Uzbekistan on Its Way to the WTO

Summary

In December 1994, the application of intention to access the WTO in the pro-fledged member status was sent to the WTO on behalf of the Government of the Republic of Uzbekistan. The application received positive respond and the Working Group was formed to direct Uzbekistan’s accession to the WTO. In September 1998, the presentation of Memorandum on Uzbekistan foreign trade regime was organised in WTO. Written answers to questions asked by a number of countries-WTO members were prepared and sent to the Secretariat of this organisation. The current phase of accession to the WTO is characterised by the implementation of works that help to resolve a broad range of organisational, legislative, technical and other issues relevant to the preparation for the oncoming meetings of the Working Group.

Key words: trade, WTO, Uzbekistan, economy, membership.

JEL codes: F5

History of the WTO

Before I discuss the Uzbekistan’s way to the World Trade Organization (WTO), I shall present a brief history of this organisation.

The WTO was established on 1 January 1995. More than 150 nations are members. The World Trade Organization builds upon the organisational structure of the General Agreement on Tariffs and Trade (GATT) and its secretariat – to a significant extent it formalises and extends the structure that had gradually evolved over a period of some 50 years. The Punta del Este Ministerial Declaration launching the Uruguay Round did not call for the creation of the WTO. In principle, it was not necessary to create an international organisation to implement the outcome of the negotiations (Jackson 2014, pp. 21-25).

The Canadian suggestion to establish a Multilateral Trade Organization (MTO) in 1990 – subsequently supported by the EU – was therefore something of a surprise. The proposal was motivated by a desire to create a single institutional framework for world trade. This would encompass the modified GATT, its sister bodies on services (GATS) and intellectual property (TRIPs), as well as all other agreements and arrangements concluded under the auspices of the Uruguay Round. The US initially opposed the idea, but after negotiations on the substance of the new organisation, agreed to the framework that currently exists, including the name change (Anderson, Martin, van der Mensbrugghe 2005, pp. 31-33).
At Punta del Este it had been agreed that the negotiations were to be a ‘single undertaking’. With the proposal to create the WTO, the concept of single undertaking was redefined to mean that all GATT contracting parties had to become a WTO member. There was no alternative – remaining a member of GATT 1947 would have no value given that it was an institutional entity that was effectively going to disappear. Developing countries therefore all joined the WTO, something that was not on the agenda at all when negotiations started in 1986 (WTO History Project 2014).

Although the US Congress remained suspicious of any limitations to its powers on trade policy, it also decided to join the new organisation. During the ratification debate it became clear that the establishment of the WTO would not do much to change the status quo as far as infringement of its national sovereignty was concerned, as the GATT 1947 was a binding international treaty (Budzowski, Wydymus 2000, pp. 22-34).

The creation of the WTO was a significant event. Attempts to put the GATT on a more secure organisational footing had been made periodically since the failure of the US Congress to ratify the ITO. During a 1955 meeting to review the GATT, a number of contracting parties proposed to establish an Organisation for Trade Cooperation (OTC). This proposal was much less elaborate than the ITO but it also failed to win the approval of the US Congress (Anderson et al. 2005, p. 34).

The issue of providing an institutional framework for international trade reappeared again in the UN Economic and Social Council (ECOSOC) in 1963. A group of experts called for the creation of a new UN agency with universal membership and substantial powers in the sphere of international trade (Anderson et al. 2005, p. 35). The idea was that this body would implement recommendations of UNCTAD as well as other relevant policy decisions taken by organs of the UN. The proposal envisaged that the GATT would become the agency’s Committee on Tariffs. The proposal did not meet with much interest among the major trading nations. However, the 1964 UN General Assembly resolution establishing UNCTAD provided that it should be concerned with matters relating to the elaboration of a comprehensive Trade Organization. Nothing concrete came of this – despite lengthy discussions about the need for a New International Economic Order during the 1970s – in large part because of the widely differing philosophies held by industrialised market economies and much of the developing world regarding the appropriate basis for international trade. With the creation of the WTO, an international Trade Organization emerged that is firmly based on GATT principles – reciprocity and nondiscrimination (Wallach, Sforza 2012, p. 31).

