ACCESSION TO THE WORLD TRADE ORGANIZATION

NEWLY INDEPENDENT STATES WTO/NCSD PROJECT

Background Paper prepared by the International Institute for Sustainable Development

September, 2002
1. INTRODUCTION

“Accession” is the international law term used when states that are not original parties to a treaty decide to join it and accept the rights and obligations the treaty contains. From the conclusion of the Uruguay Round of trade negotiations that established the World Trade Organization (WTO) in 1995 to January 2002, sixteen countries had acceded to the WTO Agreements. These include several countries from the former Soviet Union:

- Estonia
- Latvia
- Georgia
- Lithuania
- Kyrgyz Republic
- Moldova
- Azerbaijan
- Tajikistan
- Belarus
- Ukraine
- Kazakhstan
- Uzbekistan
- Russian Federation
- Ukraine
- Kazakhstan
- Uzbekistan

Several other countries from the former Soviet Union are also in the process of negotiating their accession to the WTO. These include:

The WTO has, since 1995, actively promoted accession to the organization. This is consistent with its belief that trade growth is both the key to broadening development opportunities and that trade liberalization is the key to trade growth. From the WTO perspective, the more members, the more the total benefits that can be achieved.

The consequences of a state acceding are significant. When a state accedes to a treaty, it agrees to accept all the rights and obligations in that treaty. In the WTO context, this also means accepting and being bound by the results of the dispute settlement process. It has also come to mean taking on obligations that go beyond those actually in the existing
WTO Agreements. In section 2, we look at the legal implications of accession to the WTO in more detail.

Accession by a state usually requires formal processes to be completed. Sometimes these are very simple processes, such as following the treaty ratification process in the state in question and submitting a signed, authentic document to that effect. In other cases, accession can be a complicated process. Accession to the WTO is a complicated process. This is because trade agreements require a wide range of issues to be negotiated with all other existing members (parties in the WTO are referred to as members). In section 3, the process for accession is reviewed, explaining how it is done, and what the results may look like.

In sections 4 and 5, the provision of technical assistance by the WTO and other organizations in the accession process is considered.

Sections 3 and 4 draw heavily on WTO documents that provide technical guidance to the ratification process. These documents are listed in Annex 1, along with their official WTO document numbers, and a description of how to access them on the WTO website.

Finally, the relationship between accession and national efforts towards sustainable development is considered. This section merely seeks to introduce issues that are covered in more detail in other background papers, most notably on investment and on the trade and environment relationship.

2. THE LEGAL ASPECTS OF ACCESSION TO THE WTO: RIGHTS AND OBLIGATIONS

The key legal provision that allows new members to join the WTO is Article XII of the WTO Agreement:

1. Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto.

2. Decisions on accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO.

3. Accession to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

As the WTO itself notes, one of the most striking things about Article XII is its brevity and the resulting absence of guidance on the terms to be agreed upon for membership. In addition, there are no procedural steps set out for prospective new states to follow. As a
result, additional documents have been developed to give new and existing members some guidance on the accession process. These documents are listed in Annex 1 of this paper.

The absence of specific rules on accession in the WTO texts has led to several questions concerning the goals that accession are to achieve. On the one hand, it is clear that the WTO wishes to expand to include as many members as possible, with a particular concern to increase the number of developing country members. NIS states have, as seen above, also been very active on the accession front. On the other hand, recent rates of new membership have slowed, with no new members appearing to have joined in 2002, except Chinese Taipei. This does not suggest the welcome mat has been withdrawn, but it does indicate at least a slowdown of work on accession now that a new round of trade negotiations – the Doha Round – has begun in earnest.

The most important legal consequence of accession is that new states become bound to fulfill the obligations found in the WTO Agreement. In this regard, few new members have been allowed any transition periods or extended compliance periods, even when these have been available to other countries that initially joined in 1994. One reason for this is that accession is seen by existing members as one way of encouraging countries to undertake or expedite internal market and institutional reforms. Allowing additional transition periods would reduce such incentives. This has led to other suggestions that developing countries have not been allowed to take full advantage of WTO provisions allocating certain special and differential treatments to them when they are acceding members.

