

RUSSIA AND MOLDOVA JACKSON-VANIK REPEAL ACT
OF 2012

JULY 31, 2012.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. CAMP, from the Committee on Ways and Means,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 6156]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 6156) to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to products of the Russian Federation and Moldova and to require reports on the compliance of the Russian Federation with its obligations as a member of the World Trade Organization, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

H.R. 6156 amends Title IV of the Trade Act of 1974 to remove the Russian Federation (Russia) and Moldova from the list of countries subject to that provision. It also contains provisions to address concerns about Russia’s compliance with its World Trade Organization (WTO) obligations, address bilateral trade issues between the United States and Russia, and promote the rule of law in Russia.

B. BACKGROUND

The Jackson-Vanik amendment

At present, the trade status of Russia and Moldova is subject to the Jackson-Vanik amendment to Title IV of the Trade Act of 1974, the provisions of law governing the normal trade relations (NTR) status of nonmarket economy countries that were ineligible for NTR treatment as of the enactment of the Trade Act.

Prior to 1951, the United States extended nondiscriminatory, or unconditional, NTR treatment to all of its trading partners in accordance with obligations undertaken when the United States joined the General Agreement on Tariffs and Trade (GATT) in 1948. However, the Trade Agreements Extension Act of 1951 directed the President to withdraw or suspend the NTR status of the Soviet Union and all countries under the domination of Communism. As implemented, this directive was applied to all then-existing communist countries except Yugoslavia. Poland’s NTR status was restored by Presidential directive in 1960.

Title IV of the Trade Act of 1974, which includes the so-called “Jackson-Vanik amendment,” represented a liberalization of the 1951 law. Title IV authorizes the extension of NTR treatment to nonmarket economies that both meet freedom-of-emigration requirements and conclude a commercial agreement with the United States. Title IV also authorizes the President to waive the freedom-of-emigration requirements of that title and to extend NTR status to a nonmarket economy country if he determines that doing so will substantially promote the freedom-of-emigration objectives. This waiver may be extended on an annual basis upon a Presidential determination and report to Congress that such extension will substantially promote the freedom-of-emigration objectives of the 1974 Trade Act. Under the Jackson-Vanik amendment, the President’s waiver authority continues in effect unless disapproved by the Con-

gress—either generally or with respect to a specific country—within 60 calendar days of the expiration of the existing authority.

In 1990, the United States and the Soviet Union signed a bilateral trade agreement as required under Title IV of the Trade Act of 1974. The agreement was subsequently applied to U.S.-Russian trade relations. The United States extended NTR treatment to Russia under the Presidential waiver authority beginning in June 1992. Since September 1994, Russia has received NTR status under the full compliance provision. Presidential extensions of NTR status to Russia have met no congressional opposition. Moldova acceded to the World Trade Organization in July 2001 and has received NTR status under the full compliance provision since 1997, also without congressional opposition.

Russia's accession to the World Trade Organization and benefits to the United States

Russia first applied to join the General Agreement on Tariffs and Trade (GATT—now the WTO) in 1993. To join the WTO, Russia completed the required two-step process that would provide significant benefits to U.S. employers, workers, farmers, and ranchers: (1) concluding a bilateral agreement with each WTO member that requested one, including the United States; and (2) finishing the multilateral negotiation with all participating WTO members as a whole.

The U.S. bilateral talks, aimed at opening Russia's market to U.S. exports and investment, are not a free trade agreement but an agreement setting out the terms of Russia's accession to the WTO. Russia made significant concessions to join the WTO, agreeing to reduce its tariffs on manufactured goods from almost 10 percent to less than 8 percent; improve market access for U.S. service providers in a broad array of industries; address longstanding issues related to U.S. exports of beef, pork, poultry, and other agricultural products; and improve its intellectual property rights (IPR) laws and enforcement. The United States also worked with other countries to increase Russia's quotas on meat imports and to require Russia to eventually phase out its local content requirements in the auto sector.

The multilateral talks focused on establishing Russian compliance with WTO rules, including agriculture, goods, services, intellectual property rights, treatment of state-owned or -controlled enterprises, transparency, customs, and other issues. For example, Russia must provide a notice and comment process when considering proposed measures involving trade in goods, services, and intellectual property; provide a scientific justification for sanitary and phytosanitary (SPS) measures that are more stringent than international standards; and adopt WTO standards for IPR protection. Russia must also reduce more than one-third of its tariffs immediately upon accession and subsequently reduce tariffs on most goods within three years. In addition, Russia agreed to join the WTO's Information Technology Agreement (ITA) immediately upon accession, which will require Russia to eliminate its tariffs on high-tech products. Russia also agreed to submit an offer to join the WTO Government Procurement Agreement within four years of accession.

