

INTRODUCTION AND SUMMARY

This Handbook is intended for readers wanting detailed information on the process of accession to the World Trade Organization (WTO). It will be of practical use to people involved in one way or another with the process and with the negotiations on accession to the World Trade Organization. The Handbook provides the general reader with a basis for informed discussion and analysis of the WTO's membership process. It first places accession in the context of the WTO. It then sets out the basic provisions governing accession before going on to look at the standard procedures followed and then at the terms on which applicants have acceded to the Organization. Finally, its annexes bring together the main documents used in the accession process.

The primary source used in its preparation is the documentation of the WTO¹ itself. It is therefore beyond the scope of this publication to examine the preparations that take place in each acceding country or in each of the participating WTO Members, even though these are crucial parts of the process.

ACCESSION IN PERSPECTIVE

The WTO is an intergovernmental organization that provides the multilateral framework for the conduct of world trade. The WTO Agreement establishes the Organization and provides the institutional framework for its administration. The individual agreements annexed to the WTO Agreement contain detailed obligations relating to: trade in goods, trade in services and trade-related intellectual property measures (TRIPS) and the settlement of disputes concerning WTO provisions. This package, and agreements reached after the WTO Agreement came into force in 1995, are accepted by all WTO Members as a single undertaking, and as a basic condition of membership in the Organization.

WTO agreements on goods, services, and TRIPS contain rules that discipline the adoption and application of measures relating to international trade. These provide a measure of special and differential treatment for developing countries and least-developed countries (LDCs). Each WTO Member has also negotiated lists of detailed market access commitments setting maximum levels for its customs tariffs

¹ All official WTO documents listed in this Handbook are available as free downloads from the Documents Online section of the WTO website www.wto.org.

A Handbook on Accession to the WTO

on imports of goods, restrictions on trade, and limitations on national treatment in particular categories of services.

Twenty-three new Members have acceded to the WTO since 1995, bringing its membership to 151.² The WTO membership accounts for 96 percent of world trade and, in this respect, the Organization is close to achieving its aim of becoming a truly universal body. A further 32 governments have applied for membership. Only 13 members of the United Nations have not yet taken this step. While many of the 45 non-Members are small, they are home to some 580 million people. Many of them are in the early stages of economic development and 18 of them are LDCs. All countries with large economies which are still outside the multilateral trade system are either applicants for membership in the WTO or are currently in the process of negotiating accession.

The basic WTO provision governing accession to the Organization (Article XII of the Marrakesh Agreement Establishing the WTO) states simply that “any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO”. While the terms of accession are decided on a case-by-case basis and are different for each applicant, accessions are similar enough for patterns to emerge. The main aim of this Handbook is to uncover these patterns where they exist and to identify exceptions to these. This provides an indication of what is generally expected of acceding countries. It must be stressed, however, that WTO Members are not bound by precedent, that practice has evolved over the life of the WTO and that it is likely to evolve further in future.

Because they stand outside the system, all applicants need expert advice on the complexities of the WTO and the demands of the accession process. The provision of trade-related technical assistance and training (TRTA) does not form part of the accession process proper but the WTO Secretariat provides TRTA at all stages of the accession process to LDCs, developing countries and low income countries in transition to a market economy, with priority being given to LDCs. The WTO programme of TRTA focuses on providing information on WTO agreements and developments in the Organization. Funding for WTO TRTA has increased significantly in recent years, largely thanks to voluntary contributions made by some individual WTO Members. However, some form of prioritization is necessary to ensure that all eligible recipients benefit and acceding countries need to keep this in mind when making their requests. It should also be recognized that the WTO cannot by itself meet all needs. Cooperation with other agencies that supply TRTA relevant to accession and individual WTO Members providing technical assistance and training to acceding countries is both welcome and essential.

The procedures governing the conduct of the negotiations for accession are, in practice, based on proposals made by the Secretariat very soon after the creation of

² August 2007.

Cambridge University Press

978-0-521-42594-0 - A Handbook on Accession to the WTO

Peter John Williams

Excerpt

[More information](#)*Introduction and summary*

the Organization in 1995. These have provided a framework for negotiations and have on the whole ensured transparency and predictability while allowing accession working parties to adapt to individual cases where necessary. More recently, the WTO has adopted a specific set of Guidelines on the Accession of LDCs, designed to simplify and streamline procedures for these countries.

