

# A CALL TO ACTION: RUSSIA’S SHORTCOMINGS IN FULFILLING ITS COMMITMENTS TO THE WORLD TRADE ORGANIZATION, AND THE WORLD TRADE ORGANIZATION’S SHORTCOMINGS IN ENFORCING THOSE COMMITMENTS

KAITIE WILSON\*

## ABSTRACT

*After a nineteen-year journey, the Russian Federation finally joined the World Trade Organization (WTO) in 2012. Russia had to overcome significant hurdles to obtain membership, including internal opposition, disputes with other WTO members such as the United States and Georgia, and the need to make substantial commitments to change its trade policy. While Russia deserves praise for many of the advancements it made to qualify for membership, it has not fully adhered to all the promises it made at the time of accession. This lack of compliance has been discussed: the United States completes an annual review of Russia’s membership and, more importantly, the WTO’s Trade Policy Review Mechanism reviewed Russia’s membership in 2016. But since 2016, Russia has at best plateaued if not regressed from meeting its obligations. The WTO will soon review Russia’s membership again and has an opportunity to not only expose Russia’s negative trade practices, but also to set a standard for dealing with non-compliance. If the WTO and WTO members do not address Russia’s actions (or lack thereof), Russia’s failure to comply with its commitments has the potential to threaten the very structure of the WTO.*

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\* J.D. Candidate 2021, Georgetown University Law Center. The author extends gratitude to Professor Timothy C. Brightbill for his guidance and feedback in drafting. © 2020, Kaitie Wilson.

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I. INTRODUCTION

For the past several years, China and the United States have dominated conversations about international trade. Indeed, there are many debates concerning whether China should be allowed to remain a member of the World Trade Organization (WTO),<sup>1</sup> and questions about the United States’ role in reducing the effectiveness of the WTO.<sup>2</sup> But China and the United States have distracted other WTO members, and potentially the WTO itself, from focusing on another country with harmful trade practices: Russia.

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1. See, e.g., Andrew Walker, *US Adviser Hints at Evicting China from WTO*, BBC NEWS (Nov. 21, 2018), <https://www.bbc.com/news/business-46280318>.

2. See, e.g., Clark Packard, *Trump’s Real Trade War Is Being Waged on the WTO*, FOREIGN POL’Y (Jan. 9, 2020, 1:54 PM), <https://foreignpolicy.com/2020/01/09/trumps-real-trade-war-is-being-waged-on-the-wto/>.

Before it acceded to the WTO, the Russian Federation was the largest economy not part of the organization. After many fits and starts and a nineteen-year process, Russia finally joined the WTO in 2012. Russia's membership is important for many reasons. As of 2018, the Russian Federation ranked eleventh in overall gross domestic product (GDP).<sup>3</sup> Russia has the second most powerful military in the world<sup>4</sup> and the ninth largest population.<sup>5</sup> President Vladimir Putin remains ever-present in global politics.<sup>6</sup> The WTO serves as one of the few unifying international bodies and provides a platform on which states can negotiate and find common ground. Having Russia as a WTO member further legitimizes the body and gives more incentive for other states to participate and abide by the rules.

But Russia's importance to the WTO diminishes if it is not adhering to the mandatory commitments. While many saw Russia's membership as a new start for the Russian market and government, it has not been the revolutionary kick start envisioned. Although Russia did make many changes to qualify for WTO membership, and claims to be continuing that process of change to continue to adhere to WTO rules, Russia is not making the progress it professes to be making.

The WTO has an opportunity to critically analyze and address each country's membership and their fulfillment of their commitments on a regular basis<sup>7</sup> through the Trade Policy Review Mechanism (TPRM).<sup>8</sup> Russia's first and only review occurred in 2016, and the Secretariat explained many ways in which Russia had met its goals and commitments during its first four years of WTO membership. However, the WTO also noted that more reforms were still needed in order for

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3. *Gross Domestic Product 2018*, WBG (Dec. 23, 2019), <https://databank.worldbank.org/data/download/GDP.pdf>.

4. Christopher Woody & Jenny Cheng, *Here's the Hardware the World's Top 25 Militaries Have in Their Arsenals*, BUS. INSIDER (Mar. 1, 2018, 6:09 PM), <https://www.businessinsider.com/here-are-the-worlds-most-powerful-militaries-2018-2>.

5. *Countries in the World by Population (2020)*, WORLDOMETER, <https://www.worldometers.info/world-population/population-by-country/> (last visited May 29, 2020).

6. No citation is necessary here; go to any news outlet and count how many top stories involve Russia.

7. Depending on a Member's position and importance in the international trading system, reviews are completed every two, four, or six years. Russia's next review should have been scheduled for 2020, as Russia is on the four-year rotation, but the WTO is behind in its reviews. Thus, Russia's next review should likely be completed in 2021 or 2022. See Trade Policy Review Body, *Note by the Chairperson: Trade Policy Review Mechanism: Programme of Reviews for 2020*, WTO Doc. WT/TPR/435 (July 5, 2019).

8. *The Trade Policy Review Mechanism (TPRM)*, WTO, [https://www.wto.org/english/tratop\\_e/tpr\\_e/tprm\\_e.htm](https://www.wto.org/english/tratop_e/tpr_e/tprm_e.htm) (last visited Jan. 14, 2020).

Russia to realize its “true potential.”<sup>9</sup> The WTO also emphasized the goals that Russia itself noted in its report as part of the review: “help modernize its economy, foster its global competitiveness, and create favorable conditions for its continuous growth and sustainable development.”<sup>10</sup> But despite big claims and promises made during the 2016 Trade Policy Review, Russia is not keeping its WTO commitments, and is not making the changes necessary to achieve the goals it set with the Secretariat in 2016. Russia’s next review in 2021<sup>11</sup> will be a determining moment for the WTO’s pledge to enforce the rules on its members.

After providing background information on Russia’s accession process, this Note will analyze Russia’s suitability for and engagement in the WTO by focusing on Russia’s progress and fulfillment of commitments in the years since the 2016 review. This Note will argue that Russia’s WTO membership needs to be further scrutinized, and steps need to be taken to help Russia further develop into a market economy, willing to engage with the international trade community. While the upcoming Trade Policy Review of Russia will be a crucial starting point to assess Russia’s compliance, the review only exists to evaluate WTO members’ trade policies and practices, and is not “intended to serve as a basis for the enforcement of specific obligations under the Agreements or for dispute settlement procedures, or to impose new policy commitments on Members.”<sup>12</sup> Thus, it will be important for other members to seek enforcement through other means, such as the WTO’s dispute settlement system. If Russia is not cooperating with the required commitments, the WTO system at large will be undermined.

## II. BACKGROUND

### A. *Russia’s Long Road to WTO Membership*

Before the Russian Federation even began its lengthy process to join the WTO, the Soviet Union first applied for membership to the General Agreements on Tariffs and Trade (GATT) in 1986.<sup>13</sup> This

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9. WTO Secretariat, *Trade Policy Review: Russian Federation (Revision)*, 12, WTO Doc. WT/TPR/S/345/Rev.1 (Dec. 6, 2016) [hereinafter *Report by the Secretariat*].

10. *Id.*

11. *Trade Policy Reviews*, WTO, [https://www.wto.org/english/tratop\\_e/tpr\\_e/tpr\\_e.htm](https://www.wto.org/english/tratop_e/tpr_e/tpr_e.htm) (last visited Sept. 12, 2020).

12. Marrakesh Agreement Establishing the World Trade Organization, Trade Policy Review Mechanism, Apr. 15, 1994, Annex 3A(i), 1869 U.N.T.S. 40 [hereinafter *Trade Policy Review Mechanism*].

13. Boris N. Mamlyuk, *Regionalizing Multilateralism: The Effect of Russia’s Accession to the WTO on Existing Regional Integration Schemes in the Former Soviet Space*, 18 UCLA J. INT’L L. & FOREIGN AFF. 207, 214 n.29 (2014).

application was quickly rejected, and attempts to join did not resume until after the fall of the Soviet Union. The Russian Federation submitted its application to join the GATT in 1993,<sup>14</sup> likely as an attempt to establish the new nation as an important player on the international stage.<sup>15</sup> Unfortunately for Russia, however, its application for membership would be stalled for nineteen years.<sup>16</sup>

Up until Russia was accepted into the WTO in 2012, it was the largest non-WTO economy,<sup>17</sup> and did not sit quietly while waiting. During the nineteen-year negotiation period, and despite suffering through a major economic crisis in the late 1990s and again through the global recession of 2008,<sup>18</sup> Russia worked to remain relevant. For example, Associate Professor of Law at the University of Memphis School of Law Boris N. Mamlyuk describes Russia's desire to "emulate an ostensibly superior, more productive and efficient 'West'" by doing as the West was doing in creating regional trade agreements while it waited to join the WTO, such as the Eurasian Customs Union.<sup>19</sup> Mamlyuk also accredits this obsession with regional trade agreements to Russia's attempts to "civiliz[e]" its surrounding region and prove its dominance.<sup>20</sup>

### 1. Georgian Opposition

The European Union (EU) formally supported Russia's WTO application in 2004, and the United States extended formal support in 2006.<sup>21</sup> But even with these two hurdles cleared, Russia's main opposition came from Georgia, whose vote was essential because potential WTO members must be approved by all existing WTO members, who threatened to veto Russia's membership in 2006 due to Russia's continued military invasions and trade blockades.<sup>22</sup> Russia attempted to pressure Georgia through other nations, including the United States, to

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14. *Accessions: Russian Federation*, WTO, [https://www.wto.org/english/thewto\\_e/acc\\_e/a1\\_russie\\_e.htm](https://www.wto.org/english/thewto_e/acc_e/a1_russie_e.htm) (last visited Jan. 8, 2020).

15. Mamlyuk, *supra* note 13, at 215.

16. *Accessions: Russian Federation*, *supra* note 14.

