

## Crossing Borders, Validating Sovereignty RUSSIA, GEORGIA, AND THE WTO

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Political scientists generally recognize the importance of international regimes, rules, and norms for understanding international interactions. Even in the absence of global enforcement, these factors arguably matter because they frame goals, expectations, and the terms of interaction among international actors. In particular, reputable studies have shown that global economic forces—such as trade—and associated institutions and norms de facto limit state sovereignty and help level the playing field for weaker states to interact more equitably with the “great powers.”

This memo shows how a state—particularly a large and regionally important military power—may strike back, and in more ways than using or “gaming” international institutions and norms to achieve specific policy objectives, as illustrated by political maneuvering at the UN Security Council. Such a state may use international institutions and norms on global issues such as trade—that seemingly erode state sovereignty—to assert its sovereignty and to create or legitimize sovereignty for states with disputed international status. The illustrative case study is Moscow’s official interpretation of the Russia-Georgia deal on bilateral customs administration and trade monitoring signed in late 2011 as part of Russia’s accession to the World Trade Organization (WTO) in 2012. The case study focuses on: (1) the agreement’s text, showing how it may signify the primacy of international rules and norms above state authority; (2) official Russian interpretations of the same text, showing Moscow’s view of the treaty as a tool to promote international recognition of Abkhazia’s and South Ossetia’s independence from Georgia; and (3) implications of this type of major power behavior for monitoring interstate conflict.

### **Free Trade: A Putative Imperative**

Russia and Georgia signed the intergovernmental agreement “On the Basic Principles of the Mechanism of Custom Administration and Monitoring of Trade in Goods” in Geneva on November 9, 2011. In part, it represented Georgia’s acquiescence to Russia joining the WTO. This had been a thorny issue in Russia-Georgia relations, particularly following the August 2008 war and Russia’s recognition of the independence of Abkhazia and South Ossetia, which Tbilisi views as a foreign military occupation within its sovereign territory. Since Georgia, which became a WTO member in 2000, could veto Russia’s accession to the WTO, Tbilisi held a rare card against Moscow.

An impartial analyst looking at the text of the agreement could plausibly view it as a classic case of trade giving conflicting states the incentive to downgrade or bypass contentious security issues and cooperate for mutual benefit. The agreement may be taken as evidence that the rules and norms of international trade gave Moscow and Tbilisi a focal point for cooperation despite the conflict over the sovereignty of Abkhazia and South Ossetia. Thus, according to the document:

- Russia and Georgia adhere to “the standards of the World Trade Organization with a view to making trade easier by implementing the best customs and monitoring practices.”
- Both governments express commitment to international norms favoring the lowering of tariffs and trade barriers.
- The Russian government views joining the WTO as “an opportunity for improving the transparency of its trade data in accordance with ... GATT-94” [General Agreement on Tariffs and Trade 1994 provisions] and agrees to follow WTO data-sharing procedures.<sup>1</sup>

As part of improving transparency, the Russian government agreed to provide its trade data through the WTO’s Electronic Data Exchange System (EDES) and the International Monitoring System (IMS). Russia and Georgia authorized a “Private Neutral Company” –to be identified, contracted, and funded jointly by Russia and Georgia with procedures to be monitored by Switzerland—to obtain EDES data, establish a presence at trade terminals, “manage risks,” and audit reports on trade through these terminals. The two governments also agreed to invite representatives from the designated neutral company to visit the terminals and discuss their experiences and best practices to improve operations.

In addition, Russia and Georgia agreed to apply “electronic seals” and use a GPS/GPRS system “to track the movement of cargos after their passing through trade terminals into the trade corridors.” The agreement designated three such corridors

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<sup>1</sup> “Соглашение между Правительством Российской Федерации и Правительством Грузии об основных принципах механизма таможенного администрирования и мониторинга торговли товарами ” [The Agreement between the Government of the Russian Federation and the Government of Georgia on the Basic Principles of Customs Administration and Monitoring of Trade in Goods], KonsultantPlus [dataset](#) in Russian.

between Russia and Georgia demarcated with the Universal Transverse Mercator (UTM) coordinate system.

Judging by official statements, the Georgian government interpreted the 2011 customs and trade agreement with Russia precisely as if international rules and norms constrained the potentially hostile actions of a stronger power. According to a statement by the Georgian Ministry of Foreign Affairs: “The agreement is an important achievement for Georgia as it enables...the international monitoring of trade between Russia and the whole territory of Georgia, including Abkhazia and the Tskhinvali region/South Ossetia, Georgia. The agreement reflects all elements of monitoring that Georgia has demanded since the onset of the negotiations.”<sup>2</sup> Georgian President Mikheil Saakashvili extended this line of reasoning: “...for the first time after Georgia's independence, international monitoring of the movement of goods will begin within the internationally recognized borders of Georgia.”<sup>3</sup>



*The Zemo Larsi-Kazbegi border crossing point on the Georgian-Russian border will fall under one of the three “trade corridors” set to be established under the agreement. (Photo: Tea Gularidze/Civil.ge)*

### **Turning the Tables: Sovereignty Claims for Russia’s Client States**

Responses by Russian diplomat Alexander Lukashevich on December 23, 2011 to the Interfax news agency reveal Moscow’s strategy for using international rules and norms

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<sup>2</sup> [http://embassy.mfa.gov.ge/index.php?lang\\_id=ENG&sec\\_id=293&info\\_id=13070](http://embassy.mfa.gov.ge/index.php?lang_id=ENG&sec_id=293&info_id=13070)

<sup>3</sup> <http://www.cacianalyst.org/?q=node/5671>

to legitimize the sovereignty of the client states that declared independence from Georgia.<sup>4</sup>

The crucial underlying point that Lukashевич made openly was that Russia signed the agreement because it “completely corresponded to the new realities in the Caucasus after August 2008.” The euphemism “new realities” implies that diplomatic agreements and international rules are secondary to the “realities” of military balances on the ground, specifically Russia’s military defeat of Georgia’s forces in South Ossetia and Abkhazia, the stationing of over 7,000 Russian troops in these territories, and the arrangement of Abkhazia and South Ossetia with Russia to have Russian troops guard their de facto borders with Georgia the same way they protect the borders of the Russian Federation.

