



WTO TWENTIETH ANNIVERSARY ACCESSIONS PROGRAMME

SECOND GLOBAL SEMINAR ON WTO ACCESSIONS SAUDI ARABIA 10-YEAR WTO ACCESSION SPECIAL ANNIVERSARY SESSION ACCESSIONS BOOK LAUNCH BY WTO DIRECTOR-GENERAL ROBERTO AZEVÊDO

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Panel 4: Salient Features of WTO Accession Protocols

Geneva, Tuesday, 29 September 2015, 16:00 – 16:15, Room D

1. The negotiation of accession agreements to invite in 34 countries, constituting over 25% of the WTO's original membership, is a remarkable achievement in the annals of international law. Of course, all multilateral organizations and international courts have grown in membership, but none of them with the painstaking and systematic procedures for accession used in the WTO. Contrast the UN Charter which provides for admission of new peace-loving states which in the judgment of the UN are "able and willing" to carry out the obligations of UN membership. Despite the ostensible qualifications for membership, the UN has not established any substantive process to have applicant governments engage in self-examination or to convince existing member states that the applicant is willing to carry out the obligations of UN membership.
2. Only this Organization has transformed accession into a dynamic vetting process and a key negotiating success.
3. Now with 21 countries currently undergoing accession review, and here today, this admissions process is sure to remain very busy, especially if separate customs territories qualify for and actively seek WTO membership. So our widely admired host Chiedu Osakwe will have plenty of work to do in the next 20 years.
4. Our conference celebrates this remarkable expansion of the WTO not only for the way that accession commitments facilitate economic reforms in applicant countries, but also for the boost in prestige that it has given to the WTO.



5. My work on accessions began many years ago at a WTO conference held to mark the 10th anniversary of the Organization. I wrote an essay titled "Mapping the Law of WTO Accession." This study has been reprinted in my new book, "The Path of World Trade Law in the 21st Century."

6. My research analyzed the concept of a specialized law of WTO accession that would add to the single undertaking of the Multilateral Trade Agreements. My essay was perhaps the first to systematically analyze all of the categories of new WTO law including applicant WTO-plus obligations, applicant WTO-minus obligations, and incumbent WTO-minus obligations. Like the new islands that rise out of the Pacific Ocean, new founts of law are being generated by WTO accession commitments. And these new WTO rules are being enforced in the Dispute Settlement System. So far there are six decided cases based in part of causes of action that are legally applicable only to one Article XII member.

7. Article XII of the WTO Agreement states that applicants may accede to the WTO Agreement on "terms to be agreed between it and the WTO." But Article XII does not contain any limiting principle of what terms the WTO (or its incumbent members) may demand. And as a result, incumbent WTO members have sometimes demanded that applicants commit to WTO plus obligations and demanded that incumbents should enjoy lower WTO-minus obligations.

8. Anyone who supports the norms of a predictable rule of law and of equality under the law will see that the law of WTO accession can stand in stark contradiction to those norms.

9. Why do applicants go along with joining the WTO under discriminatory conditions?

10. The answer is simple. Because the benefits of WTO membership outweigh the costs. Yesterday, we heard from several speakers that indicated how stressful and unfair the accession process was for their country. But all those speakers praised the benefits of the WTO for their own economies and all of them urged existing applicant countries to stick with the membership process.



11. How can that be? How can a process so unfair lead to good outcomes? The answer is that often, the WTO-plus actions being demanded are exactly the structural reforms that the applicant country needs to take to enable its economy to shake off a bad reputation, to attract investment, to expand imports, and to achieve sustainable job creation.

12. Of course, not every accession commitment that the WTO requests an applicant country to undertake will necessarily achieve the long-term interests of the applicant. No invisible hand exists to assure that accession terms are mutually welfare-enhancing. So as Mr. Medvedkov explained yesterday, applicant accession negotiators should think about what red lines might exist that they cannot make a commitment on.

13. But identifying those red lines is analytically difficult because there may be a temptation of any government to draw a red line around a policy merely to insulate powerful special interests, rather than because a particular policy is truly in the national interest.

14. In keeping with the intent of this program as a seminar, let me offer four specific recommendations for the applicants in the room, based on lessons from 20 years of accession.

15. First, you are not on your own. Seek advice from the international trade community on the difficult economic and legal choices you face. Ask for technical assistance from the WTO Secretariat. Seek help from law firms and international NGOs. And while the Article XII members are also now incumbents, they may often be willing to provide extra help to applicants, particularly LDCs, steer through the shoals of accession.

16. Second, the accession contract is often described as a unilateral contract meaning that only one side makes all the promises. Certainly, it is true that applicant governments cannot use the accession process as an opportunity to ask the WTO finish the long overdue DDA. But as a legal matter, Article XII would permit the WTO to agree to terms about itself. Indeed, that has already happened in at least two accession agreements where the WTO itself has taken on WTO-plus procedural obligations. Given the importance of the post-accession challenges, as we discussed yesterday, I would like to see an LDC will ask the WTO to make a serious commitment to post-accession capacity building and inscribe that in the accession agreement.



17. Third, even though the WTO fails to take into account the systemic costs of accession delays, there is one way in which these indefensible delays can provide benefit to applicant countries. That is, you can use your waiting time to prepare for future WTO membership by learning the WTO processes and building negotiating and administrative capacity in Geneva and in your capitals. As we discussed yesterday, serving as an active WTO member is just as hard as being a successful candidate.

18. Fourth, as several speakers have noted, the success of your governmental accession efforts will depend on buy-in and readiness by your parliaments, private sector and civic society. Unfortunately, in my view, the poor transparency in the WTO accession process is in tension with democratic accountability. Perhaps in some cases, applicant countries may have a good reason to ask for confidentiality. But often the opposite may be true. That is, the lack of transparency makes it easier for certain Article XI members to make unreasonable demands on applicants that might be opposed by public opinion within the Article XI countries if the public was aware of it. So I would like to see applicant countries press for more transparency in accession negotiations.

19. In closing, let me call attention to the sign in front of this building that reads "Trade Works." With appropriate economic conditions, trade will work to raise standards of living. And accessions work to bring countries into the WTO and help them achieve those preconditions of good governance and best pro-growth practices.