17. Mamlyuk, *supra* note 13, at 214.

18. *Russia becomes WTO member after 18 years of talks*, BBC NEWS (Dec. 16, 2011), <https://www.bbc.com/news/business-16212643>.

19. Mamlyuk, *supra* note 13, at 214.

20. *Id.* at 215.

21. *Russia becomes WTO member after 18 years of talks*, *supra* note 18.

22. *WTO Accessions*, WTO, [https://www.wto.org/english/thewto\\_e/acc\\_e/acc\\_e.htm](https://www.wto.org/english/thewto_e/acc_e/acc_e.htm) (last visited Dec. 14, 2019).

give its consent, but Georgia did not back down from its demands.<sup>23</sup> After prolonged negotiations, the Swiss helped broker a deal between Russia and Georgia in November 2011.<sup>24</sup> Georgia exchanged their consent to Russia's membership for "international monitoring of trade at the disputed borders with South Ossetia and Abkhazia, the two break-away Georgian republics that Russia has recognised [sic] as independent."<sup>25</sup> Russia ultimately agreed to the deal, clearing the international obstacles to WTO membership.

## 2. Internal Opposition

After the other members of the WTO accepted Russia's membership in December 2011, the Russian Parliament also had to accept the membership. Throughout the nineteen-year negotiation, Russia wavered on both its ability and its commitment to join the WTO. Due to the central planning system that dominated the Soviet Union, and the lack of any history of a market economy, it was difficult for Russia to fully transition from such an entrenched system to a full market economy.<sup>26</sup> In addition, Russia faced many economic and political problems throughout the 1990s after Russia's WTO application was started in 1993; WTO membership was hardly front-of-mind, let alone completely feasible.

Russian leadership also fluctuated on its commitment to join the WTO. Despite an early announcement in his first presidential term that he wanted to integrate Russia into the world economy and make efforts to bring Russia in line with WTO obligations,<sup>27</sup> President Putin often questioned the benefits of WTO membership.<sup>28</sup> Beginning in 2003, he began "reasserting state control over critical economic sectors, including oil and natural gas, and halting other structural reforms that were intended to diversify the economy away from its dependence on oil and other natural resources."<sup>29</sup> The 2008 financial crisis led President Putin to realize Russia's dependence on the international market and its

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23. Ellen Barry, *Russia Declares Deal to Join Trade Group*, N.Y. TIMES (Nov. 3, 2011), <https://www.nytimes.com/2011/11/03/world/europe/russia-says-it-will-join-wto-in-deal-with-georgia.html>.

24. *Russia becomes WTO member after 18 years of talks*, *supra* note 18.

25. Miriam Elder, *Russia on Cusp of Joining WTO After Georgia Compromise*, THE GUARDIAN (Oct. 27, 2011), <https://www.theguardian.com/world/2011/oct/27/russia-wto-georgia-compromise>.

26. WILLIAM H. COOPER, CONG. RESEARCH SERV., R42085, *RUSSIA'S ACCESSION TO THE WTO AND ITS IMPLICATIONS FOR THE UNITED STATES* 3 (2012).

27. *Id.* at 4.

28. *Russia becomes WTO member after 18 years of talks*, *supra* note 18.

29. COOPER, *supra* note 26, at 4.

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need to be a player on the world trade stage,<sup>30</sup> but despite good progress towards WTO membership, developments halted again in 2009 when then-Prime Minister Putin announced that Russia would only become a WTO member in a trade partnership with Belarus and Kazakhstan.<sup>31</sup> Due to resistance from WTO members, he walked this claim back, and eventually, partly as a result of meetings between former President Barack Obama and former President Dmitry Medvedev, Russia resolved trade disputes with the United States and other WTO members.<sup>32</sup>

Resistance to Russia's WTO membership did not end when Russian leadership finally supported it. Many Russian citizens argued that WTO membership would not benefit the country, but rather would harm Russia through lower customs duties and other obligations.<sup>33</sup> This opposition was also seen in Parliament when it finally came time for a vote in 2011. Although many expected the vote to go smoothly, "the Communist Party was unusually vocal in its opposition, even staging a small protest outside the building"<sup>34</sup> during the vote in the Russian Parliament's lower house, the Duma, claiming that "Russia's industry [was] too vulnerable to survive without protections."<sup>35</sup> The Communist Party, then the second-largest group in the Duma, even brought a challenge in the Constitutional Court against Russia's WTO membership, but lost the appeal.<sup>36</sup> Despite these internal challenges, both houses of Parliament did approve of accession, clearing the final hurdle to Russia's long-awaited membership in the WTO.

### 3. U.S. Opposition

After the members of the WTO officially invited Russia to join in December 2011, the United States was put into a difficult situation. Despite President Obama's commitment to Russia's WTO membership in order to improve U.S.-Russia relations,<sup>37</sup> the United States had to

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30. Will Englund & Kathy Lally, *Russia to Join World Trade Organization*, WASH. POST (July 10, 2012), [https://www.washingtonpost.com/world/europe/russia-to-join-wto-after-parliamentary-vote/2012/07/10/gJQAFwolaW\\_story.html](https://www.washingtonpost.com/world/europe/russia-to-join-wto-after-parliamentary-vote/2012/07/10/gJQAFwolaW_story.html).

31. Barry, *supra* note 23.

32. COOPER, *supra* note 26, at 5.

33. Andrew E. Kramer, *Parliament Approves Russia's Joining W.T.O.*, N.Y. TIMES (July 10, 2012), <https://www.nytimes.com/2012/07/11/business/global/parliament-approves-russia-joining-wto.html>.

34. *Id.*

35. Englund & Lally, *supra* note 30.

36. *Id.*

37. Barry, *supra* note 23.

determine “whether to enact legislation authorizing the President to grant permanent normal trade relations (PNTR) status for Russia, a status that all WTO members are required to provide each other.”<sup>38</sup> The Congressional Research Service noted that while the United States did not have much interest in the eight accessions prior to Russia, Congress and the executive branch were quite focused on Russia’s accession, likely due to the size of the Russian economy and the political history between the United States and Russia.<sup>39</sup> Additionally, “some Members of Congress and other U.S. stakeholders . . . argue[d] that the United States must not repeat what they view[ed] as the mistakes made with China’s accession by ensuring that Russia accedes only under conditions that reinforce WTO rules and principles.”<sup>40</sup>

The United States was also “at an immediate disadvantage” when Russia’s WTO membership became official in August 2012 due to a 1974 trade law amendment, the Jackson-Vanik amendment.<sup>41</sup> Due to Jackson-Vanik, which “was introduced to pressure the then-Soviet Union to allow Jews and others to emigrate” and required that the President certify to Congress each year that normal trade relations be granted to Russia, the United States was in violation of the obligation to apply “most-favored-nation” (MFN) treatment to all other WTO members.<sup>42</sup> This “result[ed] in unfavorable trade terms for U.S. firms doing business with Russia” because penalties would be assessed for the violation.<sup>43</sup> In December 2012, President Obama signed H.R. 6156, the “Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012,” into law, “which authorizes the President to extend to Russia and Moldova Permanent Normal Trade Relations and to sanction persons who are responsible for gross violations of human rights in Russia.”<sup>44</sup> This bill, commonly referred to as the Magnitsky Act, did not repeal the Jackson-Vanik amendment in full, but rather only repealed the amendment as to Russia and Moldova in order to avoid any potential consequences the amendment would have with Russia’s new WTO membership.

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38. COOPER, *supra* note 26, at i.

39. *Id.* at 1.

40. *Id.*

41. Englund & Lally, *supra* note 30.

42. *Id.*; see *U.S. May Repeal Jackson-Vanik Amendment*, NPR (Mar. 16, 2012), <https://www.npr.org/2012/03/16/148732685/russia-to-join-world-trade-organization>.

43. Englund & Lally, *supra* note 30.

44. Press Release, The White House, Statement by the Press Secretary on H.R. 6156 (Dec. 14, 2012), <https://obamawhitehouse.archives.gov/the-press-office/2012/12/14/statement-press-secretary-hr-6156>.



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### B. WTO Accession Process

Accession to the WTO is both simple and complex: simple in that the steps to follow are laid out and relatively straightforward, but complex in that all other WTO members must agree on accepting a new member (as seen above in Russia's accession process). Under Article XII of the Marrakesh Agreement Establishing the World Trade Organization, "[a]ny [s]tate or separate customs territory possessing full autonomy in the conduct . . ." of its trade policies is eligible to accede to the WTO on terms agreed between it and WTO members.<sup>45</sup>

#### 1. Overview of WTO Accession Process

The WTO categorizes the accession process into four broad stages.<sup>46</sup> First, the applicant state submits a memorandum, the Memorandum on the Foreign Trade Regime (MFTR), to the WTO General Council/Ministerial Conference, describing its trade and economic policies. A working party comprised of WTO members is created to review the applicant state's application and materials for compliance under Article XII of the Marrakesh Agreement.<sup>47</sup> The working party then submits initial recommendations back to the General Council/Ministerial Conference.<sup>48</sup>

Second, if the working party approves the application, "bilateral, plurilateral and multilateral negotiations take place in parallel."<sup>49</sup> The applicant state conducts bilateral negotiations with individual countries to make tariff offers and determine tariff concessions, as well as to discuss market access commitments that are specific to the two states.<sup>50</sup> Because state obligations apply equally to all WTO members, these bilateral talks "determine the benefits (in the form of export opportunities and guarantees) other members can expect when the new member joins."<sup>51</sup> A multilateral negotiation process stems from the working party's initial findings, and the working party and other WTO members

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45. Marrakesh Agreement Establishing the World Trade Organization art. 12, Apr. 15, 1994, 1867 U.N.T.S. 154, 162 [hereinafter *Marrakesh Agreement*].

46. *Membership, Alliances and Bureaucracy*, WTO, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org3\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org3_e.htm) (last visited Jan. 14, 2020).

