

Report on WTO Enforcement Actions: Russia



United States Trade Representative
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Introduction

This report was prepared pursuant to section 201(b) of the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitskiy Rule of Law Accountability Act of 2012 (P.L. 112-208). This Act requires the U.S. Trade Representative not later than 180 days after the United States extends permanent normal trade relations (PNTR) to the products of the Russian Federation (Russia), and annually thereafter, to submit a report to the Committee on Finance of the U.S. Senate and the Committee on Ways and Means of the U.S. House of Representatives describing the enforcement actions taken by Office of the U.S. Trade Representative (USTR) against Russia to ensure Russia's full compliance with its obligations as a Member of the World Trade Organization (WTO), including any obligations under agreements with members of the Working Party on the accession of Russia to the WTO.¹

Russia in the World Trade Organization

On August 22, 2012, following 18 years of negotiations with the United States and other Members of the WTO, Russia became a Member of the WTO. At that time, however, the United States and Russia each invoked non-application of the WTO Agreement with respect to the other. On December 21, 2012, following the termination of the application of the Jackson-Vanik amendment to Russia and the extension of PNTR to the products of Russia, the United States and Russia both filed letters with the WTO withdrawing their notices of non-application and consenting to have the WTO Agreement apply between them.

¹ P.L. 112-208 also requires the U.S. Trade Representative (USTR) to submit annual reports to the Committee on Finance of the U.S. Senate and the Committee on Ways and Means of the House of Representatives regarding Russia's implementation of the WTO Agreement, as well as its accession to and implementation of the Information Technology Agreement and Agreement on Government Procurement. The first report is due in December, 2013. In addition, USTR and the Secretary of State are required to submit annually to the same committees a report that describes the actions the agencies have taken to promote the rule of law in Russia and that discloses the status of any pending petition for espousal filed with the Secretary of State by a U.S. investor in Russia.

A significant benefit to the United States of Russia's WTO Membership is the integration of Russia into the WTO system of established, enforceable, multilateral trade rules. As a WTO Member, Russia is required to apply its trade regime in a manner consistent with WTO rules, including those on national treatment, most favored nation treatment, transparency, technical barriers to trade, sanitary and phytosanitary measures, and protection and enforcement of intellectual property rights, among many others. Not only does the WTO establish these rules, but it offers a range of tools and opportunities for Members to hold other Members accountable for implementing their WTO commitments. Those tools can include quiet advocacy between experts on the margins of WTO meetings, working with other Members with common concerns, open expressions of concern and discussions in WTO committee meetings, informal consultations, and, if necessary, formal dispute settlement proceedings. Thus, a WTO Member can work to ensure that another Member complies with its commitments through a variety of engagements, both bilaterally and multilaterally.

Russia, the Customs Union and the WTO

Russia began its move toward closer economic ties with its neighbors by signing the Treaty on the Establishment of the Eurasian Economic Community (EurAsEC) on October 10, 2000.² On January 1, 2010, Russia, Kazakhstan and Belarus began implementing a Customs Union (the Customs Union or CU) by adopting a common external tariff. On July 1, 2010, a common CU Customs Code entered into effect, and on July 1, 2011, the CU Parties abolished all customs posts on their internal borders, allowing for the free flow of most goods among the CU Parties. Beginning in early 2012, the Eurasian Economic Commission (EEC) replaced the CU Commission as the supranational body charged with implementing external trade policy for CU Parties. When it joined the CU, Russia transferred authority over many aspects of its foreign trade regime to the CU, including import tariff levels, trade in transit rules, nontariff import measures (e.g., tariff-rate quotas, import licensing, and trade remedy procedures), customs policies (e.g., customs valuation, customs fees, and country of origin determinations), border enforcement of intellectual property rights, establishment and administration of special economic

² EurAsEC includes Russia, Belarus, Kazakhstan, Kyrgyzstan and Tajikistan.

and industrial zones, and the development of technical regulations and sanitary and phytosanitary measures. As a result, many of Russia's WTO commitments are implemented through CU measures. In such cases, Russia's commitments specifically provide that they apply whether the Russian government or the competent bodies of the CU are responsible for implementation of the relevant commitment.

