4 Accessions

I sent the club a wire stating, "PLEASE ACCEPT MY RESIGNATION. I DON'T WANT TO BELONG TO ANY CLUB THAT WILL ACCEPT PEOPLE LIKE ME AS A MEMBER".

Groucho Marx, referring to the Friars Club of Beverly Hills
Groucho and Me (1959)

Introduction

Accessions have been one of the most active areas of negotiation in the WTO period. Thirty countries acceded to the WTO from 1995 to 2012, and another 25 countries were still seeking to accede at the end of the period (see Appendix 4.1). The completed accessions added an average of 1.7 new members per year, or slightly more than half the rate at which countries joined GATT from 1984 to 1994 (3.2). The new members that joined the WTO greatly outweighed the latecomers to GATT, including some of the world's largest economies. It could well be argued that the value of the accessions completed since the WTO came into effect equal or exceed any gains that might reasonably be had from a successful conclusion to the Doha Round. Once the pending accessions are completed, the WTO will come very close to comprising an organization with universal membership.

Three kinds of countries that had been marginalized in GATT predominate among the acceding countries in the WTO period. Nine of the 30 countries that acceded through the end of 2012 were formerly part of the Soviet Union, and another ten either had been or remained non-market economies; seven of the 25 countries that were then in the process of accession were similarly former Soviet or Yugoslav republics. The incorporation of these countries into the WTO marks one of the fundamental differences between the milieu of GATT and the WTO. Four of the countries that acceded, and nine of those still acceding in 2013, are classified by the United Nations as least-developed countries (LDCs). The third major category consisted of net oil-exporting countries, which accounted for three of those that acceded and seven of those still acceding. All but four of the countries that acceded by 2012 fell into one or two of these three categories of formerly marginalized countries, as did all but five of those still in accession. Put another way, these three categories encompassed 46 of the 55 countries that were in some stage of accession from 1995 to 2012.

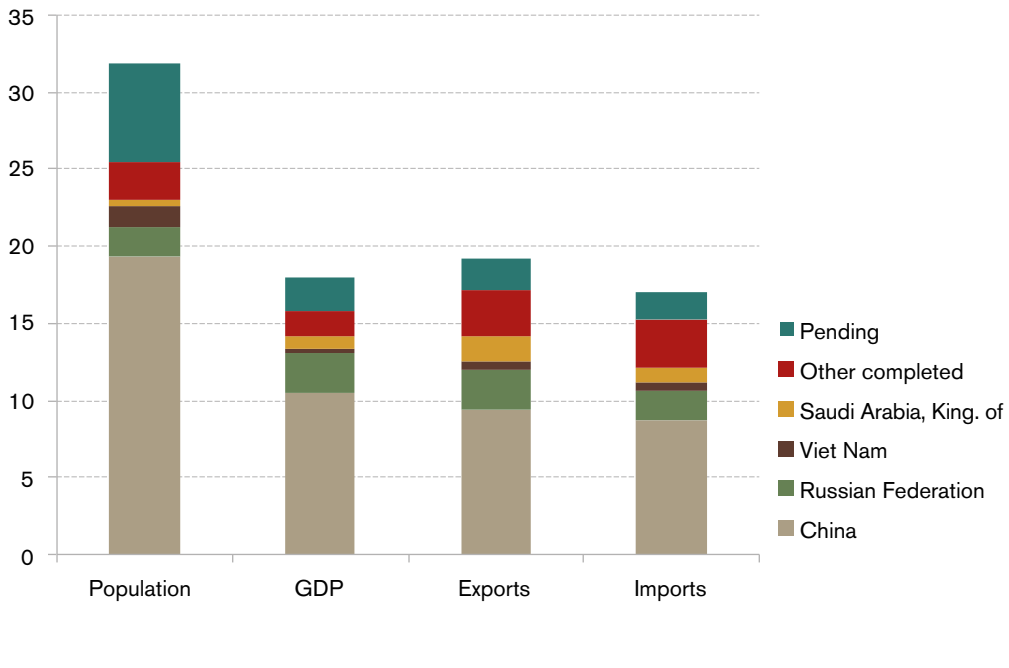
Acceding to the WTO is far different from joining other international organizations, most of which operate under an implicit principle by which, in the absence of truly egregious political problems or especially intractable diplomatic difficulties, all sovereign states have a presumptive right of membership. There may be agreements to sign, dues to pay and other obligations to meet, but the process of accession is rarely burdensome or lengthy. It will generally involve little or no formal scrutiny of the country's existing laws and policies, and even fewer demands that changes be made as a condition of entry. Examples of such universalist institutions include the United Nations, the World Bank, the International Labour Organization, the International Monetary Fund and the World Health Organization. By contrast, joining the WTO is a lengthy process of examination and negotiation in which the acceding country is obliged to make extensive concessions. The bargaining is a deliberately one-sided affair, with all of the requests and demands coming from the existing members and the full burden of adjustment falling on the acceding country. The differences between the WTO and other international organizations can be seen from the example of China. Before that country began the process of acceding to GATT and then the WTO, it first re-entered the World Bank and the International Monetary Fund – two other institutions in which it had (prior to the 1949 revolution) been a founding member. By comparison with China's WTO accession, which would take 15 years to complete, re-entry to these two institutions was remarkably speedy: China filed its formal requests in February 1980, and three months later it was back in both of them.[1]

China's accession to the WTO, coupled with those of the Russian Federation, the Kingdom of Saudi Arabia, Viet Nam and 26 other new members, added 15.8 per cent of global gross domestic product (GDP) to the WTO membership (see Figure 4.1). They brought in a further 17.1 per cent of world exports, 15.3 per cent of imports and 25.5 per cent of the world's population. This expansion is dynamic, as some of the countries that acceded have since grown at a much faster pace than the original membership. As for the countries that were still in the process of accession at the end of 2012, they collectively account for a relatively small share of global GDP (2.2 per cent) as well as exports (2.1 per cent) and imports (1.7 per cent) but a higher share of the global population (6.4 per cent).

How accessions are conducted

While there are a great many ways in which the WTO may be distinguished from GATT, the process of accession is one where the differences are in degree rather than kind. The accessions to the WTO cover a wider range of issues and tend to take much longer to complete, but the process is procedurally and politically quite similar to what it was in the late GATT period. Kim (2010: 12) found as much continuity as change when reviewing "the resilience in the rules of bargaining over trade and trade barriers in GATT and the WTO." Those rules, as exercised in negotiations over countries' accessions to the WTO, have permitted members that were dominant throughout the GATT period to wield undiminished authority in the new institution.

Figure 4.1. Relative size of acceding WTO members: shares of global totals, in %



Source: World Bank data.

Notes: Data on exports and imports are for goods and services. Members as of 2012 based on 2011 data. "Pending" = aggregate data for all other members whose accessions were pending at the end of 2012. "Other Completed" = aggregate data for all other members that completed accessions by the end of 2012.

Heritage from GATT

The first set of GATT accession negotiations was conducted in the Annecy Round in 1949, when ten new countries sought to join. The applicants were obliged in their protocols of accession to accept the rules of GATT, to abide by additional commitments that the contracting parties made at Annecy and to negotiate with existing contracting parties to establish their own schedules of concessions. The accessions negotiated in that round set two important precedents for the next four decades. One is that in the majority of the accessions the applicant's "entry fee" was negotiated concurrently with one of the eight rounds of multilateral trade negotiations conducted under the auspices of GATT. This eased the domestic politics of accessions for many countries, insofar as their negotiators could seek tariff concessions or other commitments from the existing countries as soon as their own accession negotiations were completed. Second, the concessions made by the Annecy Round applicants were not particularly onerous, involving relatively small numbers of tariff concessions. Most of the accessions through the end of the Tokyo Round (1973-1979) followed a similar pattern, and were comparatively easy for smaller applicant countries.

The multilateral system was roughly in balance between developed and developing countries at its inception, but over time came to incorporate more developing than developed countries. GATT began in 1948 to 1949[2] with 11 industrialized countries and 12 developing countries (see Table 4.1). Accessions and successions in 1949 and the 1950s maintained this broad parity, and in the 1960s eight developed countries joined. As of the 1960s, there were fewer developed countries left to accede and the end of colonialism spawned an ever-growing number of newly independent countries. Thereafter, the great majority of the additions to GATT consisted of developing countries. Nine countries joined in the 1960s that would be considered today as industrialized, but at the time they mostly were developing (Republic of Korea),[3] Communist (Poland and Yugoslavia), or still on the periphery of European development (Cyprus, Iceland, Ireland, Portugal and Spain). Switzerland was a special case: accession had been delayed by its tradition of diplomatic neutrality. All 30 of the other countries that joined in the 1960s were developing countries at that time, and from that point forward the developing world would comprise the bulk of the GATT contracting parties. The nine countries that joined in the 1970s were either Communist (Hungary) or developing, and another 11 developing countries joined in the 1980s. The first half of the 1990s saw a large wave of accessions and successions by 30 developing countries, while Liechtenstein was the final industrialized country to join (1994). That decade also witnessed the special case of the Czech and Slovak accessions: Czechoslovakia was an original GATT contracting party, but then the Czech Republic and the Slovak Republic re-acceded separately on 1 January 1993.

