



IMPLICATIONS FOR THE UNITED STATES AND U.S. COMPANIES OF NON-APPLICATION

The Ministerial Conference of the World Trade Organization (WTO) has adopted the terms of Russia's accession to the WTO and extended an invitation to Russia to join the organization. Russia must now complete its domestic procedures to accept the terms of accession and 30 days after notifying the WTO that it has accepted those terms, Russia will become a WTO Member.

As it has done when other countries still covered under the "Jackson-Vanik Amendment" reached this stage in the process of joining the WTO¹, the United States invoked non-application of the WTO with respect to Russia. If Congress does not enact legislation ending the application of the Jackson-Vanik Amendment and authorizing permanent normal trade relations (PNTR) treatment for Russia by the time Russia becomes a WTO Member, the WTO Agreement will not apply between the United States and Russia. Trade relations between the United States and Russia will continue to be conducted under our Bilateral Commercial Agreement (BCA) that entered into effect in 1992.² The United States will continue to have limited means to address trade issues that arise with Russia, and U.S. manufacturers, farmers, ranchers, workers, service providers and exporters will be at a disadvantage compared to their counterparts from other WTO Members.

Examples of Russia's Obligations to other WTO Members that the United States Would Not Enjoy

- More Liberal Treatment for Services Exports and Service Providers: Russia is undertaking enforceable commitments setting the terms for market access on services sectors that are priorities for the United States, including audio-visual, telecommunications, financial services (including insurance, banking and securities), energy services, computer services and retail services. Russia's services commitments also establish the rules for business visas for executives and professionals, and allow service companies to transfer vital employees to their operations in Russia. These commitments would not apply to U.S. services exporters or U.S. invested suppliers in Russia.

¹ The United States has invoked the non-application provisions of the WTO Agreement with respect to Mongolia, Kyrgyzstan, Georgia, Moldova, Armenia, and Vietnam.

² The original agreement with the Soviet Union was signed in 1990, but actually entered into force between the United States and the Russian Federation in 1992.

- Stronger Commitments for the Protection and Enforcement of Intellectual Property Rights (IPR): As of the day it becomes a WTO Member, Russia is required to comply with all provisions of the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and commitments in its Working Party Report, including obligations related to IPR enforcement generally and to IPR protection and enforcement in the digital environment. Since Russia has weaker obligations on protection and enforcement of IPR under the BCA, Russia would not be required, for example, to meet the stronger requirements for enforcement of IPR held by American authors and inventors.
- Enforceable Disciplines to Ensure Rules-Based Treatment of Agricultural Exports: Extensive commitments on how Russia will comply with WTO rules on sanitary and phytosanitary (SPS) measures, including disciplines to protect against trade restrictions that are not science-based; procedures to recognize equivalence of SPS measures; and harmonization with international standards, would not apply to U.S. exporters of meat and other agricultural products.
- Market Access Under Country-Specific Tariff-Rate Quotas (TRQs): Other WTO Members, such as the EU, will have TRQs available solely for their exports to Russia. While Russia must provide MFN tariff treatment to U.S. exports, Russia would have no obligation under the BCA to provide a U.S.-specific TRQ.
- Improved Transparency in Trade-Related Rule-Making: Russia's detailed obligations governing transparency in the development of trade policies and measures, including publication of draft rules and opportunities for public comments on those rules prior to their adoption, would not apply to the United States government or U.S. interested persons.
- Dispute Resolution: If, as a WTO Member, Russia restricts market access or imposes discriminatory rules on services in ways not consistent with its scheduled commitments, other Members will be able to use WTO mechanisms, including in appropriate cases dispute settlement, to challenge Russia's measures and how they are applied. The United States would have no such recourse.

Russia's Commitments under the U.S-Russian BCA

As noted, U.S. trade with Russia would continue to be governed by the 1992 BCA. Pursuant to the BCA, Russia must accord "MFN treatment" (i.e., it must treat imports from the United States no less favorably than it treats imports from third countries) with regard to the following issues:

- customs duties and charges on imports and exports;
- methods of payments for imports and exports and international transfer of payments;
- customs rules and formalities, including customs clearance, transit, warehouse and transshipment;
- taxes and internal charges applied to imports or exports; and
- rules concerning the sales, purchase, transport, distribution, storage and use of products in the Russian market.

These obligations do not include any advantages accorded to third countries in accordance with GATT or to developing countries under the GATT and other international agreements.

In addition to Russia's obligations to provide MFN treatment, the BCA obligates Russia to provide "non-discriminatory treatment" with respect to quantitative restrictions and granting licenses. Russia must also accord U.S. products MFN treatment with regard to technical regulations and standards, including conformity testing and certification, and Russia is required to ensure that technical regulations are not prepared, adopted or applied in a discriminatory manner, with a view to creating obstacles to bilateral trade or to protect domestic production.

The BCA also contains general commitments to "improve market access for products and services" and to increase national treatment; "encourages" efforts to expand trade; includes some basic commitments on transparency and protection of IPRs, but little on enforcement of IPRs; and does not contain a government-to-government dispute resolution process – rather, it provides only for consultations.

Thus, although the BCA obligates Russia to accord MFN or non-discriminatory treatment to U.S. products in some areas, and includes some provisions on IPRs, if Russia fails to implement those obligations, the United States has no additional leverage to obtain changes, in particular not the binding dispute resolution procedures of the WTO.