The results of these bilateral and multilateral negotiations are contained in Russia's WTO accession package, which also sets out Russia's commitments to revise and apply its trade regime in compliance with WTO rules. If Russia does not comply with any of these obligations set forth in the accession package, WTO members can use the WTO's dispute settlement mechanism to enforce their rights.

This package was finalized on November 10, 2011, and Russia was subsequently invited to join the WTO on December 16, 2011. Russia's accession package was ratified by the Russian government on July 21, 2012, which subsequently notified the WTO. As a result, Russia will accede to the WTO on August 22, 2012.

Need to grant Russia PNTR to realize the benefits of Russia's concessions

As part of the agreement establishing the WTO, WTO members agreed to apply most-favored-nation tariff treatment (known as normal trade relations (NTR) under U.S. law) "immediately and unconditionally" to the goods of other WTO members. However, the United States cannot permanently extend this treatment to Russia (often known as permanent normal trade relations (PNTR)) due to the requirements of the Jackson-Vanik amendment to Title IV of the Trade Act of 1974, which require annual or conditional NTR. If a WTO member determines that it cannot comply with this or any other WTO rules toward a newly acceding member, it can "opt-out" of its obligations toward that member by invoking the non-application provision. In doing so, the WTO member declares that the WTO obligations, rules, and mechanisms (such as binding dispute settlement) will not apply to its trade with the new WTO member. Because of the application of conditional NTR under U.S. law, the United States invoked non-application toward Russia on December 16, 2012.

If the United States does not grant Russia PNTR by the time that Russia becomes a WTO member, the Committee believes that U.S. companies, workers, and farmers will be disadvantaged versus their competitors from other WTO members because the United States would not benefit from all of Russia's concessions. For example, U.S. service providers would not have greater access to Russia's growing services market because they would not be covered by Russia's service market access WTO commitments. As a result, Russia could impose WTO-inconsistent restrictions on U.S. banks, insurance companies, telecommunications firms, and other service providers, but not on those from other WTO members. Russia also would not be required to comply with WTO rules regarding SPS standards, intellectual property rights, transparency, and agriculture when dealing with U.S. goods and services, and the U.S. government would likewise not be able to use the WTO's dispute settlement mechanism if Russia violates its WTO commitments. Further, the country-specific tariff-rate quotas (TRQs) negotiated as part of Russia's accession (particularly for agricultural products) would not be available to U.S. exporters.

The Committee believes that in many ways, granting Russia PNTR can be viewed as only a legal technicality. The United States already annually provides Russia with NTR treatment and has done so every year without fail for the last two decades. Granting

Russia this yearly treatment on a permanent basis, as the United States does for over 150 countries, does not constitute special treatment, but brings significant gains to the United States.

If it does not grant PNTR, the United States would still be able to assert under its 1992 bilateral trade agreement with Russia that Russia should continue to grant MFN treatment for tariffs and other customs related issues for U.S. goods (i.e., treat them the same as goods from other WTO members) and apply the technical regulations and standards under that and subsequent agreements. However, these rights and commitments are significantly narrower and less meaningful than those provided in the WTO, and the United States would not have recourse to an enforcement mechanism should Russia choose to increase tariffs or otherwise violate the terms of the agreement.

In sum, the Committee strongly believes that commercial benefits of Russian WTO accession to the United States are significant if Congress grants PNTR. The Committee expects that Russia's significance as a market for U.S. goods and services will grow upon its WTO accession. Russia is the largest economy not yet in the WTO, and the Russian market will expand as its middle class grows and its economy further diversifies. Because Russia must open up its market by reducing tariffs and other trade barriers on goods and services upon joining the WTO, U.S. exports to Russia could double or triple within five years.

Moreover, the Committee notes that not granting Russia PNTR will not prevent Russia from joining the WTO. On the other hand, the Committee believes that granting Russia PNTR is a small step that achieves significant gains. The United States does not have to change a single tariff or make any concessions for Russia to join the WTO. Instead, only Russia has to cut its tariffs and take on new obligations, many of which were won by U.S. negotiators.

Enforcement tools created by H.R. 6156

In addition to the new opportunities for U.S. employers, workers, farmers, and ranchers created by the concessions that Russia has made to join the WTO, the Committee believes that H.R. 6156 would establish powerful new tools to ensure that Russia's WTO obligations are fully implemented and enforced and to hold Russia accountable. Specifically, the bill would require USTR to annually report on whether Russia's WTO commitments are fully implemented. These reports would also describe Russia's progress in joining the WTO's Information and Technology Agreement and Agreement on Government Procurement. If Russia is not fully implementing a WTO obligation or is not making adequate progress in joining the additional WTO agreements, USTR would be required to describe its action plan to address these problems and report on enforcement actions against Russia to ensure Russia's full compliance. The bill would also require action to advance the rule of law and fight corruption in Russia and focus on tackling Russia's trade barriers beyond WTO rules, such as a bilateral SPS equivalency agreement and an intellectual property rights action plan. These powerful tools will help to assure that the United States makes the most of Russia's concessions.

