



FRAMEWORK FOR MAKING AND ENFORCING POLICIES

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OUTLINE

1. Nature of Framework commitments
2. Guiding provisions in the WTO Agreements
3. Historical background and numbers
4. Structure of the Framework section
5. Accession *acquis*: Types of commitments and special cases
6. Q&R

NATURE OF FRAMEWORK COMMITMENTS // GUIDING PROVISIONS OF WTO AGREEMENTS

- **“HORIZONTAL”** commitments related to Policy Framework
- **Categories of Framework commitments:**
 - On the relationship between the WTO Agreement and domestic legislation
 - On the uniform application of WTO law in the domestic system
 - Ensuring the right of appeal and independent review of administrative action to independent tribunals on matters subject to WTO provisions
 - With respect to sub-central governmental authorities responsible for making and implementing policies subject to WTO disciplines

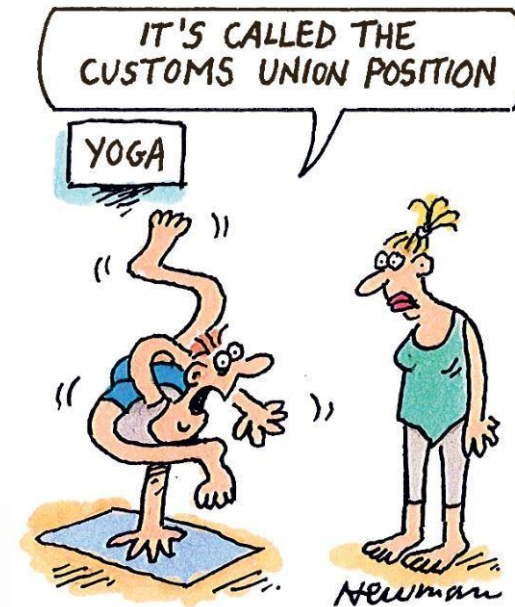


WTO Framework – selected provisions:

- Article X of the GATT 1994 (**Publication and administration of trade regulations**)
- Article VI of the GATS (**Domestic Regulation**)
- Article 23 of the SCM Agreement (**Judicial review**)
- Article 11 of the WTO Agreement on Implementation of Article VII of the GATT 1994 (*Right of Appeal*), etc.

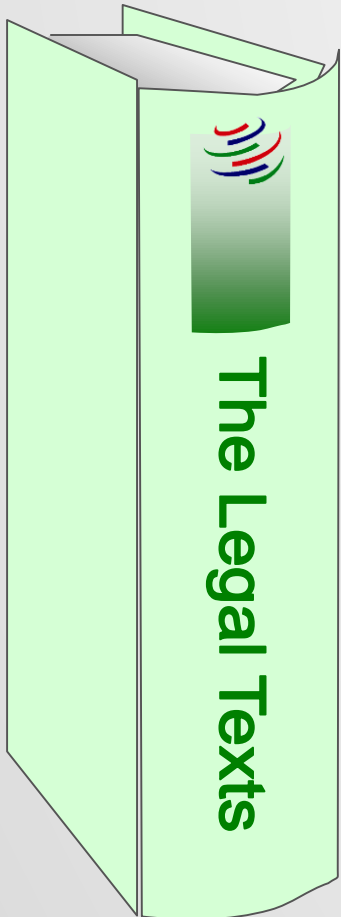
NATURE OF FRAMEWORK COMMITMENTS - 2

- **Other accession-specific Framework commitments:**
 - Commitments in the context of Preferential Trade Arrangements
 - Transparency and publication
 - Commitments pertained to bilateral trade relations with specific Members
 - Adoption of all WTO-related legislation before accession
 - Etc.



