

Summary: When Russia becomes a member of the World Trade Organization in the coming months, Europe and the United States are expected to take different approaches to putting pressure on the country to improve its human rights record. The United States is likely to use trade, specifically the granting of permanent normal trade relations status, as an incentive. Europe, on the other hand, will count on the European Court of Human Rights to penalize human rights failings. The question is, which approach will ultimately be most successful?

Russia's Joining the WTO — Different Approaches to Human Rights Concerns Across the Atlantic

by Jennifer Hillman

Introduction

Amid much fanfare in Geneva last December, the members of the World Trade Organization (WTO), including the United States and Europe, welcomed Russia into their fold, following nearly 18 years of on-again, off-again negotiations. The approval by the WTO's Ministerial Conference of Russia's accession to the WTO means that Russia will become a member 30 days after it informs the organization that it has made all the necessary changes to its laws, regulations, and tariff schedules to ensure compliance with the commitments Russia made in its accession documents. That notification will come very soon (by July 23, 2012 at the latest — with Russia's Duma having passed the necessary legislation on July 9 and its upper chamber slated to take it up on July 18). Thirty days later, Russia will automatically become a full-fledged member of the WTO. This will happen no matter what the U.S. Congress does — or does not do — with respect to granting Russia Permanent Normal Trade Relations (PNTR) status.

What will happen should Congress fail to act on a PNTR bill by the end of this summer? Currently, trade relations

between the United States and Russia are governed by a 1992 U.S.-Russia Bilateral Trade Relations Agreement, signed with the Soviet Union in 1990, but entered into force with the Russian Federation in 1992, which provides that both countries agree to give each other the benefit of most favored nation (MFN) tariff treatment on trade in goods. Unless and until the Congress passes PNTR for Russia, this agreement will remain in place and will continue to govern trade relations between the United States and Russia, even after Russia formally accedes to the WTO. However, the agreement covers only the tariff and customs treatment of goods, along with taxes or internal charges on imports or exports and the rules concerning the sales and distribution of products in the Russian market. It does *not* cover services, specific intellectual property protections, sanitary or phytosanitary standards, or disciplines on subsidies. It does not provide for national treatment for U.S. goods, include rules governing customs valuation, or provide any guarantees of a country specific tariff-rate quota, including on key products of interest to the United States, such as pork. Nor does

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it provide for a dispute settlement mechanism should either side abrogate its terms.

If Congress fails to pass PNTR legislation, Russia will still become a member of the WTO, and the obligations and commitments Russia made in doing so will be applicable to all other members of the WTO, but not to the United States.

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In December 2011 when the members of the WTO formally granted Russia entry into the WTO, the United States invoked an exception, stating that it would not apply the WTO rules and commitments to Russia. The United States was forced to invoke this exception because it could not commit to granting Russia “immediate and unconditional” Most-Favored Nation (or, in U.S. parlance, Normal Trade Relations) with Russia. While the United States has in reality granted Russia Normal Trade Relations every single year since 1992, those grants of Normal Trade Relations have not technically been “unconditional.” The “condition” placed on them stems from the Jackson-Vanik Amendment to the Trade Act of 1974 relating to the right of freedom of emigration. Following the break-up of the Soviet Union, Russia implemented full freedom-of-emigration policies, and every year since 1994, every U.S. president has declared that Russia is in full compliance with the requirements of Jackson-Vanik. Every year the Congress has had the right to review or overturn that declaration, but it has never done so. As such, Russia has received Normal Trade Relations treatment consistently since 1992, but not on a basis that can legally be declared free of conditions or that would allow the United States to apply the WTO rules and commitments to Russia. Therefore, trade relations between the United States and Russia will continue to be governed not by the broad-reaching and binding rules of the WTO, but rather by the terms of the more limited 1992 Bilateral Trade Relations Agreement, until the United States can revoke its December exception.

