

## **A Reflection on Accessions as the WTO turns 20**

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Nations home to some 2 billion people have become integrated into the global trading system since the Berlin Wall fell in 1989. In the intervening period, despite the damage wrought in recent years by the Great Recession, the growth of developing countries has been rapid, absolute poverty has fallen sharply, and trade and foreign investment – especially in developing countries – have outstripped the rate of advance of world GDP by a wide margin. Trade in intermediate products has grown even more rapidly than trade in final goods and services, causing trade and production to become increasingly and inextricably intertwined. As a share of world GDP trade in goods and services has surged over the last 20 years, from about 30% to 50%.

These broadly favorable outcomes can be attributed primarily to domestic reforms that reoriented economies towards the market – themselves the result of big political and ideological shifts – as well as to the application of transportation and communication technologies developed over many decades. In this long process, widespread trade liberalization, supported by the ideas and mechanisms that underpin the WTO and its predecessor the GATT, have played a significant role. Most recently, accession to the WTO under Article XII has provided an important framework to help effect the transition of 20 formerly planned economies to a market-based system as well as 12 other countries classified as developing countries by the World Bank. China, the largest Article XII Member, now plays a locomotive role in world trade comparable to that of the United States. As a group, China together with the other developing countries as classified by the World Bank, appear destined to hold by far the larger share of world trade within a generation. Today, WTO rules and disciplines extend the rule of law to 97% of world trade from 80% at its

inception and to 160 countries from 123. Another 23 countries accounting for approximately 2% of world trade are in the process of accession.

Unlike the GATT, which included a large number of original members and countries that acceded automatically under colonial preferences, accession to the WTO is a hard and long drawn-out process. Accession negotiations typically last about 10 years and require far-reaching commitments by the acceding country (or customs territory) as well as acceptance of disciplines and binding commitments which sometimes go beyond those applied to existing members, and occasionally even acquiescence to lesser rights – at least temporarily. This procedure has sometimes been characterized in the development and legal literature as "unfair" to new members, discriminatory, arbitrary, and possibly undermining the legitimacy of the WTO as a body of law.

Others, however, have argued that while basic WTO principles such as transparency and non-discrimination are constant, accession terms relating to the scope and extent of liberalization can and should vary, as they do vary greatly for original members. All WTO commitments, under Article XII or otherwise arrived at, are the result of reciprocal and legally binding concessions in negotiations, under a "Legal Single Undertaking", which are at the core of the way the WTO functions. In the case of Article XII countries, the argument goes, concessions must be measured against the prize of secure access to essentially the totality of their export markets; a big prize indeed.

Both sides of this ongoing argument are presented in this volume, as are ideas to improve the workings of accession. However, the main focus of the volume is on outcomes, not process.

Specifically, did WTO accession help stimulate reforms, and increase trade, investment and economic growth in Article XII Members? Did accession strengthen the multilateral trading system? A review of the most recent and voluminous economic literature on this question, as well as the writings presented here,

spanning the views of negotiators as well as development practitioners and trade experts, strongly suggest that – even though accessions pose negotiating challenges and entail a drawn-out and difficult process of domestic institutional reform – the answer to both questions is in the affirmative.

A recurring theme among the authors of this volume is that countries that undertook the most far-reaching trade reforms in the course of accession negotiations – either because they were so inclined, or because more was demanded of them, or both – tended to perform better than those for whom the process was much less demanding: acceding countries did better on various scores than the world average, and those acceding countries that undertook the most far-reaching commitments did even better. Without claiming causality – which is difficult to establish given the impossibility of controlled experiments – it is nevertheless worth noting that Article XII countries, including China, increased their share of world trade by 125% over 1995-2013. Excluding China, the share increase was 42%.

Improved governance and application of the rule of law most likely played a significant role in affecting these outcomes. The role played by governance in achieving poverty reduction and growth has long been recognized, but governance reforms are hard to do and must overcome opposition. It turns out that WTO accession can provide the political push as well as useful instruments for reforms. Rules such as transparency, non-discrimination, and the necessity and scientific principle in standard setting, make rent-seeking more difficult. WTO agreements such as government procurement, which most accession countries agree to join, help address an area where rent-seeking or outright corruption is most prevalent.

