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**TRENDS AND OUTLOOKS**

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The review “Russian Economy. Trends and Outlooks” has been published by the Gaidar Institute since 1991. This is the 43th issue. This publication provides a detailed analysis of the most significant trends in the Russian economy, global trends in the social and economic development. The work contains 6 big sections that highlight different aspects of Russia’s economic development, which allow to monitor all angles of ongoing events over a prolonged period: global economic and political challenges and national responses, economic growth and economic crisis; the monetary and budget spheres; financial markets and institutions; the real sector; social sphere; institutional changes. The work is based on an extensive array of statistical data that forms the basis of original computation and numerous charts confirming the conclusions.

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#### **4.7. Russia's participation in the WTO trade disputes in 2021<sup>1</sup>**

##### **4.7.1. Overall situation concerning World Trade Organization (WTO)**

The WTO system, in particular the mechanism for resolving trade disputes, has been in crisis for five years now. The main reasons are as follows: growth of protectionism, trade wars, the COVID-19 pandemic, systemic challenges, primarily freezing of the Appellate Body (AB). According to the U.S., AB goes beyond its authority, sometimes making decisions outside of WTO law, posing rights or obligations for member countries that are not provided for by existing WTO agreements, violates the deadlines for appellate review. The U.S. blocked decisions to appoint new AB members. Many WTO member countries agree on the need for reforms.<sup>2</sup> A temporary solution to the protracted issue of the WTO trade

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2 See in detail. URL: <https://www.iep.ru/ru/publikacii/publication/rossiyskaya-ekonomika-v-2020-godu-tendentsii-i-perspektivy-vypusk-42.html>

dispute mechanism states that when initiating a dispute, it is necessary to agree with the other party before forming an arbitral group (AG) that:<sup>1</sup>

- either AG decision will be recognized as final;
- or further arbitration will be conducted under an alternative scheme (e.g., according to Multi-Party Interim Appellate Arbitration Arrangement (MPIA), which entered into force in April 2020).<sup>2</sup>

According to experts, despite domestic difficulties, the WTO has no alternative in the regulation of international trade relations. Countries fear what will happen to the multilateral trading system and the WTO, and whether the United States will withdraw from the organization. It is noted that even those countries which have numerous free trade agreements (FTA) think that they won't be able to solve their problems without the WTO.<sup>3</sup>

In 2021, discussions on ten issues to improve the Understanding on Rules and Procedures Governing the Settlement of Disputes (URPGSD) have been completed and negotiations reached a critical juncture. WTO member countries that are more involved in trade disputes as principal parties (plaintiff or defendant) tend to be the most involved in such negotiations. There were 12 issues under negotiations<sup>4</sup>:

- 1) notices of mutually agreed decisions;
- 2) rights of third parties;
- 3) protection of strictly confidential information;
- 4) consistency of application of Art. 21.5 (Monitoring the Implementation of Recommendations and Decisions) and Art. 22.2 (Compensation and Suspension of Facilities) of the URPGSD;
- 5) situation after the authorized application of the retaliatory measure;
- 6) transparency and documents submitted by “friends of the court”;
- 7) procedural timelines;
- 8) procedure for returning an unresolved issue to AB for reconsideration by the original AG;
- 9) establishment of AG;
- 10) effective implementation of decisions and recommendations of the Dispute Settlement Body (DSB);
- 11) interests of developing countries;
- 12) flexibility and control by WTO members and additional guidance to the WTO judiciary.

Further to the discussions, questions were divided into two groups, on which WTO members have to:

- conduct additional work;
- be more flexible in negotiations.

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1 URL: [https://www.wto.org/english/news\\_e/news20\\_e/ddgaw\\_30oct20\\_e.htm](https://www.wto.org/english/news_e/news20_e/ddgaw_30oct20_e.htm)

2 URL: <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2176>

3 URL: <https://1prime.ru/world/20211216/835523866.html>

4 URL: <https://wto.ru/our-blog/peregovory-po-uluchsheniyu-dogovorennosti-o-razreshenii-sporov-dostigli-kriticheskogo-rubezha/>

5 URL: <https://wto.ru/our-blog/peregovory-po-uluchsheniyu-dogovorennosti-o-razreshenii-sporov-dostigli-kriticheskogo-rubezha/>

The WTO highlights two possible trends for further negotiations: aimed at comprehensive agreement to improve the URPGSD covering these 12 issues, or aimed at a less ambitious solution on one or more issues that improve the URPGSD, and this partial result could be an amendment to the URPGSD (legally binding enforceable rules) or an DSB decision (rules that are not binding and are not directly enforceable in the WTO dispute settlement mechanism). Given the difficulty of reaching consensus on all elements of the issues under discussion, the need for horizontal negotiations is noted.<sup>1</sup>

#### 4.7.2. Russia and the WTO trade dispute settlement mechanism

Russia joined the World Trade Organization (WTO) on August 22, 2012, including the WTO trade dispute settlement mechanism. Such a mechanism operates in accordance with the Understanding on Rules and Procedures Governing the Settlement of Disputes (URPGSD).<sup>2</sup> Thus, since August 2012 Russia has the right to protect its interests in trade through this instrument. The WTO dispute settlement procedure consists of five main successive stages:<sup>3</sup>

1) *bilateral consultations* (within 60 days from the date of request for consultations);

2) *establishment of an Arbitration group (AG)* at the request of any disputing party and approval of its members to consider the point of argument (45 days from the date of the request to establish an Arbitration group);

3) *operations of Arbitration Group* (6—9 months from the start of the Arbitration Group) and the adoption of the Arbitration Group report by the Dispute Resolution Body (DRB) and DRB recommendations (approximately 60 days from the date the Arbitration Group report is submitted);

4) *hearing of a case by the Appellate Body (AB)*, if at least one of the parties to the appeal (60-90 days from the date of filing an appeal) submits an appeal, adoption of the report of the Appellate Body of DRB and announcing DRB recommendations to the parties (30 days from the date of receipt of the Appellate Body report);

5) *DRB control* over the implementation of recommendations (no more than 15—18 months from the date of DRB adoption of the report AG or AB).

Russia continues to actively participate in the WTO trade dispute settlement system. As of late 2021, Russia was involved in 114 WTO disputes: in 8 cases as plaintiff, in 10 cases as defendant and in 96 cases as third party. In 2021, Russia did not initiate any disputes, but it had nine new disputes at the WTO — one as defendant and eight as third party.

In the majority of cases, Russia participates as a principal party in WTO disputes with the EU, Ukraine, and the USA. As a plaintiff, Russia is interested in anti-dumping investigations and measures, in particular in the metallurgical and chemical industries. Countries file complaints against Russia on TBT, SPS measures, anti-dumping measures, investment measures affecting trade, tariffs,

1 URL: <https://wto.ru/our-blog/peregovory-po-uluchsheniyu-dogovorennosti-o-razreshenii-sporov-dostigli-kriticheskogo-rubezha/>

2 URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm)

3 URL: <https://www.iep.ru/files/text/trends/2019/04.pdf>

transit restrictions, import substitution. *Table A.1* in the Annex presents WTO disputes where Russia acts as a major party.

As a third party, Russia usually participates in disputes on goods of the metallurgical industry, agriculture and foodstuffs, automobile and aircraft industry, as well as RES and timber and wood products. Special attention is paid to disputes over anti-dumping investigations and measures, as well as subsidies and countervailing measures. Russia's participation as a third party is related not only to its substantial trade interest, but also to the practice of participation in specific disputes (in particular in disputes over protective investigations and measures), systemic interest of applying the WTO rules and regulations; sometimes Russia takes a position similar to that of a defendant (to protect life and health of people and animals). Some of the disputes where Russia acts as a third party have already ended and in some cases, Russia has benefited (directly or indirectly) from participation in such disputes.

According to Maxim Medvedkov, former director of the Department of Trade Negotiations of the Ministry of Economic Development of Russia, it is difficult to estimate the material benefit for Russia from joining the WTO because of the impact of Western sanctions on the economy and retaliatory measures, as well as the pandemic of coronavirus. Although the membership in the international organization opened new opportunities for our country, there are still tasks that have not yet been solved. Russia's position in the WTO, defensive during negotiations of our affiliation, is gradually becoming more assertive because the need to get the access to foreign markets requires more active actions within the WTO.<sup>1</sup>

Even despite the current operational challenges WTO remains a multilateral institution having essential functions of monitoring international trade, negotiating new trade rules and protecting the interests of its members through the dispute settlement mechanism. Russia should continue to advocate for the maintenance of WTO as the foundation of the multilateral trading system, in particular, to participate in finding ways out of the trade dispute settlement crisis, especially by making progress in negotiating new commitments under URPGSD, which would improve the WTO trade dispute settlement system.