47. The working party on Russia's membership was comprised of over sixty countries, including the United States. *Id.*

48. *Current Status of WTO Accessions*, WTO, [https://www.wto.org/english/thewto\\_e/acc\\_e/acc\\_status\\_e.htm](https://www.wto.org/english/thewto_e/acc_e/acc_status_e.htm) (last visited Jan. 14, 2020).

49. *Id.*

50. *Membership, Alliances and Bureaucracy*, *supra* note 46.

51. *Id.*

engage in a question-and-reply process to determine specific commitments from the applicant state and to address any concerns with the state's trade or economic policies.<sup>52</sup> These discussions form certain documents, such as a Factual Summary of Points Raised, an Elements of a Draft Report of the Working Party, and eventually the Report of the Working Party (DWPR).<sup>53</sup> The DWPR formally memorializes the commitments to which the applicant state has agreed. The applicant state and interested WTO members can also conduct plurilateral negotiations on specific topics of interest or friction that are not discussed in the bilateral or multilateral process.<sup>54</sup> Third, if negotiations have been successful, the working party adopts a Draft Accession Package, which contains the DWPR, a draft decision and draft accession protocol, and a goods and services schedule.<sup>55</sup>

Finally, the working party sends this Package to the General Council/Ministerial Conference for final approval. A two-thirds majority of WTO members is needed to approve the membership of an applicant state.<sup>56</sup> If a state reaches such a majority, then the state has three to six months to ratify the agreement in its own legislature and complete other necessary domestic procedures in order to officially accept the terms of WTO membership. If domestic processes conclude positively and timely, then the state's WTO membership will be effective thirty days after it notifies the WTO Director-General that the Protocol of Accession was approved by its own legislature.<sup>57</sup>

## 2. Russia's Commitments and Benefits

The WTO describes membership as "a balance of rights and obligations" due to the negotiation and give-and-take between all member states.<sup>58</sup> But this balance is not some arbitrary list; the WTO is a rules-based system.<sup>59</sup> Without enforceable, equal obligations, there is little incentive for any state to join the WTO and thus the privileges would be minimal without equal buy-in.

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52. *Current Status of WTO Accessions*, *supra* note 48.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Membership, Alliances and Bureaucracy*, *supra* note 46.

57. *Current Status of WTO Accessions*, *supra* note 48; see also HOW TO BECOME A WTO MEMBER, WTO, [https://www.wto.org/english/thewto\\_e/acc\\_e/how\\_to\\_become\\_e.htm](https://www.wto.org/english/thewto_e/acc_e/how_to_become_e.htm) (last visited Dec. 14, 2019).

58. *Membership, Alliances and Bureaucracy*, *supra* note 46.

59. *Overview: A Navigational Guide*, WTO, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm1\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm1_e.htm) (last visited Jan. 14, 2020).

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### *a. Obligations*

Becoming a WTO member entails a number of commitments and obligations. Generally, WTO members must commit to certain fundamental trade principles, including most-favored nation treatment (MFN), national treatment, transparency, engaging in negotiations for lower trade barriers, usage of tariffs instead of quotas, commitment to the WTO dispute resolution mechanism, and compliance with trade policy reviews.<sup>60</sup> The WTO provides “a simple structure with six main parts” to encapsulate the agreements taken on by member states: “an umbrella agreement (the Agreement Establishing the WTO); agreements for each of the three broad areas of trade that the WTO covers (goods, services and intellectual property); dispute settlement; and reviews of governments’ trade policies.”<sup>61</sup> The broadest commitments upon accession to the WTO are for a country to “open their markets and abide by the rules.”<sup>62</sup>

In addition to agreeing to comply with these fundamental principles, Russia also had to make commitments specific to its economy and trade policies, most of which required Russia to back away from several of its protectionist measures.<sup>63</sup> Russia made many commitments, but there are six main commitments that are most significant, especially from a U.S. perspective.<sup>64</sup>

First, in accordance with the WTO requirement to set bindings on tariff rates, Russia agreed to reduce bound tariff rates on many categories of manufactured goods, including aircraft, automobiles, and agricultural equipment.<sup>65</sup> Russia also “committed to eliminate tariffs on information technology products . . . listed in the WTO Information Technology Agreement (ITA), such as computers, and agreed to

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60. COOPER, *supra* note 26, at 2.

61. *Overview: A Navigational Guide*, *supra* note 59.

62. *Membership, Alliances and Bureaucracy*, *supra* note 46.

63. COOPER, *supra* note 26, at i.

64. To see all of the concessions and commitments made by Russia at the time of accession, refer to Working Party on the Accession of the Russian Federation, *Report of the Working Party on the Accession of the Russian Federation, Part I - Schedule of Concessions and Commitments on Goods*, WTO Doc. WT/ACC/RUS/70/Add.1 (Nov. 17, 2001), and Working Party on the Accession of the Russian Federation, *Report of the Working Party on the Accession of the Russian Federation, Part II - Schedule of Specific Commitments on Services, List of Article II MFN Exemptions*, WTO Doc. WT/ACC/RUS/70/Add.2 (Nov. 17, 2001).

65. Working Party on the Accession of the Russian Federation, *Report of the Working Party on the Accession of the Russian Federation to the World Trade Organization*, 90, WTO Doc. WT/ACC/RUS/70 (Nov. 17, 2001) [hereinafter *Report of the Working Party*].

implement 95% of these commitments during the first three years of its accession.”<sup>66</sup>

Second, Russia committed to certain reductions in restrictions on imports of agricultural products. This category was “a very contentious issue during the WTO accession negotiations” because agriculture-exporting members, such as the United States and the European Union, were concerned about Russia’s restrictions.<sup>67</sup> Russia agreed to open market access to agricultural goods, adhere to the provisions of the WTO Sanitary and Phytosanitary (SPS) Agreement, and “eliminate all agricultural export subsidies” (with allowances to reduce subsidies over time).<sup>68</sup>

Third, Russia had to address its export duties. Of particular concern to some WTO members was Russia’s export duties on lumber.<sup>69</sup> But “after intense negotiations with the EU, Russia agreed to abandon a planned increase from twenty-five to eighty percent in export duties and instead to establish export quotas with export duties of thirteen to fifteen percent, depending on the type of lumber.”<sup>70</sup> Russia also discussed a large range of products, and pledged to reduce export duties, eliminate export duties, or bind tariff levels on most.<sup>71</sup> During the accession negotiations, Russia asserted that “export duties were applied on an MFN basis,” subject to some exceptions.<sup>72</sup>

Fourth, Russia committed to open its services sector to foreign providers.<sup>73</sup> Due to negotiations between Russia and the United States, Russia agreed to allow 100% foreign ownership of non-life insurance companies upon accession,” and agreed to allow more foreign ownership in the Russian banking sector, subject to the Russian central bank’s regulatory control.<sup>74</sup> Russia also made commitments to reduce government control of and increase foreign access to telecommunication services, professional and business services (such as lawyers, engineers, and architects), distribution and audio-visual services, and energy and computer services.<sup>75</sup>

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66. COOPER, *supra* note 26, at 6–7.

67. *Id.* at 7.

68. *Id.* at 9.

69. *See id.*

70. *Id. Report of the Working Party, supra* note, 65, at 7.

71. *Report of the Working Party, supra* note 65, at 151–55.

72. *Id.* at 151.

73. *Id.* at 347–57.

74. COOPER, *supra* note 26, at 10.

75. *Report of the Working Party, supra* note 65, at 347–57; *id.* at 10–11.

## A CALL TO ACTION

Fifth, of special importance to the United States was Russia's "lack of intellectual property rights (IPR) protection."<sup>76</sup> Russia took many steps to meet obligations under the WTO's Trade-Related Intellectual Property Rights (TRIPS) Agreement before accession, including greater monitoring of illegal distribution of copyrighted works and enactment of laws to protect data and to criminalize piracy and counterfeiting.<sup>77</sup> The United States was not completely satisfied at the time of Russia's accession with its efforts in intellectual property rights, but agreed that Russia had made the necessary commitments for membership.<sup>78</sup>

Sixth, Russia made commitments regarding its program to promote domestic auto production. The program allowed Russian auto producers who used certain amounts of local content and labor to "qualify for reduced import duties on imported components."<sup>79</sup> But many WTO Members, especially the EU and the United States, "argued that the program violate[d] the prohibition against local-content requirements under the [Trade-Related Investment Measures (TRIMS)] agreement."<sup>80</sup> Upon accession, Russia agreed to terminate the program and committed to the EU to remedy the adverse impacts of the program until termination through compensation.<sup>81</sup>

Of course, Russia made other commitments during the accession negotiations, including reducing subsidies on natural gas prices and joining the WTO Government Procurement Agreement (GPA);<sup>82</sup> the commitments listed above are merely to provide context to Russia's most difficult and controversial negotiations upon accession to the WTO. The number of commitments made by Russia during the accession process signify the vast differences between Russia's economy and the economies of most other WTO Members, especially as Russia continues to emerge from the rubble of the Soviet Union. These commitments are important because they bind Russia to act in accordance with WTO standards and respect international trade norms, instead of acting independently and only for the benefit of Russia.<sup>83</sup>

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76. COOPER, *supra* note 26, at 11.

77. *Report of the Working Party*, *supra* note 65, at 309–44.

78. COOPER, *supra* note 26, at 11.

79. *Id.* at 12.

80. COOPER, *supra* note 26.

81. *Report of the Working Party*, *supra* note 65, at 273–78.

82. COOPER, *supra* note 26, at 12.

83. *See id.* at 13.