Table 4.1. Key events in the growing membership of the multilateral trading system

GATT period	
1940s	GATT begins in 1948 with 23 original contracting parties; 11 others accede in 1949.
1950s	Fifteen contracting parties accede, two succeed and four withdraw.
1960s	Twelve contracting parties accede and 21 succeed.
1970s	Nine contracting parties accede and four succeed.
1980s	Six contracting parties accede and five succeed.
1990s	Nine contracting parties accede and 20 succeed.
WTO period	
1996	Bulgaria and Ecuador accede.
1997	Mongolia and Panama accede.
1998	Kyrgyz Republic accedes.
1999	Estonia and Latvia accede.
2000	Albania, Croatia, Georgia, Jordan and Oman accede.
2001	China, Lithuania and Republic of Moldova accede.
2002	Chinese Taipei accedes.
2003	Armenia and the former Yugoslav Republic of Macedonia accede.
2004	Cambodia and Nepal accede.
2005	Kingdom of Saudi Arabia accedes.
2007	Tonga and Viet Nam accede.
2008	Cape Verde and Ukraine accede.
2012	Montenegro, the Russian Federation, Samoa and Vanuatu accede.
2013	Lao People's Democratic Republic and Tajikistan accede.

Notes: Accessions for 2013 are up to March.

The majority of developing countries that joined GATT did not actually accede but rather succeeded to GATT status. Many of the countries that gained their independence from colonial powers in the post-war period – including most of the Caribbean and Africa, as well as parts of Asia, the Middle East and even Europe – had the option of entering GATT under the special terms of Article XXVI:5(c). This provision, which now has no equivalent in the WTO, offered a very easy route by which former colonies of GATT contracting parties could acquire *de facto* GATT status upon independence. A country could then become a full contracting party by succession, a process that involved much less stringent scrutiny of its trade regime and fewer new commitments than did the ordinary accession process of GATT Article XXXIII. Precisely half (64) of the 128 countries that joined GATT did so through succession. Some countries succeeded to GATT shortly after gaining independence, while others waited years before taking this step.[4]

Several of the countries that were still negotiating by the time the WTO came into being might well have regretted not taking advantage of this option. Some of them rejected GATT and the succession route on ideological grounds, viewing both the institution and the rule as vestiges of colonialism. Most of the countries that succeeded were former colonies of France or the United Kingdom, although in some cases the path to independence from a mother country and succession to GATT was *sui generis*. Liechtenstein is one such example, having succeeded in 1994 on the basis of its earlier customs union with Switzerland. Singapore is another notable case, having succeeded to GATT in 1973, after gaining its independence from Malaysia in 1965, and is among several succeeding countries that became very active in GATT and then in WTO negotiations. The same may be said of: Hong Kong, China; Indonesia; and Jamaica. Succession was also the path taken to GATT entry by Cyprus and Malta, which following EU membership became part of the largest trading bloc in the WTO.

Many of the countries that acceded to GATT during the 1980s and early 1990s found the process to be more demanding than it had been in past decades. Negotiators from the major trading countries grew increasingly insistent upon using the GATT accession process as a means of ensuring that the country's trade regime was consistent with the rules and principles of the system. One need only observe the Mexican example to appreciate the differences between GATT accession practices before and after the change in policy. Mexico had originally negotiated for accession during the Tokyo Round, but then decided in 1980 not to implement the protocol of accession that it had concluded in 1979. The country changed direction once again in the mid-1980s, but the protocol of accession that it negotiated in 1985 was much more exacting than the one reached just six years earlier. Whereas the 1979 protocol consisted of little more than a list of tariff concessions and the obligatory pledge to comply with GATT rules, the latter agreement entailed binding the entire tariff schedule at 50 per cent, agreeing to 373 concessions on tariffs below this ceiling, and pledging to adhere to GATT codes relating to subsidies and countervailing measures, licensing procedures, anti-dumping, standards and customs valuation. The second protocol was also less permissive than the earlier document with respect to certain sectoral exclusions that Mexico sought. This set the pattern for the 12 developing country accessions that were concluded during the Uruguay Round, which were more difficult than those conducted during the 1949 to 1979

period but less comprehensive than accessions to the WTO. The principal difference is that the GATT regime had not yet incorporated the new issues that were under negotiation in that round, and hence the acceding countries were under no obligation to make commitments on services, intellectual property and investment or on agricultural issues other than tariffs.

The process of accession

Accession negotiations are deliberately one-sided affairs, with all of the requests coming from the existing members and the full burden of adjustment falling on the acceding country. The applicant is not entitled to request tariff concessions or services commitments from the existing members. WTO Article XII and its predecessor, GATT Article XXXIII, establish a framework within which accession negotiations are conducted. The deliberately spare language of this article provides that "any state or separate customs territory possessing full autonomy in the conduct of its external commercial relations … may accede to this Agreement, on terms to be agreed between it and the WTO." The provision does not specify the precise commitments expected from acceding countries, nor does it establish clear standards for which compliance is sought or identify the scope and extent of demands that could be made. These developed only in actual practice and, given the paucity of language in the article, could evolve along new lines in the future.

To simplify, there are two stages in an accession negotiation. The first is a discovery process in which the applicant country first describes its economic and trade regime in a detailed document known as the foreign trade memorandum, and must then respond to the many questions that are posed by the existing WTO members. The second stage is a negotiation that has two components. It is partly a multilateral process in which the WTO membership collectively negotiates with the applicant country over multiple issues. There is also a bilateral component to the negotiations, in which individual WTO members negotiate with the applicant over very specific market access commitments. These are primarily on tariff rates for goods and commitments on trade in services.

The end result of the process is two documents. One is a very short protocol of accession, a two-page paper that follows a simple template providing for the accession of the country and that references the other, more substantive document. That is the report of the working party, which is far lengthier and very detailed. While that contract might appear on a quick reading to be merely descriptive, it will include many paragraphs that spell out the commitments of the acceding country.[5] Those parts usually come after several other paragraphs in which a given issue is discussed, including a summary of the views expressed on that matter by the applicant and the existing WTO members. Some statement will then be made regarding the actions that the acceding country pledges to take (or actions that it promises *not* to take), followed always by this sentence at the end of the paragraph: "The Working Party took note of these commitments." And to make certain that no one is in any doubt as to where to find the more substantive parts of the document, all of the paragraphs that include such statements are enumerated at the end of the working party report. For example, the report of the working party on the Kingdom of Saudi Arabia's accession[6] ran to 136 pages, plus annexes that specified the more precise commitments made on goods and services. Fifty-nine separate

paragraphs in the report specified the Saudi commitments. Once the talks are concluded the protocol of accession is opened for signature by the acceding government and WTO members. The rules formally provide that a two-thirds majority is required for acceptance, but in actual practice accessions – like virtually all other WTO decisions – are conducted on the basis of consensus. This means that each of the existing members of the club has the ability to "blackball" any new applicant.

Most of the demands made on applicants come from a small circle of members. Both in the multilateral and the bilateral talks, a few developed members account for nearly all of the questions that are posed to the acceding countries and the demands that are made of them. This was evident in an observation that China's chief accession negotiator made in an internal speech, observing that during a period of stalemate in that country's negotiations "we thought that GATT accession negotiation was a multilateral negotiation."

> If the US did not talk to us, we could turn to other contracting parties, like EU, Japan, or our friends in the Third World. Surprisingly, the first question they asked us was the same: Have you talked to the US? Then we realized that the US was the absolute leading power in the organization. So if China was to break the impasse with the US, no other countries could help us to break it (cited in Liang, 2002: 702).

The diplomacy of accession has grown more contentious over time, with applicants and recently acceding countries having raised concerns over the process and its consequences. In a review of the debate among member countries over the accession process in 2000, some members "pointed out that the accession process was often lengthy and too demanding for certain acceding governments," stated that the "fact finding stage, particularly, appeared to be unduly long, inquisitorial and frequently repetitive" and called for simplification of the process.[7] The average accession at that time took less than six years, but in the ensuing years that average nearly tripled.

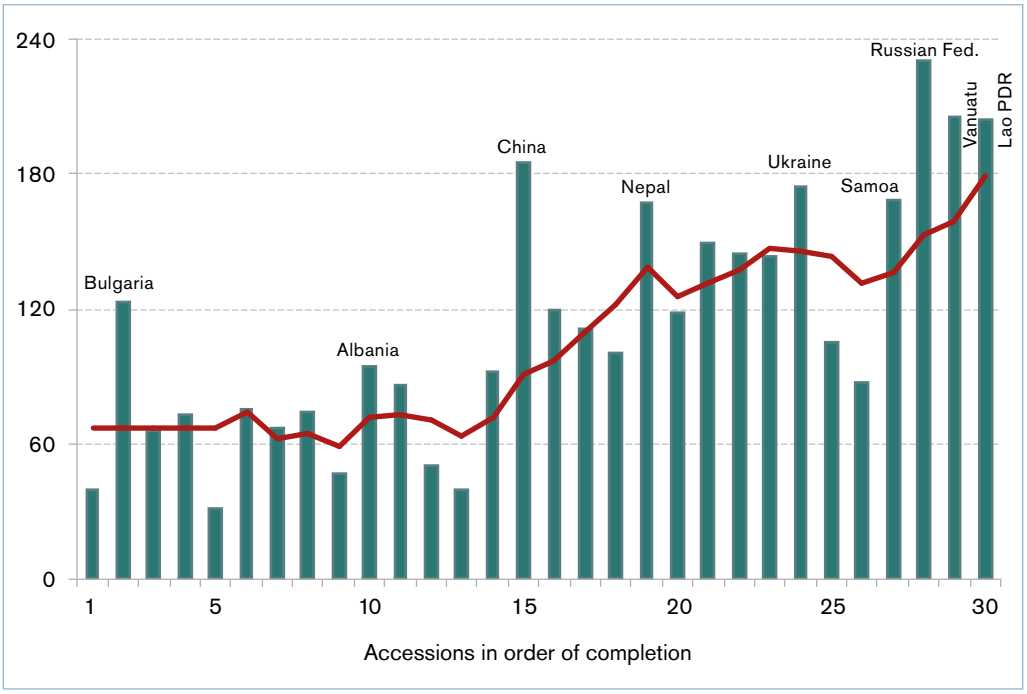
The declining frequency and rising duration of accessions

The frequency of accessions has declined over time. Two dozen accessions that had been under way since the late GATT period carried over into the WTO period, with the applicants now being obliged to negotiate over a broader package of concessions that reflected the expanded subject matter of the new institution. Four of these hold-overs from the GATT period were still negotiating over their accession as of 2013. In the first five years of the WTO's existence, another 17 countries applied for membership. Fifteen countries completed their accessions from 1996 to 2001, but after that initial surge came a decline in the rates at which existing negotiations concluded and new ones were initiated. Fourteen countries acceded from 2002 to 2012, achieving a pace that – at about one every ten months – was about half that of 1996 to 2001. There was at least one new applicant every year of the WTO's existence from 1995 to 2007, apart from the exceptional year of 2002, but starting in 2008 there were five successive years without a single new applicant.

