essential to be able to review the new draft law before this section can be completed. We would expect this section to explain in appropriate detail the procedures put in place in Russia to address issues of dumping, subsidization and the introduction of safeguard measures, as well as of injury.
173. **180** we invite Russia to submit updated information on these legislative initiatives, together with copies of new legislation when they are available.
174. **180** We seek an update on the passage of legislation referred to in paragraph 180.
175. **181** What is the point of view of the Russian Government regarding the allegations that "current legislation provided by the Russian authorities did not appear to be consistent with relevant WTO provisions". We would like to have "an appropriate commitment that should confirm the full conformity of the new Law and regulations and their modalities of application with relevant WTO Agreements", as mentioned in paragraph 182. In that sense, we would like the brackets in paragraph 184 to be deleted.
176. **181-183** Members have raised what appear to be several legitimate concerns in paragraphs 181-183.
- We ask that the substance of these concerns be addressed.
177. **183** this paragraph should be converted into formal commitments by Russia.
178. **183** We seek Russia's response to the concerns expressed in para 183 and agreement to the commitment requested.
- Please provide a list of all current antidumping, countervailing duty, and safeguard actions in place against imports, listing both products covered and countries affected.
  - What is the functional difference in procedure or penalty application under the current Russian "trade remedies" regime between antidumping remedies and safeguards?
  - By what date does Russia foresee enactment of the new legislation and implementation of new procedures in such cases?

### **Export Regulation**

- **Export Duties (paras 185-188)**

179. **185-188** This member requests Russia to provide a list of products subject to export duties.

We support concerns raised by Members over export duties applied by Russia, and the adoption by Russia of accession commitments to phase them out and not have recourse to them in the future.

- We seek the inclusion in this section of the draft Report responses to these concerns and statements of Russia's agreement to these requests.
  - We ask that full details of Russia's export duties be set out in a Table to be located in this section of the draft Report. We ask that such a Table be updated in each future iteration of the draft Report.
180. **185-188** It seems appropriate to add the following text to paragraphs 185-188: "The representative of the Russian Federation confirmed that, in particular export duties and VAT, on a non-discriminatory basis *vis-a-vis* to all WTO Members and goods, without any exceptions. The Working Party took note of this commitment."
181. **185** the WP report should incorporate a full listing of export duties by HS-number and with applied duty rates. Russia should update the WP on the latest changes made in this area. In due course, this section will need to include an appropriate commitment paragraph.
182. **185** please confirm that the list of goods subject to export duties is exhaustive and has not been modified recently.
183. **188** a new paragraph should be added after para188 containing the commitments of the Russian Federation addressing the concerns of the members.
184. **188** Russia should respond to the comments in this paragraph in particular addressing future plans, in conjunction with export tariff, VAT, and excise changes.
- Members have requested clarification on whether the Russian Federation is still levying VAT on any exported products. Please address as well the efficiency and timeliness of VAT export refunds. We understand that exporters have had difficulties claiming such legally permissible refunds, and that there have been delays in their transmittal, without explanation.
- **Quantitative Export Restrictions, Including Prohibitions and Quotas (paras 189-190)**
185. **189** We are pleased that a number of quantitative export restrictions were abolished in 1996.
- We ask that details of the export restrictions abolished in 1996, and any which may have been abolished since 1996, be included in this section of the draft Report to record Russia's reform progress in this area.
  - We seek full clarification of the reference to essential national interest as a justification for export quotas, what this means, and the connection this has to the GATT provisions that refer to essential security interest .
186. **189-193** as already indicated, these members expect Russia to commit to abide by WTO rules in respect of non-automatic export licensing and export restrictions and to eliminate all non-automatic licensing requirements and export restrictions upon accession unless they can be specifically justified under WTO provisions. A consequent commitment paragraph should be included in future drafts.
187. **190** We would appreciate information on the sorts of timber products that are covered by these measures, and clarification of whether this restricted use of checkpoints for exports is more widespread, i.e., are there additional products?
- Please explain how, and the degree to which, the commission for the Access to trunk Oil and gas Pipelines allocates the distribution of oil and gas between domestic and foreign markets.

- **Export Licensing Procedures (paras 191-195, Tables 20 (a) and (b))**

188. **Table 20(a)** Are there any licensing requirements for export of fertilizers?

189. **Table 20** We welcome that Russia is no longer seeking WTO legal cover under the exceptions of Article XX of GATT 1994 for measures applied by means of the non-automatic licensing to exports of certain precious metals and stones, objects made thereof, and certain alloys, semifabricates, ores, concentrates and wastes (Table 20(a) under paragraph 191). We fully concur that in respect of such measures it will not be appropriate to seek to invoke any of the exceptions of Article XX of GATT 1994.

190. **191** We seek the inclusion in this section of the draft Report clarification of the statement, “the procedures for export licensing were the same as for import licensing” (paragraph 191).

191. **192-195** There are some important questions raised by Members in this section of the draft Report that Russia has not answered.

- Members asked Russia to justify export restrictions on precious stones and metals (paragraphs 192 and 194). Russia should include in this section of Report a clarification and full explanation of the purpose and justification sought under GATT Article XV:9(b) for the non-automatic licensing of exports of precious metals and stones, objects made thereof, and certain alloys, semifabricates, ores, concentrates and wastes.
- To help facilitate such clarification and explanations, we seek the inclusion in this section of the draft Report of details of:
  - the measures applied under the non-automatic licensing of exports which Russia is seeking to justify under GATT Article XV:9(b), including descriptions of the measures, the bodies involved in applying those measures including details of their responsibilities, the products affected by each measure, and the legal basis for those measures (regulations, executive decisions, administrative decisions and other legal instruments and legislative acts)
  - the export licensing procedures applicable, including inter alia full details of any restrictions on eligibility for export licenses, all other terms and conditions associated with their issuance, and the procedural aspects of the issuance of such licenses
  - the provisions of Russia’s exchange arrangements with the IMF currently in force that require Russia to adopt or maintain the measures applied by means of the non-automatic licensing of exports Russia is seeking to justify under GATT Article XV:9(b)
  - Russia’s plans to eliminate all measures applied by means of the non-automatic licensing of exports that may be required under provisions of Russia’s exchange arrangements with the IMF at the conclusion of the term of any such arrangements currently in force.
  - Members also raised the justification for export restrictions on alcohol, vodka and pharmaceuticals (paragraphs 192 and 194) and restrictions on customs posts and distribution (paragraph 195).
  - We seek the inclusion in this section of the Report Russia’s responses to these concerns.

192. **193:** We support the concept of this commitment, but it is not clear how Russia intends to justify its existing restrictions on exports of precious metals and stones, pharmaceuticals, alcohol, and products for plant protection. There is not enough information to agree that these requirements are justified under GATT Articles XX or XXI, nor other WTO Agreements.

- Please provide this information. In addition, these issues should be addressed in the text and in the Working Party.
193. **194-5** we invite Russia to respond to the issues raised in these paragraphs and supply updated information in the different areas specified.
- **Export Financing, Subsidy and Promotion Policies (paras 196-198)**
194. **196 – 198:** **197** should reflect that members called on the Russian Federation to revise its domestic law/regulations for any identified subsidy measures so as to eliminate prohibited industrial export subsidies as of accession.
195. **196 and 197** We seek the inclusion in this section of the draft Report of meaningful responses to the concerns raised by Members under paragraphs 196 and 197.
196. **197** Please provide information on the extent to which Russia's State Aids Law deals comprehensively with subsidies. Does it cover subsidies funded by "revenues foregone" by the State, e.g., tax exemptions or through state-mandated price controls?
- We understand that the original draft law is being re-drafted. Please provide a description of the draft State Aids law for the WP report text.
  - Please list and describe in the WP report Russia's export and import substitution subsidies, at both the federal and regional levels, and the subsidy effect of price and availability of natural gas to export industries, both in terms of (a) world prices and (b) the price and availability to other commercial concerns within Russia.
197. **197-198** paragraphs 197/198: the text should include a reference to Russia's recognition that export subsidies cover more than budget subsidies. The commitment paragraph should include proposals made by members as regards a commitment to cover all levels of government and identify the different possible methods by which subsidies might be provided (ie including exemptions, reductions, deferrals or forgiveness of taxes and duties). Russia should also make a commitment not to invoke Articles 27-29 of the Subsidies Agreement. The following language was already proposed by these members:  
"The representative of Russia confirmed that Russia would, upon accession, grant no export subsidies in the meaning of Article 3 of the SCM Agreement. This commitment covers subsidies at all levels of government, including exemptions, reductions, deferrals or forgiveness of taxes and duties to enterprises which are contingent upon export performance. The representative of Russia confirmed that Russia would not invoke any of the provisions of Articles 27, 28 or 29 of the SCM Agreement."

### **3. Internal Policies Affecting Foreign Trade in Goods**

- **Industrial policy, including subsidy policies (paras 199-206)**

198. This section should include information on the elimination of coal subsidies.
- We ask that details of the elimination of coal subsidies be included in this section of the draft Report. Have all coal subsidies been eliminated? If not, we seek the inclusion of details of the remaining subsidies and Russia's plans to eliminate them.

To what extent are loans provided under Government Resolution No. 538 ("On Provisions of Budgetary Loans to Finance the Implementation of High-Return Contracts for Production and Supply of Products, Including Export Supplies") contingent upon export performance?



