

ASSISTING UZBEKISTAN'S PARLIAMENT WITH SPECIFIC ISSUES PERTAINING TO UZBEKISTAN'S WTO ACCESSION PROCESS

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List of abbreviations

DG	Director-General
EAEU	Eurasian Economic Union
ECOTECA	Economic Cooperation Organisation Trade Agreement
CCT	Common Customs Tariff
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GSP	General System of Preferences
LAP	Legislative Action Plan
LDCs	Least-developed countries
LPRI	Legislative and Parliamentary Research Institute
MFN	Most Favoured Nation Treatment
MFTR	Memorandum on the Foreign Trade Regime
MTAs	Multilateral Trade Agreements
NME	Non-Market Economy
SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TRQs	Tariff rate quotas
WP	Working Party
WTO	World Trade Organisation

1. Executive Summary

This Memorandum is prepared to guide the Beneficiary through Uzbekistan's accession process to the World Trade Organization (hereinafter WTO). Uzbekistan's accession process began in December 1994 but remained dormant until July 2020. Now, the Uzbek government has expressed enthusiasm for pursuing accession to the WTO. The Memorandum offers a general overview of the accession process and addresses specific questions relating to Uzbekistan's WTO accession.

The findings in this Memorandum are based largely on comparative research of recent WTO accessions with a focus on the WTO members in the Eurasian region. We have reviewed the documents submitted during Eurasian WTO members' accession process, along with the academic sources discussing such accessions. We also analysed Uzbekistan's current trade relationships to evaluate the pros and cons of Uzbekistan's accession to the WTO. We likewise analysed the considerations pertaining to EAEU membership by focusing on other WTO members in the region. Finally, to analyse the potential changes to two laws submitted by the Beneficiary with regards to its accession process. We thus have reviewed the two Uzbek acts against the backdrop of: WTO Covered Agreements, the WTO Checklist for accessions, and other amended legislation of members that recently acceded to the WTO accessions for consistency. The following are our findings:

On the overview of the WTO accession process, there are common stages (fact-finding, negotiating, finalising the Draft Working Party Report) for every Member wishing to obtain WTO Membership. In the case of Uzbekistan, the accession terms' negotiations are of paramount importance. From the beneficiary perspective, it may be advisable for the Uzbek Oliy Majlis to further engage in the negotiation process or establish other forms of parliamentary presence in the accession process.

As for the expected 'pros' and 'cons' of Uzbekistan becoming a WTO member, this memorandum identifies potential benefits such as lower tariffs, the enjoyment of non-discriminatory treatment, more predictability in trade relations and a binding dispute settlement system. At the same time, we identify the costs and drawbacks, including loss of regulatory space. Overall, we find that transition economies such as Uzbekistan will reap long-term benefits from WTO membership by, e.g., enabling them to lose the Non-Market Economy (hereinafter NME) label.

In evaluating Uzbekistan's policy towards the Eurasian Economic Union (hereinafter EAEU), this memorandum compares the relative benefits and drawbacks associated with EAEU Membership. The memorandum further analyses the effect that EAEU membership could have on the WTO Accession process of Uzbekistan. Were Uzbekistan to join both the EAEU and the WTO, we recommend prioritising accession to WTO in the interests of time and to avoid the hurdles faced by Armenia, Kyrgyzstan, and Kazakhstan.

For the two laws submitted by the Beneficiary in preparation of Uzbekistan's WTO accession, this memorandum finds that (i) the Law on Copyright and Related Rights (2006) generally conforms with the WTO Covered Agreements and (ii) some portions of the Law on Free Economic Activity (2000) may need to be revised to take WTO disciplines into consideration. For the Law on Copyright and Related Rights, we recommend revising two minor provisions (habitual residence and seizure of infringed copies upon importation). We further identify two potential questions that may arise during the accession negotiations (enforcement of intellectual property disciplines and foreign sound recording). With regards to the Law on Foreign Economic Activity, this memorandum identifies areas such as security exceptions, quantitative restrictions, trade remedies, countermeasures, and dispute settlement that may need to be revised to reflect Uzbekistan's WTO commitments. Finally, we provide a draft legislation model and a commented version of the two laws in the present memorandum's Annexes.

2. Introduction

The present memorandum aims to answer questions related to Uzbekistan's WTO Accession. The questions have been submitted by the Legislative and Parliamentary Research Institute (hereinafter LPRI) as part of their assistance to Uzbekistan's Parliament, Oliy Majlis. The LPRI tasked us with a list of six questions which form the substance of the present memorandum. Three of those relate more specifically to the accession process and its consequences on Uzbekistan. Two other questions relate to two Uzbek laws that will likely require amendments. Lastly, a separate question deals with the implications of Uzbekistan's cooperation with the Eurasian Economic Union (hereinafter EAEU) on its WTO membership.

QUESTIONS SUBMITTED BY THE LPRI

1. What are the specific steps of the WTO accession process (stages, special procedures, documents to be prepared and signed)?
2. What are the general conditions for WTO membership?
3. What are the expected pros and cons of Uzbekistan's WTO membership?
4. How will Uzbekistan's cooperation with the EAEU affect its WTO membership? Will entering the EAEU as a member state hinder or complicate Uzbekistan's entering of the WTO? Would a better option of cooperation be for Uzbekistan to only get the status of observer state at the EAEU?¹
5. In the process of accession of the Republic of Uzbekistan to the WTO, what changes will the parliament likely have to make to the legislation in the field of intellectual property, more specifically, the Law on Copyright and Related rights (2006)?
6. What changes will the accession of the Republic of Uzbekistan to the WTO bring about in the legislation in the field of foreign economic activity, more specifically, the Law on Foreign Economic Activity (2000)?

¹ As Uzbekistan became an EAEU observer in the meanwhile, we understand the question as 'Would a better option of cooperation be for Uzbekistan to only maintain the status of observer state at the EAEU?'

Uzbekistan applied for membership at the WTO on 8 December 1994. Three Working Party meetings were subsequently held until 14 October 2005.² After the third meeting, negotiations on WTO accession remained dormant for almost 15 years until 7 July 2020, at which date the Working Party on Uzbekistan's accession officially met again. On this occasion, Uzbekistan has emphasised its commitment to WTO accession as an 'absolute priority' and as an integral part of the country's ongoing reforms.³

The Oliy Majlis of Uzbekistan is the Supreme Assembly of the country. It is the highest state representative body with legislative power and has a bicameral structure comprising the Senate and the legislative chamber.⁴ Under the laws of Uzbekistan, the Oliy Majlis has exclusive powers to ratify and withdraw from international treaties and agreements and to modify and amend existing legislation.⁵ Those prerogatives include the exclusive power to ratify the WTO Agreements.

In assisting the Beneficiary LPRI, we have analysed previous and ongoing accessions to the WTO primarily from countries of the Eurasian region, thoroughly analysed the two legislative acts of Uzbekistan, and assessed the potential implications of Uzbekistan's involvement with the EAEU on its accession to the WTO.

² 'Uzbekistan resumes WTO membership negotiations, 7 July 2020, <https://www.wto.org/english/news_e/news20_e/acc_uzb_07jul20_e.htm> accessed 9 January 2021.

³ 'Uzbekistan resumes WTO membership negotiations, 10 July 2020, UNDP website, <https://www.uz.undp.org/content/uzbekistan/en/home/presscenter/articles/2020/07/uzbekistan_wto_accessionundp.html> accessed 9 January 2021.

⁴ Global data on national parliaments, Uzbekistan, <https://data.ipu.org/node/187/basic-information?chamber_id=13480> (accessed 9 January 2021).

⁵ Ibid.

3. Overview of the WTO accession process

The procedure of becoming a WTO Member is a unique one. It is a process specially designed to address the specific needs of each *acceding member*.⁶ Even though the terms of the accession will be unique to each member, the main procedural steps remain the same for each accession. The outline below visually summarises the entire accession process. A more detailed description of each step will follow.

First steps	<ul style="list-style-type: none"> ▪ Request for membership ▪ Communication to the Director-General ▪ Establishment of a Working Party ▪ General Council Decision
Working Party	<ul style="list-style-type: none"> ▪ <u>Fact-finding stage</u> <ul style="list-style-type: none"> a. Submission of a Memorandum on Foreign Trade Regime (MFTR) b. Supporting documents c. Responses to questions from Members d. Other documentation, as requested ▪ <u>Negotiations stage</u> <ul style="list-style-type: none"> a. Multilateral negotiations on rules b. Bilateral negotiations on market access for goods and services c. Plurilateral negotiations ▪ <u>Preparation of drafts</u> <ul style="list-style-type: none"> - Draft Working Party Report - Draft Protocol of Accession - Draft Schedules on Goods and Services ▪ <u>Adoption of WP Report and completion of the Working Party's Mandate</u>
Final steps	<ul style="list-style-type: none"> ▪ General Council/Ministerial Conference adopts Working Party Report and terms of accession ▪ Acceding member accepts the terms and ratifies the Protocol of Accession ▪ Notification of acceptance ▪ Membership after 30 days following the notification

Table 1: Accession Process — Summary and source: the authors

⁶ Acceding member is a state or separate customs territory acceding pursuant to Article XII of the Marrakesh Agreement establishing the WTO.

3.1 How does the accession process begin?

When a state or a separate customs territory decides to initiate the WTO accession process, the first thing it has to do is to formally notify the *Director-General of the WTO* (hereinafter DG) by sending a request letter expressing its wish to join the organisation. In the WTO accession jargon, countries or separate customs territories are referred to as *acceding member*. After the DG receives the request letter, he circulates it among all WTO Members.

The two most important WTO bodies when it comes to the accession process are the *Ministerial Conference* and the *General Council*. The *Chairperson of the General Council* is informed about the acceding member's wish to join the WTO at the same time as all 164 WTO members. The acceding member should be ready to deal with a complex range of documents, which will be covered below.

The General Council and the Ministerial Conference

The **Ministerial Conference** is the highest decision-making body of the WTO which oversees the organisation and has the authority to take decisions on all matters. It usually meets every two years, and on this occasion, all 164 WTO Members are brought together to decide on important matters related to the multilateral trading system, including the admittance of new members to the WTO.

On the other hand, the **General Council** is a WTO body that oversees the operation of the agreements and decisions of the Ministerial Conference. It has representatives from all 164 members, and it is currently chaired by Ambassador David Walker from New Zealand. Depending on the nature of the work, the General Council may convene as a *Dispute Settlement Body* and as a *Trade Policy Review Body*.

3.1.1 Legal basis for WTO membership

Article XII (1) of the WTO Agreement is the most relevant legal provision.⁷ It reads as follows: '*Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO...*'. From this provision we can draw the **two prerequisites for WTO membership**:

⁷ Officially referred to as the *Marrakesh Agreement Establishing the World Trade Organization* (entry into force: January 1st, 1995).

- (i) the applicant must be a state or separate customs territory; and
- (ii) it must have full autonomy in the conduct of external commercial relations, including matters covered by WTO rules (also referred to as WTO disciplines).

Another important point is that the accession terms are to be specifically agreed between the acceding member and the WTO. The agreed terms include the entirety of the WTO Agreements (the covered agreements). Acceding members must accept the covered agreements as a 'single-package'. In addition, the acceding member may have to implement additional commitments (referred to as 'WTO-plus'), specific to the country's accession protocol.