*b. Benefits*

In exchange for Russia's changes, Russia gained (and continues to gain) many benefits. Primarily, Russia obtained the object of its pursuit: "hav[ing] a voice in shaping and implementing the international trade regime."<sup>84</sup> A chief aim of Russia's foreign policy is to gain prominence on the global stage and take what it believes is its rightful place as a world power.<sup>85</sup> Russia can exert that power through use of the WTO dispute settlement mechanism to hold other members accountable, although this benefit can also be a burden as Russia is also subject to the mechanism.<sup>86</sup> For example, Russia has brought eight complaints to-date against other members, and has been subject to nine disputes brought against it.<sup>87</sup>

Russia also was allured by the promise of a better economic position. Significantly, Russia now receives MFN tariff rates with all WTO members, which can greatly improve Russia's trading ability. Done at the time of accession, a World Bank study showed that "in the medium term, WTO accession would increase Russia's gross domestic product (GDP) by 3.3% and, in the longer term, would increase it by 11%."<sup>88</sup> From the troubles of the end of the Soviet Union and the financial crises in the 1990s and early 2000s, Russia certainly stood in need of a boost to its ability to do business with the world and to its GDP.

Overall, WTO membership is attractive to any state because of the status it affords the member and the improved trade relations among member states. For Russia, WTO membership made the country "a more attractive location for foreign producers and investors to do business by locking in trade-liberalizing reforms," which could increase Russia's economic growth.<sup>89</sup> While investors and businesses may once have been afraid of Russia's Soviet past, the standardization and quality of the WTO help Russia to attract needed investment.

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84. COOPER, *supra* note 26, at 17.

85. Mamlyuk, *supra* note 13, at 214.

86. COOPER, *supra* note 26, at 17.

87. *Russian Federation and the WTO*, WTO, [https://www.wto.org/english/thewto\\_e/countries\\_e/russia\\_e.htm](https://www.wto.org/english/thewto_e/countries_e/russia_e.htm) (last visited Dec. 14, 2020).

88. COOPER, *supra* note 26, at 13. Unfortunately, as discussed below, Russia's economic dreams did not come true.

89. *Id.*

III. PREVIOUS REVIEWS OF RUSSIA'S WTO MEMBERSHIP

A. Trade Policy Review Mechanism

As noted above, WTO members are obligated to comply with reviews completed by the WTO. Annex 3 of the Marrakesh Agreement established the TPRM to “contribute to improved adherence by all Members to rules, disciplines and commitments made under the Multilateral Trade Agreements . . . and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practices of Members.”<sup>90</sup> The TPRM helps to both “enable outsiders to understand a country’s policies and circumstances, and [to] provide feedback to the reviewed country on its performance in the system.”<sup>91</sup> Each member state is subject to review, but the frequency of review is dependent upon the state’s share of world trade.<sup>92</sup> The Trade Policy Review Body (TPRB) reviews both the policy statements submitted by the member state and “a report prepared by economists in the Secretariat’s Trade Policy Review Division.”<sup>93</sup> The review process includes not just the reports, which “consist of detailed chapters examining the trade policies and practices of the member and describing trade policymaking institutions and the macroeconomic situation,” but also allows for input from and discussion with the member state.<sup>94</sup>

The WTO highlights three objectives in conducting such reviews: “to increase the transparency and understanding of countries’ trade policies and practices, through regular monitoring[;] to improve the quality of public and intergovernmental debate on the issues[; and] to enable a multilateral assessment of the effects of policies on the world trading system.”<sup>95</sup> In 2016, the first, and so far only, Trade Policy Review of Russia was completed.

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90. *Trade Policy Review Mechanism*, *supra* note 12.

91. *Trade Policy Reviews: Ensuring Transparency*, WTO, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm11\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm11_e.htm) (last visited Dec. 14, 2019).

92. For example, the United States is subject to review every two years because it occupies one of the top four largest shares of world trade. The US has undergone eleven trade policy reviews since inception of the TPRM. *The Reviews*, WTO, [https://www.wto.org/english/tratop\\_e/tp\\_r\\_e/tp\\_rep\\_e.htm#chronologically](https://www.wto.org/english/tratop_e/tp_r_e/tp_rep_e.htm#chronologically) (last visited Jan. 10, 2020).

93. *Overseeing National Trade Policies: The TPRM*, WTO, [https://www.wto.org/english/tratop\\_e/tp\\_r\\_e/tp\\_int\\_e.htm](https://www.wto.org/english/tratop_e/tp_r_e/tp_int_e.htm) (last visited Jan. 11, 2020).

94. *Id.*

95. *Trade Policy Reviews: Ensuring Transparency*, *supra* note 91.

1. Russia's Policy Statement

Russia's policy statement discussed its trade policy from 2012 to 2016, and focused on the changes made domestically in order to implement WTO rules.<sup>96</sup> Russia focused on six main topics: Russia in the Multilateral Trading System; Economic and Trade Environment; Foreign Trade; Trade Policy; Regional Economic Integration; and Future Directions of Russia's Trade Policy.<sup>97</sup>

In discussing Russia's place in the WTO, Russia emphasized its support for the WTO system. Russia noted that its main focus since becoming a WTO member has been to "further integrat[e] into the multilateral trading system and liberaliz[e] [] the trade regime."<sup>98</sup> Most significantly, Russia devoted much of this first reporting section to highlight its focus on transparency and its commitment to working internally and internationally to increase transparency in trade regulations. This is perhaps surprising given Russia's tenuous relationship with transparency.<sup>99</sup>

Russia seemed less enthusiastic about its economic and trade environment, noting that "the Russian economy has experienced a slowdown" since 2012 when it joined the WTO.<sup>100</sup> Russia blamed this on "external factors" such as "anti-Russian trade sanctions."<sup>101</sup> They did note, however, that the nominal GDP has increased since 2011 and that the Russian economy had started to normalize, as seen through a slowing of the economic recession and a decrease in inflation.<sup>102</sup>

Russia again blamed external sources for its lagging foreign trade in goods, noting that the "ruble devaluation" was the primary reason for a decrease in both imports and exports since 2012. Russia reported that the European Union is its largest trading partner, even though "the EU's share in the trade turnover of the Russian Federation has decreased by 3[.]9 percentage points" from 2012 to 2015.<sup>103</sup> The EU is followed by the Asia-Pacific Economic Cooperation (APEC) and then

96. Trade Policy Review Body, *Trade Policy Review: Report by Russian Federation*, WTO Doc. WT/TPR/G/345 (Aug. 24, 2016) [hereinafter *Report by Russian Federation*].

97. *Id.* at 2.

98. *Id.* at 3.

99. For example, Transparency International's Corruption Perceptions Index ranked Russia 138th out of 180 countries in the 2018 ranking. *Corruption Perceptions Index 2018*, TRANSPARENCY INT'L, <https://www.transparency.org/cpi2018> (last visited Jan. 12, 2020).

100. *Report by Russian Federation*, *supra* note 96, at 3.

101. *Id.*

102. *Id.* at 3–4.

103. *Id.* at 4.



by the Commonwealth of Independent States (CIS).<sup>104</sup> While trade in goods has decreased overall, Russia's trade in services has increased, and the EU still occupies the spot of largest trading partner.<sup>105</sup>

Russia provided great detail on its trade policy, including insights to customs and tariffs, agriculture and fisheries, industrial, energy, investment, public procurement, and intellectual property.<sup>106</sup> Russia devoted significant discussion to its improvements to customs administration and the streamlining of customs formalities.<sup>107</sup> The report also noted its advancements in attracting foreign investments through signing nine new bilateral investment treaties since 2012.<sup>108</sup> Unsurprisingly, Russia did not name any insufficiencies in any areas of its trade policy.

In regards to Russia's regional economic integration, the report highlighted three main regional focuses: the establishment of the Eurasian Economic Union, the signing of the CIS Free Trade Area Agreement, and the creation of a Free Trade Agreement between the Eurasian Economic Union and Viet Nam.<sup>109</sup> Importantly, Russia declared that “[d]eveloping the legal framework of the Eurasian Economic Union and strengthening economic integration among its Member States is one of the key priorities of Russia's trade policy.”<sup>110</sup> The Eurasian Economic Union will likely remain an important aspect of Russian trade due to Russia's longstanding devotion to the region<sup>111</sup> and due to the platform the Union provides for Russia to exert its power.<sup>112</sup>

Russia concluded the report by emphasizing its continued support for the “fundamental rules of the WTO.”<sup>113</sup> Russia's main goals over the coming years are to create a “competitive economy based on an innovative model of development, diversification of Russian exports, application of high technologies in the production, and development of competitive advantages in traditional industries,”<sup>114</sup> and to “develop its

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104. *Id.* at 4.

105. *Id.* at 5.

106. *Id.* at 5–13.

107. *Id.* at 5–6.

108. *Id.* at 8–9.

109. *Id.* at 13–14.

110. *Id.*

111. Remember Russia's early attempt to join the WTO only if in a trade partnership with Belarus and Kazakhstan, Barry, *supra* note 23.

112. See, e.g., Catherine Putz, *Remember the Eurasian Economic Union?*, THE DIPLOMAT (Jan. 13, 2018), <https://thediplomat.com/2018/01/remember-the-urasian-economic-union/>.

113. *Report by Russian Federation*, *supra* note 96, at 14.

114. *Id.*

trade policy in accordance with fundamental rules of the WTO.”<sup>115</sup> Clearly, Russia is seeking to occupy a central and important role in the international trade system.

