

New Zealand Journal of Public and International Law



VOLUME 10 • NUMBER 1 • JULY 2012

SPECIAL ISSUE

ENHANCING STABILITY IN THE INTERNATIONAL ECONOMIC ORDER
SPECIAL ISSUE EDITORS: ALBERTO COSTI AND SUSY FRANKEL

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Jo Feldman and David Brightling

THE NEW ZEALAND CENTRE OF
INTERNATIONAL ECONOMIC LAW
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FACULTY OF LAW
Te Kauhanganui Tātai Ture

NEW ZEALAND JOURNAL OF
PUBLIC AND INTERNATIONAL LAW

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Faculty of Law
Victoria University of Wellington
PO Box 600
Wellington
New Zealand

July 2012

The mode of citation of this journal is: (2012) 10 NZJPIL (page)

The previous issue of this journal is volume 9 number 2, December 2011

ISSN 1176-3930

Printed by Geon, Brebner Print, Palmerston North

Cover photo: Robert Cross, VUW ITS Image Services

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The **New Zealand Journal of Public and International Law** is a fully refereed journal published by the New Zealand Centre for Public Law at the Faculty of Law, Victoria University of Wellington. The Journal was established in 2003 as a forum for public and international legal scholarship. It is available in hard copy by subscription and is also available on the HeinOnline, Westlaw and Informat electronic databases.

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DEVELOPMENT OF THE INTERNATIONAL ECONOMIC ORDER: CONSTRAINTS ON NON-WTO MEMBERS

*Krystyna Zoladkiewicz**

A full recovery of the world economy from global economic recession depends on trade performance, as international trade is a powerful engine for economic growth. The World Trade Organization (WTO) should, therefore, aim to enhance the predictability of trade policy which is indispensable to boosting trade. This makes WTO membership crucial for all countries. However, there are still countries remaining outside the WTO. Russia's accession to the WTO, a 19-year process (1993-2012), may be treated as a benchmark of the accession process. As part of its WTO accession negotiations, Russia undertook key reforms of trade legislation, bringing greater certainty for countries doing business in Russia, particularly Polish traders. But why does accession take so long? The process is complex because of the legislative requirements that need to be met. Russia's road towards WTO membership may be a warning against making accession too hard. By and large, WTO membership is in the global interest and the pace of finalising accession talks should quicken to ensure that countries can trade with each other under predictable and transparent rules so that trade can play an increasing role in fighting the financial crisis.

I INTRODUCTION¹

Arguably, there are a range of solutions available for resolving the problems of the contemporary world economy. However, to make a travesty of the well-known slogan is "Trade not Aid", I suggest "Trade to Fight Crisis". This is the most obvious and pragmatic solution. A full recovery of the world economy from global economic recession depends on trade performance, especially that of major trade players. The development strategies of the international community

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¹ This paper draws on some findings from Krystyna Zoladkiewicz "Accession to the WTO. Case: The Russian Federation" (2010) 3 Int J of Emerging and Transition Economies 79.

depend on a well organised, sustainable system that supports the growth of trade and that respects the multilateral trade disciplines. Development strategies should not, however, undermine governments' commitments to openness in international trade policies and to the resistance of all forms of protectionist measures. The World Trade Organization (WTO) should therefore play a special role. Thus, one of the challenges confronting the WTO is to enhance the predictability of international trade policy, which is indispensable to boosting trade. This article will discuss the active intervention of the WTO in international trade. The question of particular salience, however, is whether the WTO fulfils its obligations towards all nations. The answer to this is "not really", and this article explains why.

II INTERNATIONAL TRADE DEVELOPMENTS IN 2010

The role that international trade can play in development has long been recognised. International trade is a powerful engine for economic growth. While the relevance of domestic demand – consumption and investment – to economic growth should not be underestimated, it is exports which generally drive growth, without leading to deficits in the balance of payments. Additionally, trade supports both economic activity and development. As such, trade and trade policy have become fundamentally important tools for attaining national growth objectives and are crucial elements in achieving broader development goals. Therefore, it may be natural that foreign economic policy has gained significance. If countries are allowed to trade, they will. If there are no unreasonable administrative barriers (for example, prohibitions, customs), technical barriers (for example, a lack of roads or ports), or institutional barriers (for example, insufficient protection of property), trade is likely to develop.

Between 1951 and 2010, world Gross Domestic Product (GDP) multiplied about nine times, and the volume of merchandise trade increased 33 times. The figures since 1995 show that this expansion in average annual growth in trade volume has been roughly double that of total output. This reflects the increase in the international trade share in economic activity, as well as a growing inter-dependency among nations.²

The record-breaking 13.8 per cent rise in the volume of world merchandise exports helped the world escape recession in 2010. This was a rebound from the 12 per cent collapse in 2009 and a signal of recovery to the 2008 peak level. In 2011, however, there was a more modest expansion of 5.0 per cent and in 2012 a further decline of 2.5 per cent was expected. Forecasts for 2013 estimate that trade will rebound by 4.5 per cent. World imports grew 13.7 per cent in 2010, as compared to 2.2 per cent in 2008, and a 12.9 per cent slump in 2009. Imports should advance 3.4 per cent in 2012

² Harsha V Singh "Trade Policy Has Become a Fundamental Development Tool" (6 June 2011) World Trade Organization <www.wto.org>.

and 6.1 per cent in 2013.³ Thus, the long-term trend shows that trade flows are still working their way out of the crisis, but that they are also stabilising.⁴

In discussing the international trade landscape, it is important to mention that patterns of trade have changed profoundly, especially over the last decade. The last decade has also revealed the existence of an entirely different global economic setting. The disintegration of world economics led to the creation of new centres of international economic development and a shift in the global economy towards Asia and South America. These continents are also becoming central to the development of new technologies, the geopolitical salience of environmental protection and further trade liberalisation. As a result, Asian countries have become a significant group among major trading nations and the role of developing countries in world trade has grown. These factors boosted the combined share of developing economies and of the Commonwealth of Independent States (CIS) in world exports to 45 per cent in 2010, the highest ever. Another significant change is the international division of labour, where production chains are now globally integrated, resulting in increased trade-linkages of economic activity. Such significant increases in trade flows were the result of markets remaining open and the clear move from policies of import substitution to greater efficiency – the most important contributors to economic growth.

In the light of the recent economic and financial crisis, attention should be paid to the impact of emerging global economic players such as the Russian Federation (Russia) on the recovery process. In 2011, Russian exports rose by 30 per cent to USD 522 billion (2.9 per cent of the world total) and ranked ninth among leading exporters. Imports increased by 30 per cent to USD 323 billion, equal to 1.8 per cent of total world imports, and ranked 17th in the world. This can be compared to an export average of 14 per cent in the period 2005–2011; an increase of 33 per cent in 2008, a decrease of 36 per cent in 2009, but an increase of 32 per cent in 2010. The average for imports was 17 per cent for the period 2005–2011; up 31 per cent in 2008, down 34 per cent in 2009 and up 30 per cent again in 2010. This shows Russia, a BRIC country, returning to its pre-crisis levels, and reporting a very rapid growth in its share of world trade during 2009. It also reflects trends of the country's potential trade possibilities.⁵ Nevertheless, during this time, Russia continued to remain outside global economic governance, the WTO trading system, and its rules and regulations. Such a position resulted in a lack of control and execution of trade principles, which is of particular note in

3 See World Trade Organization "Trade growth to ease in 2011 but despite 2010 record surge, crisis hangover persists" (press release, 7 April 2011).

4 In 2011, the leading merchandise exporters were China (10 per cent of world exports), the United States (8 per cent), Germany (8 per cent), Japan (4.5 per cent) and the Netherlands (4 per cent). The top merchandise importers were the United States (12 per cent of world imports), China (9.5 per cent), Germany (7 per cent), Japan (5 per cent) and France (4 per cent): World Trade Organization *World Trade Report 2012* (World Trade Organization Publications, Geneva, 2012) at 23.

5 World Trade Organization "WTO membership rises to 157 with the entry of Russia and Vanuatu" (press release, 22 August 2012).

the context of contemporary global interdependence, usually perceived to impose certain limits on the autonomy and sovereignty of nations.

In sum, the financial crisis and global recession continue to have an impact on national economies. To overcome this, countries should pursue liberal trade policies to facilitate a better exchange of products. Thus, trade policy can be seen as a fundamental developmental and economic recovery tool. In this context, WTO membership and active participation in its ongoing work is significant in terms of ensuring better market access, improved governance and recourse to better economic policies – all of which can be enforced through sanctions. Given this, it is difficult to understand why some nations are not yet integrated into the WTO system. So, the question becomes whether the WTO is an effective rules-based system to guard against protectionism and to fight crisis.

III WTO OBJECTIVES AS GLOBAL RULES-BASED SYSTEM AND "ACCESSION FUNDAMENTALISM"

The financial crisis has fuelled protectionist sentiment, or at least created conditions favourable to its reemergence. Such an effect is mainly due to high levels of unemployment in developed countries, macroeconomic imbalances, weaknesses in government's fiscal positions, rising commodity prices, environmental stresses and wider geopolitical tensions. While the salience of such problems is recognised, closing markets is not a good solution. The international community should resist protectionist pressures and should make working towards the opening of markets an international priority. As such, implementing binding mechanisms, lowering trade barriers, revising trade rules, reducing red-tape and cutting agricultural subsidies are all crucial means of providing sustainable opportunities to emerge from the global economic crisis. Considering this, the WTO should play a particular role in achieving these aims. One of the challenges confronting the WTO is to enhance the predictability of international trade policy, which is indispensable to boosting trade. As WTO Director-General Pascal Lamy has said: "'Stability' should be the name of the game for 2011".⁶ To realise such an objective, the WTO needs to act as a catalyst for international collaboration.