The first step in the process of becoming a Member of the WTO is for the applicant government to send a communication to the Director-General of the WTO. This must state that the applicant wishes to accede under Article XII. The WTO General Council considers the request and establishes a Working Party mandated to examine the application and to report back with recommendations, which may include a draft Protocol of Accession. Membership of the Working Party is open to all interested WTO Members. In the great majority of cases, Working Parties are set up rapidly. Once a Working Party is established, all applicant governments become observers to the General Council with the rights and obligations that this entails, including the obligation to pay a financial contribution. All matters relevant to an accession are dealt with in its Working Party and the General Council is not usually called upon to consider such matters until it receives the final Report of the Working Party which also concludes the Working Party's mandate.

The Working Party begins its work with an examination of factual information on the trade regime of the applicant. This is based on a Memorandum supplied by the applicant on all aspects of its trade regime, supporting documentation containing more detailed information on its trade measures and written answers to questions addressed to it by members of the Working Party. The Working Party continues its factual examination of the trade regime till all relevant aspects of the applicants' trade and economic regime have been satisfactorily clarified and documented. When enough progress has been made, Working Party members often ask the Secretariat to prepare and circulate a Factual Summary of Points Raised. This document eventually forms the basis of the Working Party's Report.

Once a sound factual basis has been established, negotiations on the terms of accession are initiated under the aegis of the Working Party. The basic pattern is that commitments on rules are negotiated *multilaterally* in the Working Party itself; that its agricultural support and export subsidy commitments, which are also systemic, are discussed and negotiated *plurilaterally* in an informal group of interested Working Party members and then brought to the Working Party for approval; and that its concessions on customs tariffs and its specific commitments on services are negotiated *bilaterally* with interested Working Party members. However, bilateral negotiations with individual WTO Members may also take up issues normally dealt with in the multilateral context.

Acceders must be prepared to accept all the rules contained in the WTO Agreement. Their obligations on rules are contained in their Protocol commitments – so called because they are either contained in the relevant paragraphs of the Working Party's Report and incorporated by reference in the Protocol setting out the terms of accession or, in some cases, in the text of the Protocol itself. These commitments would, for instance, identify the relevant WTO provisions and record the steps

A Handbook on Accession to the WTO

that the applicant has taken, or is committed to take to bring its laws, regulations and practices into line with these provisions. Commitments may also contain other provisions considered appropriate to a particular accession.

The negotiations for tariff bindings and specific commitments on services are based on a detailed offer from the applicant. Requests are then made by interested Members. When the bilateral negotiations are concluded, bilateral agreements are signed by both parties and passed to the Secretariat which consolidates these in draft multilateral Schedules. The results of the plurilateral discussions on agricultural support and export subsidies are contained in Part IV of the Goods Schedule. When the Schedules are ready, they are presented to the Working Party to review and ensure that bilateral agreements are correctly transposed and that they conform to WTO rules.

The results of the negotiations are all brought together in a draft Protocol setting out the terms on which the applicant is to be invited to accede. The Protocol is annexed to the Report of the Working Party. The Working Party also annexes a draft Decision for the General Council inviting the applicant to accede on the terms set out in the draft Protocol. The General Council/Ministerial Conference adopts Working Party Reports in accordance with the relevant WTO decision-making procedures. When they adopt the Decision, WTO Members offer terms of accession to the acceder. When it accepts the Protocol, by signature or otherwise, the acceder also accepts those terms and becomes a Member of the WTO thirty days after notifying acceptance of the Protocol.

While the rules of the WTO provide for voting, it is a well-established practice for all decisions to be taken by consensus. The practice is deeply rooted in the culture of the WTO, as it was in its predecessor the General Agreement on Tariffs and Trade (GATT). Members strive, wherever possible, to achieve consensus. While an objection by one Member can prevent decisions from being taken at each step of the accession process, the WTO has also been successful in containing the impact of political issues on its work. Only in rare cases have procedural decisions been delayed until a consensus has been reached.

After describing the procedures followed for accession, this Handbook focuses on the terms on which applicants have acceded to WTO. Each new Member of WTO undertakes to abide by the provisions of the WTO Agreement and its annexed Multilateral Trade Agreements and by the provisions in its Protocol commitments on (i) rules, (ii) customs tariffs, (iii) agricultural support and export subsidies, and (iv) services. Because the provisions of the WTO are dealt with in other Handbooks in this series and in many other publications, this Handbook concentrates on the Protocol commitments.

