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The review provides a detailed analysis of main trends in Russian economy in 2016. The paper contains 6 big sections that highlight single aspects of Russia's economic development: the socio-political context; the monetary and budget spheres; financial markets; the real sector; social sphere; institutional challenges. The paper employs a huge mass of statistical data that forms the basis of original computation and numerous charts.

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4.8. Russia's application of WTO dispute settlement mechanisms¹

On August 22, 2012, the Russian Federation joined the World Trade Organization (WTO), as well as dispute settlement mechanisms designed to resolve WTO trade disputes and governed by the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)². Hence Russia has since August 2012 been entitled to apply this instrument to uphold its commercial interests.

The WTO dispute settlement may be characterized as a five-stage process:

- 1) *bilateral consultations* (within 60 days of the request for consultations);
- 2) *establishment and composition of a panel*, if requested by any of the parties, to consider the subject matter at issue (45 days of the request for panel composition);
- 3) *panel stage* (6–9 months from date when the panel kicks off), and the Dispute Settlement Body (DSB) adopts the panel report and issues recommendations (about 60 days of the panel report);
- 4) *Appellate Body proceedings*, if a party to the dispute has filed an appeal (60–90 days of the appeal submittal date), the DSB adopts the Appellate Body report and circulates DSB's recommendations to the parties (30 days of the Appellate Body report);
- 5) *surveillance of the implementation* of DSB's recommendations (not more than 15–18 months of DSB's adoption of the panel report or the Appellate Body report).

In 2016, Russia filed no complaints to the DSB; Ukraine initiated one dispute against Russia; Russia participated in three trade disputes as third participant. By and large, according to the data as at 2016 year end, Russia participated in 42 disputes within the WTO framework, of which 4 disputes (as complainant), 7 disputes (as respondent), and 31 (as third participant).

The proceedings regarding almost all the disputes to which Russia is a principal party (complainant or respondent) are pending, except the dispute initiated by the European Union against Russia regarding customs tariffs on certain agricultural and manufacturing goods, on which the panel report was issued, recommending Russia to bring its measures into compliance. Additionally, there are two protracted disputes between the European Union/Japan against Russia regarding the so-called recycling fee, of which the former is pending at the panel composition stage and the latter at the stage of consultations (see the *Appendix* hereto).

Some of the disputes to which Russia was a third party were settled, and in some cases Russia derived indirect benefit from participating in in the WTO dispute settlement mechanism. For example, on April 10, 2015, China abolished its countervailing and anti-dumping duties on grain oriented flat-rolled electrical steel from the United States and Russia (DS414).³

4.8.1. Updates on the situation in 2016 regarding WTO trade disputes to which Russia is acting as complainant

DS476: European Union and its Member States – Certain Measures Relating to the Energy Sector

¹ Authors of chapter: M. Baeva – RANEPА, VAVT under Economy Ministry of Russia; A. Knobel – RANEPА, VAVT under Ministry of Economy of Russia.

² https://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm

³ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds414_e.htm

On April 30, 2014, the Russian Federation requested consultations with the European Union and its member States regarding measures relating to the so-called “Third Energy Package” under which gas production companies may not own trunk pipelines located on the EU territory. Russia claims that these and other provisions of the “Third Energy Package” are inconsistent with the European Union's and WTO's obligations regarding the general principles of non-discrimination and market access.¹

Since this dispute failed to be settled through consultations, the Russian Federation requested on May 11, 2015 the establishment of a panel. At its meeting on July 20, 2015, the DSB established a panel.

The dispute between the Russian Federation and the European Union regarding the “Third Energy Package” is pending before the Panel. On August 18, 2016, the Chairperson of the Panel informed the DSB that it expected to issue its final report to the parties in May 2017, in accordance with the timetable adopted after consultation with the parties.

DS493: Ukraine – Anti-Dumping Measures on Ammonium Nitrate from Russia

On 7 May 2015, the Russian Federation requested consultations with Ukraine regarding anti-dumping measures imposed by Ukraine on imports of ammonium nitrate originating from the Russian Federation.²

Russia challenges that Ukraine, while conducting anti-dumping investigations regarding ammonium nitrate, rejected electric power prices offered by Russian producers and used instead prices of third countries, that is, it used the so-called “cost adjustment”. Moreover, Russia claims that Ukraine acted inconsistently with some other terms and provisions of the Anti-Dumping Agreement.

Since the dispute between Russia and Ukraine failed to be settled through consultations, the Russian Federation requested on February 29, 2016 the establishment of a panel. The dispute is pending currently at the panel composition stage.

4.8.2. Updates on the situation in 2016 regarding WTO trade disputes to which Russia is acting as respondent

DS462, DS463: Recycling Fee on Motor Vehicles (DS462 (complaint by the European Union), DS463 (complaint by Japan))

The European Union³ and Japan⁴ requested, on July 9, 2013 and on July 24, 2013 respectively, consultations with the Russian Federation regarding the Russian Federation's measures relating to a charge, the so called “recycling fee”, imposed on imported motor vehicles. The dispute failed to be settled through consultations, whereby the European Union requested on October 11, 2013 the establishment of a panel. At its meeting on November 25, 2013, the DSB established a panel.

However, no progress has been achieved regarding these disputes over the past three years: no panelists have been appointed yet for the former while the latter still remains at the consultations stage, although all the time periods recommended within the dispute settlement mechanism have elapsed. This can be explained by the fact that on January 1, 2014 the Russian government obliged Russian producers to pay a recycling fee on a common basis whereby

¹ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds476_e.htm

² https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds493_e.htm

³ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds462_e.htm

⁴ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds463_e.htm

Russia brought the measures into compliance with the WTO rules and regulations, and the measures ceased to be discriminatory against imported motor vehicles.

