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Strategic Negotiation for WTO Accession

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Abstract

LDCs acceding to the World Trade Organization have a hard negotiation road to travel, and much to learn from previous successful accessions. While many of those negotiations were done privately, much can still be garnered by looking at the evolution of those countries' procurement policies, tariff schedules and commitments to trade-related aspects of IPR. The experiences of previous travelers areas can provide a roadmap for countries seeking to join the WTO, as they highlight the demands of the major WTO players, who serve as the gatekeepers to entry. While a close political or trade relationship with a major player may help speed up the process of accession, an LDC has no reason to expect such ties would excuse it from the same demands (or more) faced by those that have gone before it. There is a free trade threshold for admission and each LDC or developing country seeking admission should expect to satisfy or surpass that margin before the WTO grants its membership.

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WTO ACCESSION PROTOCOLS

The Marrakesh Agreement, Article XII lays out the terms for acceding¹ to the World Trade Organization (“WTO”). Article XII prescribes that a State or separate customs territory possessing full autonomy in the conduct of its external commercial relations as well as other matters provided for in the Agreement and the Multilateral Trade Agreements may accede “on terms to be agreed between it and the WTO.”² Those agreed upon terms of accession must then be approved by the topmost decision-making body of the WTO, the Ministerial Conference, by a two-thirds majority vote of its Members.³

In order to ease the accession process for Least-Developed Countries (“LDCs”), and encourage Members to exercise control when seeking concessions from LDCs, the WTO General Council adopted Guidelines for LDC Accession.⁴ Members are to “exercise restraint in seeking concessions and commitments on trade in goods and services from acceding LDCs, considering the levels of concessions and commitments assumed by existing WTO LDCs’ Members.”⁵ In return, LDCs are expected to offer “reasonable market access concessions and commitments on goods and services commensurate with their individual development, financial and trade needs”, in accordance with pertinent WTO provisions on goods and services.⁶

But since Article XII provides no limits to the terms that parties may negotiate, and despite the Guidelines, current Members, who negotiate Accession Protocols from a position of strength, are still known to demand more stringent commitments than asked of original Members. To stop this tendency, a consensus among acceding Members would have to be secured. But keeping in mind the most recent accessions, LDC applicants are better served by focusing on negotiating key terms rather than succumbing to a widespread political debate that is unlikely to produce a desired outcome.⁷

The approval of an Accession Protocol⁸ elevates an applicant to a full Member of the WTO, with all the privileges and obligations that attach to membership. Meaning, upon accession, a new Member is obliged to adhere to all WTO rules on goods, services and the trade-related aspects of intellectual property rights, in addition to the negotiated obligations incorporated into their Protocols of Accession.⁹ As a practical matter, however, once concessions have been negotiated, acceding Members may receive less favorable treatment than original members; a practice that derogates from the MFN provisions of the WTO Agreements.¹⁰

¹Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980) [hereinafter VCLT], art. 2.1(b) and art 15 (“accession” is an international act “whereby a State establishes on the international plane its consent to be bound by a treaty.”) (“A state’s consent to be bound by a treaty may be expressed in one of three ways: (a) pursuant to the treaty provisions, (b) as otherwise established by the negotiating states, or (c) as subsequently agreed by all the parties”).

² Article XII of the Agreement Establishing the WTO.

³ *Accession to WTO*, [un.org](https://www.un.org/ldcportal/accession-to-wto/) (December 28, 2016)<https://www.un.org/ldcportal/accession-to-wto/>

⁴*Id.*; Handbook on Accession to the WTO Chapter 2: 2.4 Guidelines on the accession of Least-Developed countries, [wto.org](https://www.wto.org/english/thewto_e/acc_e/cbt_course_e/c2s4p1_e.htm), https://www.wto.org/english/thewto_e/acc_e/cbt_course_e/c2s4p1_e.htm

⁵Handbook; “Accession to WTO”, *supra* note 4.

⁶*Id.*

⁷ *Id.* at Chapter 5:5.1 General points, *Substance of Accession Negotiations*, [wto.org](https://www.wto.org/english/thewto_e/acc_e/cbt_course_e/c5s1p1_e.htm), https://www.wto.org/english/thewto_e/acc_e/cbt_course_e/c5s1p1_e.htm

⁸ Officially, an Accession Protocol is a bilateral treaty entered into between the WTO and the acceding country.

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¹⁰ Julia Ya Qin, *Article: The Conundrum of WTO Accession Protocols: In Search of Legality and Legitimacy*, 55 Va. J. Int’l L. 369, 401 (Spring 2015).

The terminology “WTO-plus.” and “WTO- minus” are the descriptors used for these episodes of derogation, in which accession provisions deviate from standard WTO rules.¹¹ A WTO-minus obligation has less regulation than a corresponding WTO rule, while a WTO-plus obligation has greater discipline.¹²

When a provision is WTO- minus, an acceding Member takes on fewer obligations than normally directed by an otherwise applicable WTO rule.¹³ Usually, this means, an acceding Member joins the WTO without having to promptly comply with a troublesome WTO discipline. Typically, these deviations are given expiration dates.¹⁴ For example, Taiwan had two years after accession to remove an import ban on passenger cars outfitted with diesel engines.¹⁵

On the other hand, a WTO-plus provision places upon an acceding Member obligations not prescribed in the WTO agreements, and provides original Members with standing to demand compliance with their supplemental obligations.¹⁶ The most common WTO-plus provisions focus on direct taxes, investment regulation, energy, price and currency, transparency, as well as administrative and judicial review. Interestingly, unlike recent U.S. free trade agreements that incorporate commitments to intellectual property rights beyond those included in WTO rules,¹⁷ WTO accession agreements generally do not add obligations on top of the TRIPS Agreement¹⁸ past transparency and enforcement.¹⁹ Instead, current Members use their bargaining power to achieve regulatory changes that enable market access.²⁰

¹¹ Id. at 487.

¹² Steve Charnovitz, “Mapping the Law of WTO Accession,” in *WTO at Ten: Governance, Dispute Settlement and Developing Countries*, p. 18 (Merit E. Janow, Victoria Donaldson & Alan Yanovich, eds., Juris Publishing, Inc., 2013) at: http://scholarship.law.gwu.edu/faculty_publications.

¹³ Charnovitz, at 17 (stating, “here I mean the rules set out in the WTO Agreement and its annexes. Sometimes WTO members are granted special waivers that allow them to break a rule for a limited number of years. For instance, in 2001, the European Communities (EC) was permitted to continue WTO-illegal practices regarding bananas through 2005. In effect, that was legalized WTO-minus for an incumbent which I will disregard that for the purpose of calculating the WTO legal baseline.”)

¹⁴ Steve Charnovitz, “Mapping the Law of WTO Accession,” in *WTO at Ten: Governance, Dispute Settlement and Developing Countries*, p. 18 (Merit E. Janow, Victoria Donaldson & Alan Yanovich, eds., Juris Publishing, Inc., 2013) at: http://scholarship.law.gwu.edu/faculty_publications, at 36.

¹⁵ Report of the Working Party on the Accession of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, WT/TPKM/18 (5 October 2001), para. 71.

¹⁶ Julia Ya Qin, supra note 10 (Under the general MFN clause of GATT Article I:1, “with respect to all rules and formalities in connection with importation and exportation,” a member must accord “any advantage, favour, privilege or immunity” granted to any product of any other country to the like product of all other members “immediately and unconditionally.” GATT 1947 art. I:1. Being free from a *WTO*-plus. obligation is an advantage that is denied of the acceded member subject to the obligation. By comparison, the MFN clause of GATS Article II simply provides that “with respect to any measure covered by [the GATS], each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country.” GATS art. II.)

¹⁷ Steve Charnovitz, “Mapping the Law of WTO Accession,” in *WTO at Ten: Governance, Dispute Settlement and Developing Countries*, p. 18 (Merit E. Janow, Victoria Donaldson & Alan Yanovich, eds., Juris Publishing, Inc., 2013) at: http://scholarship.law.gwu.edu/faculty_publications., at 34.

¹⁸ The WTO Agreement on the Trade-Related Aspects of Intellectual Property Rights

¹⁹ Steve Charnovitz, “Mapping the Law of WTO Accession,” in *WTO at Ten: Governance, Dispute Settlement and Developing Countries*, p. 18 (Merit E. Janow, Victoria Donaldson & Alan Yanovich, eds., Juris Publishing, Inc., 2013) at: http://scholarship.law.gwu.edu/faculty_publications.

²⁰ Steve Charnovitz, “Mapping the Law of WTO Accession,” in *WTO at Ten: Governance, Dispute Settlement and Developing Countries*, p. 18 (Merit E. Janow, Victoria Donaldson & Alan Yanovich, eds., Juris Publishing, Inc., 2013) at: http://scholarship.law.gwu.edu/faculty_publications.

While Acceding Members generally object to demands for WTO-plus provisions, most eventually succumb to what are essentially ultimatums.²¹ In the end, Acceding Members hold the leverage because they can put the process on hold (e.g., Vanuatu)²². While there have been cases where acceding Members successfully refused to agree to a particular WTO-plus demand,²³ most eventually consented as the price of admission to the WTO.²⁴ No State is forced to join to the WTO. But as a practical matter, because membership is crucial to modern sovereignty, a state wanting to gain a seat at the WTO must reluctantly or wholeheartedly agree to the WTO-plus demands of current Members.²⁵

THE ACCESSION PROCESS

The WTO accession process is arduous and long. It should be expected by any nation to take 5 to 10 years or longer to negotiate accession. But it can be a worthwhile one. Research shows that countries undertaking the reforms required to join the WTO tend to grow at around 2.5 percentage points faster than others once the process is completed. And on average, those countries have grown 20% faster than the overall world average for the last twenty years.²⁶

Since China (2001) and Russia (2012) joined the WTO, the pool of nations working on or eligible for accession is largely small and in varying stages of economic and political development. The 164 current Members of the WTO account for 98% of world trade. Twenty-two nations currently are in various

²¹ Steve Charnovitz, "Mapping the Law of WTO Accession," in *WTO at Ten: Governance, Dispute Settlement and Developing Countries*, p. 18 (Merit E. Janow, Victoria Donaldson & Alan Yanovich, eds., Juris Publishing, Inc., 2013) at: http://scholarship.law.gwu.edu/faculty_publications.