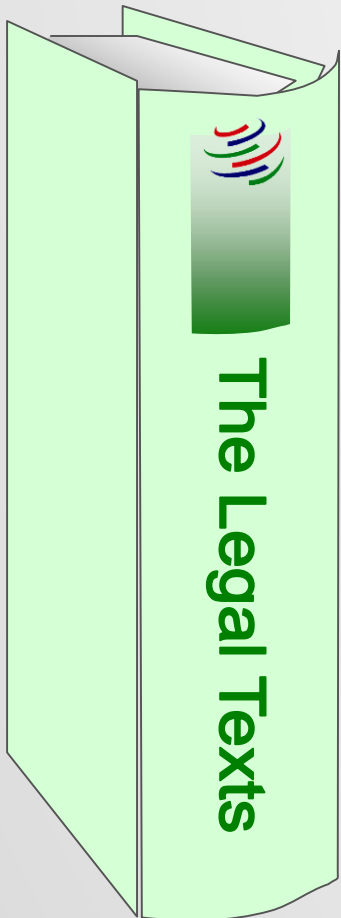
**LEGISLATIVE
ALERT**

BASIC PRINCIPLES IN WTO AGREEMENTS - 1



- Precedence of the WTO Agreement as an international treaty over domestic laws
- **Administration** of all domestic laws, regulations, decisions and rulings of general application in a uniform, impartial and reasonable manner (**Article X:3(a) of the GATT 1994**)
 - 'laws, regulations, judicial decisions and administrative rulings' reflects an intention on the part of the drafters to include **a wide range of measures that have the potential to affect trade and traders (EC – IT Products)**
 - 'of general application': **applies to a class of persons or entities that have some attribute in common (US – Countervailing and Anti-Dumping Measures (China))**
 - 'uniform, impartial and reasonable manner': **consistent and predictable application (US - COOL)**

BASIC PRINCIPLES IN WTO AGREEMENTS - 2



- Institution/maintenance of **independent judicial, arbitral or administrative tribunals** or procedures for the purpose of the prompt review and correction of administrative action (**Article X:3(b) of the GATT 1994**)
- **independent:** *“free of control or influence from the administrative agencies whose decisions are the subject of review, [so as to act] with freedom in institutional and practical terms from interference by the agencies whose decisions are being reviewed”* (**EC – Selected Customs Matters**)
- No requirement on the elimination or substitution of procedures in force which in fact provide for an objective and impartial review of administrative action - even though such procedures are not fully or formally independent of the agencies entrusted with administrative enforcement (**Article X:3(c) of the GATT 1994**)

COMMITMENTS: HISTORY AND NUMBERS

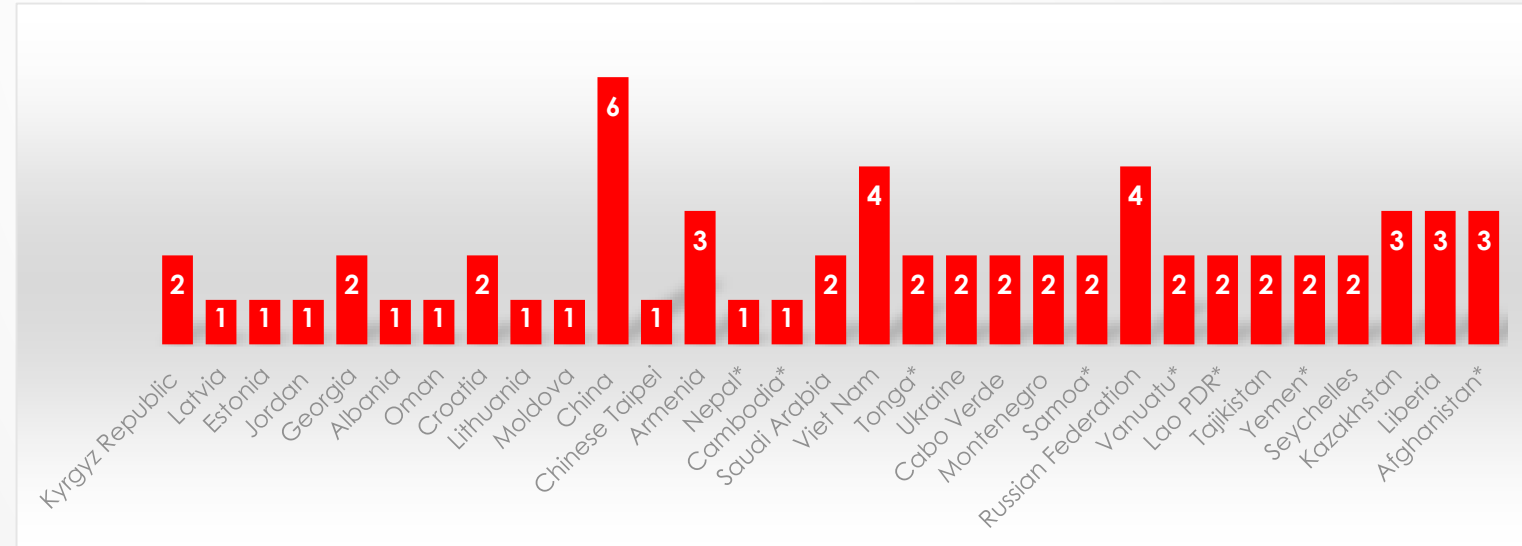
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Article XII Members* -

