

Session 2: How to drive and conclude an Accession Process: perspectives of former chief negotiators

Lead Speaker (1st): Hon Fonotoe Nuafesili Pierre Lauofo, Deputy Prime Minister of Samoa (15 minutes)

To drive and conclude a WTO accession process requires an understanding of the challenges and stumbling blocks of progress; and then to identify and implement solutions to overcome these challenges, giving way for the process of accession to move forward towards conclusion. The **driving force** behind all this, of course, is the **acceding government**.

I will draw from Samoa’s WTO accession process experience, highlighting key challenges we encountered; and how we addressed these challenges to drive the accession process to conclusion.

There are two key factors that must be well established by the acceding country before commencement of the accession process.

The first is to have a clear understanding of the WTO and the accession process itself.

Understanding the WTO and the process of accession from the beginning is crucial. Article XII of the Marrakesh Agreement Establishing the World Trade Organization is the primary legal provision governing accessions. The key part of this provision is the ‘**terms to be agreed**’. It must be well understood by the acceding government that the terms and conditions of their WTO membership is achieved through a **process of negotiations**. While WTO law itself does not provide rules for the conduct of negotiations nor benchmarks for the outcomes, the accession process of Samoa has benefitted from the evolution of the processes and adoption of best practices. Documented in the Director General of the WTO’s 2011 Annual Report, the accession process has always been grounded on systemic rules, complemented by evolving procedures and

practices which have been improved, refined and adapted to specific circumstances over the years. I agree. This in itself is flexibility, one that is important for a LDC negotiating accession to the WTO.

The other element is to have a **clear understanding and appreciation of the objectives to join** the WTO. This will be the foundation that will set the direction, commitment and dedication to the process. Samoa’s interests and expectations of joining the WTO were never premised on the notion that WTO membership will be the immediate savior of our economy, rather an important component in the long term to safeguard our trade interests for a sustained economy.

The economic reforms undertaken since the 1990s, which included substantial tariff reductions and other costs to businesses, resulted in a relatively open economy. This complemented Samoa’s interests to join the WTO and played a key role in the early conclusion of tariff commitments negotiations.

With this **commitment from government** to join the multilateral trading system comes **national ownership** of the process. This is the main force that will **drive the accession process**.

National Coordination: Without the proper national institutional set-up to manage the accession process, all efforts to drive the process would be in vain. It has been argued, and I would agree, that a significant share of the difficulties and delays encountered in accession proceedings are due to the operation of a multitude of internal factors.

The National WTO Working Committee comprised of key government, private sector and civil society representatives, was set up just prior to the submission of Samoa’s WTO application for membership in 1998. The role of the Committee was to oversee Samoa’s WTO accession process through the provision of policy advice and support to Samoa’s WTO accession negotiating team. This naturally involved the task of full engagement with all national stakeholders. The Committee was the basis of Samoa’s intra-governmental communication and operation on the WTO accession.

The functions of the Committee were expanded in 2010 to include support for other trade arrangements that Samoa was also negotiating and was accordingly renamed the National Working Committee on Trade Agreements (NWCTA). As the Minister responsible for Trade Negotiations, I took over the Chairmanship of the NWCTA also in 2010 and **prioritized the conclusion of Samoa’s WTO accession negotiations**. Under my authority, the political commitment of the Government of Samoa to accede to the WTO was effectively put into play. This involved my direct engagement at the highest level of key ministries and agencies; the Secretariat including my meeting with Mr Pascal Lamy in April last year; and WTO members. I underscore the importance of **political drive and ownership by the government** as perhaps the single most important factor in speeding up the accession process. The direction of WTO accession work from high level chairmanship provides access to information from Ministries and accelerates work that normally goes through bureaucratic bottlenecks.

After only 12 months of this interaction, we finally saw, for the first time, a realistic end to Samoa’s accession process and a welcoming realization of our Membership.

