9. Customs, Trade and WTO Aspects

9.1 Introduction

Russian customs legislation is based on the unified rules of the Eurasian Economic Union (the “EAEU”). The EAEU was launched on 1 January 2015 and includes Russia, Belarus, Kazakhstan, Armenia and Kyrgyzstan. All Russian foreign trade regulations are primarily based on rules established at the supranational level of the EAEU (for more details on the EAEU please refer to section 4 of this below). The EAEU replaced the Customs Union of Russia, Belarus and Kazakhstan (the “CU”) that started to operate as of 1 January 2010, and the main legislative framework of which gained shape on 1 July 2011.

9.2 Accession to the World Trade Organization

On 22 August 2012 Russia officially became the 156th member of the World Trade Organization (the “WTO”). Russia’s commitments and obligations are established in the Protocol of Accession of Russia to the WTO dated 16 December 2011 (the “WTO Accession Protocol”) and the Working Party Report on the Accession of Russia to the WTO dated 17 November 2011, which are publicly available.

Since Russia is a member of the EAEU, EAEU regulations are based on the WTO rules.

In July 2015 Kazakhstan signed an Agreement on accession to the WTO that was ratified in October 2015. Starting from 30 November 2015 Kazakhstan became the 162nd member of the WTO. According to Kazakhstan’s WTO commitments, the average final legally binding tariff for imported products will be 6.5% (10.2% for agricultural products and 5.6% for manufactured goods). The Unified Customs Tariff of the EAEU established higher average final rates that are based on Russia’s commitments within the WTO. In order to reach a balance in trade of such products within the EAEU, Kazakhstan took a commitment towards the EAEU, whereby all the products imported to Kazakhstan under lower rates of import customs duty cannot be freely
moved to other EAEU countries (the difference in tariffs should be compensated first). Relevant regulations, including the full list of all such products, were issued in October 2015 and came into force on 11 January 2016.

The EAEU plans to expand its cooperation with other trade blocs and in 2016 is considering starting negotiations on free-trade zones agreements with other WTO member states, including Israel, Pakistan, Egypt, etc. In May 2015 the EAEU signed a free trade agreement with Vietnam.

9.2.1 Market access for goods — tariff and quota commitments

On average the final legally binding tariff ceiling for the Russian Federation by 2017 will be 7.8% compared with a 2011 average of 10% for all products:

1. The average tariff ceiling for agriculture products will be 10.8%, lower than the average of 13.2% on the date of accession;

2. The ceiling average for manufactured goods will be 7.3% vs. the 9.5% average on the date of accession.

Russia has agreed to lower its tariffs on a wide range of products. Average duties after full implementation of tariff reductions will be:

1. 14.9% for dairy products (tariff on the date of accession 19.8%);

2. 10.0% for cereals (tariff on the date of accession 15.1%);

3. 7.1% for oilseed fats and oils (tariff on the date of accession 9.0%);

4. 5.2% for chemicals (tariff on the date of accession 6.5%);

5. 12.0% for automobiles (tariff on the date of accession 15.5%);
6. 6.2% for electrical machinery (tariff on the date of accession 8.4%);

7. 8.0% for wood and paper (tariff on the date of accession 13.4%);

8. USD 223 per ton for sugar (tariff on the date of accession USD 243 per ton).

By 2015 import customs tariffs were bound at zero for cotton (by the date of accession) and information technology (ITA) products.

In September 2015 the EAEU further reduced rates of import customs duties with respect to 4061 products (mostly for electronic devices, furniture, home appliances, textiles) in accordance with Russia’s commitments to the WTO.

It should be noted, however, that 90% of the rates of the import customs duties listed in the Unified Customs Tariff of the EAEU that was applied as of the date of accession were lower than the rates of import duties under the WTO Accession Protocol. This means that Russia retains the right to increase import duty rates for certain types of goods, which, however, is unlikely at the moment.

The final bound rate was implemented on the date of accession for more than one third of the national tariff lines with another quarter of the tariff cuts to be put in place during a transition period of 3–7 years provided for each particular item. The longest implementation period is eight years for poultry (i.e. 2020), followed by seven years for motor cars, helicopters and civil aircraft (i.e. 2019).

Tariff rate quotas (TRQs) have been established for beef, pork, poultry and some whey products. Imports entering the market within the quota will face lower tariffs while higher duties will be applied to products imported outside the quota.
The in-quota and out-of-quota rates are listed below with the out-of-quota rates in parentheses:

1. For beef 15% (duty rate out of quota 55%);
2. For pork zero (duty rate out of quota 65%). The TRQ for pork will be replaced by a flat top rate of 25% as of 1 January 2020;
3. 25% (duty rate out of quota 80%) for some selected poultry products;
4. 10% (duty rate out of quota 15%) for some whey products;
5. Some of these quotas are also subject to member-specific allocations.

9.2.2 Export duties

At the date of accession to the WTO, export duties were binding for over 700 tariff lines, including certain fish and crustaceans, mineral fuels and oils, raw hides and skins, wood, pulp and paper, and base metal products.

9.2.3 Market access for services

Russia made market access commitments in 11 services sectors and 116 sub-sectors. No market access restrictions were provided for 30 sectors, including advertising, market research, consulting and management services. At the same time, Russia did not make any commitments for 39 sectors, including pipeline, railroad and internal water transport, medical services and scientific research activities, i.e., market access for foreign companies would still be restricted in these areas.

Russia maintained certain limitations on market access and national treatment with respect to various types of services that are provided in the Russia’s WTO Accession Protocol. For example, priority is
provided for Russian entities acting as contractors, suppliers and carriers that participate in production sharing agreements for exploration, development and production of mineral raw materials.

Foreign insurance companies will be allowed to establish Russian branches nine years after Russia joined the WTO, i.e. in 2021.

Foreign banks have been allowed to establish subsidiaries in Russia. There is no cap on foreign equity in individual banking institutions, but the overall foreign capital participation in the banking system of the Russian Federation is limited to 50% (not including foreign capital invested in banks that may potentially be privatized). In order to control the foreign quota in the Russian banking sector the prior authorization of the Russian Central Bank is required for the establishment/increase of the charter capital of credit organizations with foreign participation and alienation of shares in favor of non-residents. Starting from the date of accession to the WTO Russia should allow 100% foreign-owned companies to be engaged in professional services and business services, including legal, architecture, accounting, engineering, health care, advertising, and market and management services, audio-visual services, distribution services including express delivery and wholesale and retail services. Additional market access obligations were undertaken for foreign providers of energy services, computer and computer-related services.

9.2.4 Other commitments

Russia made a commitment to gradually decrease domestic support for the agricultural sector from USD 9 billion in 2012 to USD 4.4 billion by 2018. In 2015 domestic support did not exceed USD 7.2 billion. In 2016 domestic support should be reduced to 6.3 billion.

Russia has maintained the right to impose strict limitations on market access and national treatment for foreign persons in such sectors as energy, telecommunications and education. On telecommunications, the foreign equity limitation (49%) would be eliminated during the four years following accession. The Russian Federation also agreed to apply the terms of the WTO’s Basic Telecommunications Agreement.
Russia did not sign the WTO Government Procurement Agreement (the “GPA”) and did not make any obligations in this sphere, but agreed to become an observer to the GPA and initiate negotiations for GPA membership within four years. Thus, the Russian Government has preserved the right to restrict the access of foreign companies and goods with a foreign country of origin to its biggest market.

Russia has already issued a number of limitations on access of the following types of foreign products to its public procurement market:

- heavy machinery (dual use and for military purposes);
- machines and motor vehicles;
- light industry products;
- medical devices;
- software operating systems;
- certain medicinal preparations.