Since 1947, the General Agreement on Tariffs and Trade (GATT)⁷ and, since 1995, the WTO, have been the major instruments in creating the multilateral trading system that has facilitated trade expansion. The philosophy of the WTO is that open markets, non-discrimination and transparency

6 World Trade Organization "Trade growth to ease in 2011 but despite 2010 record surge, crisis hangover persists", above n 3, at 1.

7 General Agreement on Tariffs and Trade 55 UNTS 187 (opened for signature 30 October 1947, entered into force 1 January 1948); General Agreement on Tariffs and Trade 1867 UNTS 187 (opened for signature 15 April 1994, entered into force 1 January 1995).

in international trade are essential to reduce protectionism and are conducive to the welfare of its Members.

The international trading system has evolved over time and this system contributes to development and to economic recovery. The eruption of the financial and economic crisis was evidence of a number of significant deficiencies within this system. First, the WTO was not able to curb protectionist measures enacted by its own Members (let alone non-members). The lack of control exercised by the WTO led to the recognition of a need to restore coherence in global economic governance.⁸ On the other hand, the existence of multilateral trade rules helped to avoid trade wars and some of the protectionist measures that might otherwise have been created. Thus, the global economic crisis can also be seen as proving that the WTO system serves nations well by responding to changing needs.

Recent trade figures show how trade helped the world to respond to the crisis. But countries must continue to be vigilant and resist protectionist pressures. According to WTO data, since the financial crisis began, the number of trade restrictive measures, introduced by a group of influential economies (the G20), has increased.⁹ Concerns have been raised about increases in import tariffs, non-automatic import licensing and less visible protectionist measures, such as discretionary administrative practices. Moreover, there has been an increase in export restrictions, mainly through export taxes on food products and export quotas on some metals and minerals.¹⁰ For G20 economies, heavily affected sectors were machinery and mechanical appliances, motor vehicles, meat and edible offal, electrical machinery, iron and steel, aircraft, ships and boats, plastic and articles thereof, and articles of iron and steel. In total, the cumulative effect of restrictive measures, natural disasters and risk factors in economies lead to the conclusion that the outlook for world trade in 2011 and 2012 remained uncertain. It also enhanced fears that post-crisis protectionism was gaining momentum.

8 Pascal Lamy, Director-General World Trade Organization "Crisis is opportunity to restore coherence in global economic governance" (Lecture at the United Nations Office in Geneva, Geneva, 8 December 2010).

9 "Reports on G20 Trade and Investment Measures" (paper from the World Trade Organization, Organization for Economic Cooperation and Development and the United Nations Conference on Trade and Development, 4 November 2010); "Reports on G20 Trade and Investment Measures" (paper from the World Trade Organization, Organization for Economic Cooperation and Development and the United Nations Conference on Trade and Development, 24 May 2011).

10 New restrictions over the period of October 2008–2009 covered 0.8 per cent of total world import (1.0 per cent of G20 import), then fell to 0.4 per cent to May 2010 (0.5 per cent for G20), 0.2 per cent to October 2010 (0.3 per cent for G20) and 0.5 per cent to April 2011 (an increase to 0.6 per cent of total G20 imports). The accumulation of trade restrictive measures since 2008 now covers almost 3 per cent of world merchandise trade and almost 4 per cent of G20 trade: see Pascal Lamy Director-General World Trade Organization "Lamy cautions over protectionism" (speech to the Thai Chamber of Commerce, Bangkok, 30 May 2012).

On the other hand, the lowering of trade barriers also accelerated. Out of around 550 trade restrictive measures taken since October 2008, more than 18 per cent were removed or amended during October 2010–April 2011 and 15 per cent between May 2010–October 2010. Additionally, countries implemented a great deal of action aimed at reducing barriers or facilitating trade.

So the current challenge is determining how to mitigate restrictions taken in response to the financial crisis, and also to refrain from imposing new barriers. Providing sustainable development opportunities for countries requires free trade, or serious danger to market competition arises. Thus, governments should prioritise removing restrictive measures in economic policy.

After 60 years of a functioning system, the steady erosion and the growing disruption of the international economic order is now evident and the system needs to change. The multilateral trading system cannot be taken for granted.

In my opinion, there are three important aspects of the WTO system which I recognise as crucial to fighting the financial crisis further. First, the WTO provides a venue to enhance trade inter-dependency. Thus, in order to be an effective international institution or global rules-based system, the WTO should respond to the real picture of international trade. The WTO should be an anchor to regulate trade relations, to make them more open, transparent and predictable. Such a role should also include reducing protectionism.

Secondly, for the WTO system to contribute to development and to economic recovery, the WTO must attempt to act in a way that is more "down to earth". The WTO must be visible and understood at a basic entrepreneurial level. The voice of business, the actual "traders" in the international market, needs to be heard. Trade regulations should be better associated with the needs of business, and should mirror the trade problems of many industries as they exist on the ground. The WTO needs to address the perception of important stakeholders (such as businesses, citizens and NGOs) that it is remote or obscure. In order to enhance trade expansion, the WTO trade policy regime must be backed by public (business) opinion, as it is to businesses that it is truly, even if not legally, accountable. In this respect, ensuring transparency and monitoring trade policies becomes an important instrument for maintaining a system appropriate to company decision-making. Transparency should enable companies to understand and operate in the international environment. Indeed, the international trading system may require further evolution, as "good international governance is not about globalizing local problems, but localizing global problems".¹¹

Thirdly, WTO legitimacy depends on a compromise between the competing interests of its Members, and on universal membership. As there has been a major shift in the global economic and geopolitical situation, the WTO regime should focus not only on WTO Members, but also on non-members and new Members. The participation of all nations is necessary in order to emerge from

¹¹ Pascal Lamy, Director-General World Trade Organization "Crisis is opportunity to restore coherence in global economic governance", see above n 8.

the economic crisis. The international trading system should remain highly relevant and address all countries simultaneously. This is why universal membership of WTO is so important. Universal membership will be an imperative to keep the multilateral trading system strong. It is important that national standards are not allowed to deviate from common rules. It follows that in order to reduce the scale of protectionism, it is essential that all countries in the world become members of the WTO, especially those which have a large impact on global markets. Bearing this in mind, it seems ironic that the length of the application process has increased significantly (in 2008 it was "only" 101 months, and in August 2012 it was 165 months).¹² Clearly, the accession process requires greater flexibility.

IV OVERVIEW OF CURRENT WTO MEMBERSHIP AND ACCESSION PROCESS

Article XII of the Marrakesh Agreement defines in highly general terms the rules for accession:¹³

... any state or separate customs territory possessing full autonomy in the conduct of its external commercial relations ... may accede to the Agreement on terms to be agreed between such state or separate customs territory and the members of the WTO.

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

However, there are few other WTO rules which regulate the process of accession.¹⁴ Accession issues are also found in the Doha Declaration, in which it is stated that Members "... attach great importance to concluding accession proceedings as quickly as possible," that they are "committed to accelerating the accession of least-developed countries" and that they retain as a priority accession

12 These time calculations are based on World Trade Organization [WTO] data on accession before Russian accession to the WTO: *Note by the Secretariat: Technical Note on the Accession Process* WT/ACC/10/Rev. 4 (11 January 2010) (World Trade Organisation), plus updates from WTO press releases <www.wto.org>.

13 Marrakesh Agreement establishing the World Trade Organization 1867 UNTS 410 (signed 15 April 1994, entered into force 1 January 1995), article XII.

14 According to Anna Lanoszka:

Article XII does not stipulate any membership criteria, and this signals perhaps the most problematic legal aspect of the accession process. No guidance is given on the "terms to be agreed", these being left to the negotiations between the WTO Members and the Candidate. Furthermore, Article XII does not identify any concrete steps nor does it provide any advice when it comes to the procedures to be used for negotiating the terms of accession.

See Anna Lanoszka "The World Trade Organization Accession Process: Negotiating Participation in a Globalizing Economy" (2001) 35 *J of World Trade* 575 at 589.

of Least Developed Countries (LDCs), agreeing "to work to facilitate and accelerate negotiations with acceding [LDCs]".¹⁵

The specific terms of accession must be negotiated between the WTO Members and the applicant country, meaning each accession is unique. Membership means a balance of rights and obligations. The scope of trade negotiations extends to many areas such as services, trade-related investment and intellectual property, increasing both the costs and benefits of membership. Moreover, dispute settlement is more formal under the WTO regime, and Members are subject to sanctions. As a result, the WTO accession process and accompanying negotiations have become increasingly complex, legalistic, lengthy, challenging and difficult.¹⁶

The record of WTO accessions has also revealed a significant bargaining asymmetry. While the WTO asks the applicant to adjust its trade regime for the purposes of accession, incumbent Members offer no reciprocal concessions. It is understood that their concessions to the WTO were already "paid" in earlier trade negotiations. Additionally, the number of negotiated rules commitments has generally grown with each new accession, and countries have few means of leverage or influence to reach more favourable terms of WTO accession.¹⁷ The WTO may also require aspirant countries to set tariffs lower than those of incumbent Members and these new Members must often make concessions and accept WTO-plus terms of accession. As a result, joining the WTO involves lengthy and costly negotiations and has involved some controversy.¹⁸ These terms of accession also require new Members to make concrete commitments to bring their economies into compliance with the WTO trading system.

