

Policy Note

Experience and lessons learnt from Mongolia's accession to WTO

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Introduction

Mongolia's 30-year experience with the World Trade Organization (WTO) has produced many lessons that ought to be fully analysed and used as lessons to be shared with the economies in the process of negotiating the accession to the WTO. This note groups the experiences/lessons in the following three sections:

1. Understanding, education and research
2. Institutions and legislation
3. Some particulars of negotiations

Understanding, education and research

- **Lesson 1: WTO should be understood well and by all stakeholders**

The multilateral trading system (MTS) is different from United Nations conventions and other intergovernmental treaties in that it is rules-based, and its decisions and members' commitments and obligations are binding and have commercial weight. That is why it takes a long time (often many years) to negotiate and agree on terms of accession to the WTO.

In 1991, immediately after becoming a member of the International Monetary Fund (IMF), the World Bank and the Asian Development Bank (ADB), Mongolia applied to join the then General Agreement on Tariffs and Trade (GATT). The Mongolian authorities, having no knowledge of and experience in the MTS at that time, naively expected that the accession would be as easy as joining the Bretton Woods Institutions. Hence, the preparations for the negotiations on accession and the consequent implementation were not carried out properly, indicating that it is true when some commentators say that Mongolia was "ill-prepared"¹ for membership in the MTS.

For the "recently acceded countries", the adoption of different negotiation strategies has produced very different outcomes. For example, Mongolia [whose accession process lasted six years from 1991 to 1997] took an "easy" approach to the accession negotiations, and accepted far-reaching concessions, without securing sufficient transition periods and exceptions. In contrast, Nepal [whose accession process lasted 15 years from 1989 to 2004] took a "tough" stance on the negotiations, and refused a number of concessions on market access and rules.² It will be interesting to check how these different strategies resulted in terms of benefits and/or losses these two countries have witnessed from the accession by now.

¹ Damedan Tsogtbaatar, "Mongolia's WTO Accession: Expectations and Realities of WTO Membership"; *Managing the Challenges of WTO Participation: Case Study No. 29*; 2005. Available at https://www.wto.org/english/res_e/booksp_e/casestudies_e/case29_e.htm

² Olivier Cattaneo and Carlos A. Primo Braga, 2009, "Everything You Always Wanted to Know about WTO Accession (But Were Afraid to Ask)", *World Bank Policy Research Working Paper*, No. 5116, November 2009

While the accession and later engagements in the WTO are handled by the Government (of the members), the impacts are shared by all groups in the economy – consumers, producers, traders and Governments. Therefore, it is essential that all these stakeholders have a proper understanding, knowledge and skills for applying the WTO principles and instruments.

In Mongolia, the public at large, and producers and traders in particular, even now do not treat the MTS as an important instrument to improve people's livelihood because of the lack of information, knowledge and experience.

- **Lesson 2: Accurate translation of the WTO texts into the national language is essential**

When Mongolia joined the WTO in early 1997, a translation of the full texts of the WTO agreements in the Mongolian language was not available. This limited the understanding and knowledge of WTO rights and obligations to a very few officials who knew English.

The first attempt to translate the full texts was made in 2000 with the assistance of the United Nations Development Programme (UNDP). The second edition of the translation took place in 2008 and the third (latest) one was completed in July 2021 with the financing of the European Union's Trade-Related Assistance to Mongolia (EU TRAM) project, because the earlier editions did not accurately convey the exact meaning and concept behind the WTO language.

The mis-translation and/or missing translation led to incorrect and incomplete interpretation of the WTO agreements that, in turn, confused many stakeholders.

- **Lesson 3: Training and retention of experts in WTO should be a priority**

Since Mongolia became a WTO member, about 400 Mongolian officials have gone through various short- and long-term training sessions at the WTO and at home. However, less than 10 per cent³ of them still remain engaged, directly or indirectly, in WTO-related activities. Many have either moved to work in the private sector or have emigrated.

Such a "brain-drain" has done tremendous "disservice" to our capacity-building efforts. Participation in WTO activities as well as the implementation of the country's commitment and multilateral trade agreements require permanent establishment, capable staff and academic capacity.

It is also important to build a national academic capacity to train professionals in WTO matters and on how to assess economic and social impacts, not only of accession but also other potential agreements

- **Lesson 4: Research capacity must be developed**

The academic institutions in Mongolia have not developed specific courses on programmes dedicated to the WTO and WTO organization. We still do not have a dedicated research institute and/or programme at any university solely devoted to the multilateral trading system.

³ Author's calculation.