Moldova's accession to the World Trade Organization

In 1992, the United States and Moldova signed a bilateral trade agreement as required under Title IV of the Trade Act of 1974. Moldova also applied to join the GATT and subsequently the WTO in 1993. Moldova was invited to join the WTO on May 8, 2001, and acceded to the WTO on July 26, 2001. As in the case of Russia, the United States was required to invoke non-application regarding Moldova on May 2, 2001, because U.S. law required the application of conditional, annual NTR to Moldova under the Jackson-Vanik amendment.

Other significant issues

The United States' relationship with Russia is broader than trade and economic issues. Russia and the United States successfully cooperate in some areas of foreign policy and national security. However, many Members of this Committee have deep concerns about the Russian government's lack of respect for human rights and certain aspects of Russia's foreign policy.

The most recent concern about Russia's human rights record is due to the death of Russian tax lawyer Sergei Magnitsky, who was investigated by the Russian government on allegedly baseless tax evasion and tax fraud charges. Magnitsky was later arrested and died under mysterious conditions in November 2009, allegedly from mistreatment and torture, after being held 11 months without trial. The Russian government eventually acknowledged that his death was a criminal act but has done little to pursue those responsible.

The events surrounding the death of Sergei Magnitsky resulted in the introduction of legislation to hold accountable those responsible for human rights violations. H.R. 4405, currently pending in the U.S. House of Representatives, would impose visa restrictions and asset freezes on those involved in human rights violations in Russia. The House Foreign Affairs Committee considered H.R. 4405 on June 7, 2012, and reported it out favorably by voice vote, as amended. Similar legislation was introduced in the U.S. Senate, S. 1039, but it would cover human rights violators globally and is not limited to Russia. This bill was included as an amendment to S. 3406, which would grant PNTR to Russia and Moldova. The Senate Finance Committee considered S. 3406, as amended, on July 18, 2012, and reported it out favorably by a unanimous vote.

The Committee shares the deep concerns about the Russian government's lack of respect for human rights and supports amending H.R. 6156 to include such "Magnitsky" legislation before consideration by the U.S. House of Representatives.

The Committee is also deeply concerned about Russia's continued support of the Syrian government, despite the Syrian government's attacks on its own people. Russia has an extensive history of providing weapons and political support to the regime of President Bashar al-Assad of Syria, a country designated by the Secretary of State as a "state sponsor of terrorism." It remains the top supplier of weapons to the Syrian government, reportedly providing nearly \$1 billion worth of arms in 2011, and has unabatedly continued to ship arms to the Syrian government during the ongoing popular uprisings. Moreover, the Russian government has repeatedly blocked or impeded efforts by the United Nations and individual countries to find a peaceful resolution of the situation in Syria. Fi-

nally, the Russian Navy also maintains its only permanent warm-water naval port outside of the former Soviet Union in Port of Tartus, Syria, which bolsters the Assad regime.

The Committee condemns Russia's continued sale of weapons to Syria, opposition to multiple United Nations Security Council Resolutions regarding Syria, and longstanding and ongoing support for the regime of President Assad. The Committee believes that the actions of the Russian government have enabled the Assad regime to perpetrate mass atrocities, including the slaughter of innocent civilians and the displacement of thousands of people. The Committee urges the government of Russia to immediately end all weapons sales to Syria, support international sanctions against the regime, and help with a peaceful transition of leadership within the government of Syria.

Concerns have been expressed that the granting of PNTR could send the wrong signal regarding the views of Committee Members on these matters. To be clear, the Members of the Committee deplore these actions by Russia. Just as Russia is joining the international community through its accession to the WTO, it must join the nations of the world in addressing the violence against civilians in Syria and in safeguarding the human rights of its own citizens.

C. LEGISLATIVE HISTORY

Legislative hearing

On June 20, 2012, the Committee on Ways and Means held a hearing on Russia's accession to the WTO and granting Russia PNTR.

Committee action

H.R. 6156 was introduced on July 19, 2012, by Chairman Camp, Ranking Member Levin, Trade Subcommittee Chairman Brady, Trade Subcommittee Ranking Member McDermott, and Representatives Reichert, Rangel, Roskam, Blumenauer, Paulsen, and Crowley and was referred to the Committee on Ways and Means. On July 26, 2012, the Committee ordered favorably reported H.R. 6156 to the House of Representatives without amendment.

II. SECTION-BY-SECTION SUMMARY

TITLE I: PERMANENT NORMAL TRADE RELATIONS FOR THE RUSSIAN FEDERATION

SECTION 101: FINDINGS

PRESENT LAW

No provision.