64

Accession-specific
commitment
paragraphs
on Framework

Number of Framework commitments by Member



*Undertaken by **all but 5** Members:

Ecuador (1996), Bulgaria (1996), Mongolia (1997),
Panama (1997), FYROM (2003)

86%

of Article XII Members
undertook commitments

* Including **all 9 LDC** Article XII Members

1st Member: Kyrgyz Republic (1998)

SECTION III IN MFTR/FACTUAL SUMMARY/WORKING PARTY REPORT

- **Sub-sections (current classification)*:**
 - **Powers of Executive, Legislative and Judicial Branches of Government (1)**
 - **Government entities responsible for making and implementing policies affecting foreign trade; Right of Appeal (2)**
 - **Division of authority between Central and Sub-Central Governments (3)**
- “- *Laws and legal acts*
- *Description of judicial, arbitral or administrative tribunals or procedures*
 - *Any legislative programmes or plans to change the regulatory regime*
 - *Powers of executive, legislative and judicial branches of government*
 - *Government entities responsible for making and implementing policies affecting foreign trade*
 - *Authority of sub-central governments (division of authority between central and sub-central governments)”*

***Document WT/ACC/22/Rev.1, Annex 1**

	(1)	(2)	(3)	Uniform administration of the regime	Judicial Review	Customs Union/ EAEU
Kyrgyz Republic	1		1			
Latvia						1
Estonia						1
Jordan						1
Georgia	1		1			
Albania			1			
Oman						1
Croatia						2
Lithuania						1
Moldova			1			
China	1		1	2	2	
Chinese Taipei	1					
Armenia	3					
Nepal*						1
Cambodia*						1
Saudi Arabia						2
Viet Nam						4
Tonga*						2
Ukraine						2
Cabo Verde						2
Montenegro	1		1			
Samoa*						2
Russian Federation			3			1
Vanuatu*	2					
Lao PDR*	1		1			
Tajikistan	1		1			
Yemen*	1		1			
Seychelles	1		1			
Kazakhstan	2					1
Liberia	1	1	1			
Afghanistan*	1	1	1			

ECONOMIC POLICIES

- Monetary and fiscal policy
- Foreign exchange and payments
- Investment regime
- State ownership and privatization, state-trading entities
- Pricing policies
- Competition policy

FRAMEWORK FOR MAKING AND ENFORCING POLICIES

- Powers of Executive, Legislative and Judicial branches of Government
- Government entities responsible for making and implementing policies affecting foreign trade; Right of appeal
- Division of authority between central and sub-central governments