Enforcement of Russia's WTO commitments

When Russia became a WTO Member, it had in place a legal regime allowing compliance with its WTO obligations that went into effect from the date of accession.³ In fact, during the 18 years of negotiations to join the WTO, Russia amended or adopted numerous laws, decrees, orders, regulations, decisions, and other measures to implement WTO rules and its specific commitments through its domestic legal regime. In addition, because certain aspects of Russia's WTO commitments fall under the competence of the CU or EurAsEC, some CU and EurAsEC treaties, decisions, regulations and other measures also had to be amended or adopted to implement Russia's WTO commitments. The vast majority of these measures came into effect prior to Russia's membership in the WTO.

Even before the WTO Agreement applied between the United States and Russia, USTR augmented its engagement with the government of Russia by using the tools of the WTO to ensure that Russia complied with its WTO commitments. As detailed below, USTR has used WTO committee meetings to highlight potentially WTO-inconsistent behavior; has forged alliances with other WTO Members to urge Russia to modify its behavior or avoid taking certain actions; and has met with representatives of the Russian government in connection with WTO committee meetings to press our issues bilaterally prior to raising them in the full committee.

³ Russia's WTO Protocol included transition periods for Russia's automotive investment incentive programs (until July 1, 2018) as well as for its special economic zones (until December 31, 2014 for Magadan, and March 31, 2016 for Kaliningrad).

Sanitary and Phytosanitary Measures

As a WTO Member, Russia must implement the WTO Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) and the specific commitments in its Working Party Report. For example, Russia committed to align its sanitary and phytosanitary (SPS) measures with international standards, recommendations, and guidelines by the date of its accession to the WTO or to provide a risk assessment to justify its more stringent requirements. The United States has noted its concerns in various WTO meetings about Russia's implementation of particular SPS obligations, such as the harmonization of sanitary and veterinary measures with the relevant international standards, the adoption of inspection guidelines in accordance with Codex Alimentarius ("Codex"), and ensuring that SPS measures that are more stringent than international standards are based on science and risk analyses. For example, Russia has not, to date, provided risk assessments conducted consistent with international standards, guidelines and recommendations to the United States and other Members requesting them to support more stringent requirements for any microorganism or veterinary drug residue. Specifically, Russia has a near zero tolerance for tetracycline residues, a standard more stringent than Codex's maximum residue levels (MRL), but has failed to provide to WTO Members an adequate risk assessment. Russia also has adopted a zero tolerance for ractopamine, a standard more stringent than Codex's MRL for pork and beef.

The United States has met with representatives of the Russian government, from the highest levels to technical experts on the margins of SPS Committee meetings, to press Russia to address these concerns and request that Russia amend its requirements for micro-organisms and veterinary drugs either to accept the international standards or to provide a risk assessment conducted consistent with international standards, guidelines and recommendations to justify its more stringent standards. Russia recently published a purported scientific justification for its measure on ractopamine, and the United States, working in close consultation with U.S. industry and interested stakeholders, is reviewing the information provided by Russia.

As part of Russia's WTO accession negotiations, in November 2006, the United States and Russia signed bilateral agreements in which Russia agreed: 1) to grant U.S. regulatory officials of the Food Safety and Inspection Service (FSIS), the authority to certify new U.S.