15 *Doha WTO Ministerial Declaration* WT/MIN(01)/DEC/1, 20 November 2001 (Ministerial Declaration) at [9] and [42].

16 For the procedure involved, see World Trade Organization *Understanding the WTO* (5th ed, World Trade Organization, Geneva, 2011) at 105; Bernard M Hoekman B and Michel M Kostecki *The Political Economy of the World Trading System: The WTO and Beyond* (3rd ed, Oxford University Press, New York 2009) at 51. The complexity of the negotiations are also revealed by the 20-step procedure for accession: see Kent Jones "The Political Economy of WTO Accession: The Unfinished Business of Universal Membership" (2009) 8 *World Trade Review* 279 at 291.

17 Jones, above n 16, at 295. Even large countries, such as China and Russia, have had little room for negotiating demands.

18 In reporting discussions in the General Council, Peter Naray noted that:

A number of developing countries delegations recalled that in the accession process unreasonable conditions were required of, and imposed on, applicants because developed country members had requested that acceding countries accept more stringent conditions and a higher level of commitment than was required from members themselves ("WTO-plus" requirement) ... Full transparency and objectivity was demanded in accession proceedings. The point was also made that market access commitments undertaken by acceding countries should correspond to the commitments of WTO members at similar levels of development.

See Peter Naray *Russia and the World Trade Organization* (Palgrave, New York, 2001) at 91.

The WTO was created on the assumption that it would achieve universal membership.¹⁹ However, 25 countries are still in the process of accession (see Table 1) and 14 countries are not even among applicants (see Table 2).

Table 1: Countries in WTO Accession Negotiations (as at October 2012)²⁰

Country in accession process	Original application date	Length of accession process in months (to October 2012)
Algeria	June 1987	308
Belarus	September 1993	231
Sudan	October 1994	219
Uzbekistan	December 1994	217
Seychelles	May 1995	211
Kazakhstan	January 1996	203
Iran	July 1996	197
Azerbaijan	June 1997	185
Lao PDR	July 1997	185
Lebanese Republic	January 1999	166
Bosnia/Herzegovina	May 1999	163
Andorra	July 99	161
Bhutan	September 1999	158
Yemen	April 2000	151
Bahamas	May 2001	138

19 See Renato Ruggiero, Director-General World Trade Organization "The Multilateral Trading System at Fifty" (Address to the Royal Institute of International Affairs, London, 16 January 1998), who declared in 1997 that the priority for the WTO was "to continue momentum towards universal membership". All other Directors-General since then have continued to refer to universal membership as a goal: see for example Pascal Lamy's reference to universal membership in World Trade Organization "Lamy welcomes Cape Verde's accession as another sign of confidence in the WTO" (press release, 18 December 2007); and "WTO welcomes Vanuatu as a new member" (26 October 2011) World Trade Organization <www.wto.org>.

20 "Summary Table of Ongoing Accessions" (October 2012) World Trade Organization <www.wto.org>.

Tajikistan	May 2001	138
Ethiopia	January 2003	118
Libya	June 2004	101
Iraq	September 2004	98
Afghanistan	November 2004	95
Serbia	December 2004	95
Sao Tome & Principe	January 2005	94
Comoros	October 2007	60
Liberia	December 2007	58
Equatorial Guinea	February 2008	56

Table 2: Remaining Countries Not Yet Applying for WTO Membership (as at October 2012)²¹

Country	
Eritrea	Palau
Kiribati	San Marino
Korea PDR (North)	Somalia
Marshall Islands	Syrian Arab Republic
Micronesia	Timor-Leste
Monaco	Turkmenistan
Nauru	Tuvalu

The multilateral trading system came into being on 1 January 1948 when the GATT was signed by its 23 founding members. The GATT's membership expanded considerably in the following decades. The WTO then came into force on 1 January 1995 with 128 original Members. Since the WTO's inception, Members have repeatedly stressed their commitment to making the WTO universal in scope and coverage, a view shared by a large number of countries outside the system. Since 1995, another 25 governments have negotiated their accession to the WTO and have made a

²¹ Based on WTO data: "Understanding the WTO: The Organization, Members and Observers" World Trade Organisation <www.wto.org> plus UN Membership database <www.un.org/>

significant contribution to the WTO's goal of becoming a truly universal body. As of October 2012, there were 157 Members representing approximately 93 per cent of the world's population, 99 per cent of world GDP and 97 per cent of world trade, including over 94 per cent of the foodstuffs.²² Nevertheless, economies remaining outside the WTO represent a population of nearly 500 million (being seven per cent of world total population, one per cent of world GDP, and three per cent of world trade). As such, there is considerable scope remaining to achieve the goal of universality first envisaged.

Russia became the most prominent new WTO Member in 2012 with a population of 140.4 million, GDP of USD 1,465.1 billion and merchandise trade valued at USD 648 billion as of 2010.²³ Thus, one of the challenges confronting the WTO is to manage the process of integrating Russia fully into the trading system.

Director-General of the WTO Renato Ruggiero declared in 1996 that:²⁴

The challenge is universality ... the need to bring all the other countries still outside into the WTO system. We can only reap the full benefit of a rule-based global trading system when this is achieved. No-one is under any illusion that the process is an easy one ...

In 2012, universal membership is still not a reality. The Chinese accession process took 15 years (1987–2002). Similarly the Ukrainian accession lasted 16 years (1993–2008) while the Russian accession lasted 19 years (1993–2012). Some important economies, such as other former Soviet Union states, are not WTO members almost two decades after applying. It may be argued that membership is essential to fully integrate these remaining countries into the international economy. A slow accession procedure is not a way to achieve this goal. Aspiring and existing Members alike share in the responsibility to ensure that the accession process does not last "for ages", leading to the potential for frustration.

The benefits of WTO membership, not only for the acceding country but for international business, are well illustrated by the example of Russia. Similar or even more severe problems and obstacles are experienced by other aspiring countries, especially those once part of the Soviet Union. For those countries, WTO membership would send a positive message of transition from centrally-planned economies to fully-fledged market economies, boosting their exports and inflows of foreign direct investment. Only two of them, Georgia and Kyrgyzstan, along with Mongolia, have

22 Estimates based on data from the WTO: "DDG Yerxa says APEC has become "forerunner" on new trade issues", (5 September 2012) World Trade Organisation <www.wto.org>.

23 "Russia in Figures" Russian Federal State Statistics Service <www.gks.ru>. Excluding the Russian Federation, Ethiopia, Iran, Afghanistan, Sudan, Algeria, Uzbekistan, Iraq, Yemen, Kazakhstan, Belarus, Azerbaijan, Serbia and Tajikistan figure among the most populated acceding countries.

24 Renato Ruggiero, Director-General World Trade Organization "The Road Ahead: International Trade Policy in the Era of the WTO" (The Fourth Annual Sylvia Ostry Lecture, Ottawa, 28 May 1996).

already acceded to the WTO. Many others, however, are still "knocking on the door", remaining in various stages of the accession process.

The issue of Russia's accession to the WTO may be treated as a benchmark of the accession process.²⁵ This will be explored in detail below.

V ACCESSION CASE STUDY: RUSSIA

On 22 August 2012, Russia was the final G8 and G20 country to join the WTO. Russia had been negotiating its membership for 19 years.

Russia submitted its application for accession to the GATT in 1993, after which the Working Party on Membership was established. This was transformed into a WTO Working Party in July 1995. This was the largest Working Party in the history of the WTO, comprising 62 member countries. Negotiations on accession started in 1995. During the 1990s, these talks were slow and formal, partly due to the Russian financial crisis of 1998. Soon after Vladimir Putin became president in 2000, he made accession a priority in his term.²⁶ For Putin:²⁷

I don't know to what extent the WTO actually helps develop world trade. It is a kind of symbol, a quality certificate, and it creates favourable conditions for investment and raises the level of confidence in a country. This is obviously an advantage.

He immensely accelerated Russia's steps to enter the WTO. As part of its WTO accession negotiations, Russia has undertaken the principal reforms of trade legislation in line with WTO provisions. By 2003, Russia was very close to joining the WTO. Russia had achieved a major breakthrough in its trade relations and was recognised as a market economy by the United States and the European Union.²⁸ The European Union, in 2004, and The United States, in 2006, finalised a substantial part of their bilateral market access negotiations with Russia. However, one serious obstacle to accession was Georgia (itself a WTO member since 2000). This will be further discussed below.

25 In May 2011, Director-General Pascal Lamy announced with great satisfaction that Vanuatu's accession was at the final stage: "Vanuatu's accession brings us one step closer to our goal of universal membership": "WTO welcomes Vanuatu as a new member" (26 October 2011) World Trade Organization <www.wto.org>. He did not mention, however, that the negotiations had taken more than 16 years. Without undermining the role of Vanuatu, one of the least developed countries, there were bigger players in international trade waiting for membership.

26 William H Cooper "Russia's Accession to the WTO and its Implications for the United States" (15 June 2012) Congressional Research Service <www.crs.gov>.