199. **199** We appreciate the work Russia has done with the WP to outline existing subsidies. At the current time, however, we are not prepared to accept as fact the statement in the last line of this paragraph, i.e., "At present, no budget subsidies existed in the Russian Federation which could be considered as export subsidies."
200. **199- 206** this section does not fully reflect the concerns identified by these members. Russia should confirm to the WP its understanding that the definition of prohibited subsidies under Article 3 of the Subsidies Agreement covers more than direct government payments. It should also inform the WP of latest developments and plans in relation to sectoral supports, including to the automobile and aircraft industries. Russia should confirm its intention not to authorise any new investment projects in the automobile sector on the basis of existing legislation (notably Decree no 135 of 5 February 1998 and Resolution No 413 of 23 April 1998) and to repeal this legislation.
- These members expect Russia to make a commitment in the WP report that it will notify the WTO of any subsidy within the meaning of Article 1 of the Agreement on Subsidies and Countervailing Measures granted or maintained in its territory, organised by specific product, including those subsidies defined in Article 3 of the SCM Agreement. The information provided should be as specific as possible, following the requirements of the questionnaire on subsidies as noted in Article 25 of the SCM Agreement. For purposes of applying Articles 1:2 and 2 of the SCM Agreement, without prejudice to Articles 8:2(a), 8:2(b) and 8:2(c) of the SCM Agreement, subsidies provided to state-owned enterprises will be viewed as specific if, inter alia, state-owned enterprises are the predominant recipients of such subsidies or state-owned enterprises receive disproportionately large amounts of such subsidies.
- The commitment paragraph should also be expanded to include the following language:
- "The representative of Russia confirmed that Russia would, upon accession, grant no subsidies contingent upon the use of domestic over imported goods in the meaning of Article 3:1(b) of the SCM Agreement. This commitment covers subsidies at all levels of government, including exemptions, reductions, deferrals or forgiveness of taxes and duties to enterprises which are contingent upon the export performance or to the use of domestic over imported goods."
201. **203-205** Members have raised a number of concerns specified in paragraphs 203, 204 and 205, in relation to which more discussion will be needed.
- We seek the inclusion in this section of the draft Report of responses to those concerns.
202. **203** Re Para 203: The report should reflect that Members noted that the Russian Federation representative had acknowledged that WTO rules on subsidies cover state benefits provided through a range of mechanisms, including revenues foregone as well as those financed through budgetary allocations. The reports should also reflect the view of members that, in addition to the issue of prohibited subsidies, it was necessary for the Russian Federation to address those industrial subsidies that should be notified under the WTO Agreement on Subsidies and Countervailing Measures. This member requests the Russian Federation to provide detailed information in this regard in the form of the notification requirements provided for in the WTO Agreement on Subsidies and Countervailing Measures. This member would also wish to have updated information on the Russian Federation's comprehensive draft law on State Aids, including a description of its purpose, scope and provisions, and an indication of when it might be implemented.

- **Technical Regulations and Standards, Including Measures Taken at the Border with Respect to Imports**

- **Technical Barriers to Trade (paras 207-223)**

203. **207-223** This member joins other Members in calling for an updated checklist on steps to implement TBT and copies of latest draft legislation. The WP text needs significant work, e.g., more detailed assurances that all TBT obligations will be met, such as technical regulations being justified on the basis of legitimate objectives, and a standards system that follows the Code of Good Practice. The section should provide Russia's responses to the concerns raised by Members in paras 219-221. We look forward to the latest draft of the framework law. The section should also note the changes which have been made to address concerns regarding multiple marks outlined in para 219.

This section of the draft Report includes a long description provided by Russia. However the section needs much more work which can only be undertaken after a full discussion of the issues with Russia in plurilateral process that need to be re-engaged and whose work needs to be pushed to completion as matter of high priority. Members will need to be convinced that the legislative and administrative arrangements will fulfil the requirements of the TBT Agreement.

This section of the draft Report does not appear to mention obligations under Article 4 of the TBT Agreement or acceptance of the Code of Good Practice at Annex 3 of that Agreement.

- We seek appropriate action, the inclusion of relevant information in the draft Report and commitments by Russia regarding adherence of standards setting bodies to Annex 3 of the TBT Agreement and compliance of sub-federal bodies with the provisions of the TBT Agreement.

The report identifies a number of legislative and regulatory initiatives by Russia in this area: these appear to go in the right direction but it is not possible for the WP to confirm this without further information and sight of relevant legislative texts. These views are broadly reflected in paragraph 221 of the draft report. We support the proposed initiative of a plurilateral meeting on TBT issues in the margins of the WP meeting in mid-June. Russia should take this opportunity to explain clearly how it intends to ensure that all TBT legislation and measures are fully consistent with WTO obligations at the time of accession.

204. **207-210** While we appreciate the information provided, it does not address the aspects of Russia's current regime inconsistent with WTO provisions nor specifically address how they will be amended. Specifically:

- There is provision for acceptance of certificates of conformity except through bilateral agreements or Russian membership in international certification systems;
- There is no list of fees.
- There is no description of how technical regulations and other issues are circulated for review and comment prior to finalization.
- There are no criteria consistent with WTO provisions to determine the justification for a technical regulation.
- Please provide information on the status of Russia's updated TBT/SPS Action Plan ("Inter-ministerial Program of Measures to Ensure Compliance with the WTO TBT Agreement and SPS Agreement"), as referenced in SPEC/RUS/20/Rev.1
- Please provide a copy of the Plan to the WP, once it is finalized.
- The details of the action plan, as they pertain to Russia's SPS regime should also be referenced in the SPS section.

205. **209** makes reference to existing requirements for mandatory certification of imported products. Russia should update the WP on its plans to reduce its reliance on mandatory certification and outline the related legislative changes. It is also important to ensure that voluntary standards do not in practice become the basis for mandatory requirements.
206. **Para 209** states that products imported into the territory of the Russian Federation should meet technical, pharmacological, sanitary, veterinary, phytosanitary and ecological standards and requirements determined by the Russian Federation. How is it guaranteed, that both, Russian goods and foreign imports, are evaluated the same, applying the same regulations and standards?
- With regard to the “list of goods subject to mandatory certification [...]” mentioned in **paragraph 209**: what are the criteria that a specific product is included into this list? The product range that is covered by this list is much too extensive. A reduction of the list’s product range would also diminish the danger of technical barriers to trade. The Russian Authorities should rely more on manufacturer’s declaration of conformity instead of mandatory certification. Mandatory certification should be limited to such cases, where it is strictly necessary to ensure public health and to protect the environment.
207. **210** Are certificates of conformity and conformity marks issued by a foreign country only recognized if this foreign country has signed an interstate agreement with the Russian Federation or will the Russian Federation recognize autonomously certificates of conformity and conformity marks issued by foreign countries even if they do not have such an interstate agreement?
- What conditions will such an autonomously recognition be based on?
  - Are also foreign conformity assessment bodies given the possibility to certify for the Russian market?
  - Is there a list of such bodies available and what are the criteria, which those bodies have to fulfil in order to have their activities recognized by the Russian authorities?
  - Does the Russian Federation accept results of conformity assessment procedures performed by foreign conformity assessment bodies if these bodies apply internationally agreed standards or technical regulations, which are equivalent to the Russian technical regulations? Would also regional authorities accept these results?
208. **211** says, that different confirmation schemes, depending on the degree of potential danger of products are applicable. What schemes are these? With which international rules have they been harmonized?
209. **212** It is written under paragraph 212, that the voluntary application of state standards (that are based on direct application of the corresponding international standards) should ensure compliance with the requirements of technical regulations. Will these state standards be equivalent to the respective international standards? Which international standards are taken as reference for the adoption of the state standards? Is it certain, that the voluntary application of state standards leads to a presumption of conformity to technical regulations or are there any exceptions from this rule? What a product range will the mentioned “presumption of conformity” be applicable to?
210. **212** Russia states that “all state standards (both existing and newly developed) would be transformed to non-binding instruments by revision, cancellation or adopt of new standards.” What is the timetable for this?

211. **214** The new, shorter, list of products subject to mandatory certification should be included as an annex in the draft WP report.
212. **213** What are the respective international standards that serve as a reference for the harmonization of domestic standards? Are there any trade relevant product sectors where the respective domestic standards will not be subject to harmonization with international standards?  
In this context it should be mentioned, that the current level of harmonization of domestic standards with international standards of 35 per cent is still too low. It would be a good opportunity to accelerate this harmonization process on the occasion of a further harmonization of the existing legislation with the requirements of the WTO Agreement on TBT mentioned under paragraph 211.
213. **216** Concerning the “Procedure for Preparation of Notifications of Draft Regulatory Documents” mentioned under paragraph 216: Does this document also regulate the notification of technical regulations of provinces of the Russian Federation?  
- Concerning regulatory competencies of the provinces of the Russian Federation: Are there any such regulatory competencies in the provinces and for which product sectors do they exist? How is it guaranteed that the regulations of the provinces are based on international standards and coherent with the regulations adopted at the central level?
214. **218-222** Russia needs to respond in meaningful way to the specific concerns raised by Members in paragraphs 218-222.  
- We seek the inclusion in this section of the draft Report meaningful responses the concerns raised by Members.
215. **226 and 227** A number of the measures mentioned at paragraphs 226 and 227 and elsewhere in the section on Sanitary and Phytosanitary Measures appear likely to be measures covered by the Agreement on Technical Barriers to Trade, as they do not appear to be covered by the definitions set out in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures.  
- We ask that Russia re-examine the SPS and TBT sections of the draft Report to clearly differentiate measures falling to the SPS Agreement from those falling to the TBT Agreement and address issues and concerns and respond to requests in the appropriate place and in relation to relevant provisions of the Agreements.  
- **Sanitary and Phytosanitary Measures (paras 224-243)**
216. We welcome that this section of the draft Report does not include a request by Russia for a transition period for the implementation of Russia’s future WTO obligations in relation to SPS measures.  
- We request that Russia press forward with a range reforms in this area to achieve full WTO conformity by the date of accession.  
- We seek the inclusion in this section of the draft Report of clear commitments on Russia’s part to implement the requirements of the SPS Agreement, including relevant legislative and administrative arrangements. Members will need to be convinced that the legislative and administrative arrangements will fulfil the requirements of the SPS Agreement.  
- We seek appropriate action, the inclusion of relevant information in this section of the draft Report and commitments by Russia regarding adherence to Annexes B and C of

the SPS Agreement and compliance of sub-federal bodies with the provisions of the SPS Agreement.

- We would appreciate advice as to when Russia's SPS enquiry point will be fully operational, when it will provide access to all relevant regulations in a timely manner, and what steps Russia is taking to improve its coverage so that traders can be fully aware of changes to SPS measures in advance of implementation of such changes.

These members' views are broadly reflected in paragraph 241 of the draft report. We support the proposed initiative of a plurilateral meeting on SPS issues in the margins of the WP meeting in mid-June. These members consider that all relevant legislation and procedures must be in compliance with the SPS Agreement at the time of accession. Russia should update the WP on its plans to ensure this. It would be helpful to receive a copy of the "Inter-Agency Programme of Measures to ensure Compliance with the Requirements of the WTO Agreements on TBT and WTO Agreement on SPS" mentioned in paragraph 211 of the draft report, together with an updated SPS Action Plan as mentioned in paragraph 242.