The willingness of nations to embark on the protracted and costly process of accession and to persevere until it concludes is a measure of the value they place on membership. After all, sovereign entities choose to join the WTO. In the words of Long

Yongtu, the Chief Negotiator for China's WTO Accession at the First China Round Table on LDCs' Accessions in Beijing in 2012, "... China used the WTO accession process to leverage and accelerate its domestic reforms. Acceding Governments should consider WTO accession as part and parcel of the national strategy to strengthen its development efforts and strengthen its external trade". In this book, Chinese negotiator Xiankun Lu adds that "...countries choose to be part of the rules-based multilateral trading system for different reasons. But there is a common reason behind each and every accession: i.e. it is overwhelmingly in their interest to do so". Even though they lament the difficulties of accession, negotiators from Article XII Members who contributed to this volume uniformly recognize the value of the process, and not just of the outcome. They emphasize four aspects in particular: the importance of WTO reforms as a platform for their own domestic reforms, as a bulwark against backtracking, as a means to secure market access for their exports, and as a clear signal that they are open for business and want to become an attractive place to invest.

The numerous dispute settlement decisions which refer to accession protocols and related Working Party reports, show that these documents, which sometimes run to thousands of pages, have become integral part of WTO law. Article XII Members appear as complainants of in 34 disputes, while dozens of other countries appear as interested third parties. The more demanding conditions typically placed on these new members have also pushed out the frontier of WTO disciplines across a very broad front –ranging from the frameworks for making and enforcing trade and trade-related policies, to setting sanitary and phytosanitary standards, to adopting disciplines in areas ranging from investment, energy, intellectual property, and state owned enterprises. Accession protocols have thus strengthened the multilateral trading system not just by extending its geographic reach but also by providing an important source of precedent for

negotiations, promoting adherence to other WTO Agreements, such as the Plurilateral Agreement on Government Procurement, and pointing to the system's possible evolution. They have, moreover, provided many opportunities for clarifying and giving greater precision to the rules of the WTO.

We believe that an important contribution of this volume is to show that – even as the Doha negotiations have stalled – the multilateral trading system has advanced impressively: the achievement of near-universal coverage of WTO rules and disciplines, has helped spur reforms among its Article XII Members, greatly enhanced the value of the institution to its original members, and also increased its gravitational pull on the relatively small number of countries that remain outside it. The increased importance of trade and foreign investment in economic activity, and the proliferation of closely integrated international production networks across many interdependent industries, made possible by a rules-based system, further reinforces the importance of the WTO as an arbitrator of disputes and raises the stakes on the adoption of new rules and disciplines in the future.

This volume aims to provide a comprehensive review of accession to the WTO and its implications for acceding countries, original members and for the global trade system. It is articulated in 5 sections: Section 1 reviews the global economic context and the trends in world trade within which the accession process occurs, as well as the impact of accession on macroeconomic policy and structural reforms. Section 2 examines some of the effects of accessions on WTO law and on the broader trading system. Section 3 provides the perspectives of accession negotiators, from the standpoint of Article XII Members, original members, and Chairs of Working Groups. Section 4 takes a horizontal cut at Accessions, examining the salient features of Accession protocols by subject matter, such as services, or state enterprises. Section 5 concludes by examining the potential of accessions as building

blocks for the multilateral trading system in the future. In the remainder of this introductory chapter we summarize the book's findings on the effects of accession on Article XII countries, as well on the multilateral trading system.

### The Effects of Accession on Article 12 Countries

The 32 Article XII Members are a diverse group. Most were classified as developing countries by the World Bank at the time their Accession Working Party was established. While Saudi Arabia and the Russian Federation are now recognized as high-income oil exporters, at the other extreme, 7 are LDCs, some of the world's poorest countries. And 20, including Russia, are formerly planned economies, several of which have become EU members), and another 10 are middle income and low income developing countries which decided to embark on reforms later than their peers – usually because of internal or international conflicts or an ideological bent in favor of self-sufficiency. The 23 countries currently in the process of accession, constitute a diverse group of oil exporters, LDCs, formerly planned economies, and countries that have struggled to resolve civil and/or cross-border conflicts

Dating the time taken to accede requires a benchmark, since the formal process may be preceded by informal negotiations that can take years. The average time elapsed between establishment of the Accession Working Party and actual accession approval by consensus in a General Council or Ministerial meeting is 10 years, varying from the shortest 3 years in the case of Khyrgyzstan to the longest 18 years, in the case of the Russian Federation. Other countries, for example Algeria, whose working party was established under the GATT in 1978, have been in negotiation even longer.