²² *WTO ACCESSIONS AND DEVELOPMENT POLICIES*, UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, p.35 (2001) https://unctad.org/en/Docs/ditctncd11_en.pdf (In negotiating with the United States, the demands on Vanuatu made reaching an agreement impossible. The United States demanded that Vanuatu lower its bound tariff to around 15– 25 per cent from its current average of 49 per cent. The United States demand for a reduction of the bound rate of import duty to 25 per cent would result in a complete loss of flexibility in the taxation system. Should there be a particularly severe natural disaster, the Government of Vanuatu would not be in a position to raise import duties. This is particularly significant because, as noted, Vanuatu in its comprehensive Reform Program introduced a VAT and eliminated a host of other taxes such as business licences and service tax. This meant the government became heavily dependent on import duties with a VAT that still had administrative teething problems. As such, accepting the U.S. demands and eliminating flexibility in the taxation regime was unacceptable to the Government of Vanuatu.)

²³ Charnovitz, at 34; Report of the Working Party on the Accession of Bulgaria, WT/ACC/BGR/23 (September 20, 1996), para. 24. (In 1996, Bulgaria pronounced its intent to insure transparency, while declaring: "This was not to be regarded as a basis for the imposition of specific obligations under the Agreements or as a basis for the adoption of new special policy commitments. Bulgaria could not undertake commitments exceeding the regular membership obligations.")

²⁴ Steve Charnovitz, "Mapping the Law of WTO Accession," in *WTO at Ten: Governance, Dispute Settlement and Developing Countries*, p. 18 (Merit E. Janow, Victoria Donaldson & Alan Yanovich, eds., Juris Publishing, Inc., 2013) at: http://scholarship.law.gwu.edu/faculty_publications

²⁵ Steve Charnovitz, "Mapping the Law of WTO Accession," in *WTO at Ten: Governance, Dispute Settlement and Developing Countries*, p. 18 (Merit E. Janow, Victoria Donaldson & Alan Yanovich, eds., Juris Publishing, Inc., 2013) at: http://scholarship.law.gwu.edu/faculty_publications.

²⁶ Alan Wolff, "WTO Accession has Served as a Key Engine for Economic Transformation," at: https://www.wto.org/english/news_e/news18_e/ddgra_22may18_e.htm

stages of WTO accession.²⁷ Seven are classified by the United Nations as “least developed nations.”²⁸ The rest are developing nations.

Algeria	Equatorial New Guinea	Somalia	
Andorra	Ethiopia	South Sudan	
Azerbaijan	Iran	Syrian Arab Republic	
Bahamas	Iraq	Timor-Leste	
Belarus	Lebanese Republic	Uzbekistan	
Bhutan	Lybia		
Bosnia-Herzegovina	Sao Tomé & Principe		
Comoros	Serbia		

Five nations have completed the process in the past five years:²⁹

- Afghanistan 29 July 2016—12 years
- Liberia 14 July 2016—10 years
- Kazakhstan 30 November 2015—20 years
- Seychelles 26 April 2015—10 years
- Yemen 26 June 2014—13 years

The following review of several illustrative WTO accession examples is followed by an assessment of the likely demands that current WTO Members, particularly the larger nations who both constitute the largest global share of trade and are the most serious guardians of the WTO. Lessons learned are intended to guide negotiating strategy for the 22 countries, with a focus on Sudan, in the process of trying to gain WTO membership.

LDC ACCESSION CASE STUDIES

KAZAKHSTAN

Kazakhstan offers a recent (2015) WTO success story, after 19 years of negotiating accession.³⁰ Kazakhstan had a key advantage in that its main trading partner, the EU actively supported its entry into the WTO.³¹ Besides, their close trading relationship, the EU had billions of dollars invested in

²⁷ “WTO Accessions.” *World Trade Organization*, www.wto.org/english/thewto_e/acc_e/acc_e.htm.

²⁸ The United Nations defines 47 countries as “Least-developed countries” (LDCs), 36 of which are WTO members. “Understanding the WTO - Least-Developed Countries.” *World Trade Organization*, www.wto.org/english/thewto_e/Whatis_e/tif_e/org7_e.htm

²⁹ “WTO Accessions.” *World Trade Organization*, www.wto.org/english/thewto_e/acc_e/acc_e.htm.

³⁰ “Kazakhstan and the WTO.” *World Trade Organization*, www.wto.org/english/thewto_e/acc_e/a1_kazakhstan_e.htm.

³¹ Interfax. “Nazarbayev, Ahston Discuss Situation in Afghanistan, Kazakhstan’s Accession to WTO.” *Central Asia General Newswire*, 30 Nov. 2012, p. 1. *EBSCOhost*, search.ebscohost.com/login.aspx?direct=true&db=bwh&AN=83765986&site=ehost-live.

Kazakhstan, giving the EU a vested interest in an effective Kazakhstan succession.³² It also helped that prior to accession, Kazakhstan conducted 90 percent of its trade with WTO Members and already played an important role in global value chains.³³ In addition, the bulk of exports from Kazakhstan are oil, followed by copper, petroleum gas and ferroalloys.³⁴ Such circumstances made Kazakhstan a prime WTO applicant with minimum competitive concerns from within.

Also important is the clear signal sent by Kazakhstan that it was interested in investing significantly in improving its domestic competitiveness and the capacities of its private sector. Substantial state spending was announced until 2020, after which point such support could no longer be granted, according to WTO rules. The country's leadership made strong efforts to attract foreign direct investment and create a welcome investment climate, complementary to WTO accession, a necessary precursor to reap benefits from the WTO.³⁵ The leadership in Kazakhstan has taken a more direct approach toward an open, liberal vision of the country's future at a time when it is faced with greater geopolitical uncertainty. The combination of West-Russian tensions, and China's Silk Road Economic Belt initiative seem to have offered a stimulus to Kazakhstan, and its Western trading partners, to take more serious steps to overcome concerns, including accusations of corruption and human rights violations, to get Kazakhstan under WTO discipline.

With EU support, the major obstacle for Kazakhstan to overcome was unifying its obligations as a member to the Eurasian Economic Union with the policies necessary for WTO compliance: an issue of particular importance to the United States given its complicated relationship with the Russian Federation.³⁶ To satisfy U.S. demands, Kazakhstan drastically reduced its import tariffs on over 3,170 goods and committed to reduce tariffs on agricultural products from 16.7 percent to 7.6 percent.³⁷ With these agreements in place, Kazakhstan was able to complete its 19 years application negotiation.³⁸

CAMBODIA

After initiating its accession process in July 1999,³⁹ Cambodia became the second LDC to join the WTO on October 13, 2004⁴⁰, Prior to negotiations, Cambodia prepared for membership by securing assistance

³² Interfax. "Nazarbayev, Ahston Discuss Situation in Afghanistan, Kazakhstan's Accession to WTO." *Central Asia General Newswire*, 30 Nov. 2012, p. 1. *EBSCOhost*, search.ebscohost.com/login.aspx?direct=true&db=bwh&AN=83765986&site=ehost-live.

³³ Kourmanova, Aitolkyn. "Kazakhstan and the WTO: A New Era." *Center for Strategic and International Studies*, www.csis.org/analysis/kazakhstan-and-wto-new-era.

³⁴ Kazakhstan, at: <https://atlas.media.mit.edu/en/profile/country/kaz/>

³⁵ World Bank research showed that liberalization of barriers to foreign investment in business services, which contributes to the competitiveness and productivity of manufacturing, amounts to 70 percent of gains from WTO accession. Estimates put the gains to Kazakhstan from WTO accession at 3.7 percent of GDP in the medium run, and as high as 9.7 percent of GDP in the longer run. See: Jensen and Tarr at: <https://openknowledge.worldbank.org/handle/10986/5885>

³⁶ Kourmanova, Aitolkyn. "Kazakhstan and the WTO: A New Era." *Center for Strategic and International Studies*, www.csis.org/analysis/kazakhstan-and-wto-new-era.

³⁷ Kourmanova, Aitolkyn. "Kazakhstan and the WTO: A New Era." *Center for Strategic and International Studies*, www.csis.org/analysis/kazakhstan-and-wto-new-era.

³⁸ "Accessions: Kazakhstan", wto.org, https://www.wto.org/english/thewto_e/acc_e/a1_kazakhstan_e.htm

³⁹ "Cambodia's Accession to the WTO: Lessons Learned", wto.org, https://www.wto.org/english/thewto_e/acc_e/s4pan_e.pdf

⁴⁰ "Cambodia and the WTO", wto.org, https://www.wto.org/english/thewto_e/countries_e/cambodia_e.htm

from UNCTAD.⁴¹ Cambodia then engaged in the legal reforms necessary to bring its laws and regulations into compliance with WTO rules.⁴² Cambodia knew how membership could improve its major industries (e.g., textiles, clothing, and tourism), so its negotiation strategies were based on maximizing those interests.⁴³ Cambodia sought to ensure that its bound tariff rates were significantly above its applied tariff rates, due to its need to balance its legal obligations against its desire for flexibility in managing import duties, since after accession it would be unable to use any trade remedies without notification to the WTO.⁴⁴ With limited ability to use trade remedies, in the event of harm from foreign trade, Cambodia could still adjust its applied rates, since it negotiated a much higher bound rate.⁴⁵ This is an important strategy for other negotiating LDCs to take note of and follow, as they may find themselves in a similar situation to Cambodia. Retaining the ability to meaningfully increase applied tariff rates without coming up against a bound rate ceiling is an important tool for an LDC transitioning into the WTO. One other notable Cambodian accomplishment, which may guide acceding LDCs, enabled Cambodia to phase-in the implementation of the main WTO agreements: TRIPS until 2007, TBT until 2007, SPS until 2008, and the last agreement, Agreement on Customs Valuation, going into effect on January 1, 2009.⁴⁶

GEORGIA

The significant time and effort Georgia spent preparing for accession paid off with a remarkably fast finish of 4-years.⁴⁷ Georgia applied for WTO membership on July 3, 1996 and acceded on June 14, 2000.⁴⁸ Georgia's starting point as a former member of the Soviet Union did not set an easy stage for accession. Centrally planned systems operate in a way fundamentally at odds with the market-oriented, rules-based system demanded by the WTO. The economic chaos and a breakdown of trade flows that

⁴¹ The United Nations Conference on Trade and Development (“UNCTAD”) supports developing countries to access the benefits of a globalized economy more fairly and effectively. And we help equip them to deal with the potential drawbacks of greater economic integration. To do this, we provide analysis, facilitate consensus-building, and offer technical assistance. This helps them to use trade, investment, finance, and technology as vehicles for inclusive and sustainable development.” “United Nations Conference on Trade and Development”, [unctad.org](https://unctad.org/en/Pages/aboutus.aspx), <https://unctad.org/en/Pages/aboutus.aspx>

⁴² Cheng, Fuzhi. “Cambodia's WTO Accession.” *Cornell Ecommons*, Cornell University, ecommons.cornell.edu/bitstream/handle/1813/55725/9-3.pdf?sequence=1&isAllowed=y.