The WTO’s top decision-making body is the Ministerial Conference which is normally held every two years. Below this is the General Council, normally made up of trade ambassadors and heads of delegations, but sometimes attended by officials sent by member countries to meetings held several times a year in Geneva. The General Council also meets as the Trade Policy Review Body (TPRB) and the Dispute Settlement Body (DSB). Some
member countries participate in an Appellate Body, various Dispute Settlement panels, the Textiles Monitoring Body, and several multilateral committees (Anderson et al. 2005, p. 37).

The WTO has procedures for resolving trade issues under the Dispute Settlement Understanding – under this, countries bring disputes to the WTO if they think their rights under agreements are being infringed, and judgments are made by specially appointed independent experts. Numerous specialised committees, working groups and working parties deal with individual agreements and other areas such as the environment, development, membership application and regional trade agreements. Three other working groups deal with the relationship between trade and investment, the interaction between trade and competition policy, and transparency in government procurement. The existing councils and committees examine the area of electronic commerce. The WTO Secretariat, based in Geneva, has a staff of 550, mostly lawyers, and is headed by the director-general and the deputy director-general (WTO History Project 2014).

More than 150 members of the WTO, as of 2014, accounted for 97 per cent of the world trade. Twenty-five other countries are negotiating membership. Two-thirds of the members of the WTO are ‘developing nations’, although the descriptions ‘developed’ and ‘developing’ are self-designations. Developing countries are granted longer time periods for implementing agreements and commitments. Decisions are made by the entire membership, typically by consensus (Anderson et al. 2005, p. 39).

Should it be used, however, the voting structure is weighted by a country’s share of the world trade. For example, the USA has 17 per cent of the WTO vote, while many small, developing countries with less than 1 per cent of the world’s trade have less than 1 per cent of the vote. The majority decision is possible, but has never been used, and was rare under the GATT. WTO agreements have to be subsequently ratified by member states. Thus, when the USA agreed to WTO membership, Congress tacked on a special stipulation stating that if three or more issues were decided against the USA in the DSB in one year, the USA had to opt out of the organisation (Jackson 2014, pp. 27–29).

The main objective of the WTO is to “help trade flow smoothly, freely, fairly, and predictably”. It claims to do this neutrally, by administering trade agreements, acting as a forum for trade negotiations, helping to settle trade disputes, reviewing national trade policies, providing assistance to developing countries in trade policy issues through technical assistance and training programmes, and cooperating with other international organisations (Wallach, Sforza 2012, p. 33).

According to the WTO, Secretariat does not have decision-making capacities like those granted to other international bureaucracies. Instead the Secretariat’s duties include supplying technical support for various councils and committees and the ministerial conferences, providing technical assistance for developing countries, analysing the world trade and explaining WTO affairs to the public and media. The Secretariat also provides legal assistance
in the dispute settlement process and advises governments wishing to become members of
the WTO (Anderson et al. 2005, p. 42).

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The Republic of Uzbekistan is a country located in Central Asia. It is a unitary, constituti-
onal, presidential republic, comprising 12 provinces, 1 autonomous republic, and 1 capital
city. Uzbekistan is bordered by five countries: Afghanistan to the south, Tajikistan to the
southeast, Turkmenistan to the southwest, Kazakhstan and the Aral Sea to the north and
Kyrgyzstan to the northeast (Uzbekistan 2009).

Integration of the Republic of Uzbekistan into the world economy is one of the main
directions of reforms implemented in this country. Therefore, introduction of common stand-
ards set forth by the WTO into the country foreign trade practice is one of the important
aspects for attaining planned targets1.

Uzbekistan has achieved tangible success in this process. During the independence pe-
riod, the strong legal base has been formed to support economic reforms including those that
anticipate far going liberalisation of foreign trade regulation, creation of favourable condi-
tions for foreign trade activity. Yet, to assess more precisely country’s potential capacity for
accession to the WTO one should determine the adequacy of the foreign trade regime to
WTO agreements through an analysis of legislation on foreign trade regulation and relevant
economy sectors (Roningen et al. 2004, p. 7).

The WTO represents the global legal and institutional mechanisms established for
liberalisation and unification of trade regimes in sovereign states based on multilateral agree-
ments. The Agreement on WTO establishment includes 29 juridical documents that cover
practically all spheres - from agriculture to textile and clothes as well as norms regulating
commodity origin and intellectual property. Besides, there exist more than 25 declarations,
decisions and agreements at the level of ministries that formulate additional obligations and
rules that all WTO members are to assume (WTO History Project 2014).