*The term **single-package** means that all WTO rules must inherently apply to all WTO members on a take-it-or-leave-it basis. 'Nothing is agreed until everything is agreed'.*

To facilitate the procedure for negotiations, the WTO Secretariat prepares a *non-binding note* in consultation with WTO members, and that can serve as a practical guide for the acceding member.⁸

3.1.2 Establishment of a Working Party

After considering the request letter, the General Council promptly establishes a *Working Party* to examine the acceding member's application. The request letter becomes the first official document of the Working Party. Upon the establishment of the Working Party, the *status of observer* is granted to the acceding member, at which point the accession negotiations begin.

*A **Working Party** is a group of WTO Members negotiating multilaterally with the acceding member. Uzbekistan's Working Party is currently chaired by **Ambassador PAIK Ji-ah** from the Republic of Korea.*

The Working Party's task comprises three phases:

- In the **first (fact-finding) phase**, the Working Party collects information on the applicant's foreign trade regime and proposes legislative changes when necessary to ensure conformity with WTO rules. The fact-finding phase also provides a basis for negotiations. It is also during this phase

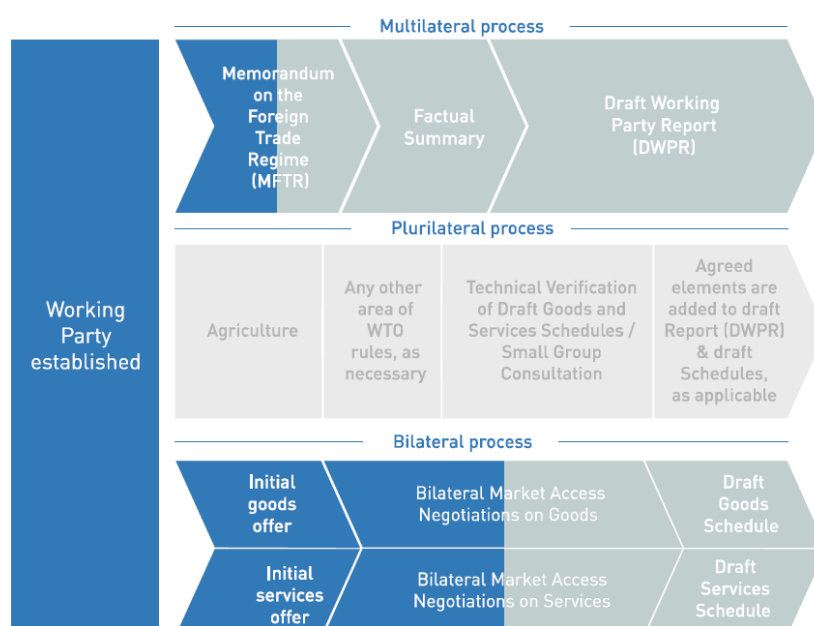
⁸ Accession to the World Trade Organization Procedures for Negotiations Under Article XII, Note by the Secretariat, WTO Doc WT/ACC/22/Rev.1 (5 April 2016).

that the acceding member needs to submit the most documentation.

- During the **second (negotiating) phase**, Working Party meetings take place more frequently. This is especially the case after the requested accession documents are received, and when new sets of questions by WTO Members and replies by the acceding member are available. At a later stage, the WTO Secretariat prepares a *Factual Summary of Points Raised*, which consolidates the information submitted by the acceding member and identifies the issues raised by other WTO members. The Factual Summary provides an overview of the discussions that took place within the Working Party.
- During the **third phase** the Secretariat prepares a *Draft Working Party Report* which contains the acceding member's draft commitments to be accepted by Working Party members.

The 4th meeting of the Working Party on Uzbekistan's accession took place in July 2020 after 15 years of dormant negotiations, under the leadership of the new president of Uzbekistan. The chart below gives a visual of the present status of Uzbekistan's accession on all three negotiations tracks.

The **WTO Secretariat** is a team of highly qualified individuals who possess a range of skills, knowledge and experience required to handle the Secretariat's responsibilities. Its role is to provide independent support to WTO member governments on all of the activities that are carried out by the WTO.



Source: WTO Website

3.2 The substance of accession: Negotiations

The following three tracks of negotiations are conducted in parallel:

- I- *Multilateral negotiations* involve all 164 WTO Members;
- II- *Bilateral negotiations* only involve Uzbekistan and interested WTO members on a separate basis; and
- III- *Plurilateral negotiations* involving some Members, that is, more than two but not all of them.

3.2.1 Multilateral negotiations

Multilateral negotiations take place in the framework of the WTO Working Party. The Working Party's purpose is to understand the acceding member's foreign trade regime to ensure that the acceding member's laws and practices conform to WTO disciplines. The *Memorandum on the Foreign Trade Regime* (hereinafter MFTR) is a document that gives a complete picture of the acceding member's economic policies on foreign trade and policies affecting among others the trade in goods, services, and intellectual property rights. The MFTR also takes into consideration how those policies are applied. It includes an assessment of the applicant's transparency in conducting trade policies and administering trade agreements. The MFTR is subsequently circulated to all WTO members. The members then have the possibility to seek further clarification by addressing additional questions to the acceding member. On 22 July 2019, Uzbekistan submitted an updated version of the MFTR.⁹

In addition, an applicant needs to submit a *Legislative Action Plan* (hereinafter LAP),¹⁰ which includes a timeline of the legislative changes necessary to conform with the WTO disciplines. The acceding member also needs to provide copies of its

⁹ The MFTR is a document of paramount importance in the Accession process. If the parliament has not yet had access to the MFTR, our advice is to seek access as soon as possible. The Parliamentarians should be aware of the views of WTO Members since such views will shape the obligations that the Parliament of Uzbekistan will be asked to endorse by ratifying the accession protocol.

¹⁰ The recommendation to be found in the former footnote equally applies for the LAP, since this document will directly affect what is expected from the Parliament.

national legislation in one of WTO's official languages (English, French or Spanish).

Following the submission of the MFTR and corresponding replies by the acceding member, the first set of questions needs to be circulated to the WTO members. During this phase, WTO members may request additional documents, such as:

- *Action plans for the implementation of specific agreements (e.g., SPS, TBT, TRIPS and Customs Valuation);*
- *Information on domestic support and export subsidies in agriculture;*
- *Checklist on Trade-Related aspects of Intellectual Property, see [below](#);*
- *Draft notification on industrial subsidies, and a questionnaire on State trading entities.*

3.2.2 Bilateral negotiations

Bilateral meetings are held with interested Working Party members to negotiate market access commitments on goods and services. Not all WTO members will seek such bilateral negotiations. The negotiations begin after the acceding member submits *initial market access offers* on goods and services, then the Working Party members request bilateral market access negotiations. Once the final market access offers are adopted, a *Bilateral Market Access Agreement* is concluded. In the case of Uzbekistan, the negotiations on goods and services access are on hold due to the current pandemic. These negotiations are expected to resume at the occasion of the next Working Party meeting.

Once all bilateral agreements are concluded, the Secretariat publishes the *Consolidated Goods and Services Schedules* drafts. The schedules consist of the lists of concessions made by Uzbekistan in which all relevant products are listed with the maximum tariff that can be applied in future trade with WTO members. The Goods and Services schedules are annexed to the *Accession Package* once the Report of the Working Party is adopted. Such schedules become an integral part of the WTO



Agreements at the time of Accession. The bilateral process is visually summarized below.

Source: WTO Website

3.2.3 Plurilateral negotiations

Issues of interest to many WTO members may need to be discussed in *plurilateral settings*. This means that an applicant negotiates with several members, but not with all members. Informal consultations also take place with interested members whenever needed. For example, plurilateral discussions typically take place to discuss the technical aspects of domestic support and export subsidies in agriculture and Sanitary and Phytosanitary (hereinafter SPS) measures.

3.2.4 Becoming a Member

Once all negotiations are successfully completed, the Working Party adopts the Draft Accession Package at the occasion of its final meeting. The package is transmitted to the Ministerial Conference or the General Council (acting on behalf of the Ministerial Conference) for approval. Both the Ministerial Conference and the General Council are composed of representatives of all WTO members. New members are admitted to the WTO by *consensus*.¹¹ In WTO, consensus means that there is no opposition at the moment of voting; it is not necessary to secure all WTO members' votes, but a government cannot accede if one of the WTO members opposes its accession.¹²

The **Accession Package** is the final output of the entire work undertaken by the Working Party and a result of both multilateral and bilateral negotiations. It is consisted of:

- 1) Report of the Working Party, which contains a summary of proceedings and conditions of entry¹³
- 2) Protocol of Accession
- 3) Schedules on market access commitments in goods and services

¹¹ Steve Charnovitz, 'Mapping the Law of WTO Accession', in *WTO at Ten: Governance, Dispute Settlement and Developing Countries* (Merit E. Janow, Victoria Donaldson & Alan Yanovich, eds., Juris Publishing, Inc., Forthcoming), p.5.

¹² Art. IX, Marrakesh Agreement.

¹³ The Report is a relatively lengthy document, nevertheless. For example, the final WP Report of Kazakhstan is 447 pages, 135 pages for Tajikistan, 612 pages for Russia, and 108 pages for Afghanistan.

Once the Ministerial Conference approves the draft Accession Package, the acceding member, in this case, Uzbekistan, will need to sign the Protocol of Accession stating that it accepts the approved 'accessions package'. Then, the Protocol of accession needs to be ratified in conformity with national procedures. In Uzbekistan, it is the parliament that has the power to ratify international treaties. In practice, the usual period for ratification ranges from three to six months. If need be, Uzbekistan may propose a different period of time to complete ratification.¹⁴ Following ratification, the acceding member formally notifies the DG and deposits the Instrument of Acceptance. The acceding member formally becomes a WTO member within 30 days following the notification of acceptance of ratification instruments.

3.3 Does the parliament have a say in the accession process?

It is the government of the acceding member that conducts the accession talks and the entire negotiations. As such, this may give the impression that the Parliament can only passively follow this process. However, the role of the Parliament in the negotiation process is fundamental. WTO rules may be negotiated at a global level by the government of the acceding member, but their entire legitimacy depends on the Parliament's approval of the accession package, since the Accession Protocol needs to be *ratified*.¹⁵ Members of the Parliament also play an important role in enhancing the multilateral trading system's transparency and helping citizens to understand WTO rules better.¹⁶ Since the Parliament of Uzbekistan must ratify accession protocols (like all other international agreements that require domestic implementation) we advise that the negotiation mandate of the Uzbek government should have parliamentary support in order to secure inclusivity, consistency, transparency and uniformity between the Parliament and the Government of Uzbekistan.

To secure this parliamentary support, we propose the following practical suggestions:

- *The Uzbek Parliament could prepare a non-binding document outlining the envisioned negotiation mandate of its own government.* This could

¹⁴ Peter John Williams, *A Handbook on Accession to the WTO* (First published 2008, Cambridge University Press 2008)

¹⁵ What is the role of parliaments in the multilateral trading system?

<https://www.wto.org/english/forums_e/debates_e/debate28_e.htm>

¹⁶ Ibid.

help align the expected outcome of negotiations between both the Parliament and the Government.