Compliance with all the WTO obligations includes, as already noted, compliance with the requirements of the dispute settlement process. This includes abiding by final decisions of that process.

Perhaps more critically for new members, there is an increased tendency in the WTO accession process to have new members take on obligations that are in addition to the original members obligations. This can arise through the bilateral negotiation process on market access that is described below, or other parts of the accession negotiation process. Some have argued this amounts to an abuse of rights by existing members, to force new members to take higher obligations than many of them may have to comply with. Often, these additional obligations will relate to market access for goods and for services. Market access to services undergoing privatization has been a focus of several additional commitments. This pattern may raise questions for some potential new members, depending on the scope of such additional obligations, and the capacity to absorb foreign services within the economy.

The WTO accession process concludes with a Protocol of Accession that sets out all the terms of joining, including compliance with the WTO Agreements, the plurilateral agreements that a new member wishes to join,¹ and the additional commitments it makes.

¹ Plurilateral agreements are agreements on specific economic activities or sectors: Trade in Civil Aircraft, Government Procurement, Dairy trade, and Bovine Meat trade. There is no legal requirement to join these agreements, but states may choose to do so.
It includes the goods and services schedules that set out the market access commitments, tariff levels being agreed to (or “bound”), any related tariff-bound quotas, and other details that complete the range of obligations of the new members.

Entering into the accession process has one additional consequence at this time. It allows prospective members to participate in the Doha Round negotiations as observers. Whether this will allow them a significant role in shaping any new rights and obligations remains to be seen.

3. THE PROCESS OF NEGOTIATING ACCESSION

3.1 The Procedures for Accession

Accession to the WTO is a complicated process. It requires addressing many issues in both bilateral negotiations with other interested existing members, and many issues on a multilateral basis. A description of the issues that must be addressed in the accession process is found below, in section 3.2. In his section, the procedures for accession are described.

The accession process can take a significant amount of time. WTO documents indicate that the shortest time for completion of the process has been two years and 10 months, for the Kyrgyz Republic. The longest time so far has been China, at 15 years, 5 months. In essence, this is a long and complex process, and one to be undertaken with this in mind. It is not a race, but a careful and deliberate negotiation process.

The WTO’s description of the accession process is found in documents 1 and 2 listed in Annex 1. In the sub-sections that follow, key elements of each stage are noted, along with an indication of some of the challenges they present.

Submission of the initial request for membership: When a state wishes to join the WTO, it communicates this intention to the WTO Director-General. This is sent to all the members, and raised in the next General Council meeting of the organization.

Establishment of Working party: At the first General Council meeting after the communication is received, the General Council will usually establish a Working Party. This is a formal group established to review each new application. (So far, only two Working parties have not been established after a request, Iran and Syria.) Although the Working Party is open to all existing members, in practice much fewer actually participate. The largest one so far is the ongoing Working Party on Russia, with 61 participants. The smallest so far has been or the Seychelles and Tonga, with ten.

Memorandum describing the country’s trade and economic policies, and legal regimes as they relate to trade law obligations: The first step in the accession process after the Working Party is established is for the prospective member to submit a Memorandum on
its Foreign Trade Regime. A standard outline is applied for this purpose. It includes the following headings, each of which is then broken down into a long list of specific elements:

- Economy, economic policies and foreign trade levels
- Framework for making and enforcing policies affecting foreign trade in goods and services
- Policies affecting trade in goods
  - Import regulations
  - Export regulations
  - Internal policies affecting foreign trade in goods
  - Policies affecting trade in agricultural products
- Trade-related intellectual property regime
- Trade-related services regime (including market access and national treatment)
- Institutional base for trade and economic relations with third countries
- Statistics and publications
- List of laws and legal acts
- Information on import licensing procedures (on goods and services)
- List of foreign trade agreements

(Extremely detailed guidance on the type of information ripe for inclusion in the memorandum has been developed in separate guidance documents relating to agricultural information, policy measures affecting trade in services, measures necessary for implementation of the Technical Barriers to Trade and Sanitary and Phytosanitary Measures Agreements, and implementation of the TRIPS Agreement. It is impossible to cover this detail in this paper. These documents are all referenced in Annex 1.)

