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WTO, an almost 20 years long process”

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I INTRODUCTION

World Trade Organization (referred to as WTO) was established in 1995, and to this day, it represents a negotiating forum for international trade. WTO sets out a wide range of rules that provide certainty and transparency for all actors within the organization. Before its establishment, there were many attempts to institutionalize and govern international trade relations. The WTO originates in the General Agreement on Tariffs and Trade (GATT), established in 1947 to navigate global trade. WTO rules govern nearly all international trade nowadays, which is understandable because the organization has 164 members. Members of the Organization may become any state or separate customs territory that is autonomous in conducting foreign commercial relations. Some members obtained their status through a succession of membership in GATT 1947, which formally preceded the WTO. What is the role of this organization, and how valuable its membership is?

Well-established regulations, principles such as the most favored nation, and national treatment¹ that provide benefits to the members, the dispute settlement system, and better access to the global market attract the remaining part of the world to join this organization. The WTO accession procedure is a complex process that allows a country to become a member of this international organization upon fulfilling certain requirements. WTO Agreement, which is the cover document in its Article XII sets out a general provision on accession without any details on the procedure. The procedure, governed by various WTO agreements and documents, ensures that new members adapt their legislation to the established rules and regulations and make necessary commitments. Ministerial declarations play a crucial role in structuring the accession process. They emphasized the importance of facilitating the integration of Least Developed Countries (LDCs) into the global trading system by pointing out the need for special and differential treatment. The detailed negotiation process is contained in the WTO document- WT/ACC/22 and involves a series of steps that the acceding country must comply with. This procedure consists of the submission of a Memorandum on the Foreign Trade Regime, bilateral negotiations with existing members and working parties to address outstanding issues and the eventual approval of the acceding country's terms of accession. In its substance, the accession process entails a comprehensive review of the acceding country's trade policies and practices. This includes the assessment of numerous fields such as tariff levels, non-tariff barriers, trade in services and intellectual property rights. The purpose of such a review is the certainty that new members will comply with the established rules and be part of a fair and open global trading system.

After the theoretical examination of the process and tackling possible obstacles within it, the second part will show practical insight into the specific accession- of Serbia. The legitimate question is, why Serbia? Serbia's

journey to the WTO is rooted in a historical context of transitioning economies in the Balkans, and Serbia's accession process reflects both its regional and international aspirations. Namely, this country remained among a few European states that are not members of the WTO. It is authentic within the scope of the WTO joining for many other reasons. First of all, since the inception of the WTO in 1995, Serbia ended up in the middle of internal conflicts within former Yugoslavia, which led to the dissolution of that country. Serbia's accession process to the WTO involves multilateral and bilateral negotiations. Within multilateral negotiations, Serbia has engaged with existing WTO members through working parties and discussions on general trade-related issues. Simultaneously, Serbia conducted bilateral negotiations to address specific market access commitments for goods and services. This dual-track approach ensures that Serbia aligns not only with the broad global trade rules but also addresses the individual requests of existing members. Despite significant efforts, Serbia faces obstacles in its accession journey, including the need to amend Law on Genetically Modified Food and close a few bilateral negotiations. Navigating these challenges requires a balance between domestic policy reforms and international commitments. The comparison between Serbia's accession process and its regional counterpart Montenegro shows a range of economic and political factors that influence this procedure. Both countries emerged from the disintegration of Yugoslavia, and while there are similarities in their paths, each has unique challenges and priorities and, consequently, the differing pace of their accession process. Serbia's WTO accession process closely affects its negotiations for European Union (EU) membership. Since the country seeks to harmonize its legal and regulatory frameworks with EU standards, aligning its trade policies with WTO rules becomes imperative. The practical significance of the WTO accession for a small transitional country such as Serbia, is profound. By acceding to WTO, Serbia can attract foreign investment, stimulate domestic industries, and diversify its trade relations. However, Serbia still has a long way to go before becoming a WTO member. It has been almost 20 years since Serbia submitted its request for accession. Moreover, there is no prediction of the date of this process finalization. The last Working Party meeting was in 2013, and since then, no detectable progress in Serbia's negotiations. Why does the process take so long, what factors affect it, and is it all worth it? Do negotiations ending depend only on the acceding government and its ability and sources to completely adapt legislation following the WTO regulations?

In the subsequent sections of this thesis, the intention is to analyze more profoundly the complex path of Serbia's WTO accession process, tackling the challenges, successes, and remained issues throughout its two-decade-long effort. Examination of the historical context, the multilateral and bilateral negotiations will tackle the obstacles that have shaped Serbia's path. Another aspect will be the correlation between Serbia's WTO accession and parallel negotiations to become an EU member, highlighting the mutual connection between these two procedures. Furthermore, it will show the practical significance of WTO membership for Serbia's

economic development, access to new trade partners, and global integration. This thesis aims to provide an insightful analysis of Serbia's prolonged WTO accession and, more importantly, practical guidelines for countries embarking on similar journeys. By assessing the factors influencing the duration of the process and evaluating the effects of internal and external elements, this thesis will hopefully provide a comprehensive study of the challenges and benefits incorporated into WTO membership and its procedure to become one.

This study examines the complexities of Serbia's exhausting attempts to join the WTO, considering the historical, political, and regulatory obstacles that have defined its accession journey. With a parallel negotiation process with the European Union (EU) and a complicated geopolitical situation, Serbia's path to WTO membership shows the correlation between domestic policies, international regulations, and global aspirations. Examination of Serbia's journey in this research contributes to a better understanding of the challenges and opportunities as integral parts of every State's international integration.

II WORLD TRADE ORGANIZATION

The World Trade Organization is an international organization governing the rules on trade between its members.¹ The idea of establishing the international trade organization was born after the establishment of the International Monetary Fund (IMF) and International Bank for Reconstruction and Development (World Bank) in 1944, bearing in mind that international organization for trade would be the great asset. The first attempt was The General Agreement on Tariffs and Trade (1947 GATT) which was signed by 23 countries, which was conceived as a provisional multilateral agreement for the reduction of tariffs.

Despite many deficiencies of the 1947 GATT as an international organization², it presented the core for 8 rounds of multilateral negotiations: Annecy (1949), Torquay (1950), Geneva (1956), Dillon (1960-61), Kennedy (1962-67), Tokyo (1973-1979) and Uruguay (1986-94).

The relevance of the Uruguay Round is, among others, the creation of the World Trade Organization. The necessity for establishing an organization emerged through the years because of the new agreements which required better institutional structure and mechanisms. Although the negotiations on constituting the

¹World Trade Organization: https://www.wto.org/english/thewto_e/thewto_e.htm[accessed 30 May 2023].

² see details on deficiencies of the GATT: John H. Jackson, 'Designing and Implementing Effective Dispute Settlement Procedures: WTO Dispute Settlement, Appraisal and Prospects' in Anne O. Krueger, ed., *The WTO as an International Organization* (Chicago: Chicago University Press, 1998) 161, 163.

organization during the Uruguay Round had ebb and flow for many reasons, The Agreement Establishing the World Trade Organization (The WTO Agreement) was eventually signed in 1994 in Marrakesh, entering into force on 1 January 1995.³ Multilateral agreements are annexed to the Agreement on Establishing the WTO and have a binding nature to all members together with the WTO Agreement (Annexes I, II, III). Annex IV of the Agreement is dedicated to plurilateral agreements, which are binding only for those members that have explicitly accepted them.⁴ Annex 1A regulates trade in goods through 13 multilateral agreements, including the General Agreement on Tariffs and Trade (GATT 1994) which replaced the GATT 1947.⁵

Article III of the WTO Agreement defines its core functions. Article III, para. 1 provides a broad definition of the WTO's functioning: 'facilitate the implementation, administration, and operation as well as to further the objectives' of the Multilateral and Plurilateral Agreements⁶, while paras. 2, 3 and 4 define the exact tasks of the WTO as follows: the forum for negotiating between members, the dispute settlement, administration of the Trade Policy Mechanism and cooperation with International Monetary Fund and World Bank.⁷ Besides these explicitly enumerated functions, there is the sixth one: technical assistance to the developing- country members, which enables them to integrate into the world trading system.⁸

In summary, the WTO today represents an international organization, with legal personality⁹ and legal capacities for achieving the main goal: to open trade for the benefit of everyone. The significance of the international trade organization shows the fact that 98% of the world trade takes place among the WTO members. Since 29 July 2016 the WTO has 164 members¹⁰, while there are 24 ongoing accessions (last update from the Annual Report 2022).¹¹ The main questions addressed in subsequent chapters will be the accession process to the WTO, with a comprehensive analysis of Serbia's negotiating process to access the WTO.

³Van den Bossche, P., & Zdouc, W. (2021). *The Law and Policy of the World Trade Organization: Text, Cases, and Materials* (5th ed.). Cambridge: Cambridge University Press. doi:10.1017/9781108784542, pg. 90-92.

⁴WTO Agreement: Marrakesh Agreement Establishing the World Trade Organization, Apr.15, 1994, 1867 U.N.T.S.154, 33 I.L.M.1144 (1994), [hereinafter Marrakesh Agreement or WTO Agreement], Article II.

⁵ GATT 1994: General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994) [hereinafter GATT 1994], see further details on GATT 1994 in WTO Agreement Art. II:4 and Annex 1A.

⁶ WTO Agreement, Art. III, para.1.

⁷ WTO Agreement, Art. III, paras. 2-5.

⁸Van den Bossche, P., & Zdouc, W. (2021). *The Law and Policy of the World Trade Organization: Text, Cases, and Materials* (5th ed.). Cambridge: Cambridge University Press. doi:10.1017/9781108784542, pg. 96, see further footnote 49: Ministerial Conference, Doha Ministerial Declaration WT/MIN (01)/DEC/1, dated 20 November 2001, para.38.

⁹ WTO Agreement, Art. VIII.

¹⁰World Trade Organization: https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm

¹¹World Trade Organization, World Trade Organization Annual Report 2022 (2022), [accessed 3 August 2023], https://www.wto.org/english/res_e/booksp_e/anrep_e/ar22_e.pdf, pg.42.

III WTO MEMBERSHIP

The WTO currently has 164 members. The WTO Agreement anticipates two possible ways of being a member: original membership and accession. The main precondition for both original and acceding members is to have schedules on goods and services in Accordance with the Decision on the Acceptance of and Accession to the Agreement Establishing the World Trade Organization.¹²

Article XI- Original Membership

WTO Agreement in its Article XI authorized Contracting Parties to the GATT 1947 and European Communities to enter the WTO as original members under certain conditions:

1. Accepting the WTO Agreement and the Multilateral Trade Agreements
2. Making commitments and concessions annexed to both GATT 1994 and GATS¹³

These conditions had to be fulfilled cumulatively, and furthermore, this way of becoming a member was possible only at the time of the WTO Agreement entering into force (1 January 1995) and during the subsequent two-year period.¹⁴ Out of 164 current WTO members, 123 members joined the WTO following prerequisites of the above-mentioned provision.¹⁵

Although the term ‘original membership’ can be misguided, leading to the presumption that two different memberships generate different rights and obligations, that is not the reality. The original membership is used only for the purpose of identifying two separate ways of becoming a WTO member. Note however, that in the process of accession, members sometimes have to undertake ‘WTO- plus obligations’ or ‘WTO-minus rights’¹⁶, which will be discussed later in the terms of accession to the WTO.

¹²World Trade Organization, Decision on the Acceptance of and Accession to the Agreement Establishing the World Trade Organization, 15 April 1994, LT/UR/D-6/1, available at: https://www.wto.org/english/docs_e/legal_e/55-dwto.pdf

¹³WTO Agreement, Article XI, para.1.

¹⁴ Article XIV para.1 of the WTO Agreement.

¹⁵ Exceptionally, Congo became an original WTO Member following expiry of the two-year period by depositing an instrument of acceptance in early 1997 in accordance with the extension of this period by the General Council (WT/L/208).

¹⁶Van den Bossche, P., & Zdouc, W. (2021). *The Law and Policy of the World Trade Organization: Text, Cases, and Materials* (5th ed.). Cambridge: Cambridge University Press. doi:10.1017/9781108784542, pg. 172, see further footnote 240.

Another remark in the scope of Article XI:1 of the WTO Agreement should be made since the status of the European Union as a WTO member may be confusing. Firstly, note that according to the WT/Let/679¹⁷, the European Union (EU) succeeded the European Communities in membership on 1 December 2009. Undeniably, Article XI highlights the membership of the European Communities (EU nowadays) and, on the other hand, EU Member states are also members of the WTO, which can lead to difficulties because of the divided competencies between the EU and its members. Namely, the Treaty on the Functioning of the European Union prescribes Article 3, dealing with exclusive competencies of the EU, and Article 4 contains provisions on shared competencies between the EU and its members.¹⁸ This kind of distribution of competence among them may sometimes affect the field covered by the WTO.

However, within the scope of this paper, it is substantial to understand that both the EU and EU Member States are members of the WTO, and all of them are equally committed to the WTO and have equal rights. In practice, the European Commission is the one that takes action for both the EU and its members, except for budget matters. According to the WTO Financial Regulations, the basis for contribution to the annual budget of the WTO is its share in international trade. Since the EU does not contribute to the budget, but each EU member proportionately to its share in international trade, in the Budget Committee each member State speaks for itself.¹⁹

Article XII- Accession

The idea behind establishing the WTO is to enact rules for the facilitation of world trade and to represent the negotiation forum of trade agreements between States. The prerequisite for this system to become operational is the participation of many trade actors- in the case of the WTO, both States and separate customs territories. The previous subchapter dealt with one possible way of gaining that goal- by allowing the Contracting Parties to the GATT 1947 to join the WTO as original members. Although it represents a convenient solution for the GATT 1947 members, it is insufficient for two reasons. Firstly, there was a two-year time frame within which GATT 1947 Contracting Parties and the EU had to accept conditions from Article XI of the WTO Agreement. The consequence of this solution would be: if they were unable to meet this criterion within the stipulated deadline,

¹⁷World Trade Organization, Notification of Succession - Council of the European Union - General Secretariat - SGS10 9272 - Note Verbale, 19 July 2010, WT/LET/679, available at:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/LET/679.pdf>.

¹⁸European Union, Consolidated version of the Treaty on the Functioning of the European Union, 26 October 2012, OJ L. 326/47-326/390; 26.10.2012, available at: <https://eur-lex.europa.eu/legal-content/EN/TEXT/?uri=celex%3A12012E%2FTXT>, Articles 3 and 4.

