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# Introduction

After 18 years of negotiations, the World Trade Organization (WTO) unanimously accepted Russia as a member at its December 2011 ministerial conference.<sup>1</sup> The Russian State Duma has until June 15, 2012, to ratify its accession. Thirty days after Russia's notification to the WTO of its ratification, Russia will become the 154th member of the WTO.

Russia's accession will strengthen the global trading system and yield potentially large benefits to the United States. However, US benefits from Russia's accession are not automatic. While congressional approval is not necessary for completion of Russian accession to the WTO, the US Congress needs to grant Russia permanent normal trade relations (PNTR) status by repealing the Jackson-Vanik Amendment so that US companies can take full advantage of access to the Russian market for both trade and investment.

The Jackson-Vanik Amendment to the US Trade Act of 1974 was enacted in the midst of the Cold War, when the Soviet Union and other communist countries generated outrage by barring Jews from emigrating. It was sponsored by Senator Henry M. ("Scoop") Jackson of Washington and Representative Charles Vanik of Ohio. In order for Russian exports to enter the US market at normal tariff rates, signifying normal trading relations, the US president must either grant an annual "waiver" or issue a semiannual report certifying by June 30 and December 31 of each year that Russia is in compliance with the freedom of emigration provisions in Section 402 of Title IV of the Trade Act of 1974 (more commonly known as the Jackson-Vanik Amendment). The

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1. The last impediment was removed on November 9, 2011, when Russia and Georgia concluded an agreement on monitoring trade flows across their disputed border. The WTO Working Party, which oversaw the negotiations, then approved Russian accession on November 10 (WTO 2011).

statute specifies that free emigration is necessary for (a) normal trading relations with the United States; (b) accessing US government financial facilities; and (c) concluding a bilateral trade agreement with the United States. If Russia were not in compliance, it would be subject to Smoot-Hawley tariff rates—Depression-era tariffs that range up to 50 percent ad valorem—and most Russian imports would be excluded from the US market.

Free emigration for Russian Jews has never been in question since Russia became independent in 1991 and transitioned to a market economy, and the country has been granted a waiver every year since then. Congress has never attempted to pass a joint resolution of disapproval of a presidential determination of Russia’s compliance (US-Russia Business Council and AmCham Russia 2005). Times have changed and the amendment has not been a necessary tool of leverage vis-à-vis Russia for many years.

A number of people seem to be under the mistaken impression that Jackson-Vanik graduation/PNTR is a necessary prerequisite for a country’s WTO accession, but that is not the case. Originally, the Jackson-Vanik Amendment applied to almost all communist countries. Gradually, they received first a waiver, then were declared not to be in violation, and finally most were “graduated,” in correspondence with their WTO accession—namely Albania, Armenia, Bulgaria, China, Czechoslovakia, Estonia, Georgia, Hungary, Kyrgyzstan, Latvia, Lithuania, Mongolia, Romania, Ukraine, and Vietnam. However, several countries joined the WTO without having previously secured PNTR from the United States, notably Mongolia, Kyrgyzstan, Georgia, Moldova, Romania, and Armenia. All but Moldova were subsequently graduated by Congress from the Jackson-Vanik Amendment (Pregelj 2005). In an exceptional case, Ukraine, which became a WTO member in 2008, was graduated by Congress in advance of its WTO accession in March 2006. Moldova is the only WTO member still subject to annual determination of “nonviolation” of the Jackson-Vanik Amendment.<sup>2</sup> This means that the United States extends normal trading relations status to Moldova’s exports year by year and Moldova does likewise for US exports. While the two countries do not apply the body of the WTO law to their trade relations, they have little trade and practically no trade friction. But Russia is no Moldova and will not passively accept a year-by-year extension of normal trade relations with the United States. Both have substantial trade and potential for much more, and Russia will not quietly accept US discrimination.

Currently the basic agreement for trade between the United States and Russia is the Bilateral Trade Relations Agreement reached in 1991 between the United States and the Soviet Union, which provides for mutual extension of most favored nation benefits, now known as normal trading relations. It was adjusted to apply to Russia in 1992 after the Russian Federation was established. However, this old bilateral agreement covers only part of the trade and

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2. The Jackson-Vanik Amendment still applies to Azerbaijan, Russia, Belarus, Kazakhstan, Tajikistan, Turkmenistan, and Uzbekistan, which have not yet joined the WTO.

none of the investment. After 13 years of negotiations, on November 19, 2006, Russia reached a much more extensive bilateral agreement with the United States on market access conditions for the former's accession to the WTO (see box 3.1 in chapter 3).