While applications have slowed the duration of the process has elongated. As can be seen from Figure 4.2, the average accession in the early years took a little over five years but began to creep up after the first 15 accessions. The briefest negotiations were with the Kyrgyz Republic, which were completed in December 1998 and took only two years, eight months; the longest have been with the Russian Federation, which lasted 19 years and two months. Even that last example may not set the record, for the negotiations over the accession of Algeria had, as of 2013, been underway for a quarter of a century and showed no sign of ending soon. Of the 25 countries that are still in the process of accession, 16 have already been at it for over 12 years (see Appendix Table 4.1B).

What accounts for the lengthening negotiations? There is only a vague relationship between the economic magnitude of an accession and the amount of time that it takes to complete. Whereas the accessions of large economies such as China, the Russian Federation and the Kingdom of Saudi Arabia have been among the lengthiest, the same may be said for those with Nepal, Samoa and Vanuatu. The length of accession negotiations are determined by at least three factors: the extent of the accommodations that a country may need to make in order to meet WTO standards, the severity of the demands that are made on it by the incumbent members, and the vigour with which it bargains over these matters with the WTO membership.

Figure 4.2. Duration of WTO accession negotiations, 1996-2012



Source: Author's calculation of data from www.wto.org/english/thewto_e/acc_e/status_e.htm and www.wto.org/english/thewto_e/acc_e/completeacc_e.htm.

Notes: Bars show individual accessions in number of months; line shows rolling average for the five most recent.

One explanation for the increasing length of the negotiations appears almost tautological. In a regression analysis for which the total length of a WTO accession was the dependent variable, Jones (2010: 69) found that the process has tended to grow longer for new applicants. He concluded that "for each additional WTO accession completed … the elapsed time from application to formal accession increased by approximately 3.3 to 4.4 months, other things being equal." That is not so much an explanation, however, as it is a measurement. This was the only variable Jones (2010) tested that consistently proved to be statistically significant. Some other variables supported the contention that accessions tend to take longer when there is more at stake for the incumbent WTO members, including the observations that negotiations are lengthier for countries that have relatively high tariffs before acceding and/or supply relatively large shares of goods to the leading industrialized countries, but here the evidence was less statistically convincing.[8] One contributing cause has been a greater level of participation from mid-sized countries in the negotiating process, which is no longer monopolized by the Quad.

Terms agreed to in accessions

Countries have differing perspectives on the purposes of accessions. Applicants often start with the belief that WTO membership is now an essential attribute of statehood, much the same way that the membership of the United Nations is virtually universal, and that their accession should be treated as if they were joining a club in which membership is a right. The existing members, and especially those that take the lead in accession negotiations, will soon disabuse them of that notion. The WTO is not a UN organization[9] and membership is a privilege that must be paid for rather than a right that can be claimed. The negotiations are dominated by large countries that usually do not hesitate to drive hard bargains, even when the acceding country is small or poor. Or as Kim (2010: 57) put it, the WTO is a "path-dependent" institution in which "outcomes over time reproduce the power relations established in the earliest 'rules' of the institution."

The Quad and a few other developed countries will sometimes treat these negotiations in a regime context, meaning that the commitments sought from each acceding country are viewed not just as opportunities to address specific problems with the country in question but in the broader framework of the rules that they want to see applied uniformly to all WTO members. This orientation sometimes leads negotiators to emphasize certain matters that may appear to be relatively unimportant in the bilateral relationship *per se*, but are instead of very great importance in relations with other countries that are either WTO members or are negotiating for their own accession. In some cases, it can also mean that the acceding country is caught between incumbent members with very different aspirations. Consider the case of audiovisual services such as recorded music, motion pictures and television, a sector in which the United States has significant offensive interests but one that France – and hence the European Union – argues should not be considered economic in the first place. It is instead, by this logic, to be treated as part of a cultural exception that excludes these sectors from the normal trade rules. In at least one case, an acceding country faced diametrically opposed demands from

Washington and Paris. France convinced Albania to withdraw audiovisual commitments that it had made to the United States by threatening to block the country's WTO accession, as French officials were reportedly concerned that the Albanian concession "could provide a back-door entry into Europe for US productions" (Evans, 1999). In other cases, an acceding country may be caught between the differing economic interests of the majors. The commitments that China made on financial services to the European Union complicated the later Chinese negotiations with Canada and the United States, for example, insofar as the country's commitments on insurance fit the needs of EU insurance providers much better than the North American providers in this sector.

Developing country applicants are especially concerned over the apparent invalidation of established principles of special and differential treatment in specific WTO agreements. Some aspects of the Uruguay Round agreements provide for preferential treatment for developing countries, but these rules are more limited in scope than the older GATT provisions. Many of the more substantive provisions of the WTO agreements allow for longer transition periods for developing countries and LDCs, but generally do not provide for permanent exemptions. Some offer two-year transitions (the agreements on sanitary and phytosanitary measures and import licensing), and others for five years (the agreements on customs valuation, trade-related investment measures and trade-related aspects of intellectual property rights). Developing and transitional countries in accession negotiations have generally found their partners extremely reluctant to permit them to use these transitional provisions.

Goods commitments

The differences between the tariff bindings of recently acceded members and the original members of the WTO are summarized in Table 4.2. Developing countries often complain that they are obliged to give up much of their "policy space" in the WTO, with their commitments leaving them with little room to innovate or adjust. The data on countries' accessions may support this contention with respect to tariffs: taken as a whole, the members that acceded between 1995 and 2012 were required to bind a larger share of their tariffs and were left with less "water" (i.e. freedom to adjust tariffs upward) than incumbent members. Alternatively, one could see this as a process by which the developed countries that generally have less water in their own tariff schedules[10] avail themselves of the opportunity to ensure that the disparity between bound and applied rates is lower for the new members than it is for the older ones.

The most striking statistic is that all acceding members have been required to bind all of their tariffs, as compared to the 26.0 per cent of tariff lines that the average original member has kept unbound. For some products, the acceding countries have agreed to ceiling bindings that are far above any applied tariffs that they might ordinarily impose but, in general, the differences between the bound and applied tariffs is much lower for the acceding countries than it is for the rest. There are 35.8 percentage points of water in the average tariff of the average original member, meaning that such a country could more than quadruple its average

Table 4.2. Binding coverage and simple average of final bound rates and applied rates for WTO members

		All products			Agricultural products			Non-agricultural products		
	Binding coverage	Bound (A)	Applied (B)	Water (A-B)	Bound (A)	Applied (B)	Water (A-B)	Bound (A)	Applied (B)	Water (A-B)
Original members (I)	74.0	45.5	9.7	35.8	65.2	15.8	49.4	33.7	8.7	25.0
Completed accessions (II)	100.0	13.6	7.5	6.1	19.5	12.6	6.9	12.7	6.7	6.0
Difference (I-II)	-26.0	31.9	2.2	29.7	45.7	3.2	42.5	21.0	2.0	19.0

Source: Calculated from data supplied by the WTO Accessions Division.

applied tariff of 9.7 per cent without running afoul of its commitments. The countries that acceded during the WTO period could also raise their applied tariffs with some impunity, but not by nearly as much. The tariffs that they currently apply are also, on average, two percentage points lower than those of the incumbent members.

GATS commitments

The commitments that countries make under the General Agreement on Trade in Services (GATS) are not as easily interpreted as their commitments on tariffs because they involve a more complicated set of modes and limitations.[11] That said, the available data all point to the same pattern for services as we already saw for goods: the newcomers are obliged to make more comprehensive commitments in their accession negotiations than the incumbents required of one another in the Uruguay Round.

One way of making these comparisons is by counting the number of sectors in which members make commitments, as Grynberg et al. (2002) did. They compared the levels of GATS commitments made by original versus the first 16 acceding members, broken down by income level, and found that acceding economies made substantially more commitments than did the incumbents. When disaggregated at the three-digit Harmonized System level, the number of sectors in which low-income acceding economies made commitments (105) was 4.6 times larger than the number of sectors in which low-income, original WTO members made commitments (23). The disparity was not nearly as large in other income categories, however, with the number of commitments for original versus acceding members being 37 and 101, respectively, for middle-income economies (i.e. 2.7 times) and 79 and 110, respectively, for high-income economies (i.e. 1.4 times). Put another way, their data showed that acceding economies tended to make commitments on more than 100 sectors at the three-digit level, irrespective of their income level, whereas the original WTO members made smaller numbers of commitments that generally rose with their levels of income.