Once the memorandum is prepared, the original versions of the relevant materials are also provided to the WTO, either completely translated into English or with a summary in English.

**The fact-finding stage:** After the memorandum is prepared and submitted, a fact-finding stage takes place. During his stage, any member can ask questions about the material submitted or relating to any other area of trade interest to it. Questions and answers are submitted in writing, and then consolidated in the same format as the original memorandum. More than one round of questions can take place, and often does. The questions can address areas of possible inconsistency between the WTO Agreements and existing laws or policies, administrative capacity, and so on. After written exchanges are complete, fact-finding meetings are held by the Working Party, where individual members can make further enquiries. This is the first real step in the Working Party process.

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2 This outline is found as an attachment to documents WT/ACC/1, “Accession to the World Trade Organization: Procedures for Negotiations under Article XII, Note by the Secretariat.” 24 March 1995.
This fact-finding stage requires a significant amount of information, which the applying country is required to furnish. It is one of the phases that has been most subject to criticism for the burden that it places on countries seeking to join. Indeed, many participants in the process have suggested that it is too cumbersome, slow and repetitive, as well as too demanding for some developing countries. This same concern is likely to be relevant for many of the newly independent states. Although some technical assistance is available, it is inevitably prospective members that must undertake the majority of work.

The fact-finding stage tests the ability of a prospective member to comply with the provisions of the WTO Agreements as a whole. Still, special attention is paid in the Secretariat material on accession to the ability to meet some of the more prominent Agreement obligations. For example, there are special materials relating to the review of the Agreement on Technical Barriers to Trade (TBT) and the Agreement on Sanitary and Phytosanitary Measures. These are instruments relating to the adoption of domestic measures to protect the public welfare – the environment, human health, animal health, etc. – that a member may take and that may have an impact on trade. For example, both these agreements require that the types of protective measures noted above be as least trade restrictive as possible. Existing members may enquire how the new member proposes to ensure this obligation is fulfilled.

The Negotiating process: Once the fact-finding stage is well underway, the Working Party may initiate the actual negotiations phase, even if the fact-finding continues. Through a process of “offer and request” negotiations (offers by the prospective new member, requests by existing members), the would-be-member negotiates agreements with all other members under three broad categories:

- market access for goods, including tariff levels and tariff-bound quotas\(^3\);
- market access for services; and
- agricultural support and export subsidies.

Although negotiations on the first two areas are largely bilateral, they can be facilitated by draft schedules that a prospective member might propose. In addition, not every member actively participates in the accession process, with such a decision reflecting the particular trading interests they may have. The agriculture negotiations are undertaken on a multilateral basis in the Working Party.

Each of these areas is described in more detail in section 3.2, below, where we explore the issues as opposed to the process.

Additional obligations beyond those in the existing agreements and those agreed on market access for goods and services may also be included in the negotiations. For example, additional obligations on privatization and participation in the non-mandatory

\(^3\) A tariff-bound quota is a level of imports for which a lower duty is paid. Once the quota or level of imports under that tariff is reached, a higher tariff can be applied. This is a major feature of agricultural product tariff rates.
plurilateral agreements have become a common practice in accession negotiations. Such additional obligations may ultimately be expressed in the Protocol of Accession or in the Working Party report’s Commitment paragraphs.

**Drafting a single accession agreement:** The Working Party collates the information from all the bilateral negotiations and drafts a consolidated single agreement that sets out all the terms of accession. This becomes the draft Protocol of Accession and includes the Schedule of Concessions and Commitments to GATT 1994 for market access in goods, and the Schedule of Specific Commitments to the GATS for market access in services. Additional commitments beyond the WTO Agreement of 1994 are included in this Working Party Report, and then included by reference into the Protocol of Accession. As a result, the Working Party report may be an important instrument in terms of establishing all the obligations of the new members. The draft report and Protocol of Accession are reviewed and adopted by the Working Party.

