PART I

WTO accessions, the trading system and the global economy
A reflection on accessions as the WTO turns twenty

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ABSTRACT

As the WTO celebrates its twentieth year, it is appropriate to ask what WTO accessions have contributed to the rules-based multilateral trading system. What demands have been made by the original and incumbent WTO members on acceding governments? How have the acceding governments fared? This chapter finds that WTO accessions have expanded the reach of the trading system, not only geographically but conceptually, by clarifying disciplines and pointing the way to their further strengthening in future negotiations. Members who have acceded under Article XII of the General Agreement on Tariffs and Trade now account for 20 per cent of total membership of the WTO. Meanwhile, with globalisation, the increased prevalence, complexity and capillarity of international exchange has greatly increased the need for a universal system of trade rules. Crucially, accession negotiations have been used by governments as an instrument for wide-ranging domestic reforms, including by means of far-reaching new legislation that has effectively changed the business landscape. In several instances, the WTO accession negotiating platform has been used for the much broader purpose of facilitating new, closer, geopolitical relationships. As the negotiating arm of the WTO continuously adapts, the success of accession negotiations also points to the opportunities inherent in variable negotiating configurations, such as plurilaterals around specific issues. There is also considerable scope for improving the process of accession negotiations to ensure greater transparency, streamlining and fairness.

The analyses in the chapters in this book were finalised at the end of December 2014. Since then the Republic of Seychelles acceded to the World Trade Organization (WTO) on 26 April 2015. This expanded total WTO membership from 160 to 161. Please see the editors’ note.
Nations home to some two 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 gross domestic product (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 twenty years, from about 30 to 50 per cent.

These broadly favourable outcomes can be attributed primarily to domestic reforms that have re-oriented 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 liberalisation, supported by the ideas and mechanisms that underpin the WTO and its predecessor the General Agreement on Tariffs and Trade (GATT), have played a significant role. Most recently, accession to the WTO under Article XII in the Marraksh Agreement Establishing the World Trade Organization has provided an important framework to help effect the transition of twenty formerly planned economies to a market-based system as well as twelve others 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 largest share of world trade within a generation. In 2015, WTO rules and disciplines extended the rule of trade law to 98 per cent of world trade between its 161 members, of which the 128 original members’ share of world trade is 80.1 per cent and that of the thirty-three Article XII members is 17.6 per cent. Another twenty-two governments accounting for 2.1 per cent of world trade are in the process of accession. When their accession negotiations are concluded, only 0.1 per cent of world trade will be outside the rules-based global economy.

1 The WTO General Council formally approved the Accession Package of Seychelles in December 2014. After parliamentary ratification by Seychelles of the formally approved package by the WTO General Council in December 2014, and twenty days after the deposit of the WTO instrument of accession of Seychelles, Seychelles became the 161st member of the WTO.
Unlike accession to the GATT, which included a large number of original members and countries that acceded, virtually automatically under colonial preferences, accession to the WTO is a hard and long-drawn-out process. Accession negotiations typically last about ten years and require far-reaching commitments by the acceding government (or separate customs territory), as well as the acceptance of disciplines and binding commitments which in several instances go beyond those applied to existing members, and occasionally even acquiescence to lesser rights – at least temporarily. This procedure has sometimes been characterised in the development and legal literature as ‘unfair’ to new members, as discriminatory, arbitrary and as possibly undermining the legitimacy of the WTO as a body of law.

Others, however, have argued that while core WTO principles and disciplines such as transparency and non-discrimination are constant, accession terms relating to the scope and extent of liberalisation 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 economies, 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, has WTO accession helped to 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 of the writings presented here, spanning the views of negotiators as well as development practitioners and trade experts, strongly suggests 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 which the process was much less demanding: Article XII members did better on various scores than the world average, and those
Article XII members 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 members, including China, increased their share of world trade by 125 per cent between 1995 and 2013. Excluding China, the share increase was 42 per cent.

