# WORLD TRADE ORGANIZATION

RESTRICTED

**WT/ACC/SPEC/RUS/32**
20 February 2003

(03-1086)

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

Original: English


## ACCESSION OF THE RUSSIAN FEDERATION

Attached is a consolidated list of follow-up comments, proposals and requests for specific information or clarification relating to issues in the revised draft of the Working Party Report on the Accession of the Russian Federation to the WTO (document WT/ACC/SPEC/RUS/25/Rev.1 refers) which were considered by the Working Party at its formal and informal sessions held in January 2003, together with comments, proposals and requests for specific information or clarification relating to issues which the Working Party will address after the March 2003 formal and informal sessions.

| Paragraph No. | Comment |
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| **8-10** | **ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE**<br>**Economic Policies**<br>**- Fiscal and Monetary Policies** |
| **11-26** | **- Foreign Exchange and Payments System** |
| 11-26 | **Questions on the IMF's Approval**<br><br>According to the IMF Report (IMF Country Report No. 02/74), "Restrictions on advance import payments (exchange restriction). The authorities do not freely permit the making of all advance payments that are required under valid import contracts. Fund approval not granted". Could Russian Federation explain whether the following regulations are approved by the IMF?<br><br>1. Limitation on the period between advance payment and customs clearance<br>2. Requirement for Russian importers to make a deposit in Rubles corresponding to the amount of the advance payment paid in foreign currency.<br><br>**Specific questions on the draft law "On Currency Regulation and Currency Control"**<br><br>1. Limitation on the period between advance payment and customs clearance<br><br>After enforcing the draft law, will transactions, for which the period between advance payment and customs clearance exceeds 180 days, have restrictions imposed only in the three exceptional situations mentioned on page 8 of "WT/ACC/SPEC/RUS/29"? Apart from these three situations, can companies conduct transactions without permission from the CBR?<br><br>Regarding transactions for which the period between advance payment and customs clearance does not exceed 180 days, are no restrictions imposed?<br><br>2) Requirement for Russian importers to make a deposit in Rubles corresponding to the amount of the advance payment paid in foreign currency<br><br>After enforcing the draft law, will the requirement (for Russian importers to make a deposit in Rubles (which is 20% of the advance payment) be only imposed when the transactions for which the period between the advance payment and customs clearance exceeds 180 days in the three exceptional situations mentioned on page 8 of "WT/ACC/SPEC/RUS/29"?<br><br>When will this regulation be abolished?<br><br>3) The mandatory requirement applicable to exporters of products from Russia to convert a certain percentage (from 50% to 30% in the draft law) of their foreign exchange earnings into domestic currency<br><br>When will this regulation be abolished? |

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| 11-26 | We welcome the new information provided by Russia on its draft Federal Law "On foreign exchange control and foreign exchange regulation". The inclusion of "proposed" elements of Russia's foreign exchange scheme with "existing" elements, however, introduces uncertainties as to what provisions will apply upon accession.<br><br>We suggest that, at an appropriate point, this entire section of the report be re-drafted along the lines suggested in the general comments in WT/ACC/SPEC/RUS/29, i.e., by drawing out clearly which provisions will be superseded by new legislation, and those that will remain the same.<br><br>We welcome the statement in Russia's response that, under draft legislation, current exchange transactions are to be "free". In relation to that statement, we seek clarification as to whether the proposed requirement that residents must ensure payments are deposited in accounts within a 180 day period in the case of prepaid imports will replace the current restriction of 90 days.<br><br>- What provisions will be made for circumstances where performance of contract does not occur within that time period?<br>- On page 12, Russia states that "it is quite possible" to prolong the current term beyond 90 days by obtaining CBR permission. We concur with the views expressed by Members under para 23 (page 6 of WT/ACC/SPEC/RUS/29) that the difficulties involved in obtaining approval would pose unnecessary additional transaction costs on importers (Article III of GATT 1994) and should be removed.<br><br>In relation to the proposed mandatory sale of export earnings (up to a limit of 30 per cent of earnings), we strongly disagree with Russia's claim that it does not represent a violation of Article III or XI of GATT 1994.<br>- Irrespective of whether exporters can acquire foreign currency on the internal market, this regulation requires exporters to dispose of their foreign currency and then re-purchase them at cost (i.e., exchange rate losses, payment of conversion margin), affording protection to domestic products (Article III).<br>- By its very nature this regulation represents a restriction on both the importation and exportation of any product (Article XI).<br><br>Russia has not addressed concerns raised under para 12 (page 5 of WT/ACC/SPEC/RUS/29) on the WTO inconsistency of the requirement to deposit an amount equal in value to the foreign currency purchased for the purpose of prepayment of imports. We look forward to a full response to this and other outstanding concerns. |
| **40-52** | **- Pricing Policies** |
| 51 | As it is stated in paragraph 51 of the draft report: “international treaties are binding throughout the entire territory of the Russian Federation”. However, we are still witnessing violations of commitments undertaken by the Russian Federation under bilateral and multilateral arrangements affecting trade in goods and services. That is why we need the clear commitment to be undertaken by the Russian Federation, with reflection in the draft report, that it will strictly observe the provisions of international treaties.<br><br>We would also like to have a clarification from the Russian Federation on the following question: in case if Russia’s domestic legislation provides for conditions |

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| | different from those stipulated by international treaties to which Russia is a party, can the legal primacy of international treaties over domestic law be enforced without the need for complainants to seek a judgment of a court? If not, what are exact procedures to be followed? |
| 48-58 | This delegation is disappointed with deleting the paragraph 72 from the document RUS/25, which deals with coordination of international and foreign economic ties of the subjects of the Russian Federation and asks the Secretariat to restore this paragraph in the current document together with the question posed by our delegation on this very issue which was reflected in document RUS/25/Add.1.<br><br>Our delegation wishes to reiterate that the provisions of the Law of the Russian Federation on Coordination of International and Foreign Economic Ties of the Subjects of the Russian Federation are being constantly violated by the subjects of the Russian Federation. 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 clear 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. |
| 48-49 | We are still concerned about the latest information given by Russian delegation that a possibility for discriminatory pricing for transportation on railway freight remains.<br><br>We would like to express our interest to see what is the deadline for the second stage of tariff unification as explained in para 49? |
| **55-65** | **FRAMEWORK FOR MAKING AND ENFORCING POLICIES**<br>**Powers of executive, legislative and judicial branches of government;**<br>**Government entities responsible for making and implementing policies affecting foreign trade;**<br>**Division of authority between central and sub-central governments** |
| 55-65 | The new information provided in this section is useful. We encourage Russia to address the substance of the questions raised by Members in relation to appeals procedures across other aspects of Russia's trade regime and how Russia intends to ensure action is taken against non-uniform application of trade-related measures. |
| **98-99** | **- Other Duties and Charges** |
| 99 | Russia should confirm that "other duties and charges" applied to imports will be bound at zero in its Goods Market Access schedule. |
| 98-99 | The para. 297 or the draft report states, "For the illegal copies, the right holder could request to take them. ... Concerning the Superior Arbitration Court's practice, the Court issued a decision on confiscation and destruction in cases where the right holder did not request the goods to be transferred to him. ". In this respect, we would like to ask for more information on whether this provision relates to films and phonograms or to goods produced with violation of rights of holders of trademarks or to all aforementioned? If the provision relates also to films and phonograms, what is the arrangement for the holder to use or sell these items? Is it stipulated in a legal document or it is discretion of the right holder? |
| **98-99** | **<u>Russian Federation:</u>**<br><br>We suggest replacing in para. 102 the words "according to the new draft Customs Code" with "in accordance with the draft Chapter 25.1 "Customs Duty and Customs Charges" of Part II of the Tax Code of the Russian Federation and the draft new version of the Customs Code of the Russian Federation", which would correctly reflect the structure of the legislation of the Russian Federation on taxes and levies and the content of the above draft laws which have been presented by the |