The World Trade Organization declares that provisions of international agreements
dominate over the national legislation. The WTO rules, contained in international agree-
ments, considerably restrict opportunity for a direct government intervention in the national
economy, including implementation of traditional industrial policy, and make government
highly responsible for violations of these rules. The WTO rules demand that the country
should allow considerable and irreversible trade regime liberalisation, ban subsidies and
price restriction (fixation) prohibited by WTO rules, protect intellectual property rights, fol-

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low requirements on trade regime transparency and accountability for WTO members, etc (Broadman 2009, pp. 47-48).

The extent of economy adaptation (openness), trade regime in particular, to the WTO rules and norms is determined by the broad terms of economic legal base and existence of relevant mechanisms ensuring full-range functioning of principles and agreements within WTO framework.

The WTO accession procedure is prescribed by the Article 12 of the Marrakesh Agreement on “WTO establishment”. In practice, the accession procedure demands long-term and complicated negotiations of four stages (Broadman 2009, pp. 49-52):

1. Stage of Formalities and Memorandum; submitting of an application for accession to the WTO and Memorandum on the country-applicant trade regime;
2. The Stage of Questions and Answers: the WTO members study and assess Memorandum viewing the country-applicant trade policy aspects;
3. The Stage of Multilateral and Bilateral Negotiations: negotiations between the country-applicant and the countries-WTO members in regard of terms and time for the country-applicant to access the WTO. This stage covers both multilateral negotiations between the country-applicant and a specially formed WTO working group, and bilateral negotiations of this country with the WTO members that have the most apparent trade interests in the country-applicant;
4. Conclusion of a legal act on accession - ratification of the accession act thus putting the act in effect.

The period of accession to the WTO may last for long years. Negotiations on country accession to the WTO may go on until parties come to agreement. And concrete meaning of “agreement terms” is the subject of negotiations between the countries-WTO members and the country-applicant. The negotiation process on accession of any country to the WTO is characterised by the narrowness of negotiations: the country-applicant must demonstrate to the WTO members how it is going to meet the WTO existing requirements, provided that it cannot change them. The WTO members may demand that the country-applicant should reduce the extent of protectionism in the national market, but the country-applicant cannot expect the same from the WTO members.

The first stage of accession to the WTO is the submission of application and memorandum on the country trade regime. After the country-applicant has sent its letter-application to the WTO Director-General declaring intentions to access the WTO, the WTO General Council, upon presentation of the Director-General, initiates the consideration of the official application. The General Council is composed of representatives of all the WTO members. The General Council forms the working group and its chairman. This group will begin and conduct negotiations with the new candidate seeking accession to the WTO in conformity with technical tasks. All countries-WTO members can be included into the Working Group,
but usually this group is composed of the countries that have trade links with the country-applicant and the most active participants, i.e. the USA, EU, Australia, and Japan (Roningen et al. 2004, p. 12).

Presentation of the full and comprehensive memorandum on the trade regime is the first important step to accession to the WTO. The Memorandum on the trade regime is a document that characterises and describes in details the measures and institutions involved in the country-applicant foreign trade practice. The Memorandum, as a rule, touches upon problems that do not concern only trade of commodities and services, although the latter anticipates the financial sector, insurance, telecommunications, professional services, and others, that, by themselves, is a huge work, but also various aspects of the macroeconomic policy, particularly in terms of exchange rate regulation, antimonopoly policy, protection of intellectual property and privatisation of enterprises. Having presented the Memorandum on the trade regime the country receives the WTO Associated Member Status (Broadman 2009, pp. 53-55).

As soon as the Memorandum is sent to the Working Group members the WTO accession process enters the next, important stage - the stage of questions and answers. This stage requires the longest period. The first part of this process is dedicated to first priority questions and answers on measures and institutions regulating foreign trade and mentioned in the Memorandum on trade regime. The first part of this period ends at the moment of the first personal meeting between the Working Group and the country-applicant delegation. Resulting from discussions and approval received during the Working Group/Country Delegation meeting the new, more specific questions on trade policy measures and its regulation by the country-applicant are asked. Regular meetings in order to work out the common position on terms allowing the country-applicant to access the WTO may take a long period. They may not concentrate only on study of Memorandum.

Upon completion of the “question/answer” stage, the country-candidate presents to the Working Group its initial programme of ‘suggestions’ on access to the market. Thus, the accession process enters the third stage of bilateral negotiations between the country-candidate and each country-WTO member wishing to discuss the accession terms expressed through the level of tariffs, access to the market for services, etc.