⁴³ Simon J. Evenett, “WTO Accession: Lessons from Experience,” The World Bank Group, 2005; at: <http://documents.worldbank.org/curated/en/831891468330043210/pdf/331270TradeNote22.pdf>

⁴⁴ “Cambodia’s Accession to the WTO: Lessons Learned”, [wto.org](https://www.wto.org/english/thewto_e/acc_e/s4pan_e.pdf), https://www.wto.org/english/thewto_e/acc_e/s4pan_e.pdf

⁴⁵ “Cambodia’s Accession to the WTO: Lessons Learned”, [wto.org](https://www.wto.org/english/thewto_e/acc_e/s4pan_e.pdf), https://www.wto.org/english/thewto_e/acc_e/s4pan_e.pdf

⁴⁶ Cheng, Fuzhi. “Cambodia's WTO Accession.” *Cornell Ecommons*, Cornell University, ecommons.cornell.edu/bitstream/handle/1813/55725/9-3.pdf?sequence=1&isAllowed=y (Cambodia was granted four transition periods, delaying implementation of TRIPS [excluding pharmaceuticals and agricultural chemicals) until January 1, 2007; the Agreement on Technical Barriers to Trade (TBT) (product standards and technical regulations ensuring the safety of products) until January 1, 2007; the Agreement on Sanitary and Phyto- sanitary Measures (SPS) (measures to protect the health of people, plants, and animals) until January 1, 2008; and the Agreement on Customs Valuation until January 1, 2009.)

⁴⁷ WTO Accessions 2016: Annual Report by the Director-General’ December 2016, WT/ACC/28, Annex 4. The shortest negotiations lasted 2 years and 10 months (Kyrgyz Republic), whereas the accession of some of the largest nations took much longer, including 19 years and 2 months for the Russian Federation and 15 years and 5 months for China, which formally joined in December 2001 during the Ministerial Conference at Doha.

⁴⁸ “Georgia Joins the WTO”, [wto.org](https://www.wto.org/english/news_e/pres00_e/pr182_e.htm), https://www.wto.org/english/news_e/pres00_e/pr182_e.htm

followed the collapse of the Soviet bloc had forced countries like Georgia to reintegrate into the global economy, making joining the WTO a crucial goal for Georgia and other transitioning economies.⁴⁹

To prepare, Georgia's negotiating team spent considerable time and effort to understand the accession process and lay the internal groundwork for an efficient and rapid accession negotiation. , , intergovernmental consultations The negotiating team carefully identified and engaged important stakeholders prior to the official launching of its accession process including extensive interdepartmental and intergovernmental consultations.⁵⁰ Hundreds of legislative texts and changes to existing laws and regulations were introduced in anticipation of WTO's membership. A competent negotiating team was formed and trained. It had many interactions with the Parliament. Training and capacity building of the officials responsible for the implementation of the WTO agreements was organized.

This strategic effort allowed Georgia to proceed through the process with crucial domestic support as it designed major structural reforms, integrated into the world economy, and aligned its obligations under other international agreements. For Georgia, bringing domestic legislation in line with international norms and standards was a major driving force behind accession.⁵¹ After the collapse of the Soviet Union and the end of the Cold War, Georgia began a program of accelerating domestic reform that would produce more efficient allocation of its economic resources. During negotiations, Georgia focused on the objectives of trade liberalization, market opening and ensuring transparency as it was determined to transition its economy and abide by the market-based principles.⁵²

JORDAN

After six plus years of negotiations, Jordan, part of the Arab League⁵³, acceded to the WTO on April 11, 2000.⁵⁴ Jordan preceded its accession with wide-ranging reforms to existing laws and most aspects of trade. Jordan implemented WTO commitments, including the reduction of nearly all tariff lines, while also entering into a number of free trade agreements with its major trading partners, including the European Union (Jordan- EU Association Agreement); United States (JUSFTA (Jordan-US Free Trade Agreement)); and its Arab League partners GAFTA (Greater Arab Free Trade Agreement); Tunisia,

⁴⁹G. Arveladze and M. Smeets, "GEORGIA'S POST-ACCESSION STRUCTURAL REFORM CHALLENGES",6 World Trade Organization, <https://www.econstor.eu/bitstream/10419/162738/1/89108519X.pdf>

⁵⁰ G. Arveladze and M Smeets, "Georgia's Post-Accession Structural Reform Challenges," WTO Economics and Statistics Research Division, May 2017; at: https://www.wto.org/english/res_e/reser_e/ersd201710_e.pdf

⁵¹G. Arveladze and M. Smeets, "GEORGIA'S POST-ACCESSION STRUCTURAL REFORM CHALLENGES",6 World Trade Organization, <https://www.econstor.eu/bitstream/10419/162738/1/89108519X.pdf>

⁵²G. Arveladze and M. Smeets, "GEORGIA'S POST-ACCESSION STRUCTURAL REFORM CHALLENGES",6 World Trade Organization, <https://www.econstor.eu/bitstream/10419/162738/1/89108519X.pdf>

⁵³ "Arab Countries 2019", <http://worldpopulationreview.com/countries/arab-countries/> (The Arab countries of the world is often referred to as the Arab world, Arab nation, Arab states, or the Arab homeland. This group of nations are made up of 22 Arab countries, which are part of the Arab League that was created to unify the Arab nations politically and to represent the interests of the people of the Arab nations, who are located in Africa and Asia. Combined, the Arab nations occupy 5 million square mile. The total population of these nations is 423 million.)

⁵⁴"Jordan becomes 136th member of the WTO", wto.org, https://www.wto.org/english/news_e/pres00_e/pr174_e.htm

Morocco and Egypt (Agadir Agreement); the EFTA countries (Jordan-EFTA Free Trade Agreement); and Singapore (Jordan- Singapore Free Trade Agreement).⁵⁵

Like with Cambodia and Georgia, these preparations materially benefited Jordan during accession negotiations.⁵⁶ By having already created a fair and secure national framework with a developing private sector, Jordan made itself an appealing applicant, something strongly encouraged by the WTO⁵⁷ and which can be emulated by other countries attempting accession.

Something that also stands out from Jordan's accession is its development of a technology sector. This achievement both strengthened Jordan's economy and reformed its private sector. Reform was crucial to accommodate Intellectual Property Rights ("IPR"), something WTO applicant countries, especially LDCs, struggle to accomplish.⁵⁸

Looking at Jordan's accession, acceding countries are advised to market their strongest industries.⁵⁹ In this regard, both Iraq and the United Arab Emirates emulated laws implemented by Jordan for accession, which likely strengthened their own candidacies.⁶⁰

SUDAN

The United States has demonstrated a history of supporting an accelerated accession process to Arab countries that aligned with U.S. political interests.⁶¹ In particular, the United States strategically tends to support Arab countries that they deem peaceful.⁶² Understanding this, Middle-East and Northern African (MENA) countries, such as Sudan, have a distinct incentive in bilateral negotiations with the United States to highlight as persuasively as possible that the country is peaceful and that it will become more so as it becomes more socially, politically, and economically developed by becoming a member of the WTO.

The WTO as a whole, and the United States in particular, seem to have taken a greater interest in applicant countries that have a large petroleum/oil export industry. Since South Sudan seceded in 2011, Sudan has seen a significant drop in its oil exporting industry and a significant increase in regional instability, violence, and political unrest. see graph 1.0).⁶³ In negotiations with key WTO members such as the United States and the EU, any evidence that can be presented to support a narrative of Sudan's continued political, economic, and social development and peace efforts that will result in a healthier

⁵⁵ Saqfahait, Nahil, "JORDAN WTO ACCESSION: A QUANTITATIVE INVESTIGATION AND ESTIMATION OF A GRAVITY MODEL 1994-2009", Vol. 12-2, Applied Econometrics and International Development, p. 181(2012)

<http://www.usc.es/economet/journals1/aeid/aeid12213.pdf>

⁵⁶ Karla J. Cunningham. "Factors Influencing Jordan's Information Revolution: Implications for Democracy." *Middle East Journal*, vol. 56, no. 2, 2002, pp. 240–256. *JSTOR*, www.jstor.org/stable/4329753.

⁵⁷ Karla J. Cunningham. "Factors Influencing Jordan's Information Revolution: Implications for Democracy." *Middle East Journal*, vol. 56, no. 2, 2002, pp. 240–256. *JSTOR*, www.jstor.org/stable/4329753.

⁵⁸ "Current issues in intellectual property", wto.org, https://www.wto.org/english/tratop_e/trips_e/trips_issues_e.htm

⁵⁹ Karla J. Cunningham. "Factors Influencing Jordan's Information Revolution: Implications for Democracy." *Middle East Journal*, vol. 56, no. 2, 2002, pp. 240–256. *JSTOR*, www.jstor.org/stable/4329753.

⁶⁰ Malkawi, Bashar H. "Anatomy of the Case of Arab Countries and the WTO." *Arab Law Quarterly*, vol. 20, no. 2, 2006, pp. 110–151. *JSTOR*, www.jstor.org/stable/27650543.

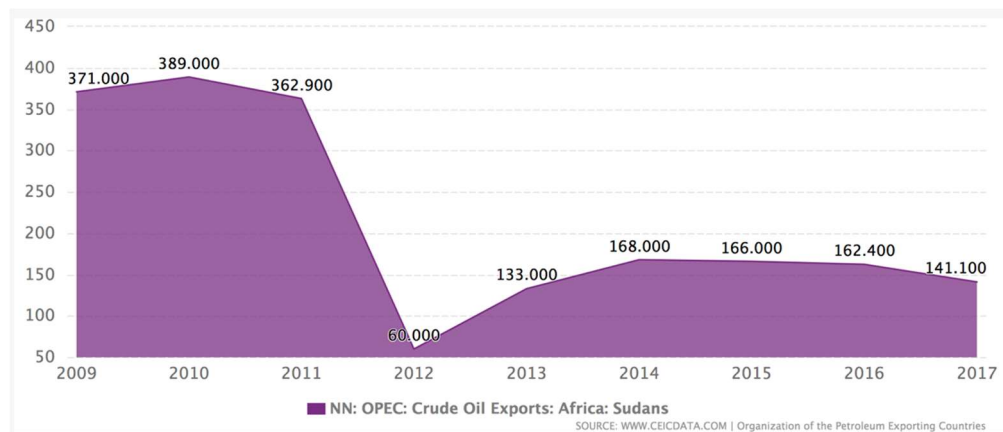
⁶¹ Malkawi, Bashar H. "Anatomy of the Case of Arab Countries and the WTO." *Arab Law Quarterly*, vol. 20, no. 2, 2006, pp. 110–151. *JSTOR*, www.jstor.org/stable/27650543.