Russia's Accession to the WTO — A Long and Winding Road

Russia formally applied for accession to the General Agreement on Tariffs and Trade (GATT) in 1993, in an effort launched by then President Boris Yeltsin. Two years later, when the WTO was created with the conclusion of the Uruguay Round as the successor to the GATT, the WTO took up Russia's application. Numerous meetings of the Working Party established to guide Russia's accession process were held and 56 members of the WTO conducted and completed bilateral market access negotiations with Russia to ensure that Russia would lower its tariffs or remove its barriers on the products of most interest to each of those WTO members.

Among the early and staunchest supporters of Russia's entry to the WTO was the European Union, and the EU's bilateral market access agreement with Russia was completed in 2004. Then and now, the EU is Russia's largest trading partner and the largest source of foreign direct investment in Russia. The United States was also a strong supporter of Russia's effort to join the WTO, and completed its own market access negotiations with Russia two years after the EU, in 2006. These various bilateral agreements and the outcome of the Working Party meetings were ultimately consolidated into a Protocol of Accession and a Working Party report that set out the terms on which Russia will soon be joining the WTO.

The twists and turns along the road were numerous, with much progress grinding to a halt during the international crises in 1997 and 1998, periods of indifference under Putin, and a further slowing of progress during the global financial crisis in 2007-2008. An agreement looked like it was just around the corner when in June of 2009, Putin said he would abandon application as Russia but would seek to join the WTO as part of a customs union with Belarus and Kazakhstan, which would require a new start on much of the work. In the end, Putin decided that Russia, Belarus, and Kazakhstan would each pursue WTO membership for themselves. The final hurdle came from WTO member Georgia, who objected to the proposed customs treatment of goods moving in and out of the separatist Georgian territories of Abkhazia and South Ossetia. As the deadline in Geneva loomed, the Swiss government came forward with a plan to allow an independent private company to check customs on all border crossing points between Russia and

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Georgia, in exchange for which Georgia removed its objection from Russia's accession to the WTO.¹

For both Russia and its trading partners, accession to the WTO marks a major milestone for bringing Russia into the rules-based trading system. It presents a tremendous opportunity for Russia, particularly as WTO membership is likely to make Russia a more attractive home for the foreign direct investment it needs to fund its “new industrialization” policy. For the WTO, Russia, with its 143 million people and its \$1.791 trillion in GDP, represents the largest trading country that was not yet a member. And for the biggest traders, the United States and the European Union, Russia's accession means significantly improved access to the Russian market and greater assurance that Russia will play by the WTO rules.

The stakes for Europe and the economic relationship between the EU and Russia are particularly high. The EU is by far Russia's largest trading partner, accounting for 47.1 percent of Russia's overall trade. Europe is also by far the most important investor in Russia, with FDI stocks invested in Russia of more than €120 billion. Europe largely imports energy and mineral fuels from Russia, along with some manufactured goods, chemicals, and raw materials, while Europe's exports to Russia cover a wide variety of goods, food, machinery, and transport equipment.

For the United States, Russia is a smaller but very important trading partner, with two-way trade between the United States and Russia of \$31.7 billion, making Russia the United States' 23rd largest goods trading partner. For the United States, Russia is a key market for machinery (\$1.7 billion in exports), meat (\$642 million), vehicles (\$484 million), electrical machinery (\$395 million), and optic and medical instruments (\$383 million). Like Europe, U.S. imports from Russia are concentrated in oil (\$18.5 billion), iron and steel (\$1.3 billion), enriched uranium (\$1.3 billion), nickel (\$727 million), and platinum (\$710 million). Compared to Europe, the United States has a much smaller level of foreign investment at \$9.9 billion, with Russian investment in the United States at \$7.8 billion.