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| | Government of the Russian Federation to the State Duma. |
| **98-99** | **<u>Russian Federation:</u>**<br><br>There are no requirements in the Russian consulates to have consular documents (consular invoices and certificates) or consular visas for performance of import/export transactions. Furthermore, no special consular fees connected with the export or import of goods or services have been instituted.<br><br>The activities of consulates are governed by worldwide accepted provisions of international law (in particular Vienna Convention 1963).<br><br>Thus, the issues on consular fees should be excluded from the Draft Report as they are not connected with importation and exportation. |
| **100-107** | - **Fees and Charges for Services Rendered** |
| 100-107 | The table of fees levied for consular purposes (Table 12) includes a number of consular fees with a potential impact on 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 to the questions we have already posed in order either (a) to demonstrate that in fact these fees are not in any 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. |
| 100-107 | The text of this Section should be updated to give additional specific information on the unified customs fee:<br><br>- whether the unified Customs fee will replace all other Customs charges on imports except for customs escort, or if not, information on any Customs charges that will continue;<br>- the status of the legislation that will establish and administer the fee and whether further regulation will be necessary to implement the fee;<br>- the scope of application, in terms of goods and exporting countries covered or exempted;<br>- the legal basis and level of application;<br>- what the revenues collected will be used for;<br>- the relationship between the revenues collected and the cost of the services for which the fee is applied; and<br>- how Russia will insure that the revenues collected are used solely for providing these services, and that none of the revenues are used for the customs clearance of exempted imports or exports. |
| 103-107 | - <u>Stamp Tax, State Duties, and Consular Fees</u><br><br>Paras 104-6: Russia should expand the text to distinguish stamp taxes from State Duties in terms of their purpose, incidence, and application, and respond to WP Members ' questions and state unambiguously in the text whether customs documents are, or are not, considered to be "vital records" or "other legally significant actions performed by vital statistics offices," i.e., subject to the stamp tax or state duties.<br><br>Paras 106-7: The text should include responses to Members' questions concerning the extent to which consular fees are applied to pay for services involving import or |

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| | export documents, which documents requiring the fees are trade-related, and if their use in importation and exportation is optional or mandatory. |
| Tables 10-13 | - Tables 10-13 should be comprehensive. If they are not, additional information should be provided to make them so.<br>- Has the legal authorization for the measures noted in the first and third "notes" to the Table listing Consular fees been eliminated? |
| **103-104** | **<u>Russian Federation:</u>**<br><br>The term "stamp tax" mentioned in the paragraphs 103-104 and Table 11 should be read "state duty". |
| **100-110** | **- Fees and Charges for Services Rendered** |
| 99-100 | Our delegation expresses its concern about the double standard policy pursued by the Russian Federation while collecting the consular fees from Georgian nationals, according to which the Russian Federation accords the privileges to and exempts from payment of certain consular fees specific groups of population based on their ethnicity and places of origin and for example, Georgian nationals from Abkhazian and South Ossetian regions are considered/treated as Russian nationals. Our delegation urges the Russian Federation to apply the uniform consular fee policy towards all Georgian nationals and eliminate the current practice prior to its accession to the WTO. |
| **111-116** | **Application of Internal Taxes on Imports**<br>**- Excise Taxes** |
| 111-116 | In para 115 a Member raised the issue of the calculation of excise taxes on imports on the customs value plus the total of customs duties and levies payable versus the calculation of excise taxes on domestically produces goods on the basis of the actual value only and raised the question of its national treatment implications. As it does not seems that the Russian delegation addressed this concern, we would welcome an answer. |
| **142-150** | **- Customs Valuation** |
| 142-150 | This Section should be updated to describe how the provisions of the draft Customs Code and draft Chapter 25.1 of Part II of the Tax Code will bring Russia into conformity with WTO provisions once they are enacted.<br><br>- Please include information on what will be required concerning changes to regulations in place and issuing further regulations to fully implement the new customs valuation regime.<br>- The draft report should also include reference to Member requests for commitments on the use of the two WCO decisions on valuation.<br>- Please elaborate in the revised draft Working Party Report text on the need and operation of the "special technique of customs control" to prevent commercial valuation fraud. What precisely is the "special technique," how is it applied, and does Russia intend to keep using it in future?<br>- Please provide a list of products by HS item number currently subject to the "special technique," e.g. flat glass.<br>- Please include information on how Russia's customs regime addresses the right to import merchandise under bond.<br>- Please include information in the text on the scope for use of transaction value in related party transactions, the need to include the Interpretative Notes in Russia's customs valuation legislation, and respond to the specific concerns noted regarding the determination customs value under transaction value, value of identical merchandise, deductive value, and the fallback method. |

| **151-158** | **- Rules of Origin** |
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| 151-158 | We submitted a number of specific questions on Rules of Origin in May 2002, to which no response has yet been made. We invite Russia to respond now. |
| 151-158 | On the basis of the answer from the Russian delegation during the December 2002 meeting paragraph 153 should be modified, as the requirement of the written statement by the consignor will be repealed by the draft tax code. We seek a confirmation and a commitment from the Russian delegation on this issue. |
| 151-158 | Please provide specific and updated information on the new Rules of Origin provisions with respect to WTO obligations, e.g., as provided for in the new Customs Code, and the need or existence of any relevant implementing regulations, with particular attention to the requirements of Article 2(h) and Annex II, paragraph 3(d) of the Agreement on Rules of Origin. .<br><br>Do Russia's preferential rules of origin for the FTAs with CIS, Yugoslavia, or other such agreements, reflect the interim rules of the WTO Agreement in Annex II of the Agreement? Please provide specific legal citations. |
| *151-158* | *Normally the country of origin will most often be stated in the trade documents/ invoices. A certificate of origin is normally not necessary, unless requesting preferential treatment. Para 152 , as in para 163 of the former document, uses the word "might" e.g. "might request a certificate of origin" or "might be no mandatory requirement to submit a certificate of origin"*<br><br>*Our exporters are confronted with uncertainties as Russian practice can be unclear and opens for high tariffs (double the MFN-rate). This again means that for all practical purposes an exporter needs a certificate of origin even though it shouldn't be necessary when not requesting preferential treatment and when the origin is reflected in the documentation for customs clearance. The non-clarity and unnecessary bureaucratic burdens should be solved by the time of WTO-accession. First there is a need for more information on practice.* |
| 152-156 | 1. Our delegation wishes to reiterate the importance of problems described in paragraph 153 regarding the customs regulation and simplification of border control measures and necessity of bringing all these inconsistencies under the WTO legal umbrella.<br><br>We regret that the Russian Federation instead of understanding the problem raised by the member tries to circumvent the question, which has the utmost importance and serious economic consequences for the member's national economy. Accordingly, the problems listed in paragraph 153 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 Russian side to remove all customs formalities, which represent hidden barriers to trade and major trade distorting measures, prior to its accession to the WTO.<br><br>2. Our delegation would like to reiterate that the provisions of decrees of the State Customs Committee of the Russian Federation No 961-r dated 4 October 2001 and No 1002 dated 19 October 2001 run counter the provisions of the Constitution of the Russian Federation and namely Article 15 which states that: "if an international treaty to which the Russian Federation is party provides for other rules than those set forth by Russian Federation domestic law, the rules of the international treaty should apply". |

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| | It should be stated that the two above-mentioned decrees of the State Customs Committee violate the provisions of the bilateral agreement between this member and the Russian Federation on Customs Check Points.<br><br>Accordingly, our delegation urges the Russian Federation to immediately eliminate these discrepancies and to ensure the consistency of these legislative acts with the provisions of the international treaty. |
| *152* | *We refer to the reference in paragraph 152 to country quotas and "other methods for regulation of foreign economic activities".*<br>- *We seek the inclusion in the draft Report of explanations of the circumstances under which these two measures are applied.* |
| **159-163 and 200-201** | **- Other Customs Formalities** |
| 200-201 | Please identify and describe any other export measures like the one described in these paragraphs. |
| 163 | Russia should respond to WP Member requests for a commitment addressing the issue of reduced access to the Russian market through selectively closed and opened border crossings. |
| 159 and 200-201 | We are still concerned about the operation of customs check-points, which are from time to time promptly closed for certain products under different reasons. This uncertainty over operation of customs checkpoints is considerably limiting market access for some products. We would like to see a commitment from Russian side to bring its practices in conformity with WTO rules. |
| **209-225** | **Technical Regulations and Standards, Including Measures Taken at the Border with Respect to Imports**<br>**- Technical Barriers to Trade** |
| 209-225 | Under section IV of the document on "basic administrative measures necessary for carrying out activity in the field of medicines" it is not clear if the certificate of conformity of the medicines delivered by the Ministry of Health or Gosstandard of Russia or both and what are their respective competence. It would be useful to get more information on their respective competence.<br><br>In addition, it is mentioned that the cost for getting a certificate of conformity is determined on agreement between an applicant and a body of certification. Considering Article I and VIII GATT and Article 5.2.5 of the TBT Agreement, we have serious doubts on the consistency with WTO rules of way the fee requested for a certificate of conformity is determined.<br><br>According to **Paragraph 209**, Gosstandard of Russia is operating in the regulatory as well as in the commercial field. Such combination of responsibilities is problematic with regard to impartiality and independence of Gosstandard. Is it intended to separate certain tasks from Gosstandard? Who will in future be responsible for the operation of a reliable accreditation system in Russia?<br><br>**Paragraph 212** mentions that Government Resolution No. 287 of 29 April 2002 substantially reduced the list of goods subject to mandatory certification. We request that an updated list be annexed to the draft report. Are further revisions of this list planned in the near future?<br><br>**Paragraph 214** in principle refers to the list of products whose conformity may be confirmed by conformity declaration. We do not understand why the Russian |