¹⁹Van den Bossche, P., & Zdouc, W. (2021). *The Law and Policy of the World Trade Organization: Text, Cases, and Materials* (5th ed.). Cambridge: Cambridge University Press. doi:10.1017/9781108784542, pg. 167.

they lost the opportunity of becoming members. The other drawback of the original membership is the impracticability of the States/ custom territories that were not part of the GATT 1947 to enter the WTO Agreement. Article XII of the WTO Agreement embodies the overcoming of mentioned disadvantages. Namely, it opens the accession process for the other possible members, strengthens the mechanism for widening membership, and leads to greater participation in global trade under the WTO.

The World Trade Organization currently has 164 members²⁰ with the possibility of any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations to access. Article XII of the WTO Agreement therefore sets out essential rules on accession, pointing out who can apply and leaving the specific rules to be agreed between the potential member and WTO in paragraph 1.²¹

A separate customs territory is a territory that possesses full autonomy regarding its external commercial relations and other fields covered by the WTO Agreement. Article XII:1 of the WTO Agreement explicitly states that members of the WTO may be both States and separate customs territories. Presently, three members of the WTO are not states but separate customs territories: Hong Kong (China), Macau (China), and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu, also known as Chinese Taipei.²²

Article XII, paragraph 2 states:

*Decisions on accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO.*²³

One observation should be made regarding this provision: the WTO Agreement in its Article IV para.1 prescribes that each WTO member has a representative in the Ministerial Conference, which shall meet at least once every two years.²⁴ Furthermore, it is stated in Article IV, para. 2 that in periods between the General Council should administer the Ministerial Conference's functions.²⁵ Consequently, the decision-making process is conducted by the Ministerial Conference, but also by the General Council in cases when the Ministerial Conference is absent.

Article XII, para 3. remarks that accession to a Plurilateral Trade Agreement should be conducted in accordance with the rules of such an agreement, which means that paras. 1 and 2 rules accession to the WTO Agreement

²⁰World Trade Organization: https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm

²¹ WTO Agreement, Article XII, para.1.

²²Van den Bossche, P., & Zdouc, W. (2021). *The Law and Policy of the World Trade Organization: Text, Cases, and Materials* (5th ed.). Cambridge: Cambridge University Press. Doi:10.1017/9781108784542, pg. 121.

²³ WTO Agreement, Article XII, para.2.

²⁴ WTO Agreement, Article IV, para.1.

²⁵ WTO Agreement, Article IV, para.2.

and the Multilateral Trade Agreements.²⁶ As it is noted before, Plurilateral Trade Agreements are not automatically binding upon the accession to the WTO, but only for members that categorically accepted them. Therefore, accession to the Plurilateral Agreements is regulated separately, in those agreements.

Overall, the core issue with the accession procedure is the broad definition of Article 12. There is no strict frame of the commitments that future members must undertake. This approach is rooted in the presumption that WTO members have already established a necessary level of obligations, and the acceding government has to offer its proposals in order to meet WTO standards. Consequently, negotiations are a one-way direction since the applicant can fulfill requirements but cannot make any.²⁷

Within the scope of this chapter, it is imperative to mention the possibility for non-member governments to gain observer status before applying for WTO membership. Since this step is not mandatory in the accession process, an increasing number of States/customs territories get involved directly in the negotiations process.²⁸ A potential member of the WTO acquires observer status for five years, within which obliged to start the accession process, except for Holy See. Currently, the WTO has twenty-four observer governments.²⁹ The chapter "Process of Negotiations" will provide further comments on the function and relevance of the observer governments.

Other relevant Articles of the WTO Agreement

Article XVI:

Article XVI:1 of the WTO Agreement specifies that the WTO shall be guided by the decisions, procedures, and customary practices of GATT 1947 unless the Agreement or the Multilateral Trade Agreements determine exceptions.³⁰ In other words, the work of the WTO should follow the well-established practice and rules of the GATT 1947 in cases where the WTO Agreement or the Multilateral Trade Agreements do not provide new solutions or in the absence of relevant provisions. This approach is justified and based on the fact that the WTO represents the successor of the GATT 1947.

²⁶ WTO Agreement, Article XII, para.1.

²⁷ Ivan Marković, How to join the World Trade Organization: Some aspects of the Accession process, *ECONOMIC ANNALS*, Volume LIV, No. 180, January – March 2009, pg.116-132, UDC: 3.33 ISSN: 0013-3264, pg. 122.

²⁸World Trade Organization, & Hussain, A. (2008). The accession process: The procedures and how they have been applied. In *A Handbook on Accession to the WTO: A WTO Secretariat Publication* (World Trade Organization, pp. 24-47). Cambridge: Cambridge University Press. doi:10.1017/CBO9781139162104.006, Chapter IV, pg. 26.

²⁹World Trade Organization. A List of Observer Governments: https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm

³⁰ WTO Agreement, Article XVI, para.1.

Article IX:

Article IX contains a general provision on voting:

"The WTO shall continue the practice of decision-making by consensus followed under GATT 1947.1 Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting..."³¹

On the other hand, as stated before, Article XII of the WTO agreement states that the two-thirds majority of the WTO members should decide positively on the accession of the new member. The co-existence of these two provisions raised concerns about which rule has primacy and under which conditions. Another issue regarding the Article XII solution was the non-appearance of smaller delegations leading to obstacles in achieving a two-thirds majority.³² The General Council agreed and resolved this issue in a statement by the Chairman on Decision-making procedures under Articles IX and XII of the WTO Agreement in November 1995.³³ Namely, in matters of accession and waivers, they adopted the solution from Article IX- decisions based on consensus. Exceptionally, in cases where Members cannot reach consensus or a member requests voting, the applicable provisions on voting are Articles IX and XII.

MINISTERIAL DECLARATIONS AND GUIDELINES FOR LEAST- DEVELOPED COUNTRIES

Ministerial Declarations

The Ministerial Conference is the leading body of the WTO according to Article IV:1 of the WTO Agreement, consisting of representatives of all member states, with the duty to meet at least once every two years. The Ministerial Conference is responsible for making decisions and taking actions to navigate the work of the WTO.³⁴ So far, there have been twelve Ministerial Conferences, and the last one occurred in Geneva in June 2022. Five of these resulted in adopting Ministerial Declarations which, inter alia, dealt with the accession of new members: Singapore (1996), Geneva (1998), Doha (2001), Cancún (2003), and Hong Kong (2005).

Ministerial Declarations represent the report on current work and point out future challenges and goals within the work of the WTO. Each highlighted the significance of the new members' accession and further

³¹ ibid, Article IX.

³²World Trade Organization and Hussain A, "The Basic Rules," *A Handbook on Accession to the WTO: A WTO Secretariat Publication* (Cambridge University Press 2008).

³³World Trade Organization:The General Council Decision,WT/L/93, 24 November 1995, available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/L/93.pdf&Open=True>

³⁴ WTO Agreement, Article IV:1.

globalization of the WTO trading system. Generally, the Ministerial Conference, through its Declarations, welcomed newly accepted members and pointed out progress for ongoing negotiations. The first two Declarations- Singapore and Geneva show the discrepancy between plenty of applications and just a few accessions.³⁵ Ministers keep emphasizing the importance of accelerating the accession process and recalling the duty of potential members to make commitments under the WTO rules. The Doha Ministerial Declaration gave prominence to the least developed countries (LDC) and, as a result, the first two LDC: Cambodia and Nepal, acceded to the WTO. The Cancún Declaration welcomed this enlargement. The Hong Kong Declaration again pointed out the strong commitment to making WTO a global actor and facilitating the accession process.³⁶

The practical relevance of the Ministerial Declarations is limited since they do not establish any concrete rules on accession. Undeniably, they are significant in encouraging States and separate customs territories to accede to the WTO because of their influence since the Ministerial Conference represents the highest body. Furthermore, the Ministerial Conference is responsible for tackling current issues and provides direction for the organization's future work. One example is the WTO Working Programme for LDCs launched as a result of the Doha Ministerial Conference, which eventually led to the Guidelines for the Accession of LDCs.

Guidelines for least- developed countries

The General Council adopted the Guidelines for the Accession of LDCs in December 2002. As mentioned before, the Guidelines embodied the goal of the Doha Ministerial Conference to accelerate the accession of least-developed countries. WTO accepted the United Nations criteria for least-developed countries.³⁷ Currently, 46 countries have the status of LDCs.

³⁵World Trade Organization, Singapore Ministerial Declaration, WT/MIN (96)/DEC, adopted on 13 December 1996, available at: https://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm , para.8;

World Trade Organization, Geneva Ministerial Declaration, adopted on 20 May 1998, available at: https://www.wto.org/english/thewto_e/minist_e/min98_e/min98_e.htm , para. 7.

³⁶World Trade Organization, Doha Ministerial Declaration WT/MIN (01)/DEC/1, adopted on 20 November 2001, available at: https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm , para. 9;

World Trade Organization, Cancún Ministerial Declaration WT/MIN (03)/20, adopted on 14 September 2003, available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN03/20.pdf&Open=True> , para. 2;

World Trade Organization, Hong Kong Ministerial Declaration, WT/MIN (05) DEC, Adopted on 18 December 2005, available at: https://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm , para. 3.59.

³⁷ The UN established 3 criteria for a country to be classified as LDC: <https://www.un.org/ohrlls/content/ldc-category>.

The General Council in the Guidelines decided that:

"Negotiations for the accession of LDCs to the WTO, be facilitated and accelerated through simplified and streamlined accession procedures, with a view to concluding these negotiations as quickly as possible..."³⁸

Besides this general commitment, the Guidelines set out concrete obligations within the market access, WTO rules, process, and trade-related technical assistance and capacity building. In the market access field, the WTO members should consider the LDCs' status in seeking concessions and commitments on trade in goods and services. On the other hand, the LCDs should offer to undertake it according to their capabilities and personal development. The Guidelines highlight that special and differential treatment provided in the WTO Agreement, Multilateral Agreements, and other relevant documents apply to the LDCs from the date of entry into force of their respective Protocols of Accession. Furthermore, it provides transitional periods for LCDs to fulfill their commitments based on their development, financial and trade needs. Regarding the accession process, the Guideline asserts that the good offices of the Director-General and Chairpersons of the LDCs' Accession Working Parties should assist in implementing this decision and continuously make an effort to facilitate this process. Finally, WTO and other relevant multilateral, regional, and bilateral development partners should provide technical assistance and capacity building to include LDCs in the multilateral trading system.³⁹

Overall, the Guidelines serve as a meaningful tool in the accession process of the least developed countries. Considering the goal of the WTO to get as many members as possible on the global level and the lack of capacity of LDCs to negotiate accession, this instrument is practical in accomplishing that intention. The system that helps the most vulnerable countries strengthens its influence among different groups and spreads the WTO trade system globally because it opens the accession process to the countries that might not be able to do it on their own soon.

IV PROCESS OF NEGOTIATIONS

As already explained, Article XII of the WTO Agreement contains a provision governing general rules on accession without a detailed explanation of the procedure. Since the establishment of the WTO, the document WT/ACC/1 named "Accession to the WTO — Procedures for Negotiations under Article XII" from 1995, drafted by the Secretariat, represents the basis for the process of every single accession to the WTO. In

³⁸Accession of least- developed countires, The General Council Decision, 10 December 2009, WT/L/508, 20 January 2003, available at: https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=3772&CurrentCatalogueIdIndex=0&FullTextSearch=.

³⁹ WTO document WT/L/508, paras. 1-4.

formulating these procedures, the Secretariat as core used accession rules from Contracting Parties to the GATT 1947 and Rules on acceding to the GATT 1994. After finishing the draft, there was an intense debate between the Secretariat and interested WTO Members on the nature of these rules. After the discussion, the Secretariat adapted the text according to the recommendations. More importantly, they agreed on the solution that it is not necessary to submit the content to the Ministerial Conference/ General Council or Working Parties but rather to present practical guidelines accession process. WT/ACC/1 contained in Annexes templates which serve acceding members in filling negotiating input to their Accession Working Parties.⁴⁰

Defining this document as a guideline, without additional formalities for adopting it, is practical in different senses. Firstly, since it is not a general policy, it can be adapted according to the needs of the perspective acceding government to some extent. Moreover, its less formal nature enables WTO and its members to change it easier according to the ongoing changes in the trading system and improve it based on accession practice and overcome acknowledged obstacles. Consequently, in August 2014, WT/ACC/22⁴¹ replaced WT/ACC/1. The new document contains amendments considering changes in the practice of accession since the WTO establishment, prepared in the dialogue with WTO Members. Furthermore, it provides updated templates in the Addenda for acceding governments corresponding to the new challenges within the WTO for the perspective subjects:

- WT/ACC/22/Add.1 - Information to be provided on Domestic Support and Export Subsidies in Agriculture.
- WT/ACC/22/Add.2 - Templates for Accession Negotiating Inputs in the areas of SPS, TBT, IPRs and Industrial policy, including subsidies.
- WT/ACC/22/Add.3 - Information on the area of Trade in Services (to be circulated later).⁴²

In general, the accession process is overly complex and involves many steps before the potential Member accedes. For this process to start, the necessary prerequisite is the request for accession made by an interested state/ separate customs territory to the Ministerial Conference/ General Council and their decision on the application and establishment of the Working Party. Afterward, the next stage represents the central one in the negotiation process and consists of a fact-finding procedure, bilateral and multilateral negotiations between

⁴⁰Accession to the WTO — Procedures for Negotiations under Article XII”, WT/ACC/1, 24 March 1995,

To see full document: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/ACC/1.pdf&Open=True> , para.2.

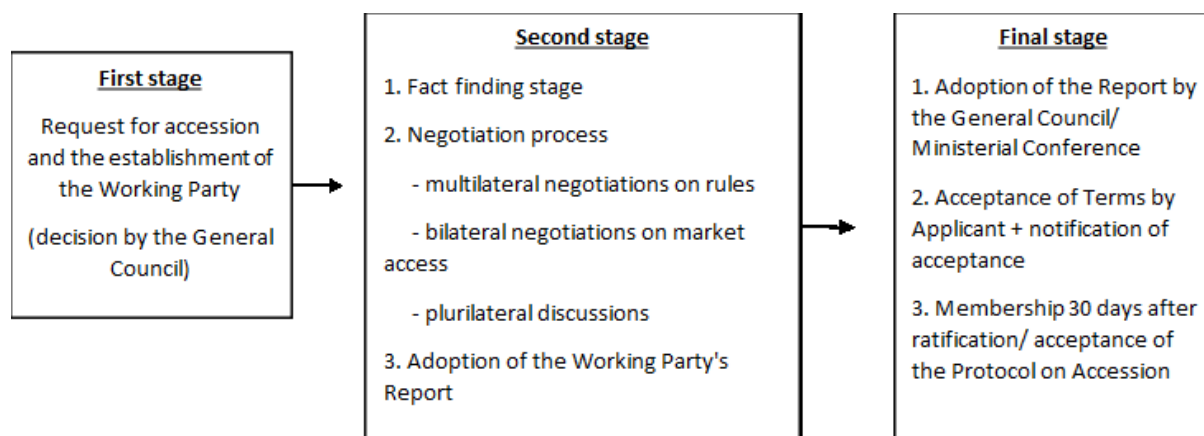
⁴¹Accession to the WTO — Procedures for Negotiations under Article XII”, WT/ACC/22, 1 August 2014, available at:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/ACC/22.pdf&Open=True>, pg.1 and 2.