EXPLANATION OF PROVISION

Section 101 states that Russia allows its citizens to freely emigrate and has been found to be in full compliance with the freedom of emigration requirements under Title IV of the Trade Act of 1974 since 1994. Russia has received normal trade relations (NTR) since concluding a bilateral trade agreement with the United States in

1992. The Ministerial Conference of the WTO invited Russia to accede to the WTO on December 16, 2011.

REASON FOR CHANGE

The provision describes Russia's compliance with the Jackson-Vanik amendment, the status of United States trade relations with Russia, and Russia's invitation to join the WTO.

SECTION 102: TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO PRODUCTS OF THE RUSSIAN FEDERATION

PRESENT LAW

Title IV of the Trade Act of 1974 sets forth the requirements relating to freedom of emigration that must be met, or waived by the President, in order for a nonmarket economy country to be granted NTR. Title IV also requires that a bilateral commercial agreement that provides for nondiscriminatory, NTR status remain in force between the United States and the nonmarket economy country receiving NTR status. Finally, Title IV sets forth minimum provisions that must be included in such an agreement.

As described above, an annual Presidential recommendation under section 402(d) for a 12-month extension of authority to waive the Jackson-Vanik freedom-of-emigration requirements—either generally or for specific countries—may be disapproved through passage by Congress of a joint resolution of disapproval within 60 calendar days after the expiration of the previous waiver authority. Congress may override a Presidential veto within the later of the end of the 60 calendar day period for initial passage or 15 legislative days after the veto.

EXPLANATION OF PROVISION

Section 102 authorizes the President to determine that Title IV of the Trade Act of 1974 should no longer apply to Russia and to proclaim the extension of NTR treatment to the products of Russia. The effective date of the extension of NTR treatment to the products of Russia is to be no sooner than the effective date of Russia's accession to the WTO. The application of title IV of the Trade Act of 1974 to Russia terminates on the effective date of the extension of NTR treatment to the products of Russia.

REASON FOR CHANGE

The Committee believes that increasing exports is an important means to create U.S. jobs. Russia is the largest economy not yet in the WTO, and the Russian market will expand as its middle class grows and its economy further diversifies. Upon joining the WTO on August 22, 2012, Russia must open up its market by reducing tariffs and other trade barriers on goods and services, which could cause U.S. exports to Russia to double or triple within five years. Becoming a WTO member will not only require Russia to lower its trade barriers, but will also require Russia to comply with all of the WTO's rules and create a level playing field for U.S. exports by addressing discriminatory practices, enforcing intellectual property rights, creating transparency, and implementing uniform customs rules and science-based measures. If Russia does not comply with

these obligations, WTO members can use the WTO's dispute settlement mechanism to enforce their rights.

However, WTO rules do not require Russia to extend any of these benefits to the United States unless Congress authorizes the President to grant Russia permanent normal trade relations (PNTR). Not granting Russia PNTR will only hurt U.S. companies, workers, farmers, and ranchers because they will lose ground in the Russian market to their foreign competitors. Moreover, the United States does not have to change any tariffs or make any concessions for Russia to join the WTO. Therefore, the Committee strongly believes that granting Russia PNTR is in the best interest of U.S. companies, workers, farmers, and ranchers, as well as for the country as a whole.

TITLE II: TRADE ENFORCEMENT MEASURES RELATING TO THE RUSSIAN FEDERATION

SECTION 201: REPORTS ON IMPLEMENTATION BY THE RUSSIAN FEDERATION OF OBLIGATIONS AS A MEMBER OF THE WORLD TRADE ORGANIZATION AND ENFORCEMENT ACTIONS BY THE UNITED STATES TRADE REPRESENTATIVE

PRESENT LAW

No provision.

EXPLANATION OF PROVISION

Section 201(a) requires the United States Trade Representative (USTR) to report annually to the Senate Finance Committee and the House Ways and Means Committee on Russia's implementation of its obligations as a member of the WTO, in particular with respect to obligations relating to SPS issues and intellectual property protection. USTR's report would also cover Russia's progress on acceding to and implementing the WTO Information Technology Agreement and the WTO Agreement on Government Procurement. To the extent that USTR believes that Russia is not fully implementing a WTO agreement or making adequate progress in acceding to the above agreements, USTR is required to include in the report its plans for addressing those situations. In preparing the report, USTR must provide an opportunity for public comment, including by holding a public hearing.

Section 201(b) requires 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 USTR to ensure full compliance by Russia with its WTO obligations.

REASON FOR CHANGE

The Committee believes that Russia must be held accountable to fully implement its WTO obligations and that USTR must take action when Russia does not meet those obligations. The Committee expects that requiring USTR to annually report on Russia's implementation of its WTO obligations and to pursue enforcement actions when Russia does not meet those obligations will help ensure that USTR is constantly vigilant concerning Russia's compliance. The bill specifically directs USTR to report on Russia's compliance

with the WTO Agreement provisions relating to SPS measures and intellectual property protection because of the Committee's concern over the past difficulties with Russia in those areas. The Committee also expects USTR to press Russia to follow through with its obligations to join and implement the WTO Information Technology Agreement and the WTO Agreement on Government Procurement.