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| | Federation also mentions the mandatory certification procedure in this context. Hence, what would be the difference between this list and the list mentioned in paragraph 212 above? It would be very useful if the Russian Federation could list and explain in a separate paper what conformity assessment procedures must be completed for what types of products, and how the required procedures will look like. Such paper should refer to all possible conformity assessment procedures laid down in Russian law, from mandatory certification to supplier's declaration of conformity.<br><br>Also mentioned in paragraph **214** is the recognition of certificates issued in the supplying (foreign) country. Such recognition will take place in case the supplying country has concluded an interstate agreement or if is participating in an international certification system to which the Russian Federation has acceded to. We would like to know in what international certification systems the Russian Federation already participates. Is a participation in other certification systems planned?<br><br>**Paragraph 214** refers also to the appeal commission of Gosstandart. As Gosstandard itself supplies many of the services that the appeal commission has to decide upon, we would like to know how independence and impartiality between Gosstandard and the appeal commission will be guaranteed.<br><br>**Paragraph 215** mentions the Draft Federal law "on technical regulation". On November 18 2002, we sent written questions referring to this Draft law to the Russian mission in Geneva. Up to now, we have not receive any answer to this letter. We would like to ask the Russian delegation until when the Russian answers and comments to the Swiss paper can be expected.<br><br>**Paragraph 217** states that the overall level of harmonization of domestic with international standards is currently about 35 per cent. Is there a specific reason why only 35% of domestic standards are harmonized with international standards? We would like to ask if the harmonization of state standards with international standards is even below the 35 per cent level for some product sectors. For which specific product sector(s) is this the case?<br><br>In the comments provided by Russia in SPEC/RUS/29 it is indicated that over 50% of state standards were already harmonized with international standards and that the overall level of harmonization of domestic standards with international standards was currently 35%. What is the difference between domestic and state standards ? How many categories of standards do you have a part from state standards ? |
| re: Federal Law No.27 | 1. <u>General remark</u><br><br>The English translation of the federal law "Framework Provisions on Technical Regulation in the Russian Federation" contains several terms and definitions that seem not to be in line with the agreed terminology under the WTO-TBT Agreement (hereinafter the TBT Agreement). The Russian Federation is asked to make broader use of globally agreed TBT terminology and of internationally harmonized definitions (e.g. ISO Guide 2)<br><br>2. <u>Preparation, adoption and application of technical regulations of (central/local) governmental bodies</u><br><br>- Article 3 of the law on technical regulating lays down the principles of technical regulating in the Russian Federation. One of these principles is the "compatibility of technical regulating to the performance of national |

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| | economy, condition of technical infrastructure and achieved level of technological development". Nothing is said in this article about the compatibility of national technical requirements with internationally harmonised standards. We would like to know why the principle of compatibility of national technical regulations with international standards as laid down in Article 2.4 of the WTO TBT Agreement is not included in Article 3 of the Russian law on technical regulating.<br>- In the same context, Article 9 paragraph 10 stipulates that in the case of non-compliance of technical regulation with the interests of the national economy, the Government of the Russian Federation may cancel this technical regulation or may amend it to make it compatible with these interests of the national economy. How will the Government of the Russian Federation decide in the case of such conflict between an international harmonised standard and the interests of the national economy? According to agreed principles, the protection of interests of national economy is in general not a legitimate objective to deviate from international standards (see Articles 2.4 and 2.2 of the WTO TBT Agreement).<br>- Article 11 of the law "Framework Provisions on Technical Regulation in the Russian Federation" deals with the adoption and application of technical regulations in case of urgency. Article 2.10 of the TBT Agreement however requires adequate consultation of member states and interested parties also in those cases where technical regulations must be adopted rapidly. Does the Russian law also consider adequate consultation procedures for stakeholders in case of urgency (possibly after adoption of the regulation)?<br><br>3. <u>Procedures for Assessment of Conformity</u><br><br>- Article 20 paragraph 1 differentiates on the one hand between mandatory and voluntary conformity confirmation. We would be very much interested in some further information about the ongoing review of the list of products requiring mandatory certification. We would like to express again that past lists have been too extensive. Mandatory certification shall only be required for products with a considerable hazard potential.<br>- Furthermore, Article 20 paragraph 3 defines the two possibilities for mandatory conformity confirmation: Supplier's declaration of conformity /"declaring of conformity" (SDoC) and mandatory certification. What criteria are relevant in order to determine whether a product falls under the SDoC- or the mandatory certification scheme?<br>- With regard to SDoCs (Article 24), we are concerned that the respective proposals in the Russian Draft law would create unnecessary barriers to trade. First, we would like to know in what cases the declaration of conformity based on own proofs must be completed by proofs or certificates of a third party (Article 24 paragraph 3). According to our understanding of SDoCs, the participation of conformity assessment bodies shall only be necessary in exceptional cases. Therefore, we propose that the involvement of accredited test labs or certification bodies should only be required for products with high hazard potential. Second, according to Article 24 paragraph 6, the properly issued SDoC must be registered at the federal executive body in the field of technical regulation. We think that such a requirement is not necessary. For the purpose of market surveillance, the SDoC must be available where the product is delivered. Normally this will be the manufacturer or the distributor but certainly not the authorities as required in the Russian law. |

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| | We are of the view that the SDoC-procedure proposed in the Russian Draft law is too complicated and not in line with the internationally agreed purpose and the intention of SDoC, i.e. to keep the main responsibility at the manufacturer himself. Therefore, the Russian Federation should modify the proposed SDoC procedure with a view to delegate more responsibilities in the field of conformity assessment to the manufacturer.<br><br>- Article 22 deals with the issue of voluntary conformity markings. How will it be guaranteed by the Russian government that voluntary conformity marks are not created as a means to discriminate foreign products against domestic products?<br>- Article 30 deals with the recognition of results of conformity assessment. Article 6.1 of the WTO TBT Agreement obliges member states under clearly defined circumstances to accept results of conformity assessment procedures performed in other member states even when those procedures differ from their own. According to Article 30 of the Russian law, recognition of results of conformity assessment in the Russian Federation may only be possible according to international treaties of the Russian Federation in this field. We would like to know if recognition of results of conformity assessment is also possible, lacking a specific bilateral agreement with the Russian Federation. In this context we would like to ask the following questions:<br>- Can a foreign test lab act as a subcontractor of a Russian certification body? Under what preconditions is this accepted?<br>- Under what circumstances can foreign certification bodies issue certificates for the Russian market? Would an accreditation in a foreign country be sufficient if this country is engaged in international cooperative work in the field of accreditation (e.g. ILAC, IAF, EA)?<br>- Previous versions of the law on technical regulating contained provisions with regard to independence and impartiality between accreditation and certification bodies. This provision has been deleted in the latest version of the law. We would like to know the reasons for this modification. In this context, we would like to know whether or not such impartiality and independence problems have been resolved at Gosstandard. |
| 209-225 | a) According to Russia's explanation given at the last WP meeting, following the entry into force of the federal law "On Technical Regulation" (hereafter "umbrella law"), each technical regulation will be reviewed over a 7-year transition period. With regard to this review, please indicate the "Responsible Authority" and the "Time-Frame" of each Technical Regulation (including the "Interstate Sanitary Regulations and Norms").<br><br>Furthermore, we would appreciate it if Russia could update the document "Interdepartmental Program of Measures to Ensure Full Compliance with the Requirements of the WTO Agreement on Technical Barriers to Trade and the WTO Agreement on the Application of Sanitary and Phytosanitary Measures in 2002-2005 Job No. 4930)", which was submitted by Russia to the WTO Secretariat in June 2002.<br><br>b) With regard to Article 6 "The Purposes of Technical Regulations" of the umbrella law, the "protection of state or municipal property" is included as one of the purposes. Please explain how this purpose conforms with the purposes specified in Article 2.2 of the TBT Agreement, which are legitimate |