⁴² World Trade Organization, Accession to the World Trade Organization, Procedures for negotiations under Article XII, Note by Secretariat, Revision, WT/ACC/22/Rev.1, 1 August 2014, available at: https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=126310

WTO members and potential ones. The crown of this phase is the adoption of the Working Party's report, which represents the end of its mandate. Because of the number and diversity of acts and conducts within this phase, some authors divide it into two parts. According to that approach, the second phase serves for the Working Party to check the domestic legislation of a potential member and to conduct bilateral negotiations. While during the third phase, the Working Party concludes the terms of accession in its Working Report, followed by the drafts on accession protocol and trade and good commitments.⁴³ However, from now on, I will stick to the concept of three stages, where the third or final stage serves for the Ministerial Conference/ General Council to adopt the Working Party's Report and for the applicant to accept the terms of accession. In subsequent paragraphs, I will show the scheme of the accession process and discuss each stage more profoundly.

Schematic presentation of the negotiations process:



Source: World Trade Organization website supplemented by the author

I Initiation of the process:

In light of initiating the accession process, the observer status of non-member governments deserves attention. The Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council in its Annex 2 contains guidelines on Observer Status for Governments in the WTO.⁴⁴ The purpose of granting the observer status is for interested governments to better understand the work of the WTO before officially

⁴³Van den Bossche, P., & Zdouc, W. (2021). *The Law and Policy of the World Trade Organization: Text, Cases, and Materials* (5th ed.). Cambridge: Cambridge University Press. doi:10.1017/9781108784542, pg. 126.

⁴⁴The Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council, Annex 2: the Guidelines for Observer Status for Governments in the WTO; WT/L/161,25 July 1996; available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/L/161.pdf&Open=True>

applying for accession. That leads to the conclusion that the WTO will grant observer status to the government intending to become a member soon.

As stated, the interested government may seek observer status before officially applying for the joining, which the General Council/Ministerial Conference will consider on a case-by-case basis. Which body decides in a concrete case depends on the question in which body the perspective government seeks the observer status (General Council or Ministerial Conference). However, if the perspective government obtains observer status for the General Council, it shall be invited to the meetings of the Ministerial Conference automatically.⁴⁵ The initially granted period of observer status is five years, and governments must initiate the accession process within that time frame. In exceptional circumstances, they may ask for the continuance of the observer status.⁴⁶ Another obligation of the observer governments is to contribute annually to the budget of the WTO for the services they use.⁴⁷ On the other hand, the observer governments derive certain rights from their status, concretely to observe formal meetings of the General Council and its subsidiary bodies, with one exception: of the Committee on Budget, Finance, and Administration. Furthermore, they may seek assistance from the Secretariat regarding the accession process or other general mechanisms of the WTO and access the capital WTO documents.⁴⁸

This opportunity may be helpful for the States/ separate customs territories in the light of a better understanding WTO system and gaining additional assistance before they formally apply for accession. It might be an introductory period that shows them how to improve their trade system and set a solid basis for the accession process once started. Nevertheless, the WTO practice shows that the governments willing to join the WTO directly apply for accession rather than obtain observer status first.⁴⁹ One reason might be the length of the accession process and additional costs during the observer status, combined with their wish to access as soon as possible.

However, the initial step for the accession process is informing the Director General of the WTO of the intention to accede to the WTO according to Article XII of the Marrakesh Agreement, made by interested State/ separate customs territory, distributed to all Members. Afterward, the Ministerial Conference/ General Council

⁴⁵ *ibid*, para. 2.

⁴⁶ *ibid*, paras. 6 and 8.

⁴⁷ *ibid*, para. 11.

⁴⁸ *ibid*, paras. 6 and 9.

⁴⁹ Maxine Kennett, Simon J Evenett and Jonathan Gage, *Evaluating WTO Accessions: Legal and Economic Perspectives* (World Trade Institute, 2005) 33.

decides on the application and establishes the Accession Working Party. After the establishment, each Working Party gets uniform terms of reference:

"To examine the application for accession to the WTO under Article XII and to submit to the General Council/Ministerial Conference recommendations which may include a draft Protocol of Accession".⁵⁰

In other words, the Working Party is responsible for examining all relevant aspects of the applicant's trade system, including the domestic legislation and negotiation with the WTO members to help the Ministerial Conference/ General Council finally decide on accession. Generally, in practice, the Working Party ends its mandate by adopting its Report, consisting, among others, of a Draft Protocol on Accession on which the Ministerial Conference/ General Council decides in the final stage.

There are two essential questions on the formation of the Working Party: who can take part in it and the selection of the Chairperson. Firstly, every interested WTO member can participate in the conduct of the Working Party and can join at any stage during the process. Consequently, the size of the Working Party fluctuates based on the interest of the WTO Members in a specific accession. Reasons for participating in it are various: from offering support to close partners to the actual effect the outcome may have on their trade system. Regarding the other question, the General Council's Chairperson has to name the Chairman of the Working Party after consulting the WTO members and the acceding member. The practice is that the Chairman is the ambassador with the residence in Geneva. Although there are no precise directives on the work of the Chairman, from its title derives the conclusion that he is the one who manages the conduct of the Working Party and may use his authority to direct debate in a concrete direction, with the limitation since the WTO Members and interested acceding government carry out the negotiation.

II Negotiation process:

The Working Party phase consists of three steps:

1. Fact finding: this period serves the applicant to distribute information on its trade regime. This phase is valuable for two reasons: this notice points out the necessary changes in the applicant's domestic law to conform with the WTO rules and represents the basis for future negotiations.
2. Negotiations: once the Working Party obtains sufficient data on the trade regime, they move on to the discussion. They multilaterally negotiate on the general rules relating to goods, TRIPS, and services.

⁵⁰ WT/ACC/22, para. 6.

Bilateral negotiations occur with interested WTO members on access to its market of goods and services, while plurilateral negotiations⁵¹ are directed to export subsidies and agricultural support.

3. The draft Report: once the WTO members and acceding government reach a compromise, the Working Party finalizes its Report. It includes the draft of the Protocol of Accession, commitments on general rules on trade in goods and services, and other undertakings reached in bilateral and plurilateral negotiation.

1. Fact finding:

The acceding government must submit the Memorandum on the Foreign Trade Regime (Memorandum or MFTR) before the first session of the Working Party. The MFTR represents the comprehensive review of the applicant's foreign trade regime and sets out the core for future negotiations and should be in the form provided in Annex 1 of the WT/ACC/22.⁵² After the submission and circulation among members of the Working Party, they may ask questions necessary for further clarification of the content.

Once the Working Party examines the Memorandum and obtains satisfying answers to additional questions, they schedule the first session. The meeting starts with the opening statement by the applicant, followed by the examination of the MFTR and the questions and replies provided to seek any further clarifications that may be necessary considering the various provisions of the WTO Agreement and the MTAs.⁵³ Generally, the first session is the ground for defining future steps in the accession process based on the insight into the current applicant's trade regulations and laws, and, if necessary, they may organize further fact-finding sessions. After each session, The Chairperson of the Working Party has to define future goals and determine fundamental actions to prepare for future meetings. The Working Party authorizes the Secretariat to write a Factual Summary of the Points Raised to consolidate facts from questions, answers, and other supplementary written communications in one document. Ultimately, it is the core of the Working Party Report.⁵⁴

2. Negotiations on terms of accession

WT/ACC/22 does not offer a detailed description of the negotiation process but defines a core for the conduct of this phase. More concretely, it points out agreement on general rules and bilateral negotiations. There are

⁵¹ As explained earlier, plurilateral agreements are not integral part of the WTO Agreement and therefore the State must explicitly accept, for that reason only members interested in topics covered by plurilateral agreements engage in this part of negotiations.

⁵² World Trade Organization, Accession to the World Trade Organization, Procedures for Negotiations under Article XII, 1 August 2014, WT/ACC/22, available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/ACC/22.pdf&Open=True>, Annex I.

⁵³ *ibid*, para. 13.

⁵⁴ *ibid*, para.14.

three different forms of negotiations: multilateral- on the general rules, plurilateral among interested members and acceding government- on agricultural domestic support and export subsidies and bilateral between interested parties- on specific commitments on goods and services. Members conduct these negotiations with the acceding government in parallel. However, it is necessary to multi-lateralize bilateral and plurilateral conclusions before the Working Party adopts the draft Report, meaning they all agree to incorporate these commitments in the accession package.

- **Multilateral Negotiations**

As soon as the Working Party obtains satisfying factual ground and establishes future steps, negotiations on general rules start. The acceding government must provide relevant information on domestic regulation at the same time as MFTR and conform it with the WTO rules as early as possible. According to Lanoszka, in this step, the Working Party profoundly evaluates 'the overall regulatory framework of the country, its administrative institutions, and its capacity to consolidate the promised reforms'.⁵⁵ After identifying inconsistencies in its domestic rules, the acceding member should develop a detailed Legislative Action Plan (LAP), updating it according to needs once the process advances. This plan serves as the guideline for future steps and, for that reason, although it's not mandatory, should be submitted before the first meeting of the Working Party. Another recommendation is for accessing members to provide the draft of the proposed new legislation to the Working Party. It is voluntary, and they may adopt new rules without consultations, but it is the practice to wait for the Working Party's approval. Namely, it is because of practical reasons since their parliament may ratify particular laws which the Working Party finds incompatible with the WTO Rules and therefore has to change it again.

- **Bilateral Negotiations**

At the same time, interested parties may initiate bilateral negotiations. We differ them in two parts: bilateral negotiations on tariffs on goods and services. Lacey The main principle is the same, based on offers and requests. Usually, the accessing member proposes the market access tariffs after the first session of the Working Party. Once there is an offer, interested members conduct negotiations, aiming to find a solution suitable for all parties. The acceding government revise the initial offer according to the requests of interested WTO members. After reaching a satisfactory conclusion, the Secretariat includes it in the draft Schedule of Concessions and Commitments on Goods ("Goods Schedule") and the draft Schedule of Specific Commitments on Services

⁵⁵Anna Lanoszka, 'The World Trade Organization Accession Process' (2001) 35 *Journal of World Trade*, 575-602, pg. 584.

("Service Schedules"). As Toohey observes, bilateral negotiations are the most controversial part of the negotiating procedure. Namely, although Article XII.1 predicts agreement on the accession package between the applicant and the WTO, in practice, each WTO member has to be pleased with the candidate's commitment in order to reach a consensus.⁵⁶

- **Plurilateral Negotiations**

The document WT/ACC/22/Add.1⁵⁷ replaced WT/ACC/4 of 18 March 1996 in regulating Information to be provided on Domestic Support and Export Subsidies in Agriculture. Although the WT/ACC/22 defines only two types of negotiation: multilateral and bilateral, in practice, members negotiate on agricultural products and export subsidies plurilateral. The reason for such a solution lies in the idea that the particular topic is more general and, therefore, all interested members should participate in the discussion together. On the other hand, tariff concessions, for example, are more individual matters, and consequently, each interested member negotiates on its own. WT/ACC/22/Add.1 prescribes that the accessing member should provide supporting tables containing information on agricultural products and export subsidies in the format defined in the same document. Once they submit the supporting table to the Working Party, parties interested in this topic may initiate negotiations. Once they reach a satisfactory agreement, they present the final table in the form of "Total Aggregate Measurement of Support (Total AMS)" and Export Subsidies in Agriculture, which is part of the Schedule of Concessions and Commitments on Goods within the Accession Protocol. This document defines total AMS as a gathering of support measures based on product-specificity directed to one or a limited number of products and other measures provided not on a product-specific basis.⁵⁸

3. Adoption of the Draft Report

Once members and the applicant agree on general rules, agricultural rules, export subsidies, and commitments in the trade of goods and services, the Working Party may end its mandate. To do so, they must accept the draft Report and submit it to the Ministerial Conference/ General Council.

In general, the Report contains introductory information, mentioning relevant documents, and the outline of the discussion before the Working Party. On the other hand, the detailed substance differs in each accession based

⁵⁶ Lisa Toohey (2012). Barriers to Universal Membership of the World Trade Organization. *Australian international law journal*, 19, published 12 July 2012, pg. 102.

⁵⁷ World Trade Organization, Accession to the World Trade Organization, Procedures for Negotiations under Article XII, Information to be provided on domestic support and exports subsidies in Agriculture, Note by Secretariat, Addendum, WT/ACC/22/Add.1, 1 August 2014, available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/ACC/22A1.pdf&Open=True>, [accessed 12 July 2023].

⁵⁸ *ibid*, para.11.

on the commitments discussed and agreed upon during the negotiation phase. Although not mandatory, the Working Party annexes a draft of the Protocol of Accession and a draft General Council/Ministerial Conference Decision calling upon the applicant to join the WTO Agreement by accepting the terms of the Protocol.⁵⁹

III Finalizing the process:

The final stage consists of two steps: the adoption of the Report by the Ministerial Conference/ General Council and acceptance of the Terms by the applicant and its joining to the WTO.

As explained, the General Council/ Ministerial Conference, establishing the Working Party, automatically authorizes it to consider every accession aspect. Consequently, only in exceptional cases, Members call the General Council to review ongoing accessions. Once the Chairperson of the Working Party presents its Report, it is up to the General Council to adopt: the draft Protocol of Accession and the text of the draft Decision on the Accession of the prospective applicant. The General Council decides on the adoption of the drafts by consensus even though Article XII foresees a two-thirds majority, discussed in the scope of relevant Articles of the WTO Agreement.⁶⁰ Another requirement to be fulfilled by the acceding government before the General Council/ Ministerial Conference makes the final decision is contributing to the WTO budget as an observer, explained in the previous subchapter.

The applicant accepts the terms of reference by adopting the Protocol of Accession. The Protocol sets out the deadline within which the applicant has to agree on it by signing or ratification, depending on its domestic constitutional law. The acceding government has the right to propose the time frame necessary for them to conduct internal procedures that precede the signing of the Protocol. Although, in practice, usually, that period is 3-6 months within the Protocol of Accession is open for signature, applicants asked for additional time in a few cases, which the General Council allowed without extensive discussion. Thirty days after signing the Protocol or adopting it another way, the State/ separate customs territory officially becomes a member of the WTO. That period serves the other WTO members to accommodate their trade policies to the new member.