DS475: Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union (complaint by the European Union)

On April 8, 2014, the European Union requested consultations with the Russian Federation concerning certain measures adopted by the Russian Federation affecting the importation of live pigs and their genetic material, pork, pork products and certain other commodities from the European Union, purportedly because of concerns related to cases of African swine fever, and concerning the imposition of a ban on the importation of all types of finished pig products originating from Poland and Lithuania.¹

Since the dispute failed to be settled through consultations, the European Union requested on June 27, 2014 the establishment of a panel. At its meeting on July 22, 2014, the DSB established a panel. On April 22, 2015, the Chairperson of the Panel informed the DSB that the Panel expected to issue its final report to the parties by February 2016.

On August 19, 2016, the panel report was circulated to Members. The Panel found that the bans on imports of the products at issue do not “conform to” the relevant OIE (Office International des Epizooties) standards and thus are inconsistent with the Agreement on the Application of Sanitary and Phytosanitary Measures (SPM). In particular, the Panel also found that Russia failed to duly perform a risk assessment based on scientific data for the application of the principle of regionalization whereby trade may be conducted with certain areas of a country that are claimed pest- or disease free or of low pest or disease prevalence, provided that the rest of the country’s territory is facing an unfavorable situation. Russia instead imposed a EU-wide ban on the importation of pork and live pigs. The Panel also resolved that the measures at issue were applied in a discriminatory manner and constitute a hidden ban on trade.

On September 23, 2016, the Russian Federation notified the DSB of its decision to appeal to the Appellate Body certain issues of law and legal interpretations in the panel report. On September 28, 2016, the European Union notified the DSB of its decision to cross-appeal. This dispute is currently pending before the Appellate Body.

DS485: Tariff Treatment of Certain Agricultural and Manufacturing Products (complaint by the European Union)

On October 31, 2014, the European Union requested consultations with the Russian Federation regarding the tariff treatment that it accords to certain goods in both agricultural and manufacturing sectors, which are inconsistent with Russia’s obligations as a WTO member.² In particular, duty rates on goods such as paper and paperboard, equal to 15% or 10%, were applied in excess of the bound rate, which is 5%. Furthermore, when the customs value was below the set value, customs duties on certain goods were charged in excess of the bound rate, thus violating the WTO agreement on customs valuation.³

This dispute failed to be settled at the stage of consultations, whereby the European Union requested on February 26, 2015 the establishment of a panel. At its meeting on March 25, 2015, the DSB established a panel. On August 12, 2016 the panel report on the trade dispute between

¹ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds475_e.htm

² https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds485_e.htm

³ The Board of the Eurasian Economic Commission, Decision No. 52 of July 16, 2014 “Concerning the establishment of import duty rates of the unified customs tariff of the Customs Union on certain types of goods pursuant to the obligations of the Russian Federation within the WTO framework”

the European Union and the Russian Federation regarding Russia's import duties on certain agricultural and manufacturing products was circulated to Members.

The Panel upheld in general the EU claims against Russia regarding import duties on palm oil, refrigerators and paper, which were lifted in excess of the bound rate established when Russia acceded to the WTO in 2012. At the same time, the Panel rejected the EU charges of the systemic nature of Russia's violations of its WTO commitments regarding import tariff on paper, palm oil and refrigerators. Additionally, Russia's Ministry of Economic Development noted that all except two import duty rates on the lines at issue were brought into compliance with Russia's obligations as a WTO member, while the rest of them (regarding paper and refrigerators) will be brought into compliance in the short term.

According to the WTO rules, Russia was given about two months (till mid-October 2016) to appeal the Panel's ruling. Russia filed no appeals, whereby the panel report was accepted by the DSB with recommendations to bring the measures into compliance. Such a decision was predictable.

DS512: Measures Concerning Traffic in Transit (complaint by Ukraine)

On September 14, 2016, Ukraine requested consultations with the Russian Federation regarding alleged multiple restrictions on traffic in transit from Ukraine through the Russian Federation to third countries (in Central/Eastern Asia and Caucasus).¹ In early July 2016, Russia introduced a requirement for Ukraine to ensure that international railway and motor cargo traffic in transit from Ukraine to the Republic of Kazakhstan and the Republic of Kyrgyzstan through the Russian Federation go strictly from the Republic of Belarus, provided that cargo spaces of motor and railway vehicles, spaces and containers and other places in which goods are or may be contained are equipped with means of identification (stamps), including means of identification that are operated using the technology of Global Navigation Satellite System (GLONASS), as well as drivers of cargo motor vehicles are required to obtain certain registration cards when entering the territory of the Russian Federation, which must be kept during the trip and returned when leaving the territory of the country. Additionally, a ban was imposed on goods in transit with other than zero tariff rates in conformity with the EEU unified customs tariff, as well as a ban was imposed on the goods in transit covered by sanctions introduced by the Russian government's Executive Order dated 07.08.2014, No. 778.²

Ukraine claims that Russia imposed the measures in response to the taking effect (on 01.01.2016) of the Free-Trade Agreement between Ukraine and the European Union, and the measures are inconsistent with the WTO's provisions concerning free transit, because they violate free transit across the territory of the Russian Federation via the easiest routes for international traffic in transit from Ukraine, and also because Russia's treatment of traffic in transit is based on the national flag on vehicles and the origin of goods. The Russian party is treating traffic in transit from Ukraine less favorably than other goods in transit into/from third countries. Ukraine also claims that the publishing of Russia's respective rules and regulations was deliberately ill-timed so that the Ukrainian government and business community had no opportunity to review them.

¹ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds512_e.htm

² Executive Order of the President of the Russian Federation of 01.07.2016 No. 319, an amendment to the Executive Order of the President dated 01.01.2016 No. 1 "Concerning measures to ensure economic security and national interests of the Russian Federation in international cargo transit from the territory of Ukraine to the territory of Kazakhstan through the territory of the Russian Federation".

Additionally, Ukraine claims that the Russian measures at issue are inconsistent with the WTO provisions concerning the overall abolishment of quantitative restrictions, as well as the Protocol of Russia's Accession to the WTO. Therefore, goods in transit from Ukraine are subject to unnecessary restrictions and delays. According to Ukraine's request for consultations, after Russia imposed the measures restricting goods in transit, the trade between Ukraine and countries in Central/Eastern Asia and Caucasus in January-June 2016 dropped by 35.1% compared to the values seen in the same period of 2015.