An alternative way to measure the differing commitments that members make is to examine the more sensitive sectors. Table 4.3 shows the percentages of the existing and acceding members that made commitments in each of 18 sensitive sectors. In every one of these sectors, the

Table 4.3. GATS commitments of acceding and original WTO members in selected sectors

	Original members (n = 127)	Acceded members (n = 25)
Rental/leasing services	37 (29.1)	21 (84.0)
Research and development services	35 (27.6)	19 (76.0)
Courier services	32 (25.2)	22 (88.0)
Sewage services	27 (21.3)	22 (88.0)
Refuse disposal services	27 (21.3)	21 (84.0)
Secondary education services	21 (16.5)	20 (80.0)
Higher education services	20 (15.7)	22 (88.0)
Rail transport services	20 (15.7)	15 (60.0)
Real estate services	20 (15.7)	9 (36.0)
Primary education services	19 (15.0)	16 (64.0)
Audiovisual services	18 (14.2)	12 (48.0)
News agency services	14 (11.1)	13 (52.0)
Libraries, archives, museums and other cultural services	13 (10.2)	10 (40.0)
Internal waterways transport	12 (9.4)	6 (24.0)
Social services	8 (6.3)	10 (40.0)
Pipeline transport services	5 (3.9)	10 (40.0)
Postal services	5 (3.9)	8 (32.0)
Space transport	2 (1.6)	2 (8.0)

Source: Tabulated from data on the WTO Services Database at http://tsdb.wto.org/default.aspx.

Notes: Numbers and percentages of members in each category making commitments in a given sector; listed in descending order of commitments made by original members. Acceded countries do not include the five members that completed their accessions in 2012 and for which full data are not yet available.

acceding countries are at least twice as likely as the existing to have made commitments, and in most sectors the disparity was at least three-to-one. A few sectors may suffice to illustrate this point. One of the widest disparities is in postal services, a sector that in many countries is reserved to the state and where only 3.9 per cent of the existing WTO members made commitments in the Uruguay Round. By contrast, nearly one third of the acceding members made commitments in this sector. A similar pattern may be seen in the related field of courier services. The disparities are also wide in education services. Only 15.0 per cent to 16.5 per cent of the existing members made commitments here, varying according to the level of education at issue, whereas 64.0 per cent to 88.0 per cent of the acceding countries did so.

Least-developed countries

WTO rules draw a distinction between the broad group of developing countries and the subgroup of LDCs, with the 34 WTO members (as of 2013) that are defined to fall in the latter category being exempted from some requirements or otherwise treated differently. That distinction is not as sharp in the case of accessions, however, with the process having been at least as lengthy and demanding for several LDCs as it has been for the other developing and transitional economies that acceded from 1996 to 2012. The commitments made by LDCs have often been as substantive as those demanded of other acceding members.

This is partly the consequence of a difference in the approach taken to accessions by the two most influential members. As a general rule, the European Union is more willing than the United States to make fewer demands on the LDCs, both in accessions and in other aspects of trade policy. The difference might be partly attributable to the fact that most LDCs seeking to accede are former European colonies that gained their independence in the 1950s to the 1970s and hence have a special relationship with some EU member states. Of the 51 LDCs (all but 17 of which are WTO members), five are members of the Comunidade dos Países de Língua Portuguesa, 12 of them are in the British Commonwealth and 23 are in the Organisation internationale de la Francophonie.

The European Community proposed in 1999 that a "fast-track" procedure be established to facilitate the accession of LDCs.[12] This proposal suggested that the accessions of LDCs "could be expedited by agreeing with other WTO Working Party Members on a range of minimum criteria" and a "flexible, streamlined approach" that would "spee[d] up the process for them all without discrimination." It contemplated LDC tariff binding "at a level something like 30% across the board" with "a limited number of higher tariffs on 'exceptional' products'," higher bindings on agricultural products, and no commitments on domestic support and export subsidies. It also called for services commitments in at least three services sectors, with the European Community "attach[ing] great importance to good commitments in Mode 3 (commercial presence), in particular on foreign capital participation and employment requirements and in Mode 4 (movement of personnel)." The proposal provided for the "automatic applicability of transition periods agreed in the Uruguay Round for LDCs towards full compliance with WTO Agreements."

The proposal did not get far at that time due to opposition from the United States. The only area in which the US negotiators seemed prepared to "cut some slack" for the LDCs was in the number of working party meetings, which they believed could be limited to two or three.[13] They otherwise insisted that these countries be required to provide all of the same information that other applicants submit, and that LDCs be obliged to make commitments bringing their regimes into conformity with WTO rules. Even in some areas where the WTO agreements explicitly provide for special treatment, such as the transition period for intellectual property rights or the exemption from commitments on agricultural subsidies, the US negotiators would often request that LDCs undertake disciplines that go beyond the letter of the WTO agreements.

A WTO Work Programme for LDCs was launched following the Doha Ministerial Conference, leading to the adoption by the General Council of the Guidelines for the Accession of LDCs in December 2002. In the guidelines, members agreed that negotiations for the accession of LDCs should be facilitated and accelerated through simplified and streamlined procedures. The guidelines stipulated that members were to exercise restraint in seeking market access concessions from acceding LDCs, but also that the LDCs were to offer reasonable concessions commensurate with their individual development, financial and trade needs. The actual results did not suggest much favouritism to the three LDCs that fully completed their accession to the WTO by the end of 2012, nor to the three that had completed most of the process by that time. On average, the accessions of Cambodia (completed in 2004), Nepal (2004), Samoa (2012), Vanuatu (2012) and the Lao People's Democratic Republic (2013) took just over 15 years to complete.[14]

At the 2011 Ministerial Conference, ministers tasked the Sub-Committee on LDCs to develop recommendations to bolster and make more specific the 2002 guidelines. The new guidelines, which were then adopted in July 2012, are generally aimed at limiting the commitments that LDCs are obliged to make, while also providing for transparency in the negotiations and the provision of technical assistance.[15] The most precise parts of the guidelines establish principles and benchmarks for LDCs' market access commitments on goods and services. For goods commitments, they state that "some flexibility should be provided" and negotiations "should ensure the appropriate balance between predictability of tariff concessions of acceding LDCs and their need to address specific constraints or difficulties as well as to pursue their legitimate development objectives," while also "recogniz[ing] that each accession is unique" and tariff concessions "could vary depending on [the LDCs'] individual/particular circumstances."

Acceding LDCs are still required to bind all of their agricultural tariff lines, but may do so at an overall average rate of 50 per cent. On non-agricultural tariff lines, they are generally to bind 95 per cent of their tariff lines at an overall average rate of 35 per cent; alternatively they may undertake comprehensive bindings and in exchange will be afforded proportionately higher overall average rates as well as transition periods of up to ten years for up to 10 per cent of their tariff lines. On services commitments, the guidelines recognize "the serious difficulty of acceding LDCs in undertaking commitments, in view of their special economic situation and their individual development, financial and trade needs," and provide for "flexibility for acceding LDCs for opening fewer sectors, liberalizing fewer types of transactions and progressively extending market access in line with their development situation." They are not expected to offer full national treatment, nor are they required to undertake commitments "on regulatory issues which may go beyond their institutional, regulatory, and administrative capacities." The guidelines provide more specifically for reasonable offers from LDCs that are "commensurate with their individual development, financial and trade needs" and assurance that the LDCs will "not be required to undertake commitments … beyond those that have been committed by existing WTO LDC members, nor in sectors and sub-sectors that do not correspond to their individual development, financial and trade needs." The guidelines also include additional provisions with respect to special and differential treatment and transitional periods.

At the end of 2012, eight LDCs were still in the process of accession, accounting for almost one third of the total then pending.[16]

Oil-exporting countries

One of the anomalies of the multilateral trading system is that, for several decades, it was largely disconnected from global energy trade. This is a very large exception, especially since the rapid rise in energy prices in the 1970s. The past practice in GATT was exemplified by an unwritten, unacknowledged, yet nonetheless real "gentlemen's agreement" that largely kept oil outside of the system.[17] Both energy-importing and energy-exporting countries employed trade restrictions in pursuit of their economic, diplomatic or security objectives, and neither

side opted to use GATT rules to challenge their trading partners' major measures. It would be wrong to say that the oil and gas sector had been fully "carved out" of the system, as the rules theoretically apply to trade in all types of goods between the members. There are, nevertheless, three reasons why the rules first established in GATT in 1947, and then subsequently developed over decades of negotiation and practice, had much less impact on trade in energy than on trade in other sectors.

The first reason why oil and gas trade was not fully covered in the GATT/WTO system was that the main exporters of these products remained on the outside. The only original GATT contracting parties that came to export large quantities of oil were Canada, Norway and the United Kingdom, and they did not hit their respective gushers until well into the GATT period. It was not until the 1980s that some of the major producers joined the body, with Mexico leading the way in 1986. Other oil-exporters that acceded or succeeded in this period were the Bolivarian Republic of Venezuela (1990), Angola (1994) and the United Arab Emirates (1994). Some of the smaller Arab oil exporters had earlier succeeded to GATT upon achieving their independence from European countries, as did several African countries, but few of them participated very actively in the system.

Table 4.4 shows how the share of global oil controlled by countries in the multilateral trading system has grown rapidly. At the start of the WTO period the major, net-exporting members of this organization accounted for about one third each of global reserves and production. By the time that all of the pending accessions are completed, the oil exporters in the WTO will control the vast majority of reserves and nearly three quarters of production. Almost all of the remaining reserves and production will be in WTO members that are net oil importers; examples of major consumers that provide some of their own needs include such influential members as Australia, Brazil, China, India and the United States.

A second reason for the earlier isolation of oil trade is the parallel regime for trade in this sector. The Organization of the Petroleum Exporting Countries (OPEC) is founded on an altogether different basis than the WTO insofar as it is focused on just one set of commodities, it represents only the producers, and its principal objective is not free trade for mutual benefit but restricted production and trade in the interests of the members of the cartel. It was not until there came to be a major overlap in OPEC and WTO membership that experts in this area even began to consider whether and how the differences might be bridged. No dispute settlement panel has ever ruled on the question of whether a country that is a member of both organizations can meet its OPEC obligations and still be in compliance with its WTO commitments. The answer may pivot on a distinction between export restrictions (which are legally problematic) versus the production restrictions through which OPEC actually operates (which would likely be easier to defend). As a practical matter, however, it is doubtful whether the OPEC members' practices could be successfully challenged in the WTO dispute settlement process. In the event that a formal complaint were made, and if a panel were to find (and the Appellate Body were to affirm) that OPEC restrictions violate WTO obligations, the easiest way for a country to reconcile the contradictions would be to stay in OPEC and withdraw from the WTO.