⁵⁹ The text of the Decision by General Council/ Ministerial Conference on the Accession is set out in Annex 10.1 in the WTO document: General Council- Technical Note on the Accession Process - Note by the Secretariat - Revision, WT/ACC/10/Rev.3 of 28 November 2005 and remains the same in each accession.

⁶⁰ see above, Other relevant Articles of the WTO Agreement.

Article XIII of the Marrakesh Agreement provides that:

“This Agreement and the Multilateral Trade Agreements in Annexes 1 and 2 shall not apply as between any Member and any other Member if either of the Members, at the time either becomes a Member, does not consent to such application.”

To achieve the purpose of Article XIII and avoid the application of the WTO Agreement and Multilateral Agreements between particular members, the Member must inform the Ministerial Conference/ General Council before accepting the terms of accession. The members invoked this provision 12 times so far, although ten subsequently withdrew it. The two invocations remained are: Turkey in respect of Armenia and the US in the respect of Tajikistan.⁶¹

After extensive elaboration on the accession process, it is reasonable to conclude that it is very complex and takes much time and resources. Since the accessing member has to provide a broad report on its domestic trade regulation only to start the negotiating process, together with considering different capabilities, especially among developing and least developed countries, it is clear that the accession process takes real effort. There are various reasons for procrastinating accession: political, difficulties obtaining and presenting relevant information, etc. Also, another obstacle represents domestic law changes and the adoption of new regulations which conform with the WTO Rules. Furthermore, the accession process enables each interested WTO member to negotiate the new member's commitments, which leads to another extension of the procedure. It may take a long time to reach an agreement satisfactory for both sides.

The average length of the process is ten years and two months, according to the WTO Director-General Annual Report 2022. The shortest one was the negotiation process with the Kyrgyz Republic- two years and eight months, while the longest one that acceded so far is Kazakhstan's accession, completed in 19 years and nine months.⁶² Reasons for such lengthy procedures are various, while the most relevant is the weakness of governments and the huge gap between the trade regime's situation of the candidate at the time of application and the level it must achieve to become a member, which is also affected by its government and policies.⁶³ This issue is relevant because postponement of the accession may remarkably affect trade benefits and the economic well-being of the respective country.

⁶¹World Trade Organization, WTO Analytical Index, WTO Agreement - Article XIII (Practice), For the details see: https://www.wto.org/english/res_e/publications_e/ai17_e/wto_agree_art13_oth.pdf.

⁶²WTO Accessions, 2022 Annual Report by Director- General, WT/ACC/43, WT/GC/257, 01/03/2022, Annex IV.

⁶³ Kent Jones & Yunwei Gai, 2013. "Joining the WTO: Why Does It Take So Long?," Open Economies Review, Springer, vol. 24(4), pages 695-716, September, pg. 714.

V SUBSTANCE OF NEGOTIATIONS

Article XII of the Marrakesh Agreement explicitly provides that any State and separate customs territory may accede to the WTO under the terms agreed between it and WTO members. The WTO Agreement does not specify any further details on such terms, but each Protocol of Accession contains them. Since Article XII does not explain the conditions for joining, but they are the consequence of the negotiation process, each member has different obligations based on their national measures. Another reason is the fact that Article XII of the WTO Agreement follows the idea of Article XXXIII GATT1947. At that time, the drafters had the intention that terms of accession should be flexible because members acceding have free markets regulated by international agreements in different fields. Even those whose market was not that free rest on government decisions. For that reason, drafters predicted that strict rules on terms would discourage many members from acceding since it might affect their current trade market. Article XII of the WTO sticks to the same approach: without strictly predefined rules, each new member may negotiate their accession terms corresponding to their specific situation in trade. Consequently, it is more likely that governments will join the WTO once they have a chance to adjust the conditions as it fits their existing situation in the market. Such a regulation on accession enables the WTO to fulfill its core idea- to attract as many members as possible to join while facilitating global trade.

The following paragraphs will elaborate main parts of the Working Party Report, which are later also parts of the Protocol of Accession:

1. introduction:

The introduction represents the reproduction of the First Working Party session and includes all the provided documents. The acceding government introduces itself and, if wanting to, provides particular reasons for accession. Moreover, it points out general expectations and concerns it might have related to its domestic policies and their correlation with the WTO rules.

2. economic policies:

Information in the sphere of economic policies consists of monetary and fiscal policy, legislation enacted, applicable taxes, and relevant authorities.

3. framework for making and enforcing policies:

The applicant provides information on the power of the government in the executive, judicial and legislative branches and significant constitutional mechanisms related to it. The applicant should submit details on

subcentral governments and, in case of their existing, mutual relationship between them and the central one.⁶⁴ According to the WTO Agreement, the accessing government commits itself to adopt new rules and regulations to conform with the WTO Rules and to establish independent tribunals for reviewing and appealing actions related to WTO provisions.

4. policies affecting trade in goods:

The General Agreement on Tariffs and Trade⁶⁵ sets out general provisions relevant to trade in goods. Consequently, the acceding government obligates itself to comply with the rules prescribed in this Agreement and to enact domestic legislation following them. More concrete commitments related to trade in goods are the subject of bilateral negotiations, which are eventually transformed into Goods Schedules. GATT 1994 allows new members to keep existing customs duties as long as they fulfill the most favored nation principle but suggests negotiations to avoid future obstacles. Another subject of the GATT is internal taxes on imports. Internal taxes are prohibited in Article III of the GATT. The acceding government has a duty to provide all information on internal taxes, both direct and indirect, such as excise taxes, general sales taxes, or value-added taxes. Tariff exemptions allow the import of some products without paying duties or charging lower ones. Members are particularly interested in this matter, and the applicant has to inform them of all applicable tariff exemptions, which members will consider if they are in accordance with the MFN and national treatment.⁶⁶

5. trade-related intellectual property regime:

The TRIPS Agreement regulates intellectual property rights, including copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits, and undisclosed information.⁶⁷ Members should comply with obligations related to TRIPS Agreement at the time of its accession. During the negotiation phase, the accessing government has to provide a strategic plan and time frame for rule amendments. They also have a chance to submit future legislative proposals and ask for recommendations, although it is not obligatory. However, by the time of the accession, the new member should apply laws in accordance with the TRIPS Agreement. Article 65 of the TRIPS Agreement grants a general transition period of 1 year from its entering into force (until 1 January 1996) and an additional period of 5 years for developing countries (1 January 2000). In the case of the later applicants, only the first one undertook the transitional period⁶⁸, while afterward, the WTO provided such a chance only for LDCs and one transitional

⁶⁴ Report of the Working Party on the Accession of the Republic of Seychelles, WT/ACC/SYC/64, 5 November 2014, paras. 95,96.

⁶⁵ GATT 1994: General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994).

⁶⁶ Handbook on Accession on the WTO, Chapter 5.

⁶⁷ see details: TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994) [hereinafter TRIPS Agreement].

⁶⁸ World Trade Organization, Report of the Working Party on the Accession of Ecuador, WT/L/77, 14 July 1995, para. 78.

economy. Article 66 initially granted a general transition period for LDCs until 1 January 2006. The WTO members repeatedly extended this period, and in 2021 they agreed to prolong the deadline until 1 July 2034 for LDCs to protect intellectual property rights following the TRIPS Agreement conditions.⁶⁹

6. policies affecting trade in services:

Except for trade in goods, a significant role in the global market recently obtained trade in services. Besides being an integral part of the production chain, it is also a valuable asset in their rights for many economies. Consequently, emerged a need for regulating this field, and therefore, the WTO's integral part is the GATS Agreement that navigates international trade in services. Similar to the GATT, this Agreement provides general rules applicable to all members, and in parallel, each acceding member negotiates its specific commitments in bilateral negotiations. However, there is one significant difference from the GATT. According to the GATS, the MFN and national treatment members should grant only to sectors listed in their Schedules under the conditions there.⁷⁰ At the beginning of the process, within the scope of the MFTR, a potential member has to provide information on general domestic rules related to trade in services. Following the Memorandum, interested WTO members will ask further questions about transparency, licensing procedure, judiciary procedures, etc. More specific questions on trade in services are subject to bilateral negotiations and will eventually become part of the Services Schedule. However, the acceding member must implement in its legislation the general rules provided in the GATS by the date of its accession.

7. transparency:

Since transparency is one of the basic principles of the WTO, it has its place in the Report and Protocol of Accession. Although each Agreement of the WTO has its own specific rules, the main postulates are the same. Among other things, the applicant should inform of the availability of the Official Gazette and that general rules will be published in it before being enforced, enabling the international public to get familiar with it. Additionally, the representatives undertake to make public all existing laws, regulations, and judicial decisions related to trade in accordance with the WTO standards.

8. trade agreements:

The first remark is that there are two types of agreements: one that establishes international organizations and plurilateral and bilateral agreements based on the most-favored-nation or preferential treatment. Article XXXIV of the WTO allows two kinds of preferential trade agreements under certain conditions: custom unions and free trade areas. Each applicant provides a detailed report on international agreements they are party to, with

⁶⁹ World Trade Organization website: https://www.wto.org/english/news_e/news21_e/trip_30jun21_e.htm.

⁷⁰ GATS: General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183, 33 I.L.M. 1167 (1994) [hereinafter GATS], Articles II:1 AND XVII:1.

particular insight on ones based on MFN treatment. Moreover, they undertake to examine WTO provisions, especially regarding the conditions for free trade areas and customs unions.

9. conclusions:

After examining all information provided by the accessing party, the Working Party decides whether to call it to accede to the WTO, pursue the Article XII of the Marrakesh Agreement, and provide further steps: adoption of the Report by the General Council/ Ministerial Conference and signing the Accession Protocol.

VI SERBIA'S NEGOTIATION PROCESS

After a comprehensive examination of the accession procedure and substance of the negotiations, this chapter will deal with an example of the accession procedure and appliance of all the above-mentioned rules- Serbia's accession process. Serbia remained one of the few European countries that are still not WTO members. This particular journey is interesting for several reasons, for example, the historical development and failure of succeeding the GATT 1947 and the length of the accession process. This part will also deal with the practical value of joining the WTO, the procedure timeline, obstacles in negotiating, and highlighting the achievements gained so far.

Serbia had to overcome many obstacles to start the accession process, which is just an introduction to exhausting and thorough negotiations that have been going on for years now. The practical significances of joining the WTO are numerous, but, in the first place, it enables Members to trade on a global level under defined and well-known rules, without uncertainty about treatment and regulations. Furthermore, the WTO framework grants protection against discrimination and guarantees fair treatment to all members. Overall, accession to the WTO will enable Serbia to upgrade its foreign trade relations and, while doing so, strengthen its trade system in general.

HISTORICAL BACKGROUND

Officially, Serbia initiated the negotiation process to join the WTO on 5 September 2005. The extremely long-time gap between the establishment of the WTO and Serbia's request for accession rests on the historical and political reasons this State has faced since the 1990s. Serbia was one of six constituent republics in the Socialist Federal Republic of Yugoslavia (SFRY) until its breakup in 1993.

The SFRY was a member of the GATT 1947 but did not become a member of the WTO under Article XI of the Agreement establishing the WTO. As already explained, Article XI prescribes the possibility for the former GATT 1947 members to join the WTO automatically within two years of the WTO creation under the condition of having schedules for goods and services in accordance with the WTO Agreement. Because of obvious reasons, the SFRY did not rejoin the WTO under this Article. The early 1990s represented the culmination of internal conflicts between constituent republics, which led to the civil war and eventual dispersal of the SFRY. The political situation in the country and tension within the territory put in the background its trade system and disabled them from following the new tendencies in world trade.

The Federal People's Republic of Yugoslavia (FPRY) was not a member of the GATT 1947 at its inception. The reason behind it was the FPRY planned economy within its socialist regime, with trade policy contrary to the market economy and trade liberalization promoted by the WTO. Once the country realized the benefits of such an organization, it applied for observer status, which lasted from 1950 to 1958. By signing the Declaration on the Regulation of Relations between the FPRY and the GATT in May 1959, the FPRY moved to the next phase in its relations with the GATT. Yugoslavia (renamed in 1963 to Socialist Federal Republic of Yugoslavia) had the status of associate member from 1959 to 1965, during which it conducted economic reforms, achieving satisfying development, to finally become a GATT member in 1966.⁷¹ From that point, Yugoslavia was a significant member, attending negotiating rounds, even the Uruguay Round that established the World Trade Organization. After the breakup of SFRY in 1992 and UNGA Resolution 47/1 that expelled Yugoslavia from the UN General Assembly⁷², the GATT also changed its attitude toward Yugoslavia's status.

After the breakup of SFRY in 1992, the two remaining republics, Serbia and Montenegro, constituted the Federative Republic of Yugoslavia (FRY), representing the formal successor of the SFRY. In September 1996, the FRY communicated a request to the Director General of the WTO, aiming to join the WTO. In its Communication, the FRY demanded access to the WTO with the retroactive clause, claiming that as the direct successor of the SFRY could access under Article XI of the WTO Agreement. Unfortunately, Slovenia, part of the former SFRY, disputed this request, claiming that the FRY could not join as a successor.⁷³ As a reminder, general agreement among members is necessary for negotiating initiation. To obtain a consensus and change Slovenia's position related to its accession, the FRY submitted a new request in November 1996. This request

⁷¹Jelisavac Trošić, Sanja (2022) The World Trade Organization and Serbia's Long Path Towards Accession. In: International Organizations: Serbia and Contemporary World. Institute of International Politics and Economics; Faculty of Philosophy of the University of St. Cyril and Methodius, Belgrade; Skopje, pp. 161-179. ISBN 978-86-7067-305-2, pg. 173

⁷² Upon receiving the recommendation of the Security Council, the UN General Assembly decided that the FRY must apply for membership in the United Nations and cannot automatically continue membership of the former SFRY, available at: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/023/69/IMG/NR002369.pdf?OpenElement>

⁷³ World Trade Organization, "Communication of the Republic of Slovenia", 18 October 1996, WT/L/181, 96-4335.

was similar to the first one, except for directly demanding legal continuity of the SFRY. In this one, the FRY left space for different interpretations, expecting the WTO to decide on the nature of its accession. After Slovenia's other Communication, the final WTO decision was that the FRY must apply as a new member under Article XII of the WTO Agreement.⁷⁴ Unfortunately, even though the WTO explicitly denied the request to consider the FRY as a direct successor, it did not give up on that status. Furthermore, another internal issue occurred within the FRY- the tightening of relations in Kosovo, which escalated in 1999. These actions led to the situation where the WTO's General Council did not even further consider the FRY's request to join the WTO.⁷⁵

In the following years, as the situation in the FRY reconciled, they submitted a new request for accession to the WTO in January 2001. In February 2001, the General Council decided on its session to start the FRY's negotiation process by establishing the Working Party. As already mentioned, two republics - Serbia and Montenegro, constituted the FRY, and such a composition led to further obstacles in the negotiating process.