This dispute is pending at the stage of consultations.

4.8.3. Updates on the situation in 2016 regarding WTO trade disputes to which Russia appears as third participant

Since its accession to the WTO in August 2012, Russia has made 31 appearances as third participant to disputes within the WTO framework, of which 12 disputes were settled. Russia's appearances as third participant is often governed not only by a substantial trade interest, but mostly by the practice of participating in disputes concerning specific issues, as well as the interest in the application of various WTO rules and regulations. Russia tends to participate in disputes against the European Union, China and the United States.

All the WTO disputes to which Russia was a third participant can be conventionally divided into the following subgroups according to their subject matter¹:

- 1) bans on imports (on environmental or other grounds) (DS400, DS401, DS469, DS484, DS495);
- 2) anti-dumping, countervailing and special safeguard investigations and respective measures imposed (DS414, DS437, DS449, DS454, DS468, DS471, DS473, DS480, DS488, DS490, DS496);
- 3) bans on exports (DS431, DS432, DS433, DS508, DS509);
- 4) intellectual property rights (DS441, DS458, DS467);
- 5) subsidies (including tax and other allowances (D502)) (DS456, DS472, DS487, DS497, DS489);
- 6) tariffs (DS492).

Note that from time to time some technically different disputes are linked by the same alleged restriction/violation by the respondent. An example is disputes on Export Duties on Certain Raw Materials initiated against China by the United States (DS508) and the European Union (DS509), which Russia joined in 2016.

DS484: Indonesia – Measures Concerning the Importation of Chicken Meat and Chicken Products (complaint by Brazil)

On October 16, 2014, Brazil requested consultations with Indonesia concerning certain measures imposed by Indonesia on the importation of meat from fowls of the species *Gallus domesticus* and products from fowls of the species *Gallus domesticus*². In particular, this refers to the nonrecognition of the Brasil sanitary certificate, the imposition of non-automatic import licensing regime, the need for pre-approval of the importation of goods at issue by the Indonesian Ministry of Agriculture, as well as measures regarding the pricing policy and administration of imports. Russia's participation in this dispute is governed by its interest in how to apply sanitary and phytosanitary measures and technical regulation measures in

¹ See Bayeva M. Trade disputes within the WTO framework, to which Russia is a party, and the settlement mechanism // Russian Foreign Economic Bulletin. 2014, No. 3. PP. 75–90.

² https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds484_e.htm

conformity with the WTO rules and regulations, because the European Union filed a complaint against Russia on measures on the importation of live pigs, pork and other pig products from the European Union (DS475). This dispute is pending before the Appellate Body to which both parties filed an appeal. Additionally, note that Russia do not export chicken meat and chicken products to Indonesia, which may be related to the foregoing Indonesia's restrictions on imports, and if the restrictions are lifted or amended, it may result in signing respective contracts.¹

On October 15, 2015, Brazil requested the establishment of a panel. On its meeting on December 3, 2015, the DSB established a panel. On February 22, 2016, Brazil requested the Director-General to compose the panel. On March 3, 2016, the Director-General composed the panel. This dispute is pending at the panel stage, the final report is expected to be issued early in April 2017.

DS495: Korea – Import Bans, and Testing and Certification Requirements for Radionuclides (complaint by Japan)

On May 21, 2015, Japan requested consultations with Korea regarding measures adopted subsequent to the accident at the Fukushima Daiichi nuclear power plant in March 2011.² Korea's measures include import bans on certain food products, additional testing and certification requirements regarding the presence of certain radionuclides, a number of alleged omissions concerning transparency obligations under the Agreement on the Application of Sanitary and Phytosanitary Measures.

Russia reserved its third-party rights because Russia imposed a ban on fish imports from Japan subsequent to the accident at the Fukushima Daiichi nuclear power plant. Russia's Federal Service for Veterinary and Phytosanitary Surveillance lifted the ban only in the summer of 2015. This dispute is of interest to Russia from the procedural perspective, and the practice of participating therein is useful to the extent that Russia can better understand the rules of the application of sanitary and phytosanitary measures pursuant to the WTO regulations.

Since this dispute failed to be settled through consultations, Japan requested on August 20, 2015 the establishment of a panel. At its meeting on September 28, 2015, the DSB established a panel. On January 27, 2016, Japan requested the Director-General to compose the panel. On February 8, 2016, the Director-General composed a panel. The dispute between Japan and Korea is pending at the panel stage, and the final report is expected to be issued in June 2017.

DS437: United States – Countervailing Duty Measures on Certain Products from China (complaint by China)

On May 25, 2012, China requested consultations with the United States concerning the imposition of countervailing duty measures by the United States on certain products from China.³ China challenges various aspects of certain identified countervailing duty investigations and final determinations that led to the imposition of countervailing duties. China also challenges, the US Department of Commerce incorrectly determined, or did not have a sufficient basis to determine, that certain State-owned enterprises (SOEs) are "public bodies" which confer equivalent subsidies through their sales of inputs to downstream producers, and conduct countervailing duty investigations in violation of the WTO rules.

¹ UN COMTRADE database // <http://comtrade.un.org/>

² https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds495_e.htm

³ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds437_e.htm

Russia's interest in participating in this dispute is governed not only by its substantial trade interest in industries at issue (iron and steel industry), but also the practice of participating in disputes concerning countervailing measures in pursuit of better understanding the application of the respective provisions of the Agreement on Subsidies and Countervailing Measures.

On August 20, 2012, China requested the establishment of a panel. At its meeting on September 28, 2012, the DSB established a panel. On July 14, 2014, the panel report was circulated to Members. In late August both parties filed an appeal to the Appellate Body. At its meeting on 16 January 2015, the DSB adopted the Appellate Body report and the panel report, with recommendations to bring the measures into compliance. On October 9, 2015, the Award of the Arbitrator was circulated to Members. The Arbitrator determined the reasonable period of time as 14 months, 16 days. The reasonable period of time will thus expire on April 1, 2016.

