

# Report on WTO Enforcement Actions: Russia



United States Trade Representative  
June 2014



## **Introduction**

This report is the second 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 (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.

The United States supported Russia's accession to the WTO, based on the assessment that it was important to have Russia as part of the rules-based global trading system. We remain convinced

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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 first “Implementation Report” was submitted in December 2013. 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.

that WTO membership is a critical means of ensuring predictability and accountability, on the part of Russia and all Members, to the rules-based trading system.

Not only does the WTO establish these rules, but it also offers a range of tools and opportunities for Members to hold each other accountable for implementing their WTO commitments. For example, Members can have officials with expertise engage in discussion and advocacy on the margins of WTO meetings, build consensus with like-minded Members, raise issues in WTO committee meetings for discussion and elaboration, engage in informal consultations, and, if necessary, launch 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. Over this year, however, the United States has utilized various other tools available in the WTO to urge Russia to abide by its WTO obligations so U.S. workers and businesses reap the benefits of Russia's WTO membership. We stand ready and willing to launch formal dispute settlement proceedings as the situation warrants and are participating in other Members' proceedings.

### **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.<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 external trade policy for CU Parties. On May 29, 2014, Russia, Kazakhstan and Belarus signed a treaty establishing the Eurasian Economic Union, which will come into force on January 1, 2015, and replace the CU.

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

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 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 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 for compliance with its WTO obligations.<sup>3</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 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.

Reflecting on Russia’s first year as a WTO Member, USTR has grown increasing 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. Consequently, over the past year, USTR 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; has aggressively highlighted potentially WTO-inconsistent behavior in WTO

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<sup>3</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).

committee meetings; and has forged alliances with other WTO Members to urge Russia to modify its behavior or avoid taking certain actions.

### 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 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 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. However, Russia has not, to date, provided to the United States and other WTO Members risk assessments conducted consistent with international standards, guidelines and recommendations to support its more stringent requirements for microorganisms or veterinary drug residues. 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. While Russia published a purported scientific justification for its measure on ractopamine, which we are reviewing in close consultation with U.S. industry and interested stakeholders, Russia has not provided any risk assessment with regard to hormones.

The United States has met with representatives of the Russian government, from senior political officials 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 microorganisms 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. We have also raised significant questions regarding Russia's apparent

failure to implement its SPS commitments and lack of transparency in meetings of the General Council, the WTO’s highest-level decision-making body.<sup>4</sup>

Despite a bilateral agreement with Russia granting U.S. regulatory officials of the Food Safety and Inspection Service (FSIS) the authority to certify U.S. meat and poultry establishments to export meat and poultry to Russia, Russia has not recognized consistently FSIS’s 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 both at senior political levels and at the technical level 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 measures that remove the requirement for such lists, and to implement fully its 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 the elimination of tariffs on computers, semiconductors and other information technology products within five years. Upon accession to the WTO, Russia submitted an initial draft ITA schedule that failed to include a small number of important products. The United States and other WTO Members insisted that Russia file a comprehensive and complete ITA schedule. Finally, on September 2, 2013, Russia filed with the WTO Secretariat a revised ITA schedule with the missing lines included. Following review and approval by members of the ITA Committee, on September 13, 2013, Russia became the 78<sup>th</sup> participant of the ITA Committee. It is worth noting however, that despite Russia’s delay in formally joining the ITA, its commitment to eliminate tariffs on ITA goods was enshrined in its

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<sup>4</sup> In addition, the United States has supported other Members’ interventions about Russia’s improper use of SPS measures to block imports (e.g., Lithuanian milk and dairy products, agriculture products from Moldova, and prepared meats from Poland, Lithuania and Moldova).

WTO goods schedule from the date of its WTO accession; thus, Russia began to implement the tariff-elimination requirements of ITA membership from day one.<sup>5</sup>

### Transparency

As a WTO Member, Russia 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 of, 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; however, a transparent, standardized system for providing notifications on issues such as technical barriers to trade (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. As a result, Russia submitted its notification under Article 7.3 of the Agreement on Import Licensing Procedures to the WTO Committee on Import Licensing (over 12 months late) and notified measures related to its (and the CU's) import licensing regime. Although Russia has promised to respond to multiple sets of questions from the United States and other Members, we and our co-sponsors have not yet received formal responses. The United States will review the submitted notifications and seek clarifications from Russia as necessary.

The United States similarly used the WTO Committee on Customs Valuation to press Russia to make the CU Customs Code available to WTO Members. Although Russia eventually made this

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<sup>5</sup> See, section 201(a)(1)(B)(i) of the Act.

crucial document available, the United States has identified additional measures that appear relevant to customs valuation that Russia has not yet provided to the WTO. In the Working Party on State Trading Enterprises, the United States expressed concern that Russia has not notified Gazprom to the WTO or provided the required basic information about the company. Finally, the United States has asked Russia to notify its regional trade arrangements, including the Customs Union, to the WTO.

The United States has likewise used the meetings of the WTO Committee on Technical Barriers to Trade (TBT Committee), as well as bilateral meetings in Washington, Moscow, and Geneva, to request that Russia notify certain CU and Russian technical regulations which Russia had not yet notified. In response, Russia has notified additional regulations, providing additional transparency for our stakeholders. 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.

