

Policy Note

Experience and lesson learnt from Lao People's Democratic Republic's accession to the WTO

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Introduction

The Lao People's Democratic Republic joined the World Trade Organization (WTO) in 2013, after its 15-year accession process. It should be noted that acceding economies do not have much leverage in accession negotiations based on Article XII of the WTO Agreement, which only states the “terms to be agreed” between any WTO members and acceding economies. This poses challenges for any least developed country (LDC) given its limited institutional capacity while WTO accession is a complex and lengthy process.

This note has been prepared to share the experience of the Lao People's Democratic Republic about WTO accession negotiations with policymakers and negotiators in Uzbekistan. It provides a background of the accession process, key motives behind the WTO membership application, and commitments made by the Lao People's Democratic Republic. The note also shares lessons learnt that are relevant to WTO accession negotiations and post-accession challenges.

Background

In general, WTO accession negotiations are undertaken in two forms. A multilateral negotiation held in working party meetings aims to bring the acceding candidate's trade policy-making in line with WTO rules, while a bilateral negotiation is focused on market access commitments. In some circumstances, plurilateral meetings may be called upon to discuss commitments on agricultural support and export subsidies.

As an LDC, the accession of the Lao People's Democratic Republic is covered by the Guidelines for accelerating LDC membership negotiations, provided that: “Transitional periods/transitional arrangements foreseen under specific WTO agreements, to enable acceding LDCs to effectively implement commitments and obligations, will be granted in accession negotiations taking into account individual development, financial and trade needs”.

The Lao People's Democratic Republic applied for WTO membership in 1997. The start of the process in earnest was in 1999 when a national steering committee was set up. It took four years for the Government of the Lao People's Democratic Republic to submit the memorandum on a foreign trade regime. The first working party was held in October 2004, which was then followed by rounds of bilateral negotiations from late 2006 onwards.

After the working party meetings had made sufficient progress, bilateral negotiations commenced. Basically, these bilateral negotiations were on market access of trade in goods and services. They are bilateral because different negotiating partners have different interests. The number of members taking part in such negotiations varies from one accession to another. There were nine WTO members negotiating with the Lao People's Democratic Republic bilaterally: Australia, Canada, China, Taiwan, Province of China, the European Union, Japan, the Republic of Korea, Ukraine and the United States.²

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² Other members took part in the bilateral negotiations but later withdrew their requests, including the Dominican Republic, Honduras, India and Switzerland.

Most bilateral negotiations were held mainly on the sidelines of working party meetings. A few consultations were held in Vientiane while the Lao delegation also went to partner countries, including Australia, Ukraine and the United States. Near the final stage, negotiations with certain members involved the political level and through various means of communications as well as informal exchanges including through e-mails.

Motives for WTO membership

The chief motives for the Lao People's Democratic Republic to join the WTO were as follows:

First, market access was not perceived as the chief benefit of WTO accession for the Lao People's Democratic Republic, given that the country already enjoyed preferential access in exporting to markets in developed countries and many developing countries. Therefore, WTO membership gave the Lao People's Democratic Republic the assurances that at the minimum its goods would continue to receive such treatment in the future.

Second, WTO accession was seen as an effective anchor for internal reforms. Membership can enable policymakers to resist protectionist pressures from vested interests, and this can support continued internal reforms that benefit the overall economy. This is traditionally the central benefit of WTO membership and of the movement towards a broader international integration of the Lao People's Democratic Republic. The country was expected to use accession to lock in trade policy reforms in the transition toward a market-oriented economy. The Lao People's Democratic Republic has been making use of the opportunity of WTO accession to strengthen its trade policy and institutions. Greater transparency and the impact of domestic reforms to ensure compliance with WTO principles contributed to attracting increased and high-quality investment. WTO agreements required members to increase transparency of regulations such as through establishing enquiry points and publishing trade-related regulations. Newly-instituted measures affecting trade also need to be notified to WTO members and published for traders to adjust their practices accordingly.

Third, it is the benefit arising from the multilateral trading system. Other countries wishing to restrict imports from the Lao People's Democratic Republic on the grounds of food safety, for example, cannot do this arbitrarily but have to apply internationally agreed standards or provide scientific evidence of risks. In addition, WTO membership also gives the Lao People's Democratic Republic a seat at the multilateral negotiating table. As a small country, the Lao People's Democratic Republic does not have much leverage in negotiating trade deals bilaterally with trading partners. However, in the WTO, the country could align its position with negotiating groups such as the Association of Southeast Asian Nations (ASEAN), LDCs and recently acceded members.