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| | objectives.<br><br>c) Russia's current "Interstate Sanitary Regulations and Norms" includes 12 categories of conformity assessment for technical regulation such as that for noise, vibration (general/local), infrasonic, etc. However, we have never known cases where the existing WTO Members adopt such categories for the conformity assessment of technical regulations for electronics products.<br><br>We are thus concerned how these categories can justify being adopted as a technical regulation for electronics products. Please explain in detail the contents of the "Interstate Sanitary Regulations and Norms", together with the justification for imposing this technical regulation, giving such evidence as scientific and technical information and so on.<br><br>d) Russia also explained that the EU technical regulations and standards system will be applied widely in the Russian Federation. Are we to understand that the products subject to Russia's "Declaration of Conformity (DOC) system" will cover such products under the EU technical regulations and standards system, as "Television Receivers", "Audio Products", and "Personal Computers and their peripherals"?<br><br>e) After the umbrella law comes into effect, will the procedures for the acquisition of a certification on technical regulation be modified or not? If so, what kind of modification to procedures is envisaged? |
| 209-225 | Russia's response to this section is lengthy, and includes large sections from the existing draft of the WP report. We ask that Russia re-draft this section in a format of specific answers to questions and concerns raised by Members, so as to allow an assessment to be made of what issues remain in dispute. |
| **226-245** | **- Sanitary and Phytosanitary Measures** |
| 226-245 | **General comments**<br><br>Valid and well justified comments and requests for further information are raised in Doc WT/ACC/SPEC/RUS/29. Unfortunately Russia fails to provide clear replies.<br><br>The Russian response is mainly copied from the Draft Working Party report WT/ACC/SPEC/RUS/25/Rev.1 and includes few new elements. Therefore, it does not provide replies for most of the questions raised. The necessary clarification for a very confusing description of the various procedures/authorities involved in authorising imports of commodities under the SPS rules is still lacking. |
| | **Import authorisations in general**<br><br>A “state registration” seems to be an essential part of import authorisations although its exact contents remain unclear. However, Russia now states that the “state registration” would only apply from 2006 (page 40, first paragraph). Does this mean that all points where Russia refers to “state registration” would only apply from 2006?<br><br>The connection between the state registration and the import permits issued by the Chief Veterinary Officer (MOA) remains unclear. Russia explains that the Ministry of Health, in conjunction with the Ministry of Agriculture, is responsible for the state registration of imported food products of animal origin. On the other hand, Russia states that a permission from the Chief Veterinary Officer (MOA) is required for all |

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| | imports of products of animal origin (Article 14 of the Federal Law on Veterinary Services, No 4979-1 of 14 May 1993). Is the Ministry of Agriculture competent only for animal health aspects or does it also cover veterinary public health?<br><br>In conclusion, there appears to be a duplicate administrative procedure for authorising imports of food products of animal origin as both a state registration and an import permit is required. This could create an administrative barrier to trade. Therefore, Russia should further clarify this point. |
| | **Imports of live animals and products of animal origin**<br><br>Russia provides a new description on the system for authorising imports of live animals and products of animal origin (page 44 of WT/ACC/SPEC/RUS/29).<br><br>As regards the list of "controlled products" (para 2) a reference is made to the Government Resolution of 29 October 1992, No 830. This contradicts earlier statement which says that the list of "controlled cargoes" is contained in the letter of the Veterinary Department, No13-8-01/3009 of 16 May 2000. In any case, if the list of products is the one presented in WT/ACC/SPEC/RUS/21/Rev.1 (reference paper 10) it is overwhelming. It includes items for which there should be no need for veterinary controls, 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. We have established a list of products which have to undergo veterinary border inspection when imported to the EU. This list is laid down in Commission Decision 2002/349/EC[1]. We invite Russia to study this decision.<br><br>In paragraph 3 Russia states that the import conditions to be fulfilled by the exporting countries are laid down in the "Veterinary requirements in respect of imports to the Russian Federation of animal cargoes, approved by the Veterinary Department on 23 December 1999", letter No 13-8-01. However, in the second paragraph on page 42 Russia states that this letter applies only to imports from countries which do not have bilateral agreements with Russia. Russia should clarify this issue and provide a translated copy of this letter.<br><br>In paragraph 4 Russia states that "finished products of animal origin that have undergone a thermal treatment" do not require an import authorisation from the Chief Veterinary Officer. Instead, in para 6 it is stated that "imports of finished products are administered by the Chief State Veterinary Inspector of the Region in his own discretion". Russia should clarify the definition of a "finished product" and specify which rules apply for their imports. How is it guaranteed that the regional services apply uniform SPS measures for imports of "finished products"?<br><br>In paragraph 5 it is stated that the regional veterinary services consider the application of an importer on condition that the importer is able to provide proper conditions for storage and processing of products. Russia should further explain which criteria is applied for evaluating these conditions and how it is guaranteed that uniform criteria is applied in different regions and for imported and domestic products.<br><br>In paragraph 6 it is stated that the Chief Veterinary Officer considers the submission of the regional services by reference to the epizootic situation in the exporting |

[1] OJ L 121, 8.5.2002, p. 6

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| | country, and issues permission or prohibition to import. In general, a system of individual import permits, although not necessarily against the SPS Agreement, risks being non-transparent, non-coherent, non-consistent and discriminatory. Therefore, Russia should clarify whether the criteria (the import requirements) for issuing import permits is published as legally binding legislation and uniformly applied to all applicants. Moreover, amendments to the import requirements must be subject to prior notification in accordance with the SPS Agreement.<br><br>In paragraph 9 Russia states that the requirements concerning imports of products of animal origin were modified in 1999 so that they became science based and reflect the OIE recommendations. This is contradicting the information in the Non-Paper of 17 June 2002 (Interdepartmental Program to ensure compliance with the TBT and SPS Agreements) where in points 1.3.5. and 1.3.6. it is mentioned that the SPS measures should be aligned with the international guidelines and be science based only by 2005. Russia should clarify this issue. |
| | **Framework laws**<br><br>The situation with regard to framework legislation remains unclear. Russia states that after entry into force of the Federal Law No 184-FZ of 27 December 2002 "On Fundamentals of technical Regulation in the Russian Federation" all requirements of the WTO SPS Agreement would become mandatory (page 44, second paragraph). It seems unlikely that this law would overrule the vertical framework laws on veterinary and public health matters.<br><br>Indeed, in the Non-Paper of 17 June 2002 (Interdepartmental Program to ensure compliance with the TBT and SPS Agreements) in points 1.3.2. and 1.3.9 it is mentioned that amendments are also needed in the Federal Law on Sanitary and Epidemiological Well-Being of Population (No 52-FZ of 30 March 1999) in the Federal Law on Veterinary Services (No 4979-1 of 14 May 1993). Russia should explain the foreseen amendments more in detail, in particular their relevance to the compliance with the SPS Agreement. |
| | **Permanent Russian inspectors in the EU**<br><br>We maintain our position that the requirement for pre-shipment inspection of fresh meat by the Russian veterinary services in the exporting countries is not in accordance with the SPS Agreement. Therefore, we invite Russia to abolish this system and to rely on the certificates signed by the authorities of the exporting countries at latest by the WTO accession.<br><br>Russia fails to address this issue in its response in Doc WT/ACC/SPEC/RUS/29 although this is specifically asked.<br><br>In paragraph 237 of the Draft Working Party Report (WT/ACC/SPEC/RUS/25, Rev.1) Russia insists that this system is in accordance with the OIE Animal Health Code. This is not a correct statement since 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". |

