Protections Against Direct and Indirect Expropriation

How the United States and the European Union use Sanctions and Bilateral Investment Treaties to Protect Intellectual Property

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Abstract

This paper presents an overview of how the United States and the European Union use their sanctions and Bilateral Investment Treaty policies to protect intellectual property rights overseas from expropriation. Both territories' policies vary, with American rightsholders more capable of protecting their overseas intellectual property through the United States' sanctions policy; European Union investors, conversely, are more likely to benefit from Bilateral Investment Treaties signed by the Member States and third countries. Domestically, both the United States and the European Union have ensured that intellectual property rights are unaffected by their sanctions policy, granting exemptions to sanctioned international entities to maintain, but not use, their frozen intellectual property assets. To assess how American and European rightsholders may use sanctions and Bilateral Investment Treaties to protect their intellectual property overseas, a case study on Russia was conducted, evaluating Russia's recent post-2022 intellectual property amendments in the wake of US and EU sanctions. Ultimately, this paper concludes by determining that rightsholders are in a vulnerable position with regard to Russia, and that only through an extraterritorial sanction mechanism under 19 USC §1337 can American rightsholders guarantee that Russia's latest intellectual property revisions shall be investigated. European investors are dependent entirely upon Bilateral Investment Treaties to protect against expropriation that occurs inside Russia, but have recourse under Regulation 608/2013 to seize any infringing goods once they enter the European Union.

Keywords: United States of America, European Union, Russia, Intellectual Property, Sanctions, Bilateral Investment Treaties, Direct Expropriation, Indirect Expropriation.

Foreword

I'd like to express my gratitude to my thesis supervisor, Peter Gottschalk, for his guidance throughout this thesis writing process. He, alongside Johan Axhamn, have been instrumental in my time on this Master's programme, and I have benefitted greatly from their instruction.

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Abbreviations

BIT	Bilateral Investment Treaty
CFR	Code of Federal Regulations
CFSP	Common Foreign and Security Policy
EEA	European Economic Area
EU	European Union
GATT	General Agreement on Tariffs and Trade 1947 (1994)
GDP	Gross Domestic Product
ICSID	International Centre for the Settlement of Investment Disputes
IP	Intellectual Property
ISDS	Investor-State Dispute Settlement
JCPOA	Joint Comprehensive Plan of Action
OFAC	Office of Foreign Assets Control
PCA	European Community-Russia Partnership and Cooperation 1994
SWIFT	Society for Worldwide Interbank Financial Telecommunications
TEU	Treaty on European Union 1992 (2007)
TFEU	Treaty on the Functioning of the European Union 2007
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights 1995
UN	United Nations
UNCITRAL	United National Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
US (USA)	United States of America
USC	United States Code
USITC	United States International Trade Commission
VCLT	Vienna Convention on the Laws of Treaties 1969
WTO	World Trade Organisation

1. Introduction

1.1 Background

Expropriation can be broadly defined as the seizure of assets; although any asset can be seized either by the state or those sanctioned by the state,[1] there are also indirect seizures, whereby assets are seized in an irregular manner through states' actions.[2] The former instance can be more frequently protected against under international law, and is easier to detect given the formalities that states and other actors must abide by in seizing the targeted assets.[3] In the latter case, however, indirect expropriation may occur more subtly, depriving the owner of their property rights without a formal procedure ordering the deprivation.[4] Despite the impacts of indirect expropriation, many claims are often dismissed given that the formal procedure for seizing an asset may not have occurred.[5] It is for this reason that the United States of America ('US/USA') and the European Union ('EU') aim to define in their international strategies how direct and indirect expropriation may occur, offering their residents redress for both types of expropriation. This is mainly constituted through both territories' sanctions and Bilateral Investment Treaty ('BIT') policies, as shall be examined in this paper.

Regarding intellectual property ('IP') rightsholders, assets such as patents, copyrights, and trademarks, alongside other property, may be protected through the US' and EU's international actions. These rightsholders may benefit from sanctions and BIT policies to protect against direct and indirect seizures of their assets, as shall be explored in this paper. Proponents of the *property rights movement* have

[1] Using direct expropriation: 'a mandatory legal transfer of the title to the property or its outright physical seizure.' UNCTAD, 2012, 6.

[2] Using indirect expropriation: 'total or near-total deprivation of an investment but without a formal transfer of title or outright seizure.' UNCTAD, 2012, 7.

[3] Formalities can include demonstrating that these assets shall be used for public purposes, that the seizure is performed in a non-discriminatory manner (based on nationality or other like characteristics), that due process of law has been applied, and that compensation has been paid to the owner. UNCTAD, 2012, 27-57.

[4] Oftentimes, indirect seizures have the effect of rendering property rights 'useless,' decreasing the value of the targeted assets, depriving the owner of effective control of the asset, or being only temporary in nature. Importantly, however, if the measures are not sanctioned under official expropriation guidelines, then the claim for indirect expropriation is unlikely to be successful. UNCTAD, 2012, 63-78.

[5] UNCTAD, 2012, 64.

long argued that, for the purposes of legal protection, intellectual property should be treated the same as actual property;[6] resultingly, provisions in the US' and EU's international strategies have focussed upon IP, and given IP's importance to both territories' economies,[7] the significance of protecting IP overseas cannot be overstated.

1.2 Purpose and research question

The purpose of this paper is to compare and analyse how the US and EU use their sanctions and Bilateral Investment Treaties to protect intellectual property overseas, focussing in particular on Russia's recent actions in response to the US' and EU's sanctions in the wake of the War in Ukraine. Accordingly, the following research questions shall be answered in this paper:

1. How do US and EU sanctions protect intellectual property from expropriation?
2. How do US and EU Bilateral Investment Treaties protect intellectual property from expropriation?
3. How can US and EU sanctions and Bilateral Investment Treaties be used in response to Russia's new intellectual property strategy?

1.3 Delimitations

This paper shall focus primarily on the use of state-state actions, such as sanctions and Bilateral Investment Treaties, in order to assess how intellectual property can be protected from expropriation. Although international agreements such as the General Agreement on Tariffs and Trade ('GATT') and the Agreement on Trade-Related Aspects of Intellectual Property Rights ('TRIPS') could be studied in their entirety, the focus of this paper relates to how territories such as the US and EU offer additional protection to rightsholders through their bilateral international relations policies. Accordingly, the provisions of these and other similar

[6] Menell, 2007, pp.713-714.

[7] The US Patent and Trademark Office estimated in 2022 that IP accounted for 41% of US GDP in 2019, supporting 63 million jobs. Toole, Milller, and Rada, 2022, 1. Similarly, IP accounted for 47% of the EU's GDP in 2019, accounting for 61 million jobs. Wajsman *et al*, 2022, 17-26.

international agreements that may be used to prevent or respond to expropriation shall not form the main focus of this paper.

The US and EU were chosen because they are, respectively, the largest sender of sanctions unilaterally and multilaterally, excluding the United Nations; Russia is, as of May 2023, the largest recipient of these sanctions, and has rapidly overtaken Iran since the invasion of Ukraine in 2022.[8] Given Russia's economically advanced state compared to other sanctioned regimes, it presents an opportunity to assess how the US and EU can use their international strategies to protect rightsholders in wealthier nations. Although other countries such as the United Kingdom shall be mentioned in the Bilateral Investment Treaty section of this paper, it is only where these third nations' policies align with the US and EU (and in the case of the United Kingdom when considering its former obligations as a Member of the EU) that these nations shall be analysed.

Although there is no strictly defined time range throughout which US and EU sanctions and Bilateral Investment Treaties shall be examined, given the choice of Russia as a case study and the rapid increase in sanctions since 2022, much of the analysis conducted within this paper shall focus upon events since the beginning of the War in Ukraine in February 2022.

1.4 Materials and method

This paper shall rely primarily upon the *legal dogmatic* method, through which a qualitative assessment of how the law interacts with the ongoing changes in international relations can be made. By doing so, the legal situation with regard to sanctions policies and active Bilateral Investment Treaties can be reviewed. Furthermore, given the review of laws as they have been implemented and used, and laws as they may (or rather should) be implemented and used, this paper shall also use the *de lege lata* and *de lege ferenda* review as part of the methodological approach to the research questions.

More specifically, in Chapter 2, the sanctions issued by the US and EU shall be assessed, analysing each territories' statutory provisions enacting these sanctions,

[8] *Castellum.AI,* 2023. 'Russia Sanctions Dashboard.' [Online]. Accessed: 25th May 2023. Available from: https://www.castellum.ai/russia-sanctions-dashboard.

and addressing the limitations arising from judicial reviews. In Chapter 3, Bilateral Investment Treaties of the US and EU shall be assessed using the same methodology as Chapter 2. Both the 2nd and 3rd chapters use US/EU treaty and statutory provisions, alongside court cases in both territories, and commentary in books, book chapters, journal articles, and other online sources. Chapter 4, given its focus on Russia's actions, shall further add Russian Government decrees, directives, and other notices to assess Russia's response to US/EU sanctions. The study shall end with a review of the contents of Chapters 1-4, drawing conclusions on the research questions. Throughout all sections of this paper, treaties, statutory provisions, court cases, official reports, books, journals, and internet-based resources shall form part of the assessment, the combination of which shall be used to answer the research questions.

1.5 Structure

This paper begins with this first chapter introducing the study topic. It shall then be followed by a study on sanctions policies in Chapter 2, a study on Bilateral Investment Treaty policies in Chapter 3, a case study on Russia's countersanctions in Chapter 4, and a summary of the findings of the paper in Chapter 5. The following section introduces sanctions policies, leading into an analysis of the United States' and the European Union's sanctions, respectively.

2. Sanctions

2.1 Introduction

Sanctions can be used in a variety of ways, and are broadly grouped into two main categories: comprehensive, and targeted. Although comprehensive sanctions in the form of embargoes used to be the norm, their use has fallen drastically since the 1990s, with the introduction of targeted, or *smart*, sanctions, seeking to limit the damage to civilian populations in sanctioned countries.[9] Targeted sanctions are beneficial for many reasons, chief of which is that they only target the political operatives responsible for the sanctioned actions, and that they protect vulnerable communities who would otherwise suffer under embargoes.[10] However, targeted individuals may shield themselves from sanctions' measures by moving assets overseas, or by using third parties to help evade restrictions.[11] Smart sanctions shall, therefore, need to be implemented in a wide-ranging manner, targeting the web of individuals responsible for international emergencies, whilst not implementing total embargoes that could prove detrimental to civilian populations.

If used correctly, targeted sanctions can prove effective in helping deter armed conflict or violence.[12] As will be seen below, under the guise of the US President's constitutional powers, and given the EU's ability to impose targeted asset freezes that are not expropriatory,[13] both the United States and the European Union have attempted to draft their sanctions policies to avoid expropriating either directly and indirectly intellectual property assets. These targeted sanctions can aid in both territories' attempts to hinder Russia's aggression against Ukraine, with those targeted being subject to asset freezes;[14] still, both the US and the EU have exempted IP from these limitations, in order to avoid expropriations.

[9] Broad sanctions have, since their damaging use in Iraq, only been imposed twice (Haiti and Yugoslavia). Gordon, 2011, pp.316-318.

[10] Tostensen and Bull, 2002, pp.373-374; Hufbauer *et al*., 2009, 138; Happold, 2016, 88.

[11] Tostensen and Bull, 2002, pp.387-388; Hufbauer *et al*., 2009, 138.

[12] Depending on finding and targeting the assets of the Russian regime. Hufbauer *et al.*, 2009, 141.

[13] As constrained by the C-390/08 *Bank Melli* Case (paragraph 71): Happold, 2016, 95.

[14] Chachko and Heath, 2022, pp.135-137.

2.2 United States Sanctions Policy

2.2.1 Introduction

The US President can declare sanctions imposed on any individual, entity, or nation they so choose; Congress has enacted rather broad powers by which the President can make a determination on what constitutes a national emergency, and what should therefore be followed by sanction impositions.[15] Given the somewhat broad powers the President has to impose sanctions, intellectual property rights, alongside other property, is often caught-up by the intricacies of sanctions. Should the US President impose a full sanctions regime against any nation, without issuing exemptions for rightsholders to maintain their property through renewal fees and transfers of capital, for example, it could lead to their property being indirectly expropriated by the actions of the US Administration. Some sanctions regimes, therefore, include General Licences issued by the Office of Foreign Asset Control ('OFAC'), seeking to provide clarity to investors that they can pay for the acquisition and maintenance of their IP in sanctioned countries. The examples of extant General Licences shall be reviewed below. Furthermore, the US has enacted provisions under the Tariff Act to impose a targeted sanction against any individual who violates US intellectual property (often patents) overseas.[16] The §1337 provisions allow for any expropriated or infringed US intellectual property assets to be subject to import bans, as shall also be explained below.

2.2.2 General Licences and Statutory Provisions

According to the OFAC database,[17] there exist only two General Licences within the US' sanction regimes that allow a general exemption for intellectual property renewal fees; Venezuela[18] and Russia.[19] All other sanctioned regimes require rightsholders to seek OFAC approval before funds can be transferred, as shall be explained below in relation to Iran. In both cases, rightsholders are allowed to

[15] The International Emergency Economic Powers Act (50 USC §1701 et seq.), the National Emergencies Act (50 USC §1601 et seq.), §5 of the United Nations Participation Act of 1945, as amended (22 USC §287(c)), and §301 of title 3, United States Code.

[16] 19 USC §1337.

[17] OFAC, 2023. 'Selected General Licenses Issued by OFAC.' [Online]. Accessed: 19th May 2023. Available from: https://ofac.treasury.gov/selected-general-licenses-issued-ofac.

[18] Venezuela General Licence 27 of 5th August 2019, giving exemptions from Executive Order 13692 of 8th March 2015, Executive Order 13850 of 1st November 2018, and Executive Order 13884 of 5th August 2019.

[19] Russia General Licence 31 of 5th May 2022, giving exemptions from Russian Harmful Foreign Activities Sanctions Regulations 31 CFR §587.

transfer to Venezuela and Russia the funds necessary for the acquisition and maintenance of their IP assets. In theory, issuing these licences should avoid any potential indirect expropriation from occurring. However, given the financial intricacies of accompanying sanctions, it is oftentimes difficult for these assets to be acquired and maintained.

In the Venezuelan example, three key Executive Orders were issued by the Obama and Trump administrations against the Venezuelan Government; Executive Order 13692 of 8th March 2015 (Obama),[20] and Executive Order 13850 of 1st November 2018 (Trump), blocking property held in the US by the targeted Venezuelan nationals, and Executive Order 13857 of 25th January 2019 (Trump) blocking Venezuelan Government assets.[21] The lack of a General Licence for investors in Venezuela in the interim period 2015-2019 gave rightsholders only the possibility of applying for an exception to the sanctions through OFAC. Resultingly, General Licence 27 was issued by OFAC, allowing for a simplified procedure for US rightsholders to continue to acquire and maintain their IP rights in Venezuela.[22]

A similar situation exists in the US' sanctions on Russia. Following the invasion of Ukraine in 2022, the US imposed wide-ranging sanctions against the Russian Government and individuals it deems responsible for the ongoing invasion.[23] As part of the US' sanctions, wide-ranging blanket bans on financial transactions were imposed. However, not included within the first round of sanctions was an exemption allowing US rightsholders to acquire and maintain their IP rights in Russia. To address this problem, OFAC issued General Licence 31, giving rightsholders similar sanctions exemptions allowed in the Venezuelan example above.[24]

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[20] The Guardian, 2015. '"Deeply concerned" Obama imposes sanctions on Venezuelan officials.' 9th March 2015. [Online]. Accessed: 19th May 2023. Available from: https://www.theguardian.com/world/2015/mar/09/obama-venezuela-security-threat-sanctions.

[21] Jraissati and von Laer, 2021. 'How Maduro Beat Sanctions.' *ForeignPolicy*, 3rd June 2021. [Online]. Accessed: 19th May 2023. Available from: https://foreignpolicy.com/2021/06/03/maduro-sanction-trump-biden-stronger/.

[22] OFAC, 2023.

[23] Executive Order 14065; Funakoshi, Lawson, and Deka, 2022. 'Tracking sanctions against Russia.' *Reuters*, 9th March 2022; Brown, 2023. 'Russia's war on Ukraine: A sanctions timeline.' *Pieterson Institute for International Economics*, 8th May 2023.

[24] OFAC, 2023.

As both the Venezuelan and Russian examples demonstrate, the US Administration can issue a General Licence in situations it feels necessary. Although there are other extant US sanctions whereby investors can seek permission from OFAC to acquire and maintain their IP rights, the process through which rightsholders must go can be complex. Rightsholders holding assets in Venezuela and Russia can, however, inform OFAC that they are seeking to acquire and maintain these assets, with a simplified procedure allowed under the Licences.

In the case of Iranian sanctions, and other similar regimes not benefitting from a General Licence, the wording of the sanctions themselves can allow for rightsholders to continue acquiring and maintaining their IP assets. In 2018, the Trump Administration announced its intention to withdraw from the Joint Comprehensive Plan of Action ('JCPOA'), and to reimpose sanctions on Iran.[25] The reimposed post-JCPOA sanctions included an exemption for any IP asset fees, although these assets would remain frozen and incapable of being used by the sanctioned entities for the duration of the sanctions.[26] Despite this exception, the US does not permit any payments to be made from any bank account or financial source specified as belonging to or being associated with a sanctioned entity,[27] unless a specific exemption is issued by OFAC.[28] Many Iranian Government financial services are subject to these restrictions, such as the Iranian Central Bank, through which payments for IP renewal fees would otherwise be made. Unlike the sanctions the US has imposed on Venezuela and Russia, there has been no General Licence issued in the Iranian sanctions regime for IP protection. This does not mean rightsholders are necessarily at a disadvantage vis-à-vis rightsholders with Venezuelan and Russian IP assets, but rather demonstrates that the statutory mechanism adopted by Congress, 31 USC §506.509, operates similarly to General Licences, with both mechanisms seeking to avoid indirect expropriations.

[25] Executive Order 13846 of 6th August 2018. President Trump overturned Executive Order 13716 of 16th January 2016, reimposing some of the sanctions seen in the earlier Orders under Executive Orders 13574 of 23rd May 2011, 13590 of 20th November 2011, 13622 of 30th July 2012, and 13645 of 3rd June 2013.

[26] 31 USC §560.509.

[27] 31 USC §560.211.

[28] 31 USC §560.322.