Still, the country was dealing with internal issues, among which the most important one was the reconstruction of the Constitution and jurisdiction regulation between the two republics. One of the irreconcilable obstacles was the situation where Serbia and Montenegro were not ready to give up on their foreign trade policies and relinquish jurisdiction in the particular field to the Ministry for International Economic Relations.⁷⁶ The WTO prescribes that any State/ separate customs territory may join the WTO only if it has full autonomy in its external commercial relations. Since the FRY, later Serbia and Montenegro, did not confer this department to the mutual organ but instead kept different regulations on foreign trade, further negotiations could not proceed.

Finally, in 2004 Serbia and Montenegro submitted separate requests for the accession. The General Council of the WTO established the Working Party for Serbia in 2005, representing the start of Serbia's accession process.⁷⁷ The WTO considered the previous mutual request of the FRY as withdrawn. Further discussion on the differences between Serbia's and Montenegro's foreign trade policy and how it affected their negotiations on accession will be the subject of one of the upcoming chapters.

Overall, due to political reasons and instability in its territory Serbia had a long way to start negotiating process in the first place. It took almost a decade since the establishment of the WTO to initiate the accession process

⁷⁴ World Trade Organization, "Accession of the Federal Republic of Yugoslavia, Communication from the Republic of Slovenia", 28 November 1996, WT/L/199-5038.

⁷⁵ Sanja Jelisavac Trošić, *Pregovori u okviru GATT i STO* (2015), Institut za međunarodnu politiku i privredu, pg. 266.

⁷⁶ Predrag Bjelić, "Jedna stolica za dve države", 18 July 2013, available at: http://www.ekof.bg.ac.rs/wp-content/uploads/2014/04/1009intervju_politika.pdf, pg.5.

⁷⁷ World Trade Organization website: https://www.wto.org/english/thewto_e/acc_e/a1_serbia_e.htm

and for the General Council to establish the Working Party. Moreover, as time passes, the negotiation process becomes more demanding because of the nature of the WTO's accession process. Namely, every member has the right to initiate bilateral negotiations with the acceding government, and with a current membership of 164, it may be very complex. Another reason for more challenging negotiations is the development of foreign trade and new requirements that potential members must meet.

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The Working Party establishment and work

The General Council established the Working Party for Serbia's accession on 15 February 2015, which appointed ambassador Mr. Francois Roux (Belgium) as the first Chairperson. The GC tasked the Working Party to examine the degree of conformity of Serbia's legislation with the WTO rules and monitor bilateral negotiations. Serbia submitted Memorandum on Foreign Trade Regime on 17 March 2005, which was circulated to all WTO members after the Secretariat's formal control. Afterward, interested Members asked questions regarding the MFTR, and together with replies, the Secretariat prepared a Factual Summary of Points Raised (Factual Summary).⁷⁸

So far, the Working Party for Serbia's accession was holding 13 meetings. The first meeting of the Working Party was on 7 October 2005, where Serbia submitted MFTR, replies to the questions asked by interested members, drafted notice on subsidies, and action plan for implementation of the TRIPS Agreement and action plan on the legislation reforms. The Working Party suggested Serbia expand research on control lists for services, sanitary and phytosanitary measures (SPS Agreement), and technical trade barriers (TBT Agreement). At the second meeting in June 2006, Serbia provided proposals for market access tariffs for industrial and agricultural products, which opened the door for interested members to initiate bilateral negotiations. The pillar of the third meeting was the preparation of the Factual Summary of the Points Reached by the Secretariat.⁷⁹ Submission of the Factual Summary means that the acceding government is ready to close questions and replies as part of the negotiations and move to the next phase. At its fourth meeting, the Working Party supported Serbia's strong commitment to conform domestic legislation with the WTO rules and ascertained that Serbia had engaged in bilateral negotiations on market access with ten interested members. Although during the 8th meeting, the Working Party welcomed Serbia's progress in adapting legislation and bilateral negotiations, members pointed out certain shortcomings needing additional devotion: trading rights, state-owned enterprises,

⁷⁸see details on Serbia's current accession status on: https://www.wto.org/english/thewto_e/acc_e/a1_serbia_e.htm

⁷⁹Sanja Jelisavac Trošić, Pregovori u okviru GATT i STO (2015), Institut za međunarodnu politiku i privredu, pg. 270, 271.

sanitary and phytosanitary measures, export subsidies and special safeguards in agriculture, environmental protection, and import restrictions. The Working Party Chair, Marie-Claire Swärd Capra (Sweden), during the 9th meeting, pointed out that Serbia has to intensify discussion with interested WTO members on market access since it represents the crucial point for finalizing the accession process. At that point, Serbia concluded bilateral agreements with Japan, Honduras, and Norway and negotiated a date to sign them with Canada, the EU, and the Republic of Korea. On 17 March 2011, the Working Party held its 10th meeting, where members welcomed the reforms undertaken so far and reminded of fields in need of additional attention: trading rights, import licensing, export duties, customs, balance of payments, sanitary and phytosanitary issues, intellectual property and agricultural policies. During the last meeting held in 2013, the Working Party suggested Serbia accelerate the adoption of the legislation that must adapt and agree on dates to sign the rest of the bilateral agreements. Serbian delegation stated that the remaining legislation is in the process of amending, meantime the Working Party decided to schedule its next session once it is done.⁸⁰ Obviously, it has been ten years since the last meeting, during which Serbia did not fully comply with the Working Party's request, and hence, the Working Party did not have a session for the final revision of the Draft Report. More detailed information on specific obstacles in multilateral negotiation will be provided in the next Chapter.

The Working Party meetings	7 October 2005
	8 June 2006
	6 December 2006
	27 November 2007
	8 May 2008
	10 July 2009
	5 March 2010
	20 October 2010
	17 March 2011
	30 September 2011
	29 March 2012
	13 June 2013

Source: World Trade Organization, https://www.wto.org/english/thewto_e/acc_e/a1_serbia_e.htm and Sanja JelisavacTrošić, Pregovori u okviru GATT i STO (2015), Institut za međunarodnupolitikuiprivredu, pg. 268

⁸⁰see details on the Working Party meetings (4th, 8th, 9th, 10th, 11th and 13th) in Serbia news archives, on the WTO website: https://www.wto.org/english/news_e/archive_e/country_arc_e.htm?country1=SRB

According to the 2018 Annual Report, the WTO Secretariat sent a mission to Belgrade upon the request of Serbia. The purposes of the mission were multiple:

- restoration the contact with the Government due to five years of inactivity in the accession process;
- provide help to the negotiating team in updating the negotiating inputs necessary for the continuance of the Working Party process; and
- agreement on the future steps in the accession process.⁸¹

In 2019, the Government of Serbia demanded the WTO Secretariat undertake the mission to Belgrade to attend another seminar on the WTO Accession and provide assistance in reviewing data for reactivation of the acceding process.⁸² This seminar is the product of the cooperation of the United Nations Club of the University of Belgrade, Faculty of Law, the Ministry of Trade, Tourism, and Telecommunications, the Embassy of Switzerland in Serbia, and the "IDEAS" center from Geneva. Ms. Anna Varyanik, Legal Affairs Officer of the WTO Accession Division, held the first lecture, providing information on the topic: "WTO admittance – history, structure, current state “.⁸³In the 2020 Annual Report by the Director-General on the WTO Accession, Serbia still had the status of 'reactivation'. According to the WTO, reactivation illustrates the information exchange with the WTO Secretariat/ WTO members with the intention of reestablishing the negotiation process after a period of inactivity.⁸⁴ Once again, the Director-General pointed out that the next Working Party meeting will occur once Serbia fulfills the necessary conditions: to adopt outstanding legislation and complete remaining bilateral negotiations.⁸⁵ Lately released, the 2023 Annual Report defines Serbia as inactive in its general status. According to the criteria prescribed by the WTO, inactive status obtains acceding member that has had no activity at the level of the Working Party for at least the last three years.⁸⁶ At the General Council meeting on 7 March 2023, they certified the appointment of the new Chairperson of Serbia's Working Party on accession: Ambassador Margit Szűcs (Hungary).⁸⁷

⁸¹ WTO Accessions, 2018 Annual Report by the Director-General, 3 July 2019, WT/ACC/33/Rev.1, available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/ACC/33R1.pdf&Open=True>, para.41.

⁸² WTO Accessions, 2019 Annual Report by the Director-General, 21 February 2020, WT/ACC/36, available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/ACC/36.pdf&Open=True>, para. 29.

⁸³ The University of Belgrade, Faculty of Law, Seminars and Roundtables, Seminar „Accession of the Republic of Serbia to the World Trade Organization “, available at: <http://www1.ius.bg.ac.rs/2019/03/07/seminar-accession-of-the-republic-of-serbia-to-the-world-trade-organization-held/>

⁸⁴ WTO Accessions, 2020 Annual Report by the Director-General, 8 March 2021, WT/ACC/38/Rev.1, available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/ACC/38R1.pdf&Open=True>, para. 42.

⁸⁵ *ibid*, para. 59.

⁸⁶ WTO Accessions, 2022 Annual Report by the Director-General, 1 March 2023, WT/ACC/43, available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/ACC/43.pdf&Open=True>, para. 40, Table 1.

⁸⁷ WTO Accessions Newsletter, Issue N° 111 - June 2023, <https://mailchi.mp/wto/wto-accessions-newsletter-n-111-june-2023-15626965>

To conclude, after the initially expeditious submission of the MFTR and engaging in negotiations, Serbia has shown unenviable results in the accession process in the last ten years. Regarding the multilateral phase, Serbia's government has been struggling for years with the same issues e.g., sanitary and phytosanitary measures, TRIPS Agreement, and regional trade agreements. Annual Reports by the Director-General show recent increased interest in reactivating the accession process. The following chapters will examine reasons for such results through the years and the perspective of finishing the procedure.

Within the scope of this and upcoming chapters, it is essential to explain that there are limited sources on the accession process of Serbia. It is a consequence of the rule that documents on ongoing accession are restricted. According to the Ministerial Conference Decision of 14 May 2002, all documents concerning the accession process are subject to restriction until the adoption of the report of the working party by the Ministerial Conference/ General Council.⁸⁸ Documents issued before 2002 are under the other regime set out in the General Council Decision (WT/L/160/Rev.1 of 26 July 1996). Consequently, since Serbia's accession process is still in progress, all documents submitted are under restriction, and only narrow scope of information is available. Although more comprehensive analyses will be possible once Serbia joins the WTO, this paper provides a general frame on Serbia's accession and tackles contemporary obstacles.

Bilateral Negotiations and their challenges

As already explained, another kind of negotiation in the accession process is bilateral, which is open for each interested WTO member to initiate with the acceding government. WTO members can exercise this right and demand the negotiation opening until the adoption of the Working Party report. The purpose of this engagement is to agree on customs tariffs with the potential member, which are, after adoption, applicable to all members.

Since the accession process's inception, Serbia has participated in bilateral negotiations with 18 WTO Members. Fourteen WTO members so far signed the protocols on market access for goods and services and, therefore, closed bilateral negotiations with Serbia: Japan, Honduras, Norway, Canada, the EU, the Republic of Korea, Ecuador, the Dominican Republic, China, Salvador, Panama, India, Mexico, and Switzerland. Serbia still has four ongoing bilateral negotiations with the US, Brazil, Ukraine, and Russia.⁸⁹

In negotiations with the US, Serbia had a challenging task in fields such as services, industrial products, and importing genetically modified food from the US, which will be subject to thorough examination within the

⁸⁸ Procedure for circulation and derestriction of WTO Documents, Decision of 14 May 2002, WT/L/452, available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/L/452.pdf&Open=True>

⁸⁹ Sanja Jelisavac Trošić, Dragoljub Todić, Milorad Stamenović, Svetska trgovinska organizacija, životna sredina i sistem zdravstvene zaštite (2018), Institut za međunarodnu politiku i privredu, pg. 184.

next chapter. One topic still represents a stumbling stone in negotiations with the US and Brazil: tariffs for agricultural products.⁹⁰ Ukraine appears to be a very tough negotiator, creating many difficulties in reaching an agreement. Namely, Ukraine demanded more than 700 products' customs tariffs be either lowered or abolished. In a few sectors Ukraine did not want to make any concessions: agricultural products, steel, and ferrous metallurgy.⁹¹ Considering the current situation between Russia and Ukraine that shakes the whole world, it is not likely that negotiations with these two countries will be continued in the foreseeable future.⁹² It is reasonable to expect that Serbia's bilateral negotiations with these two countries have been postponed until further notice, which will additionally extend the already long process of Serbia's accession to the WTO. What is also not predictable at this moment is the outcome of the conflict and how it will affect their negotiating positions once they settle it.

The main goal of WTO members interested in engaging in negotiations with the acceding government is to obtain access to the goods and services market under better conditions. Another relevant factor for concluding bilateral negotiations is an expansion of the WTO and the constant joining of new members. With the increasing number of members, the chances that more parties will initiate discussion on customs tariffs for themselves are bigger too. Also, it is an evident trend that as more States/ separate customs territories are joining the WTO, the concessions that each of them has to make are more demanding, and the existence of a giant discrepancy between the obligations of the original members and freshly accepted.⁹³ Completion of bilateral negotiations with all interested members is a necessary precondition for the accession process to end. The Working Party repeatedly called upon Serbia to finish the bilateral market access as a prerequisite for scheduling its next session and for the Draft Report adoption, which will take Serbia to the next phase in the accession process.⁹⁴ On the other hand, Serbia cannot, without question, accept all concessions offered by negotiating partners. The goal of Serbia within this process is to protect sectors relevant to its economy. Another way of protecting it is for Serbia to demand transition periods for each area possible, especially for agriculture and services. The final conditions that Serbia accepts in this process will have long-term effects on its trade and, consequently, its economic development in general.⁹⁵

⁹⁰ Sanja Jelisavac Trošić, Pregovori u okviru GATT i STO (2015), Institut za međunarodnu politiku i privredu, pg. 274

⁹¹ Sanja Jelisavac Trošić, Dragoljub Todić, Milorad Stamenović, Svetska trgovinska organizacija, životna sredina i sistem zdravstvene zaštite (2018), Institut za međunarodnu politiku i privredu, pg. 184.

⁹² Russian Federation launched military action on Ukraine on 24 February 2022. <https://news.un.org/en/story/2023/03/1134122>

⁹³ Sanja Jelisavac Trošić, Dragoljub Todić, Milorad Stamenović, Svetska trgovinska organizacija, životna sredina i sistem zdravstvene zaštite (2018), Institut za međunarodnu politiku i privredu, pg. 185.