SECTION 202: PROMOTION OF THE RULE OF LAW IN THE RUSSIAN
FEDERATION TO SUPPORT UNITED STATES TRADE AND INVESTMENT
PRESENT LAW

No provision.

EXPLANATION OF PROVISION

Section 202(a) requires USTR and the Secretary of State to report annually on measures they have taken and results achieved to promote the rule of law in Russia 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 Russia, to fully implement their commitments; promoting corruption-free customs, tax, and judicial authorities in Russia; and increasing cooperation between the United States and Russia to expand the capacity for civil society organizations to monitor, investigate, and report on suspected incidents of corruption.

Section 202(b) 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 Russia that could affect them and to request U.S. assistance relating to corruption issues in Russia. The Secretary of Commerce is also required 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; a summary of U.S. actions taken in response to requests; and a description of the efforts to inform U.S. entities of the availability of assistance through the hotline and website. The identities of those reporting are not to be included in the report.

REASON FOR CHANGE

The weak rule of law and the high level of corruption in Russia have been significant barriers against U.S. exports to and investments in Russia. The Committee intends that requiring USTR and the State Department to report on specified activities that increase the rule of law and decrease corruption in Russia will promote progress in those areas and further trade and investment with Russia. The Committee also believes that requiring the Commerce Department to set up a phone hotline and secure website to enable U.S. entities to report on corruption and bribery in Russia will provide the U.S. government with vital information on the nature and

extent of this problem and better enable assistance to U.S. entities that are the victims of such practices.

SECTION 203: REPORTS ON LAWS, POLICIES, AND PRACTICES OF THE
RUSSIAN FEDERATION THAT DISCRIMINATE AGAINST UNITED
STATES DIGITAL TRADE

PRESENT LAW

Section 181 of the Trade Act of 1974 requires the Office of the United States Trade Representative to submit to the President, the Senate Finance Committee, and the appropriate committees in the House of Representatives an annual report on significant foreign trade barriers, known as the National Trade Estimate Report on Foreign Trade Barriers. The statute requires identification of acts, policies, and practices of each foreign country that constitute significant foreign trade barriers affecting U.S. exports of goods and services, foreign direct investment by U.S. persons, and U.S. electronic commerce, and an estimate of the trade-distorting impact of these barriers on U.S. commerce. The report must also include information on any action taken to eliminate any barriers identified. After submission of the report, the USTR must consult and take into account the views of the recipient congressional committees.

EXPLANATION OF PROVISION

Section 203 amends section 181 of the Trade Act of 1974 by requiring that the annual National Trade Estimate Report on Foreign Trade Barriers issued under section 181 include a description of Russian laws, policies, and practices that deny fair and equitable market access to U.S. digital trade.

REASON FOR CHANGE

An increasing share of U.S. trade is digital—that is, it is conducted over the Internet and by other digital means. The creativity and innovation of the U.S. economy makes the United States a leader in digital trade. The Committee is disturbed by policies all over the world that deny or unduly restrict market access to U.S. digital trade. One example of such policies is undue restrictions on cross-border data flows, on which digital trade often relies. By requiring USTR to report on Russia’s laws, policies, and practices that deny fair and equitable treatment to U.S. digital trade, the Committee intends that barriers of this type be identified and analyzed.

SECTION 204: EFFORTS TO REDUCE BARRIERS TO TRADE IMPOSED BY
THE RUSSIAN FEDERATION

PRESENT LAW

No provision.

EXPLANATION OF PROVISION

Section 204 requires the USTR to pursue the reduction of Russian barriers to U.S. exports through efforts to negotiate a bilateral agreement with Russia that would recognize U.S. SPS measures as equivalent to Russian SPS measures, and through efforts to obtain

Russia's acceptance of an action plan to provide greater protections for intellectual property rights than those provided under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

REASON FOR CHANGE

Russia's adoption of WTO obligations should significantly help remove barriers to U.S. exports. However, more work remains to resolve ongoing issues regarding SPS measures and IPR protection that are not covered by WTO rules. The Committee expects the Administration to negotiate a bilateral agreement under which Russia would recognize U.S. SPS measures as equivalent to its own SPS measures. Such an agreement would end a major barrier to U.S. agriculture exports caused by the need to comply with additional Russian rules after already meeting U.S. food safety requirements. Regarding IPR protection, the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights is focused on substantive intellectual property rights and is limited in its ability to provide for IPR enforcement, particularly against Internet piracy. USTR and the Russian government have been discussing an action plan to address this issue, but progress has been slow.

The Committee expects USTR to work diligently toward concluding these bilateral agreements with Russia as quickly as possible.