establishments and U.S. establishments that have remedied a deficiency to export meat and poultry to Russia; and 2) to meet specific deadlines for responding to U.S. requests to list facilities that U.S. authorities had inspected and determined to be in compliance with the requirements to export to Russia. In practice, however, Russia has not recognized consistently FSIS' authority to certify additional U.S. facilities, and there have been delays in responding to U.S. requests to update the list of U.S. facilities approved to export to Russia. With the CU now having competence over approval of establishments and inspections, in some cases, Russia has insisted that FSIS provide guarantees that products for export to Russia meet Customs Union requirements, despite the continued validity of our bilateral U.S.-Russia export certificates. The United States has met bilaterally with Russia to discuss these concerns and press Russia to include FSIS-approved facilities in the list of establishments approved to export to Russia. We have also pressed Russia, both bilaterally and in the WTO, to cease maintaining lists of establishments for certain products in accordance with relevant CU decisions that remove these requirements and to implement fully its WTO obligations.

Motor Vehicle Recycling Fee

In September 2012, Russia introduced a "recycling fee" on sales of wheeled vehicles for the announced purpose of covering the cost of establishing a recycling industry. Domestic manufacturers of wheeled vehicles, however, do not have to pay the fee if they agree to assume the responsibility to recycle the vehicle at the end of its life. Both bilaterally as well as in meetings of the WTO Council for Trade in Goods, the United States, along with other Members, has objected strenuously to the apparent discriminatory nature of the fee. The United States also has registered its concern with the amount of the fee itself, particularly on large construction vehicles, and submitted written questions to the Russian delegation seeking further information about implementation of the program. In response to these concerns, on May 30, the Russian Duma published proposed amendments to the recycling law that would revise the program and apply the fee to domestically produced vehicles as well as to imports. USTR will monitor carefully the implementation of this stated commitment to ensure that our objectives are achieved.

Information Technology Agreement

As part of the terms for its membership in the WTO, Russia committed to join upon accession the Information Technology Agreement (ITA). However, when Russia submitted its ITA schedule to the ITA Committee, Members noted that a few tariff lines were missing from Russia's draft ITA schedule. The United States and other Members have repeatedly raised concerns, in the ITA and other WTO committees, about Russia's failure to complete its ITA accession. As a result of this engagement, Russia has agreed that the missing tariff lines should be added, and has completed its domestic political approval process to do so. Russia has sent the schedule to the EEC for modification of the Customs Union's tariff schedule. Once this internal review is completed, Russia can submit the revised schedule to the ITA Committee for review and, then membership in the ITA. USTR will continue to monitor this process to ensure its successful conclusion.

Intellectual Property Rights

As a condition of WTO membership, Russia amended numerous laws and regulations to bring its IPR legal regime into conformity with the WTO Agreement on Trade Related Aspects of Intellectual Property (TRIPS). Nevertheless, as part of the TRIPS Council's mandate to review the intellectual property laws of new WTO Members, the United States submitted a number of questions to the Russian Federation. The objective of these questions is to enhance our understanding of Russia's Civil Code concerning procedures related to licenses and transfer of ownership of intellectual property rights, and the operation of laws regarding copyrights, trademarks, industrial design, patents, and data protection. In addition, we sought additional information on how Russia provides intellectual property protection for plant varieties and integrated circuits.

Transparency

As a WTO Member, Russia has assumed obligations to make its (and the Customs Union's) trade regime more transparent. These obligations include, *inter alia*, the requirement to publish, and to notify the WTO about, measures (laws, decrees, orders, etc.) pertaining to or affecting trade in goods, services, and intellectual property, as well as the formal establishment of notice and comment procedures for such proposed measures prior to their adoption. Through the WTO

accession process, and since becoming a Member, Russia has provided to WTO Members a significant number of laws, decisions, regulations, resolutions, and other measures related to its foreign trade regime and its implementation of WTO rules. As a Member, Russia has made an effort to comply with these transparency obligations, notifying new measures as well as amendments to existing measures, but a transparent, standardized system for providing notifications on issues such as TBT is not yet in place in Russia. The United States will continue to encourage Russia to develop a regularized, comprehensive notification system consistent with the TBT transparency requirements.