Table 4.4. Proven oil reserves and production in selected net oil-exporting countries, 1995 and 2010

	1995		2010	
	Reserves	**Production**	**Reserves**	**Production**
In GATT as of 1980	**14.3**	**20.1**	**13.3**	**15.5**
Kuwait, State of*	9.4	3.1	7.3	3.1
Nigeria*	2.0	2.9	2.7	2.9
Canada	1.0	3.5	2.3	4.1
Norway	1.0	4.3	0.5	2.6
Indonesia	0.5	2.3	0.3	1.2
United Kingdom	0.4	4.0	0.2	1.6
Joined 1981-1994	**18.9**	**13.9**	**28.5**	**14.3**
Venezuela, Bolivarian Republic of*	6.4	4.3	15.3	3.0
United Arab Emirates*	7.1	3.5	9.5	3.5
Qatar*	0.4	0.7	1.9	1.9
Angola*	0.3	0.9	1.0	2.3
Mexico	4.7	4.5	0.8	3.6
Acceded to the WTO	**31.0**	**23.5**	**25.6**	**26.6**
Saudi Arabia, Kingdom of*	25.4	13.4	19.1	12.2
Russian Federation**	5.2	9.2	5.6	12.5
Azerbaijan**	0.1	0.3	0.5	1.3
Ecuador*	0.3	0.6	0.4	0.6
Acceding to the WTO	**25.4**	**12.5**	**26.3**	**16.2**
Iran*	9.1	5.5	9.9	5.2
Iraq*	9.7	0.8	8.3	3.0
Libya*	2.9	2.1	3.4	2.0
Kazakhstan**	2.3	0.6	2.9	2.1
Algeria*	1.0	1.9	0.9	2.2

Source: Calculated from *BP Statistical Review of World Energy,* June 2011, available on-line at www.bp.com/statisticalreview.

Notes: Percentages of world totals. Countries arranged in descending order of proven reserves in 2010; accession status as of the end of 2012. *Member of the Organization of the Petroleum Exporting Countries. **Data for proven reserves in the former Soviet republics are not available for 1995. Estimates here for Azerbaijan, Kazakhstan and the Russian Federation are based on 1998 data.

The third reason is that there are several aspects of GATT rules that provide exceptions to, or tend to make ambiguous, the applicability of WTO rules to trade in energy. The national security exception provided under GATT Article XXI is one such loophole. This article allows countries to take actions that would otherwise violate GATT that they consider to be in their essential security interests. On the exporters' side, the general exceptions of GATT Article XX may provide a legal means for oil exporters to impose restrictions on their production and exports of oil. There are many legal arguments that arise over the relationships between these two exceptions clauses of the GATT/WTO system, as well as the general prohibitions that are provided elsewhere in WTO law on cartels, export quotas and subsidies.

The accession of the Kingdom of Saudi Arabia offered an opportunity to address the export practices of OPEC members, but only on one limited aspect of these restrictions. At issue

here is dual pricing in the energy sector, a practice by which governments keep domestic prices for inputs such as oil and gas lower (or export prices higher) than would be the case if they had been determined by market forces. The European Union argued in the accession negotiations with the Kingdom of Saudi Arabia that dual-pricing practices are incompatible with WTO rules and constitute a hidden subsidy to downstream products. Under the WTO Agreement on Subsidies and Countervailing Measures, a subsidy exists when there is a financial contribution by a government or public body, or where there is any form of income or price support that confers a benefit. The Kingdom of Saudi Arabia made a commitment by which producers and distributors of natural gas liquids will "operate, within the relevant regulatory framework, on the basis of normal commercial considerations, based on the full recovery of costs and a reasonable profit."[18] Moreover, these operators must "fully recover their production and investment costs … and make a profit in the ordinary course of business." This essentially means that they can sell gas at a lower cost to any purchaser that is located within the Kingdom of Saudi Arabia than they sell the same product for export, but that the domestic price cannot be so low as to make those sales unprofitable.

The same issue arose in the accession of the Russian Federation, with the European Union again being the principal *demandeur*, but once more the talks produced a limited result. Although the Europeans asked the Russian Federation to align domestic and export prices of natural gas, the terms of the accession agreement require only that producers and distributors of natural gas operate on the basis of normal commercial considerations based on recovery of costs and profit. The Russian Federation's authorities are expected to come into compliance with the commitment by raising prices for domestic industrial users, reaching the long-run marginal costs of Gazprom, but may nonetheless continue to regulate prices for gas supplied to households and other non-commercial users based on domestic social policy considerations.

Five major oil-exporting countries were still in the process of accession at the end of 2012. They collectively account for over one quarter of global oil reserves, although a smaller share of current oil production.

Political issues in WTO accessions

WTO members generally try to isolate the low politics of trade from the high politics of diplomacy, war and peace, but accessions are one of the processes in which that separation can be difficult to maintain. Incumbent members have three options for addressing the political issues that they may have with an acceding country. The most severe of these is simply to block that accession, which is quite easily accomplished in a system in which decisions are made by consensus. Second, a country can invoke "non-application" upon the accession of another country with which it has difficult political relations. Third, an existing member can seek commitments from the acceding country on political issues. Several such issues have arisen in WTO accessions. Two are carry-overs from the GATT period: relations between the United States and current or former Communist countries that are subject to a special sanctions law, and the issues surrounding the Arab League's multi-tiered boycott of

Israel. Other cases have been unique to specific relations between pairs of members, including China–Chinese Taipei, Turkey–Armenia and Georgia–Russian Federation. In all of these cases, the political tensions between incumbent and acceding members (and in one case between two acceding members) complicated the process by which accessions were negotiated, and raised the prospect of accessions being blocked altogether.

Non-application and the US Jackson–Vanik law

The most frequent source of political tensions in accessions is also the oldest. The GATT system and the Cold War were coeval developments, and have intersected in US policy from the beginning. The connections carried over even after the Cold War ended and the WTO replaced GATT, with several acceding countries being subject to a 1974 US statute that conditions most-favoured-nation (MFN) treatment for certain countries to their observance of human rights. In both the GATT and the WTO periods, this law was responsible for the great majority of cases in which a country invoked the non-application clause.

Formerly provided under GATT Article XXXV and now Article XIII of the Agreement Establishing the World Trade Organization (WTO Agreement), the non-application clause allows countries to stipulate that GATT or WTO treatment will not apply between any pair of them if either party invokes the clause upon the new country's accession. Article XIII of the WTO Agreement differs from its GATT predecessor in only one important respect. GATT Article XXXV had provided that a country could not invoke the non-application clause if it had engaged in tariff negotiations with an applicant country; this proviso was included in order to prevent countries from using the threat of invocation as a means of applying additional pressure on an applicant in the tariff negotiations. There is no such prohibition in Article XIII of the WTO Agreement. As a practical matter, the principal consequence of non-application is that countries invoking it may not take one another to dispute settlement in the WTO. The fact that countries invoking this clause are free to discriminate against one another does not mean that they always do so. In some cases, a country that invokes non-application not only extends MFN treatment under the terms of some other agreement or policy, but will actually provide preferential treatment under the Generalized System of Preferences.

The United States has historically invoked this provision more frequently than any other member, as this is one of several ways that Washington treated non-market economies (NMEs) differently during and after the Cold War. Of the seven GATT contracting parties that were NMEs for at least part of the period 1947 to 1994, the United States effectively denied full GATT treatment to five of them. It variously did so through GATT-authorized withdrawal of MFN treatment (Czechoslovakia in the 1950s), an embargo combined with the unilateral withdrawal of MFN treatment (Cuba in the 1960s), the invocation of GATT Article XXXV upon a country's accession to GATT (Hungary and Romania in the 1970s), or the imposition of a trade embargo combined with the invocation of GATT Article XXI (Nicaragua in the 1980s). The only exceptions to this rule were Poland and Yugoslavia, both of which were granted special treatment for political reasons, but even these countries have been subject to US trade sanctions during periods of

martial law (Poland in the 1980s) or civil war (Serbia, Montenegro and the Serbian-held territory of Bosnia and Herzegovina in the former Yugoslavia in the 1990s).

The United States continues to invoke the non-application clause more frequently than any other member in the WTO period, with its policy being determined by the status of an acceding country under a provision of US law that imposes conditions on the extension of MFN treatment[19] to certain countries. Congress enacted a law in 1951 that generally required the denial of MFN treatment to Communist countries, and the Jackson–Vanik provisions of the Trade Act of 1974 built upon this statute by providing a means by which MFN might be extended on a conditional basis. The law applies to all countries that were still denied MFN treatment at the time of enactment of that law (i.e. what was then the Soviet Union, China and most Communist countries other than Poland and Yugoslavia) and that have not subsequently been "graduated" from this law (i.e. removed from its coverage by an act of Congress). It provides for the extension of MFN treatment to these countries via bilateral agreements, but also conditions that treatment on a country's freedom-of-emigration practices. That conditionality, which came in response to congressional outrage over the Soviet Union's restrictions on the emigration of Jews, is in direct conflict with the core rule of the multilateral trading system. GATT Article I requires that WTO members extend universal and unconditional MFN treatment to all other WTO members. Ever since Communist countries began negotiating for accession to GATT in the 1960s, the United States has repaired to the non-application clause in order to reconcile the conflict between the Jackson–Vanik law and its predecessor statutes[20] and US obligations under GATT Article I.