Russia's Accession Protocol Package

- **Protocol of Accession** — basic legal text of what Russia has committed to do to bring its trade laws and practices into compliance with WTO rules, including non-discriminatory treatment of goods and services imports; ensuring transparency when implementing trade measures; limiting and reducing agriculture subsidies; enforcing intellectual property rights; opening government procurement contract opportunities to foreign firms; and acceptance of WTO dispute settlement procedures.
- **Working Party Report** — summarizes proceedings and sets forth more detailed conditions of entry; some paragraphs are expressly incorporated by paragraph number into the Protocol and hence into the WTO Agreements.
- **Schedules for tariff bindings** — reductions in tariffs on industrial and consumer goods from almost 10 percent to 7.8 percent on average, with larger cuts for chemicals, aircraft, and farm machinery, and cuts to 0 percent on information technology products; reductions in tariffs on farm products from 13 percent to 10.8 percent on average.
- **Schedules for services bindings** — opening services markets to 100 percent foreign ownership of companies in banking, securities, non-life insurance, telecommunications, audiovisual, wholesale, distribution, retail, and franchises.

Recent studies examining the effect of Russia's accession to the WTO indicate significant positive economic effects virtually across the board, along with critical but harder to quantify benefits of having Russia part of the rule-based trading system and subject to disciplines that guard against protectionist measures or unilateral actions. For the United States, Anders Aslund and Gary Hufbauer predict that if the Congress grants PNTR status to Russia, allowing the United States to reap all of the benefits contained in Russia's accession package, U.S. exports of goods and services to Russia will likely double within five years, from \$11 billion in 2011

¹ For the details and implications of the agreement regarding Georgia, see Andras Racz, “Russian WTO Accession and the Geneva Agreements: Implications for Russia and Georgia,” Transatlantic Academy, December 2011. <http://www.gmfus.org/archives/russian-wto-accession-and-the-geneva-agreements-implications-for-russia-and-georgia>.

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to \$22 billion in 2017.² Russia, for its part, is predicted to see an increase in its GDP of 4.3 percent in the medium term as a result of its accession to the WTO and much larger gains (up to an 11 percent increase in GDP) once the investment climate in Russia has improved and needed investments to modernize its industries and markets have occurred.³

The Price of Passage of PNTR?

Despite previous concerns that passage of PNTR for Russia would not receive the early attention of Congress, much work has been done. On June 12, the chairman of the Senate Finance Committee, Sen. Max Baucus (D-MT), along with Senators Kerry (D-MA), Thune (R-SD) and McCain (R-AZ) introduced a straightforward bill to grant Russia Permanent Normal Trade Relations. Both the House Ways and Means Committee (on June 20) and the Senate Finance Committee (on June 21) held hearings to examine PNTR legislation as well. The Senate Finance Committee is scheduled to take up and report out legislation granting Russian PNTR status in July.

What makes the passage of a simple bill less certain is what will be attached to it to satisfy concerns about issues other than Russia's accession to the WTO or free emigration from Russia, since that singular goal of Jackson-Vanik has long ago been achieved. The issue that is clearly going to be attached is that of human rights, and it will come in at least the form of the so-called Magnitsky bill, which would deny visas to and freeze the assets of Russian officials involved in the death of lawyer and political activist Sergei Magnitsky and other human rights violations. The House Foreign Affairs committee reported out its version of the Magnitsky bill (Sergei Magnitsky Rule of Law Accountability Act of 2012) on June 8, and the Senate Foreign Relations Committee followed suit, with unanimous approval of its Magnitsky bill on June 26. Whether and how this bill would be linked to legislation granting PNTR to Russia is not clear, as the chair of the House Foreign Affairs Committee, Rep. Ileana Ros-Lehtinen (R-FL), is opposed to joining the

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Magnitsky bill to any legislation repealing Jackson-Vanik. On the Senate side, on the day he introduced legislation to grant Russia PNTR, Senator Baucus also wrote a letter to the Senate sponsors of Magnitsky legislation pledging to move both the Russia PNTR bill and the Magnitsky legislation together and to do so as quickly as possible.

