Russia’s WTO Implementation
Comments Submitted by the U.S.-Russia Business Council
September 12, 2013

The U.S.-Russia Business Council (USRBC or Council) is pleased to offer comments on Russia’s implementation of its World Trade Organization (WTO) obligations. As one of the leading trade associations promoting mutually beneficial economic opportunities for U.S. and Russian businesses, the Council views efforts to expand two-way trade and investment as its primary objective.

The U.S.-Russia Business Council strongly supported Russia’s WTO accession efforts through eighteen years of negotiations and welcomed Russia’s entry into the WTO last year. The Council likewise supported the termination of application of the Jackson-Vanik Amendment to Russia and the enactment by the United States of Permanent Normal Trade Relations with Russia last December. The Council appreciated the leadership of the U.S. Trade Representative in these efforts. As a result, Russia has joined the United States and other WTO members inside the WTO system of established, enforceable multilateral trade rules. The shared commitments to WTO principles and norms present opportunities for the economies and businesses of all WTO members. WTO accession represents a significant step forward for Russia’s objective of further integration into the global rules-based trading system.

The Council recognizes that Russia had a legal regime in place for compliance with its WTO obligations at the time of accession and that the vast majority of measures to implement Russia’s WTO accession came into effect prior to Russia’s entrance into the WTO. Russia has likewise implemented many WTO obligations during the first year of its membership. At the same time, outstanding issues remain of interest to the U.S. and Russian business communities, and they are detailed below. The Council supports Russia’s efforts to address these issues as part of overall efforts to promote a more transparent and predictable two-way trade and investment regime between the United States and Russia in accordance with WTO trade rules.

**Standards and Technical Barriers to Trade**

Russia has made a significant effort to comply with its WTO commitments on technical and regulatory standards and technical barriers to trade (TBTs). This is a critical area that affects a broad range of goods and bilateral trade and investment. The transparency principles associated with these commitments can accelerate mutually beneficial commercial cooperation, particularly in terms of advance notification of new rules and the opportunity for the private sector to provide input for the development of technical standards and regulations.

The Council applauds the level of cooperation between the United States and Russia in this area, including a conference held in Moscow in May, co-organized by the U.S. and Russian governments. This forum highlighted the important role that technical regulations and the process of their formulation can play in limiting barriers to trade. It also prompted a frank discussion between government and industry and showcased the value of private sector input. The Russian Ministry of Economic Development has also been working closely with the U.S. Department of Commerce to develop best practices for creating national standards, adhering to international standards and reducing or eliminating technical barriers to trade.
USRBC looks forward to continuing cooperation on technical standards and regulations with the U.S. and Russian governments in connection with the Sub-Working Group on Standards within the U.S.-Russia Presidential Commission’s Business Development and Economic Relations Working Group.

**Customs Issues/Trade Facilitation**

U.S. exports to Russia grew 29 percent year-on-year in 2012 to a record $10.7 billion, and we expect to see continued strong growth in two-way bilateral trade. The clearance of goods at customs checkpoints is slowing the growth of imports into Russia as U.S. exporters seek to increase shipments. Customs clearance points, like Vnukovo Airport, offer a high standard of logistics and customs services. As goods shipments have grown, the limited staff at these locations has been increasingly unable to process incoming and outbound express shipments in a timely manner.

The USRBC and its members stand ready to work more closely with the Federal Customs Service to simplify and improve efficiencies in customs clearance. We encourage the Federal Customs Service to expand the number of customs officials responsible for customs clearance operations and to enhance the efficiency of clearance process services in tandem with increased trade volumes.

**Information Technology Agreement (ITA)**

Russia committed to joining the Information Technology Agreement (ITA) upon its accession, but has not yet taken the necessary steps to formally become an ITA member, in part because of approvals pending in the Customs Union.

The ITA’s basic premise of permitting duty-free entry of IT products has unleashed innovation, productivity and growth across the globe. The Consumer Electronics Association has estimated that 80 percent of the benefits of the widespread usage of technology enhance the development of new businesses, new products and the quality of life for a country’s inhabitants. Becoming an ITA member could help Russia further its goal of diversifying its economy. Further, as an ITA member, Russia could join the United States and other like-minded members to expand the ITA to further augment global innovation and growth.

The Council respectfully encourages Russia to formally join the ITA and to reduce tariffs on relevant IT products to zero in three, equal annual cuts starting Sept. 1, 2013, with full tariff elimination on Sept. 1, 2015.

**Sanitary and Phytosanitary (SPS) Measures**

Russia’s implementation of its sanitary and phytosanitary (SPS) standards commitments continue to be an area of concern for U.S. farmers and companies. Adherence to science- and risk-based standards is a major tenet of the WTO SPS Agreement to which all WTO members are committed.

