

Russia's Accession to the WTO: Exchanging Economic Freedom for Voice

Written by Geraldo Vidigal-Neto

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GERALDO VIDIGAL-NETO, AUG 20 2012

On 22 August 2012, following 18 years of protracted negotiations, the Russian Federation is set to become the 156th member of the World Trade Organization (WTO). While the effects on trade of Russia's accession may only be felt gradually, there are major political, legal and symbolic implications. Prior to its accession, Russia was the only permanent member of the UN Security Council, the sole country in the G20 group of nations, and the only one among the world's 30 largest trading nations to remain outside the multilateral trading system. Its accession may be compared in some ways to that of China in 2001, which helped the Asian giant become the world's leading exporter and second largest importer of merchandise in 2011, moving up from the 7th and 8th positions it occupied in 2000.

Politically, Russia's accession adds a further complicating element to an already strained decision-making system. The WTO follows the consensus practice for decision-making developed by the contracting parties to its predecessor, the 1947 General Agreement on Tariffs and Trade (GATT). Originally signed by 23 countries, the GATT grew incrementally over the following decades both in the number of contracting parties and in the quantity and complexity of its rules. The need to avoid major confrontation between contracting parties, coupled with the agreement's institutional weakness, led the parties to prefer consensus over formal voting. This procedure was effective within the 'club model' of GATT,[1] which comprised essentially like-minded, mostly Western, countries; but, as the membership increased in number and variety, decisions demanded escalating amounts of time and resources.

The creation of the WTO itself, after eight years of negotiations in the Uruguay Round (1986-1994), involved a good deal of coercion by the world's largest economic power. The United States and the European Communities first entered discussions with Canada and Japan before all the parties agreed to an acceptable text, which was presented to other GATT contracting parties as a 'single undertaking' that had to be adhered to in its entirety or not at all. In what was labelled the "transatlantic maneuver",[2] the United States then threatened to withdraw from the GATT 1947. Other countries wishing to continue to have most-favoured nation access to the American market had little option but to sign up to the WTO Agreements.[3]

While the GATT counted more than 100 contracting parties at the end of 1990, WTO rules (which included obligations in services and intellectual property rights) were agreed essentially between Washington and Brussels. This strategy worked well within the club model, in which very few GATT contracting parties held almost the entirety of world trade and were thus able to dominate world trade negotiations. Since the WTO was established (and possibly due partly to its establishment) this scenario has changed. The lowering of trade barriers, increased legal certainty worldwide, and declining transportation costs mean that global companies can now produce goods wherever it is cheaper to do so – which is often where salaries are lower, i.e. in developing countries.

As a result, developing countries now account for a substantial amount of world trade, with the BRICs (Brazil, Russia, India, and China) alone being responsible for 16% of the world trade in goods. With all four BRICs now in the WTO, their bargaining power has increased substantially, and achieving 'consensual' results through a mix of minor trade concessions and the exercise of economic power has become much more difficult. The failure of developed countries to change negotiation strategies in response to this shift in bargaining positions has been diagnosed as one of the major reasons for the repeated failure of WTO members to conclude the now 11-year long Doha Round.[4]

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Additionally, BRIC countries have very different economies; it cannot be assumed that they will pursue the same, or even similar, agendas within the organization. In this regard, Russia's accession will most likely add another difficult member to an already overcrowded table of negotiations, making progress in topics such as investment, intellectual property, and government procurement all the more complicated.

On the legal front, on the other hand, Russia's accession appears to be a big step forward. Perhaps uniquely among international organizations, the WTO features a dispute settlement system with compulsory jurisdiction in which disputes are dealt with by recourse to adjudicators widely recognized as independent and impartial. The compulsory jurisdiction of WTO panels, coupled with the highly praised legal skills of members of the standing Appellate Body (as well as of WTO Secretariat staff), mean that, more often than not, final decisions are produced in a relatively short period of time, consistent with both the wording and the spirit of WTO law. Aspects of such sensitive policies as the US embargo on Cuba, the European Common Agricultural Policy and the Chinese policy of "content review" of imported audiovisual products have been successfully examined by WTO adjudicators – and considered as WTO-inconsistent.[5]