In addition, a wide range of products containing “Made in Russia” status may enjoy a 15% preference in public tenders.

9.2.5 Dispute Settlement in the WTO

WTO members can initiate disputes over any trade-related issue. Any WTO member may initiate a dispute against any other WTO member if it believes that this member violates: (i) any provisions of the WTO Agreements, or (ii) its commitments within the WTO.

Starting from 22 August 2012, any trade measures applied by Russia with respect to any other WTO member state must be in compliance with Russia’s commitments within the WTO and the WTO rules. When any WTO member state considers that Russia is not observing any of its commitments within the WTO, or is applying regulations that do not comply with the WTO rules, it can impose reverse measures or bring a case to the WTO Dispute Settlement Body. Vice
versa, Russia can challenge any inconsistent measures applied by WTO members against Russia. Despite acceding to the WTO, Russia is still able to impose immediate measures of protection provided that: (i) the measure is aimed against measures of another WTO member state that are inconsistent with the WTO rules and (ii) it was impossible to predict the adverse consequences for economic damage to the Russian economy at the moment of Russia's accession to the WTO.

Disputes within the WTO are settled by the Dispute Settlement Body (the “DSB”). Between January 1995 and December 2015 WTO members initiated more than 501 disputes. The right of the WTO members to initiate disputes is based on a presumption that violation of the WTO rules and commitments has an adverse impact on other WTO members.

The DSB is a special institution of the WTO, located at the WTO headquarters and specifically designated for the resolution of all disputes between WTO members. The DSB is made up of all member governments, usually represented by ambassadors or the equivalent, and is headed by the chair.

Disputes are often resolved at the pre-dispute stage by means of consultations of the interested WTO members performed under the patronage of the DSB. Only WTO member countries can participate in the disputes, private companies do not have this right.

The WTO dispute settlement procedures include four stages: (i) consultations (60 calendar days), (ii) consideration of a complaint by the panel (9 months), (iii) appellate procedures (90 days) and (iv) implementation of the decision in the form of either removal of a measure, or compensation, or retaliation (15 months). In practice these terms might be extended.

If the respondent loses a dispute it will be bound by the final decision of the DSB (i.e., the panel or appellate body) and should inform the DSB of its intentions and measures to implement the DSB ruling.
When the respondent is unable to comply with the decision immediately it must be provided with a “reasonable time” to do so.

The DSB should supervise performance of its rulings and issue official reports on their implementation. If a losing respondent fails to comply with the DSB ruling within a reasonable period of time the complainants are entitled to apply temporary measures including (i) request compensation or (ii) suspension of concessions (retaliation). If a losing respondent fails to implement a DSB decision within a reasonable period of time established by the DSB, the respondent shall enter into consultations with the complainant and agree on mutually acceptable compensation (a benefit, no monetary payments).

In cases when no satisfactory compensation has been agreed within 20 days after the expiry of the reasonable period, the complainant may request the DSB to unilaterally suspend its concessions or other obligations (for example, increase tariff rates) in order to compensate for the damage. Priority should be given to the subject of the dispute (i.e., the relevant goods, services, or affected IP rights).

According to statistics, the most probable areas for disputes between Russia and its WTO counterparts include: subsidies, sanitary and phytosanitary measures, technical barriers to trade, trade-related investment measures, anti-dumping, countervailing and special safeguard measures, rules of origin, customs valuation, and import licensing in such sectors as: oil and gas, agriculture, the automobile and motor industry, aircraft, beef, steel and the pipe industry, air transportation services, energy (electricity) tariffs, etc.

The first WTO claim involving Russia was initiated by the European Union (the “EU”) in 2013 regarding the imposition by Russia of a “utilization fee” on motor vehicles that, in the view of the EU, discriminated against imported vehicles that were subject to the utilization fee when locally produced vehicles were exempt from the fee. In October 2013 the DSB established a panel (case No. DS462), after which Russia annulled the discriminating regulations and the
case was discontinued. The “utilization fee” on motor vehicles and spare parts was also challenged by Japan (case No. DS463);

In the course of 2014 and 2015 Russia was involved in a number of disputes within the DSB initiated by the EU, Japan and Ukraine. In particular, the EU challenged the following measures applied by Russia which, in the view of the EU, were inconsistent with the WTO regulations: statutory limitations on the importation into Russia of live pigs and their genetic material, pork, pork products and certain other commodities from the EU, purportedly because of concerns related to cases of African Swine Fever (case No. DS475); anti-dumping duties on light commercial vehicles from Germany and Italy levied by Russia pursuant to Resolution No. 113 of 14 May 2013 of the Collegium of the Eurasian Economic Commission (case No. DS479); tariff regulation that Russia applies to certain goods in both the agricultural and manufacturing sectors (case No. DS485). On 21 October 2015 Ukraine filed a claim with the DSB challenging the restrictions imposed by Russia in 2013 on the importation of railway equipment and parts thereof (case No. DS499).

In 2015 Russia initiated 4 disputes against the EU challenging “cost adjustment” methodologies used by the EU to calculate dumping margins in anti-dumping investigations and reviews in connection with the so-called “Third Energy Package” Directives, Regulations, implementing legislation and decisions. Russia also acted as a plaintiff against Ukraine on anti-dumping measures imposed by Ukraine on imports of ammonium nitrate originating from Russia and a third party in disputes involving the EU, China, USA and Japan in eight other cases.

9.3 CIS Free Trade Agreement

On 18 October 2011 CIS countries signed the Free Trade Agreement of the Commonwealth of Independent States (the “CIS FTA”), which came into force for Russia, Belarus and Ukraine on 20 September 2012. By mid December 2012 the CIS FTA was ratified and came into
force for Armenia, Kazakhstan and Moldova. Azerbaijan and Turkmenistan did not sign the CIS FTA.

Uzbekistan did not sign the CIS FTA, but on 28 December 2013 Uzbekistan ratified the protocol “On Application of the CIS FTA dated 18 October 2011 between the CIS FTA Member States and the Republic of Uzbekistan” (the “Protocol”). According to the Protocol, Uzbekistan and other member states of the CIS FTA that have ratified the Protocol would be mutually bound by the general rules of the CIS FTA with certain significant exemptions set forth in the Protocol.

The CIS FTA was ratified by Kyrgyzstan in 2014. As of December 2014 and 2015 Tajikistan was the only member that had not ratified the CIS FTA.

The CIS FTA provides for the free movement of goods within the territory of the CIS, no import customs duties, non-discrimination, gradual decrease of export customs duties and abolishment of quantitative restrictions in mutual trade between the CIS FTA member states. The CIS FTA covers goods originating from the signee states, and among other points provides that:

- goods originating from the CIS FTA member states are not subject to import customs duties in the country of import except for certain cases (i.e. sugar originating from Ukraine);

- the CIS FTA fixes the maximum rates of export customs duties that for Russia primarily cover raw materials and agricultural products (i.e., cellulose – 10%, vegetables – 7%, oil, coal etc.); there are four positions for Ukraine and 76 for Russia;

- the signees agree not to apply quantitative limitations in trade;

- free transit is established (an exception is made for pipeline transit, which should be separately agreed between the signees).
The CIS FTA establishes that the WTO rules will govern customs transit of goods, application of special safeguard, anti-dumping and countervailing measures, technical barriers to trade, as well as the provision of subsidies and other measures applied in trade between its signees.

Disputes between the member states of the CIS FTA should be settled at the Economic Court of the CIS. At the discretion of a member state, a dispute arising out of the WTO rules can also be settled under the WTO dispute settlement procedures.

