

Russia and the WTO: The Work to Be Done

Michael Rosenbaum
October 1997
PONARS Policy Memo 19
Harvard Law School

In this brief memo, I will discuss Russian prospects for a successful relationship with the World Trade Organization (WTO), and the factors behind those prospects. By strengthening bilateral and multilateral trade relationships and by enhancing economic interdependency, successful Russian involvement with the WTO could be an important element of Russian stability within the international economic and security system. The WTO is an organization whose political and legal goal is free trade, or equivalently, lower barriers to trade. Regardless of other considerations that might lead to the WTO's acceptance of Russia's application for membership, the success of any country in its relationship with the WTO is wholly dependent upon its ability to lower barriers to trade and keep them low.

The issue can be broken down into two distinct questions. First, can Russia lower its trade barriers to a level sufficient for membership in the WTO, down from their current level of approximately twice the average level for WTO members? For the purposes of this memo, I will define "sufficient" to be at a level roughly equivalent to other WTO members. The answer to the question is probably not at this time, because of (1) the lack of an effective legal framework in Russia to facilitate lower trade barriers, (2) the power of domestic economic actors whose interests are in tariff and non-tariff protection, and (3) the inability or unwillingness of domestic economic actors interested in WTO membership to force the actors interested in protection to relinquish that protection.

The second question is, if Russia becomes a member of the WTO, will it be able to lower and maintain low trade barriers through WTO mechanisms and domestic politics? The answer is again probably not at this time, because of (1), (2), and (3) above, in addition to the fact that (4) the weak Russian central state, even if compelled through international law promulgated by the WTO to lower trade barriers, will be unable to overcome the power of domestic Russian industrial interests to force them to relinquish the protection they seek. The countervailing consideration here is (5) that the Russian Constitutional Court may, at some point in the next several years, develop the institutional strength to be able to compel the Russian administrative state to lower trade barriers in compliance with a WTO ruling.

I. Russian Ability to Lower Trade Barriers Sufficient for Membership in the WTO

Low Russian trade barriers depend on three factors:

1) Effective Domestic Legal Framework.

An important element of Russia's ability to lower trade barriers is the existence or nonexistence of a domestic legal framework that makes such lower barriers possible. Such a legal framework impacts trade barriers in two main ways:

- a) By making the domestic economic environment more predictable for those with a more limited understanding of that environment, an effective system of contract, criminal, tort, property, and administrative law reduces the costs of doing business for foreign economic interests relative to those for domestic interests. Domestic interests with informal networks and protection from crime have a greater advantage relative for foreign interests when the legal system is less developed. Russia has been making some, albeit limited, progress on this front.
- b) By making government processes more transparent and by balancing the costs of access for producers and consumers, a system of administrative law facilitates lower trade barriers even when the state is weak relative to private economic interests. Two Russian Constitutional Court cases in the past 18 months upholding private challenges to administrative decisions dealing with trade barriers suggest that the Russian legal system is slowly but steadily building the institutional capacity to serve this purpose. The Russian bureaucracy respected both decisions.

Although there has been recent talk in Russia about creating "trade courts" to improve the possibility of compliance with WTO requirements, such a judicial system may be premature in a state whose highest court has only challenged state trade policy twice with success. Nevertheless, progress is being made, and Russia's legal system may soon be sufficiently developed to facilitate the lowering of trade barriers.

2) The Power of Domestic Interests Seeking Protectionist Measures.

The groups interested in protection from international competition are domestic producers selling to domestic markets. These producers include many of the large formerly state-owned producers of consumer products. Their political power relative to those interested in lower tariffs, namely, consumers of foreign products, is often substantial. This political power stems not only from financial resources but also from continued relationships with former superiors in the Russian administrative bureaucracy. Therefore, we see in Russia 30% import duties on refrigerators, while industrial equipment imported by domestic producers enjoys nonexistent trade barriers. The power of these domestic producers will continue to dwindle as informal relationships between producers and bureaucrats dissipate, but the imbalance of power is still overwhelming.

