

DESCRIPTION OF CHAIRMAN'S MARK TO AUTHORIZE THE EXTENSION OF
NONDISCRIMINATORY
TREATMENT (NORMAL TRADE RELATIONS TREATMENT)
TO PRODUCTS OF THE RUSSIAN FEDERATION AND MOLDOVA

Scheduled for Markup
by the
Senate Committee on Finance
on July 18, 2012

I. Introduction

The Senate Committee on Finance has scheduled a markup of a proposal to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to products of the Russian Federation and Moldova. This document provides a description of the proposal.

II. Proposal

Present Law

Section 401 of Title IV of the Trade Act of 1974 requires the President to continue to deny normal trade relations ("NTR") treatment to any country that was not receiving that treatment at the time of the law's enactment on January 3, 1975. This included all communist countries except Poland and Yugoslavia. Section 402 of Title IV, the so-called Jackson-Vanik amendment, also denies such a country NTR treatment, as well as access to U.S. government credit facilities and investment guarantees, if it denies its citizens the right of freedom of emigration.

One condition for such a country obtaining NTR treatment is that the President determine that the country is in full compliance with the freedom-of-emigration conditions set out under the Jackson-Vanik amendment. For the country to maintain that status, the President must reconfirm his determination of full compliance in a semiannual report (by June 30 and December 31) to Congress. The President's determination can be overturned by the enactment of a joint resolution of disapproval concerning the December 31 report. The Jackson-Vanik amendment also permits the President to waive the freedom-of-emigration requirements, if he determines that such a waiver would promote the objectives of the amendment, that is, encourage freedom of emigration. This waiver authority is subject to an annual renewal by the President and to congressional disapproval via a joint resolution.

Before a country can receive NTR treatment under either the presidential determination of full compliance or the presidential waiver, that country and the United States must have concluded and enacted a bilateral agreement that provides for, among other things, reciprocal extension of NTR treatment. The agreement and a presidential proclamation extending NTR status cannot go into effect until a congressional joint resolution approving the agreement is enacted.

The United States and the Russian Federation entered into a bilateral agreement in 1992, which Congress had approved on November 25, 1991. The Russian Federation received conditional NTR status in 1992 under a presidential waiver. In 1994, the President determined that Russia was in full compliance with Title IV. That determination has been continuously confirmed in semiannual reviews since 1994.

The United States and Moldova entered into a bilateral agreement in 1992, which Congress had approved on November 25, 1991. Moldova received conditional NTR status in 1992 under a presidential waiver. In 1997, the President determined that Moldova was in full compliance with Title IV. That determination has been continuously confirmed in semiannual reviews since 1997. Moldova acceded to the World Trade Organization (“WTO”) on July 26, 2001.

Description of Proposal

The proposal authorizes the President to determine that Title IV should no longer apply to the Russian Federation, and to proclaim the extension of NTR treatment to the products of the Russian Federation. The proposal terminates the application of Title IV to Russia on the effective date of the President’s proclamation.

The proposal also requires the United States Trade Representative (“USTR”) to report annually to the Senate Finance Committee and the House Ways and Means Committee on the Russian Federation’s implementation of its obligations as a member of the WTO, in particular with respect to obligations relating to sanitary and phytosanitary (“SPS”) issues and intellectual property protection. The USTR’s report would also cover the Russian Federation’s progress on acceding to and implementing the WTO Information Technology Agreement and the WTO Agreement on Government Procurement. To the extent the USTR believes that the Russian Federation is not fully implementing a WTO agreement or making adequate progress in acceding to the above agreements, the USTR would be required to include in the report its plans for addressing those situations. In preparing the report, the USTR must provide an opportunity for public comment, including by holding a public hearing.

The proposal also requires the USTR to report within 180 days, and annually thereafter, to the Senate Finance Committee and the House Ways and Means Committee on enforcement actions taken by the USTR to ensure full compliance by the Russian Federation with its WTO obligations.

The proposal further requires the USTR and the Secretary of State to report annually on measures they have taken and results achieved to promote the rule of law in the Russian Federation and to support U.S. trade and investment by strengthening investor protections in Russia, including the negotiation of a new bilateral investment treaty; advocating for U.S. investors in Russia, including by promoting the claims of U.S. investors in the Yukos Oil Company; encouraging all parties to the OECD Anti-Bribery Convention, including the Russian Federation, to fully implement their commitments; promoting corruption-free customs, tax, and judicial authorities in the Russian Federation; and increasing cooperation between the United States and the Russian Federation to expand the capacity for civil society organizations to monitor, investigate, and report on suspected incidents of corruption.

The proposal also requires the Secretary of Commerce to establish and maintain a hotline and secure website to allow U.S. entities to report instances of bribery and corruption in the Russian Federation that could affect them and to request U.S. assistance relating to corruption issues in the Russian Federation. The proposal would also require the Secretary of Commerce to report annually to the Senate Finance Committee and the House Ways and Means Committee on the instances of bribery, attempted bribery and other forms of corruption reported through the hotline and website, a description of the regions where those instances are alleged to have occurred, and a summary of U.S. actions taken in response to requests. The identities of those reporting will not be included in the report.

In addition, the proposal amends section 182 of the Trade Act of 1974 by requiring that the report under section 182 include a description of laws, policies, or practices of the Russian Federation that deny fair and equitable treatment to U.S. digital trade.

The proposal also requires the USTR to pursue the reduction of Russian barriers to U.S. exports through efforts to negotiate a bilateral agreement with the Russian Federation that would recognize U.S. SPS measures as equivalent to Russian SPS measures, and through efforts to obtain the Russian Federation's acceptance of an action plan to provide greater protections for intellectual property rights than those provided under the WTO TRIPs Agreement.

The proposal also authorizes the President to determine that Title IV should no longer apply to Moldova, and to proclaim the extension of NTR treatment to the products of Moldova. The proposal terminates the application of Title IV to Moldova on the date of the President's proclamation.

Effective Date

The effective date of the President's proclamation extending NTR treatment to the products of Russia may be no sooner than the date the Russian Federation accedes to the WTO.

Given that Moldova is already a member of the WTO, the effective date is the date of the President's proclamation extending NTR treatment to the products of Moldova.