## 2. Secretariat Report and Chairperson’s Concluding Remarks

The Secretariat and the TPRB publish the results of their inquiry into Russia’s trade policies and practices. Overall, the Secretariat expressed optimism about Russia’s WTO membership, but also noted that Russia needs intense focus and targeted reforms in order to develop its liberal status, as well as “consistent and determined implementation of reforms” to “lift the Russian economy towards its true potential.”<sup>116</sup>

The Secretariat Report itself is quite lengthy; it discussed both specific trade practices, as well as the trade policy-making institutions and economic situation of the country. For example, the report analyzed trade policies by measure, such as tariffs and government procurement, and it analyzed trade policies by sector, such as agriculture and tourism. A helpful gauge of the WTO’s reaction to the review can be found in the Concluding Remarks by the Chairperson of the review. Here, the Chairperson recognized the “challenging economic environment” faced by Russia at the time of the review, and commended Russia for being “an active Member, . . . [that] had made significant contribution to multilateral negotiations.” The Chairperson also recognized the “considerable progress that the Russian Federation had made in liberalizing its trade regime both before and after accession to the WTO.”<sup>117</sup> However, the Chairperson relayed the concern that several delegations expressed concerning Russia’s “alignment with the basic principles of the WTO.”<sup>118</sup> The Chairperson noted several policies that were troublesome: import substitution which had been enacted in response to the economic crisis; lack of transparency and predictability in trade policies; unfair favor shown to state-owned enterprises; ignorance of the WTO Government Procurement Agreement; lack of adherence to international sanitary measures; and import restrictions.<sup>119</sup> The Chairperson remarked that “more could be done” by Russia, especially “given the high level of education, excellence in technology, and the

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115. *Id.*

116. *Report by the Secretariat, supra* note 9, at 12.

117. *Concluding Remarks by the Chairperson*, WTO, [https://www.wto.org/english/tratop\\_e/tpr\\_e/tp445\\_crc\\_e.htm](https://www.wto.org/english/tratop_e/tpr_e/tp445_crc_e.htm) (last visited Jan. 14, 2020).

118. *Id.*

119. *Id.*

wide range of resources available in the Russian Federation.”<sup>120</sup> The remarks concluded with a call to action for a more “open and transparent trade and investment regime” and better adherence to WTO principles.<sup>121</sup>

The Secretariat report and the Chairperson’s Concluding Remarks show that despite Russia’s progress in certain areas, WTO members were largely dissatisfied with Russia’s commitment to international standards and WTO rules. This first Trade Policy Review was completed only four years after Russia’s accession; however, Russia was working on its WTO membership for nineteen years, so greater advancements were expected.

### B. *United States Trade Representative Reviews*

Under the Magnitsky Act, the U.S. Trade Representative (USTR) must prepare an annual report for the Committee on Ways and Means of the U.S. House of Representatives for every year after the United States extends permanent normal trade relations (PNTR) to Russia.<sup>122</sup> Of course, this report is biased and has no real effect on Russia’s WTO membership, but it can provide useful insights into the dynamic between WTO members that the Trade Policy Review does not contain. The most recent USTR report in 2018 highlights some areas of improvement in Russian trade relations and in Russian adherence to WTO rules, but describes the years since Russia’s accession as “disappointing” overall.<sup>123</sup>

The United States’ main concern with Russia in regards to its WTO membership was that Russia, in the eyes of the United States, is not “permit[ting] reciprocal and mutually advantageous trade.”<sup>124</sup> The United States is troubled about Russia’s increasingly protectionist trade measures and is concerned that Russia is disregarding WTO commitments.<sup>125</sup> The United States discussed ten main areas of concern it has with Russia’s trade laws and regulations: disregard of the WTO’s general principles; increase of protectionist measures; continued difficulty

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120. *Id.*

121. *Id.*

122. UNITED STATES TRADE REPRESENTATIVE, 2018 REPORT ON THE IMPLEMENTATION AND ENFORCEMENT OF RUSSIA’S WTO COMMITMENTS (Feb. 2019) [hereinafter *2018 USTR Report*].

123. *Id.* at 6.

124. *Id.* Of course, this critique offered by the United States should be taken with some skepticism, as the United States is not the epitome of a good WTO member and does not always engage in “reciprocal and mutually advantageous trade.”

125. *Id.* at 3.

of importing into Russia; non-transparent customs legal regime; import ban on agricultural goods from the United States and other WTO members; discriminatory industrial policies; expansion of import substitution and localization policies; unreliable and ineffective implementation of rules around intellectual property rights; and lack of adherence to the notifications requirement.<sup>126</sup> The United States' concerns about Russia's membership will be discussed in greater detail below.

#### IV. RUSSIA'S CURRENT PROGRESS

Russia places a lot of blame for the condition of its economy and for many of its trade policies on other states, such as the United States. However, as the USTR noted in its 2018 report, "at the end of the day, Russia must decide its future and take responsibility for its actions and the impact of those actions on its citizens."<sup>127</sup> Russia's next review will cover the full range of trade policies in regards to goods and services, and will also analyze Russia's economic and trade outlook. But perhaps the most important aspect of Russia's trading regime that needs to be analyzed is its adherence to the fundamental principles of the WTO, and its fulfillment of the specific commitments it made during accession. As will be discussed below, Russia's progress on these goals has not been enough to satisfy the demands of WTO membership.

##### A. *Adherence to Fundamental WTO Principles*

In addition to the commitments contained in the WTO agreements concerning specific activities, there are five "simple, fundamental principles" to which all WTO members must adhere that "are the foundation of the multilateral trading system:" trade without discrimination; freer trade; predictability; promotion of fair competition; and encouragement of development and economic reform.<sup>128</sup>

##### 1. Trade without Discrimination

One of the hallmarks of the WTO is extending equal treatment to all other WTO members: the most-favored-nation (MFN) treatment principle. MFN is mentioned in each of the WTO agreements that govern trade in goods, trade in services, and intellectual property rights, which

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126. *Id.* at 3–5.

127. *Id.* at 6.

128. *Principles of the Trading System*, WTO, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact2\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm) (last visited Jan. 15, 2020).

constitute “all three main areas of trade handled by the WTO.”<sup>129</sup> Often considered jointly with MFN is the national treatment principle, which holds that a country “should not discriminate between its own and foreign products, services or nationals.”<sup>130</sup> National treatment is also mentioned in the three foundational WTO documents.

As discussed by the Chairperson in the concluding remarks at Russia’s 2016 Trade Policy Review, the political turmoil between Russia and Ukraine and the resultant sanctions have caused concern about Russia’s adherence to the MFN principle. Beginning in 2014, Russia continues to maintain an import ban of agricultural products coming from nine countries and the countries of the EU; this ban will extend at least until the end of 2020.<sup>131</sup> While Russia could make the case that this ban is necessary to its national security,<sup>132</sup> which would enable different standards to be applied,<sup>133</sup> such a widespread ban on most agricultural products from so many countries should raise some red flags to the WTO and should trigger, for the affected countries, the WTO dispute settlement mechanism. Additionally, the WTO does allow for some exceptions to the MFN principle, such as exceptions for developing countries or exceptions for a country “rais[ing] barriers against products that are considered to be traded unfairly from specific countries.”<sup>134</sup> But the WTO notes that “the agreements only permit these exceptions under strict conditions”; Russia’s continued negligence of the MFN principle likely does not qualify for any of the exceptions. MFN and national treatment form the basis of trust that exists between WTO members which enables the system to work, and Russia’s violation of such principles should not be permitted.

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129. *Id.*

130. *Id.*

131. USDA FOREIGN AGRIC. SERV., RUSSIA: RUSSIA EXTENDED FOOD IMPORT BAN THROUGH END OF 2020 (Jul. 7, 2019).

132. This argument is stronger in light of the recent global pandemic, COVID-19. Many countries around the world are tightening their holds on their food and medical supplies. *See, e.g.*, Robyn Dixon, David L. Stern & Almaz Kumenov, *As Borders Harden During Pandemic, Some Countries Look to Hold on to Their Own Food*, WASH. POST (Apr. 8, 2020), [https://www.washingtonpost.com/world/as-borders-harden-during-pandemic-some-countries-look-to-hold-onto-their-own-food/2020/04/08/385600e4-7459-11ea-ad9b-254ec99993bc\\_story.html](https://www.washingtonpost.com/world/as-borders-harden-during-pandemic-some-countries-look-to-hold-onto-their-own-food/2020/04/08/385600e4-7459-11ea-ad9b-254ec99993bc_story.html).

133. For example, in a recent dispute settlement brought by Ukraine against Russia for Russia’s transit bans between the countries, the panel found that Russia, in this specific instance only, was acting in accordance with its essential security interests and thus was allowed to maintain the bans. *Russia—Measures Concerning Traffic in Transit*, WTO Doc. WT/DS512, [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds512\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds512_e.htm) (last visited Jan. 9, 2020).

134. *Principles of the Trading System*, *supra* note 128.

2. Freer Trade

The WTO maintains that open trade is the most favorable condition for both the economic growth of individual states and for the success of the international trading system at large.<sup>135</sup> The WTO hails “liberal trade policies” for “sharpen[ing] competition, motivat[ing] innovation and breed[ing] success,”<sup>136</sup> and warns against indications of protectionism: “subsidies, complicated red tape, and . . . legitimate policy objectives such as environmental preservation or consumer protection [used] as an excuse to protect producers.”<sup>137</sup> Thus, the WTO rules and dispute negotiations often center on preventing “self-defeating and destructive drift[s] into protectionism.”<sup>138</sup>

The WTO noted its concerns over Russia’s protectionism and lack of growth in the Secretariat Report of the 2016 Russia Trade Policy Review. The Secretariat found that “[t]he State continues to play a major role throughout the Russian economy” and found that state-owned enterprises (SOEs) “still account for about half of GDP with some of the largest SOEs occupying a dominant position in key sectors such as banking, transport and energy.”<sup>139</sup> Despite a plan by the Russian government to withdraw the state from all SOEs (with a few exceptions) by 2016, “the majority of large transactions were delayed because of the unfavourable market situation.”<sup>140</sup> The 2019 Index of Economic Freedom reported that Russia’s “private sector has been marginalized by structural and institutional constraints caused by ever-growing government encroachment into the marketplace. Large state-owned institutions and an inefficient public sector dominate the economy.”<sup>141</sup>

In the years since the 2016 Secretariat Report, little progress has been made to reduce Russia’s protectionist measures and decrease the state’s involvement in the market, despite recent comments at the 2019 BRICS annual summit by President Putin that criticized politically-motivated protectionism and asserted that Russia was not enacting such

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135. See *The Case for Open Trade*, WTO, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact3\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact3_e.htm) (last visited Jan. 11, 2020).