TITLE III: PERMANENT NORMAL TRADE RELATIONS FOR MOLDOVA

SECTION 301: FINDINGS

PRESENT LAW

No provision.

EXPLANATION OF PROVISION

Section 301 states that Moldova allows its citizens to freely emigrate and has been found to be in full compliance with the freedom of emigration requirements under Title IV of the Trade Act of 1974 since 1997. Moldova acceded to the WTO on July 26, 2001.

REASON FOR CHANGE

The provision describes Moldova's compliance with the Jackson-Vanik amendment and Moldova's accession to the WTO.

SECTION 302: TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO PRODUCTS OF MOLDOVA

PRESENT LAW

Title IV of the Trade Act of 1974 sets forth the requirements relating to freedom of emigration that must be met, or waived by the President, in order for a nonmarket economy country to be granted NTR. Title IV also requires that a bilateral commercial agreement that provides for nondiscriminatory, NTR status remain in force between the United States and the nonmarket economy country receiving NTR status. Finally, Title IV sets forth minimum provisions that must be included in such an agreement.

As described above, an annual Presidential recommendation under section 402(d) for a 12-month extension of authority to waive the Jackson-Vanik freedom-of-emigration requirements—either generally or for specific countries—may be disapproved through passage by Congress of a joint resolution of disapproval within 60 calendar days after the expiration of the previous waiver authority. Congress may override a Presidential veto within the later of the end of the 60 calendar day period for initial passage or 15 legislative days after the veto.

EXPLANATION OF PROVISIONS

Section 302 authorizes the President to determine that Title IV of the Trade Act of 1974 should no longer apply to Moldova and to proclaim the extension of NTR treatment to the products of Moldova. The provision would terminate the application of Title IV of the Trade Act of 1974 to Moldova on the date of the President's proclamation.

REASON FOR CHANGE

Moldova faces many challenges as it strives to grow and develop its economy. Becoming a WTO member in 2001 was a significant achievement for Moldova and has helped spur economic reform. The Committee hopes that granting PNTR to Moldova will increase trade and investment between the United States and Moldova and will further strengthen relations between the two countries.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the vote of the Committee on Ways and Means in its consideration of the bill, H.R. 6156.

MOTION TO REPORT THE BILL

The bill, H.R. 6156, was ordered favorably reported by a voice vote without amendment (with a quorum being present).

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of this bill, H.R. 6156, as reported: The Committee agrees with the estimate prepared by the Congressional Budget Office (CBO), which is included below.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES BUDGET AUTHORITY

In compliance with subdivision 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 6156 does not contain any new budget authority or credit authority. The Congressional Budget Office estimates that any change in fiscal years 2012, 2013, 2013 through 2017, and 2013 through 2022, would be negligible.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET
OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by CBO, the following report prepared by CBO is provided:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 27, 2012.

Hon. DAVE CAMP,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6156, the Russia and Moldova Jackson-Vanik Repeal Act of 2012.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 6156—Russia and Moldova Jackson-Vanik Repeal Act of 2012

CBO estimates that implementing H.R. 6156 would cost \$1 million over the 2013–2017 period, assuming appropriation of the necessary amounts. The bill also would affect direct spending and revenues; therefore, pay-as-you-go procedures apply, but CBO estimates that any such effects would not be significant in any year. H.R. 6156 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

H.R. 6156 would remove Moldova and the Russian Federation from the list of countries specified under title IV of the Trade Act of 1974 (the Jackson-Vanik amendment), thereby granting them permanent normal trade relations (NTR) with the United States. Those countries have had NTR status with the United States for about 20 years, and CBO's baseline reflects the expectation that they will maintain that status. Establishing permanent NTR with Moldova and the Russian Federation could potentially increase tariff collections by lifting quotas on certain imported goods. CBO estimates, however, that any such effects would be insignificant over the 2013–2022 period.

Based on information from the U.S. Trade Representative (USTR), CBO estimates that implementing the provisions of H.R. 6156 would cost a total of \$1 million over the 2013–2017 period, assuming the availability of appropriated funds. That amount includes affected agencies' costs to hire additional staff, complete required reports, hold public hearings, and establish and maintain a secure phone line and Web site related to activities under the bill.

CBO expects that enacting H.R. 6156 would decrease revenues from visa fees and increase revenues from civil and criminal penalties imposed on those who violate the regulations. CBO estimates that the provisions would affect few people and that revenues deposited in the Treasury would not be significant in any year.

The legislation also would increase direct spending from criminal penalties, which are deposited in the Crime Victims Fund and spent in subsequent years. However, CBO expects that any net effects associated with collecting and spending such penalties would not be significant in any year.