The General Council or Ministerial Conference of the WTO formally votes to adopt the terms of accession: A 2/3 majority of existing members is needed for a new country to join the WTO. In practice, however, new members are generally accepted by consensus, as the Working Party has already overseen and consolidated the negotiations.

There is an option for existing members to block a new member’s rights and obligations taking effect as between itself and the new member. This individual “blocking” process requires specific steps by the existing member under Article 13 of the WTO Agreement. These steps have been initiated five times to date, but only two such efforts remain in effect.

Finally, the state in question must adopt the accession agreement through its own treaty making process. The new membership takes effect thirty days after the instrument of ratification is deposited at the WTO.

Some thoughts on the process

As an example of how long and complicated the accession process can be, Russia has been seeking membership since 1993. Only now are bilateral negotiations in a serious phase, especially with Europe and the United States. Russia, of course is a major trading country, or at least one that is potentially significant for many other countries. In the meantime, however, some smaller states with significantly fewer trade-related concerns with other members, like Georgia and Kyrgyz Republic, have joined the WTO.

The accession process has several key challenges for non-member states. First, states must have personnel that are able to negotiate effectively with existing member states. They must understand the legal agreements as well as the trade and economic interests of their country. Significant economic analysis may be required to prepare the initial memorandum describing the trade environment of the country. And states must have the capacity to develop and administer the laws and processes required to meet trade
obligations. All this takes a high level of internal knowledge and capacity, often with little technical assistance available.

The need to meet these challenges is demonstrated by the current displeasure expressed by many developing states with the current balance of obligations under trade law. Indeed, many of the developing countries that signed onto the WTO Agreement in 1994 believe they were misled in the very complicated final stages of the last round of negotiations to expect more benefits than they have received, both in fact and under WTO law. New members must be aware of these concerns and ensure the balance of rights and obligations reflects their development and sustainability needs.

### 3.2 The Substantive Issues Addressed in the Accession Process

The accession process is the time when existing members ensure that a prospective new member can meet its obligations. It is also when they seek to extract the best bargain in their own self-interest from new members as they seek to join “the club”. As already noted, this does create a situation where bargaining power is not always fairly distributed, and has led to some new members taking on obligations in excess of other existing members. Again, new members must work to ensure that meeting their obligations does not become more onerous than their benefits.

New members are expected to adhere to all the obligations in the 1994 WTO Agreements, and to consider adhering to the plurilateral agreements. This raises the full range of substantive issues covered by the Agreements as subjects for the initial Memorandum, the fact-finding process, the bilateral and multilateral negotiations, and the final Protocol of Accession. In this section, the major areas of substantive negotiation are briefly described.

**Application of WTO rules**

The WTO Agreements clearly contain an extensive set of rules for all members to apply. In addition to the tariffs and related monetary rules, there are many rules in agreements - such as the TBT Agreement and SPS Agreement - that require actions to be taken to show the capacity to comply is present, and that inconsistent measures have been modified. The additional Secretariat documents noted in Annex 1 set out a checklist of expected actions by prospective governments as regards compliance with the rules of these Agreements.

In addition, the rules negotiation, often done multilaterally, is where issues such as transition periods and special and differential treatment for developing countries are raised and addressed. Transition periods, as we have already noted, were included in the 1994 WTO Agreement. A transition period is a period of time that allows a member to phase in or delay certain additions or changes to its law to become fully in compliance with its new WTO obligations. During the transition period, a member is understood not
to be in a state of non-compliance with its obligations, even if they are not fully met. At
the end of the period, full compliance is required.