2.2.3 19 USC §1337

Section 1337 of the Tariff Act of 1930[29] grants rightsholders the ability to pursue action against IP infringements that occur overseas, with a blacklist created by the US International Trade Commission ('USITC') listing the infringers and their penalties.[30] The USITC operates as a 'quasi-judicial federal government agency,' and as such, is not subject to provisions such as Federal Rules of Civil Procedure ensuring both parties in a dispute can present their cases, or the 7th Amendment to the Constitution allowing for jury trials, both of which would be allowed in domestic courts.[31] USITC is allowed, upon complaint by an American rightsholder, to issue cease-and-desist orders against those infringing on IP rights overseas, preventing the entities targeted from importing either the targeted good, or sometimes all goods, to the US.[32]

Should any claim be made against a foreign-based importer, the foreign company may be at a disadvantage, with a Partial Exclusion Order issued against it until completion of a full investigation by USITC.[33] The extraterritorial nature of these protections offers relief to US rightsholders not available through the Patent Act provisions for domestic infringements.[34] US investors actively seek to use the §1337(d)(1) protections to prevent their rival overseas firms from importing to the US, as the imposition of a General Exclusion Order would prohibit the listed entities from all imports to the US.

Section 1337 is, importantly, not only a tool used for intellectual property infringement, but rather can be used in any cases of unfair competition. The reason is it often used for IP infringements is that, under the 1988 Trade Act, §1337 IP damage claims are easier to assert than non-IP claims.[35] Section 1337 is mainly used against patent infringements, as the Department for Homeland Security's

[29] 19 USC §1337.

[30] Shriver, 1996, pp.441.

[31] EveryCRSReport, 2009; Duan, 2021, 3.

[32] 19 USC §1337(e-f); Shriver, 1996, pp.442. Importantly, the extent of the infringement is not necessary for the cease-and-desist or exclusion orders to be issued. If the rightsholder can demonstrate that imports they believe infringe their IP rights *have* or *may be* made, they can apply for temporary relief. See Shriver, 1996, pp.444; EveryCRSReport, 2009.

[33] EveryCRSReport, 2009.

[34] 35 USC §283/284; Shriver, 1996, pp.442.

[35] The provisions of 19 USC §1337(a)(1)(A) for non-IP claims require the claimant to prove 'serious damage' has occurred, whereas 19 USC §1337(a)(2) allows IP claimants to prove only that an industry to which damage may occur exists. See Rogers and Whitlock, 2002, pp.470-471.

Customs and Borders Protection unit is empowered to prevent the importation of goods infringing copyright, trademarks, and other IP rights using on-the-spot inspection powers.[36] Furthermore, it is often used for patent protection as the US Supreme Court has repeatedly held patent violations capable of redress under the US Patent Act can only be committed *domestically*, not internationally.[37] Conversely, the 1930 Smoot-Hawley Tariff Act that introduced §1337 was found *not* to protect US rightsholders from process patent infringement if the process was performed overseas.[38] In the wake of the *Amtorg* Case, Congress expanded the rules under which §1337 can be claimed to include any patent infringement anywhere around the world.[39] Resultingly, §1337 is favoured by patent holders, as the domestic protections under the Patent Act 35 USC §271(a-g) apply only when such international infringing products are imported to the US.[40] By using §1337, US rightsholders may have their competitors banned from all potential imports of any good to the US should they suspect their patents have been infringed.[41] Moreover, patent holders are better able to receive redress under USITC cases compared to Federal District Court cases; research suggests that IP rightsholders won 65% of infringement proceedings under the USITC procedure, compared to 40-45% in the Federal Court system.[42] Such benefits cannot be understated given the volume and cost of patent infringements.[43]

The nature of the §1337 provisions are such that the original provisions weren't compliant with the General Agreement on Tariffs and Trade ('GATT') 1947, or the Agreement on Trade-Related Aspects of Intellectual Property Rights ('TRIPS') 1995, under which foreign investors should have been treated equally to US

[36] 19 USC §156; 19 USC §1595(a); 19 CFR §133.42.

[37] The Supreme Court ruled in the *Deepsouth Packing Co., Inc. v. Laitram Corp*. Case, 406 U.S. 518 (1972) (page 527) that under the Patent Act 1952 §271(a), protection could only be extended if an infringement of a US patent occurred within the US. This was later upheld in the *NTP Inc. v. Research In Motion* case, 418 7.3d 1282 (2005) (page 1318); DuChez, 2008, 449-452; Watson, as cited in Duan, 2021, 3.

[38] *Amtorg Trading Corporation* 75 F.2d 826 (C.C.P.A. 1935); DuChez, 2008, 448-449.

[39] 19 USC §1337(f); DuChez, 2008, 449.

[40] As confirmed by the Supreme Court in *Bayer A.G. v. Housey Pharms. Inc*. 340 F.3d 1367 (2003) (page 1377); DuChez, 2008, 455.

[41] DuChez, 2008, 453.

[42] Hahn and Singer, referenced by Yin, 2017, pp.325.

[43] The average cost of patent litigation to a firm was estimated at between $2.3-$4 million per annum (*Copperpod*, 2022. '*How Much Does Patent Litigation Cost?*' 11th May 2022). In total, $60 billions of company wealth was estimated to be lost to patent litigation per annum (Bessen, 2014. 'The Evidence Is In: Patent Trolls Do Hurt Innovation.' *Harvard Business Review*, November.).

rightsholders in infringement proceedings.[44] In order for the §1337 rules to become more compliant with the US' treaty obligations, Congress recast the §1337 provisions to allow for foreign investors to receive a stay from Federal District Courts, meaning their cases shall be tried only by USITC when the complaint is made, and not simultaneously in Federal Court, limiting also the use of General Exclusion Orders.[45]

Section 1337 is, in effect, a targeted sanction against individuals or companies suspected of violating US patents overseas. Although the §1337 USITC system is open to abuses by US rightsholders, it remains one of the strongest IP enforcement mechanisms available. By sanctioning individual entities, investigating their infringements in the meantime, and determining whether to issue a Partial or General Exclusion Order against the infringing party, the US provides its rightsholders with a shield against IP infringement internationally. In response to any expropriations occurring overseas, which have been done in a manner that disadvantages US rightsholders, such infringements may bring about a USITC investigation, allowing the rightsholders to present evidence that their rights have been infringed upon by foreign entities, oftentimes backed by foreign governments.

Infringements by Russian entities in the wake of Decree 299, as discussed later, may fall under the remit of the USITC and §1337; the expropriatory mechanism that Decree 299 enacted would be incompatible with rightsholder compensation rules owed under several international IP agreements, and as such, may warrant investigation by USITC.[46] Not only do Russia's actions potentially fall afoul of the rules under §1337, but so too do China's. Perceived weaknesses in the Chinese patent system, coupled with forced technology transfers by Chinese enterprises,[47] make Chinese companies the most common targets of §1337 orders.[48] In summary,

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[44] GATT Articles III(4) and XX(d); TRIPS Article 3. The US was accused of violating the national treatment provisions of both agreements in relation to the General Exclusion Orders under §1337. Rogers and Whitlock, 2002, argue that §1337 violates Article III(4) GATT (pp.498) and Article XX GATT (pp.503-504) but doesn't violate the TRIPS Agreement at all (pp.522-523). For a greater explanation of the incompatibility of the initial §1337 provisions, see Shriver, 1996, pp.447; Rogers and Whitlock, 2002, pp.474-523.

[45] Shriver, 1996, 441-442, 452.

[46] Scott Keiff and Thomas Grant, 2022. 'The ITC's Crucial Role in Countering Russia's Aggression.' *Law360*, 18th March 2022.

[47] It should be noted that the scale of forced technology transfers makes valuations difficult to estimate. Hufbauer and Lu, 2017. 'Section 301: US investigates allegations of forced technology transfers to China.' *East Asia Forum*, 3rd October 2017; Sykes, 2021, pp.132-133.

[48] Yin, 2013, pp.337.

the §1337 mechanism works best when targeting more industrialised nations; indeed, most of those nations targeted under §1337 are wealthier nations from whom the US sources most of its imports.[49] The only similar mechanism in EU law is Regulation 608/2013, as shall be examined below.

2.3 European Union Sanctions Policy

2.3.1 Introduction

The European Union, much like the US, devises its own sanctions packages either following UN Resolutions,[50] or of its own initiative, targeting individuals, entities, and regimes, too. The Union is empowered to do so under the terms of the Treaty on European Union ('TEU'),[51] and the Treaty on the Functioning of the European Union ('TFEU').[52] On proposal by the High Representative of the Union for Foreign Affairs and Security Policy, and the Commission, and subject to a qualified majority vote in the Council, the Union may adopt sanctions against any entity it desires.[53]

Unlike the US sanctions mechanism, the EU has no equivalent to a General Licence that may be issued retroactively. Instead, all intellectual property exclusions are contained within the regulations enacting the sanctions, with the Commission proposing amendments to the regulations when required. As such, any issues related to intellectual property asset acquisition and maintenance must be included within the regulation. Within the EU's extant sanctions, the Commission has enacted provisions aimed at avoiding indirect expropriations, allowing for rightsholders to continue paying fees related to the acquisition and maintenance of their assets

[49] Chiang, 2004, pp.427; 438.

[50] The exact method for adopting these sanctions is left indeterminate by the UN, and the Court of Justice found in the *Kadi* C-402/05 and C-415/05 Joined Cases (paragraph 298) that the Union can implement the UN sanctions how it pleases. See also Tzanou, 2019, pp.140-146.

[51] TEU Article 29.

[52] TFEU Article 215. TFEU Article 75 may also be used, however, under the provisions of the *UN Sanctions* Case C-130/10 (paragraphs 100-111), the Court of Justice gave the Council of the European Union the power to invoke UN-backed sanctions without using the Article 75 mechanism. Under Article 75, the Parliament of the European Union would otherwise be involved in implementing UN Resolutions, however, the choice of the Council to invoke UN Resolutions 1267 (1999) and 1333 (2000) of the United Nations Security Council using Article 215 was challenged by the Parliament. The Court sided with the Council, allowing the Council the ability to issue sanctions without the consent of the Parliament, as long as the Parliament has been informed; Ott, 2012; Eckes, 2015, pp.544-547.

[53] The Commission was granted broad powers by the Court of Justice to list any individual it deems appropriate in the sanctions lists it enacts. Under the findings of the *Ezz* Case C-220/14 (paragraphs 86-94), the Commission was granted almost limitless remit to list any individuals it chooses under the sanctions' annexes, as long as they provide at least one reason why.

without seeking the Commission's prior approval. The EU's regulations, and decisions by the Common Foreign and Security Policy ('CFSP') body shall be analysed below, demonstrating that the Union has a uniform method to protect IP under its sanctions.

2.3.2 Extant EU Sanctions

The EU maintains a list of active sanctions regimes through the EU Sanctions Map, the last update of which was the 28th April 2023.[54] Using this map, and the relevant Regulations of the Council and Commission, it is possible to determine in which regimes the EU has allowed IP assets to be frozen, but unappropriated.

In the vast majority of cases, the EU maintains IP exemptions for the targeted regimes, entities, and individuals, allowing them to continue to transfer funds otherwise frozen by the sanctions to the relevant IP office. Of the roughly 30 active sanctions regimes,[55] approximately 29 include IP exemptions, demonstrating a uniform application of sanctions across all regimes which allow rightsholders targeted by the sanctions to keep ownership of their assets. These assets remain frozen, so the rightsholders cannot access and use their IP rights whatsoever while targeted by sanctions; on the basis that the sanctioned entities may one day be removed from the sanctions list, however, the EU allows them to renew and maintain their IP. The one exception to the trend is that of Iraq, which shall be explained further below.

In general, the EU applies the same wording to the 29 sanctions regulations to ensure that payments necessary for the maintenance of IP assets are exempted. Accordingly, provisions either entirely the same or very similar to the below example are inserted into the regulations:

> 'The competent authority of a Member State … may authorise the release of certain frozen funds or economic resources or the making available of

[54] European Commission, 2023. 'EU Sanctions Map.' [Online]. Accessed: 19th May 2023. Available from: https://www.sanctionsmap.eu/#/main.

[55] Not including horizontal sanctions such as those issued under the heading 'terror,' for example. The EU has, as of May 2023, sanctions imposed against Haiti, Nicaragua, Venezuela, Bosnia and Herzegovina, Tunisia, Libya, Sudan, South Sudan, the Central African Republic, Guinea, Guinea-Bissau, Mali, the Democratic Republic of the Congo, Somalia, Zimbabwe, Yemen, Iraq, Iran, Syria, Lebanon, Turkey, Afghanistan, Myanmar (Burma), North Korea, Ukraine (Crimean sanctions issued post-2014), Belarus, and Russia (including post-2014 sanctions under Regulation 833/2014 and those imposed in 2022/3 under amendments to Regulation 833/2014 Annexes III-IV.).

> certain funds or economic resources, under such conditions as it deems appropriate, after having determined that the funds or economic resources concerned are … intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services; or … intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources.[56]'

In all 29 examples in which IP is similarly exempted, wording similar to the above was referenced.[57] By allowing for such exemptions, the EU avoids indirectly expropriating the assets of its rightsholders. The sanctions on Iraq, however, do not contain such exemptions.

In the case of Iraq, the EU has frozen all assets belonging to the sanctioned individuals, and has not granted any similar IP exemptions under the sanctions.[58] This is perhaps because of the nature of the sanctions themselves, given the targets of the sanctions are those involved or related to the Government of Saddam Hussein, including Hussein himself.[59] The Regulation provides no redress through which sanctioned individuals can acquire or maintain their IP rights in the EU, unless their addition to the sanctions list was a result of negligence on the part of

[56] Regulation 765/2006 Article 3(b-c), imposing sanctions against Belarussian officials such as President Lukashenko.

[57] Regulation 314/2004 Article 7(1)(b-c) imposing sanctions against Zimbabwe; Regulation 765/2006 Article 3(1)(b-c) imposing sanctions against Belarus; Regulation 1284/2009 Article 8(1)(b-c) imposing sanctions against Guinea; Regulation 356/2010 Article 5(1)(a)(ii-iii) imposing sanctions against Somalia; CFSP 2010/788 Article 5(3)(b-c) imposing sanctions against the Democratic Republic of the Congo; CFSP 2011/72 Article 1(3)(b-c) imposing sanctions against Tunisia; CFSP 2011/173 Article 2(3)(b-c) imposing sanctions against Bosnia and Herzegovina; Regulation 359/2011 Article 4(1)(b-c) imposing sanctions against Iran; Regulation 753/2011 Article 5(1)(b-c) imposing sanctions against Afghanistan; Regulation 36/2012 Article 16(b-c) imposing sanctions against Syria; Regulation 377/2012 Article 4(1)(b-c) imposing sanctions against Guinea-Bissau; Regulation 208/2014 Article 4(1)(b-c) imposing sanctions against Crimea (Ukraine); Regulation 224/2014 Article 6(a)(ii-iii) imposing sanctions against the Central African Republic; Regulation 269/2014 Article 4(1)(b-c) imposing sanctions against Russian entities; Regulation 747/2014 Article 6(1)(ii-iii) imposing sanctions against Sudan; Regulation 1352/2014 Article 4(a)(ii-iii) imposing sanctions against Yemen; CFSP 2015/740 Article 7(2)(b-c) imposing sanctions against South Sudan; Regulation 2015/1755 Article 3(1)(b-c) imposing sanctions against Burundi; Regulation 2016/44 Article 8(1)(b-c) imposing sanctions against Libya; Regulation 2017/1509 Article 35(1)(a)(i-ii) imposing sanctions against North Korea; Regulation 2017/1770 Article 3(1)(b-c) imposing sanctions against Mali; CFSP 2017/2074 Article 7(4)(b-c) imposing sanctions against Venezuela; Regulation 2018/647 Article 4b(1)(b-c) imposing sanctions against Myanmar (Burma); Regulation 2019/1716 Article 3(1)(b-c) imposing sanctions against Nicaragua; Regulation 2019/1890 Article 3(1)(b-c) imposing sanctions against Turkey; Regulation 2021/478 implementing Regulation 2020/1998 Article 4(1)(b-c) imposing sanctions against four Chinese nationals; Regulation 2021/1275 Article 3(1)(b-c) imposing sanctions against Lebanon; Regulation 2022/2319 Article 3(3)(b-c) imposing sanctions against Haiti; CFSP 2023/891 Article 2(3)(b-c) imposing sanctions against Transnistria (Moldova).

[58] Regulation 1210/2003 Article 4 imposing sanctions against Iraq does not permit any deviation from the sanctions for the purpose of acquiring and maintaining any IP assets owned by the sanctioned entities.

[59] Regulation 1210/2003 Article 4(2)(a-d).

the Union.[60] The Regulation does, in fact, expropriate any funds that are the proceeds of petroleum and natural gas drilling, ordering that these proceeds be deposited into the Development Fund for Iraq.[61] This expropriatory measure was recently challenged at the Court of Justice, which ruled that the assets of those under sanction would, until transferred to the Development Fund for Iraq, remain the property of their original owner.[62] Although the Regulation did not exempt those connected to the Hussein Regime from intellectual property expropriation, the Court of Justice has corrected this through the *Instrubel* Case. While the Union may have under the Iraq sanctions example violated the IP rights of those targeted, they were permitted to do so under the terms of the UN Security Council Resolution 1483,[63] and as such cannot be seen to have violated the international IP obligations the Union must adhere to under international agreements such as GATT and TRIPS.

In the Russian example, the ongoing War in Ukraine, and the earlier invasion and annexation of Crimea, spawned two different EU sanctions regimes. There are the initial sanctions against both Russian and Ukrainian entities,[64] mainly individuals and entities seeking to undermine the territorial sovereignty of Ukraine following the 2014 Annexation of Crimea by the Russian Federation, and the post-2022 additions of Russian entities aiding in the War in Ukraine.[65] As far as the EU's record on these sanctions go, it renews annually the sanctions lists to ensure that, upon legal challenge through EU courts, the sanctioned individuals and their assets remain frozen in Union territory. For example, Victor Yanukovych, the former President of Ukraine, who is a target of the EU's sanctions,[66] has filed another attempt at the General Court to have his assets unfrozen.[67] His previous attempts to have these assets unfrozen were successful, with the General Court most recently ruling in 2021 that his assets should be unfrozen by the Council.[68] However, by

[60] Regulation 1210/2003 Article 9.

[61] Regulation 1210/2003 Article 2. The Development Fund was founded under UNSC Resolution 661(1990).

