



Russian-Georgian WTO Agreement: Actors and Factors Influencing its Practical Implementation

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Executive Summary

Eight years after the date of signature, the Russian-Georgian Agreement on the Basic Principles for a Mechanism of Customs Administration and Monitoring of Trade in Goods (hereinafter referred as the “Agreement”) remains on the books but lacks practical implementation. Both Georgia and Russia signed required separate contracts with neutral private companies in 2017 and 2018, respectively, bringing implementation of the Agreement to the next stage (but not necessarily the last).

The Agreement, which facilitated Russia’s entry into the WTO in 2011, was hailed by everyone involved, including Russia, Georgia and the international community at large. Despite this, practical implementation of the Agreement has proved a lengthy and difficult process. This is primarily due to the Agreement dealing with questions of sovereignty. Questions of sovereignty have largely trumped commitment on both sides to deepening trade relations, hence contributing to the delay in implementation.

The domestic political context in Georgia as well as Russia’s reluctance have also delayed the implementation of the Agreement. Initially, Georgia’s ruling Georgian Dream (GD) party did not see the merits of the Agreement after winning power in 2012. In the years since, disagreements with Russia on issues of sovereignty have deepened concerns about implementing the Agreement. For its part, Russia, with WTO membership already a mission accomplished, has not

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viewed implementation of the Agreement as a priority and accordingly has been reluctant to alter the current status quo arrangements.

Despite the factors hindering implementation, both parties acknowledge that the Agreement needs to be implemented, not least because of the presence of Switzerland as a mediator in the process and because of their own political and financial commitments to implementation of the Agreement. The first working group envisaged by the Agreement met in March 2019 to resolve remaining issues of contention before the international monitoring mechanism--a landmark achievement brought by the 2011 Agreement and designed to monitor trade between Georgia and Russia – becomes operational.

In case the parties reach a consensus and the Agreement is implemented, regional trade and economic relations will benefit, although the Agreement does not include obligations on opening new transit routes connecting the South Caucasus to Russia and vice versa. The trade corridors envisaged by the Agreement could, however, become the basis for new economic arrangements and pave the way to stronger economic and people-to-people connectivity in the region. For this to happen, however, the remaining questions of sovereignty and status must be settled.

Introduction

In 2011, Russia and Georgia signed the agreement on the Basic Principles for a Mechanism of Customs Administration and Monitoring of Trade in Goods. The Agreement paved the way for Russia's entry into the World Trade Organization (WTO). Signature of the Agreement, however, was necessitated by a number of international political developments, the first being the Russian-Georgian war of 2008 and Russia's subsequent recognition of Abkhazia and South Ossetia as independent states. Russia's recognition of Abkhazia and South Ossetia transformed the nature of Russian-Georgian relations, including certain legal aspects related to trade. The war and Russia's subsequent recognition of the breakaway territories as independent states enhanced Georgia's insistence on signing an agreement to legally assert de jure control over its borders with Russia, including those located in Abkhazia and South Ossetia. Second, as part of the United States' "Reset" policy towards Russia, international consensus had been achieved that the global economy as well as Russia would benefit from WTO membership. Reaching agreement among members of the international community on allowing Russia to enter the organization necessitated that Georgia also show a flexible and cooperative approach. In the words of Michael McFaul, at the time the U.S. president's special assistant and the National Security Council's senior director for Russian and Eurasian Affairs, the U.S. expected that Georgia would "find a cooperative solution to this issue to deal specifically with the economic and trade issues that are involved here, and not make it a bigger debate."²

Whereas finalization of Russia's accession to the WTO required Georgia's support, the decision by Tbilisi to back accession depended on settling "legal and technical issues" related to trading

²"Georgia Says Position 'Unchanged' over Russia WTO Entry.", Civil.ge, Available at <https://old.civil.ge/eng/article.php?id=23216>

with Russia.³ This, according to Georgia's then-Foreign Minister Grigol Vashadze, followed from Russia's "unthoughtful, hasty, emotional and stupid decision to recognize so called independence of Abkhazia and Tskhinvali region."⁴

Georgia and Russia, with the mediation of Switzerland, have re-entered into negotiations in March 2011 with the aim of coming to a win-win solution which would, on the one hand, secure Georgia's interests and, on the other hand, pave the way for Russia's accession to the WTO. Negotiations unfolded with some difficulties, caused in part by Russia portraying Georgia's demands as politically motivated and not related to trade issues. In the words of Russian Foreign Minister Sergey Lavrov, "essentially, the problem created by Georgia is only political one. All the rest is related to WTO rules, which is possible to be resolved at the level of experts."⁵

Georgia, on the other hand, saw its particular demands as trade related. According to Zurab Tchiaberashvili, Georgia's then-Ambassador to the Swiss Confederation:

"Georgia's demands were fully legitimate and in line with WTO's basic principles and regulations. In particular, based on the principles of transparency and uniform application of national policies and regulations, Georgia was pushing for the establishment of mechanisms to monitor all trade across the Abkhaz (Gantiadi-Adleri) and Tskhinvali region (Roki-Nizhny Zaramag) sections of the Georgian-Russian border."⁶

Despite difficulties in the negotiation process, with the help of Swiss mediation and the intensive engagement of the international community at large, Georgia and Russia came to what at the time seemed a mutually acceptable agreement in November 2011. According to what was agreed, Russia would enter the WTO but had to accept the presence of an international monitoring mechanism at the entrances and exits of predefined trade corridors. These corridors include the territories of Abkhazia and South Ossetia, regions over which Georgia lacks effective control and is hence unable to exercise customs procedures. Russia's accession to the WTO was approved on December 16, 2011 by decision of the Ministerial Conference⁷ and formally finalized on August 22, 2012.⁸

The Agreement was hailed by the members of international community, the U.S. first and foremost. On November 10, 2011, the day after signature of the Agreement, then-President of the United States Barack Obama issued a statement congratulating Russia on its accession while also underlining that Russia's entry into the WTO would benefit Georgia, "which concluded a far-

³"Georgia says Keeps Helpful Position in WTO Talks.", Civil.ge, Available at <https://old.civil.ge/eng/article.php?id=23240>

⁴"Georgian FM on WTO talks with Russia.", Civil.ge, Available at <https://old.civil.ge/eng/article.php?id=23374>

⁵"Lavrov on WTO Entry Talks with Georgia.", Civil.ge, Available at <https://old.civil.ge/eng/article.php?id=23433>

⁶"Georgian Ambassador on WTO deal with Russia", Civil.ge, available at: <https://civil.ge/archives/121609>

⁷"Ministerial Conference approves Russia's WTO membership", WTO.org, available at: https://www.wto.org/english/news_e/news11_e/acc_rus_16dec11_e.htm

⁸"WTO membership rises to 157 with the entry of Russia and Vanuatu", WTO.org, available at: https://www.wto.org/english/news_e/pres12_e/pr671_e.htm

reaching agreement with Russia yesterday for monitoring trade between their two countries.”⁹ The Agreement was also hailed by both signatories. The Russian Foreign Ministry called it “a huge success for all the parties participating in the negotiations”,¹⁰ while then-President of Georgia Mikheil Saakashvili declared that Georgia “got what we wanted from these talks.”¹¹

Despite initial expressions of satisfaction by all stakeholders, practical implementation of the Agreement has proven a lengthy and difficult process. Several factors have led to this conclusion. First, as of the time of writing, the customs administration mechanism and monitoring of all trade in goods, as stipulated by the Agreement are not yet in place. Second, Georgia and Russia only signed separate contracts with neutral private companies—an action required by the Agreement—in 2017 and 2018, respectively.¹² Third, Georgia, which negotiated the Agreement in 2011, underwent a change of government through democratic elections in 2012. Implementation had to therefore be carried out by the new government, which, as we will see, was not a simple matter. Fourth, with Russia’s annexation of Crimea in 2014 and the still-ongoing war in Ukraine, the nature of relations between Russia and the West has changed. Russia has been subjected to various economic sanctions and attempts at isolation, while at same time its military and political presence has extended beyond the post-Soviet space. Accordingly, implementation of the Agreement became a low-priority issue on Russia’s busy international agenda.