136. *Id.*

137. *Id.*

138. *Id.*

139. *Report by the Secretariat*, *supra* note 9, at 14.

140. *Id.* at 14.

141. RUSSIA, 2019 INDEX OF ECONOMIC FREEDOM, THE HERITAGE FOUND. [hereinafter THE HERITAGE FOUND.], <https://www.heritage.org/index/pdf/2019/countries/russia.pdf> (last visited Aug. 24, 2020).

measures.<sup>142</sup> Some research shows that, in 2019, Russia controlled up to seventy percent of its economy.<sup>143</sup> Russia's control might be best seen through recent regulation of technology; for example, in November 2019, the Russian parliament passed legislation that banned the sale of devices, such as computers and smart phones, that did not have pre-installed Russian software.<sup>144</sup>

This should be troubling to WTO members, including the United States, because Russia's steps away from a market economy defeats the principle of freer trade. Allowing Russia to maintain such a high level of involvement in its economy while remaining a member of the WTO with access to all of the benefits of membership thwarts fairness and makes it more difficult for other WTO members to trust and trade freely with Russia. Ultimately, if the core principles of the WTO are abused and not enforced, the structure of the WTO will crumble.

Increased protectionism should also be troubling to Russian citizens. Since 2014 when President Putin doubled down on his protectionist efforts, Russia has seen "a sharp rise in prices, an extra \$6.9 billion a year spent on food, and limited benefit in terms of increased production."<sup>145</sup> Elina Ribakova, deputy chief economist at the Institute of International Economics, warned: "The lesson from this sanctions and isolation experience for others is don't do it. . . . A large, complex emerging economy like Russia can still benefit from a lot of productivity spillovers and is better off being integrated in global markets."<sup>146</sup> Russia's continuing protectionist measures harm both the international trading system and Russian citizens.

### 3. Predictability

Through measures that increase predictability, the WTO believes that there will be greater trust between WTO members which will help

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142. See Jake Spring & Vladimir Soldatkin, *BRICS Leaders Rail Against 'Bullying' Protectionism*, REUTERS (Nov. 13, 2019), <https://in.reuters.com/article/brics-summit/brics-leaders-rail-against-bullying-protectionism-idINKBN1XN23Z>.

143. See, e.g., Nini Arshakuni & Natasha Yefimova-Trilling, *What Is the State's Share in Russia's Economy?*, RUSSIA MATTERS (June 26, 2019), <https://www.russiamatters.org/analysis/what-states-share-russias-economy>.

144. James Rodgers, *Russia in 2019: Testing the Limits of Technology*, FORBES (Dec. 20, 2019), <https://www.forbes.com/sites/jamesrodgerseurope/2019/12/20/russia-in-2019-testing-the-limits-of-technology/#7d515bd75b74>.

145. Aine Quinn, *Putin's Costly Protectionism Experiment Is a Lesson for Trump*, BLOOMBERG (Oct. 1, 2019), <https://www.bloomberg.com/news/articles/2019-10-01/putin-s-costly-protectionism-experiment-is-a-lesson-for-trump>.

146. *Id.*

to stabilize and strengthen the international trading system. The two main measures on which the WTO focuses for predictability are bindings and transparency. Bindings occur “when countries agree to open their markets for goods or services” and set relevant ceilings on tariff rates.<sup>147</sup> These bindings are enforced and changed through negotiations with other members and through notifications to the WTO. These notifications also are required in order to enhance transparency. Calling for notifications increases the clarity of a country’s trade policies and makes it easier for other countries to rely on such measures.<sup>148</sup> Additionally, the TPRM measures transparency, as well as exposes a country’s lack of transparency to other members.

To its credit, Russia has complied with the TPRM, as evidenced by its thorough participation in 2016. However, Russia has not been as agreeable in adhering to notifications requirements. In the Report of the Working Party on the Accession of the Russian Federation to the World Trade Organization, Russia agreed to adhere to the deadlines of submitting initial notifications by the date of its accession, with some exceptions.<sup>149</sup> Russia also agreed to establish formal procedures for giving notices and comments for proposed measures for a range of topics, including on measures for trade in goods<sup>150</sup> and on decisions made regarding trade issues.<sup>151</sup>

Russia did comply with some of these commitments: “Russia provided the required initial notifications as part of the WTO review of its trade regime” and “provided to the WTO all the initial notifications which it committed to provide in the [Report of the Working Party on the Accession of the Russian Federation to the World Trade Organization].”<sup>152</sup> However, Russia has failed to provide all the required continuous notifications. For example, “the United States has submitted multiple rounds of questions, prompting Russia to provide further details on certain investment incentive programs, certain subsidy programs, including numerous subsidy programs identified by the United States that Russia did not notify.”<sup>153</sup> Due to frustration with Russia’s lack of transparency, the United States circulated a Draft Ministerial Decision, “Procedures to Enhance Transparency and Strengthen Notification under WTO Agreements,” in October

147. *Principles of the Trading System*, *supra* note 128.

148. *Id.*

149. *Report of the Working Party*, *supra* note 65, at 362.

150. *Id.*

151. *Id.* at 360.

152. *2018 USTR Report*, *supra* note 122, at 53.

153. *Id.* at 54.



2017 “which would allow for the imposition of administrative consequences where a member does not fulfill notification commitments.”<sup>154</sup> No formal action has yet been taken on that Draft.

Many countries have broader concerns about Russia’s transparency, which is reflected in the annual Corruption Perceptions Index. The 2018 Index ranked Russia 138 out of 180 countries in terms of public sector corruption; Russia’s score has been stagnant for the past several years.<sup>155</sup> Increased corruption leads to decreased transparency which, in terms of the WTO, makes the trading market less predictable. If WTO members cannot easily predict what a fellow member will do, members will have less trust and will be more reluctant to engage in trading relationships with each other. The upcoming Trade Policy Review will be an important gauge of Russia’s willingness to be open and honest about its policies and objectives.

#### 4. Promotion of Fair Competition

A cousin to the MFN and national treatment principles is the promotion of fair competition principle. A main goal of the WTO is to bolster fair trade conditions, which it seeks to do through many of its agreements that “aim to support fair competition.”<sup>156</sup> Through these agreements, the WTO “discourag[es] ‘unfair’ practices, such as export subsidies and dumping products at below cost to gain market share.”<sup>157</sup> The WTO seeks to be flexible according to the needs of each member by allowing tariffs and occasionally other forms of protection, but overall, the system seeks fairness, if not always equality.

An important aspect of securing fair competition are rules on subsidies.<sup>158</sup> Russia has a significant number of subsidy programs, many of which are in opposition to accession commitments.<sup>159</sup> One illustrative example is oil subsidies and gas regulation. During the accession negotiations, many WTO members expressed concern over Russia’s oil and gas policies and worried about the unfair competition that Russia created by providing subsidies to the sector and regulating prices of gas.<sup>160</sup> Russia asserted that “[t]he basic goal of competition policy in the Russian Federation was to create a favourable climate for enterprises,

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154. *Id.*

155. *Corruption Perceptions Index 2018, supra* note 99.

156. *Principles of the Trading System, supra* note 128.

157. *Id.*

158. *Id.*

159. *See, e.g., 2018 USTR Report, supra* note 122, at 29–30.

160. *Report of the Working Party, supra* note 65, at 23–32.

and the facilitation of competition and efficient functioning of the markets by preventing, restraining and eliminating monopolistic and anti-competitive practices among economic operators.”<sup>161</sup> While Russia was allowed to continue its regulatory regime for domestic pricing of natural gas, it did still have to apply certain price controls.<sup>162</sup> However, the United States has found that “Russia’s progress in meeting this commitment appears to be modest and uneven.”<sup>163</sup> This issue also highlights problems with Russia’s adherence to the predictability principle because without notifications from Russia it is difficult for outside parties to ascertain the current policy. But according to U.S. stakeholders, “it appears that the domestic price for industrial users may be below export prices.”<sup>164</sup> Further, in September 2019, Russia announced that the government would “provide 1.6 trillion roubles (\$25 billion) in subsidies for the oil sector” in 2020.<sup>165</sup> Such measures are unfair and undermine the promotion of competition, which increases the difficulty of trading with Russia.

##### 5. Encouragement of Development and Economic Reform

While the WTO does give developing countries “more time to adjust, greater flexibility, and special privileges,”<sup>166</sup> Russia is not among the list of countries the WTO classifies as “least-developed.”<sup>167</sup> Thus, Russia is expected to develop and modernize its economy as a WTO member. But in the few years since the 2016 Trade Policy Review, the Russian economy has made little progress towards greater marketization.<sup>168</sup>

The Index of Economic Freedom has charted each country’s economic freedom for the past twenty-five years, defining economic freedom as “the fundamental right of every human to control his or her own labor and property.”<sup>169</sup> Through analyzing four key categories

161. *Id.* at 32–33.

162. *Id.* at 32.

163. *2018 USTR Report, supra* note 122, at 33.

164. *Id.*

165. Maria Kiselyova, *Russian Oil Subsidies Will Total 1.6 Trln Roubles Next Year – Finmin*, REUTERS (Sep. 25, 2019), <https://www.reuters.com/article/russia-oil-subsidies-idAFR4N26B013>.

166. *Principles of the Trading System, supra* note 128.

167. *Least-Developed Countries*, WTO, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org7\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org7_e.htm) (last visited Jan. 9, 2020).

168. The current form of Russia’s economy is analyzed here in a general sense, and not necessarily for purposes of U.S. antidumping law (with its six-part test) or for any other specific purpose.

169. *About the Index, 2020 Index of Economic Freedom*, THE HERITAGE FOUND., <https://www.heritage.org/index/about> (last visited Jan. 10, 2020).