Under the WTO Agreement on Safeguards, Members are required to notify all safeguard measures in effect in their territory and pending safeguard investigations. The United States has identified nine safeguard investigations undertaken by the EEC (the body responsible for administering the safeguard laws in the Customs Union), only three of which have been notified to the WTO. (Although the EEC conducts the investigation and imposes the measure on behalf of the CU, 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 the committee of all safeguard measures, regardless of whether they had been undertaken by Russia or the EEC.

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 its trade remedy regime, 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.

### Import Licensing

Upon accession, Russia agreed to adopt the provisions of the Agreement on Import Licensing Procedures, which seeks to ensure that the procedures used by Members in operating their import licensing systems do not form barriers to trade. In the Committee on Import Licensing, the United States raised questions about Russia's imposition of an import licensing regime imposing a quota on certain pipe products, and noted that Russia had failed to notify any such import licensing measure. The United States also raised concerns with the process for obtaining an import license for products with cryptographic capabilities, reminding Russia of the requirement that license applications should be processed in not more than 60 days.

### 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 if the EEC conducts the safeguard investigation. When Russia became a WTO Member, it provided to the WTO the applicable CU legislation governing the conduct of EEC safeguard investigations. 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 the EEC's actions with various provisions of the WTO Agreement on Safeguards. In particular, the United States has raised concerns about the final safeguard measure on combine harvesters and modules, imposed by the EEC in the form of an import quota.

We will continue to monitor all of the EEC's safeguard investigations, engage with Russia on the investigation of combine harvesters and other matters of concern, and consider next steps.

### Intellectual Property Rights

As a condition of WTO membership, Russia amended numerous laws and regulations to bring its intellectual property rights legal regime into conformity with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). In 2013, the TRIPS Council commenced its review of Russia's national implementing legislation. As part of that process, Russia notified its legislation, followed by an exchange of questions and answers

between Russia and interested Members, including the United States. The objective of these questions was 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, the United States sought additional information on how Russia provides IPR protection for plant varieties and layout-designs of integrated circuits. The United States submitted additional questions following the first round of discussions, and will continue to use the TRIPS Council as a forum in which to press Russia to implement fully its commitments under the TRIPS Agreement and its WTO Protocol.

#### Technical Regulations Governing Alcoholic Beverages

Over the past year, the United States has raised concerns that Russia's regulations governing the technical conditions for storage of alcoholic beverages (specifically Order Number 59n) impose burdensome and unnecessary restrictions on storage practices. The United States raised substantive concerns about Order 59n 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. We will continue to monitor the situation.

The United States also continued to raise substantive concerns regarding registration requirements on alcohol in Russia that duplicated registration procedures required by the Customs Union. 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, recommended that Russia streamline the process by eliminating the apparent duplication of reporting and registration requirements, and urged Russia to provide importers a sufficient transition period. The United States further raised concerns about the regulation's treatment of specific distilling techniques such as different

practices for the aging of whiskey as well as its exclusion of certain winemaking practices that were commonly used internationally.

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, among other concerns.

#### Automotive 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, did 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 and the General Council, 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. The United States has continued to press Russia for written responses to those questions. The United States requested to join the consultations requested by the European Union and Japan on the "recycling fee" and participated in those consultations. In addition, although it appears that Russia revised the program to apply the fee to domestically produced vehicles as well as to imports, USTR has raised questions about other support programs for the automotive industry that appear to have been introduced to compensate domestic producers for the loss of the competitive advantage associated with paying the recycling fee. USTR will continue to monitor carefully those support programs and related measures.

#### 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 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. The United States, along with other interested WTO Members, has commenced a discussion in the TRIMS Committee regarding the steps Russia will take to bring its automotive industry investment incentive program into conformity with its WTO obligations and eliminate the WTO-inconsistent aspects of the programs. The United States will continue to monitor Russia's administration of these programs, and the efforts to bring them into compliance with its WTO obligations.

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 Russia’s compliance with the TRIMS Agreement and Article III of GATT 1994. Russia responded to questions posed by the United States clarifying the terms under which RAL leases agriculture equipment and the definition of “manufactured in the Russian Federation.” The United States will continue to monitor this program and other domestic support programs to ensure that they are operated in a manner consistent with Russia’s WTO commitments.

#### 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 supported Russia's accession to the WTO, based on the assessment that it was important to have Russia as part of the rules-based global trading system. In fact, market-opening changes made by Russia in the first year of its WTO membership have benefitted U.S. exporters, with U.S. merchandise exports to Russia growing 4.6 percent in 2013 over 2012, and another 6.1 percent in the first quarter of 2014 compared with the first quarter of 2013. Some of the winners included U.S. exporters of woven fabrics of synthetic filament yarn; railway or tramway track construction material; soybeans; air or vacuum pumps/compressors; certain automobiles; nuts; parts and accessories for tractors; civilian aircraft; and prepared foods.

That said, after Russia's first year as a WTO Member, the United States is concerned about Russia's implementation of some of its commitments and its approach to trade liberalization, rule of law, and transparency. 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 Customs Union (or the CU's successor, the Eurasian Economic Union), 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 needed, dispute settlement, to ensure that Russia's and the CU/EEC's measures conform to Russia's WTO obligations.