



## **USRBC Fall 2005 Update on Intellectual Property Rights (IPR) Issues**

As many of you know, despite some important progress in recent years, ongoing violations of intellectual property rights (IPR) in Russia have represented a serious commercial issue and one of the primary impediments to Russia joining the World Trade Organization (WTO). Russia's failure to protect U.S. intellectual property not only costs U.S. firms billions of dollars per year but also, importantly, results in negative health and safety consequences for the Russian population.

Commitments in intellectual property protection by the Russian Government are central to a bilateral agreement with the United States regarding Russia's WTO accession and for the lifting of the Jackson-Vanik amendment in the U.S. Congress, which will enable the United States to benefit from the terms of Russia's accession.

In view of the extensive interaction on the IPR front over the past several weeks, we thought it would be a good time to recap recent initiatives for USRBC members.

Intellectual property protection was a major focus of the meetings that Minister of Economic Development and Trade German Gref had in late September during a brief visit to Washington. Prior to his meeting with U.S. Commerce Secretary Carlos Gutierrez, the USRBC sent a letter to Secretary Gutierrez urging him to raise U.S. industry's trademark concerns with Minister Gref.

Minister Gref then spent a half-day with U.S. Trade Representative Robert Portman discussing these and other WTO-related issues, and he concluded his Washington visit with meetings on Capitol Hill regarding IPR and agricultural issues. It is interesting to note that a resolution calling on Russia to provide adequate and effective protection of intellectual property rights, or risk losing its eligibility to participate in the Generalized System of Preferences (GSP) program<sup>1</sup> -- which allows for Russia's imports to enter the United States at preferential tariff rates -- currently has nearly 90 co-sponsors in the House of Representatives. The resolution suggests that as part of Russia's WTO accession, Russia must ensure that intellectual property is protected in law and in practice and demonstrate its ability and will to meet its international obligations. The resolution does not carry the force of law, but with a sizeable co-sponsorship such as this, it is a strong expression of Congressional sentiment.

Over the past few months, as bilateral negotiations on Russia's WTO accession have continued, the USRBC has actively engaged senior U.S. and Russian government

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<sup>1</sup> USTR held a hearing on the GSP program on November 3 and is accepting comments through November 14, 2005. In 2004, Russia was among the top 10 GSP beneficiary country exporters, by trade volume of non-petroleum GSP products. The GSP program is currently set to expire on December 31, 2006.



officials to express our members' concerns regarding difficulties they are facing in connection with protecting their intellectual property in Russia.

### USRBC IP Efforts with the US and Russian Governments

In early October, the USRBC joined the Coalition for Intellectual Property Rights (CIPR), and private firms -- including USRBC members Diageo and Intel -- for a day-long series of meetings with officials from the Office of the U.S. Trade Representative (USTR), the U.S. Department of Commerce, and the Patent and Trademark Office (USPTO) on the eve of their departure for bilateral meetings in Moscow.

At the meeting, USRBC noted the copyright and data exclusivity concerns of U.S. industry, but also pointed to trademark issues of concern to U.S. businesses operating in Russia. While Russia has made some progress on trademark protection and enforcement, U.S. companies still face a lack of transparency in the trademark registration process, misuse of the judicial system related to trademark registration, and a failure by Russian authorities to recognize well-known trademarks and geographical indications (GIs).

Numerous U.S. firms have found Russia's patent and trademark agency, Rospatent, to be unresponsive to their concerns. A late October videoconference between Rospatent and U.S. officials from USTR, USPTO, and the U.S. Embassy made little progress. Rospatent continues to insist that its laws and regulations are WTO-compliant even as U.S. officials point to specific problems with Russian law and practices. The videoconference was hampered by the fact that the head of Rospatent did not participate as planned, and, for example, a discussion on GIs was truncated, because his staff was not conversant with the Spring 2005 WTO decision on this matter. In an effort to move the discussions with Russia forward at a higher level and generate some political pressure on Rospatent, the USRBC presented a letter to Minister Gref on these issues and raised specific company concerns.

Also in October, the USRBC participated in an informal luncheon with Secretary of Commerce Gutierrez's coordinator for intellectual property enforcement, Christopher Israel, who is leading a campaign to enhance IP enforcement in a concerted effort among U.S. government agencies, the private sector and U.S. trading partners. The USRBC pledged to work with Mr. Israel on IP issues related to Russia.

### U.S.-Russia IPR Bilaterals

In mid-October, the United States and Russia held bilateral discussions in Moscow on Russia's intellectual property protection. The United States is seeking demonstrable advances from Russia in four key areas by year's end:

- Permanent closure of plants engaged in illicit production of copyrighted materials, including revocation of licenses and repossession and destruction of illicit merchandise;
- Closure of internet sites engaged in the sale of illicit materials;



- Protection of confidential data related to pharmaceuticals (via the draft Law on Medicines);
- Action by Customs officials to seize illicit materials destined for export.

The assessments we have heard of the IPR Working Group meetings in Moscow were lukewarm in terms of tangible progress.

U.S. and Russian trade negotiators are expected to take advantage of time together in Geneva during the week of November 7 to continue to discuss these issues, but these discussions are not full, formal bilateral negotiations. USTR Portman and Minister Gref are also expected to address IP and other accession matters in broader discussions later in November at the APEC Summit in Busan, Korea.

### Next Steps on the U.S.-Russian IP Agenda

Russia's IPR practices are currently being examined as part of USTR's out-of-cycle review of Russia's intellectual property protection regime, as prescribed by U.S. trade law.

Each year, after submission of its report on foreign trade barriers to Congress, USTR is required to identify foreign countries that deny adequate and effective protection of IPR to U.S. persons that rely upon IPR protection. USTR must determine whether to designate a country a "Priority Foreign Country" – one that "(1) has the most onerous and egregious acts, policies and practices which have the greatest adverse impact (actual or potential) on the relevant U.S. products; and (2) is not engaged in good faith negotiations or making significant progress in negotiations to address these problems."

Russia is currently on the U.S. "Priority Watch List" under Special 301, and its out-of-cycle review is expected to be completed as early as January 2006 (For more information and instructions on submitting corporate commentary, please see Federal Register notice 70 FR 56963 of September 29, 2005, or <http://www.usrbc.org/Members-Only/reports/fedreg-IPR-OCR-russia.pdf> )

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*The USRBC encourages members to keep us updated regarding their intellectual property concerns so that we can ensure these receive a hearing in formal as well as informal channels with the U.S. and Russian governments.*

*If your company has an intellectual property rights issue in Russia that is not being addressed, or you are aware of specific progress being made in Russia on the intellectual property front, we would like to hear from you. Please contact USRBC Director of Policy and Programs Randi Levinas at (202) 739-9196 or [levinas@usrbc.org](mailto:levinas@usrbc.org) or USRBC Executive Vice President Blake Marshall at (202) 739-9189 or [marshall@usrbc.org](mailto:marshall@usrbc.org).*