It is expected that the member countries will resolve certain important mutual trade issues within the legal framework of the CIS FTA (i.e. transit of gas, export customs duties for certain products, access to government procurement, etc.).

The CIS FTA provides for certain exemptions, including import customs duty and withdrawal from national treatment for certain products and allows subsidies in certain circumstances. In addition, the CIS FTA does not prevent the signees from applying non-tariff measures.

It should be noted that in 2014 two members of the CIS FTA, Moldova and Ukraine, ratified agreements of association with the EU. The statutory requirements of association with the EU could create certain collisions with implementation by Moldova and Ukraine of the CIS FTA. In this regard, other member states of the CIS FTA could adjust the conditions of membership of Moldova and Ukraine in the CIS FTA.

Starting from 1 January 2016 Russia suspended the application of CIS FTA with respect to Ukraine.

9.4 Eurasian Economic Union and Customs Union

In 2010 Russia, Belarus and Kazakhstan launched the Customs Union, which is a unified customs territory with free movement of goods, unified customs tariff and non-tariff regulations and regulations on
application of indirect taxes. Once goods have been imported and released in any of the CU member state, such goods may be freely moved within the whole CU territory, except for certain specific types of goods (for example, medicinal preparations, medical devices, dual use products, etc.). The CU also adopted unified technical regulations, rules for veterinary and phytosanitary control, etc.

Starting from 1 January 2015 the CU was transformed into the Eurasian Economic Union (EAEU). The CU and CU regulations became an integral part of the EAEU. The EAEU establishes a unified set of rules governing the most important economic sectors that should cover all its member states by 2020. In particular, in addition to the unified customs territory that has already been in place since 2010, the EAEU provides for free trade in services, including market access to natural monopolies (e.g. railways, energy), access to financial services, including free movement of capital and workforce, unified competition laws, macroeconomic policy, and unified regulations for taxes and intellectual property. This should also include unified regulations for circulation of medicinal preparations and medical devices etc. Since the EAEU is the successor of the CU, below we refer to all of the regulations implemented at the CU level as the “EAEU” regulations. Starting from 1 January 2015 the EAEU comprised the territories of Russia, Belarus, Kazakhstan and Armenia. Kyrgyzstan joined the EAEU on 12 August 2015.

Armenia does not have a common border with other EAEU members (it is separated from the EAEU by the territories of Azerbaijan and Georgia, which are not members of the EAEU). Thus in order to freely trade in goods with Armenia, the other EAEU countries need to apply the customs transit procedure across the territories of Azerbaijan and Georgia.

The main regulatory body of the EAEU is the Supreme Eurasian Economic Council. Similar to the CU, the Eurasian Economic Commission retains the status of executive body of the EAEU and is also authorized to issue implementing regulations of the EAEU.
9.5 Unified Tariff Regulations of the Customs Union

The classification of goods for customs purposes in Russia is carried out in accordance with the Unified Customs Tariff of the EAEU, which is based on the International Convention on the Harmonized Commodity Description and Coding System, dated 14 June 1983 (the Harmonized System), providing that all the goods crossing the customs territory of the EAEU are assigned customs classification codes (HS codes) determined in accordance with the general rules of interpretation of the Harmonized System. Customs authorities control the correctness of the classification of goods.

The Unified Customs Tariff of the EAEU has undergone periodic revision since 2011 with the rates of import customs duties set in accordance with Russia’s obligations within the WTO, which were outlined in the WTO Accession Protocol.

9.6 Preliminary Classification Decisions

At the discretion of importers of record, the Russian customs authorities may take preliminary decisions on classification of goods (“a preliminary classification decision”) which is equivalent to binding tariff information used in the USA and the EU.

Information and documents provided by applicants for the preliminary classification (such as technical descriptions, pictures, samples, etc.) should be exhaustive and should contain all the data required for proper determination of a HS classification code. Preliminary classification decisions are issued in the name of the applicants (i.e. importers of record) and may only be used by them (for more information please refer to the section “Importer of Record” below). The timing for issuance of a preliminary classification decision is 90 calendar days from the date of filing an application, which may be extended for a number of reasons provided by law. Preliminary classification decisions are valid for three years and are mandatory for all Russian customs authorities with respect to the classified goods.
9.7 Sanitary-Epidemiologic Measures

Unified sanitary measures of the EAEU are applied in order to confirm that goods imported and distributed in EAEU territory comply with all safety requirements and do not pose any threat to life and health. The unified sanitary rules are applied at the external border and within the whole territory of the EAEU and include three lists of goods:

1. The list of goods that are subject to sanitary-epidemiologic control (includes almost all food products and consumer goods). Goods falling under this list must comply with the established sanitary and safety requirements;

2. The list of goods that are subject to state registration, which is required in order to confirm compliance with sanitary-epidemiologic and hygiene requirements and applies to food products, cosmetic and household chemical products, certain clothing items, mineral water, alcoholic beverages, etc. The state registration must be carried out prior to the goods’ importation into the EAEU;

3. The list of exemptions from state registration (for example, when goods subject to state registration are imported for exhibition purposes).

Sanitary-epidemiologic control is performed at EAEU customs entry points when goods cross the EAEU customs border as well as within EAEU territory. State registration certificates for the controlled goods, if any, must be issued prior to the goods’ importation into EAEU territory.
9.8 Technical Regulations (Confirmation of Compliance)

Confirmation of compliance is designed to confirm that goods conform to the statutory quality and consumer characteristics requirements. Confirmation of compliance in Russia is based on the Russian national regulations and on the legislation of the EAEU. The technical rules of the EAEU establish a unified list of goods that are subject to mandatory confirmation of compliance in the form of (i) certification or (ii) declaration of compliance, as well as unified forms for the (i) certificate and (ii) declaration of compliance that are issued by the accredited agencies and laboratories of the EAEU member states and are valid throughout the EAEU.

In addition to the EAEU unified list of goods that are subject to mandatory confirmation of compliance, the technical rules of the EAEU include a number of technical regulations with requirements for goods on the unified list, including 47 priority CU technical regulations. As of December 2015 35 technical regulations of the EAEU have already been issued including regulations on the safety of machinery and equipment, elevators, low-voltage equipment, clothes, grain, food, juices, perfume and cosmetics, toys, pyrotechnics, packaging, electromagnetic compatibility, etc. In 2016 technical regulations of the EAEU on tobacco products will come into force. Some technical regulations are scheduled to be issued in 2016 or later (for example, on the safety of chemical products; buildings and constructions, construction materials and related products; poultry, fish, etc.).

Once the EAEU technical regulations come into force the relevant Russian national requirements (standards) for the same products should be repealed. Starting from 1 January 2015 the EAEU member states cannot issue any additional technical requirements at the national level for any products that are not included in the unified list of goods of the EAEU subject to mandatory confirmation of conformity.

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It should be noted that currently the technical rules of the EAEU and national (i.e. local) standards and national lists of products that are subject to mandatory confirmation of compliance may still exist separately in the EAEU countries. Therefore, currently two different systems of compliance confirmation co-exist in the EAEU, i.e., the unified system of the EAEU and separately applied national (local) technical rules of Russia, Belarus, Kazakhstan, Armenia and Kyrgyzstan. Prior to importation of goods into any of the EAEU member states it is important to ensure that the goods comply with both systems.

In order to facilitate and improve the Russian system of technical regulation a Federal Accreditation Service was established at the end of 2011, which should be a common body responsible for the accreditation of certification bodies and testing laboratories, maintenance of registers and state supervision (http://fsa.gov.ru/).