Several countries that are or have been subject to Jackson–Vanik have acceded to the WTO, and in most cases the United States has followed one of two different patterns in dealing with them. The most common is for the US executive to invoke non-application upon a country's accession and then ask Congress to enact a law graduating the country from Jackson–Vanik, thus allowing the subsequent disinvocation of the clause. That is what happened in the accessions of Armenia, Georgia, the Kyrgyz Republic, the Republic of Moldova, Mongolia and Viet Nam. The United States also invoked Article XIII of the WTO Agreement with respect to Tajikistan in 2012 in anticipation of that country's accession in 2013. The interval between the invocation and disinvocation could be anywhere from two months (in the case of Viet Nam) to nearly 12 years (in the case of the Republic of Moldova), with the duration being determined by the speed with which the US Congress granted the administration's request that the country be graduated. Two other countries present *sui generis* cases. The United States graduated the Ukraine from Jackson–Vanik prior to its accession and, in the case of Romania, it carried over the invocation from the GATT period before later withdrawing that invocation.

The accession of China set a second pattern that was also followed, with a few innovations, in the accession of the Russian Federation. In this approach, the United States will grant permanent and unconditional MFN treatment, known in US law as permanent normal trade relations (PNTR), simultaneously with the country's accession to the WTO. That is done through the enactment of a law that also sets special terms for the relationship between the United States and the acceding country, albeit in ways that do not violate the letter of GATT

Article I. In the case of China, Congress enacted a law in the final stages of the accession negotiations that gave the president the authority to grant PNTR to China while also reflecting in US law the special terms of China's accession (e.g. a selective safeguard) and providing for close and regular reviews of the US economic and security relationship with China. The Clinton administration had to invest a great deal of political capital in order to secure enactment of that bill in 2000, as MFN treatment for China had been a high-profile issue ever since the Tiananmen protests in 1989. The Jackson–Vanik law allows for congressional consideration of a president's decision to continue MFN treatment with a country that fell under the terms of the law, and for over a decade the annual debate over that decision had become a ritual in the domestic politics of US foreign policy. Extending PNTR to China meant bringing that process to an end.

In the case of the Russian Federation, the Obama administration would have preferred that Congress enact a "clean" bill allowing the president to grant PNTR simultaneously upon that country's accession, but it encountered opposition from members of Congress who were concerned over human rights in the Russian Federation. Legislators insisted upon replicating the pattern set in China's accession, enacting a law that replaced the Russian Federation's status under the Jackson–Vanik law with a new set of measures addressing specific economic and political concerns with the country in question. Congress attached to the PNTR bill a law that provides for financial sanctions and the denial of visas to Russian officials who are found to be responsible for extrajudicial killings, torture or other human rights violations committed against individuals seeking to promote human rights or to expose illegal activity. The law also includes reporting and other provisions that are comparable to those in the law enacted for the accession of China. This law did lead to the extension of PNTR to the Russian Federation, but only after considerable tensions between Washington and Moscow, and not until three months after the Russian Federation had completed its accession in August 2012. The case was also unique for the way in which non-application was invoked. In all other cases only one party invoked the clause, sometimes the acceding country but more often one of the existing members. In this case, both the Russian Federation and the United States invoked the clause with respect to one another when the terms of the Russian Federation's accession were concluded in 2011, and then mutually disinvoked non-application upon the extension of PNTR.

While the United States continues to be the principal user of the non-application clause it is not alone either in invoking this clause or in bringing political issues to the table in accession negotiations. Other cases in which countries threatened or invoked non-application, or even threatened to block accessions altogether, concerned the relations between China, Chinese Taipei and third countries; between Israel and members of the Arab League; between Turkey and Armenia; and between the Russian Federation and Georgia.

China and Chinese Taipei

The accessions of China and Chinese Taipei were among the most economically consequential additions to the WTO membership, but were also the most politically complex. At issue here was not only the question of whether non-application might be invoked by

incumbent members but also the potential blocking of accession by either China or Chinese Taipei if one got in before the other.[21] As in the case of the US law and policy discussed above, these events demonstrate another way in which the Cold War and GATT came into the world together, but in which the political alignments carried on even after the Cold War ended and the WTO replaced GATT.

China was among the original contracting parties to GATT. The entry of this agreement into force coincided with the final stages of the Chinese Revolution, however, and the deposed Kuomintang government declared China's withdrawal from GATT after it took refuge on the island of Taiwan. There then followed decades in which the governments in Beijing and Taipei were both estranged from the multilateral trading system even while they remained active in different sets of global political institutions. Their struggle for recognition focused on the United Nations long before they turned to GATT and the WTO. Chairman Mao Zedong had supported creation of the United Nations in 1945 and, after the revolution succeeded, Foreign Minister Zhou Enlai sought to take China's seat in the United Nations. Cold War politics intervened, however, and Beijing would not achieve this end until 1971. For a quarter of a century, it was the Republic of China that was represented both in the General Assembly and on one of the five permanent seats in the Security Council.[22]

The political climate for Chinese Taipei's return to GATT would have been most accommodating during the time that its economic interest in doing so was lowest. By the time that Chinese Taipei adopted a more GATT-friendly trade and development strategy, the political barriers had grown high. The island based its economic strategy on import-substitution industrialization from the 1950s to the 1970s. Starting first with apparel and light manufactures, then turning to heavy industries such as petrochemicals and steel, this policy might have been undercut if Chinese Taipei were to make tariff commitments and adhere to GATT disciplines. The island underwent important political and economic changes in the 1980s that encouraged it to reconsider its GATT status, but by this time it had become more diplomatically isolated. The turning point came upon approval of UN Resolution 2758 in 1971, by which the People's Republic of China (PRC) replaced the Republic of China in the United Nations. That event also meant the end of Chinese Taipei's observer status in GATT, which it had held since 1965, and accelerated the process by which other countries transferred diplomatic recognition from Chinese Taipei to Beijing. In 1970, there were 66 countries that recognized the Republic of China, compared with just 47 that recognized the PRC; by 1975 only 27 countries recognized Chinese Taipei versus 106 for Beijing (Cho, 2002: 120).

The PRC also pursued economic policies in the 1950s to the 1970s that discouraged entry to GATT, but in its case both the economic and the political changes in later decades militated in favour of accession. Emerging from the Cultural Revolution in the 1970s, China pursued political and economic reforms that transformed it into one of the world's largest trading powers. China formally requested on 10 July 1986 that its status as a GATT contracting party be resumed. Resumption would have avoided any negotiations over the terms of accession, so the existing members insisted instead that China had to go through the full accession procedure. That formally began in 1987 and carried over into the WTO, with the Working Party on China's Status

as a Contracting Party meeting an unusually frequent 20 times. The terms by which China joined the WTO differed both in degree and in type from those reached with typical acceding countries. These included provisions for a selective safeguard and the continued treatment of China as a non-market economy for purposes of anti-dumping laws; the first of these measures was to be eliminated within 12 years of accession, and the other within 15 years. The working party issued its report on 1 October 2001 (the 52nd anniversary of the Chinese Revolution).

Chinese Taipei had made its own request to accede to GATT in 1990, but it took two years to work out tricky legal and political issues that were not made any easier by the concurrent negotiations with the PRC. Director-General Arthur Dunkel did not dare to proceed with the application until an informal understanding was reached both with the contracting parties and China, and the process was further complicated by the fact that neither the European Community nor the United States wanted China to accede ahead of Chinese Taipei. EC Ambassador Paul Tran (see Biographical Appendix, p. 595) broke the deadlock on this issue in 1992, in consultation with US Ambassador Rufus Yerxa and others. He proposed a deal by which the accessions would be essentially simultaneous but minutely sequential: China would come in just ahead of Chinese Taipei, and the questions of sovereignty and statehood would be sidestepped by having the latter accede not as an independent country but (as contemplated by GATT Article XXXIII) as a separate customs territory possessing full autonomy in the conduct of its external commercial relations. The terms by which these two accessions would be conducted – commonly called the Understanding – took the form of a statement read out by the chairman of the GATT Council of Members on 29 September 1992, providing for continued work by the already established working party on China's accession, the establishment of a new working party on Chinese Taipei's accession, and the principle by which "the Council should examine the report on the Working Party on China and adopt the Protocol for the PRC's accession before examining the report and adopting the Protocol for Chinese Taipei, while noting that the working party reports should be examined independently."[23] It would still take another nine years, and the transition from GATT to the WTO, before this was finally accomplished with the accession of China in December 2001 and the accession of Chinese Taipei the next month. The negotiations with Chinese Taipei had in fact advanced much faster than those with China, and the deal had to be put on hold until the conclusion of the talks with China. In the end, the two accessions were handled by the General Council on the same day, with China coming on the agenda just before Chinese Taipei and thus ensuring that neither one could block the other's accession.

There was also the very delicate matter of how the government in Chinese Taipei would be referred to in the WTO. While that government called itself the Republic of China, in the UN system it was known after 1971 as Taiwan, Province of China. Each of these designations would be unacceptable to one of the prospective members. Cho (2002) credited the International Olympic Committee (IOC) with providing the formula by which the issue of names and symbols could be finessed and both applicants could accede to international organizations. The PRC had withdrawn from Olympic competition in 1958, objecting to the IOC's "two-China" policy, and from then through the 1970s Chinese Taipei was the sole representative of China in Olympic competition. It was only the impending Moscow Olympics

of 1980 that forced Beijing to reconsider its position. Following some diplomatic manoeuvres in 1978 and 1979, the IOC approved a resolution by which both the Chinese Olympic Committee and the Chinese Taipei Olympic Committee would be granted recognition, although the latter committee's "anthem, flag, and emblem would have to be changed and be subject to prior approval of the IOC Executive Board" (Cho, 2002: 153). With suitable adjustments, comparable arrangements followed in other international bodies – including the WTO. The 1992 Understanding provided that the formal title by which Chinese Taipei would accede is the *Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu*. In common usage, however, the simpler designation of Chinese Taipei is much more frequently used.