Last, another benefit is the recourse to WTO dispute settlement. In principle, the Lao People's Democratic Republic could use this to address unfair trade measures. Equal treatment compensates small economies for lacking political power in trade disputes with richer partners. For example, Viet Nam won an anti-dumping case against the United States on shrimps. However, the mechanism is considered costly and challenging in terms of the capability for effective litigation.

Commitments made by the Lao People's Democratic Republic

Throughout its 15-year accession process, the Lao People's Democratic Republic held 12 working

party meetings.³ More than 90 laws and regulations were enacted, included on trading rights, import licensing, customs valuation, pre-shipment inspection, trade-related investment, sanitary and phytosanitary measures, technical barriers to trade and trade-related intellectual property rights.

The commitments that the Lao People's Democratic Republic made cover two areas: rule-making and market access. Rule-making commitments are the results of multilateral negotiations, to which the Lao People's Democratic Republic committed to abide by – WTO general principles and specific agreements. The Working Party Report (WPR) contains descriptions of the country's foreign trade regime and wide-ranging commitments on laws and measures to be brought into compliance with WTO rules. The WPR consists of 247 paragraphs, of which 26 are commitment texts. Most commitments are to be implemented on accession, while for some it would be during transition periods (See Box 1).

³ There were 66 working party members, counting the European Union's member States and the European Union itself.

Box 1. Summary of rule-making obligations of the Lao People's Democratic Republic

Implementation from the date of accession

- State enterprises: To import or export broadly under commercial terms.
- Price controls: To be consistent with WTO rules on trade in goods, agricultural products and services, and publication of the price control list in the Official Gazette.
- Financial, monetary and settlement policy: To comply with relevant provisions of the International Monetary Fund (IMF).
- Trade-related investment measures: to comply with WTO rules.
- Tariff bindings: Application of only ordinary customs duties, with no additional duties and charges.
- Taxes and other charges on imports: To comply with WTO agreements, including national treatment and most-favoured nation principle.
- Import licensing: To comply with the Agreement on Import Licensing Procedures. No quantitative restrictions are allowed, such as licensing, quotas, prohibitions, bans and other restrictions, except if for balance of payments purposes and compliance with WTO rules.
- Customs valuation: To apply transaction and other valuation methods instead of minimum prices.
- Right to appeal: Individuals and enterprises have the right to making legal appeal on government administrative actions covered by WTO rules.
- Local authorities: To comply with WTO obligations throughout the customs territory, including special economic zones and other zones that apply preferences on customs, taxes and regulations.
- Other rules: Such as rules of origin, pre-shipment inspection, export measures including prohibition, subsidies, transit trade and preferential trade will also be implemented upon accession.

Phase-in obligations

- Trading rights: Grant to some products the right to import and export, including without commercial presence, within two years after accession, while for most products it applies from membership date.
- Anti-dumping and countervailing measures: To be imposed only when fundamental laws complying with WTO rules have been developed.
- Safeguards: To be developed fully in compliance with WTO rules within five years of accession.
- Technical barriers to trade (product standards and labeling): To fully comply with the TBT Agreement by 1 January 2015.
- Sanitary and phytosanitary measures (food safety and animal and plant health): To fully comply with the SPS Agreement by 1 January 2015.
- Intellectual property: To fully comply with the Trade-Related Aspects of Intellectual Property Rights Agreement by 1 January 2017.
- Trade in services: Ensure that legislation governing trade in services is in line with commitments specified in the services schedule from the date of accession and up to seven years' transition.
- Transparency: To submit initial notifications as required within six months after accession. All relevant laws, regulations and other measures as required are to be notified. The Official Gazette to be set up within

As a result of bilateral negotiations, the Lao People's Democratic Republic made market access commitments on trade in goods covering 10,694 tariff lines with average bound rates of 19.3% for agricultural products and 18.7% for industrial products, compared with applied rates of 18.4% and 10%, respectively. Most tariff commitments take effect from the date of accession while some will be reduced during 5- to 10-year transition periods. Given its LDC status, and through rounds of bilateral negotiations, the Lao People's Democratic Republic managed to opt out from joining sectoral initiatives, including cutting tariffs to zero per cent, as requested by certain WTO members.