On April 15, 2016, China and the United States informed the DSB of Agreed Procedures under Article 21 (Surveillance of Implementation of Recommendations and Rulings) and Article 22 (Compensation and the Suspension of Concessions) of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

On May 13, 2016, China requested consultations pursuant to Article 21.5 of the DSU (Surveillance of Implementation of Recommendations and Rulings), in connection with the United States' alleged failure to implement the recommendations and rulings of the DSB in this dispute. On July 8, 2016, China requested, pursuant to Article 21.5 of the DSU, the establishment of a compliance panel. At its meeting on July 21, 2016, the DSB agreed to refer to the original Panel. On October 5, 2016, the Director-General composed the panel. Australia, Canada, the European Union, India, Japan, Korea, Vietnam and the Russian Federation reserved their third party rights in the implementation assessment proceedings.

Russia's interest in participating in this dispute is governed not only by its substantial trade interest in industries at issue (iron and steel industry), but also the practice of participating in disputes concerning countervailing measures in pursuit of better understanding the application of the respective articles and terms of the Agreement on Subsidies and Countervailing Measures, including the assessment of respondent's implementation of the DSB recommendations in accordance with the findings of the proceedings on the situation at issue.

DS454: China – Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes (“HP-SSST”) from Japan (complaint by Japan)

On December 20, 2012, Japan requested consultations with China concerning measures imposing anti-dumping duties on high-performance stainless steel seamless tubes (“HP-SSST”) from Japan.¹ Japan challenges that China has violated the WTO rules and regulations while determining the injury, providing the evidence, commencing and carrying out the investigations, issuing a public notice and justifying the decisions made.

This dispute is important for Russia because China imposed anti-dumping measures on certain Russian products (predominantly chemical products). Additionally, Russia is interested in anti-dumping disputes from the procedural perspective (“energy pricing” practices at issue in the European Union (DS474 and DS494) and Ukraine (DS493), “zeroing” practice in the United States (DS471)).

On April 11, 2013, Japan requested the establishment of a panel. At its meeting on May 24, 2013, the DSB established a panel. On February 13, 2015, the panel report was circulated to Members. On 20 May 2015, Japan notified the DSB of its decision to appeal to

¹ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds454_e.htm

the Appellate Body certain issues of law and legal interpretation in the panel report. On May 26, 2015, China also notified the DSB of its decision to appeal to the Appellate Body certain issues of law and legal interpretation in the panel report. On October 14, 2015, the Appellate Body report was circulated to Members. At its meeting on October 28, 2015, the DSB adopted the Appellate Body and panel reports, as modified by the Appellate Body, recommending China to bring its measures into compliance with the WTO rules and regulations.

On February 19, 2016, Japan and China informed the DSB that they had agreed that the reasonable period of time for China to implement the DSB recommendations and rulings shall be 9 months and 25 days from the date of adoption of the Appellate Body and panel reports. Accordingly, the reasonable period of time is set to expire on August 22, 2016.

Should China fail to report on the implementation of the DSB recommendations, then Japan may request for implementation assessment proceedings. Note, however, that China seems to be very much inclined to implement the DSB rulings, except one of the 13 disputes that reached this stage, to which China is acting as respondent, when the complainant initiated implementation assessment proceedings.

DS471: United States – Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China (complaint by China)

On December 3, 2013, China requested consultations with the United States regarding the use of zeroing methodology at issue in anti-dumping investigations involving Chinese products. While using the methodology, the weighted average-to-transaction, which is higher or equal to the normal value, is zeroed, as a result of which such transactions are excluded from the determination of the margin of dumping, thus making its value higher than normal. China claims that the zeroing methodology is inconsistent with the articles of the Anti-Dumping Agreement, in particular Determination of Dumping, Evidence, Imposition and Collection of Anti-Dumping Duties.

On February 13, 2014, China requested the establishment of a panel. At its meeting on March 26, 2014, the DSB established a panel. On October 19, 2016, the panel report was circulated to Members. Note that overall the Panel upheld China's complaints despite the fact that some of the Chinese claims were rejected. In particular, the Panel upheld China's claims that the United States Department of Commerce (USDOC) acted inconsistently with Article 2.4.2 (Determination of Dumping) of the Anti-Dumping Agreement by using the zeroing methodology.

Till late 2016, both parties may appeal the Panel's ruling. Presumably, it is highly likely that the parties will appeal the panel report.

DS473: European Union – Anti-Dumping Measures on Biodiesel from Argentina (complaint by Argentina)

On December 19, 2013, Argentina requested consultations with the European Union regarding Basic Regulation No.1225/2009 of November 30, 2009 and anti-dumping investigations, as well as the investigation underlying anti-dumping measures of the European Union against biodiesel, including biodiesel from Argentina.¹ Argentina claims that the anti-dumping investigations and the temporal and final anti-dumping measures of the European Union on biodiesel from Argentina were carried out and imposed in an inconsistent manner; in particular, the determination of dumping and of injury, the introduction and collection of anti-dumping duties, etc. were subject to violation. Argentina challenges, among other things, the

¹ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds473_e.htm

method of “adjustment of costs” that the European Union used while carrying out the anti-dumping investigations.

On March 13, 2014, Argentina requested the establishment of a panel. At its meeting on April 25, 2014, the DSB established a panel. On February 15, 2015, the panel was composed. On March 29, 2016, the panel report was circulated to Members.

Acting as third participant to the dispute, Russia presented arguments that are similar to Russia’s complaints with regard to the method of adjustment of costs that the European Union used while conducting anti-dumping investigations and establishing anti-dumping duties (see disputes DS474 and DS494 to which Russia is acting as complainant against the European Union on similar issues). Russia noted, among other things, that the amendments to Article 2(3) and 2(5) of the Basic Regulation were made at the time when Russia gained the ‘market economy status’ within the WTO in 2002. According to Russia, the amendments were made to allow the European Union to use data on other markets, rather than on the country of origin, to establish the normal value. In particular, the amendments to Article 2(5) of the Basic Regulation entitled the European Union to adjust the costs recognized in the documents of producers/exporters and to apply such costs in accordance with “the information on other representative markets”. Russia claims that the practice of adjustment of costs is inconsistent with the terms of WTO. The data, under Article 2.2.1.1 (Determination of Dumping) of the Anti-Dumping Agreement, must show the costs associated with the production and sale of products under investigation. Russia also claims that the concept of dumping, as defined in the Anti-Dumping Agreement, cannot be applied to prices of manufacturing resources.