⁶² Malkawi, Bashar H. "Anatomy of the Case of Arab Countries and the WTO." *Arab Law Quarterly*, vol. 20, no. 2, 2006, pp. 110–151. *JSTOR*, www.jstor.org/stable/27650543.

⁶³ Malkawi, Bashar H. "Anatomy of the Case of Arab Countries and the WTO." *Arab Law Quarterly*, vol. 20, no. 2, 2006, pp. 110–151. *JSTOR*, www.jstor.org/stable/27650543.

exporting industry will be advantageous.

1. Sudan's Crude Oil: Exports from 2009 to 2017:⁶⁴



Sudan, as a member of the Arab League can also turn to their fellow league members as allies in the WTO negotiation process. The Arab League member nations would benefit from having a greater presence in the WTO because this will increase their influence in establishing future trade regulations and their role in dispute settlement negotiations.⁶⁵ Securing allies in bilateral negotiations has been a key strategy to which WTO applicant countries can consistently turn.⁶⁶

As a final note on Arab countries' WTO accessions, Sudan should be aware that imports deemed forbidden by Muslim Law are often not addressed in the terms of WTO membership.⁶⁷ There is no precedent set for attempting to secure the restriction of these imports, namely alcohol and pork products, in WTO negotiations.⁶⁸ However, once membership is secured, Sudan could turn to GATT article XX(a), the public morality exception, to block undesired imports. Although, Sudan may still face the threat of retaliation from other WTO member countries, but it would be on solid institutional grounds to defend faith-based embargoes on GATT's public morality exception.⁶⁹

WTO'S PRICE OF ADMISSION: AN INVESTMENT IN THE FUTURE

⁶⁴ "Sudan Crude Oil: Exports [2009 - 2019] [Data & Charts]." [2009 - 2019] [Data & Charts], CEIC, www.ceicdata.com/en/indicator/sudan/crude-oil-exports.

⁶⁵ Malkawi, Bashar H. "Anatomy of the Case of Arab Countries and the WTO." *Arab Law Quarterly*, vol. 20, no. 2, 2006, pp. 110–151. *JSTOR*, www.jstor.org/stable/27650543.

⁶⁶ Evenett, Simon J.: *WTO Accession: Lessons from Experience*. The World Bank Group, International Trade Department, 2005.

⁶⁷ Bhala, Raj, and Shannon B. Keating. "Diversity within Unity: Import Laws of Islamic Countries on 'Ḥarām' (Forbidden) Products." *The International Lawyer*, vol. 47, no. 3, 2013, pp. 343–406. *JSTOR*, www.jstor.org/stable/43923964.

⁶⁸ Bhala, Raj, and Shannon B. Keating. "Diversity within Unity: Import Laws of Islamic Countries on 'Ḥarām' (Forbidden) Products." *The International Lawyer*, vol. 47, no. 3, 2013, pp. 343–406. *JSTOR*, www.jstor.org/stable/43923964.

⁶⁹ Bhala, Raj, and Shannon B. Keating. "Diversity within Unity: Import Laws of Islamic Countries on 'Ḥarām' (Forbidden) Products." *The International Lawyer*, vol. 47, no. 3, 2013, pp. 343–406. *JSTOR*, www.jstor.org/stable/43923964.

While the WTO has no clear price associated with accession,⁷⁰ estimated costs for an LDC (Tanzania) to pen necessary laws and implement corresponding enforcement mechanisms to comply with TRIPS in 1996 was \$1.5 million USD.⁷¹ It is also projected that the cost of WTO accession is increasing annually.⁷² In the bilateral negotiation process it is likely that the applicant country will be pressured to adopt costly rules-related commitments, the nation in the accession process should first try to avoid committing to such an agreement. If this is not possible, an applicant's second course of action should be to insist on technical and financial assistance to help off-set the regulation's implementation costs.⁷³

There are real costs to WTO accession. The most direct costs of WTO accession are the institutional requirements for negotiating and even more for implementing agreements, which for small poor countries impose substantial demands on scarce human capital. It is also true that some WTO codes may be counterproductive for developing countries (e.g. the constraints imposed by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) for affordable access to medicines).

THE CONSIDERATION REQUIREMENT: WHAT MUST AN LDC BE WILLING TO GIVE?

LDCs, such as Sudan, will have to consent to increased international intervention to be consistent with the WTO's mission to enforce transparent global trade practices. Acceding nations will be subject to regular mandated notification requirements.⁷⁴ These would be outlined by the individual agreements conceded as a condition for WTO entry.⁷⁵ Entering nations would also submit new legislation, or revisions thereof, to the WTO secretariat, as well as being subject to the regular trade policy review mechanism approximately every six years.⁷⁶ These reviews by a selected group of WTO members will carefully audit the trade regime to assess performance.

Notifications to the WTO secretariat that are key to the agricultural industry (which makes up 39.6% of the Sudan's GDP) will arise under the Agreement on Technical Barriers to Trade (TBT), the Agreement on Sanitary and Phytosanitary Measures (SPS), the Agreement on Agriculture, the Agreement on Trade-Related Aspects of Intellectual Property Rights, and the Agreement on Subsidies and Countervailing Measures.⁷⁷ These policies as related to the Working Party of Sudan would be closely reviewed by the WTO and an assessment will be made as to whether Sudan can reasonably apply these agreements. If Sudan's national legislation contains contrasting policies, it will raise the concern of member countries.⁷⁸

⁷⁰ Simon J. Evenett, "WTO Accession: Lessons from Experience," The World Bank Group, 2005; at: <http://documents.worldbank.org/curated/en/831891468330043210/pdf/331270TradeNote22.pdf>

⁷¹ Mosoti, Victor. "The Legal Implications of Sudan's Accession to the World Trade Organization." *African Affairs*, vol. 103, no. 411, 2004, pp. 269–282. *JSTOR*, www.jstor.org/stable/3518612.

⁷² Simon J. Evenett, "WTO Accession: Lessons from Experience," The World Bank Group, 2005; at: <http://documents.worldbank.org/curated/en/831891468330043210/pdf/331270TradeNote22.pdf>

⁷³ Simon J. Evenett, "WTO Accession: Lessons from Experience," The World Bank Group, 2005; at: <http://documents.worldbank.org/curated/en/831891468330043210/pdf/331270TradeNote22.pdf>

⁷⁴ Mosoti, Victor. "The Legal Implications of Sudan's Accession to the World Trade Organization." *African Affairs*, vol. 103, no. 411, 2004, pp. 269–282. *JSTOR*, www.jstor.org/stable/3518612.

⁷⁵ Mosoti, Victor. "The Legal Implications of Sudan's Accession to the World Trade Organization." *African Affairs*, vol. 103, no. 411, 2004, pp. 269–282. *JSTOR*, www.jstor.org/stable/3518612.

⁷⁶ Mosoti, Victor. "The Legal Implications of Sudan's Accession to the World Trade Organization." *African Affairs*, vol. 103, no. 411, 2004, pp. 269–282. *JSTOR*, www.jstor.org/stable/3518612.

⁷⁷ "The World Factbook: Sudan." *Central Intelligence Agency*, Central Intelligence Agency, 1 Feb. 2018, www.cia.gov/library/publications/the-world-factbook/geos/su.html.

⁷⁸ Mosoti, Victor. "The Legal Implications of Sudan's Accession to the World Trade Organization." *African Affairs*, vol. 103, no. 411, 2004, pp. 269–282. *JSTOR*, www.jstor.org/stable/3518612.

The Agreement on Agriculture has the potential to pose a threat to food security and agricultural industry development in Sudan as an LDC. As a member of the WTO, Sudan might sacrifice its ability to use non-tariff barriers to protect its agricultural industry. Article 4 states that all tariffs must be bound, and Sudan will not be able to protect infant industry growth with this legal tool.⁷⁹ Sudan also falls above the threshold of \$1000 GDP-per-capita that requires the country, regardless of LDC status, to reduce export subsidies to keep a good competitive.⁸⁰

Many of these costs, however, are investments. The reduced sovereignty in the area of trade policy formation is a minor consideration if WTO rules help to generate “best practices” in a more market-oriented, open economy. The shift from tariffs as a source of government revenue is desirable under almost all imaginable conditions.⁸¹ Although existing WTO members often imposed stricter terms on new members’ tariff bindings than they themselves observe, retaining high tariffs is usually not in the self-interest of small open economies.⁸² The logic behind the multilateral trading system is to generate among as many nations as possible the legal, regulatory and institutional structures that have evolved over time among developing and developed nations and can be said to be the foundation of their economic success. The transaction cost of shifting toward ‘best practices’ can be high, but are believed by existing Members, such as the United States and the EU, as necessary investments. It is the intent of WTO accession. The United States takes these intentions very seriously and believes the ‘costs’ are reasonable investments in the reforms that nations need to make to maximize their development potential, even less developed countries.⁸³

A better strategy than resisting is to embrace the change and seek as much assistance as can be negotiated in the name of trade capacity building. The developed Members of the WTO have shown themselves willing to contribute. For instance, from the outset of U.S. of negotiations with the Central American nations and the Dominican Republic leading to the US-CAFTA/DR Agreement, the United States advocated for assisting the Central American countries. Each Central American country prepared a National Action Plan based on a review of its “trade-related” needs. The Agreement created a permanent Committee on Trade Capacity Building to continue work begun in the negotiation process. Assistance was provided by the United States government through the U.S. Trade and Development Agency, Agency for International Development, and the Department of State, among others. Private groups (corporate and non-government organizations—NGOs) and five international organizations (the Inter-American Development Bank—IDB, Central American Bank for Economic Integration—CABEI, United Nations Economic Commission on Latin America and the Caribbean—ECLAC, Organization of American States—OAS, and the World Bank) coordinated aid with the U.S. government assistance, including \$20

⁷⁹ Mosoti, Victor. “The Legal Implications of Sudan's Accession to the World Trade Organization.” *African Affairs*, vol. 103, no. 411, 2004, pp. 269–282. *JSTOR*, www.jstor.org/stable/3518612.

⁸⁰ Mosoti, Victor. “The Legal Implications of Sudan's Accession to the World Trade Organization.” *African Affairs*, vol. 103, no. 411, 2004, pp. 269–282. *JSTOR*, www.jstor.org/stable/3518612.

⁸¹ Richard Pomfret, “Lessons from Kyrgyzstan’s WTO Experience for Kazakhstan, Tajikistan and Uzbekistan, Background note,” SPECA/PWG-Trade/2007/EN/6, June 2007. For poor countries with limited administrative capacity and hence limited ability to substitute other revenue sources for tariffs, the first-best outcome would be for the international community to support capacity building.

