

# Report on WTO Enforcement Actions: Russia



United States Trade Representative  
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## **Introduction**

This report is the third annual report prepared pursuant to section 201(b) of the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012 (P.L. 112-208). This Act requires the U.S. Trade Representative to submit a report annually 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 the 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.<sup>1</sup>

## **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 permanent normal trade relations 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.

The United States supported Russia's accession to the WTO, based on the assessment that it was important to include Russia in the rules-based global trading system. We remain convinced that WTO membership is a critical means of enhancing predictability and accountability, on the part of Russia and all Members, of the rules-based trading system.

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<sup>1</sup> P.L. 112-208 also requires the U.S. Trade Representative 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 – comprising the Marrakesh Agreement Establishing the World Trade Organization and the Multilateral Trade Agreements annexed thereto – as well as its accession to and implementation of the Information Technology Agreement and Agreement on Government Procurement. The U.S. Trade Representative submitted the second "Implementation Report" in December 2014. In addition, the U.S. Trade Representative 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. The second such report was submitted in December 2014.

In addition, the WTO offers a range of tools and opportunities for Members to hold each other accountable for implementing their WTO commitments. For example, officials and experts from WTO Members use the organization as a forum for engaging in bilateral and plurilateral discussion and advocacy, building consensus with like-minded Members, raising awareness in WTO committee meetings of developing trade issues among the broader WTO Membership, engaging in formal government-to-government consultations, and, if necessary, launching formal dispute settlement proceedings. Thus, a WTO Member can work to ensure that another Member complies with its commitments through a range of tools for technical-level and political-level engagement, bilaterally, plurilaterally, and multilaterally. In the past year, the United States has utilized these tools to urge Russia to abide by its WTO obligations so U.S. workers and businesses reap the benefits of Russia's WTO membership. The United States has joined in proceedings launched by other WTO Members, and where the situation warrants, will launch formal dispute settlement proceedings.

Although the United States has restricted its overall bilateral engagement with Russia as a result of Russia's attempted annexation of Crimea and violations of Ukraine's sovereignty and territorial integrity, we continue to remind Russia of its WTO commitments, as well as the benefits to Russia and to other WTO Members of Russia complying with those commitments.

### **Russia, the Eurasian Economic Union and the WTO**

Russia began its move toward closer economic ties with its neighbors in the mid-1990s, and made a significant step forward by signing the Treaty on the Establishment of the Eurasian Economic Community (EurAsEC) on October 10, 2000.<sup>2</sup> 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 the external trade policy of the CU for the CU Parties.

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<sup>2</sup> EurAsEC includes Russia, Belarus, Kazakhstan, Kyrgyzstan, and Tajikistan.

On May 29, 2014, Russia, Kazakhstan, and Belarus signed a treaty (the Treaty) establishing the Eurasian Economic Union (EAEU), the successor to the CU;<sup>3</sup> on January 1, 2015, the Treaty entered into force. The Treaty expands the competence of the EEC into a number of new policy areas, including financial services, government procurement, intellectual property rights, industrial subsidies, and agricultural support measures. Beyond these areas, the Treaty commits the Parties to coordinate or harmonize national policies over time in the areas of financial regulation, monetary policy, macroeconomic policy, competition, transportation, and rail policy, labor migration policy, and policies regulating their markets for oil, gas, and electricity. In addition, the EAEU has broadened its geographical reach to include Armenia as of January 2, 2015 and Kyrgyzstan as of January 2016, pending member States' final approval.

As a member State of the EAEU, Russia has nominally transferred authority over many aspects of its foreign trade regime to the EAEU, 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 and industrial zones, and the development of technical regulations and sanitary and phytosanitary (SPS) measures. As a result, many of Russia's WTO commitments are implemented through CU/EAEU measures. In such cases, Russia's commitments specifically provide that they apply whether the Russian government or the competent bodies of the CU/EAEU 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 for compliance with its WTO obligations.<sup>4</sup> 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. In addition, because certain aspects of

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<sup>3</sup> On January 2, 2015, Armenia became the fourth member State of the EAEU.

<sup>4</sup> Russia's WTO Protocol of Accession (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).

Russia's WTO commitments fell 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.

Reflecting on Russia's early years as a WTO Member, USTR has grown increasingly concerned about Russia's implementation of its commitments, as well as its dedication to the goals of the WTO with respect to trade liberalization, rule of law, and transparency. Most notably, Russia's increasing reliance on import substitution policies, while focused primarily on government procurement to date, is creating cause for concern. Consistent with limitations on overall U.S. engagement with Russia in light of its actions in Ukraine, USTR continues to meet with Russia to raise concerns related to its implementation of its WTO commitments prior to raising them in full WTO committee meetings. When appropriate, USTR has aggressively highlighted potentially WTO-inconsistent behavior in WTO committee meetings, and has forged alliances with other WTO Members to urge Russia to modify its behavior or avoid taking certain protectionist actions.

#### Import Substitution/Localization Policies

In 2014, the Russian government accelerated its promotion of import substitution programs with respect to government procurement, increasing local production requirements across a variety of sectors. The United States voiced general concerns about Russia's reliance on such programs.