On May 20, 2016, the European Union notified the DSB of its decision to appeal to the Appellate Body certain issues of law and legal interpretation in the panel report. On May 25, 2016, Argentina notified the DSB of its decision to cross-appeal. On October 6, 2016, the Appellate Body report was circulated to Members. The Appellate Body upheld the Panel’s finding that the European Union acted inconsistently with Article 2.2.1.1 (Determination of Dumping) of the Anti-Dumping Agreement by failing to establish the cost biodiesel production according to the data stored by Argentinean producers.

The Appellate Body upheld the Panel’s finding that the European Union acted inconsistently with Article 2.2 (Determination of Dumping) of the Anti-Dumping Agreement and Article VI:1(b)(ii) (Anti-Dumping and Countervailing Duties) of the GATT 1994, because the European Union failed to use the cost of production in Argentina while constructing the normal value of biodiesel.

The Appellate Body upheld the Panel’s finding that the European Union acted inconsistently with Article 9.3 (Imposition and Collection of Anti-Dumping Duties) of the Anti-Dumping Agreement and Article VI: 2 (Anti-Dumping and Countervailing Duties) of the GATT 1994 by imposing anti-dumping duties in excess of the margin of dumping, which was proved by Argentina’s hard evidence.

The Appellate Body upheld the Panel’s rejection of Argentina’s claims with regard to four factors other than dumped imported allegedly causing injury to the domestic industry, namely the domestic industry’s overcapacity, the imports of the investigated product made by the domestic industry, the double-counting regimes of certain EU member States, and the lack of vertical integration of and access to raw material of the EU domestic industry. Argentina claims that the European Union failed to appropriately assess the injury caused by these factors other than dumped imports and to separate and distinguish that injury from the injury caused by the

allegedly dumped imports. The Panel rejected Argentina's claim as it concerned each of the four "other factors".

The Appellate Body upheld the Panel's finding that Argentina had not established that the second subparagraph of Article 2(5) of the Basic Regulation is inconsistent "as such" with Article 2.2.1.1 and Article 2.2. (Determination of Dumping) of the Anti-Dumping Agreement. Argentina claims that the European Union allows its member states to reject or adjust the cost data of the producers/exporters as included in their records when those costs reflect prices which are "abnormally or artificially low" because they are affected by an alleged distortion. The Panel and the Appellate Body rejected this.

At its meeting on October 26, 2016, the DSB adopted the Appellate Body report and the panel report, recommending to bring the measures into compliance. Interestingly, the practice of "adjustment" of costs in the European Union under Article 2(5) of the Basic Regulation was not recognized inconsistent with the WTO rules and regulations, although violations thereof were detected in the EU anti-dumping investigations and measures on biodiesel from Argentina. A similar ruling should be expected in the disputes initiated by Russia against the European Union (DS474 and DS494), as well as Ukraine (DS493).

DS441, DS458, DS467: Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging (DS441 (complaint by the Dominican Republic), (DS458 (complaint by Cuba), DS467 (complaint by Indonesia))

On July 18, 2012, the Dominican Republic¹, on May 3, 2013, Cuba², and on September 20, 2013, Indonesia³ requested consultations with Australia regarding Australia's Tobacco Plain Packaging Regulations, which, according to the complainants, is inconsistent with the WTO rules and regulations concerning intellectual property rights.

The panel for this dispute was established as early as in late April 2014, however, the panel proceedings have been underway for more than two years. On June 29, 2016, the Chairperson of the Panel informed the DSB that due to the complexity of the dispute, the Panel expected to issue its final report to the parties not before the end of 2016.

This dispute is of interest to Russia because it concerns complex system-wide issues regarding the protection of intellectual property rights pursuant to the WTO rules and regulations, because many of the third participants thereto believe that the Australian regulations should be disputed, otherwise a negative precedent may be created and then followed by other countries. Russia may support Australia in the dispute because Russia has adopted antismoking laws, and a respective antismoking policy is in effect in the country.

DS456: India – Certain Measures Relating to Solar Cells and Solar Modules (complaint by the United States)

In February 2013, the United States requested consultations with India concerning certain measures of India relating to domestic content requirements (DCR) under the Jawaharlal Nehru National Solar Mission ("NSM") for solar cells and solar modules.⁴ In fact, Indian state-owned energy companies are not allowed (since 2011) to employ foreign-made components, including solar cells. The United States claims that these measures are inconsistent with the national treatment principle because they accord "less favorable treatment" to imported products than to

¹ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds441_e.htm

² https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds458_e.htm

³ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds467_e.htm

⁴ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds456_e.htm

domestic ones, as well as constitute prohibited subsidies in the case of using domestic rather than imported products.

On April 14, 2014, the United States requested the establishment of a panel. At its meeting on May 23, 2014, the DSB established a panel. The panel was composed within 4 months of the panel establishment date. On February 24, 2016, the panel report was circulated to Members.

By and large, the Panel upheld the US claims by finding that the DCR measures do accord “less favorable treatment” within the meaning of that provision, which is inconsistent with Article III:4 (National Treatment on Internal Taxation and Regulation) of the GATT 1994. With reference to the Appellate Body’s report concerning the dispute initiated by the European Union against Canada regarding the Measures Relating to the Feed-in Tariff Program (DS426)¹, the Panel found that the DCR measures for solar cells and solar modules are not justified as the procurement by governmental agencies of products purchased for governmental purposes under Article III:8(a) (National Treatment on Internal Taxation and Regulation) of the GATT 1994. In particular, the Panel found that the electricity purchased by the government is not in a “competitive relationship” with the solar cells and modules subject to discrimination under the DCR measures. The Panel therefore found that India failed to demonstrate that the challenged measures are justified under Article XX of the GATT 1994.