National consultations: The government has always maintained a **close partnership with the private sector** recognizing them as the engine of economic growth. In fact, private sector representatives were part of the Samoa delegation that attended the final meeting of the Working Party last October. This engagement has largely shaped the domestic debate of Samoa’s WTO membership based on the level of seriousness of the government’s commitment to accede to the WTO. Trade policy is now **aligned with the national strategic priorities** of Samoa.

Negotiations and preparations: Negotiation is the **process of discussion and compromise to reach a solution**. The chief negotiator and the negotiating team must prepare accordingly. Samoa’s attitude towards negotiations had evolved over the years. Our arguments to maintain certain measures were based on our least developed economy status and *like* trade policy measures being implemented by existing WTO Members. We were not willing to reform measures that were clearly practiced by Members. That approach did not get too far when it came to negotiating key contentious issues. A re-evaluation of our position based on the balance

between the more realistic national circumstances and the application of WTO disciplines resulted in an agreeable solution. The agreed solution to remove Samoa’s import prohibition of turkey tails is one such example. While it may be criticized as unfair especially for a LDC, it is this type of compromise that is required to progress negotiations; a solution within WTO rules and implementable by Samoa. Our **commitment to reform** was challenged and reaffirmed.

As such, Samoa’s commitment to legislative reforms, through the work contained in the **Legislative Action Plan**, was instrumental in concluding the negotiations with key WTO members in the last 12 months of negotiations.

Samoa’s negotiating positions to a large extent have relied on model accessions of other LDCs namely Cambodia, Nepal, and Vanuatu. We also referred to the accession of Tonga, a developing island country in the Pacific of similar economic and vulnerable characteristics as Samoa. Such model accessions should be well digested to provide orientation to drive your accessions to conclude.

The **Guidelines for the Accessions of LDCs** is an excellent example of evolving WTO practice and procedures; and adaptation to specific circumstances, as I earlier alluded to. Coincidentally, the first meeting of the Working Party on the Accession of Samoa was in 2002, the same year the Guidelines were adopted. The first draft of the Working Party Report was circulated in 2003. The next milestone achieved in Samoa’s accession was not until 2007 when we concluded the first bilateral negotiation which was with the People’s Republic of China.

One could easily conclude that the stagnant progress in negotiations in the years prior is a result of the non-implementation by WTO Members of the Guidelines for LDC Accessions aimed at accelerating the accession process for LDCs. In fact, the Guidelines have often been criticized to have had little effect on the reality of LDC accessions. There were moments in our accession process where one would tend to agree. The reference to the Guidelines had become a permanent feature in strengthening our negotiating position and strategy which has been met at times with an almost sense of disregard from our ‘friends’ across the table.

However, in retrospect, the Guidelines impacted positively in driving the conclusion of the remaining bilateral negotiations in Samoa’s accession process. In fact, with Samoa’s pending graduation from LDC status, the conclusion of the WTO accession process under the flexibilities accorded to LDCs was imperative. I recommend LDCs remaining in the process of accession to aggressively take advantage of the Guidelines including the **pursuit of implementing the recent Decision of the 8th Ministerial Conference to further simplify the accession procedures for LDCs.**

The accession process is complex. The acceding country will require assistance at various stages of this resource – demanding process. This is an undeniable fact. The **technical and financial support is absolutely necessary** to build capacity to negotiate, engage in negotiations, prepare for negotiations; and to undertake awareness outreach programs.

The first challenging task of the accession process was the compilation of **Samoa’s Memorandum of Foreign Trade Regime (MFTR)** which took 2 years to complete through extensive consultations and engagement with national authorities. As it was the first time that a compilation of such information was undertaken in Samoa, it was a time consuming and often frustrating exercise. To assist, we sought external assistance and I am happy to acknowledge the work of Mr Peter John Williams, author of the Handbook on Accession to the WTO, in the production of this document. Extensive engagement with national stakeholders was crucial as the MFTR detailed the legal, institutional, political, economic and administrative situation in Samoa in relation to trade and Samoa’s intending WTO membership. This necessary engagement is supported by the Director General’s 2011 Annual Report that the presentation of a comprehensive and accurate Memorandum is important as it facilitates future work, sets a positive tone for the rest of the accession process; and is the foundation on which the Working Party eventually constructs the Working Party Report. In actual fact, this engagement continues as the report is revised throughout the years through the cycle of ‘questions and answers’.