**Ractopamine Ban.** Russia’s ban in February of meat imports with traces of the feed additive ractopamine sets a higher standard than that of Codex Alimentarius for acceptable maximum residue levels. As Codex standards are used as the point of reference in the WTO’s SPS
Agreement, Russia needs to provide WTO members with its scientific justification for the adoption of stricter standards for ractopamine.

**Inspection Equivalency.** It is also important that Russia recognize inspection equivalency, allowing U.S. inspectors to certify that U.S. meat, poultry, and other food production facilities adhere to accepted standards. The United States recognizes inspection equivalency and has a system for implementation. Russia’s WTO commitment on inspection equivalency, including the certification of production facilities, is contained in Russia’s WTO accession commitments and are part not only of the November 2006 U.S.-Russia bilateral agreement that forms part of Russia’s WTO accession, but also the Working Party Report.

**Russia’s Use of Trade Remedies**

Like the United States and other WTO members, Russia now has recourse to the rules of WTO trade remedies agreements in order to defend its own interests, and, at the same time, must abide by the rules established in those agreements. Some Customs Union rules, however, may differ from WTO rules. For example, unlike the WTO agreements, the Customs Union regime does not require members seeking imposition of a measure to present proof of injury to the local industry.

An active safeguards investigation in the Customs Union serves as a good example of this issue. The investigation has increased prices of imported combine harvesters and decreased combine harvester accessibility to farmers in the Russian market. As a result of the investigation — the methodology of which has been questioned by the U.S. government — the Customs Union found serious injury had been caused to domestic producers and imposed a preliminary 27.5 percent *ad valorem* safeguard duty in February 2013. In June 2013, the Eurasian Economic Commission made its final determination on injury and called for the imposition of tariffs that would stay in place until at least 2016. Kazakhstan’s disagreement with the decision, as is its right under the Customs Union, has postponed final implementation of this measure. It is now up to the Supreme Eurasian Economic Council, a body made up of the three heads of state of the Customs Union, to make the final decision on the measure.

The uncertainty resulting from this safeguards investigation presents problems for U.S. businesses and their customers in Russia that are placing orders and considering production schedules. It is important to note that safeguard actions are meant to provide temporary relief to enable a domestic industry to invest and refocus in order to grapple with a new set of market realities and competition. The USRBC encourages the Russian government and the Customs Union to factor these concerns into their deliberations.

**National Treatment**

Russia has taken actions that run counter to its WTO commitments to treat imported goods and services offered in the Russian market as they do domestic goods and services.

**Automobile Recycling Fee.** Russia’s recycling fee on imports of motor vehicles, which went into effect on September 1, 2012, did not apply to domestic producers in Russia or local producers from Russia’s Customs Union partners, Belarus or Kazakhstan. Russia’s non-Customs Union trade partners cited the decline in import tariffs on motor vehicles (programmed to drop from 30 percent to 15 percent over 7 years) as the impetus for the recycling fee and noted that the fee runs counter to WTO national treatment rules. Statements by First Deputy Prime Minister Igor
Shuvalov and other senior Russian officials suggested that the purpose of the fee was to fund a domestic recycling industry in Russia.

The fees are particularly high for heavy construction vehicles and do not appear to reflect actual recycling costs. Legislation to require domestic producers to also pay the recycling fee has not moved forward in the Duma. The EU and Japan have launched dispute settlement proceedings at the WTO, and the United States and others are third parties to those discussions.

The USRBC is hopeful that the issue will be resolved during WTO consultations so that a dispute resolution panel will not be necessary, and that passage will be expedited of amendments that will either repeal the fee or apply it in equal fashion to all motor vehicles, regardless of origin.

**Discriminatory Drug Pricing Policies.** In Russia, the government controls the prices of drugs included in the Essential Drugs List (EDL), assigning a registered maximum price to every drug on the list. In accordance with revisions to the Law on Medicines passed in 2010, local companies are able to adjust their registered prices on an annual basis, but foreign manufacturers are not permitted to do so. There is an exception made for locally packaged medicines.

After Russia’s WTO accession, the practice of allowing domestic producers to request annual adjustments of their registered prices was neither abolished nor extended to foreign manufacturers. The USRBC is encouraged that the Russian Ministry of Health has developed proposed amendments to the Law on Medicines to resolve this issue, and we respectfully request that the government’s pricing guidelines be similarly adjusted to provide national treatment to foreign manufacturers.