It first examines a number of general points: requests that applicants observe a standstill and do not introduce new restrictive measures for the duration of the accession negotiations; the oft-heard view that commitments accepted by new Members can be more stringent than those of original WTO Members at similar levels of economic development (sometimes referred to as WTO-plus commitments); special and differential treatment for developing countries; legislative action plans

outlining the action being taken by applicants to achieve conformity with WTO requirements; transitional periods; and the implementation of the Guidelines governing the accession process for LDCs.

It then examines the rules accepted by new Members in their Protocol.³ An examination of some 40 different subjects shows that these rules may:

- confirm that the acceding country will impose the measures in question only in conformity with the relevant WTO provisions by the date of accession and give examples of the main provisions concerned, either by referring to them or quoting from them;
- specify the way in which the new Member will interpret and implement a WTO provision;
- create an obligation accepted by the new Member without referring to WTO provisions;
- provide that the new Member will ensure that its measures are transparent by publishing them, by providing notifications and by providing information and consulting on request;
- specify the steps that the new Member will take to bring its existing laws, practices and administrative arrangements into conformity with the Protocol commitment;
- grant transitional periods, in particular to LDCs;
- contain factual statements describing the existing laws and enforcement mechanisms related to the implementation of specific WTO rules. In such cases, the intention of the commitment would presumably be to make these contractually binding.

Analysis of the Tariff Schedules of new Members shows that applicants are expected to bind all tariff lines in the Goods Schedule.

The earliest accessions do not reflect present practice and the LDCs are in a category of their own. These aside, the simple average of the final *ad valorem* tariff bindings of new Members has been somewhere between 6 percent and 16 percent. *Ad valorem* tariffs on agricultural products tend to be bound at higher rates (simple averages varying from a low of 9 percent to a high of 42 percent) than on non-agricultural products (5 percent to 24 percent). Although the correlation is not strong, the average of bindings is somewhat higher for developing countries than for other new Members. That some of the new Members have a flatter tariff structure than others is demonstrated by the fact that the highest final *ad valorem* bound rates in different acceders varies from 15 percent to 500 percent in the agricultural sector and from 20 percent to 55 percent in the non-agricultural sector. All these new (non LDCs) Members bar one,⁴ participated, either wholly or partially, in at least some of the sectoral initiatives negotiated during the Uruguay Round and since. The share

³ A tabular presentation listing these subjects and showing the relative frequency of these commitments is at Annex 12.

⁴ A small, vulnerable, isolated developing country.

Cambridge University Press

978-0-521-42594-0 - A Handbook on Accession to the WTO

Peter John Williams

Excerpt

[More information](#)*A Handbook on Accession to the WTO*

of non-*ad valorem* bound rates is typically low. They are, however, somewhat more common in the agricultural sector than in the non-agricultural sector.

The average of the final bound rates of the two LDCs that have already acceded is 19 percent and 26 percent respectively. They were not expected to participate in sectoral initiatives and did not do so.

When tariffs were bound below the level of the rates actually applied, transitional periods of up to ten years were often negotiated in order to allow reductions to be phased in gradually.

WTO Members are reluctant to allow new Members to use tariff rate quotas (TRQ) and special safeguards (SSG) that are a feature of the Agreement on Agriculture. Only a minority of more recent acceders has negotiated the right to use a limited number of TRQs and only one of these the right to use SSGs. TRQs are very uncommon in the non-agricultural sector.

Part IV of the Goods Schedule sets out levels of support in favour of agricultural producers that are not subject to reduction commitments: “green box” measures that have no, or at most minimal, trade-distorting effects; certain support measures maintained by developing countries; and “blue box” payments under certain production-limiting programmes. Measures subject to reduction commitments are said to be in the “amber box”. Fourteen of the new Members did not provide amber box support above the *de minimis* level in the base period and were not obliged to reduce the level of domestic support on accession. The Schedules of the other new Members specify maximum permitted levels of amber box support and reduction commitments. The norm was for the developing countries to reduce the level of their amber box support by some 13 percent and the other new Members by some 20 percent. It appears that ten of the new Members have a *de minimis* level of 10 percent, i.e. were treated as developing countries in this respect. Only one had claimed a *de minimis* level of 10 percent but this was reduced to 8.5 percent in negotiations. The remainder have a *de minimis* level of 5 percent.