On July 24, 2012, CBO transmitted a cost estimate for S. 3406, the Russia and Moldova Jackson-Vanick and Magnitsky Rule of Law Accountability Act of 2012, as ordered reported by the Senate Committee on Finance on July 19, 2012. The two bills are similar except that H.R. 6156 does not contain provisions regarding human rights violations. Because the human rights provisions are not included in H.R. 6156, our estimate of costs under that bill is lower.

The CBO staff contacts for this estimate are Sunita D'Monte, Matthew Pickford, and Susan Willie. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE OF REPRESENTATIVES

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee concluded that it is appropriate and timely to consider H.R. 6156, as reported.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of the part of this legislation that authorizes funding are for the establishment and operation within the Department of Commerce of a dedicated telephone line and secure website for allowing U.S. entities to report instances of bribery, attempted bribery, or other forms of corruption in Russia and to request assistance of the United States with respect to issues relating to corruption in Russia.

C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (P.L. 104-4). The Committee has determined that the revenue provisions of the bill do not impose a Federal mandate on the private sector. The Committee has determined that the revenue provisions of the bill do not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. APPLICABILITY OF HOUSE RULE XXI 5(b)

Clause 5(b) of rule XXI of the Rules of the House of Representatives provides, in part, that, "A bill or joint resolution, amendment, or conference report carrying a Federal income tax increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the sections of the bill and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

E. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TRADE ACT OF 1974

* * * * *

TITLE I—NEGOTIATING AND OTHER AUTHORITY

* * * * *

CHAPTER 8—IDENTIFICATION OF MARKET BARRIERS AND CERTAIN UNFAIR TRADE ACTIONS

SEC. 181. ESTIMATES OF BARRIERS TO MARKET ACCESS.

(a) NATIONAL TRADE ESTIMATES.—

(1) * * *

* * * * *

(3) *INCLUSION OF CERTAIN DISCRIMINATORY LAWS, POLICIES, AND PRACTICES OF THE RUSSIAN FEDERATION.—For calendar year 2012 and each succeeding calendar year, the Trade Representative shall include in the analyses and estimates under paragraph (1) an identification and analysis of any laws, policies, or practices of the Russian Federation that deny fair and equitable market access to United States digital trade.*

[(3)] (4) ANNUAL REVISIONS AND UPDATES.—The Trade Representative shall annually revise and update the analysis and estimate under paragraph (1).

* * * * *

VII. ADDITIONAL VIEWS

H.R. 6156, the “Russia and Moldova Jackson-Vanik Repeal Act of 2012,” recognizes the importance of ensuring that Russia implements its existing WTO commitments and directs USTR to take further action to secure WTO-plus commitments to address several significant and longstanding trade issues.

Specifically, on enforcement, the bill requires the U.S. Trade Representative (USTR): (1) to report on Russia’s implementation of all of its WTO commitments; (2) to describe the Administration’s plan to address any deficiencies; (3) to seek public input in the assessment of Russia’s compliance; and (4) to submit a separate report on enforcement actions that the USTR has taken to ensure that Russia has fully complied with its WTO obligations. It also includes special reporting requirements regarding Russia’s progress in acceding to and in implementing two additional WTO plurilateral agreements: the WTO Information Technology Agreement and the WTO Agreement on Government Procurement.

The bill also calls for the negotiation of new agreements that exceed WTO rules to further address longstanding issues with Russia’s enforcement of intellectual property rights and barriers to U.S. agricultural exporters.

Finally, the bill includes provisions to promote openness and rule of law in Russia. These provisions include: (1) requiring USTR to identify and address barriers to internet access affecting U.S. digital trade; (2) requiring USTR and the Department of State to submit an annual report on measures taken to promote the rule of law in Russia, including by promoting the claims of U.S. investors; and (3) requiring the Department of Commerce to gather and report information on bribery and corruption in Russia, and report on U.S. government actions taken to assist U.S. entities affected by such bribery and corruption.

Some have proposed that the enforcement of Russia’s WTO commitments could be further strengthened by providing the Committee with the ability to request that the Administration take “appropriate action” to address any deficiency. We favor such a mechanism, but note that existing law (Section 301 of the Trade Act of 1974) already provides “any interested person” the right to petition for such an enforcement action. There are no limitations on the definition of “any interested person” in the statute, and this week we exchanged letters with USTR confirming that Section 301 already enables the Committee to request action, and requires USTR to respond within a fixed timeline. Those letters are attached.

We also believe the Committee, as part of its responsibility to provide oversight, should schedule regular hearings with USTR and others to assess Russia’s compliance in the initial stages of its WTO Membership. USTR should be notified well in advance that it will be called upon to do so, and public comments on Russia’s

compliance should be submitted in advance of the hearing to help inform the Committee of outstanding issues.

Finally, we note the language in the Committee Report regarding the Russian government's lack of respect for human rights and Russia's continued support for the Syrian government was developed on a bipartisan basis and has our full support.