27 Russian President Vladimir Putin "Interactive webcast with the President of Russia" (interactive webcast, The Kremlin, Moscow 6 July 2006) <<http://archive.kremlin.ru>>.

28 Anders Aslund and C Fred Bergsten "Let Russia Join the WTO" (18 June 2010) Foreign Policy <www.foreignpolicy.com>. The United States did not accord similar status to WTO member China.

The long process had put the WTO accession of Russia into doubt, but the climate eventually changed. In August 2008, Vladimir Putin, in his capacity as Prime Minister, said that Russia should not depart from its strategic aim to join the WTO, but that Russia required transparency and predominantly, elementary fairness. Historically high commodity prices and internal resistance to Russia's entry to the WTO contributed to Russia's cooler attitude to the WTO. Nevertheless, the G8 countries remained determined that Russia should complete its entry negotiations in 2011. But as President Dmitry Medvedev said, Russia could only join the WTO on the right terms: "Russia will never agree to obviously unfavorable decisions. If our partners are not ready for Russia's fair accession to international organizations, it would be a sad scenario".²⁹

Russian officials confirmed that Russia was very close to finishing its accession process. Significant issues which were mostly resolved in 2011 are discussed below.

A Customs Union with Kazakhstan and Belarus³⁰

In June 2009, Vladimir Putin announced that Russia's customs union with Belarus and Kazakhstan had priority over its WTO accession. Moreover, Russia was committed to negotiating the WTO accession of all members of the customs union jointly as a group, for which there was no precedent.³¹ Countries usually pursue WTO membership separately. The approach caused Russia's negotiations with the WTO to halt briefly. Eventually, it was confirmed that the newly launched customs union would not interfere with Russia's obligations to the WTO.

B Remaining Barriers

The WTO still required Russia to dismantle some residual protectionist measures. However, those hurdles were modest in 2011. Key decisions left for Russia included: binding tariffs (import tariffs would fall to 8 per cent on average), export tariffs, reduction on aircraft tariffs, defining levels of subsidies in agriculture, quotas, new car assembly rules, phytosanitary and veterinary control, bureaucracy and regulation of state-owned enterprises (common in Russia). Some commitments on services also needed agreement. This included foreign participation in the insurance sector which will only be allowed five years after the date of accession (with special treatment for the European Union). Banks will only be allowed 50 per cent foreign ownership, with some additional restrictions

29 RIA Novosti "Russia can join WTO this year but only on right terms – Medvedev" (17 June 2011) RIA Novosti <www.en.ria.ru>.

30 Russia, Kazakhstan and Belarus together constitute the Eurasian Economic Community (EurAsEC), creating common tariffs and a single market of 165 million people as at 30 June 2011. The mechanisms regulating the activity of the customs union are to be introduced, adjusting the regulations to those in force in the Member states but it will be a difficult task. Thus, there are still doubts about the final results.

31 Catherine Belton and Frances Williams "Russia puts its WTO entry in doubt" *Financial Times* (online ed, London, 10 June 2009).

against excessive inflow of foreign investments.³² In terms of foreign direct investment, in May 2008 a list of 42 restricted sectors was also introduced in which purchases of "controlling interests" by foreign investors must be pre-approved by the Russian government.³³

C Georgia

Georgia signed a bilateral agreement on Russian accession in 2004, but withdrew the agreement in April 2008. The two sides broke off diplomatic relations after the conflict in August 2008, when Russia recognised the independence of Abkhazia and South Ossetia. Georgia claimed that recognition violated its territorial integrity and represented an illegal occupation of Georgian regions. This resulted in Georgia blocking talks to resolve Russian WTO accession. Georgia also objected to discussing the issue in multilateral meetings. One of the major stumbling blocks was the non-negotiable stance taken by Georgia over the establishment of border custom posts between Russia, Abkhazia and South Ossetia. Georgia maintained that according to WTO rules, Members must have control of their borders. Any Georgian presence along that border was, however, absolutely denied by Russia. At the beginning of negotiations, the United States also stalled the Russian accession, as a show of political support for Georgia. This later changed somewhat, with both the United States and the European Union, while expressing sympathy for Georgia's position, also strongly endorsing Russia's bid to join the WTO. Both powers supported Swiss-mediated negotiations between Russia and Georgia over WTO entry terms. As a means of facilitating these talks, the United States offered Georgia special help with lifting Russia's 2006 ban on the import of Georgian wines and mineral water as well as a package of grants and concessions (worth USD 100–250 million) for the Georgian state. This was a significant boost to the country's economy. In negotiations lasting several months, Switzerland mediated the agreement signed by the two countries on 9 November 2011. The agreement established a mechanism to regulate customs administration and the supervision of commercial goods, and paved the way for Russia to join the WTO.³⁴

D Voting

Formally, the accession of a new WTO member requires approval by a two-thirds majority of existing WTO Members. However, in practice, accession requires unanimous support. Thus, in 1995, WTO members agreed that consensus-based decision-making would apply to WTO

32 World Trade Organization "Protocol on the accession of the Russian Federation" (Geneva 16 December 2011) <www.economy.gov.ru> at 48-52.

33 "Report of the Working Party on the accession of the Russian Federation to the World Trade Organization" WT/ACC/RUS/70 WT/MIN(11)/2, 17 November 2011 (Report of the Working Party).

34 Swiss Federal Department of Foreign Affairs "Successful mediation between Russia and Georgia by Switzerland" (press release, 9 November 2011). The agreement envisages that the neutral private company will conduct customs checks on all trade between the two nations. In addition Switzerland assumes the role of a neutral third party responsible for mediation in the case of any difficulties.

accessions unless a Member requested a vote or consensus could not be reached.³⁵ Despite this, a majority vote might have been a necessity, if a solution to the impasse with Georgia had not been possible. Such an outcome would have been embarrassing for Russia. It might have been the first country in the world to join the WTO by majority vote. This might have also signaled Russia's growing impatience with the process. On the other hand, a majority vote accession procedure used to effectively override a WTO Member's objection could have been interpreted as domination by powerful countries. Thus, there was significant political incentive to find a compromise in the Georgia–Russia talks.

E Signing

Once Russia's terms of membership had been finalised, including addressing the recommendations of the Working Party Report for Russia's Accession, the WTO adopted the Protocol of Accession at the Ministerial Conference on 16 December 2011.³⁶ Accession implementation legislation was ratified by the State Duma (Russian Parliament) and the Federal Council (the Upper House of the Parliament) respectively on 10 and 18 July 2012. It was then signed into law by president Vladimir Putin on 21 July 2012. On 22 August 2012, Russia officially notified the WTO Secretariat that the ratification process was complete and Russia became the organisation's 156th member. Director-General Pascal Lamy recognised that it had: "been a long road to reach this destination ... and (Russia) will take its rightful place at the table with family of trading nations". Lamy also noted that Russia would "undoubtedly strengthen the multilateral trading system" as it would bring Russia's trading laws into compliance with the international standards set by the WTO.³⁷

VI OUTLINE OF SELECTED IMPEDIMENTS IN RUSSIA

Russian regulations contained high tariffs (which were discriminatory), customs procedures, standards, certification and the like. The regulations also contained some forms of "made-to-measure punishment" where there has been "disagreement" with Russia, especially directed towards former closely connected nations. Examples include: embargoes on Polish meat; embargoes on Estonian products after Estonia disassembled a monument of Russian soldiers; and, embargoes on crude petroleum deliveries to Lithuania coupled with Gazprom's (Russia's giant gas company) alleged abuse of its dominant position. There were also fears of an "unexpected" increase of export

35 Marrakesh Agreement, arts IX(1) and XII(2).

36 "Minister Elvira Nabiullina and the WTO Director-General Pascal Lamy Have Signed the Protocol of Russia's Accession to the WTO" (17 December 2011) Ministry of Economic Development of the Russian Federation <www.economy.gov.ru>.

37 World Trade Organization "Lamy hails Russia's WTO accession ratification" (press release, 23 July 2012).

tariffs on timber that would affect the Finnish economy.³⁸ The unpredictability of Russian trade measures was of particular concern.

A Tariffs and Customs Procedures

The structure of Russian tariffs was rather diverse.³⁹ The average level of Most Favoured Nation (MFN) tariffs in 2010 was estimated at 9.5 per cent whereas the average weighted with the volume of trade (in 2009) amounted to 10.0 per cent, with tariffs on agricultural produce at a level of 13.5 per cent (17.6 per cent as a weighted average) and on non-agricultural goods at 8.9 per cent (8.4 per cent as a weighted average). Among the MFN tariffs for imported agricultural produce (duty-free 7.7 per cent), the most frequently used ad valorem tariffs (applied to 35.0 per cent of imported goods) were rates below five per cent, and the less frequently used ad valorem tariffs included: 10–15 per cent rates applied to 31.8 per cent of imports; 15–25 per cent rates applied to 11 per cent of imports; 5–10 per cent rates for 8.4 per cent; 25–50 per cent rates for 3.9 per cent of imports; and, the highest over 50 per cent rates were used for 2.3 per cent of imports. In the case of non-agricultural goods (duty-free 14.5 per cent), the MFN rates were used as follows: below 5 per cent ad valorem rate for 34.9 per cent of imports; 5–10 per cent rates for 20.3 per cent of imports; 10–15 per cent rates for 21.1 per cent of imports; 15–25 per cent rates for 8.3 per cent of imports; and, over 25 per cent for 0.7 per cent of imports.