⁸² Acceding transition countries have been expected to offer an average bound tariff on industrial imports of 10 per cent, which is double the OECD average but well below that of many existing WTO members, e.g. India’s average bound rate of 34 per cent. Langhammer and Lücke, “WTO accession issues,” *World Economy*, Dec 2002.

⁸³ U.S. negotiators generally make this perception clear to trading partners. Interview with USTR official, March 2019.

million for labor and environmental technical assistance in the FY2005 budget. The Bush Administration made promises to keep assistance in the budget for several years.⁸⁴

Most developed nations in the WTO are committed to helping less developed Members and aspiring Members. The key for accession negotiations is to leverage this interest to get as much trade capacity assistance as possible to support the changes that these very same Members are likely to be requiring for entry. In addition to negotiating substantial financial support to implement the institutional, regulatory and judicial requirements of accession “[s]hrewd officials from applicant countries,” Evenett points out, “have also sought to optimize the value of any technical assistance received. Playing a full role in drafting the terms of reference for international consultants is important and so is participating in the selection process for such consultants. Ensuring the workshops and consultant visits are tailored to country-specific circumstances and involve follow up is also important. Picking the right officials to attend workshops and promoting the learning of official WTO languages contributes positively as well. In short, making the most of WTO accession requires making the most of technical assistance offered to applicants.”⁸⁵

MEETING THE DEMANDS OF THE GATEKEEPERS: THE UNCOMPROMISING AGENDA OF THE WTO’S MAJOR PLAYERS

Judging from the past, the 22 nations looking to accede to the WTO will face their highest hurdles from conditions imposed by the “major players” during negotiations. These days, those demands will come from the U.S. the European Union (EU) and India. In order for a developing country or LDC to successfully navigate the procedure, it should prepare to reconcile its needs and realities with the demands of these players. For the EU and the U.S., requests will be made for reduced trade barriers, fairness in procurement policies, IPR and access to service sectors. Countries negotiating with India, should expect discussions, instead, to center around a standard framework based on India’s strategy towards advancing its own economy.

Below are synopses of recent FTA negotiations by the U.S., the EU and India. These demonstrate each country’s commitment to free trade and their main considerations during recent negotiations, information which should prove valuable to countries in the process of accession.

UNITED STATES TRADE AGENDA

The Trans-Pacific Partnership (TPP) Agreement

The TPP, a multi-national trade agreement between 12 states in the Asia-Pacific region⁸⁶, perhaps best captures America’s trade agenda, at least up to the Trump Administration. It can be said with some confidence, however, looking at the USMCA, that the principles negotiated into the TPP with only a few exceptions such as autos and steel, still hold true. TPP was aimed at developing a fully integrated rules-based economic area. It was an ambitious plan to reduce trade barriers and to establish consistent rules for global investment, dispute resolution, standards-setting, subsidies, and enforcement of intellectual

⁸⁴ J. F. Hornbeck, “The U.S.-Central America Free Trade Agreement (CAFTA): Challenges for Sub-Regional Integration,” CRS Report, April 25, 2003; at:

https://www.everycrsreport.com/reports/RL31870.html#_Toc219185233

⁸⁵ Simon J. Evenett, “WTO Accession: Lessons from Experience,” The World Bank Group, 2005; at:

<http://documents.worldbank.org/curated/en/831891468330043210/pdf/331270TradeNote22.pdf>

⁸⁶ U.S., Japan, Australia, Peru, Malaysia, Vietnam, New Zealand, Chile, Singapore, Canada, Mexico, and Brunei DarU.S.salam.

property rights.⁸⁷ When the pact was signed in early 2016, the goal for the United States was that “the United States—and not countries like China—[would be]... the one writing this century’s rules for the world’s economy.”⁸⁸

Unlike traditional trade pacts, the TPP did not exempt poorer countries from most obligations through special provisions for LDCs. The logic behind this policy shift was that the more LDCs get a ‘free pass’ from committing to vital domestic economic reforms, the more difficult it will be for those LDCs to vie for foreign investment, a critical component of economic development.⁸⁹

The TPP required the quick elimination of most tariffs with very few exceptions. Nearly all tariffs on autos and clothing were eliminated after a decade. Substantial cuts were made in farm trade barriers and tariffs as well as sanitary and phytosanitary standards. For a narrow range of products, the TPP allowed partial liberalization through expanded tariff rate quotas. In acknowledgement of political realities, sensitive farm products like rice, sugar and dairy remained substantially in place; U.S. sugar and U.S. and Canadian dairy restrictions were also mostly untouched. But no farm products were fully released from TPP reform.⁹⁰

The TPP did more than grant preferential access to member countries. In order to achieve competitive neutrality among public and private enterprises in the domestic market, new rule-making obligations constrained the use of industrial policy measures in order to discriminate against foreign suppliers and investors, including via government procurement preferences, as well as subsidies and other policies favoring SOEs.⁹¹

The TPP also contained important, albeit controversial (even inside the United States), provisions on IP regulations.⁹² The pact's extensive provisions on IP, including patent enforcement, expanded copyright terms, and protections for technology and trade secrets. This included hotly disputed protections for prescription drugs, which contained a new class of medications known as biologics.⁹³

The TPP contained the most substantive chapter on trade-related environmental issues of any trade agreement. Among its key provisions, was a ban on certain fish subsidies.⁹⁴

In addition, the TPP included more explicit rules on labor practices than prior FTAs.⁹⁵ The TPP committed members to permit workers to establish unions, prevent forced and child labor, boost workplace conditions, and strengthen environmental protections.⁹⁶

TPP members committed to ‘avoid persistent exchange rate misalignments’ and ‘refrain from competitive devaluation’. Each country agreed to disclose foreign exchange reserves and interventions in spot and forward currency markets.⁹⁷ With respect to e-commerce, the TPP would have been the first regional deal to incorporate comprehensive rules on digital commerce, ensure the free flow of information across

⁸⁷ Jeffrey J. Schott, “The TPP: Origins and outcomes”, Chapter 34 in Handbook of International Trade Agreements: Country, regional and global approaches (edited by Robert E. Looney, London: Routledge, 2018) [pile.com](#) 401, 401.

⁸⁸ James McBride and Andrew Chatzky, “What Is the Trans-Pacific Partnership (TPP)?”, cfr.org (January 4, 2019) <https://www.cfr.org/backgrounder/what-trans-pacific-partnership-tpp>

⁸⁹ Schott, *supra* note 85 at 403-4.

⁹⁰ Schott, *supra* note 85, at 405-6.

⁹¹ Id. at 407.

⁹² Id. at 407.

⁹³ McBride, *supra* note 86.

⁹⁴ Schott, *supra* note 85, at 407.

⁹⁵ Schott, *supra* note 85, at 408.

⁹⁶ McBride, *supra* note 86.

⁹⁷ Schott, *supra* note 85, at 408.

borders, mandate consumer privacy protections, and ban policies forcing investors to relocate servers and associated facilities to a host country.⁹⁸

In addition, the United States is taking a more adamant stand in its FTAs on restrictions on monopolies, provisions carefully limiting state-owned enterprises, controls on rules governing e-commerce and digital trade, and streamlined regulations designed to assist smaller businesses trading across borders.⁹⁹

Another set of key provisions in TPP, which was fundamental to the extensive support of American business for the Agreement, was often encapsulated under the label ‘regulatory coherence.’ This set of provisions set forth basic principles consistent with practice in the United States as defined by the Administrative Practices Act of 1946.¹⁰⁰ That statute and its various amendments lays out the steps necessary for federal rule-making. Rule-making, both formal and informal, is driven by the dual goals of participation and transparency. The process requires extensive notice and comment; public hearings; clarity of intent in regulations; public access to all evidence, data and other information relevant to the decision; and clear paths to appeal unfavorable decisions. These rule-making requirements are considered fundamental to fair and effective regulatory regimes in developed economies and are highly desirable for Western businesses as they increasingly engage in developing countries. Imposing these practices of good governance on developing countries that did not have them is an extremely attractive objective for industry in developed nations. It made TPP highly popular in American industry. Regulatory coherence is a fundamental objective of any U.S. FTA negotiation. It could be an important objective for any U.S. accession negotiations, especially less developed nations like Sudan where the United States has a clear agenda for reforms and a long record of imposing penalties intended to make those reforms occur.

United States- Colombia Trade Promotion Agreement (TPA or “Agreement”)

The TPA, a comprehensive FTA between the U.S. and Colombia eliminated tariffs and removed barriers to U.S. services in areas including financial services, cable television services and professional services. The Agreement entered into force on May 15, 2012.¹⁰¹ U.S. agricultural commodities benefitted from the Agreement, as more than half of U.S. farm exports to Colombia instantly became duty-free¹⁰². U.S. companies, under the TPA, are assured protection against discriminatory or unlawful treatment in Colombia.¹⁰³

Prior to enactment, the U.S. congressional debate over the TPA centered around issues of violence and human rights in Colombia. Some Congressional members opposed passage of the agreement due to concerns over targeted violence against union members and deficient government efforts to bring perpetrators to justice.¹⁰⁴ As a resolution, Colombia and the U.S. agreed to adopt and maintain, in both law and practice, the fundamental labor rights laid out in the 1998 International Labor Organization

⁹⁸ McBride, *supra* note 86.

⁹⁹ McBride, *supra* note 86.

¹⁰⁰ Administrative Procedure Act (APA) of 1946 (5 U.S.C. § 551 *et seq.*). For a thorough discussion see Curtis W. Copeland, “The Federal Rulemaking Process: An Overview, Congressional Research Service, February 22, 2011.