Transition periods allowed developing states members a period of time to adjust to their
new obligations after the conclusion of the Uruguay Round negotiations. Many of these
periods have now run their course. However, some key ones remain in place for a few
more years, especially in relation to TRIPS. While transition periods have been the
subject of much discussion, the net result is a fairly limited use of this potential tool in the
accession process. Most developed countries now argue that they are generally
unnecessary because new members have the full accession time period to bring their laws
and procedures into compliance with the WTO obligations.

Special and differential treatment is another area of concern. Special and differential
treatment (S&D) refers to the collection of provisions in the WTO Agreements that give
just that - special treatment - to developing countries. For the 49 Least Developed
Countries on the UN list, S&D has been agreed to. For other developing countries not in
that category, however, there has been a limited will to see them extended, and in practice
few concessions have been granted to new members. Although an exhaustive search was
not carried out, no special provisions appear to have been accorded to new WTO
members from the NIS, which is consistent with the general view they are not within the
developing country category of states, given their economic and political histories.

Transition periods and S&D have been negotiated from the perspective that new
members are not necessarily legally entitled to the same rules as the original 1994
members. Rather, it is what is negotiated in the accession process that binds them. In
some cases where specific timetables for full compliance are developed, transition
periods have been allowed (but not often). In others, some S&D concessions have been
agreed. But, overall, there is significant pressure to reduce, if not completely eliminate,
both S&D and transition period allowances. This is an area where increased effort may
still bear fruits, however, for some developing countries, though as already noted this is
not likely for NIS states.

In addition, the so-called Commitment paragraphs of a Working Party report may also
contain additional obligations or even restrictions on the exercise of rights available to
other members, for example on utilizing recourse to some specific provisions of the
agreements. These obligations would extend the new member’s obligations beyond those
of the original members.

Market access commitments for goods: Tariff rates, tariff-bound quotas and tariff
concessions

Negotiations on market access for goods are conducted at a bilateral level, then collated
by the Secretariat into one comprehensive tariff schedule. This process focuses mainly
on tariff levels and tariff concessions. High tariff levels support domestic production,
while low tariff levels support higher levels of imports. Thus, there are very different
interests at stake in the process, and bargains must be struck. Different countries have
struck different bargains, some for higher tariff rates and some for lower. Rates will also vary across different product categories.

A maximum tariff level is called a tariff “binding”, and cannot be exceeded once the commitment is agreed to. In practice, however, most actual tariff rates (“applied rates”) are lower than the bound level, allowing some flexibility for future changes by the new members. In some sectors, several new and original members have adopted zero bindings, meaning a commitment not to impose tariffs, in certain specified sectors, notably where new sources of these products are necessary to their development. Many countries have also included beer in the zero bindings, showing that life is more than development alone! Non-tariff market access concessions, or commitments not to prevent entry through non-tariff measures, can also be made. The results of this process are reflected in the Goods Schedule that is adopted by the Working Party as part of the Protocol of Accession.

It should be pointed out that the negotiations on market access for goods is a two-way street. New members can also seek commitments from existing members. Although significant changes in existing bound tariffs are unlikely in most cases, some concessions may be possible. Key sectors like textiles may be areas worth pursuing for some countries that are negotiating accession, depending on the importance of the sector to the economy and likely opportunities for increased production for exports.

**Commitments on intellectual property rights**

One of the WTO Agreements is the Agreement on Trade-Related Intellectual Property Rights, or TRIPS. Unlike most of the WTO agreements that provide for freer competition, TRIPS requires the recognition of monopoly rights for holders of patents and other intellectual property rights. These other rights include copyright for written and artistic works, trademarks for brand names and symbols, special rights for certain agricultural seeds, geographical indications rights for products coming from well known and identified regions, protection of industrial designs and trade secrets, an others.

TRIPS includes a phase in period for developing countries to fully apply these intellectual property rights. There are ongoing negotiations to extend these periods as part of the first phase of the Doha Round negotiations, so some care should be taken in this area. Still, developed countries expect high levels of commitments in this area, and new members should expect to become full participants in the IPR process as part of their accession commitments. The capacity to implement the requirements of TRIPS is a central part of the original Memorandum process, and prospective states can expect this to be a major area of concern during the fact-finding process.