POLICIES AFFECTING TRADE IN GOODS

- Trading rights
- Trade Facilitation
- A. IMPORT REGULATIONS
 - Ordinary customs duties
 - Other duties and charges
 - Tariff rate quotas, tariff exemptions
 - Fees and charges for services rendered
 - Application of internal taxes to imports
 - Quantitative import restrictions, including prohibitions, quotas and licensing systems
 - Customs valuation
 - Rules of origin
 - Other customs formalities
 - Pre-shipment inspection
 - Anti-dumping, countervailing duties, safeguard regimes
- B. EXPORT REGULATIONS
 - Customs tariffs, fees and charges for services rendered, application of internal taxes to exports
 - Export restrictions
 - Export subsidies
- C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS
 - Industrial policy, including subsidies
 - Technical barriers to trade, standards and certification
 - Sanitary and phytosanitary measures
 - Trade-related investment measures
 - Free zones, special economic areas
 - Government procurement
 - Transit
 - Agricultural policies

TRADE-RELATED INTELLECTUAL PROPERTY REGIME

POLICIES AFFECTING TRADE IN SERVICES

TRANSPARENCY

- Publication of information on trade
- Notifications

TRADE AGREEMENTS



PRECEDENCE OF WTO AGREEMENT OVER DOMESTIC LAWS

- Confirmation of international status of the WTO Agreement
- Precedence of international treaties over national legislation
- Direct application or amendments to national legislation

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Article XII Members:

Estonia, Jordan, Armenia, Viet Nam, Vanuatu, Liberia

“The National Assembly would make the determination, upon ratification of the Protocol of Accession, as to whether such differences existed between the Protocol and a legal normative document in the context of ratification of Viet Nam’s Protocol of Accession. If the National Assembly were to conclude that such differences existed, it would determine at that time the precise manner in which the relevant treaty commitment(s) would prevail over the legal normative document, namely, through either direct application of the treaty (or portions thereof) or amendment of the domestic measure at issue.”

Viet Nam, para. 119

Examples:

“...if laws or other acts of [XXX] should be found to contradict international treaties or agreements [ratified by Parliament], the provisions of the international treaty or agreement, such as the WTO Agreement, would apply. [The WTO Agreement would have the status of an international treaty...]”

Estonia, para. 30; Vanuatu, para. 31; Liberia, para. 59

“international treaties and agreements ratified by [the National Assembly], including WTO Agreements, had precedence over domestic laws [or other acts]...”

Armenia, para. 37; Liberia, para. 59

ADOPTION OF LEGISLATION BEFORE ACCESSION

- Nature of domestic legal acts
- Commitment to fully implement WTO obligations, with an illustrative list of laws to be amended

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Article XII Members:

Armenia, Chinese Taipei, Liberia, Afghanistan

“All legislative or regulatory instruments necessary for the application of the WTO provisions would be adopted and enacted upon accession, with the exception of those in the areas where Liberia would be granted transition periods in accordance with its Protocol of Accession.”

Liberia, para. 59

Examples:

“The representative of Afghanistan noted that, in accordance with Article 79 of the Constitution of Afghanistan, during the recess of the House of People, the Government of Afghanistan could, in case of an immediate need, issue legislative decrees. These decrees, after endorsement by the President, acquired the force of law. The Government had decided to enact the full package of legislation required for the accession to the WTO before WTO Membership. The Working Party took note of the commitment.”

Afghanistan, para. 57

“...Chinese Taipei would fully implement its obligations under the WTO Agreement and its Draft Protocol of Accession upon accession to the WTO, unless specifically provided in this Report and Draft Protocol. [...] An illustrative list of the laws that would be amended as part of Chinese Taipei's implementation of its obligations is reproduced in Attachment D to this Report.”