On April 20, 2016, India notified the DSB of its decision to appeal to the Appellate Body certain issues of law and legal interpretation in the panel report. On September 16, 2016, the Appellate Body report was circulated to Members. By and large, The Appellate Body upheld each of the Panel conclusions, with minor corrections, appealed by India. At its meeting on 14 October 2016, the DSB adopted the Appellate Body report and the panel report and recommended to bring the measures into compliance.

The DSB therefore ruled that India acted inconsistently with the world trade rules by imposing the measures relating to domestic content requirements for solar cells and solar modules.

This dispute is of importance for Russia not only from the perspective of having the opportunity to ramp up Russia’s exports of the products at issue to India as soon as the restrictions are lifted, given that exports of these products to India account for about 5% of total Russia’s exports of these goods.² Additionally, considering high importance of developing alternative types of energy in Russia, one should consider the domestic content of products in manufacturing, as well as subsidies that may be treated as inconsistent with the WTO rules and regulations.

DS487: United States – Conditional Tax Incentives for Large Civil Aircraft (complaint by the European Union)

On December 19, 2014, the European Union requested consultations with the United States with respect to conditional tax incentives established by the State of Washington in relation to the development, manufacture, and sale of large civil aircraft.³

In November 2013, the United States broadened largely the scope of aerospace tax allowances in order to encourage the Boeing Company to manufacture new models of large civil aircraft 777X in the State of Washington. The company was granted extra subsidies to the tune of USD 1bn, including while using components manufactured in the State of Washington.

¹ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds426_e.htm

² UN COMTRADE database // <http://comtrade.un.org/>

³ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds487_e.htm

The European Union alleges that these measures constitute a type of the subsidies prohibited in the WTO.

On February 12, 2015, the European Union requested the establishment of a panel. At its meeting on February 23, 2015, the DSB established a panel. The panel was composed within 2 months of the panel establishment date. On November 28, 2016, the panel report was circulated to Members.

The Panel concluded that all the aerospace tax measures at issue constitute *de facto* subsidies under Article 1 (Definition of a Subsidy) of the Agreement on Subsidies and Countervailing Measures.

The Panel concluded that the European Union had not demonstrated that, acting together, the First Siting Provision and the Second Siting Provision make the challenged aerospace tax measures *de jure* contingent upon the use of domestic over imported goods. However, the Panel upheld the European Union that there are *de facto* amendments to aerospace taxation contingent upon the use of domestic over imported goods. The Panel found that the reduced business and occupation tax rate for the manufacturing or sale of commercial airplanes under the 777X program) is inconsistent with Article 3 (Prohibition) of the Agreement on Subsidies and Countervailing Measures.

The United States and the European Union may within about 2 months appeal the Panel's ruling, which is very likely to happen.

This dispute is of interest to Russia from the perspective of domestic content in manufacturing, as well as tax allowances that may lead to specific subsidies and may be treated as inconsistent with the WTO rules and regulations.

DS489: China – Measures Related to Demonstration Bases and Common Service Platforms Programs (complaint by the United States)

On February 11, 2015, the United States requested consultations with China with regard to certain measures providing subsidies contingent upon export performance to enterprises in several industries in China.¹ This dispute concerned China's programs – Transformation of International Trade and Modernization of Demonstration Bases (hereinafter – the Demonstration Bases) and Common Service Platforms – which, according to the US allegations, resulted in export subsidies by the use of the Common Service Platforms for free or at a discount, or through grants in cash.

On April 14, 2016, China and the United States informed the DSB that they had reached an agreement in relation to this dispute in the form of a Memorandum of Understanding.

The dispute is of interest to Russia to the extent that it was settled in an amicable manner, because the way it was settled may have a certain effect on manufacturers, exporters and consumers in Russia. In this context, there are industries that may be most sensitive to Russia, namely manufacture of textiles, agricultural industry, manufacture of medical products, consumer industry, special-purpose chemical engineering, manufacture of metal products and construction materials.

DS502: Columbia – Measures Concerning Imported Spirits (complaint by the European Union)

On January 13, 2016, the European Union requested consultations with Colombia regarding certain measures in relation to the treatment that Colombia accords at national and departmental level to imported alcoholic beverages. These measures allegedly adversely affect exports of

¹ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds489_e.htm

spirits classified under HS 22.08 from the European Union to Colombia.¹ The dispute concerns discriminatory, according to the EU allegations, taxation on imports of alcoholic beverages. Columbia is divided into 32 departments whose regional governments often own producers of rum and vodka located on their territory, as well as they control sales of hard liquids on their territory. Under the Columbian fiscal treatment, the consumption of alcoholic beverages are subject to the national excise duty, except the application of the so-called “fiscal monopoly” on alcoholic beverages at departments or other regional and local areas. In return, the departments collect duties associated with their fiscal monopoly. The size of both taxes and duties is contingent upon the strength of alcoholic beverages, with a higher tax rate on alcoholic beverages of more than 35% ABV. Furthermore, there are departments where domestically produced alcoholic beverages that aim to stimulate sales are subject to tax exemption, whereas imported alcoholic beverages are not subject to a similar tax exemption.

Additionally, the departments impose certain requirements for products at issue, which Columbia applies in a manner, according to the EU allegations, inconsistent with the terms provided for by the GATT 1994, namely the requirement for imports of alcoholic beverages to a department, which they normally receive upon investigation of economic and financial feasibility, the requirement for the insurance policy to an contract, minimum quotas and minimum prices, etc. For example, departments that import, produce or distribute alcoholic beverages are required to affix excise tax stamps on imported alcoholic beverages, thus ensuring that internal taxes and duties have been paid. The requirement is not applied to alcoholic beverages of similar type that are produced in the department.

