

Policy Note

Experience and lessons learnt from Afghanistan's accession to WTO

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Introduction

In 2016 the Government of the Islamic Republic of Afghanistan ("Afghanistan") became the 164th nation and the most recent member to join the World Trade Organization (WTO). The accession process of Afghanistan began soon after the approval of its new Constitution. Afghanistan adopted a market economy as an economic system that was affirmed in Article 10 of the Constitution: "The State will encourage, protect as well as ensure the safety of capital investment and private enterprises in accordance with the provisions of the law and market economy." In addition, Article 11 states that: "Matters related to domestic as well as foreign trade will be regulated by law in accordance with the economic requirements of the country and public interests." Article 13 declares that: "The State will design and implement effective programmes for developing industries, expanding production as well as protecting activities of craftsmen to raise the standard of living of the people". These three Articles established the framework for Afghan economy (mainly trade and industries). Therefore, based on the creation of that economic framework, Afghanistan decided to acceded with WTO membership to help develop its economy and implement the market economy system expressed in its constitution.

The General Agreement on Tariffs and Trade (WTO's predecessor) and the WTO reflect an effort to identify principles and rules that would promote reciprocal and continuous liberalizing of trade among its members.

Afghanistan membership in the WTO

Afghanistan applied for membership of the WTO in December 2004. It submitted a Memorandum on Foreign Trade Regime (MFTR) in 2009 and had its first Working Party meeting on 31 January 2011. That event was followed by five Working Party meetings and several rounds of bilateral negotiations with nine WTO members to conclude the accession negotiations. On 11 November 2015, at the conclusion of the fifth Working Party meeting, Afghanistan accession to the WTO was officially approved, and the accession package was forwarded to the Ministerial Conference for formal approval. On 16 December 2015, the ninth ministerial conference was held in Nairobi, Kenya, during which Afghanistan membership was approved. and the membership agreement was officially signed by the Afghan representative and the Director-General of the WTO. Afghanistan then initiated its internal ratification process and on 29 June 2016, an instrument of ratification was submitted to the WTO. As per the WTO rules, a country becomes a full member one month after submission of the instrument of the ratification; thus Afghanistan became a full member of the WTO on 29 July 2016.

In 2017, Afghanistan established its Mission to the WTO in Geneva and appointed an ambassador and three trade diplomats to achieve Afghanistan's goal envisaged in the accession process. Based on the request of the Afghanistan Ministry of Commerce and Industry, the former President

established two inter-ministerial committees. One committee was chaired by the Minister of Commerce and Industry with the participation of Deputy Ministers from relevant ministries, and met bi-annually. The second committee, which met quarterly, was chaired by the then Deputy Minister of Commerce with the participation of technical staff from relevant ministries. The purposes of the committees were to follow up on Afghanistan's commitment to the WTO, develop post-accession strategy, decide how to utilize Afghanistan membership and advise on future negotiations with acceding members. These committees were asked to report progress to the Cabinet on a regular basis.

Afghanistan managed to institute several domestic reforms during the accession process. These reforms included 27 legal documents (laws, regulations and procedures) that were adopted and implemented before WTO membership. Licensing reform was also initiated; several licences were merged into one, Export procedures were simplified, different customs-related procedures and hurdles were eliminated, the import of goods was simplified –without doubt making doing business in Afghanistan easier.

In addition, an intellectual property rights office was established, Trade-Related Intellectual Property Rights (TRIPS) laws were adopted and implemented. Technical Barriers to Trade (TBT) restrictions were eliminated,¹ standards were adopted and implemented according to the WTO rules to minimize trade disruption. The levy of Other Charges and Duties (OCD) was eliminated, which reduced the cost of imports, and the concept of trade facilitation was introduced in Afghan customs policy.

Post-accession challenges

The WTO accession process is considered difficult and complex. For example, a negotiator acts in the country's best economic interests while working with members to convince them to consider the country to be the part of the rule-based system. The post-accession phase is tougher than the accession phase as the country needs to implement the commitments it has made. Putting the commitments into effect sometimes is easy, but often the task creates problems and brings challenges to the new member country.

- **Post-accession strategy**

For better and coordinated efforts to implement commitments and establish good working relations with WTO and its members, a new member must establish a strong, comprehensive post-accession strategy. This strategy should reflect what the country expects from its membership and what the members expect from the newly acceded member. This strategy should define the role of each governmental entity involved in trade and the expected results. A proper follow up mechanism

¹ The full implementation of the TBT Agreement started from 1 January 2018. During the transition period, existing TBT measures will be applied on a non-discriminatory basis. Any changes made in Afghanistan's laws, regulations and practice during the transition period will not result in a lesser degree of consistency with the TBT Agreement than existed at the date of accession. Available at https://www.wto.org/english/news_e/news15_e/afgancommitmentsmc10_e.pdf.

should be created. The new member should also prepare a timeline for the implementation of the transitional period. If putting the post accession strategy in place is not done in a timely way, it may cause delays in the implementation process.