In the Council on Trade in Goods (the CTG), the United States joined other WTO Members to criticize Russia's adoption of policies that appear to discriminate against imports. For example, the United States expressed concern about Russia's increasing reliance on "buy Russia" policies in government procurement and Russia's ban on government purchases of imported automobiles, metal products, and heavy machinery from non-EAEU countries. We also raised concerns about certain Russian measures that exclude non-EAEU produced medical devices from eligibility for state and municipal government procurement tenders, if a comparable device is made by two or more producers in the EAEU. Most recently, we have noted with particular concern a proposal that appears to extend "buy Russia" requirements, previously limited to procurements by government entities, to State-owned enterprises (SOEs), some of which engage in commercial activities and hence are subject to the national treatment disciplines of the WTO. We also took

note of Russia's ban on imports of certain agricultural goods. We will monitor the continued development of Russia's import substitution policies in this area, and make clear our serious concerns about its efforts to promote import substitution and expand "buy Russia" requirements beyond government procurement.

Reflecting concerns raised in the CTG, the United States focused on specific measures in the Committee on Trade Related Investment Measures (TRIMS Committee). One such measure is the 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 leasing terms that appear favorable to farmers on agriculture equipment "manufactured in the Russian Federation." The United States also raised questions in the TRIMS Committee about new financial support programs offered to Russian automobile manufacturers who participated in Russia's automotive assembly programs. Russia put these supports into place shortly after it amended, under pressure from many WTO Members, its "recycling fee" to apply to Russian automobile manufacturers (who previously had been exempted from paying the fee) and offered the supports to the same companies that had been exempted from the "recycling fee" Thus, the United States is concerned that the purpose of these new support programs is to compensate certain Russian automobile manufacturers for having to pay the recycling fee. Because participation in the assembly program is a condition for receipt of the new benefits, the United States is concerned that those support programs might likewise be contingent on use of domestic content, raising concerns regarding Russia's compliance with the TRIMS Agreement and Article III of GATT 1994. The United States will continue to monitor the application of these programs to ensure their consistency with Russia's WTO obligations.

#### 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 has committed to align its sanitary and phytosanitary (SPS) measures with relevant international standards, recommendations and guidelines, or to provide a risk assessment to justify its more stringent standards. The United States has noted its concerns in WTO committee 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.

Russia has not, to date, provided the United States and other WTO Members with risk assessments conducted consistently with international standards, guidelines and recommendations to support the more stringent requirements that it maintains with respect to the presence of microorganisms and veterinary drug residues on imported products. 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 and certain hormones, standards more stringent than Codex’s MRLs for pork and beef. We are closely reviewing Russia’s risk assessments for ractopamine in close consultation with U.S. stakeholders and other interested stakeholders.

In addition, Russia also agreed in its WTO accession protocol to allow trade in certain agricultural goods based only on the relevant export certificates and import permits. The United States is, therefore, concerned that Russia continues to prohibit the importation of dairy and petfood except from production facilities included on a list of approved establishments. The United States has raised these concerns with representatives of Russia’s Ministry of Agriculture and will continue discussions at the technical level to press Russia to ensure it implements its WTO commitments.

### Agriculture

Upon its accession to the WTO, Russia assumed obligations under the WTO Agreement on Agriculture, which addresses disciplines for agriculture with respect to market access, domestic support, and export competition. Russia also agreed to additional specific disciplines on the provision of domestic support and export subsidies in the agriculture sector in its Accession Protocol. Russia’s “Plan of Priority Measures to Ensure Sustainable Economic Development and Social Stability in 2015” (the Plan) outlines a number of steps to be taken by the Russian government to sustain economic development, including specific steps to support the agriculture

industry. In the WTO Committee on Agriculture, the United States requested additional details on specific programs funded through the Plan that target the agriculture sector, and requested that Russia notify those programs to the WTO Committee on Agriculture. The United States will continue to monitor Russia's support for the agriculture sector to ensure transparency and consistency with WTO obligations.

#### Information Technology Agreement

As part of the terms of its accession to the WTO, Russia committed to join the Information Technology Agreement (ITA), which requires staged elimination of tariffs on computers, semiconductors and other information technology. On September 13, 2013, Russia became the 78<sup>th</sup> participant of the ITA Committee. Although Russia began to implement the tariff-elimination requirements of its ITA membership from day one its WTO membership, Russia has not yet notified the WTO of modifications to its WTO tariff schedule to reflect fully these reductions, as called for under the ITA. We will continue to urge Russia to take the administrative step to comply fully with its accession obligations.

#### Technical Regulations Governing Alcoholic Beverages

In the past year, the United States continued to seek resolution of various concerns regarding Russia's regulatory regime for alcoholic beverages. For example, the United States made progress in addressing duplicative registration requirements maintained in Russia and the Customs Union, with the Customs Union dropping its registration requirements in late 2014.

