

# Chapter 2 Membership and Observer Status

After reading this chapter you will be able to:

- Explain why it is important to distinguish between the WTO Secretariat and its Members
- Describe the importance of accession negotiations to applicant countries
- Find out if your country is a member of an informal grouping
- Identify the best way for your organization to make its views heard in WTO negotiations

## 2.1 Members

The WTO is a ‘member-driven’ organization, meaning that Members themselves make all the decisions: unlike many United Nations (UN) bodies, no smaller executive body is charged with decision-making. Also unlike the UN, non-state entities with the status of separate customs territories – such as Hong Kong, Macao and Taiwan – can become full Members of the WTO.

Over two-thirds of the 148 WTO Members are developing countries or **least developed countries** (LDCs). All Members designated as LDCs by the United Nations system are given LDC status at the WTO. Among the 50 LDCs currently on the United Nations list, 30 have become WTO Members. Members can assert developing country status by self-selection, although other Members may not automatically accept this. For instance, when China negotiated its accession to the WTO, existing Members insisted that it accept tighter restrictions on the use of agricultural **subsidies** (see Chapter 6) than those applicable to developing countries.

In some cases, the WTO grants **special and differential treatment (S&D)** to developing countries and to LDCs. This can include different forms of preferential treatment such as longer transitional periods for implementing new WTO commitments, greater flexibility in, or even exemption from, accepting certain specified obligations, and the possibility of receiving technical assistance to implement their commitments. Developing countries and LDCs have been calling for greater use of S&D provisions.

## 2.2 Accession to the WTO

Among the current 148 Members of the WTO, the majority (128) were signatories of GATT and automatically became WTO Members on 1 January 1995. Any state or customs territory with full autonomy in the conduct of its trade policies may join (‘accede to’) the WTO (Article 12, the WTO Agreement), but they have to negotiate their accession with existing Members.

Although every applicant seeking to join the WTO follows the same accession procedures, the time necessary for completing the process varies. If a number of Members are keen to secure market concessions from the applicant, the bargaining and accession processes are more intense and difficult, and hence, lengthy. For these reasons, bigger traders tend to take a longer time to join the WTO. For example, it took China, who became a member in December 2001, over 15 years to complete its accession process. Russia applied to join in 1993, and its negotiations are still ongoing. The shortest accession negotiations were those of Kyrgyzstan (32 months) and Ecuador (36 months).

Newly acceded Members such as China, Croatia and Georgia argue in the **Doha negotiations** (see Chapter 3.5) that since they made many concessions and commitments in their accession process, they should not be expected to make further major concessions in new trade negotiations. This reflects the fact that acceding Members very often face tough negotiations during the accession process and have to make WTO-plus commitments (concessions beyond those required by the WTO agreements) and accept WTO-minus treatment (foregoing some benefits and

It is important to differentiate WTO Members from the WTO Secretariat. Most of the criticisms directed against the WTO actually concern decisions taken by Members (or by panels or the Appellate Body in dispute settlement cases), not by the Secretariat.

The list of WTO Members is given at Annex II

The list of countries negotiating WTO accession is given at Annex II. An indication of the stage of each country’s accession process is at [www.wto.org/english/thewto\\_e/acc\\_e/acc\\_e.htm](http://www.wto.org/english/thewto_e/acc_e/acc_e.htm)

Asian countries currently in the WTO accession process are Bhutan, Kazakhstan, Laos, Samoa, Tajikistan, Tonga, Vanuatu and Viet Nam.

### Box 2.1 The accession process – inherently flawed?

#### Kicking off the accession process

The accession process starts when a country applies to join the WTO. The General Council considers the application and establishes a working party. Objection from one single member can block this process, such as the application of Iran, which has been blocked by the US since 1996.



#### Working party and the fact-finding process

The applicant then provides a 'Memorandum' which describes its foreign trade regime in detail. This is examined by Members of the working party. The working party consists of WTO delegates and there is no room for impartial experts. This process in effect allows Members pursuing their own commercial interest to act as judge and jury on the trade regime of acceding countries.



#### Bilateral negotiations

Members and the applicant start bilateral market access negotiations on goods, services and intellectual property rights. The applicant has to come to an agreement with every Member which has requested bilateral negotiations, before it can join the WTO.

This bilateral process is a defensive battle for the applicant, because it cannot make any specific demands of WTO members in return.