Compliance with WTO provisions requires legislative changes which is an exercise demanding of significant time, resources and active engagement with stakeholders. We sought and received

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financial and technical assistance from the Government of Australia to review and draft modern, WTO compliant intellectual property laws for Samoa that were passed by Parliament late last year.

The **speed of progress** of Samoa’s accession was challenged by our **non-residency in Geneva**. We resorted to the substantial use of technological communication with our negotiating partners mainly to prepare for actual negotiations. But admittedly, some agreements were also reached informally via emails and later officially confirmed. Recognizing the importance of face-to face negotiations, we sought assistance from our development partners and other WTO Members for funding to enable our presence in Geneva during the crucial times of negotiations. Samoa also took advantage of arranging accession negotiating meetings to be held in Geneva in the margins of other WTO meetings. The biennial Geneva Week is one such important opportunity that was fully utilized in Samoa’s accession negotiations to drive and progress the process. To assist also, Australia and New Zealand offered the use of their High Commission Offices in Apia to advance bilateral negotiations.

The technical support by the WTO Secretariat has been fundamental in facilitating the conclusion of our accession through the use of the good offices of the Director General, in particular, the Accessions Division.

I recognize the effective stewardship of the Chairman of the Working Party of Samoa’s Accession, Mr Oike Atsuyuki of Japan which had taken over the responsibility from his predecessors. The active engagement of the Chairman with Samoa, members of the Working Party and the Secretariat accelerated the conclusion of our accession and the work of the Working Party in time for the 8th Ministerial Conference to adopt the Accession Package of Samoa.

The Working Party of Samoa’s Accession has only officially met two times over the 13 years of accession, in 2002 and in 2011 where the accession package was approved ad referendum. Informal meetings of the Working Party had taken place in the last 4 years of the process. This arrangement proved most effective in resolving many issues in the absence of the burden of

negotiating in a formal setting. This arrangement was also necessary given the absence of a Samoa permanent office in Geneva.

The International Trade Centre (ITC) has also supported Samoa’s accession process, particularly through close collaboration with Samoa’s private sector.

I recommend the use of the Enhanced Integrated Framework (EIF) for LDCs. Samoa has completed its Diagnostic Trade Integrated Study (DTIS) which has been the key document in mainstreaming trade into our national priorities. Samoa’s first Trade, Commerce and Industry Sector Plan, includes the DTIS, was recently launched in Apia. We expect the assistance under the EIF to continue to assist us through our post accession and implementation phase.

Post accession: With the accession process now complete, focus is on post accession support to implement our WTO obligations and commitments. In the absence of Samoa’s permanent presence in Geneva, we will continue to value opportunities such as the Geneva Week. In addition, we will consider how best to utilize Samoa’s Permanent Mission to the EU based in Brussels. We also now have two senior trade officials in Geneva on work attachments under the WTO Internship Programme based at the Permanent Office of the Pacific Islands; and the International Trade Centre. These are opportunities that LDCs, particularly those without missions in Geneva, should take full advantage of to build capacity.

Concluding remarks...

In summary, the acceding government is the driver of its own accession process to the WTO. Proper management of this process will ensure that challenges are accordingly addressed to move the process forward. Managing the accession process and information includes national coordination; active engagement at all levels; preparation for negotiations; and the extensive use of technical and financial assistance where relevant.

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As Williams remarked, “The accession process is designed to ensure that new Members emerge as full and effective players from their date of membership. It is a process of learning and preparation for membership. Each accession is conducted and completed on its own merits”.