#### 4.7.3. Russia as plaintiff

##### *DS554: Special protective measures for steel and aluminum products (USA)*

On June 29, 2018. Russia has submitted a request to DSB for consultations with the United States on protective measures on steel and aluminum products imposed in the spring of 2018. According to Russia, the U.S. imposed measures on steel and aluminum products in violation of GATT 1994 and the Agreement on Special Protective Measures: they granted certain countries benefits and privileges that did not apply to other countries, imposed import restrictions other than duties, taxes or other charges through quotas, failed to justify the imposition of emergency measures, did not send a prompt written notice, and disallowed

<sup>1</sup> URL: <https://www.tks.ru/reviews/2021/12/16/04>

consultation. In 2017, 13% of Russian steel and aluminum exports (FEACN 72, 73, and 76) went to the U.S., and Russia's share of U.S. imports was 32%.<sup>1</sup> China (DS544), India (DS547), the EU (DS548), Canada (DS550), Mexico (DS551), Norway (DS552), and Switzerland (DS556) initiated similar disputes against the US, most of which Russia joined.

On November 21, 2018, the AG was established. On February 4, 2021, the chair of the group informed the DSB that due to delays caused by the COVID-19 pandemic, the AG plans to release its final report to the parties no earlier than H2 2021.

#### 4.7.4. Russia as a defendant

##### ***DS604: Russia – Certain measures with regard to domestic and foreign goods and services (EC)***<sup>2</sup>

On July 22, 2021, the EU submitted a request to the WTO for consultations with Russia on a number of measures which lead to discrimination of foreign suppliers by Russian state companies.<sup>3</sup> On November 17, 2021 the EU submitted a request to the DSB to establish an AG, and on December 20 it was established.

Since 2015, Russia has been gradually expanding its import substitution policy, which, among other things, is aimed at reducing the share of foreign goods and services in the procurement of state organizations and investment projects supported by the state. In 2019, (the year before the pandemic), the value of published tenders by state-owned enterprises was Rb 23.5 trillion (about Euro 290 bn) in Russia corresponding to about 21% of Russia's GDP.<sup>4</sup> The main legal acts regulating import substitution in procurement include Federal Law No. 223-FZ "On Procurement of Goods, Works and Services by Certain Legal Entities" of July 18, 2011 and Federal Law No. 488-FZ "On the Industrial Policy of the Russian Federation" of December 31, 2014. The EU challenges Russia's measures that relate to non-governmental procurements made by a wide range of government-related entities that are not government agencies (including state-owned enterprises and state trading enterprises) (*see Table 28*).

Russia is not a member of the WTO Agreement on Government Procurement (GPA), but since 2013 it is an observer and is negotiating about joining the agreement. The GPA does not apply to the procurement of goods and services for the purpose of commercial sale/resale and for use in the production of goods and services for the same purposes (Article 2 of the GPA).

The Ministry of Economic Development of Russia is ready to show compliance with WTO rules of those aspects of Russian procurement regulations, which raise doubts in the EU.<sup>5</sup> Experts of RANEPА note that Russia may refer to the need to

1 Data base UN COMTRADE // URL: <http://comtrade.un.org/>

2 URL: [https://www.vavt-imef.ru/wp-content/uploads/2021/10/Monitoring\\_74.pdf](https://www.vavt-imef.ru/wp-content/uploads/2021/10/Monitoring_74.pdf)

3 URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds604\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds604_e.htm)

4 URL: <https://wto.ru/news/es-initiiroval-spor-v-vto-iz-za-diskriminatsii-goskompaniyami-rf-inostrannykh-postavshchikov/>

5 URL: <https://wto.ru/news/v-mer-zayavili-o-gotovnosti-rossii-provesti-konsultatsii-s-es-po-sporu-o-goszakupkakh/>

ensure national security in the part of vital industries or MIC. Also, according to experts, the consequences of the EU dispute against Russia over discrimination against foreign suppliers by Russian state-owned companies present reputational risks.<sup>1</sup> If the decision on the dispute is not in favor of Russia, additional retaliatory measures are possible.

*Table 28*

**Russia's import substitution measures challenged by the EU (DS604)**

Measures	Description	WTO provisions violated, according to the EU
Price preferences	Russia prefers domestic goods and services in the procurement of a wide range of state-related entities, including state-owned enterprises and state trading enterprises. Price preferences of 15% (30% for radio-electronic products) of the offered price for domestic goods and services are applied at the stage of evaluation. These preferences significantly increase the chances of Russian suppliers to win the tender. If the bid containing domestic goods or services selected, then the full price will be paid. Goods and services of foreign companies are evaluated less favorably than those of domestic companies. The EU disputes the measure because it does not apply to state procurement and is related to the support of commercial activities of state-owned enterprises.	<ul style="list-style-type: none"> <li>• Paragraph 2 of the Protocol of Accession of Russia to the WTO and paragraphs 98, 99, 1450 of the Report of the Working Party on accession of the Russian Federation to WTO;</li> <li>• Art. III (national treatment of domestic taxation and regulation), Art. XI (general withdrawal of quantitative restrictions) and Art. XVII (state trading enterprises) of GATT 1994;</li> <li>• Article XIII (Government procurement) and Article XVII (National Treatment) of GATS.</li> </ul>
Obtaining pre-approval	Russian companies wishing to buy certain engineering products abroad need to obtain non-automatic permission from the Russian State Commission for Import Substitution. According to the EU, the procedure lacks clear, transparent, objective criteria, however, goal of replacing imported engineering products by domestic equivalents is clear. Such approval is not required for purchasing domestic engineering products. This measure applies to purchases for specific investment projects supported by the state (including private companies without or with limited state participation).	
Minimum quotas for domestic products	Russia introduced minimum quotas for domestic goods in purchases by state-owned enterprises, state trading organizations and other state-related entities. In particular, this measure requires minimum shares of goods of Russian origin as a percentage of the total volume of goods purchased annually per customer in a given year. The minimum share is from 1 to 90% of purchases depending on goods, while for many products this share will increase from year to year, starting in 2021. Quotas apply to about 250 goods.	

Source: URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds604\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds604_e.htm)

<sup>1</sup> URL: <https://rg.ru/2021/07/20/chem-groziat-rossii-pretentzii-evrosoiuzna.html>



On the whole, the policy of EU and some other countries, including the U.S., is largely aimed at reducing the role of the state in the economy of individual countries, primarily Russia and China. Issues of market economies can be mentioned, including anti-dumping investigations; pricing in different domestic markets, for example in Russia for raw materials; providing subsidies strictly regulated by WTO, etc. The U.S. saw import substitution and preferences for Russian domestically produced goods and services as a violation of WTO norms and rules. The U.S. believes that Russia continues to deviate from fundamental WTO principles such as non-discriminatory practices, more open trade, predictability, transparency and fair competition. This puts U.S. businessmen at a disadvantage economically and deprives them of fair competition. The main U.S. claims about Russia's compliance with its WTO commitments, include among others that Russia:<sup>1</sup>

- practices preferences for domestic goods and services;
- maintains import restrictions in the agricultural sector unrelated to science and refuses to recognize other countries' guarantees for export capacity;
- implements an import substitution program in the IT sector;
- expands government control over economy and tightens restrictions on trade.

#### 4.7.5. Russia as a third party

As of the end of 2021, Russia is or was involved as a third party in 96 WTO trade disputes (*Table A.2* in the Annex). About 41% of these disputes were concluded in one way or another.

In 2021, Russia joined 8 disputes on antidumping and countervailing measures two of them related to sanitary and phytosanitary measures (SPS), one concerned subsidies and export restrictions and one dealt with renewable energy sources (RES). Sometimes formally different several disputes on behalf of different plaintiffs are related to the same measures of the defendant (below we will consider some "unique" cases, which represent 74 out of 96 disputes).

Most often, Russia joins disputes on measures affecting agricultural and food products, metallurgy, automobile and aircraft industry, chemical industry, timber and wood products, and renewable energy sources. As for agreements that cover disputes to which Russia has joined as a third party (one dispute usually covers several agreements), *Fig. 30* shows a respective distribution by subjects according to data as of the end of 2020. Typically, the majority of disputes are related to GATT, as well as the Agreements on Antidumping and Subsidies and Countervailing Measures. Moreover, Russia is also interested in violations of the Agreement on Special Protective Measures and the Agreement Establishing the WTO.

First of all, let's look at the year changes of WTO disputes, to which Russia joined as a third party before 2021 (ref. 13 unique disputes).