The comparison between tariffs for individual groups of products in New Zealand and Russia are presented in Table 3.

38 In 2009, Russia made an attempt to raise export tariffs for raw wood (from EUR 15 per cubic metre to EUR 50), which posed a threat of bankruptcy to many Finnish enterprises dealing with wood processing. It was not until Finland intervened in the European Union, however, that a moratorium on this decision was introduced by Russia's Prime Minister, Vladimir Putin.

39 International Trade Centre and United Nations Conference on Trade and Development *World Tariff Profiles 2011* (World Trade Organization, Geneva, 2011) at 137.

Table 3: New Zealand's and Russia's MFN applied duties of different product groups (in per cent)⁴⁰
 NEW ZEALAND (2009) RUSSIAN FEDERATION (2010)

Average MFN applied duties	Duty-free	Max MFN applied duties	Product groups	Average MFN applied duties	Duty-free	Max MFN applied duties
1.5	69.2	5	Animal products	24.4	11.3	81
1.4	71.7	5	Dairy products	16.6	0	28
1.2	75.6	5	Fruits, vegetables, plants	11.0	5.1	29
2.3	54.2	5	Coffee, tea	9.2	20.8	20
2.9	42.9	5	Cereals and preparations	14.2	2.6	83
0.7	86.9	5	Oilseeds, fats and oils	8.5	9.6	20
1.5	70.3	5	Sugar and confectionary	16.5	0	66
3.0	39.9	8	Beverages and tobacco	31.8	4.9	321
0.0	100	0	Cotton	0.0	100.0	0
0.7	86.9	5	Other agricultural products	5.8	7.9	20
0.4	91.6	5	Fish and fish products	12.2	0.8	126
1.8	64.4	10	Minerals and metals	10.0	5.9	93
0.2	95.8	5	Petroleum	5.0	0	5

⁴⁰ At 123 and 137.

0.8	84.3	10	Chemicals	6.4	6.1	20
1.3	75.1	10	Wood, paper, etc	13.2	6.1	57
1.9	66.6	45	Textiles	11.0	0.7	34
9.6	1.7	10	Clothing	11.8	0	24
3.1	47.6	10	Leather, footwear, etc	8.6	8.0	82
3.0	39.9	5	Non-electrical machinery	3.4	67.3	20
2.6	47.4	10	Electrical machinery	7.4	24.2	29
3.1	43.5	10	Transport equipment	11.1	17.5	139
1.7	65.6	10	Manufacturers, (not elsewhere specified)	11.3	17.0	195

100 per cent bound duties

Russia's tariffs were also characterised by two features: "tariff chimneys" and a number of "specific" tariffs, expressed as a combination of an ad valorem duty and a specific duty. In practice, the higher of the two was applied to imports.⁴¹ In 2010, non-ad valorem duties applied to 29.7 per cent of agricultural goods and 10 per cent of manufactured goods.

Moreover, during 2007–2011, some tariff rates were increased as part of application of "anti-recessionary measures" to create more comfortable conditions for domestic manufacturers whereas import tariffs for raw materials and semi-finished goods were reduced. In 2010, significant increases in import tariffs to protect domestic farmers were reported for many imported goods (for pig livestock from 5 per cent to 40 per cent ad valorem).⁴² The changes also referred to the export tariffs for many Russian products (for mineral oils and painted or preserved raw wood from 15 per cent to 25 per cent ad valorem, but not less than EUR 15 per cubic metre) as well. On the other hand, in the years 2011–2012, it was announced that the reductions in tariffs would apply to imports of hi-tech

⁴¹ For instance, the ad valorem rate for soft cheese was 15 per cent but not less than EUR 0.5 per kilogram.

⁴² Those operations resulted in significant declines in exports of livestock, but this result still did not satisfy the expectations of Russian producers.

goods. The aim was to simplify and accelerate the procedures of importing and exporting innovative goods, and introduce tax exemptions for the Russian export of those goods since under the existing system innovative enterprises in Russia remained unprofitable. This was directly related to the coming into force of the "Innovative Russia" package of Bills.⁴³

B Quotas, Phytosanitary Norms, Technical Standards and Other Measures

A general problem in Russian trade is illustrated through the Food Security Doctrine, which came into force on 30 January 2010.⁴⁴ This decree aims to develop domestic production of good quality, safe and cheap food and to reduce dependence on imports. The share of domestic production to be achieved in four to five years is estimated in relation to the total annual consumption for individual agricultural markets (95 per cent for grain and potatoes, 90 per cent for milk and dairy products, 85 per cent for meat and salt and 80 per cent for fish products, sugar and vegetable oil).⁴⁵

Sanitary, phytosanitary and veterinary regulations were another form of intervention. In 2010, Russia introduced an obligation on producers to attach to all imported and domestic agricultural products, safety certificates (which are issued for any period from one to five years) or declarations of mutual recognition of safety standards. Furthermore, a list has been made of "approved exporters" of meat products, dairy products, poultry, eggs, pig and bovine livestock who satisfy the requirements of Russian veterinary control and are then allowed to export their products to Russia. However, even for those enterprises listed as approved exporters, the presentation of a relevant

43 This strategy was developed by the Russian Ministry for Economic Development and Trade. One of its key targets is to increase the share of manufacturing enterprises implementing technical innovations from 9.3 per cent in 2010 up to 40–50 per cent by 2020, the growth of export ratio of high-technology products at the world market from 0.35 per cent in 2008 by up to 2 per cent in 2020 and the share of the innovative sector of GDP from 12.7 per cent in 2009 up to 17–18 per cent in 2020 year: see "Deputy Minister Oleg Fomichev delivered a speech at the first meeting of the Club of Directors on Innovations at Moscow School of Management Skolkovo" (21 October 2011) Ministry of Economic Development of the Russian Federation <www.economy.gov.ru>.

44 The text of the doctrine in Russian can be found at <<http://state.kremlin.ru>>.

45 For instance as early as 2009, imports accounted for only 25 per cent of the total annual consumption of poultry. At the same time, numerous barriers were introduced to reduce the competitiveness of imports and support the domestic production of food instead. Since 2007, a system of two parallel kinds of quotas has been in force: import quotas (for example, in 2010 the quota for poultry was set at 780,000 tonnes, for pork at 500,000 tonnes and for beef at 560,000 tonnes) and tariff-rate quotas (for example, within the quota the tariff on poultry amounts to 25 per cent but not less than 0.2 EUR/kg, and above it 80 per cent but not less than 0.7 EUR/kg; the figures for pork amount to 15 per cent but not less than 0.25 EUR/kg and 75 per cent but not less than 1.5 EUR/kg within and above the quota respectively, and for beef 15 per cent but not less than 0.2 EUR/kg and 50 per cent but not less than 1 EUR/kg, respectively). The significance of these examples is that the level of quotas in the cases of poultry and pork were reduced in relation to the preceding year, whereas the quota for beef was increased following the problems in this market.

certificate does not imply the right to apply time limits the same as above in the case of products subject to veterinary supervision.

Another situation showed a similar approach. On 2 June 2011, Russia banned the import of all fresh vegetables from the European Union because of the E coli outbreak in Germany. The total value of European Union exports of fresh vegetables to Russia is USD 860 million a year, a quarter of total exports. Spain, France, Germany and Poland are the biggest exporters. The European Union regarded the embargo as "disproportionate" and lodged a protest with the Russian Government. On 28 June, Russia lifted the import ban on products from Belgium and the Netherlands. However, imports from Poland, Lithuania, Spain, Denmark and the Czech Republic were still forbidden. The representative of the European Union in Russia found that the embargo violated WTO rules. The representative said "One aspect of the entry into the WTO is a set of rules concerning sanitary and phytosanitary measures, and the ban decided by health authorities in Russia do not follow these rules".⁴⁶ He added that as a non- member, "Russia had no legal obligation to obey WTO rules, but as it wished to accede to the WTO it should have already been implementing the rules in full."⁴⁷

VII RUSSIA'S POSITION IN 2012

WTO accession has been supported by some Russian policymakers who have sought to restructure and reform the Russian economy. In joining the WTO, Russia committed to ensure that its trade laws and practices would comply with WTO rules as well as other market-opening measures. Thus, accession was considered to be a major step for Russia towards integration of its trading system into the world economy.

Nevertheless, Russia needs the WTO less than many other countries. This stems from the composition of Russian foreign trade (see Table 4 and Figures 1 and 2). Russia's exports consist mainly of commodities (energy products) which enjoy free-market access and Russia's imports are largely manufactured goods which many countries are eager to sell in such a vast market. Accordingly, Russia is in a unique position and has not suffered much from either export barriers or protectionism in recent years. Evidently, Russia is strong enough on its own. Despite such independence, it should also be noted that almost one quarter of Russian exports consist of metals, chemicals and forestry products, all of which are highly sensitive to protectionism because they are frequent targets of antidumping investigations (metals, chemicals), some Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS) (forestry products).

⁴⁶ See Vedomosti <www.vedomosti.ru>.

⁴⁷ See Vedomosti <www.vedomosti.ru>. But it could also be read: "Thank goodness that Russia is not a member of the WTO ... is saving us from ghastly European vegetables ... from Moldovan and Georgian wine, Finnish baby food and Belarusian milk" it added with heavy irony, referring to past bans.

