



**Hearing of the Subcommittee on European Affairs,
U.S. Senate Committee on Foreign Relations**

“The State Of Human Rights and the Rule of Law in Russia: U.S. Policy Options”

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Chairwoman Shaheen, Ranking Member Barrasso and Members of the Subcommittee on European Affairs, it is an honor and a privilege to testify before you today on behalf of the 250 members of the U.S.-Russia Business Council. The USRBC provides business development, dispute resolution, government relations, and market intelligence services to its member companies, which range from Fortune 100 firms to small businesses in the United States and Russia that support increased trade and investment between our two countries.

In offering my views today on rule of law issues with respect to business, trade and the investment climate in Russia, I would suggest you consider the broader context of effecting change in a legal and regulatory system that to date has not lent itself easily to transparency or much external input, but that has, nevertheless, achieved progress in recent years with respect to rule of law in the commercial sphere. It is in both Russia’s and the United States’ interest for Russia to conduct its commercial operations and adapt its corresponding legal and regulatory environments with greater transparency and accountability.

I will begin my testimony today by highlighting specific regulatory developments in Russia that indicate progress toward stronger rule of law in the commercial sphere. Then, I will proceed to address the specific benefits that we expect to see from Russia’s membership in the World Trade Organization (WTO) and the successes that American companies have achieved in exporting to Russia and the potential for increasing the volume of goods and services that the U.S. exports to



Russia. I will conclude by underscoring why it is critically important for American businesses and American jobs that Congress lift the Jackson-Vanik Amendment as it applies to Russia.

Regulatory Developments in Russia

In recent years, there have been a number of positive developments in the rule of law in Russia motivated by the need to attract foreign investment as well as the necessity to adapt to the rules and norms required for membership in the WTO and the Organization for Economic Cooperation and Development (OECD).

I do not want to conflate the progress made in commercial law with the ongoing problems in the criminal court system and continued concerns about the overall lack of an independent judiciary. However, I would point out that there has been significant progress in the implementation of commercial law and its application by judges within the commercial court system.

Among these advancements have been the creation of an online commercial law library and a database of cases pending before the commercial courts that can be accessed at any time by both parties to a dispute. Thanks in part to the efforts of organizations like the Open World Leadership Center — which is sponsored by Congress — many Russian judges and prosecutors have come to the United States to meet with their counterparts to exchange ideas and share views on best practices.

Another important step in the strengthening of rule of law with respect to foreign investment in Russia was the adoption of the Law on Foreign Investment in Strategic Sectors in 2008. While this law may have been too broad in defining which sectors are “strategic,” it codified a clear procedure for vetting foreign investment in these sectors. In the past, foreign investment in areas that could be deemed to be strategic was a matter of trial and error. The process established by the new law has been compared by some to the Committee on Foreign Investment in the United States (CFIUS) process in the United States.



The Russian government has since amended and modified the Law on Foreign Investment in Strategic Sectors to liberalize rules for investment in that area. Specifically, it increased the threshold for review of investment in the oil and gas sector from 10 percent ownership to 25 percent.

Further, the USRBC is encouraged by what we see as the professional manner in which the provisions of the Strategic Sectors Law have been implemented by the Federal Anti-Monopoly Service (FAS). This agency has a mandate to enforce competition law and oversight of foreign investment in strategic sectors. Thanks to professional and technical exchange programs with the United States and Russia's other trading partners, FAS has developed a cadre of highly-qualified specialists who are recognized for their impartiality and transparent enforcement of the law. The FAS is led by General Director Igor Artemyev, who has been extremely accessible to the private sector and remarkably candid in expressing his views on the need to combat monopolistic and oligopolistic tendencies in the Russian economy.

These advances will be extremely important as the Russian government launches its privatization initiative, intending to sell upwards of \$40 billion in state assets and shares in state-owned enterprises. It is in the Russian government's interest that these sales are conducted in a manner that will achieve the greatest possible proceeds. Investors expect well-defined rules and absolute transparency in the conduct of these tenders.

Additionally, through the U.S.-Russia Bilateral Presidential Commission, we have had a constructive dialogue about the importance of the electronic procurement process as part of the wider effort to reduce corruption in Russia. Various Russian government officials have come to the United States under the auspices of the Commission to learn about e-government and how it is implemented in the United States.



Implications of Russia's WTO Accession

Now, I would like to turn to a topical question for the business community, Russia's membership in the WTO, and address the influence it may have on the development of the rule of law in Russia.

By the end of this week, Russia will be formally invited to join the WTO. Barring an unlikely reversal, the State Duma should ratify Russia's WTO accession agreement within the stipulated six-month period. At the very latest, Russia will be a full member of the WTO by mid-July of next year. What has been an elusive goal during 18 years of on-again, off-again negotiations will finally have been realized. We believe that this will bring multiple benefits to Russia and to U.S. companies doing business there.

First, Russia will be required to implement its commitments on lower tariffs for a broad range of imported goods. Some of those tariff reductions will be phased in over time, and some will be immediate. The U.S. industries most likely to benefit are those that have already developed successful export-based businesses with Russia: manufacturers of commercial aircraft, farm equipment, automobiles and automotive parts, chemicals, pharmaceuticals, communications equipment, mobile communications devices, oil and gas producing equipment, and a variety of others too numerous to cite.