⁹⁴ e.g., Information about the Working Party 12th meeting, News items 2011, available at: https://www.wto.org/english/news_e/news11_e/acc_srb_30sep11_e.htm

⁹⁵ Sanja Jelisavac Trošić, Pregovori u okviru GATT i STO (2015), Institut za međunarodnu politiku i privredu, pg. 274, 275.

The main obstacles in negotiation process

Within the scope of this topic, it is imperative to start this elaboration with the fact that Serbia has had many obstacles since the inception of the accession process, which do not bypass it even nowadays. There is a variety of reasons that negatively affected Serbia's joining the WTO. These factors go from internal political issues and frequent changes in the State's constitutional structure to the obstacles in bilateral negotiations with some WTO members. This chapter will briefly mention problems already discussed in previous parts of the paper and extensively deal with the current challenges that slow down Serbia's accession.

Serbia officially started negotiating accession in 2005, when the GC finally established the Working Party. So, from the beginning, the State was ten years behind the establishment of the WTO and its initial chance to apply for membership. The reason is more than evident, internal conflicts in the SFRY, its breakup, and disagreement on whether the newly formed FRY has the status of the successor in terms of the original membership provided in Article XI of the WTO Agreement. After the final decision that FRY has to apply as a new member following the conditions in Article XII of the WTO Agreement, FRY (later Serbia and Montenegro) submitted the request in 2001. This attempt was unsuccessful, again affected by the situation within FRY's territory. Namely, Serbia and Montenegro could not agree on the constitutional reforms, and neither was ready to give up on its foreign policy. Eventually, in 2004, both of them applied for WTO accession separately. That request finally qualified Serbia as the state in the negotiation process within the WTO.⁹⁶

Another fact that does not favor Serbia in the context of accession is that the WTO does not qualify it as either a developing country or a least developed country (DC/ LDC). The Working Party, during its sessions, discusses whether the State, the subject of the accession process, should obtain the status of a developing country. On the other hand, the status of a least developed country is non-negotiable. That is because the WTO accepted the classification and conditions for LDC established by the UN.⁹⁷ Unfortunately for Serbia, members did not qualify it as a developing country, which would be fruitful from many aspects.⁹⁸ WTO Agreements contain provisions that grant beneficial rights to developing countries. Agreements refer to them as “special and differential treatment” (S&D) provisions. Overall, S&D represents a set of measures that facilitates the accession process and functioning within the WTO for DCs, providing:

- longer periods of time for implementing Agreements and commitments,
- measures to increase trading opportunities

⁹⁶ for details on this issue see chapter: Historical background.

⁹⁷ see details on a least developed country category on: <https://www.un.org/ohrlls/content/ldc-category>

⁹⁸ Sanja Jelisavac Trošić, Pregovori u okviru GATT i STO (2015), Institut za međunarodnu politiku i privredu, pg. 272.

- provisions requiring all WTO members to safeguard the trade interests of developing countries,
- provide aid for developing countries to build the capacity to carry out WTO work, handle disputes, and implement technical standards.⁹⁹

In the overall practice of the WTO, this topic has been controversial. Namely, since there are no well-established criteria for such a qualification, it may lead to absurd results. Since that is a decision made by members of the Working Party, the actual influence that the acceding government has may affect their decision. China, for example, has a status of a developing country within the WTO, although it is the second-largest world economy. On the other hand, none of the European countries obtained such a status. Clearly, every member would enjoy such a characterization because of the benefits provided. For some members, this arbitrary deciding practice is favorable, but for others, it represents just another obstacle. Serbia, which is a country in transition, with obviously backward technology and constant internal turbulences, could not get the DC status. Above all, for Serbia, it would be a significant concession in the scope of the negotiating process and for providing a longer adaption process, considering its financial and other sources.

The rising issue for Serbia is again an internal problem within its territory, projecting on its foreign relations. Namely, Serbia has a conflict with its Autonomous Provinces Kosovo and Metohija (referred to as Kosovo), dating from the 1990s. The situation escalated in 2008 when Kosovo proclaimed its independence, while Serbia does not recognize Kosovo as an independent country. Kosovo was admitted to the World Customs Organization (the VCO) in 2017, showing a clear intention to join the World Trade Organization shortly. There are four possible outcomes in the relations between Kosovo and the WTO:

- i) staying outside the WTO
- ii) gaining observer status within the WTO
- iii) becoming a full WTO member as a state
- iv) becoming a member as a separate customs territory.¹⁰⁰

In 2016, Kosovo set a goal to become an observer within the WTO. The last option may represent the biggest obstacle in Serbia's accession process. Namely, if Kosovo decides to join as a separate customs territory in need of joining the WTO as soon as possible, it may make all requested concessions. It is the case under the presumption that as a separate customs territory, Kosovo would not tend to protect its industry from the foreign surge of imports and imposition of low customs barriers. Consequently, a situation in which Kosovo would

⁹⁹ Special and differential treatment provisions in the WTO Agreements, see details on: https://www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm#legal_provisions

¹⁰⁰ Loxha, Arbëresha; Pula, Erëza (2016). Kosovo's Accession to the WTO — An Assessment of Potential Costs and Benefits. Policy Analysis — No. 06/2016. Prishtina: Group for Legal and Political Studies, pg. 6,7.

agree to all the set demands could lead to Kosovo's accession to the WTO before Serbia does. That would put Serbia in an unenviable position where Kosovo could initiate bilateral negotiations with Serbia, with requests Serbia is unable to accept.¹⁰¹ These are potential scenarios in light of present events, which may or may not be realized. What is certain is that Serbia's negotiating party should consider this as a significant risk and accelerate its working on the accession since it is the only reliable tool.

Serbia is in parallel negotiations for accession to the WTO and EU. The next chapter will provide details on the negotiations with the EU while, in the scope of this one is necessary to mention it. There is a substantive correlation between these two procedures, so the EU actively monitors Serbia's position in bilateral agreements within the WTO. Because of the universal foreign trade policy of the EU, Serbia has to bear it in mind while negotiating with the WTO members. The European Union advised it to decline concessions lower than consolidated customs rates within the EU.¹⁰² The reason behind it is that the EU wants to avoid future problems as it had with Estonia. Namely, during the WTO negotiations, Estonia made concessions lower than applicable within the EU. After the accession, the EU had to compensate third countries because of the higher rates applicable within the EU and automatically to all its members. Consequently, the EU suggested that Serbia negotiate its custom rates at least equivalent to the EU's ones or even higher.¹⁰³ It seemingly represents another obstacle for Serbia in the WTO accession process. Once though, negotiations with interested WTO members are even more complex with this additional requirement imposed by the EU.

As explained, the accessing government may end up in a situation to conduct parallel multilateral and bilateral negotiations. Multilateral negotiations serve as a forum for potential members to discuss general domestic legislation and adapt it to the WTO rules. Although enacting new legislation may be a complex procedure demanding many resources, Serbia harmonized its legislation greatly before the last Working Party meeting in 2013. The most important unresolved issue is the passing of the Law on Genetically Modified Food (referred to as GMO). This topic, in concrete, blocks scheduling the next Working Party session and reviewing the draft Report. Still, the seventh revision of the Draft Working Party Report circulated in October 2012 summarizes the work of multilateral negotiations.¹⁰⁴

¹⁰¹ Sanja Jelisavac Trošić, Dragoljub Todić, Milorad Stamenović, Svetska trgovinska organizacija, životna sredina i sistem zdravstvene zaštite (2018), Institut za međunarodnu politiku i privredu, pg. 188.

¹⁰² *ibid*, pg. 185.

¹⁰³ Jelisavac Trošić, Sanja; Rapaić, Stevan (2015). Stanje i perspektive pristupanja Srbije Svetskoj trgovinskoj organizaciji. *Međunarodni problemi*, 1/2015, Vol. LXVII, Beograd: Institut za međunarodnu politiku i privredu, pgs. 128—147, pg. 132.

¹⁰⁴ WTO Accessions, 2022 Annual Report by the Director-General, 1 March 2023, WT/ACC/43, available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/ACC/43.pdf&Open=True>, para. 62.

In 2009, Serbia adopted Law on Genetically Modified Food which states that there is a general prohibition of placing on the market or cultivating for commercial purposes any GMO or its product.¹⁰⁵ This legal solution is not in accordance with the WTO rule prescribing that none of the WTO members in their legislation can contain a provision on the general prohibition on the trade of any product. It is crucial to understand that the WTO does not regulate GMOs as such but does not allow import/export prohibition of any product unless it is scientifically proven that one is harmful to human health.¹⁰⁶ The National Assembly received, on 21 October 2013, the amendment proposal implementing another inadequate solution. Namely, the newly proposed Law on GMOs would prohibit the cultivation, production, and trade of GMO products for commercial trade until 2020. So even though Serbia in 2013 was in the WTO accession process for years and was aware of the existing inconsistencies in its domestic laws, the new law proposal again contained provisions incompatible with the WTO regulations. The WTO does not predict anything about the cultivation and production of specific products, but the general prohibition on trade is not allowed. Further progress in the negotiations is not possible before Serbia does not implement new laws on this topic, which is not contrary to the WTO principles. The most optimal solution for overcoming this obstacle is to enact a law consistent with the EU regulations, which fulfills the WTO demands but, on the other hand, provides a high degree of protection from GMOs. It would also be a step closer to finalizing the process of Serbia joining the EU. However, Serbia is autonomous to regulate this field on its own terms, but without general trade prohibition. Serbia may introduce technical requirements that would lead to more demanding conditions on the market or insist on explicit labeling of GMO products.¹⁰⁷ Another proposal is a precondition of obtaining licenses issued by national institutes and raising awareness of the general population on the negative impacts of GMO food. Starting with the assumption that knowledge of GMO disadvantages would discourage citizens from purchasing such products, the conclusion is that it may be effective as the prohibition. Consequently, lower market demand would lead to a reduction in imports.¹⁰⁸

Undeniably, Serbia has more than justified reasons for remaining restrained with the amending of this legislation field. Human life and health require the highest degree of protection by a State, and potential abuse of GMO products may be a severe threat. However, many mechanisms exist, some mentioned in this paper,

¹⁰⁵ Zakon o genetički modifikovanim organizmima, "Službeni glasnik RS", br.41/2009, Art.2, available at: https://www.paragraf.rs/propisi/zakon_o_geneticki_modifikovanim_organizmima.html

¹⁰⁶ Bojana Todorović, Zašto Srbija treba da uđe u Svetsku trgovinsku organizaciju? (2017), Beograd: Centar za međunarodne i bezbednosne poslove, pg. 6.

¹⁰⁷ Jelisavac Trošić, Sanja; Rapaić, Stevan (2015). Stanje i perspektive pristupanja Srbije Svetskoj trgovinskoj organizaciji. Međunarodni problemi, 1/2015, Vol. LXVII, Beograd: Institut za međunarodnu politiku i privredu, 128-147, pg. 134.

¹⁰⁸ Sanja Jelisavac Trošić, Dragoljub Todić, Milorad Stamenović, Svetska trgovinska organizacija, životna sredina i sistem zdravstvene zaštite (2018), Institut za međunarodnu politiku i privredu, pg. 186, 187.

available for its prevention. Serbia should seriously consider all options and decide which is the most suitable and effective within its system. As long as the current Law on GMOs is in force, Serbia cannot proceed with its accession process. No member can join the WTO before obeying the core principles of the Organization.

Correlation between the WTO and EU accession

After the meticulous examination of Serbia's process to accede to the WTO, this chapter will deal with the other strategic goal of Serbia- becoming a member of the EU. Except for a brief explanation of the success gained so far, it will deal with the correlation between these two accession processes and point out the relevance of the EU as an actor within the WTO.

For a long time, the accession to the EU has been Serbia's primary foreign policy goal. Officially, negotiations between the EU and Serbia started in 2012. The first step was a *Stabilization and Association Agreement* signed in 2008 and entered into force on 1 September 2013. In the beginning, negotiations consisted of 35 chapters, but the EU Council revised the enlargement methodology and changed it into six Clusters. Chapters 34 – Institutions and 35 – Other issues stayed outside the new division and will be the topic of discussion at the end of negotiations.¹⁰⁹ Until today, Serbia entirely opened only two clusters- Fundamentals and Green Agenda and sustainable connectivity, and the others partially- some chapters according to the old methodology. By December 2021, the number of opened chapters was 22, where two of them were provisionally closed- Chapter 25 (Education and Culture) and 26 (Science and Research).

A significant part of the annual reports by the European Commission is Serbia's negotiation process with the WTO, giving recommendations and asking questions on the current status. The question is: why is such an interest from the EU in Serbia's accession to the WTO? Firstly, the EU is one of the most influential members of the WTO nowadays. At the same time, each EU state is a member of the WTO on its own. Cluster 6 deals with the content of the former Chapter 30- External Relations, and one of the most significant Serbia tasks within it is the accession to the WTO. Consequently, the finalization of the negotiation with the EU is not possible until Serbia becomes a WTO member. Additionally, the result of the negotiation with the WTO will affect some other clusters, and it is not possible to take a definite position in the discussion with the EU before finishing the WTO accession process. The outcome of the WTO accession will affect Serbia's approach in negotiating former Chapter 29 (currently part of Cluster 3)- Customs Union since membership in the WTO and the EU will influence Serbia's customs. Furthermore, a definite stand in negotiating Chapter 11- Agriculture and

¹⁰⁹ see details: <https://www.mei.gov.rs/eng/documents/negotiations-with-the-eu/negotiation-clusters/> [accessed 30 July 2023]

rural development and Chapter 12- Food Safety, veterinary and phytosanitary policy (both in Cluster 5 now), Serbia will take, once it conforms those fields with the WTO rules.¹¹⁰ Overall, despite how far Serbia proceeds in the accession process to the EU and how many Clusters manage to close, as long as joining the WTO is in progress, Serbia won't be able to become a member of the EU. Since the EU is a member of the WTO and all individual EU states¹¹¹, it is clear that Serbia cannot join the EU before acceding to the WTO. Considering the nature of the WTO and the commitments that every member has to make, it is evident that being a WTO member is the precondition for EU accession. This fact is formally reflected in the content of the negotiations, which in some segments directly depend on the outcome of the negotiations with the WTO.