Table 4: Russia's top export markets and import sources in 2010 (USD billion)⁴⁸

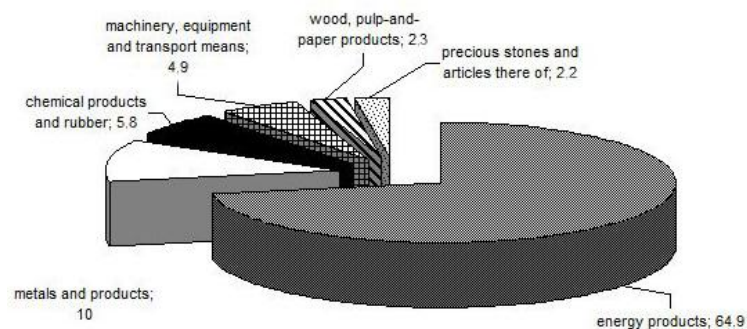
Export		Import	
Country	USD billion	Country	USD billion
1. Netherlands	54.0	1. China	39.1
2. Italy	27.3	2. Germany	26.7
3. Germany	25.1	3. Ukraine	14.0
4. Ukraine	23.1	4. USA	11.1
5. Turkey	20.4	5. Japan	10.3
6. China	20.3	6. France	10.2
7. Belarus	18.1	7. Italy	10.0
8. Poland	14.9	8. Belarus	9.8
9. France	14.4	9. Korea	7.3
10. United States	12.4	10. Poland	5.8
Total exports	396.4	Total imports	229.0

In 2010, Russia's principal merchandise exports were:

- energy products (64.9 per cent of exports) with the largest share made up of crude petroleum and products (50.1 per cent, valued at USD 198.5 billion), natural gas (11.7 per cent, USD 46.5 billion) and coal (2.3 per cent, USD 9.2 billion);
- metals and products (10.0 per cent);
- chemical products (5.8 per cent);
- machinery, equipment and transport means (4.9 per cent);
- wood, pulp-and-paper products (2.3 per cent); and,
- precious stones and articles thereof (2.2 per cent).

⁴⁸ Author's compilation based on data from Embassy of Poland, Moscow "Russia, Your Market" No 2/2011 at 4–5. Data according to Russia's sources differ slightly as compared with the WTO data.

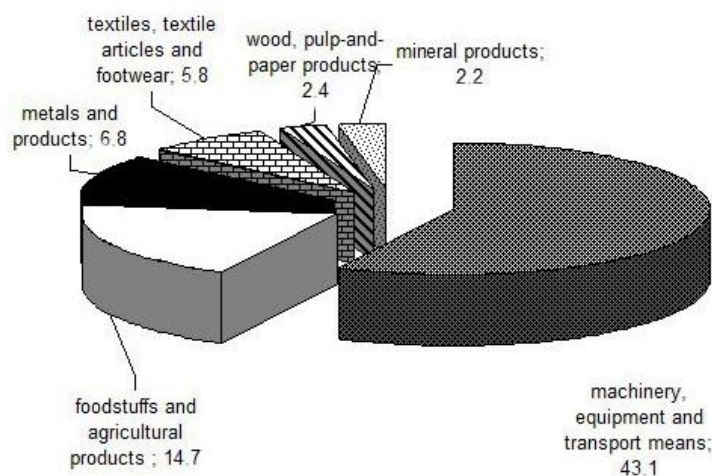
Figure 1: Principal merchandise exports of Russia as percentage of total in 2010⁴⁹



In 2010, Russia's principal merchandise imports were:

- machinery, equipment and transport means (4.9 per cent);
- chemical products (15.7 per cent) with the largest share made up of medicaments (26.1 per cent, valued at USD 9.3 billion);
- foodstuffs and agriculture products (14.7 per cent) largest share of meat (15.1 per cent, USD 5 billion), alcoholic and non-alcoholic beverages (6.6 per cent, USD 2.2 billion), fish (5 per cent, USD 1.7 billion), and tropical fruits (3.8 per cent, USD 1.3 billion);
- metals and products (10.0 per cent);
- textile, textile articles and footwear (5.8 per cent) largest share of clothing (41.8 per cent, valued at USD 5.5 billion) and footwear (16.8 per cent, valued at 2.2 billion);
- wood, pulp-and-paper products (2.4 per cent); and,
- mineral products (2.2 per cent).

⁴⁹ Author's compilation based on data from Embassy of Poland, Moscow "Russia, Your Market" No 2/2011 at 4–5. Data according to Russia's sources (differ slightly as compared with the WTO data).

Figure 2: Principal merchandise imports to Russia as percentage of total in 2010⁵⁰

A *Russia's WTO Commitments*

The Protocol on the Accession of Russia was signed on 16 December 2011, comprising a range of important commitments. Russia must also comply with the terms of all WTO agreements.⁵¹

On average, Russia's average applied tariff rate will be reduced to 7.8 per cent (compared with a 2011 average of 10 per cent). Russia agreed to bind its tariffs on agriculture products at an average rate of 10.8 per cent (versus 13.2 per cent) and manufactured goods at an average rate of 7.3 per cent (versus 9.5 per cent). Russia maintains high tariff rates on imports of some sensitive products. By 2020, applied MFN tariffs of Russia will fall by at least 30 per cent. The trade weighted average tariffs, however, will fall more substantially to 5.4 per cent by 2020. The first reduction of duties took place upon Russia's accession to the WTO, resulting in 1147 tariff rate reductions and changes in a number of tariff codes.⁵²

⁵⁰ Author's compilation based on data from Embassy of Poland, Moscow "Russia, Your Market" No 2/2011 at 4–5. Data according to Russia's sources (differ slightly as compared with the WTO data).

⁵¹ "Working Party seals the deal on Russia's membership negotiations" (10 November 2011) World Trade Organization <www.wto.org>. All information about Russia's commitments are based on this document if not stated otherwise. The Working Party Report consists of seven sections (Economy, Economic Policy, Legal Trade Policy Implementation System, Policy on Trade in Goods, Intellectual Property Rights Regime (TRIPS), Services Trade Policy, Transparency, Agreements on Customs Unions and Free Trade Zones): *Report of the Working Party on the Accession of the Russian Federation to the World Trade Organization* WT/ACC/RUS/70/WT/MIN(11)/2, 17 November 2011 (Report of the Working Party).

⁵² Embassy of Poland, Moscow, "Russia, Your Market" No. 9/2012, 7/2012, 1/2012.

Russia's average tariff reductions will be:

- dairy products to 14.9 per cent (versus 19.8 per cent);
- cereals to 10.0 per cent (versus 15.1 per cent);
- oilseeds, fats and oils to 7.1 per cent (versus 9.0 per cent);
- chemicals to 5.2 per cent (versus 6.5 per cent);
- automobiles to 12.0 per cent (versus 15.5 per cent);⁵³
- electrical machinery to 6.2 per cent (versus 8.4 per cent);
- wood and paper to 8.0 per cent (versus 13.4 per cent);
- sugar to USD 223 per tonne (versus USD 243);
- zero for cotton;
- zero for information technology (versus 5.4 per cent);
- civil aviation industry to 7.5 per cent (versus 20 per cent);
- construction equipment to 5.5 per cent;
- agricultural equipment (combine harvesters, threshers) to 5.6 per cent;
- machinery (pumps, saws, filters) to 7.2 per cent; and,
- medical equipment to 4.9 per cent.

The tariff quota regime for pork meat will terminate in 2019, but no date is fixed for cancellation other quotas.⁵⁴ Furthermore, export tariffs, which refer to over 700 tariffs lines, include certain products in the sectors of fish and crustaceans, mineral fuels and oils, raw hides and skins, wood, pulp and paper and base metals.

Russia has also made important commitments on market access for 11 services sectors and for 116 sub-sectors, among others: elimination of the foreign equity limitation (49 per cent) on telecommunications four years after accession to the WTO; permission to establish foreign insurance branches nine years after accession; and, permission to establish subsidiaries of foreign banks (foreign capital participation limited to 50 per cent) while 100 per cent of the foreign-owned

53 Russia indicated that the current tariff on foreign imports of the commercial light truck industry (new and used cars) was 30 per cent and would be reduced first to 25 per cent (September 2012) then eventually to 15 per cent: see Cooper, above n 26.

54 Moreover, tariff rate quotas (TRQs) will apply to imports of beef 15 per cent (out of quota 55 per cent), pork 0 (out of quota 65 per cent), poultry meat 25 per cent (out of quota 80 per cent), and some whey products 10 per cent (out of quota 15 per cent).

wholesale, retail, franchise sector may operate upon accession. On the other hand, Russia will retain the right to introduce new restrictions in fields such as energy and educational services, those related to foreign ownership of land, and financial services.

General commitments on market access included the reform of the tariff regime for sugar in 2012, with a view to further liberalisation by the date of accession, 22 August 2012. Any tariff exemption for space equipment will be provided on a MFN basis. Moreover, commitments include elimination of quantitative restrictions on imports (quotas, licensing, and the like), cancellation of all Russian industrial support programmes or their modification and notification to the WTO. The trade distorting agricultural subsidies will not exceed USD 9 billion in 2012 and will be gradually reduced to USD 4.4 billion by 2018. Further changes regard laws, regulations and other measures related to investment and should be consistent with WTO provisions by 1 July 2018.⁵⁵ Russia will also apply the provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as well as a requirement of transparency through improving access to official publications, to legislation affecting trade in goods, services and intellectual property rights.⁵⁶ Russia will also comply with legislation and standards of the TBT and SPS Agreements. The reason for suspension, cancellation or refusal of an import permit must be consistent with international standards and recommendations, except in case of serious risk to animal and human health. In such cases the Federal Service for Veterinary and Phytosanitary Surveillance would not suspend imports but rather give a proposal for corrective measures.