[62] *Instrubel* C-753/21 and C-754/21 Joined Cases (paragraphs 51-55).

[63] UNSC Resolution 1483(2003) (paragraphs 20-21).

[64] With Russian entities identified in the initial Regulation 833/2014 Annexes III-VI, and Ukrainian nationals identified in Regulation 269/2014 Annex I, respectively.

[65] Regulation 833/2014.

[66] Under Regulation 269/2014 (and the accompanying CFSP 2014/145 Decision), and subsequent recast Regulations and decisions such as Regulation 2022/1354 (and the accompanying CFSP 2022/1355).

[67] T-643/22 *Yanukovych* Case.

[68] T-303/19 (paragraph 140).

recasting the Regulations enacting the sanctions against Mr Yanukovych and others every year, the Union effectively overturns the decisions of the General Court and Court of Justice as they relate to sanctioned entities' frozen assets.[69] With some rather high-ranking Russians due to have cases heard by the Court in the coming months,[70] it will be interesting to see how the Council and Commission react to the post-2022 sanctions being examined by the Court as they relate to entities holding IP assets.[71] Although the Union does not officially expropriate their assets, when the Court finds that the sanctioned entities should be removed from the sanctions list, the EU renews the sanctions the following year, effectively denying rightsholders subject to these sanctions the opportunity to use their IP rights. Should any of the targeted Russian entities wish to be removed from the sanctions, they could argue that the Union has violated their rights under international IP law,[72] and indeed the European Community-Russia Partnership and Cooperation Agreement ('PCA') 1994, as seen below.

The Court of Justice recently decided that its jurisdiction extends into the damages claims of individuals impacted by the Common Foreign and Security Policy.[73] Specifically, the Court declared that, although otherwise prohibited from making legal assessments of the Union's CFSP policy under TFEU Article 275, it could determine damages owed to those against whom the Council and Commission had imposed sanctions under TEU Article 29 and TFEU Article 215.[74] This is interesting in the light of the sanctions against Russia; should any Russian national or entity targeted by the sanctions seek redress against the Union for any alleged damage caused by the sanctions, the Court of Justice would now be able review such damages, and to order the Union to pay any damages to any Russian entity as it sees fit. As shall be discussed further in the section on Bilateral Investment

[69] Aurup, 2022. 'Abramovich is suing the EU. He's not the only one.' *Politico*, 3rd June 2022.

[70] Alisher Usmanov (Case T-237/22), Mikhail Fridman (Case T-304/22), Roman Abramovich (T-313/22), and Petr Aven (Case T-301/22) being some of the names mentioned by Aurup, 2022. In the case of Petr Aven, his inclusion on the sanctions list as a dual Latvian-Russian national is of note, as these sanctions may be determined through the lens of EU internal policy, not CFSP decisions. This is not an exhaustive list of decided and pending cases against Russian/Ukrainian nationals targeted by EU sanctions; such a list of cases is maintained by the Court. See Curia, 2023. 'Juris, last update on 22/5/2023.' [Online]. Accessed: 22nd May 2023. Available from: https://curia.europa.eu/en/content/juris/t2_juris.htm.

[71] These entities being subject to Regulation 269/2014 and other restrictive measures.

[72] Although, as the sanctions do not officially expropriate these assets, but rather freezes them, the Court would be unlikely to rule the Union had violated the terms of agreements such as GATT and TRIPS.

[73] C-134/19 *Bank Refah Kargaran* Case (paragraphs 32-39).

[74] *Ibid* (paragraph 43).

Treaties, under the terms of the European Community-Russia Partnership and Cooperation Agreement, and given the terms of the PCA in relation to intellectual property[75] and the direct effect of the PCA under the *Simutenkov* Case,[76] Russian entities subject to EU sanctions may use the findings of the *Bank Refah Kargaran* Case[77] to contest that their IP under sanction entitles them to damages. For example, any Russian target of the sanctions imposed in 2014 after the annexation of Crimea,[78] against whom the sanctions have been effective for 9 years, may be able to claim damages should they be able to prove that the CFSP had a knock-on impact on their business. It is possible the same claims may be used in the same manner by Russians under sanction following the War in Ukraine,[79] with IP asset freezes potentially becoming the target of these damages claims.

2.4 Summary

Although the US and EU sanctions policies allow Russian IP rights to be maintained by American and European rightsholders, and vice versa, the removal of Russia from the Society for Worldwide Interbank Financial Telecommunication ('SWIFT') payment system adds a further complication. Although rightsholders are permitted to acquire and maintain IP rights in Russia and the US/EU, they are disadvantaged by the EU Commission's decision to block several Russian banks from the SWIFT bank network.[80] The largest bank in Russia, Sberbank,[81] was initially spared from the SWIFT sanctions package imposed in Regulation 2022/334, but was later added alongside two other financial institutions.[82] For rightsholders, attempting to send payments from the US or EU has since become

[75] Article 54(1-3), compelling both the Union and Russia to adhere to the Paris Convention 1883, the Madrid Agreement 1891, the Patent Cooperation Treaty 1970, the Budapest Treaty 1977, and the Nice Agreement 1979.

[76] C-265/03 *Simutenkov* Case (paragraph 29).

[77] C-134/19 *Bank Refah Kargaran* Case (paragraph 43).

[78] Regulation 833/2014 Articles 2, 3, 4, and 5.

[79] Regulation 833/2014 Annexes III-IV. Only Russian nationals entitled to direct effect under the C-265/03 *Simutenkov* Case (paragraph 29) would be eligible to claim damages using this route, as only they are eligible to benefit from the provisions of the PCA Articles 23-25 and 30(f).

[80] The seven banks listed in the first blocking order were: Bank Otkritie, Novikombank, Promsvyazbank, Bank Rossiya, Sovcombank, Vnesheconombank, and VTB Bank. Regulation 2022/345 Annex XIV amending Regulation 833/2014.

[81] Nardelli, Chrysoloras, and Follian, 2022. 'EU to Ban Seven Russian Banks From SWIFT, Spare Key Firms.' *Bloomberg*, 1st March 2022.

[82] The three banks added to the sanctions were: Sberbank, Credit Bank of Moscow, and Joint Stock Company Russian Agricultural Bank, JSC Rosselkhozbank. Regulation 2022/879 Annex XIV.

more difficult, and they may face challenges in sending any funds to Russia.[83] The Russian Central Bank itself was targeted by EU sanctions, closing another avenue for rightsholders to pay for their IP fees.[84] Similarly, American sanctions had previously targeted the Russian Central Bank and other entities related to the Russian Government under Directive 4 of Executive Order 14024.[85]

To address this issue, both the EU and the US agreed to allow for IP acquisition and maintenance fees to be exempted from their sanctions against Russia.[86] Payments shall still remain difficult for the rightsholders to process, however, any rightsholders present in the US/EU or Russia are legally permitted under the US' and EU's sanctions regimes to attempt to acquire and/or maintain IP rights in the aforementioned territories. In so doing, the US and the EU have demonstrated that their sanctions regimes may be used to protect rightsholders from either direct or indirect expropriation that may arise if sanctions are not correctly implemented in accordance with the US' and the EU's international IP obligations.

Furthermore, the US allows for its rightsholders to ensure that any violation of US patents (and other IP rights) may incur trade restrictions against the infringing entity. As shall be seen later, Russia has amended its compulsory licencing mechanism, allowing for its companies and nationals to infringe on the IP rights of all US and EU nationals. American rightsholders, vis-à-vis their European counterparts, have the use of §1337 to fall back on, providing them with extraterritorial protection against Russia's actions. EU rightsholders, on the other

[83] The US issued its own financial sanctions against Russian banks under the provisions of Executive Order 14024 of 15th April 2021. Included in the sanctions are similar entities to the EU banking sanctions, including VTB Bank on 24th February 2022, Sberbank and 42 subsidiaries on 6th April 2022, and other banks seeking to evade sanctions. See Treasury, 2022a. 'U.S. Treasury Announces Unprecedented & Expansive Sanctions Against Russia, Imposing Swift and Severe Economic Costs.' [Online]. Accessed: 19th May 2023. Available from: https://home.treasury.gov/news/press-releases/jy0608; Treasury, 2022b. 'U.S. Treasury Escalates Sanctions on Russia for Its Atrocities in Ukraine.' [Online]. Accessed: 19th May 2023. Available from: https://home.treasury.gov/news/press-releases/jy0705; Treasury, 2023. 'With Over 300 Sanctions, U.S. Targets Russia's Circumvention and Evasion, Military-Industrial Supply Chains, and Future Energy Revenues.' [Online]. Accessed: 19th May 2023. Available from: https://home.treasury.gov/news/press-releases/jy1494. This list is not exhaustive, however, Press Release JY1494 is the latest released referring to financial entities.

[84] Regulation 2022/334 Article 3e(4) amending Regulation 833/2014.

[85] OFAC, 2022. 'Directive 4 (As Amended) Under Executive Order 14024.' [Online]. Accessed: 22nd May 2023. Available from: https://ofac.treasury.gov/recent-actions/20220228.

[86] As permitted under CFSP 2014/512 Article 1b(5)(b-c) and Regulation 269/2014 Article 4(1)(b-c) of the European Union imposing sanctions against Russian entities; Russia General Licence 31 of 5th May 2022 of the United States, giving exemptions from Russian Harmful Foreign Activities Sanctions Regulations 31 CFR §587.

hand, do not benefit from the extraterritoriality of EU IP protections.[87] The only similar provision in EU law is that of Regulation 608/2013, under which rightsholders may apply for infringing goods to be detained or destroyed.[88] Regulation 608/2013 is, like all EU trading provisions, territorially-bound, and requires that the goods infringing EU patents are imported to the Union before the relevant customs agents may prevent their circulation, unlike the §1337 provisions which allow for any *potentially* infringing good to be denied importation to the US. Given these limitations of the EU's sanctions compared to the US', it stands to reason that the EU has applied its international IP obligations in relation to territoriality more stringently than the US, which has allowed for American rightsholders to pursue damages against extraterritorial infringements, sanctioning parties either temporarily or permanently.

Finally, when comparing the US' and the EU's sanctions with their obligations under international law, both territories, insofar as IP rights are concerned, do not, other than in the circumstances highlighted in this chapter,[89] allow for either their rightsholders' or third-country rightsholders' IP rights to be directly or indirectly expropriated. In this regard, both the US and the EU can be found to have arguably complied with their obligations under the GATT and TRIPS agreements, providing protections from expropriation under their sanction regimes. This contrasts to the Russian State, which as shall be explained below, has allowed for its obligations under IP agreements to become null and void, with infringement and expropriation allowed in some instances without compensation.

[87] The EU does not recognise, nor does it issue, any extraterritorial sanctions mechanisms. European Commission, 2022. 'Frequently asked questions: Restrictive measures (sanctions).' [Online]. Accessed: 22nd May 2023. Available from: https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_1401.

[88] Regulation 608/2013 Articles 2, 3, 6, 17, 18, 23, and 25. Customs agents in the Union may either receive information from rightsholders about their IP being infringed upon, or can act *ex officio* to make a determination on-the-spot: Pila and Torremans, 2019, 572-577. Under the terms of the *Philips* and *Nokia* C-446/09 and C-495/09 Joined Cases (paragraph 78) only when these goods are listed for sale can the customs agents consider them to have infringed on the IP rights of Union rightsholders.

[89] In regard to the example of the GATT violation of §1337 of the US, and the EU's expropriation of Iraqi assets, for example.

3. Bilateral Investment Treaties

3.1 Introduction

Both the United States and the European Union Member States negotiate Bilateral Investment Treaties with third countries, granting their investors certain protections in these nations. In order to standardise their investment treaties, both the US and EU Member States may draft model agreements which they refer to in agreeing new BITs. These model agreements have been continually updated to reflect the changing nature of international investment, namely taking account of new technological investments that have arisen in recent decades. In theory, these Bilateral Investment Treaties should grant American and European investors protections from irregular expropriations that occur in the states with which the US and the EU have active BITs. However, as shall be discussed below, this depends entirely upon the adherence of both Parties to the terms of the Treaties, and there are compelling arguments that countries like Russia should abandon their BITs.

3.2 Model Bilateral Investment Treaties

3.2.1 The United States' Model BIT

The United States released its model Bilateral Investment Treaty in 2012,[90] contained within which are provisions related to expropriation, and investor-state dispute settlement. The first feature, expropriation, covers both direct and indirect expropriations, compensation and the calculation thereof, and contains a reference to compulsory licencing under the TRIPS Agreement, a provision not mentioned in earlier BITs of the United States.[91] Included too within the Model BIT is an investor-state dispute settlement mechanism, which covers issues related to the forum of arbitration and selection of arbitrators,[92] the time limits by which investors are bound to bring a dispute to arbitration,[93] and other formalities of arbitration

[90] See United States Model BIT 2012.

[91] *Ibid*, Article 6.

[92] *Ibid*, Articles 24.3 and Article 27, respectively.

[93] *Ibid*, Article 26.

related to procedures and awards.[94] Should the US adhere to these provisions in all future investment negotiations, American rightsholders should be protected in their investments in any third country, and should rest assured that the dispute resolution mechanism will provide to them the ability to have any expropriations contrary to the BIT resolved through arbitration.

Unlike in the EU case, in which Member States are now constrained in their ability to draft BITs, the US Constitution provides no such limitations to the President's powers to draft treaties.[95] This would perhaps incur more changes from one President to the next, however, the Model BIT signals the US' steadfast support of IP rights in its international treaties.

3.2.2 The EU Member States' Model BITs

In a similar vein, the EU adopted Regulation 1219/2012 establishing rules that all Member States should abide by when signing Bilateral Investment Treaties with non-EU Member States. For those Member States who before 2009 had concluded Bilateral Investment Treaties with third countries, Regulation 1219/2012 requires these BITs be submitted to the Commission for review. The logic of the Commission stemmed from the desire to have a common commercial policy of the Union, insofar as Member States should have uniformity in their conclusion of trade agreements with third countries.[96] Member States now require the Commission's permission before opening any BIT negotiation with third countries,[97] with the Commission reserving the ability to participate in the BIT negotiations[98] and gaining the ability to review agreements before their ratification.[99] The Commission

[94] *Ibid*, Articles 23-36.

[95] The only constraints to the US Constitution Article 2 Section 2 powers allowing the President to conduct treaty negotiation have been imposed through Court actions. As long as these negotiations 'properly pertain' to solely foreign affairs (*Santovincenzo v. Egan*, 284 U.S. 30 (1931) (page 40)) or are properly the 'subject' of foreign affairs (*Asakura v. City of Seattle*, 265 U.S. 332 (1924) (page 341); *Holden v. Joy*, 84 U.S. 211 (17 Wall.) (1872) (page 243); *De Geofroy v. Riggs*, 133 U.S. 258 (1890) (page 267); *Ross v. McIntyre*, 140 U.S. 453 (1891) (page 463); *Holmes v. Jennison*, 39 U.S. (14 Pet.) 540 (1840) (page 569)) then the President has a broad remit to conclude Bilateral Investment Treaties. For a greater discussion on Article 2 Section 2, see Congress, 2023. 'Browse the Constitution Annotated Article II.' [Online]. Accessed: 23rd May 2023. Available from: https://constitution.congress.gov/browse/article-2/section-2/clause-2/. Congress has already enacted provisions related to international arbitration under the rules of 28 USC §1782, although future agreements may extend further arbitration protections to US investors.

[96] As laid out in TFEU Article 207.

[97] Regulation 1219/2012 Article 9.

[98] Regulation 1219/2012 Article 10.

[99] Regulation 1219/2012 Article 11.

can, therefore, impose various restrictions on Member States' future BITs that prevent them from signing agreements contrary to the Union's objectives.

Furthermore, the Court of Justice has confirmed that the EU Member States' investor-state dispute settlement mechanisms may sometimes be contrary to EU law, further constraining BITs. The *Achmea* Case, for example, examined the Bilateral Investment Treaty signed between the Netherlands and Slovakia in 1991, before the latter's accession to the Union.[100] On review by the Court, the provisions of the investor-state dispute settlement mechanism were found incompatible with EU law,[101] as retaining such a mechanism between two EU Member States would fall afoul of TFEU Articles 18, 267, and 344.[102] The ruling in *Achmea* prohibited any investor-state dispute settlement from being concluded by any third-party arbitral body,[103] the result of which is that Member States may not be able to rely upon investor-state dispute settlement ('ISDS') provisions of agreements they have concluded should the Court of Justice be removed from the review process contrary to EU rules.

The Regulation 1219/2012 and *Achmea* Case provisions establish guidelines to which Member States are subject in negotiating Bilateral Trade Agreements. Although the *Achmea* Case provides an insight into how *intra*-EU BITs may be interpreted by the Court of Justice, the Court has yet to intervene in EU-third party agreements, although may soon be asked to with regards the interpretation of the EU-Russian BITs, as discussed below.

Of the current 27 Member States of the EU, 13 have active Model Bilateral Investment Treaties published through the United Nations Conference on Trade and Development's ('UNCTAD') database.[104] The treatment varies, although intellectual property is listed in Article 1 of all the Models as falling under the

[100] C-284/16 *Achmea* Case.

[101] C-284/16 *Achmea* Case (paragraph 56).

[102] Concerning the non-discrimination on the grounds of nationality of the Member States, establishing the Court of Justice of the European Union, and ensuring disputes in EU Treaty interpretation are addressed only through the bodies of the EU, respectively.

[103] C-284/16 (paragraph 62).

[104] These Member States are; Croatia, Denmark, Finland, Greece, Sweden, France, Germany, Austria, Slovakia, the Netherlands, Belgium and Luxembourg (joined model), and Italy. Spain and Cyprus are listed as having active Model BITs, but have not published these texts with UNCTAD. As such, they shall not be further included in this analysis.

protection of the BITs. Furthermore, all Agreements contain expropriation, loss, and investor-state dispute settlement mechanisms,[105] however, in the examples of Germany and Italy, both also contain provisions allowing for other EU/EEA nationals to benefit from the protection of their BITs.[106] This latter point concerning protections extended to other EU/EEA nationals raises an interesting dilemma; should any national contest that there is an unfair advantage offered to those established in Germany and Italy under TFEU Article 49, when compared to those in any other EU Member State with a BIT, then the Commission and the Court may be called to investigate such arrangements in relation to EU obligations.[107] The Court could also be asked, theoretically, to investigate the German and Italian Model BITs in relation to the Member States of the EU that have no model, under the guise of the uniformity requirements of Regulation 1219/2012.