(rule of law, government size, regulatory efficiency, and open markets), this Index provides a snapshot of the progress of each economy and each country's freedom in relation to the world.<sup>170</sup> The 2019 Index gave Russia an "economic freedom score [of] 58.9, making its economy the 98<sup>th</sup> freest."<sup>171</sup> Additionally, on a scale of Free, Mostly Free, Moderately Free, Mostly Unfree, and Repressed, Russia's economic status is "mostly unfree."<sup>172</sup>

The Index reports that "Russia's transition from a centrally planned economy to a more market-based system" has been "delay[ed]" due to increasing statist, nationalist, and protectionist economic policies, such as deeper government involvement in the private sector, as a result of the conflicts with the West.<sup>173</sup> Notably, the Index reports that, from 2018 to 2019, Russia dropped 1.6 points in the category of Trade Freedom.<sup>174</sup> This could be attributed to the 225 nontariff measures in force in Russia.<sup>175</sup>

Nonetheless, despite Russia's ranking in the bottom half of the world, the Index does show that Russia's economic freedom has improved, albeit minimally, in recent years. Russia's score dipped to an eight-year low in 2016 to 50.6, likely a result of sanctions and financial troubles, but then made a large gain to 57.1 in 2017. In 2018, Russia's score rose again to 58.2.<sup>176</sup> Thus, there is a strong argument that Russia's economy is modernizing as it is becoming more free. However, even at its current score of 58.9, Russia is still in the "Mostly Unfree" category. Further, since Russia's WTO accession in 2012 when it first pledged to modernize its economy, its economic freedom score had stagnated, averaging a score of 51.4 from 2012 to 2015, and then experienced the dip in economic freedom in 2016 to 50.6.<sup>177</sup>

Another indication of an improving economy and an ability to participate in the international trade arena is global competitiveness. Russia embraced this principle in its 2016 TPRM policy statement, explaining

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170. *Id.*

171. THE HERITAGE FOUND., *supra* note 141.

172. *Id.* For context, on this scale the United States is "Mostly Free," Ukraine is "Mostly Unfree," Latvia is "Mostly Free," and Hong Kong leads the world at the top of the "Free" category (the 2019 report was completed before the escalation of the 2019 Hong Kong protests, which may change future scores).

173. *Id.*

174. *Id.*

175. *Id.*

176. *Graph the Data, 2020 Index of Economic Freedom*, THE HERITAGE FOUND., <https://www.heritage.org/index/visualize> (last visited Jan. 12, 2020).

177. *Id.*

that creating a “competitive economy based on an innovative model of development”<sup>178</sup> was among its chief goals moving forward. But since that claim in 2016, Russia’s competitiveness has plateaued.

The World Economic Forum releases the Global Competitiveness Index each year as an “economic compass” that measures the national economies of approximately 140 states, using four main buckets (enabling environment, human capital, markets, and innovation ecosystem) to determine the competitiveness and productivity of each economy.<sup>179</sup> The World Economic Forum defines competitiveness as “the set of institutions, policies and factors that determine the level of productivity.”<sup>180</sup> Since Russia became a member of the WTO in 2012 until the year after the release of the 2016 Trade Policy Review, Russia’s global competitiveness was on an upward trajectory: from 2013 until 2017, Russia ranked sixty-fourth,<sup>181</sup> fifty-third,<sup>182</sup> forty-fifth,<sup>183</sup> forty-third,<sup>184</sup> and then thirty-eighth,<sup>185</sup> respectively, in the world rankings.

However, despite Russia setting a goal with the WTO in 2016 to increase its global competitiveness, it has since plateaued. In the 2018 Index, Russia moved to forty-third, and remained there in the 2019 Index.<sup>186</sup> The World Economic Forum explained that Russia and its Eurasian neighbors need an increased focus on “financial development and innovation capability.”<sup>187</sup> Additionally, Russia ranked “outside the top 100 in terms of corruption, openness to international trade and

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178. *Report by Russian Federation*, *supra* note 96, at 14.

179. KLAUS SCHWAB, WORLD ECON. FORUM, THE GLOBAL COMPETITIVENESS REPORT 2 (2019) [hereinafter *2019 Competitiveness Report*], [http://www3.weforum.org/docs/WEF\\_TheGlobalCompetitivenessReport2019.pdf](http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf).

180. *Id.* at xiii.

181. KLAUS SCHWAB, WORLD ECON. FORUM, THE GLOBAL COMPETITIVENESS REPORT 2013-2014 326 (2013), [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2013-14.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf).

182. KLAUS SCHWAB, WORLD ECON. FORUM, THE GLOBAL COMPETITIVENESS REPORT 2014-2015 320 (2014), [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2014-15.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2014-15.pdf).

183. KLAUS SCHWAB, WORLD ECON. FORUM, THE GLOBAL COMPETITIVENESS REPORT 2015-2016 306 (2015), [http://www3.weforum.org/docs/gcr/2015-2016/Global\\_Competitiveness\\_Report\\_2015-2016.pdf](http://www3.weforum.org/docs/gcr/2015-2016/Global_Competitiveness_Report_2015-2016.pdf).

184. KLAUS SCHWAB, WORLD ECON. FORUM, THE GLOBAL COMPETITIVENESS REPORT 2016-2017 306 (2016), [http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017\\_FINAL.pdf](http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf).

185. KLAUS SCHWAB, WORLD ECON. FORUM, THE GLOBAL COMPETITIVENESS REPORT 2017-2018 248 (2017), <http://www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017%E2%80%932018.pdf>.

186. *2019 Competitiveness Report*, *supra* note 179, at 482.

187. *Id.* at ix.

access to finance for entrepreneurs” in the 2019 Index.<sup>188</sup> These measures hardly seem to be fostering improvement in Russia’s trading ability.

Of course, ranking forty-third is still in the top half of the world’s economies for competitiveness. Despite a dip after 2017 and a plateau in 2018 and 2019, Russia has not slipped far, and certainly is much improved since its sixty-fourth place in 2013 (and worse in earlier years). But an active member of the WTO, who makes commitments to advance their global competitiveness, needs to show greater progress in strengthening its economy. Russia has not made requisite economic reforms and has instead resorted to protectionist trade policies and state involvement in the private sector which has left a dearth of economic development. If the principles and rules of the WTO are not encouraging and demanding Russia to improve, there will be few reasons for Russia to maintain an active WTO membership.

### B. *Fulfillment of Specific Commitments*

As discussed above, Russia made many individual commitments when it joined the WTO; from the U.S. perspective, six were most important. As each state must make certain concessions to bring its trade policy into alignment with the WTO upon accession, these commitments from Russia must be closely analyzed by the WTO during the upcoming 2021 Trade Policy Review, and individual member states should also consider their assessment of Russia’s fulfillment of these commitments.

#### 1. Reduction in Restrictions on Imports of Manufactured Goods

From the United States’ and Western Europe’s perspective, Russia has not sufficiently enabled trade in manufactured goods to meet Russia’s accession commitments. The United States reported that Russia’s tariff commitments fluctuate, and “non-tariff measures appear to pose the greatest barriers to trade.”<sup>189</sup> The United States noted that Russia’s customs and licensing systems are burdensome and not transparent, making it difficult to export U.S. products to Russia. Likewise, the European Union has found that Russia is not playing fair with importing manufactured goods. For example, in mid-2016 the

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188. *Russia Going Nowhere in Global Competitiveness Rankings*, THE MOSCOW TIMES (Oct. 9, 2019), <https://www.themoscowtimes.com/2019/10/09/russia-going-nowhere-in-global-competitiveness-rankings-a67655>.

189. *2018 USTR Report*, *supra* note 122, at 3.

WTO Dispute Settlement Board (DSB) resolved a case in which the European Union challenged Russian tariff rates.<sup>190</sup> The DSB found that Russia was violating its commitment to “not apply customs duties in excess of the ‘bound rates’” to which Russia committed due to “customs duties on paper, refrigerators and palm oil [that were] inconsistent with its WTO commitments.”<sup>191</sup>

## 2. Reduction in Restrictions on Imports of Agricultural Goods

As with manufactured goods, Russia has not adequately reduced restrictions on imports of agricultural goods. As discussed above in Part IV.A.1, Russia maintains a strict import ban of agricultural products from several countries. This is in violation of Russia’s commitment to reduce restrictions on imports of agricultural goods. In addition, many WTO members, including the United States, have argued that Russia is not adhering to its commitments to ensure its sanitary and phytosanitary requirements conform to international standards.<sup>192</sup> If the international community cannot rely on Russia to meet its own commitments and participate fairly in the trading system, Russia is in violation of both fundamental WTO principles and its specific commitments.

## 3. Abolish High Export Duties

Russia pledged to reduce or eliminate export duties, in line with the MFN principle.<sup>193</sup> Russia has largely conformed to its commitments, removing export licensing requirements for a number of goods and eliminating export restrictions for another group of goods.<sup>194</sup> However, Russia has increased its use of export controls for certain products that Russia considers most important for its domestic market.<sup>195</sup> Such a distinction could be considered as allowable by the WTO if it is found to be necessary for national security interests, but this is not an issue that the WTO has yet addressed or resolved. Allowing a member to reserve the right to issue export duties on products of its own choosing seems

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190. *Russia – Tariff Treatment of Certain Agricultural and Manufacturing Products*, WTO Doc. WT/DS 485, [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds485\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds485_e.htm) (last visited Jan. 13, 2020).

191. *WTO Confirms Russian Import Duties Violate WTO Rules*, EUR. COMM’N (Aug. 12, 2016), <https://trade.ec.europa.eu/doclib/press/index.cfm?id=1534>.

192. *2018 USTR Report*, *supra* note 122, at 4.

193. *Report of the Working Party*, *supra* note 65, at 151.

194. *2018 USTR Report*, *supra* note 122, at 18.