As noted in the Comments on WT/ACC/SPEC/RUS/25, WTO Members should have an opportunity to review the list of laws and regulations referenced in WT/ACC/SPEC./RUS/20/Rev.1, but not yet provided for review.

We would appreciate receiving copies of the following:

- Procedures of Sanitary and Epidemiological Examination of Products, approved by Order No. 217 of the Ministry of Health of Russia on July 20, 1998
- Resolution of the Russian Federation on State Registration of New Food Products, Materials and Items of December 21, 2000, No. 988
- Resolution of the Russian Federation Government On State Registration of Certain Types of Food Products First Imported to the Territory of the Russian Federation of April 4, 2001, No. 262
- Regulations on the State Veterinary Service of the Russian Federation for Protection of the Russian Territory Against Importation of Infectious Animal Diseases from Abroad, approved by Resolution of the Russian Federation Government of October 29, 1992, No 830
- Regulations of State Veterinary Surveillance in the Russian Federation, approved June 19, 1994, No. 706
- Regulations on the Procedure for Examination of Low Quality or Hazardous Food Input and Products, Their Use and Destructions, September 29, 1997, NO. 1263
- Regulations on the division of Functions of State Veterinary Surveillance in Processing and Storage Enterprises of Animal products, October 14, 1994, No. 13-7-2/173
- Instruction on the procedure for issuance of veterinary accompanying documents for cargoes controlled by the State veterinary surveillance agency, April 12, 1997, No. 13-7-2/871
- Regulations on State Surveillance and Control in Ensuring Quality and Safety of Food products, December 21, 2000, No 987
- Letter of the Veterinary Department of the Ministry of Agriculture listing controlled cargoes, May 16, 2000, no. 13-8-01/3009
- Resolution On State Service for Quarantine of Plants in the Russian Federation of April 23, 1992, No. 268, and amendments of October 1998

No further comments can be provided for the moment since the lack of sufficient information on these areas, so This member reserves its right to make further comments in the future.

For an evaluation of SPS measures, This member deems it necessary to be informed by the Russian Federation:

- a) For the SPS measures for which an international standard exists and the Russian Federation actually applies it, the Russian Federation shall reaffirm that these measures are effectively in conformity with them.
- b) For SPS measures for which no international standard exists, the risk assessment on which the measures are based on shall be provided.
- c) For the SPS measures for which an international standard exists in CODEX, OIE or IPPC, but the Russian Federation applies a higher standard, the Russian Federation shall provide: (i) the type of SPS measure, (ii) the measure and (iii) the existing international standard (iv) the Adequate Level of Protection (ALP) established by the Russian Federation and v) a description of how their own measures achieve the ALP established and vi) the risk assessment in which the measures are based on.
- d) This member would like to have all measures relating to products derived from modern biotechnology (or genetically modified organisms, GMOs) and its translation into English, including those related to labelling.

217. **224 – 243** This member continues to have concerns that Russia's current SPS system is not consistent with the WTO SPS Agreement. Our experience is that the Russian system lacks transparency - new measures are introduced without prior notification and it is difficult to obtain information when requested. Many of Russia's SPS measures are not based on scientific justification. Additional information, including an update of its SPS action plan, will be necessary to provide a basis to be satisfied that Russia will be in position to implement and enforce the Agreement. This member expects a commitment from Russia that they will fully apply the WTO SPS Agreement upon accession.

218. **224-239** The Working Party has no specific information on how Russia intends to bring its current SPS regime into conformity with WTO provisions. This section of the draft WP report does not address this problem, has no reference to WTO consistency, or any plans to move in that direction are included in the lengthy narrative. The narrative also avoids mention of the active measures currently applied at the border to interdict imports from other WTO members in a manner not consistent with WTO provisions.

219. **225** At paragraph 225, Russia notes that conformity of imported products with hygienic standards should be underpinned by a "sanitary-epidemiological approval" or a "registration certificate". It further notes this represents a "statement that a certain type of product is in conformity with sanitary legislation". Furthermore, a hygienic assessment has to be "performed, as a rule, prior to delivery of products into the territory of the Russian Federation".

- We request that responses to the following questions be included in this section of the draft Report:
- What are the full processes and costs involved in obtaining a hygienic assessment, and does the requirement of an assessment concern all imported products of animal origin?
- Is a hygienic assessment the least trade-restrictive method of "confirmation that a type of product" meets sanitary legislation?
- Could exporters, instead, check product conformity against an established list of approved products in Russian legislation without the need to obtain a certificate or assessment?
- Furthermore, pre-existing certificates drafted by the Russian Veterinary Department (i.e., which cover specific types of products like beef or lamb meat) also imply such products must already meet existing hygienic and sanitary requirements. Can

Russia, therefore, explain the policy justification for both a veterinary health and hygiene certificate in such cases?

220. **225** A detailed description is needed for the procedure of hygienic assessment of imported products (rules, authorities, documentation, terms, etc.).
221. **226** Which pesticides are allowed or prohibited? How is the procedure for “State registration”?
222. **227** The subfederal entities seem not to have the capacity to enact SPS measures affecting importation, distribution or consumption of imported products. Which is their role in respect of imported goods?
223. **226-227** In paragraphs 226/227, it is stated that “certain types of products including food products imported into the Russian Federation for the first time should be subject to state registration”. According to Art. 43 of the Federal Law No. 52-FZ, a similar requirement does not exist for novel food products of domestic origin. Only products which are potentially dangerous for man need a state registration if produced domestically. Since these provisions may potentially discriminate between the imported and domestically produced food products, this issue should be further clarified by Russia and an explanation provided to justify the different treatment between the imported and domestically produced food products. A practical example of the “state registration” process should be provided, together with any other relevant legislation.  
It is also stated that the Ministry of Agriculture is responsible for the state registration of new food products of animal origin. On the other hand, according to Article 14 of the Federal Law No 4676-1 of 14 May 1993, a permission from the Chief Veterinary Officer is required for all imports of products of animal origin. Law No 4676-1 does not foresee the state registration of imported food products. Russia should clarify the interrelationship between the state registration and the import permits for food products of animal origin.
224. **226 and 227** A number of the measures mentioned at paragraphs 226 and 227 and elsewhere in the section on Sanitary and Phytosanitary Measures appear likely to be measures covered by the Agreement on Technical Barriers to Trade, as they do not appear to be covered by the definitions set out in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures.
- We ask that Russia re-examine the SPS and TBT sections of the draft Report to clearly differentiate measures falling to the SPS Agreement from those falling to the TBT Agreement and address issues and concerns and respond to requests in the appropriate place and in relation to relevant provisions of the Agreements.
225. **227** At paragraph 227, it is stated that a registration certificate is issued "for any type of products for the whole period of industrial production in the case of Russian products, or the period of supplies in the case of imported products".
- We request that a response to the following question be included in this section of the draft Report:
  - What is meant by "the period of supplies in the case of imported products"? Does this period cover the supply of a consignment, or current and all future consignments?
226. **230** Could all the implementation measures related to import of products pursuant to Law No. 4979-1 of 14/5/93 be tabled?
227. **231** It is stated in paragraph 231 that amendments are necessary for the Federal Law No. 4979-1. Russia should explain these amendments more in detail. According to Article 14 of

the Federal Law No. 4979-1 all imports of animals and animal products require an import permit from the Chief veterinary Officer. In addition, it is explained that the required veterinary certificates are agreed with the veterinary services of each exporting country. It would appear that the actual import conditions are laid down either in the import permit or in the certificate. In either case, these members are concerned that the Russian system appears to lack transparency, coherency and consistency. The list of goods subject to state veterinary control (reference paper 10) in WT/ACC/SPEC/RUS/21/Rev.1 is overwhelming. It includes items for which the need for veterinary controls is difficult to understand, e.g. products of purely vegetable origin. Certain products on this list also appear on the list of goods subject to quarantine and phytosanitary control (reference paper 11) of the same document indicating that the controls are sometimes overlapping.

228. **232** In paragraph 232 it is stated that the requirement for pre-shipment inspection of fresh meat by the Russian veterinary services in the exporting countries is applied pursuant to the OIE Animal Health Code. However, Chapter 1.2.2 of that Code concerning the certification procedures does not recognise a system where officials of importing country sign export certificates in the exporting country. Instead, Article 1.2.2.3. of the Code clearly states that "Certifying veterinarians should be authorised by the Veterinary Administration of *the exporting country* to sign international veterinary certificates". Therefore, the current system of pre-shipment inspection is not in line with the WTO/SPS principles. We expect Russia to abolish this system and rely on the certificates signed by the authorities of the exporting countries at latest by the WTO accession.
229. **232** How is the preshipment inspection for meat carried out? If there is a certificate accepted by the RF's sanitary authority is this preshipment inspection needed?
230. **232** Regarding paragraph 232, it is mentioned that there is a requirement that exporting countries must negotiate a bilateral agreement on veterinary cooperation.
- We request that responses to the following questions be included in this section of the draft Report:
  - What is the legal basis for the "requirement" that exporting countries must negotiate a bilateral agreement on veterinary cooperation?
  - What is the necessity for Russian supervision of preshipment inspection of raw meat products not having undergone thermal treatment? What steps will Russia take to explore whether policy objectives underpinning this requirement could be met by recognition of the equivalence (Article 4 of the SPS Agreement) of export-country inspection methods?
  - We have received advice from Russia that inspection and certification of individual plants is "a usual requirement for exporting countries". Could Russia specify the legal basis for this requirement, and explain the circumstances which may trigger the need for such inspections (eg disease status) and the scientific justification for this?
  - Furthermore, in light of these "usual requirements", what steps will Russia take towards accepting the equivalence of export-country sanitary and phytosanitary procedures in this area?
231. **235** At paragraph 235, it is stated that transit cargoes "require written authorisation by the Chief Veterinary Inspector of the Russian Federation or his/her deputies".
- We request that details of this requirement be included in this section of the draft Report, including:
    - the process involved;
    - the criteria upon which a decision is made;
    - how this meets the requirements of Article V of GATT 1994?