Given these developments, this research paper broadly aims at unpacking the factors behind the delay in practical implementation of the Agreement. It also aims at reaching an understanding of the implications that practical implementation would have for key stakeholders. In particular, the research paper asks the following questions: 1) what is the added value of the Agreement for Georgia and Russia? 2) to what extent is the Agreement politically instrumentalized and interpreted by both Russia and Georgia? 3) what factors have contributed, and still contribute, to the delay in practical implementation? 4) What are possible benefits and implications for other regional actors if the Agreement is implemented?

In addressing the above questions, the research paper uses a qualitative research methodology and consults with primary and secondary sources including official statements from respective state institutions of Georgia and Russia and media interviews given by former and current government representatives of both countries. The research also involved conducting exploratory and systemizing elite interviews in Georgia to better understand the delay in implementation of the Agreement and the implications that practical implementation will have for other regional stakeholders. To analyze the positions of Russia and other relevant actors, the paper will largely

⁹ “Statement by President Obama on Progress in Russia’s WTO Accession Talks.”, The White House, Available at: <https://obamawhitehouse.archives.gov/the-press-office/2011/11/10/statement-president-obama-progress-russias-wto-accession-talks>

¹⁰ “Moscow and Tbilisi Hail WTO Deal.”, Civil.ge. Available at: <https://old.civil.ge/eng/article.php?id=24129>

¹¹ *ibid*

¹² See the statement from the Ministry of Foreign Affairs of Georgia here: <http://mfa.gov.ge/News/sagareo-saqmeta-saministros-ganckhadeba-shveicarul.aspx?CatID=5&lang=en-US>; See the statement from the Ministry of the Foreign Affairs of the Russian Federation here: http://www.mid.ru/ru/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/3229274

rely on official statements and media interviews. In the case of Georgia, five interviews were held with former and current members of the government who played or are now playing integral parts in the negotiation and implementation of the Agreement. In the case of Russia, the research analyzed positions expressed by the Ministry of Foreign Affairs and its representatives to make sense of Russia's positions on signing and implementing the Agreement. In measuring the possible impact of the Agreement on regional economic and trade dynamics, secondary sources and expert opinions were scrutinized in addition to primary source material.

The research paper will proceed as follows. First, it outlines the details and nature of the Agreement. Second, it will discuss the so-called "sovereignty debates" surrounding the Agreement and the extent to which Georgia and Russia have politicized the process. Third, the research paper will identify and analyze the factors that have and continue to contribute to the delay in the practical implementation of the Agreement. Fourth, the paper discusses the implications of the Agreement for other regional actors. The paper concludes by offering recommendations.

The 2011 Agreement Explained

The Agreement signed by Russia and Georgia in 2011 is an agreement to establish, in the framework of bilateral negotiations between Russia and Georgia on Russia's accession into the World Trade Organization (WTO), a mechanism of customs administration and monitoring of all trade in goods that enter and exit predefined trade corridors (as defined in Annex I of the Agreement).

The primary value of the Agreement lies in its status-neutral approach, manifested by the use of geographic coordinates to determine the locations of the trade corridors (instead of explicitly mentioning geographic names of locations). According to Annex I to the Agreement, the trade corridors cover the following three geographic locations:

Trade Corridor 1 refers to the Abkhazian (Gantiadi-Adleri) section of the Georgian-Russian border. Geographic coordinates set out in the Agreement envisage the trade corridor covering the territory from the area surrounding Adler¹³ (Russia) to Zugdidi (Georgia). Relevant customs terminals shall be installed in Georgia and Russia to allow the representatives of a neutral private company to exercise monitoring functions.

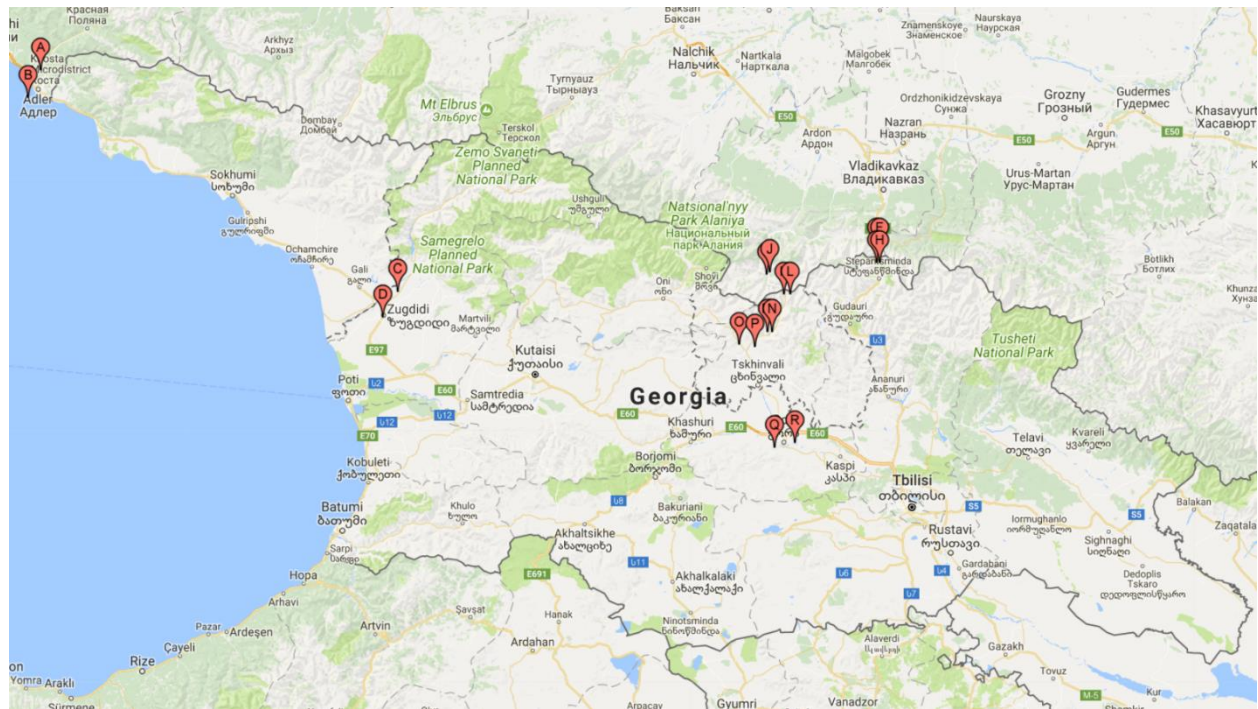
Trade Corridor 2 refers to the Tskhinvali region (Roki-Nizhny Zaramag) section of the Georgian-Russian border. Geographic coordinates set out in the Agreement envisage the trade corridor covering territory from the area surrounding the village of Nar¹⁴ (Russia) to Gori (Georgia).

¹³ Adler is itself included within the Corridor 1, see "Georgia-Russia WTO deal in details.", civil.ge, available at <http://old.civil.ge/eng/article.php?id=24158>

¹⁴ Nar is also within the Corridor 2, *ibid*

Relevant customs terminals shall be installed in Georgia and Russia to allow the representatives of a neutral private company to exercise monitoring functions.

Trade Corridor 3 refers to the Kazbegi region (Kazbegi-Upper Larsi) section of the Georgian-Russian border, which is the only border section currently under Georgian control. Geographic coordinates similarly set out the trade corridor to operate in this section of the border as well. Relevant customs terminals shall be installed in Georgia and Russia to allow the representatives of a neutral private company to exercise monitoring functions.