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<sup>1</sup> URL: [https://www.rbc.ru/economics/22/12/2021/61c269229a7947b0aadb099b?from=from\\_main\\_6](https://www.rbc.ru/economics/22/12/2021/61c269229a7947b0aadb099b?from=from_main_6)

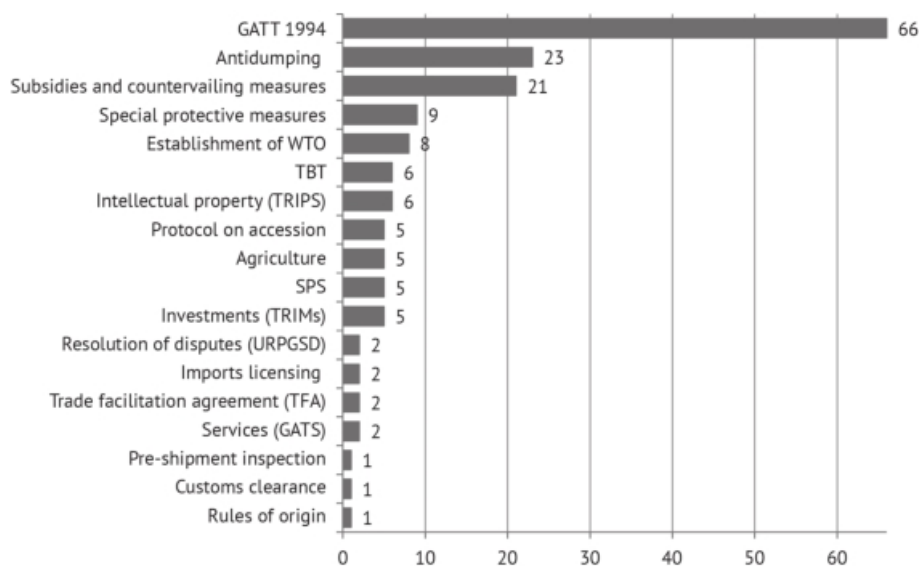


Fig. 30. Topics on WTO dispute agreements, which Russia has joined as a third party, as of the end of 2021.

Source: own estimates according to data of the WTO official website – URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds462\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds462_e.htm)

### ***DS517: China – tariff quotas for agricultural products (USA)***

At the end of 2016, The U.S. filed a request for consultations with China on tariff quotas on wheat, certain types of rice, and corn.<sup>1</sup> The U.S. believes that China violated its obligations under the WTO’s Protocol of Accession because tariff quotas on wheat, rice, and corn are not applied in a transparent, predictable, and equitable manner. The U.S. believes China violated GATT 1994 because it imposed import bans or restrictions other than duties, taxes, or other charges and failed to provide public notice of the quantities allowed to be imported under each tariff quota and their changes. On February 12, 2018, AG was established at the request of the United States.

On April 18, 2019, the AG report was circulated to members. The AG ruled that China violated WTO obligations in administering tariff quotas. In particular, basic eligibility criteria, allocation principles, redistribution procedures, and the public consultation process were inconsistent with commitments to administer tariff quotas in a transparent, predictable, and equitable manner and using clearly defined requirements. The AG rejected some U.S. claims, for example that Article XIII:3(b) (National Treatment of Domestic Taxation and Regulation) of GATT 1994 requires public notice of total tariff quotas available for allocation and any respective changes rather than total amount of tariff quotas actually allocated.

<sup>1</sup> URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds517\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds517_e.htm)

On June 24, 2019, China informed the DSB that it intended to implement its recommendations to bring measures into compliance with its WTO commitments within a reasonable period of time, which was prolonged up until June 29, 2021. On July 15, 2021, the U.S. filed a request with the DSB to suspend concessions or other commitments because China had not brought its measures into compliance within a reasonable period of time. On July 23, 2021, China objected to the U.S. proposed level of suspension of concessions and the matter was submitted to arbitration. On July 15, 2021, China submitted a request to DSB to establish a compliance commission, and it was established on August 30, 2021. Russia and other countries joined as third parties.

Russia has a significant trade interest, as the share of disputed goods exported from Russia to China in total Russian exports of these goods fell from 7% in 2012 to 0.2% in 2016, and in dropped in rice from 16 to 0.7%.<sup>1</sup>

***DS537: Canada – Measures regulating sale of wine in grocery stores (Australia)***

Australia, being a major wine supplier, including to Canada (8% of Canadian wine imports and 7% of Australian wine exports in 2017),<sup>2</sup> filed a request for consultation with Canada on January 12, 2018 regarding the sale of wine in grocery stores, challenging the priority of domestic wine for display.<sup>3</sup> The U.S. has also filed complaints against Canada on this issue (DS520 and DS531 disputes).

On May 29, 2020, Australia and Canada agreed to arbitration procedures under Article 25 of the URPGSD in accordance with MPIA.<sup>4</sup>

In spring 2021, the parties informed the AG that they had reached a mutually agreeable solution. On May 25, 2021, the AG sent out a report. Pursuant to Article 12.7 (Arbitration Panel Procedures) of the URPGSD, the AG report was limited to a brief description of the case and an announcement on reaching a solution.

Since Russia does not export wine to Canada, the interest to participate was not based on a substantial trading interest, rather on the unusual nature of the claim and the practice of participating in such a dispute.<sup>5</sup>

***DS538: Pakistan – Anti-dumping measures against BOPP film from the UAE (UAE)***

At the end of January 2018, the UAE filed a request for consultations with Pakistan on anti-dumping measures against biaxially oriented polypropylene film (BOPP film).<sup>6</sup>

According to the UAE, the anti-dumping investigation was conducted in violation of the GATT and the Anti-Dumping Agreement. For example, there was not enough precise evidence to launch an anti-dumping investigation and therefore the application for such an investigation by the industry in Pakistan should have been rejected.

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1 Data base UN COMTRADE // URL: <http://comtrade.un.org/>

2 Ibid.

3 URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds537\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds537_e.htm)

4 URL: <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2176>

5 URL: <https://www.iep.ru/files/text/trends/2018/04.pdf>

6 URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds538\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds538_e.htm)

The AG began its work in May 2019. On January 18, 2021, the AG report was sent out. The UAE challenged the April 9, 2015 imposition of anti-dumping duties as well as the December 1, 2016 decision on law termination, which extended the anti-dumping duties for five years. The AG concluded that the April 9, 2015 final decision was inconsistent with the provisions of the Anti-Dumping Agreement. In particular, the anti-dumping investigation was initiated based on several years old evidence without explaining the rationale behind it or seeking more recent evidence that affected the assessment of damages, dumping imports, dumping margins and anti-dumping duties. Pakistan has not objectively considered whether the volume of dumped imports increased significantly in absolute terms and in relation to domestic production and whether dumped imports had an impact on prices of similar goods. Pakistan did not assess all factors of damage and failed to objectively estimate the impact of dumping imports on the domestic industry. There were other violations as well. The AG rendered that the December 1, 2016 termination decision violated Article 11 (Duration and Review of Antidumping Duties and Price Commitments) of the Antidumping Agreement because Pakistan relied on dumping margins calculated in violation in determining the likelihood of continued or repeated dumping and damage and failed to complete the review before the expiration date within 12 months of initiation in the absence of abnormal circumstances. The AG recommended that Pakistan lift the anti-dumping measures against imports of BOPP film from the UAE. On February 22, 2021, Pakistan appealed to the Appellate Body, whose activities have been frozen.

Pakistan also conducted anti-dumping investigations against Russian companies, however, they did not result in the imposition of relevant measures. They related to hot-rolled coils (the investigation was initiated in early April 2009 and completed in late February 2011) and phthalic anhydride (initiated in mid-February 2016 and completed in mid-December 2017).<sup>1</sup>

***DS539: USA – Anti-dumping and countervailing measures on certain goods and use of available facts in related investigations (Republic of Korea)***

On February 14, 2018, the Republic of Korea has filed a request with DSB for consultations with the U.S. regarding anti-dumping and countervailing measures on certain products and use of available facts in related investigations.<sup>2</sup> The Republic of Korea disputes the practice of using “adverse available facts” in anti-dumping and countervailing investigations, under which the U.S. believes that Korean producers or exporters cannot cooperate in the best possible way and use not the best available facts in determining dumping and/or subsidization, which has an impact on other aspects of the investigation and the amount of relevant duties.

In mid-April 2018, Korea submitted a request to establish AG and at the end of May 2018 it was set up and began its operations on December 5, 2018. On January 21, 2021, the AG sent out a report. In all but two cases involving U.S. use of “available facts” disputed by Korea, the AG concluded that conditions for

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1 URL: <http://i-tip.wto.org/goods/>

2 URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds539\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds539_e.htm)

lawful recourse to “available facts” were not met. Specifically, with respect to four investigations, the AG found that the U.S. had resorted to “available facts” inconsistent with Article 6.8 (Evidence) of the Antidumping Agreement because: it failed to specify the detailed information required of the party concerned or it failed to take into account verifiable information that was properly and timely submitted, or it failed to immediately inform the party concerned of the reasons for not accepting certain information submitted by such party and it failed to provide that party the opportunity to provide additional explanation within reasonable period of time. In another investigation, the AG also supported Korea and held that the U.S. had improperly set a ceiling on “all other” bets based on the margin established under the mentioned circumstances. In two cases where the AG rejected Korea’s pre-trial claims and found that the U.S. nevertheless acted improperly in choosing the substitution facts because it did not consider all the previous information.

The AG rejected Korea’s claims about the “per se” nature of the measure, as the challenged measure should be properly described as a “rule or norm” rather than a form of “persistent conduct. The AG found that Korea failed to prove the existence of the properly described unwritten measure to which it referred. On March 19, 2021, the U.S. appealed to the AG, whose operations have been frozen.

In April 2017, the U.S. initiated an anti-dumping investigation against Russian companies on hot-roll rods.<sup>1</sup> Therefore, Russia is interested in methodologies used by the U.S. in anti-dumping investigations and it has previously joined the disputes against the U.S. with regard to U.S. methodologies used in anti-dumping investigations.