195. *Id.*

to be in opposition to core WTO principles of MFN, national treatment, and predictability.

#### 4. Open Services Sector

Russia made substantial promises to open many of its service sectors, including financial services, energy, and telecommunications, during membership negotiations.<sup>196</sup> Fortunately, Russia had made significant progress in this area and has largely upheld its promises. Overall, a valuable indicator of the openness of a country's markets is the Doing Business ranking from the World Bank, which "provides objective measures of business regulations and their enforcement."<sup>197</sup> While this measure does expand beyond just the openness of the services sector, it does reflect on the commitment of the Russian government to enact regulations that support the ease of doing business, regardless of sector, in the country. In the 2020 rankings, Russia ranked 28<sup>th</sup> out of 190 countries,<sup>198</sup> which is an improvement from past years.<sup>199</sup> These rankings show that Russia is working towards opening its markets and making it easier to do business in Russia.

Additionally, the United States Trade Representative's 2018 review of Russia's WTO membership had predominantly positive remarks regarding the openness of Russia's services sector. The only real concerns expressed were regarding audio-visual and media services in Russia, which the US complained that, despite agreements to allow foreign-owned companies to operate freely, "Russia has banned advertisements on pay cable and satellite channels," "Russia adopted a law limiting foreign ownership of large online streaming companies," and "Russia began enforcing a law (adopted in 2014) that limits foreign ownership of Russian media assets to 20 percent."<sup>200</sup> Nonetheless, while additional improvements could be made, this is one area in which there is less cause for concern.

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196. *Report of the Working Party*, *supra* note 65, at 347–57.

197. DOING BUSINESS 2020: COMPARING BUSINESS REGULATION IN 190 ECONOMIES - ECONOMY PROFILE OF RUSSIAN FEDERATION 3 (2019), <http://documents.worldbank.org/curated/en/184231575291681006/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies-Economy-Profile-of-Russian-Federation.pdf>.

198. *Id.* at 4.

199. WBG, *Ease of Doing Business in Russian Federation*, *Doing Business: Measuring Business Regulations*, <https://www.doingbusiness.org/en/data/exploreconomies/russia> (last visited Jan. 13, 2020).

200. *2018 USTR Report*, *supra* note 122, at 42.

5. Adhere to the TRIPS Agreement

Even before Russia became a WTO member, the United States and others were concerned about Russia's protection of intellectual property.<sup>201</sup> Nonetheless, Russia agreed to the TRIPS Agreement when it acceded to the WTO,<sup>202</sup> and even amended certain domestic laws regarding intellectual property in order to adhere to WTO commitments.<sup>203</sup> Moreover, Russia asserted at the time of accession that "the Constitution of the Russian Federation established basic rights in the field of intellectual property in the Russian Federation."<sup>204</sup> But even though the Russian Constitution "guarantee[s]" "everyone" "the freedom of ideas and speech," "the right to freely look for, receive, transmit, produce and distribute information by any legal way," and "the freedom of mass communication,"<sup>205</sup> the same article of the Constitution disallows "[t]he propaganda or agitation instigating social, racial, national or religious hatred and strife" and "[t]he propaganda of social, racial, national, religious or linguistic supremacy,"<sup>206</sup> which Russia uses to justify intrusive government measures.

Indeed, instead of focusing on enlarging protections for "the freedom of ideas and speech,"<sup>207</sup> the Russian government has focused on enlarging the power of the government through the guise of protecting its citizens from harmful propaganda.<sup>208</sup> This disabuse of intellectual property and freedom of expression is also seen in the international trading arena. Ever since Russia gained WTO membership, the Office of the United States Trade Representative has held Russia on its Priority Watch List as a country "that engage[s] in substantial intellectual property rights (IPR) violations."<sup>209</sup> While Russia has made many advancements towards greater protection of intellectual property, such as passing laws to decrease online piracy and imposing penalties for

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201. See COOPER, *supra* note 26, at 11.

202. *Report of the Working Party*, *supra* note 65, at 309–44.

203. *2018 USTR Report*, *supra* note 122, at 43.

204. *Report of the Working Party*, *supra* note 65, at 309.

205. KONSTITUTSIYA ROSSIISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 29, cl. 1, 4, 5 (Russ.).

206. *Id.* art. 29, cl. 2.

207. *Id.* art. 29, cl. 1.

208. See YULIA GORBUNOVA, ONLINE AND ON ALL FRONTS: RUSSIA'S ASSAULT ON FREEDOM OF EXPRESSION (Tanya Lokshina & Rachel Denber eds., 2017), <https://www.hrw.org/report/2017/07/18/online-and-all-fronts/russias-assault-freedom-expression>.

209. *Russia - Protecting Intellectual Property*, INT'L TRADE ADMIN. (Oct. 13, 2019), <https://www.trade.gov/knowledge-product/russia-protecting-intellectual-property>.



trademark counterfeiting,<sup>210</sup> there are insufficient safeguards. The USTR has found that there are three major concerns with Russia's protection of intellectual property: online piracy, end-user software piracy, and sales of counterfeit goods.<sup>211</sup> The United States, in its recent review of Russia's WTO membership, discussed that Russia's main problem is not necessarily lack of legislation, as Russia has at least passed initial laws in response to WTO commitments, but rather the problem is enforcement. The United States established a United States-Russian Federation Intellectual Property Rights Working Group to address the issues, but unfortunately, "due to the current political situation, bilateral engagement with Russia has been put on hold since early 2014."<sup>212</sup> Russia deserves some praise for taking the introductory steps towards fulfilling its commitment to protect intellectual property, but the WTO needs to address if Russia's actions are sufficient to entitle them to ongoing WTO membership.

#### 6. Terminate the Domestic Auto Production Program

During the accession process, both the United States and the European Union expressed concern with Russia's program that promoted domestic auto production; they "argued that the program violates the prohibition against local-content requirements under the [Trade-Related Investment Measures (TRIMS)] agreement."<sup>213</sup> Russia committed to ending the program by 2018, and in July 2018 it upheld that commitment by terminating the automotive investment incentive programs.<sup>214</sup> However, "within a week [of ending the programs they] announced state support programs conditioned on local content and production quotas."<sup>215</sup> It appears that Russia's growing number of SOEs, as discussed above, is allowing Russia to broaden its influence and, as it did with the domestic auto production program, avoid WTO commitments by channeling resources through the SOEs.<sup>216</sup> Thus, while it appears by the letter of the law that Russia met this specific commitment, it does not seem that Russia is keeping with the spirit of the law of reducing state influence in the economy.

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210. 2018 USTR Report, *supra* note 122, at 44.

211. *Id.* at 46.

212. *Id.* at 49.

213. COOPER, *supra* note 26, at 12.

214. 2018 USTR Report, *supra* note 122, at 5.

215. *Id.*

216. *See id.* at 31.

V. CONCLUSION

Russia's accession to the WTO was a momentous occasion for the international community. A country with great natural resources and land mass, substantial political power, and a burgeoning economy was an essential addition to the WTO if the organization wanted to increase its clout and significance. At the outset, Russia's agreements to adhere to the fundamental principles of the WTO and its willingness to make specific commitments were promising. Nonetheless, eight years after Russia's accession, there are still serious problems with Russia's commitment to be a part of the world trading system, such as Russia's continued negative countermeasures to sanctions (especially the ban on agricultural imports), the increasing number of SOEs, and the overall lack of economic reform or development.

If the WTO does not more strictly enforce its rules and punish members that do not fulfill obligations, the WTO itself will be cheapened and will be less attractive to future members. Examples of this can already be seen in the increasing number of regional and bilateral trade agreements, as states are not trusting the WTO and are not working with the greater international community. If the WTO fails to act and defend its system, other systems will inevitably rise up to replace it. For example, Liu Jingdong, the Vice Chairman of the WTO Law Research Society of China Law Society, recently argued that "[f]or a long time, developing countries including [China, Russia, India, and Brazil] severely lack speaking right[s] and rule-making right[s] in terms of the WTO regime," which has led to a crisis within the WTO and the need for (in her example) Chinese-led reforms "so as to adapt to the new situation of international trade development."<sup>217</sup> Emerging economies, such as Russia, will either need to conform to the standards of the WTO, or the WTO will risk being replaced or substantially reformed.

This critique of Russia is not to say that the other WTO members are model members; on the contrary, Russia is just one example out of many. The United States and China are obvious examples of other states that need to be reprimanded by the WTO or need to face international consequences for their actions.<sup>218</sup> Nevertheless, Russia illustrates the need for greater enforcement of WTO standards. Especially after

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217. Jingdong Liu, *Research on the Necessity of the WTO Reform and the Design of Reform Issues*, 9 J. WTO & CHINA 3, 4, 8 (2019).

218. Consider, for example, both countries' faults in the U.S.-China trade war. See, e.g., Josh Zumbrun, Feliz Solomon & Jeffrey Lewis, *U.S.-China Trade War Reshaped Global Commerce*, WALL STREET J. (Feb. 9, 2020), <https://www.wsj.com/articles/u-s-china-trade-war-reshaped-global-commerce-11581244201>.

### *A CALL TO ACTION*

such a long accession process, during which Russia made many reforms in order to comply with the WTO, Russia must adhere more fully to the standards set and work within the confines it agreed to during accession. While the WTO itself has a weak ability to reprimand members, other members can and should utilize the dispute settlement mechanism to raise complaints against Russia and force compliance. At the very least, the WTO must take advantage of Russia's next Trade Policy Review to shed light on Russia's behavior. The Trade Policy Review, for any country, is one of the WTO's few opportunities to expose the ways in which member states are not complying with their obligations and commitments. For the WTO to continue to be taken seriously as an effective, powerful international body, it needs to more vigorously enforce its standards and chastise disobedient members. Certainly, the consequences of allowing Russia, or any other member, to cheat the system will cause ripples that will weaken the WTO as a whole.