Some areas of TRIPS are also undergoing extensive consideration. The provision of medicines in the case of pandemics such as AIDS is one such area where new members may have a specific interest, and were technical assistance may be of value.
Much thought is now being given to the value of extensive intellectual property rights obligations for developing countries and transition economies. Prospective new members should follow and understand the positive and negative aspects of this debate just as much as they follow the technical aspects of building an IPR system in assessing their national interests in this area.

**Market access commitments for services**

Under the General Agreement on Services (GATS), each country must list the service sectors it is prepared to allow foreign service providers to participate in. Where this is allowed, trade in services takes place. Developed countries seek very broad commitments on trade in services, as many have a strong global presence in this sector. Banking, telecommunications, energy supply, environmental, education, health care, clean water and waste water services are all areas where commitments are being sought today.

Services negotiations usually begin with an offer of what service sectors will be listed as open by the new member. Requests are then made on a bilateral basis for additional sectors to be included. Broad sectors can also be broken down into more refined sub-sectors, and even included sectors are often subject to specific limitations. In some cases, these may relate to the right to establish a domestic office, as opposed to provide a service on a cross-border basis. Hence, there is a wide variety of possible outcomes to a services negotiation.

The existing practice is to require new members to agree to open most service sectors, leading to most new members taking on service liberalization commitments in excess of most existing members from 1994. This trend may place a significant strain on new domestic service sectors, and negotiating countries should weigh this issue carefully. Again, expert advice on the many associated economic issues and possible legal avenues to address some concerns may be warranted.

The services negotiation also has a direct link to the making of additional commitments on privatization. As states change from state run to free market economies, and developing countries and transition economies move more towards market-based economies, privatization of many state-run services and utilities has become a significant economic trend. During the accession process, several new members have accepted commitments to privatize specific services, and to allow foreign competition to enter the market and provide those services. Electricity and water have been two areas where this process has been prevalent, and controversial. Each prospective new member should consider this issue carefully, again weighing its interest in developing domestic capacity, in the nature and quality of the service required, in the cost efficiency of gaining the needed services, and in joining the trade regime. It should not be believed that one solution is right for all new members. Rather, a careful analysis of national interests should be undertaken and a specific goal set for linking services commitments and additional commitments on privatization.
**Subsidies and market access rules for agricultural products**

Subsidies and market access in the agricultural area offer one of the most complex areas of WTO law and policy. Prospective members are expected to fully set out their subsidies to the agricultural sector, both those relating to domestic supports and export subsidies, in their initial Memorandum. This is one of the most extensively reviewed sections of the original Memorandum of a prospective member, and a focus of both bilateral and multilateral negotiations in most cases. An extensive Secretariat technical note, WT/ACC/4, describes in detail what is required.

The commitments on domestic supports for agriculture are agreed in detail. In accordance with the Agreement on Agriculture, they are divided into carefully defined green and amber “boxes”. The green box covers government support measures relating to production that are at or below levels where the have no, or minimal, trade distorting impacts. Environmental services, pesticide programs, training and research, disaster relief, income insurance, marketing and promotion, inspection and other support programs can all fall within this broad category. Careful examination of all green box subsidies is part of the fact-finding process, to ensure that programs are not trade distorting. If such measures are at a level or are of a type that they would likely distort trade, then they are classified as amber box measures and are subject to controls based on individual levels of support and on aggregate levels of support. Government buying of agricultural produce at a guaranteed price ("market price support") is one example of a government support that falls into the Amber box category.

Special measures of support are available for developing countries, including programs to divert from illegal drug crops, investment subsidies in the sector and some input subsidies. Again, levels of these subsidies must be agreed in the accession process if any are sought.

Finally, direct payments under programs that seek to limit levels of production may be exempt from liberalization commitments, but must be fully described during the initial stages of accession.