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| 226-245 | WT/ACC/SPEC/RUS/29 contains what appears to be a revision of the SPS chapter of the WP Report. While we welcome new information provided, we have the following concerns:<br><br>It does not directly address many of the questions raised by Members on the previous draft.<br>- It introduces information on new legislation in the SPS sphere, without an adequate description of which aspects of the existing policy regime will become redundant and which will remain in effect.<br>- It does not assist the Working Party to track and eventually resolve outstanding concerns, or move towards the drafting of commitment language in the Working Party report.<br><br>The steps we feel are needed to take this process forward are as follows:<br><br>- Russia needs to restructure and augment the information provided in WT/ACC/SPEC/RUS/29 by tabulating specific answers against each comment/question made by Members.<br>- This chapter of the report needs to be re-drafted to:<br>  - capture outstanding concerns and explain clearly how Russia's new legislation in the SPS/TBT sphere addresses those concerns;<br>  - include commitment language designed to address concerns.<br><br>**Working Party Report Chapter on SPS Issues**<br>- As it stands, this section of the draft report represents a description of Russia's SPS policy framework, relevant laws and regulations, and some detail on requirements for the export of products to the Russian market.<br>- It has a number of problems and gaps that need to be addressed. Members have sought to rectify these shortcomings, but insufficient responses from Russia have meant that there has been little progress in resolving outstanding concerns.<br>- There are a number of aspects of the draft that need to be addressed for this aspect of the accession to move ahead, and appropriate commitments to be identified. The information provided on new legislation in the SPS sphere is useful, but does not adequately address how Russia's system will meet key aspects of the SPS agreement.<br>- Below is a list (not exhaustive) of the key concerns we consider should be reflected in additional paragraphs for the report. We ask that Russia provide a full response to each of these issues and explain how they will be addressed. We reserve the right to provide more detailed text for future discussions on SPS issues as the draft report evolves.<br><br>**Basic Rights and Obligations**<br>- A key requirement of Article 2 of the SPS Agreement is that SPS measures should be applied only to the extent necessary to protect human, animal, or plant life or health. Russia describes a list of multiple certification requirements associated with exporting products of animal origin to Russia, with insufficient explanation of the need for these various layers of certification in protecting human, animal, or plant life and health.<br>- Members are concerned that Russia applies discriminatory measures, including requirements affecting imports that are more restrictive than those |

affecting domestic production, despite similar or identical conditions. For example, more stringent testing or conformity assessment is required of some imported products than is applied to the domestic product despite similar risks to plant, animal or human life. These constitute disguised restrictions on international trade (Article 2:3 of the SPS Agreement). For example, in relation to dairy products, Russia requires exporting countries to certify freedom from certain diseases that are prevalent on its own territory (and have been notified to the OIE).

**Transparency**
The draft report currently does not address how Russia will meet the various requirements of the SPS Agreement in relation to Transparency and Notification of measures. Members are concerned about insufficient periods of notification of new or amended measures, which in effect do not allow time for producers in exporting Members to adjust to new conditions.

**Recognition of Disease-Free Status**
The draft report does not address Members' concerns that Russia does not fulfil Article 6 of the SPS Agreement in relation to the importation of some products of animal origin. In particular, Russia continues to make the export of some products conditional upon testing for diseases which are not prevalent in the exporting Member's territory. In the case of wool, Russia requires national registration and full-time monitoring of production of wool in the territories of some Members, despite the absence of diseases that could contaminate product.

**Assessment of Risk**
The draft report does not address Members' concerns that Russia does not ensure SPS measures are based on a true assessment of the risks to human, animal or health life, taking into account risk assessment techniques developed by the relevant international organisations. For example, in the case of fish exports, Russia requires that the fisheries products contain no preservatives. This is despite the fact that the use of a form of salt preservation is used throughout the world in prawn industries and is an international standard.

**Equivalence**
Members are concerned that Russia does not have adequate policies and measures in place to accept the sanitary and phytosanitary measures of other Members as equivalent in achieving Russia's level of sanitary and phytosanitary protection. In particular, Members are concerned that Russia requires more frequent access to establishments within exporting Members for the purposes of inspection and testing, but with little attempt to eventually recognise the equivalence of those Members' SPS measures.

**Transit Provisions**
The draft report does not address Members' concern about Russian non-compliance with WTO rules on transit trade. In particular, a requirement that the transit of product through third countries to Russia be conditional on obtaining a "permit" and agreement on the itinerary of the cargo does not comply with Article V(3) and V(1) of GATT 1994. Furthermore, details of the requirements underpinning such "permits" is required to assess consistency with the WTO Agreement on Import Licensing Procedures.

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| | **Import Licensing**<br>Russia appears to apply a form of non-automatic licensing to the importation of products of animal origin. Members are concerned that Russia may not apply that scheme in accordance with the provision of the WTO Agreement on Import Licensing Procedures and other relevant GATT articles. In particular, Russia requires importers to demonstrate adequate facilities for storage/processing imported product such as meat, but it is not clear that the same requirement is applied to purchasers of domestically-produced product in compliance with GATT Article III.<br><br>**Other Issues**<br>Change of Buyer Status: Members have concerns that Russian procedures that are applied where is a change in Russian consignee for a shipment, involving the reconsideration by Russian authorities of veterinary certificates, do not comply with relevant WTO provisions. This issue, including full procedures involved, will need to be addressed in the Working Party report. |
| **268-271** | - **Government Procurement** |
| **268-271** | **Russian Federation:**<br><br>Draft Federal Law "On Placement of Orders for Deliveries of Goods, Performance of Works and Provision of Services for Public Needs" is addressing the following key tasks:<br><br>- to systematize the legislation of the Russian Federation on state procurement; create a framework normative legal act to regulate civil law and procedural aspects of such procurement;<br>- to ensure transparency of the mechanism of procurement of products for public needs; to stimulate good competition and effective use of budgetary funds;<br>- to eliminate regulatory loopholes encouraging malpractices by stricter regulation of procurement procedures;<br>- to bring the Russian state procurement legislation into conformity with international laws, to profit by positive regulatory experience of foreign states in state procurement and to implement regulatory and legal acts of international organizations.<br><br>The draft federal law:<br><br>- lifts the existing forbidding limitations for engagement of foreign suppliers for product deliveries for public needs, and systematizes the procedure for participation of such foreign suppliers in tenders;<br>- allows qualifying mediation agencies to participate in tenders and deliveries of products for public needs;<br>- clearly distinguishes tender and non-tender procurement methods (buying from single source);<br>- extends the powers of the relevant executive authority in respect of control of compliance with procurement procedure;<br>- provides a mechanism of bid processing;<br>- establishes generally recognized criteria of evaluation of bids and determination of the winning bidder;<br>- provides for protection of rights and lawful interests of affected persons in respect of placement of orders for deliveries for public needs;<br>- the scope of the draft law includes all product procurements and deliveries on |

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| | the territory of the Russian Federation financed with the funds of the Federal Budget of the Russian Federation, regional budgets and non-budgetary funds of the Russian Federation and Russian Federation Regions. |
| **272-275** | **- Regulation of Trade in Transit** |
| 272-275 | Our delegation would like to thank the secretariat for accurate drafting of questions in this section. We also appreciate response provided by the Russian Federation, however it should be mentioned that the response is not sufficient one and needs to be further broadened in order to address specific issues raised by members.<br><br>Our delegation once again would like to ask the Russian Federation to provide detailed information on questions that are still outstanding in this section, including those on: transit of goods of dual usage, circumstances under which the Russian Federation may impede transit of other countries' exports through its territory, etc.<br><br>We would also welcome the clarifications from the Russian Federation what is the rationale for making the distinction between the humanitarian cargoes if they consist of the same goods but they have different recipients - governmental or non-governmental institutions, as it is provided by the Decree of the State Customs Committee of the Russian Federation No 1055 dated 6 November 2001. For example, if clothes or other goods are destined for institutions financed by state budget they are treated as humanitarian cargo but if the same category of goods is destined for non-budgetary organizations they are not considered as humanitarian cargo. Do these provisions apply to humanitarian cargoes destined to other countries and going in transit through the territory of the Russian Federation? |
| **285-287** | **TRADE-RELATED INTELLECTUAL PROPERTY REGIME (TRIPS)**<br>**General** |
| *285-304* | *The TRIPS Agreement allows Members some discretion in the measures that are implemented. For example, Article 27(3) provides exclusions from patentability.*<br>*- What exclusions from patentability will Russia be applying?*<br>*Russia has commented on the legal provisions that will be in place to combat infringements of intellectual property rights. However, 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.*<br>*- We ask Russia to provide information on what action the Russian authorities are taking to increase awareness of intellectual property rights among the public, the judiciary, education and research institutions, industry and businesses.*<br>*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.*<br>*- Will Russia subject its pharmaceutical industry to a term of patent protection of not less than 20 years?* |

