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Trade Policy

Russian Ratification of WTO Protocol Seen in July; Timing Affects PNTR Debate

A recent panel discussion and subsequent interviews with Capitol Hill sources point to Russia ratifying its World Trade Organization accession protocol near the late July deadline, which has implications for the U.S. congressional debate on granting permanent normal trade relations (PNTR) to Russia.

Viacheslav Evseev, director of the Center for Customs Tariff and Non-tariff Regulation Research in Moscow, said April 13 at the Atlantic Council discussion that parliamentary ratification could take place in May or June but was more likely to be close to the July 23 deadline, which is based on WTO rules. Russia has 220 days to ratify the protocol following the Dec. 16, 2011, invitation to join the organization and would become a full WTO member 30 days after ratification.

Congress must lift the application of Title IV of the Trade Act of 1974 for President Obama to grant PNTR to Russia, which must happen prior to Russia's accession to the WTO or else the terms of the accession agreement will not apply for U.S. companies.

Edward Verona, president of the U.S.-Russia Business Council, said at the discussion that congressional action will be required before the August recess, as Russia is on track to become a WTO member on or before Aug. 22.

Verona said that if the United States fails to grant PNTR, or unconditional most favored nation (MFN) status as it is called the WTO, Washington will be forced by WTO rules to invoke nonapplication of the accession protocol. Many of the terms of the protocol were negotiated by U.S. trade officials, he said, adding that the United States would be the only WTO member country that might have to invoke nonapplication.

Russia Could Use Time to Adopt Regulations. Evseev, whose research organization aims to develop foreign trade regulations in customs tariff and nontariff spheres in the Russian Federation and the other Customs Union countries based on free trade principles, said that there are three parts to the ratification process that are required, as protocol would become a federal law:

- a vote in the State Duma, the lower house of the Federal Assembly;
- a vote in the Federation Council, the upper house of the Federal Assembly; and
- signature by the president.

Even though the opposition has more seats now than in the previous Duma, Evseev said that ratification of the protocol still has majority support and he does not anticipate major problems with the vote.

"There are two possibilities," he said when asked about the timing of the votes. "One possibility is that the government will wait until the last moment in order to be able to take all necessary measures to protect Russian industry."

Evseev envisioned the adoption of Russian regulations to lessen the impact of accession. The other possibility, he said, is that ratification could take place in May or June.

"But I think it will happen at the last moment," he said, "in July."

Administration Prefers Early Ratification. Capitol Hill sources close to the issue told BNA April 16 the Obama administration would prefer Russian ratification to take place sooner rather than later but confirmed the probable late July timing based on a recent fact-finding trip to Russia by Senate Finance staff and comments by senior Russian officials.

The administration and Senate Finance Committee preference for early ratification relates to the idea that ratification would possibly prompt rapid action on legislation—not yet introduced—in the Senate. If the Senate were to act quickly after early ratification, that would leave only the House to move during the post-ratification 30-day waiting period prior to Russia joining the WTO.

Industry sources have told BNA that even though the House has shown no signs of action, a hearing in the Ways and Means Subcommittee on Trade could be the first logical step in the House catching up if the Senate were to pass a bill and deem to have passed it again if approved by the House without substantial alterations.

Although trade legislation must originate in the House Ways and Means Committee, lawmakers agree that in this instance the Senate would take the lead. The Senate Finance Committee has held two hearings but has not publicly stated how any eventual Title IV legislation would interact with human rights provisions, only that Chairman Max Baucus (D-Mont.) is looking for the best way to do both (45 ITD, 3/8/12).

Simultaneous Debates Likely in Duma, House. One Capitol Hill source noted that it appears likely the ratification debate in the Russian State Duma and the PNTR debate in the U.S. Congress will coincide in late July, with lawmakers on both sides likely expressing dissatisfaction with the other country.

Verona acknowledged that extraneous issues involving human rights and foreign policy will likely be raised

in the House, based on over 100 meetings his group has held with lawmakers or their staffs since January.

Removing application of Title IV of the Trade Act of 1974 was described as a “huge lift” in the House by a Capitol Hill source who noted widespread Republican distrust of Russia and the inclination to oppose the Obama administration during an election year.

The source said the Republican caucus is split on the issue in a way that presents problems for the leadership, which prefers to be able to rely on all or a majority of Republican votes to pass legislation. Industry groups are putting lobbying pressure on lawmakers concerning Russia’s WTO accession and reauthorization of the U.S. Export-Import Bank.

For example, Tom Donohue, president of the U.S. Chamber of Commerce, listed those two issues in an April 15 statement, along with trade promotion authority, as the group’s trade priorities.

Benefits Could Inflict Costs. Several of other potential points of contention emerged at the Atlantic Council discussion when the industries Verona cited as opportunities for U.S. businesses were mentioned as concerns of Russians by Evseev, who added that many Russians believe WTO accession will result in lower production in many sectors.