***DS542: China – certain intellectual property rights protections (U.S.)***

On March 23, 2018, the U.S. asked DSB to consult with China on intellectual property rights protections.<sup>2</sup> The main U.S. claim is that China denies foreign patent holders the ability to protect their patent rights in a joint venture with China after the technology transfer contract has expired. China also imposes mandatory adverse contract terms that are discriminatory and less favorable to the imported foreign technology. Therefore, China denies foreign rights holders the right to protect their IP rights in China and to freely negotiate market terms in licensing and other technology-related contracts.

The AG began its work in mid-January 2019, but early June 2019, the U.S. requested that AG suspend the proceedings until December 31, 2019, a request that China agreed to. The AG informed the DSB of its decision to comply with the U.S. request and suspend its work. Under Article 12.12 (Arbitration Panel Procedures) of the URPGSD, the AG’s authority lapses after 12 months of suspension. On December 23, 2019, the U.S. requested that the AG be further suspended until February 29, 2020, which expired on June 9, 2021.

Russia’s participation in this dispute is defined not only by its interest to analyze the consequences of the trade war between the United States and China,

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1 Data base UN COMTRADE // URL: <http://comtrade.un.org/>

2 URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds542\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds542_e.htm)

in which Russia also takes part (steel and aluminum), but also by a high demand in terms of Russia's participation in contracts with China related to technologies and the critical issue of protecting the rights of Russian technology suppliers in this context.

***DS548: USA – Certain measures for steel and aluminum products (EU)***

In the spring and summer of 2018, several countries, including the EU (June 1, 2018),<sup>1</sup> filed requests to consult with the U.S. on measures on steel and aluminum products. In the fall of 2018, plaintiffs requested the establishment of AG to resolve these disputes, and the AG started working on January 25, 2019. Russia also filed a related complaint against the U.S. in late June 2018 with the DSB regarding these measures (DS554).

On November 8, 2021, the AG informed the DSB that it had granted the EU's request of November 4, 2021, to which the U.S. agreed, to suspend the AG in accordance with Article 12.12 of the URPGSD (Procedure for Arbitration Groups) until December 17, 2021.

The U.S. did the same (ref. DS559).

***DS553: Republic of Korea – Reconsideration in connection with the end of anti-dumping measures for stainless steel bar stock (Japan)***

The AG was established in October 2018, and on November 30, 2020, AG report was filed on the dispute initiated by Japan in mid-June 2018 against the Republic of Korea regarding the review in connection with the end of anti-dumping measures on stainless steel bar stock.<sup>2</sup> According to Japan, this review was conducted by Korea in violation of the Anti-Dumping Agreement and the GATT because, among other things, Korea failed to properly determine the rationale to continue introducing anti-dumping measures that the expiration of measures would result in continued or repeated damage.<sup>3</sup> The AG found that Korea failed to reconcile the contradictions in its conclusions. On the one hand, AG found that the price level in Japan after duties have expired would weaken Korea's price competitiveness and growth of Japanese imports. On the other hand, it found that Korean market was price sensitive and that the price level in Japan would remain significantly higher than prices in Korea and third countries even if the duties were lifted. This contradiction was reinforced by Korea's conclusion that a large volume of low-priced imports from third countries was already present and exerting price pressure on the Korean market. By failing to explain how significantly more expensive imports from Japan could weaken Korea's price competitiveness, Korea failed to resolve the contradictions in its conclusions and failed to conduct an "impartial and objective" assessment of the facts, violating Article 11.3 (Duration and Revision of Antidumping Duties and Price Commitments) of the Antidumping Agreement.

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1 URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds548\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds548_e.htm)

2 URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds553\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds553_e.htm)

3 URL: <https://www.iep.ru/files/text/trends/2019/04.pdf>

Japan also argued that Korea had failed to consider factors that could explain the likely recurrence of harm instead of the termination of duties on Japan: the impact of high volume of low-priced imports from third countries; the cost of raw materials; and weak demand in domestic and export markets. The AG decided not to consider the first factor because it had already been considered in assessing the price and volume impact claims. On the other factors, the AG concluded that Japan had failed to establish non-compliance with Art. 11.3. The AG found that Korea had violated Art. 6.8 (Evidence) and 11.3 by rejecting Japanese exporters' production capacity data on the grounds that they did not comply with new parameters of which they had not been informed. The AG agreed with Japan that Korea failed to ensure that there was "good reason" for treating pieces of information as confidential, while noting that Korea's overall system for protecting information as confidential had merits. On January 22, 2021, Korea decided to appeal against the AG, whose work is suspended.

Korea's anti-dumping measures on kraft paper were in effect against Russian companies from October 27, 2008 through April 9, 2015. Participation in the dispute was due to important for Russia practice of dispute resolution on protective measures.<sup>1</sup>

***DS559: EU – Additional duties on certain U.S. goods (USA)***

On July 16, 2018, the U.S. submitted requests to DSB to consult with a number of countries, including the EU, on additional duties (increased import tariffs on U.S. goods in retaliation for U.S. imposition of special protective measures in terms of respective duties on steel and aluminum products).<sup>2</sup> On November 5, 2021, the AG informed DSB that it had granted the US request of November 4, 2021, to which the EU agreed, to suspend the AG in accordance with Article 12.12 of the URPGSD (Arbitration Group Procedures) until December 17, 2021. Russia's interest is primarily based on application of these measures also to Russian goods. Besides, Russia is involved in two disputes against the United States over safeguarding measures on steel and aluminum products, participating there as a major party (DS554 and DS566).

***DS562: USA – Special protective measures on imports of crystalline silicon photovoltaic products (China)***

On August 14, 2018, China submitted a request to DSB for consultation with the U.S. on a special protective measure (a 4-year tariff quota) for imports of crystalline silicon-based photovoltaic cells, whether or not they are partially or fully embedded into other products (including but not limited to modules, boards, panels and structural materials) (silicon photovoltaic products), which the US notified the WTO in late January 2018.<sup>3</sup> Later, on February 18, 2018, the U.S. introduced additional procedures for stakeholders requesting to exempt certain goods from safeguard measure for silicon photovoltaic goods. As of July 8, 2019,

1 URL: <https://www.iep.ru/files/text/trends/2019/04.pdf>

2 URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds559\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds559_e.htm)

3 URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds562\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds562_e.htm)

53 separate exemption requests had been submitted, 11 of which were granted and others denied.

China believes that this special protective measure is inconsistent with GATT 1994 and the Agreement on Special Protective Measures because the U.S failed to:

- prove that the increased imports were the result of “unanticipated development” and “the consequence of commitments” made by the U.S. under GATT 1994;
- prove the required “causal link” between the increased imports and major damage that was found;
- prove that the damage caused by other factors was unrelated to the increased imports;
- provide sufficient opportunity for stakeholders to participate in the investigation.

Since October 24, 2019, the AG has been litigating the case, and submitted a report on September 2, 2021. The AG dismissed all China’s claims, siding with defendant, finding that China failed to prove that:

- The U.S. protective measures on silicon photovoltaic products were inconsistent with the requirement of GATT 1994 Article XIX:1(a) (Extraordinary Measures on Imports of Certain Goods) that imports increased “as a “result of unforeseeable events and the effects of commitments made.”
- The U.S. acted inconsistently with Articles 2.1 (Conditions), 3.1 (Investigation), and 4.2(b) (Determination of Serious Harm or Threat of Serious Harm) of the Agreement on Special Protective Measures by failing to demonstrate the necessary “causal link” between the increased imports and the serious harm that was found;
- The United States acted inconsistently with Articles 2.1, 3.1, and 4.2(b) of the Agreement on Special Protective Measures by failing to ensure that damage caused by “other” factors was unrelated to the increase in imports;
- The U.S. acted inconsistently with Articles 3.1 and 3.2 of the Agreement on Special Protective Measures as a result of the procedural treatment of confidential information on the merits of the investigation.

On September 16, 2021, China appealed to the Appellate Body, whose work is suspended.

Russia’s interest is primarily due to application of these measures to goods from Russia. In addition, Russia participates in two disputes with the United States over protective measures on steel and aluminum products, in which it is a major party (DS554 and DS566).

***DS577: USA – Antidumping and countervailing measures against olives from Spain (EU)***

Russia has also joined the dispute against the U.S. over antidumping and countervailing measures with regard to freshly picked olives from Spain, initiated



by the EU in late January 2019.<sup>1</sup> The EU's main claims are the following: the U.S. failed to prove the specificity of subsidies, the reason for imposed countervailing measures, the countervailing duty is larger than any subsidy that is imposed on freshly picked olives, no damage to the U.S. industry from the subsidized imports was shown, an appropriate causal link (similar to the anti-dumping measures), the final subsidy for a particular company was calculated incorrectly, accordingly the countervailing duty was calculated incorrectly, stakeholder received no notification on the required information or any sufficient opportunity to submit proof, the U.S. was not properly confident in the accuracy of information.