Russia's potential gains from WTO accession have been assessed by the World Bank as amounting to 3.3 per cent of its annual GDP in the medium term, and 11 per cent in the long term, as well as 6.7 per cent of consumption per year. Accession will generate medium and long-term benefits estimated on an annual basis at USD 49 billion and USD 162 billion (per year based on 2010 GDP at market exchange rates) respectively. That equates to about seven per cent more income a year for the average Russian household.⁵⁷ Such an economic boost will arise mainly from freer trade of services and increased foreign direct investment.⁵⁸ Moreover, Russia would benefit significantly from internal reforms which the accession process required. Such reforms will assist Russia in using its commodity boom to achieve long-term sustainable growth. Long term and sustainable growth will also require Russia to reorient and strengthen its policies in all key areas to protect Russia from external shocks and recession resulting from decreases in the price of oil.

55 Russian Ministry of Economic Development and Trade "Negotiations on Russia's Accession to the WTO Rounded Off" (press release, 11 November 2011) <www.economy.gov.ru>.

56 Agreement on Trade Related Aspects of Intellectual Property Rights 1869 UNTS 299 (signed 15 April 1994, entered into force 1 January 1995).

57 Relevant figures may be found in World Bank *Moderating Risks, Bolstering Growth* (Russian Economic Report No 27, April 2012).

58 Aslund and Bergsten, above n 28.

Growth in Russia was 8.5 per cent in 2007, 5.2 per cent in 2008, negative 7.8 per cent in 2009, 4.3 per cent in 2010, 4.3 percent in 2011 and is projected to be 3.5 per cent (4.0 per cent high oil price) in 2012 and to be 3.9 per cent (4.2 per cent) in 2013. Growth-enhancing reforms could lift medium-term and long-term growth to 3.3 and 11 percent, respectively.⁵⁹ Accession to the WTO will likely play an important role in growth by improving the business climate and by increasing predictability of the government's trade policies. Decisive implementation of planned privatisation – including in the banking sector – should help to curtail state dominance and improve competition. Privatisation will also influence a reduction in corruption and tax evasion and build trust by creating a stronger legal system. This is of particular importance as Russia (ranked 143) currently sits at 2.4 on the Transparency International Corruption Perceptions Index (ranging from 1 (completely corrupt) to 10 (completely honest)).⁶⁰

The World Bank points out that estimated gains for Russia's economy come from improved quality and lower prices of services (72 per cent) as well as lower consumer prices, due to tariff reductions (18 per cent). Export intensive sectors, such as non-ferrous metals, ferrous metals and chemicals, will likely expand and will benefit from improved market access due to better protection of their commercial interests in antidumping cases (10 per cent).⁶¹ Currently, according to the Russian Ministry of Economic Development and Trade, Russian business losses are estimated at USD 2 billion annually because of discrimination measures. As of 1 July 2012, 19 countries (Australia, Azerbaijan, Armenia, Belarus, Brazil, India, Indonesia, Kyrgyzstan, China, Republic of Korea, Mexico, Moldova, the United States, Thailand, Turkmenistan, Turkey, Uzbekistan and the Ukraine) as well as the European Union apply protective measures to Russian goods.⁶²

On the other hand, the Ministry of Economic Development and Trade calculates direct budget losses resulting from the accession caused by lower import duties to be RUB 188 billion

⁵⁹ World Bank *Moderating Risks, Bolstering Growth*, above n 58, at 3, 34 and 40.

⁶⁰ See Transparency International "Corruption Perceptions Index 2011" <<http://cpi.transparency.org>>. Results between 2 and 2.9 are characteristic for Central Asia as well. Bribery was one of the most important reasons that Swedish company IKEA has withdrawn its new operations from Russia and started again after 4 years: see "Ikea opens in Samara after four year delay" *The Moscow News* (online ed, Moscow, 19 October 2012) <<http://themoscownews.com>>.

⁶¹ The World Bank Report also estimates benefits from higher prices of exports in roubles due to real exchange rate depreciation: see World Bank *Moderating Risks, Bolstering Growth*, above n 56.

⁶² According to data from the Russian Ministry of Economic Development and Trade, Russian goods are subjected to 73 measures, and namely: 40 antidumping duties, three special protective duties, 14 non-tariff measures, four technical barriers, five quota limitations, two additional taxes, three discriminatory excise taxes, one nomenclature-related limitation and one prohibition of import. Five investigations are also being conducted, including 4 antidumping investigation and one special protective investigation, as well as 12 reviews of antidumping measures: see Russian Ministry of Economic Development and Trade "On August 22 Russia to Become a Full-Fledged Member of World Trade Organization" (press release, 21 August 2012).

(approximately USD 6 billion) in 2013 and RUB 257 billion (approximately USD 8 billion) in 2014. Yet, the real losses will be much less due to anticipated growth in trade and, consequently, the tax base. However, many Russian sectors, especially agriculture, light industry, machinery and equipment, construction materials and automobile industry (light trucks) may experience the greatest competitive pressure from imports. In anticipation of possible reductions of output, the Russian government has prepared programmes of adjustment assistance to support industries amounting to almost half a trillion roubles in 2013–2014,⁶³ including: exemptions from some taxes for farmers; preferences for Russian producers in contracts in accordance with government procurement (15 per cent surcharge to delivery price); the possibility of using antidumping investigations; and, countervailing duties or safeguards in cases of potential injury to the industry.⁶⁴

In joining the WTO, Russia has also committed to WTO dispute settlement procedures. The WTO accession allows Russia to use the WTO Dispute Settlement Body (DSB) to protect its trade interests. On the other hand, it will also give WTO members an opportunity to seek justice and impose sanctions if Russia breaches the WTO agreements.

Benefits to Russia of WTO membership are also expected to come from the fact that the WTO requires that other Members grant the new Member permanent MFN status or what is often called "permanent normal trade relations" (PNTR) "immediately and unconditionally". Therefore, once Russia became a WTO member, the United States should have almost certainly removed the Jackson–Vanik amendment.⁶⁵ However, the United States has not extended PNTR to Russia and continues to conduct its trade relations with Russia under the provisions providing for MFN commitments on tariffs and the application of TBT. Russia is not obligated to apply other commitments regarding services, Trade Related Investment Measures, TRIPS, SPS and the DSB.⁶⁶ Until the United States terminates the application of the Jackson–Vanik amendment, it might not benefit from all the concessions it has extracted from Russia upon accession.⁶⁷

63 Russian Ministry of Economic Development and Trade "On August 22 Russia to Become a Full-Fledged Member of World Trade Organization", above n 61.

64 Embassy of Poland, Moscow, "Russia, Your Market" No. 9/2012, 7/2012, 1/2012.

65 The Jackson–Vanik amendment to the Trade Act 19 USC §§2431–2441 of 1974 tied normal trade relations with the Soviet Union and other communist countries to human rights abuses. It requires an annual review of emigration policies of religious minorities in order for the United States to grant MFN status to Russia (and Azerbaijan, Belarus, Kazakhstan, Tajikistan, Turkmenistan and Uzbekistan as well as Moldova, which is already a WTO Member). Many experts assert that this measure may be considered as an irritant to Russia. It has waived each year since 1994, but it is still in place.

66 Under the provisions of the 1992 "Agreement on Trade Relations Between the United States and Russia": Cooper, above n 26.

67 The maintenance of the Jackson–Vanik amendment is obsolete and only hurts United States exports. The volume of United States exports of merchandise and services to Russia is estimated to double from USD 11 billion in 2011 to USD 22 billion over about five years should the WTO rules apply to United States trade

There was a lot of resistance in Russia to opening its market to foreign competition and to the liberalisation of trade connected with the accession process to the WTO. However, the strong Russian lobby against WTO membership diminished upon accession. Business circles believe that membership will create conditions that will improve Russia's position as a more competitive and dynamic marketplace, and provide confidence to foreign partners that Russia will follow international rules and norms.

VIII THE RELEVANCE OF RUSSIA'S WTO MEMBERSHIP TO POLAND'S COMPANIES⁶⁸

In 2011, Russia was Poland's sixth largest export market (following closely after Germany, Great Britain, Czech Republic, France and Italy), and Poland's second largest source of imports (Germany ranking first, and China third).⁶⁹ Thus, an expansion of Polish exports to Russia means it is of particular significance to Polish exporters that Russia obeys WTO regulations. Surety around this may play an important part in securing their trade interests in this market.

A survey conducted among 308 companies from the Pomeranian Voivodship (in northern Poland, near the Baltic Sea) evidences how local businesses perceive this issue. The survey results exemplify general experiences in Poland and reveal the extent to which access to Russian markets is restricted (see Figure 3). The highest share of the analysed enterprises claim that customs procedures were a cause of their problems with export to the Russian market, bureaucracy was the second most frequently cited reason, and nearly half of exporters listed corruption as another significant obstacle. High trade tariffs, technical standards and phytosanitary barriers were also mentioned as sources of problematic protectionist measures that traders experienced.