The WTO dispute settlement system is by no means infallible. Some disputes drag on for years, and the implementation of rulings ultimately still depends on the cooperation of WTO members. But the mere fact that international adjudication is available is a major change from the usual situation within international law, in which squabbles over the interpretation of rules often end with each state interpreting the law as it finds best – with the most powerful state's interpretation usually prevailing. Russia, which has sometimes been reluctant to accept the jurisdiction and comply with the rulings of international courts, will probably have to abide by WTO law or find itself at the receiving end of WTO-authorized trade retaliation – an experience which has in the past led both the United States and the European Union to change their policies.[6]

Symbolically, Russia's accession means that the WTO membership now includes every single country with global dimensions and global interests. This is relevant in that WTO members willingly adhere to what the organization stands for: economic prosperity through open markets and freer trade. The addition of Russia to this group epitomizes and gives legal form to the global spread of free-market ideas after a century of confrontation on the issue. It must be reminded that, throughout its existence, the GATT was not only a trade arrangement but also a club of countries that saw in economic liberalism (or perhaps "embedded" liberalism)[7] the most reliable path to their own national prosperity. As such, the GATT had in the Soviet-dominated Comecon and in the Third-World-driven UNCTAD two powerful ideological rivals. Of course, Soviet socialism ended in 1991 and pro-market reforms have since been implemented in virtually every formerly socialist country – not least in Russia itself. Third World thinking, which for years inspired the call for a "New International Economic Order", followed through, depending as it did largely on a claim to independence from the two models championed by the Cold War superpowers. The accession to the WTO of Russia, the *de jure* and *de facto* successor to the Soviet Union, marks the demise of conceptions of prosperity alternative to liberalism on the global arena.

With Russia inside the WTO, the list of countries outside the organization will comprise essentially a handful of developing and least-developed countries which find it difficult to adapt to WTO rules, Middle Eastern nations and others whose economies are essentially oil-based, and international pariahs with little prospect of providing a credible alternative economic model on the world stage. Even among the habitual critics of the post-Cold War capitalist world order – in Cuba, Venezuela or Zimbabwe – no country leader has seriously proposed to leave the WTO. If anything, the alternative to free markets is provided today by Chinese-inspired state capitalism, a system not *per se* WTO-incompatible and which some argue will transition, as income rises, to a form of heavily regulated market system.[8] The WTO is, of course, not a cause of the turn to the market system, but it operates as an important legal instrument for its consolidation. Accession to the WTO is widely used, by both local governments and current WTO members, to trigger, provide an impulse for, and "lock in" market-oriented reforms in acceding countries.[9]

The trade implications of Russia's accession, consolidated in the respective Working Party Report,[10] tend to be substantial. Although average tariff rates had been decreasing even before the country joined the WTO, Russian protectionist policies on a few "sensitive" products (which include cars and cigarettes) will have to be revised.

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Quotas on agricultural products, as well as the protectionist use of sanitary and phytosanitary (SPS) controls, will have to be done away with – WTO rules mandate the use of international standards for SPS controls and require members to provide a credible scientific basis for any stricter measures. As part of the deal, limitations on the provision by foreign companies of a series of services will have to be eliminated or reduced, and the government monopoly on telecommunications will have to be abolished. Importantly for technology- and culture-exporting countries, Russia will be required to improve both the legal framework for and the enforcement of intellectual property rights in its territory.

The accession of the Russian Federation constitutes a major step in the process of universalization of the World Trade Organization. In parallel, by submitting itself to WTO rules subject to compulsory jurisdiction, Russia consolidates its transition into a market economy – if one in which the state will probably still play, to a certain extent, the prominent role it plays today. Importantly, this move binds Russia to the principle of non-discrimination between WTO members, limiting its capacity to use its economic weight for geopolitical purposes. In exchange for the limitations on its sovereignty, Russia obtains for itself the right not to be discriminated against by other WTO members and to receive from them treatment based on WTO rules. More significantly perhaps, with accession, Russia obtains voice in the forum that currently dominates the regulation of world trade matters.

Some have argued that WTO membership would be superfluous and even prejudicial to Russia. Its exports consist mostly of oil, gas, and raw materials that are lightly taxed and not discriminated against; its high-technology exports are concentrated in defense equipment, which is not covered by WTO rules. Accession would therefore harm Russia's largely uncompetitive industry without providing any substantial benefits in exchange.[11] This argument, however, misses two fundamental points. First, liberal economics claims that lowering trade barriers not only increases national welfare but in fact improves competitiveness in the long run, whereas continuous protection leads to a widening of the productivity gap between domestic and the foreign industries.[12] Second, Russia's interest in joining the WTO is largely a function of its quest for influence in global matters – something it can no longer exercise based solely on military might.