On May 16, 2019, the EU submitted a request to DSB to establish AG and AG sent out a report on November 19, 2021. The AG agreed with the EU on the definition of specificity in the countervailing investigation, finding that the U.S. acted inconsistently with Art. 2. (Specificity) of the Agreement on Subsidies and Countervailing Measures: the US definition of specificity was not based on a reasoned and adequate explanation of why access to subsidies was clearly limited to olive producers and was not clearly justified taking into account positive evidence. However, the AG found that the EU did not demonstrate that the U.S. acted inconsistently with Articles 2.1 and 2.1(a) of the Agreement on Subsidies and Countervailing Measures simply because the U.S. based its conclusions about the de jure specificity of the ripe olive countervailing duty investigation on the rules of the relevant subsidy programs governing the calculation of the subsidy amounts available to eligible enterprises. The EU did not demonstrate that the U.S. acted inconsistently with Article 2.1(a) of the Agreement on Subsidies and Countervailing Measures because the U.S. determination of de jure specificity depended on how certain alleged aspects of previous subsidy programs, no longer in effect, were incorporated and integrated into the subsidy program under consideration. The EU did not demonstrate that, indeed, the U.S. found that the subsidies under consideration were de jure specific to olive producers because they were linked to olive production. Moreover, the AG sided with the U.S. in showing that the U.S. rejection of the convergence factor arguments in the subsidy program was reasonable and based on clearly substantiated positive evidence. The absence of a formal finding of specificity under U.S. law does not undermine the U.S. definition of de jure specificity with respect to subsidy programs, and the U.S. has made sufficient factual findings to be convinced that these subsidies would be de jure specific under its domestic law if it were required to make such a definition.

The AG held that Section 771B of the Tariff Act of 1930 was per se inconsistent with GATT 1994 Art. VI:3 (Antidumping and Countervailing Duties) and Art. 10 (Application of Article VI of GATT 1994) of the Agreement on Subsidies and Countervailing Measures because it requires the U.S. to assume that the entire benefit of a subsidy granted for raw agricultural inputs flows into an agricultural product processed further according to a technological chain based on of only two factual circumstances, shutting the door for considering any other factors that may be relevant to determining whether there is any carryover. The U.S. acted

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<sup>1</sup> URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds577\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds577_e.htm)

inconsistently with the above sections with respect to the application of section 771B of the Tariff Act of 1930 in the investigation of the countervailing duty on ripe olives in Spain because it was unable to prove the existence and extent of the indirect subsidy in light of all the relevant facts and circumstances of the case.

The AG rejected the EU's claims regarding the determination of damages because the EU had not demonstrated that these U.S. actions were inconsistent with the WTO agreements. On the EU's claim regarding the mandatory defendant, the final subsidy margin and the calculation of the countervailing duty rate, the AG concluded that the U.S. had acted inconsistently with the WTO agreements, for example, because the U.S. had not informed the parties concerned before the final determination that the volume of raw olive procurement processed into ripe olives was an "important fact." The AG recommended that the U.S. align its measures with its WTO commitments.

Russia's interest in this dispute can be explained due to its lawsuit against the U.S. for anti-dumping measures described earlier (DS586). Russia often joins the dispute over countervailing measures and subsidies.

***DS578: Morocco — certain antidumping measures against school notebooks from Morocco (Tunisia)***

On February 21, 2019, Tunisia submitted a request to DSB for consultations with Morocco regarding anti-dumping duties imposed by Morocco since the beginning of January 2019 on imports of school notebooks.<sup>1</sup> This is the second request submitted by Tunisia against Morocco on a similar issue (see DS555, regarding temporary antidumping duties imposed by Morocco on imports of school notebooks from Tunisia). Anti-dumping duties: 15.69% for SITPEC, 27.71% for SOTEFI and other Tunisian exporters. Tunisia's main claims are, first, that the request for the antidumping investigation did not contain sufficient evidence of dumping, damage and causation and, second, that the investigation did not adequately demonstrate dumping, damage and causation and was conducted in error, resulting in an inflated fair value and inflated anti-dumping duties.<sup>2</sup>

The AG filed its report on July 27, 2021. The AG agreed with Tunisia, finding that determination of Moroccan fair value was incompatible with Art. 2.2 (Determination of dumping) and that the amount charged to profits was incompatible with Art. 2.2 and 2.2.2 of the Anti-Dumping Agreement. The AG agreed with Tunisia, finding that the mathematical formula used to calculate the dumping margin did not express it for each of the Tunisian exporters who participated in the investigation. According to AG, this error resulted in an unfair comparison between the fair value and the export price of the notebooks and was contrary to Art. 2.4.

With respect to the Tunisian exporters' request for a discount because certain models were sold under license, the AG found that the exporters did not demonstrate how such a difference affected the comparability between the fair value and the export price of the notebooks. However, the AG found that Morocco failed to explain in its final decision "the reasons for accepting or rejecting the

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1 URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds578\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds578_e.htm)

2 URL: <https://www.iep.ru/files/text/trends/2019/04.pdf>

relevant arguments or claims made by the exporters” regarding the effect of the licenses on price comparability in violation of Article 12.2.2 (Public Notice and Explanation of Decisions) of the Antidumping Agreement.

The AG considered that Morocco violated Articles 3.1 and 3.2 (Determination of Damages) of the Antidumping Agreement by failing to conduct an “objective study” of price reduction and averting rising prices. Moreover, AG considered that these articles prevented the investigating authority from comparing the price of Tunisian imports with the hypothetical price of the domestic product in order to verify the underpricing. According to AG, the fact that Morocco applied this method was inconsistent with Art. 3.2. The AG also concluded that Morocco did not conduct an “objective study” of the evolution of sales, market share and domestic market productivity and profitability within Articles 3.1 and 3.4.

The AG found that the evidence submitted to the investigating authority did not prove that the competition was the cause of the damage and that Morocco had therefore not violated Articles 3.1 and 3.5. The AG concluded that, although Article 5.2 (Initiation and Follow-up of an Investigation) of the Antidumping Agreement specifies the content of the appeal, it does not impose any direct obligation on the investigating authority. However, it considered that the investigating authority was obliged by Article 5.3 to verify the accuracy and adequacy of the evidence provided in the appeal to determine whether there was sufficient evidence to justify the initiation of an investigation. The AG found that Morocco did not adequately verify the evidence related to export price, fair value and specific adjustments. On July 28, 2021, Morocco filed an appeal with the AG, whose operation was suspended.

Russia’s interest is due to most of its disputes in the WTO related to anti-dumping and countervailing measures, and it is important for Russia to practice such measures in accordance with WTO norms and rules.<sup>1</sup>

***DS579: India – Measures for sugar and sugar cane (Brazil), DS580: India – Measures for sugar and sugar cane (Australia), DS581: India – Measures for sugar and sugar cane (Guatemala)***

On February 27, 2019, Brazil<sup>2</sup> and Australia,<sup>3</sup> and Guatemala<sup>4</sup> on March 15, 2019, filed their requests to DSB for consultations with India with regard to domestic support, allegedly provided by India to their agricultural sugar cane and sugar producers (measures of domestic support), as well as all export subsidies that India provides according to plaintiffs for sugar and sugar cane (export subsidies). On July 11, 2019, Brazil, Australia, and Guatemala submitted requests to the DSB to set up an AG and it was set up in mid-August 2019 and began operating late October 2019. Australia, as plaintiff in these disputes, cited the greatest number of provisions it believes India violated, so let’s look more closely at Australia’s complaint.

1 URL: <https://www.iep.ru/files/text/trends/2019/04.pdf>

2 URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds579\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds579_e.htm)

3 URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds580\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds580_e.htm)

4 URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds581\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds581_e.htm)

On December 14, 2021, the AG report was submitted. The AG found that for five consecutive sugarcane seasons from 2014/2015 to 2018/2019, India provided non-exempt domestic support to sugarcane producers for specific products in excess of 10% of the total value allowed. The AG found that India violated Article 7.2(b) (General Internal Support Regulations) of the Agreement on Agriculture. The AG also found that market price support does not require governments to purchase or procure relevant agricultural products and that the challenged schemes represent export subsidies under Article 9.1(a) (Export Subsidy Obligations) of the Agreement on Agriculture. Since India's schedule does not include obligations to reduce sugar export subsidies, the AG concluded that such export subsidies were inconsistent with Articles 3.3 (Inclusion of Concessions and Obligations) and 8 (Export Competition Obligations) of the Agreement on Agriculture.

For Russia, participation in disputes over subsidies is extremely important, including in terms of applying measures to support its domestic producers in accordance with WTO rules and norms.

***DS597: USA — Requirement for origin marking (Hong Kong)***

On October 30, 2020, Hong Kong has requested consultations with the U.S. on certain measures relating to origin marking requirements applicable to goods produced in Hong Kong.<sup>1</sup> On August 11, 2020, The U.S. Customs and Border Protection (USCBP) issued a notice that after September 25, 2020 (later postponed to November 10, 2020), goods made in Hong Kong must be labeled as originating in "China". According to Hong Kong, these U.S. measures violate GATT 1994 because the U.S. applies more discriminatory treatment to Hong Kong goods vs similar goods from other countries with respect to import rules and formalities relating to marks of origin; the U.S. does not apply its requirements for origin marking in a uniform, impartial and reasonable manner. According to Hong Kong, these measures also violate Article 2 (Obligations during the Transition Period) of the Agreement on Rules of Origin.