Improved governance and application of the rule of law most probably played a significant role in effecting these outcomes. The role played by governance in achieving poverty reduction and growth has long been recognised, but governance reforms are hard to make and must overcome opposition. It turns out that WTO accession can provide the political push as well as useful instruments for reform. Rules such as those on transparency, non-discrimination and the necessity of and adherence to international standards, based on science, make rent-seeking more difficult. WTO agreements such as on government procurement, which most acceding governments agree to join ‘upon accession’, help to 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 is concluded 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 LDC 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 [their] development efforts and strengthen [their] 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 recognise the value of the process, and not just of the outcome. They emphasise four aspects in particular: the importance of WTO accession-triggered reforms as a platform for their own domestic reforms, as a bulwark against back-tracking, as a means to secure market access for their exports and as a clear signal that their country is open for business and wants 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 an integral part of WTO law. Article XII members appear as complainants in thirty-four 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 framework for making and enforcing trade and trade-related policies, to setting sanitary and phytosanitary (SPS) standards, to adopting disciplines in areas ranging from investment, energy, intellectual property and state (either owned, controlled, invested or trading) 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 (GPA) 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 continue to face strong headwinds, if not to stall – 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, has greatly enhanced the value of the institution to its original members and has 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 reinforce the importance of the WTO as an arbitrator of disputes and raise 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 original members, Article XII members, acceding governments and for the global trade system. It is articulated in five parts. Part I 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. Part II examines some of the effects of accessions on WTO law and on the broader trading system. Part III provides the perspectives of accession negotiators, from the standpoint of Article XII members, original members and chairs of working groups. Part IV takes a
horizontal cut across accessions, examining the salient features of accession commitments by subject matter, such as services or state enterprises. Part V 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 summarise the book’s findings on the effects of accession on Article XII members, as well as on the rules-based multilateral trading system.

The effects of accession on Article XII members

The thirty-three Article XII members are a diverse group. Most were classified as developing countries by the World Bank at the time when their accession working parties were established. Saudi Arabia and Russia are now recognised as high-income oil exporters. At the other extreme, seven are least-developed countries (LDCs), some of the world’s poorest countries. Twenty, including Russia, are formerly centrally planned economies, several of which have become European Union (EU) members, and another ten are middle-income and low-income developing countries which decided to embark on reform later than their peers – usually because of internal or international conflicts or an ideological bent in favour of self-sufficiency. The twenty-two countries currently in the process of accession constitute a diverse group of oil exporters, LDCs, formerly planned economies and countries that continue to struggle 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 ten years, varying from the shortest – three years in the case of Kyrgyz Republic – to the longest – twenty years, in the case of Seychelles. Other countries, for example, Algeria, whose working party was established under the GATT in 1987 and is still in progress, have been in negotiations for even longer.

Under the terms of accession, members demand of the acceding government WTO-consistency in its domestic laws and regulations. Moreover, members request that the acceding government 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. They may also have ‘red lines’ for which they may seek differentiated treatment.
Their ability to win such concessions depends on the power of the 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, Russia obtained ‘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-off 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 for a specific commercial interest to a desire to see the acceding government’s regulatory system upgraded. Although there are acknowledged best practices and norms that guide negotiations, the negotiations are unequal, in the sense that demands on the acceding government 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 government 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+’ (or WTO-plus), commitments in areas for which there is no precedent. Yet the fact remains that the results from this process have strengthened the WTO as a rules-based system and taken it further, with positive knock-on effects for the global economy. The latter are discussed more fully in the next part, 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 XII members with regard to their tariff concessions and specific commitments in Goods and Services Schedules. While original members bound about three-quarters of their tariff lines, Article XII members have agreed to bind nearly 100 per cent. Moreover, the average bound rate for original members is 45.5 per cent, whereas it is 13.8 per cent for Article XII members. Article XII members also committed to liberalise over twice as many service subsectors as original members. However, differences in applied tariffs were much smaller, 7.3 per cent on average for Article XII members versus 9.7 per cent 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 in their trade regimes was relatively modest, especially considering the fact that adjustment typically occurs over the course of a 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 members 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 Khemmanni Pholsena and Buavanh Vilavong of Lao PDR, whose accession took fifteen years, write that ‘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[ed] create an enabling environment for business and trade in the country’. Thus, while the thirty-three Article XII members accepted approximately 1,361 specific obligations that, pursuant to the WTO Accession Protocol, are integral to the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement), they also enacted approximately 7,356 WTO-consistent laws and associated implementing regulations 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 ‘[i]t is for these reasons that the European Union has been systematically engaged in consultations with acceding governments not only on the market access side... but also, and with no less vigour, 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