With the protections offered through Regulation 1219/2012, the C-284/16 *Achmea* Case, and the 13 Model Bilateral Investment Treaties, rightsholders can expect that the Union will protect their IP fully through any Member State's Bilateral Investment Treaties. However, with regards to the Russian BITs signed between 18 Member States and Russia, none were adopted after 2000. The aforementioned restrictions still apply, but at the moment of adoption of these EU-Russian BITs, the levels of protection varied state-to-state.

3.3 Bilateral Investment Treaties with Russia

The Bilateral Investment Treaties that have been adopted between the Western *unfriendly* countries and Russia contain provisions aimed at protecting the

[105] Croatia Model BIT 1998 Articles 5-10; Denmark Model BIT 2000 Articles 5-9; Finland Model BIT 2001 Articles 5-9; Greece Model BIT 2001 Articles 5-10; Sweden Model BIT 2002 Articles 4-8; France Model BIT 2006 Articles 6-8; Germany Model BIT 2008 Articles 4-10; Austria Model BIT 2008 Articles 7-19; Slovakia Model BIT 2019 Article 7-26; Netherlands Model BIT 2019 Articles 12-23; Belgium/Luxembourg Economic Union Model BIT 2019 Articles 7-19; Italy Model BIT 2022 Articles 9-30.

[106] Any EU/EEA national established in either country can, under the Models, benefit from BIT investment protection: Germany Model BIT 2008 Article 1; Italy Model BIT 2022 Article 1. The Danish Model BIT 2000 Article 1 allows for Permanent Residents to benefit from its protections, so EU/EEA Nationals would also be permitted to claim establishment under the time limits of Regulation 2004/38 Articles 16-18.

[107] Regulation 1219/2012 Article 3 requires all BITs signed by EU Member States to adhere to the TFEU's provisions, including Article 49. Should any German or Italian BIT offer such protections in the future (as neither Party has yet enforced such provisions in its BITs), it could lead to legal challenges. It is likely given the Member States have previously been denied the ability to block secondary establishment under TFEU Article 49 (in the C-212/97 *Centros* Case (paragraph 39)), and that the Court has given direct effect to Article 49 (in the C-2/74, *Reyners* v Belgian State Case (paragraph 30), investors may seek to domicile their businesses in Germany or Italy to take advantage of their BIT provisions, with the non-discriminatory principles of Article 49 protecting them should either state refuse recognition of their secondary establishment: Xuereb, 2021, 1030; 1040-1045.

investments of either side's investors in the territory of the other. As aforementioned, the model bilateral investment treaties of the unfriendly nations contain these provisions, although there are discrepancies between the countries and their varying protections, as shall be analysed below.

3.3.1 The United States-Russia Bilateral Investment Treaty 1992

The Bilateral Investment Treaty between the United States of America and the Russian Federation was signed in 1992,[108] but has importantly not entered into force, therefore denying both countries' investors the protections that similar European-Russian agreements contain. Several articles within the Treaty, which had it entered into force would have become active, contained protections against expropriation for both Russian and American investors in either territory. These included protections against direct and indirect expropriation,[109] and a loss mechanism for damages associated with war or armed conflicts of either Party.[110]

Investor-state dispute settlement was further agreed; these provisions allow for an investor to seek arbitration through the International Centre for the Settlement of Investment Disputes ('ICSID'), or through an *ad hoc* investment tribunal established under the United Nations Commission on International Trade Law ('UNCITRAL') procedure.[111] This would have provided American and Russian investors redress should their assets be expropriated by the either government, however, as the Treaty remains unratified, this provision is unusable by either country's investors.

Although these provisions of the BIT would have offered more stringent protection to investments in the US and Russia than those protections under the World Trade Organisation ('WTO') structure, they remain inactive. American nationals could benefit through forum shopping with third countries who have active Bilateral Investment Treaties with the Russian Federation, and vice versa for Russian nationals who route their investments to the US via a third country with whom the

[108] See United States-Russia BIT 1992.

[109] Article III(1).

[110] Article III(3).

[111] Arbitration Rules of the United Nations Commission on International Trade Law: UN. General Assembly (31st session: 1976-1977), Assembly Resolution 31/98.

US has an active BIT.[112] Some of these countries include Member States of the EU, as identified below.

3.3.2 EU-Russia Bilateral Investment Treaties

Of the 27 Member States of the European Union, 18 have active Bilateral Investment Treaties with Russia.[113] Of the 9 Member States lacking active BITs, 5 (Croatia, Cyprus, Poland, Portugal, and Slovenia) have signed but not ratified their BITs,[114] with the remaining 4 yet to adopt any kind of BIT with Russia (Estonia, Ireland, Latvia, and Malta). For the 4 Member States with no Bilateral Investment Treaties with Russia, they may rely upon the provisions in the European Community-Russia Partnership and Cooperation Agreement ('PCA') 1994, as shall be discussed later. The purpose of these Bilateral Investment Treaties was to give European and Russian investors' assets protections in each other's territories, although as shall be demonstrated, there are discrepancies between the BITs of different Member States of the European Union and Russia.

Generally, the extant Bilateral Investment Treaties between the 18 EU Member States and the Russian Federation all contain provisions denying either Party the ability to expropriate assets without the subsequent payment of compensation to the rightsholders.[115] For nationals or businesses domiciled in these countries, or from which countries their investments in Russia are processed, their investments are, in theory, safe from uncompensated expropriation. However, the Russian Government's intention to cap the compensation paid to Western investors whose IP has been infringed by Russian entities at 0% violates all 18 of these agreements, as no compensation can be issued to any of these EU Member State investors under

[112] Cooley, 2022. 'Investment Treaties Could Provide Remedy For Russia's Unlawful Seizure of Foreign Assets.' *Cooley Alert*, 9th June 2022.

[113] Finland-Russia BIT 1989 (Amended Agreement 1999); Belgium/Luxembourg-Russia BIT 1989; Germany-Russia BIT 1989; France-Russia BIT 1989; Netherlands-Russia BIT 1989; Austria-Russia BIT 1990; Spain-Russia BIT 1990; Bulgaria-Russia BIT 1993; Greece-Russia BIT 1993; Romania-Russia BIT 1993; Denmark-Russia BIT 1993; Slovakia-Russia BIT 1993; Czech Republic-Russia BIT 1994; Hungary-Russia BIT 1995; Sweden-Russia BIT 1995; Italy-Russia BIT 1996; Lithuania-Russia BIT 1999.

[114] See Poland-Russia BIT 1992; Portugal-Russia BIT 1994; Croatia-Russia BIT 1996; Cyprus-Russia BIT 1997; Slovenia-Russia BIT 2000.

[115] Finland-Russia BIT 1989 (Amended Agreement 1999) Article 4(2); Belgium/Luxembourg-Russia BIT 1989 Article 5; Germany-Russia BIT 1989 Article 4(1-5); France-Russia BIT 1989 Article 4(3); Netherlands-Russia BIT 1989 Article 6(a-c); Austria-Russia BIT 1990 Article 4(1-4); Spain-Russia BIT 1990 Article 6; Bulgaria-Russia BIT 1993 Article 4(1)(2); Greece-Russia BIT 1993 Article 4(1)(2); Romania-Russia BIT 1993 Article 5; Denmark-Russia BIT 1993 Article 4(1)(2); Slovakia-Russia BIT 1993 Article 5(1)(2); Czech Republic-Russia BIT 1994 Article 5(1)(2); Hungary-Russia BIT 1995 Article 5(1)(2); Sweden-Russia BIT 1995 Article 4(1)(2); Italy-Russia BIT 1996 Article 5(1-6); Lithuania-Russia BIT 1999 Article 6(1)(2).

Decree 299, as discussed later. By negotiating these provisions, the 18 Member States of the EU with Russian BITs have provided any investor from their territory superior protection for their assets in Russia than exist under WTO rules. Even with the provisions of Decree 299, there are remedies available to these investors as provided by the BITs, as discussed below.

These protections, when combined with the review processes allowed within the BITs, should enable investor-state disputes to be resolved relatively straightforwardly. However, disputes of parties in situations such as in the Russian example, wherein compensation for any use or expropriation of an asset can be 0%, means that the provisions allowing for investor-state dispute settlement may become more heavily relied upon by the 18 EU Member States that have ratified such agreements with Russia.

Should an investor in either Russia or one of the aforementioned 18 EU Member States dispute the settlement offered by the Government, the Bilateral Investment Treaties offer ISDS mechanisms. Included within these provisions is the possibility for the investors to seek arbitration and judgements in the matter from third parties not involved in the dispute. All 18 BITs include these investment dispute mechanisms, although the forum in which these disputes shall be settled varies treaty-to-treaty. An *ad hoc* tribunal under the UNCITRAL rules of Resolution 31/98 is found in 13 of the BITs between EU Member States and the Russian Federation,[116] the rules of which allow for both sides to contest their claims in front of impartial third-party arbitrators in an agreed forum of the Parties. The *ad hoc* arbitrators shall then issue a ruling on the amount owed to the investor for the expropriation to be deemed legally binding. Oftentimes, the Institute of Arbitration of the Stockholm Chamber of Commerce is also cited as the primary forum for investors of either Party to seek redress, as is the case in 7 BITs;[117] this has, in the examples of the four of the largest EU economies (Germany, France, the

[116] Belgium/Luxembourg-Russia BIT 1989 Article 10.2.2; France-Russia BIT 1989 Article 7; Austria-Russia BIT 1990 Article 7(1-4); Spain-Russia BIT 1990 Article 10(1-4); Bulgaria-Russia BIT 1993 Article 7(1-3); Greece-Russia 1993 Article 9(1-4); Denmark-Russia BIT 1993 Article 8(1)(2); Slovakia-Russia BIT 1993 Article 8(1-3); Czech Republic-Russia BIT 1993 Article 8(1-3); Hungary-Russia BIT 1995 Article 8(1)(2); Sweden-Russia BIT 1995 Article 8(1)(2); Italy-Russia BIT 1996 Article 9(1-4); Lithuania-Russia 1999 Article 10(1-3).

[117] Belgium/Luxembourg-Russia BIT 1989 Article 10.2.1; Austria-Russia BIT 1990 Article 7(1-4); Spain-Russia BIT 1990 Article 10(1-4); Denmark-Russia 1993 Article 8(1)(2); Hungary-Russia BIT 1995 Article 8(1)(2); Lithuania-Russia BIT 1999 Article 10(1-3).

Netherlands, and Italy), been omitted, with each of these states opting instead for *ad hoc* UNCITRAL tribunals.[118]

Further protections given by the European Community-Russia Partnership and Cooperation Agreement 1994 in several articles allow for investors from all EU Member States to seek redress for any investment dispute that arises in Russia. Such protections encompass Most Favoured Nation provisions for all EU investors in Russia,[119] compel both Russia and the EU to adhere to the provisions of several international IP agreements,[120] establish an investment protection mechanism,[121] reaffirm IP rightsholders' rights in both territories,[122] and establish a dispute settlement mechanism of the Cooperation Council between Russia and the EU.[123] Within the European Union, any investors who seek direct effect of any provision of the PCA may do so; the *Simutenkov* Case[124] allows for nationals of either Party to use the terms of the Agreement to activate protections contained within the PCA. The *Simutenkov* Case concerned a Russian national seeking to activate employment rights under the PCA, against the wishes of the Spanish Ministry of Education and Culture,[125] and the Royal Spanish Football Association.[126] Specifically, the Court held in this case that by the wording of the Agreement, direct effect could not be denied to any national of the EU or Russia, and that all nationals present in the Territory of the European Union had the ability to use the provisions of the PCA to seek legal redress.[127] At the time of signing the Agreement in 1994, the terms applied to only 11 of the current Member States,[128] with the United Kingdom also benefitting from the terms of the PCA before leaving the Union in 2020.[129] Should

[118] Germany-Russia BIT 1989 Article 10(1-5); France-Russia BIT 1989 Article 7; Netherlands-Russia BIT 1989 Article 9(1-4); Italy-Russia BIT 1995 Article 9(1-4).

[119] Article 36.

[120] Article 54(1-3). Specifically mentioned are the Paris Convention 1883, the Madrid Agreement 1891, the Patent Cooperation Treaty 1970, the Budapest Treaty 1977, and the Nice Agreement 1979.

[121] Article 58(1)(2).

[122] Article 62(1).

[123] Article 101(1-4).

[124] C-265/03 *Simutenkov* Case (paragraph 29).

[125] *Ministerio de Educación y Cultura*.

[126] *Real Federación Española de Fútbol*.

[127] C-265/03 *Simutenkov* Case (paragraph 29).

[128] Belgium, Denmark, Germany, Ireland, Greece, Spain, France, Italy, Luxembourg, the Netherlands, and Portugal.

[129] The United Kingdom had signed its own BIT with Russia in 1989 whilst a Member of the EU, and benefitted from protections offered by the PCA 1994, and the direct effect this PCA provided under the C-265/03 *Simutenkov* Case between 2005 and 2020 when the UK left the EU. The UK-Russia BIT 1989 contains extant provisions allowing for nationals of either Party to seek investment protection in the territory of the other in a

any of the remaining EU Member States without BITs with Russia be disadvantaged by actions taken by the Russian Government, their investors may sue the Russian State through the EU court system for restitution. The protections of the PCA remain, however, limited compared to the terms of the BITs between the Member States and Russia.

Hypothetically, all the aforementioned Bilateral Investment Treaties of the EU Member States should entitle their investors to seek redress should the Russian State expropriate their investors' assets contrary to the provisions of the BITs. Since the Invasion of Crimea and imposition of sanctions against Russia in 2014, however, there have only been 5 tribunals launched by EU Member State entities against the Russian State through arbitration, only three of which have directly relied upon protections offered through Bilateral Investment Treaties.

The earliest of these arbitrations, the *Pugachev v. Russia* Case, concerned an attempt by the Russian State to expropriate land assets of a Russo-French dual national, alleging that as a Russian national, the terms of Article 7 France-Russia BIT 1989 did not apply owing to the Master Nationality Rule.[130] The tribunal in this case rejected the assertion that dual nationals cannot benefit from the BIT's provisions, providing insight into how EU-Russian BITs of a similar nature can protect investors of dual EU-Russian nationality.[131] Although the panel could not assess the legality of the expropriations based on a lack of *ratione personae* jurisdiction, it noted that these expropriations *would* have been assessed under the provisions of the BIT had Mr Pugachev, or any similar EU National, held the relevant nationality of a state with a Russian BIT at the time of their investment. The *Pugachev* Case dispelled the assertion that one can forum shop the location from which investments are made. Although EU law allows capital to flow freely around the Union, and allows for establishment in any EU Member State by any national of the Union or EEA under TFEU Article 49, should an investment be made by a non-national of any of the 18 EU Member States with Russian BITs,

similar way to the current EU-Russian BITs, including the wartime losses provision under Article 4 (which the UK-Russia BIT was the first to include), the expropriation protections under Article 5(1)(2), and the Article 8 provisions establishing ISDS mechanisms.

[130] Convention on Certain Questions Relating to the Conflict of Nationality Laws 1930 Article 4.

[131] Interim Award of the 7th July 2017. *Sergei Viktorovich Pugachev v. The Russian Federation*, 2016 (paragraphs 382-388).

then these investments will most likely be found unprotectable by future arbitration panels for the same reason Mr Pugachev's investments were, depending on the wording of the agreement.

The second case, *Starr v. Russia*,[132] is pending, with the results of the arbitration yet to be concluded. It is being brought under the conditions of the Netherlands-Russia Bilateral Investment Treaty 1989. The investor, Starr Russia Investments III B.V., alleged that its equity in *PJSC "Investtradebank,"* a Russian commercial bank, has been expropriated contrary to the terms of the Netherlands-Russia BIT 1989 Article 6. The case was able to be sent to international arbitration under the terms of Article 9 of the Dutch-Russian BIT. Although it is yet to be concluded, the arbitration panel in this case is unlikely to dismiss the claims based on the same rationale in the *Pugachev* decision, as Starr Russia Investments III is considered a *legal* person under the terms of Article 1 of the BIT, and as such, should be entitled to bring an application for arbitration under the terms of the Agreement.

The final case, *Rafikovich Amalyan v. Russia*,[133] concerns an alleged expropriation by the Russian city of Voronezh in its failure to correctly transfer land titles to Rafikovich Amalyan, a Greek investor taking advantage of Article 9 Greece-Russia Bilateral Investment Treaty 1993. Mr Amalyan paid more than €24 million for 28.5 hectares of land in Voronezh, which he claims has been wrongly expropriated by Voronezh's City Administration.[134] This case has yet to be arbitrated, although given the apparent Russian judicial rulings in favour of Mr Amalyan already confirming his ownership of the land,[135] it would seem likely that the arbitration panel would find in his favour.

3.4 Summary

This chapter assessed how Bilateral Investment Treaty provisions can be used by investors to protect against expropriation. If an IP rightsholder suspects their asset has been directly or indirectly expropriated, they may request an arbitration under the governing rules of the BIT concerned. The United States and the European

[132] *Starr Russia Investments III B.V. v. Russian Federation*, 2016.
[133] *Artashes Rafikovich Amalyan v. Russian Federation*, 2016.
[134] *Notice of Arbitration, Artashes Rafikovich Amalyan v. Russian Federation*, 2016 (paragraph 30).
[135] *Ibid*, (paragraph 33).

Union Member States analysed have a considerable number of BITs with third countries, offering their investors protection from uncompensated, or sometimes illegal, expropriations.

The aforementioned arbitrations demonstrate that investors of states with BITs with Russia may benefit from arbitration should their assets allegedly be expropriated unlawfully. It is difficult to conclude how many cases shall arise from the new Decree 299 provisions of the Russian Government, as the Russian Government could remove its signature from the relevant BITs, abandoning these agreements following the War in Ukraine. Intellectual property expropriations and infringements, which ordinarily may be sent to arbitration by investors of the relevant 18 EU Member States under the provisions of these BITs, may pass without being arbitrated should Russia abandon these BITs. At present, however, these 18 European-Russian BITs remain active, offering a possibility of restitution to affected investors. This remains entirely dependent on Russia not removing its signature from these agreements, the possibility of which may continue to grow as sanctions against Russia increase.