¹⁰¹ Office of the United States Trade Representative, United States- Colombia Trade Promotion Agreement, ustr.gov, <https://ustr.gov/trade-agreements/free-trade-agreements/colombia-tpa>

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ The U.S.-Colombia Free Trade Agreement: Background and Issues, everyersreport.com (May 1, 2008 -March 28, 2018) <https://www.everyersreport.com/reports/RL34470.html> (last visited March 27, 2019)

(“ILO”) Declaration on Fundamental Principles and Rights to Work.¹⁰⁵ Additionally, both governments agreed to “concrete steps” for tackling the violence against members of the Colombian labor union.¹⁰⁶

With respect to protecting the environment, both parties committed to implementing laws and regulations, as well as other measures aimed at achieving the countries commitments under multilateral environmental agreements.¹⁰⁷ The TPA also contained significant disciplines pertaining to customs administration, trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, e-commerce and intellectual property rights.¹⁰⁸

U.S.-Malaysia Trade Negotiations

One valuable way to decipher U.S.’s negotiating priorities is to examine the breakdown of U.S. talks with Malaysia. Between July 8, 2006 and July 2009, the U.S. and Malaysia held eight rounds of trade negotiations.¹⁰⁹ The scheduled ninth round of talks never transpired, as Malaysia suspended negotiations partly in response to U.S. support for Israeli military operations in Gaza.¹¹⁰

Prior to the collapse of negotiations, one major “sticking point” had been the Malaysian government’s procurement policies, which give preferential treatment to Malaysian-owned companies. Other outstanding provisions concerned intellectual property rights, protection of Malaysia’s agricultural and automotive industry, as well as trade in services.¹¹¹ U.S. exporters demanded a reduction in trade barriers to automobiles and certain agricultural products, provisions for the enforcement of intellectual property rights, and broader access to Malaysia’s service sectors such as financial services, telecommunications, and professional services.¹¹²

While political differences played a role in the fallout, it is significant to note that, in the end, unresolved provisions between the parties concerned intellectual property rights, protection of Malaysia’s agricultural and automotive industry, as well as trade in services. Considering those outstanding provisions in light of the compromises reached in the TPP (which included both the U.S. and Malaysia), as well as the Colombia TPA, it is difficult to imagine the U.S. was willing to compromise on any of the unresolved provisions.

U.S. FTA PRIORITIES

Overall, U.S. demands of trading partners entering into FTAs include reduced trade barriers on automobiles and agricultural products, non-discriminatory opportunities to compete for government procurement, enforcement of intellectual property rights, access to domestic service sectors including

¹⁰⁵Office of the United States Trade Representative, *supra* note 99 (Under the TPA both parties agreed to effectively enforce – and not waive – labor laws related to fundamental labor rights.); Fundamental Principles and Rights at Work Branch (FUNDAMENTALS), ilo.org, <https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/governance/fprw/lang--en/index.htm> (last visited March 27, 2019)

¹⁰⁶Office of the United States Trade Representative, *supra* note 99.

¹⁰⁷*Id.*

¹⁰⁸*Id.*

¹⁰⁹Michael Martin, The Proposed U.S.-Malaysia Free-Trade Agreement, Congressional Research Service (January 26, 2009)

¹¹⁰ The Proposed U.S.-Malaysia Free Trade Agreement, everycrsreport.com (September 21, 2006 – January 26, 2009) <https://www.everycrsreport.com/reports/RL33445.html>; Stephen Marshall, *Did Israel and Malaysia’s relationships change?*, timesofisrael.com (April 8, 2018) <https://blogs.timesofisrael.com/did-israel-and-malysias-relationships-change/> (last visited March 27, 2018)(Malaysia and Israel do not share diplomatic relations).

¹¹¹ The Proposed U.S.-Malaysia Free Trade Agreement, *supra* note 108.

¹¹² *Id.*

financial services and telecommunications, labor reform where necessary and overall reduction and elimination of customs duties.

EUROPEAN UNION (“EU”) TRADE AGENDA

EU-Vietnam FTA (“EVFTA”)

The EVFTA, negotiated between the EU and Vietnam will knock out more than 99% of tariffs between the countries upon ratification.¹¹³ This agreement takes an asymmetrical approach towards eliminating tariffs. 65% of duties on EU exports to Vietnam will be eliminated upon entry into force and the remainder will be phased out over a 10-year period. EU duties on Vietnamese imports, on the other hand, will be steadily lowered over a 7-year period.¹¹⁴ The parties chose this method in recognition of Vietnam’s status as a developing country.

With respect to sensitive agricultural products, the EU market will not completely open to Vietnamese imports; and quotas will limit the quantity that can enter duty-free.¹¹⁵ After the EVFTA is signed, however, Vietnam will become one of the leading exporters of agricultural products to the EU market. Vietnamese agricultural products will also have more advantages compared to other states since, within 7 years, duties on Vietnamese agricultural products imported to the EU will be 0%.¹¹⁶

The agreement also addresses non-tariff barriers in the automotive sector, including the recognition of the EU whole vehicle certificate of conformity five years after the EVFTA enters into force.¹¹⁷

With regard to public procurement, EU companies will be able to compete for Vietnamese government contracts (and vice-versa),¹¹⁸ thereby achieving a measure of transparency and procedural fairness similar to other EU trade agreements with developed countries and more advanced developing countries.¹¹⁹ The EU will also be permitted to bid for public contracts with Vietnamese ministries and important state-owned enterprises, as well as the two biggest Vietnamese cities, Hanoi and Ho Chi Minh City.¹²⁰

¹¹³ European Commission, EU-Vietnam Trade Agreement - memo, (October 17, 2018) <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1922> (last visited March 28, 2019) (The EVFTA, negotiated between 2012 and December 2015, will also partially remove remaining Tariff Rate Quotas (TRQs). A TRQ is an import quota that permits a limited quantity of specific merchandise into a country (or withdrawal of already imported merchandise from a bonded warehouse) for consumption at a reduced duty rate during a specified period.)

¹¹⁴ Id.

¹¹⁵ Id.

¹¹⁶ *EVFTA gives advantages to Vietnamese agricultural products*, [agroberichtenbuitenland.nl](https://www.agroberichtenbuitenland.nl) (AugU.S.t 23, 2018) <https://www.agroberichtenbuitenland.nl/actueel/nieuws/2018/08/23/evfta-gives-advantages-to-vietnamese-agricultural-products>

¹¹⁷ European Commission, EU-Vietnam Trade Agreement, *supra* note 111.

¹¹⁸ EU-VIETNAM FREE TRADE AGREEMENT (EVFTA), Legislative Train Schedule: A Balanced and Progressive Trade Policy to Harness Globalization, <http://www.europarl.europa.eu/legislative-train/theme-a-balanced-and-progressive-trade-policy-to-harness-globalisation/file-eu-vietnam-fta> (last visited March 28, 2019) Duane Morris Vietnam, Vietnam, *EU-Vietnam Free Trade Agreement and investment protection agreement - market access for goods and services - what you must know*: (February 25, 2019) <https://www.lexology.com/library/detail.aspx?g=816b2e88-f6d8-467a-b17d-d3b47bbc3394> (last visited March 30, 2019) (The FTA commitments on Government procurement mainly deal with the requirement to treat EU bidders, or domestic bidders with EU investment capital, equally with Vietnamese bidders when the Government purchases goods or requests a service worth over the specified threshold).

¹¹⁹ European Commission, EU-Vietnam Trade Agreement, *supra* note 111.

¹²⁰ Id.

In addition, the parties agreed to comprehensive provisions on trade and sustainable development.¹²¹ This includes implementing the core labor standards and the Conventions of the ILO as well as Multilateral Environmental Agreements that have been ratified by EU and Vietnam¹²².

For the EVFTA, Vietnam committed to a high level of intellectual property protection, beyond the standards of the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement. Additionally, EU artwork, brands, innovations and 169 European delicacies will be better protected against unlawfully copying, including through stronger enforcement provisions.¹²³ The EU pharmaceutical sector will also benefit from improved protections. Vietnam made formidable commitments to procuring pharmaceutical products; and committed to marked improvements for EU companies looking to access a broad range of services sectors, including: business, telecommunications, environmental, transportation and banking.¹²⁴

EU-Malaysia Trade Negotiations

EU and Malaysia formally launched negotiations towards a FTA (the “MEUFTA”) on October 5, 2010. After eight rounds of talks, the parties exhausted their negotiating options and reached an impasse.¹²⁵

For its part, the EU, who could exploit its stronger bargaining power in a bilateral setting, demanded (i) a large liberalization of the service sector; (ii) removal of caps on foreign equity holdings; (iii) clear directives for government procurement; and (iv) protection of intellectual property rights.¹²⁶ Malaysia rejected several of the EU demands, pushing, instead, for their own concessions and exceptions, which were more reflective of the parties disparate levels of development.¹²⁷ Eventually, the combination, of their disparities, Malaysia’s 2013 elections and the parallel rise of the U.S.-driven TPP negotiations caused a breakdown of the MEUFTA negotiations.¹²⁸ The Malaysian cabinet then shifted its efforts towards the TPP, where the demands for liberalization were less severe than those sought by Brussels.¹²⁹

¹²¹ Id.

¹²² Id.(The parties effectively implemented international environmental agreements, including the Paris Agreement and agreed to promote democracy and respect for human rights).

¹²³ Id.

¹²⁴ Id.

¹²⁵ Giuseppe Spatafora, *EU-Malaysia Trade Talks: No End in Sight*, iai.it, <https://www.iai.it/en/pubblicazioni/eu-malaysia-trade-talks-no-end-sight> (last visited March 28, 2019)(negotiations proceeded between December 2010 and September 2012)

¹²⁶ Id. (The EU was following “the deep-trade agenda announced in the Global Europe communication (2006)”); Billy A. Melo Araujo, SETTING THE RULES OF THE GAME: THE RISE (AND FALL) OF MEGA-REGIONALS, DEEP INTEGRATION AND THE ROLE OF THE WTO, 21 UCLA J. Int'l L. & For. Aff. 151, 165-6 (Spring 2017) (“The EU position is that, in the absence of any real progress in the Doha Round negotiations, they should look to enter into PTAs promoting ‘deep integration,’ which it defines as “WTO-plus. in terms of width and depth.” Recent studies of PTAs concluded by both the European Union and the United States confirm that they typically include the new deep disciplines that were rejected in the Doha Round.”); EUROPEAN COMMISSION, ANNEX TO COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS 1, 19 (2006).

¹²⁷ European Commission, *Global Europe: Competing in the World* (COM/2006/567), 4 October 2016, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52006DC0567>; Billy Alexis Melo Araujo, *The EU Deep Trade Agenda. Law and Policy*, Oxford, Oxford University Press, 2016.

¹²⁸ Spatafora, *supra* note 123.