- *Share accession-related information with members of the Parliament.* The government of Uzbekistan could be asked to share the governmental position taken during the ongoing negotiations, as well as inform the Parliament about the outcome of each negotiation round after they take place, and after each rule or bilateral agreement is agreed. Since there may be confidentiality obligations in the ongoing negotiations at the WTO, the information shared with the Parliament would be treated as confidential. One of the main documents in the accession process, as stated above, is the MFTR, which remains restricted until the end of the accession talks. Since acceding member's parliaments normally do not have access to this document, the Parliament of Uzbekistan could thus ask for a copy it to inform itself of the position that Uzbekistan's government has taken in its foreign trade relations, on the basis that adequate confidentiality measures are observed in the process.
- *Oversee and influence government policy in relation to accession negotiations.* The Parliament of Uzbekistan can also ask for access to other restricted documents ensuing from the ongoing negotiations with the Working Party. The Parliament could further ask to be informed by the work of the Working Party and eventually influence the direction of the negotiations if necessary.
- *Parliamentary presence in the Working Party meetings.* Another option that we advise is for the Parliament to send representatives or ensure other way of parliamentary presence in the work of the Working Party in order to ensure transparency.
- *Establishment of a cooperation/approval system between the Uzbek Parliament and the Government.* Uzbek Parliament can also establish a system of cooperation with the Uzbek government (formal or informal) whereby major questions, such as accession to the WTO, would be discussed in inter-institutional settings. This could ensure that both the Government and the Parliament are 'on the same page' before formal

negotiations with the WTO proceed. For this, we provide two practical examples below.

The UK example

In the United Kingdom (hereinafter UK), there is a process called 'meaningful vote process' under which the UK Parliament may issue an up or down vote.¹⁷ Furthermore, when the UK Government is negotiating an international treaty that constitutes a 'major change to UK constitutional arrangements' (like the accession protocol to the WTO for example), it needs to obtain an approval from the UK Parliament.

The EU example

There is an inter-institutional agreement on cooperation between the European Commission and the European Parliament. This agreement, among other things, helps to define areas of competence and establishes key pillars for political dialogue between both institutions.

4. The Expected 'Pros' and 'Cons' of Uzbekistan's WTO Membership

Anticipated 'pros' and 'cons' to WTO Membership for Uzbekistan are listed below. These sections are followed by overarching elements that need to be considered when balancing the potential benefits and hindrances of WTO Membership.

4.1 The 'Pros' of WTO Membership

4.1.1 Export Diversification and increased market access

WTO Agreements provide for what is called the Most Favoured Nation (hereinafter MFN) treatment, which prohibits discrimination between members. In practical terms, this means that when a member lowers its tariffs, it becomes equally applicable to all WTO members.

¹⁷ Graeme Cowie, A User's Guide to the Meaningful Vote, Commons Library, 25 October 2018, at 6-7.

Liberalising trade in the WTO multilateral system, through lower tariffs and MFN treatment, would give the opportunity to Uzbekistan to diversify its exports.¹⁸ Uzbekistan will enjoy lower tariffs when exporting to most of the world, as the WTO counts 164 Members.

4.1.2 Tariff Security

Members list their tariff commitments in the form of ‘schedules’ with specific tariff ceilings for each type of good. Those tariffs are binding: in principle, once a commitment is given, the member cannot raise tariffs over what it is bound to respect. However, members are not barred from applying tariffs lower than their committed schedule; this is referred to as ‘putting water’ in tariffs. In fact, countries often apply tariffs that are lower than their bound tariffs, which gives them a certain degree of flexibility. For example, it is possible to lower tariffs if there is a need for increased imports or to raise them up to bound tariff commitments when more protection is needed. Uzbekistan will also enjoy such a possibility. Uzbekistan will also enjoy lower tariffs applied by WTO members and expect such tariffs not to go above their bound committed tariffs.

Some of Uzbekistan’s industry sectors, such as agriculture, manufacturing, and transport, have internationalisation potential.¹⁹ By lowering its own tariffs and barriers, Uzbekistan and its citizens will also enjoy a broader gamut of products. More competition in the Uzbek market following WTO accession will lower prices for consumers and push Uzbek firms to become more productive.

Pursuant to Article XXVIII and XXVIII*bis* of the GATT, members may renegotiate their tariff commitments on a reciprocal and mutually advantageous basis. This entails the possibility of raising tariffs on specific goods and the need to lower them on other products to obtain approval of the concerned members.

4.1.3 Most Favoured Nation treatment

One of the most important features of WTO membership is the MFN treatment

¹⁸ Richard Pomfret, ‘Uzbekistan And The World Trade Organization’ (Virtual Seminars on Applied Economics and Policy Analysis in Central Asia, 2020).

¹⁹ Roman Vakulchuk and Farrukh Ilnazarov, ‘Analysis of Informal Obstacles to Cross-Border Economic Activity in Kazakhstan and Uzbekistan’ (2014) 140 Asian Development Bank Working Paper Series on Regional Economic Integration.

enjoyed by all members. An important question Uzbekistan should investigate is whether MFN treatment from WTO membership would add significant value beyond what Uzbekistan is currently enjoying through the *General System of Preferences* (hereinafter GSP) scheme of developed WTO Members or under *Free Trade Agreements* (hereinafter FTAs) or *Preferential Trade Agreements* (hereinafter PTAs). This will depend on the products exported, as well as the destination market.

- First, through various GSP schemes, Uzbekistan currently receives preferential zero-tariff treatment for many goods exported to Canada, the EU, Japan, Norway, Switzerland, Turkey and the USA. The most important destination of Uzbek goods is Switzerland (~23%), a country which mainly buys Uzbek gold (enters the country on a duty-free basis regardless of the GSP.²⁰) Among GSP providers, Turkey is the second most important destination (~8.4%). Canada, (~0.01%), Japan (~0.06%), the EU (~2.5%), Norway (~0.001), and the USA (~1%) were marginal destinations of Uzbek goods in 2018.²¹
- Second, Uzbekistan has FTAs with some of its economic partners, through the FTA of the Community of Independent States²² (hereinafter CIS) which includes Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Ukraine, and Tajikistan,²³ and on a bilateral basis with Azerbaijan and Georgia. Trade with CIS countries represents a significant share of Uzbekistan's foreign trade.

The analysis shows that Uzbekistan's trade turnover with the CIS countries in January-September 2019 amounted to \$10.7 billion — 33.8% of Uzbekistan's foreign trade turnover. The share of imports from CIS members totalled 33.6%

²⁰ Swiss tariffs, 'Natural Or Cultured Pearls, Precious Or Semi-Precious Stones, Precious Metals, Metals Clad With Precious Metal, And Articles Thereof; Imitation Jewellery; Coin' <https://xtares.admin.ch/tares/tariff/searchResultFormFiller.do?sessionId=_qHSu1cYKFOceuvsdY0JQnmThWEAtfiu9D7BSf_r4JaNsbmfeP!387543710?!=en&selectedId=1044320@T8&cmd=refresh&schluesselElementId=1044320@T8&kopfdaten.date=05.01.2021&kopfdaten.direction=import&kopfdaten.userCountryIso2Code=DE&kopfdaten.countryIso2Code=DE&openIds=1044320@T8,304005@T8,2192@V4,304003@T8&keyCmd=refresh&keyOpenIds=1044320@T8,2192@V4&schluessel=>> accessed on 9 January 2021.

²¹ The data is for the year 2018 and is to be found on the Observatory of Economic Complexity (OEC) page on Uzbekistan <<https://oec.world/en/profile/country/asuzb>>. The EOC data is itself taken from the United Nations Comtrade database <<https://comtrade.un.org/>>.

²² Protocol on the application of the Agreement on a free trade zone dated October 18, 2011 (Ratified by the Parliament of Uzbekistan in December 2013) <<https://lex.uz/docs/2304877>> accessed January 9 2021.

²³ CIS, 'CIS Free-Trade Zone' <<http://cis.minsk.by/reestr/ru/index.html#reestr/view/text?doc=3183>> accessed 9 January 2021.

of all imports, and the volume of exports to CIS members, 34.1%. During the same period in 2020, trade turnover with CIS countries amounted to \$8.4 billion, i.e., 30.4% of Uzbekistan's foreign turnover. Imports from CIS members represented 35.68% of total imports and exports 24.03%.²⁴

- Third, Uzbekistan also enjoys a PTA's benefits with Members of the [Economic Cooperation Organization Trade Agreement](#) (hereinafter ECOTECA). Under ECOTECA, Members are encouraged to offer MFN tariff rates to other Members. [Afghanistan](#), [Azerbaijan](#), Iran, [Kazakhstan](#), Kyrgyzstan, Pakistan, Tajikistan, and Turkey are ECOTECA Members. So far, this MFN 'promise' does not appear to be fully enforced.
- In total, Uzbekistan currently receives MFN treatment from 47 countries. Upon joining the WTO, it would receive MFN treatment from 164 countries.

We note that these FTAs, PTAs and GSP benefits would not be affected by WTO membership. WTO membership only 'locks in' MFN tariff rates set by other WTO members but does not set any additional obligations relating to GSP or other agreements. Another distinguishing factor is that MFN benefits enjoyed by Uzbekistan will be set in stone by the WTO and protected by its dispute settlement system. Furthermore, obtaining MFN treatment through the WTO increases the possibilities to develop markets where Uzbekistan had not previously enjoyed preferential treatment.

4.1.4 Non-discrimination between foreign and domestic products (National Treatment)

MFN is not the only non-discrimination guarantee in WTO Agreements. Uzbek products will also enjoy National Treatment in the territory of other WTO Members. This means that other WTO members need to ensure that domestic and foreign (Uzbek) products are treated on an equal footing. WTO members will be prohibited from implementing measures treating their national products better than Uzbek products. For example, other WTO members could not impose technical regulations or domestic taxes discriminating against Uzbek products.

²⁴ Data provided by the Beneficiary.

4.1.5 Network benefits

As WTO members observe rules and agree to abide by them, the larger the WTO Membership, the higher the benefits.²⁵ As Uzbekistan is now geographically surrounded by WTO members (with the notable exception of Turkmenistan), it is likely to benefit more than countries that joined the WTO at a time when they were the only member in a region (for example, Kyrgyzstan).

4.1.6 Securing enforcement in Uzbekistan's existing trade relations

As of 2018, Uzbekistan's top export products are gold (\$2.49 billion), petroleum and gas (\$2.45 billion), non-retail pure cotton yarn (\$726 million), refined copper (\$510 million), and ethylene polymers (\$432 million).²⁶ The largest importers of Uzbek goods are WTO Members and subject to its disciplines, e.g., Switzerland, China, Russia, Kazakhstan, Turkey, and Kyrgyzstan. As of 2018, the top imports of Uzbekistan are vehicle parts (\$892 million), packaged medicaments (\$660 million), refined petroleum (\$505 million), cars (\$339 million), and textile fibre machinery (\$389 million).²⁷ The largest providers of foreign goods to Uzbekistan are also WTO members, e.g., China, Russia, South Korea, Kazakhstan, Turkey, and Germany.

Joining the WTO's multilateral system would mean that Uzbekistan would enjoy greater trade security and lower tariffs from some of its major partners, such as Switzerland and Turkey.

4.1.7 Fostering Investment

Becoming a WTO member serves as a signal for investors. It indicates that a country is implementing reforms and becoming economically more open on the international plane. WTO membership could thus bring more Foreign Direct Investment (hereinafter FDI) to Uzbekistan. Undertaking commitments regarding the liberalisation of services such as construction or financial services would, for instance,

²⁵ Richard Pomfret, 'Lessons from Kyrgyzstan's WTO Experience for Kazakhstan, Tajikistan and Uzbekistan' (Background note, United Nations Economic and Social Commission for Asia and the Pacific, 2017), 6.

²⁶ Observatory of Economic Complexity (OEC) page on Uzbekistan <<https://oec.world/en/profile/country/asuzb>>. The EOC data is itself taken from the United Nations Comtrade database <<https://comtrade.un.org/>>.