Mandatory technical regulations of Russia and the EAEU together with the Russian laws on protecting consumer rights apply the following requirements with respect to the controlled goods:

1. Minimum technical safety requirements;
2. Mandatory certification/declaration of compliance;
3. Mandatory marking and labeling requirements;
4. Use of specific signs, including the use of a market circulation mark (i.e., “EAC”).

Additionally, certain specific certification requirements may apply with respect to goods in the fire safety regulations sphere (i.e., various construction products and goods specifically designated for fire safety), as well as hardware and software products in the sphere of protection of personal data and other types of confidential information.
Starting from 2014, the Russian customs authorities should no longer require certificates or declarations of compliance to be submitted in hard or in electronic copies during customs clearance of imported goods. The importer of record needs to indicate the relevant details of such certificates or declarations (if any) in the import customs declaration. Despite that fact, in practice sometimes the importers of record are required to provide certificates or declarations of compliance in hard copies (for example, in case of additional customs control for certain shipments).

9.9 Phytosanitary and Veterinary Control

Importation into Russia of certain types of products, such as living animals, animal foods, meat, meat products, seafood, plants, etc. are subject to special supervision (control) in accordance with the unified veterinary and phytosanitary rules of the EAEU. Thus, a consignment with controllable goods can be imported into Russia in accordance with the unified veterinary requirements of the EAEU and with special permission (a veterinary or phytosanitary certificate) issued in the established procedure by the Russian Federal Service on Veterinary and Phytosanitary Supervision (Rosselkhoznadzor), which is responsible for monitoring controllable goods and maintaining the register of foreign companies authorized to export certain goods into Russia, as well as lists of certain products banned for importation into Russia from third countries. Note that Russia still applies certain local rules on veterinary and phytosanitary control in addition to the supranational regulations effective in the EAEU (for example, such requirements are applied to the importation of seeds).

In 2015 the Federal Law “On Quarantine of Plants” came into force which established general requirements over importation and exportation of quarantineable plants to/from Russia including special requirements applied to importation of plants subject to low and high quarantineable risk, special procedures of customs border control over imported and exported plants, etc. that replaced relevant provisions of the Federal Law “On Quarantine of Plants” dated July 15, 2000.
9.10 Import and Export Licensing

The legal basis for the import licensing system is the EAEU legislation on non-tariff measures. The purpose of the licensing measures is to monitor and control imports and exports of goods which are classified as sensitive by the EAEU member states or by the international community. Import/export licenses are required: (i) in the event of temporary quantitative restrictions on imports of certain types of goods; (ii) to regulate the importation of certain goods for reasons of national security, health, safety or environmental protection; (iii) to grant an exclusive right to import or export certain goods; or (iv) to carry out international obligations. A unified list of goods to which import and export limitations and prohibitions are applied was established on the level of the EAEU, based on which certain categories of goods (e.g., fertilizers; rare animals and plants; goods with a high level of cryptographic protection, hazardous waste, drugs, items of cultural value, precious stones and metals, etc.) require an import or export license for their movement across the EAEU border. In Russia licenses are issued by the Ministry of Industry and Trade in accordance with the unified licensing rules of the EAEU. Products containing any cryptographic devices or functions and not requiring an import license (which covers the majority of IT hardware and software goods, such as electronics; phones; computers; laptops; modems; software, etc.) are subject to mandatory notification with the Russian Federal Security Service. A Russian licensee may import licensed goods into Russia only and has the right to transit such goods through the territory of the other EAEU member states. In 2013 the Eurasian Economic Commission issued regulations on the procedure for providing licenses and notifications.

It should be noted that in accordance with the WTO requirements on non-discrimination in foreign trade, the import licensing of medicinal preparations was abolished in the CU in 2011. The import licensing of alcohol products was also abolished automatically in the CU as of the moment when Russia became a member of the WTO.
9.11 The new Customs Code of the EAEU

In 2015 members of the EAEU decided to adopt the new Customs Code of the EAEU which should replace the existing Customs Code of the CU (effective from 2010). The draft of new Customs Code should result in codification of some 17 supranational regulations of the EAEU, including the customs valuation rules, importation and exportation of cash by individuals, international mail, etc. The draft Customs Code of the EAEU was structured to contain 9 sections, i.e.:

1. General provisions;
2. Customs formalities and parties engaged in activities in the customs sphere;
3. Customs procedures;
4. Customs payments, special safeguard, anti-dumping and countervailing measures;
5. Peculiarities of movement of certain types of goods across the Customs Border of the Union;
6. Conducting customs control;
7. Customs authorities;
8. Activity in the customs sphere. Authorized economic operator;

The draft Customs Code should also include 4 annexes on: (i) procedures of moving goods between Kaliningrad and EAEU territory; (ii) application of the free customs zone procedure; (iii) interaction between the customs authorities of the EAEU when the customs transit procedure is applied; (iv) the list of data for exchange between the customs authorities of the EAEU.
The new Customs Code should include the following main innovations:

1. all customs clearance procedures should be performed electronically (documents in hard copies will be allowed only in certain exceptional cases);

2. goods should be released automatically without the involvement of customs inspectors;

3. goods must be released by the customs authorities within 4 hours after registration of a customs declaration (currently this process takes 1 day);

4. the declarant should have an opportunity to file import/export customs declarations without supporting documents;

5. rights and simplifications for the status of authorized economic operators should be extended, in particular, authorized economic operators (i) will be given priority to perform customs operations, (ii) will not be obligated to provide security for paying customs duties and taxes in certain cases, (iii) will have priority in developing pilot projects and experiments performed by customs;

6. customs regulations would be established primarily on the supranational level of the EAEU, the new Customs Code of the EAEU should include far fewer references to national legislation of the EAEU member states than the Customs Code of the CU;

7. the importers of record should apply a special procedure on preliminary informing of the customs authorities on the importation of goods;
8. A single point of contact between importers and customs authorities should be established, through which all procedures and formalities should be completed.

The Customs Code of the EAEU is expected to simplify customs clearance procedures for importers and exporters and should satisfy the requirements of the EAEU business community. Initially, the EAEU had planned to adopt the new Customs Code in the beginning of 2016, but subsequently this term was extended to 2017.

9.12 The Russian Customs Authorities

The introduction of the CU/EAEU has not affected the internal structure of the Russian customs service, which remains as follows:

1. The Federal Customs Service;
2. Regional customs administrations;
3. Customs-houses; and
4. Clearing Customs posts.

Importantly, together with the formation of the CU, a new concept of customs clearance of goods at the Russian external state border is currently being implemented, which should entail a significant reorganization of the Federal Customs Service and the whole local customs clearance infrastructure. Under this concept it was expected that the customs clearance of goods transported by road should be performed at the external border of Russia starting from 1 January 2012, however, this term was re-scheduled due to the considerable infrastructure changes needed. This concept was implemented in 2013. The customs clearance of goods transported by rail should be performed at the external border of Russia starting from 1 January 2020. It is expected that when this reorganization is completed, physical shipment of goods into Russia will often coincide with their release for free circulation.
As a result of implementation of the concept it is expected that a large number of regional customs administrations and customs houses situated far from the customs border of Russia will be closed or considerably reduced in staff and functionality. The concept would require significant economic and infrastructural development of the Russian border regions in order to provide sufficient customs, logistic and warehousing resources to process clearance and control of almost all the traffic and goods crossing the Russian border. At the same time considerable governmental and private investment is still required for successful implementation of the concept by 2020.

On 28 December 2012 the Russian Government issued a Resolution on the Strategy for Development of the Russian Customs Authorities up to 2020 (the “Strategy”) which establishes key priorities for the Russian customs authorities for each type of activity, including: customs payment collection, law enforcement activities, increasing the quality of services provided to Russian importers and support to the integration processes within the CU/EAEU.