Under the terms of accession, Members demand of the acceding country or territory WTO-consistency with domestic laws and regulations. Moreover, members request that the acceding

country take on specific obligations on rules, as well as market access. The Acceding Government can request concessions which pertain largely to transitional periods for the elimination of WTO-inconsistent measures. Their ability to win such concessions depends on the power of arguments presented and on concrete evidence. An example would be limits on imports of alcoholic beverages in Muslim countries on religious grounds. In another instance, the Russian Federation won "a transitional concession" for its WTO-inconsistent measures in the automobile sector. However, it is a fact that – as a general rule – the fundamentals of WTO acquis are taken as given and cannot be changed. Accession is by consensus of the membership which means that – at least in theory – objection by even one or a small number of members can delay or block the process. Since accession is a one-time event, and the stakes for the country acceding are large, it represents a unique opportunity for original members to make demands, which can range from pressing from a specific commercial interest to a desire to see the acceding country's regulatory system upgraded in some way. Although there are acknowledged best practices and norms that guide negotiations, the negotiations are unequal, in the sense that demands on the acceding country can be made by any of the Members, and there is no rulebook that places hard-and-fast limits on what can be demanded. The outcome is that typically the acceding country takes on more demanding obligations than original members which did not have to go through the same process. These obligations can take the form of more stringent commitments within established areas such as tariff bindings, or they can be "WTO+", commitments in areas for which there is no precedent. The latter are discussed more fully in the next section which reviews the effect of Accession Protocols on the evolution of WTO disciplines.

The extent of commitments by Article XII Members in established areas is best understood by comparing original and article 12

members with regard to their tariff concessions and specific commitments in services Schedules. While original members bound about  $\frac{3}{4}$  of their tariff lines, Article XII Members agreed to bind nearly 100%. Moreover, the average bound rate for original members is around 45%, whereas it is approximately 14% for Article XII Members. Article XII members also committed to liberalize over twice as many service subsectors as original members. However, differences in applied tariffs were much smaller, 7.3% for Article XII Members versus 9.7% for original members, suggesting that while Article XII Members gave up much of their "policy space", so called, in protection on joining the WTO, the actual adjustment to their trade regime was relatively modest, especially considering the fact that the adjustment typically occurs over the course of the negotiation which takes many years.

Why were Article XII members willing to engage in protracted negotiations and undertake these commitments? The contributions by negotiators of Article XII countries in this volume give considerable weight to the security afforded by the WTO membership on access to foreign markets, as might be expected. However, the overall picture that emerges is one that places even greater importance on the domestic transformation required by WTO membership. In the words of the Cambodian negotiator Cham Prasidh "... being a WTO member is one of the main pillars of Cambodia's successful economic performance. This does not mean, however, that membership automatically leads to trade-led economic development.... Post-accession policies in areas such as commercial legislation, supply-side development...trade facilitation..., will ultimately determine the extent to which WTO membership triggers an acceleration...". The negotiators Khemmani Pholsena and Buavanh Vilavong of Lao PDR, whose accession took 15 years, write " Lao PDR used the WTO accession process as a very useful tool to implement its decision to establish a market economy... accession allowed LAO PDR to



apply international best practices... [and] ...help create an enabling environment for business and trade in the country". Thus, while the 32 Article XII Members accepted approximately, 1,321 specific obligations that, pursuant to the WTO Accession Protocol are integral to the WTO Agreement, they also enacted approximately 7,106 WTO-consistent laws and associated implementing regulation across the principal areas of the foreign trade regime.

Correspondingly, the negotiators of original members also place great emphasis on facilitating trade-supportive domestic reforms in new members, and not just on securing their own market access. Thus, EU negotiator Ruta Zarnauskaite refers to the WTO as a "unique platform to anchor growth targeting reforms" and writes "... it is for these reasons that the EU has been systematically engaged in consultations with acceding members not only on the market access side...but also, and with no less vigor, on the rules side."

As discussed above, numerous commentators have been critical of WTO accession, as a process that – in their eyes - demands too much and takes too long, especially as the Article XII Members are predominantly developing countries and even more especially as the group includes LDCs, with limited resources and capacity, and fragile economic structures with limited or non-existent safety nets. Some have even suggested that, in actual practice, WTO accession represents the opposite of what is intended by special and differential treatment, a form of discrimination that hits the poorest countries harder, and they point to instances of arbitrary treatment by Members intent on gaining a particular trade advantage or bent on a political agenda.

Any reasonable assessment of these issues must in the end rest in part on an evaluation of the outcomes observed in the accession countries. The analysis by World Bank economists in Chapter 4 suggests that – as a group, excluding and including

China – accession countries have done better in comparison to world averages with respect to exports, imports and foreign direct investment. They also saw improvements in credit ratings and various measures of policy and institutional strength. Key to understanding these outcomes is the fact that countries in the process of accession have fairly systematically embarked on more far-reaching domestic reforms – ranging from macroeconomic policy to structural reforms such as those that affect the business climate, banking system, education and health provision, labor markets and competition, and the freedom to import and to invest. Indeed, in the view of these analysts “Applying for WTO membership signals the willingness of a government to undertake deep reforms regardless...when countries decide to join...they are already thinking of a reform process that is wider than the WTO itself”.