For US investors in Russia, they shall need to rely upon other customary international law, as the US' BIT with Russia remains inactive. There may be other avenues through which US rightsholders may seek arbitration against the Russian State, including an arbitration under the *International Chamber of Commerce*, which as of March 2023, still lists the Chamber of Commerce and Industry of the Russian Federation as one of its Members.[136] The Russian Chamber of Commerce and Industry could, however, withdraw its membership from the organisation. Russia's countersanctions in response to the West's sanctions regime has seen the Russian State forgo international IP protections, and as such, Russia may wish to avoid arbitration applications from EU (and potentially US) investors as it continues to amend its IP laws. This shall be further analysed in the following chapter.

[136] International Chamber of Commerce, 2023. 'Our Members.' [Online]. Accessed: 24th May 2023. Available from: https://iccwbo.org/world-chambers-federation/our-members/.

4. Russia's Countersanctions

4.1 Introduction

In late February 2022, Russia adopted a series of retaliatory measures aimed primarily at the group of countries it considers to be unfriendly states;[137] these are primarily Western states allied to the United States who have imposed various forms of sanctions on Russia in the wake of the 2022 Invasion of Ukraine.[138] As a result of these designations, intellectual property assets of investors from these states have become unprotected in Russia, owing to statutory provisions adopted by the Russian Government since February 2022. These new provisions could be seen as an attempt to regularise indirect expropriation by the Russian State, and have been joined with undoubted direct expropriation mechanisms, as discussed below.

4.2 Russia's Statutory Measures

The Russian Government issued Decree 299, amending compensation provisions as they relate to intellectual property.[139] Specifically, these changes impact only those investors domiciled in any of the unfriendly countries as listed in Government Decree 79, Government Directive 430-r, Government Directive 1998-r, and

[137] Decree 79. The list of countries considered by Russia to be unfriendly states has been expanded since the initial government order. See Russian Government, 2023a. 'On the application of special economic measures in connection with the unfriendly actions of the United States and foreign states and international organizations that have joined them.' *President of Russia,* 28 February 2022, Decree Number 79 [Online]. Accessed: 1st May 2023. Available from: http://kremlin.ru/events/president/news/67881.

[138] The full list of countries is collated as; The United States of America, Canada, The United Kingdom of Great Britain and Northern Ireland (and Overseas Territories/Crown Dependencies thereof), Australia, New Zealand, all 27 Member States of the European Union, and other allied states close to the aforementioned such as Albania, Andorra, The Bahamas, Iceland, Japan, Liechtenstein, Micronesia, Monaco, Montenegro, North Macedonia, Norway, the Republic of Korea, San Marino, Singapore, Switzerland, Taiwan (listed as part of the People's Republic of China), and Ukraine. This list has been amended since its first inception (with the notable inclusion of Hungary, a state the Russian Government had appeared previously reluctant to sanction), and as such, this list of countries and territories may not be exhaustive. See Russian Government, 2023b. 'Government Directive No. 430-r of 5 March 2022.' Published 7th March 2022. [Online]. Accessed: 1st May 2023. Available from: http://government.ru/en/docs/44745/; Russian Government, 2023c. 'Directive No. 1998-r of 20 July 2022.' Published 22nd July 2022. [Online]. Accessed: 1st May 2023. Available from: http://government.ru/en/docs/46080/; Russian Government, 2023d. 'Directive No. 2018-r of 23 July 2022.' Published 24th July 2022. [Online]. Accessed: 1st May 2023. Available from: http://government.ru/en/docs/46096/. For further commentary on the list of countries included in the Russian Government measure, see Cole, 2023. 'Putin Turns on His Former Ally as He Brands Hungary "Unfriendly Nation".' *Newsweek*, 30th March 2023; Tass, 2022. 'Russian government approves list of unfriendly countries and territories.' 7th March 2022; TeleSur, 2022. 'Russia Expands Its "Unfriendly Nations" List.' 22nd July 2022.

[139] Decree 299; Russian Government, 2022a.

Government Directive 2018-r, all of which expanded the list of countries against whom Decree 299 was targeted.[140] Furthermore, amendments were made to the Russian compulsory licencing compensation mechanism of the Russian Federation's Civil Code Articles 1360 and 1362, as enacted through Government Decree 1767.[141] In so amending Articles 1360 and 1362, the Russian Government now permits intellectual property infringements of intellectual property assets owned by rightsholders in the unfriendly states listed by the aforementioned decrees; whereas previously the compensation for compulsory licencing in Russia was fixed at 0.5% of the profits made by the producing Russian company for the period of the licence, the recast Decree 299 amendments fixes compensation at 0%.[142] Any entity sanctioned by the Russian Government may now seek to use the compulsory licencing revisions to expropriate the assets of unfriendly nations, and the Russian Government appears to be encouraging these uncompensated uses.[143]

Resultingly, any intellectual property uses by Russian nationals or organisations of intellectual property owned by unfriendly state entities, without the rightsholders' consent, is free from compensation obligations otherwise extended to Russian and friendly state entities. There are conditions attached to this unconsented use; Article 1360 of the Russian Federation Civil Code allows for compensation to be disregarded only in the instance that the rightsholders are associated with unfriendly countries, and that the use is done for *essential* purposes such as national security or public health.[144] Despite these limitations, issuing no compensation for IP rightsholders of the designated unfriendly countries could be seen as a violation of Russia's international obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights, and the General Agreement on Tariffs and Trade. It may also, given the nature of the targeted unfriendly countries, incur penalties under 19 USC §1337, and court cases applied for by EU nationals or residents of EU Member States with whom Russia has BITs. These issues shall be discussed below.

[140] Decree 79; Directive 430-r; Directive 1998-r; Directive 2018-r. See Russian Government, 2023a, 2023b, 2023c, and 2023d, respectively; Gurgula, 2023, pp.3.

[141] Decree 1767; Russian Government, 2023e.

[142] Russian Government, 2022a; Gurgula, 2023, pp.3.

[143] Gotev, 2022. 'Russia legalises intellectual property piracy.' *EurActiv*, 8th March 2022.

[144] See Papula Nevinpat, 2023. 'Overview of the plans to restrict IP rights in Russia.' 14th March 2022.

The Russian Government has similarly recast intellectual property protections through the new law FZ-46,[145] allowing the Government to redefine intellectual property designations in goods, or group of goods, with the effect that the Government can waive intellectual property protections in any class of IP product or process it desires.[146] In issuing FZ-46, the Russian Government is empowered to reclassify which intellectual property is entitled to protections under the Russian Federation Civil Code, and which are not, even on an individual product level. Should the Russian Government wish to reclassify any goods imported from the designated unfriendly nations as unprotectable, it is so empowered to do so.

The final major announcement the Russian Government made directly impacting intellectual property was done through amending provisions related to intellectual property exhaustion. The provisions of Decree 506 entitle the Russian Ministry of Industry and Trade to add specified goods groupings (as defined under FZ-46), placed on *international* markets, to a list kept by the Ministry, allowing these products to be considered exhausted if placed on any market outside Russia.[147] By designating these products as exhausted should they have been sold outside Russia, the Russian Industry and Trade Ministry, under the guise of Decree 506, is falling afoul Articles 1359(6) and 1487 of the Russian Federation Civil Code which determines exhaustion to take place *nationally.*[148]

More broadly, IP rights may be acquired directly by the Russian State through nationalisation. The Draft Bill 104796-8 presented in the State Duma allows for the Russian Government to take ownership, under court review, of the assets of companies that have left Russia in the wake of the War in Ukraine.[149] These companies must be more than 25% controlled by unfriendly country nationals, worth more than 1 billion roubles,[150] and must have been left without effective

[145] Federal Law FZ-46. See Zotova, 2022. 'Restrictions on intellectual property rights in the context of sanctions.' *Lexology*, 30th March 2022.

[146] Gurgula, 2023, pp.4.

[147] Decree 506. Russian Government 2022b; Gurgula, 2023, pp.4. This is allowed under TRIPS Article 6, as there is no mandatory imposition of national, regional, or international exhaustion. Resultingly, Member States can determine when IP exhaustion occurs.

[148] Russian Government, 2022c; Gurgula, 2023, pp.4.

[149] Bill Number 104796-8.

[150] Sarkar, 2022. 'Primer: Russian IP law and practice rules post-Ukraine invasion.' *ManagingIP*, 4th May 2022.

management.[151] For any company holding IP assets in Russia, the restrictions imposed by Draft Bill 104796-8 leave, effectively, no recourse to domestic court restitution; in this scenario, the only ability foreign investors have to protect their assets, intellectual or not, would be through investor-state dispute settlement.[152] The Bill, in a similar way to the aforementioned IP amendments, violates the Most Favoured Nation provisions in IP agreements and Bilateral Investment Treaties.

If the Russian Government is able to renounce its obligations under such agreements so wilfully, then it is likely the Government could revoke its remaining BITs with the EU Member States.[153] It may be encouraged to do so; by terminating these agreements, the investor-state dispute settlement mechanisms may no longer be used by investors, closing one path for rightsholders to seek compensation from the Russian Government. Indeed, in other countries, and in normal circumstances, terminating BITs was found to have increased investment.[154] Although this is certainly not likely in the Russian case given its recent actions, there are demonstrable benefits in terminating its remaining BITs.

The above revisions to Russia's IP laws have already begun being reviewed through court actions. In the *Peppa Pig* decision, the Court upheld the provisions of the Russian Government as it relates copyright, denying Entertainment One (ultimately owned by Hasbro) relief from copyright infringement.[155] Although this decision was later overturned, it demonstrates that rightsholders can no longer rely on judicial redress for infringements of their IP.[156] Consequently, rightsholders may only be left with the protections enacted under GATT and TRIPS agreements, which although Russia has violated under its recent IP revisions, it would be less likely to withdraw from, as it would effectively renounce its WTO Membership.

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[151] Arkhipov, Golubev, and Kazakov, 2022. 'Bill on the External Management of Foreign Companies.' *EPAM*, 15th April 2022.

[152] Fenn, Fletcher, and Tretyak, 2022. 'Russia proposes new law to seize control over the assets of foreign companies.' *PinsentMasons*, 17th May 2022.

[153] Russia may have grounds to terminate any agreement unilaterally; Bernasconi-Osterwalder *et al*., 2020, 12-14.

[154] PublicCitizen, 2018. 'Termination of Bilateral Investment Treaties Has Not Negatively Affected Countries' Foreign Direct Investment Inflows.' 16th April 2018.

[155] *Case No. A28-11930/2021* in the Arbitration Court of the Kirov Region; Davis, 2022. 'Putin v. Peppa Pig: How Russia's War in Ukraine Threatens Intellectual Property Rights.' *JDSupra*, 21st March 2022.

[156] *Case No. A28-11930/2021* in the Second Arbitration Court of Appeals in Kirov; Richter, 2023. 'Copyright Claims Dismissed Because of "Western Sanctions".' *IrisMerlin*. [Online]. Accessed: 24th May 2023. Available from: https://merlin.obs.coe.int/article/9452.

4.3 International Treaty Violations by Russia

4.3.1 TRIPS Agreement

Under the terms of the Agreement on Trade-Related Aspects of Intellectual Property Rights 1995, Russia, as a member of the World Trade Organisation, has undertaken to protect the intellectual property assets of all Members of the WTO, if such investments have been made in Russia by entities of other Member States. The Russian Government has claimed it has the authority to impose IP restrictions under Article 73 of the TRIPS Agreement, although it is likely that Russia's actions violate TRIPS, as explained below.

Firstly, Russia's recent executive declarations may violate the TRIPS Agreement through the removal of Most Favoured Nations protections for the WTO Members targeted under the unfriendly countries list. The Russian Government's decision to exclude intellectual property owners of the nearly 50 countries on the unfriendly state list from full IP protections in Russia likely violates Article 3.1 of the TRIPS Agreement.[157] By adding these countries to the unfriendly country list, Russia has removed from rightsholders associated with these territories the right to be compensated for unconsented uses of their intellectual property.[158] TRIPS protections also allow for any benefit given to one member of the World Trade Organisation to be given to *all* other members of the WTO; by declaring that some Members and their nationals are incapable of receiving compensation for the uncompensated use of their intellectual property, unlike the other WTO members not mentioned in the unfriendly countries list, Russia has provided more favourable conditions to the investors from friendly countries, creating a discrepancy between these two groupings.[159] The final provision of the TRIPS Agreement that Russia has arguably violated relates to Articles 30 and 31, allowing for exceptions to the Agreement with regard to patent exploitation,[160] and uses authorised under compulsory licencing,[161] respectively. In particular, Russia's unfriendly countries designations under Government Decree 79, Government Directive 430-r, Government Directive 1998-r, and Government Directive 2018-r, and the

[157] TRIPS Agreement 1995 Article 3.1.
[158] Gurgula, 2023, pp.5.
[159] TRIPS Agreement 1995 Article 4.
[160] *Ibid*, Article 30.
[161] *Ibid*, Article 31.

restrictions imposed by the Russian Government through Decree 299, may violate Article 31(h) of the TRIPS Agreement.[162] By ignoring the obligations of the TRIPS Agreement as it relates to the intellectual property assets of unfriendly country entities, Russia has allowed for a two-tier investment system to be created, where entities from friendly countries are provided more stringent IP protections than those from unfriendly countries.

The Russian Government's decisions to allow itself the authority to reclassify groups of intellectual property has further fallen afoul of the TRIPS Agreement; allowing for State agencies to regroup IP rights in contravention of the TRIPS Agreement sets a dangerous precedent whereby the Russian State can pick and choose which IP assets are capable of protection. By singling out the IP assets of those unfriendly State entities, allowing them to remain uncompensated for unconsented use, the Russian Government has further heightened the disparity between its allies' and unfriendly countries' entities.[163]

All these provisions enacted by the Russian Government under the guise of TRIPS Article 73 arguably violate the good faith requirement Russia should adhere to.[164] Given Russia initiated the War in Ukraine, it may have failed to satisfy the joined requirements of good faith under VCLT Articles 26 and 31, and emergencies under TRIPS Article 73.[165] It remains to be seen if any of the targeted countries shall contests these TRIPS violations.

4.3.2 GATT Agreement

Similar provisions in the General Agreement on Tariffs and Trade related to times of international emergency may not, however, have been violated by Russia. A GATT panel has previously found that the provisions in GATT may be suspended under the emergency assessment of Members' governments under Article XXI(b)(iii).[166] In the *Traffic in Transit* Case, the Panel found that Russia (and any other WTO Member) has the ability to define what constitutes an essential security

[162] TRIPS Agreement 1995 Article 31(h); Gurgula, 2023, pp.5.

[163] Gurgula, 2023, pp.6.

[164] Vienna Convention on the Law of Treaties 1969 ('VCLT') Articles 26 and 31 compel all ratifiers of the TRIPS Agreement to act solely in good faith when using its provisions.

[165] TRIPS Article 73(b)(iii); Gurgula, 2023, pp.8.

[166] GATT Article XXI(b)(iii).

threat within the meaning of Article XXI,[167] and as such, even when the aggressor in the conflict,[168] partially suspend its GATT obligations.[169]

As a result of the *Traffic in Transit* Case, it is unclear whether Russia's newly enacted IP provisions would be found to have violated the GATT Agreement, or concurrently, the TRIPS Agreement. The World Trade Organisation is currently in a frozen state regarding Member States' disputes, and the Appellate Body is currently unable to hear any dispute appeals between WTO Members under either the TRIPS or GATT agreements. The United States' blocking of new judges to the Body,[170] contrary to the wishes of the majority of WTO Members,[171] and Russia's absence in the alternate *Multi-Party Interim Appeal Arbitration Arrangement*,[172] means that any dispute settlement brought under either the TRIPS or GATT agreements may be frozen by WTO bureaucracy. Although interim panel reports can be issued either in Russia's favour or against Russia, should the US, EU, or Russia wish to appeal a decision, they may find themselves without redress. This leaves rightsholders in limbo; Russia's GATT and TRIPS violations are unlikely to be settled by the WTO, and panel reports assessing Russia's IP measures shall likely be held up in appeal processes. Resultingly, investors may rely upon sanctions provisions, or Bilateral Investment Treaty clauses, to have Russia's latest amendments to IP rights challenged.

4.4 Remedies for US and EU Rightsholders

For American investors in Russia, the Russian Government actions can best be contested using the provisions of 19 USC §1337. As the United States and Russia do not have an active Bilateral Investment Treaty, and while reliance upon other

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[167] World Trade Organisation *Traffic in Transit* Panel Report of the 5th April 2019 (paragraph 7.131). No Member can elevate *any* issue to an emergency so as to deviate from its GATT obligations, but rather must make qualified assessments in light of objective measures (paragraphs 7.130-7.132); Gurgula, 2023, pp.10-11.

[168] The Panel refused to recognise its role in assessing which side in the conflict was responsible for the emergency situation (paragraph 7.121) but did refer to UN General Assembly Resolution 71/205 in deciding if Russia's invocation of Article XXI(b)(iii) was well-founded (paragraph 7.125-7.126); Gurgula, 2023, pp.10.

[169] The Panel found Russia had previously, correctly, asserted Article XXI(b)(iii) in refusing to allow goods belonging to countries that had imposed sanctions against Russia to transit through its territory (paragraph 7.149); Gurgula, 2023, pp.10.

[170] A summary for the reasons the US is blocking appointments to the Appellate Body can be found in Vidigal, 2019, pp.865-870. Members must agree to the appointments under the WTO Agreement Annex 2.

[171] As found by Fiorini *et al*., 2020, pp.667, 680-696.

[172] The European Union is, unlike both the US and Russia, a member of the Arrangement. WTOPlurilaterals, 2023. 'Multi-Party Interim Appeal Arbitration Arrangement (MPIA).' [Online]. Accessed: 23rd May 2023. Available from: https://wtoplurilaterals.info/plural_initiative/the-mpia/.

forms of customary international law may be a long process, rightsholders who have been impacted by the changes to compulsory licencing provisions in Russia may seek redress immediately under §1337. Any complaints made to USITC would incur an investigation under the rules of procedure, through which the Commission may block the imports of any goods manufactured in Russia which violate US patents and IP rights. There have been no petitions or complaints referencing Russia since February 2022,[173] and resultingly have not been any USITC violations reports mentioning Russian infringements.[174] There has, however, been one Commission opinion referencing Russia; an action alleging unfair sodium nitrate importation from Russia and India was investigated by USITC, with only India found to have created an unfair trading practice.[175] This opinion related to an action filed before the adoption of Decree 299, and as such, it is reasonable to conclude §1337 has not been applied by rightsholders in response to any Russian IP violations.