According to the Strategy, before 2020 the Russian customs authorities should significantly simplify and speed up customs clearance procedures. Thus, all the services rendered by the customs were transferred into electronic form by 2014 against 1% in 2012. The number of documents required to cross the customs border should be decreased from 10 in 2012 to 4 by 2018 and the maximum clearance time for goods imported for internal consumption should be decreased from 96 hours in 2012 to 2 hours in 2018. It was planned to increase the total number of customs declarations filed electronically without provision of documents in hard copy from 40% in 2012 to 100% by 2014 (except for potentially risky supplies/hazardous goods) and this was achieved by the customs authorities as by 2014.

At the same time, the Russian customs authorities should increase their performance indicators for collection of customs payments, performance of customs controls and in general law enforcement practice. For example, the amount of customs payments reimbursed to the importers of record as a result of challenging claims against
actions (inaction) of the Russian customs authorities should not exceed 5% of the total amount of customs payments collected on an annual basis. The total amount of convictions in administrative cases initiated by customs authorities should be increased from 82% in 2012 to 89% by 2020. Customs audits that result in detecting customs violations should reach 85% by 2020, against 72% in 2012. This means that as well as making efforts to simplify customs clearance procedures and increase the quality of services rendered, the Russian customs authorities would still scrutinize shipments imported into Russia and perform extensive clearance and post-clearance customs control over the imported goods and importers’ foreign trade activities.

In 2015 the Russian Government announced about an initiative to divide the Russian Federal Customs Service into two parts - fiscal and law enforcement. If the initiative is adopted, the fiscal functions related to the collection of import customs duties and taxes could be delegated to the Russian Federal Tax Service, while the law enforcement functions could be delegated to the Federal Security Service.

9.13 Declarant (Importer of Record)

The resident principle applies in the EAEU, i.e. only companies that are local residents of a EAEU member states and are parties to cross-border supply agreements may act as importers of record before the customs authorities. Generally, in order to act as the importer of record, a person must have a direct interest in goods imported under a foreign trade transaction (i.e. the right to own, or possess, or dispose of imported goods).

As a general rule, foreign entities may not act as importers of record, except for a limited number of cases when goods may be imported by representative offices or branches of foreign legal entities accredited in Russia.
The legal status of importers of record is unlikely to change under the new Customs Code of the EAEU.

9.14 Registration of Importer of Record with Local Customs Authorities

Russian customs regulations do not require importers/exporters of record to be registered with the Russian customs authorities. However, a clearing customs post must open a file for every importer/exporter of record that clears goods through customs. The file should contain a standard set of documents that must be filed with the clearing customs post together with the first customs declaration and usually includes: an application together with documents confirming legal name/address/tax ID, certified copies of statutory documents, and a certified letter from the bank confirming a valid bank account (note: this list of documents is not exhaustive and might be somewhat different depending on the requirements of a particular customs house). In order to avoid any possible delays importers/exporters of record prefer to submit the above-mentioned documents before customs clears the goods.

The Russian customs authorities have started applying a unified electronic database of all documents, including the files of importers of record. Thus, once an importer of record opens a file at any Russian clearing customs post such importer of record would only need to provide the same electronic file of its statutory documents in order to start customs clearance formalities at another customs post. Hard copies are no longer required, but may still be used at the discretion of the importer of record.

9.15 Customs Brokers (Representatives/Agents)

A declarant may clear goods through a customs broker (in accordance with the Customs Code of the CU the term “customs representative” is used) — an intermediary legal entity fulfilling customs clearance formalities on behalf and in the name of, and as instructed by, the declarant or another person who is authorized to perform customs
operations. The customs representative may pay customs duties and taxes on declared goods. Every customs representative should be included by the customs authorities in the official list of customs representatives (in Russia the responsible body is the Federal Customs Service). A customs representative is jointly and severally liable together with the declarant for the observance of the customs legislation. According to the official list, by 2015 there were 382 registered customs representatives in Russia.

At the same time, a customs declarant can choose whether to engage a customs representative or to perform customs clearance on his own behalf.

The legal status of customs representatives is unlikely to change under the new Customs Code of the EAEU.

9.16 Authorized Economic Operator

Authorized economic operator (AEO) is a special status granted by the Russian customs authorities to Russian importers and exporters that is based on the Kyoto Convention and is similar to the already established concept in the European Union. AEO status ensures certain procedural simplifications, including but not limited to:

1. Temporary storage and release of imported goods at the premises of the AEO;

2. Release of imported goods for free circulation prior to their declaration to the Russian customs authorities;

3. Simplified customs transit procedure;

4. Other customs benefits that could be provided to AEO by the CU/EAEU customs regulations.

According to the draft Customs Code of the EAEU the AEOs should be granted more customs simplifications and privileges, which could include: (i) priority when performing certain customs operations, (ii)
not being obligated to provide security for paying customs duties and taxes, (iii) priority in developing pilot projects and experiments performed by customs. As of December 2015 AEO status had been granted to some 150 Russian legal entities.

9.17 Customs Clearance

Goods that are moved into Russia through Kazakhstan, Belarus, Armenia and Kyrgyzstan are placed under the transit customs regime at the external border of the EAEU and are finally released for free circulation by the Russian customs authorities. In Russia imported goods are legally released for free circulation after the Russian customs authorities confirm this by notifying the declarant electronically that the goods have been released. Imported goods are normally cleared at customs either before their shipment to Russia or when the goods reach the designated customs house/post (and are placed in a special temporary customs warehouse if necessary).

Customs clearance is normally completed by the importer of record (or a customs agent acting on its behalf) filing the customs declaration (the main document) and the required set of documents. The list of documents required for customs clearance in each particular case depends on the type and characteristics of the goods and terms of their importation (e.g. the customs regime chosen). Notably, according to the draft Customs Code of the EAEU, importers/exporters should not be obligated to enclose supportive documents with the customs declaration. This move is aimed at simplifying customs declarations for the business community and eliminates burdensome responsibilities and formalities.

The timing for the customs clearance procedure is one business day after the date when a customs declaration was registered by the Russian customs authorities, provided that all the required documentation was submitted. However, in practice the customs clearance process may take longer than the statutory term.
The legislation gives a customs inspector the right to extend that term by up to ten business days at the discretion of the chief of a customs terminal.

Under the draft Customs Code of the EAEU, the terms of release of goods by the customs authorities should be reduced to 4 hours (with certain conditions). This term could be extended only if a customs inspector requires additional supporting documentation for the imported goods, or if a declarant decided to amend information provided in the customs declaration during customs clearance.

9.18 Electronic Declaration

As of 1 January 2010 the Russian customs authorities have started to carry out customs clearance operations with the use of electronic declarations (the “e-declarations”), which should significantly speed up customs clearance formalities for declarants and customs agents. Currently customs clearance in Russia is performed electronically. Starting from 1 January 2014 almost all customs declarations have been submitted in electronic form (i.e., without any documents in hard copies), except for certain cases, for example goods sent by international mail. Customs posts are equipped with the technical facilities for performing “electronic declaration”, which makes it possible to (i) inform the customs authorities in advance over the Internet, (ii) file a customs declaration and other supporting documents in electronic form and (iii) electronically release the goods. E-declaration also makes it possible for importers located far from clearing customs posts to perform customs clearance formalities and release goods at the Russian border remotely, i.e. without being physically present and without the need to provide documents in hard copies.

According to the draft of new Customs Code of the EAEU, almost all customs clearance formalities should be performed electronically. Hard copies could be allowed only in the following exceptional cases: (i) customs transit of goods, (ii) importing/exporting goods designated
for personal use by individuals, (iii) goods sent by international mail, (iv) declaration of vehicles of international transportation.