Given the interplay of many factors, the correlation between WTO accession and favorable trade and investment outcomes hardly constitute definitive scientific proof that WTO accession has boosted the performance of Article XII countries. What can be said is that the correlation is consistent with the basic idea that making trade possible and predictable, and simultaneously embarking on domestic reforms that improve the business climate, will pay dividends in terms of increased productivity and living standards - an idea that provides the rationale for the existence of the WTO in the first place.

The World Bank findings are broadly consistent with the evolving consensus in the academic literature on the subject, also reviewed in Chapter 8. Initial research findings on the impact of GATT/WTO membership on trade outcomes had found no significant impact. Subsequent research has overturned this conclusion, using successively more refined metrics of what in shorthand can be described as “membership”. For example many former colonies participated in the GATT even though they were not formally members, biasing downward the estimates of the

beneficial effect of formal membership. Subsequent analyses showed that those GATT/WTO members that undertook extensive obligations saw better trade performance than those that did not. For example, trade has grown relatively rapidly in industrial countries and in recently acceded developing countries and separate customs territories. These countries have committed to much greater tariff cuts than developing countries that joined the GATT with minimal commitments during the early days. Even more recent research has shown a strong correlation between the number and extent of WTO commitments and favorable trade outcomes. In the same vein, some recent studies identify a substantial growth dividend in the wake of WTO accession, lasting some five years or so, but a dividend that is more pronounced in countries which undertook deeper reforms and more extensive WTO commitments.

### The Effects of Accessions on the World Trading System

Accessions have expanded the reach of the multilateral trading system. But, as already mentioned, they are not an unmitigated blessing - the process of accession is overly lengthy, costly, and raises fair questions about the legitimacy of some of the demands played on Article XII Members. Moreover, when combined with an increasingly complex agenda, the addition of a large number of new members with vastly diverse economic structures and levels of income has almost certainly made it more difficult to conclude comprehensive trade rounds. This is despite the fact that Article XII Members have often espoused higher rather than lower levels of ambition in negotiations and expressed a preference for broader rather than narrower negotiating agendas.

As already shown, accessions have expanded market access and made it more predictable for both original and Article XII Members. Original members have seen the coverage of WTO disciplines apply to an additional 20% or so of their export market, while Article XII countries and separate customs territories have gained secure access for the near totality of their

trade for the first time. All WTO members benefit from this “network effect”, making membership in the institution of greater value to all. This is a crucial beneficial effect of accessions but it is only a part of the story. Accessions have strengthened the multilateral trading system in three other quite distinct ways: by reinforcing the geopolitical underpinnings of a globally encompassing trading system; by embedding trade more firmly in reformed domestic laws in Article XII countries; and by adding to WTO law, clarifying and deepening existing rules and disciplines, and enabling “WTO plus” experimentation and innovation in many areas.

The world trading system does not operate in a vacuum – like all other forms of international cooperation it is conditioned by the core values and the geopolitical interests of its members. Similarly, accession to the WTO is a 360 degree process, one that cannot be neatly compartmentalized into economic or legal aspects on one hand and international relations on the other, but is motivated by and entails considerations of each of these dimensions. By facilitating the integration of economies with disparate economic systems at the end of the Cold War and accelerating the convergence of these systems, accessions have simultaneously helped improve the political understanding and the orderly international relations that must underpin trade. Moreover, by establishing a common set of rules and providing an arbitration mechanism, the WTO has reduced the risk of commercial disputes among former adversaries from escalating dangerously.

Thankfully, the systemic change of which accessions have been both an outcome and a driver will not be easy to reverse. As this volume shows, the domestic market-oriented reforms that have accompanied accessions have often been transformational; they are not typically only at the margin. The domestic reflection of accession-specific commitments can be found in the laws, as discussed and shown in Table 1 of Chapter 9. The security

afforded by WTO disciplines and related market reforms have made investment in Article XII Members more attractive, and also had a beneficial effect on investment in original members. It should be recognized that, once large numbers of enterprises become dependent on foreign markets and on imported inputs to serve both domestic and foreign markets – the integration of global production chains - the domestic interests in favor of openness are strengthened. The resilience of the world trading system, its resistance to protectionism, does not depend only on the international laws and regulations which govern its functioning, but also on the core values of the market economy, the acceptance of the rule of law and of good governance principles at home, in short, by the support afforded to it by the domestic legal and political systems of Members.