- We also request that responses to the following questions be included in this section of the draft Report:
    - Could Russia clarify the nature of "permits" required for international transit? Are these permits required in addition to the usual veterinary certificates required for products transported directly from their place of origin?
    - Could Russia provide an explanation of the policy objective underpinning its requirement that the "itinerary of the cargo also has to be agreed"?
    - Do the provisions in mentioned in paragraph 235 also relate to goods destined for final sale in Russia?
232. **239** A detailed description is needed for the procedure of phytosanitary requirements, certificate and quality of import products (rules, authorities, documentation, terms, etc.).
233. **239** At paragraph 239 it is stated that "permits could also be issued by the regional inspection authorities of the regions concerned".  
We request that responses to the following questions/requests be included in this section of the draft Report:
- We ask Russia to clarify whether these "permits" are additional to, or substitutes for, permits issued by Rosgoskarantine.
  - Also, are such permits issued by regional representatives of federal government agencies, or are they developed and implemented at a regional level?
234. **240-41** The only mention of issues to be resolved occurs in paras 240-42 where members concerns are listed. We would like to have Russia's substantive response to the issues raised .
- We also seek detailed information on the specific improvements it is planning to undertake to bring the current system into line with WTO agreements.
  - WTO Members should have an opportunity to review the list of laws and regulations referenced in WT/ACC/SPEC./RUS/20/Rev.1, but not yet provided for review. The list is provided separately.
235. **240** We require more information on currently applied phytosanitary measures.
236. **241** We suggest the following modification on the second sentence of para. 241:  
*"In practice this could be fulfilled by achieving compliance with WTO obligations, particularly regarding the following principles of the SPS Agreement:*
- *base sanitary and phytosanitary measures on scientific evidence, including risk assessment;*
  - *proportionality of measures, by the application of measures not more trade restrictive than required to achieve their appropriate level of protection*
  - *non discrimination at the adoption or application of the measures*
  - *equivalence of sanitary and phytosanitary measures (Decision G/SPS/19)*
  - *transparency (Decision G/SPS/7/Rev.2)*
  - *as possible, to base sanitary and phytosanitary measures on international standards, guidelines or recommendations, when they exist. When there is no international standard or when they introduce measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on relevant international standards, guidelines or recommendations, these measures shall be based on a transparent and scientific risk assessment.*
  - *Sanitary regionalisation*
  - *Acceptance of certificates and other guarantees given by a third country (including the European Union) competent authorities as the basis for imports."*

237. **242** A detailed description is needed on the inspection procedures and associated charges in force in relation to import of poultry meat and red meat. Schedule for the update of the Russian Federation SPS Action Plan.

- **Trade-Related Investment Measures (paras 244-248)**

238. We look forward to Russia's response to the issues raised by members (paragraph 247). In relation to the PSA regime, Russia should identify the initiatives it proposes to eliminate the regime's inconsistencies with relevant WTO obligations. For sake of completeness, paragraph 247 should also describe the elements of the current regime that have given rise to concerns as to their consistency with WTO requirements (for example the 70% local content requirement under PSA contracts).

239. **244-248:** With reference to P.247, This member seeks elaboration on Production Sharing Agreements in the energy sector.

240. **244** We seek clarification of the status of the sentence in brackets.

241. **246** Please provide a description of the provisions of the superceding Government Resolution.

242. **247** We would appreciate more information on how Russia plans to address the commitments it has already made to firms to grant incentives for the production of Autos and Aircraft, and for output under the Production Sharing Arrangements if, as is stated, Russia is also committed to eliminating the laws that authorize granting such incentives.

243. **247** We seek the inclusion in this section of the draft Report meaningful responses to the requests made and concerns raised by Members in paragraph 247.

- **State-trading Practices (paras 249-255)**

244. The impact on trade of dual energy pricing by Russia's State Trading Enterprises (STEs) will need to be elaborated in the WP report text.

245. **249-250** Russia should list the five entities designated as STEs, and briefly describe their activities.

246. **250** We understand that, in relation to Alrosa's sales of raw diamonds for export, arrangements are in place that are expressly designed to deprive enterprises of Members of an opportunity to compete for participation in those sales. This is inconsistent with the provisions of Article XVII:1(b) of GATT 1994.

- We ask this section of the draft Report include:

- full details of such arrangements;
- full details of the range of measures applied in connection with these arrangements and their legal basis;
- commitments that these arrangements will be eliminated by the date of accession and that Russia will not have recourse to them in the future.

- We assume that the reference in paragraph 250 to GATT Article XII is an error and that GATT Article XVII was intended, and ask that this be rectified.

- We ask that reference also be made to the Understanding on the Interpretation of Article XVII of GATT 1994, which contains provisions concerning notification.

247. **253 and 254** We seek the inclusion in this section of the draft Report responses to the requests made and concerns raised by Members in paragraphs 253 and 254.
248. **253** Could the RF specify the contents of the “recent gov. resolution” on licensing?  
 - Draft report: In relation to para. 251 at the end of para. 255 following should be added:  
*“The Representative of the Russian Federation confirmed that the Federal Agency for Food Market Regulation, established through Government Resolution No.1224 of 26 September 1997, does not provide any domestic support nor export subsidies in any form”.*  
 - Could the all the functions of the Federal Agency for Food Market Regulation be fully described?
249. **254** These members have already outlined their concerns on the operation of Russian state-trading enterprises and other enterprises with special or exclusive privileges. These should be reflected appropriately in the report, building on what is already in paragraph 254. We suggest the following language:  
 “Members expected Russia to ensure that the practices of existing state-trading enterprises and other enterprises with special or exclusive privileges were brought into line with relevant WTO requirements before the date of accession. Purchases and sales by such enterprises, whether state-owned, state-invested or enjoying any special advantage or privilege, should be based solely on commercial considerations, without any government influence or application of discriminatory measures.  
 Some Members were particularly concerned that the commercial practices followed by Russian state-trading enterprises, and in particular Gazprom and Alrosa, could not be said to be based on commercial considerations. Specifically, sales for export were subject to controls in relation to quantity and price, and the sale of gas for domestic industrial consumption was at price levels considerably below those applied for export (which are linked to the prevailing world market price). Artificially low domestic energy prices could also lead to indirect subsidisation of downstream industries and to exports of value-added intermediate and finished goods at prices below their normal value. In addition to the significant trade distortions caused by this, these Members were concerned that current prices to domestic industrial customers could take place at rates that did not ensure “adequate remuneration” under Article 14(d) of the Agreement on Subsidies and Countervailing Measures and thus would confer a benefit to domestic industrial users. More generally, the current situation gave rise to questions as regards its compatibility with WTO requirements, not only in relation to GATT Article XVII, but also in relation to Article XI and XVI of the GATT and the WTO Agreement on Subsidies and Countervailing Measures.  
 These Members invited Russia to provide the Working Party with further information on the operation of these enterprises, particularly as regards the manner in which prices were set for the export of natural gas and diamonds. Russia should explain how such sales were the sole result of commercial considerations, bearing in mind the strong regulatory framework, the wide discrepancy between domestic and export/world market prices for natural gas, the application of export duties on gas and the activity licensing regime for diamonds.”
250. **254** Dual pricing of energy should be included in the list of practices of concern.
251. **255** paragraph 255: These members consider that the inclusion of commitment language on this issue, additional to that already found in this paragraph, will be called for in future versions of the report.
252. **255** Reference to dual pricing of energy should be added to the commitment.

- **Free Zones and Special Economic Zones (paras 256-263)**

253. **256–263** This member requests more information on how imported inputs are treated for customs purposes when exiting such a zone.

Russia has described a system where certain sales into the rest of Russia are not subjected to tariffs and taxes. The imported component of goods produced in free zones but eventually sold inside the home country should be subject to normal customs formalities when entering the rest of the country, including the application of tariffs and taxes. How does Russia intend to address this problem?

In addition, we seek specific information on the central issue of whether and the extent to which incentives granted to firms establishing in the zones are based on any kind of export performance or local content requirements..

254. **257 and 260** The new information on the application of duties and taxes to goods produced in the Kaliningrad and Magadan zones sold in the rest of Russia will require additional discussion, as it appears that such application is suspended under certain criteria.

Under these circumstances, the commitment in para 263 does not conform to the information provided, and therefore we seek additional information as to how Russia intends to harmonize its practices. E.g.:

- What level of change in commodity classification constitutes “sufficient processing?”
- If no duties are paid on input products processed in the zones and later “exported” to other regions of the Russian Federation, this may be an actionable subsidy subject to notification.
- To what extent are benefits provided in special economic zones contingent upon use of domestic rather than imported inputs?
- To what extent are benefits provided in special economic zones – with the exception of custom duty exemptions on imported inputs and final stage sales taxes – contingent upon export performance?

These are critical questions that should be answered to determine if such benefits must be eliminated prior to accession.

255. **261 and 262** We seek the inclusion in this section of the draft Report responses to the questions raised by Members in paragraph 261 and the proposal in paragraph 262.

- **Government Procurement Practices (paras 264-266)**

256. These members invite Russia to update the WP on the existing procurement regime at federal and sub-federal level and on the preparation of draft legislation in this area. These members expect Russia to make a commitment to ensure that its public contracting entities will award contracts in a transparent manner according to published laws, regulations and guidelines. A consequent commitment to this effect should be envisaged in future drafts.

We suggest the following consequent additions to the text:

257. **264** insert “in particular on the existing procurement regime at both federal and sub-federal levels” at the end of the first sentence;
258. **265** insert “in particular on the draft Federal Law “On the Purchases and the Deliveries of Products for State Needs” at the end of the first sentence;
259. **266** insert “and start negotiations by submitting an offer no later than one year after accession” at the end of the first sentence. Insert “and ensure that by this date, its public

contracting entities would award contracts in a transparent manner according to published laws, regulations and guidelines” at the end of the second sentence.

260. **264 – 266** Russia indicates that it plans to request observer status in the Agreement on Government Procurement (AGP) at the time of its accession to the WTO. This member would encourage Russia to make an offer to become a member of the AGP within a specified time period after its accession to the WTO.
261. **268** We seek the inclusion in this section of the draft Report meaningful responses to the requests made and concerns raised by members in paragraph 268.
262. **268, 269** Georgian delegation once again would like to raise a question concerning the transit of goods including those of dual usage. Regrettably, despite our requests with respect to getting clarifications and detailed description of transit procedures and goods of dual usage, we did not receive the clear response on that issue as it is mentioned in paragraph 268.