The same conclusion could be reached regarding European investors. Although the aforementioned 18 EU countries have BITs, and all Member States of the Union benefit from the European Community-Russia PCA 1994, there have been no disputes filed under investment arbitration rules since Decree 299 was adopted, and as such, no rightsholders have received redress through this mechanism.[176] It could perhaps be a result of how recently the Decree 299 provisions were implemented, or that many companies have withdrawn their assets from Russia in the wake of the sanctions, however the redress mechanism available to EU IP holders has remained unused, despite the argument that BITs remain the best option available to rightsholders to appeal Russia's actions.[177] As discussed earlier, Russia may in the

[173] Neither active or archived petitions and complaints show that Russian companies have been targeted under §1337. See United States International Trade Commission, 2023a. 'Petitions and Complaints.' [Online]. Accessed: 24th May 2023. Available from: https://www.usitc.gov/petitions_and_complaints?facets_query=; United States International Trade Commission, 2023b. 'Petitions and Complaints Archive.' [Online]. Accessed: 24th May 2023. Available from: https://www.usitc.gov/petitions_and_complaints_archive.

[174] Electronic Document Information System, 2023a. 'ID/RD – Final on Violation.' [Online]. Accessed: 24th May 2023. Available from: https://edis.usitc.gov/external/search/advanced.html?security=0&docType=25%7CID%252FRD%2B-%2BFinal%2Bon%2BViolation.

[175] Electronic Document Information System, 2023b. 'Investigation 701-679: Sodium Nitrite from India and Russia; Inv. No. 701-TA-679-680 and 731-TA-1585-1586 (Final).' [Online]. Accessed: 24th May 2023. Available from: https://edis.usitc.gov/external/search/document/790875.

[176] According to the UNCTAD database. See UNCTAD, 2023. 'Russian Federation: Cases as Respondent State.' [Online]. Accessed: 24th May 2023. Available from: https://investmentpolicy.unctad.org/investment-dispute-settlement/country/175/russian-federation/respondent.

[177] Fenn, Fletcher, and Tretyak, 2022. 'Russia proposes new law to seize control over the assets of foreign companies.' *PinsentMasons*, 17th May 2022.

interim period between any expropriatory actions and the launching of arbitration, which often takes 6 months, remove its signature from the relevant Bilateral Investment Agreements between itself and the 18 EU Member States. Should this happen, EU investors would similarly be left without any recourse to arbitration awards under the UNCITRAL rules. Unlike in the US case, EU investors have no mechanism similar to §1337 by which they may seek an unfair importation investigation, and the possible bans this may incur, unless these infringing goods should be imported to the Union.[178] Should the Russian Government allow Russian entities to use EU-based intellectual property without the consent of the rightsholders, an action by the rightsholders to seize the goods once imported to the Union could be launched under Regulation 608/2013. Until such time, however, the EU's lack of extraterritorial IP protections denies EU rightsholders the ability to contest, in a similar manner to US rightsholders, that their IP has been incorrectly expropriated, and that their infringed IP *may* be imported to the Union.

Collectively, therefore, the sovereignty of the Russian Government in determining which IP protections it shall extend to international rightsholders may, owing to the blocking of appellate judges at the WTO by the US, the lack of an active Bilateral Investment Treaty between the US and Russia, and the chance that EU sanctions and BITs continue to fail in deterring Russia's recent IP actions, leave only §1337 protections open to US rightsholders. EU rightsholders would likely have no recourse through which to contest Russia's expropriation of their IP unless the Union were to adopt similar extraterritorial sanctions as the US has.

Ultimately, it remains to be seen how EU rightsholders may contest the intellectual property that has been directly or indirectly expropriated by the Russian State. As seemingly no actions have been launched under Regulation 608/2013, and the Bilateral Investment Treaties' arbitration provisions have also seemingly yet to be activated, rightsholders impacted by the expropriations may be at a loss given the Russian Government's unwillingness to allow compensation or judicial review to be enacted by EU rightsholders. American rightsholders can, under §1337, launch investigations against the Russian Government, but have yet to do so either, leaving Russia free to continue expropriating directly and indirectly US and EU IP assets.

[178] Regulation 608/2013 Articles 2, 3, 6, 17, 18, 23, and 25.

5. Summary and Conclusions

This paper attempted to analyse the ways in which the United States and the European Union have used their sanctions and Bilateral Investment Treaty policies to protect intellectual property outside their jurisdictions. In Chapter 2, an analysis was conducted to compare both territories' sanctions policies, coming to the conclusion that domestically, the United States and the European Union have adopted various protections to allow international rightsholders to protect their intellectual property whilst under sanctions. In the sanction regimes analysed, it could be concluded that the European Union has consistently applied intellectual property protections to avoid indirect expropriation of other nationals' assets, with the sole exception of the sanctions against Iraq, under which the EU was compelled by the United Nations to take control of sanctioned entities' assets. As held by the Court of Justice in several key decisions, the EU's sanctions policy may be drafted quite broadly by the Commission without the consent of the EU Parliament; the Commission has, given its overseas strategy, chosen to allow international IP rightsholders to continue paying fees associated with the maintenance of their rights in the Union, but has frozen these IP assets indefinitely. The United States has similarly exempted IP from sanctions policy, either through issuing General Licences, or through Acts of Congress. The President's powers to implement these decisions was assessed, in particular as it relates to policy changes under successive administrations. US sanctions policy is, however, unlike the EU's, extraterritorial in nature, with domestic rightsholders entitled to use the provisions of 19 USC §1337 to contest unfair importation and international violation of US IP rights. These various exemptions and protections offered to domestic and international IP rightsholders have, however, been muted by further US and EU sanctions; by sanctioning the institutions associated with the Russian Government, including Rospatent and several key banks, the US and the EU have effectively indirectly expropriated their own rightsholders' assets, as should any of these rightsholders have any dealings with the sanctioned entities, they would be liable for sanctions violations. In answer to the first research question, it must be concluded that the US

and EU have broad protections for rightsholders under their sanctions regimes as it relates to the maintenance of these assets, but have failed to effectively allow their own rightsholders to pay for the maintenance of their IP rights in Russia.

Chapter 3 introduced the Bilateral Investment Treaties under which American and European rightsholders may benefit from expropriation, loss, and investor-state dispute settlement provisions. The United States' Model Bilateral Investment Treaty and the EU Member States' Model Bilateral Investment Treaties all contain provisions related to the protection of intellectual property assets. In practice, however, the United States has failed its investors by not ratifying the Bilateral Investment Treaty signed between itself and Russia in 1992. Had the US done so, its investors would have been able to take the Russian Government before an arbitral body, determining in the process if Russia's expropriation of American IP assets was done according to the provisions of the BIT. The European Union, on the other hand, offers 18 of its Member States a two-tier system of protection; under these 18 Member States' Bilateral Investment Treaties with Russia, and the EU's Partnership and Cooperation Agreement with Russia, rightsholders may rely upon numerous provisions to seek restitution should the Russian Government expropriate their assets directly or indirectly. The *Pugachev*, *Starr*, and *Amalyan* tribunals are demonstrative of how EU rightsholders may benefit from the terms of arbitration protection offered under Bilateral Investment Treaties. In answer to the second research question, therefore, it must be determined that the United States and the European Union both, in theory, use their BITs to protect rightsholders operating in third countries. In practice, however, it is dependent upon whether the US and the EU Member States have signed and ratified their BITs with the relevant country, and even when these BITs are active, it remains dependent on both Parties agreeing to remain bound by the BITs' conditions.

Finally, in Chapter 4, Russia's countersanctions were assessed to determine what can be done by American and European rightsholders in response. Russia has effectively both directly and indirectly expropriated intellectual property assets belonging to investors of *unfriendly* countries, breaking the Most Favoured Nations provisions that rightsholders have previously benefitted from. With regard to American rightsholders, their intellectual property may, should the Russian Government or any entities associated therewith, form the basis of §1337 sanctions.

By allowing the United States International Trade Commission to investigate Russia's actions, rightsholders have a potential form of redress given the possibility of import restrictions levied against infringing Russian entities. The §1337 provisions have yet to be requested by American rightsholders, perhaps given that the mechanism has become most often used against Chinese infringements, disadvantaging the US' investors with expropriated assets in Russia. Furthermore, these same American rightsholders do not have any redress against Russia's actions under the terms of a Bilateral Investment Treaty; had the United States and Russia ratified their Agreement, it would have offered investment treaty arbitration to affected US rightsholders. European rightsholders, on the other hand, may apply for arbitration under the terms of the 18 Bilateral Investment Treaties (depending on place of establishment, as determined by the TFEU Article 49 and the *Centros* Case), and may seek to challenge Russian expropriatory actions through this mechanism. It remains to be seen, however, whether any cases shall be brought under the arbitration provisions of the EU Member States' Bilateral Investment Treaties, and any case must be brought before the Russian Government has a chance to remove its signature from the relevant BITs. In answer to the final question, therefore, it must be determined that rightsholders from the US and the EU, although directly impacted by Russia's recasting of IP rights, have yet to fully take advantage of their ability to pursue Russian entities through either sanctions policy (US investors) or Bilateral Investment Treaties (EU investors). Ultimately, it is speculative to determine how these new Russian provisions will be countered by rightsholders, as at present, they have yet to take advantage of their ability to do so.

In conclusion, this paper has analysed how American and European rightsholders may be protected by their governments' actions in sanction and Bilateral Investment Treaty policies. Both jurisdictions have sought to protect their rightsholders domestically and internationally through their sanctions and Bilateral Investment Treaties. In the example of Russia, however, state sovereignty and the broad powers the Russian Government has to deviate from its international agreements, has left US and EU investors in Russia with few options. It is in this way sanctions and BITs may best be used; although their application has so far given few protections to those in Russia, they serve as an example of how future applications of sanctions and BITs against other, possibly less economically advanced countries, may occur.

Reference List / Bibliography

Official Publications

United Nations

Resolution 31/98 (1977) Arbitration Rules of the United Nations Commission on International Trade Law. UN. General Assembly (31st session: 1976-1977). 99th Plenary Meeting on 15th December 1976. A/RES/31/98.

Resolution 661 (1990) adopted by the Security Council at its 2933rd meeting on 6 August 1990. S/RES/661(1990).

Resolution 1267 (1999) adopted by the Security Council at its 4051st meeting on 15 October 1999. S/RES/1267(1999).

Resolution 1333 (2000) adopted by the Security Council at its 4251st meeting on 19 December 2000. S/RES/1333(2000).

Resolution 1483 (2003) adopted by the Security Council at its 4761st meeting on 22 May 2003. S/RES/1483(2003).

World Trade Organisation

Traffic in Transit Panel Report of the 5th April 2019. WTO Document Number: WT/DS512/R.

European Union

Regulation 1210/2003. *Council Regulation (EC) No 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC) No 2465/96*. Document 32003R1210.

Regulation 2004/38/EC. *Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance)Text with EEA relevance.* Document 02004L0038-20110616.

Regulation 314/2004. *Council Regulation (EC) No 314/2004 of 19 February 2004 concerning certain restrictive measures in respect of Zimbabwe*. Document 32004R0314.

Regulation 765/2006. *Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus*. Document 32006R0765.

Regulation 1284/2009. *Council Regulation (EU) No 1284/2009 of 22 December 2009 imposing certain specific restrictive measures in respect of the Republic of Guinea*. Document 32009R1284.

Regulation 356/2010. *Council Regulation (EU) No 356/2010 of 26 April 2010 imposing certain specific restrictive measures directed against certain natural or legal persons, entities or bodies, in view of the situation in Somalia*. Document 32010R0356.

CFSP 2010/788. *Council Decision 2010/788/CFSP of 20 December 2010 concerning restrictive measures against the Democratic Republic of the Congo and repealing Common Position 2008/369/CFSP*. Document 32010D0788.

CFSP 2011/72. *Council Decision 2011/72/CFSP of 31 January 2011 concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia.* Document 32011D0072.

CFSP 2011/173. *Council Decision 2011/173/CFSP of 21 March 2011 concerning restrictive measures in view of the situation in Bosnia and Herzegovina*. Document 32011D0173.

Regulation 359/2011. *Council Regulation (EU) No 359/2011 of 12 April 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran*. Document 32011R0359.

Regulation 753/2011. *Council Regulation (EU) No 753/2011 of 1 August 2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan*. Document 32011R0753.

Regulation 36/2012. *Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011*. Document 32012R0036.

Regulation 377/2012. *Council Regulation (EU) No 377/2012 of 3 May 2012 concerning restrictive measures directed against certain persons, entities and bodies threatening the peace, security or stability of the Republic of Guinea-Bissau.* Document 32012R0377.

Regulation 1219/2012. *Regulation (EU) No 1219/2012 of the European Parliament and of the Council of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries.* Document 32012R1219.

Regulation 608/2013. *Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003.* Document 32013R0608.

CFSP 2014/145. *Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.* Document 32014D0145.

Regulation 208/2014. *Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine.* Document 32014R0208.

Regulation 224/2014. *Council Regulation (EU) No 224/2014 of 10 March 2014 concerning restrictive measures in view of the situation in the Central African Republic.* Document 32014R0224.

Regulation 269/2014. *Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.* Document 32014R0269.

CFSP 2014/512. *Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.* Document 32014D0512.

Regulation 747/2014. *Council Regulation (EU) No 747/2014 of 10 July 2014 concerning restrictive measures in view of the situation in Sudan and repealing Regulations (EC) No 131/2004 and (EC) No 1184/2005.* Document 32014R0747.

Regulation 833/2014. *Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.* Document 32014R0833.

Regulation 1352/2014. *Council Regulation (EU) No 1352/2014 of 18 December 2014 concerning restrictive measures in view of the situation in Yemen.* Document 32014R1352.

CFSP 2015/740. *Council Decision (CFSP) 2015/740 of 7 May 2015 concerning restrictive measures in view of the situation in South Sudan and repealing Decision 2014/449/CFSP*. Document 32015D0740.

Regulation 2015/1755. *Council Regulation (EU) 2015/1755 of 1 October 2015 concerning restrictive measures in view of the situation in Burundi.* Document 32015R1755.

Regulation 2016/44. *Council Regulation (EU) 2016/44 of 18 January 2016 concerning restrictive measures in view of the situation in Libya and repealing Regulation (EU) No 204/2011.* Document 32016R0044.

Regulation 2017/1509. *Council Regulation (EU) 2017/1509 of 30 August 2017 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Regulation (EC) No 329/2007.* Document 32017R1509.

Regulation 2017/1770. *Council Regulation (EU) 2017/1770 of 28 September 2017 concerning restrictive measures in view of the situation in Mali*. Document 32017R1770.

CFSP 2017/2074. *Council Decision (CFSP) 2017/2074 of 13 November 2017 concerning restrictive measures in view of the situation in Venezuela*. Document 32017D2074.

Regulation 2018/647. *Council Regulation (EU) 2018/647 of 26 April 2018 amending Regulation (EU) No 401/2013 concerning restrictive measures in respect of Myanmar/Burma.* Document 32018R0647.

Regulation 2019/1716. *Council Regulation (EU) 2019/1716 of 14 October 2019 concerning restrictive measures in view of the situation in Nicaragua.* Document 32019R1716.

Regulation 2019/1890. *Council Regulation (EU) 2019/1890 of 11 November 2019 concerning restrictive measures in view of Turkey's unauthorised drilling activities in the Eastern Mediterranean*. Document 32019R1890.

Regulation 2020/1998. *Consolidated text: Council Regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses.* Document 02020R1998-20230307.

Regulation 2021/478. *Council Implementing Regulation (EU) 2021/478 of 22 March 2021 implementing Regulation (EU) 2020/1998 concerning restrictive measures against serious human rights violations and abuses.* Document 32021R0478.

Regulation 2021/1275. *Council Regulation (EU) 2021/1275 of 30 July 2021 concerning restrictive measures in view of the situation in Lebanon.* Document 32021R1275.

Regulation 2022/334. *Council Regulation (EU) 2022/334 of 28 February 2022 amending Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine*. Document 32022R0334.

Regulation 2022/345. *Council Regulation (EU) 2022/345 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine*. Document 32022R0345.

Regulation 2022/879. *Council Regulation (EU) 2022/879 of 3 June 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.* Document 32022R0879.

Regulation 2022/1354. *Council Implementing Regulation (EU) 2022/1354 of 4 August 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.* Document 32022R1354.

CFSP 2022/1355. *Council Decision (CFSP) 2022/1355 of 4 August 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine*. Document 32022D1355.

Regulation 2022/2319. *Council Decision (CFSP) 2022/2319 of 25 November 2022 concerning restrictive measures in view of the situation in Haiti.* Document 32022D2319.

CFSP 2023/891. *Council Decision (CFSP) 2023/891 of 28 April 2023 concerning restrictive measures in view of actions destabilising the Republic of Moldova.* Document 32023D0891.

United States of America

US Statutory Provisions

(*The titles of the Statutory Measures are taken from the Cornell University Law School Database. Cornell Law School, 2023. 'U.S. Code: Table Of Contents.'*

[Online]. Accessed: 23rd May 2023. Available from: https://www.law.cornell.edu/uscode/text).

19 CFR § 133.42: *Infringing copies or phonorecords.*

31 CFR § 560.211: *Prohibited transactions involving blocked property.*

31 CFR § 560.322: *Blocked account; blocked property.*

31 CFR § 560.509: *Certain transactions related to patents, trademarks, and copyrights authorized.*

31 CFR § 587: *Russian Harmful Foreign Activities Sanctions Regulations.*

3 U.S. Code § 301: *General authorization to delegate functions; publication of delegations.*

19 U.S. Code § 1337: *Unfair practices in import trade.*

19 U.S. Code § 1595(a): *Aiding unlawful importation.*

22 U.S. Code § 287(c): *Economic and communication sanctions pursuant to United Nations Security Council Resolution.*

28 U.S. Code § 1782 - *Assistance to foreign and international tribunals and to litigants before such tribunals*.

35 U.S. Code § 156: *Extension of patent term.*

35 U.S. Code § 271: *Infringement of patent.*

35 U.S. Code § 283: *Injunction.*

35 U.S. Code § 284: *Damages.*

50 U.S. Code § 1701: *Unusual and extraordinary threat; declaration of national emergency; exercise of Presidential authorities.*

50 U.S. Code § 1601: *Termination of existing declared emergencies: the National Emergencies Act*.

Executive Orders

(Titles in italics denote the title of the Executive Order according to the Federal Register, names in brackets denote the President by whom the Executive Order was adopted).

Executive Order 13574 of 23rd May 2011*: Concerning Further Sanctions on Iran*. (Obama).