On November 9, 2020, the U.S. announced that it was ready to begin consultations with Hong Kong, but it believes that these measures are imposed on national security issues not subjected to review or resolution through WTO dispute settlement. On January 14, 2021, Hong Kong requested establishing of AG, and it was established on February 22, 2021. Russia, as well as Canada, China, the EU, India, Japan, Korea, Norway, Singapore, Switzerland, Turkey and Ukraine joined the dispute as third parties. On April 19, 2021, Hong Kong asked the Director General to approve AG members, and on April 29, 2021 he joined the AG. On October 26, 2021, the chairman of the commission informed DSB that taking into consideration the complexity of the issues presented in the dispute, the commission plans to issue its final report to the parties in Q2 2022.

On November 13, 2020, Russia requested to join consultations. On November 19, 2020, the U.S. requested Chairman of the DSB to send out a communication rejecting Russia's request to join consultations. Russia's intention to participate in this dispute stems from its practice of participating in disputes over rules of

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<sup>1</sup> URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds597\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds597_e.htm)

origin, as well as disputes in which a defendant invokes national security issues not subjected to WTO review. Participation in this dispute may also be relevant to Russia in terms of exports of the Republic of Crimea and the relevant sanctions of countries, including the U.S., with respect to goods originating from this Russian region. This may be the reason why the U.S. rejected Russia's request to join these consultations.

Below, 8 disputes will be considered, which Russia has directly joined as a third party in 2021.

***DS589: China – Measures concerning imports of canola seeds from Canada (Canada)***

On September 9, 2019, Canada filed a request for consultation with China on two types of measures allegedly affecting imports of canola seed (intended for processing and consumption rather than planting) from Canada.<sup>1</sup>

1) measures suspending imports of canola seed from two Canadian companies;  
2) measures involving enhanced inspections of all imports of canola seed from Canada.

China suspended imports of canola seed from two Canadian companies on March 1, 2019 and March 26, 2019, respectively. Other Canadian companies are still allowed to export canola seed to China, but these imports are subject to enhanced inspections, including enhanced testing. China cites the detection of quarantine pests in canola seed shipments as the reason for its measures affecting imports of Canadian canola seed.

Canada has repeatedly sought information from China on the scientific basis of its measures and on the process of re-establishing full market access for Canadian canola seeds. Canada used multiple and varied formal and informal mechanisms at its disposal to obtain this information. For example, as Canada believes that China's measures restrict the export of canola seed from Canada and that these measures do not appear to be based on relevant international standards, guidelines or recommendations, Canada submitted a request under Article 5.8 (Risk Assessment and Determination of Appropriate Level of Sanitary or Phytosanitary Protection) of the SPS Agreement on June 13, 2019, for China to provide "an explanation" of its measures. China's July 12, 2019 response did not answer most of the questions raised by Canada, including, in particular, an explanation of the nature and extent of the enhanced inspections that are being conducted on all imports of Canadian canola seed.

China's measures regarding imports of Canadian rapeseed, according to Canada, are inconsistent with China's WTO commitments, in particular:

- SPS Agreement, as measures are not based on scientific principles or applied only to the extent necessary to protect plant life or health and supported without sufficient scientific evidence; measures are not based on assessment of risks to plant life or health as appropriate to the circumstances, taking into account risk assessment methods developed by relevant international organizations; measures are not taken or supported

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1 URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds589\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds589_e.htm)

where relevant scientific evidence is insufficient, they are not temporarily adopted or based on available appropriate information or considered within reasonable period of time; they are discriminatory, demonstrate veiled restrictions of international trade, etc. China did not publish or notify its measures; in particular, it has not provided sufficient information to enable Canada to know specific principles and methods applicable to the products under consideration;

- GATT 1994, as China failed immediately and unconditionally accord to Canada any advantages, privileges, or immunities granted by China with respect to rules and formalities relating to the imports of canola seeds; failed to accord Canadian canola seeds no less favorable treatment than that accorded to Chinese “like” products; China failed to comply with its laws, regulations, decisions, and rulings with respect to measures under consideration in a uniform, impartial, and reasonable manner; as China failed to publish information about measures in a timely, non-discriminatory and easily accessible manner to allow Canada and traders to become familiar with them;
- The TFA, because the notifications or guidelines issued by China to its stakeholders to improve border controls or inspections of food or fodder subject to notification or guidelines to protect plant life or health in its territory are not risk-based and have not been properly terminated or suspended; China failed to develop and apply risk management in a manner that avoids arbitrary or unjustifiable discrimination or veiled restriction of the international trade; China failed to base risk management on assessing the risks using appropriate selectivity criteria.

Similarly, measures involving enhanced inspections of all Canadian canola seed imports are, according to Canada, incompatible with China’s obligations under the SPS Agreement, GATT 1994 and the TFA.

On September 19, 2019, Russia and Chinese Taipei requested joining the consultation. On June 17, 2021, Canada requested to establish AG, and it was established on July 26, 2021. Australia, Brazil, the European Union, India, Japan, Norway, Russia, Singapore, Chinese Taipei, and the United States joined the dispute as third parties.

Russia is one of the largest producers and exporters of rapeseed. In 2018, the volume of Russian exports of this product exceeded 490.000 tons, which determines significant trade interest of Russia’s participation in this dispute. In addition, Russia needs practice of participation in SPS disputes.

#### ***DS592: Indonesia – Measures on raw materials (EU)***

On November 22, 2019, the EU filed a request for consultation with Indonesia on the following raw materials measures needed for stainless steel production, as well as an import duty exemption scheme when domestic goods are used instead of imports:<sup>1</sup>

- nickel export restrictions, including a de facto export ban:

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<sup>1</sup> URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds592\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds592_e.htm)

- domestic processing requirements for nickel, iron ore, chromium, and coal;
- domestic marketing obligations for nickel and coal products;
- nickel export licensing requirements;
- system of prohibited subsidies.

The EU stated that:

- measures restricting exports of certain raw materials, including those requiring domestic processing rules, domestic marketing obligations and export licensing requirements, appear to be inconsistent with Article XI:1 (General Elimination of Quantitative Restrictions) of GATT 1994;
- the scheme of prohibited subsidies is inconsistent with Art. 3.1(b) (Prohibition) of the Agreement on Subsidies and Countervailing Measures;
- untimely publication of challenged measures is inconsistent with Article 1 X:1 (Publication and Application of Trade Rules) of the GATT 1994.

As part of implementation of the national developing plan of certain processing industry sectors, including stainless steel production, Indonesia imposed a number of restrictions on raw material exports. In particular, exports of nickel ore (HS code 260400) were banned in Indonesia in 2014. In 2017, Indonesia partially relaxed the export ban, temporarily allowing the export of certain minerals, including nickel ore marked by a concentration below 1.7%, subject to certain additional requirements. These requirements were supposed to be temporary and that the full export ban would be reinstated on January 11, 2022. However, in August 2019, the Indian Ministry of Energy and Mineral Resources (MEMR) determined that certain documents required to export low concentration nickel would expire on December 31, 2019. The temporary export authorization for low-concentration nickel ore did not do any harm to the ongoing ban on exports of nickel ore with concentrations above 1.7%, which cannot be exported even during the temporary easing of the export ban. Nickel ore exports are also subject to additional export requirements.

On January 14, 2021, the EU submitted a request to establish the AG, and on February 22, 2021, it was established. Russia, Brazil, Canada, China, India, Japan, the Republic of Korea, Saudi Arabia, Singapore, Chinese Taipei, Turkey, Ukraine, the UAE, the UK and the U.S. joined the dispute. On April 9, 2021, the EU instructed the Director General to approve members of the AG, and on April 29, 2021, the Director General joined it. On November 1, 2021, the Panel Chairman informed the DSB that in accordance with the timetable approved after consultation with the parties, the AG estimated that it would submit its final report to the parties in Q4 2022.

Russia's imports of nickel ore fell from \$59.9 mn in 2016 to \$0.001 mn in 2020, while exports increased from \$27.8 mn in 2016 to \$82 mn in 2020, accounting for nearly 2% of this commodity's global exports.<sup>1</sup> Moreover, Russia is interested in participating in disputes over export restrictions and commodities, because it also uses them.

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<sup>1</sup> URL: <https://www.iep.ru/files/text/trends/2019/04.pdf>

***DS598: China – Anti-dumping and countervailing measures on barley from Australia (Australia)***

On December 16, 2020, Australia requested consultations with China on anti-dumping and countervailing measures for barley (HS code 1003) imported from Australia. According to Australia,<sup>1</sup> China imposed these measures in violation of the relevant WTO agreements. On March 15, 2021, Australia submitted a request to establish AG and it was established on May 28 2021. Russia, Brazil, Canada, the EU, India, Japan, Mexico, New Zealand, Norway, Singapore, Ukraine, the UK and the US joined the dispute as third parties.