On trade in services, the Lao People's Democratic Republic agreed to open 10 service sectors, covering 79 subsectors out of a total 160. These subsectors include professional, computer, research and development, telecoms, construction, distribution, private education, environmental, financial, private health, tourism, and air transport services. However, more than 80 services subsectors were not liberalized, including professional services (doctors, nurses, veterinarians), postal services, tourism services (tour guides), audio-visual services, transport (road, train, water

ways, maritime and pipelines), other financial services (related to securities), and recreational services. Even though some services sectors were liberalized, they were only part of sectors. such as wholesale and retail sale of vehicles and parts in distribution services as well as private services supply in the education and health sectors.

Lessons learnt with regard to WTO accession

- **Early process serves as more of a learning mode**

The Lao People's Democratic Republic took four years to complete and submit its memorandum on the foreign trade regime. It was only in October 2004 that its first working party meeting was held; it was not until late 2006 that the Lao People's Democratic Republic began bilateral negotiations after its initial offer was tabled. In the first few years, most preparatory works were mainly the training of officials involved with the accession process. The officials benefited substantially from various courses and internships operated by the WTO and other donors. Awareness-raising campaigns were also launched with the support of the WTO Secretariat, other international organizations and donors.

Although this is considered a dormant state of accession, use of it should be made to build national capacity. In the initial preparatory stage, the Lao People's Democratic Republic was very much reliant on external consultants and their services in preparing documentation required by the WTO; however, thanks to intensive on-the-job training and working with donor-supported consultancy, such expertise was eventually internalized.

- **Coordination and consultations**

Coordination and consultations help in developing policy consensus among various stakeholders in a country. This also greatly expands the knowledge base, which will allow a negotiating team to create and implement trade agreements that maximize gains and minimize negative impacts. The coordination mechanism also serves as an 'early warning system' for political and technical problems. This also promotes the balance of views with most interested parties involved in the process. Another benefit is to educate all interested parties, thereby increasing reassurance with both process and substance of the accession negotiations. Effective consultations provide time for legislature as well as allow the private sector to consider the best paths for implementation and adjustment that will help ease implementation processes.

WTO agreements are broad and complex. Coverage is far-reaching and touches on most economic activities, ranging from tariffs and non-tariff trade barriers. Acceding countries need to ensure compliance with these issues so that producers take full advantage of them, and that their economies adjust. Lessons learnt for other accessions are that they should have proper responses. First, acceding countries need to identify non-compliance areas, for example non-tariff trade barriers as well as various other border and behind-the-border regulations and procedures. Proper coordination also needs to be put in place. Second, there must be coordination within the Government (intra-ministry, and executive with legislative), between the public and private sectors, and between the Government and the trading partner. Third, acceding countries need to have a proper consultation mechanism in place, both within the Government and with interested private sector parties.

To overcome such issues, a country must strengthen coordinating mechanisms at two levels. At the top, a subset of the ministerial Cabinet, chaired at the deputy prime minister level, should oversee trade negotiations at the multilateral and regional level. As the Lao People's Democratic Republic moved into the final phase of accession, direct involvement of the top levels of political leadership were needed to broker compromises across ministries and monitor their implementation. At the operational level, the inter-ministerial task force working on accession

might have required expansion, and its members were given the authority and budget to support trade negotiations on a broader basis (including ASEAN and other relevant agreements). The trade negotiating machinery for the WTO is different to that within ASEAN, leading to potential differences and inconsistencies in commitments and implementation.

- **Transition periods and alternative measures**

From the experience of recently acceded members, the Lao People's Democratic Republic sought transition periods to amend or implement its legal reform commitments in several areas, including trading rights, investment measures, customs valuation, sanitary and phytosanitary measures (SPS), technical barriers to trade (TBT) and trade-related intellectual property right. The duration of the transition period depends on what is being negotiated, which is partly dependent on the benchmarks made by recently acceded LDC or developing members. China had four years to fully liberalize its trading rights, while Nepal got three years to fully implement its SPS and TBT obligations. It is crucial that acceding economies outline what steps are to be made and provide the rationale as to why such a time span is credibly necessary.