Accession Protocols, and the Working Party Reports and Goods and Services Schedules which accompany them, typically run to thousands of pages. They result from bilateral and plurilateral negotiations of the applicant with dozens of countries, and require a decision by consensus of the WTO membership. Although largely flying below the radar accessions have thus come to constitute one of the most active and continuously ongoing negotiating agendas of world trade. Their results are integral to WTO laws, and have been cited in close to 30 disputes, of which close to 20 have proceeded to Panel Stage. These disputes have included both original and Article XII members as complainants and defendants, as well as several interested parties in each instance. Panels have found and the AB has upheld that specific accession commitments in Working Party Reports are enforceable in WTO Dispute Settlement, and that the WTO Accession Protocol is an integral part of the WTO Agreement, signaling a major extension of the disciplines at the core of the global trading system.

In the process of negotiating accessions, many opportunities have arisen to test, apply, deepen and refine existing rules and

disciplines, as well as to extend WTO rules and disciplines into new areas, so-called "WTO plus". Several of these areas have been the object of negotiation under the Doha Development Agenda, with little progress. What follows are some salient examples, drawn mainly from the technical chapters in this volume, and which do not constitute a comprehensive list.

*Trade in Services.* A striking feature of the services accession commitments has been the depth and range of domestic regulation-type disciplines which a number of acceding Members have undertaken. Out of 32 Article XII Members, 10 Members have undertaken "horizontal and sector-specific obligations" on Policies Affecting Trade in Services. These specific obligations go further than the existing provisions of GATS Article VI (Domestic Regulation) as they require acceding Members to ensure that their licensing procedures and conditions are transparent, reasonable, impartial and not more burdensome than necessary. An example of this, are the accession-specific obligations on the so-called "necessity test". This is a potentially powerful discipline which would allow WTO members to challenge other members on the trade-restrictiveness of their measures.

In heavily regulated sectors, such as financial services and telecommunication services, accession-specific services obligations have included, for example: a specific timeframe allowing foreign services providers; non-discriminatory treatment when regulatory changes occur; obligation of the acceding government to consult with Members on new regulations in a specific sector.

*Market Access.* Although the frequency of use of complex compound and specific duties is roughly similar among Article XII and original members, accessions have typically insisted on identifying and re-calculating these complex duties and changing them to reflect their Ad Valorem Equivalents (AVEs). The AV equivalent, is a transparency measure. Moreover, compared to the original Members, Article XII Members have a significantly higher coverage of tariff lines subject to restrictions that prevent

breaching bound tariffs. In Goods Schedules, the use of Initial Negotiating Rights (INRs) – a GATT creation – by Members must meet a transparency test. The INR is a negotiating modality which allows for the "right of a Member" to request tariff negotiations and concessions, even if it is not a principal supplier with a substantial trade interest. This is a systemic right. In its evolution, consequent on accession negotiations, it has become a tool by which Members limit the capacity of other Members to arbitrarily, or without cause, seek an increase in their tariff bindings. Accession negotiations have consolidated transparency in the use of this mechanism and reinforced safeguards against market access instability in goods schedules.

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*Agriculture.* Most accession countries have bound their trade-distorting subsidies at close to zero. With a small number of exceptions, Article XII Members have also committed to bind their export subsidies at zero upon accession. This is consistent with paragraph 20 of the Agreement on Agriculture and has been one of the central objectives of the Doha Round negotiations on agriculture. It is worth noting that recent studies show that membership of the GATT/WTO increased agriculture trade by 68%, compared with 31% for non-agriculture trade.

*Sanitary and Phyto-Sanitary Standards.* SPS accession commitments undertaken by 32 Article XII WTO Members have exercised a significant influence on WTO jurisprudence, clarifying and strengthening WTO law. Given the potential for hidden protection "behind-the-border", special attention has been paid to SPS in accession negotiations, so that some 90 SPS accession-specific commitments were undertaken by the Article XII WTO Members. The SPS Chapters in Working Party Reports are consistently the most voluminous and detailed, covering items such as shelf life and expiry dates, MRLs, risk assessments, precautionary measures and international standards, audits,

listing and de-listing of establishments, veterinary certificates, etc. . The obligations accepted by the Russian Federation, in this area were the most comprehensive, including WTO plus provisions on import permits, transit requirements, veterinary certificates, establishment approval procedures, and inspections. This reflected a desire by Members to guard against the uncertainty caused by rapidly changing regulations in the Customs Union between Russia, Belarus and Kazakhstan

*Government Procurement.* Of the 32 Article XII Members, 22 undertook GPA-related commitments, and 7 subsequently completed accession to the GPA. Out of the 10 WTO Members that are currently seeking accession to the GPA, 9 undertook commitments related to GPA accession at the time of their WTO accessions, while five other Article XII WTO Members that have not yet initiated their accession to the GPA have also undertaken commitments to eventually do so. Thus this is an example of WTO Accession Negotiations strengthening not only the main body of WTO disciplines but also the adherence to an important Plurilateral Agreement.