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| **285-287** | **Russian Federation:**<br><br>Pursuant to the amendments made by Federal Law 22-FZ of February 7, 2003 "On Making Amendments and Supplements to the Patent Law of the Russian Federation" the following are now considered to not be patentable: types of plants, species of animals; layout designs of integrated circuits; solutions incompatible with public interests, principles of humanity and morals. This amendment is entirely consistent with the requirements of para. 2 and 3 of Article 27 of the TRIPS Agreement.<br><br>Russia currently strongly emphasizes media coverage of issues related to intellectual property rights, and keeping citizens, judiciary and business informed of the IP rights. Training programs are run regularly under the auspices (or with participation) of Rospatent to provide training and skills upgrade to experts in intellectual property protection, and other events to encourage invention process (conferences, seminars) are held. The underlying legal acts, information on the activity of Rospatent and other information are published on the official Rospatent website.<br><br>Evidencing the attention given by the regulators to public awareness of intellectual property rights, a special meeting of the Russian Federation Government was convened on 3 October 2002 devoted to means of supporting legal dealing in products containing intellectual property objects and protection of the consumer market from the spread of counterfeit goods in Russia. The meeting took a number of important decisions concerning measures to enhance and coordinate the efforts of the competent authorities in prevention and combat of IP rights infringements and in increasing public awareness of the measures undertaken. E.g. the Ministry of Press, TV and Radio Broadcasts and Mass Media was instructed to provide mass media coverage of any actions taken against IP infringements.<br><br>Under the Patent Law, including amendments made by Federal Law 22-FZ of February 7, 2003 "On Making Amendments and Supplements to Patent Law of the Russian Federation", the validity term of patents for all types of inventions without exception is 20 years from the date of application, which is consistent with Article 33 of the TRIPS Agreement. The new law provides for possible extension of this term. The validity term of the patent for an invention that is a medicine, a pesticide or an agrochemical the use of which requires statutory permission, may be renewed by the federal executive authority for intellectual property based on the patentholder's application, for a term calculated as the period between the date of application for invention and the date of permission for use being first granted less five years. The term of such renewal cannot exceed five years. |
| **285** | **Russian Federation:**<br><br>The representative of the Russian Federation said that the national system of protection of intellectual property rights complied with the basic international standards adopted in this field, including the provisions of the WTO Agreement on TRIPS. The framework of the Russian Federation's policy on intellectual property was determined by the Constitution of the Russian Federation (Article 44, item 1) which in particular guaranteed freedom of literary, artistic, scientific, technical and other types of creative activity, and provided protection for such activities. The whole system of the Russian legislation in force supported the implementation of this constitutional right. A number of international agreements signed by the Russian Federation constituted an integral part of this system. He also informed that the new Arbitration Procedure Code (Federal Law No. 95-FZ of 24 July 2002 on "Arbitration |

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| | Procedure Code") would enter into force on 1 September 2002. The draft law on amendments to the Patent Law set forth that plants, animals, layout-designs of integrated circuits, decisions that were contradictory to public interests, principles of humanity and moral were excluded from patentability. |
| **286** | **Russian Federation:**<br><br>He noted that the Russian Federation applied national treatment to the legal entities and individuals of those countries which had signed the treaties providing for such treatment (in particular, the Paris Convention for the Protection of Industrial Property, the World Convention on Copyright, and the Bern Convention for the Protection of Literary and Artistic Works) both directly pursuant to such covenants (Clause 4 of Article 15 of the Constitution of the Russian Federation provided for the direct application and prevalence of international agreements) in accordance with the obligations undertaken under these treaties and in accordance with applicable provisions of legislative acts of the Russian Federation (in particular, Articles 36 and 37 of the "Patent Law of the Russian Federation" No. 3517-1 FZ of 23 September 1992; Articles 47 and 48 of Federal Law No. 3520-FZ of 23 September 1992 "On Trademarks, Service Marks, and Appellations of Origin"; Article 3, Article 5:1 and Article 35:4 of Federal Law No. 5351-1 FZ of 9 July 1993 "On Copyrights and Related Rights"; Article 7 of Federal Law No. 3523-1 FZ of 23 September 1992 "On the Legal Protection of Computer Programs and Databases"; and Articles 13 and 14 of Federal Law No. 3526-1 FZ of 23 September 1992 "On the Legal Protection of Layout Designs of Integrated Circuits"). The application of most-favoured-nation treatment (subject to exceptions regarding certain preferences granted by the Russian Federation under certain treaties including those with CIS countries) as to intellectual property was additionally provided for under the treaties signed with the European Union and ourselves. As a party to the Euroasian Patent Convention the Russian Federation granted no advantages and privileges to other parties under this Convention. Any party to this Convention which used the procedure set out in the Convention could obtain the benefits of being a party to the Convention within the territory of any signatory. |
| **287** | **Russian Federation:**<br><br>Commenting on specific aspects of ongoing legislative work in the area of TRIPS and in response to specific enquiries by members, the representative of the Russian Federation provided the following information. |
| **288** | **- Copyright and Related Rights** |
| **288** | **Russian Federation:**<br><br>Overall, the provisions of the Russian legislation on copyright (including those relating to protection of computer programmes and databases) were in conformity with the provisions of the Bern Convention for the Protection of Literary and Artistic Works (including Article 6 bis) and the relevant provisions of the WTO Agreement on TRIPS. In particular, the Russian legislation protected not only personal non-proprietary rights of authors, such as authorship right, right to name, publication right, right to protect reputation of the author, but also property rights of authors which could be inherited. Thus copyrights were valid during the life of the author and during 50 years after his/her death. In certain cases stipulated by the law, the term for protection was calculated on the basis of other dates ( for instance from the date of latest death of a co-author where a work had been created in co-authorship). The draft law under consideration by the Duma intended to extend the term for protection to 70 years after the death of the author. At the same time, further to the |

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| | declaration made by the Government of the Russian Federation when joining the Bern Convention, the provisions of the latter did not applied to literary and artistic works which were of public property when the Convention came into force for the Russian Federation. In accordance with Article 28 of Federal Law No. 3531-1-FZ of 9 July 1993 "On Copyright and Related Rights", works for which the term of copyright had elapsed as well as works which had never been protected in the Russian Federation were considered to have become public property. The Russian authorities intended to further amend this law so as to bring it in full conformity with the respective requirements of the Bern Convention and WTO Agreement on TRIPS. |
| **289** | **- Trademarks** |
| **289** | **<u>Russian Federation:</u>**<br><br>Overall, the provisions of the Russian legislation relating to the protection of trademarks and service marks were in conformity with the provisions of the Paris Convention for the Protection of Industrial Property and the relevant provisions of the WTO Agreement on TRIPS, except for those which governed well-known marks protection with respect to non-homogeneous goods. Additions reflecting these provisions of the WTO Agreement on TRIPS were contained in the draft federal law submitted to the Duma "On amending the Federal Law "On Trademarks, Service Marks and Appellations of Origin". The Russian legislation in force allowed for protection of well-known trademarks. The legal basis was Articles 2 and 7 of the Federal law No. 3520-FZ of 23 September 1992 "On Trademarks, Service Marks and Appellations of Origin" as well as the Regulation on recognition trademark as well-known in the Russian Federation. The legislation did not require the registration of well-known trademarks. Nevertheless, any trademark pretending to be well-known should be recognized as such by a competent authority, i.e. the Higher Patent Chamber of Rospatent. Such a procedure of granting protection was fully consistent with Paris Convention. The provisions of criminal and civil legislation applicable to "ordinary" trademarks were also applicable to well-known trademarks. Among the remedies there were the recognition of the right, prevention of the violation, compensation of losses, criminal and administrative liability. |
| **290-291** | **- Geographical Indications** |
| **290** | **<u>Russian Federation:</u>**<br><br>Prior to 1992 geographical indications in the Russian Federation were protected mostly by considering any false geographical indications as a form of unfair competition or a violation of consumer rights (this was done by antitrust -antimonopoly- agencies or courts respectively). Since 1992 one important category of geographical indications - appellations of origin - was accorded special protection through their State registration in line with the procedure set forth in the Federal Law No. 3520-FZ of 23 September 1992 "On Trademarks, Service Marks and Appellations of Origin". Protection for such types of geographical indications was provided for under Article 6 of the said law which prohibited to register trademarks containing indications of the place of production of goods as well as trademarks containing false indications or indications which might mislead the customer as to the identity of the producer of goods. Protection of appellation of origin existed for all kind of goods – food and manufactured goods alike. According to Article 47 of the same law, the right to register an appellation of origin in the Russian Federation was granted to persons and legal entities of those states that provided similar rights to Russian persons and legal entities. |