That formula facilitated the completion of the two accessions, but did not put an end to the two new members' concerns over names and titles. That was evident in an episode that began when Swiss authorities recognized the diplomatic titles used by delegates from Chinese Taipei, including terms that, from the PRC perspective, are not acceptable (e.g. "ambassador"), as well as the title of "Permanent Mission" for the delegation itself. The PRC mission protested the inclusion of those titles in the telephone directory that the Secretariat had routinely issued for years, leading to at least a year in which this "blue book" could not be updated. The matter was resolved in June 2005 when a new blue book was issued in which the only delegates from Chinese Taipei to bear diplomatic titles were the permanent representative and his deputy; the others were identified only as "Mr", "Mrs", or "Miss". The new blue book did however retain the title of "Permanent Mission" rather than "Trade Office"; the PRC mission had wanted Chinese Taipei's delegation to be known by that latter designation. The mission of Chinese Taipei responded by sending replacement pages with the preferred wording of their personnel titles to other delegations, giving them the opportunity to insert these pages into their copies of the blue book. That was no longer an option when the hard-copy version of the directory was discontinued and replaced by an online version. Another accommodation that the Secretariat made was to adopt the practice of placing Chinese Taipei on any alphabetical list (including seating charts) not between China and Colombia, but instead between Switzerland and Tanzania.[24] In the WTO even the alphabet is susceptible to constructive ambiguity, as this is where either the word "Taipei" or "Taiwan" would fit.

These frictions notwithstanding, the WTO members had managed to juggle the joint accessions of these two members without dropping any balls. No incumbent or acceding members blocked either party, and there was only minimal use of the non-application clause. As discussed above, the United States avoided that step by graduating China from the Jackson–Vanik law and enacting a new law that reflected the terms negotiated in Geneva. And while nearly two-dozen WTO members recognized Taipei rather than Beijing at the time of their respective accessions, El Salvador was the only one among them to invoke non-application with respect to the PRC. No members invoked non-application with respect to Chinese Taipei.

Israel, the Arab League boycott and the United States

Ever since Israel joined GATT in 1962 there have been issues surrounding its relations with the Arab countries in the system. While it is possible under WTO rules for a country to be a

member and still engage in the Arab League boycott of Israel, both Israel and the United States have sought to use these countries' accessions as a means of pressuring them into the normalization of relations with Israel, or at least to reduce the severity of their application of the boycott. The Arab League boycott predates the establishment of both GATT and the State of Israel. In 1945, the Arab League Council adopted a resolution recommending that all Arab states establish national boycott offices to block trade with Jewish-owned businesses in Palestine. The participating countries took steps to strengthen enforcement of the boycott in the years that followed, including its application to third-country firms. In 1954, the Arab League formally established both a secondary embargo (i.e. a ban on trade with third-country companies that have economic or political ties to Israel) and a tertiary embargo (i.e. a ban on trade with third-country companies that have ties to companies found to violate the secondary embargo).

For most of the GATT period there were only rare opportunities for any of the interested parties to deal with the boycott as a GATT issue. Very few of the Arab states sought accession to GATT, and the United States had not yet adopted a very aggressive policy on this matter. Egypt managed to accede in 1970 without any change in its boycott policy, but the country could not prevent discussion of the matter. In fact, issues related to the boycott took up over one third of the report of the working party on Egyptian accession.[25] Egypt invoked GATT Article XXXV with respect to Israel, but later disinvoked this action when these two neighbours reached a separate peace. This set a precedent for Morocco and Tunisia upon their own accessions.[26] Both of these countries later allowed their invocations of GATT Article XXXV to expire, opting not to invoke Article XIII of the WTO Agreement when the new regime entered into effect in 1995. Similarly, Jordan did not invoke Article XIII when it acceded to the WTO in 2000, five years after it terminated the boycott against Israel.

The transition period from GATT to the WTO coincided with the adoption of a more vigorous US policy to eradicate all aspects of the boycott. The US aims had previously been limited to eliminating the secondary and tertiary aspects, but policy now aimed to eliminate the primary embargo as well. The Clinton administration took a series of steps towards linking this objective to accession. The first public declaration of linkage between the boycott and accession came in March 1994, in a hearing of the Committee on Foreign Affairs in the House of Representatives. In response to a question from a committee member, US Trade Representative Mickey Kantor declared that "we have made it quite clear to various Arab Ambassadors from Arab nations that GATT accession will not be supported by the United States until the *secondary and tertiary* boycotts are ended" (emphasis added).[27] He also contradicted the views expressed by a former Office of the US Trade Representative (USTR) official who had characterized as "nonbinding" the various "sense of the Congress" resolutions that the legislature had passed with respect to the boycott. Mr Kantor said that such a characterization did not "reflect the policy not only of this administration but [of] this Trade Representative."[28]

The policy acquired a more formal and expansive character later that year, when Congress wrote it into the implementing legislation for the Uruguay Round agreements. Section 133 of the Uruguay Round Agreements Act states the "sense of the Congress" that the USTR

"should vigorously oppose the admission into the World Trade Organization of any country which, through its laws, regulations, official policies, or governmental practices, fosters, imposes, complies with, furthers, or supports" the Arab League boycott. The USTR interpreted this provision to be a legally binding mandate from Congress that requires the agency to oppose the accession of any country that participates in any aspect of the Arab League boycott. The new policy thus went beyond Mr Kantor's earlier insistence that a country eliminate only the non-primary aspects of its boycott.

The Kingdom of Saudi Arabia is the only Arab League member to have completed its accession since the adoption of the US policy. It did not invoke non-application with respect to Israel, and it did abandon the non-primary aspects of the boycott as part of the Israeli–Palestinian peace process, but it is still formally listed by the US Department of the Treasury as participating in the boycott.[29] As of 2013, that list also included three countries that joined GATT or the WTO prior to the adoption of the stricter US policy (the State of Kuwait, Qatar and the United Arab Emirates) as well as five countries that were still in the process of accession (Iraq, the Lebanese Republic, Libya, the Syrian Arab Republic and Yemen). This issue can therefore be expected to arise in the future.

The Arab League boycott, as well as Middle East peace in general, was also at issue in the three instances during the WTO period in which an existing member acted to block the accessions of would-be members. The rule of consensus means that any one incumbent member can prevent even the formation of a working party on another country's accession. This is a step that the United States took in the GATT period with respect to Bulgaria and the Soviet Union, and has also done for three Middle Eastern countries in the WTO period. In each case, however, that objection was eventually lifted and a working party on accession was formed. Iran had first applied to become a WTO member in July 1996, for example, but the working party on its accession was not established until May 2005. The interval for Libya was from December 2001 to July 2004, and for the Syrian Arab Republic it lasted from October 2001 to May 2010.

The controversy over the Arab League's boycott on Israel also carries over into the group's efforts to secure observer status in the WTO, and the dispute over that matter has also affected the extension of observer status to other groups; see Chapter 5 on both points.

Turkey–Armenia and Georgia–Russian Federation

Two other *sui generis* cases of political issues in accessions merit attention. Both of them involve neighbouring states of the former Soviet Union, but in each case transcend the seemingly transitory issues of the Cold War. The tensions between the countries date back not just to the world before the WTO or even GATT, but to what it was before the League of Nations.

One is the special case of relations between Turkey and Armenia. Those relations have always been tense, with Armenia having been a part of the Ottoman Empire for centuries and the

events of 1915 to 1917 in Armenia being a matter of continuing political controversy. Turkey had been a contracting party to GATT since 1951, and when Armenia acceded to the WTO in 2003 (13 years after gaining its independence from the Soviet Union), Turkey invoked non-application. The invocation has not subsequently been withdrawn.

The other special case concerns Georgia and the Russian Federation. Georgia had been annexed by the Russian Empire in 1800 and also (after three years of independence) by the Soviet Union in 1921, then proclaimed its independence once again in 1991. In that process of gaining, losing and regaining its independence, the boundaries between Georgia and the Russian Federation remained subject to dispute. (Coincidentally, Georgia also has borders with Turkey and Armenia.) After it acceded to the WTO in 2000, Georgia was in a position to block the accession of the Russian Federation. The temptation to do so grew all the greater after the two countries fought a five-day war in 2008 over South Ossetia and Abkhazia. Citing disputes over customs checkpoints in these two areas, Georgia threatened in the 2011 endgame of the Russian accession negotiations to withhold its approval. The situation was eventually defused when Switzerland, both as mediator in the dispute and as host country to the WTO, agreed to act as a neutral third party to facilitate the operation of an agreement that Georgia and the Russian Federation reached in November 2011. This agreement brokered by former Swiss President Micheline Calmy-Rey establishes a mechanism of customs administration and monitoring of all trade in goods that enters or exits specific pre-defined trade corridors, and consists of an electronic data exchange system and an international monitoring system. As a result of this agreement, Georgia neither blocked the Russian Federation's accession nor invoked non-application.

Endnotes

1 See Kent (2007: Chapter 3).

2 The number and composition of the original set of contracting parties is complicated by the special case of Chile. This was intended to be among the original 23 contracting parties but failed to complete its domestic approval procedures within the allotted time, and hence did not become a contracting party until early 1949. Chile may thus be considered either the last of the original contracting parties (as is done for purposes of the count in this paragraph) or the first country to accede to GATT.

3 Note that the Republic of Korea is a special but not unique case, being one of five countries that declare developing-country status in the WTO and yet are also members of the OECD. The others are Chile, Israel, Mexico and Turkey.