3) Failure of Exporting Interests to Compel Lower Trade Barriers.

Some producers, however, receive substantial profits from exports, and these producers may benefit from lower trade barriers in other countries resulting from a relationship with the WTO. In Russia, the most prominent examples are textiles and steel products producers that seek particularly to export into restrictive European markets. These European markets remain quite closed to Russian imports, though they would be substantially opened should Russia become a member of the WTO.

Nevertheless, Russian trade barriers to imports of consumer goods in particular remain high enough to upset European and other foreign producers. The Russian government has made few commitments to lower such barriers. Indeed, the recently formed Russian Committee on Protectionist Measures in Foreign Trade and Customs and Tariffs Policy seeks explicitly to protect certain domestic industries in the process of developing Russia's WTO application. This phenomenon could be the result of the inability of textiles and steel products producers to convince consumer products producers to relinquish trade barrier protection. More likely, however, the textiles and steel products producers assume that acceptance of Russia's application

into the WTO will not depend upon wide-ranging Russian trade barriers to consumer goods. Italian, French, and European Union commitments to support Russia's application over the last several months may reinforce this impression to the domestic Russian interests seeking to export to European markets.

II. Effectiveness of WTO Mechanisms in Impacting Russian Trade Policy

The effectiveness of WTO mechanisms in impacting Russian trade policy will depend upon two factors:

1) The Ability of the Russian State to Implement WTO Requirements.

The WTO's rulings and requirements can only impact Russian trade policy if Russian political leaders and administrative bureaucracy are willing and able to lower trade barriers in compliance with those rulings and requirements. The "trade courts," whose specific attributes are uncertain at this time, may be an attempt by the Russian political leadership to create a political buffer in implementing WTO decisions. Nevertheless, for WTO requirements to impact Russian trade policy, the Russian state with whatever quasi-judicial help it musters will have to implement the appropriate policies. For this to occur, Russian bureaucratic and political officials will have to challenge pressure from Russian domestic producers seeking the protection. If the threat of dismissal from the WTO were credible, domestic interests seeking the export benefits of WTO membership might come to the aid of those political and bureaucratic leaders seeking Russian compliance; nevertheless the possibility of compliance seems remote. The Russian state is simply too weak at this time, Russian domestic producers too strong relative to consumers, and any threat of dismissal from the WTO (should Russia be admitted next year) too uncertain.

2) Russian Judicial Power as a Countervailing Force.

The more likely method by which WTO membership and subsequent rulings and requirements might impact Russian trade policy is through the Russian Constitutional Court. Article 15, Section 4 of the Constitution of the Russian Federation gives those international agreements not in violation of the Constitution supremacy over domestic law, and therefore any WTO rulings or requirements would have nearly constitutional status in the Russian domestic legal system. Activity by the Russian Constitutional Court over the past 18 months has suggested that the Russian judiciary has the potential, and may soon have the actual power, to overturn Russian administrative and trade policies. Its ruling, successfully enforced, against the customs authorities in March 1996 regarding imports from the former Soviet republics was a landmark political and legal ruling. In June 1996 the Court again managed to have its judgment against the federal tax police regarding discrimination against corporations enforced. These two cases suggest that the Russian Constitutional Court may be able to enforce WTO rulings and regulations should the Russian political and bureaucratic leadership resist. The Russian Constitutional Court has only heard a total of 81 cases in its brief history, and it cannot with its very limited resources effectively enforce a host of WTO requirements if there is great resistance in the bureaucracy. Nevertheless, the existence of the Russian Constitutional Court and its recent successes suggest that WTO membership may, within several years, be able to have a substantial impact on Russian trade policy.

Conclusion

Russia's prospects for a successful relationship with the WTO are limited at this time. The factors that limit those prospects, however, are rapidly and clearly deteriorating, such that successful membership and related shifts in trade barriers may be a possibility in the near future. The factors to watch will be the five legal, economic, and political factors discussed here.

© PONARS 1997