In addition, pursuant to the draft of new Customs Code of the EAEU, the release of goods by the customs authorities should be performed automatically (currently customs release is executed by customs officers) and relevant reports issued by customs should be sent by electronic mail.

9.19 Customs Regimes

9.19.1 Introduction

Goods may be placed under any of the applicable customs regimes (i.e. “customs procedures”) established by the Customs Code of the CU/EAEU that are based on the International Convention on Harmonized Commodity Description and Coding System. Below is a brief description of the most commonly used customs regimes.

9.19.2 Internal (Home) Consumption

Importation of goods for internal (home) consumption (usually, the synonymous term “release for free circulation” is used in practice) on Russian territory is the main customs regime for importation with the ensuing free circulation of the goods in Russia without any further customs restrictions or post-clearance customs control, provided that all applicable customs duties and taxes have been paid.

9.19.3 Temporary Import

Temporary import is considered to be a special “economic” customs regime, pursuant to which foreign goods are used for a certain period of time (the term of the temporary import) on Russian customs territory with full or partial exemption from import customs duties and taxes (i.e., import VAT and excise taxes, where applicable). Temporarily imported goods must remain unchanged, except for changes due to natural wear and tear or natural loss given normal transportation, shipment, storage, and use conditions. Russian
importers are allowed to perform operations with temporarily imported goods required for their preservation, maintenance of the consumer features of products, and keeping the products in the condition they were in before they were cleared at customs for temporary importation into Russia.

Certain products (e.g., pallets and other types of returnable packaging for goods temporarily imported to further international trade, tourism, science, culture, cinema and sporting relations, etc.) may be temporarily imported with full exemption from import customs payments.

Where partial (rather than full) exemption from import customs payments is granted, the temporary import regime contemplates that 3% of the total amount of import customs payments (that would have been paid if the goods had been fully imported for free circulation) must be paid for each month the goods stay in Russia under this regime.

However, the generally permitted term for temporary import is only two years. There are some statutory requirements that should be met in order to be eligible for exemption from customs duties. In particular, temporarily imported goods may not be sold or otherwise transferred to any third party. The customs authorities could also request security for import customs payments (most likely a bank guarantee or cash deposit) from the importer of record before applying the temporary import regime.

9.19.4 Bonded Warehouse

Under the bonded warehouse customs regime, goods imported into the EAEU are stored at special places (bonded warehouses) under customs control without an obligation to pay import customs duties and taxes, and without regard to domestic quota restrictions or other economic measures. Storage at a bonded warehouse is subject to regular non-refundable storage fees as contractually agreed with the bonded warehouse’s owner. Goods so imported and put under this
customs regime (pursuant to the permission of the customs authorities) have the status of foreign goods.

The maximum term for the storage of imported goods at a bonded warehouse is three years, with an option to extend this term with the permission of the customs. Goods with a shorter useful life and/or sale terms must be assigned to other customs regimes and shipped from such bonded warehouses at least 180 days prior to expiration of such term (except for products subject to accelerated deterioration with respect to which the term for storage at a bonded warehouse could be reduced).

The importer of record or other interested parties having placed imported goods in a bonded warehouse can sell or otherwise transfer them to third parties, with preservation of the same customs status, with the prior consent of the customs authorities, which is followed by a legal substitution of the importer of record by the third party that acquired these goods. Please, however, note that such a sale or transfer might be subject to local Russian taxation, since apart from the special customs regime a bonded warehouse is no different from any other warehouse located in Russian territory.

Goods placed in a bonded warehouse can be further exported, placed under another customs regime, including importation for internal (home) consumption. When sold to Russian customers for free circulation on the local market, such goods should be declared for the “internal consumption” customs regime with payment of the relevant import customs duties and taxes.

9.19.5 Transit

Under the customs transit regime goods cross the customs border of the EAEU and are under customs control during their movement across Russian customs territory without an obligation to pay import customs duties and taxes, and without regard to domestic quota restrictions or other economic measures. Only foreign goods can be subject to this customs regime, which is granted only based on the
permission of the customs authorities. The regime is normally granted either to a carrier or an expediter if it is a Russian legal entity or an entity of the EAEU. The transit customs regime is terminated when the goods are actually shipped out of Russia. A special transit customs declaration is required for declaration of the transit customs regime.

Security for payment of customs duties and taxes is usually required before the goods are placed under the customs transit procedure. However, TIR carnets are still accepted by Russian customs as an exemption from the obligation to provide such security until 28 February 2015. After that date the Russian customs authorities will no longer accept TIR carnets and importers of record will have to provide security (for example, a deposit, bank guarantee etc.).

9.19.6 Destruction

Products having the status of foreign goods can be declared for destruction before the customs authorities, which would imply that such destruction must be completed under customs control and the importer would not be subject to import customs duties and taxes with respect to such destroyed products. However, the cost of destruction must be fully covered by the importer claiming the regime. Moreover, the waste generated as a result of such destruction would be subject to customs clearance requirements and import customs duties and taxes under general rules.

9.19.7 Abandonment to the State

Foreign goods imported into Russia may be abandoned to the Russian state, which is a special customs regime that can be selected by the importer of record. Under this regime the title to the imported goods is gratuitously transferred to the state without an obligation of the importer to pay any import customs duties and taxes, including the customs processing fee. Imported products may be cleared under this regime with a permit from the customs authorities. This regime may be a convenient way to avoid unreasonable customs clearance costs if they become applicable to goods for any reason (e.g., customs have classified the goods under a code entailing a substantially higher
import duty than the importer is ready to pay, or the customs request a permit / license that the importer does not possess, and it is too costly / burdensome to ship the goods back from Russia).

9.19.8 Export

Export of goods is the main customs regime for definitive exportation of goods out of the customs territory of Russia. Export of certain types of goods is subject to export customs duties. Export of any goods is also subject to Russian VAT with a special 0% rate (see below).

9.19.9 Re-export

Re-export is the customs regime when goods initially delivered into Russian territory may be taken out with the return of customs duties and fees (if any were paid) and without application of any economic restrictions provided by Russian laws. Generally, the re-export regime applies only to “foreign goods,” i.e. goods that were delivered into Russian territory but have not undergone the entire customs clearance procedure and have not been released under a particular customs regime. Thus, generally, the re-export customs regime is not applicable to goods that were imported into Russia and released for free circulation in Russia. The re-export regime can be applied to goods released into free circulation in relation to which it has been established that when they crossed the Russian customs border they had defects or in some other way did not conform to the provisions of the foreign trade contract in terms of quality, quantity, description or packaging, and for this reason were returned to the supplier or another nominated person. Such goods may be placed under the customs regime of re-export, if they (i) were not used or modified, except if such use or modification was required for detection of the defect; (ii) may be identified by the Russian customs authorities (iii) were re-exported within six months from the date of release into Russia.

9.19.10 Re-import

Re-import is the opposite of the re-export customs regime and is designed to exempt goods that were initially exported from the
customs territory of Russia from the payment of import customs duties and taxes, without the application of any economic restrictions provided by Russian laws and laws of the CU/EAEU.

9.20 Customs Valuation Rules

The customs value of goods imported into the EAEU, which is used as a basis for calculation of import customs duties and taxes, includes the cost of goods, insurance costs and costs on transportation of the goods to the EAEU customs border. Depending on the actual circumstances, including contractual arrangements, an importer of record may in addition have to include royalties (payable for the right to use trademarks and other IP rights in order to resell the goods) or other income (e.g. freight charges, insurance costs, etc.) into the customs value of those goods, provided that the importer must directly or indirectly (e.g. via third parties) pay those royalties, other license fees and/or other income as a direct consequence of importation of the goods being valued at customs.