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| **291** | **Russian Federation:**<br><br>On the whole, the provisions in accordance to which geographical indications were protected in the Russian Federation were in conformity with the Paris Convention for the Protection of Industrial Property and the relevant provisions of the WTO Agreement on TRIPS. The draft law "On amendments to Federal Law No. 3520-FZ "On Trademarks, Service Marks and Appellations of Origin" would allow protection not only for appellation of goods duly registered in the Russian Federation but for geographical indication of wines and spirits as well, in line with the provisions of Article 23.3 of the WTO Agreement on TRIPS. Such additional protection was not maintained for any other goods. |
| **292** | **- Inventions and Industrial Designs** |
| **292** | **Russian Federation:**<br><br>On the whole, the provisions of Federal Law No. 3517-FZ of 23 September 1992 "Patent Law of the Russian Federation on the protection of inventions and industrial designs" were in conformity with the Paris Convention and the relevant provisions of the WTO Agreement on TRIPS. The amendments to the Patent Law of the Russian Federation (Federal Law No. 22 dated February 2003) reflected the provisions of Article 31 of the WTO Agreement on TRIPS by extending the scope of currently existing provisions on "compulsory licensing". Under this law, a patent might not be obtained in relation to the following: plant varieties, animal breeds, solutions violating social interests or humanitarian and moral principles. This amendment corresponded to Article 27.3 of the WTO Agreement on TRIPS. Under the amended Patent Law in force, the validity term of patents for all kind of inventions was 20 years, starting from the date when the application was submitted. This term corresponded to the relevant provisions of Article 33 of the WTO Agreement on TRIPS. Moreover, the amended law provided for the possibility of extending such term for pharmaceutical products (medicines), pesticides and agricultural chemicals, if their use had been based on a consent of an authorized state body. In these cases, the general 20 year term might be extended for up to 5 years. |
| **293** | **- Plant Variety and Animal Breed Protection** |
| **293** | **Russian Federation:**<br><br>Plant varieties and animal breeds were protected in accordance with Federal Law No. 5605-1 FZ of 6 August 1993 "On Selection Attainments". The provisions of this Law, in the Russian Federation's view, were in conformity with the WTO Agreement on TRIPS and the UPOV Convention (International Union for Protection of New Varieties of Plants) to which the Russian Federation became a member in 1998. |
| **294** | **- Layout Designs of Integrated Circuits** |
| **294** | **Russian Federation:**<br><br>Layout designs of integrated circuits were protected in accordance with Federal Law No. 3526-1 of 23 September 1992 "On Legal Protection of Layout Designs of Integrated Circuits". In general, the provisions of this Law were in conformity with the provisions of the Treaty on Intellectual Property in Respect of Integrated Circuits (Washington Treaty) despite the fact, that the Russian Federation is not a party to this agreement. In addition the Federal law No.82-FZ of 9 July 2002 “On Amending the Law on Legal Protection of Topologies and Integrated Designs” contains provisions aimed at bringing in compliance with the WTO Agreement which supplement the |

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| | Washington Treaty. In addition, the Federal Law No. 82-FZ of 9 July 2002 "On amendments to the Law "On Legal Protection of Layout Designs of Integrated Circuits" contained provisions aimed at satisfying the requirements of the WTO Agreement which were additional to those of the Washington Treaty. |
| **295** | **- Requirements of undisclosed information, including trade secrets and test data** |
| **295** | **Russian Federation:**<br><br>Protection of undisclosed information, as in Section 7 of the WTO Agreement on TRIPS, was ensured in the Russian legislation by virtue of Article 139 of the Civil Code. In particular, this article stipulated legal protection of undisclosed information which constituted official or commercial secrets. In addition, the acquisition, use, or disclosure of scientific, technical, production, or commercial information, including commercial secrets, without the owner's consent were not permitted by virtue of Article 10 of Federal Law No. 948-1 of 23 March 1991 "On Competition and Restriction of Monopoly Activity on Commodity Markets". The provisions of the above-mentioned laws prohibited the use of undisclosed information without the consent of the right holder. All these provisions were applicable to the protection of confidential (undisclosed) information related to pharmaceutical and argochemical products containing new chemical substances. Following the opinion of the Ministry of Health of the Russian Federation the term of six years was sufficient to protect undisclosed information obtained during clinical tests of new medicines. In the event that protection of undisclosed information could endanger the human life and health such information could be published before the expire of this term. |
| **296-297** | **- Enforcement**<br>**- Criminal Measures** |
| **296** | **Russian Federation:**<br><br>Since 1999 there had been a special department dealing with intellectual property crimes within the Main Economic Crime Division of the Ministry of Interior (and its regional departments). As for criminal sanctions, the Criminal Code of 13 June 1996 included three articles specifically dealing with intellectual property: Article 146 (Copyright and Related Rights Violations); Article 147 (Patents Violations); and Article 180 (Trademark Violations). While copyright violations were punishable by fines and imprisonment, for other intellectual property violations no imprisonment had been provided until December 2001 where a new paragraph was introduced to the Criminal Code providing for liability for illegal use of trademarks. In addition to fines, this paragraph stipulated that sanctions up to five years of imprisonment. The legislators continued their work on the Criminal Code with a general intention of establishing an even wider scope of liability.<br><br>On 13 June 2002 the project of the Federal law “On Amending Article 146 of the Criminal Code of the Russian Fderation” was adopted in the second hearing by the State Duma of the Federal Assembly of the Russian Federation. The project law suggests specifying the objective part of respective corpus delicti by introducing the notion “heavy proportion” instead of “heavy damage”, the former establishing the amount of 200 minimal wages. The law also suggests increasing the liability to up to 6 years of imprisonment with and without confiscation of property. Abandoning the assessment criterion “heavy damage” will, on the one hand, enable to unify the criteria of protection of constitutional rights of composers and performers and, on the other hand, to increase the effectiveness of the application of the mechanism of criminal liability for the offence. |

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| **297** | **Russian Federation:**<br><br>Since intellectual property crimes were not considered to be "grave" crimes, enforcement bodies used other articles of the Criminal Code where appropriate such as smuggling, consumer fraud, etc. In 1997, there were 720 intellectual property violation cases; in 1998, 950; in 1999, 1300; in 2000, 2000 including 1,117 cases on copyrights and related rights violations. In 1999, 125 illegal manufacturing facilities were closed down and 30 million illegal units were confiscated. In 2000, 334 manufacturing facilities were closed down and 50 million units were confiscated. Confiscation of illegal goods, materials and equipment used for their manufacturing was not directly stipulated under Articles 146, 147 and 180 of the Criminal Code. It was normal practice, however, to confiscate these goods and machinery as material evidence. For the illegal copies, the right holder could request to take them. For machinery, the matter had to be decided by courts. Concerning the Superior Arbitration Court's practice, the Court issued a decision on confiscation and destruction in cases where the right holder did not request the goods to be transferred to him. Where a court did not order confiscation of illegal goods in civil proceedings, the right holder might appeal.<br><br>Pursuant to the project of the new Customs Code of the Russian Federation protection of intellectual property rights may be provided by customs authorities upon a written request of a right holder. The suspension of launch of goods which cross the border of the Russian Federation and are recognized as counterfeit may be done upon the customs procedure and customs control. The project was discussed by the committees of the State Duma of the Federal Assembly of the Russian Federation. Devoted to the protection of the intellectual property rights by the customs authorities no amendments were made to it that would be inconsistent with the TRIPS Agreement. |
| **298** | **- Criminal Procedure** |
| **298** | **Russian Federation:**<br><br>In accordance with the legislation in force, the enforcement bodies had no responsibility for discovering or identifying criminal violations. Since intellectual property violations were within the category of private accusation, criminal procedure could not be initiated without a complaint by the right holder. The time limits for investigation in accordance with the Criminal Procedure Code was initially 10 days and 30 days for the final decision in complex cases. Normally, the statement that the goods were counterfeit was made by the right holder. Official state examination might be done by the Centre for Expertise of the Ministry of Interior. At the request from an anti-trust or law enforcement body and on the basis of a relevant court order, Rospatent experts provided an opinion regarding a trademark, invention or another intellectual property issue. An investigator, prosecutor or court would then make a decision based on the results of the examination. The examination initiated by the law enforcement bodies was free of charge. |
| **299** | **- Administrative Measures** |
| **299** | **Russian Federation:**<br><br>A new Code of Administrative Offences was in force since 1 July 2002. Articles 7.12, 7.28 and 14.10 of this Code established liability for violation of copyrights and related rights, rights to inventions, useful models and industrial designs, service marks and appellation of origin. The administrative sanctions, in addition to fines, included confiscation of counterfeit products. In addition, anti-monopoly legislation provided certain sanctions that were administered directly by the Ministry of |