²⁷ *Ibid.*

positively contribute to attracting more FDI.²⁸ Analysis from the WTO Secretariat on acceding members' trade performance shows that new members grow faster than original members, are more resilient in times of economic crisis, and have more success in attracting FDI.²⁹

4.1.8 Change from Non-Market Economy to Market Economy

Uzbekistan is currently categorised as a NME by the USA.³⁰ Although the EU does not have a list anymore, Uzbekistan is presumably treated similarly to NME.³¹ Studies have found that NMEs are more often subject to anti-dumping (hereinafter AD) duties than market economies.³²

Joining the WTO could help Uzbekistan to lose the label of NME. Becoming a WTO Member does not automatically grant this 'market economy' status in individual WTO members, but it is an item that can be negotiated in the WTO accession process.³³ China's WTO accession is a well-known example. China's accession protocol Rule 15(d) provided that,

in principle, (i) when China's market economy status is established (under the law of an importing WTO Member) or (ii) when 15 years have passed from China's accession, importing WTO Members can no longer find a legal basis for using so-called NME methodologies for determining the normal value of Chinese imports. This means that the investigating authorities of an importing WTO Member would be required to rely exclusively on the provisions of the Anti-Dumping Agreement when investigating imports from China.³⁴

Other countries such as Bulgaria, Latvia, Estonia, Lithuania were also asked to commit

²⁸ Jamshid Normatov, 'Uzbekistan's Long Way to The World Trade Organization' (2018) Centre international de formation européenne, 104.

²⁹ Chieu Osakwe, 'Post-Accession Benefits of the WTO Membership of Tajikistan: Tajikistan Is Open for Business and Investor-Friendly' (International Trade and Investment Conference of Dushanbe, 2015), 5.

³⁰ US Department of Commerce, 'Countries Currently Designated by Commerce as Non-Market Economy Countries' <<https://www.trade.gov/nme-countries-list>> accessed 9 January 2021.

³¹ Stéphanie Noël and Weihuan Zhou, 'EU's New Anti-Dumping Methodology and the End of the Non-Market Economy Dispute?' (2019) 14 Global Trade and Customs Journal 417, 417.

³² Noël and Zhou (2019), 417.

³³ Pomfret (2017), 8–9.

³⁴ For more information, see Andrei Suse, 'Old Wine in a New Bottle: The EU's Response to the Expiry of Section 15(a)(ii) of China's WTO Protocol of Accession' (2017) 20:4 Journal of International Economic Law 951.

to ensuring trading rights of enterprises and liberalisation programmes when acceding to the WTO.³⁵

Whereas the WTO accession may pose challenges for Uzbekistan that had been closer to a centrally planned economy, it will help Uzbekistan to show that it has accepted the WTO rules based on market principles as a norm.

4.1.9 Increased transparency and predictability for Uzbek traders

Uzbek products would enjoy greater protection from protectionism as WTO Members must notify Technical Barriers to Trade (hereinafter TBT) as well as SPS measures. Such regulations must respect WTO disciplines and be justified (they cannot amount to a disguised trade restriction). Uzbekistan will have more information regarding its partners' trading practices due to transparency obligations. For example, under the SCM Agreement, Uzbekistan will need to notify the subsidies it gives, but it will also receive information regarding the evolution of its partners' regulatory frameworks. The required transparency in the WTO Agreements, notably in Trade Policy Reviews, helps reduce uncertainty.³⁶

4.1.10 Freedom of Transit

WTO members also enjoy guarantees as regards free transit within other members' territories. Uzbekistan is a landlocked country, the access afforded by WTO membership would constitute a precious guarantee as all of Uzbekistan neighbours (excluding Turkmenistan), and transit hubs (Russia and China) are WTO members.

Landlocked countries strongly benefit from Article V of the GATT, that obligates all WTO members to grant free access to their territory to other members for transit purposes, even when such transit necessitates transshipping, warehousing or

³⁵ For example, see WTO document, WT/ACC/BGR/7, Accession Protocol of Bulgaria (11 October 1996), see also WTO document, WT/ACC/EST/28, Report of the Working Party on the Accession of Estonia to the World Trade Organization (9 April 1999), para. 41t; WTO document, WT/ACC/LVA/32, Report of the Working Party on the Accession of Latvia to the World Trade Organization (30 September 1998), para. 40; and WTO document, WT/ACC/LTU/52, Report of the Working Party on the Accession of Lithuania to the World Trade Organization (7 November 2000), para. 42.

³⁶ Tancrede Voiturez, 'WTO Entry and Beyond: Accession Benefits and the Cost of Membership. A Preliminary Analysis in the Case of Viet Nam', Paper prepared for the MALICA Seminar entitled 'Recent changes affecting quality in Viet Nam's agriculture and food chains—institutional challenges and methods', Hanoi, December 11 & 12, 2007, <http://agents.cirad.fr/pjjimg/tancrede.voituriez%40cirad.fr/paper_TV1.pdf>, accessed 9 January 2021, 4.

changing the goods' mode of transportation. Article V of the GATT thus facilitates export and import from and between landlocked countries, as access to third countries is granted for transit purposes. It is nevertheless important to note that such access is not unfettered: the member in which the goods transit can, for example, impose reasonable charges relating to the traffic in transit. Facilitating transit is of paramount importance for landlocked countries as one additional day in transit is valued on average at 0.8% of the values of the goods being traded.³⁷ Uzbekistan will thus benefit from faster and facilitated transit through neighbouring WTO members. It is important to note that Uzbekistan will also need to grant access to other WTO members to its territory for transit purposes.

4.1.11 Dispute Settlement as a 'sword'

Once a country accedes to the WTO, it is entitled to use the Dispute Settlement procedures of the WTO to assert its rights. If Uzbekistan deems that one of its WTO trading partners fails to respect its obligations, *e.g.*, by hindering free transit, raising its tariff beyond its commitments, or imposing AD duties on cotton contrary to WTO rules, Uzbekistan will have the right to challenge such measures before an independent adjudicator. The WTO Dispute Settlement system is automatic and compulsory. WTO adjudicators can order a member to bring measures into conformity with the WTO Agreements. If such a member does not comply with the decision, Uzbekistan will be formally authorised to retaliate so as to bring back the other member into compliance with its WTO obligations. Through the WTO, developing members can successfully challenge developed members' trade policies; *e.g.* Brazil successfully challenged the subsidies granted by the United States to its cotton industry.³⁸ Uzbekistan likewise suffered from US cotton policies, as such policies were undermining Uzbek access to foreign markets and causing price suppression.³⁹ As Uzbekistan is a large cotton producer, this example shows that the WTO dispute settlement system could help its industries when facing unfair competition from other WTO members.

³⁷ Jean-Francois Arvis, Gael Raballand and Jean-Francois Marteau, 'The Cost of Being Landlocked: Logistics Costs and Supply Chain Reliability' [2017] World Bank Policy Research Working Paper No. 4258, 24.

³⁸ Pomfret (2017), 6.

³⁹ Pomfret (2017), 15.

4.1.12 Dispute Settlement as a ‘shield’

Such a system serves both an offensive (challenging measures) but also a defensive purpose. If Uzbekistan adopts measures deemed inconsistent with WTO law by another WTO member, this member cannot retaliate or take sanctions against Uzbekistan without the WTO’s approval. Such retaliation is only allowed once the WTO’s impartial adjudicator (not a WTO member unilaterally) has determined that there is, indeed, a violation. This, to a great extent, replaces power relations with the rule of law and protects weaker members against potential ‘bullying’ by stronger nations. The WTO Dispute Settlement System’s protection to Uzbekistan is thus twofold: as a ‘sword’ and as a ‘shield’.

4.1.13 Counterbalancing protectionist lobbies

WTO Membership will help the Uzbek government and parliament to overcome interest groups in a way that increases the welfare of the general electorate.⁴⁰ Obligations undertaken at the time of becoming a WTO Member would also compel future Uzbek governments to stick to trade liberalisation and a liberal investment climate environment. Once bound by the WTO Agreements, Uzbekistan’s government could deflect the pressure coming from lobbies and civil society seeking special protections (e.g., through tariffs, quantitative restrictions or subsidies) and justify refusal to offer such special protections with reference to the need to comply with international WTO rules.⁴¹ Being a WTO member would ‘hand-tie’ Uzbekistan as the country would need to continue on the path of reforms to first accede to the WTO and second to ensure compliance with WTO disciplines. Thus, being a WTO member enables the government and parliamentarians to resist better protectionist pressures from domestic industries, resulting in the overall benefit of national welfare. The WTO is an anchor for ‘market-friendly’ reforms: 1) such reforms are necessary to accede to the WTO, and 2) the government can ‘blame’ the WTO for the reforms to resist pressure from domestic actors to ‘stay the course’ in the national interest rather than in particular interests.⁴²

At the end of section 3.2 below, we include [Mongolia](#), [Kazakhstan](#) and the

⁴⁰ Voituriez (2007), 3-4.

⁴¹ Normatov (2018), 104.

⁴² Pomfret (2017), 6.

[Kyrgyz Republic](#) as examples and portray their specific experience with regards to their accession to the WTO.

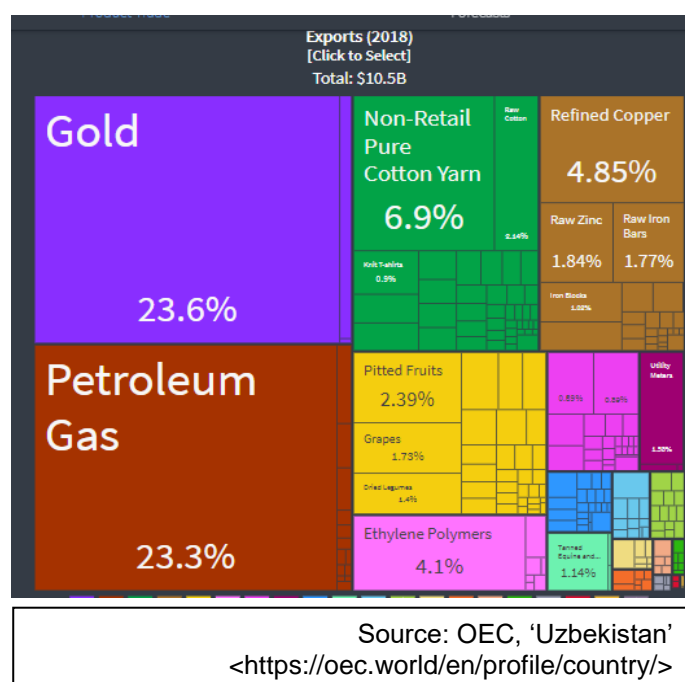
4.2 The ‘Cons’ of WTO Membership

4.2.1. Real cost of lower tariffs

Uzbekistan will need to make concessions by lowering tariffs on imports from other WTO members. Such negotiation of concessions will be reflected in Uzbekistan’s schedules of commitments. The principle of reciprocity governs the negotiations: WTO members will offer MFN tariffs to Uzbekistan, Uzbekistan will also need to make concessions on various sectors, e.g. by granting increased market access in the automotive sector. For example, Kazakhstan made commitments in its automotive sector. Such concessions resulted in cheaper imported cars, but also caused a 12% shrink in the sales of Kazakh-made cars.⁴³

Oil, gas, gold, and other raw materials amount to a large share of Uzbek exports (about 70%). Minerals and gas enjoy liberal access to foreign markets irrespective of WTO Membership.⁴⁴ Therefore, benefits from lower tariffs may not be significant.