On July 27, 2021, Australia and China informed the DSB that they had agreed to arbitration procedures under Article 25 (Arbitration) of the URPGSD in this dispute. Such procedures have been introduced by Australia and China to implement the Multilateral Interim Appeal Arbitration Agreement pursuant to Article 25 of the URPGSD (MPIA) and to establish a framework for the arbitrator to decide any appeal of any final AG report issued in this dispute if AG cannot hear the appeal pursuant to Articles 16.4 (Acceptance of Panel Reports) and 17 (Consideration of Appeals) of the URPGSD.

Russia is one of the leading exporters of barley. In 2019, Russian barley exports totaled \$763.6 mn, nearly 11% of global barley exports. In light of the various arguments raised by Australia in its request for consultations Russia has a significant trade and systemic legal interest in this dispute.

***DS599: Panama – Measures concerning imports of certain products from Costa Rica (Costa Rica)***

On January 11, 2021, Costa Rica submitted a request for consultation with Panama on measures restricting or prohibiting imports of a number of food products originating from Costa Rica, including: strawberries, dairy products, beef, pork, poultry and turkey meat, fish, fresh pineapples and bananas.<sup>2</sup> In particular, despite Costa Rica's long history of exporting dairy products; beef; pork; processed poultry; beef, pork and poultry cured products; cooked beef, pork, chicken and turkey and fish products to Panama, Costa Rica's sanitary status has not changed in any way. Panama decided to maintain an unannounced ban on the importation of these Costa Rican products and did not take any steps to permit the resumption of trade in these products.

On August 19, 2021 Costa Rica submitted a request to establish AG and on September 27, 2021 the AG was established. Russia, Australia, Brazil, Canada, China, EU, Guatemala, Honduras, India, Mexico, Nicaragua, Chinese Taipei, UK and US joined the dispute as third parties.

Russia is interested in import ban disputes, while its food exports as a whole continue to grow. The Russian Ministry of Agriculture estimates that it exported 79mn tons of agricultural products and food worth \$30.7 bn in 2020, a 20%

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1 URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds598\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds598_e.htm)

2 URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds599\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds599_e.htm)



increase over 2019, which also accounts for Russia's substantial trade interest in participating in the dispute.<sup>1</sup>

***DS600: European Union and some Member States — measures concerning palm oil and oil palm biofuels (Malaysia)***

On 15 January 2021, Malaysia submitted a request for consultations with the EU, France and Lithuania on measures imposed by the EU and EU Member States on palm oil and oil palm biofuels from Malaysia.<sup>2</sup>

Malaysia argued that the EU measures (the EU Renewable Energy Target (RE), the criteria for identifying high-risk feedstocks, and the criteria for sustainability and greenhouse gas savings) were incompatible with WTO rules and regulations.

In the context of addressing the environmental risks associated with the extensive use of fossil fuels, the EU and its Member States have since 2009 adopted policies to promote the use of biofuels by setting national targets for the use of RES in various sectors, including transport. This policy resulted in rapid increase in the consumption of biofuels in the EU, produced mainly from food and feed crops.

While measures taken by the EU and some of its member states in the renewable energy policy are aimed in general at reducing greenhouse gas emissions and meeting obligations under international climate agreements, Malaysia considers that some of these measures are incompatible with the WTO obligations of the EU and some of its member states. In particular, the EU argues that palm oil production alone entails a high risk of indirect land use change (ILUC). Hence, the share of oil palm-based biofuels should not exceed the consumption of such fuels in each EU member state in 2019 and should be gradually reduced to 0% by 2030. Malaysia argues that in fact a number of EU countries seem likely to phase out oil palm biofuels in order to meet EU renewables targets much earlier than 2030. If oil palm biofuels are certified as low risk ILUC, they cannot count towards the EU renewable energy targets.

Russia has an overall interest in renewables and in the EU policy in this area in particular and has already joined similar debates.

***DS601: China – Anti-dumping measures against stainless steel products from Japan (Japan)***

On 11 June 2021, Japan submitted a request for consultations with China on anti-dumping measures on stainless steel billets, hot-rolled coil and hot-rolled sheets from Japan.<sup>3</sup> Japan considers these Chinese protective measures to be inconsistent with the Anti-Dumping Agreement and GATT 1994. On 19 August 2021, Japan submitted a request for establishment of AG, and on 27 September 2021 it was established. Russia, Australia, Brazil, Canada, the EU, India, Korea, Mexico, Saudi Arabia, Chinese Taipei, the US and Vietnam joined the dispute.

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1 URL: [https://www.alt.ru/external\\_news/79892/](https://www.alt.ru/external_news/79892/)

2 URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds600\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds600_e.htm)

3 URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds601\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds601_e.htm)

Russia is interested in disputes over protective measures, particularly in relation to metallurgical goods, as a significant number of anti-dumping measures are in force against Russia, particularly against companies in the metallurgical industry.<sup>1</sup>

***DS602: China – Anti-dumping and countervailing measures against Australian wine (Australia)***

On 22 June 2021, Australia submitted a request for consultations with China on anti-dumping and countervailing duties in relation to bottled wine in containers of 2 liters or less imported from Australia.<sup>2</sup>

According to plaintiff, China imposed these measures in violation of the Anti-dumping Agreement, the Agreement on Subsidies and Countervailing Measures and the GATT 1994. On 16 September 2021 Australia submitted a request to establish AB and it was established on 26 October 2021. Russia, Brazil, Canada, the EU, India, Japan, Korea, Mexico, New Zealand, Norway, Singapore, Switzerland, Chinese Taipei, Turkey, Ukraine, the UK, the US and Vietnam joined the dispute as third parties.

Russia is actively joining disputes against China in 2021 with regard to introduction of anti-dumping and countervailing measures by the Chinese in violation of WTO rules and regulations.

***DS605: Dominican Republic — Anti-dumping measures on corrugated steel bars (Costa Rica)***

On 23 July 2021, Costa Rica requested the Dominican Republic to consult on anti-dumping measures imposed on imports of corrugated or deformed steel or concrete reinforcement bars produced in Costa Rica.<sup>3</sup> The anti-dumping investigation was launched on 30 July 2018 in response to a request submitted by a Dominican manufacturer that Costa Rica considered inconsistent with the minimum requirements of the Anti-dumping Agreement. For example, after an investigation containing numerous faults, on 27 December 2019, the Commission on the Regulation of Unfair Trade Practices and Protective Measures of the Dominican Republic took a decision providing for the application of definitive anti-dumping measures, despite the absence of dumping and damages. Costa Rica considers this decision and the application of final duties to be inconsistent with the Dominican Republic's obligations under the Anti-Dumping Agreement and GATT 1994. In particular, as the Dominican Republic Commission did not rely on correct export prices in its determination of dumping and included in the estimates of dumping margin transactions taking place beyond the investigation period, excluded in the determination of dumping the transactions occurring in the ordinary course of trade for similar goods intended for consumption in Costa Rica, excluded sales of similar goods in the domestic market of the exporting country allegedly at below cost, without first having duly established that those

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1 URL: <https://www.iep.ru/files/text/trends/2019/04.pdf>

2 URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds602\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds602_e.htm)

3 URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds605\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds605_e.htm)

sales took place during a long period in substantial quantities and at prices that do not recover all costs within a reasonable time, incorrectly included financing costs when analyzing below cost sales in order to identify sales that were presumably not made in the normal course of business.

The Commission failed to make a fair comparison between the export price and fair value, including a comparison of sales made at the highest possible price. Furthermore, the Commission's analysis of the volume of dumped imports was not based on an objective examination of positive evidence or study of all relevant evidence. The Commission did not base its determination of the threat of material loss on facts, rather only on assertions, assumptions or slim possibility of damage, and did not adequately establish that a change in circumstances would create a situation when alleged dumping causing the damage was clearly foreseeable and unavoidable. The Commission did not give due consideration:

- whether there has been a significant increase in dumped imports into the domestic market, indicating the likelihood of a significant increase in imports;
- whether there was sufficient spare capacity indicating the likelihood of an imminent significant increase in dumped exports to the Dominican Republic, given the availability of other export markets to absorb any additional exports;
- whether imports were imported at prices that would have had a significant depressing or suppressive effect on domestic prices and likely to increase demand for further imports;
- whether the combination of abovementioned factors resulted in conclusion that further dumping of exports was inevitable and in material damage unless protective measures were taken.

The Commission did not adequately verify the accuracy and adequacy of the evidence presented in the request to determine whether there was sufficient evidence of dumping, damages and a causal link between the dumping import and alleged injuries to justify the opening of investigation. Costa Rica points to other irregularities in the Dominican Republic Commission's anti-dumping investigations. The Dominican Republic imposed anti-dumping duties, although all requirements for their imposition were not met; did not impose anti-dumping duties in the appropriate amount; imposed anti-dumping duties beyond the dumping margin that should have been imposed under Article 2 of the Anti-dumping Agreement (Determination of Dumping).

On 15 November 2021, Costa Rica requested establishment of AG, and it was established on 20 December 2021.