There are serious outstanding trade issues we have with Russia, ranging from the enforcement of intellectual property rights to the rule of law. Russia's WTO membership will help us to make progress on some of these issues. At the same time, Russia's accession will not, by itself, fully resolve any of these issues. We will need to continue to work actively to address these issues at every opportunity. H.R. 6156 provides us with additional tools for doing so.

SANDER M. LEVIN.
JIM McDERMOTT.

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

July 24, 2012

The Honorable Ron Kirk
Office of the United States Trade Representative
600 17th Street NW
Washington, D.C. 20508

Dear Ambassador Kirk:

As Congress considers legislation to provide permanent normal trade relations (PNTR) to Russia, we write to seek a clarification regarding the ability of Members of Congress to request trade enforcement actions from your office.

Given that the U.S. Constitution grants Congress the sole power to regulate commerce with foreign nations, Congress has the responsibility to ensure that the U.S. Trade Representative enforces our trade agreements. Section 301 of the Trade Act of 1974 provides one avenue through which Congress can exercise its responsibilities to provide oversight of trade enforcement. Under that provision, "any interested person" has the right to petition the Trade Representative requesting that an enforcement action be taken, and the Trade Representative is required under that law to respond to the request.

Our view is that the Senate Committee on Finance and the House Committee on Ways and Means can use section 301 to formally request that the U.S. Trade Representative take appropriate action to obtain the full compliance of the Russian Federation with its WTO commitments. The Trade Representative should, in turn, either take action or provide the Committees with an explanation for not acting.

We are seeking your understanding that you share this view that under section 301, the Committees have the ability to request enforcement action, and that the Trade Representative is required to act or to explain its reasons for not acting, under that law.

Sincerely,



Sander M. Levin
Ranking Member
Committee on Ways and Means



Jim McDermott
Ranking Member
Subcommittee on Trade
Committee on Ways and Means

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

July 24, 2012

The Honorable Sander M. Levin
Ranking Member
Committee on Ways and Means
U.S. House of Representatives

The Honorable Jim McDermott
Ranking Member
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives

Dear Congressman Levin and Congressman McDermott:

Thank you for your July 24 letter regarding the pending bill to provide permanent normal trade relations (PNTR) to Russia. You have requested assurances that the Committee on Finance of the Senate and the Committee on Ways and Means of the House ("trade committees") will be able to formally request that the U.S. Trade Representative (USTR) take appropriate action to obtain Russia's full compliance with its WTO commitments. We appreciate your leadership on this and other trade matters, in particular your efforts to ensure that U.S. rights are enforced under all of our trade agreements.

This Administration has made an unparalleled commitment to enforcing U.S. rights under our trade agreements, and has demonstrated that it will take all necessary measures to enforce these rights, including using the dispute settlement process in the World Trade Organization (WTO), where appropriate. The Russia PNTR bill reported out of the Senate Finance Committee contains strong provisions on monitoring and enforcement that provide this and future administrations the tools to ensure that the United States uses all appropriate means to obtain and enforce U.S. rights under the WTO Agreement vis-à-vis Russia.

To illustrate, the bill requires the USTR to submit an annual report to the trade committees assessing Russia's implementation of all of its WTO commitments, including implementation of the Agreement on Application of Sanitary and Phyto-sanitary Measures and the Agreement on Trade-Related Aspects of Intellectual Property Rights, and Russia's progress on joining the Information Technology Agreement and the Agreement on Government Procurement. The USTR must also include an explanation of actions that will be taken to encourage Russia to improve its implementation of its commitments. The bill also provides for public participation and an open exchange of information in the drafting of this report. In addition to this report, the

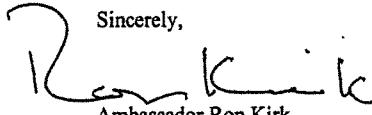
The Honorable Sander M. Levin and The Honorable Jim McDermott
Page Two

bill requires the USTR to submit a separate report on enforcement actions that the USTR has taken to ensure that Russia has fully complied with its WTO obligations. Thus, the bill provides meaningful opportunities for Congress and others to bring concerns to USTR's attention and receive an explanation of the actions that USTR plans to take to address those concerns.

I would also like to confirm that nothing in U.S. law precludes the trade committees from requesting action under section 301 of the Trade Act of 1974. As you note, section 302 of the statute provides that "any interested person" may file a petition. USTR regulations on the submission of petitions define an interested party as "any party who has a significant interest affected by the act, policy or practice complained of." 15 C.F.R. 2006. Nothing in the statute or USTR regulations would in any way preclude a trade committee from being a party with significant interests affected by a matter raised under section 301. Further, this is consistent with recent agency practice.

Thank you again for your letter. I look forward to working with you and your colleagues to enact swiftly a bill authorizing PNTR for Russia.

Sincerely,



Ambassador Ron Kirk