**Trade in Goods**

**Import Licensing and Goods with Encrypted Technologies.** Russia has not fully implemented its obligations with respect to import licensing procedures related to products with encryption. The definition of “mass market” in Russia’s import regulations differs from the definition in the activity licensing regulations in a way that nullifies the benefit of the mass market concessions outlined in the Working Party Report on Russia’s WTO accession. The Russian import regulations also do not provide an exemption for encrypted items for personal use, prevent stocking of spare parts (which prevents importers from selling service contracts to customers in Russia) and require an import license for products using strong encryption on a per-user basis and not by product family, as envisaged under the Working Party Report.

**Cane Sugar Tariffs.** The price of white sugar in Russia is set by the price of imported cane sugar, which reflects an import tariff tied to the price of cane sugar on the New York Mercantile Exchange (NYMEX). Under Russia’s WTO accession commitments, duties on cane sugar were to decrease, but a Customs Union decision has effectively raised base prices for white sugar in the domestic market from $634 per ton to $878 per ton. Russia’s current pricing system for sugar goes against Russia’s commitment to lower sugar tariffs and raises domestic sugar prices for Russian consumers as well as for food and drink companies that use sugar to produce their goods in Russia.

**Tariff Bindings.** In May 2013, Russia changed its applied duties for 370 tariff lines by adding an additional minimum specific duty to ad valorem duties. The application of these added tariff
levels represents possible violations of Russia’s bound rates. The USRBC encourages Russia to review its tariff schedule and address any inconsistencies with its bound tariff rates.

**Investment Measures and Localization**
Russia’s adherence to its commitments under the WTO’s Agreement on Trade-Related Investment Measures (TRIMs) continues to generate concerns.

*Automotive.* The terms of Russia’s WTO accession permit investment rules through 2018 that incentivize local production and provide preferential tariff rates for components imported by companies with a manufacturing presence that meet certain production levels and local content thresholds.

The USRBC encourages Russia to adopt policies that will help it prepare for the auto investment regime phase-out, thus opening its market to a broader range of competitors, creating increased benefits for consumers in terms of choice and pricing and, in turn, new opportunities for the growth of competitive Russian components manufacturers.

*Healthcare.* The Russian government presented proposals in recent months that would extend localization and local content requirements to the medical technologies industry. The USRBC encourages the Russian government to evaluate the economic dynamics of each industry as it makes policy decisions regarding new investment rules. We are encouraged that there have been early indications of receptivity in the Russian government to meet with the private sector, and we are hopeful that the business community’s input will receive full consideration in the development of any new investment regulations.

**Intellectual Property Rights**
Russia has made major strides in Intellectual Property Rights (IPR) protections, but much remains to be done to realize Russia’s goal of diversification and the development of innovation as an engine of growth.

The USRBC has been pleased to serve as a partner to the U.S. and Russian governments in advancing their work on the Intellectual Property Rights (IPR) Action Plan agreed to in December 2012. The Council is committed to support a continuing dialogue between government and the private sector to improve IPR protection and enforcement in a cooperative fashion that benefits both the Russian and U.S. economies.

*IPR Enforcement.* Russia has made considerable advances in conforming its legal and regulatory base to WTO standards and the Agreement on Trade-Related Aspects of Intellectual Property (TRIPs). The creation in February 2013 of a specialized intellectual property rights Court under the Arbitrazh Court System, for example, represents an important step in the strengthening of Russia’s IPR enforcement regime.

However, Russia should consider measures to strengthen enforcement in several areas, most notably with respect to internet piracy. Illegal end-user piracy of software continues to be a significant challenge in Russia.

Passage of the Law on Combating Internet Piracy was a positive step, but the law refers only to video content, and it places a significant burden on internet service providers (ISPs) to police content. The USRBC is encouraged that the Russian government and State Duma are
currently considering amendments to the Law on Combating Internet Piracy to broaden its scope beyond audio-visual content, as well as to other laws governing intellectual property rights, and that additional provisions are being considered related to liability for IPR infringement.

The USRBC supports Russia’s continuing efforts to develop legislation for protecting IPR and to enforce laws and regulations to eliminate internet and other forms of piracy in Russia and protect the intellectual property that represents the foundation for innovation.

**Regulatory Data Protection.** Russia included its WTO commitments to regulatory data protection in its Law on Medicines, which relates to the protection of clinical data that is gathered during the different phases of drug development to prove the safety, efficacy and quality of the new drug. However, an implementing procedure or mechanism is needed to enact this protection in Russia, such as a provision on removing a product registered in violation of regulatory data protection.