Therefore, Columbia’s internal taxes and duties on imported alcoholic beverages are higher than on domestically produced alcoholic beverages. While protecting domestic manufacturers, Columbia acts inconsistently with the principles of National Treatment on Internal Taxation and Regulation (Article III of the GATT 1994). The European Union also claims that Columbia acted inconsistently with the rule of administering in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in Article X:3(a) (Publication and Administration of Trade Regulations) of the GATT 1994.

Additionally, the foregoing measures prevent EU exporters enjoy the benefits offered by the free-trade zone established between the European Union and Columbia in 2013, because Columbia fails to meet the requirement for taking such reasonable measures as may be available to it to ensure observance of the provisions of the GATT 1994 (Article XXIV:12 (Territorial Application – Frontier Traffic – Customs Unions and Free-trade Areas)) by the regional and local governments and authorities within its territories.

Since the dispute between the European Union and Columbia failed to be settled through consultations, the European Union requested on August 22, 2016 the establishment of a panel. At its meeting on September 26, 2016, the DSB established a panel. The dispute is currently at the panel composition stage.

Note that in 2012 the European Union (DS396)² and the United States (DS403)³ initiated similar disputes against Philippines. The DSB ruled that Philippines’ excise duties on imported strong alcoholic beverages are discriminatory and Philippines must bring its measures into compliance with the WTO rules and regulations.

¹ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds502_e.htm

² https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds396_e.htm

³ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds403_e.htm

As regard to Russia's participation in the dispute, note that Russia's exports of alcoholic beverages to Columbia were extremely small in terms of volume in 2013 and 2014, as well as they were zero in 2015. This dispute is supposedly of interest to Russia from the perspective of entering new markets, because Russia is listed among the major exporters of the products at issue (under HS 22.08). Additionally, this dispute may be useful to Russia from the perspective of gaining experience in the settlement of disputes regarding taxation, because in 2013 the European Union (DS462)¹ and Japan (DS463)² initiated disputes against Russia on taxation (the so-called "recycling fee"), which are still pending despite the discriminatory component have been eliminated by Russia.

DS508: China – Export Duties on Certain Raw Materials (complaint by the United States), DS509: China – Duties and other Measures concerning the Exportation of Certain Raw Materials (complaint by the European Union)

On July 13, 2016, the United States requested consultations with China regarding China's export duties on various forms of antimony, cobalt, copper, graphite, lead, magnesia, talc, tantalum, and tin.³ Additionally, on July 19, 2016, the European Union requested consultations with China regarding China's duties and other alleged restrictions on the export of various forms of antimony, chromium, cobalt, copper, graphite, indium, lead, magnesia, talc, tantalum and tin.

On July 19, 2016, the European Union requested consultations with China regarding China's duties and other alleged restrictions on the export of various forms of antimony, chromium, cobalt, copper, graphite, indium, lead, magnesia, talc, tantalum and tin.⁴ China also imposes restrictions on the trade-related rights of producers seeking to export such products, thereby treating foreign equity companies in a less favorable manner than domestic companies.

The complainants claim, as with disputes against China regarding rare earth metals (DS431, DS432, DS433), that China acts inconsistently with the terms and provisions of the WTO (Article XI:1 (General Elimination of Quantitative Restrictions) of the GATT 1994), and China's measures are not uniform, impartial and reasonable (Article X:3(a) of the GATT 1994). Additionally, the complainants claim that China has failed to justify that the measures can be treated as "General Exceptions" (Article XX of the GATT 1994) and constitute an excuse for failing to honor China's commitments to eliminate export duties pursuant to the China's Protocol on the Accession to the WTO.

Since the dispute failed to be settled through consultations, on 13 October 2016, the United States requested the establishment of a panel. At its meeting on November 8, 2016, the DSB established a panel. On October 26, 2016, the European Union requested the establishment of a panel. However, at its meeting on November 8, 2016, the DSB deferred the establishment of a panel. These disputes concerning the same China's measures on the exportation of raw materials may expectedly be considered by a common panel.

Russia participated in the foregoing disputes as third participant because they are of substantial trade interest to Russia. Imports of these China's raw materials that are used by the Russian industry account for about 10% of total Russia imports and about 2% of total China exports of such raw materials. This is not the first time that Russia participated in disputes

¹ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds462_e.htm

² https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds463_e.htm

³ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds508_e.htm

⁴ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds509_e.htm

initiated against China regarding restricted exports of raw materials (see above disputes regarding rare earth metals).

* * *

Russia continues applying the WTO dispute settlement mechanism. In 2016, Russia was involved in four new WTO disputes as respondent (one dispute) and as third participant (three disputes).

Only one of the disputes initiated against Russia in the period between 2012 and 2016 is pending at the panel stage. The panel report on the dispute against the European Union regarding the “Third Energy Package” (DS476) is expected to be issued in May 2017.

As regard trade disputes to which Russia is respondent, panel reports were issued for two of the seven disputes in 2016. In the dispute regarding tariffs on the importation of certain products that are lifted in excess of the bound rate Russia was predictably recommended to bring its tariffs into compliance with the WTO treaty commitments, and Russia has almost complied with the recommendations. As to the dispute regarding the measures on the importation of live pigs, pork, pork products, Russia and the European Union appealed the Panel’s ruling in 2016. The dispute initiated by the European Union against Russia regarding anti-dumping measures on light commercial vehicles is pending before the Panel. The two disputes initiated in 2013 by the European Union/European Union and Japan against Russia regarding the “recycling fee” are still pending at the stage of panel composition and consultations. The two disputes initiated by Ukraine in 2015–2016 against Russia are pending at the stage of consultations.

In 2016, panel reports and, in some instances, Appellate Body’s reports were issued in four disputes to which Russia reserved its rights as third party. Of most importance for Russia is the dispute initiated by Argentina against the European Union regarding anti-dumping measures on biodiesel, because Russia’s complaints against the European Union are similar Argentina’s complaints (DS474, DS494). Note that the Panel rejected Argentina’s allegations that the provisions at issue of the relevant Basic Regulation regarding the method of “adjustment of costs” that the European Union used while carrying out anti-dumping investigations are inconsistent “as such” with the WTO rules and regulations.