- **Negotiation team**

A negotiation team plays an important role in achieving membership in the WTO, but the role of this team becomes even more important in the post-accession phase. Many countries lose members of their negotiation team to job opportunities outside the Government, political changes or during an internal reshuffle in the Government. These personnel should commit to at least a one- or two-year term with the team in order to carry out a proper transfer of the knowledge and skills to new officials.

- **Internal coordination between ministries and agencies**

The other challenges that occur in post-accession is the coordination between ministries and relevant agencies and the private sector. It is important to coordinate these stakeholders as commitments are made by the negotiations team, approved by the Parliament and then circulated to the line ministries for implementation. To provide the best coordination, a two-level coordination mechanism should be established:

- (1) At the ministerial level, chaired by the lead ministry to follow up on the implementation of the commitment and WTO-related work. This group should meet every six months and submit a report to the Council of Ministers;
- (2) At the technical level, this group should be chaired by the chief negotiator and should have technical individuals from the line ministries, preferably the same negotiation team, meeting on a quarterly basis and reporting to the Ministerial level team.

Most countries have regular meetings during the accession process, but these meetings are usually discontinued once the country becomes a WTO member, which then results in slow implementation of the WTO commitments.

- **Donor funding**

Most of the bilateral and multilateral donors are interested in funding the WTO accession process and supporting countries to be part of the Multilateral Trading System and the WTO. Based on this support, most countries in the accession process make commitments and promises that, without donor support, may be impossible to implement. Once membership is achieved the donor support will gradually dry up. This consequence places the country in a difficult situation and results in slowing down the post-accession implementation process and causing missed deadlines for commitments.

- **Short-term negative impact**

WTO membership may also result in negative consequences for some economic sectors, especially if a country agrees during accession negotiations to open its goods market and service sectors significantly. To either minimize or avoid such a risk, the relevant ministries must

conduct extensive consultations through direct ministerial meetings and working groups, involving representatives of the public private sectors, academia and think tanks, to discuss sectoral strategies and formulate sector-specific strategies in order to avoid or lessen negative outcomes.

- **Protecting industry**

Most developing countries and, more importantly, least developed countries rely on their domestic industries to create jobs and exports. Generally, prior to and during the accession process, domestic businesses are protected, but there is the chance for strong competition from imports after the accession. This situation can cause tension between importers and domestic producers, which triggers challenges for the Government. This will happen in the first few years during the transition period. Therefore, a Government needs to act wisely, keeping in mind WTO safeguard measures for protecting local industries.

- **Post-accession capacity-building**

Building capacity within the public and private sectors, civil society as well as among journalists and academia should be the top priority of the lead ministry during post-accession in order to improve the capability of these stakeholders to take advantage of WTO membership. They also need to understand the WTO commitments and terms of accession. The education of these societal elements on WTO commitments – particularly the specialized capacity required by the technical aspects of the Sanitary and Phytosanitary measures, and TBT and TRIPS regulations – is crucial to a successful accession.

- **Public awareness**

Transparency lies at the heart of the WTO system. especially in the post-accession process. As of 2021, Afghanistan has made 34 notifications to 17 committees and councils.² To fully comply with the WTO rules for transparency, there is a need for public awareness regarding the country's commitments and the terms of accession. This will help the lead ministry to inform the private sector about the advantages of the WTO accession and how to utilize the membership. Civil society needs to be aware of the WTO accession for the purpose of observing government activities, organizing debates and performing critical analyses. Media representatives are important to a broader discussion on the WTO issues, so the public can be better educated. Finally, it is important for academia to participate in studies, analyses and sector-specific research.

- **Representation in Geneva**

Establishing a WTO mission in Geneva facilitates a member's participation in committees, subcommittees and councils, and involvement in various multi-lateral negotiations. The optimal

²Afghanistan: A Retrospective on Five Years of WTO Membership, pp. 15, available at https://www.intracen.org/uploadedFiles/intracenorg/Content/Redesign/Afganistan_A_Retrospective_on_Five_Years_of_WTO_Membership_new.pdf ; see also https://www.wto.org/english/news_e/news21_e/acc_09aug21_e.htm.

choice for the representative would be the chief negotiator in order to utilize the knowledge of the WTO gained during the accession and post accession periods.

Concluding remarks

WTO is a member-driven international organization where decisions are made by consensus and every country has a say in shaping future international trade rules and regulations. By not acceding to the WTO, countries lose the ability to participate in this process. Given the current international support for the accession to the WTO, it shows that countries may not face major difficulties in the accession process.