#### Report, Protocol of Accession and Entry into Force

Results of the negotiations are packaged into documents including the draft protocol of accession, together with the applicant's schedules of commitments. The whole package is submitted to the WTO General Council or Ministerial Conference for approval. The protocol of accession then enters into force. The applicant ratifies the protocol and becomes a WTO Member 30 days later.

WTO, *WTO Training Package*, [www.wto.org/english/thewto\\_e/whatis\\_e/eol/e/wto08/wto8\\_53.htm](http://www.wto.org/english/thewto_e/whatis_e/eol/e/wto08/wto8_53.htm).  
Roman Grynberg, Victor Ognitsev and Mohammad A Razzaque, *Paying the Price for Joining the WTO: A Comparative Assessment of Services Sector Commitments by WTO Members and Acceding Countries*, Commonwealth Secretariat, 2002

rights conferred by the WTO agreements) as a type of 'entrance fee' for joining the global trade club.

Paul Hunt, Special Rapporteur on the Right to Health for the UN Commission on Human Rights, expressed concern that 'pressure in trade negotiations, particularly when exercised by stronger trading partners over small acceding countries, might lead to unsustainable commitments to trade liberalization that, in practice, diminish states' capacity to realize the right to

#### When China joined the WTO, it agreed

- to limit its agricultural subsidies at a lower level than that normally applicable to developing countries, therefore restricting its **policy space**
- to accept a clause on transitional safeguards applicable to its textile and clothing exports
- to be treated, for 15 years after its accession, as a non-market economy in investigations about whether China is engaging in dumping. Being treated as a non-market economy means a complainant can use third country reference prices when deciding whether China is dumping its products.

health.<sup>1</sup> He referred to ‘TRIPS-plus’ situations, where acceding countries are required to implement not just TRIPS-consistent but more stringent legislation on intellectual property at an earlier date than required by the TRIPS Agreement itself, or to limit their flexibility to facilitate introduction of generic drugs.

The Commonwealth Secretariat found that ‘the commitments made by acceding countries were far larger than those made by WTO Members’<sup>2</sup> in trade in services. The study found that ‘WTO Members in general, and the **Quad** in particular, have used their unique negotiating position, by virtue of inherent flaws of the accession process ensuring the vulnerability of applicant countries, to unleash their considerable strategic privilege in acquiring ever greater concessions from the latter, irrespective of their size and economic significance.’

Even so, countries are keen to join the WTO for the benefits of gaining access to WTO Members’ markets, protecting themselves from discriminatory treatment, and making use of the WTO dispute settlement system to assert their rights. For some countries, such as China, WTO membership also serves as an external force to push forward otherwise domestically difficult reforms.

## 2.3 Groupings and alliances

The relatively stable and widely recognized groupings are the **Quad**, the **Cairns Group** and the European Union. The newly emerged Group of 20 developing countries (**G20**) is rapidly becoming recognized as an influential alliance on agricultural negotiations. There are other alliances whose members sometimes but not always speak with one voice, such as the Association of South East Asia Nations (ASEAN), the African Group, the Latin American and Caribbean group, and the African, Caribbean and Pacific Group of States (**ACP**). Cancún saw the emergence of a coalition of some of the poorest Members into the **G90**, which included the ACP, the Africa Group and the LDCs.

A loose association of countries called the **Like-minded Group** has in the past been particularly insistent on issues of concern to developing countries in the WTO. Some of its most vocal Members included India, Pakistan and Malaysia. These countries have traditionally put up strong

Human rights advocates in countries currently negotiating accession should contact their country’s officials responsible for the accession negotiations to seek information about what is being proposed, and to ensure that the conditions of the country’s WTO membership do not undermine human rights.

Understanding the political groupings and negotiating alliances in the WTO is one of the major elements in appreciating how the WTO works.

### Box 2.2 Major groupings in agriculture

Groupings	Main Interests	Coordinator/spokesperson in mid-2004
Cairns Group (exporters)	Market access & reduction of domestic support	Australia
G10 (net importers)	Non-trade concerns (e.g., environment, food Security & rural development)	Switzerland
G20 (developing countries)	Reduction of OECD farm subsidies & domestic support, less keen on market access	Brazil and China
G33+ (developing countries)	Special Products (SPs) & Special Safeguard Mechanism (SSM) for developing countries to protect small farmers from import surges, and help poverty alleviation	Indonesia
G90 (LDCs, African Union, & ACP)	Preservation of preferential treatment	Botswana and Mauritius
LDC	Coordinate interests of LDC group at WTO meetings	Tanzania and Rwanda

<sup>1</sup> UN Commission on Human Rights, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health – Special Rapporteur on the Right to Health, Paul Hunt, Mission to the World Trade Organization*, E/CN.4/2004/49/Add.1, March 2004.