It should be noted that the Russian customs authorities often increase the customs value of imported goods and the importers of record have the right to challenge such adjustments in court. Court practice shows that in the majority of cases the courts supported the importers of record.

Currently the customs value of goods should be determined in accordance with 6 methods provided by the Agreement “On Determining The Customs Cost Of Commodities, Moved Across The Customs Border Of The Customs Union” (the “Agreement”). It is planned that the new draft of the Customs Code of the EAEU will include relevant customs valuation rules and will replace the Agreement. However, the main principles of the customs valuation Rules of the EAEU are unlikely to be changed since they should be based on WTO regulations.
9.20.1 Customs Payments

Customs payments applied in Russia include the following types:

- import/export customs duties;
- taxes;
- customs clearance (processing) fees;
- utilization fee.

9.20.2 Import Customs Duties

Customs duties are imposed on top of the declared customs value confirmed and accepted by the Russian customs authorities. The rates of import customs duties in Russia normally range from 0% to 25% based on the Unified Customs Tariff of the CU/EAEU. The unified rates of import customs duties apply to goods originating from all countries outside the CU/EAEU except when tariff preferences or the free trade regime are applied (e.g. the CIS FTA).

Starting from 1 July 2010 the import customs duties are paid to the unified budget of the CU/EAEU and are subsequently distributed among the members of the CU/EAEU. As mentioned above, the rates of import customs duties are based on Russia’s commitments to the WTO.

9.20.3 Export Customs Duties

Even after the formation of the CU, setting export customs duties still remains within the competence of the member states. Generally, Russian mineral resources and raw materials (such as oil, petrochemicals, gas, wood, metals, etc.) are subject to export customs duties. There is no unified list of export customs duties and the Russian Government separately establishes the export customs duties for particular types of products. The Russian Government establishes the rates of export customs duties for oil and petrochemicals at 2 month intervals. Export customs duties may be deducted for corporate
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profits tax purposes. Oil supplied to Belarus starting 1 January 2011 is duty free and the export customs duties are levied when it leaves the external border of Belarus.

9.20.4 Import VAT

Starting from 1 July 2010 payments of import VAT and distribution of the VAT between member states are performed based on a special agreement signed by the member states. The customs VAT applies to the sum total of the customs value and the customs duty. Import of goods is generally subject to Russian customs VAT levied at the same rates as Russian sales VAT (i.e. 18% and 10%). VAT is imposed on all goods imported into Russia and also applies to the sale of goods, works and services in Russia. The general VAT rate is 18% and applies to most goods, works and services. The 10% VAT rate applies to limited categories of goods, e.g., pharmaceuticals, children’s products, some food products, while some other medical equipment and medical goods, art and cultural goods, etc. may be VAT exempt. Import VAT may generally be offset against output VAT collected from local customers.

Pursuant to a direct provision of the Russian Tax Code the importation of products that do not have analogues manufactured in Russia and are included in the list approved by the Russian Government is VAT exempt. This exemption came into effect from 1 July 2009.

9.20.5 Export 0% VAT

Exportation of goods from Russian customs territory is subject to 0% VAT. There is a special statutory procedure that Russian exporters of record must comply with in order to apply the 0% VAT rate to exports. Generally, they must provide the Russian tax authorities with the following documents:

1. The contract for the exportation of goods;
2. A customs declaration bearing a mark of the Russian customs authorities evidencing the actual export of goods out of Russia; and

3. Copies of shipping documentation (transfer and acceptance statements, waybills, invoices, etc., confirming the transport of the goods out of Russia).

Additional requirements are provided for the exportation of goods that were previously imported into Customs Union countries. The taxpayer must submit these documents within 180 days after the export of the goods. If the taxpayer does not meet the requirements outlined above, the taxpayer loses the right to apply the 0% VAT rate on exports and the usual VAT rates (10% or 18%) apply depending on the type of goods.

Exportation of goods from Russia to the other CU/EAEU member states is also subject to 0% VAT. The procedure for confirming the 0% rate in this case is established at the level of the CU/EAEU and has certain peculiarities (for example, the list of confirmation documents should include an application on the importation of goods and payment of indirect taxes, an extract from the bank confirming the receipt of funds paid for the exported goods, etc.).

9.20.6 Import Excise Taxes

Excise taxes apply to Russian imports of limited categories of products, like tobacco products, spirits and alcohol, beer, cars, petroleum products, diesel and motor oil.

9.20.7 Utilization Fee

Starting from 1 September 2012 Russia introduced a utilization fee on wheeled vehicles. A utilization fee should be paid for all imported or locally manufactured vehicles. Certain types of vehicles are exempt from the utilization fee including vehicles imported (i) as personal belongings of refugees and certain categories of immigrating persons, (ii) by diplomatic and consular missions and international
organizations, and (iii) that are over 30 years old and are not designated for commercial transportation (i.e. “retro-vehicles”). The utilization fee is calculated as a base rate that is RUB 20,000 for cars and RUB 150,000 for commercial vehicles that should be multiplied by increasing coefficients, which depend on certain technical characteristics of the vehicle (e.g., engine capacity and age).

In addition to the utilization fee on vehicles, starting from 1 January 2015 the Russian Government introduced an ecological fee. Importers and manufacturers of certain goods are obliged to utilize waste from such goods in accordance with utilization limits. If such manufacturers and importers fail to utilize the waste they will have to pay an ecological fee calculated on the basis of a specific formula. The list of goods subject to such utilization (including their packaging), as well as the applicable rates of utilization fees and utilization limits were adopted by the Russian Government in October 2015. Utilization limits were bounded at zero in 2015. In this regard, according to explanations given by the Russian Ministry of Natural Resources and ecology the ecological fee for the first nine months of 2015 should not be paid before 15 October 2015. Starting from 2016 the ecological fee should be paid for each year before 15 April of the next year. The Government also issued the relevant implementing regulations on the procedure to pay the ecological fee.

9.21 In-Kind Contribution

Importation of goods as an in-kind contribution into the charter capital of a Russian legal entity is duty free. After importation of the goods, the importer of record is required to prove that the goods were recorded on its balance sheet and were not disposed of.

Goods imported with no import duty as in-kind contributions into charter capital are treated as conditionally released and if the goods are alienated by the importer in any manner, the importer will be required to pay the import customs duties and import VAT plus interest for the whole term during which the duty exemption applied to the goods.
The agreement “On the Eurasian Economic Union” provides that provisions on tariff preferences for in-kind contributions should be established at the level of the Eurasian Economic Commission (until this issue is regulated by the Resolution of the Council of the Customs Union issued in 2011 and in Russia at the local level by Government decree).

9.22 Customs Inspection and Liability

Customs authorities are allowed to carry out customs inspections within 3 years after clearance of the respective goods. During a customs inspection the customs authorities verify the fact of release of imported goods and the accuracy of information stated in the customs declaration and other documents submitted to the customs authorities in the process of customs clearance. Please note that the customs authorities may check not only the declarant of the goods, the customs brokers, owners of temporary-storage and/or bonded warehouses, customs carriers, but also the legal entities authorized to dispose of the imported goods in the customs territory of Russia (e.g. the local downstream wholesalers and retailers of the imported goods).

A customs inspection may be either a documentary or on-site inspection. When the customs authorities reveal a customs legislation breach during a documentary inspection (which is performed internally at the customs house based on the documents filed by the importer of record at the time of customs clearance of goods) a targeted on-site inspection may be carried out. An on-site inspection should be performed within two months. However, in certain cases it may be extended by one month. The customs authorities may use documents and information provided by Russian banks, as well as inventory and audit conclusions, and the conclusions made by other state authorities.