I fully agree. Samoa has already benefitted from the experience and lessons learnt in the 13 years we spent negotiating the terms and conditions of our WTO Membership. One of these is the opportunity to review outdated measures and legislation; and recognizing reform where necessary; to ensure that our policies and laws are current and relevant in today’s global trading economy.

Session 4: Best Practices – The Negotiating Process

Lead Speaker (2nd): Nella Tavita-Levy, MFAT, Samoa (20 minutes)

(Moderator: H.E. Ambassador Xiaozhun Yi, Permanent Representative of China to the WTO / Working Party Chairperson for Lao PDR)

[to be updated]

I will refer only to key lessons learnt from Samoa’s experience in the negotiating process following the suggested discussion points for this session:

(i) Working Party Chairperson

The chairmanship of the Working Party on the Accession of Samoa has remained with the delegation of Japan since the establishment of the Working Party in 1998.

Mr. Yoichi Suzuki (Jan 1999 — May 2009)

Ms. Kuni Sato (May 2009 — July 2010)

H.E. Mr. Shinichi Kitajima (July 2010 — Feb 2011)

Mr. Atsuyuki OIKE (Feb 2011 - Oct 2011)

It was important that the chairmanship remained with Japan to ensure continuity of the work that had been undertaken. The Working Party completed its mandate on 28 October 2011, under the chairmanship of Mr. Atsuyuki Oike. His active engagement and management of the work of the members of the Working Party, the Secretariat and the officials from Apia was a key contributing factor to the conclusion of our work.

(ii) Bilateral Negotiating Track:

a. initial/revised market access offers & Secretariat consolidation of concluded Bilateral Market Access Agreements

- Initial offers in goods and services were submitted on 30 August 2001
- All goods negotiations were completed and signed in May 2011
- All services negotiations were completed and signed in October 2011
- Note: negotiations of goods and services were not done in isolation of each other. Members (US) used one to leverage the other. Important therefore to find compromise which can be achieved if one has a clear understanding of national priorities and interests versus WTO rules.
- The consolidated schedules were circulated to Members in November 2011
- It was not possible for Samoa to have undertaken negotiations on goods and services without assistance. The consolidation of the schedules requires the expertise of the Secretariat

b. strategy and management

- early conclusion with close trading partners (ANZ); and the use of their High Commission Offices in Apia to facilitate negotiations;
- electronic communication used to an extent; exchange of letters and occasional meetings in Geneva;
- informal meetings

c. "good offices"/ facilitation of Working Party Chairpersons and the Director-General;

- absolutely necessary

(iii) Multilateral Negotiating Track:

a. managing multilateral discussions/dialogues on trade regime

- early conclusion with key partners and have them as allies at the multilateral level

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b. meetings of Working Party

Samoa has only had two formal WP meetings. The first meeting in 2001 under the chairmanship of the first chairperson; and the second and final meeting under Mr Oike's leadership. All other

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meetings were held on an informal basis. This informal arrangement proved useful to progress work and we would encourage this for remaining LDCs in accession where relevant.

c. documentation: Q&R, commitment paragraphs, legislative action plans

For the most part of the 13 years of our accession, Samoa had gone through a cycle of “Questions and Answers” which provided the basis of updating the Working Party Report, each time the Q&A were formally circulated to Members. The answers provided in these documents are not only crucial in shaping the text of the report but also determines the next cycle of questions from the Members.

(iv) regular contact with the WTO Secretariat

- Accessions division
- Experts for Goods, Services & Intellectual Property

(v) observership of other Accession Working Parties

Samoa did not participate as an observer in other accession parties except on two occasions on the accession of Vanuatu, one of which was the final meeting of the reconvened working party in October last year.

Sources:

Hijazi, Hadil and Schloemann, Hannes (2011), Expediting and Facilitating the WTO Accession Processes for the Remaining Commonwealth non-WTO Members: Obstacles Demystified, Lessons Learned and Challenges Ahead, Commonwealth Secretariat, London

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