Visualization of the trade corridors as envisaged by the Agreement.¹⁵

According to the preamble of the Agreement, Georgia and Russia express their desire to facilitate trade relations and, in line with WTO standards, implement best practices in customs administration and monitoring trade flows. The document refers to the “Agreement between the Government of Georgia and the Government of Russia on Free Trade” as well as to other agreements forming a free trade zone in the sense of Article XXIV of the General Agreement on Tariffs and Trade (GATT) of 1994. The preamble also: 1) recognizes the opportunity of Russia’s accession to the WTO as an occasion to improve transparency of trade data in the sense of Article X of GATT of 1994; 2) reaffirms the will of the Contracting Parties (the “Contracting Parties”) to

¹⁵ Georgian Institute of Politics, 2018, available here: <http://gip.ge/ge/gip-%E1%83%99%E1%83%9D%E1%83%9B%E1%83%94%E1%83%9C%E1%83%A2%E1%83%90%E1%83%A0%E1%83%98-%E1%83%A5%E1%83%90%E1%83%A0%E1%83%97%E1%83%A3%E1%83%9A-%E1%83%A0%E1%83%A3%E1%83%A1%E1%83%A3%E1%83%9A%E1%83%98/>

fight illegal trade, including trade in counterfeited goods, and corruption; and 3) acknowledges that WTO commitments can be reviewed through the WTO dispute settlement mechanism.¹⁶

The Contracting Parties also undertake to: “notify data about the trade covered by this Agreement to the WTO Integrated Data Base (IDB). The Contracting Parties shall transmit monthly to the Secretariat of the WTO aggregated trade data in respect of trade in goods as described in Annex I. The Contracting Parties will nominate officials responsible for transmission of the data as specified in Annex II.”¹⁷

Monitoring Mechanism - Electronic Data Exchange System and International Monitoring System

According to the Agreement, all trade in goods that enters or exits predefined corridors shall be submitted to the Monitoring Mechanism (the “Mechanism”) established by the Agreement.

The Mechanism includes: a) the Electronic Data Exchange System (EDES); and b) the International Monitoring System (IMS). The overall functions of the Mechanism, among others detailed in the Agreement, are to ensure transparency and uniform customs administration, monitor customs procedures and clearance by means of checking documentation and records, and to identify and, if needed, reexamine, reassess and/or check suspicious cargo.¹⁸

According to the Agreement, the EDES is designed to “capture and manage trade, commercial and logistics data.” In particular, the EDES establishes a common electronic data exchange platform for sharing information with a neutral private company (the “Neutral Private Company”) regarding all customs and trade transactions. It also facilitates risk management by a neutral private company and ensures data accuracy.¹⁹ The IMS, on the other hand, builds on the data provided by EDES and, among other things, ensures auditing and physical monitoring of trade entering or exiting the trade corridors.

Neutral Private Company: Selection, Role and Functions

The Agreement stipulates that a neutral third party (Switzerland, hereinafter referred to as the “Neutral Third Party”) is responsible for consulting with the Contracting Parties on defining terms of reference and the mandate for the neutral private company (hereinafter referred to as the “Neutral Private Company”). The mandate and terms of the reference shall be “identical for the activity of the neutral private company in Georgia and in the Russian Federation.”²⁰ The

¹⁶ “Agreement between the Government of Georgia and the Government of the Russian Federation on the basic principles for a Mechanism of customs administration and monitoring of trade in goods”, Georgian version available here: <https://www.matsne.gov.ge/ka/document/view/1512898?publication=0>

¹⁷ibid

¹⁸ ibid

¹⁹ ibid

²⁰ibid

Neutral Third Party is also responsible for submitting “a list of neutral private companies with sufficient international standing and expertise to fulfill the mandate” and for selecting the neutral private company based on consultations with the Contracting Parties.

The Neutral Private Company is contracted bilaterally by Russia and Georgia to undertake activities in the respective countries, while the Neutral Third Party stands as a witness in each case. The neutral private company is accountable to the Neutral Third Party with the responsibility to “regularly report all its findings to the Joint Committee.” The Neutral Private Company is responsible for auditing the data sent to the WTO IDB and, based on the results of risk management analysis, “can recommend to the competent national customs officials to verify and check specific cargo at the terminals in the presence of a representative of the neutral private company as specified in Annex I.”²¹

The Contracting Parties are responsible for compensating the work of the Neutral Private Company through a specially designated Trust Fund administered by the Neutral Third Party.

Implementation of the Agreement

Annex I of the Agreement, which together with Annex II form an integral part of the agreement, stipulates the procedures for implementation.

The EDES enables the Neutral Private Company to obtain relevant data from customs declarations and advanced cargo information in accordance with the standards and best practices of the World Customs Organization (WCO). This allows the Neutral Private Company to ensure “risk management prior to entry of the cargo into trade corridor.” The Contracting Parties are responsible for providing the Neutral Private Company with a set of data on all goods that enter or exit the trade corridors.²²

The Agreement also stipulates that:

- All trade in goods that enters or exits the corridors shall be controlled and administered in accordance with the provisions of the respective national law by the national customs officials. The control and administration of this trade shall take place in customs terminals which are located at the exit/entry points of the trade corridors;
- In each said terminal, representatives of the Neutral Private Company shall monitor customs procedures and clearance by means of being present during checking of documentation and records, during physical examination of goods, reexamination, reassessment and checking of suspicious cargo, and shall verify that electronic seals are put on cargo that enters the predefined trade corridors.
- The Contracting Parties shall ensure that electronic seals are applied to each trade cargo that enters a predefined trade corridor at a terminal.

²¹ *ibid*

²² Please see Annex I to the Agreement for more details.

- The Contracting Parties shall ensure that a GPS/GPRS-operated cargo tracking system is used for trade cargo that enters a predefined trade corridor at a terminal.²³

Implementation of the Agreement will thus be performed by the following steps:²⁴

1. Georgian and Russian national customs systems validate the trade-related data to be transmitted to the EDES.



2. The data is transmitted to EDES, which enables SGS to obtain relevant trade-related data.



3. National customs officials control and administer trade at customs terminals that are located at the exit/entry points of the trade corridors.



4. Representatives of the Neutral Private Company who are physically present at the terminals monitor customs procedures and clearance.



5. Before sending goods through the trade corridors: 1) The Contracting Parties apply electronic seals to each cargo container; 2) The Contracting Parties use a GPS/GPRS-operated cargo tracking system for each cargo container that enters the trade corridors.



6. Representatives of the Neutral Private Company verify that electronic seals are put on cargo containers that enter the predefined trade corridors.

²³ Ibid.

²⁴ Please note this is the author's own reading of the Agreement. Actual procedures might differ once implementation of the Agreement is in place.

Joint Committee and Dispute Settlement

The Agreement stipulates that in order to further define and specify the general terms stated in the Agreement, the Contracting Parties shall establish two bilateral working groups to deal with matters related to IT and legal aspects of implementation.

Once the Agreement enters into force, the Contracting Parties undertake to establish a Joint Committee including representatives from Russia, Georgia and Switzerland. The Joint Committee is tasked to:

- supervise and review implementation of the Agreement;
- endeavor to resolve disputes that may arise regarding interpretation or application of the Agreement;
- oversee and review the Agreement's further development and consider any other matter that may affect operation of the Agreement.

Each Contracting Party, by written notice to the other Party, can request a special meeting of the Joint Committee. Unless otherwise agreed, such meeting should take place within seven days of receipt of the request.

If the Contracting Parties claim that commitments are violated by the other Party, three experts from Russia, Georgia and Switzerland, respectively, shall be nominated to take urgent action and submit their recommendations to the Joint Committee within one week.

If the Contracting Parties fail to agree through a Joint Committee within one month from the first written notice of the dispute, each Party is authorized to take the dispute to the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States (the "Arbitral Tribunal"). The Arbitral Tribunal is composed of three members: one nominated by Russia, one nominated by Georgia and the presiding arbiter, who is nominated by the Parties themselves. If the Parties fail to do so, the Secretary General of the Permanent Court of Arbitration at The Hague is designated as an appointing authority.

What is the Added Value of the Agreement?