The Lao People's Democratic Republic agreed to bind and reduce its tariffs for all agricultural and industrial products. A transition period was required, particularly for products that were classed as sensitive for domestic production or affecting government revenue. Alternative measures that are legal under the WTO need to be put in place to address difficult situations. These measures include the use of safeguards such as tariffs and quotas in specified circumstances, anti-dumping duties or countervailing duties.

- **LDC Guidelines playing some role**

Observation of various accessions shows that the accession process becomes more difficult as time passes. Lower tariff bindings and more liberalization of services sectors are expected from latecomers. However, as a least-developed country, the application of the Lao People's Democratic Republic is covered by the Guidelines for accelerating LDC negotiations.⁴ In the area of market access, the Guidelines provide that WTO members are to exercise restraint in seeking concessions and commitments from acceding LDCs. In addition, acceding LDCs are expected to make offers with concessions commensurate with their individual development, financial and trade needs.

The Lao People's Democratic Republic benefitted from the LDC Guidelines, although some members requested the country to bind its tariffs close to applied rates or, in certain circumstances, as low as it could bear. Given its LDC status, and through citing sound rationale over rounds of bilateral consultations, the Lao People's Democratic Republic managed keep most of its tariff lines well above the applied rates. More importantly, the country was successful in opting out from joining in the so-called 'zero-for-zero' and 'harmonization' sectoral tariff initiatives.

- **Taking a holistic approach to handling services negotiations**

In preparing service offers, acceding countries should undertake an inventory of present and future measures that regulate all services sectors. This will help to define the "upper binding" by sectors for acceding countries. It is also advisable to study the level of commitments of recent accessions. In the Lao case, the experience of Nepal and Cambodia were closely consulted. In some circumstances, the commitments by China and Viet Nam were also been studied as well as the overall commitments of LDC members and ASEAN. These need to be coupled with a reality check in terms of their country's situation or the requests whether negotiating partners are reiterating

⁴ The Guidelines set out four components for LDC accessions to be streamlined and facilitated: (1) market access; (2) WTO rules; (3) accession process and procedures; and (4) trade-related technical assistance and capacity-building.

what has been requested. Moreover, acceding LDCs should ensure that their commitments made under the WTO are consistent with those made under other regional trade agreements.

In services negotiations, it is crucial to foresee possible post-accession regulatory needs. For example, commitments in telecoms would not only cover opening the sectors to foreign entry, but would also require putting in place regulatory authority to ensure proper functioning of the market and competition. Equally important, oversight regulations also need to be developed in financial services, including insurance and banking. In other areas such as professional services, there is a need to avail of the possibility for testing foreigners' competences. In addition, several service sectors are also subject to well-known market failures. Liberalization should be sequenced with regulatory reforms such as developing prudential regulations and ensuring universal service. This is relevant in financial services.

- **Post-accession challenges**

Joining the WTO is not an end in itself – it is just the beginning. The true benefits are expected only if the acceding country takes the accession negotiations seriously and implements the obligations accordingly. Post-WTO preparations are also crucial and should start early on. Experience from other countries demonstrates that the structure of a country's trade policymaking institutions shapes policy outcomes. An acceding country will benefit from trade agreements if it constructs a policy process that focuses on trade as a means of achieving economic policy objectives.

WTO membership provides export opportunities, but in reality the Lao People's Democratic Republic has already had considerable opportunities for market access, including in the ASEAN market (which is the largest trading partner for the Lao People's Democratic Republic). The true benefits will only occur if the country can overcome its supply constraints. Investment is therefore needed in infrastructure and export supply capacity. Given constraints in government funding and domestic investment, international cooperation and assistance from donors can play a key role.

Concluding remarks

A chief motive of the Lao People's Democratic Republic for WTO membership was not to secure more market access, given that the country had already enjoyed trade preferences in most markets. In fact, the aim was to leverage economic integration as a driver for economic growth through enabling business environment resulting from WTO-induced reforms. To move forward, WTO accession negotiations, coordination and consultations are crucial to building national consensus. Acceding countries may need to avail themselves of transition periods and measures that are allowed under the WTO. The Lao People's Democratic Republic made good use of its LDC status and developmental arguments to convince negotiating partners in combination with gaining technical assistance.