4 The experience of countries under GATT Article XXVI:5(c) varied considerably. The Gambia succeeded to GATT just four days after achieving independence in 1965, while Lesotho allowed more than 11 years to pass between the acquisition of *de facto* GATT status and its succession to GATT. See *De Facto Status and Succession: Article XXVI.5(c): Note by the Secretariat*, GATT document MTN.GNG/NG7/W/40, 22 January 1988.

5 For the working party reports, see the accessions database at www.acdb.wto.org.

6 See *Report of the Working Party on the Accession of the Kingdom of Saudi Arabia to the World Trade Organization*, WTO document WT/ACC/SAU/61, 1 November 2005.

7 See *Technical Note on the Accession Process*, WTO document WT/ACC/7/Rev.2, 1 November 2000, p. 6.

8 The significance of some other variables that Jones tested achieved the 1 per cent level in at least some of the formulae into which they were plugged, but were less significant in others. These included the level of the applicant country's average applied tariff (those with higher tariffs took longer) and the applicant's market share of imports in the "core" accession reviewing countries of Australia, the European Union, Japan, Switzerland and the United States (those countries with high shares in these markets took longer). Another variable that was significant at either the 5 per cent or 10 per cent confidence level concerned whether the application was originally made to GATT and carried over into the WTO period; all things equal, those applications that were made only after the WTO came into effect took 21-31 months less than those carrying over from the GATT period.

9 See the discussion in Chapter 5 on the relationship between the WTO and the United Nations.

10 See Chapter 9 for a complete discussion of bound rates, applied rates and water.

11 See Chapter 9 for guidance on how to read a GATS schedule.

12 See *Preparations for the 1999 Ministerial Conference: Accessions to the WTO – Communication from the European Communities*, WTO document WT/GC/W/153, 8 March 1999.

13 Author's interviews with US accession negotiators in 1999.

14 Cape Verde graduated out of the LDC classification in 2007 prior to becoming a WTO member in 2008.

15 For full text of the draft Decision on the Accession of Least Developed Countries, see *Recommendations by the Sub-Committee on LDCs to the General Council to Further Strengthen, Streamline and Operationalize the 2002 LDC Accession Guidelines*, WTO document WT/COMTD/LDC/21, 6 July 2012.

16 Afghanistan, Bhutan, Comoros, Equatorial Guinea, Ethiopia, the Republic of Liberia, Sao Tomé and Principe, and Sudan.

17 For a more detailed examination of the relationship between WTO law and oil trade, see UNCTAD (2000).

18 See *Report of the Working Party on the Accession of the Kingdom of Saudi Arabia to the World Trade Organization*, WTO document WT/ACC/SAU/61, 1 November 2005, pp. 13-14.

19 Note that by US law, all references to MFN treatment have, since 1998, been changed to "normal trade relations" (NTR). The difference is only rhetorical; NTR and MFN treatment are substantively identical. The reason for this change is that members of Congress tired of having to explain to constituents that extending MFN treatment to China did not mean that this country was receiving unusually favourable treatment. US law further distinguishes between the conditional form of NTR treatment that is extended by way of the bilateral agreements reached with countries that are subject to the Jackson–Vanik law and the unconditional, permanent NTR (PNTR) that is granted to countries that have been graduated by Congress from the Jackson–Vanik law.

20 The Jackson–Vanik law is the successor statute to earlier laws enacted in 1951 and 1962. Those previous laws did not provide specific conditions with respect to the freedom of emigration, but rather were aimed more generally at denying MFN treatment to Communist countries.

21 The analysis here stresses the foreign policy aspects of China's accession to the WTO. For a closer examination of the domestic Chinese politics of accession, see Pearson (2001), who stressed "elite preference" (i.e. the insertion of top Chinese leaders into the process at decisive junctures) as a central explanation for why and how China acceded. Similarly, Feng (2006: 6) characterized the accession as "a state-led, leadership-driven, top-down political process in which a determined political leadership partly bypassed and partly restructured a largely reluctant and resistant bureaucracy". See also Yong (2002: 26-29).

22 For a review of these events, see Kent (2007: 36-57).

23 See *Minutes of Meeting Held in the Centre William Rappard on 29 September-1 October 1992*, GATT document C/M/259, 27 October 1992, p. 4.

24 Following the accession of Tajikistan, the alphabetical placement of Chinese Taipei is between this member and Switzerland.

25 See *Report by the Working Paper on the Accession of the United Arab Republic*, GATT document L/3362, 25 February 1970, pp. 33-43.

26 Israel did not invoke Article XXXV with respect to any of these countries.

27 See United States Congress, House of Representatives, Committee on Foreign Affairs (1994: 37).

28 *Ibid*., p. 48.

29 See Department of the Treasury (2012).

Appendix 4.1. Accessions to the WTO, as of February 2013

Table 4.1A. Completed accessions in chronological order

			2011 global shares of (in %)			
	Application	**Membership**	**Population**	**GDP**	**Exports**	**Imports**
Ecuador	September 1992	January 1996	0.21	0.09	0.11	0.12
Bulgaria	September 1986	December 1996	0.11	0.08	0.16	0.16
Mongolia	July 1991	January 1997	0.04	0.01	0.02	0.04
Panama	August 1991	September 1997	0.05	0.04	0.11	0.12
Kyrgyz Rep.	February 1996	December 1998	0.08	0.01	0.02	0.02
Latvia	November 1993	February 1999	0.03	0.04	0.07	0.08
Estonia	March 1994	November 1999	0.02	0.03	0.10	0.10
Jordan	January 1994	April 2000	0.09	0.04	0.06	0.10
Georgia	July 1996	June 2000	0.06	0.02	0.02	0.04
Albania	November 1992	September 2000	0.05	0.02	0.02	0.03
Croatia	September 1993	November 2000	0.06	0.09	0.12	0.12
Oman	April 1996	November 2000	0.04	0.10	0.22	0.13
Lithuania	January 1994	May 2001	0.05	0.06	0.15	0.16
Moldova, Rep. of	November 1993	July 2001	0.05	0.01	0.01	0.03
China	July 1986	December 2001	19.27	10.46	9.40	8.76
Chinese Taipei	January 1992	January 2002	0.10	0.72	1.26	1.30
Armenia	November 1993	February 2003	0.04	0.01	0.01	0.02
FYR Macedonia	December 1994	April 2003	0.03	0.01	0.02	0.04
Nepal	May 1989	April 2004	0.44	0.03	0.01	0.03
Cambodia	December 1994	October 2004	0.21	0.02	0.03	0.04
Saudi Arabia, Kingdom of	June 1993	December 2005	0.40	0.82	1.69	0.91
Tonga	June 1995	July 2007	<0.01	<0.01	<0.01	<0.01
Viet Nam	January 1995	January 2007	1.26	0.18	0.48	0.50
Ukraine	November 1993	May 2008	0.66	0.24	0.40	0.45
Cape Verde	October 1999	July 2008	0.01	<0.01	<0.01	0.01
Montenegro	December 2004	April 2012	0.01	0.01	NA	NA
Samoa	April 1998	May 2012	<0.01	<0.01	<0.01	<0.01
Russian Federation	June 1993	August 2012	2.04	2.65	2.59	1.91
Vanuatu	July 1995	August 2012	<0.01	<0.01	<0.01	<0.01
Lao People's Dem. Rep.	July 1997	February 2013	0.09	0.01	0.01	0.01

Sources: Calculated from World Bank data at http://data.worldbank.org/, supplemented by data for Chinese Taipei at http://eng.stat.gov.tw/.

Notes: <0.01 = less than 0.005 per cent.

Table 4.1B. Pending accessions in chronological order

		2011 global shares of (in %)			
	Application	**Population**	**GDP**	**Exports**	**Imports**
Algeria	June 1987	0.52	0.27	0.34	0.26
Belarus	September 1993	0.14	0.08	0.21	0.22
Sudan	November 1994	0.49	0.09	0.06	<0.01
Uzbekistan	December 1994	0.42	0.06	NA	NA
Seychelles	May 1995	<0.01	<0.01	<0.01	0.01
Kazakhstan	January 1996	0.24	0.27	0.42	0.24
Iran	September 1996	1.07	0.57	NA	NA
Andorra	July 1997	<0.01	0.01	NA	NA
Azerbaijan	June 1997	0.13	0.09	0.17	0.07
Lebanese Republic	January 1999	0.06	0.06	0.12	0.15
Bosnia and Herzegovina	May 1999	0.05	0.03	0.03	0.05
Bhutan	September 1999	0.01	<0.01	NA	NA
Yemen	April 2000	0.36	0.05	0.04	0.05
Bahamas	May 2001	<0.01	0.01	0.02	0.02
Tajikistan	May 2001	0.10	0.01	0.01	0.02
Syrian Arab Republic	October 2001	0.30	0.09	0.10	0.11
Ethiopia	January 2003	1.22	0.04	0.03	0.05
Libya	June 2004	0.09	0.11	0.06	0.07
Iraq	September 2004	0.47	0.16	0.37	0.24
Afghanistan	November 2004	0.51	0.03	NA	NA
Serbia	December 2004	0.10	0.07	0.07	0.11
Sao Tomé and Principe	January 2005	<0.01	<0.01	<0.01	<0.01
Comoros	February 2007	0.01	<0.01	NA	NA
Equatorial Guinea	February 2007	0.01	0.03	NA	NA
Liberia, Republic of	June 2007	0.06	<0.01	0.01	0.02

Source: Calculated from World Bank data at http://data.worldbank.org/.

Notes: <0.01 = less than 0.005 per cent. GDP: data for Andorra are from 2008; data for Libya and the Syrian Arab Republic are from 2009; data for Iran are from 2010. Exports: data for Sudan and the Syrian Arab Republic are from 2010. Imports: data for the Syrian Arab Republic are from 2010.