Executive Order 13590 of 20th November 2011: *Iran Sanctions*. (Obama).

Executive Order 13622 of 30th July 2012: *Authorizing Additional Sanctions With Respect to Iran*. (Obama).

Executive Order 13645 of 3rd June 2013: *Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Freedom and Counter-Proliferation Act of 2012 and Additional Sanctions With Respect To Iran.* (Obama).

Executive Order 13692 of 8th March 2015: *Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela.* (Obama).

Executive Order 13716 of 16th January 2016: *Revocation of Executive Orders 13574, 13590, 13622, and 13645 With Respect to Iran, Amendment of Executive Order 13628 With Respect to Iran, and Provision of Implementation Authorities for Aspects of Certain Statutory Sanctions Outside the Scope of U.S. Commitments Under the Joint Comprehensive Plan of Action of July 14, 2015.* (Obama).

Executive Order 13846 of 6th August 2018: *Reimposing Certain Sanctions With Respect to Iran*. (Trump).

Executive Order 13850 of 1st November 2018: *Blocking Property of Additional Persons Contributing to the Situation in Venezuela*. (Trump).

Executive Order 13857 of 25th January 2019: *Taking Additional Steps To Address the National Emergency With Respect to Venezuela*. (Trump).

Executive Order 14024 of 15th April 2021: *Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation.* (Biden).

Executive Order 14065 of 21st February 2021: *Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to Continued Russian Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine*. (Biden).

Russian Federation

Russian Federation Civil Code Article 1359(6).

Russian Federation Civil Code Article 1360.

Russian Federation Civil Code Article 1362.

Russian Federation Civil Code Article 1487.

Draft Bill Number 104796-8. Bill introduced in the State Duma 12th April 2022, adopted 24th May 2022.

Decree 79. *Decree of the President of the Russian Federation Number 79 dated 28th February 2022.* See also Russian Government, 2023a.

Directive 299. *Decree of the Russian Government Number 299 dated 6th March 2022*. See also Russian Government, 2022a.

Directive 430-r. *Decree of the Russian Government Number 430-r dated 5th March 2022*. See also Russian Government, 2023b.

Federal Law FZ-46. *Federal Law No. 46-FZ "On Amendments to Certain Legislative Acts of the Russian Federation" of 8th March 2022 (as amended on 26th March 2022).* See also Zotova, 2022.

Decree 506. *Resolution of the Russian Government no. 506 dated 29 March 2022*. See also Russian Government, 2022b.

Directive 1998-r. *Directive No. 1998-r dated 20th July 2022.* See also Russian Government, 2023c.

Directive 2018-r. *Directive No. 2018-r dated 23rd July 2022.* See also Russian Government, 2023d.

Decree 1767. *Decree No. 1767 dated 18th October 2021*. See also Russian Government, 2023e.

Literature

Books and Book Chapters

Happold, Matthew, 2016. Chapter "Targeted Sanctions and Human Rights" in *Economic Sanctions and International Law*, edited by Matthew Happold and Paul Eden. Hart Publishing: Oxford, UK, and Portland OR, USA. ISBN: 9781849465908.

Hufbauer, Gary Clyde, Jeffrey Schott, Kimberley Ann Elliott, and Barbara Oegg, 2009. *Economic Sanctions Reconsidered*. Peterson Institute for International Economics: Washington D.C., USA. The E-book version was used for this paper, with the standard zoomed size, and as such any references to pages are done on this basis. Ebook available at: Perlego. [Online]. Accessed: 24th May 2023. Available from: https://www.perlego.com/book/773486/economic-sanctions-reconsidered-pdf. ISBN: 9780881324822.

Pila, Justine, and Paul Torremans, 2019. *European Intellectual Property Law*, Second Edition. Oxford: Oxford University Press. The E-book version was used for this paper, with the standard zoomed size, and as such any references to pages are done on this basis. Ebook available at: VitalSource Library. [Online]. Accessed: 22nd May 2023. Available from: Bookshelf:VitalSource online library. ISBN: 9780198831280.

Xuereb, Peter G., 2021. Chapter "Article 49 [Freedom of Establishment] (ex-Article 43 TEC)" in *Treaty on the Functioning of the European Union - A Commentary Volume I: Preamble, Articles 1-89*, edited by Hermann-Josef Blanke and Stelio Mangiameli. Springer Nature Switzerland: Cham, Switzerland. The E-book version was used for this paper, with the standard zoomed size, and as such any references to pages are done on this basis. Ebook available at: SpringerLink. [Online]. Accessed: 19th May 2023. Available from: https://doi.org/10.1007/978-3-030-43511-0. ISBN: 9783030435110.

Journal Articles

Chachko, Elena, and J. Benton Heath, 2022. 'A Watershed Moment for Sanctions? Russia, Ukraine, and the Economic Battlefield.' AJIL Unbound 116: pp. 135-139. [Online]. Accessed: 20th May 2023. Available from: doi:10.1017/aju.2022.21.

Chiang, Eric P., 2004. 'Determinants of Cross-Border Intellectual Property Rights Enforcement: The Role of Trade Sanctions.' *Southern Economic Journal* 71(2): pp.424–40. DOI: 10.2307/4135300.

DuChez, Neil F., 2008. 'Synopsis of the Extraterritorial Protection Afforded by Section 337 as Compared to the Patent Act.' *Michigan Telecommunications and Technology Law Review*, 14(2): pp.447-456.

Eckes, Christina, 2015. 'The CSFP and Other EU Policies: A Difference in Nature?' *European Foreign Affairs Review*, 20(4): pp.535-552. [Online]. Accessed: 19th May 2023. Available from: http://www.kluwerlawonline.com/document.php?id=EERR2015044.

Fiorini, Matteo, Bernard M. Hoekman, Petros C. Mavroidis, Maarja Saluste, and Robert Wolfe, 2020. 'WTO Dispute Settlement and the Appellate Body Crisis: Insider Perceptions and Members' Revealed Preference.' *Journal of World Trade*, 54(5), September: pp.667-698. DOI: 10.2139/ssrn.3827215.

Gordon, C. Joy, 2011. 'Smart Sanctions Revisited.' *Ethics and International Affairs*, 25(3): pp.315-335. DOI: 10.1017/S0892679411000323.

Gurgula, Olga, 2023. 'Invoking Article 73 TRIPS in good faith: no recourse to 'security exceptions' for Russia's violation of TRIPS.' *Journal of Intellectual Property Law & Practice, 2023, Vol. 00, No. 00*: pp.1-14. DOI: 10.1093/jiplp/jpad032.

Ott, Andrea, 2012. 'Case C-130/10 European Parliament v. Council of the European Union, Judgment of 19 July 2012, Not Yet Reported.' *Maastricht Journal of European and Comparative Law*, 19(589): pp.1-26.

Rogers, Joel W. and Joseph P. Whitlock, 2002. 'Is Section 337 Consistent with the GATT and the TRIPs Agreement?' *American University International Law Review* 17, no.3: pp.459-525.

Shriver, Ernest P., 1996. 'Separate but Equal: Intellectual Property Importation and the Recent Amendments to Section 337.' *Minnesota Journal of International Law.* 120: pp.441-465.

Sykes, Alan O., 2021. 'The Law and Economics of "Forced" Technology Transfer and Its Implications for Trade and Investment Policy (and the U.S.–China Trade War).' *Journal of Legal Analysis*, 13(1): pp.127–171. [Online]. Accessed: 24th May 2023. Available from: https://doi.org/10.1093/jla/laaa007.

Tostensen, Arne, and Beate Bull, 2002. 'Review Article: Are Smart Sanctions Feasible?' *World Politics* 54, April: pp.373-403. DOI:10.1353/wp.2002.0010.

Tzanou, Maria, 2019. 'Case-note on Joined Cases C-402/05 P & C-415/05 P Yassin Abdullah Kadi & Al Barakaat International Foundation v. Council of the European Union & Commission of the European Communities.' *German Law Review*, 10(2): pp.123-154. DOI: 10.1017/S2071832200000973.

Vidigal, Geraldo, 2019. 'Living Without the Appellate Body: Multilateral, Bilateral and Plurilateral Solutions to the WTO Dispute Settlement Crisis.' *Journal of World Investment and Trade*, 20: pp.862–890. DOI: 10.1163/22119000-12340160.

Yin, Yiqing, 2017. 'Section 337 of the Tariff Act of 1930 and Its Impacts on China.' *Catholic University Journal of Law and Technology*, 25(2): pp.319-339.

Online sources

Bilateral Investment Treaty Sources

Finland-Russia Bilateral Investment Treaty 1989. *United Nations Conference on Trade and Development*. [Online]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/1535/finland---russian-federation-bit-1989-.

Finland-Russia Bilateral Investment Treaty (Amended Agreement) 1999. *United Nations Conference on Trade and Development*. [Online]. [In Finnish]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/1535/finland---russian-federation-bit-1989-.

Belgium/Luxembourg-Russia Bilateral Investment Treaty 1989. *United Nations Conference on Trade and Development*. [Online]. [In French]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/3645/belgium-luxembourg---russian-federation-bit-1989-.

United Kingdom-Russia Bilateral Investment Treaty 1989. *United Nations Conference on Trade and Development*. [Online]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/2861/russian-federation---united-kingdom-bit-1989-.

Germany-Russia Bilateral Investment Treaty 1989. *United Nations Conference on Trade and Development*. [Online]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/1745/germany---russian-federation-bit-1989-.

France-Russia Bilateral Investment Treaty 1989. *United Nations Conference on Trade and Development*. [Online]. [In French]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/1605/france---russian-federation-bit-1989-.

Netherlands-Russia Bilateral Investment Treaty 1989. *United Nations Conference on Trade and Development*. [Online]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/2645/netherlands---russian-federation-bit-1989-.

Austria-Russia Bilateral Investment Treaty 1990. *United Nations Conference on Trade and Development*. [Online]. [In German]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/271/austria---russian-federation-bit-1990-.

Spain-Russia Bilateral Investment Treaty 1990. *United Nations Conference on Trade and Development*. [Online]. [In Spanish]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/2851/russian-federation---spain-bit-1990-.

United States-Russia Bilateral Investment Treaty 1992. *United Nations Conference on Trade and Development*. [Online]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/2862/russian-federation---united-states-of-america-bit-1992-.

Poland-Russia Bilateral Investment Treaty 1992. *United Nations Conference on Trade and Development*. [Online]. [In Russian]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/2774/poland---russian-federation-bit-1992-.

Bulgaria-Russia Bilateral Investment Treaty 1992. *United Nations Conference on Trade and Development*. [Online]. [In Russian]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/705/bulgaria---russian-federation-bit-1993-.

Greece-Russia Bilateral Investment Treaty 1993. *United Nations Conference on Trade and Development*. [Online]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/1813/greece---russian-federation-bit-1993-.

Romania-Russia Bilateral Investment Treaty 1993. *United Nations Conference on Trade and Development*. [Online]. [In Russian]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/2822/romania---russian-federation-bit-1993-.

Denmark-Russia Bilateral Investment Treaty 1993. *United Nations Conference on Trade and Development*. [Online]. [Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/1281/denmark---russian-federation-bit-1993-.

Slovakia-Russia Bilateral Investment Treaty 1993. *United Nations Conference on Trade and Development*. [Online]. [In Russian]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/2848/russian-federation---slovakia-bit-1993-.

Czech Republic-Russia Bilateral Investment Treaty 1994. *United Nations Conference on Trade and Development*. [Online]. [In Russian]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/1223/czech-republic---russian-federation-bit-1994-.

European Community-Russia Partnership and Cooperation Agreement ('Agreement on Partnership and Cooperation Establishing a Partnership between the European Communities and Their Member States, of One Part, and Russia, of the Other Part') 1994. *United Nations Conference on Trade and Development*. [Online]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/3127/ec---russia-pca-1994-.

Portugal-Russia Bilateral Investment Treaty 1994. *United Nations Conference on Trade and Development*. [Online]. [In Portuguese]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-

agreements/treaties/bilateral-investment-treaties/2794/portugal---russian-federation-bit-1994-.

Hungary-Russia Bilateral Investment Treaty 1995. *United Nations Conference on Trade and Development*. [Online]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/1895/hungary---russian-federation-bit-1995-.

Sweden-Russia Bilateral Investment Treaty 1995. *United Nations Conference on Trade and Development*. [Online]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/2852/russian-federation---sweden-bit-1995-.

Italy-Russia Bilateral Investment Treaty 1996. *United Nations Conference on Trade and Development*. [Online]. [In Italian]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/2116/italy---russian-federation-bit-1996.

Croatia-Russia Bilateral Investment Treaty 1996. *United Nations Conference on Trade and Development*. [Online]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/1099/croatia---russian-federation-bit-1996-.

Cyprus-Russia Bilateral Investment Treaty 1997. *United Nations Conference on Trade and Development*. [Online]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/3759/cyprus---russian-federation-bit-1997-.

Lithuania-Russia Bilateral Investment Treaty 1999. *United Nations Conference on Trade and Development*. [Online]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-

agreements/treaties/bilateral-investment-treaties/2424/lithuania---russian-federation-bit-1999-.

Slovenia-Russia Bilateral Investment Treaty 2000. *United Nations Conference on Trade and Development*. [Online]. Accessed: 26th April 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bilateral-investment-treaties/2849/russian-federation---slovenia-bit-2000-.

Model Bilateral Investment Treaties

Croatia Model Bilateral Investment Treaty 1998. *United Nations Conference on Trade and Development*. [Online]. Accessed: 23rd May 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/model-agreements (entry 62).

Denmark Model Bilateral Investment Treaty 2000. *United Nations Conference on Trade and Development*. [Online]. Accessed: 23rd May 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/model-agreements (entry 56).

Finland Model Bilateral Investment Treaty 2001. *United Nations Conference on Trade and Development*. [Online]. Accessed: 23rd May 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/model-agreements (entry 54).

Greece Model Bilateral Investment Treaty 2001. *United Nations Conference on Trade and Development*. [Online]. Accessed: 23rd May 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/model-agreements (entry 53).

Sweden Model Bilateral Investment Treaty 2002. *United Nations Conference on Trade and Development*. [Online]. Accessed: 23rd May 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/model-agreements (entry 51).

France Model Bilateral Investment Treaty 2006. *United Nations Conference on Trade and Development*. [Online]. Accessed: 23rd May 2023. Available from:

https://investmentpolicy.unctad.org/international-investment-agreements/model-agreements (entry 38).

Germany Model Bilateral Investment Treaty 2008. *United Nations Conference on Trade and Development*. [Online]. Accessed: 23rd May 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/model-agreements (entry 36).

Austria Model Bilateral Investment Treaty 2008. *United Nations Conference on Trade and Development*. [Online]. Accessed: 23rd May 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/model-agreements (entry 35).

United States Model Bilateral Investment Treaty. 2012. *United Nations Conference on Trade and Development*. [Online]. Accessed: 14th May 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/model-agreements (entry 24).

Slovakia Model Bilateral Investment Treaty 2019. *United Nations Conference on Trade and Development*. [Online]. Accessed: 23rd May 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/model-agreements (entry 9).

Netherlands Model Bilateral Investment Treaty 2019. *United Nations Conference on Trade and Development*. [Online]. Accessed: 23rd May 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/model-agreements (entry 8).

Belgium/Luxembourg Economic Union Model Bilateral Investment Treaty 2019. *United Nations Conference on Trade and Development*. [Online]. Accessed: 23rd May 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/model-agreements (entry 7).

Italy Model Bilateral Investment Treaty 2022. *United Nations Conference on Trade and Development*. [Online]. Accessed: 23rd May 2023. Available from: https://investmentpolicy.unctad.org/international-investment-agreements/model-agreements (entry 2).

Other Online Sources

Arkhipov, Denis, Denis Golubev, and Denis Kazakov, 2022. 'Bill on the External Management of Foreign Companies.' *EPAM*, 15th April 2022. [Online]. Accessed: 24th May 2023. Available from: https://epam.ru/en/legal-updates/view/zakonoproekt-o-vneshnej-administracii-v-inostrannyh-kompaniyah.

Aurup, Sarah Anne, 2022. 'Abramovich is suing the EU. He's not the only one.' Politico, 3rd June 2022. [Online]. Accessed: 20th May 2023. Available from: https://www.politico.eu/article/roman-abramovich-sue-eu-sanctions-assets-visas-vladimir-putin-russia-war-ukraine-mikhail-fridman-petr-aven-alisher-usmanov/.

Bernasconi-Osterwalder, Nathalie, Sarah Brewin, Martin Dietrich Brauch, and Suzy Nikièma. 'Report: Terminating a Bilateral Investment Treaty IISD BEST PRACTICES SERIES – MARCH 2020.' *International Institute for Sustainable Development*. [Online]. Accessed: 24th May 2023. Available from: https://www.iisd.org/system/files/publications/terminating-treaty-best-practices-en.pdf.

Bessen, James, 2014. 'The Evidence Is In: Patent Trolls Do Hurt Innovation.' *Harvard Business Review*, November. [Online]. Accessed: 19th May 2023. Available from: https://hbr.org/2014/07/the-evidence-is-in-patent-trolls-do-hurt-innovation#:~:text=The%20economic%20burden%20of%20today's,in%20firm%20wealth%20each%20year).

Brown, Chad P., 2023. 'Russia's war on Ukraine: A sanctions timeline.' *Pieterson Institute for International Economics*, 8th May 2023. [Online]. Accessed: 19th May 2023. Available from: https://www.piie.com/blogs/realtime-economics/russias-war-ukraine-sanctions-timeline.

Castellum.AI, 2023. 'Russia Sanctions Dashboard.' [Online]. Accessed: 25th May 2023. Available from: https://www.castellum.ai/russia-sanctions-dashboard.

Cole, Brendan, 2023. 'Putin Turns on His Former Ally as He Brands Hungary "Unfriendly Nation".' *Newsweek*, 30th March 2023. [Online]. Accessed: 1st May 2023. Available from: https://www.newsweek.com/russia-hungary-putin-orban-unfriendly-countries-1791498.

Congress, 2023. ‘Browse the Constitution Annotated Article II.’ [Online]. Accessed: 23rd May 2023. Available from: https://constitution.congress.gov/browse/article-2/section-2/clause-2/.

Cooley, 2022. ‘Investment Treaties Could Provide Remedy For Russia’s Unlawful Seizure of Foreign Assets.’ *Cooley Alert*, 9th June 2022. [Online]. Accessed: 3rd May 2023. Available from: https://www.cooley.com/news/insight/2022/2022-06-09-investment-treaties-could-provide-remedy-for-russia-unlawful-seizure-of-foreign-assets.