Baucus' commitment to move both pieces of legislation at the same time satisfied a number of senators, including Senator McCain, who have long advocated addressing human rights issues in Russia as part of the process of repealing the Jackson-Vanik Amendment. However, that same commitment angered both Russia and a number of U.S. companies currently doing business in Russia on one hand, and a group of Republican senators who do not believe the commitment goes far enough on the other. Russia has warned that passage of the Magnitsky bill would cool U.S.-Russia relations and could lead to retaliation, while some U.S. companies fear that, depending on the specific language in the final version of the Magnitsky bill, their companies could be inadvertently subject to sanctions. Those concerns are offset by others expressed by ranking Finance Committee member, Sen. Orrin Hatch (R-UT), who was joined by seven other Republican senators in stating that a link to the Magnitsky bill alone was not enough. They advocate that in addition to the inclusion of a strong version of the Magnitsky bill, that legislation granting PNTR for Russia should also do something to address Russia's support for the Assad regime in Syria, the occupation in Georgia, and suppression of protests over the recent election in Russia, along with a number of trade-related concerns over intellectual property protection, the lack of a transparent, scientific basis for sanitary and phytosanitary standards, bribery and corruption problems, export restrictions, and investment disputes.

2 Anders Aslund and Gary Clyde Hufbauer, "The United States Should Establish Permanent Normal Trade Relations with Russia," Peterson Institute for International Economics, *Policy Analysis in International Economics*, 97, April 2012, p. xiv.

3 Thomas Rutherford and David Tarr. 2006 *Regional Impact of Russia's Accession to the WTO*. World Bank; Thomas Rutherford and David Tarr. 2010, "Regional Impacts of Liberalization of Barriers against Foreign Direct Investment in Services: The Case of Russia's Accession to the WTO." *Review of International Economics* 18, no 1:30-46.

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Human Rights Issues in Russia — Does the Link to WTO Accession Work?

While many countries share a number of these concerns, particularly over human rights violations in Russia, none are likely to link them to Russia's accession to the WTO for two reasons: 1) most view the WTO as the best forum in which to address trade concerns and to tie Russia to a transparent, rules-based trading system, rather than trying to resolve trade-related complaints on a bilateral basis outside of the multilateral trading system; and 2) most believe there are more efficient, effective ways to raise human rights concerns than through the WTO accession process. Certainly Europe has long been at least as strong a champion for human rights as the United States, but to a large degree, Europe has put its faith in the European Court of Human Rights as the most effective institution to both shine a light on human rights abuses and to dole out penalties for human rights violations.

Russia ratified the European Convention on Human Rights in May of 1988 and thereby subjected itself to the jurisdiction of the European Court of Human Rights (ECHR). The ECHR is an international court made up of 47 judges (one from each of the countries that have ratified the Convention) that hears complaints that a country has violated the rights enshrined in the convention. Either individuals or other states can bring a case to the ECHR, alleging a violation of one or more of the civil or political rights set forth in the convention, which include the right to life; to a fair hearing; to respect for private and family life; to freedom of expression, religion, and thought; to the protection of property. It also prohibits torture and inhumane or degrading treatment or punishment, slavery or forced labor, the death penalty, arbitrary and unlawful detention, or discrimination in the enjoyment of the human rights set out in the convention.

The court has not been shy about rendering decisions critical of Russia's human rights practices, with over 1,140 judgments finding at least one violation by Russia and 40,225 cases (26.5 percent of all cases) pending against Russia.⁴ Millions of dollars in compensation have been awarded to victims of human rights abuse in Russia, much of it relating to survivors of abuses in Russia's North

Caucasus region. And those winning cases range from little-known war victims to the wealthy and powerful.⁵ In a recent well-noted case, the court ordered the Russian government to pay more than \$1.7 million in compensation to those who filed a case against Russia's handling of a hostage crisis at a Moscow theater in 2002 that left 130 hostages and 50 Chechen fighters dead.