Furthermore, Georgia would welcome undertaking clear commitment by the Russian Federation with respect to the transit of goods, as it is provided for in paragraph 269 of the draft Report.

- **Regulation of Trade in Transit (paras 267-269)**

263. The report should reflect concerns already identified by these members. We expect Russia to respond to these concerns. It should specify to the WP how it intends to ensure the elimination of current WTO-inconsistent measures, such as State Customs Committee Order number 631 of 27 August 2001.
264. **267-68** We continue to seek provision by Russia of sufficient description of its transit policies and practices to confirm whether these are in conformity with the provisions of WTO Agreements, in particular Article V of the GATT 1994.
- Please indicate the circumstances under which Russia currently impedes transit of other countries' exports through its territory. Are there situations where such trade is prohibited?
  - We seek more specific information on the charges for transit escort and the reason such charges are applied.
265. **268** We seek the inclusion in this section of the draft Report meaningful responses to the requests made and concerns raised by Members in paragraph 268.

- **Policies Affecting Foreign Trade in Agricultural Products (paras 270-272)**

266. This section will need to be entirely reworked. Pending other relevant detailed information, this section could provide for the time being the current priorities of the agri-food policy and agricultural reform and indicate a need to thoroughly restructure the sector. It should note that Members encouraged the Russian Federation to address these priorities by non-distorting policy measures that meet the criteria of Annex 2 of the Agreement on Agriculture. It should also note that a comprehensive submission on the Russian Federation's agricultural support policies was still required in order to establish the basis for measuring distorting support in accordance with WT/ACC/4. This measurement would establish Total AMS commitments and outline constituent data and methodology for future measurement in yearly notifications. On export subsidies, the views of members will have to be reflected and the issue dealt with based on Russia's comprehensive submission.

The reference to the "possible results of the on-going new WTO negotiations on agriculture" is not material to the accession. Russia's accession takes place under the present WTO agreements.

Annex II mentions only Part I (Goods ) and Part II (Services) among the Schedules. It will be important at some point also to include Part IV (Agricultural Products: Commitments Limiting Subsidization, including Domestic Support: Total AMS commitments, with reference to supporting tables).

We would appreciate more information in the WP report concerning Russia's longer term plans for agricultural support and recognition in the text that Russia will not use export subsidies in agriculture after accession.

Russia will need to respond to Members' concerns expressed in paragraph 272. Commitments will need to be included. It is premature to draft this section of the draft Report in advance of agreement being reached on substantive issues, including in the plurilateral process. However this section will need to include a more complete description of Members' concerns and Russia's responses, and include a commitment by Russia to the elimination of export subsidies.

This member wishes to inform that, as long as no further information is provided on the domestic support policies, it is only in position to comment on the export subsidies by submitting a drafting proposal for the draft report of the Working Party:

267. **272.** Members noted with concern that a comprehensive submission of the Russian Federation's agricultural support policies was still required in order to establish a detailed description of the Russian Federation's agricultural policies on which appropriate commitments could be determined. Members considered that in providing this information the Russian Federation should give emphasis on "green box" measures that could achieve the desired reform objectives pursued by the Russian Federation in the field of agriculture. Some members further argued that in the current context they considered it inappropriate for any country to accede to the WTO with export subsidy commitments. These members stressed *the need* that the Russian Federation ~~should~~ binds its export subsidies at zero, *since the IVth. Ministerial Conference of the WTO has already agreed to eliminate all forms of export subsidies. In this respect, these members also stressed that the disciplines contained in the Agreement on Agriculture on export credits, export credit guarantees or insurance programmes need to be applied by the Russian Federation so as to avoid circumvention of the commitment not to provide export subsidies. Further, these members underscored the need not to provide export subsidies in any form, including through practices in export state trading enterprises or through food aid abuse*".
- This member proposes to add "272 bis. The Representative of the Russian Federation confirmed that the Russian Federation shall not provide any export subsidies as from the date of accession and that it shall not circumvent this commitment in any form, in particular through export credits, export credit guarantees or insurance programmes or through state trading enterprises or through food aid abuse."*

#### Domestic Support.

In respect of domestic support policies, *This member* would like to have following information:

- a) Base period to which the information refers to (Annexes 1 and 2 of the latest document WT/ACC/SPEC/RUS/23 on agricultural support measures does not indicate this).

In the document WT/ACC/SPEC/RUS/17, Russia outlines its position as regards agricultural domestic support payments, based on factual data on domestic support between 1991 and 1993.

Russia considers the 1991-1993 period to be representative for the following reasons:

- it is the last triennial period previous to the Federation of Russia's application for accession to the GATT and, later, to the WTO (1993 and 1994);
- during it an intensive process of agricultural economic reforms began, including the identification of the main producer support programs, although its implementation has been limited by the lack of financial resources and the effects of the 1998 financial turmoil;
- this period will allow to extend the development of the agricultural sector and will contribute to establish fairer conditions of competition with the main trade representatives of the Federation of Russia in its domestic market.

In the Agreement on Agriculture, for the calculation of the Aggregate Measurement of Support (distorting domestic support), the fixed external reference price is based on the years 1986-1988. We consider that this should be the base period to be used for the following reasons:

- On accession to the WTO, the Federation of Russia binds itself to the Agreement on Agriculture and, in this sense, this Agreement states nothing concerning the Members' power to change the base period when schedules are made. (It is irrelevant that the Russian accession takes place after the Uruguay Round).

After the Uruguay Round, several countries acceded the World Trade Organization. Ecuador, for example, acceded the WTO in 1995 and, when submitting its first commitment offer, it took into account the years 1986-1988 as domestic support base period. This offer was rejected (despite considering the years 1986-1988 as base period) and finally the Andean country did not adopt commitments in that respect. It is not relevant the reason that 1991-1993 is a representative period since it is the last triennial period previous to the Federation of Russia's application for accession to the GATT and, later, to the WTO (1993 and 1994). Here, it is raised the question of which the base period considered by China when acceding to the WTO was.

It cannot be considered as an argument the extension and development of the Russian agricultural sector for the establishment of the years 1991-1993 as base period. In any case, the use of that base period would extend the possibility to grant agricultural production subsidies.

- b) Updated calculation of the value of production of the products in Annex I of the Agreement on Agriculture (AoA).
- c) Presentation of the information in the format of G/AG/2, as WT/ACC/4 refers.
- d) Green box measures: Identification in the measure of the Russian Federation, which authorizes the direct payment or the provision of a service, of the criteria set out in the paragraphs 1 to 13 of Annex 2 of the AoA. The absence in a measure of the Russian Federation providing "green box" support of a mandatory provision which prescribes how the support will be provided is central for deciding if the measure will be deemed to be a "green box measure".

- Until this information is provided, the drafting process cannot progress in this area. We reserve our right to submit further comments as a result of the assessment of the information *This member* hopes to receive.
- e) While the Federation of Russia submitted the list of domestic support programs with the description of each measure before the WTO Secretariat, it is necessary to highlight that said list was part of a non official document on "Preliminary Calculation of the Agricultural Domestic Support".
  - Until this information is provided, the drafting process cannot progress in this area. We reserve our right to submit further comments as a result of the assessment of the information *This member* hopes to receive.
- e) In paragraph 3, page 1, document WT/ACC/SPEC/RUS/23, the critical increase of the efficiency of agricultural production is considered as a primary objective of the Amber Box measures. We consider that the provision of production subsidies is inconsistent with the term "efficiency" since, in fact, the higher the subsidies are, the lower the efficiency is. On the other hand, if the Russian producers were efficient, they would not need subsidies. Although this comment is pragmatic, it may be used as a counter-argument in the Russian consolidation of the AMS.
- f) Regulations of the agricultural products and food market (WT/ACC/SPEC/RUS/23, pp. 5 and 6): government procurement interventions take place when market prices fall below the minimum level or when producers cannot sell their products due to the decrease of the demand; likewise, commodity interventions take place when there is deficit in the market of these products or when market prices exceed the fluctuation limit. Thus, the interventions take place as a reaction to minimum or maximum price levels. Government procurement interventions are maintained between the minimum level (intervention level) and the desired level, in which the intervention ends.
  - We understand that this system would operate like a kind of system of market price support. Which are the fixed external reference prices taken into account to establish the minimum and maximum trigger levels? Are price fluctuations in Russia only due to the abrupt variations of the climate conditions?
- g) Input subsidies (WT/ACC/SPEC/RUS/23, p. 7) – Financing for the purchase of seeds and Partial compensation of the costs in which agricultural producers incur for the purchase of mineral fertilizers and chemical products for plant protection.
  - When considering said document, it is understood that those subsidies are not related to certain producers or products. Do the expenditures incurred in by the Federation of Russia exceed 5% of the value of its total agricultural production?
- h) Creation of stockpiles to provide food security (WT/ACC/SPEC/RUS/23, p. 13, para. 2). The government determines the content and the volumes of agricultural products that should be purchased and food stocks are bought at market prices.
  - It would be convenient to require the Federation of Russia to confirm that the sales of products belonging to food security stocks will be performed at a price not inferior to the average price of the domestic market for the concerned product and quality.
- i) Insurance programs (WT/ACC/SPEC/RUS/23, p. 14, para. 4). In 2001, it was approved the government Resolution No. 758, dated on November 1, 2001, on "State support to insurance programs in the agro-industrial production." The Ministry of Agriculture is creating a federal agency to channel the State support to insurance programs in the agro-industrial production. The insured sum is determined at 70% of the insurable value of the



crops. The insurable value is determined on the basis of the size of the cropland, the average yield of the preceding five years and the forecasts on market prices. Insurance premium subsidies that agricultural companies have to pay according to their contracts with insurance companies are granted. Agricultural producers pay 50% with their own resources and the remaining 50% is paid with funds charged to the Federal Budget.

- We consider that this measure would not meet the requirements of Annex II of the Agreement on Agriculture so as to be included in the Green Box. In this respect, paragraph 7 of said annex (government financial share in income insurance and income safety-net programs) provides for the fundamental requirement that there should be a loss in the average gross income or its equivalent in terms of net income corresponding to the previous triennium in order to receive the payments. If the insurance premium is subsidised, the loss of 30% or more in terms of incomes is uncertain; in practice, this resulted in the provision of support to producers that faced no income decrease at all.