Chinese Taipei, para. 15



RIGHT OF APPEAL - 1

- Confirmation of existence of necessary institutional base
- Ensure right of appeal from the date of accession
- Impartiality of tribunals or procedures

Article XII Members:

Afghanistan, Armenia, Cabo Verde, China, Georgia, Kazakhstan, Kyrgyz Republic, Lao PDR, Montenegro, Nepal, Oman, Samoa, Saudi Arabia, Seychelles, Tajikistan, Tonga, Viet Nam, Ukraine, Russian Federation, Vanuatu, Yemen, Liberia

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Example:

"The representative of [XXX] confirmed that from the date of accession [XXX]'s laws would provide for the right to appeal administrative rulings on matters subject to WTO provisions to an independent tribunal in conformity with WTO obligations, including [but not limited to] [Article X:3(b) of the GATT 1994] [those set out in Article X of the GATT 1994, Article 23 of the SCM Agreement, Article 11 of the WTO Agreement on Implementation of Article VII of the GATT 1994, Article 62 of the TRIPS and Article VI of GATS]."

Armenia, para. 34; Croatia, para. 37; Georgia, para. 35; Oman, para. 32; Saudi Arabia, para. 85; Tajikistan, para. 71; Ukraine, para. 92; Cabo Verde, Montenegro, para. 56; Samoa, para. 54; Yemen, para. 57; Afghanistan, para. 64



RIGHT OF APPEAL – 2: ESTABLISHMENT OF INDEPENDENT TRIBUNALS – LDC COMMITMENTS

“...its laws and regulations provided the necessary institutional base for the prompt administrative and judicial review of the Government’s actions...”

Yemen, para. 57; Liberia, para. 64; Afghanistan, para. 64

“...upon the date of accession, [XXX] would establish or designate tribunals or procedures for the prompt review of all administrative actions relating to the implementation of laws, regulations, judicial decisions and administrative rulings of a general application referred to in Article X:1 of the GATT 1994, Article VI of GATS. The tribunals or procedures would also include actions relating to the implementation of national treatment, conformity assessment, the regulation, control, supply or promotion of a service, including the grant or denial of a licence to provide a service and other matters.”

**Nepal, para. 31; Tonga, para. 43; Cabo Verde, para. 66;
Yemen, para. 57**

“...The tribunals or procedures responsible for such reviews would be impartial and independent of the agency entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter. The review procedure would include the opportunity for appeal, without penalty, by individuals or enterprises affected by any administrative action subject to review. Notice of the decision on appeal would be given to the appellant and the reasons for such a decision would be provided in writing.”

**Nepal, para. 31; Tonga, para. 43; Cabo Verde, para. 66;
Yemen, para. 57; Liberia, para. 64; Afghanistan, para. 64**



DIVISION OF AUTHORITY BETWEEN CENTRAL AND SUB-CENTRAL/LOCAL GOVERNMENTS

- Confirm no authority/jurisdiction by sub-central entities over issues covered by WTO
 - “Issues”: subsidies, taxation, trade policy or any other measures covered by WTO provisions”
 - Central government to eliminate/nullify measures taken by sub-central authorities that are in conflict with the WTO provisions

Article XII Members:

Afghanistan, Albania, Armenia, China, Croatia, Estonia, Jordan, Kyrgyz Republic, Latvia, Lithuania, Moldova, Montenegro, Samoa, Seychelles, Chinese Taipei, Tajikistan, Tonga, Ukraine, Vanuatu

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Examples:

*“The representative of [XXX] confirmed that sub central entities had **no autonomous authority over issues of subsidies, taxation, trade policy or any other measures covered by WTO provisions....”***

Albania, para. 38; Croatia, para. 41;
Jordan, para. 43; Lithuania, para. 29; Afghanistan, para. 65; Montenegro, para. 59

“... the central government would eliminate or nullify measures taken by [sub-central] [local] authorities in [XXX] that were in conflict with the WTO Agreement [when those measures were brought to its attention...]”