Significant issues remain. In order to obtain a wholesale license for alcohol sales, an importer or distributor must satisfy detailed requirements that are set forth in Order #59n from Russia's Federal Service for the Regulation of the Alcohol Market. The requirements in Order #59n, particularly concerning the conditions for the storage of alcoholic beverages (*e.g.*, the requirements that different spirits and wines be stored at different temperatures and that different types of spirits be kept on different pallets), remain stringent and overly burdensome. Moreover, Russia has not notified these measures to the WTO, despite urging from the United States to do so. The United States raised its concerns regarding Order #59n in the WTO TBT Committee, as well as concerns with Russia's treatment of specific distilling techniques such as different practices for the aging of whiskey and the requirement for an expiration date on certain alcoholic

beverages (a requirement not in keeping with international standards). Throughout our engagement, the United States has reiterated to Russia the importance of implementing its obligations consistent with the TBT Agreement. In the coming year, the United States will continue to monitor closely the situation and seek resolution of any remaining or new issues.

#### Medical Devices and Pharmaceuticals

The United States has met bilaterally with Russian officials on the margins of the TBT Committee to discuss U.S. stakeholder concerns regarding technical regulations governing medical devices and pharmaceutical products. U.S. officials also requested that Russia notify certain amendments to the Law on the Circulation of Medicines to the WTO TBT Committee. The U.S. delegation also emphasized the importance of stakeholder input during the drafting process. The United States will continue to monitor Russia's actions to ensure Russia's measures are consistent with its WTO obligations.

#### Transparency

As a WTO Member, Russia assumed obligations to make its (and the EAEU's) trade regime more transparent. These obligations include, *inter alia*, the requirement to publish and to notify the WTO of measures (laws, decrees, orders, etc.) pertaining to or affecting trade in goods, services, and intellectual property. In addition, in its accession protocol, Russia committed to establish formal notice and comment procedures for proposed Russian as well as CU measures prior to their adoption. Through the WTO accession process, and since becoming a Member, Russia has notified to the WTO a significant number of laws, decisions, regulations, resolutions and other measures related to its foreign trade regime and its implementation of WTO commitments. As a Member, Russia has made an effort to comply with these transparency obligations, notifying new measures and amendments to existing measures. In response to concerns raised by the United States about the ease of communication with the CU's Enquiry Point for notifications on issues such as technical barriers to trade (TBT), Russia and the EEC rectified the problem. The United States is now able to submit comments on TBT measures to both the EEC Enquiry Point and Russia's Enquiry Point.

Notwithstanding Russia's many notifications, the United States has continued to press Russia for greater transparency. We have used a variety of WTO committee meetings and 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 provide comments on certain measures that have been notified. As a result, Russia submitted to the WTO legislation related to its intellectual property rights (IPR) regime, import licensing regime, and customs valuation regime; Russia also notified the EAEU to the Committee on Regional Trade Agreements. The United States will review the submitted notifications and seek clarifications from Russia as necessary.

U.S. efforts to press Russia on transparency in other areas have met more challenges. For example, under the WTO Agreement on Safeguards, Members are required to notify all pending safeguard investigations and safeguard measures in effect in their territory. The United States has identified nine safeguard investigations undertaken by the EEC (the body responsible for administering the safeguard laws in the CU/EAEU), only four of which have been notified to the WTO. (Although the EEC conducts the investigation and imposes the measure on behalf of the CU/EAEU, Russia as a WTO Member must still abide by the notification requirements.) The United States, and other WTO Members, raised this deficiency in the Committee on Safeguards, noting the importance of both transparency and the notification obligation with regard to all safeguard measures and requesting that Russia notify immediately the committee of all safeguard measures, regardless of whether they had been undertaken by Russia or the EEC. The United States will continue to monitor closely this issue and press Russia to provide the committee with the necessary information.

Finally, in the Working Party on State Trading Enterprises, the United States expressed concern that Russia has not notified or provided the required basic information regarding Gazprom to the WTO. The United States will continue to press Russia on this issue.

Another important benefit of the transparency requirements of the WTO is the opportunity for Members to ask questions about measures that are notified. Thus, over the past year, the United States has submitted multiple rounds of questions, prompting Russia to provide further details on certain investment incentive programs and its subsidy programs, including numerous subsidies identified by the United States that Russia did not notify, giving the United States a greater understanding of these measures.

## Government Procurement

In its WTO 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. Russia became a GPA observer on May 29, 2013.

## **Conclusion**

The United States firmly believes that Russia's membership in the WTO remains a benefit to the world trading system, despite appearances that the benefits may be waning. Over the past year, even as much of Russia's trade regime remains WTO consistent, the United States has become increasingly concerned that Russia may be moving away from the core WTO principle of trade liberalization, for example by placing greater emphasis on localization and import substitution policies. In light of this dynamic, Russia's WTO membership has, therefore, become even more important because the WTO Agreement contains enforceable rules and the WTO provides a forum in which we can raise concerns and, when appropriate, challenge Russia's actions through formal dispute settlement.

In the coming year, USTR, working closely with other U.S. government agencies, will continue to monitor Russia's implementation of its WTO commitments. If it finds that Russia, or the EAEU, acts in ways that appear not to be consistent with Russia's commitments, USTR will investigate and continue to use all appropriate means to resolve the matter, including, as warranted, dispute settlement, to ensure that Russia's and the EAEU's measures conform to Russia's WTO obligations.