¹²⁹ Id.(In order to have developing countries like Vietnam, Peru, Chile and Malaysia on board with the TPP, the U.S. needed to allow some concessions.); Firdaos Rosli et al., *National Interest Analysis of Malaysia’s Participation in*

By early 2017, with the TPP gone, or at least significantly altered, contacts between the EU and Malaysia resumed. But, at the same time, the issues that led to a breakdown remained unresolved. And while Malaysia had been focusing its efforts on the TPP, the EU had finalized two FTAs [with Singapore (2015) and Vietnam (2016)].¹³⁰

Malaysia, for its part, adopted a noteworthy policy of liberalization and divestment with its Economic Transformation Program, as well as lifting caps on foreign ownership in almost thirty service sectors, including manufacturing.¹³¹ But European negotiators point out that significant restrictions remain in target sectors, including real estate, telecommunications and financial services. The EU claims that without a significant lifting of Malaysia's restrictions on foreign ownership in these sectors, Brussels's expected gains from the FTA would be negligible.¹³²

EU-Mexico Trade Negotiations

In April 2018, the EU and Mexico reached a trade “agreement in principle” as part of a broader, modernized EU-Mexico Global Agreement.¹³³ The parties determined that eventually 99% of products traded between the two states would be duty free; as well as 98% of goods, including those in the agricultural sector.¹³⁴ Mexico agreed to simplify customs procedures to further benefit EU industries, including in sectors like pharmaceuticals, machinery and transport equipment.¹³⁵ The parties negotiated progressive rules on sustainable development, including a commitment to implement their obligations under the Paris Agreement.¹³⁶ It is also the first EU trade agreement to tackle corruption in the private and

the Trans-Pacific Partnership, Kuala Lumpur, Institute of Strategic and International Studies (ISIS) Malaysia, 2015, http://fta.miti.gov.my/miti-fta/resources/ISIS_The_Grand_Finale.pdf. (The differences in concessions for Malaysia are evident in negotiations regarding Malaysia's government procurement contracts: in the TPP, Putrajaya could secure a high liberalization threshold below which it could maintain its current legislation that favors ethnic Malays. The EU negotiating team, on the other hand, refused the same threshold on the grounds that it would not benefit European small and medium enterprises (SMEs) working in Malaysia and throughout Southeast Asia).

¹³⁰ Spatafora, *supra* note 123. (These two agreements are now viewed by BrU.S.sels as models and benchmarks for further talks with other ASEAN members; and if a less-developed country like Vietnam agreed to a more comprehensive trade agreement than the TPP, which covers government procurement, state-owned enterprises and intellectual property rights, how can Malaysia refuse a similar agreement?).

¹³¹ Christopher Napoli, “The Political Economy of an EU-Malaysia FTA”, in *Journal of Southeast Asian Economies*, Vol. 30, No. 2 (AugU.S.t 2013), p. 213-227.

¹³² Id.

¹³³ European Commission, Policy Information and Services: Mexico, <http://ec.europa.eu/trade/policy/countries-and-regions/countries/mexico/> (last visited March 28, 2019);

¹³⁴ McLarty Associates, *EU-Mexico Trade Agreement Update*, macglobal.com (May 1, 2018) <https://maglobal.com/wp-content/uploads/2018/05/mclarty-update-eu-mexico-trade-agreement-may-2018.pdf> (last visited March 28, 2019) (For the excepted items, which includes dairy and meat exports from both sides, customs duties will be eliminated over a period of time or for a restricted amount, as defined by quota.)

¹³⁵ *EU and Mexico reach new agreement on trade*, European Commission: News Archive (April 21, 2018) <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1830>

¹³⁶ Id.

public sectors.¹³⁷ As with the EVFTA, the EU secured protection for European delicacies;¹³⁸ as well as high level of protection for intellectual property rights.¹³⁹

The trade pact sets lofty standards on labor, safety, environmental and consumer protection. It also fortifies the EU and Mexico's positions on sustainable development and climate change¹⁴⁰ It explicitly references the EU's standard preventative measure, which allows the EU to keep products out of its market if there is no scientific certainty of their safety.¹⁴¹

Importantly, Mexico consented to open up trade in services, including financial services, transportation, e-commerce, and telecommunications. The agreement notably includes the EU's new Investment Court System to ensure transparency and the right of governments to regulate in the public interest. The aim is to also ensure that Mexico and the EU work towards the setting up of a Multilateral Investment Court.¹⁴²

EU-West Africa Economic Partnership Agreement (“EPA”)

The EU EPA with West Africa is a goods and development cooperation with the objective of pursuing sustainable development at all levels of the economic partnership.¹⁴³ The deal weighs in West Africa's favor and takes into account the disparities in development between the two regions. The EU completely opens its market at inception, while West Africa only partially removes import tariffs over a 20-year transition period.¹⁴⁴ It establishes a dedicated development plan, endowed with 6.5 billion EUR to support its implementation through 2019.¹⁴⁵ The EPA also includes the possibility of future negotiations on sustainable development, services, investment and other trade-related issues.¹⁴⁶

In order to protect the trade partners from the potentially harmful effects of trade liberalization and, in the event of an unforeseen surge of imports that threaten local producers, the EU-EPA offers a series of safeguards, including short-term imposition of customs tariffs and quantitative restrictions.¹⁴⁷ The EPA also allows West Africa to take specific measures in case food security is threatened.¹⁴⁸ Similarly, certain export taxes are permitted temporarily to protect emerging industries in West Africa. Significantly, the EPA contains a rendezvous clause, which commits the parties to begin negotiating a comprehensive agreement covering services, capital transfers, competition, investment, copy right and sustainable development.¹⁴⁹

¹³⁷Id.

¹³⁸Id. (These “geographical indications” or “GIs”, such as Champagne or Comté cheese from France, Queijo São Jorge cheese from Portugal, Szegedi szalámi from Hungary, and Magiun de prune Topoloveni plums from Romania. Including these provisions means that EU producers of traditional delicacies are not struggling against copies, and that consumers can buy these products knowing they are buying the real thing.)

¹³⁹Id.

¹⁴⁰Id.

¹⁴¹Id.

¹⁴²Id.

¹⁴³Economic Partnership Agreement with West Africa - Facts and figures, (November 29, 2017) http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152694.pdf (last visited March 29, 2019)

¹⁴⁴Id.

¹⁴⁵Id.

¹⁴⁶Id.

¹⁴⁷Id.

¹⁴⁸Id.

¹⁴⁹*Economic Partnership Agreement with West Africa*, LEGISLATIVE TRAIN SCHEDULE A BALANCED AND PROGRESSIVE TRADE POLICY TO HARNESS GLOBALISATION, <http://www.europarl.europa.eu/legislative->

Debates over the EPA have centered around two crucial issues: (i) the potential disruptive effects of trade liberalization on the industrial and agricultural sectors in West Africa, and (ii) the loss of customs duties, which is a vital source of government revenue for many West African countries.¹⁵⁰

The plan is to put the EPA into practice in a mutually beneficial way. For West Africa, it can expand exports to the EU, spark investment, contribute to developing production capacity, as well as have a favorable effect on employment.¹⁵¹ The EPA will encourage much needed reforms and advance economic and social development. For the EU, the EPA offers new business opportunities and maximizes legal certainty for European investors in the region. It offers the parties effective tools for cooperative trade and the resolution of problems that may arise.¹⁵² However, one of the principal challenges faced by the African countries looking to access the EU market is the EU's strict quality and packaging demands. For example, in 2016, the EU banned 26 Nigerian food products on health and safety grounds. But the EU, under the EPA, sets out to offer financial and technical aid to West African exporters so they can comply with Sanitary and Phytosanitary (SPS) standards, which could potentially remove a major non-tariff barrier to trade.¹⁵³

EU FTA PRIORITIES

The EU negotiating priorities are similar to those of the United States. They focus on protecting intellectual property rights, opening trade markets for services (e.g., financial, telecommunications and transport), lifting restrictions on foreign ownership, transparency and fairness in procurement policies, and reducing or eliminating customs duties. As of late, however, the EU is philosophically more prone to take into account disparities in development while negotiating, as evidenced by the EVFTA and the EU-EPA with West Africa. The EU still focuses on eliminating tariffs but now negotiates terms that favor developing countries in order to avoid any harmful economic effects from liberalization. The United States tends to see trade restrictions and blockages in the domestic market as constraints on economic development that will benefit all when removed.

INDIA'S TRADE AGENDA

India-Africa FTA

India's recent proposal for an FTA in Africa ambitiously aims to enhance and strengthen the parties' economic relationship towards a new global trading order.¹⁵⁴ According to India, a FTA with Africa should benefit Africa first, in order to help increase its share in the global market place. India's plan is for both India and Africa to work together and "take advantage of the new global trading order" so that all

[train/theme-a-balanced-and-progressive-trade-policy-to-harness-globalisation/file-epa-with-west-africa](https://blogs.lse.ac.uk/africaatlse/2018/03/19/eu-africa-trade-relations-why-africa-needs-the-economic-partnership-agreements/) (last visited March 29, 2019)

¹⁵⁰ Id.

¹⁵¹ Id.

¹⁵² Id.

¹⁵³ Dr. Olu Sasan, *EU-Africa trade relations: Why Africa needs the economic partnership agreements*, Firoz Lalji Centre for Africa (March 19, 2018) <https://blogs.lse.ac.uk/africaatlse/2018/03/19/eu-africa-trade-relations-why-africa-needs-the-economic-partnership-agreements/> (last visited March 30, 2019)

¹⁵⁴ *India proposes pact with Africa to enhance bilateral trade*, businessline.com (March 17, 2019) <https://www.thehindubusinessline.com/economy/india-proposes-pact-with-africa-to-enhance-bilateral-trade/article26561227.ece> ("This suggestion came from Suresh Prabhu, Minister for Commerce and Industry and Aviation, during his address at the 14th CII-EXIM Bank Conclave on India Africa Project Partnership in the Capital.") (last visited March 30, 2019).

parties involved can become financially self-reliant and work towards economic freedom. It is India's position that this can be realized through industrialization and job creation.¹⁵⁵

India-Malaysia

The Malaysia-India Comprehensive Economic Cooperation Agreement (MICECA) was signed in February 2011 and entered into force on July 2011.¹⁵⁶ MICECA covers trade in goods and services, investments and movement of natural persons ("MNP").¹⁵⁷

The FTA between India and Malaysia provides Indian professionals, including accountants, engineers and doctors access to the Malaysian marketplace.¹⁵⁸ Under MICECA, both Malaysia and India will steadily reduce or eliminate tariffs on their respective industrial and agricultural products. MICECA provides a framework to further facilitate cross-border investments between the two countries through commitments regarding national treatment as well as provisions protecting investors and investments from expropriation, transfers and subrogation.¹⁵⁹ In facilitating cross-border investments between the two countries, MICECA creates an attractive operating environment for the business communities on both side to increase bilateral trade and investment.¹⁶⁰ India commits to allow Malaysian foreign equity shareholding ranging between 49 to 100% in certain service sub-sectors, including in professional services, healthcare, telecommunications, retail and environmental services.¹⁶¹ For its part, Malaysia pledges to allot Indian foreign equity shareholding in 91 services sub-sectors.¹⁶² MICECA also provides for cooperative economic development in infrastructure, human resources, tourism, science and technology, creative industries, finance and business facilitation.¹⁶³

Similarly, exports of items such as basmati rice, mangoes, eggs, trucks, motorcycles and cotton garments will not be subject to any duty in Malaysia, thereby giving Indian exports a boost.¹⁶⁴ Sensitive sectors like agriculture, fisheries, textiles, chemicals and automobiles are provided with protection from imports without duty or with significant cuts.¹⁶⁵

Singapore-India CECA

In addition to Malaysia, several Asian countries, including Singapore have signed Comprehensive Economic Cooperation Agreements (CECA) with India. These integrated packages of agreements

¹⁵⁵Id. ("This suggestion came from Suresh Prabhu, Minister for Commerce and Industry and Aviation, during his address at the 14th CII-EXIM Bank Conclave on India Africa Project Partnership in the Capital.") (last visited March 30, 2019).