Acceders are expected to bind their agricultural export subsidies at zero whether or not they granted such subsidies in the base period.

The complexity of the Services Schedules makes them difficult to summarize but it is clear that the new Members have generally accepted a large number of specific commitments. The high level of commitment is confirmed by an analysis at the sub-sectoral level, although there is a wider spread in the number of commitments made at this level.

Recent practice has been for new Members, including LDCs, to make specific commitments in key sectors: professional services (legal, accountancy, architectural and engineering); computer and related services; other business services, courier services; telecommunications (value-added and basic); construction, distribution, educational, environmental, financial (insurance, banking and other); tourism; and air transport. Fewer commitments were made in other sectors such as: postal, audio-visual, marine transport, and rail transport. Some of these were full commitments and some were partial commitments. While many restrictions on market access and

limitations on national treatment were scheduled, some of these partial commitments simply provided specified periods of time for these restrictions and limitations to be phased out. LDCs made commitments in nearly as many sectors as some of the other acceders.

SOME OBSERVATIONS

The procedures for accession to the WTO have, in general, worked smoothly. There are a number of reasons for this. These procedures are based on decades of experience in the GATT 1947. They do not restrict the freedom of Members or foreclose any options. There have, for instance, been no debates about terms of reference for individual Working Parties which are as open-ended as WTO Article XII itself and no differences of opinion about their composition, as all interested WTO Members are free to join.

The WTO is a multilateral organization but has important bilateral elements. The same is true of the accession procedures. These are multilateral in the sense that all WTO Members have the right to participate in the General Council/Ministerial Conference and in accession Working Parties. However, in practice, only some WTO Members have the resources necessary to participate actively in the details of all the individual accession processes. Parts of the accession negotiations are conducted bilaterally and in private and the results of these are subject to multilateral review only after bilateral agreements are signed with each of the Members requesting such negotiations.

The WTO Agreement is a complex legally-binding instrument dealing with a wide variety of subjects. Applicants must prepare detailed technical documentation. Typically, these run into hundreds of pages. This places a significant administrative burden on the limited resources of their administrations. In addition, applicants need to prepare the substantive offers on which negotiations are based, to negotiate the whole range of basic obligations and to satisfy WTO Members that they will have the necessary legislation and administrative arrangements in place to implement their obligations when they become Members. The busy WTO calendar and preoccupation with other on-going negotiations oblige WTO Members to assign priorities and to concentrate on those acceders that respond most effectively to the challenges of accession. The rules and procedures do not limit the requests that WTO Members may make of applicants (with certain exceptions for LDCs). Members take final decisions on the terms of accession and decisions are taken by consensus. These features contribute to the special character of the accession negotiations. It is perhaps not surprising that the period of time between the filing of an application and accession is counted in years, and that the shortest completed accession process lasted almost three years and the longest more than 15 years.

For all these reasons, applicants need to possess a firm conviction that WTO membership is in their national interest, if they are to fulfil the demands of the accession process. Invariably, a large number of different government agencies are responsible for the range of subjects dealt with in these negotiations and a strong

Cambridge University Press
978-0-521-42594-0 - A Handbook on Accession to the WTO
Peter John Williams
Excerpt
[More information](#)

A Handbook on Accession to the WTO

lead needs to be given from the highest levels of government in each acceding country. It is not an accident that almost all governments that have acceded see WTO membership as reinforcing and consolidating a national reform process on which they were already embarked for their own reasons.

Article XII sets no limits to the terms that may be agreed and the terms of accession are different for each new Member. However, the factual analysis presented in this Handbook shows some patterns emerging that enable conclusions to be drawn about the terms likely to be asked of acceding governments. By identifying exceptions that have been made, the analysis also highlights some unique features of each accession. The terms of accession have evolved in some respects since the entry into force of the WTO in 1995 and there has been something of a “ratchet effect” – a novel commitment, once accepted, tends to be asked of other acceders.

The accession process is flexible and continues to evolve. It is likely to be further adapted to the needs of each case.