The Agreement between Russia and Georgia is unusual due to the nature of the dispute over the status of Abkhazia and Tskhinvali region/South Ossetia. Georgia, unlike WTO members who have entered into bilateral negotiations with Russia over purely trade-related issues, had to resolve logistical aspects and establish mechanisms to ensure "transparency on the border crossing points at Psou [Abkhazia] and Roki [South Ossetia]."²⁵ Hence, the Agreement had to address political questions that go beyond technical aspects of trade, such as: who is able to exercise functions related to customs procedures? Where is the border and to whom does it

²⁵ "Georgia Says Position Unchanged over Russia WTO Entry.", Civil.ge, Available at: <https://old.civil.ge/eng/article.php?id=23216>.

belong? Viewed in hindsight, dealing with questions of a political nature created obstacles to implementing certain provisions of the Agreement, which this research paper will subsequently demonstrate.

While the Georgian side initially put forward the idea of “securing access of the Georgian customs services to the Psou and Roki border crossing points,”²⁶ this position was later abandoned due to the impossibility of reaching a deal with Russia based on such a premise. The Georgian side then agreed to proceed with a proposal by Switzerland to commit negotiators to focus more on technical aspects of trade and less on questions of sovereignty. The “Swiss innovation” implied the idea of status-neutral trade corridors, which “would leave the possibility open to focus solely on trade flows and exchange of trade in goods.”²⁷ The status-neutral approach is thus believed to be the primary added value of the Agreement as it, at the time, allowed the parties to transcend political questions and deal specifically with technical aspects of trade. Designating geographic coordinates rather than naming specific locations was also intended to put questions of status aside.

In addition to status neutrality, the Agreement gave both parties the ability to report and resolve any perceived violations of the terms of the Agreement, first bilaterally and then via neutral arbitration. The Agreement, since it paved the way for Russia’s entry into the WTO, also enabled the possibility for both Georgia and Russia to use the WTO’s dispute settlement mechanism to dispute and resolve any trade practices (i.e., which fall outside the scope of the provisions of the 2011 Agreement) that might go against the WTO rules.

While status neutrality and dispute settlement mechanisms promised common benefits for both Russia and Georgia, each side saw the Agreement to its own advantage. From the perspective of Georgia, the added value lay in the country’s ability to portray itself as a responsible member of the international community²⁸ and to set a precedent that successful agreement with Russia can only be achieved through objective mediators that respect international norms.²⁹ Russia’s entry into the WTO would also ensure that Georgia is able to use mechanisms that would avoid, or at least enable the possibility to dispute, Russian unilateral measures to embargo Georgian products.³⁰ Georgia lacked such a platform in 2006-2007 when it was subjected to an economic embargo and energy blockade by Russia.

From the Russian perspective, the Agreement secured WTO accession and served “to facilitate the normalization of trade relations in the region in accordance with WTO principles.”³¹ Russia has similarly gained additional mechanisms to initiate trade disputes against Georgia if Georgia is found to be in violation of WTO rules and practices. Moreover, Russia sees the Agreement as

²⁶ Ibid.

²⁷ Tchiaberashvili. Z.,; author’s interview, May 2019.

²⁸ Tchiaberashvili. Z, and Zakareishvili.P, author’s interview, May 2019.

²⁹ Tchiaberashvili. Z.,; author’s interview, May 2019.

³⁰ ibid

³¹ “Replies by MFA Spokesman Alexander Lukashovich to Questions from Interfax News Agency on Russian-Georgian Agreement in Context of Russia’s WTO Accession”, Ministry of Foreign Affairs of the Russian Federation, 2011, available at: http://www.mid.ru/en/vsemirnaa-torgovaa-organizacia-vto/-/asset_publisher/km9HkaXMTium/content/id/176298

compatible with its perceived “new realities prevailing in the South Caucasus after August 2008”³²; that is, Russia’s recognition of Abkhazia and South Ossetia as independent states. For Russia, the Agreement will “constitute an adequate benchmark for the final international legal formalization of trade relations in the region,” implying that it will over time legalize (i.e., make “interstate”) the now-informal trade relations between Georgia and Abkhazia and South Ossetia.³³ This position has been disputed by Georgia, however, arguing that the Agreement simply monitors trade flow and “does not legalize the trade”³⁴ with Abkhazia and Tskhinvali region/South Ossetia.

While there are points of added value that work the same way for both parties and there are individual added values that parties ascribe to the Agreement, the Agreement has caused the so called ‘sovereignty debates’ between Russia and Georgia. What follows is the discussion of those debates.

Legally Status Neutral but Politically Contested: Sovereignty Debates between Russia and Georgia

While the Agreement is legally status neutral and does not directly mention Abkhazia and South Ossetia,³⁵ Georgia’s bilateral negotiations with Russia were necessitated primarily by questions of sovereignty. How settling those questions would lead to transparency and monitoring of trade between Georgia and Russia remained the modus operandi of the negotiations.

The first and most significant issue of disagreement, including within Georgia, concerns what the Agreement means for Georgia’s territorial integrity. Not unexpectedly, Georgian and Russian perspectives on this issue have differed drastically. Georgia has interpreted the Agreement to strengthen its territorial integrity for the following reasons: 1) the Agreement was signed between Russia and Georgia and there is no mention of Abkhazia or South Ossetia; 2) Georgia secured that monitoring of trade between Russia and Georgia be exercised at all the legal border-crossing points. These border-crossing points are located in Abkhazia, South Ossetia and Kazbegi, respectively; 3) Russia agreed to allow the presence of Neutral Private Company representatives in Kazbegi (the only border-crossing point which is de facto and de jure controlled by Georgia) where there was no actual need of their presence as Georgia was able to perform customs services on its own. This points to Russia losing the argument about “having separate trade regimes – one with Georgia, when movement of goods takes place via Larsi border-crossing point and another one, when movement of goods occurs via so called ‘third countries’ (via Gantiadi-Adleri and

³² *ibid*

³³ *ibid*

³⁴ Kapanadze.S.; author’s interview, May 2019

³⁵ In the words of Paata Zakareishvili, “the Agreement is related to the territories of Abkhazia and South Ossetia [...] but does not even mention them” Zakareishvili, P., author’s interview, May 2019

Roki-Nizhny Zaramag border crossing points)”;³⁶ 4) Georgia’s sovereignty is also reaffirmed by the fact that data about trade between the occupied territories of Abkhazia and Tskhinvali region/South Ossetia and Russia, to be collected by the Neutral Private Company and sent to the WTO, will be aggregated in the WTO as trade between Russia and Georgia.³⁷

Russia has interpreted these aspects of the Agreement differently. According to the Russian interpretation, the Agreement is “fully consistent with the new realities prevailing in the Caucasus after August 2008” and “shall not infringe on the status of Abkhazia and South Ossetia as independent states.”³⁸ Russia has maintained that its trade with Abkhazia and South Ossetia is different from its trade with Georgia, it is not obliged to report to Georgia “any information about Russian trade with Abkhazia and South Ossetia in excess of normal statistical reports accessible through the WTO database.”³⁹ Furthermore, Russia has also underlined that “for the first time since August 2008 Georgia signed an international agreement which clearly indicates the places where its customs service is to work.”⁴⁰ That the other side of the trade corridors are in Gori and Zugdidi, in Russia’s view, indicates that Georgia has recognized these “new political realities.”

The second issue has been the practical role that Abkhazia and South Ossetia would play, or would seek to play, in the implementation of the Agreement. While the Agreement does not directly mention either territory, most of the area in the predefined trade corridors is covered by both territories, which could mean that Abkhazia and South Ossetia might try to boost their status as independent states by: applying their own customs procedures to goods entering or exiting the trade corridors; or by attempting to hinder full implementation of the Agreement.