*Energy.* Although there are no specific rules on energy *per se* in WTO Agreements, all tradable energy goods and services are covered by the GATT and GATS respectively. Energy-specific commitments were first undertaken by Ukraine in 2008 in its Accession Protocol. The commitment confirmed guaranteed freedom of transit for energy. This guarantee was subsequently confirmed in the Accession Protocols of Montenegro, the Russian Federation and Tajikistan. These commitments have enhanced legal certainty and reinforced the provisions of GATT 1994 Article V. The obligations assumed by these Article XII Members clarified that their laws, regulations and other measures governed the transit of goods included energy. Accession-specific commitments undertaken with regard to "pipeline transportation" are of particularly notable geo-political importance. Ukraine and Montenegro made commitments on transparency and non-discrimination for pipeline transportation of fuels. These energy-related accession-specific obligations go beyond those made by



original members and could form the basis of future commitments by countries still in the process of accession and also provide a broader energy framework within the rules-Multilateral Trading System in the WTO.

Specific to energy trade, obligations on pricing policies were also undertaken by Saudi Arabia and the Russian Federation. These stipulate that they would operate on the basis of normal commercial considerations, based on recovery of costs and profit. The accession obligations on energy pricing did not eliminate price controls, but essentially, brought price controls within the regulatory framework of the WTO, subjected them to commercial considerations, and improved transparency by annexing to these binding commitments "lists", specifically, identifying goods and services subject to price controls.

*Rule-Making.* Accession results show that the majority of Article XII Members have undertaken commitments stating that sub-central or local government entities shall have no autonomous authority regarding subsidies, taxation, trade policy or any other measures covered by WTO provisions. An even larger number committed that central government authorities would eliminate or nullify measures taken by sub-central or local authorities that were inconsistent with WTO provisions; and, enforce these provisions without requiring affected parties to petition through the courts or requiring formal legal proceedings. Nearly all Article XII Members accepted specific obligations that the provisions of the WTO Agreement would be applied uniformly throughout the customs territory of the new Member. It is worth noting, in contrast, that several original Members have placed limitations on the uniform application of the WTO Agreement across the totality of their custom territories.

*Appeal.* The Reports of Working Parties of 25 Article XII Members record discussions on the right to appeal administrative decisions, while several accepted commitments regarding the establishment of a system of appeal, judicial review, or a system of commercial courts.

*Export Duties.* Although export duties have been prohibited in several FTAs and some bilateral trade agreements, the specific obligations in WTO Accession Protocols represent the best efforts, so far, to discipline the use of export duties, substantively and multilaterally. Nearly half of all Article XII Members have accepted accession-specific obligations on the application of export duties. Specifically, these range from obligations to "abide" by the provisions of the "WTO Agreement"; "bind and/or fix" applied export duty rates; and, "reduce", "eliminate", or "foreclose" on the use of such duties. A precedent was set by the WTO Accession commitments of the Russian Federation, whereby export duties are "fixed" and bound on 704 tariff lines, of which 544 are subject to reduction commitments. The commitment by Montenegro stipulates that "from the date of accession, Montenegro would neither apply nor reintroduce any export duty." This commitment represents the strictest discipline on export duties to date in all Article XII accessions.

*State Enterprises.* The existing multilateral framework of rules remains fragmented and in some ways inadequate in establishing disciplines for state enterprises engaged in trade and participating in international production chains. In fact, there is ambiguity in the GATT definition of what constitutes a state enterprise. The accession process has provided a fertile testing ground for devising approaches to deal with practical issues related to state trading. Accessions have helped clarify the definition of "state trading enterprise", broadening to include state trading and production activities of both goods and services, as well as state investment in enterprises, and also have addressed the transparency deficiency in this area. In the China accession, a supplementary obligation – not derived from the GATT – is added for "State Owned" enterprises, stipulates that the Government undertakes not to "influence, directly or indirectly, commercial decisions [...], including on the quantity, value or country of origin of any goods purchased or sold". In some instances, Article XII Members undertook obligations either to limit or phase-out STEs. The accession process establishes a list of STEs, promoting

transparency and assisting monitoring of post-accession implementation. The notification rate of Article XII Members has been consistently higher than that of original members.