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| | Anti-monopoly Policy and Support for Business. Any business entity whose rights of intellectual property were violated by another business entity could apply to the Ministry to start the proceedings against the offender. The Ministry could issue a decision imposing fines or demanding certain actions or prohibiting infringing actions. The procedure normally took between one and two months, and in complicated cases between three and six months. |
| **300-301** | **- Border Measures** |
| **300** | **Russian Federation:**<br><br>Article 10 of the Customs Code referred intellectual property protection to the competence of the Customs authority. Since 1998, the State Customs Committee accepted applications from right holders for the customs measures. The following documents had to be presented: confirmation of the intellectual property rights, power of attorney (when necessary) and information on the violation (description of goods) as well as any additional information available from the right holder. The Code of Administrative Offences in force since 1 July 2002 introduced administrative liability for import of goods violating intellectual property rights. |
| **301** | **Russian Federation:**<br><br>At present, the Customs Code did not allow the Customs bodies to act fully in accordance with the all provisions of the WTO Agreement on TRIPS 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. The draft new Customs Code included a new section dealing with intellectual property protection which effectively addressed these issues as well. When goods were detained, the Customs had ten working days to inspect all goods. Particular attention was paid to the goods indicated by the right holder. The term could be extended for another 20 working days or 31 calendar days. According to the existing practice, if during this period a violation of intellectual property was confirmed, the Customs transferred the evidence to the Police and prosecutors, and, since 1 July 2002, the Customs would also draw up a protocol of administrative offence. The right holder could then bring a civil law case to the court. As for the possibility of obtaining from the Customs bodies information about the infringing company, its history and activity, the new draft Customs Code stipulated that such information would be available in relation to importers as well as imported goods. |
| **302-303** | **- Civil Law Remedies and Procedures** |
| **302** | **Russian Federation:**<br><br>The Higher Arbitration Court of the Russian Federation had drafted a Code of the Arbitration Procedure Code which was currently under examination by the Duma. This draft code reflected the latest international developments in the organisation and administration of economic justice, and established new mechanisms essential for an effective application the WTO Agreements. For example, these mechanisms included preliminary interim measures which would promote realisation of Section 3 of Article 44 of the WTO Agreement on TRIPS. The draft code also contained an updated section on consideration of economic disputes with participation of a foreign party which introduced application of the principle of reciprocity in the enforcement of court orders and awards; national treatment for foreign participants in respect of the procedure; and the abandonment of the principle of absolute immunity. Remedies available under the Civil Code included confirmation of rights; prohibition of actions violating rights; imposing fines; compensation of damages caused to the right holder; and compensation of income received by the infringer and statutory |

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| | compensation. The last two measures were available only for copyrights. |
| **303** | **Russian Federation:**<br><br>Regarding claims for damages and assessment of damages, civil law cases provided for the general principle of full recovery of damages. The amount of damage was calculated in accordance with the general norms of the Civil Code based on the prices of corresponding legitimate goods adjusted for actual damage and forgone profit of the right holder. As for the statutory compensation, it was initially defined by the plaintiff who had the burden to prove the fact of damage caused without calculating the amount. Then it was further assessed by the court based on the nature of infringement, income received by the infringer, etc. The final decision on the amount of compensation rested with the court. Regarding provisional measures under Article 75 of the Arbitration Procedure Code, the court could issue an order for preliminary injunction based on the plaintiff's petition. Such measures should be aimed at securing the claim. Provisional measures included: prohibition of infringing actions, arrest of property including back accounts, seizure of documents and other evidence. The judge handling the case should make a decision the next day after the petition was filed without the representatives of the parties. Under the current legislation, any petition for provisional measures could be filed after the civil procedure was initiated. However, the draft amendments to the Code of Arbitration Procedure proposed to allow provisional measures to be obtained before filing the claim. |
| **305-326** | **TRADE-RELATED SERVICES REGIME**<br>**Policies Affecting Trade in Services** |
| *305-326* | *Some important changes made to the text, especially that the reference to natural monopolies has been deleted. We take that as a reflection of the fact that the issue of monopolies is in essence a market access restriction that is part of the specific commitments negotiations. However, it is important to have some detailed references to the regulatory framework concerning monopolies in the WP report.*<br><br>*We refer to some of the comments we made on natural monopolies at the plurilateral on services on November 1:*<br>- *Two issues related to natural monopolies*<br>- *natural monopolies as an argument for not allowing market access, and*<br>- *the regulations on natural monopolies, and whether some of these are in contradiction to the GATS or fall under the GATS, esp. Art VIII on monopolies and exclusive service suppliers and art IX on Business Practices. We agree that these articles are relatively narrow.*<br>- *On 1: We do not accept the argument that for sectors dominated by so-called natural monopolies, it is impossible or extremely difficult to increase market access. For the energy sector, the only natural monopoly with decreasing marginal costs would be the transportation/distribution networks (gas pipelines, electric power transmission and distribution lines), i.e. the lines not the transportation as such. The same goes for telecom and some areas of the transportation sector (services connected to ports, terminals etc. are "unbundled" and not naturally part of monopoly). For natural monopolies in infrastructure, it is important to ensure that both producers and consumers have non-discriminatory access to them on transparent and objective terms, similar to those established for instance through the Reference Paper for Telecommunications.*<br>- *On 2: The test of whether anti-monopoly regulations might not be conform with the GATS, is to look to art II on MFN, art XVI and art XVII specifically.* |

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| *306* | *If measures are to be taken for safeguard reasons, they have to be in conformity with the GATS, regardless of whether it is for infant industries or other business.* |
| *307* | *Russia is intending to maintain its subsidies to domestic service providers, the bulk of which go to large service providers such as Rostelekom, Ingostrakh, Aeroflot, etc.*<br>*- We seek the inclusion in this section of the draft Report of 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.*<br>*- We seek the inclusion in this section full responses to questions raised by Members.*<br>*We note that a number of issues are still subject to the broader plurilateral discussions, and we reserve the right to request further changes in this section pending their outcome.* |
| *320* | *We assume that the measures referred to either come under prudential measures or BOP-measures and should be conform with the GATS.* |
| *321-324* | *Para 321-324 are as before and do not reflect discussions at the plurilateral on services. We therefore reiterate some of our comments.* |
| *321* | *The use of public utilities argument cannot be used for protectionist purposes or in areas where the services are of a narrow nature that cannot be defined as a general public service. Specifically on environmental services, no intention to undermine the freedom for local government, municipalities to decide whether they themselves operate or by tender open up to private actors to operate e.g., sewage treatment facilities or refuse disposal. Does not undermine government's rights to formulate and implement national environmental policies. In taking commitments in the area of public utilities it is possible to make the distinction between statutory work on behalf of and delegated by government, and commercial services in the area and we would urge the Russian delegation to look further into this matter.* |
| *322* | *- On culture, comparing the WP draft report and the Russian services offer, the report text seems wide open as to when and were there might be authorization requirements in place, while in the offer it seems only related to education. The working party text cannot be that general because it can imply a national treatment restriction. We would like a confirmation that where specific commitments are made, no new (Art XVI- and Art XVII-) restrictions based on cultural concerns suddenly pop up.*<br>*- On specifically protected natural territories, we would think that the regulations to protect such territories would be the same for all, and as such are covered by the GATS (relevant articles are preamble and art VI on domestic regulation, and Art XIV (b)).* |
| | Our delegation is still deeply concerned over the Russian Federation's maintenance of a discriminatory regime with regard to the supply of services on Russian services' market by Georgian nationals residing in different regions of Georgia, under the modes of supply - "commercial presence" and "movement of natural persons". We urge the Russian Federation to make the necessary adjustments prior to its accession in order to avoid the discriminatory treatment and to allow all nationals of Georgia to provide services on the Russian market at the equal footing. |

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| **327-330** | **TRANSPARENCY**<br>**- Publication of Information on Trade** |
| 327-330 | 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.<br><br>- We understand that there are over 4,500 customs regulations and "instructions". While it is possible that these exist somewhere in published form, it is not easily accessible to traders, and the State Customs Committee does not provide them to importers (or to Embassies) upon request. This information should be noted in the WP report text.<br>- Russia should elaborate on 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.<br><br>There is a larger problem of operational transparency. This has become clear in the area of e.g., Telecommunications and energy, where the market can be manipulated with little scrutiny by major players. |
| 329 | There is a crucial typo in the penultimate sentence. It should read “three” days rather than “the” days. |
| 330 | It would be useful to have information regarding elements in this paragraph, e.g., can Russia identify the publication or publications referred to in this paragraph. We note that GATT 1994 and GATS requirements are specifically mentioned, but that TRIPS Agreement transparency requirements are not mentioned. This needs to be addressed. |
| **331** | **Notifications** |
| 331 | Is this text acceptable to Russia? What steps is Russia taking to develop the required initial notifications? |