9.22.1 Arrest of Goods during Customs Inspection

The customs authorities are authorized to arrest goods during a special customs inspection, if they reveal that:
1. The goods were imported without any special marks, symbols, or other elements applied in accordance with Russian legislation certifying the legality of their import;

2. The customs declaration does not contain the “Release for free circulation” or other applicable stamp of the corresponding customs regime, or the customs authorities deem such stamps fictitious or the documents on which such entries are made are missing;

3. Conditionally released goods were utilized and/or disposed of for purposes other than those permitted by customs.

Arrested goods should be returned to their owner on the final day of the customs inspection if a breach of the customs legislation was not confirmed.

9.22.2 Seizure of Goods during Customs Inspection

During customs inspections goods may be seized for a term that does not exceed one month if the import of such goods into the Russian market is directly prohibited or a simple restriction on moving the goods is not sufficient to detain the goods. Such seizure can only last for the period of the customs inspection. Generally, seized goods are removed to a temporary storage warehouse. The goods should be released on the final day of the customs inspection if a breach of the customs legislation was not confirmed. Goods may only be confiscated based on a court ruling.

9.22.3 Administrative Penalties

Based on the results of the customs inspection, the customs authorities may hold the inspected company administratively responsible for breach of the customs rules. Chapter 16 of the Russian Administrative Code provides such sanctions as administrative fines and/or confiscation of the imported goods. Note that in the case of confiscation, this sanction may be applied not only to the actual violator (the importer of goods) but also to the bona fide downstream
owner of the goods if the goods were involved in a customs law violation. Depending on the type of violation committed, the sanction against the companies could amount to fines of up to 200% of the goods’ value or the amount of customs duties and import VAT that were not paid with respect to the cleared goods in question and may also include confiscation of those goods.

In February 2015 the Russian Parliament adopted a law that provides Russian importers of record a possibility to avoid administrative sanctions in cases of self-disclosure of violations related to inaccurate declaration of goods resulting in underpayment of import customs duties and taxes, provided that the importers prove that they acted in a bona fide fashion and immediately reported such violations to the customs and took all possible measures to comply with the law.

In addition, in 2015 the draft law was issued aimed at specifying certain articles of Chapter 16 of the Russian Administrative Code and liberalization of administrative liability in the sphere of customs regulation. In September 2015 the draft law was adopted in the first reading in the Russian State Duma. The draft Law stipulates, inter alia, the following amendments:

- reducing administrative fines for a number of offences;
- excluding part 4 “Presentation to the Customs Body of Invalid Documents on the Goods” from the article 16.1 “Illegal Transportation of Goods Across the Customs Border of the Customs Union”;
- parts 1 and 2 of the article 16.3 “Non-Observance of Prohibitions and/or Restrictions on the Importation of Goods” should be united;
- Note to the article 16.2 “Non-Declaring or Misleading Declaring of Goods” should be amended and as a result, the declarant will be exempted from the administrative liability
under part 1 of the article 16.2 for self-disclosure of the offence.

There is a 2-year statute of limitations period established for customs violations. Normally it runs starting from the moment of commitment of the violation. However, in the case of lasting/repeated violations, this 2-year period runs starting from the date of discovery of the violation by the Russian customs authorities. Importantly, customs payments cannot be enforced after expiration of the statute of limitations term established for customs audits, i.e. more than 3 years after customs clearance of the respective goods.

Please note that the administrative sanctions (i.e., confiscation of goods, fines) may be imposed only on the basis of a court decision; the customs authorities may not confiscate the goods ex officio.

For a 9-month period in 2015 the Russian Customs authorities initiated 64,041 administrative cases, that is 7.7% higher than in the same period in 2014.

9.22.4 Criminal Penalties

Russian law does not have the concept of corporate criminal liability. Only individuals (i.e., the managers of an importer of record or a customs broker) responsible for a particular crime can face criminal penalties in Russia. Importantly, Russian law does not limit the application of criminal liability for corporate crimes only to employees of the relevant corporate entity that committed the offence. Relevant crimes could constitute evasion of customs payments, tax evasion and bribery.

The maximum liability for evasion of customs payments is 12 years of imprisonment or a fine of up to RUB 1 million or the amount of the salary or other income of the convicted person for a period of up to 5 years. The maximum statute of limitations for this crime is 15 years.
For a 9-month period in 2015 the Russian Customs authorities launched 1617 criminal cases, which is 6.5% more than during the same period in 2014.

9.23 Safeguard Measures

In order to protect its internal market and national manufacturers from the adverse effect of foreign competitors and neutralize losses caused by dumping, or subsidized or increased imports of goods, Russia applies certain safeguard measures.

Starting from 1 January 2015 the main provisions in this sphere are provided by the agreement “On the Eurasian Economic Union” which nullified the CU agreement “On Application of Special Safeguard, Anti-dumping and Countervailing Measures with Respect to Third Countries” dated 25 January 2008. At the same time, any anti-dumping, countervailing and safeguard measures imposed within the CU/EAEU are generally based on WTO regulations and may be imposed by the Eurasian Economic Commission based on the results of special investigations. Starting from 1 January 2015 safeguard investigations are conducted and measures are imposed by the Eurasian Economic Commission in accordance with the procedure outlined by the agreement “On the Eurasian Economic Union.”

Russia can impose safeguard measures against other countries, including WTO members, if dumping, or subsidized or increased import of products causes or threatens to cause serious damage to a Russian national industry.

A safeguard measure can be imposed based on the results of a special investigation that confirms the serious damage or negative impact caused by a particular country. The CU/EAEU regulations on safeguards and the WTO rules set special procedures and terms for conducting investigations and their review, provision of evidence, as well as special measures against circumvention of the imposed safeguard measures. Any facts and evidence should be supported and
confirmed by independent expert review based on thorough economic analysis and evaluation.

Information on all safeguard measures imposed by the EAEU and investigations conducted is publicly available on the EAEU official web-site in the Russian language at: http://www.eurasiancommission.org/ru/act/trade/podm/Pages/default.aspx.

As of December 2015 the EAEU had applied 15 measures of protection, among them 13 anti-dumping duties imposed on some products made of steel and polyamide and originating from China, Taiwan and Ukraine, bulldozers, truck tyres and citric acid from China as well as light commercial vehicles from Germany, Italy and Turkey, graphite electrodes from India; two special safeguard measures on porcelain dishes and harvesters originating from all third countries.

If an imposed safeguard measure does not correspond to the WTO rules, the exporting WTO member can bring a case to the DSB of the WTO and claim for removal of such measures, compensation or retaliation.

9.24 Export Control

Russia is a party to the 1998 Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, but still has certain peculiarities.

Should the products fall under the Russian lists of products subject to export control (the “Russian Dual-Use List”), exportation of such products out of Russia would be subject to a special export control clearance (i.e. an export control license or permit issued by the Russian Federal Service for Technical and Export Control (the “FSTEC’’)). In certain cases importation of dual-use products might be subject to export control requirements.

If a product by its HS code, description, or designation, may potentially fall under Russian export control regulations, it must undergo a special export control identification and testing in order to
determine whether a special export control clearance is required (i.e. export control license, or permit, or end-use certificate issued by the FSTEC for the importation/exportation of the products). In certain cases the Russian importers/exporters of record need to undergo an independent identification export control testing performed by testing laboratories accredited by the FSTEC.

Currently, the members of the EAEU are considering the establishment of unified rules on export control at the supranational level. Draft regulations are already in place, however, the date of adoption at the EAEU level has not yet been selected.