The Russian positions are particularly noteworthy in this regard. In relation to the application of electronic seals on cargo containers, Russia holds that “although equipping trade cargoes with these or any other devices at a Russian or Georgian customs terminal is no problem, neither Russia nor Georgia can be responsible for the operation of the devices within the territories of Abkhazia and South Ossetia. These states are not parties to the Agreement, and of course it imposes no obligations on them.”⁴¹ In its commentary on the Agreement, Russia also welcomed steps taken by Abkhazia and South Ossetia “to regularize trade with Georgia by introducing proper customs clearance at the border with the country.”⁴²

³⁶ “Georgian Ambassador on WTO deal with Russia”, Civil.ge, available at: <https://civil.ge/archives/121609>

³⁷ similar precedent exists in relation to Cyprus. Kapanadze, S., and Tchiaberashvili Z., author’s interview, May 2019

³⁸ “Replies by MFA Spokesman Alexander Lukashovich to Questions from Interfax News Agency on Russian-Georgian Agreement in Context of Russia’s WTO Accession”, Ministry of Foreign Affairs of the Russian Federation, 2011, available at: http://www.mid.ru/en/vsemirnaa-torgovaa-organizacia-vto/-/asset_publisher/km9HkaXMTium/content/id/176298

³⁹ *ibid*

⁴⁰ *ibid*

⁴¹ *ibid*

⁴² *ibid*

Moreover, both de facto territories have requested formal engagement—i.e., conclusion of separate agreements with them as parties—in implementation of the Agreement until any transit through their territories is allowed.⁴³ Since Georgia does not recognize the independence of Abkhazia and Tskhinvali region/South Ossetia and is unreservedly against any formal inclusion of the de facto entities in the process, it might perceive Abkhazian and South Ossetian attempts to incorporate themselves in the process as attempts to politicize the process. Coupled with the possibility that Russia might use the Agreement to strengthen the independence of the de facto entities⁴⁴, Georgia could be reluctant to undertake practical implementation of the Agreement.

The third issue of importance concerning issues of sovereignty is that of who would carry out customs and passport control on the Abkhazian and South Ossetian sections of the border with Russia, sections over which Georgia does not exercise control. Georgian positions imply that “all cargo pass through (or at least be registered online with) Georgian customs before crossing the border.”⁴⁵ That would mean that trucks entering from Russia would have to complete passport and customs control procedures on Georgia-controlled territory.⁴⁶ Moscow, expectedly, has rejected Georgian claims as they undermine its recognition of the breakaway territories’ independence.⁴⁷

Russian and Georgian authorities have thus engaged in a war of words regarding sovereignty, each interpreting the Agreement as favorable to its position. Of particular significance is interpretation of where the state border lies and who exercises control over it. In Russia’s interpretation, according to Grigory Karasin, the Agreement defined the location of Georgia’s “customs border” which, in Karasin’s view, is in Zugdidi and Gori,⁴⁸ two Georgia-controlled cities. That claim has been rebutted by the Georgian side, arguing that “installing customs terminal is not related to [defining] border.”⁴⁹ Moreover, the Agreement stipulates that customs procedures are done according to national legislation. Therefore, distinction is made between international (trade with Russia) and domestic (trade with the occupied territories according to Georgian legislation) trade⁵⁰, which refutes any claims about defining the border by administering customs procedures at certain locations.

⁴³ “Abkhazia and South Ossetia ‘Block’ Transit Agreement Between Russia and Georgia”, Eurasia Daily Monitor, 2019, available at <https://jamestown.org/program/abkhazia-and-south-ossetia-block-transit-agreement-between-russia-and-georgia/>

⁴⁴ Zakareishvili.P, author’s interview, May 2019

⁴⁵ “Abkhazia and South Ossetia: Time to Talk Trade”, May 2018, International Crisis Group, available at: <https://www.crisisgroup.org/europe-central-asia/caucasus/georgia/249-abkhazia-and-south-ossetia-time-talk-trade>

⁴⁶ ibid

⁴⁷ ibid

⁴⁸ “ «Мы хотим восстановления добрососедства с Грузией, но не за счет интересов Абхазии и Южной Осетии» (“We want to restore good-neighborly relations with Georgia, but not at the expense of the interests of Abkhazia and South Ossetia”), Kommersant, January, 25, 2018, available at: <https://www.kommersant.ru/doc/3528425?query=%D0%9A%D0%B0%D1%80%D0%B0%D1%81%D0%B8%D0%BD>

⁴⁹ Kapanadze. S,; author’s interview, May 2019

⁵⁰ ibid

Although questions related to sovereignty and political interpretation might stand in the way of practical implementation of the Agreement, both parties as well as Switzerland have an interest in seeing the Agreement come into effect.⁵¹ Despite the fact that working group meetings are now taking place between Russia and Georgia to resolve remaining obstacles,⁵² the provisions of the Agreement have not yet been implemented. Paata Zakareishvili, former State Minister for Reconciliation and Civic Equality of Georgia, noted that because parliamentary elections are approaching in Georgia in 2020, the actual implementation of the Agreement might be postponed until the post-election period.⁵³ However, it is worth discussing what factors have so far contributed to the delay in implementation of the Agreement since 2011.

Factors Explaining the Delay in Practical Implementation

As has been pointed out above, only in 2017 and 2018 did Georgia and Russia respectively conclude separate contracts with the Neutral Private Company, SGS.⁵⁴ This begs the question of why it took so long to contract SGS, considering that both Georgia and Russia initially seemed satisfied with the results of the 2011 negotiations. Three major factors stand out: 1) Georgia's domestic political context; 2) Russia's reluctance to implement the Agreement; and 3) the realization by both countries that although the Agreement was legally status neutral, in practical terms, sovereignty questions have and continue to trump issues of trade and have contributed to delays in the implementation of the Agreement.

Georgia's Domestic Political Context

A year after signing the Agreement, Georgia experienced a democratic change of government. This has had implications for implementation of the Agreement.

The incoming Georgian Dream (GD) government based part of its electoral campaign on improving relations with Russia, exemplified by creating the position of Special Representative of the Prime Minister of Georgia for Relations with Russia. The new appointment allowed the opening of a bilateral political dialogue – known as the Karasin-Abashidze format – which raised expectations that Georgia and Russia would have fewer obstacles to implementing the Agreement (supported also by the international community). The initial aim of the bilateral dialogue was to “restore cultural and trade relations in the nearest future.”⁵⁵

However, because the Agreement signed by the previous government was not only a matter of trade but a matter of sovereignty and border control, the new government had to “look into the

⁵¹ Zakareishvili.P, Author's interview, May 2019

⁵² anonymous, the Ministry of Foreign Affairs of Georgia, author's interview, March 2019

⁵³ Zakareishvili.P, author's interview, May, 2019

⁵⁴ more about SGS could be seen here: <https://www.sgs.com/>

⁵⁵ “PM Appoints Special Envoy for Relations with Russia.”, Civil.ge, Available at: <https://civil.ge/archives/122366>

Agreement”⁵⁶ to clearly define its positions. Because the Agreement was a “tabula rasa” that dealt with “sensitive and difficult nuances” the process has taken longer than envisaged.⁵⁷

Paata Zakareishvili, State Minister for Reconciliation and Civic Equality (2012-2016), similarly noted that Georgia’s new government, particularly the ministries of finance and economy, had doubts about the Agreement, raising fears that implementing the Agreement could contribute to recognition or legitimization of Abkhazia and South Ossetia as independent states.⁵⁸ The process has therefore been drawn out, even to the extent that it created an impression that Georgia would have been happy not to sign the contract with a neutral company had there not been Swiss mediation to ask the parties to accelerate the process.⁵⁹

Furthermore, Georgia also fears that Russia will attempt to politicize the Agreement, such as attempts to include Abkhazia and South Ossetia in the process.⁶⁰ In addition to Russia, the de facto authorities are also trying to politicize the process, attempting to assert their status by exercising customs procedures. Georgia considers this to be illegal and attributes responsibility to the occupying power.⁶¹

Another factor contributing to the delay in implementation of the Agreement was the procedures related to signature of separate contracts with the Neutral Private Company. The process was prolonged because, under the Agreement, the contractual terms had to be identical for both Georgia and Russia. Because the parties did not have access to each other’s respective contracts, it took longer to finalize the process. For instance, the Georgian side did not see Russia’s contract with SGS, precluding the opportunity to compare its own contract with that of Russia.⁶²