Notwithstanding Russia's many notifications, the United States has used a variety of WTO committee meetings, as well as bilateral meetings on the margins of WTO meetings, to identify instances in which Russia has not notified measures, as well as to seek additional information and to provide comments on certain measures that have been notified. For example, although Russia notified some of its import licensing measures, the United States, joined by other WTO Members, used meetings of the Import Licensing Committee to remind Russia of its obligation under Article 7.3 of the Agreement to respond to the Questionnaire on Import Licensing Procedures. The United States has also identified specific Russian and CU laws, decisions, regulations, resolutions, and other measures that are a part of Russia's import licensing regime and asked that Russia notify them to the WTO. Russia said that it would respond to the U.S. questions.

The United States has similarly used the meetings of the Committee on Technical Barriers to Trade (TBT) to request that Russia notify certain CU and Russian technical regulations which Russia had not yet notified. To date, Russia has followed up by notifying the regulations in a reasonable period of time. The United States has raised concerns about the comment periods provided by Russia or the EEC, as appropriate, on draft technical regulations to ensure that the United States and interested parties have adequate time to comment. The United States has also reminded Russia of its obligation to respond to comments submitted by Members. Finally, the United States has asked Russia to notify its regional trade arrangements, including the Customs Union, to the WTO.

Technical Regulations Governing Alcoholic Beverages

In October 2010, Russia's Federal Service for Alcohol Market Regulation (FSR) adopted regulations under Order Number 59n governing the technical conditions for storage of alcoholic beverages. The United States is concerned that these regulations impose burdensome and unnecessary restrictions on storage practices. In addition to engaging the Russian government in bilateral meetings prior to Russia's WTO accession, the United States has raised substantive concerns about this Order in the WTO TBT Committee, for example, encouraging Russia to take steps to ensure that the inspections and licensing of alcoholic beverage warehouses are performed in a timely and transparent manner, with clear guidance available for all parties. We also suggested that Russia allow businesses to renew their warehouse licenses well before their expiration to avoid trade disruptions. Throughout our engagement, the United States has reminded Russia of its obligations under the TBT Agreement to avoid creating unnecessary obstacles to trade in the process of revising these regulations. Following our engagement, Russia amended Order 59n, addressing many of our concerns; however, we continue to monitor the situation.

The United States has also raised substantive concerns regarding duplicative registration requirements on alcohol in Russia. At the national (i.e., Russian government) level, alcoholic beverage products must receive state registration from two different government agencies. In 2011, the Customs Union introduced yet another level of registration, duplicating in large part the certification and reporting requirements already applied at the national level. In 2012, a third Russian government agency, the FSR, proposed yet another registration requirement. In both bilateral engagements as well as in the TBT and other WTO committee meetings, the United States has requested that Russia clarify the relationship among these various reporting and certification requirements and urged Russia to streamline the process by eliminating the apparent duplication of reporting and registration requirements. We also reminded Russia of the obligation to respond to Members' questions. Following this engagement, the CU announced that it will remove its registration requirement; we will continue to press for implementation of this decision and simplification of the process overall.

Safeguard Investigations

As a WTO Member, Russia must ensure that any safeguard measure imposed within its territory, including the investigation that led to that measure, is consistent with the WTO Agreement on Safeguards. Under the terms of Russia's WTO Protocol, this obligation applies even though the EEC conducts a safeguard investigation. When Russia became a WTO Member, it provided to the WTO the applicable CU legislation governing the conduct of EEC safeguard investigations and notified three EEC safeguard investigations. The investigation of most interest to U.S. stakeholders concerns combine harvesters and modules. The United States has used the meetings of the WTO Committee on Safeguards to question Russia about the EEC's methodology, and the consistency of its actions with various provisions of the WTO Agreement on Safeguards. In addition, on the margins of the Safeguards Committee meeting, the United States, in conjunction with other Members, met with representatives of Russia and the EEC and raised concerns specific to the investigation on combine harvesters. On April 30, 2013, Russia notified WTO Members of the EEC's affirmative serious injury determination. The investigation now moves to the remedy stage, with a decision due by early July. We will continue to monitor the EEC's safeguard investigations, continue to engage with Russia on the investigation of combine harvesters and other matters of concern, and assess any and all appropriate next steps in this matter, in consultation with industry once Russia has taken its final decision.