For instance, Kazakhstan and Mongolia also export of a great share of oil, gas and minerals (about 90% of their



⁴³ Valijon Turakulov, 'Trade Policy Issues of Oil-Rich but Land-Locked Country Case: Focusing on Kazakhstan Post-WTO Entry' (2020) 16 Journal of International Trade & Commerce, 143.

⁴⁴ Valijon Turakulov, 'Trade Policy Issues of Oil-Rich but Land-Locked Country Case: Focusing on Kazakhstan Post-WTO Entry' (2020) 16 Journal of International Trade & Commerce, 136; Damedin Tsogtbaatar, 'Mongolia's WTO Accession: Expectations and Realities of WTO Membership: 45 Case Studies' in Peter Gallagher, Patrick Low and Andrew L Stoler (eds), Managing the Challenges of WTO Participation (Cambridge University Press 2005), 413.

exports⁴⁵) which were already subject to a favourable import regime prior to their WTO Accession.⁴⁶ WTO Membership may thus not substantially contribute to promoting Uzbekistan's trade in oil and gas.⁴⁷ The general benefits from lower tariffs enjoyed by Uzbekistan should nonetheless be greater than those of Kazakhstan as its economy is more diverse. In this regard, we note that WTO Membership can also help Uzbekistan incrementally diversify its exports, beyond raw materials, to be less vulnerable in case of economic shock (e.g., if the price of raw materials decreases significantly).⁴⁸

4.2.2. Real cost of Most Favoured Nation Treatment beyond the status quo

Application of MFN treatment is one of the most important outcomes of WTO accession. In the case of Uzbekistan, an assessment of costs and benefits should be made. Uzbekistan needs to assess which industries it is worth protecting through tariffs and which sectors should become more open. Upon WTO accession, it is important to be strategic to obtain better terms by comparing export-oriented interests and the value of imports.⁴⁹ While Uzbekistan would enjoy MFN treatment from WTO members, it will also be required to reciprocate to a significant number of new territories (As Uzbekistan currently grants MFN status to about 47 countries, and it will need to extend MFN treatment to 117 additional WTO members.) This entails increased imports of foreign goods in Uzbekistan.

Another consideration is that Uzbekistan is already enjoying preferential treatment through FTAs and through GSP schemes of many developed countries, as shown above, which already today provides better treatment than MFN under the WTO. On 30 November 2020, the EU amended Annex III to Regulation (EU) No 978/2012 to include the Republic of Uzbekistan among the countries benefiting from tariff preferences under the GSP+. That said, FTAs and especially GSP benefits may be less stable and predictable than WTO commitments.

⁴⁵ OEC Country Profile, 'Mongolia', page visited on 6 November 2020, <<https://oec.world/en/profile/country/mng>>; OEC Country Profile, 'Kazakhstan', <<https://oec.world/en/profile/country/kaz>> accessed 9 January 2021.

⁴⁶ Turakulov (2020), 136; Tsogtbaatar (2005), 413.

⁴⁷ Turakulov (2020), 136.

⁴⁸ Turakulov (2020), 145.

⁴⁹ Krzysztof J. Pelc, 'Why Do Some Countries Get Better WTO Accession Terms Than Others?', *International Organization* Vol. 65, (2011), 65:4 639–672, 641.

First, we note that for the existing FTAs and GSPs, there are risks of non-compliance or unilateral withdrawal. Benefits through GSP schemes are offered on a voluntary basis under national laws and not protected under an international rule-based system. Members may consider withdrawing preferential treatment based on considerations external to trade, as shown in recent comments from human rights activists asking the EU to remove Uzbekistan from their GSP list because of alleged practices in the cotton industry.⁵⁰

Second, the benefits enjoyed by Uzbekistan under GSPs appear to be marginal except for Turkey. Indeed, Uzbekistan [exports few goods](#) to the United States or the EU for instance as they represent less than 3% of Uzbek foreign trade and that the main export of Uzbekistan to Switzerland enters the country on a duty-free basis [regardless of the GSP](#). GSP benefits accorded by developed countries vary, covering different types of products. The recent inclusion by the EU of Uzbekistan in its GSP+ scheme nonetheless could change the situation. Under the regular EU GSP scheme, Uzbekistan benefitted from tariff reductions on 2/3 of tariff lines (types of goods). Under the GSP+, Uzbekistan will have increased access to the EU market and more trade opportunities as it will benefit from zero-duty tariffs on 2/3 of EU's tariff lines (which are sensibly the same under both the GSP and the GSP+ schemes).⁵¹

4.2.3. Assumption of New Obligations and Loss of Regulatory Space

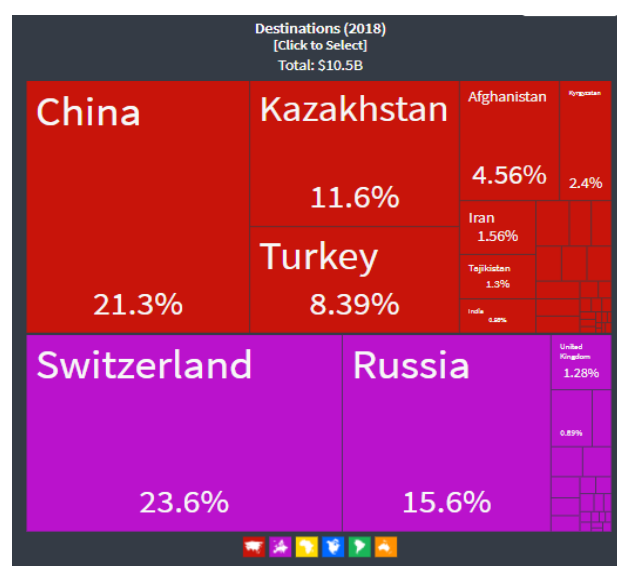
With WTO accession, Uzbekistan will need to assume new obligations under the WTO agreements. This will have the effect of limiting the Uzbek government and parliament's regulatory space to a certain extent.⁵²

⁵⁰ Hugh Williamson, Uzbekistan not even close meriting EU's Trade Scheme, Human Rights Watch, 4 November 2020, at: <<https://www.hrw.org/news/2020/11/04/uzbekistan-not-even-close-meriting-eus-trade-scheme>> accessed 9 January 2021.

⁵¹ European Commission, 'The EU's Generalised Scheme of Preferences (GSP)' 2015 <https://trade.ec.europa.eu/doclib/docs/2015/august/tradoc_153732.pdf> Accessed on 9 January 2021; European Commission, 'European Union's GSP+ scheme' 2019 <http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc_155235.pdf> Accessed on 9 January 2021.

⁵² Pomfret (2020).

For instance, Uzbekistan will need to respect the rules and principles on Subsidies and AD. The subsidisation of national firms will be scrutinised and might get challenged before the WTO. Uzbekistan subsidisation practises will have to adapt to respect WTO disciplines, even as regards sensitive sectors. The Uzbek government will need to respect the AD disciplines when imposing AD duties on certain products. The duties imposed by Uzbekistan will also be subject to other members' scrutiny. Non-tariff barriers will also be under the scrutiny of WTO and might be challenged.⁵³ The Uzbek government



Source: OEC, 'Uzbekistan'
<<https://oec.world/en/profile/country/>>

would be bound by strict transparency obligation. It would need to publish information on regulations affecting trade and imported products and to notify measures pertaining to the TBT or SPS Agreements.

Countervailing Duties (CVDs) aim to offset the impact of subsidised goods on the domestic market. CVDs can be unilaterally imposed by a member when its domestic producers suffer a material injury caused by other members' subsidised imports. Besides CVDs, two types of subsidies can be challenged directly at the WTO:

Actionable subsidies are specific subsidies causing adverse effects (injury) to a Member's domestic industry.

Prohibited subsidies are subsidies contingent on exports or requiring a producer to use domestic over imported goods. If proven to exist, such subsidies must be withdrawn.

For instance, a subsidy granted to textile producers which require to use Uzbek cotton in carpets would be prohibited. Subsidies granted to companies on the condition that they export a certain percentage of their goods would also be prohibited.

Anti-Dumping (AD) duties aim to offset dumping. Dumping happens when a

⁵³ Valentina Baturina, 'Uzbekistan's Accession to the WTO: Government Regulation and Protection of National Economy Sectors' [2005] Center for Effective Economic Policy.

company exports a product at a price lower than its domestic price or production cost. Under the AD Agreement, the Member injured by dumping can charge extra import duties—following an investigation—on the products of specific producers to offset the dumping margin and bring prices closer to normal value.

4.2.4. Potential adverse effects to certain Uzbek industries

Some of Uzbekistan's economic sectors are highly protected by existing tariffs or subsidies. The Uzbek automotive industry, as it stands, would greatly be affected by WTO rules and principles as it receives specific subsidies which are potentially inconsistent with WTO disciplines. For example, foreign cars are currently subject to discriminatory excise taxes. This means that enterprises such as *Uzavtosanoat* will not be able to receive as much governmental support (here, in the form of tax reductions) as before. In addition, Uzbekistan could no longer grant tax privileges for companies that export more than 15% of their production.⁵⁴ Industry sectors likely to suffer from foreign competition are automobile and textiles.⁵⁵ Uzbek domestic companies will need to adapt by improving their competitiveness in the market, which may take three to five years.⁵⁶ In the interim, detrimental effects on national industries may result in reduced tax revenues and increased unemployment.⁵⁷

On the other hand, some sectors, such as the cotton industry, are likely to benefit from WTO Membership as Uzbekistan will be able to assert its rights by challenging WTO members' cotton policies if needed.⁵⁸

4.2.5. Cost of Dispute Settlement

By becoming a WTO Member, Uzbekistan would undertake the obligation to abide by the WTO Dispute Settlement System. If another Member challenges Uzbek measures, WTO Panels or the Appellate Body may require Uzbekistan to modify

⁵⁴ Ganiev (2012), 13.

⁵⁵ Valentina Baturina, Jakhonghir Muinov and Evgenia Elfimova, 'Uzbekistan on Its Way to the WTO: Risks and Benefits for the Textile and Apparel Industries' [2003] Center for Effective Economic Policy.

⁵⁶ Valijon Turakulov and Alisher Umirdinov, 'The Last Bastion of Protectionism in Central Asia: Uzbekistan's Auto Industry in Post-WTO Accession' (2019) 11 Trade, L & Development 301; V Vakhobov, NG Muminov and F Djurakhanov, 'The Accession of Uzbekistan to The WTO: Challenges And Opportunities for the Food Processing Industry' [2006] Center for Effective Economic Policy.

⁵⁷ Jamshid Normatov, 'Uzbekistan's Long Way to The World Trade Organization' (2018) Centre international de formation européenne; 73-74.

⁵⁸ Pomfret (2017), 15.

specific laws or practices when non-compliant with the WTO agreements. In addition, if Uzbekistan wishes to challenge what it considers to be WTO inconsistent measures from other members, it will need to pursue redress through the Dispute Settlement System, to the exclusion of any other remedies. This means that Uzbekistan will bear the costs of pursuing litigation and defending itself before WTO panels.

4.2.6. Cost of allocating resources for compliance with WTO

Being a WTO Member also entails real costs in terms of human resources. Uzbekistan will need to endow its institutions with resources to administer and comply with the WTO Agreements.⁵⁹ For example, as discussed in Question 5, Uzbekistan's government and parliament may need to work on reinforcing personnel in the Uzbekistan Agency for Intellectual Property to ensure stronger enforcement of intellectual property rights under the Trade-Related Aspects of Intellectual Property Rights (hereinafter TRIPS) or its Accession Protocol.