Another reason for the delay in signing the contract with SGS was due the inability of the government of Georgia to identify an institution which could be responsible for implementation of the Agreement.⁶³ In addition to this, there was distrust surrounding the Agreement because it has been negotiated by the previous government.⁶⁴ In the end, the current government realized that “there is nothing bad with the agreement” and signed the contract with the Neutral Private Company.⁶⁵

⁵⁶ Anonymous, March 2019

⁵⁷ *ibid*

⁵⁸ Zakareishvili.P, author’s interview, May, 2019

⁵⁹ *ibid*

⁶⁰ Anonymous, the Ministry of Foreign Affairs of Georgia, author’s interview, March 2019

⁶¹ *ibid*

⁶² *ibid*

⁶³ “რუსეთს WTO-ში გაწევრიანებისთვის საქართველოსთან დადებული ხელშეკრულების პირობების შეცვლა უნდა” (“Russia wants to change terms of the Agreement signed with Georgia to accede WTO”), factcheck.ge, available at” <https://factcheck.ge/ka/story/25879-ruseths-wto-shi-gatsevranebisthvis-saqarthvelosthan-dadebuli-khelshekrulebis-pirobebis-shetsvla-unda>

⁶⁴ *ibid*

⁶⁵ “Вся правда о коридорах через оккупированные регионы. Россия, Армения, Грузия” (“All truth about trade corridors through occupied territories. Russia, Armenia, Georgia”), Пограничная ZONA, available at: <https://www.youtube.com/watch?v=Mef6rnHR8cg&feature=youtu.be>

Zurab Tchiaberashvili, current MP and the former Ambassador of Georgia to the Swiss Confederation, similarly noted that the government has heavily criticized the Agreement. Time was lost due to the fact that GD had complete distrust towards the previous government, believing that they signed an agreement that was not in accordance with Georgia's interests.⁶⁶ In the end, he maintains, it was more pressure from the international community than the interest of the government of Georgia that led to implementation of the Agreement.⁶⁷ Moreover, the Swiss side even attempted to use informal channels of communication (through a former official) to convince Bidzina Ivanishvili, at the time the Prime Minister of Georgia, of the merits of the Agreement.⁶⁸

Despite the procedural and political factors that have contributed to the decision of the Georgian side to delay signing the contract with SGS, Georgia was the first party to sign such a contract. That, Zakareishvili explained, is due to the fact that Russia wanted the contract to be signed by Georgia first because Russia had some doubts about Georgia's commitment to signing the contract.⁶⁹

Russia's Reluctance

Russia's reluctance to sign the Agreement also contributed to the delay in practical implementation. Even though the country initially agreed to the presence of international monitors within its territory, it has reservations about the practical implications the international presence might have for the current status quo.

Russia currently conducts trade relations in such a manner conforming to its positions vis-à-vis Abkhazia and South Ossetia. Namely, it believes that it has a separate trade regime with the independent states of Abkhazia and South Ossetia, and that Russia's trade with these entities is not related to its trade with Georgia. However, a change to the status quo – that is, installing terminals close to Abkhazia and South Ossetia and agreeing on the presence of international monitors at the site of the terminals – would imply that Russia has, not just on paper but also practically, agreed to Georgia's right to receive information on its trade with Abkhazia and South Ossetia. According to Sergi Kapanadze, current MP and the former Deputy Minister of Foreign Affairs of Georgia, by agreeing to the creation of three trade corridors with Georgia, Russia “in principle recognized our [Georgia's] sovereignty on all these territories.”⁷⁰ Moreover, by recognizing Georgia's right to receive information on its trade with Abkhazia and South Ossetia, Russia has practically undermined the claims of independence of each respective territory.⁷¹

⁶⁶ Tchiaberashvili. Z, author's interview, May 2019

⁶⁷ *ibid*

⁶⁸ Anonymous, former government official, author's interview

⁶⁹ Zakareishvili.P, author's interview, May 2019

⁷⁰ “*Вся правда о коридорах через оккупированные регионы. Россия, Армения, Грузия*” (“All truth about trade corridors through occupied territories. Russia, Armenia, Georgia”), *Пограничная ZONA*, available at: <https://www.youtube.com/watch?v=Mef6rnHR8cg&feature=youtu.be>

⁷¹ *ibid*

Grigory Karasin, deputy Foreign Minister of Russia, acknowledges that practical implementation of the Agreement, namely the installation of customs terminals, “causes certain political emotions on the part of our partners [Abkhazia and South Ossetia] in relation to status.”⁷² While Karasin rejects claims that Russia wants Georgia to sign separate agreements with Abkhazia and South Ossetia, he remarks that “there are some details that have to be discussed with these republics.”⁷³ Despite this, Karasin has held that Russia “must implement this Agreement, we will move forward.”⁷⁴

Russia’s reluctance is exacerbated by other two factors. First, Georgia’s refusal to give approval to the Agreement until all precautions have been taken to ensure that practical arrangements do not undermine Georgia’s sovereignty and territorial integrity. For instance, during the negotiations Russia asked for two corridors instead of three⁷⁵, which is a red line for Georgia as it departs from the spirit of the original Agreement. Russia’s major incentive in asking for two customs terminals instead of three – namely asking for merger of trade corridor 2 and 3 as defined in the Agreement – is to avoid proper monitoring of trade in goods⁷⁶, which could effectively undermine the implementing functions of the Neutral Private Company. Georgia also opposes any engagement of the de facto authorities in implementation of the Agreement.

Russia’s second concern deals with the Law of Georgia on Occupied Territories (hereinafter referred to as the “Law”). It is well known that Russia generally objects to this particular piece of legislation. In this case, however, the issue of contention is not only a ban on those who travel to Abkhazia and South Ossetia from territories outside Georgia’s control, but also the fact that the Law restricts economic activities in the occupied territories. Pertinent to the Agreement is Article 6 of the Law, which, among other things, restricts “railway traffic and international automobile transportation of cargo.”⁷⁷ Russia raised concerns over the Law, declaring the legislation to be “inconsistent with the norms of the Agreement” and that “these prohibitions upon its entry into force shall not be applied.”⁷⁸

Russia’s reluctance is also caused by the fact that since Russia has already secured membership in the WTO, and since there is no legally binding mechanism that can force Russia to implement the Agreement, it has little incentive to change the status quo, not least because any change would cause protest from Abkhazia and South Ossetia.

⁷² “Мы стремимся призвать Грузию к тому, чтобы неприятных неожиданностей не было” (“We intend to urge Georgia so that there is no unpleasant surprises”), Kommersant, February 2019, available at: <https://www.kommersant.ru/doc/3896419>

⁷³ *ibid*

⁷⁴ *ibid*

⁷⁵ anonymous, the Ministry of Foreign Affairs of Georgia, author’s interview, March 2019

⁷⁶ Kapanadze, S, author’s interview, May, 2019

⁷⁷ Law of Georgia on Occupied Territories, article 6th, 1(c1), available at:

<https://matsne.gov.ge/ka/document/view/19132?publication=7>

⁷⁸ “Replies by MFA Spokesman Alexander Lukashevich to Questions from Interfax News Agency on Russian-Georgian Agreement in Context of Russia’s WTO Accession”, Ministry of Foreign Affairs of the Russian Federation, 2011, available at: http://www.mid.ru/en/vsemirnaa-torgovaa-organizacia-vto/-/asset_publisher/km9HkaXMTium/content/id/176298

Swiss mediation – and more importantly financial commitments to the Neutral Private Company – might encourage both Russia and Georgia to take steps towards actual implementation of the Agreement. However, the question remains whether the disagreements over sovereignty and the perceived political risks following from practical implementation of the Agreement would trump concerns over finances and commitments to deepening trade relations.