*Investment.* While the WTO Dispute settlement applies only to State-to-State disputes, Accession protocols reinforce the right of private investors' access to impartial binding procedures to settle investment-related disputes with host governments. For example, some Article XII Members have accepted explicit accessions commitments to guarantee the right to alternative dispute settlement. For example, in the Georgia accession, it is stipulated that disputes between the state and a foreign investor could be settled in the Courts of Georgia or other fora, including arbitration, such as the "International Centre for Settlement of Investment Disputes" (ICSID).

*Land.* Foreign investment in land has often been marked by lack of information, transparency and uncertainty as to what is allowed and not. Moreover, purchases of land by foreigners have often triggered controversies and accusation of "land grabs". The investment-related entries on land in the GATS schedules of Article XII Members offer transparency and predictability for services-related FDI in land. The vast majority of Article XII Members have made commitments to streamline services-related FDI in land. These include clear and precise rules on ownership, leasing, duration and usage of land for FDI by foreign services providers.

*Privatization:* A large majority of Article XII Members have committed to regularly "notify" their privatization programs to WTO Members. These specific commitments are not explicitly linked to a notification requirement under any particular WTO Agreement, but are aimed to enhance systemic transparency. Over 1995-2013, approximately 43,500 notifications and related information were entered in the Central Registry of Notifications (CRN). Almost a fifth of these notifications (17%) were made by Article XII Members. This number is significant because many Article XII Members completed their accessions only relatively

recently and, unlike original Members, have not been subject to notification requirements since 1995. Article XII Members have, on average, been more active in fulfilling their notification requirements, although scope remains for improvement.

### A Brief Word on Reform Implications

The fact that the accession process – accompanied by vigorous domestic reforms – appears to both enhance development outcomes and strengthen the world trading system does not mean one cannot do better. The review of accessions presented in this volume raises two reform questions: how can the accession process be improved? And, how should the institution improve its workings in light of its much expanded membership? On both these issues, numerous ideas have been put forward by negotiators as well as academics.

On the process of accession, it has been argued that, as a minimum, the WTO Secretariat should catalogue all "departures" from WTO rules, or expansions, and include them in an official index. The objection raised against this proposal is that Accession provisions are not "departures", but form part of a WTO Single Legal Undertaking, and this has been the case ever since the rules-based Multilateral Trading System emerged in 1947. In this view, the system of rules is continuously evolving, whether through accessions, other negotiations, or deliberations under dispute settlement. Other proposals include an evaluation of the acceding country's trade regime by a panel of independent experts instead of by interested parties, as well as the establishment of reference points for commitments by suitable peer groups as a guideline for negotiators. Proposals have also been made to "accelerate" and "fast-track" the accession process by, for example, allowing more flexibility in the application of commitments, instead of insisting on their implementation before accession is agreed, and improving the coordination of aid to finance reforms. The most ambitious proposals call for a new

broad-ranging Agreement on Accessions, which might include provisions limiting the extent to which original members can ask for "WTO-plus" commitments from Acceding Governments. But, since non-members could not be party to such an agreement by definition, it is not clear why original members would limit their policy space in the absence of any *quid pro quo*.

There are, in our view, three mutually reinforcing ways in which the accession process can be improved: the process should be accelerated, it should be made more transparent, and, commensurate to its importance, it should receive be guided by policy-makers at the highest levels. Although steps have been taken in recent years to remedy these shortcomings, more can and should be done.

The drawbacks are not new. When the WTO was established as an International Organization (IO) in 1995 and the accession process was initiated, evolving from the GATT's Protocol of Provisional Application, the transparency deficit was already evident, and there clearly was considerable scope for sharpening the negotiating process to make it analysis- and fact-based. Technical assistance and capacity-building for Acceding Governments was too general and untailored. There was insufficient evidence about the results of accession and its effect on growth, exports, and domestic reform, and insufficient understanding of how the process could strengthen the international trading system for everyone. The leadership of the Secretariat, pulled in many directions, was not systematically engaged in removing roadblocks in negotiations, encouraging Members and the Acceding Government to look beyond the negotiating minutiae and see the big picture.