From the other perspective, what will accession to the EU bring Serbia as a member of the WTO, and is it relevant? Namely, over the years, the influence of the EU has increased, and it has a significant role in the WTO reform. Except for the fact that the EU defines Serbia's WTO accession as the precondition for joining the European Union, it will also bring certain benefits for Serbia in the WTO. The EU, the US, Japan, and Canada have been members, among others, since the establishment of the WTO in 1995, and at that time, those four states had a share of 90% in world trade. These countries proposed many considerable solutions for the work of the WTO.¹¹² The EU has always been a strong supporter of trade multilateralism and, with its exclusive competence in trade policy, had a strong voice while representing all its members. In its Strategic Agenda 2019-2024, the EU set six milestones that should confront the challenges of the EU and its citizens:

1. A European Green Deal;
2. A Europe fit for the digital age;
3. An economy that works for people;
4. A stronger Europe in the world;
5. Promoting our European way of life;
6. A new push for European democracy.¹¹³

Point 4: A stronger Europe in the world defines strategies, among others, for the improvement of the WTO system, setting three main goals:

- updating the rule book on international trade to capture today's global economy
- strengthening the monitoring role of the WTO

¹¹⁰ Jelisavac Trošić, Sanja (2020), Serbia in EU and WTO negotiation, Revizor. 23. 49-55. 10.5937/Rev2092049J, pg. 54.

¹¹¹ see the above Chapter: Article XI: Original Membership.

¹¹² Jelisavac Trošić, Sanja. (2021). What Is the Role of the European Union in Reshaping the Future of the World Trade Organization? https://doi.org/10.18485/iipe_euchanges.2021.ch21 , pg. 430.

¹¹³ European Commission. (2019). The European Commission's priorities, see at: https://ec.europa.eu/info/strategy/priorities2019-2024_en [accessed 4 June 2023].

- overcoming deadlock on the WTO dispute settlement system.¹¹⁴

For each of these objectives, the EU recommended a set of measures and suggestions for overcoming the current obstacles within the WTO.¹¹⁵ Generally, the EU intends to overcome all shortcomings with current WTO rules. The Chapter "Practical Significance" will deal with the third bullet in the context of the dispute settlement system in the WTO and recent events. For the purpose of this chapter, it is crucial to understand how valuable the role of the EU is in the WTO and global trade in general. Additionally to the huge share the EU has in the world market, which makes them one of the drivers of the WTO, its intention to strengthen multilateralization and to improve the WTO rules following new challenges makes the EU an essential part of the system. What does that mean for Serbia? Although Serbia's accession to the WTO is a necessary precondition for joining the EU, once Serbia finishes both procedures, being a member of the EU within the WTO will bring benefits to Serbia. Being part of the EU will provide Serbia stronger voice and a better position in the forum for negotiations within the WTO. Serbia is a small country in transition, and without uniting with someone does not stand a chance in protecting its interests. Since the EU is one of Serbia's most relevant partners in foreign trade, accession to both the EU and the WTO will significantly impact Serbia's foreign trade relations and, consequently, its GDP.

Comparison with the accession of Montenegro

As already mentioned, the FRY, later the State Union of Serbia and Montenegro, submitted the request to join the WTO in 2001. Although the General Council had established the Working Party in February 2001 and the FRY sent the Memorandum on Foreign Trade Regime in 2002, the first meeting of the Working Party never happened. The stumbling stone of the process continuance was the political issue between Serbia and Montenegro. Although they applied for accession as one State, they could not agree on constitutional reforms. The central problem was that both had competence over their foreign trade policies, acting more like separate customs territories. Despite the comprehensive debate on changing the Constitution, neither was ready to entrust competence in external relations to the Ministry for International Economic Relations of the State Union.¹¹⁶

As a result, in 2004, Serbia and Montenegro applied for the accession, submitting separate requests and asking for the withdrawal of the previous joint submission. Although they constituted one State at that time- Serbia and

¹¹⁴ European Commission. (2019b). The EU's objectives, see details on: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/eu-and-wto_en [accessed 4 June 2023].

¹¹⁵ for the details on specific proposals of measures see: European Commission. (2018, September 18). WTO modernization, Introduction to future EU proposals, Concept paper, Brussels.

¹¹⁶ Sanja Jelisavac Trošić, Pregovori u okviru GATT i STO (2015), Institut za međunarodnu politiku i privredu, pg. 267.

Montenegro, this was possible because each of them had full autonomy in the conduct of its external commercial relations that qualified them to apply as separate customs territories under Article XII of the WTO Agreement. Unlike Serbia which is still in the negotiations phase, Montenegro went through this process more smoothly and became a WTO member in 2012. Even though the reasons for such a difference are a broad topic, impossible to cover within the scope of this paper, basic information on the accession process will suffice for the main assumptions. Montenegro submitted the Memorandum on Foreign Trade Regime in March 2005, while the Working Party finished its Draft Report in 2008. Montenegro prepared MFTR on such short notice, which is reasonable, bearing in mind that Serbia and Montenegro already submitted one together in 2002, which might be a solid basis. But the fact that multilateral negotiations lasted less than two years means that Montenegro expeditiously brought laws into conformity with the WTO rules. Bilateral negotiations did not take much longer. Montenegro provided Goods Offers in 2006 and, Service Offers in 2005, while both Drafts on Goods and Services were finished in 2008.¹¹⁷ Reasons for such discrepancy may be various, from different external policies at the time of accession to the less rigid Montenegro's position during the negotiations. Also, it is definite that this process is becoming much more difficult through the years as more members engage in bilateral negotiations, which demands more effort from the acceding governments.

Practical significance

Undeniably, one of Serbia's most important foreign policy goals is joining the WTO. This accession has a double function. In the first place, joining the WTO would impact outstandingly its foreign trade and, in that way, access the market of the WTO members. Another perk of accession is fulfilling one of the crucial conditions for joining the EU.

Nowadays, 98% of the world's trade occurs under the auspices of the WTO. The WTO established a predictable and well-known set of rules that regulates foreign trade in goods, services, and intellectual property rights among its members. First, for small economies such as Serbia, membership is valuable because it provides better access for establishing cooperation with more States/ separate customs territories. Serbia already has significant economic ties with the EU, USA, China, and Russia, by joining the WTO won't only further facilitate those connections but also attract other players in the trade field. Even negotiations for accession change its appearance in the world market because of the alignment of laws with the WTO. As a head start for

¹¹⁷ see full details of the accession process: https://www.wto.org/english/thewto_e/acc_e/a1_montenegro_e.htm

the country in transition, a huge step represents amending national laws and regulations and conforming them with the WTO standards. Trade liberalization and reforms in that field expedite the country's development and efficiency in a global market. Predictable treatment and legislation will attract more foreign investors to come to Serbia, and on the other hand, it will enable Serbia's companies to explore new markets.¹¹⁸ Within the act of joining the WTO, Serbia will commit itself to fulfilling many obligations during a certain period of time, which will define the direction of the domestic and foreign trade policy. Breach of those obligations would lead to renewed negotiations with the WTO members. Moreover, Serbia would have to compensate in money the members who suffered a loss caused by avoidance of undertaken commitments.¹¹⁹ As a small country disabled to effectively negotiate with dominant economies, joining the WTO provides another advantage. Namely, the WTO represents the forum for negotiations on current obstacles in trade, facilitating all interested members to discuss ongoing issues. As expected, a small country cannot resist the pressure from the stronger parties, but the forum enables members with the same intentions to join and negotiate together.¹²⁰ Another issue for the countries that are not members of the WTO is discrimination against their companies on foreign markets. Since nowadays, the majority of the world is within the WTO system, following strict rules on non-discrimination, those who are not members are in the grey area. Companies originating from states that are not WTO members are usually subject to discrimination in the foreign markets from those who are, without any consequences.¹²¹

As already discussed, one of central Serbia's foreign policy goals is accession to the European Union. Although Serbia officially started negotiations in 2012, there is still a long way to finish it and finally become a member. Negotiating Cluster 6¹²² covers external relations and prescribes for Serbia to accede to the WTO as a necessary precondition for becoming an EU member. Consequently, as long as Serbia does not finish the accession to the WTO, Cluster 6 cannot be closed. Furthermore, the result of negotiations with the WTO affects other Clusters- Cluster 5 in the part of Agriculture and rural development and Food safety, veterinary and phytosanitary policy, and Cluster 29 on Customs union.¹²³ Another reason will prolong joining the EU - after the accession to the

¹¹⁸ Bojana Todorović, *Zašto Srbija treba da uđe u Svetsku Trgovinsku Organizaciju?* (2017), Centar za međunarodne i bezbednosne poslove, Friedrich Ebert Stiftung, pg.7, <https://www.isac-fund.org/wp-content/uploads/2017/07/Za%C5%A1to-Srbija-treba-da-u%C4%91e-u-STO.pdf>

¹¹⁹ Sanja Jelisavac Trošić, *Pregovori u okviru GATT I STO* (2015), Institut za međunarodnu politiku i privredu, Beograd, pg. 288,289

¹²⁰ Predrag Bjelić, *Međunarodna trgovina- teorija, poslovanje, politika* (2011), Centar za izdavačku delatnost Ekonomskog fakulteta u Beogradu, Beograd, pg. 515.

¹²¹ Jelena Kozomara, *Spoljnotrgovinsko poslovanje* (2005), Institut za ekonomsku diplomatiju, Beograd, pg. 170.

¹²² see the EU Council enlargement methodology and details on Clusters: <https://www.mei.gov.rs/eng/documents/negotiations-with-the-eu/negotiation-clusters/>

¹²³ Sanja Jelisavac Trošić, (2020). SERBIA IN EU AND WTO NEGOTIATIONS. *REVIZOR*, 23(91-92), 49–55. <https://doi.org/10.5937/Rev2092049J>.

WTO, the EU will strictly monitor Serbia's foreign trade policy.¹²⁴ Namely, the EU will track Serbia's behavior in the foreign trade field to decide if Serbia is ready to become a member of the trade policy union.

Another milestone of the WTO is the dispute settlement system. Annex 2 of the WTO Agreement, named Dispute Settlement Understanding (DSU)¹²⁵, provides rules and procedures governing the settlement of disputes. Article 1.1 of the DSU defines the jurisdiction of the Dispute Settlement Body over all disputes arising from 'covered agreements' between the WTO Members.¹²⁶ From such a formulation, it is reasonable to conclude that jurisdiction under the DSU is broad and offers legal certainty for members in case that dispute arises. The DSU predicts two instances of dispute settlement: Panels (Articles 6-16 of the DSU) and the Appellate Body (Article 17 of the DSU). Except for having a well-established international dispute settlement system, the WTO is a rare example of such a system offering appellate review for each case. Overall, a standardized dispute settlement mechanism with predetermined rules and authorized bodies represents a great asset for each member in protecting its rights derived from the WTO provisions. It is especially beneficial for countries such as Serbia, small ones, and those that do not have enough resources because it is more likely that they will get proper protection through this system than achieve it on their own.

Recently, the functioning of the dispute settlement system has been disturbed due to political reasons and disagreements with the existing procedures. The Appellate Body was established in 1995¹²⁷ and represents the permanent adjudicative body, consisting of 7 members, responsible for deciding in a second-level instance on appeals of Panels' reports.¹²⁸ Members of the Appellate Body have a mandate of four years, and each may be reappointed once. A consensus is necessary for the decision on the appointment of each member.¹²⁹ In 2018 the US started blocking appointments and reappointments of the Appellate Body members, which escalated in 2019. Namely, from December 2019, the Appellate Body became ineffective since only two members remained.¹³⁰ The practical significance of ongoing events is enormous since the Appellate Body is unable to review any appeals, which further leads to many unresolved disputes. This issue affects the whole WTO system

¹²⁴Jelisavac Trošić Sanja, Todić Dragoljub, Stamenović Milorad (2018). Svetska trgovinska organizacija, životna sredina i sistem zdravstvene zaštite. Institut za međunarodnu politiku i privredu, pg. 185

¹²⁵DSU, Dispute Settlement Rules: Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401, 33 I.L.M. 1226 (1994) [hereinafter DSU]: https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm

¹²⁶ Appendix 1 of the Dispute Settlement Agreement enumerates 'covered agreements': the WTO Agreement, GATT 1994 and other multilateral agreements on goods, GATS, TRIPS Agreement and Plurilateral Agreement on Government Procurement.

¹²⁷Recommendations by the Preparatory Committee for the WTO, approved by the Dispute Settlement Body on 10 February 1995, WT/DSB/1, 19 June 1995.

¹²⁸Article 17.1 DSU.

¹²⁹ Article IX of the WTO Agreement provides that decisions should be arrived by consensus unless otherwise provided in a specific cases.

¹³⁰Matteo Fiorini, Bernard M. Hoekman, Petros C. Mavroidis, Maarja Saluste & Robert Wolfe, WTO Dispute Settlement and the Appellate Body Crisis: Insider Perceptions and Members' Revealed Preferences, 54 J. WORLD TRADE 667 (2020), pg. 667.

because, without efficient remedies for breaches of obligations, respect for the rules and functioning of the Agreements is also questionable. Once it became evident that the US won't give up blocking the work of the Appellate Body, a few WTO members, led by the EU, started working on a different approach. As a result, they established The Multy-Party Interim Appeal Arbitration Arrangement (MPIA)¹³¹ under Article 25¹³² of the DSU. Currently, there are 27 members of the MPIA, and they proclaimed that while the Appellate Body is ineffective, they won't appeal according to Articles 16.4 and 17 of the DSU but instead resort to the MPIA as interim appeal arbitration procedure.¹³³ To conclude, although the WTO dispute settlement system seemed a remarkable benefit for the members, there has been a conflict in its functioning for a long time. Recently it escalated and led to the paralyzing of the existing mechanism and trying to establish a new, temporary one. It is impossible to predict what will happen in the future, whether more members will accept the MPIA, and when they will find a new, permanent solution acceptable to everyone.

Anticipated benefits of Serbia's accession to the WTO are transparency and legal certainty in international trade affairs, better access to the world market, and taking advantages predicted by the WTO, such as most favored nation and national treatment and predetermined customs tariffs. The dispute settlement mechanism established within the WTO for a long time has been considered one of the greatest assets of this organization. But in light of the events from the last few years, the practical significance of the DSU has been shaken. Hopefully, in the coming period, the WTO members will be able to find a permanent solution satisfying everyone. Membership in the WTO will attract foreign companies to invest in Serbia. Furthermore, as a WTO member, Serbia sends a picture of a well-established system consisting of transparent rules, which will attract more partners and open new market access for Serbia's products and services. Another advantage is the opportunity to associate with other members with the same interests and use the WTO as a negotiating forum for achieving their goals.

The only disadvantage of these negotiations for Serbia is the costs it bears in the accession process. The particular issue is that Serbia has been negotiating accession for almost 20 years, which accumulated expenses without taking advantage of the WTO in that period. The costs necessary to bear for fulfilling the conditions to join the organization are like a form of investment, keeping in mind the benefits that membership will provide. The only question remaining is how much longer Serbia will remain in the status of the acceding state. Overall, Serbia won't lose anything by joining the WTO. The WTO will provide a better position on the world market,

¹³¹ *ibid*, pg.680.

¹³² Article 25.1 of the DSU states: Expeditious arbitration within the WTO as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties.