When bilateral negotiations reach their logical conclusion and the Working Group is convinced that the legal and institutional basis of the country-candidate conforms to the WTO requirements and norms, the Secretariat presents to the Working Group the draft report determining the country-candidate accession procedure. Upon Working Group approval this report goes to the General Council. Following the positive decision of the General Council the country-candidate is invited to sign the Protocol on Accession to WTO.

In December 1994, the application of intention to access the WTO in the Full-Fledged Member Status was sent to the WTO on behalf of the Government of the Republic of Uzbekistan. The application received positive respond and the Working Group was formed to direct Uzbekistan’s accession to the WTO. In September 1998, the presentation of Memorandum on the Uzbekistan foreign trade regime was organised in the WTO. Written answers to questions asked by a number of countries-WTO members were prepared and sent to the Secretariat of this organisation.

In December 1998, the Government made a decision (Decree… 1998), according to which the staff of Interdepartmental Commission to work with the WTO was approved. Representatives of the Agency on Foreign Economic Relations, the Ministry of Macroeconomics and Statistics, the Ministry of Finance, the State Tax Committee, other ministries and departments were included in the Commission. According to the Decree, the Agency on Foreign Economic Relations was entrusted functions of the Secretariat of Interdepartmental Commission. A number of Commission meetings were held (Roningen et al. 2004, pp. 22-23).

Official delegations from the Republic of Uzbekistan took part in three WTO Ministerial Conferences held in Singapore (1996), Geneva (1998) and in Seattle (1999). Within the second stage of accession to the WTO working groups were formed in ministries and departments on3:
- Preparation of information on the sanitary and phytosanitary measures and technical barriers in trade;
- Preparation of information on the internal support and export subsidies in agriculture;
- Preparation of information on the measures in policy concerning trade of services;
- Preparation of information within the WTO agreement framework on the trade aspects of intellectual property rights;
- Preparation of suggestions on the tariff concessions for commodities and liabilities on services;
- Making alterations to the national legislation according to the WTO agreement provisions;
- Preparation of research on assessment of the impact made by Uzbekistan accession to the WTO on various economic sectors.

In 2002, the first Working Group meeting on Uzbekistan accession to the WTO was held in Geneva. The main issue of agenda was an article-by-article study of the memorandum on foreign trade regime in the Republic of Uzbekistan. During discussion the most active and interested in discussion of foreign trade policy measures in Uzbekistan were representatives of delegations from the USA, EU, Switzerland, Korea, and Australia. The questions covered such areas as price regulation, regime of access to foreign currency, regulation of access

3 https://www.wto.org/english/thewto_e/acc_e/acc_e.htm [access: December 2014].
to the Uzbekistan market of commodities and services, existing restrictions in this sphere, custom tariff level, plan for application of Harmonised System, 2002, customs payments and methods of their levy, regime for import of goods from CIS countries. As for the protection of intellectual property rights it was recommended to apply in practice the country legislation in this sphere and to join Bern’s Convention.

The current phase of accession to the WTO is characterised by the implementation of works that help to resolve the broad range of organisational, legislative, technical and other issues relevant to the preparation for the oncoming meetings of the Working Group (Broadman 2009, pp. 57-59).

So, the country has passed the preliminary stages of accession to the WTO and now it will have to begin negotiating with countries-WTO members. This process may require concentration of considerable resources and make a clear definition of the country position on the debatable issues mentioned below. A part of the questions may be accepted and has already been accepted due to the implemented reforms. The work carried out earlier revealed that the country legislation relevant to the sphere and scrutinised in the report is in the process of permanent development. It is apparent from the character of answers on the Memorandum and on the content of the Memorandum that the government directed to the countries-members. If, answering the questions of US Government, our side focused on convertibility, licensing of foreign trade activity, in answers to additional questions we gave explanation of alterations in legislation that considerably improved aspects under discussion. As it was noted before, the Memorandum became obsolete and requires permanent updating.

Still, there is a number of problems mentioned practically by all countries-WTO members. It stresses the need for further implementation of measures that help to bring the national legislation in conformity with the provisions of WTO agreements.