Subsequently, negotiators with the Office of the US Trade Representative (USTR) continued to engage their Russian counterparts on implementation of preaccession commitments agreed to under the 2006 bilateral agreement and worked on multilateral issues related to WTO accession with other trading partners who are also members of the Working Party on Russia's WTO accession. While the process significantly slowed between 2008 and 2010 due to Russia's war with Georgia in August 2008 and the establishment of the Russia-Kazakhstan-Belarus Customs Union, Presidents Barack Obama and Dmitri Medvedev reenergized Russia's accession bid in June 2010 with a commitment to resolving bilateral issues by September 30, 2010. This led to substantial progress in the negotiations, which were concluded on November 10, 2011, and with unanimous consent of the membership, Russia joined the WTO on December 16, 2011.

President Obama, in a statement issued November 10 after the WTO Working Party's preliminary approval of Russian accession, said he looked forward to working with Congress "to end the application of the Jackson-Vanik Amendment to Russia in order to ensure that American firms and American exporters will enjoy the same benefits of Russian WTO membership as their international competitors."<sup>3</sup> He emphasized the importance of congressional action in his State of the Union address on January 24, 2012: "And this Congress should make sure that no foreign company has an advantage over American manufacturing when it comes to accessing finance or new markets like Russia."<sup>4</sup>

Passage of PNTR, thereby overriding the Jackson-Vanik Amendment, would be a political statement symbolizing Russia's treatment as a *permanent normal trading* country in US trade. Furthermore, it would create a more stable climate for doing business and, most important, be a step toward welcoming Russia into the WTO, thus conveying the right political tone to the overall tenor of US-Russia relations. A vote against PNTR, or no vote at all, has implications that go far beyond the benefits of holding on to a relic of past confrontation. It would mean that the US administration—with congressional oversight—will continue its semiannual reviews of Russian policies, holding out the distant threat of terminating the 1992 Bilateral Trade Agreement and imposing Smoot-Hawley tariffs on Russian imports. While distant, the threat would be understood as major discrimination in Moscow and would send the message that the United States is unwilling to embrace the transformation of Russia since the days of the Cold War.

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3. President Barack Obama, Statement on Progress in Russia's WTO Accession Talks, White House, November 10, 2011, [www.whitehouse.gov](http://www.whitehouse.gov) (accessed on February 13, 2012).

4. President Barack Obama, State of the Union Address, White House, January 24, 2012, [www.whitehouse.gov](http://www.whitehouse.gov) (accessed on February 13, 2012).

## Why the United States Should Grant Russia PNTR

Under Article 35 of the General Agreement on Tariffs and Trade (GATT) (incorporated into the WTO), when a country accedes to the WTO, any existing WTO member can decide not to apply WTO terms to the new member, and vice versa. If the United States does not graduate Russia from the Jackson-Vanik Amendment, it would be obliged to invoke the nonapplication clause of the WTO agreement, which it formally did on December 15, 2011, shortly before the WTO accepted Russia as a member, and Russia reciprocated the same day. So long as the United States does not confer PNTR on Russia, even though it continues to waive Jackson-Vanik one year at a time, both the US and Russian nonapplication letters will very likely remain in effect.

In other words, Russia might choose to ignore the terms of the bilateral agreements, even if it formally adhered to them, and would not be obliged to apply the whole fabric of WTO rules to its commercial dealings with the United States. It could pick and choose the WTO obligations that it extends to the United States. Firms located in the United States will likely be denied most of the new market access benefits negotiated by the United States and other governments over the past 18 years. A confrontational tenor will mar US-Russia commercial relations, and US firms and workers will lose out. A negative vote on PNTR hardly sets the tone for a vibrant commercial relationship with Russia.

Fundamentally, the Jackson-Vanik sledgehammer is too big for sensible use: Subjecting US imports from Russia to Smoot-Hawley tariffs would cut off almost all trade. Unlike the International Emergency Economic Powers Act (IEEPA), which authorizes the president to fine-tune economic sanctions according to the objective sought, Jackson-Vanik is an all-or-nothing switch. There are very few foreseeable circumstances in which the United States would want to terminate its 1992 Bilateral Agreement on Trade Relations between the United States and Russia and cease all economic contact with Russia, but if those circumstances arose, the president could invoke IEEPA after Jackson-Vanik is retired through PNTR.