- **Trade in Civil Aircraft (paras 273-274)**

268. **273-74** We would appreciate Russia's report on its efforts to negotiate additional market access in Russia for aircraft. We support a commitment by Russia to join the Agreement on Trade in Civil Aircraft upon accession.

- **Textiles (paras 275-276)**

269. **266** The purpose of this paragraph is not to further restrict Russia's textile exports after accession. Rather it is intended to ensure that the starting point for the MFA liberalization schedule for Russia's textile exports is consistent with the terms of its bilateral agreements at the time of accession, i.e., that the quantities provided for in these agreements become the starting points for the liberalizations provided for in the MFA phase out schedule.

- We seek a commitment to that effect based on the language in this paragraph.

## **TRADE-RELATED INTELLECTUAL PROPERTY REGIME (TRIPS)**

### **General (paras 277-281)**

270. These members consider that the section dealing with TRIPS issues needs to be expanded further so as to provide a firmer basis for an assessment of current TRIPS deficiencies and the work in hand by Russia to ensure TRIPS compliance by the time of accession to WTO. The report does not give sufficient detail to allow for a meaningful assessment of TRIPS compliance. Repeated statements that new laws and amendments to existing laws will be sufficient to make Russia's IPR legislation TRIPS-compliant need to be backed up with a detailed explanation of existing shortcomings, a description of new legislative initiatives and an identification of the provisions which are intended to address specific TRIPS shortcomings. Otherwise, no assessment of the actual TRIPS compliance of the proposed changes can be possible. The report should also specify the timeframes foreseen for the adoption of the new laws and amendments which are referred to. Until these laws have been adopted and examined, it is difficult to confirm that they will indeed be sufficient to ensure TRIPS compliance. Accordingly, we invite Russia to make detailed information on these legislative initiatives available to the WP, together with the actual texts as soon as these can be provided.

271. **277 – 303** This member supports calls for more information in this area and shares concerns about the treatment of IP in the Russian Civil Code which will make enforcement difficult. We look forward to seeing the draft legislation which is under consideration in the

Russian parliament and we are encouraged to hear that enforcement has been greatly enhanced in the last year.

272. General Comments: The WP report text in this section is very general and does not provide a clear picture of the way in which the obligations of the TRIPS Agreement are met or will be met by the Russian Federation.

In addition, there should be a section identifying the international intellectual property agreements to which the Russian Federation belongs and the government agency or agencies responsible for all the various functions related to TRIPS obligations should be identified expressly. Russia should also provide information throughout on the status of the pending legislation.

The text should also reflect the views of Members on the WTO consistency of Russia's IPR regime and on the parts that should be amended to meet the provisions of the WTO Agreement on TRIPS.

In particular, it should reflect Member's views on the adequacy, or lack thereof, of Russian arrangements for enforcement. The treatment of enforcement is particularly problematic as we are working bilaterally on these issues and none of the problems we have jointly identified or discussed are addressed.

We seek copies of English translations of Russia's legislation which implements its TRIPS obligations, both with respect to intellectual property protection and enforcement.

The TRIPS Agreement allows Members some discretion in the measures that are implemented. For example, Article 27(3) provides exclusions from patentability.

- What exclusions from patentability will Russia be applying?

While Russia has commented on the legal provisions that will be in place to combat infringements of intellectual property rights, these provisions will only be effective if the owners of intellectual property rights and the public are aware of the intellectual property system and those rights.

- We ask Russia to provide information on what action, and when, the Russian authorities will be taking to increase awareness of intellectual property rights among the public, the judiciary, education and research institutions, industry and businesses.

We have become aware of an issue regarding Russia's trade marks system that we would like to raise. The issue concerns how Russia handles well known or famous trade marks, and we are providing separately a copy of an article which sets out the problem.

- We would like to know what Russia will do to prevent the misuse of well-known marks as described in this article. We feel that Russia should not rely upon a slow, expensive and dubious legal system to remedy the problem (and please note that the remedy to the problem proposed in the article is not satisfactory).

WTO Members are bound by the provisions of the TRIPS Agreement which subject their pharmaceutical industries to 20 years of patent protection. We would expect this minimum patent protection to be implemented by Russia.

- Will Russia subject its pharmaceutical industry to a term of patent protection of not less than 20 years?

273. **279** Does Russia intend to seek any special arrangement regarding an exception from MFN treatment for the Eurasian Patent Convention. Since it appears to have entered into force in August of 1995, i.e., after the date of entry into force of the WTO Agreement. As the exemptions provided for in Article 4 would not seem to apply to this case, Russia should be prepared to extend MFN treatment upon accession or seek an exception.

- **Copyright and Related Rights (para 282)**

274. One area in which the Russian copyright law is not yet TRIPs compliant is that of retroactive protection of foreign works and foreign sound recordings. The WP report (paragraph 282) states that "new amendments to the copyright law would bring the provisions relating to retroactive protection into conformity with the respective requirements of the Berne Convention and the WTO Agreement on TRIPs". Can Russia explain, by reference to these proposed amendments, how the existing inconsistencies with TRIPs requirements will be eliminated?

275. **282** Please describe the way in which related rights obligations of Article 14 of the TRIPs Agreement will be met, with particular attention to the requirements of Article 14.4 and 14.6 because these rights are not dealt with by the Berne Convention.

276. **282** The paragraph does not bring enough information to evaluate compliance of Russian legislation with the TRIPs Agreement. In particular, it would be useful to know:

- Does Russian legislation provide authors and their successors rental rights?
- Which are the terms of protection in this category of intellectual property rights?

- **Trademarks, including Service Marks (para 283)**

277. In order to fully address and assess the current legal situation of trademark protection in Russia in the light of the TRIPs Agreement, it would be indispensable to receive an English version of the 1992 Federal Law NO. 3520-FZ with subsequent amendments.

These members have the following specific comments and questions in this area:

Russian law does currently not provide for the protection of well-known trademarks. Please explain how the Russian Law will comply with the provisions of Article 16.2 and 16.3 TRIPs. How will Russia qualify a "well-known mark"? Will it follow the recommendations set forth by the Joint Recommendation concerning Provisions on the Protection of Well-Known Marks adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the World Intellectual Property Organisation (WIPO) at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO September 20 to 29, 1999? Please confirm that, in order to benefit from protection, well-known marks will not need to be registered in Russia. Please specify whether, in order to benefit from a protection in Russia, a well-known mark will have to be used in said territory.

What signs precisely are eligible for registration as trade marks under the Russian Law (Article 15 TRIPs)? Are single colours (or only combinations of colours) protectable? May registration be acquired for sound and smell marks? If so, under which conditions? (dependent on distinctiveness acquired through use?).

Please explain how the Russian Law on Trade Marks complies with Article 15.5 TRIPs. Does Russia afford the opportunity for registration of trade marks to be opposed by earlier trade mark holders? On what kind of earlier rights may a petition to cancel a registration be filed?

The Russian Law on Trade Marks provides that a registered trade mark may be cancelled on request of a third party in case the owner has not used his trade mark without legitimate reasons for 5 consecutive years. This is in conformity with Article 19 of the TRIPs Agreement. Question: What happens in cases when the owner did not use his trade mark for an uninterrupted period of 5 years and such non-use was never challenged by a third party? Can it then be challenged subsequently? Will resumed use after 5 years lead to revival of the exclusive trade mark rights with no further possibility for a third party to claim its revocation for non-use?

How does Russia meet the terms of Article 23 TRIPs? Does the Russian Trade Mark Law provides that trade marks containing geographical indications will be rejected *ex officio* when such marks designate wines and spirits, regardless whether they are misleading or not?

278. **283** Please provide additional specific information on how Russia protects well known marks under existing law.
- We reserve the right to return to this issue with specific examples of problems experienced by trademark holders under current law.
- **Geographical Indications, Including Appellations of Origin (paras 284-285)**
279. The TRIPs Agreement does not establish any sub-categories of “geographical indications”. So, what does that mean the title of this Section? Which others sub-categories are suppose to be included under the category “geographical indications”?
- *This member* asks for the deletion of words “*Including Appellations of Origin*”, included in the title of this section. The categories of Intellectual Property Rights should be mention in the same way as in the TRIPs Agreement.
  - Please indicate if for the Russian Federation legislation “indication of source” is “geographical indications” in terms of the definition provided in Art. 22.1. of TRIPs Agreement.
  - Is the Russia Federation part of any multilateral or bilateral agreement related specifically to Geographical Indications?
280. **284** This paragraph indicates that since 1992, “one highly important category of geographical indications -appellations of origin- was accorded special protection”. Could please the Russian Federation indicates:
- Which is/are the other/s “less important categories of geographical indications”?
  - Under which base the Russian Federation establishes different categories of “geographical indications”?
  - In the opinion of the Russian Federation, the totality of this so considered “sub-categories of geographical indications” (apparently included in his legislation) are in conformity with definition provided for Art. 22.1. of TRIPs Agreement?
  - Which categories of products are actually protected by geographical indications and registrable in the state register? Does the system of “state registration” provide national treatment?
281. **284, 285** Georgian delegation welcomes working out by Russian Government of amendments to the Federal Law of 1992 "On Trademarks, Services Marks and Appellations of Origin" which, in our opinion, gives an additional protection to geographical indications for wines and spirits.
- According to information available to us, the Russian side has intensified the work for developing the common register of geographical indications within the CIS, which is in full line with decisions of the WTO Doha Ministerial Conference. We certainly welcome these positive steps while wondering if the Russian delegation