In 2021, Russia actively joined the dispute over anti-dumping measures in violation of WTO rules and regulations. Furthermore, Russia has a significant trade interest. In 2020 it exported bars of iron or non-alloy steel containing less than 0.25% wt % carbon used for reinforcement of concrete (HS code 721499) for \$279.2mn, representing 12.4% of world exports of such goods.

*Annex*

*Table A.1*

**WTO trade disputes in which Russia is a major party to the dispute  
(plaintiff or defendant)**

<b>Dispute</b>	<b>Substance of the claim</b>	<b>Current stage (as of the end of 2021)</b>
<b>As plaintiff</b>		
DS474: EU – Cost-adjustment methodology and specific anti-dumping measures for Russian imports (23.12.2013) <sup>1</sup>	Energy adjustments in anti-dumping investigations to calculate dumping margins (EU ignored cost and price information from Russian producers and exporters). The EU conducted end-of-dumping inspections without sufficient data on continued dumping and damage.	Approval of AG members (22.07.2014) The dispute has actually turned into another dispute — see second action (DS494)
DS476: EU – Specific measures influencing energy sector (30.04.2014)	EU Third Energy Package: Gas production companies cannot own the main pipelines located in the EU. Operating companies controlled by foreigners have to undergo a special certification procedure.	AG operations (21.09.2018) De facto, AG operations suspended
DS493: Ukraine – Anti-dumping measures against ammonium nitrate (07.05.2015)	In its anti-dumping investigations into ammonium nitrate, Ukraine did not take into account electricity prices in Russia provided by producers, but rather used prices of the third countries (energy adjustments) when calculating costs.	Defendant implemented the DSB recommendations (reversal of measures) (21.09.2020)
DS494: EU – Cost-adjustment methodology and specific anti-dumping measures for Russian imports (07.05.2015)	In anti-dumping investigations into welded pipes and ammonium nitrate from Russia, the EU did not take into account cost and price information provided by producers and exporters to calculate dumping margins, but used prices of the third countries (energy adjustments).	AG operations (28.08.2020) De facto, AB operations suspended
DS521: EU – Anti-dumping measures on cold-rolled steel from Russia (27.01.2017)	The EC is not taken into account the information provided by Russian producers, rather is replaced by unsubstantiated data and incorrect estimates.	AG operations (16.03.2020)
DS525: Ukraine – Measures restricting trade of goods and services and transit (19.05.2017)	A comprehensive lawsuit over Ukrainian measures restricting trade in goods and services from Russia.	Consultations (19.05.2017)
DS554: USA – Special protective measures for steel and aluminium products (29.06.2018)	According to Russia, the US imposed measures on steel and aluminium products in spring 2018 in violation of GATT 1994 and the Agreement on Special Protective Measures, granting benefits and privileges to some countries that did not apply to others, imposing import restrictions beyond duties, taxes or other charges through quotas, failing to justify the emergency measures, did not send an urgent written notice or allowed consultation.	AG operations (25.01.2019)

<sup>1</sup> The date of the consultation request is given in brackets.

<b>Dispute</b>	<b>Substance of the claim</b>	<b>Current stage (as of the end of 2021)</b>
DS586: Russia – Anti-dumping measures against Russian hot-rolled carbon steel flat products (USA, 05.07.2019)	According to Russia, the US failed to correctly estimate the fair value and dumping margins for all known exporters and producers and the costs of producing the goods under consideration; failed to adequately demonstrate the need for further measures, did not terminate these measures, rather expanded them; refused to rely on information from Russian exporters.	Consultations (05.07.2019)
<b>As defendant</b>		
DS462: Russia – Vehicle disposal charge (EU, 09.07.2013)	Additional payments (recycling fee) on imported and domestic vehicles were exempted under certain conditions. In estimating the levy, there is too much difference in the amount of the levy for new and used cars.	Approval of AG members (25.11.2013) Dispute is not active
DS463: Russia – Vehicle disposal charge (Japan, 24.07.2013)	Additional charges (recycling fee) on imported and domestic vehicles are exempt under certain conditions.	Consultations (24.07.2013) Dispute is not active
DS475: Russia – Measures affecting imports of live pigs, pork and other pork products (EU, 08.04.2014)	The ban on imports of live pigs, pork and pork products from the EU is a disproportionate measure, as there have been several minor cases of ASF infestation of wild boar near the borders with Belarus, which have been promptly contained. The EU disputes the way Russia is regionalising the territory.	Dispute suspended (28.01.2020). The AG suspended its work on checking implementation of DSB recommendations at the request of the EU and its mandate has expired on 28.01.2021
DS479: Russia – Anti-dumping duties on light commercial vehicles from Germany and Italy (EU, 21.05.2014)	The way Russia conducts anti-dumping investigations and determines dumping margins on light commercial vehicles contravenes WTO rules in establishing dumping and the existence of damage, evidence, industry determination, public notice and explanation of decisions.	Defendant fulfilled DSB recommendations (reversal of measures) (20.06.2018)
DS485: Russia – Estimates of import duties for certain agricultural and industrial goods (EU, 31.10.2014)	Russia applies a duty of 15 or 10% for paper and cardboard, which exceeds a bound level of 5%. When customs value is below a certain margin, duties are levied above the bound level for a number of other goods.	Defendant fulfilled DSB recommendations (08.06.2017) AG rejected charges of systemic violations of Russia's WTO commitments on import tariffs
DS499: Russia – Measures restricting imports of railway equipment and its parts (Ukraine, 21.10.2015)	Russia suspends certificates of conformity issued to manufacturers of track parts and rolling stock until new technical regulations are introduced, and rejects applications for new certificates.	Compliance with DSB recommendations by defendant (05.03.2020) Ukraine has requested Russia to clarify the requirements that Ukrainian suppliers must comply with in order to obtain a certificate of conformity (23.03.2020)

<b>Dispute</b>	<b>Substance of the claim</b>	<b>Current stage (as of the end of 2021)</b>
DS512: Russia – Measures restricting transit (Ukraine, 14.09.2016)	International transit of goods by road and rail from Ukraine to Kazakhstan or Kyrgyzstan via the Russian Federation should be carried out only from Belarus under certain conditions. Prohibition of transit of goods with tariff rates not amounting 0 and those under embargo.	Reports accepted and no further actions required (26.04.2019)
DS532: Russia – Measures restricting imports and transit of certain Ukrainian goods (Ukraine, 13.10.2017)	Russia introduced measures to restrict imports and transit of juices, beer, confectionery and wallpaper of Ukrainian origin through Russia to third countries. Export of such Ukrainian products to Russia dropped significantly, to 0 for some items.	Consultations (13.10.2017)
DS566: Russia – Increased import tariffs on a number of goods made in the US (USA, 27.08.2017)	As of August 2018, Russia increased import duties on certain types of vehicles for cargo transportation, road construction equipment, oil and gas equipment, tools for metal processing and rock drilling and fiber optics (25, 30 and 40% depending on the product). According to the US, these measures violate GATT 1994, as Russia does not impose such duties on similar goods from other WTO members and gives the US less favorable treatment.	AG operations (25.01.2019)
DS604: Russia – Some measures over domestic and foreign goods and services (EU, 22.02.2021)	The EU challenges Russia’s import substitution policy measures applied to improper procurement by state-owned enterprises, citing provisions of GATT, GATS, the Protocol on Russia’s Accession to WTO and the Taskforce Report on Russia’s Accession to WTO: price preferences; prior clearance; minimum quotas.	Consultations (22.02.2021)

Source: own estimates according to WTO website: URL: [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)

Table A.2

### WTO disputes joined by Russia as a third party

<b>Subject</b>	<b>Disputes</b>
1) Import bans or restrictions (for environmental or other reasons), including rules of origin	DS400, DS401, DS469, DS484, DS495, DS524, DS531, DS537, DS576, DS597, DS589, DS600
2) Protective investigations and measures (anti-dumping, countervailing and special protective measures)	DS414, DS437, DS449, DS454, DS460; DS468, DS471, DS473, DS480, DS488, DS490, DS496, DS513, DS516, DS518, DS523, DS529, DS533, DS534, DS536, DS538, DS539, DS544, DS545, DS546, DS547, DS548, DS550, DS551, DS552, DS553, DS556, DS562, DS564, DS573, DS577, DS578, DS591, DS598, DS601; DS602; DS605
3) Exports restrictions	DS431, DS432, DS433, DS508, DS509, DS541, DS590, DS592
4) Intellectual property rights	DS441, DS458, DS467, DS542, DS567
5) Subsidies (including tax and other benefits) and requirement of localization	DS502, DS456, DS472, DS487, DS497, DS489, DS510, DS511, DS522, DS579, DS580, DS581, DS583, DS593, DS595, DS592
6) Tariffs and tariff quotas	DS492, DS517, DS557, DS558, DS559, DS560, DS543, DS561, DS585, DS582, DS584, DS588.
7) Trade and economic sanctions	DS526

Source: based on M.A. Baeva (2015). WTO trade disputes which involve Russia as well as mechanism of their resolution // Russian Foreign Trade Bulletin, 3. Pp. 75–90.

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