“What is considered a win by foreign companies and foreign countries is often considered as a loss by Russian businesses,” Evseev said.

While Russian steel, chemical, and fertilizer sectors are expected to experience benefits under the WTO, most industrial companies—notably the automotive sector, agricultural machinery manufacturing, and the aviation sector—will not benefit from increased market access because of their low competitiveness, Evseev said. He said there was opposition from “sectoral ministries” in Russia to opening their sectors to foreign competition, but political leaders had a more positive outlook on accession.

In the medium and long term, these sectors should improve their competitiveness as a result of Russia’s WTO membership, Evseev said. He added that Russian steel and chemical sectors are subject to some anti-dumping measures and may prompt Russia to request WTO consultations, as the first step in the dispute settlement process, with other members when Russia joins the organization.

IP Discussions May Be Under Consideration. An audience member who closely tracks the issue and was formerly with the Office of the U.S. Trade Representative said in an audience question that the administration may be working on an intellectual property rights action plan, possibly in consultations with Russia, to help get legislation lifting Title IV over the finish line.

He cited what some U.S. industries see as Russia’s failure to fully implement a 2006 IPR side letter to the U.S.-Russia bilateral agreement on Russia’s WTO accession.

He told BNA that the side letter on intellectual property was an unprecedented addition to a WTO accession agreement and that the copyright industry has successfully lobbied lawmakers on the issue, which was raised by senators in recent Senate Finance hearings.

He said the administration might press Russia to make moves against some of its well-known pirating websites that would create some good will on Capitol Hill toward lifting Title IV. The effort might coincide

with the April 30 release by USTR of its Special 301 annual review of intellectual property rights protection and market access in foreign countries.

Magnitsky to Replace Jackson-Vanik. Currently, normal trade relations with Russia and certain other nonmarket economies are subject to annual reviews of Jewish emigration pursuant to the Jackson-Vanik Amendment, which is Section 402 of the Trade Act of 1974. Conditioning MFN status on an annual review conflicts with the WTO principle that the best trading terms unconditionally apply to all members.

Traditionally application of all of Title IV, not just Section 402, has been lifted when other nonmarket economies have joined the WTO, even though this is commonly referred to as lifting Jackson-Vanik.

Verona said that lifting Jackson-Vanik is seen by lawmakers as conferring acceptance on Russian human rights and rule-of-law policies that will require a replacement, which will likely be the Sergei Magnitsky Rule of Law Accountability Act of 2011 (S. 1039), sponsored by Sen. Benjamin Cardin (D-Md.) along with 32 co-sponsors.

The bill—named after a lawyer who was wrongfully incarcerated and died in prison—has provisions relating to visa denials and asset freezes. Capitol Hill sources said the still confidential iteration of the bill has significant changes from the published version relating to which lawmakers would be eligible to ask the secretary of state, with a statutory right of reply, on whether a given individual meets the criteria for an asset freeze.

The original bill said that any member of Congress could make such a request, but this has been amended to 20 members—the chairs and ranking members of five committees in both the House and Senate. The replies can be classified and have the option of using a national security waiver.

Uncertain Interaction With Title IV. Sen. John Kerry (D-Mass.), chairman of the Senate Foreign Relations Committee, has said that he intends to bring the Magnitsky bill before his committee.

Industry sources, however, have told BNA that the Senate Finance Committee is weighing whether to include acceptable elements of the Magnitsky measure in legislation lifting Title IV.

Verona said that he has the “very clear impression” that the Magnitsky bill, whether directly or indirectly linked, will be the key to getting Jackson-Vanik lifted.

Lawmakers, Verona said, will argue that this legislation is important for business as Magnitsky was a Russian lawyer working for a U.S. law firm representing a client that included many American investors. Verona noted that while his group does not have a position on the legislation, he has written to the Russian president about the case and brings it up with officials, encouraging them to get to the bottom of it because of the apprehension it raises with U.S. investors.

Verona added that Russian officials have said that they will not extend the WTO terms to the United States with Title IV in place but they will react in a “symmetrical” way if the Magnitsky bill becomes law.

Accession Consummates U.S. Policy, Wilson Says. Ross Wilson, director of the Dinu Patriciu Eurasia Center at the Atlantic Council and moderator of the discussion, described Russia’s WTO accession as the successful culmination of U.S. policy dating to 1946.

This policy succeeded in bringing the Soviet Union into the United Nations and eventually the World Bank and International Monetary Fund, but it faced much greater challenges when trying to work with the socialist bloc on economic and trade issues.

The Generalized Agreement on Trade and Tariffs (GATT) that was signed in 1946 under United Nations

auspices and lasted until 1993 as the subsequent agreement, GATT 1994, created the WTO, which was formed in 1995.

Russian accession started in 1993, Evseev said, but accelerated in 2010 through what was seen by many observers as a political initiative.

BY LEN BRACKEN