<sup>2</sup> Roman Grynberg, Victor Ognitsev and Mohammad A Razzaque, *Paying the Price for Joining the WTO: A Comparative Assessment of Services Sector Commitments by WTO Members and Acceding Countries*, Commonwealth Secretariat, 2002.

Personal contacts with coordinating governments often play a key role in NGOs' ability to meet with the groups. To find out which country is coordinating which group within the WTO, contact the WTO Secretariat's External Relations or Press Divisions (details in Chapter 8.1).

resistance to the **Singapore issues** (see Chapter 3.5), and have been outspoken supporters of increased **internal transparency** within the WTO. However, they tend to object heavily to **external transparency** and increased participation of non-members (including civil society) in WTO processes.

Members also form alliances on issue-specific and ad hoc bases. These would include the Group of 17 (**G17**) on the Singapore issues, different 'groups of friends,' such as the 'friends of education' and 'friends of Mode 4' on services negotiations, the Group of 33 (**G33**) developing countries on Special Products (SPs) and a Special Safeguard Mechanism (SSM) in agriculture, and the Group of 10 (**G10**) net importers of agricultural products.

Responsibility for coordination of each group often falls on those with a strong interest in the relevant issue area (Box 2.2). Coordinating Members set the agenda, organize meetings and introduce topic areas. They can also invite guests, such as NGOs or business groups, to present informally on findings or projects, or to provide input on positions, a regular practice at meetings in Geneva and at Ministerials.

#### Box 2.3 International organizations with observer status with the General Council

International Monetary Fund (IMF),  
Organization for Economic Co-operation and Development (OECD)  
United Nations Conference on Trade and Development (UNCTAD)  
United Nations Food and Agricultural Organization (FAO)  
United Nations Organization (UNO)  
World Bank  
World Intellectual Property Organization (WIPO)

## 2.4 Observer status

There are two major observer categories in the WTO:

1. Non-member countries negotiating to join the organization are given observer status once a working party on their accession has been established. They can participate in meetings but cannot take part in the decision-making process. There are currently 30 observer governments to the WTO.
2. International organizations enjoy only limited status. For example, the United Nations Environment Programme is an observer to the Committee on Trade and Environment but not to the General Council. Only seven international organizations are observers to the

Non-governmental organizations (NGOs) are not accorded any observer status. Some NGOs have found other ways to participate:

- by intervening at the national level (see Chapter 7.2)
- by submitting **amicus briefs** in the dispute settlement process (see Chapter 1.7)
- by undertake work relating to the Trade Policy Review Mechanism (TPRM) (see Chapter 1.8)

#### Box 2.4 Some anomalies in granting observer status

- Iran, even though requesting to join the WTO, is not an observer, and therefore cannot start negotiating its accession, due to repeated objections by the United States.
- The ILO does not enjoy observer status, as some Members fear that such a move would open the door for introducing core labour standards into the trade body.
- The secretariats of various environmental treaties have not been granted permanent observer status, even though the Doha Work Programme mandates the WTO to work with them.

General Council (Box 2.3), and this does not automatically give them observer status in other WTO bodies. The narrow approach to cooperation with other international organizations is a major source of criticism from the development, human rights and environmental communities, as well as from many of the international organizations themselves (see Box 2.4).

The WTO Agreement also states that the General Council may make appropriate arrangements for consultation with non-governmental organizations (NGOs), but no NGO has ever been granted observer status. The General Council adopted a decision in 1996 stating a broadly held view among Members that ‘it would not be possible for NGOs to be directly involved in the work of the WTO or its meetings.’<sup>3</sup> Nevertheless, the WTO does grant NGOs accreditation and limited access to Ministerial Conferences (see Chapter 1.5).

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<sup>3</sup> WTO, *Guidelines for Arrangements on Relations with Non-Governmental Organizations*, Decision adopted by the General Council, WT/L/162, 18 July 1996. To find this and other WTO documents on the web, see Chapter 8.1.