So far, to my knowledge, no Mongolian academic institution has applied for and is qualified to use, for example, the WTO Chairs Programme launched in 2010 with the aim “of enhancing knowledge and understanding of the trading system among academics and policymakers in developing countries through curriculum development, research and outreach activities by universities and research institutions”.⁴

Institutions and Legislation

- **Lesson 5: Foreign trade should be an important and stable component of government structure**

During the past 30 years, Mongolia has been shifting its foreign trade portfolio among different ministries. Foreign trade issues have changed hands seven times back and forward (Ministry of Trade and Industry to Ministry of Economic Development to Ministry of Foreign Affairs). This has resulted in a partial loss of institutional memory.

Currently, the Ministry of Foreign Affairs is in charge of foreign trade, for which it has a very small department with just 10 staff members. Such a small team cannot handle complex WTO matters except for doing simple secretarial work and occasional “fire extinguishing” actions. Notifications are not sent out in time. Occasional legislation is adopted with provisions that are in violation of Mongolia’s commitments and obligations.

In addition to the Ministry of Foreign Affairs acting as the central government body in charge of the WTO matters, the Ministry of Food, Agriculture and Light Industries (domestic trade), Finance Ministry (customs tariffs), Ministry of Environment and Tourism (tourism), Ministry of Mining and Heavy Industries (mining exports), the Office of the Deputy Prime Minister (free trade zones), and the Mongolian Chamber of Commerce and Industry (certificates of origin) are also involved.

The engagement of line ministries and specialized agencies is natural, but still ineffective unless a country has a powerful and effective permanent coordinating mechanism. Mongolia has established inter-ministerial coordination mechanisms such as the Council on Customs Tariffs, the National Committee on Trade Facilitation and the Export Promotion Council. However, the decisions made by these institutions are not legally enforceable because these institutions were not established by law.

- **Lesson 6: A framework law on foreign trade is vital for the transition period**

Since 1992, when Mongolia adopted its first democratic, market-oriented Constitution, the Government has promulgated many laws (58), parliamentary resolutions (12), government decrees (24) and ministerial decisions (11) directly dealing with particular foreign trade issues.

These are important legislations for implementing Mongolia’s WTO commitments and agreements. However, they are often initiated and drafted with sectoral ambitions and without proper consultations in the spirit and language of Mongolia’s commitments and WTO principles. The Ministry of Foreign Affairs acts as a watchdog for Mongolia’s implementation of the WTO agreements has to engage in laborious efforts to ensure their WTO conformity.

⁴ See https://www.wto.org/english/tratop_e/devel_e/train_e/chairs_prog_e.htm

In an effort to ensure that the domestic legislation serves to improve the Government's implementation of the WTO commitments and agreements, and to institutionalize effective coordination and harmonization trade-related policies, the Ministry of Foreign Affairs has twice initiated a draft stand-alone law on foreign trade, taking into account the experiences of our major trading partners, including the Russian Federation and China.

After the failure of the first attempt in 2007-2008, we undertook another attempt in 2020-2021 to introduce a foreign trade law after having conducted comprehensive research and study. However, the process is still incomplete.

The main purpose of such legislation is to institutionalize policy coordination among ministries and agencies, and to define clearly the responsibilities of all stakeholders. It is to become a framework law for foreign trade activities. This seems warranted, especially for transition countries like Mongolia that are undergoing a complicated process of redefining the State's role in foreign trade.

Particulars of Negotiations

- **Lesson 7: Ambitious but reasonable strategies should be in place**

"A strategy that some countries have pursued in their accession negotiations is to try to liberalize as little as necessary to ensure accession. Several transition countries (examples of economies choosing such an approach are Albania, Estonia, Georgia, the Kyrgyz Republic, Latvia and Mongolia) that have recently become WTO members pursued a different strategy, in most respects adopting a liberal trade strategy," according to Dr. Sok Siphana.⁵

I suggest that Uzbekistan should avoid the extreme cases of Mongolia and Nepal (as referred to above) and take a "middle way strategy", equally protecting its national interests and the interests of WTO members.

- **Lesson 8: A strong national negotiating team is a must-have**

When negotiating entry into the WTO, Mongolia failed to secure enough concessions and sufficient transition periods because we did not have a professional and experienced negotiating team. Our government officials who were negotiating accession lacked proper training, knowledge and skills for multilateral and bilateral trade negotiations.

A professional negotiating team should be institutionalized and permanently included in the structure of the ministry in charge of foreign trade. For example, New Zealand's Department of Foreign Affairs and Trade has a separate division for trade negotiations and an office of Lead Negotiators.⁶ Such a team consisting of experienced negotiators, international trade law

⁵ Dr. Sok Siphana, 2005, *Lessons from Cambodia's Entry into the World Trade Organization*. Asian Development Bank Institute, Tokyo. Available at

<https://www.adb.org/sites/default/files/publication/159380/adbi-lessons-cambodia-wto.pdf>

⁶ See <https://www.mfat.govt.nz/ru/trade/>

⁷ Olivier Cattaneo and Carlos A. Primo Braga, 2009, "Everything You Always Wanted to Know about WTO Accession (But Were Afraid to Ask)", *World Bank Policy Research Working Paper*, No. 5116, November 2009.

experts and other professionals will be of great help not only for the WTO negotiations, but also for current and future regional and bilateral free trade negotiations.