Albania, para. 38; Armenia, para. 36;
Kyrgyz Republic, para. 28; Chinese Taipei, para. 15;
Latvia, para. 30



DIVISION OF AUTHORITY BETWEEN CENTRAL AND SUB-CENTRAL/LOCAL GOVERNMENTS - 2



- **If sub-central government entities have authority:**
 - Define competence of sub-central authorities
 - Central Authorities shall **ensure** that the laws, regulations and other measures of government entities at the sub-national level conform to the WTO obligations
 - and **enforce** them at the sub-national level
 - Legal redress to companies facing breach of WTO obligations by sub-central authorities

Examples:

“Central authorities would ensure that the laws, regulations and other measures [including those] of government entities at the sub-national level would conform to the obligations [under the WTO Agreement] [undertaken in [XXX]’s Protocol of Accession and the WTO Agreement], [and would enforce them at the sub-national level]”

Georgia, para. 40; China, para. 70; Viet Nam, para. 134

“The representative of [XXX] confirmed that all fiscal, financial and budgetary activities performed by local governments would be in compliance with Article III of the GATT 1994. [...] sub-central entities had no autonomous authority over issues of subsidies, taxation, trade policy or any other measures covered by WTO provisions.”

Moldova, para. 48; Liberia, para. 66

“Article 4 of the Law No. 07/NA “On the Handling of Petition” of 9 November 2005 provided the legal redress to companies facing an apparent breach of WTO obligations by sub-central authorities.”

Lao PDR, para. 55

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Article XII Members:

China, Georgia, Lao PDR, Liberia, Moldova, Viet Nam



UNIFORM APPLICATION OF THE WTO AGREEMENT IN THE DOMESTIC SYSTEM

- Uniform application of the WTO Agreement in the domestic system
 - Territorial application:
 - **Customs territory**
 - **Other territories under control:** “including in regions engaging in border trade or frontier traffic, special economic zones, and other areas where special regimes for tariffs, taxes and regulations are established”
 - Authorities shall act to **enforce** WTO provisions when apprised of non-application/non-uniform application
 - **No requirement** for parties to petition through the courts

Article XII Members:

Afghanistan, Albania, Armenia, Croatia, Cabo Verde, China, Estonia, Georgia, Jordan, Lao PDR, Liberia, Lithuania, Moldova, Montenegro, Russian Federation, Samoa, Saudi Arabia, Viet Nam, Seychelles, Tajikistan, Tonga, Ukraine, Vanuatu, Yemen

Example:

“ the provisions of the WTO Agreement, including [XXX]'s Protocol, would be **applied uniformly throughout** its customs territory and other territories under its control, **including in regions engaging in border trade or frontier traffic, special economic zones, and other areas where special regimes for tariffs, taxes and regulations were established.....**”

“ **when apprised** of a situation where WTO provisions were not being applied or were applied in a non-uniform manner, the central authorities would act to enforce WTO provisions without requiring affected parties to petition through the courts.”

Croatia, para. 41; Estonia, para. 30; Georgia, para. 40; Jordan, para. 43; Lithuania, para. 29; Moldova, para. 48; Viet Nam, para. 134, Ukraine, para. 84; Cabo Verde, para. 60; Montenegro, para. 59; Samoa, para. 58; Vanuatu, para. 31; Yemen, para. 59; Tajikistan, para. 76; Seychelles, para. 96; Liberia, para. 66; Afghanistan, para. 65

PREFERENTIAL TRADE ARRANGEMENTS - CU/EAEU



- **Treaty on the Functioning of the Customs Union in the Framework of the Multilateral Trading System**
- **Creation of a mechanism for publication of proposed legal acts** of the customs union before their adoption; the provision of a reasonable period of time to receive comments by Members or interested persons; and that no legal act would enter into force prior to publication
- **Expanded commitment** on uniform application of WTO provisions and right of appeal

Example:

“...CU Commission Decision No. 308 of 18 June 2010 "Decision-Making at the Commission of the Customs Union", [would be] [had been] amended to establish and put into effect a mechanism for publication of proposed [CU] [EAEU] legal acts covered under paragraph [XXX] before their adoption and to provide a reasonable period of time for Members and interested persons to provide comments to the competent [CU] [EAEU] Body. [Such a Body would be] [which was] authorised to take these comments into account in its consideration of such proposed legal act. Moreover, pursuant to this mechanism, no [CU] [EAEU] legal act covered under paragraph [XXX] would become effective prior to publication as provided for in the applicable provisions of the WTO Agreement...”