Sovereignty Questions vs Commitment to Deepening Trade

The signature of separate bilateral contracts with the Private Neutral Company marked “the end of negotiations phase” and put all the conditions in place for the implementation of the Agreement.⁷⁹ However, this still does not mean that the Agreement is in place and no further issues must be resolved between Georgia and Russia before terminals at the trade corridors are installed and international monitors are allowed to be present.

As envisaged by the Agreement, the Joint Committee is established to solve possible disputes that may stand in the way of implementation of the Agreement. The first meeting of the joint committee took place on February 6, 2019. According to a statement by the Revenue Services of Georgia, the Neutral Private Company presented information about the activities it has so far undertaken, while the parties “will continue discussion regarding the issues envisaged by the Agreement under the newly established working group.”⁸⁰ The working group includes the Ministry of Finance, Ministry of Justice and Ministry of Foreign Affairs.⁸¹

At the first meeting of the Joint Committee, Georgia and Russia failed to achieve agreement on all outstanding issues, but a working group was created with the purpose of resolving disagreements.⁸² The main challenge for implementation of the Agreement is therefore not technical, but rather political.⁸³ Political issues include different interpretation of the terms of the Agreement and questions related to sovereignty and application of customs procedures. A major practical issue of contention is the specific location of the customs terminals in Russia. On this issue, Russia appears to be changing its positions, namely asking for the installation of customs terminals at two locations instead of three.⁸⁴

Georgia rejects any scenario in which the de facto authorities exercise passport control or collect customs fees, since that would strengthen the statehood and administrative capacity of the de

⁷⁹ “Switzerland’s Good Offices: All Conditions for Implementation of Russian-Georgian Customs Agreement are in Place”, Federal Department of Foreign Affairs, available at: <https://www.fdfa.admin.ch/eda/en/home/news/news-fdfa.html/content/eda/en/meta/news/2019/2/5/73896>

⁸⁰ see Revenue Service of Georgia, available at: https://www.rs.ge/Default.aspx?sec_id=4845&lang=1&newsid=5254

⁸¹ anonymous, author’s interview, March 2019

⁸² anonymous, the Ministry of Foreign Affairs of Georgia, author’s interview, March 2019

⁸³ *ibid*

⁸⁴ Kapanadze, S., author’s interview, May 2019; anonymous, the Ministry of Foreign Affairs of Georgia, author’s interview, March 2019

facto authorities⁸⁵, which Georgia would see as a threat to its sovereignty and territorial integrity. Moreover, Georgia also rejects Russia's position that the terminals should only be installed at two trade corridors.⁸⁶ Georgia seeks guarantees from Russia that the Agreement will not be politically instrumentalized by the de facto authorities.⁸⁷

On the other hand, Russia acknowledges that progress has been achieved in the preparatory work for implementing the Agreement. It urges Georgia "to confirm, without [using] tricks, its intention to honestly implement the agreement requirements on customs terminals."⁸⁸ Russia further holds that "the Russian-Georgian agreement does not regulate, and by definition, cannot regulate the cargo movement through the territory of the Republic of South Ossetia."⁸⁹ If transit is to proceed, "practical issues related to it" must be resolved.⁹⁰

Russia consistently maintains that the deal does not apply to Abkhazia and South Ossetia, arguing that "the work of private Swiss company, invited to administer certain customs issues, does not cover the territories of Abkhazia and South Ossetia either. It applies exclusively the territories of Russia and Georgia within the post-August, 2008 borders."⁹¹ This certainly remains the major contention between Russia and Georgia, as Georgia interprets the Agreement to be in service of "the very purpose of securing Georgia's territorial integrity and its main essence is about eradicating illegal movement of cargo, including on the occupied territories in predefined corridors."⁹²

With questions of sovereignty dictating the fate of the Agreement, in hindsight it appears that in 2011 both Georgia and Russia rushed to sign the Agreement in order to accelerate Russia's accession to the WTO. This, at the time, made sense because of interest from most of the international community in letting Russia in, thus urging Georgia and Russia to enter into negotiations and resolve the issues of contention. Both Georgia and Russia compromised at the time, producing a neither-lose-neither-win agreement that each side could interpret to its own liking.

While it should be noted that from the perspective of international law the Agreement favored Georgia's interests, its gains were more abstract than practical. Contrary to this, for Russia, the Agreement delivered a practical result: that is, entering the WTO without actually implementing the terms of the Agreement before accession took place. The major shortcomings of the Agreement, which presupposed that the Agreement was doomed to remain only on the paper,

⁸⁵ "Abkhazia and South Ossetia: Time to Talk Trade", May 2018, International Crisis Group, available at: <https://www.crisisgroup.org/europe-central-asia/caucasus/georgia/249-abkhazia-and-south-ossetia-time-talk-trade>

⁸⁶ anonymous, the Ministry of Foreign Affairs of Georgia, author's interview, March 2019

⁸⁷ *ibid*

⁸⁸ "Russian MFA on WTO Deal Implementation", Civil.ge, available at:

<https://old.civil.ge/eng/article.php?id=30183>

⁸⁹ *ibid*

⁹⁰ *ibid*

⁹¹ "Lavrov: 2011 Georgia-Russia WTO Deal Does Not Cover Abkhazia, S. Ossetia", Civil.ge, available at:

<https://old.civil.ge/eng/article.php?id=28119>

⁹² "Georgian MFA Accuses Russia of Misinterpreting 2011 WTO Deal", Civil.ge, available at:

<https://old.civil.ge/eng/article.php?id=28126>

were that it did not clearly set out a timetable which would commit the parties to the commencement of the practical implementation of the Agreement, and that the Agreement lacked an effective enforcement mechanism prior to it taking effect. Neither Georgia nor Russia are legally or otherwise obliged to actually implement the Agreement, and the status of the Agreement – implemented or not implemented – does not bear any consequence for Russia’s membership in the WTO.

This has left implementation up to the political will of the parties and to the efforts of Switzerland as a mediator country. Absent direct sovereignty questions and implications, Russia and Georgia would have easily found the means to implement the Agreement, as trade relations between Russia and Georgia are expanding even without implementation.⁹³ But because at the heart of the Agreement are questions of sovereignty, territoriality and border control, its scope transcends trade issues and thus makes it difficult for the parties to find mutually acceptable ways to put the Agreement into practice.

However, the perception of Switzerland as a neutral party by both countries (and Switzerland’s own interest in implementation of the Agreement)⁹⁴ might encourage the parties to find ways to delink trade and sovereignty issues. In case the Agreement is implemented, it could potentially give rise to new trade regimes in the region. Whether trade priorities can trump sovereignty and status issues remains to be seen. However, it is assumed that full operation of the trade corridors “would provide a major boost to intra-regional and inter-regional trade.”⁹⁵ In what follows is a discussion of what practical implementation of the Agreement means for regional trade dynamics.

Implications for Regional Trade Dynamics

In terms of the Agreement’s impact on regional trade, it should be noted from the very outset that the primary aim of the Agreement is to monitor trade between Russia and Georgia, and the idea of trade corridors is intended to serve that very purpose. The Agreement does not mention or imply the opening of new transit possibilities to and from Russia.⁹⁶ However, even if the Agreement implied new transit opportunities which could theoretically be beneficial for Georgia, discussions should center on what kind of transit would be implied and under what conditions could it be implemented.⁹⁷ That the Agreement does not infer commitments towards opening new transit routes is consensual, however. The Agreement does set the ground for further

⁹³ “Georgia’s Foreign Trade in January-March 2019”, Civil.ge, available at: <https://civil.ge/archives/302774>

⁹⁴ Kapanadze. S, author’s interview, May, 2019; Zakareishvili. P, author’s interview, May, 2019

⁹⁵ Wolff. S. (2019). Russian-Georgian WTO agreement and its implications for Georgian-Russian relations, *Georgian Institute of Politics*, available at: <http://gip.ge/wp-content/uploads/2019/04/Expert-comment-6.pdf>