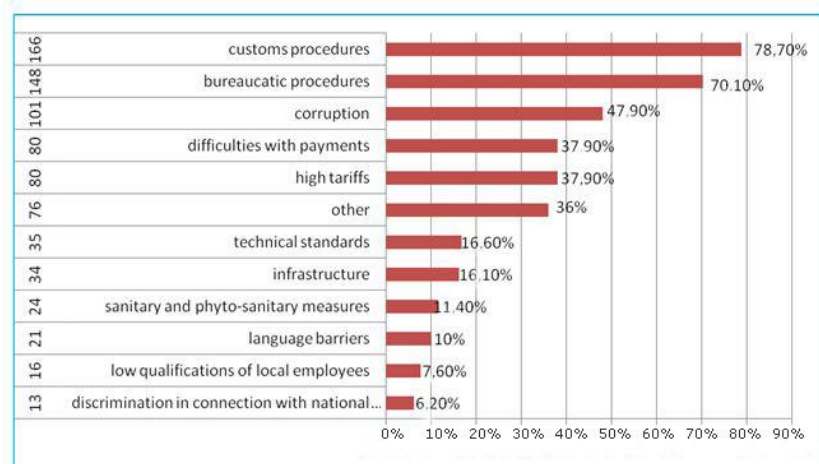
with Russia: see Anders Aslund "The Cost of not Granting Russia PNTR" (31 August 2012) Peterson Institute for International Economics <www.piie.com>.

⁶⁸ This Part draws on some findings from Renata Orłowska and Krystyna Zoladkiewicz "Bariery w handlu z Rosją napotymane przez firmy województwa pomorskiego" in S Umiński ed *Eksport oraz bezpośrednie inwestycje zagraniczne firm województwa pomorskiego* (PBS DGA, Gdańsk, 2010) (translation: "Trade barriers used by Russia against Pomeranian firms" in *Exports and foreign direct investments of Pomeranian firms*).

⁶⁹ "Foreign Trade" (23 August 2012) Ministry of Economy <www.mg.gov.pl>.

Figure 3: Barriers used against Pomeranian firms in 2010 (per cent)⁷⁰

Figure 3. Barriers used against Pomeranian firms, in 2010 (%)

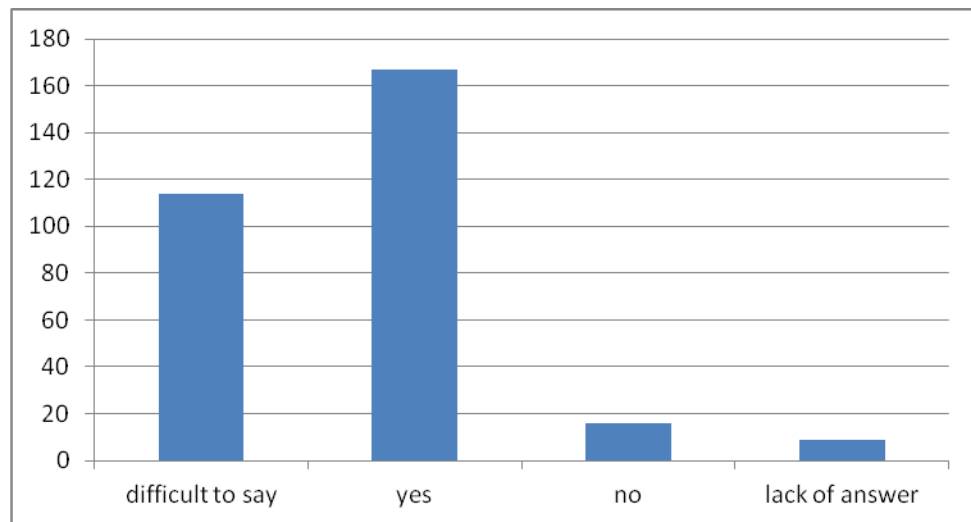


Source: Orłowska and Zoladkiewicz, 2010, p. 103.

Tariffs and customs procedures were considered to be the heaviest burden limiting access to the Russian market, especially by the manufacturers of machines and equipment (30 per cent), jewellery (13 per cent), building materials (9 per cent), furniture (8 per cent), ships and boats (5 per cent), clothing and footwear (5 per cent) and fish products (4 per cent). Exporters also perceived the problem of high tariffs, of which 24 per cent were manufacturers of machines and equipment, 18 per cent each manufacture jewellery and furniture, and 6 per cent each manufacture building materials, clothing and footwear, and ships and boats.

The problem of Russia's membership in the WTO was definitely more complex than a mere discussion on the barriers that Russia applies. But even taking the above difficulties into consideration, it seems beyond doubt that Russia's accession to the WTO was wisely supported by Poland (and the European Union). The majority of respondents supported Russia joining the WTO (see Figure 4). The conclusion, therefore, seems to be unanimous. From the perspective of Pomeranian entrepreneurs, the government should have been lobbied to support WTO membership of the Russia since it was without doubt beneficial to Pomeranian (Poland's) exporters through enhanced access to this market and increased transparency in operations.

70 Orłowska and Zoladkiewicz, above n 66, at 103.

Figure 4: Importance of Russian membership in the WTO for Pomeranian firms⁷¹

IX CONCLUSIONS

In sum, Russia is the last of the G20 countries to join the WTO. After a 19-year long process of negotiation the accession of Russia to the WTO was completed on 22 August 2012. Russia's entry, as one of the world's biggest countries and largest economies, will strengthen the global trading system and yield potentially large benefits for the world economy. Russia has made a lot of progress toward opening up a market economy in the past decade. However, Russia needs to change further as it is still a tough place to do business. Russia comes in at number 120 on the World Bank's ranking of countries for their ease of doing business.⁷² The recent crisis has shown the need for modernisation, the introduction of new technologies and further integration into the global economy. WTO accession will require Russia to enact new rules on issues related to trade, investment and intellectual property standards. These rules will bring greater certainty for countries doing business in Russia.

But why does WTO accession take so long? Terms of accession are a major concern to every acceding country. The accession process is complex because of the legislative requirements that need to be met. However, WTO Members should consider facilitating this process and should provide assistance to acceding countries to strengthen their institutional capacities, which would expedite the process and remove barriers to accession. As such, the WTO Secretariat should also play

⁷¹ Orlowska and Zoladkiewicz, above n 66, at 103.

⁷² "Economy Rankings" (2012) Doing Business <www.doingbusiness.org>.

a more proactive role in accession. Such internal reform would enable the WTO to achieve its goal of universal membership in the near future.

Russia's road towards WTO membership illustrates the experience shared by various countries. It may be a warning against "accession fundamentalism" by WTO Members, which may result in economic isolation of aspiring countries. WTO Membership is crucial for many countries. In the current turbulent times, the WTO must make a contribution to a more stable world by acting as a catalyst of trust and global unity. This must be achieved by universal membership. It should be emphasised that enhancing stability in the international economic order requires accession of aspiring nations to the WTO. Universal membership may be a way to reduce trade barriers, to benefit businesses of all parties and to ensure the growth of the trade sufficient to overcome the present financial crisis. Universal membership will also increase the role of the WTO in developing an international economic order and restoring coherence in the global economic environment.⁷³

By and large, WTO membership is not a gift to any country, but it is in the global interest. WTO accession sends a strong message to the business community that a country is committed to reforming and modernising its economy. Substantial gains from WTO membership are achieved from improvements in market access, in the investment and business climate, as the result of growth and liberalisation of trade policy.

The same conclusions may apply to the accession process of all aspiring countries. Internal arguments do not concern whether or when countries should join the WTO, but on what terms. There is no doubt that countries should accept a set of commitments necessary for entry into the WTO and should be confronted with rules and regulations of the world trading system. Given the imperative for ensuring wide accession, I would even suggest that WTO Members should not subject these countries (approximately 20 are LDCs and many countries in transition) to the same level of rigour applied to past applicants. Such a compromise may allow accession to be based on a seemingly "modest" set of commitments, because otherwise there is a risk that these countries will not participate in deeper integration with the global economy. This lack of integration risks the smooth functioning of states, and arguably will miss a key opportunity to reduce the rampant corruption that is present in many of them. Keeping trade open has been, and continues to be, crucial in providing sustainable opportunities for countries to emerge from the global crisis, in particular, at times of growing difficulties for many domestic economies. This will in turn attract foreign investment, technology and talent, which are crucial to those countries to accelerate sustainable long-term economic growth.

The pre-accession period is considered to be "the last chance" to obtain important commitments from aspiring countries. As such, many may agree with past criticisms of negotiators who have not

73 "Obama and Biden Extol Improved Relations with Russia, Support Investments, Normalization of Trade" (2011) 21(2) Foreign Policy Bulletin 84 at 84.

always fully engaged in the process, meaning that the reforms offered and implemented are, in many cases, less extensive than would otherwise be desired. This criticism applies especially in the case of Russia, whose negotiating style was partly responsible for the delays in the accession process. Conversely, this critique does not explain why negotiations lasted so long without final determination of the necessary domestic and international compromises. Indeed, the accession experience of Russia proves why some WTO regulations require amendment.

In conclusion, the pace of finalising accession talks with acceding countries should increase. I believe it will be better for both aspiring countries and Members to be able to trade with each other under predictable and transparent rules. Open access to markets will expand international trade, employment and economic growth, all of which are indispensable to fight the current financial crisis.