While far from perfect and increasingly bogged down under a heavy case load, the Court is seen in Europe as doing more to combat human rights abuses, both through fines and compensation paid to victims and in providing the factual and legal basis for calls for more far-reaching legal reforms and changes in practice, than any linkage to trade or other issues could accomplish. So despite its strong support for the respect of human rights, Europe won't tie Russia's accession to the WTO to any of its concerns over human rights issues in Russia.

For the United States, its issues and concerns with Russia's practices, both in the human rights arena and in certain foreign policy areas, are very real. But it is not clear why

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denying PNTR to Russia would create much leverage over Russia to address them, given that Russia will gain the broader benefits of WTO membership regardless, or why dealing with these issues on a bilateral basis outside of the formal structure and binding rules of institutions such as the WTO or the European Court of Human Rights would be an effective way to address them. If the United States cannot remove its exception to Russia acceding to the

4 European Court of Human Rights, Analysis of Statistics, January 2012, http://www.echr.coe.int/NR/rdonlyres/4ACC88A2-0336-415D-A904-061BE63EDE8D/0/FAITS_CHIFFRES_EN_JAN2012_VERSION_WEB.pdf

5 Sergei Loiko, "In Russia, Some Seek Justice in European Court of Human Rights: Billionaires and War Survivors who Challenge the Government may get Nowhere in Russia, but the European Court of Human Rights in France is Listening," *Los Angeles Times*, March 22, 2012.

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WTO, then Russia will not have to give the United States the benefits of the many concessions it made in its accession process. But Russia would not lose anything in that bargain. Therefore, the denial of PNTR to Russia does not create any incentive for Russia to address the human rights and foreign policy concerns that many in the Congress and the administration have with Russia. The bargain that was struck by the Jackson-Vanik Amendment was that Russia would get access to the U.S. market when it permitted the free emigration of its citizens and reached a mutually agreeable commercial agreement with the United States. Russia has met both of those conditions for 20 years. It is not clear that Russia's accession to the WTO presents an opportunity to strike a new bilateral bargain with Russia, as it does not offer the prospect of greater access to the U.S. market than Russia already has and there does not appear to be a singular goal, such as the free emigration goal of Jackson-Vanik, that such access could be tied to.

The United States is the Lone Loser Should the Congress not Pass PNTR Legislation

As Edward Gresser from Progressive Economy put it, acceding to the WTO required Russia to “reduce or eliminate thousands of tariffs, eliminate dozens of quotas, publish hundreds of laws and regulations for the first time, require laws on intellectual property, services, and standards-setting polices, and subject its decisions on these issues to impartial international dispute settlement.”⁶ If the U.S. Congress does not pass legislation that repeals the application of the Jackson-Vanik Amendment to Russia, all of those benefits will be available to the other 154 members of the World Trade Organization, but not to the United States or its companies, workers, and farmers wishing to sell their goods or services in Russia. And because no other countries have invoked exceptions to Russia's accession to the WTO, it is the United States alone that will lose out on increased access to the large Russian market.

Perhaps more importantly, failure to pass PNTR legislation may mean that the United States has given up on the hope created by the accession process in a Russia that is more open, more transparent, more integrated with the rest of the world and more willing to be bound by international rules. It is just as much in the United States' interest as in

that of the other WTO members that Russia, with its 140 million people and one-eighth of the world's land, uses the WTO accession process to turn its economy away from one heavily based on trade in natural resources and controlled by a handful of rich oligarchs to one that is open to trade and investment from the world, where rules are written and policies developed with the goal of promoting long-term economic growth for all. The United States has the opportunity to join Europe and the rest of the world in welcoming Russia into an organization that is dedicated to many of our core values — most importantly to an open, transparent, and rules-based system, and in doing so, helping to steer Russia onto a path that may lead to stronger relations with all of the members of the WTO, including the United States, on issues both within the realm of trade and without.

About the Author

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⁶ Edward Gresser, “Permanent Normal Trade Relations for Russia,” *Progressive Economy Policy Memo*, June 6, 2012.