Having laid down this conceptual foundation, Lukashевич developed arguments that Russia’s 2011 agreement with Georgia de jure endorsed Abkhazia’s and South Ossetia’s claims to independence and sovereignty.

- The first specific point Lukashевич argued was that the agreement covers only “regional trade” and does not cover “non-trade shipments” – meaning shipments and deployment of Russia’s military equipment in South Ossetia and Abkhazia. This statement also signals that the Kremlin may declare the whole deal invalid if Georgia demands that Russia report its military shipments to these regions using WTO trade monitoring standards and procedures.
- The second point concerned the location of border crossings or “corridors” between Russia and Georgia. Lukashевич emphasized that the treaty established two such corridors through Abkhazia and South Ossetia with Russian terminals in Adler and Nizhniy Zaramag and Georgia’s terminals on the left bank of the Inguri river and north of the town of Gori. Trade flows between these terminals will have to cross Abkhazia and South Ossetia, respectively. This means, according to the Russian foreign ministry, that Russia will report its trade with Abkhazia and South Ossetia under WTO rules and procedures as international trade, separately and on par with its trade with Georgia. According to Lukashевич, compliance with WTO procedures—including provision of trade statistics to EDES and IMS—will thus become “an important attribute of Abkhazia and South Ossetia as independent customs-control territories and of the status of their borders with Georgia as customs borders analogous to the Russian-Georgian border with its crossing at Verkhniy Lars-Kazbegi,” where Russia and Georgia border directly, not through areas with disputed sovereignty status.
- Lukashевич also argued that by signing the 2011 agreement Tbilisi both invalidated Georgia’s law on occupied territories that declares direct international travel and shipments to Abkhazia and South Ossetia as illegal and abrogated, in international legal terms, its earlier stated right to restore Georgia’s

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<sup>4</sup> Available at [www.mid.ru](http://www.mid.ru).

border terminals with Russia at the Psou river (Abkhazia) and Roki Tunnel (South Ossetia).

Another dimension of Moscow's position that Lukashevich articulated is that Russia does not see the 2011 treaty with Georgia as weakening its sovereign rights vis-à-vis international institutions or impose obligations on Abkhazian and South Ossetian authorities to make trade through their territories transparent.

- Lukashevich noted that Russia's obligation under the agreement to provide trade data from its terminals with Georgia to a "neutral third party" does not give the latter access rights to the data. The Russian government, Lukashevich noted, would act on the basis of Russia's customs rules and norms determining the data it provides. Moreover, Lukashevich emphasized that any data provided to the neutral third party is confidential and thus will not be available to Tbilisi if Moscow restricts it.<sup>5</sup>
- While the "neutral third party" could give recommendations to Russian customs officials on "best practices," it has no right, according to Lukashevich, to "interfere with the work" of Russia's customs agencies.
- The agreement's provision for electronic tagging and GPS tracking of shipments, Lukashevich stated, does not imply that "Russia or Georgia could be held responsible for these tags to be operational on the territory of Abkhazia and South Ossetia, since these states are not party to the aforementioned agreement."

### **Significant Implications**

Russia's interpretations of the 2011 customs and trade agreement with Georgia first and foremost mean that Moscow does not see its accession to WTO—including Georgia's non-use of its veto power to block it—as constraining its right to use military power against Georgia. The signing of the treaty, in fact, validates the calculus that international rules and norms would ultimately adjust to "realities" on the ground and that the latter are determined by military power. Russia's military threat to Georgia's sovereignty remains unchanged after Russia's accession to WTO.

Secondly, comments by Russia's Ministry of Foreign Affairs show that WTO accession enhances Moscow's capacity to plausibly deny hostile motivations toward or intent to use military power against other states, such as Georgia, by couching its arguments in technocratic international-legal terms. The Russian government has followed the same logic elsewhere, arguing that its shipment of military helicopters to

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<sup>5</sup> The treaty itself only requires provision of basic trade data to the WTO datasets—number of customs declaration, exporter/importer names, countries of origin and destination, exit/entry terminals, identification of the means of transportation crossing the border, description of goods, their designated currency and cost, shipment weight, procedure code, and the list of validating documents including certificates and permissions.

the Syrian government was due to an earlier business contract and not part of a policy to help Bashar Assad's regime brutally suppress its opponents.

Thirdly, these interpretations mean that Moscow, regardless of its stated adherence to free trade ideals, is likely to exploit other WTO rules unilaterally—in particular, to argue that its import ban on Georgian wine and mineral water, Georgia's big export revenue earners, is legitimate, as it is based on an official Russian determination that these products are unsanitary. Russia could use WTO health exemptions to require Georgia to prove that it meets the environmental standards of other countries from which Russia imports wine and water.<sup>6</sup> This position is likely to endure at least as long as Vladimir Putin is interested in weakening Georgia's economy in the hope of opening up the prospect of Georgia's pro-Western government being replaced by one favoring closer integration with Russia and the Eurasian Union over NATO and the European Union.

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<sup>6</sup> [\*WTO and Public Health: A Joint Study by WHO and WTO Secretariat\*](#), 2002, p. 30.