4.2.7. *De facto* irreversibility of WTO membership

Once a country has become a WTO member, the integration within the international trading system progressively increases. Opting out of the WTO system at a later stage would be burdensome and costly as a member opting out would face higher tariffs and higher discrimination outside the system, plus send a strong, negative signal to international markets and traders. In any event, if Uzbekistan wishes to withdraw from the WTO, such a possibility formally exists under Article XV of the Marrakesh Agreement. Once the WTO's DG receives a notice of withdrawal, such withdrawal is effective after six months. To date, however, not a single WTO Member has withdrawn from the organisation.

Mongolia's Experience

Mongolia acceded to the WTO in 1997

On the one hand:

—Mongolia did not secure sufficient transition period rights and exceptions that most developing countries aim to secure.⁶⁰ Uzbekistan should be careful to ask for appropriate transition periods to implement its WTO obligations. The Mongolian government failed to consult its business

⁵⁹ Pomfret (2017), 17.

⁶⁰ Tsogtbaatar (2005), 409.

community sufficiently at the time of acceding.⁶¹ Uzbekistan could benefit and avoid drawbacks by consulting its business community when negotiating its transition periods.

—Mongolia was not prepared enough to resist pressure from larger economies, such as the US, Mexico, and the EC. Mongolia might have given too many immediate concessions.⁶²

—Most industries did not benefit from the expected advantages of WTO Membership. Exporting more is not a guarantee: the Mongolian meat industry failed to enter WTO markets that were promising, e.g. in north-east Asia.⁶³

—Mineral and gas, which amount to an important share of Mongolian exports—similarly to Uzbekistan—enjoy liberal access to foreign markets irrespective of WTO Membership. The benefits in terms of trade openness were thus limited.

—The Mongolian economy does not seem to have directly benefited from WTO Membership, as it suffered an economic crisis in its accession's aftermath. However, Mongolia's Accession coincided with the 1997 Asian Financial Crisis and the 1998 Russian crisis, explaining the detrimental impact on the Mongolian economy. At the time, Mongolia was also surrounded by non-WTO Members (Russia and China).

On the other hand:

—Joining the WTO helped the Mongolian economy to become more competitive in the long run.

—Joining the WTO helps the government to resist protectionist pressure from its business sectors, it can more easily say 'no' to special interest requests from the business community by pointing out that its demands are 'WTO-inconsistent'.

Kazakhstan's Experience

Kazakhstan acceded to the WTO in 2015

On the one hand:

—Kazakhstan's tariffs were lower on the aggregate than Uzbekistan's tariffs, which made adjustments less costly when negotiating its tariff schedules.⁶⁴ Kazakhstan's final average bound import tariff rate is 6.1%⁶⁵ which is above the average applied rate of 5.58% between 2003 and 2010.⁶⁶

—Kazakhstan made liberalisation commitments in 10 services sectors and 116 subsectors under

⁶¹ Tsogtbaatar (2005), 412.

⁶² Tsogtbaatar (2005), 409.

⁶³ Tsogtbaatar (2005), 413.

⁶⁴ Pomfret, (2017), 12

⁶⁵ WTO, 'Overview of Kazakhstan's Commitments' <https://www.wto.org/english/news_e/news15_e/kazakhannex_e.pdf> accessed on 9 January 2021.

⁶⁶ Selda Atik, 'Regional Economic Integrations in the Post-Soviet Eurasia: An Analysis on Causes of Inefficiency' *Procedia — Social and Behavioral Sciences* 109 (2014), 1334.

the General Agreement on Trade in Services (GATS).⁶⁷

—Kazakhstan had a more ‘market-oriented economy’ than Uzbekistan at the time of Accession,⁶⁸ hence making adjustments necessary for WTO participation were less burdensome than they might be for Uzbekistan.

—Immediate gains for Kazakhstan were low as the country’s GDP grew by only 1% and remained low in the following years; such low growth can nonetheless be attributed mainly to a fall in commodity prices.⁶⁹

—Yet, WTO Membership is likely to raise Kazakhstan’s GDP by about 3.7% in the medium term and about 10% in the long run.⁷⁰

—Kazakhstan’s ‘WTO-Plus’ obligations include bindings on its export tariffs; Kazakhstan bound itself not to impose higher export tariffs than negotiated on 370 tariff lines. For instance, Kazakhstan agreed to impose 0 export duties on aluminium, fuels, and other minerals.

On the other hand:

—Kazakhstan managed to reform its economy by adopting WTO-consistent legislation.

—Kazakhstan’s WTO Accession is likely to have contributed to reducing the corruption within the country.

—Kazakhstan enjoys greater protection as a WTO Member. Before joining the WTO, Kazakhstan was notably suffering from anti-dumping duties on its steel exports that it could not challenge at the time.

Kyrgyz Republic’s Experience

The Kyrgyz Republic acceded to the WTO in 1998

On the one hand:

—Kyrgyzstan bound most of its tariffs at 10% following bilateral access negotiations in its accession process⁷¹, but the applied tariffs were low at the time—unlike Uzbekistan, which still applies high tariffs.⁷²

—Kyrgyzstan suffered an economic crisis in the aftermath of its WTO Accession. The recession was mainly caused by the 1997 Asian Financial Crisis and the 1998 Russian crisis rather than

⁶⁷ Kireyev (2017), 75.

⁶⁸ Pomfret (2017) 14

⁶⁹ Kireyev (2017), 71–72.

⁷⁰ J Jensen and D Tarr, ‘The Impact of Kazakhstan Accession to the World Trade Organization: A Quantitative Assessment’ [2007] World Bank Policy Research Working Paper No. 4142.

⁷¹ Pomfret (2017), 9.

⁷² Pomfret (2017), 10.

by WTO Accession.⁷³

—No neighbour of Kyrgyzstan was a Member of the WTO at the time of its accession (China acceded in 2001, followed by Tajikistan in 2013 and Kazakhstan in 2015), which limited the immediate benefits of this country upon accession.⁷⁴ WTO Membership at the time created tension with its neighbours, which imposed very high tariffs, quotas and other trade restrictions.⁷⁵ Such a scenario is not likely to concern Uzbekistan as most of its neighbours are now WTO Members.

-In any event, Kyrgyzstan suffered no harm because of its WTO Accession.

On the other hand:

—Even though benefits for Kyrgyzstan have been minor in the first years following its Accession to the WTO, the benefits are likely to grow in the long run, especially as most of its neighbours are now WTO Members.⁷⁶

4.3 Cross-cutting Elements

Advantages and benefits accruing from WTO membership are not automatic and immediate. In legal terms, Uzbekistan would automatically enjoy rights such as dispute settlement or freedom of transit immediately upon accession. However, most economic benefits should be expected only in the medium and long run; the WTO offers no guarantees of short-term improvements or particular export numbers (only increased export opportunities). Most new WTO members did not enjoy significantly improved market access, the exception being China.⁷⁷ In general, researchers found little correlation between WTO membership and higher trade and FDI flows.⁷⁸ Nonetheless, studies show that in the case of ‘small’ economies like Uzbekistan, the costs related to the reduced sovereignty in terms of trade policy are outweighed by benefits.⁷⁹

Although WTO Membership is not automatically generating increased trade and FDI flows, the impact of WTO membership seems positive in terms of reforms for

⁷³ Pomfret (2017), 10.

⁷⁴ Marc Bacchetta and Zdenek Drabek, ‘Effects of WTO Accession on Policy-Making in Sovereign States: Preliminary Lessons from the Recent Experience of Transition Countries’ [2002] WTO Staff Working Paper, No. DERD-2002-02; 32.

⁷⁵ Bacchetta (2002), 32.

⁷⁶ Pomfret (2017), 11

⁷⁷ Pomfret (2017), 5.

⁷⁸ Nauro Campos, ‘What Does WTO Membership Kindle in Transition Economies? : An Empirical Investigation’ (2004) 19 Journal of Economic Integration 395, 397, 412.

⁷⁹ Pomfret (2017), 7.

transition economies such as Uzbekistan. It can help them to get rid of the NME label. Post-Soviet WTO members have experienced higher income and conducted more extensive reforms by acceding to the WTO as compared with post-Soviet countries remaining outside the WTO.⁸⁰

When negotiating, there is a possibility to ask for exemptions and adjustment periods to implement specific segments of the WTO Agreements, e.g., as regards subsidisation and under the Trade Facilitation Agreement (TFA). Such exemptions or adjustment periods are subject to WTO members' acceptance through negotiations (under the TFA, they are up to the acceding country itself).

WTO PLUS OBLIGATIONS

—Kazakhstan accepted 118 accession-specific obligations (not imposed on original WTO Members), Russia 163 and China 168.⁸¹ Additionally, Kazakhstan bound its export tariffs for 370 tariff lines and agreed not to impose any export tariffs on goods such as oil, gas, aluminium and other minerals (original WTO Members do not have ceilings on export taxes). Russia agreed to limit its export tariffs on 556 tariff lines, of which 81% were set at 0%.⁸² Tajikistan agreed to eliminate all export duties except for 300 tariff lines.⁸³

—In the area of agriculture, Kazakhstan bound its overall support to its agriculture at 0% but managed to keep the possibility to give non-product-specific support of 8.5%. Kazakhstan also bound all its agricultural export subsidies at 0%. Kazakhstan Special Economic Zones are also subject to the WTO Agreements.⁸⁴

—Kazakhstan granted a minimal period of 30 days to WTO Members to comment on its laws prior to their adoption.⁸⁵

—Kazakhstan agreed to eliminate quantitative restrictions on exports and industrial subsidies. Besides, Kazakhstan agreed to grant access to its state-owned pipelines on a non-discriminatory basis to foreign investors. Kazak state-controlled enterprises must also afford opportunities to WTO Members businesses to participate to their procurement.⁸⁶

—Kazakhstan agreed to apply all WTO Agreements upon accession. WTO developing Members usually enjoy a transitional period of five years under the TRIMS and two years

⁸⁰ Campos (2004), 412.

⁸¹ Kireyev (2017), 75.

⁸² Kireyev (2017), 76.

⁸³ Chieu Osakwe, 'Post-Accession Benefits of the WTO Membership of Tajikistan: Tajikistan Is Open for Business and Investor-Friendly' (International Trade and Investment Conference of Dushanbe, 2015), 8.

⁸⁴ Kireyev (2017), 78.

⁸⁵ Kireyev (2017), 79.

⁸⁶ Kireyev (2017), 77.

under the SPS and TBT Agreements to implement the agreements.

—In the case of Kazakhstan, such a possibility was denied, but Kazakhstan managed to get two specific transitional periods in relation to the TRIMS Agreement. It managed to obtain four years to eliminate TRIMS measures in its automotive industry and six years in its oil and gas industry.⁸⁷

Those commitments are significant, and, in any case, Uzbekistan should not agree to undertake more WTO-plus commitments than its neighbours.

5. Evaluation of Uzbekistan's policy towards the Eurasian Economic Union

On 28 April, the Legislative Chamber of the parliament of Uzbekistan adopted a resolution on cooperation between Uzbekistan and the EAEU as an observer state. According to expert opinion,⁸⁸ the main reasons for making this decision follow: first, cooperation with the EAEU as an observer state will help Uzbekistan to strengthen dialogue and cooperation with the EAEU member states in areas of mutual interest. Second, the observer status does not impose any specific legal obligations on Uzbekistan and does not impose obligations on the state to become a full member of this organisation in the future. Third, the observer status gives the best opportunity to comprehensively study the pros and cons of full membership in the EAEU 'from the inside'⁸⁹. On 11 December, the Supreme Eurasian Economic Council decided to grant the Republic of Uzbekistan observer status in the EAEU.⁹⁰

The following section aims to answer the question of the implication of EAEU membership on the WTO accession process. Different scenarios will be taken into consideration to assess whether joining the EAEU would hinder Uzbekistan's WTO Accession process (A) and if staying an observer would be a better option for Uzbekistan (B).