“...in order to ensure compliance with provisions of the WTO Agreement **any individual or entity could bring to the attention of the authorities of the Government of [XXX] or competent [CU] [EAEU] Body cases of non-application or non-uniform application of provisions of the WTO Agreement in [XXX].** Such cases would be referred promptly to the responsible authorities without requiring the affected party to petition through the courts, and **when non-application or non-uniform application actually existed, the authorities of the Government of [XXX] or a competent [CU] [EAEU] Body would act promptly to address the situation, consistent with the laws and international obligations of [XXX].** The individual or entity notifying the authorities of the Government of [XXX] or a competent [CU] [EAEU] Body would be informed promptly in writing of any decision and action taken...”

Russian Federation, para. 214; Kazakhstan, para. 208

Russian Federation, para. 183; Kazakhstan, para. 250



SPECIAL CASE: LEGAL BASIS FOR THE NEW MEMBER'S TRADE RELATIONS WITH CERTAIN MEMBERS



“The representative of the Russian Federation took note of this Member's concerns. He stated that in his view measures in trade with that Member were applied in conformity with the bilateral free trade agreement and were in line with its domestic legislation and with the WTO Agreement. That representative further referred that Member to the obligations that the Russian Federation would comply with from the date of the accession of the Russian Federation to the WTO, including those commitments referred to in paragraphs 1426, 1427 and 1428 relating to transparency and paragraph 214 related to uniform application of the Russian Federation's trade regime. The representative of the Russian Federation confirmed that in the future the Russian Federation would have the WTO Agreement as the legal basis of its trade with this Member in such a manner to ensure full consistency with WTO rules, including Articles I, X, and XXIV of the GATT 1994, and to respect its specific WTO obligations and commitments.”

Russian Federation, para. 209

SPECIAL CASE: INVESTMENT-RELATED COMMITMENT



“In response to a Member's question about legislation addressing the right to invest in particular sectors, the representative of Viet Nam confirmed that any amendment or deletion to the list of prohibited or conditional investment sectors, set out in Tables 1 and 2 of this Report (also annexed to Government Decree No. 59-2006-ND-CP of 12 June 2006), would comply with Viet Nam's WTO obligations, including those relating to transparency. In this respect, the Ministry of Planning and Investment or the line ministries, in coordination with the relevant agencies, would submit any proposed changes to the Government, or in the case of investment activities regulated by other laws (e.g. Law on Credit Institutions, Law on Insurance Business, etc.), to the competent authority, for consideration. He further confirmed that comments received during the drafting stages and changes to proposals would be made public, in accordance with the Law on the Promulgation of Legal Normative Documents.”

Viet Nam, para. 117

SPECIAL CASE: CHINA



- **Timeline**

“...administrative regulations, departmental rules and other central government measures would be promulgated in a timely manner so that China’s commitments would be fully implemented within the relevant time frames. If administrative regulations, departmental rules or other measures were not in place within such time frames, authorities would still honour China’s obligations under the WTO Agreement and Draft Protocol. [...] the central government would undertake in a timely manner to revise or annul administrative regulations or departmental rules if they were inconsistent with China’s obligations under the WTO Agreement and Draft Protocol. ”

China, para. 68

- **Transparency**

“In response to questions from certain members of the Working Party, the representative of China confirmed that administrative actions related to the implementation of laws, regulations, judicial decisions and administrative rulings of general application referred to in Article X:1 of the GATT 1994, Article VI of the GATS and the relevant provisions of the TRIPS Agreement included those relating to the implementation of national treatment, conformity assessment, the regulation, control, supply or promotion of a service, including the grant or denial of a licence to provide a service and other matters, and that such administrative actions would be subject to the procedures established for prompt review under Section 2(D)(2) of the Draft Protocol, and information on such procedures would be available through the enquiry point that China would establish upon accession.”

China, para. 79



THANK YOU!

Questions?