Formation and improvement of the republican foreign trade regime is closely linked to the socioeconomic development of the country. Many-facet aspects of the socioeconomic policy plunge the country into the depth of protectionism, first, but, second, globalisation challenges determine the economic growth potential to integrate into the world market. But in any case, building of feasible and adequate policy on protectionism and liberalism must be based on pragmatic approaches that take into account the international practice and principles of law.

Improvement of the legal base of foreign trade relations as well as creation of a more flexible trade regime adequate to the requirements and the real situation in economy development may be achieved only through the legal system adjusted to basic norms of international trade laws where the World Trade Organization serves as a guarantor of such a law in the current globalising environment of international trade.

This report is the first one dedicated to the legal aspects of Uzbekistan accession to the WTO. Therefore, the work on assessment of perspectives for Uzbekistan accession to
the WTO had started from comparison of the trade regime regulation of Uzbekistan and the WTO basic principles.

As for regulation of trade in services there are no significant restrictions. The trade in services is not the subject of the Law “On foreign economic activity”, the Customs Code and other acts. Due to their specific character and their diversity, they are regulated at the current time by the special laws, for example, the Law “On insurance activity” and subdepartmental acts which cover some services. In the context of negotiations with the WTO, the sphere of services will occupy a special place for industrially developed countries. Therefore, the development of common policy in this area will be necessary taking into consideration that the sphere of services will include such most important economic spheres as banking business, insurance, business services, telecommunications, transport, tourism, etc.

A rather simplified and flexible regime on regulation of commodity trade does exist in Uzbekistan. Particularly, the practice on application of quality import/export quotas prohibited by the WTO rules is not used, the types of import contracts due to be registered in the Agency for Foreign Economic Relations have been curtailed and real conditions are being created for further cutting down of such a list. It indicates the further trade liberalisation in Uzbekistan. Yet, regulation of import goods needs to be brought to terms of the WTO practice on internal taxation and import duties. In this case, the methodic on tax estimation and levy and the area of their application must precisely fit into the national regime. The great job must be done in order to improve the use of technical barriers in trade, i.e. reformation of standardisation and certification systems. As for export regulation, according to the WTO requirements, it is necessary to continue narrowing the list of commodities banned for export. This measure may create additional prerequisites for the growth of country export potential. In the result of elimination of misbalance between the internal and external prices the need for licensing of non-strategic commodity must be no longer relevant. Still, the most significant problem in this aspect will be the harmonisation of norm in the sphere of export subsidising and support to national import substituting production and sectors. Therefore, it is necessary to receive the ‘developing country’ status in the process of negotiations on accession to the WTO. It will allow to retain some volume of medium-term support to perspective sectors (Broadman 2009, pp. 62-66).

For transit regulation, Uzbekistan practices a differential regime. The WTO agreement system creates favourable conditions for cargo transit through the territories of countries-WTO members. At the same time Uzbekistan, with a very convenient geographical location, may serve as the center of transport corridors going through Central Asia. For this purpose, a good incentive may be unification and optimal reduction of transit duties regardless of the country of destination and transit cargo origin.

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Uzbekistan has developed the required legal base for protection of intellectual property. In future, procedures on intellectual right protection should be set forth clearly to eliminate violations in this area. It concerns, first of all, the administrative and criminal legislation and relevant legal procedures and frontier control system. Considering the economic importance of property protection great attention, upon legislation improvement, should be paid to responsibility for breach of intellectual property rights. Besides, within the accession to the WTO, the republic will have to join Bern and Rome Conventions on intellectual property right protection (Roningen et al. 2004, pp. 26-27).

A considerable disproportion of internal and external prices for agricultural goods exists in the agriculture regulation system that requires reformation of the pricing system. The main direction of reformation is creation of a competitive environment in agriculture and minimisation of state order role for specific goods.

As for institutional aspects of Uzbekistan accession to the WTO, it is worth establishing a permanent body and staff it with specialists from relevant ministries and departments. The objective of this approach is to invite experts in all spheres of the WTO regulation and deal with problems of accession at the professional level. The important aspect is also the guaranteeing the professional level and permanent character activity of members of the Uzbekistan delegation conducting negotiations on accession. It is required by the fact that negotiations take a long time, require professional and logical position of the country in settlement of all problems of accession both normative and organisational (Broadman 2009, pp. 71-77).

References


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5 https://www.wto.org/english/thewto_e/acc_e/acc_e.htm [access: December 2014].
Streszczenie


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