The USRBC welcomes ongoing discussions by Russia’s Ministry of Health on amendments to the Law on Medicines that include regulatory data protection-related proposals, with input from the private sector. The recommended changes include requiring proof of IPR when submitting an initial application for state registration and the consent of the originator as a part of an initial application if regulatory data protection applies (if less than 6 years have passed since the day of originator registration). That said, the USRBC would like to see consideration of proposals to give the Ministry of Health the authority to revoke drug registration on the grounds of regulatory data protection violations and to rely on the results of pre-clinical and clinical trials, rather than the literary review of published data for state registration.

**Services**

The services sector, particularly financial services, is an area of great growth potential in the Russian market. A World Bank report attributes the greatest advances in Russia’s GDP growth from WTO accession to the liberalization of its trade in services. Continued uncertainty around laws and regulations governing the services sector broadly, and areas like financial services specifically, limit opportunities for growth.

**Electronic Payments**

Russian as well as international companies have a strong interest in ensuring the availability of a modern and competitive electronic payments system for all types of purchase and sale transactions in Russia. Russia’s new Federal Law No. 161-FZ “On the National Payment System” (Payments Law) includes helpful improvements to existing legislation, but leaves some important issues unresolved.

In particular, payment clearing services within the scope of “international payment systems” are currently carried out in collaboration with processing infrastructure located outside of Russia. However, Article 3.9 of the new Payments Law requires a “payment clearing center” to be an organization established by law. It remains unclear under the Payments Law whether a payment clearing center in Russia may utilize payment services provided by companies located in the territory of other countries. The electronic payments industry has proposed to comply with this requirement by establishing Russian legal entities that would adhere to Article 3.9, while obtaining services using clearing and processing infrastructure located outside of Russia.
The USRBC encourages the Russian government to clarify this aspect of the Payments Law and whether it approves the electronic payments industry’s proposed solution as it conforms to Russia’s WTO commitments.

**Transparency**

As the Customs Union and the Eurasian Economic Commission (EEC) are still relatively new, the policymaking and decision-making processes continue to cause confusion and concerns in the business community. In line with its WTO commitments to greater transparency in policies that affect trade, Russia should consider working with its partners in the Customs Union to establish a dialogue between the EEC bureaucracy and relevant stakeholders before action is taken on regulatory matters.

The EEC’s Working Group on the regulation of drug circulation is a good example. It addresses the important tasks of developing a procedure for mutual acknowledgement of state registration certificates issued by Customs Union member states, a uniform requirement for labeling and a common drug regulation policy. The USRBC encourages Russia, as the sole WTO member within the Customs Union, to insist on greater transparency in the legal and regulatory drafting process and to involve medical professionals, industry groups and patient groups.

**Government Procurement Agreement**

Russia became an observer to the WTO Government Procurement Agreement (GPA) in May 2013 and has committed to begin negotiations to join the GPA within four years of its accession. The USRBC applauds the commitment to join the GPA and encourages Russia to begin negotiations as soon as possible. Several issues have arisen in the government procurement area that cause concern for the international business community.

*Government Procurement of Drugs.* In its government tenders, Russia maintains a 15 percent pricing preference for drugs manufactured in Russian or Belarusian territory. “Manufacturing” refers to the production of active pharmaceutical ingredients, dosage forms, or primary and/or secondary packaging or labeling (for this latter category, domestic manufacturing status will be valid until December 31, 2014).

*Government Procurement of Medical Devices.* In July 2013, the Russian government released a draft decree stipulating that, with certain exceptions, only Customs Union producers of medical devices could participate in state and municipal procurement tenders. This policy is expected to be implemented in January 2014 and would remain in effect through December 2020.

While it is not yet a party to the Government Procurement Agreement, the USRBC encourages Russia to adopt non-discriminatory policies in procurement that allow for access to a wider range of products and services, particularly in the healthcare arena, thereby improving the efficacy of government tenders and broadening the availability of medical technologies to the Russian people.

**Russia’s WTO Mission in Geneva**

The Russian government has not opened a permanent representative office at the WTO’s headquarters in Geneva. The lack of a permanent WTO representative limits engagement on issues important to Russia’s trading partners and also affects Russia’s own interests in the
WTO. The USRBC encourages Russia to appoint a permanent representative to the WTO as soon as is feasible.

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Russia’s membership in the WTO represents a milestone in both the rules-based international economic system and in U.S.-Russian relations. Russia’s accession brought the world’s sixth-largest economy into the World Trade Organization and created new opportunities for mutually beneficial Russian-American trade and investment. The U.S.-Russia Business Council recognizes Russia’s ongoing efforts to implement its WTO commitments and, in that spirit, offers this statement and its continued support to both the Russian and United States governments to help address outstanding issues. Working together, the Russian and American business communities can take advantage of the opportunities created by Russia’s WTO accession and the United States’ enactment of PNTR with Russia in order to contribute to the prosperity of both nations.