¹³³ The Multy-Party Interim Appeal Arbitration Arrangement (MPIA), WTO Doc. JOB/DSB/1/Add.12 (30 April 2020), paras. 1 and 2.

but it is just a starting point. Once a member, Serbia will still have a long way to become a real competitor in global trade, starting with the improvement of its production.

Future expectations

Obviously, from the former examination, Serbia is in the advanced stage of the accession procedure. But what are future expectations, and is there any prediction on the finalization of this process? Although there is no reliable information on these questions, this chapter will provide some conclusions based on available data.

Firstly, for ten years, when was the last Working Party meeting, Serbia did not make any significant progress. Since then, they closed a few more bilateral negotiations but still have four more left: with Brazil, Russia, Ukraine, and the US. Considering recent events, especially the Russia-Ukraine conflict, it is not likely that Serbia will in the foreseeable future close remained negotiations. Serbia should also consider the long-term consequences of the conflict within the scope of future discussions with these two countries. It is not impossible to imagine a scenario in which Russia and Ukraine would substantively change their requirements following the outcome of the current situation. It would lead to months or possibly years for Serbia to agree on commitments.

Regarding the progress within multilateral negotiations, the situation is slightly better. Although the same issue stayed unresolved for years- The law on Genetically Modified Organisms, the mitigating circumstance is that the new law adoption depends only on Serbia, not the other members. Serbia's law on GMOs is contrary to the WTO principle that the general prohibition of trade of any product is not permissible. Still, there is no single amendment proposal on this topic, not even a suggestion on a possible future date.

It is discouraging that the WTO, in its latest Annual Report 2022, categorized Serbia as inactive¹³⁴ in its status of accession. Namely, after the reactivation status during the past few years, showing the tendency to re-establish communication with the WTO and finalize its membership process, last year, the WTO did not notice any activity by Serbia. The only available recent announcement by the Ministry of Trade is the written answer to the question of the future of Serbia's accession by the media. The Ministry stated that the finalization of the multilateral part depends on the Law on GMOs, which is the responsibility of the Ministry of Agriculture, Forestry, and Water Management. Considering bilateral negotiations, the Ministry claimed that it is a complex

¹³⁴ see footnote 79.

process affected by both involved.¹³⁵ Overall, without providing any detail on current work or plans for the future. After consideration of all these factors, even though Serbia finished a major part of the present negotiation phase, the remaining issues have been unresolved for a long time without any significant progress. Due to all the above-mentioned reasons, it is ungrateful to predict the accession date.

VII CONCLUSION

The World Trade Organization undeniably represents a crucial actor in governing international trade. It intends to gather as many members as possible and thus apply its rules in the complete global market. On the other hand, States/ separate customs territories that have not joined yet, also aim to become members. It is understandable when considering all the advantages they will obtain. Membership in the WTO guarantees legal certainty and transparency regarding the rules and better access to the world market, which is especially valuable for small and vulnerable economies. Even the accession procedure has significant effects on the domestic system, namely adapting internal regulations during the negotiations phase sets out the base for the trade policies improvement and closer connection with the WTO members. Another great WTO asset is the Dispute Settlement System, which has been shaken in light of recent events, and, hopefully soon, the WTO members will find a suitable solution. As a result, it's comprehensible that countries outside of this organization strive to join and, consequently, engage in the accession process. One of them is Serbia, which has been on the accession path for almost 20 years with no prospect of joining any time soon.

Overall, Serbia's accession procedure has been accompanied by various historical, political, and economic challenges. Accession initiated in 2005, nearly a decade after the establishment of the WTO, Serbia's journey was delayed by the complex legacy of the Socialist Federal Republic of Yugoslavia (SFRY) and the subsequent breakup of the federation. The initial postponement in Serbia's WTO accession is the consequence of the intricate political and territorial disputes that plagued the SFRY in the early 1990s. The SFRY's disintegration was followed by the formation of the Federal Republic of Yugoslavia (FRY), consisting of Serbia and Montenegro, with ambitions to enter the WTO. However, internal disagreements and unresolved issues between the two republics hindered progress and prevented FRY's earlier entry into the WTO. The absence of a clear status for FRY within the WTO framework prolonged the negotiation process. The organization's decision to treat FRY as a new member under Article XII rather than as a successor under Article XI created additional

¹³⁵ Radio Slobodna Evropa, Radio Free Europe / Radio Liberty, 2023 RFE/RL, Inc. Website, accessed 5 August 2023, available at: <https://www.slobodnaevropa.org/a/ministarstvo-trgovine-srbija-pristupanje-svetskoj-trgovinskoj-organizaciji/31885916.html>

obstacles. The ongoing conflict in Kosovo further complicates matters, affecting Serbia's negotiating position and potential difficulties in the WTO discussion.

Within the scope of substantive requirements of negotiations, one significant challenge has been Serbia's determination to protect its domestic industries and markets, coupled with the demand for alignment with WTO standards. The decade-long solicitude over genetically modified organisms (GMOs) legislation is the best example. While Serbia is concerned about safeguarding public health and the environment, the WTO's prohibition on general trade restrictions requires legislation amendments. Serbia has to strike a balance between these two priorities to accede to the WTO. Different possibilities may satisfy Serbia's concerns and, at the same time, comply with the WTO requirements.

Another complicating factor is Serbia's parallel negotiations with the European Union. The mutual relation between the EU and WTO requirements has further complicated Serbia's approach to negotiations, with the EU advising Serbia to make trade concessions after consideration of the EU levels. These parallel negotiation processes represent another increase in the challenges since Serbia's trade policies should comply with both organizations' regulations. Considering the influential role of the EU within the global trade community and its positioning as a key participant in shaping the course of the WTO's evolution, Serbia will be part of the strong community within the organization. Within the context of global trade, the EU possesses an exceptional role as a WTO member who drives transformations within the organization. Reasons behind the EU representing a guiding force for reshaping the WTO following new global developments are considerable market share and its commitment to the multilateralization of trade. The significance of both memberships strengthens Serbia's position on the worldwide stage, equipping it with a stronger voice and enhancing its negotiation capabilities. As a nation in transition, Serbia's association with the EU and the WTO fosters an environment prolific for attracting foreign investment, exploring new markets, and driving economic development.

The different positions taken by Serbia and Montenegro in their aim to become WTO members disclose various factors that have affected their perspective accession procedure. Although both nations initiated their accession journeys as part of the State Union of Serbia and Montenegro, various political and economic reasons significantly shaped the outcomes. Montenegro's smoother accession process can be partly attributed to its relatively quick preparation of crucial documentation and swift compliance with WTO regulations. Economically, Montenegro's ability to expeditiously align with WTO rules might indicate its effective legislative adjustments. The economic and political climate of Serbia, influenced by the long-term effects of the Federal Republic of Yugoslavia's breakup and parallel negotiations with the EU, may have posed more obstacles, impacting the prompt implementation of necessary reforms. These two opposite experiences, derived

from the same starting point, highlight the importance of political and economic factors in navigating the WTO accession procedures of countries. As explained, Montenegro's accession shows the advantages of prompt adaptation of domestic legislation. On the other hand, Serbia's prolonged accession procedure is an example of the complex relationship between its political history and its later capacity to comply with international trade principles.

Another obstacle to Serbia's accession path is bilateral negotiations. The Kosovo question remains a huge concern, potentially influencing Serbia's negotiation dynamics. Namely, if Kosovo becomes a WTO member before Serbia, it could put Serbia in an unfavorable position during bilateral negotiations, as Kosovo may demand concessions that are unacceptable to Serbia. Despite these drawbacks, Serbia shows determination to comply with international trade norms, encourage economic growth, and become a player in the global market and consequently finalize the WTO accession process. Over the years, Serbia has made progress, engaging in bilateral negotiations with numerous WTO members and addressing domestic legislation issues. Recent inactivation in the negotiations has brought certain concerns about Serbia's WTO timeline, leaving its accession expectations to be further determined by the resolution of ongoing issues like GMO regulations and the intricate geopolitical contexts of bilateral negotiations.

Looking ahead, Serbia's journey to WTO accession remains uncertain. The country must govern intricate negotiations, resolve domestic conflicts, and harmonize trade policies in alignment with both WTO and EU requirements. The inseparable procedures of Serbia's WTO and EU membership will offer a solid basis for national trade improvement, new market access, negotiation leverage, and economic development. However, the journey's complexity and unforeseen obstacles demonstrate that, while the final goal is clear, the path ahead is far from predictable. Undoubtedly the prolonged process of joining the WTO challenges sizable resources and constant efforts from a country like Serbia. While the extended timeline and related costs might look disheartening, the foreseen benefits of WTO membership, such as better market access, trade regulation, and international cooperation, look promising. Conclusively, despite the various challenges Serbia faces in this process and the numerous advantages offered by the WTO, even this prolonged procedure could be worthwhile for Serbia's position in the world market and economic growth. Undoubtedly, gaining WTO membership represents the core stone for Serbia to achieve a competitive global position. However, it is essential to understand that this accomplishment is just the beginning since Serbia still needs to significantly strengthen its domestic production capacities to institute a strong and lasting presence in the world trade scene.

Serbia's accession process strongly reminds us that the path to international integration is unpredictable and accompanied by many obstacles. This example shows the unavoidable connection between domestic policies,

geopolitical situations, and international regulations. Although the timeline for joining the WTO remains uncertain, the commitment to the process remains consistent. Information obtained from Serbia's accession process examination may serve as a direction for Serbia's negotiating team to solve the remaining issues. Furthermore, lessons learned from this country's experience may serve as a guideline for states in a similar position that did not initiate accession procedure yet. States planning to join the WTO might use each obstacle that Serbia went through as a warning and try to avoid it more promptly. Finally, it is important to note that Serbia's WTO accession process is only a tiny part of the broad global intention to strengthen global partnerships and encourage world cooperation instead of confrontation.

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ABSTRACT

The World Trade Organization has 164 members and navigates 98% of global trade. A wide range of rules, transparency within the organization, and legal certainty attract the rest of the world to join the WTO. Twenty-four States/separate customs territories are in the WTO accession process. This paper seeks to examine the accession procedure's rules and process, with the particular example of Serbia's accession path. It will discuss the negotiation process, going through all phases and mentioning the advantages of being a WTO member. Moreover, it provides information on the main obstacles to Serbia's attempts to become a WTO member and makes suggestions for its improvement.

World Trade Organization is an international organization that sets out rules for trade in foreign markets, establishing a series of mechanisms for legal certainty while providing many benefits for its members. Serbia, as a part of former Yugoslavia, had a member status in The General Agreements on Tariffs and Trade 1947, and later breakup of the state led to many problems in its position internationally. One of them is membership in the WTO, which represents a long-term foreign project for Serbia and whose outcome is still ambiguous.

In pursuit of this goal, this paper will review existing literature on the accession and relevant documents issued by the WTO. Serbia's accession process will be examined in light of internal and external factors affecting further progress and pointing out the main present issues. Moreover, the paper provides some proposals for overcoming this obstacle.

This study shows that although the WTO prescribes general rules on accession, the accessing governments sometimes still struggle with this process. Reasons behind it are sometimes of an internal nature, such as a lack of resources. The great uncertainty represents bilateral negotiations, which may prolong the process, and the outcome is questionable, meaning that each member may have different commitments. In the case of Serbia, the research discovers that the internal situation has a major impact on the WTO accession process. Moreover, parallel negotiations for joining the EU and WTO, which are in correlation, further complicate Serbia's position. The study concludes that many factors influence the accession process and propose suggestions for overcoming some.

Keywords: WTO, accession, WTO accession procedure, multilateral and bilateral negotiations, Serbia

ABSTRACT

Die Welthandelsorganisation hat 164 Mitglieder und steuert 98 % des Welthandels. Ein breites Regelwerk, Transparenz innerhalb der Organisation und Rechtssicherheit locken den Rest der Welt dazu, der WTO beizutreten. Vierundzwanzig Staaten und getrennte Zollgebiete befinden sich im WTO-Beitrittsprozess. Diese Arbeit versucht, die Regeln und den Ablauf des Beitrittsverfahrens am konkreten Beispiel Serbiens zu untersuchen. Es wird der Verhandlungsprozess besprochen, alle Phasen durchlaufen und die Vorteile einer WTO-Mitgliedschaft erwähnt. Darüber hinaus informiert sie über die Haupthindernisse für Serbiens Versuche, WTO-Mitglied zu werden, und macht Vorschläge für deren Verbesserung.

Die Welthandelsorganisation ist eine internationale Organisation, die Regeln für den Handel auf ausländischen Märkten festlegt, eine Reihe von Mechanismen für Rechtssicherheit einrichtet und ihren Mitgliedern gleichzeitig viele Vorteile bietet. Serbien hatte als Teil des ehemaligen Jugoslawiens einen Mitgliedsstatus in den Allgemeinen Zoll- und Handelsabkommen von 1947, und der spätere Zerfall des Staates führte zu vielen Problemen in seiner internationalen Position. Eine davon ist die Mitgliedschaft in der WTO, die für Serbien ein langfristiges Auslandsprojekt darstellt und dessen Ausgang noch unklar ist.

Um dieses Ziel zu erreichen, werden in dieser Arbeit die vorhandene Literatur zum Beitritt und relevante Dokumente der WTO überprüft. Der Beitrittsprozess Serbiens wird im Lichte interner und externer Faktoren untersucht, die den weiteren Fortschritt beeinflussen und die wichtigsten aktuellen Probleme aufzeigen. Darüber hinaus liefert diese Arbeit einige Vorschläge zur Überwindung dieses Hindernisses.

Diese Studie zeigt, dass obwohl die WTO allgemeine Beitrittsregeln vorschreibt, die beitretenden Regierungen jedoch in manchen Fällen immer noch mit diesem Prozess zu kämpfen haben. Manchmal sind die Gründe dafür interner Natur, etwa fehlende Ressourcen. Eine große Unsicherheit stellen bilaterale Verhandlungen dar, die den Prozess in die Länge ziehen können, und deren Ergebnis fraglich ist, was bedeutet, dass jedes Mitglied unterschiedliche Verpflichtungen haben kann. Im Fall Serbiens ergab die Untersuchung, dass die interne Situation einen großen Einfluss auf den WTO-Beitrittsprozess hat. Darüber hinaus erschweren parallele Verhandlungen über den Beitritt zur EU und zur WTO, die miteinander korrelieren, die Position Serbiens zusätzlich. Die Studie kommt zu dem Schluss, dass viele Faktoren den Beitrittsprozess beeinflussen und schlägt Vorschläge zur Überwindung einiger vor.

Schlüsselwörter: WTO, Beitritt, WTO-Beitrittsverfahren, multilaterale und bilaterale Verhandlungen, Serbien