I have no doubt that Uzbekistan is using training opportunities to the utmost for negotiators provided by the WTO and other multilateral institutions.

- **Lesson 9: Use all available avenues for better concessions and reasonable commitments**

As stated above, Mongolia's accession process was characterized by too many political ambitions and the absence of proper understanding, knowledge and skills to navigate through the complex WTO system. That resulted in weak concessions and over-sized commitments.

I would like to draw attention to the following observations, already referred to above, in the World Bank paper⁷ that might still be the case for newly acceding countries:

- (a) The WTO accession process is becoming more demanding in terms of market access commitments;
- (b) There is growing concern that the price of joining the WTO now includes commitments that go beyond the GATT/WTO agreements; and
- (c) The accession process takes limited account of the specific circumstances of applicant countries or their needs for special and differential treatment.

There are some instruments that a newly-acceding country can use against the above abnormal outcomes (which are dubbed as "WTO-plus concessions and WTO-minus rights):

- (a) Provisions for special and differential treatment in favour of developing and least-developed countries;
- (b) Enabling the clause adopted in 1979 to allow derogations from the MFN principle in favour of developing countries;
- (c) Application to the extent of the necessity for transition periods seeking delays in implementation of specific provisions of the WTO agreements (to be accompanied of course, with a time-bound, realistic plan).
- (d) Provisions for Waiver of Obligations.⁸

- **Lesson 10: Bilateral negotiations are the cornerstone**

Mongolia was not able to pay serious attention to our bilateral negotiations due to the above-mentioned shortcomings. We did not fully realize that bilateral schedules of concessions become integral parts of the overall Protocol of Accession.

In concluding bilateral protocols, a newly acceding country should be careful of according the Initial Negotiating Rights (INRs) to trade partners. The incumbent members with principal and substantial interests in the export market of the acceding country usually request such rights. Informed and negotiated INRs do not pose problems, but they should be accorded with reciprocity.

⁷ Olivier Cattaneo and Carlos A. Primo Braga, 2009, "Everything You Always Wanted to Know about WTO Accession (But Were Afraid to Ask)", *World Bank Policy Research Working Paper*, No. 5116, November 2009.

⁸ Waiver power is defined by the requirements laid down in Articles IX:3 and 4 of WTO Agreement and in the Understanding in Respect of Waivers of Obligations under the General Agreement on Tariffs and Trade 1994. See <https://academic.oup.com/ejil/article/20/3/615/402381>

- **Lesson 11: Commitments in the Protocol of Accession should be realistic**

Mongolia took some 17 commitments in its Protocol of Accession.⁹ But several of them have not been fulfilled so far. For example, Mongolia committed to initiating negotiations to join the plurilateral Agreement on Government Procurement, but it has not done so yet.

- **Lesson 12: Post-accession adjustment efforts are lengthy and costly**

Most of our scholars and industry experts have held the view that we became self-satisfied with the membership and left the adjustment and implementation obligations unattended. Occasional steps taken on the concerns raised by the WTO members, especially concerning Mongolia's Trade Policy Review exercises (2005, 2012 and 2021¹⁰), were not sufficient and comprehensive enough to fulfil our commitments.

Even almost 25 years after its accession, Mongolia is still looking for an integrated approach and an all-inclusive, stable mechanism for dealing with the WTO and its commitments and obligations. The WTO members also call for improvement of consistency and efficiency.

The weakness and inconsistency of Mongolia's policies, institutions and capacity, as referred to above, are the main cause.

The adjustment and implementation measures are costly to introduce and institutionalize. In addition to the WTO itself, our development partners such as UNDP, ESCAP, the United Nations Conference on Trade and Development, the World Bank, ADB and the European Bank for Reconstruction and Development as well as bilateral partners such as the European Union, have contributed substantial funding for improvement of legal framework, capacity-building, and knowledge and experience- sharing in this regard.

Concluding remarks

In conclusion, it should be stated that an absence and/or weakness of capacity is not a valid justification for under-utilization of the opportunities and benefits of WTO membership, and/or ignorance of the commitments and obligations.

⁹ WT/ACC/MNG11 https://www.wto.org/english/thewto_e/acc_e/a1_mongolia_e.htm

¹⁰ See https://www.wto.org/english/tratop_e/tpr_e/tp506_e.htm