Export subsidies are required to be bound at agreed levels. Many new members do not subsidize agricultural exports, and hence are bound at a zero level. Other countries do have some subsidies in this area, and agreed levels are then negotiated in the accession process. On some occasions, phase out periods may also be negotiated.

Market access for agricultural products relates to the tariffs and tariff bound quotas imposed on imports for agricultural products. Tariff bound quotas allow a set level of imports at the lower tariff level, and additional imports at a higher tariff level. Exporting countries seek to ensure that these are low tariff levels, with high numbers of importing products included in the tariff bound quota. From the producer’s perspective, tariff levels remain a major element, along with subsidies, in protecting domestic farmers.
New members have again set different levels for both tariffs and tariff-bound quotas.
There is no one set formula that can be pointed to as a result of the accessions to date.
Thus, prospective new members must carefully negotiate this part of the accession agreement to ensure they retain maximum benefits.

The complexity and detail involved in the agricultural negotiations makes it a primary area where technical assistance can be of value. Indeed it may be essential either to receive extensive training of national officials or to engage expert advisers in his area. The more developed the agricultural sector of a prospective member, the more important this will be. Indeed, it is likely that reading the non-legal guidance material the WTO Secretariat has produced in this area will leave more questions than answers for non-experts.

The importance of agricultural negotiations in the accession process may even be exceeded by the agricultural negotiations under the Doha Round negotiations now under way. Many observers argue that agriculture will be the most important part of this negotiation, and will be a key part of improving development opportunities for developing countries and economies in transition. Reduced subsidies and tariff levels in developed countries are key elements in this respect.

**Plurilateral agreements**

Finally, new members must make decisions whether to be bound at all by some of the plurilateral agreements. These are agreements that not all members of the WTO are bound by. As a result, new members must identify which ones they wish to participate in.

4. TECHNICAL ASSISTANCE AND THE ACCESSION PROCESS

The preceding sections indicate how difficult and complex the accession process can be. This has been recognized in the WTO and in other organizations that provide technical assistance (TA) to developing countries and NIS region states embarking on the accession process.

Given the high burdens required to complete the accession process, the WTO does provide technical assistance, as do other organizations such as UNCTAD and the World Bank. This assistance covers many aspects of the accession process, and to some extent longer-term capacity building. TA can be focused on the specific stages of the accession process, such as advice on the preparation of the original Memorandum, communications with existing members, preparation of fact-finding responses, and so on. TA can also be in the form of “training sessions” lasting from one day to one or two weeks.

TA is designed as a demand-driven process. In other words, the prospective new member must take the first steps to receive the assistance it needs. Levels of assistance are, however, limited by the resources of the WTO Secretariat and other organizations.

National development aid agencies are also involved in this TA process, though often on
a targeted basis that reflects their potential trade interests rather than a first-come, first-serve basis.

The WTO also tries to coordinate its assistance programs into a coherent economic development framework with institutions such as the World Bank. This may or may not always be the type of assistance a prospective new member needs.

5. THE LIMITS OF TECHNICAL ASSISTANCE

Many observers have recognized that the existing TA process is inadequate for most developing countries and others in need. Increased resources and better coordination of inter-agency assistance are two suggested avenues for improvement. Still, it is unlikely that any prospective members currently in the Working Party process will soon see real improvements in the process. This is especially troubling as prospective members are also able to participate as observers in the Doha negotiating process and may also require assistance in this regard.

But the lack of TA resources is just one part of the problem. A second issue arises in relation to the programs that are available. This is the extent to which TA programs lack a broader goal of relating the accession process to the different social, cultural and environmental aspects of issues related to joining the WTO. In essence, current approaches to TA go to the negotiating steps, the fact-finding and memorandum stages, and limited negotiating support. Little, however, is available by way of ensuring a real understanding of the legal obligations and their relationship to domestic issues and concerns. Promoting and managing investments, developing service infrastructures that meet local needs, protecting the environment and human welfare, using and promoting traditional or local knowledge, all of these remain largely out of the scope of TA for acceding countries.