⁹⁶ Kapanadze. S, author’s interview, May, 2019; anonymous, the Ministry of Foreign Affairs of Georgia, author’s interview, March 2019

⁹⁷ *ibid*

negotiations to be conducted in this regard. However, that should be done only after Russia fully meets its obligations under the Agreement.⁹⁸

Any possibility of opening new transit routes via trade corridors covering the territories of Abkhazia and South Ossetia remains absent until Georgia and Russia resolve their differences on the practicalities of implementation. Trade corridor 3, as given in the Agreement – the Kazbegi-Upper Lars border crossing – is currently “the main artery linking the South Caucasus to Russia.”⁹⁹ Opening new transit passages through Abkhazia and South Ossetia would especially benefit Armenia, which has lobbied Georgia to open the transit route.¹⁰⁰ Azerbaijan on the other hand lobbies against the opening of new transit passages¹⁰¹ as it “gains nothing” from this possibility.¹⁰² New transit routes would also benefit businesses in Turkey and contribute to opening up de facto South Ossetia, which has been isolated since the 2008 war.¹⁰³

Although potential trade and economic benefits of the Agreement – and the new transit routes that might appear as a result of it – are substantial in terms of increasing sustainable and dependable trade connectivity among regional actors¹⁰⁴, given the contention over the issues of sovereignty and status, the prospects of its realization seem slim.

Provided that in the eighth year since the signature of the 2011 Agreement, Georgia and Russia still fail to find consensus on the practicalities of implementing an agreement that both countries and international community hailed as status - neutral, the likelihood of the deal between Russia and Georgia on the new trade routes and arrangements – which unlike the 2011 Agreement would require inclusion of de facto authorities, hence the question for Georgia over their legitimization – remains low.

However, in case an agreement is reached between Russia and Georgia that settles or temporarily pauses disagreements regarding sovereignty and status, its implementation would not only benefit regional trade dynamics but would also pave the way for conflict transformation.¹⁰⁵

According to Sergi Kapanadze, while negotiating the 2011 Agreement, Georgia rested on the assumption that if/when the conflict dynamics start to change positively – a process which elsewhere is encouraged by enabling new trade opportunities and interpersonal contact – Georgia

⁹⁸ Turmanidze, T. (2019). Russian-Georgian WTO agreement and its implications for Georgian-Russian relations, *Georgian Institute of Politics*, available at: <http://gip.ge/wp-content/uploads/2019/04/Expert-comment-6.pdf>

⁹⁹ “Abkhazia and South Ossetia: Time to Talk Trade”, May 2018, International Crisis Group, available at: <https://www.crisisgroup.org/europe-central-asia/caucasus/georgia/249-abkhazia-and-south-ossetia-time-talk-trade>

¹⁰⁰ *ibid*, p 14, footnote 70

¹⁰¹ *ibid*, p 14

¹⁰² Zakareishvili, P., author’s interview, May 2019

¹⁰³ “Abkhazia and South Ossetia: Time to Talk Trade”, May 2018, International Crisis Group, available at: <https://www.crisisgroup.org/europe-central-asia/caucasus/georgia/249-abkhazia-and-south-ossetia-time-talk-trade>

¹⁰⁴ Wolff, S. (2019). Russian-Georgian WTO agreement and its implications for Georgian-Russian relations, *Georgian Institute of Politics*, available at: <http://gip.ge/wp-content/uploads/2019/04/Expert-comment-6.pdf>

¹⁰⁵ Zakareishvili, P., author’s interview, May 2019

will be able to use the existing international WTO monitoring mechanism for dealing with any future trade and economic arrangements that include Abkhazia and Tskhinvali region/South Ossetia.¹⁰⁶

Conclusion and Recommendations

This paper demonstrates that the Agreement between Russia and Georgia was welcomed by both countries in 2011. Since then, the parties have read the terms of the Agreement according to their own liking and have viewed the Agreement as contributing to their own respective interests.

The Agreement established a mechanism to allow both parties to settle disputes through neutral arbitration if and when they arise. However, it lacks effective enforcement mechanisms which would incur costs for the parties for refusing to put the Agreement into practice. Instead, implementation of the Agreement has been largely left up to the political will of the parties and to the Swiss mediation.

Due to the lack of enforcement capabilities, implementation of the Agreement became subordinate to political developments within and between Russia and Georgia. Three hindering factors have therefore contributed to the delay in the implementation of the Agreement.

First, domestic political considerations within Georgia have delayed implementation. The change of government in Georgia in 2012 left the incoming ruling party in doubt over the value of the Agreement, which was negotiated by a rival political force and which dealt with issues of sovereignty and territorial integrity. In the first years after signing the Agreement, the new government reassessed whether it benefitted Georgia. In the years that followed, Georgia settled its domestic political concerns and appeared ready to implement the Agreement but concerns over sovereignty remained. Finally, in 2017 and 2018, both Georgia and Russia respectively agreed to perform a required step and sign separate contracts with the Neutral Private Company. This, however, was not the end of practical implementation of the Agreement, and disagreements on the interpretation of the terms of the Agreement loomed large.

The second factor that delayed practical implementation of the Agreement was Russia's reluctance to change the status quo, and its conviction that since WTO membership has already been achieved, implementation of the Agreement is of a secondary importance. Despite this, Russia also took a step closer to implementation of the Agreement in 2018 but the concerns over the practicalities of the implementation remained.

The third hindering factor was the realization by both parties that questions of sovereignty outweighed any commitment to deepening trade relations. Given the fact that the Agreement set no timetable for implementation and that non-implementation was not subject to conditionality, implementation of Agreement has been dictated by domestic political developments and the self-

¹⁰⁶ Kapanadze. S, author's interview, May 2019

interested interpretations of either party. This is the very opposite of what the parties as well as the international community sought prior to signature of the Agreement in 2011.

However, the first meeting of the Joint Committee was held in March 2019, raising hopes that the parties would settle differences that are more political than technical in nature. Implementation of the Agreement would benefit regional trade, however, to the expectations of different actors in the region, particularly Armenia, it does not automatically follow from the Agreement that new transit routes will be opened that would connect the South Caucasus to Russia and vice versa.

The Agreement, once implemented, could give rise to new trade and economic arrangements, although questions of sovereignty and status are again likely to trump the commitment to deepened trade relations. However, if Georgia and Russia agree to delink sovereignty and status issues from trade commitments, the Agreement could become a basis for more regional economic connectivity, which would also positively impact prospects for conflict resolution.

Policy Recommendations

For the Government of Georgia:

- To avoid further politicization of the Agreement, the Ministry of Foreign Affairs, the Ministry of Justice and the Ministry of Finance—all institutions that are part of the Joint Committee—should take full agency, both formal and informal, in the implementation of the Agreement. Political dialogue taking place within Karasin-Abashidze format should not influence the implementation of the Agreement;
- Given the signature of a separate contract with SGS and its commitment to implementation of the Agreement, Georgia should engage more with the international community to apply pressure on Russia to implement the Agreement in good faith and based on the spirit of the 2011 negotiations. That includes: 1) refraining from including de facto authorities in the implementation of the Agreement; 2) upholding the terms of the Agreement and installing customs terminals at all three trade corridors; and 3) locating customs terminals at such locations that allow international monitors to exercise their functions unhindered.
- Seek the possibility of engaging other actors, the European Union in particular, to assist in implementation of the Agreement. For example, seek the advice, experience and expertise of the European Union's Border Assistance Mission in Ukraine and Moldova (EUBAM).

For the International Community:

- Facilitate agreement between Russia and Georgia to ensure that, in the context of implementation of the Agreement, emphasis is placed less on sovereignty-related issues and more on commitment—based on a status-neutral approach—to deepening trade relations and facilitating the free movement of people and goods.

- Apply pressure on Russia to follow the Agreement in good spirit and refrain from instrumentalizing the Agreement to strengthen the statehood of Abkhazia and/or South Ossetia.
- Observe and encourage the timely implementation of the Agreement and urge all parties to reach consensus in strict accordance with the terms of the Agreement.

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