⁸⁷ Kazakhstan Working Party Report WT/ACC/KAZ/93, paras 207–212.

⁸⁸ Doniyor Turaev, 'The decision of the Legislative Chamber is assessed by the expert "golden mean"', 30 April 2020) <<http://parliament.gov.uz/ru/events/other/30900/>> accessed 9 January 2021.

⁸⁹ Doniyor Turaev, 'The decision of the Legislative Chamber is assessed by the expert "golden mean"', 30 April 2020) <<http://parliament.gov.uz/ru/events/other/30900/>> accessed 9 January 2021.

⁹⁰ Uzbekistan, 'The President takes part in the Eurasian Economic Union online summit meeting' <<https://president.uz/en/lists/view/4003>> accessed 9 January 2021..

First, to answer these questions, the general implications of EAEU Membership will be laid out (1).

Second, examples of joint EAEU-WTO experiences will be highlighted (2). An interesting example is Kazakhstan, which recently acceded to the WTO while already being an EAEU member. In contrast, Armenia and Kyrgyzstan's experiences will also be highlighted as those two members joined the EAEU after acceding to the WTO.

Third, the impact of EAEU membership on Uzbekistan will be assessed to answer, on the one hand, whether Uzbekistan should join the WTO or the EAEU and, on the other hand, to which organisation Uzbekistan should accede first if it aims to accede to both the WTO and EAEU (3).

Finally, a conclusion will summarise the different possibilities (4).

5.1 General implications of EAEU Membership

If Uzbekistan wants to join the EAEU, it will need to implement the EAEU's disciplines. The EAEU is a customs union, under its constitutive treaty, three main elements must be underlined. *First*, the EAEU mandates its members to apply a Common External Tariff, the Common Customs Tariff (hereinafter CCT), this means that—in principle—a good entering the territory of any EAEU member will face the same customs duties. *Second*, the EAEU is also a free-trade zone. This means no tariffs are applicable to goods entering one EAEU member from another EAEU member. The free-trade aspect is not controversial since Uzbekistan already is in a FTA with its EAEU partners as a CIS member. The last element to consider is that in addition to the CCT and intra-EAEU free trade, EAEU members also agree not to implement unilateral trade remedies against both EAEU members and third countries as they hand jurisdiction to the EAEU over the administration of trade remedies.

5.1.1 What the EAEU's Common Customs Tariff entails for WTO Members

Indeed, the EAEU treaty mandates its members to harmonise their trade agreements and to implement the CCT, i.e. all EAEU members progressively will apply the same tariffs to imports coming from third countries.⁹¹

⁹¹ Michal Ovádek and Ines Willemyns, 'International Law of Customs Unions: Conceptual Variety, Legal Ambiguity and Diverse Practice' (2019) 30 European Journal of International Law 361, 372–373.

The EAEU's external tariff follows almost entirely Russia's WTO bound tariffs.⁹² There is a discrepancy between EAEU's Members, e.g. Kazakhstan and Kyrgyzstan, the WTO bound tariffs of which were lower than the Russian bound tariffs that became EAEU's CCT. The EAEU treaty provides some flexibility to accommodate its member's obligations towards the WTO as they can apply lower tariffs than the CCT to be *en phase* with their WTO commitments.

The EAEU treaty creates two categories of members, one category englobes EAEU Members that were WTO members at the time of joining the WTO (Armenia and Kyrgyzstan), and a second category comprises EAEU members that were not yet WTO members at the time of joining the EAEU (Kazakhstan and potentially Uzbekistan if it decides to join the EAEU).

In the first case, the EAEU Treaty permits members to respect the obligations undertaken before the entry into force of the EAEU treaty (Armenia and Kyrgyzstan, see the section [below](#)) including the WTO Agreements.⁹³ In the second case, EAEU members that were *not* WTO members at the time of acceding to the EAEU, such as Kazakhstan (see the section [below](#)), do not benefit from the treaty provision applying to obligations in force at the time of joining the EAEU. Consequently, Kazakhstan needed to ask the EAEU's Commission to benefit from exemptions to maintain WTO bound tariffs that are not consistent with the EAEU's CCT. This put a huge pressure on Kazakhstan as all EAEU members must agree to grant the exemptions from the CCT through EAEU's Commission. In practice, it means that Kazakhstan's WTO accession negotiations were conducted jointly with the EAEU which had to approve Kazakhstan's WTO commitments beforehand since what Kazakhstan was committing to in the WTO had to be acceptable to EAEU members. This thus pleads against joining the EAEU first as it would be easier for Uzbekistan to grant concessions to WTO members during negotiations. In any case, the EAEU membership permits its members to apply lower WTO-consistent tariffs until the readjustment (to bring their tariffs in phase with the CCT) process begins.

Other Customs Unions' Examples

Two examples of Customs Unions are the EU and the MERCOSUR. The European Union unites

⁹² Kazakhstan, Working Party Report, para 0.307; Tarr (2016), 2.

⁹³ Art. 102(1), EAEU.

European Members and the MERCOSUR Latin American Members.

The EU is very well integrated; its common market is fully implemented, the EU is in itself a Member of the WTO. The tariffs of European Members are entirely defined and bound by the EU in the WTO and not by national members.

The MERCOSUR is less well integrated, its members (Argentina, Brazil, Paraguay and Uruguay) still benefit from thousands of tariff exemptions from MERCOSUR's Common External Tariff. Such exemptions have been granted by the MERCOSUR Council until 2021. Those exemptions have been granted on a continuous basis since the customs' union foundation in 1992.

The EAEU is certainly closer to the MERCOSUR than to the EU since its CCT is also subject to the EAEU Commission's exemptions to EAEU Members. In general, the post-Soviet countries and the region's integration process are more similar to the integration process in Latin America than in the EU.⁹⁴

5.1.2 Trade liberalisation

EAEU Members must, in theory, permit free entry of the goods and grant all the advantages stipulated in the treaty. Nevertheless, this is not necessarily happening in practice; Russia has reinstated *de facto* customs check for goods coming from Belarus, and the same occurred between Kazakhstan and Kyrgyzstan over political tensions.⁹⁵ The effect of EAEU on trade liberalisation and facilitation seems to be less than what was expected. In a sense, trade is facilitated as there is no formal border between EAEU Members for cargo. Yet, many non-tariff barriers remain, indicating that the EAEU did not significantly impact trade liberalisation.⁹⁶

5.1.3 Trade Remedies and Other Measures:

EAEU Members also agree not to individually impose import or export restrictions, impose trade remedies, technical regulation (TBT) or phytosanitary regulations (SPS). The EAEU applies trade remedies as one entity. For example, if Kazakhstan wants to impose AD tariffs on some goods originating from the EU, it would have to secure consensus to do so in the EAEU Commission.

5.2 The Impact of EAEU Membership on other Members of the Region

EAEU Members had diverse incentives to join the EAEU. Belarus receives

⁹⁴ See Zhenis Kembayev, 'Integration Processes in South America and in the Post-Soviet Area: A Comparative Analysis' (2005) 12 Sw J L & Trade Am 25.

⁹⁵ Ovadek (2019), 373.

⁹⁶ Tarr (2016), 17–19.

cheap oil from Russia and earns a premium by reselling it to the EU. Kyrgyzstan and Armenia enjoy security guarantees from Russia and important remittances from their citizens working in Russia. In the case of Kyrgyzstan, such remittances amount to 31.5% of the country's GDP. In Kazakhstan, the situation is more complex as it neither receives 'oil loans' nor important remittances from its citizens living in Russia.⁹⁷ Kazakhstan was supposed to benefit from more trade openness with other EAEU members. The benefits from expected trade openness were supposed to outweigh the cost of being EAEU Members which are mainly linked to trade diversion. Because of the higher CCT than Kazakhstan's pre-existing applied tariffs, Kazakhstan substituted a significant share of its imports, which were before mainly originating from China and the EU with lesser quality and more expensive Russian goods.⁹⁸ The maintenance of high non-tariff barriers for the moment entails that Russia is the great 'winner' from EAEU Membership whereas Kazakhstan is the main 'loser'.⁹⁹

Kazakhstan's EAEU Experience: Joining the EAEU before the WTO

Kazakhstan joined the WTO while being an EAEU member and was bound by the EAEU's CCT before the terms of its WTO Membership were set.¹⁰⁰ Kazakhstan, as any other acceding member, negotiated bilateral access commitments with other WTO members.

Under its WTO Accession Protocol, Kazakhstan must fully implement the concessions it negotiated in the WTO's framework.¹⁰¹ This means that it must not apply higher tariffs than those it agreed to respect. Those commitments are made per type of products which are classified under tariff 'lines' in the World Customs System, e.g., microwaves and gold ore will be classified under different lines as they are different products.

As Kazakhstan also committed to respecting the EAEU's CCT, it needed to ask the EAEU's Commission¹⁰² for exemptions on the tariff it had agreed to grant WTO members when those tariffs are lower than those set by EAEU's CCT. To apply higher tariffs than the CCT, EAEU Members always need the Union's approval, otherwise, they would be breaching their obligations under the EAEU treaty.

Kazakhstan's Realignment with EAEU's CCT: Under its accession protocol, Kazakhstan needs to strictly enforce its WTO commitments for a minimum of three years and six months

⁹⁷ Tarr (2016), 16.

⁹⁸ Tarr (2016), 16.

⁹⁹ Tarr (2016), 16.

¹⁰⁰ Kireyev (2017), 74.

¹⁰¹ Kazakhstan Working Party Report, para 0.307

¹⁰² Art. 42:6, EAEU Treaty.

after fully implementing such commitments.¹⁰³ In its protocol of Accession, Kazakhstan committed to fully apply its WTO concessions until five years until their full implementation.¹⁰⁴ According to the WTO, Kazakhstan is supposed to begin its EAEU realignment process in 2023, which means that it needed five years (from 2015 until 2020) to implement its commitments fully and that after 2020 it needed three years to continue to implement its WTO commitments.¹⁰⁵

After the full implementation of its WTO commitments, Kazakhstan will need to align its tariffs upwards with EAEU's CCT progressively.¹⁰⁶ To align its tariffs with the EAEU, Kazakhstan will need to change its WTO commitments. In its protocol of Accession, Kazakhstan undertook the obligation to negotiate with concerned WTO members to compensate them for the tariffs it wants to raise to bring them in line with the EAEU's CCT.¹⁰⁷ The negotiation obligation is more stringent than for WTO founding members since, in the case of Kazakhstan, there is an obligation to reach an agreement with interested members to modify commitments.¹⁰⁸

Time Frame to Complete the Realignment Process: Once negotiations with interested members have been initiated, Kazakhstan will need to complete such negotiations within three years.¹⁰⁹ Moreover, if EAEU membership had the effect of decreasing advantages for interested members (e.g., through SPS measures), Kazakhstan will also bear the obligation to offset any negative impact on interested members through negotiations.¹¹⁰

Negotiating 'hand-in-hand' with EAEU: The commitments that Kazakhstan (and other EAEU Members) made in the WTO not only bind itself but the whole EAEU. Kazakhstan undertook the obligation to involve its EAEU partners in the negotiations pertaining to its tariff realignment.¹¹¹ Thus, this obligation is not only logical (as EAEU Members will need to approve the exemptions), but also a requirement set by the WTO members that want to ensure that Kazakhstan will not face EAEU pressure to disregard its WTO obligations. The commitments made in the WTO become integral parts of the EAEU legal framework.¹¹² During its accession, Kazakhstan undertook 23 commitments that explicitly extend to both itself and the EAEU.¹¹³

¹⁰³ Kazakhstan Working Party Report, para 0.307

¹⁰⁴ WTO, 'WTO members review regional trade agreements covering EU, Ghana and EAEU' (Page consulted on November 5) <https://www.wto.org/english/news_e/news18_e/rta_19nov18_e.htm>.