Copperpod, 2022. ‘*How Much Does Patent Litigation Cost?*’ 11th May 2022. [Online]. Accessed: 19th May 2023. Available from: https://www.copperpodip.com/post/how-much-does-patent-litigation-cost).

Davis, Daniel, 2022. ‘Putin v. Peppa Pig: How Russia’s War in Ukraine Threatens Intellectual Property Rights.’ *JDSupra*, 21st March 2022. [Online]. Accessed: 24th May 2023. Available from: https://www.jdsupra.com/legalnews/putin-v-peppa-pig-how-russia-s-war-in-2435822/.

Duan, Charles, 2021. ‘The U.S. International Trade Commission: An Empirical Study of Section 337 Investigation.’ *R Street Policy Study: 2021*. Number 246. November 2021. [Online]. Accessed: 19th May 2023. Available from: https://www.rstreet.org/research/the-u-s-international-trade-commission-an-empirical-study-of-section-337-investigations/.

Electronic Document Information System, 2023a. ‘ID/RD – Final on Violation.’ [Online]. Accessed: 24th May 2023. Available from: https://edis.usitc.gov/external/search/advanced.html?security=0&docType=25%7CID%252FRD%2B-%2BFinal%2Bon%2BViolation. [Account registration required to access database].

Electronic Document Information System, 2023b. ‘Investigation 701-679: Sodium Nitrite from India and Russia; Inv. No. 701-TA-679-680 and 731-TA-1585-1586 (Final).’ [Online]. Accessed: 24th May 2023. Available from: https://edis.usitc.gov/external/search/document/790875. [Account registration required to access database].

EveryCRSReport, 2009. 'Intellectual Property Rights Protection and Enforcement: Section 337 of the Tariff Act of 1930.' Report RS22880. [Online]. Accessed: 19th May 2023. Available from: https://www.everycrsreport.com/reports/RS22880.html#:~:text=Section%20337%20of%20the%20Tariff%20Act%20of%201930%20(19%20U.S.C.,patents%2C%20trademarks%2C%20and%20copyrights.

European Commission, 2022. 'Frequently asked questions: Restrictive measures (sanctions).' [Online]. Accessed: 22nd May 2023. Available from: https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_1401.

European Commission, 2023. 'EU Sanctions Map.' [Online]. Accessed: 19th May 2023. Available from: https://www.sanctionsmap.eu/#/main.

Fenn, Michael, Michael Fletcher, and Slava Tretyak, 2022. 'Russia proposes new law to seize control over the assets of foreign companies.' *PinsentMasons*, 17th May 2022. [Online]. Accessed: 24th May 2023. Available from: https://www.pinsentmasons.com/out-law/analysis/russia-proposes-seize-control-assets-foreign-companies.

Funakoshi, Minami, Hugh Lawson, and Kannaki Deka, 2022. 'Tracking sanctions against Russia.' *Reuters*, 9th March 2022. [Online]. Accessed: 19th May 2023. Available from: https://www.reuters.com/graphics/UKRAINE-CRISIS/SANCTIONS/byvrjenzmve/.

Gotev, Georgi, 2022. 'Russia legalises intellectual property piracy.' *EurActiv*, 8th March 2022. [Online]. Accessed: 24th May 2023. Available from: https://www.euractiv.com/section/global-europe/news/russia-legalises-intellectual-property-piracy/.

Hufbauer, Gary Clyde, and Zhiyao (Lucy) Lu. 'Section 301: US investigates allegations of forced technology transfers to China.' *East Asia Forum*, 3rd October 2017. [Online]. Accessed: 24th May 2023. Available from: https://www.eastasiaforum.org/2017/10/03/section-301-us-investigates-allegations-of-forced-technology-transfers-to-china/.

Jraissati, Jorge, and Wolf von Laer, 2021. ‘How Maduro Beat Sanctions.’ *ForeignPolicy*, 3rd June 2021. [Online]. Accessed: 19th May 2023. Available from: https://foreignpolicy.com/2021/06/03/maduro-sanction-trump-biden-stronger/.

Keiff, Scott, and Thomas Grant, 2022. ‘The ITC's Crucial Role In Countering Russia's Aggression.’ *Law360*, 18th March 2022. [Online]. Accessed: 19th May 2023. Available from: https://www.law360.com/articles/1475129/the-itc-s-crucial-role-in-countering-russia-s-aggression.

Nardelli, Alberto, Nikos Chrysoloras, and John Follian, 2022. ‘EU to Ban Seven Russian Banks From SWIFT, Spare Key Firms.’ *Bloomberg*, 1st March 2022. [Online]. Accessed: 19th May 2022. Available from: https://www.bloomberg.com/news/articles/2022-03-01/eu-agrees-to-block-russian-banks-from-swift-sparing-key-firms?leadSource=uverify%20wall.

OFAC, 2022. ‘Directive 4 (As Amended) Under Executive Order 14024.’ [Online]. Accessed: 22nd May 2023. Available from: https://ofac.treasury.gov/recent-actions/20220228.

OFAC, 2023. ‘Selected General Licenses Issued by OFAC.’ [Online]. Accessed: 19th May 2023. Available from: https://ofac.treasury.gov/selected-general-licenses-issued-ofac.

Papula Nevinpat, 2023. ‘Overview of the plans to restrict IP rights in Russia.’ 14th March 2022. [Online]. Accessed: 1st May 2023. Available from: https://www.papula-nevinpat.com/overview-of-the-plans-to-restrict-ip-rights-in-russia/#:~:text=The%20law%20%E2%80%9COn%20Amendments%20to,IP%20law%20may%20be%20waived.

PublicCitizen, 2018. ‘Termination of Bilateral Investment Treaties Has Not Negatively Affected Countries’ Foreign Direct Investment Inflows.’ [Online]. Accessed: 24th May 2023. Available from: https://www.citizen.org/article/termination-of-bilateral-investment-treaties-has-not-negatively-affected-countries-foreign-direct-investment-inflows/.

Richter, Andrei, 2023. ‘Copyright Claims Dismissed Because of "Western Sanctions".' *IrisMerlin*. [Online]. Accessed: 24th May 2023. Available from: https://merlin.obs.coe.int/article/9452.

Russian Government, 2022a. ‘Decree of the Government of the Russian Federation No. 299 dated March 6, 2022 "On amendments to paragraph 2 of the methodology for determining the amount of compensation paid to the patent owner when deciding to use an invention, utility model or industrial design without his consent, and the procedure for its payment" [In Russian].’ *Pravo* (“Official Publication of Legal Acts”), document published online 7th March 2022. [Online]. Accessed: 24th May 2023. Available from: http://publication.pravo.gov.ru/Document/View/0001202203070005.

Russian Government, 2022b. ‘Decree of the Government of the Russian Federation of March 29, 2022, No. 506 "On goods (groups of goods) in respect of which certain provisions of the Civil Code of the Russian Federation on the protection of exclusive rights to the results of intellectual activity expressed in such goods, and the means of individualization by which such goods are marked [In Russian].’ *Pravo* (“Official Publication of Legal Acts”), document published online 30th March 2022. [Online]. Accessed: 24th May 2023. Available from: http://publication.pravo.gov.ru/Document/View/0001202203300003.

Russian Government, 2022c. ‘Order of the Ministry of Industry and Trade of the Russian Federation dated April 19, 2022 No. 1532 "On approval of the list of goods (groups of goods) in respect of which the provisions of subparagraph 6 of Article 1359 and Article 1487 of the Civil Code of the Russian Federation do not apply, subject to the introduction of these goods (groups of goods) into turnover outside the territory of the Russian Federation by right holders (patent holders), as well as with their consent" (Registered on May 6, 2022 No. 68421) [In Russian].’ *Pravo* (“Official Publication of Legal Acts”), document published online 6th May 2022. [Online]. Accessed: 24th May 2023. Available from: http://publication.pravo.gov.ru/Document/View/0001202205060001.

Russian Government, 2023a. ‘On the application of special economic measures in connection with the unfriendly actions of the United States and foreign states and international organizations that have joined them.’ *President of Russia,* 28 February

2022, Decree Number 79 [Online]. Accessed: 1st May 2023. Available from: http://kremlin.ru/events/president/news/67881.

Russian Government, 2023b. 'Government Directive No. 430-r of 5 March 2022.' Published 7th March 2022. [Online]. Accessed: 1st May 2023. Available from: http://government.ru/en/docs/44745/.

Russian Government, 2023c. 'Directive No. 1998-r of 20 July 2022.' Published 22nd July 2022. [Online]. Accessed: 1st May 2023. Available from: http://government.ru/en/docs/46080/.

Russian Government, 2023d. 'Directive No. 2018-r of 23 July 2022.' Published 24th July 2022. [Online]. Accessed: 1st May 2023. Available from: http://government.ru/en/docs/46096/.

Tass, 2022. 'Russian government approves list of unfriendly countries and territories.' 7th March 2022. [Online]. Accessed: 1st May 2023. Available from: https://tass.com/politics/1418197

Russian Government, 2023e. 'Background Paper on the Zero Remuneration Rate.' Published 4th April 2022. *Rospatent*. [Online]. Accessed: 24th May 2023. Available from: https://rospatent.gov.ru/en/news/paper-zero-remuneration-rate.

Sarkar, Sukanya, 2022. 'Primer: Russian IP law and practice rules post-Ukraine invasion.' *ManagingIP*, 4th May 2022. [Online]. Accessed: 24th May 2023. Available from: https://www.managingip.com/article/2a5d1aveddrlq9opduzgg/primer-russian-ip-law-and-practice-rules-post-ukraine-invasion.

TeleSur, 2022. 'Russia Expands Its "Unfriendly Nations" List.' 22nd July 2022. [Online]. Accessed: 1st May 2023. Available from: https://www.telesurenglish.net/news/Russia-Expands-Its-Unfriendly-Nations-List-20220722-0006.html.

The Guardian, 2015. '"Deeply concerned" Obama imposes sanctions on Venezuelan officials.' 9th March 2015. [Online]. Accessed: 19th May 2023. Available from: https://www.theguardian.com/world/2015/mar/09/obama-venezuela-security-threat-sanctions.

Toole, Andrew A., Richard D. Miller, and Nicholas Rada, 2022. 'Report: Intellectual property and the U.S. economy: Third edition.' *United States Patent and Trademark Office,* March 2022. [Online]. Accessed: 24th May 2023. Available from: https://www.uspto.gov/ip-policy/economic-research/intellectual-property-and-us-economy.

Treasury, 2022a. 'U.S. Treasury Announces Unprecedented & Expansive Sanctions Against Russia, Imposing Swift and Severe Economic Costs.' *United States Department of the Treasury.* [Online]. Accessed: 19th May 2023. Available from: https://home.treasury.gov/news/press-releases/jy0608.

Treasury, 2022b. 'U.S. Treasury Escalates Sanctions on Russia for Its Atrocities in Ukraine.' *United States Department of the Treasury.* [Online]. Accessed: 19th May 2023. Available from: https://home.treasury.gov/news/press-releases/jy0705.

Treasury, 2023. 'With Over 300 Sanctions, U.S. Targets Russia's Circumvention and Evasion, Military-Industrial Supply Chains, and Future Energy Revenues.' *United States Department of the Treasury.* [Online]. Accessed: 19th May 2023. Available from: https://home.treasury.gov/news/press-releases/jy1494.

UNCTAD, 2012. 'Expropriation - A Sequel: UNCTAD Series on Issues in International Investment Agreements II.' *United Nations Conference on Trade and Development (UNCTAD) Series on Issues in International Investment Agreements II,* UN, New York. [Online]. Accessed: 25th May 2023. Available from: https://doi.org/10.18356/098cf83b-en.

UNCTAD, 2023. 'Russian Federation: Cases as Respondent State.' [Online]. Accessed: 24th May 2023. Available from: https://investmentpolicy.unctad.org/investment-dispute-settlement/country/175/russian-federation/respondent.

United States International Trade Commission, 2023a. 'Petitions and Complaints.' [Online]. Accessed: 24th May 2023. Available from: https://www.usitc.gov/petitions_and_complaints?facets_query=.

United States International Trade Commission, 2023b. ‘Petitions and Complaints Archive.’ [Online]. Accessed: 24th May 2023. Available from: https://www.usitc.gov/petitions_and_complaints_archive.

Wajsman, Nathan, Michał Kazimierczak, Carolina Arias Burgos, Francisco García Valero, Yann Ménière, and Ilja Rudyk, 2022. ‘Report: IPR-intensive industries and economic performance in the European Union: Industry-level analysis report, fourth edition October 2022.’ *European Patent Office* and *European Union Intellectual Property Office*. [Online]. Accessed: 24th May 2023. Available from: https://euipo.europa.eu/ohimportal/en/web/observatory/ip-contribution#ip-contribution_1.

WTOPlurilaterals, 2023. ‘Multi-Party Interim Appeal Arbitration Arrangement (MPIA).’ [Online]. Accessed: 23rd May 2023. Available from: https://wtoplurilaterals.info/plural_initiative/the-mpia/.

Zotova, Vera, 2022. ‘Restrictions on intellectual property rights in the context of sanctions.’ *Lexology*, 30th March 2022. [Online]. Accessed: 24th May 2023. Available from: https://www.lexology.com/library/detail.aspx?g=955a986b-1e45-4cd6-a7d3-8bc33805ae37.

Cases

European Union

Court of Justice of the European Union

Curia, 2023. 'Juris, last update on 22/5/2023.' [Online]. Accessed: 22nd May 2023. Available from: https://curia.europa.eu/en/content/juris/t2_juris.htm. (Provides a list of EU Court Cases either decided or pending before the Court).

C-2/74. Judgment of the Court of 21 June 1974. *Jean Reyners v Belgian State*. Document 61974CJ0002.

C-212/97. Judgment of the Court of 9 March 1999. *Centros Ltd v Erhvervs- og Selskabsstyrelsen*. Document 61997CJ0212.

C-265/03. Judgment of the Court (Grand Chamber) of 12 April 2005. *Igor Simutenkov v Ministerio de Educación y Cultura and Real Federación Española de Fútbol*. ECLI:EU:C:2005:213.

C-402/05 and 415/05 (Joined Cases). Judgment of the Court (Grand Chamber) of 3 September 2008. *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities*. ECLI:EU:C:2008:461.

C-446/09 and C-495/09. Judgment of the Court (First Chamber) of 1 December 2011. *Koninklijke Philips Electronics NV (C-446/09) v Lucheng Meijing Industrial Company Ltd and Others and Nokia Corporation (C-495/09) v Her Majesty's Commissioners of Revenue and Customs.* ECLI:EU:C:2011:796.

C-130/10. Judgment of the Court (Grand Chamber), 19 July 2012. *European Parliament v Council of the European Union*. ECLI:EU:C:2012:472.

C-220/14. Judgment of the Court (Fifth Chamber) of 5 March 2015. *Ahmed Abdelaziz Ezz and Others v Council of the European Union*. ECLI:EU:C:2015:147.

C-284/16. Judgment of the Court (Grand Chamber) of 6 March 2018. *Slowakische Republik v Achmea BV*. ECLI:EU:C:2018:158.

C-134/19. Judgment of the Court (Grand Chamber) of 6 October 2020. *Bank Refah Kargaran v Council of the European Union*. ECLI:EU:C:2020:793.

C-753/21 and C-754/21 (Joined Cases). Judgment of the Court (Eighth Chamber) of 15 December 2022. *Instrubel NV and Montana Management Inc. v Montana Management Inc. and Others*. ECLI:EU:C:2022:987.

General Court (Tribunal)

T-303/19. Judgment of the General Court (Fifth Chamber) of 9 June 2021. *Viktor Fedorovych Yanukovych v Council of the European Union*. ECLI:EU:T:2021:334.

Pending General Court Cases

T-301/22. *Aven v Council*. Application to the General Court of 23rd May 2022.

T-304/22. *Fridman v Council*. Application to the General Court of 24th May 2022.

T-313/22. *Abramovic v Council*. Application to the General Court of 25th May 2022.

T-237/22. *Usmanov v Council*. Application to the General Court of 17th June 2022.

T-643/22. *Yanukovych v Council*. Application to the General Court of 11th November 2022.

United States of America

Holmes v. Jennison, 39 U.S. (14 Pet.) 540 (1840).

Holden v. Joy, 84 U.S. 211 (17 Wall.) (1872).

De Geofroy v. Riggs, 133 U.S. 258 (1890).

Ross v. McIntyre, 140 U.S. 453 (1891).

Asakura v. City of Seattle, 265 U.S. 332 (1924).

Santovincenzo v. Egan, 284 U.S. 30 (1931).

Amtorg Trading Corporation 75 F.2d 826 (C.C.P.A. 1935).

Deepsouth Packing Co., Inc. v. Laitram Corp., 406 U.S. 518 (1972).

Bayer A.G. v. Housey Pharms. Inc. 340 F.3d (2003).

NTP Inc. v. Research In Motion, 418 7.3d (2005).

Russian Federation

Case No. A28-11930/2021 in the Arbitration Court of the Kirov Region of 3rd March 2022.

Case No. A28-11930/2021 in the Second Arbitration Court of Appeals in Kirov of 26th June 2022.

UNCITRAL Tribunals

Sergei Viktorovich Pugachev v. The Russian Federation, 2016. *United Nations Conference on Trade and Development*. [Online]. Accessed: 14th May 2023. Available from: https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/680/pugachev-v-russia. (Additional documents related to this arbitration can be found on the ItaLaw website. See Sergei Viktorovich Pugachev v. The Russian Federation, *ItaLaw*, 2023. [Online]. Accessed: 15th May 2023. Available from: https://www.italaw.com/cases/3661).

Starr Russia Investments III B.V. v. Russian Federation, 2016. *United Nations Conference on Trade and Development*. [Online]. Accessed: 14th May 2023. Available from: https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/1164/starr-v-russia.

Artashes Rafikovich Amalyan v. Russian Federation, 2016. *United Nations Conference on Trade and Development*. [Online]. Accessed: 14th May 2023. Available from: https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/727/rafikovich-amalyan-v-russia. (Additional documents related to this arbitration can be found on the JusMundi website. See Artashes Rafikovich Amalyan v. Russian Federation, 2023. [Online]. Accessed: 15th May 2023. Available from: https://jusmundi.com/en/document/other/en-artashes-rafikovich-amalyan-v-russian-federation-notice-of-arbitration-monday-22nd-february-2016.).