- could provide us with some detailed information about passing of the CIS Agreement on Creation of Common Register of Geographical Indications in the State Duma.
- Besides, we would appreciate if this point will be duly reflected in the draft Report.
282. **285** Please explain more in detail what the draft law and amendments to Federal Law N<sup>a</sup> 3520-FZ of 23 September 1992, would exactly provide in relation to geographical indications identifying wines and spirits.
- Which would be the main difference in relation to the actual protection to geographical indications identifying wines- spirits and other products?
  - Please indicate if National Treatment and Most-Favoured-Nation Treatment would be granted.
  - Does the draft law and amendments include a disposition related to Art. 23.4 of TRIPs Agreement?.
283. **285** This paragraph states that Russia's draft law amending the current legislation, i.e., Law No. 3520-FZ of 23 September 1992 "On Trademarks, Service Marks and Appellations of Origin" would "take into account" (emphasis added) the provisions of the WTO Agreement on TRIPS relating to additional protection of geographical indications for wines and spirits and extended only for the appellations of origin which were registered in accordance with the established procedure." This phrase is used in subsequent references to new legislation.
- It is not clear that the phrase "take into account" means the same thing as "bring Russian law into conformity with." All WTO members must bring their laws, regulations and other measures into conformity with TRIPS requirements, not simply "take into account" its provisions. Russia's description of its draft legislation does not clearly state this.
  - We seek detailed information on how this and other IPR-related legislation will bring Russia into compliance with TRIPS, in the area of Trademarks and in other areas.
- **Inventions and Industrial Designs (para 286)**
284. **286** We note the same issue with the statement that the draft revisions will "take into account" the provisions of the TRIPS Agreement. We are seeking additional certainty and details on how the draft amendment will bring Russia's laws into compliance with TRIPS requirement.
- **Plant Variety and Animal Breed Protection (para 287)**
285. No comments.
- **Layout Designs of Integrated Circuits (para 288)**
286. **288** This paragraph also uses the phrase "take into account" and raises the same issues relating to certainty about compliance and the need for detailed information to determine if the draft legislation will bring Russia into compliance.
- We reserve the right to make further comments after reviewing the draft legislation.
- **Requirements on undisclosed information, including trade secrets and test data (para 289)**
287. Please describe how the Russian Law meets the requirement of Article 39.3 TRIPs Agreement stating that Members shall protect undisclosed test or other data which is submitted as a condition of approving the marketing of pharmaceutical or of agricultural products against unfair commercial use. Does your legislation prevent the regulatory authority

itself from relying on original test data for approving bio-equivalent products that are submitted by a generic manufacturer? And, if so, what is the period of time?

Patents

- The information provided by the report on patents is rather scarce. A more detailed description of the patent law and its current legislative status (i.e. whether it is adopted yet or, if not, when this might be the case) is desirable before any meaningful assessment of its TRIPs compliance can be made.
  - How does Russia intend to implement Article 39.3 of the TRIPs Agreement on the protection of test data for pharmaceutical and agro-chemical products?
288. **289** In addition, we seek a detailed description of the way in which data submitted to the Russian government to obtain marketing approval for pharmaceuticals and agricultural chemicals is protected against unfair commercial use, and a specific commitment from Russia on this issue. We are seeking information, for example, on which products qualify, the duration of such protection, and the treatment accorded others seeking to obtain marketing approval for the same product.
289. **re: Enforcement - Concerning para 289** Please provide information on how the relevant ministries in Russia coordinate to ensure that marketing approvals are provided and used prior to expiration of a patent?
- **Enforcement**
    - **Criminal Measures (paras 290-291)**
290. **290** We believe this description should be elaborated with a description of the activities of the special department since 1999 – including appropriate statistics.
291. **re: Enforcement - Concerning para 290**
- Please describe when illegal use of objects of copyright or neighboring rights under Article 146 of the Criminal Code triggers a criminal investigation.
  - Please describe the types of cases that warrant criminal prosecution under Article 180 involving trademark infringement.
  - Please provide details of the approved draft amendment to Article 180 of the Criminal Code addressing organized crime, initial conspiracy and imprisonment.
292. **291** Does the term “intellectual property violation cases” mean police seizures or prosecutions; if the former, please indicate how many of those cases were prosecuted; of prosecuted cases, how many resulted in the imposition of fines and the average fine; how many resulted in prison terms and the average period of imprisonment.
- Regarding confiscation, could information be supplied on how many cases resulted in the right holder requesting transfer of the goods; how many cases resulted in the Court ordering destruction of the goods?
  - We would also like to have some idea of the nature of the products seized– are they optical media, software, videos, sound recordings, counterfeit trademarked goods
  - This paragraph is unbalanced in its treatment of current enforcement problems. We regret to report that the Russia has become a major exporter of pirated intellectual property, particularly in the area of optical media such as compact audio and video discs.
  - We seek more information from Russia on how the revisions to the Customs Code are intended to address the problem.

- We also seek reflection of this in the draft Working Party report and action from Russia to pass specific legislation to address this problem, noted in a commitment the WP report text.
  - We understand that the current draft that will soon have its second reading in the Duma has been heavily amended. We would appreciate assistance from Russia in obtaining copies of the relevant portions of the text so that we may verify the scope and substance of the provisions dealing with these problems.
293. **re: Enforcement - Concerning para 291:**
- Article 61 of TRIPS provides that criminal penalties are to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale. Please describe how the determination is made whether a violation is on a commercial scale. Please describe how determination is made that violation resulted in “significant damage”.
  - Article 61 provides that remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. Please describe the number and range of monetary penalties issued last year and the number of cases in which jail time was given and the lengths of imprisonment. Is there a range of the level of penalties and jail time the courts use? Please describe the amount of criminal fines that have been imposed within the last year under Article 146. Please describe the number of prison sentences issued under Article 146 and the lengths of imprisonment.
  - Please describe the number of cases in which criminal fines were assessed under Article 180 involving trademark infringement within the last year and the amount of fines assessed.
  - Article 61 provides that in appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offense. Please describe the number of criminal cases in which the goods were seized, forfeited and destroyed and cases in which the materials and implements used were seized, forfeited and destroyed. Is seizure of goods and materials and implements at the discretion of the court?
- **Criminal Procedure (paras 292-293)**
294. **292** Please identify the enforcement bodies and describe their general responsibilities.
295. **re: Enforcement - Concerning para 292:**
- Must a complaint be filed by a right holder in order to initiate a criminal investigation?
  - Please describe the jurisdiction of government agencies in investigating intellectual property crimes.
296. **293** We would appreciate more details on the issues covered in this section, in the form of statistics to demonstrate Russia’s efforts towards criminal enforcement, and more information on changes Russia is prepared to make to improve the currently somewhat negative enforcement situation.
- **Administrative Matters (paras 294-295)**
297. **294** We understand that Russia intends to modify the threshold described in this paragraph so that it is easier to meet. How does Russia intend to do this?

- We would also appreciate some statistics on the activities of the Ministry of Anti-monopoly Policy and Entrepreneurship Support in initiating proceedings against offenders, decisions imposing fines and prohibiting infringing actions.
298. **re: Enforcement - Concerning para 294:**
- Please describe the minimum and maximum administrative sanction fines and under which law/article are these imposed.
299. **re: Enforcement - Concerning para 295:**
- Please describe the number of determinations made by the Ministry of Anti-Monopoly Policy and Entrepreneurship Support involving intellectual property violations. Please describe the procedures under which a right holder may file a claim.
  - Article 49 of TRIPS provides that to the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent to those set forth in section 2 of Part II of TRIPS. Please describe how the administrative procedures in the above ministry comply with Article 49.
- **Border Measures (paras 296-298)**
300. **296-298** Please provide statistical information on how many rightholders' applications for Customs' measures have been accepted by the SCC since 1998.
- What is the status of provisions in the new draft Customs Code that will allow the SCC to act fully in accordance with the WTO TRIPS standards in terms of supplying the right holder as a third party with information and of providing the right holder with an opportunity to inspect detained goods and take samples?
301. **re: Enforcement - Concerning para 296:**
- Please identify the number of right holders applications for Customs measures that are currently filed with the State Customs Committee.
  - Please identify the number of cases and disposition (seizure of goods/fines/imprisonment) relating to actions based on applications filed by right holders.
302. **re: Enforcement - Concerning para 297:**
- Please describe how the draft new Customs Code complies with the provisions in Article 57 of TRIPS relating to right of inspection and information. Under the draft code, what information may be supplied to the right holder?
303. **re: Enforcement - Concerning para 298:**
- Please describe the type of information relating to the importer that may be provided to a right holder under TRIPS Article
- **Civil Law Remedies and Procedure (paras 299-303)**
304. **re: Enforcement - Concerning para 299:**
- Please identify the particular articles under the Civil Code that address the remedies referenced in this paragraph.



305. **re: Enforcement - Concerning para 300:**
- Please provide an overview of damages that have been awarded by courts relating to civil infringement cases within the last year. Please identify cases in which statutory damages have been awarded by courts and the amounts.
306. **re: Enforcement - Concerning para 301:**
- With regard to provisional measures, please describe how readily available these measures are to rights holders. If a claim must currently first be filed in order to obtain provisional measures are measures *Inaudita altera parte* pursuant to TRIPS Article 50 available?
  - Please describe the frequency with which destruction of infringing goods and materials and implements are ordered for destruction by courts.
  - Please describe the frequency in which property including bank accounts are arrested within a civil proceeding. Is this procedure available in criminal prosecutions?
  - Please describe how the draft amendments to the Code of Arbitration and Procedure provide for provisional measures to be obtained prior to the filing of the claim.
307. **303** We support the thrust of the concerns raised in this paragraph. We would like Russia to indicate in specific terms how current deficiencies in Russia's intellectual property protection regime will be remedied.
- We also seek a commitment from Russia that it will avoid enacting competing provisions in the Russian Civil Code, provisions will create confusion with the regular legislation and will make changing the laws to keep up with changing technology extremely difficult.
  - We seek reference to the views of Members in the WP report text noting their views that establishment of IPR protection in Civil Code would be harmful to the protection of intellectual property rights and to the Russian economy.
  - We also seek confirmation that Russia has established, or will do so prior to accession, coordination between authorities issuing marketing approvals for pharmaceuticals and those responsible for granting patent protection.
308. **303** In Para 303 the representative of the Russian Federation has confirmed that its country would provide effective protection against unfair commercial use of undisclosed test or other data for a period of at least six years from the date of marketing approval. Could you please confirm if the six-year protection prohibits a second applicant from relying on, or from referring to the original data of the first applicant, when applying subsequently for market authorisation for a similar product.
309. **303** *This member* welcomes the confirmation made by the Russian Federation in the sense it would apply fully the provisions of the TRIPs Agreement from the date of accession to the WTO.
- Nevertheless, it has to be noted that Art. 39 does not establish that a period of time of protection would have to be granted at national level to consider that "effective protection" is provided to undisclosed information. As no period of time has to be established at national level to comply with Art. 39, *This member* asks for the deletion of the words "*in compliance with Article 39 of the TRIPs Agreement*", included in the second sentence of paragraph 303 in the Draft Report of the Working Party on the Accession of the Russian Federation to the WTO. *This member* understands that the Russian Federation is free to assume "TRIPs- plus" obligations or compromises, but this kind of unilateral compromises should not be reflected as to incorrectly interpret any TRIPs Agreement provisions.

