

## Jeopardizing Competitiveness Of US Businesses In Russia

*Law360, New York (June 05, 2012, 1:30 PM ET)* -- U.S. businesses are eager to benefit from Russia's accession to the World Trade Organization once the Russian State Duma ratifies the membership terms, as expected this summer. As various U.S. Senate committees are holding hearings to decide whether to support graduating Russia from the controversial Jackson-Vanik amendment (Section 402 of the Trade Act of 1974, as amended; 19 U.S.C. 2432) and to extend to Russia permanent normal trade relations status, a number of major U.S. companies (including General Electric Co., The Boeing Co., Caterpillar Inc., Ford Motor Co., General Motors and Deere & Co.), trade organizations (including the U.S. Chamber of Commerce, the U.S.-Russia Business Council and the American Chamber of Commerce in Russia) and even Russian political opposition leaders are lobbying Congress to remove Russia from the outdated Soviet-era trade restrictions.

If the Jackson-Vanik amendment is still on the books when Russia officially becomes a member of the WTO, U.S. companies risk missing out on the benefits and protections that the liberalization of trade relations with the world's ninth-largest economy brings, especially as U.S. companies are eagerly looking to expand into new markets amid slow growth at home and in other developed markets.

The Jackson-Vanik amendment mandates a policy of free emigration as a condition to the extension by the U.S. of certain economic benefits to a "nonmarket economy" country. The Jackson-Vanik Amendment provides that (1) products of an NME country "shall not be eligible to receive nondiscriminatory treatment" (i.e., normal trade relations or most favored nation (MFN) status), (2) an NME country "shall not participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly," and (3) the U.S. president "shall not conclude any commercial agreement with any such country" if he/she determines that the NME country, among other things, "denies its citizens the right or opportunity to emigrate."

An NME country has generally been considered to be any communist country, including the Soviet Union. Historically, the enactment of the Jackson-Vanik amendment was a U.S. reaction to the Soviet Union's highly restrictive emigration policy of the time (including the assessment of education reimbursement fees on its citizens wishing to emigrate to nonsocialist countries), which, for the most part, affected Soviet Jews wishing to emigrate to Israel or to the U.S. The Jackson-Vanik amendment was approved by Congress even though the Soviet Union had ceased assessing the fees by that time.

The president of the United States has the power to waive, under certain conditions, the application of the Jackson-Vanik amendment to an NME country, provided that he/she certifies to Congress in an annual report that (1) the waiver will substantially promote the free-emigration objectives of the Jackson-Vanik amendment and (2) the emigration practices of that NME country will lead substantially to the achievement of the objectives of the Jackson-Vanik amendment. There are still about a dozen countries that are subject to the Jackson-Vanik amendment, including Russia, which has been certified as being in compliance with the free-emigration policy by successive U.S. administrations every year since 1994.

Although the Jackson-Vanik amendment has largely been symbolic and has had little impact on U.S.-Russia trade relation, Russia's expected accession to the WTO has called attention to the Jackson-Vanik amendment once again, as this law contradicts a fundamental principle of the WTO that requires each member state to grant unconditional MFN status to all other members of the WTO. This means each WTO member must offer the same level of market access to other members without attaching special conditions to that access.

Given the free emigration condition imposed by the Jackson-Vanik amendment, which requires periodic assessment of its compliance, the U.S. would not be able to extend to Russia unconditional MFN status (or "normal trade relations" status, as provided by the U.S. law). In turn, Russia would be under no obligation to extend MFN status to the U.S. and, thus, would continue to apply high tariffs on U.S. products and maintain other barriers to trade for U.S. businesses.

In fact, Igor Lavrov, Russia's foreign minister, has already suggested that Russia is contemplating using this reciprocity right in full against countries, such as the U.S., which do not extend MFN status to Russia. This would obviously impede U.S. companies trading, or looking to expand their trade relationship, with Russia, putting those U.S. companies at a considerable disadvantage in the Russian market compared to their competitors from other WTO countries that would be able to take advantage of the WTO. In addition, the U.S. would not be able to take advantage of the WTO dispute resolution procedures and other mechanisms to resolve its trade disputes with Russia and to enforce Russia's market access commitments.

The U.S. business and legal communities involved in Russian trade consistently oppose the Jackson-Vanik amendment as a lose-lose proposition, particularly once Russia officially joins the WTO. In an election year where some wrongly view a vote for Russian trade as a vote against the U.S. economy, one can only hope that more rational minds prevail and Jackson-Vanik is finally abolished for Russia.

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