Trade-Related Investment Measures

Since 2005, Russia has maintained an automotive industry investment incentive regime which allows for the duty-free entry of auto parts used in the production of vehicles that contain a certain level of Russian content. In December 2010, Russia initiated a second automotive industry investment incentive program that increased the production volume and domestic content requirements to qualify for the incentive. As part of its WTO accession protocol, Russia agreed to eliminate the elements of both of its investment regimes that are inconsistent with the Agreement on Trade Related Investment Measures (TRIMS) by July 2018, and to begin consultations in July 2016 with the United States and other WTO Members on WTO-consistent measures it could take in this sector. In a TRIMS Committee meeting, the United States asked Russia to confirm that its automotive industry investment incentive program would be brought

into conformity with its WTO obligations by July 1, 2018, and solicited information on steps Russia was taking to eliminate the WTO-inconsistent aspects of the programs. The United States also requested that Russia inform the TRIMs Committee on a regular basis of the steps that will be taken with a view to consulting interested WTO Members and eliminating the relevant programs. Russia agreed to provide a written response to these requests.

The United States has also raised concerns in the TRIMS Committee about a leasing program established by RosAgroLeasing (RAL), a state-owned leasing company created to supply agricultural equipment to farmers in Russia. Under the leasing program, RAL will provide favorable leasing terms to farmers on agriculture equipment “manufactured in the Russian Federation”. This requirement raises concerns regarding its compliance with the TRIMs Agreement and Article III of GATT 1994. The United States asked Russia for additional information on the terms under which RAL leases agriculture equipment and on the definition of “manufactured in the Russian Federation”. The United States also asked Russia what steps it would take to ensure that this program operated in a manner consistent with Russia’s WTO commitments.

Committee on Government Procurement

In its WTO Accession protocol, Russia committed to request observership in the WTO Government Procurement Agreement (GPA) and to begin negotiations to join the GPA within four years of accession. On the margins of the WTO Committee on Government Procurement meeting, the United States met bilaterally with Russia to urge Russia to request observership. Thereafter, on May 15, 2013, Russia submitted its request to become an observer under the GPA. Russia became an observer on May 29th when the WTO Committee on Government Procurement formally accepted Russia’s request.

Conclusion

Russia's membership in the WTO brings the sixth largest economy into the rules-based international economic system. The implementation of the commitments Russia made upon becoming a Member will benefit U.S. businesses and workers by improving market access for U.S. exports of goods and services and generating more exports for American manufacturers and farmers, in turn supporting well-paying jobs in the United States. Market-opening changes made by Russia during the course of its WTO accession process may already have brought benefits to U.S. exporters, as evidenced by the fact that year-on-year percentage growth in U.S. exports to Russia was up 29 percent in 2012 over 2011, and up another 10.5 percent through the first quarter of 2013 compared with the first quarter of 2012. In order to maximize positive results such as these, USTR, in concert with other U.S. government agencies, will continue to monitor closely Russia's implementation of its WTO commitments. If Russia or the CU acts in ways that appear not to be consistent with Russia's scheduled commitments-- for example, by restricting market access, imposing discriminatory rules on U.S. exports of goods or services, providing prohibited or trade-distorting subsidies to Russia's domestic enterprises, or other actions -- USTR will investigate and continue to use all appropriate means to resolve the matter, including, as needed, the full panoply of WTO tools, including dispute settlement where appropriate, to ensure that Russia's and the CU's measures (including how they are applied) conform to Russia's WTO obligations.