## TRADE-RELATED SERVICES REGIME

### - Policies Affecting Trade in Services (paras 304-319)

310. The issues earlier raised by these member are broadly reflected in paragraph 319 of the draft report. In light of the discussion on 24/25 April, these members consider it appropriate that additional language on Financial Services should also be incorporated in the draft following the present paragraph 319:

“Regarding the banking sector, some members expressed concern that the two largest commercial banks in the Russian Federation (Sberbank and Vneshtorgbank) were currently owned by the Russian Central Bank (CBR). Taken together these two banks held a dominant position on the Russian market and their ownership by the CBR created a clear potential conflict of interest with the Central Bank’s prudential and other tasks. While welcoming information by Russian Federation on plans to divest the CBR holdings in commercial banks, these members invited the Russian Federation to indicate a firm date by when the ownership of these banks and their commercial activities would be legally and in practice separated from the CBR.

- In addition, these members expressed concern about the distortions of competition created by the unlimited (i.e. 100%) state guarantee given to deposits in accounts held with the state-owned Sberbank. No state guarantee at all existed for deposits held in accounts with other banks, whether Russian or foreign. These members expected the Russian Federation to make a commitment by which deposit guarantees would be granted in a non-discriminatory way to all account holders irrespective of the bank they choose, and under the same conditions and up to the same deposited sums. These Members were of the view that this would foster equal conditions of competition between different banks operating in Russia, and would help improve the solidity and functioning of the financial sector more generally.
- These members commended the Russian Federation on the reform proposals that were being considered towards the creation of a deposit insurance scheme, although they had concerns about the length of time for implementation suggested in certain proposals, the low figure for guaranteed deposits (equivalent to around \$650) and the continuation of the preferential position currently enjoyed by Sberbank, which was contrary to WTO principles of non-discrimination and should be ended on accession. They invited the Russian Federation to submit more detailed information on these proposals, including on their implementation date, as well as to demonstrate the equivalence of guarantees for deposits with the Sberbank and other banks.”
- The report could also usefully include a description of existing prudential requirements governing the financial services sector, together with relevant legislation.
- These members expected Russia to make commitments to (a) divest or bring under the responsibility of another branch of government the commercial activities of the Central Bank of Russia (CBR) and (b) to ensure that there is no discrimination between established banks as regards the guarantee of deposits. Both these steps should be completed by an agreed deadline.
- The issue of International Accounting Standards (addressed in paragraph 318 of the report) is not relevant solely to trade in services. We would therefore suggest that this paragraph be moved to an appropriate section of the report.

311. **304 – 319** The current services text in the Working Party report is unbalanced and requires further work. This member joins others in expressing concern about the transposition of certain horizontal limitations from the Russian schedule of commitments into the services section of the Working Party report. We do not support language in the Working Party report that could allow Russia to apply safeguards in the area of services. In addition to

these concerns, This member feels that the Russian definition of a natural monopoly as outlined in footnote 8 to the Working Party report is too broad and potentially excludes sectors where commercial provision of services is important. We share concerns about current restrictions in the banking sector and specifically the fact that two of the largest banks in Russia (Sperbank and Commercial Bank) are owned by the Russian Central Bank. We look forward to receiving the non-paper on various issues raised in the Working Party report by the next Working Party meeting in June.

As we noted in April, this section of the draft WP report needs work and is, overall, unbalanced.

In general, there is no voice for the Members in the early paragraphs. Russia's statements, many of which are problematic from the standpoint of Members' positions, go without a parallel statement that would bring the needed balance.

A serious case in point is the definition and use of the concept of "natural monopolies" in this section.

The comments included in paras 316-319 represent only a fraction of the statements made by delegations on this topic.

In addition, in several instances, as noted specifically below, Russia appears to be attempting to use the Working Party report to introduce restrictions on trade in services.

312. **305** We request deletion of this paragraph, which contemplates a safeguards regime for services. The issue of safeguards in the services context is one on which WTO Members have not yet reached consensus; the matter is under discussion in the Working Party on GATS Rules.
313. **305** Russia has used the infant industry argument in order to justify protecting its services sector.
- How will Russia go about this?
  - If Russia seeks to use safeguards measures as it hints, then how will this be reconciled with the absence of any safeguards mechanism in the GATS?
314. **306** It is encouraging that Russia has embarked upon a "series of measures to reduce red tape restraints on the economy, involving streamlining of the procedures of company registration, down-sizing the list of types of activities subject to licensing and the reduction of frequency of inspections of enterprises". We are very keen to see the removal of many of the layers of licensing, inspection and approvals processes, and the introduction of less restrictive requirements. We understand that in the construction sector, services suppliers are subject to:
- multiple approvals for each single aspect of their operation;
  - approvals that are not based on any tangible policy rationale;
  - procedural requirements that provide opportunities for rent seeking by officials;
  - inconsistencies in approval requirements and procedures over time and in different parts of Russia.
  - How will Russia's new legislative acts concerning "debureaucratisation" ensure that domestic regulations concerning construction-related activity are no more burdensome than necessary to ensure the quality of the service and will not constitute unnecessary barriers to trade in services.
  - Will these new laws establish any principles for the administration of such regulations, in particular to ensure consistency of implementation in all parts of Russia?
  - What legal procedures will be available to service suppliers who wish to appeal against administrative decisions?

- Can Russia describe the nature of domestic regulation affecting the construction industry? Are regulatory measures part of Federal or regional law? Does Russia intend to ensure, when framing its laws, that regional and Federal measures do not overlap and are no more burdensome than necessary?
315. **307** This paragraph is not necessary and it should be removed. As a WTO Member, Russia will be expected to adhere to the results of the debate on subsidies; it is not necessary to say so here.
316. **307** Russia is insisting that it maintain its subsidies to domestic service providers, the bulk of which go to large service providers such as Rostelekom, Ingostrakh, Aeroflot, etc.
- We seek the inclusion in this section of the draft Report of the following:
    - detailed factual information on the types and levels of subsidies currently provided;
    - Russia's intentions in respect of areas currently not receiving any subsidies; and
    - an undertaking by Russia to phase out its system of subsidies.
317. **308** Russia has made no commitments on the provision of mining, oil drilling and pipeline services.
- We seek the inclusion in this section of the draft Report of the following:
    - details of the relationship, if any, between the lack of any commitments on the provision of mining, oil drilling and pipeline services, and the exercise of Russia's sovereign rights over its subsoil and mineral and energy resources;
    - Russia's intentions in respect of the development of a market environment in relation to the provision of mining, oil drilling and pipeline services, and whether these are consistent with the role that it sees for the conclusion of production sharing and concession arrangements (we see the latter aspects as fundamentally inconsistent with transition from the command economy to a market economy).
318. **309** The last sentence of this paragraph, relating to state procurement and services purchased for governmental purposes, is not necessary and it should be removed.
319. **311** We request removal of this paragraph, or its substantial modification. As written, it is by no means clear which services sectors Russia considers to be natural monopolies, nor is it clear how such determinations might be made. Absent clarification, this paragraph should be removed from the report.
320. **312** We request removal of this paragraph. As written, it is too vague and would appear to reserve for Russia the right to declare virtually any service sector a public utility and to derogate from the specific commitments in its schedule.
321. **313** We request revision of this paragraph. We understand Russia's interest in protecting its cultural heritage, but this provision is too broadly and vaguely worded. Please provide more specific definitions of what is meant by "a juridical person . . . related to the cultural heritage . . . and/or being a cultural property of the Russian Federation." Please also provide more specific explanations of what constitutes "specially protected territories."
322. **314** Please provide more detail as to who specifically are the "indigenous persons and exiguous ethnic communities" referred to in this paragraph.

323. **315** This paragraph is not necessary and should be removed. GATS treatment of national security issues is clearly spelled out and does not need to be re-stated here.
324. **316-319** We seek Russia's substantive response to the concerns raised in these paragraphs.
325. **316-319** We ask Russia to respond in a meaningful way to the requests made and concerns raised by Members in paragraphs 316-319.
326. **318 bis** A Member expressed concern over the current regulations of the Bank of Russia regarding qualification of certain countries as off-shore zones and other discriminatory measures in banking. This Member asked to bring these regulations of the Bank of Russia in conformity with the internationally recognised practice.

## TRANSPARENCY

### - Publication of Information on Trade (paras 320-323)

327. **321-322** The publication of customs regulations and decrees is vital for traders attempting to import and export. We understand, however, that this is often a problem for importers. We understand that there are over 4,500 customs regulations and "instructions". While it is possible that these exist in published form, the State Customs Committee does not provide them to importers (or to Embassies) upon request.
- Could Russia discuss how it is approaching this issue, e.g., the need to improve and systematize the availability of customs documents, and to simplify the current system of customs regulations in its draft customs code?

### - Notifications (paras 324-325)

328. No comments.

## FREE TRADE AND CUSTOMS UNIONS AGREEMENTS (paras 326-332)

329. **326 – 332** This member joins others in calling for further information on tariffs, rules of origin and services provisions of Russia's various preferential agreements.

We ask that the status of the agreements to which Russia is party be made clearer by providing a more detailed description of progress in relation to the following processes:

- formation of the Eurasian Economic Community (paragraph 328 refers);
- amendment or termination of VER agreements (paragraph 329 refers).

We seek a fuller explanation of why MFN exemptions will be needed in Russia's GATS Schedule if, as is claimed, the customs union arrangements will be in conformity with GATS Article V?

330. **327** Is it the meaning of the text of this paragraph that preferential access to exports of other CIS to the Russian market is limited to exporters resident in the exporting country? If so, please indicate how this is compatible with WTO obligations.
331. **328** Please provide a date by which the Article XXIV notifications will be provided, given that these agreements have long been in effect.