In addition, because new members are increasingly being subject to higher levels of obligations than found in the 1994 Agreements, to the inclusion of more services in their commitments to services liberalization than many of the developed country members included in 1994, and to pressures for high levels of privatization, the ability to understand and assess the impacts of these increased levels of obligations is crucial. Little, if any, TA is available for this purpose, leaving both the economic and sustainability impacts largely, if not completely, unassessed in many cases.

Thus, it may also be useful to consider opportunities for support and assistance between developing or transition countries. Pooled resources that allow one or a small group of experts to assist more than one country, and the development of regional centers of excellence are two approaches. Broader non-governmental input into the accession process can often be another source of assistance to government negotiators coming from within the country itself. Further options are no doubt available. But before any of these can be successfully employed, a broader scope for their content must be developed.
Finally, it is worth noting that TA is a major focus of the Doha Round of negotiations. Many developing states already members of the WTO have sought assurances that TA will be available in order to level the playing field during the negotiation process. This includes preparation for the next Ministerial Meeting in Cancun, Mexico in September, 2003. So far, only minimal levels of such assistance appear to have materialized.

6. IMPLICATIONS OF ACCESSION FOR SUSTAINABLE DEVELOPMENT

As trade agreements have expanded, so to have their relationships to other parts of national life. From agriculture to the arts, the sale of textiles to the sale of high tech computer and telecommunications equipment, the provision of banking services to the provisions of sanitation services, almost all areas of life can today be touched. With such a broad range of possible impacts, one might well ask why accession is worthwhile. The answer lies in the greatly increased capacity to participate in the global trading scheme, a scheme that plays a significant part in the globalization process. While some very large economies, like China, have been able to engage themselves into this system prior to joining the WTO, most countries cannot do so effectively without participating in the rules and processes that make up the trade system. Indeed, even China has now joined. And Russia is working on its own membership, which will bring all major industrial countries into the WTO. This is expected sometime in 2004.

Participation in the trading system is critical for achieving development opportunities. Market access in foreign countries for products produced in the newly independent states and in developing countries is critical, and this access can only be guaranteed with participation in the trade rules system. As the potential economic benefits of expanded participation in global trade are central to achieving higher levels of development, the effort to join the WTO is almost always seen as useful. Still, we know that today, in the real world, trade and economic growth must be balanced with other parts of daily life, most notably the protection of human and environmental health. That makes the process of joining and participating in the WTO all the more complicated.

Recognition of this need through projects such as the one this paper has been prepared for will assist in the process. This paper is not the place to analyze all the links between trade and sustainable development. That is done elsewhere in these background papers. Here, it is important to note that developing and transition countries should consider these issues early in the accession process in order to address them as part of their own priority setting and policy development. This is the best way to ensure that an accession agreement will achieve long-term development goals that are both environmentally and economically sustainable.
ANNEX 1: MAJOR WTO DOCUMENTS ON THE ACCESSION PROCESS

The WTO website provides access to the key documents used in the preparation of this paper. These documents can be accessed by going to the WTO website at www.wto.org and following the link to “documents”, or by going directly to the documents search page at http://docsonline.wto.org/gen_search.asp. (As at September, 2002)

Once at this page on the web, simply type in the documents number in the document number box, click your mouse on the “Search” button, and the documents will come up on the screen and can then be saved or printed.

An alternative way to access the WTO documents on accession, and one that makes it easier to find new documents, is to go to the “trade topics” link on the WTO home page. Then find the link for “acessions”. This will bring up links to all the accessible WTO documents on this subject. It may take a few minutes to work through to find just what you need, but this is the most comprehensive access point on this subject.


3. WT/ACC/4 - Information to be provided on Domestic Support and Export Subsidies in Agriculture, 18 March 1996.

4. WT/ACC/5 – Information to be Provided on Policy Measures Affecting Trade in Services, 31 October 1996.

5. WT/ACC/8 - Information to be Provided on Policy Measures with Respect to SPS and TBT Issues, 15 November 1999.