¹⁵⁶ Malaysia's Free Trade Agreements, Malaysia-India, fta.miti.gov.my, <https://fta.miti.gov.my/index.php/pages/view/malaysia-india?mid=44> (last visited March 25, 2019)

¹⁵⁷ Id. (MNP refers to temporary presence of individuals in another country in order to supply services and is one of the four ways through which services can be supplied across international borders).

¹⁵⁸*India-Malaysia FTA takes effect today*, thehindu.com (June 30, 2011) <https://www.thehindu.com/business/Economy/indiamalaysia-fta-takes-effect-today/article2148241.ece> (last visited March 25, 2019)

¹⁵⁹Id.

¹⁶⁰Id.

¹⁶¹Malaysia - India Comprehensive Economic Cooperation Agreement (MICECA), [motive.gov.my](http://www.mtib.gov.my/en/industry/services2/marketing-and-promotion/free-trade-agreement-fta/bilateral/1944-malaysia-india-comprehensive-economic-cooperation-agreement-miceca), <http://www.mtib.gov.my/en/industry/services2/marketing-and-promotion/free-trade-agreement-fta/bilateral/1944-malaysia-india-comprehensive-economic-cooperation-agreement-miceca> (last visited March 30, 2019)

¹⁶²Id.

¹⁶³Id.

¹⁶⁴*India-Malaysia FTA takes effect today*, *supra* note 156.

¹⁶⁵Id.

embracing trade in goods, services, investments and economic co-operations in education, science and technology, air services, and intellectual property provide wide-ranging exemptions and reductions on basic customs duties for products imported from each individual country.¹⁶⁶

The India-Singapore CECA initially entered into force in August 2005. The agreement covered investment and trade in services and slashed import tariffs. But in 2018, the parties decided it was necessary to upgrade the agreement in order for more Singaporean companies to qualify for the lower tariffs and improve access to the Indian market.¹⁶⁷

With the CECA update in place, tariffs on 30 products will be drastically reduced or fully eliminated, matching the rates set under a separate free trade agreement between India and the Association of Southeast Asian Nations (ASEAN), of which Singapore is a member. These revised tariffs apply to a variety of selected sectors, which will improve local exporters' access to the Indian market.¹⁶⁸

INDIA FTA PRIORITIES

Recently, India has adopted a new strategy toward negotiating free trade agreements even as it has engaged in talks with members of the Regional Comprehensive Economic Partnership (“RCEP”), the proposed ASEAN-focused regional free trade area.¹⁶⁹ India's new policy includes appointing two independent agencies that will prepare a template for negotiating FTAs for safeguarding India's main interests.¹⁷⁰ As it currently stands, 65 percent of the state's current demand for electronic products is met by imports. The FTAs currently in place are with production-driven economies, which has resulted in imports of finished products at a cost lower than it would have been to manufacture the same products in India. This reliance on imports, combined with the fact that components of the finished products typically are subject to high import duties, arguably, means that India's FTAs have contributed to the decline in India's manufacturing sector.¹⁷¹ This had led to some doubt whether past FTAs have worked in favor of India. What has proved true is that imports have increased much more than exports.¹⁷² On the other hand, the imports of component parts have benefitted local industries by allowing them to price their products competitively.¹⁷³ Either way, the likely outcome of India's new strategy is that parties negotiating with the state can expect to work from a standard framework during negotiations since India will be set on safeguarding their own interests.

¹⁶⁶ India - Trade Agreements (October 10, 2018) <https://www.export.gov/article?id=India-Trade-Agreements> (last visited March 30, 2019)

¹⁶⁷ *India, Singapore Upgrade Trade Deal, Pledging to Boost Economic Ties*, [ictsd.org](https://www.ictsd.org/bridges-news/bridges/news/india-singapore-upgrade-trade-deal-pledging-to-boost-economic-ties) (June 7, 2018) <https://www.ictsd.org/bridges-news/bridges/news/india-singapore-upgrade-trade-deal-pledging-to-boost-economic-ties> (last visited March 30, 2019)

¹⁶⁸ *Id.*

¹⁶⁹ Atul Ranjan, *India to adopt new approach toward free trade agreements*, [japantimes.co.jp](https://www.japantimes.co.jp) (November 19, 2018) <https://www.japantimes.co.jp/news/2018/11/19/business/india-adopt-new-approach-toward-free-trade-agreements/#.XJ6T8S2ZOu4> (last visited March 30, 2019) Appreciating the government's move to adopt a new strategy aimed at protecting domestic interests, Vinod Sharma, managing director of Deki Electronics Ltd., appreciates the country's new strategy as the industry is not in favor of including consumer electronics in the RCEP. “RCEP is nothing but an FTA with China,” Sharma said during the event, adding that the proposed deal would badly hit local electronics and appliance manufacturers with cheap imports likely to flood the market after the deal is concluded).

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

LDC NEGOTIATING STRATEGIES:

As the many bilateral negotiations between a WTO applicant and existing WTO members are private, there is relatively little concretely known about their exact substance and proceedings.¹⁷⁴ Therefore, the applicant country must prepare for negotiations by identifying early how signing onto binding commitments with member nations aligns with their national priorities.¹⁷⁵

Least developed or developing countries must exercise care in bilateral negotiations. Member nations often make WTO-plus demands,¹⁷⁶ such as joining the Agreement on Government Procurement. This Agreement opens a country to competitive bidding by foreign with constrained authority to regulate.¹⁷⁷ For instance, even though none of the Central American nations are part of the WTO Government Procurement Agreement, the US-CAFTA/DR Agreement grants non-discriminatory rights to U.S. firms to bid on contracts from Central American ministries, agencies, and departments, with the exception of “low-value contracts” and a few other small exceptions. It also calls for procurement procedures to be transparent and fair, including clear advance notices of purchases and effective review. Specific schedules detailing exceptions and limitations were written by each country, covering such diverse issues as the sale of firearms to supplying school lunch programs. In addition, each country provided a list of subnational governments (e.g., states and municipalities) that agree to adhere to the government procurement provisions. The CAFTA/DR Agreement also makes clear that bribery is a criminal offense under the laws of all countries. In general, the provisions are supported by U.S. businesses interested in doing or expanding opportunities in the region.¹⁷⁸

The majority of LDCs acceding to the WTO do not sign on to plurilateral agreements where they can be avoided. Sudan’s status as an LDC can also be beneficial because of the prolonged timelines they are granted to implement certain WTO legislation.

Another benefit to LDC status in the negotiation step of accession is that they are afforded more lenient terms than those typically granted to developing countries. Developing countries should expect an agricultural tariff rate and a non-agricultural goods tariff rate bound below 20% and 10% respectively.¹⁷⁹ However, WTO member countries have a track record of offering better rates to LDCs, which should be leveraged in negotiations. As an LDC, Sudan should be afforded the four major areas of Special and Differential Treatment (SDT) including: “privileged access to the markets or trading partners, particularly the developed countries; the right to restrict imports to a greater degree than developed countries; freedom

¹⁷⁴ Simon J. Evenett, “WTO Accession: Lessons from Experience,” The World Bank Group, 2005; at: <http://documents.worldbank.org/curated/en/831891468330043210/pdf/331270TradeNote22.pdf>.

¹⁷⁵ Simon J. Evenett, “WTO Accession: Lessons from Experience,” The World Bank Group, 2005; at: <http://documents.worldbank.org/curated/en/831891468330043210/pdf/331270TradeNote22.pdf>.

¹⁷⁶ Mosoti, Victor. “The Legal Implications of Sudan's Accession to the World Trade Organization.” *African Affairs*, vol. 103, no. 411, 2004, pp. 269–282. *JSTOR*, www.jstor.org/stable/3518612.

¹⁷⁷ Mosoti, Victor. “The Legal Implications of Sudan's Accession to the World Trade Organization.” *African Affairs*, vol. 103, no. 411, 2004, pp. 269–282. *JSTOR*, www.jstor.org/stable/3518612

¹⁷⁸ J. F. Hornbeck, “The U.S.-Central America Free Trade Agreement (CAFTA): Challenges for Sub-Regional Integration,” CRS Report, April 25, 2003; at: https://www.everycrsreport.com/reports/RL31870.html#_Toc219185233

¹⁷⁹ Simon J. Evenett, “WTO Accession: Lessons from Experience,” The World Bank Group, 2005; at: <http://documents.worldbank.org/curated/en/831891468330043210/pdf/331270TradeNote22.pdf>

to subsidize exports; and flexibility in applying certain WTO rules or the right to postpone applying the rules.”¹⁸⁰

Developing and least developed countries should also note that the WTO is taking into consideration the complaints of recent applicants surrounding the ambiguous cost of accession. Applicant countries are advocating for accession process costs to be commensurate to any given country’s level of development.¹⁸¹ This would be highly beneficial to LDCs moving forward in their negotiations for technical support and favorable membership conditions.

CONCLUSION

Acceding LDCs, such as Sudan, have much to learn from previous successful accessions of other LDCs and developing countries. While many of those negotiations were done privately, much can still be garnered by looking at the evolution of those countries’ procurement policies, tariff schedules and commitments to trade-related aspects of IPR. Concessions in those areas can provide a roadmap for countries seeking to join the WTO, as they highlight the demands of the major WTO players, who serve as the gatekeepers to entry. While a close political or trade relationship with a major player may help speed up the process of accession, an LDC has no reason to expect such ties would excuse it from the same demands (or more) faced by those that have gone before it. There is a free trade threshold for admission and each LDC or developing country seeking admission should expect to satisfy or surpass that margin before the WTO grants its membership.

¹⁸⁰ Cheng, Fuzhi. “Cambodia’s WTO Accession.” *Cornell Ecommon*, Cornell University, ecommons.cornell.edu/bitstream/handle/1813/55725/9-3.pdf?sequence=1&isAllowed=y.

¹⁸¹ Simon J. Evenett, “WTO Accession: Lessons from Experience,” The World Bank Group, 2005; at: <http://documents.worldbank.org/curated/en/831891468330043210/pdf/331270TradeNote22.pdf>