There has been progress. To improve transparency, the Informal Group on Accessions (IGA) was expanded and it became more representative of the whole Membership. Accession Newsletters reported on the substance of the negotiations. A "Facilitation Mechanism" was established in 2010 to mediate "blockages" in

the two LDCs' accessions of Yemen and Lao PDR. Directors-General became less tolerant of unreasonable blockages, and became more insistent on ensuring that the terms and conditions of membership safeguard the rules-based system. The Secretariat conducts an Annual Outreach Cycle of engagement with all WTO "Constituency Groups" to address questions, concerns and explain. An Accessions Commitments Database (ACDB) was established in 2010 that created an inventory of all the accession-specific commitments that are now integral to (part of) WTO law. Technical assistance has been more closely tailored to the requirements of Acceding Governments. The WTO Secretariat routinely suggests Road Maps to Acceding Governments to assist them in managing their accessions and bring them to closure. As observed in Chapter 9, the Secretariat and the broader membership recognize that "It is in the nature of the process and substance of accession negotiations that they do not conclude, either naturally, or routinely. The delivery of an accession has to be midwifed".

More can be done to make the accession process faster, more transparent, and more connected to strategic policy-making. While the Secretariat has work to do along all these dimensions, especially in the area of preparation, outreach and analysis, progress depends critically on the way that original members and the acceding government interact and how the acceding government relates to its own domestic reforms and regulatory change. In many instances, the speed of accession depends most critically on the capacity of the acceding government to acknowledge and understand the changes needed, which are often more far-reaching than they originally expected, explain the changes to domestic constituencies, and orchestrate and implement the domestic regulatory reforms to become WTO-compatible. The process of Accession can be characterized without exaggeration as regime change, and for this reason, should be supported at the highest levels, and be led by an

individual able to handle the politics as well as think strategically about the reforms required. On their part, Original Members, especially those directly engaged in the Working Party, need to focus on the most important changes required of the acceding government, not lose themselves in minutiae, or make unreasonable demands unrelated to the economic and trade agenda that is at the heart of accession. They must push for their commercial interest but also see themselves as supporters of the domestic changes needed, understanding the constraints and limitations faced by the acceding government. In all this, it is difficult to overestimate the importance of analysis and outreach by all concerned to domestic constituencies, beginning with the acceding government supported by the WTO Secretariat. The international development community, including the Multilateral Development Banks and the IMF, also have a significant role to play in the provision of technical assistance and in the analysis of the impact of accession on specific sectors and the economy as a whole.

On the issue of how to conduct multilateral trade negotiations among a much expanded membership, there is a very valid concern that the WTO has become a victim of its own success. As its membership has become almost universal, and the negotiating agenda has simultaneously become broader and more complex, negotiations based on a single undertaking to be agreed by consensus of the whole membership have become increasingly unwieldy; some would say impossible.

As has often been argued, a powerful case exists to have Members focus on a narrower agenda, placing greater focus on concluding plurilateral agreements under the auspices of the WTO. These may be more tractable, since they are sector or issue – specific instead of being all-encompassing, and can include a critical mass of the interested members instead of the whole membership. Plurilateral agreements can take two forms. The first form consists of an agreement among members on certain rules of the game whose obligations apply only to the contracting

parties to the agreements but whose benefits are accorded to the whole membership, i.e. are on an MFN basis. Examples include the 1997 Information Technology Agreement, as well as ongoing negotiations to extend it. These are the Annex-4-type Agreements, which form part of the "Covered Agreements" of the "WTO Agreement". The downside of this type of plurilateral agreement is that it allows most members to free-ride, reducing the value of the deal for contracting parties, while at the same time creating an incentive not to participate. The other form of plurilateral enables the signatories to conclude a deal among themselves without extending either the obligations or the benefits to the rest of the membership. Examples are the GPA and the Civil Aviation Agreement. As a matter of current practice – if not law- inclusion of these agreements under WTO auspices requires the consensus of the membership, which may or may not be forthcoming, because excluded members may consider that the agreement may put them at a disadvantage or create precedents that they disfavor.

Although overcoming the obstacles in the way of both types of plurilateral agreements is not easy, it should be possible to expand their use through a combination of so-called side – payments to enlist the support of excluded members or reluctant participants, as well as by including provisions for well-designed, system-enhancing special and differential treatment to enlist the support of developing countries.

Indeed, the successful conclusion of 32 accession negotiations, requiring consensus of the broad WTO membership, demonstrates that multilateral negotiations based on progressive layers of consultations around a well-defined issue can yield results even if large all-encompassing trade rounds – whose appeal is rapidly fading – may not. An important lesson from the accessions process is that there are contexts and modalities which lead multilateral trade negotiations to successful outcomes, even in the complex and multi-polar 21<sup>st</sup> century economy.