1

ACCESSION IN PERSPECTIVE

The multilateral trading system came into being on 1 January 1948 when the General Agreement on Tariffs and Trade (GATT 1947) was signed by its 23 founding members.¹ The GATT's membership expanded considerably in the following decades as many countries gained their independence and took over the rights and obligations of membership that metropolitan powers had accepted on their behalf, and others negotiated their accession to the treaty. All the Members of GATT 1947 decided by the end of the Uruguay Round of trade negotiations (1986–1994) to take on the greatly enlarged rights and obligations of the new organization they had negotiated – the World Trade Organization (WTO), which came into force on 1 January 1995 with 128 original Members.² While these accounted for an extremely large percentage of world trade, many economies remained outside the multilateral system. Since its inception, WTO Members have repeatedly stressed their commitment to making the WTO universal in scope and coverage – an ambition shared by a large number of governments outside the system.

Since 1995 another 23 governments have negotiated their accession to the WTO, which now has 151 Members.³ This is an endorsement of the principles on which the Organization is based and the validity of its disciplines. The new Members are, in the order in which they acceded:

- | | |
|--------------------|-----------------------------------|
| 1. Ecuador | 10. Albania |
| 2. Bulgaria | 11. Oman |
| 3. Mongolia | 12. Croatia |
| 4. Panama | 13. Lithuania |
| 5. Kyrgyz Republic | 14. Moldova |
| 6. Latvia | 15. China |
| 7. Estonia | 16. Separate Customs Territory of |
| 8. Jordan | Taiwan, Penghu, Kinmen, and |
| 9. Georgia | Matsu (Chinese Taipei) |

¹ “Contracting Parties.”

² See Marrakesh Agreement Establishing the World Trade Organization, Article XI, Original Membership. The original Members included the member States of the European Communities (EC) and the EC themselves. The WTO legal texts refer to the EC not the European Union as the Union does not have a legal personality. Though not original Members, the General Council gave Granada, Papua New Guinea, Qatar, St. Kitts and Nevis, and the United Arab Emirates additional time to complete the negotiation of their Schedules. These countries acceded to the WTO after 1 January 1995 under the special procedures established by the General Council (WTO document WT/L/30).

³ August 2007.

A Handbook on Accession to the WTO

- | | |
|---|--------------------|
| 17. Armenia | 20. Cambodia (LDC) |
| 18. Former Yugoslav Republic of Macedonia (FYROM) | 21. Saudi Arabia |
| 19. Nepal (LDC) | 22. Viet Nam |
| | 23. Tonga |

The detailed statistics contained in Annex 1 demonstrate that these new Members have made a significant contribution to the WTO's goal of becoming a truly universal body. Based on these statistics, the percentage of world trade accounted for by Members of the Organization has risen from 86.8 percent to 96.4 percent and the percentage of GDP from 89.4 percent to 96.7 percent. Population figures are equally relevant and important. Whereas original Members accounted for only 66.0 percent of the world's population, the accession of the new Members has brought this figure up to 90.1 percent.

The WTO has shown itself flexible enough to accommodate Members of very different economic sizes, at all stages of economic development. The five that are largest in trade terms (EC, USA, China, Japan and Canada) account for as much as 68 percent of the trade of all WTO Members and the five smallest for less than 0.01 percent of that trade. Its membership includes not only all the wealthiest countries in the world but also 32 of the 50 LDCs.⁴

There are at present another 32 governments which have applied to accede to the WTO (in alphabetical order):

- | | |
|--|---------------------------------|
| 1. Afghanistan (LDC) | 17. Lebanon |
| 2. Algeria | 18. Liberia (LDC) |
| 3. Andorra | 19. Libyan Arab Jamahiriya |
| 4. Azerbaijan | 20. Montenegro |
| 5. Bahamas | 21. Russian Federation |
| 6. Belarus | 22. Samoa (LDC) |
| 7. Bhutan (LDC) | 23. Sao Tomé and Príncipe (LDC) |
| 8. Bosnia and Herzegovina | 24. Serbia |
| 9. Cape Verde (LDC) | 25. Seychelles |
| 10. Comoros (LDC) | 26. Sudan (LDC) |
| 11. Equatorial Guinea (LDC) | 27. Syria |
| 12. Ethiopia (LDC) | 28. Tajikistan |
| 13. Iran | 29. Ukraine |
| 14. Iraq | 30. Uzbekistan |
| 15. Kazakhstan | 31. Vanuatu (LDC) |
| 16. Lao People's Democratic Republic (LDC) | 32. Yemen (LDC) |

The above account for 4 percent of world trade, 3.3 percent of world GDP, but as much as 8.4 percent of world population. Their membership of the WTO would bring the coverage of the Organization to 99.95 percent of world trade,

⁴ As defined by the United Nations (UN).