Most of the WTO disputes to which Russia is complainant or respondent involve claims against/by the European Union and Ukraine. Russia, as complainant, is, above all, interested in anti-dumping investigations and anti-dumping measures, especially in iron and steel and chemical industries. Most of WTO members’ complaints against Russia cover the following issues: technical barriers to trade, sanitary and phytosanitary measures, anti-dumping measures, trade-related investment measures, tariffs, measures on transit.

Russia, as third participant, tends to participate in disputes regarding goods manufactured by such industries as iron and steel, agriculture, automobile and aircraft. Russia’s participation as third party are often associated with not only substantial trade interests, but also the practice of participating in disputes, as well as Russia is interested in the application of the WTO rules and regulations.

It is of outmost importance for Russia to maintain the appropriate position and tactics in WTO disputes to develop mutual trade relations with other WTO members in concordance with the WTO rules and regulations while upholding its interests.

Appendix

WTO trade disputes to which Russia is the party (complainant or respondent)

Dispute	Particulars of the claim	Current stage
1	2	3
As complainant		
DS474: European Union – Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia (23.12.2013 ¹)	Regarding “cost adjustment” methodologies used by the EU for the calculation of dumping margins in anti-dumping investigations and reviews (European Union rejected cost and price information of producers and exporters in the country of origin (Russia)). The effect of such rejection of cost and price data on the determination of dumping margins and injury caused by dumped imports.	Panel composition stage (22.07.2014)
DS476: European Union and its Member States – Certain Measures Relating to the Energy Sector (30.04.2014)	Regarding the EU “Third Energy Package” under which gas producers may not own trunk pipelines located on the EU territory. If operating companies are foreign owned/controlled, they must be subject to a special certification procedure: they must meet extra requirements.	Panel stage (07.03.2016)
DS493: Ukraine – Anti-Dumping Measures on Ammonium Nitrate from Russia (07.05.2015)	Ukraine, while conducting anti-dumping investigations regarding ammonium nitrate, rejected electric power prices offered by Russian producers and used instead prices of third countries, that is, it used the so-called “cost adjustment”.	Panel composition stage (22.04.2016)
DS494: European Union – Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia – (Second complaint) (07.05.2015)	The European Union, while conducting anti-dumping investigations regarding welded pipes and ammonium nitrate from Russia, used prices of third countries (cost adjustment) to determine dumping margins and rejected cost and price information of producers and exporters in the country of origin (Russia).	Consultations (07.05.2015)

Cont'd

1	2	3
As respondent		
DS462: Russian Federation – Recycling Fee on Motor Vehicles (complaint by the European Union, 09.07.2013)	The Russian Federation imposes measures relating to a charge, the so called “recycling fee”, imposed on motor vehicles, whereas domestically manufactured motor vehicles are, under specific conditions, are exempted from the foregoing fee. The structure of Russia’s methodology for determining the fee amount has a detrimental impact on imported vehicles as compared with relevant domestic vehicles, because the fee is progressive and differentiates between brand new and secondhand motor vehicles.	Panel composition stage (25.11.2013)
DS463: Russian Federation – Recycling Fee on Motor Vehicles (complaint by Japan, 24.07.2013)	Russian Federation imposes extra charges on imported motor vehicles (recycling fee), whereas domestically manufactured motor vehicles are, under specific conditions, are exempted from extra charges.	Consultations (24.07.2013)
DS475: Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union (complaint by the European Union, 08.04.2014)	Russia’s EU-wide ban on the importation of pork and other pig products from Poland and Lithuania constitutes a disproportional measure, because only a few insignificant cases of African swine fever (ASF) were confirmed with wild boars near the border with Belarus and promptly contained. The European Union challenges Russia’s ASF regionalization of the EU territory.	Both parties have appealed the panel report. Pa6opa Appellate Body (23.09.2016)

¹ Parenthesized is the date of request for consultations.

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DS479: Russian Federation – Anti-Dumping Duties on Light Commercial Vehicles from Germany and Italy (complaint by the European Union, 21.05.2014)	Russia's anti-dumping investigations and determination of dumping margins on light commercial vehicle inconsistent with the WTO rules; in particular Determination of Dumping, Determination of Injury, Evidence, Definition of Domestic Industry, Public Notice and Explanation of Determinations.	Panel stage (18.12.2014)
DS485: Russian Federation – Tariff Treatment of Certain Agricultural and Manufacturing Products (complaint by the European Union, 31.10.2014)	Russia's duty rates on goods such as paper and paperboard, equal to 15% or 10%, were applied in excess of the bound rate, which is 5%. When the customs value was below the set value, customs duties on certain goods were charged in excess of the bound rate.	DSB adopted the panel report and recommended to bring the measures into compliance (26.09.2016)
DS499: Russian Federation – Measures affecting the importation of railway equipment and parts thereof (complaint by Ukraine, 21.10.2015)	The Russian Federation has suspended conformance certificates issued to manufactures railway equipment and railway rolling stock until new technical regulations are introduced. The Russian Federation has rejected applications for new certificates.	Consultations (21.10.2015)
DS512: Russian Federation – Measures Concerning Traffic in Transit (complaint by Ukraine, 14.09.2016)	The Russian Federation imposes multiple restrictions on traffic in transit from Ukraine through the Russian Federation to third countries (in Central/Eastern Asia and Caucasus). The Russian Federation introduced a requirement for Ukraine to ensure that international railway and motor cargo traffic in transit from Ukraine to the Republic of Kazakhstan and the Republic of Kyrgyzstan through the Russian Federation go strictly from the Republic of Belarus, provided that certain conditions are met. Additionally, a ban was imposed on goods in transit with other than zero tariff rates in conformity with the EEU unified customs tariff, as well as a ban was imposed on the goods in transit covered by Russia's sanctions.	Consultations (14.09.2016)

Source: own compilation based on the data posted on the official WTO website: https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm