KC AMERICA

September 5, 2006

GSP Subcommittee
Trade Policy Staff Committee
Office of the United States Trade Representative
USTR Annex, Room F-220
1724 F Street, NW
Washington, DC 20508

To the Members of the GSP Subcommittee:

KC America submits these comments pursuant to the USTR's Federal Register Notice of August 8, 2006. (71 Fed. Reg. 45079-80)

One of the key elements of GSP is to promote the development of industries in developing countries. Russia is in many ways a low level developing country, despite recent oil revenue increases. Its per capita GNI (Gross National Income as computed by the World Bank) in 2005 was only $4,460.[1] This is significantly below the $10,066 threshold normally used by the USTR and is lower than countries such as Botswana and Lebanon.

The Russian economy is still struggling to make a meaningful transition to a market economy. In a recent report, the World Bank noted,

> Despite the strong economic growth and the other positive treads in recent years, Russia continues to face a challenging development agenda. This includes spatial imbalances, deteriorating infrastructure, still low investment rates, social distress in many regions, a demographic crisis, and problems in supporting the competitiveness of manufacturing industries.[2]

That same World Bank report cited the lack of development and its impact on health:

Poor health detracts from the quality of life of a large portion of the Russian population, restrains economic development, and is an important component of the growing demographic crisis in the country.[3]

The World Economic Forum further stated that Russia recently fell five places to 75th in the forums' Annual Growth Competitive Index—just above Morocco and just below Indonesia.[4] Many segments of the Russian economy are still in critical need of GSP treatment.

Russia is essentially two economies. The CIA recently reported[5] that oil, natural gas, metals and timber account for 80% of exports, "leaving the country vulnerable to swings in world prices." Normally, products such as these have zero or little duties, or in the case of steel, are not eligible for GSP.

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[1] World Development Indicators Database, World Bank (July 1, 2006)
[2] *Russian Economic Report* at 13, World Bank (April 2006).
[3] *Id*. at 19
[4] Moscow Times, September 29, 2005.

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In the economic sectors where Russia is still truly a developing country, it has products for which GSP treatment is still very important. Many of these industries, such as the PTFE industry, are far from the main population centers of Russia. The CIA report further noted that "Russia's manufacturing base is dilapidated and must be modernized if the country is to achieve broad based economic growth."[6] The majority of Russian manufacturing companies are still in need of GSP treatment.

Indeed, in a recent GSP case involving PTFE from Russia, the GSP Subcommittee elected to maintain GSP status for that product.[7] KC America testified and presented evidence at the ITC and DOC hearings on this matter. This product still needs continued GSP as the circumstances that led to the decision of the GSP Subcommittee continue to exist. These issues were, in brief, removal of GSP status would cause irreparable harm to the towns of Kirovo Chepetsk and Perm, Russia. Kirovo Chepetsk is a one industry town that relies significantly on the revenues from the PTFE plant for its very existence. Russian PTFE is of lower quality than that of domestic US producers and is sold largely to other uses than US PTFE. Its markets are commodity like and very price sensitive.

The volume of U.S. imports from Russia covered by GSP was over $500 million in 2005.[8] Much of this is concentrated in products where duties are already low, such as copper, aluminum, and ferroalloys. Were GSP to be discontinued many smaller manufacturing industries that most need development assistance, such as PTFE, face higher duties. GSP treatment will help keep these Russian companies competitive in the United States market.

Based upon the foregoing, we respectfully request that the GSP Subcommittee recommend that the President maintain GSP treatment for Russia.

Sincerely,

Patrick H. Neale

Partner

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[5] *The World Factbook* Central Intelligence Agency (August 2006) (*See* www.cia.gov/cia/publications/factbook/geos/rs.html)
[6] *Id*
[7] 70 Fed. Reg. 39843 (July 11, 2005)
[8] Source: USITC Dataweb. Russia's share of total world goods exports in 2005 may have exceeded 0.25%. However, the Russian share is clearly exaggerated by the inclusion of oil and gas products. Indeed, Russia's share of exports of manufactured goods is still miniscule.

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INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE®

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September 1, 2006

Via Email FR0052@USTR.EOP.GOV
Ms. Marideth J. Sandler
Executive Director for the GSP Program
Chairman, GSP Subcommittee
of the Trade Policy Staff Committee (TPSC)
Office of the United States Trade Representative
USTR Annex, Room F-220
1724 F Street, NW
Washington, DC 20508

Re: 2006 GSP Eligibility and CNL Waiver Review
71 Fed. Reg. 45079 (August 8, 2006)

To the GSP Subcommittee:

The International Intellectual Property Alliance (IIPA) is a private sector coalition formed in 1984 to represent the U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyrighted materials.[1] We take this opportunity to respond to the GSP Subcommittee's request for comments to determine whether major beneficiaries of the GSP program have expanded exports or progressed in their economic development to the degree that the eligibility should be changed under the Trade Act of 1974.

In brief, IIPA supports the renewal of the GSP trade program. While we offer no comments on the TPSC's request on whether any of the 83 existing competitive need limitation (CNL) waivers are still warranted, we do note that maintaining the GSP program, and providing benefits as broadly as possible, provides leverage that can be used to advance important USG goals such as the effective protection of intellectual property. Finally, IIPA again urges that duty-free treatment for Russia be withdrawn or suspended immediately.

[1] IIPA is comprised of seven trade associations, each representing a significant segment of the U.S. copyright community. These member associations represent over 1,900 U.S. companies producing and distributing materials protected by copyright laws throughout the world – all types of computer software including business applications software and entertainment software (such as videogame CDs and cartridges, personal computer CD-ROMs and multimedia products); theatrical films, television programs, home videos and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals (in both electronic and print media). See www.iipa.com for more details.

The Importance of the GSP IPR Criteria and Renewal of the Program

The IIPA has been a strong supporter of the GSP program because of its explicit inclusion of intellectual property provisions in the eligibility criteria. Over the years, IIPA has filed numerous petitions requesting the U.S. Government to initiate GSP intellectual property rights (IPR) reviews of copyright law and enforcement practices in targeted countries.[2]

At present, the U.S. government is continuing GSP IPR investigations on the copyright law and enforcement practices in three countries in which IIPA was the original petitioner: Russia, Lebanon, and Uzbekistan. In January 2006, USTR terminated the GSP investigations of Ukraine, Brazil and Pakistan, and in May 2006, terminated the case against Kazakhstan.[3]

The IIPA has continually stressed that countries should not continue to receive duty-free trade benefits if they fail to provide adequate and effective copyright protection. The U.S. Congress has also made clear that countries should not remain eligible to receive such preferential benefits if they fail to take action against the blatant theft of copyrighted materials. IIPA believes it remains imperative that this very important trade tool – the GSP program – be used in an effective and credible way with our training partners. The benefits of the program offer developing countries an incentive to improve their economies, and similarly, the possible removal of such benefits presents countries with challenges to solve their domestic problems.

The legislation authorizing the GSP program expires on December 31, 2006. The IIPA and its members support the reauthorization of this important trade program.

Country GSP Review: Russia

The IIPA uses this opportunity to comment directly on one country – Russia**.** In our view, GSP duty-free benefits to Russia should be immediately withdrawn or suspended because of Russia's failure to provide adequate and effective copyright protection to U.S. copyright owners, as required by the GSP program, specifically section 502(c)(5) of the Act (19 U.S.C. 2462

[2] Since 1999, IIPA (and in one case, a coalition of 6 of the 7 IIPA members) has filed 18 GSP IPR petitions with USTR, requesting the initiation of IPR investigations against the following countries: Poland, Peru, Lebanon, Dominican Republic, Ukraine, Moldova, Uzbekistan, Armenia, Kazakhstan, Belarus, the Kyrgyz Republic, Brazil, Russia, Guatemala, Costa Rica, Uruguay, Thailand, and Pakistan. Of these 18 petitions, USTR initiated reviews in 10 countries: the Dominican Republic, Ukraine, Moldova, Uzbekistan, Armenia, Kazakhstan, Brazil, Russia, Lebanon, and Pakistan. IIPA withdrew its request to initiate reviews in three cases (Peru, Uruguay and Thailand). Of these 10 reviews, so far USTR has completed its investigations and terminated its reviews in 8 cases (Armenia, Moldova, Dominican Republic, Ukraine, Brazil, Pakistan, and Kazakhstan, plus Turkey—a case which IIPA petitioned for in 1993 and which was closed in 2001).

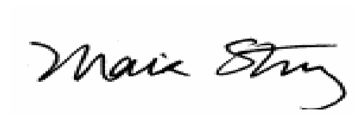
[3] With respect to two of the 13 countries at issue in this particular GSP docket, IIPA noted that progress has been made in Brazil, especially in improved Brazilian government will and coordination as well as increased seizures of pirated materials, but that some deep systemic problems, particularly involving the Brazilian judicial system (including prosecutors), remain. IIPA remains puzzled over why the Kazakhstan GSP review was terminated because IIPA members are not aware of any improvements in local anti-piracy enforcement results in that country.

(c)(5)).[4] IIPA and its members have provided numerous public updates on the lack of progress being made in Russia on continuing rampant piracy, ineffective copyright enforcement and the dangers of proposed legislative reform to the Civil Code. There simply is no justification for continuing to give trade benefits to a country which fails to comply with the explicit terms of the GSP trade program. IIPA reported an estimated trade loss due to copyright piracy in Russia of almost $1.8 billion in 2005 alone. Meanwhile, Russia benefited from $738.2 million in duty-free GSP imports to the U.S. in 2005; for the six months of 2006, imports from Russia under GSP totalled $318.8 million.

The granting of hundreds of millions of dollars in GSP benefits while U.S. copyright-based companies continue to suffer the piracy of their creative content in Russia is simply not justified, and ought to be reversed.

We appreciate your consideration of our comments.

Respectfully submitted,



Maria Strong
on behalf of the
International Intellectual Property Alliance

[4] In 2000, IIPA submitted a GSP IPR petition against Russia to the U.S. government; this petition was accepted and two sets of public hearings have been held. See IIPA's February 13, 2006 report on Russia in IIPA's 2006 Special 301 Submission posted at http://www.iipa.com/rbc/2006/2006SPEC301RUSSIA.pdf; see IIPA's March 1, 2006 letter on Russia to the GSP Subcommittee, posted at http://www.iipa.com/pdf/Russia%20GSP%202006%20Special%20301%20Submission%20FINAL%20psb%20030106.pdf; and see also IIPA's June 2, 2006 letter to the GSP Subcommittee, posted at http://www.iipa.com/pdf/IIPA%20Russia%20GSP%202006%20Recommendation%20June%20060206.pdf. Finally, see USTR's description of the IPR problems in Russia in USTR's April 28, 2006 Special 301 Decisions, posted at page 11, at http://www.ustr.gov/assets/Document_Library/Reports_Publications/2006/2006_Special_301_Review/asset_upload_file353_9337.pdf.

Supports Brazil, Russia, & Venezuela
Re Aluminum Products – no CNLWs

From: Wisor, Russell C. [Russell.Wisor@alcoa.com]
Sent: Friday, September 01, 2006 8:24 AM
To: FN-USTR-FR0052
Subject: 2006 GSP Eligibility and CNL Waiver Review

Comments of Alcoa, Inc
On the
2006 GSP Eligibility and CNL Waiver Review
Submitted to the
GSP Subcommittee
Office of the United States Trade Representative
September 1, 2006

Alcoa appreciates the opportunity to comment on the need for continued GSP eligibility for certain countries and products. Alcoa is the world's leading producer and manager of primary aluminum, fabricated aluminum and alumina facilities, and is active in all major aspects of the industry. Alcoa serves the aerospace, automotive, packaging, building and construction, commercial transportation and industrial markets, bringing design, engineering, production and other capabilities of Alcoa's businesses to customers. In addition to aluminum products and components, Alcoa also markets consumer brands including Reynolds Wrap(R) foils and plastic wraps, Alcoa(R) wheels, and Baco(R) household wraps. Among its other businesses are closures, fastening systems, precision castings, and electrical distribution systems for cars and trucks. The company has 129,000 employees in 44 countries.

Alcoa urges that GSP eligibility be continued for Brazil, Russia and Venezuela. If GSP benefits of these countries are limited, the program should continue to apply to a number of products imported by Alcoa, including aluminum powder, extrusions, sheet, plate, foil and forgings. Loss of GSP treatment for these products will cause significant disruption to our supply chain and harm our customers who rely on these products. Aluminum markets are global, as is the competition. It is also a business where a cost increase of pennies per pound is a threat to continued operations and profitability. To remain competitive in the US with imports from countries around the world, Alcoa relies on duty free imports from these three countries to help us grow in the United States, remain competitive, and deliver more competitively priced supplies into the American marketplace. Accordingly, we request that these countries not lose their eligibility.

We are doing this because, as a global company, we are required to deliver product to our US customers at competitive prices. We do not have the physical capacity to produce many of the products we are importing; yet to meet the needs of our customer base, we must be able to supply them. If we fail to do this, we will be unable to expand our US business and compete with other suppliers.

Our customers in the aerospace, automotive, packaging and construction industries rely on these imports and our ability to deliver them at a competitive price. The imposition of over $3 million in additional costs that could result from the imposition of duties will pose a serious burden on our business as well as that of our customers.

If Brazil, Russia and Venezuela have their GSP eligibility restricted in some way, we request that the following products not be removed:

Brazil
HTSUS 7603.10.00
HTSUS 7604.29,10
HTSUS 7604.29.30
HTSUS 7604.29.50
HTSUS 7606.92.30
HTSUS 7606.92.60
HTSUS 7607.11.30
HTSUS 7607.11.60
HTSUS 7607.11.90
HTSUS 7608.10.00
HTSUS 7608.20.00

Russia
HTSUS 7604.29.30
HTSUS 7604.29.50
HTSUS 7606.12.30
HTSUS 7608.20.00
HTSUS 7616.99.50

Venezuela
HTSUS 7616.99.50
HTSUS 8708.70.45

In conclusion, we would ask that as policy regarding GSP eligibility for Brazil, Russia and Venezuela is being reviewed, the significant negative impact on our business and markets, and those of our customers, be given due consideration and that the multi-million dollar cost increase on the American economy that will result from the imposition of tariffs on these aluminum imports be rejected.

Submitted by:

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September 5, 2006

<u>Via Electronic Mail</u>

Marideth J. Sandler, Chairman
GSP Subcommittee of the Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, NW
Washington, D.C. 20508
Email: FR0052@USTR.EOP.GOV

Re: 2006 GSP Eligibility and CNL Waiver Review: GSP Eligibility for Russia

Dear Chairman Sandler:

We are writing in our capacity as lawyers for 40 U.S. citizens who are owners of Yukos Oil Company ("Yukos"), a Russian oil and gas company that has been expropriated by Russia. These U.S. citizens are currently seeking relief in U.S. court for Russia's unlawful re-nationalization of Yukos and Russia's failure to provide adequate compensation to Yukos's owners. To date, Russia has not agreed to let this case be heard on the merits in any forum. Therefore, as you consider whether to graduate Russia from the Generalized System of Preferences (GSP) program, we urge you to graduate Russia and terminate its GSP benefits.

Based solely on a review of Russia's growth in GDP, growth in exports, and its significant debt reduction in recent years, Russia no longer should be benefiting from the GSP program. Furthermore, a country such as Russia that has expropriated property of U.S. citizens in violation of U.S. and international law may not be a GSP beneficiary as a matter of law. For these reasons, we urge you to withdraw Russia's GSP benefits.

Russia's current level of economic development is sufficient for the U.S. to withdraw, suspend, or limit Russia's preferences under the GSP program. Russia's GDP has grown at an average rate of 6.4 percent per year since 1998. Exports have contributed substantially to this growth, totaling $245 billion in 2005. Oil earnings have allowed Russia to increase its foreign currency reserves from $12 billion to $180 billion by 2005. Foreign debt has declined from 90 percent of GDP to 31 percent. Russia recently paid off the last of its Paris Club debt – more than a decade ahead of schedule. Russia's per capita income has risen to $11,100, and personal incomes have realized average increases of over 12 percent, when adjusted for inflation. Fixed capital investments have increased on average more than 10 percent each year since 2000.

In addition to Russia's rapid economic growth, Russia's expropriation of property of U.S. citizens without compensation requires the United States to terminate GSP benefits. U.S. law prohibits the President from extending GSP benefits to a country that has nationalized, expropriated, or otherwise seized ownership or control of property owned by a U.S. citizen. *See* 19 U.S.C. § 2462(b)(2)(D)(i). Russia's expropriation of Yukos is a clear example of such a seizure, and demonstrates Russia's failure to abide by international standards and the rule of law.

Russia began its efforts to re-nationalize Yukos with the arrest of Yukos's founder, Mikhail Khodorkovsky. Later, Russia arranged a sham auction of Yukos's largest and most productive asset, a subsidiary called Yuganskneftegaz. In December 2004, Baikalfinansgroup, a company that was established a month before the sham auction and that disappeared days later, bought Yuganskneftegaz from the Russian Federal Property Fund. It was soon revealed that Rosneft, the state-owned oil company, had purchased Baikalfinansgroup for an unknown sum. As a result of this illegal acquisition of Yukos's assets, the oil production of sate-owned Rosneft nearly doubled overnight. Russia also issued a series of confiscatory tax levies against Yukos as part of an effort to seize all remaining economic value of Yukos. Through the seizure of the shares of Yukos's principal owners, unjustified tax levies, and the sham auction of Yukos's principal asset to a state-owned company, Russia has re-nationalized Yukos, and has done so without paying any compensation to its owners, including U.S. citizens. Holders of Yukos American Depository Receipts, many of whom are U.S. citizens or investment funds, have lost investments worth approximately $6 billion as a result of Russia's illegal actions.

Russia has completed the dismemberment of Yukos by orchestrating the bankruptcy of the company, installing a management team that was not approved by Yukos's shareholders, and pursuing harassing criminal and tax prosecutions against Yukos's former managers. These actions have enabled the Russian state to gain control of all of Yukos's assets.

In sum, Russia has illegally expropriated Yukos and has refused to provide prompt, adequate, or effective compensation to the U.S. citizens harmed by this expropriation. Furthermore, Russia has not taken any steps to discharge its obligation under international law to compensate these U.S. citizens, nor has it agreed to let this case be heard on the merits in any forum. Russia's state of economic development, coupled with Russia's expropriation of property owned by U.S. citizens, supports termination of Russia's GSP benefits. We therefore encourage you to withdraw Russia's eligibility under the GSP program.

Sincerely,

\s\ O. Thomas Johnson, Jr.
O. Thomas Johnson, Jr.
tjohnson@cov.com

\s\ Marney L. Cheek
Marney L. Cheek
mcheek@cov.com

U.S.-RUSSIA BUSINESS COUNCIL

September 5, 2006

GSP Subcommittee
Trade Policy Staff Committee
Office of the United States Trade Representative
USTR Annex, Room F-220
1724 F Street, NW
Washington, DC 20508

Re: 2006 GSP Eligibility and CNL Waiver Review

To the Members of the GSP Subcommittee:

In response to the Office of the U.S. Trade Representatives' *Federal Register* Notice of August 8, 2006 (71 *Fed. Reg.* 45079-80), regarding Initiation of Reviews and Request for Public Comments on the Generalized System of Preferences (GSP), the U.S.-Russia Business Council (USRBC) is pleased to submit comments in support of the Government of the Russian Federation's continued eligibility as a Beneficiary Developing Country in the GSP program.

USRBC is a Washington-based trade association that represents the interests of 300 member companies operating in the Russian market. The Council's mission is to expand and enhance the U.S.-Russian commercial relationship. Guided by member interests, the Council promotes an economic environment in which businesses can succeed in a challenging Russian market. Through a range of activities, the Council contributes to the stability and development of a free market in Russia and supports Russia's integration into the global economy.

USRBC strongly supports the Russian Federation's continued designation by the Trade Policy Staff Committee as a Beneficiary Developing Country under the GSP program and opposes any action to limit, suspend or withdraw those benefits. First and foremost, our support for the Russian Federation's continued eligibility stems from the simple and straightforward reality that it continues to meet the program criteria as outlined by the statute and USTR's own policy guidelines. No changed circumstances exist to warrant modifications to Russia's continued eligibility under the program. Additionally, removal of Russia's GSP status at this time would send the wrong signal to the Government of the Russian Federation and its people regarding the intentions of the United States to work in a cooperative fashion with Russia in a policy of engagement and encouragement of further liberalization of their own market.

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Among the criteria outlined in the statute and in USTR's own policy guidelines (USTR's *Generalized System of Preferences Guidebook*) regarding a GSP beneficiary country's continued eligibility in the program are (1) the country's level of economic development; (2) per capita GNP; (3) the living standards of its inhabitants; and (4) the overall economic interests of the United States.

Level of Economic Development

Despite advances in recent years, the Russian economy is still struggling with numerous difficulties related to its transition to a market economy.

The World Bank recently noted as follows,

> Despite the strong economic growth and the other positive trends in recent years, Russia continues to face a challenging development agenda. This includes spatial imbalances, deteriorating infrastructure, still low investment rates, social distress in many regions, a demographic crisis, and problems in supporting the competitiveness of manufacturing industries.[1]

That same World Bank report noted the lack of development and its impact on health:

> Poor health detracts from the quality of life of a large portion of the Russian population, restrains economic development, and is an important component of the growing demographic crisis in the country.[2]

Similarly, the World Economic Forum noted that Russia recently fell five places to 75th in the Forum's Annual Growth Competitive Index—just above Morocco and just below Indonesia.[3]

Russia is in some ways two economies. A recent CIA report[4] notes that oil, natural gas, metals and timber account for 80% of exports, "leaving the country vulnerable to swings in world prices." Typically, these products have zero or little duties, or as in the case of steel, are not eligible for GSP. Conversely, where Russia is still truly a developing country, it has products for which GSP treatment is still very important. Many of these industries are far from the main population centers of Russia. That same CIA report noted that "Russia's manufacturing base is dilapidated and must be modernized if the country is to achieve broad based economic growth."[5] Most Russian manufacturing companies are still in need of GSP treatment. Indeed, in a recent GSP case involving polytetrafluoroethylene (PTFE) from Russia, the GSP Subcommittee elected to maintain GSP status for that product.[6]

In short, GSP is still of critical need to many segments of the Russian economy.

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[1] *Russian Economic Report*, World Bank (2006) at 13.
[2] *Id*. at 19.
[3] *Moscow Times*, September 29, 2005.
[4] *The World Factbook*, Central Intelligence Agency (2006) (See ww.cia.gov/cia/publications/factbook/geos/rs.html)
[5] *Id.*
[6] 70 *Fed. Reg.* 39843 (July 11, 2005).

Per Capita GNP
Depending on the statistics used, Russia's per capita income in 2005 ranged between US$4,460[7] to US$5,324.[8] Russia's Federal State Statistics Service reports that, for the most recent months in 2006, monthly income per capita in the Russian Federation has averaged about US$350,[9] or, if extrapolated annually, approximately US$4,200. If one delves into the data, the figures are much lower in some areas, and, importantly, more representative of some of the regions from which Russian products subject to GSP are originating.[10] Such per capita income figures are not only lower than the World Bank levels for Gabon and Panama,[11] they also fall significantly below the $10,066 threshold normally used by the USTR.

Russian Living Standards
While Russia has made great strides in reducing poverty in recent years, Russia's social infrastructure is precarious and in need of reform. As the recent Trilateral Commission Report on Russia noted, "Poor social infrastructure is feeding into a steep decline in population, which threatens to shrink the workforce and become a serious constraint on future development. As President Putin has stressed, this is one of the most acute challenges facing Russia."[12] The World Bank's Russian Economic Report notes that female life expectancy in Russia is now at the same level as in Eritrea and Papua New Guinea. In Russia, less than 60% of 15-year old boys are expected to reach the age of 60 – in Brazil and Turkey that figure is nearly 80%.[13] The average life expectancy for males in Russia today is 59.[14]

Changed Circumstances
No changed circumstances exist to warrant the Russian Federation's removal from the GSP program.

U.S. Economic Interest
There can be no doubt that a more stable, prosperous and predictable Russia is in the United States' economic interest, and programs such as GSP contribute to fostering such an environment in Russia. Further, the unique global importance of the U.S.-Russia relationship is an important consideration in U.S. policy decisions, and should be weighed carefully in decisions that affect our relationship, and specifically, in decisions that affect our economic relationship.

In our efforts to integrate Russia into the global economy, the United States must give careful consideration to the cooperative elements in our relationship and areas of mutual benefit that enhance our collaboration. The GSP program is an important example of a foreign policy

[7] World Development Indicators Database, World Bank, July 1, 2006.
[8] Country Briefings: Russia Factsheet, Economist.com, July 25, 2006.
[9] Monthly Per Capita Income and Consumption Expenditures, Goskomstat (Federal State Statistics Service), http://www.gks.ru/gis/tables/UROV-2.htm. (Dollar figures calculated using an exchange rate of 26.7 rubles per dollar.)
[10] *Id.*
[11] World Development Indicators Database, World Bank, July 1, 2006.
[12] Roderic Lyne et. al., "Engaging with Russia: The Next Phase" Report to the Trilateral Commission, (2006) at 69.
[13] *Russian Economic Report*, World Bank, (2006) at 20.
[14] *Id.* at 19.

instrument that offers concrete benefits to industry and workers in Russia by providing preferential access for inputs supporting U.S. industry and its workers. The program is an integral part of U.S. assistance to Russia over the years that has been critical in improving living standards and advancing opportunities for the Russian population – and important to U.S. industries and workers here at home.

At this pivotal point in Russia's economic transition, the United States needs to seek opportunities to encourage Russia's economic liberalization and engage Russia in greater economic integration with the global economy. The U.S. GSP program benefits a broad cross section of Russia's manufacturing industries.[15] GSP treatment will help keep these Russian companies competitive in the United States market, and provide continued benefits to U.S. companies and workers that rely on those inputs for their own production here in the United States. Further, the continuation of Russia's designation as a Beneficiary Developing Country under the program will send an important message to the Government of the Russian Federation and its people that the United States is a dependable partner, serious about encouraging the Russian Federation's successful economic development.

In conclusion, given that (1) the Russian Federation continues to meet the eligibility requirements of the GSP program, (2) no changed circumstances warrant the removal of the Russian Federation from the program, and (3) the U.S. continuation of including the Russian Federation in the GSP program is in the U.S. economic interest, the U.S.-Russia Business Council respectfully requests that the GSP Subcommittee of the Trade Policy Staff Committee recommend that the President maintain GSP treatment for the Government of the Russian Federation.

Thank your for the consideration of these comments.

Sincerely,

Eugene K. Lawson
President

[15] USITC Dataweb. While the Russian Federation's share of total world goods exports in 2005 may have exceeded the 0.25% level criteria suggested in USTR's *Federal Register* Notice, the inclusion of Russia's exports of oil and gas products exaggerates this figure. As noted above, these exports are subject to broad price fluctuations. Indeed, the Russian Federation's share of exports of manufactured goods in world exports is miniscule.

Министерство экономического развития и торговли Российской Федерации

Ministry of Economic Development and Trade of the Russian Federation

Департамент торговых переговоров

Department of Trade Negotiations

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No. Д11-2243	Date: 5 September 2006	Quantity of pages: 1+1

To:	Office of the US Trade Representative	**From:**	V.O.Nikishina
Cc.:	GSP Subcommittee		Chief of the Unit
Country:	the USA		
City:	Washington		
Fax:	FR0052@USTR.EOP.GOV		

FACSIMILE MESSAGE

Enclosed please find the position of the Russian Site regarding the investigation of reviews of the Generalized System of Preferences (GSP) in the USA in respect of eligibility of the Russian Federation under GSP program.

Yours respectfully,

Veronika Nikishina
Chief of the Market Access Unit

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In view of the fact that investigation of reviews of the Generalized System of Preferences (GSP) in the USA is on the completion phase, the Russian Site considers necessary to determine its position on criteria's, that are suggested by the Office of the United States Trade Representative to discuss, in respect of beneficiary countries.
1.The Russian Federation has availed itself of preferences under the GSP regime since 1993. Under this program we export duty-free more than 650 descriptions of goods generally with high-added value on the US market.
2. It helps to keep the necessary level of production in many branches of russian industries. The growth of preferential import from Russia to the USA is only in 2005 more than 30 % in comparative with 2004.
3. One of the most successful examples of cooperation is trade of base metals and articles of them, in particular finished articles of aluminum and copper. Preferential export of commodity group 76 is increased for 70 % in 2005 towards 2004, as to commodity group 74 for 60 %. That allowed to russian business to preserve and in some cases to increase the number of staff (more 60 000 people are employed in these two sectors of industries), to carry out modernization of production facilities and to invest money in environmental programs.
Mostly undertakings in non-ferrous metallurgy are hail growth.
4. It is rather important also to keep preferential regime for other high-added value goods: foods, chemicals, machinery and equipment and so on.

5. In frames of the advancing investigation the Russian Federation is included in the list of 13 countries, which eligibility status for GSP may be limited, suspended or withdrown.
We are proceeding from the fact that the criteria's chosen for this list are not quiet correct reflect russian export both in world and as preferential in frame of the GSP.

- ⇨ Analyzing data on deliveries in the USA russian goods under the GSP, it is necessary to mention that the volume of such deliveries is less than 5 % of total export to the USA generally. So we suppose that the criteria, that the total value of US imports under GSP should not exceed 100 mln $, can't allow to judge about the reliance opportunities granted by GSP;
- ⇨ The main product of russian export is fuel. According to russian statistical data, the part of fuel in total value of russian export is more than 60 % in 2004-2005. That testifies that russian export of high-added value goods is not enough competitive on world markets. Besides, as a rule, world raw material markets are very sensible to different fluctuations. Without taking this reason into consideration using the criteria's to eligible countries seems to be incorrect.

The GSP program is being formed now for the next 10-years period. In our mind it is not reasonably to use short-term indexes of economic development.
It is significant to notice that withdrawal of preferential regime from Russia can grant additional privileges to other competitors on US markets, especially its neighbors. We consider that adoption of these criteria's should non-discriminatory in relation to all interested parties being at the same stage of economic development.

We believe that the continuation of our cooperation, including in the frame of GSP, will be mutually beneficially both for russian exporters and for US consumers.

Brian Toohey
Deputy Vice President
International Affairs

PhRMA

September 5, 2006

Marideth J. Sandler,
Executive Director for the GSP Program
Chairman, Trade Policy Staff Committee, GSP Subcommittee
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Dear Ms. Sandler:

Thank you for the opportunity to comment on factors to be considered in connection with the withdrawal, suspension or limitation of duty-free treatment with respect to certain GSP beneficiary countries.

The Pharmaceutical Research and Manufacturers of America (PhRMA) represents the country's leading pharmaceutical research and biotechnology companies, which are devoted to inventing medicines that allow patients to live longer, healthier, and more productive lives. PhRMA companies are leading the way in the search for new cures. PhRMA members alone invested an estimated $39.4 billion in 2005 in discovering and developing new medicines. Industry-wide research and investment reached a record $51.3 billion in 2005.

PhRMA recognizes that you specifically requested comments with respect to the factors set forth in subsections 501(1), 501(4), and 502(c)(2) of the Trade Act of 1974, as amended, as well as comments on the current Competitive Need Limit waivers. We note, however, that the President "shall" also consider "the extent to which such country is providing adequate and effective protection of intellectual property rights…." when deciding whether to withdraw, suspend, or limit the application of duty-free treatment. (Subsections 501(d)(1) and 502(c)(5)) In light of this statutory factor, it is crucial that the United States place great emphasis on intellectual property protection when granting countries GSP benefits. Intellectual property is one area in which American companies, including pharmaceutical companies, enjoy a clear competitive advantage. Protecting intellectual property in GSP beneficiary countries is crucial to preserving the competitive advantage of American pharmaceutical companies globally.

PhRMA members support the GSP program and the continuation of GSP eligibility for the broadest range of developing countries. We urge USTR to give serious consideration to the following intellectual property issues in examining the type and level of benefits that these countries should receive under the GSP program.

Brazil

The Government of Brazil has created an intellectual property regime that does not adequately protect pharmaceutical products. The result is that many innovative products developed by PhRMA members do not enjoy adequate and effective intellectual property protection in the Brazilian market.

One problem in Brazil is the inadequate allocation of resources to the Brazilian National Institute of Industrial Property (INPI). Despite the fact that the INPI charges fees for processing of patent applications, INPI recently reported a backlog of over 70,000 patent applications awaiting examination and processing. This translates into delays of five to seven years in obtaining patents. Worse, applications related to pharmaceutical inventions constitute a disproportionate 30 percent of the total applications in the backlog. We understand that the Government of Brazil has made available additional financial resources to upgrade INPI's facilities and that INPI has hired new patent and trademark examiners. Although progress is being made to reduce the trademark backlog, we have not seen any concrete results yet related to the patent backlog.

The backlog problem has been magnified by Article 229C of the Brazilian Industrial Property Law, added by Law 10,196 on 14 February 2001. That Article provides that any patent application referring to a pharmaceutical invention and deemed by INPI to contain patentable claims may be granted only after receiving approval from the National Agency for Health Surveillance (ANVISA), an agency within the Brazilian Ministry of Health. The Article does not articulate any grounds of patentability that the ANVISA is to evaluate. In fact, the assessment of patentability criteria are to have been completed prior to the application being transmitted to ANVISA. Moreover, the Article does not require ANVISA to approve or disapprove applications within a specific time period. In practice, this requirement for approval by ANVISA has led to additional delays of between six and twelve months on average to the approval process in most patent applications related to pharmaceutical products. This secondary approval mechanism is not applied to applications claiming inventions in any other field of technology.

Practitioners in Brazil report that there is no transparency or public disclosure with respect to the criteria used by ANVISA and that it is impossible to decipher the criteria from the decisions of ANVISA given the lack of clarity and consistency of those decisions. In short, our Members cannot predict which applications will be approved and cannot determine the rationale or criteria used by ANVISA to approve or disapprove applications.

The lack of prompt and predictable patent protection for pharmaceutical products is exacerbated by the lack of other provisions to prevent third parties from improperly using the research and development data of innovators. Other countries protect the undisclosed test and other data submitted to prove that pharmaceutical products are safe and effective. Brazil, however, denies protection for undisclosed test and other data associated with pharmaceutical products while providing it for agricultural chemical products.

In short, the patent and data protection regimes in Brazil are inadequate to protect pharmaceutical products. Assuming that the GSP program is renewed, we urge you to consider the type and level of benefits provided to Brazil in light of the adequacy of the intellectual property regime in Brazil. PhRMA members hope that Brazil will eliminate the inadequacies and that continuing GSP benefits may provide the necessary incentives for Brazil.

India

Like the situation in Brazil, the Government of India fosters an intellectual property regime that does not adequately protect pharmaceutical products because it has not provided data protection that would prevent reliance on undisclosed test and other data submitted by PhRMA Members to demonstrate that their products are safe and effective. Lack of protection constitutes unfair commercial use in that Indian drug producers are encouraged to unfairly exploit the intellectual property of PhRMA members and market products developed by PhRMA members without the substantial expenses of conducting the research and development of these products.

The Government of India also appears not to protect certain "biological" inventions adequately under their patent system. Under the standards of practice used by the Controller, certain types of biotechnology inventions are to be excluded from patent eligibility. These products include tissues, cells, viruses, transgenic animals and plants, and even transformed cell lines and processes of preparing such cells. The Controller follows this practice in finding these inventions *per se* unpatentable under the Indian standards, even though these materials are not expressly excluded in the Patent Act, 1970, as amended.

In short, the patent and the data protection regimes in India are inadequate to protect pharmaceutical products. Assuming that GSP program is renewed, we urge you to consider the type and level of benefits provided to India in light of the adequacy of the intellectual property regime in India. PhRMA members hope that India will eliminate the inadequacies and that continuing GSP benefits may provide the necessary incentives for India.

Russia

The Government of Russia has not created an intellectual property regime that provides adequate protection for pharmaceutical products. Russia's intellectual property regime for pharmaceuticals is lacking in two key respects: 1) protections for commercially valuable test data are woefully inadequate, and 2) intellectual property rights are not robustly enforced.

Russia's existing Law of Medicines does not provide for data exclusivity. As a result, when PhRMA members seeking marketing approval for their products submit undisclosed test and other data to Russian government regulators, these data can be used unfairly by competitors. The Law of Medicines requires both originators of a product and copiers of a product to provide "results of clinical and preclinical tests" to gain marketing approval of their drugs. The U.S. research-based pharmaceutical industry is vulnerable to copying by generic companies in Russia because Russia does not prevent these companies from relying on test data in support of an application for product approval without first seeking the permission of the company that initially generated and submitted the data. These problems will continue until Russia amends its laws to ensure that generic companies cannot rely on test and other data for at least five years and that confidential information is not disclosed.

Compounding problems with the lack of data exclusivity for pharmaceutical products in Russia is the poor system for enforcement of intellectual property rights. Russia does not sufficiently penalize violations of intellectual property rights, and existing damages are insufficient to compensate PhRMA members for the injury they suffer when their intellectual property rights are infringed. Problems also exist with the administration and adjudication of patent disputes.

The lack of effective enforcement mechanism is exacerbated by problems in other areas. For example, Russia's enforcement against counterfeit medicine producers is also poor. Russian law does not criminalize pharmaceutical counterfeiting, and courts do not enjoin the practice. Although the Law of Medicines contains a definition of "pharmaceutical counterfeit," there are no corresponding enforcement provisions in either criminal or civil legislation. There are also no procedures that enable evidence in counterfeiting cases to be gathered and for these cases to be brought before courts. Currently, counterfeiting cases can only be addressed in Russia in actions for infringement of trademark rights. Yet, the penalties for trademark infringement are insufficient to deter counterfeiters, and the compensation for trademark holders is not commensurate with the loss suffered by PhRMA members.

The regime for protecting trademarks in Russia protection is also plagued by other difficulties in Russia that render them inadequate to protect U.S. pharmaceutical products. Due to the lack of enforcement provisions, current practice in Russia permits trademarks to be registered that are very similar to existing trademarks – effectively sanctioning trademark infringement. Russia has also passed rules that require doctors to prescribe medicine using non-proprietary names, rather than trademark names.

In addition to considering intellectual property protection, the GSP statute also directs the President to consider the extent to which a country has "assured the United States that it will provide equitable and reasonable access to [its] markets." *See* subsection 502(c)(4) of the Trade Act of 1974 (19 U.S.C. § 2462(c)(4)). PhRMA members are concerned that, despite this statutory provision, Russia will discriminate against U.S. pharmaceutical manufacturers in favor of local manufacturers. The Russian

Minister of Health recently stated that the Russian Government intends to give preferences to Russian manufacturers and raise barriers to foreign manufacturers. He indicated that once domestic manufacturers are able to independently supply the country with medicines, barriers to foreign company participation in government programs will be introduced. He even recommended that foreign companies transfer their manufacturing to Russia. He also reiterated the Ministry of Health's objective of favoring local companies over importing companies in determining access to Russia's new federal reimbursement program.

In sum, serious barriers exist to the adequate protection of U.S. pharmaceutical products in Russia. Despite these difficulties, PhRMA members support the continuation of GSP benefits for Russia provided that these issues are resolved soon. PhRMA also expects that as part of Russia's accession to the WTO, Russia will make commitments on a par with other recently-acceded countries to provide data exclusivity, adequate and effective enforcement of intellectual property rights, and non-discriminatory treatment for U.S. products.

Turkey

Turkey has made substantial progress in improving its intellectual property regime for pharmaceutical products. After years of discussions, Turkey passed data exclusivity legislation in 2005 designed to protect test data submitted by pharmaceutical companies seeking marketing approval for their products. In addition, the U.S. pharmaceutical companies' access to the Turkish market has continued to grow.

Although Turkey's new law provides for six years of data exclusivity, there are a number of provisions in the law that could limit the term of data exclusivity to considerably less than six years, depending on how these provisions are interpreted by the Government of Turkey. For instance, the data exclusivity period begins from the date that the products, associated with the data, received marketing approval within the European Customs Union (ECU), for products registered in the ECU after January 1, 2005. But there is a 210-day delay between European and Turkish product approval. Furthermore, it is unclear whether test and other data associated with products already on the market within the ECU on January 1, 2005 will receive data exclusivity protection in Turkey. It is possible that these products will prematurely face copied products on the Turkish market. Government pricing and reimbursement procedures also may contribute to shortened periods of data exclusivity.

In recognition of Turkey's progress, PhRMA member companies support the continuation of GSP benefits for Turkey. The U.S. Government, however, should carefully monitor Turkey's implementation of its data exclusivity law to ensure that it provides adequate protection for U.S. products. The type and level of GSP benefits that Turkey receives should be adjusted accordingly.

Conclusion

PhRMA members hope that Brazil, India, Russia and Turkey will work towards resolving the serious issues with the protection of pharmaceutical products, and continuing GSP benefits may provide them with the necessary incentives.

Again, we appreciate the opportunity to provide comments for your consideration in determining the eligibility of these countries for benefits under the Generalized System of Preferences. If you have any questions about our comments, please do not hesitate to contact us.

Sincerely,

Brian C. Toohey

Kohler Co., Kohler, Wisconsin 53044 Founded in 1873 920-457-4441 Fax 920-459-1745 david.kohler@kohler.com

KOHLER.

David Kohler
Group President
Kitchen & Bath Group

August 31, 2006

Dear Ms. Sandler:

I am writing in regard to your review of legislation to extend the Generalized System of Preferences (GSP) trade program for the United States, currently set to expire on December 31, 2006. Your committee also is reviewing thirteen countries for continued benefit under GSP and has asked for public comment. I believe the GSP program provides a significant benefit to the U.S. economy, helping create balanced global development, or *smart trading*. The GSP program is doing its job. But that job is not finished.

Kohler Co. is a global leader in the manufacture of kitchen and bath products, engines and power generation systems, cabinetry, tile and home furnishings, and international host to award-winning hospitality and world-class golf destinations. From the thirteen countries under review, we import the following products into the United States:

Country	GSP Product(s)	HTSUS Code
Argentina	Engine Parts	8409.91.99
Brazil		
Croatia		
India	Oil/Fuel Filters	8421.23.00
Indonesia	Framed and Unframed Mirrors	7009.92.10 & 7009.92.50
Kazakhstan		
Philippines		
Romania		
Russian Federation		
South Africa	Shower Door Parts	3925.90.00
Thailand	Vitreous China; Mirrors	6910.10.00 & 7006.00.40
Turkey	Vitreous China; Stone Flooring	6910.10.00 & 6802.92.00
Venezuela		

In the future we hope to import additional products from these countries, specifically from the Philippines, Russia and perhaps Brazil. Much of our product is sold to consumers through the nation's leading retailers (Home Depot, Lowe's), independent builders, Kohler showrooms, Baker Stores, and independent small businesses.

Import Duties

Kohler Co. is one of America's oldest and largest privately held companies, based in Kohler, Wisconsin. The company employs more than 31,000 associates on six continents, operates plants in 49 worldwide locations, and has dozens of sales offices around the globe. We are committed to preserving and creating jobs in the U.S., where more than half of our employees live and work.

Several of our current and potential source countries - Thailand, Philippines, Singapore and Indonesia - are members of ASEAN, the ten-member Association of Southeast Asian Nations that is collectively the United States' fourth largest export market. Thailand, for example, thrives in large part because its biggest export partner is the United States.

Under the Enterprise for ASEAN Initiative (EAI) announced by President George W. Bush in October 2002, the U.S. Government is seeking to further strengthen U.S. trade and investment ties to ASEAN, both bilaterally and regionally. The Administration has been negotiating a Free Trade Agreement (FTA) with Thailand since 2003 under the premise that with many of Thailand's products already entering the U.S. market duty-free under the GSP, an FTA will make duty-free treatment a two-way street. What is implied here is that the GSP – or similar provisions – will remain.

Turkey is not nearly as well established in trading with the U.S. as Thailand. U.S. imports from Turkey amounted to $5.2 billion in 2005, approximately half of which are textiles. Kohler imports of vitreous china as toilets and sinks add up to just over one-tenth of 1% this amount. Two-way trade between the two countries was $9.5 billion in 2005. Keeping GSP benefits in place for Turkey encourages further trade with the United States.

At a minimum we request the continued duty-free treatment of vitreous china and stone flooring product. Far better is to extend the entire GSP program. In doing so, our nation grants not only market access, but legal access too. The implications of complying with a legal system cannot be underrated - it is the backbone for instituting institutional reform. With extremism and unrest growing in countries like Indonesia and Turkey, unemployment brought on by canceling the GSP will only fuel that flame. The promise of change is heard loud and clear among the disaffected – those without jobs, money, and few options. Employed workers throughout the world are good for the United States.

Encouraged by continued access to our markets and the possibilities that come with it, countries like Indonesia, Thailand and Turkey become consumers as well as producers. This clearly creates new opportunities for U.S. goods and services. Those opportunities enable improved quality of life, the rule of law and everything it enhances: better business, investment and consuming climates; improved infrastructure; better education; better health care; institutional reform; consumer rights; human rights; labor rights; environmental best practices; and so on. Prematurely ending the GSP provisions would cut short the important work of this development tool. It may negatively impact U.S. consumers through higher prices, and it will disable an important vehicle our government has for continuing free trade with bilateral agreements.

I urge you to extend the GSP program and its benefits for Argentina, Brazil, India, Indonesia, Russia, South Africa, Thailand, Turkey and the Philippines.

Sincerely,

D Kohler

David Kohler
Group President – K&B Group

Ms. Marideth J. Sandler
Executive Director for the GSP Program
Chairman, GSP Subcommittee of the Trade Policy

cc: Senator Russ Feingold
Senator Herb Kohl
Congressman Tom Petri
Herbert V. Kohler, Jr.