This is a reflection of a deeper change in international relations. While for most of the 20th century, state sovereignty was synonymous with the freedom to make autonomous choices, 21st century sovereignty is exercised through participation in international decision-making fora.[13] In the economic field at least, the global integration of production chains means that decisions made in multilateral fora affect every state in the world regardless of their 'consent'. Exit from the international trade system would deprive most countries of voice while doing little for their autonomy, and it has been said that leaving the WTO as a response to an unfavourable decision would be too costly even for the United States.[14]

In the same vein, Russia's decision to finally join the organization is motivated by political interest as much as by economic calculation. The WTO provides a forum in which states may exercise their voices in international economic regulation; it has become, if not the only game in town, a game that states desiring to have influence and prestige cannot afford to leave. It still cannot be said with certainty whether Russia will play by the rules once it is in the system. But the WTO's previous record with inducing rule compliance, even by its most powerful members, encourages a deal of optimism.

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[1] R. Keohane and J. Nye, "The Club Model Of Multilateral Cooperation And Problems Of Democratic Legitimacy", in R. Porter *et al* (eds), *Efficiency, Equity, Legitimacy: The Multilateral Trading System At the Millennium* (Brookings Institution, 2001), at 286.

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- [3] R. Wolfe, "The WTO Single Undertaking as Negotiating Technique and Constitutive Metaphor", 12 *Journal of International Economic Law* 835, at 840.
- [4] A. Narlikar (ed), *Deadlocks in Multilateral Negotiations: Causes and Solutions* (CUP, 2010).
- [5] See Appellate Body Report, *United States – Section 211 Omnibus Appropriations Act of 1998 ("Havana Club")* (WT/DS176/AB/R), adopted 2 January 2002; Appellate Body Report, *European Communities – Export Subsidies on Sugar* (WT/DS266/AB/R), adopted 19 May 2005; Appellate Body Report, *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products* (WT/DS363/AB/R), adopted 19 January 2010.
- [6] See *Understanding on Bananas* between the United States and the European Union (WT/DS27/59), 11 April 2001; *Joint Communication from Brazil and the United States* regarding *United States – Subsidies on Upland Cotton* (WT/DS267/45), 31 August 2010.
- [7] J. G. Ruggie, "International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order", 36 *International Organization* (1982) 379.
- [8] I. Bremmer, *The End of the Free Market: Who Wins the War Between States and Corporations?* (Penguin, 2010).
- [9] H. G. Broadman, *Russian Trade Policy Reform for WTO Accession* (World Bank, 1998), at 1-3.
- [10] *Report of the Working Party on the Accession of the Russian Federation* (WT/ACC/RUS/70 and WT/MIN(11)/2); William H. Cooper, "Russia's Accession to the WTO and Its Implications for the United States" (Congressional Research Service, 2012), available at <http://www.fas.org/sgp/crs/row/R42085.pdf> (last accessed 19 August 2012).
- [11] F. Goryunov, "Russia Can Join the WTO, But Shouldn't", *Russia Beyond the Headlines*, 4 November 2011, available at http://rbth.ru/articles/2011/11/04/russia_can_join_the_wto_but_shouldnt_13702.html (last accessed 19 August 2012).
- [12] This is of course a highly contentious claim. C. Arkoladis et al, "The Elusive Pro-Competitive Effects of Trade", 18 June 2012, available at <http://www.princeton.edu/~ies/IESWorkshopS2012/ArkolakisPaper.pdf> (last accessed 15 August 2012). D. D. Li and C. Wu, "GATT/WTO Accession and Productivity", in T. Ito and A. K. Rose, *Growth and Productivity in East Asia, NBER-East Asia Seminar on Economics, Volume 13* (University of Chicago Press, 2004), available at <http://www.nber.org/chapters/c10746.pdf> (last accessed 19 August 2012).
- [13] A. Chayes and A. H. Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Harvard University Press, 1998). See, on this topic more generally, Joost Pauwelyn, "The Transformation of World Trade", 104 *Michigan Law Review* (2005) 1, based on the theory expounded in A. O. Hirschmann, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Harvard University Press, 1970).
- [14] R. H. Steinberg, "Judicial Lawmaking at the WTO: Discursive, Constitutional, and Political Constraints", 98 *American Journal of International Law* (2004) 247, at 267.