U.S. goods exports to Russia increased significantly over the last decade, from \$2 billion in 2000 to a peak of \$9 billion in 2008 — an amount that we will come close to matching this year. American exports of components to third countries for assembly and re-export to Russia account for a possibly significant, if unsubstantiated, amount of additional exports.

It is difficult to estimate the precise number of U.S. jobs that exclusively depend on trade with Russia, but using recent Department of Commerce calculations for average number of jobs



created per dollar of exports (one job per \$165,000), we can assume that trade with Russia supports about 55,000 U.S. jobs.

It bears emphasizing that these are, by-and-large, high value exports with a significant human capital component — in other words, these are quality jobs. Moreover, this does not capture those service sector jobs that will increase as a result of Russia's WTO accession.

Second, there are indirect benefits that will improve the business climate and create the conditions for a virtuous cycle of increased investment, economic growth and expansion of the middle class. Russian membership in the WTO is a prerequisite for membership in the OECD, which in turn requires that all members adopt certain international standards in the financial and business realms.

Collectively, this will lead Russia in the direction of better corporate governance and transparency in many areas of economic and social policy. One important example of this is Russia's signing of the OECD Anti-Bribery Convention in May, which establishes benchmarks for compliance with international anti-corruption standards.

In accordance with the requirements of OECD membership, Russia will be expected to provide economic and financial data with an international baseline, including information on publicly-traded but state-controlled enterprises; to adhere to guidelines on procurement, public tender policies and internal costs; and to comply with internationally-accepted competition policies. These issues have been raised by some of Russia's most prominent activists in areas of financial and economic reform, such as Alexey Navalny.

WTO membership in particular carries with it specific commitments to improve transparency, such as advance publication of proposed laws and measures that affect trade in goods, services or intellectual property rights and ample time (not less than 30 days) for interested parties to



provide comments on these proposed measures. In addition, Russia has undertaken a commitment to provide a right of appeal to interested parties — including recourse to the Eurasian Economic Community (EurAsEC) court that has jurisdiction over Customs Union disputes — as well as ensure transparency on issues such as the application of price controls and fees charged for importing and exporting goods. As a WTO member, Russia will be required to consult with other members on a wide range of issues at their request and will provide for member consultation both before and after the adoption of new rules and regulations.

By joining the WTO, Russia will also accept the principle of international review and arbitration in the event of trade disputes. This is crucial to U.S. companies and farmers, who have complained on numerous occasions about tariffs, quotas and non-tariff barriers against their exports.

In a broader sense, joining the WTO will be a signal to exporters and to foreign and domestic investors alike that the Russian economy is becoming more predictable and that governance in the areas that affect business is on a path of gradual improvement. Membership in the WTO and, later, the OECD will apply subtle but firm pressure on Russia to adhere to international norms and standards.

Third, encouraging trade, tightening Russia's integration into the global economy and greater access by Russian consumers to transformative technologies (i.e., smartphones and the internet) is likely to contribute to growing societal demands for accountable government and vigorous action to combat corruption, which, first and foremost, affects the average Russian citizen.

One should not underestimate the effect of an increase in the size of the middle class on Russia's political and economic system. For example, the World Bank estimates that WTO membership will result in at least a 3.7 percent increase in GDP in the next five years. According to several socio-economic studies, when per capita GDP exceeds roughly \$15,000, individuals become



more attentive to quality of life issues, including quality of government. Russia's current per capita GDP of nearly \$12,000 (at market exchange rates) places it at the threshold of that category.¹

Conclusion

Our members have developed lucrative businesses trading with and investing in Russia. We perceive a major market in Russia for the types of goods and services in which the United States has a strong competitive advantage. We believe that U.S. companies' presence in the Russian market exerts a constructive influence and has a demonstrably positive effect on many Russian companies.

We welcome Russia's WTO membership and wish to take advantage of the market opportunities that it creates, many of which are the result of the hard work of U.S. negotiators over the last 18 years. However, we are at risk of falling behind our global competitors if the U.S. is the only country in the WTO that is unable to extend permanent normal trade relations (PNTR) to Russia, which would be the case for as long as the Jackson-Vanik Amendment applies to Russia.

Jackson-Vanik fulfilled its purpose admirably, and for that, we should be grateful. With respect to Russia, however, its time has passed and it provides no leverage in our relationship now that Russia will be a full member of the WTO. Failing to lift Jackson-Vanik will have no other effect than to harm American commercial interests and to put American jobs at risk.

¹ Prosperity enables societies to acquire the very instruments that have been demonstrated recently to have a powerful effect on the public consciousness and to provide motivation to affect constructive change. Some historical examples are South Korea, which began the process of democratic transition in the late 1980s, assisted greatly by membership in the OECD in 1996 when per capita GDP was about \$12,000. Mexico is another example. It joined the OECD in 1994, providing added momentum to a process that would result in the PRI party losing its influence, resulting in its electoral defeat in 2000 after 72 years in power.



We, therefore, urge Congress to act quickly to ensure that we are able to have PNTR by the time that Russia's accession becomes effective.

Thank you for the opportunity to testify before the Subcommittee today. I will be pleased to address any questions you may have.