Congressional failure to permanently normalize trade relations would send a clear message of US skepticism that the WTO is a suitable forum for adjudicating commercial relations between the United States and Russia. Russian companies will become wary of the United States, and since US companies would be put at a competitive disadvantage in the ensuing atmosphere of distrust, they would be less able to compete for Russian business. By contrast, if PNTR proponents carry the day, both the WTO and the global agenda of trade and investment liberalization will receive a fresh boost, as Russia is the last major economy to join the WTO. Russia's accession would truly make it the *World Trade Organization*. In turn, the United States will gain three major economic advantages:

- First, our estimates show that US exports of goods and services to Russia could double from \$11 billion in 2011 to \$22 billion by 2017. These gains will be realized as the obligations of the agreement are phased in from

2013 until 2020; the gains will be distributed across the board, from agriculture to manufactures to services. In addition, econometric models indicate that new US export opportunities will also flow from an expansion of US foreign direct investment in the Russian economy, highlighting the importance of the PNTR vote.

- Second, Russia’s adoption of rules on issues ranging from trade-related investment measures to intellectual property protection will add greater certainty to the business environment and “lock in” market access concessions. The “locking in” effect constitutes an important benefit for US firms and workers as it provides greater predictability and ensures that the market will not become more restrictive in the future. By establishing permanent normal trade relations with Russia, the United States can encourage Russia’s efforts to strengthen its fragile legal and economic institutions, the weakness of which poses a major risk to Russia’s long-term progress.
- Third, PNTR will ensure that the best available trade and investment access to the Russian market offered to foreign firms is also offered to US firms. In the event of a “no” vote, the Russian government will very likely give preference to products and services from other nations. America’s commercial competitors in Europe and Asia are already taking steps to enjoy the fruits of Russia’s WTO commitments, some of which were secured by the United States at the negotiating table. In fact, in October 2006, the European Union—a direct US competitor in the Russian market—unveiled a new trade strategy that upgrades Russia to the status of a top priority partner. The strategy document states that Russia has “combinations of market potential and levels of protection which make [the country] of direct interest to the EU” (European Commission 2006). While it is unclear how fast potential EU negotiations with Russia can advance toward a free trade agreement, at the national level individual European countries are already orienting their export promotion machinery to target the Russian market.

In Russia today, liberal and reactionary forces are competing to define the country’s political future. Public opinion studies there show an ambiguous attitude toward globalization and international trade. In 2009, 49 percent of Russians supported Russia’s WTO bid but in 2011, that number was down to 44 percent. In 2011, 27 percent believed that WTO membership “runs contrary to Russia’s interests,” up from 21 percent three years earlier.<sup>5</sup> Russia’s WTO membership and PNTR will help anchor Russia in the West and strengthen the liberal and legally oriented forces in Russia. A substantial part of the Russian elite opposes Russia’s accession to the WTO. These people are connected with the security services and have little contact with the West and desire even less.

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5. “Russians Less Keen on WTO, More Wary of NATO,” *Poll Interfax*, July 25, 2011.

If Russia becomes a member of the WTO and has a WTO-compliant trading relationship with the United States, such forces will be dealt a meaningful setback.

WTO membership will also bring Russia into participation with a substantial body of commercial law (thousands of pages of WTO legal text) and an effective arbitration court (the dispute settlement system of WTO panels and the WTO Appellate Body). Both the WTO and PNTR will help shape Russia's integration into the global economy. While PNTR is mainly a vote to cement US economic access in Russia, it also carries the symbolic significance of US recognition of Russia's economic advances and US intentions to work through commercial differences using the established mechanisms of the WTO.

In sum, the United States gains nothing by postponing PNTR status to Russia. By applying conditional treatment, the United States would be singling out Russia from practically all other WTO members. Russia is now a member of the WTO, regardless of what Congress decides on PNTR. Given the strong market access terms of the 2006 bilateral agreement that the United States has negotiated and other market access commitments that Russia agreed to in multilateral talks, it makes little sense not to take advantage of the full benefits of Russia's WTO accession by granting PNTR to Russia.