¹⁰⁵ WTO, 'WTO members review regional trade agreements covering EU, Ghana and EAEU' <https://www.wto.org/english/news_e/news18_e/rta_19nov18_e.htm> accessed 9 January 2021.

¹⁰⁶ Kazakhstan Working Party Report, para 0.308.

¹⁰⁷ Kazakhstan Working Party Report, para 0.309.

¹⁰⁸ Kazakhstan Working Party Report, para 0.309.

¹⁰⁹ Kazakhstan Working Party Report, para 0.310.

¹¹⁰ Kazakhstan Working Party Report, para 0.310.

¹¹¹ Kazakhstan Working Party Report, para 0.310.

¹¹² Kiriyevev (2017), 76.

¹¹³ Kiriyevev (2017), 76.

This means that if Uzbekistan considers joining the WTO and the EAEU, it should closely collaborate with EAEU officials to ensure that its commitments are acceptable to the Union members.

Armenia and Kyrgyzstan's Experiences: Joining the EAEU after WTO

The cases of Armenia and Kyrgyzstan are also interesting as they were already WTO Members at the time of joining the EAEU.

Armenia and Kyrgyzstan also need to compensate other WTO members for their participation in the EAEU (the only member that does not need to do so is Russia as EAEU's CCT was mainly based on Russian WTO Commitments). For instance, Armenian bound tariffs increased on average from 2.7 to 7.5% after its EAEU Accession.¹¹⁴ When a WTO member joins a Customs Union, it still needs to renegotiate and compensate members with a substantial interest under Articles XXIV and XXVIII of the GATT (see [above](#)) when its participation in the EAEU has the effect of raising its tariffs over its WTO Commitments.¹¹⁵

When Armenia negotiates, it negotiates for the EAEU, as the whole EAEU Membership will be subject to the new concessions;¹¹⁶ an EAEU delegation thus negotiates on behalf of Armenia (and Kyrgyzstan).¹¹⁷ Armenia is already engaged in its renegotiation process. The process started in 2014¹¹⁸ and should be completed by 2022 (seven years).¹¹⁹ If such renegotiation does not satisfy a member with substantial interest, such member will be authorised to suspend its obligations towards Armenia.¹²⁰ The obligation to renegotiate and to compensate interested members is thus less burdensome for existing WTO members as there is no obligation as in the case of Kazakhstan to reach a satisfying agreement with interested parties.

All the observations regarding Armenia apply to Kyrgyzstan that also undertook such negotiations. An EAEU delegation acts on behalf of Kyrgyzstan as the renegotiation process of its bound tariff will likewise impact the whole EAEU Membership.¹²¹

¹¹⁴ WTO, 'Trade Policy Review of Armenia', WT/TPR/S/379, paras 3–4.

¹¹⁵ Art. XXIV:6 GATT.

¹¹⁶ WTO, 'Treaty on Accession of the Republic of Armenia to the Eurasian Economic Union', WT/REG358/M/1, para 1.55.

¹¹⁷ WTO, 'Factual Presentation: Treaty on Accession of the Republic of Armenia to the Eurasian Economic Union', WT/REG363/1, paras 3.9-3.10.

¹¹⁸ WTO, 'Factual Presentation: Treaty on Accession of the Republic of Armenia to the Eurasian Economic Union', WT/REG363/1, para 3.11.

¹¹⁹ WTO, 'Trade Policy Review of Armenia', WT/TPR/S/379, paras 3–4.

¹²⁰ Art. XXVIII(3)(b) GATT.

¹²¹ WTO, 'Factual Presentation: Treaty on Accession of the Kyrgyz Republic to the Eurasian Economic Union', WT/REG366/1, para 3.9.

5.3 The Implications of EAEU Membership for Uzbekistan

The following conclusions can be drawn from Kazakhstan's and Armenia's experiences:

- 1) If Uzbekistan becomes an EAEU Member, it will have to apply EAEU's CCT in any event.
- 2) If the WTO comes first, as in Armenia's case, the EAEU negotiators will at least play a role at the time of renegotiating WTO commitments to compensate Members affected by the implementation by Uzbekistan of EAEU's CCT. Still, Uzbekistan would officially remain the sole actor involved at the time of negotiating its WTO commitments.
- 3) If the WTO comes after, as in Kazakhstan's case, the EAEU negotiators will negotiate with Uzbekistan from the moment Uzbekistan joins the EAEU as the WTO is likely to require Uzbekistan to engage the whole EAEU Membership as Kazakhstan was required to do. In Kazakhstan's case, the Accession Working Party made clear that even if the EAEU's Commission were not to grant exemption from the CCT to Kazakhstan, it would still be bound by its commitments under WTO law.¹²² If Uzbekistan joins the EAEU before the WTO, it would need to secure the EAEU's Commission's approval when negotiating with WTO Members to avoid breaching its EAEU obligations. It is most likely that an EAEU delegation would accompany Uzbekistan as it did with Kazakhstan.

If Uzbekistan is not yet decided on whether to accede to the EAEU but is still considering this option, joining WTO first might be a better option. According to Professor R. Pomfret, even though Kyrgyzstan ultimately decided to accede to the EAEU, being a WTO Member helped the country resist political pressures to enter the Union.¹²³ Joining the WTO first could thus help Uzbekistan resist eventual pressures to join the EAEU. For example, Uzbekistan could use the fact that it would need to significantly change its tariff regimes twice in a short period of time (less than ten years for Kazakhstan). Such tariff back-and-forth movement ('yo-yo' effect) could create

¹²² Kazakhstan Working Party Report, para 0.307

¹²³ Pomfret (2020), 11.

instability for the Uzbek business community as imported goods' prices could significantly be affected because of tariff changes.

Thus, there is an advantage to joining the WTO before the EAEU as Uzbekistan would be the sole actor involved at the time of making WTO Commitments. The economic impacts of the 'yo-yo' tariffs should nonetheless be taken into consideration.

Nonetheless, in the case of the EAEU, parallel accession with WTO has been treated as tantamount to prior membership to the customs union by WTO Members.¹²⁴ If WTO Members consider that Uzbekistan seems to be acceding or is expressing interest in joining the EAEU, WTO Members risk treating both accessions as parallel and thus impose more stringent conditions in Uzbekistan's Accession protocol. This is so as Kazakhstan faced such treatment and that WTO Members want to ensure that membership in a new organisation will not conflict with its own disciplines.

In such a scenario, WTO Members will most likely include provisions obligating Uzbekistan to reach an agreement with affected Members, as happened to Kazakhstan.

In any event, acceding parallelly or being a customs union Member will delay WTO Accession negotiations.¹²⁵ The accession process would thus be facilitated by joining the WTO first. However, Uzbekistan acceding the EAEU before or after acceding to the WTO will have the same overall effect: it will need to involve the EAEU either during its WTO Accession or afterwards at the moment of rebalancing WTO Obligations so as to apply the EAEU's CCT.

5.4 Uzbekistan's strategic approach between WTO and EAEU

Since the impact of joining the EAEU before or after WTO accession would be similar—although joining the WTO first would facilitate acceding to this organisation—in either, another question is whether joining the EAEU would benefit Uzbekistan at all. The advantages of joining the WTO have been outlined in section III [above](#). The following sections will thus outline the expected 'pros' and 'cons' of joining the EAEU in comparison with the WTO. In general, the anticipated benefits of WTO Membership

¹²⁴ Patrizia Tumbarello, 'Regional Trade Integration and WTO Accession: Which Is the Right Sequencing? An Application to the CIS' IMF Working Paper No. WP/05/94, 4.

¹²⁵ Tumbarello (2005), 4.

are 'set in stone'. In contrast, the expected benefits from EAEU Membership are much more uncertain as the EAEU seems for now governed by politics rather than law (e.g. as referred above, the Russian and Belarusian measures vis-à-vis one another that are not withdrawn despite EAEU's having a dispute settlement mechanism). Besides, joining the EAEU would be more burdensome than joining the WTO for Uzbekistan as the EAEU entails more profound economic integration. The elements outlined below demonstrate that the EAEU's integration goes deeper than the WTO disciplines.

The costs of joining the EAEU appear to be higher than those associated with joining the WTO. For EAEU Membership to benefit Uzbekistan, expected advantages would have to outweigh the costs associated with Membership.

5.4.1 Loss of economic leeway in EAEU

By joining the EAEU, Uzbekistan would join an organisation with 'four freedoms'. Joining the EAEU is not only liberalising trade in goods and services as is the case with the WTO, it also entails the liberalisation of labour and capital flows. The EAEU also has the power to enact standards and technical regulations by which all EAEU products must abide.¹²⁶ The relevant decisions on those aspects would be taken by the EAEU's bodies, such as the Supreme Council. The EAEU also aims to coordinate the macroeconomic and exchange rate policies¹²⁷ of EAEU Members and set limits. For example, an EAEU Member cannot under the EAEU treaty have annual deficits amounting to more than 3% of its GDP or consolidated debts amounting to more than 50% of its GDP.¹²⁸ The EAEU treaty thus entails overarching obligations going beyond what is expected of a WTO Member.

5.4.2 Loss of control over tariffs

As indicated above, Uzbekistan by joining the EAEU would have to implement the CCT. As a result of EAEU Membership, Uzbekistan would lose the possibility to 'put water' in its tariffs, which means that it could not apply tariffs below its WTO bound tariffs as WTO members are authorised to (on the assumption that such tariffs would then fall below the CCT). Moreover, higher and less flexible tariffs (as an EAEU

¹²⁶ Art. 52, EAEU Treaty.

¹²⁷ Art 62, EAEU Treaty.

¹²⁸ Art 63, EAEU Treaty.

Member Uzbekistan would lose direct control) could have negative consequences. Uzbekistan currently imports various equipment goods at low or 0% tariffs. For instance, goods currently imported at a 0% tariffs, e.g., metal-cutting machines¹²⁹ would face an 8% tariff under the CCT whereas steam turbines¹³⁰ and nuclear reactors would face a 15% tariff.¹³¹ Equipment goods are important from an economic perspective as they foster the productivity of workers and businesses. The price to pay for higher tariff protection through the EAEU would thus be a loss of leeway. As an EAEU Member, Uzbekistan would need to convince other EAEU Members—the Council’s decisions are taken by consensus—if it wishes to import goods at lower tariffs.

5.4.3 Less control over trade remedies in EAEU

Uzbekistan would not only be ‘tied’ to the EAEU with regards to its tariffs, EAEU would also be the competent body (and not Uzbekistan) to impose trade remedies (safeguards, AD and CVD duties), Technical Regulations (TBT) and standards, and Sanitary and Phytosanitary measures (SPS) as all of those areas are under EAEU’s jurisdiction.¹³² Uzbekistan would have a say as an EAEU Member, but the final decision is dependent on the whole EAEU Council which takes decision by consensus.

Uzbekistan would thus lose the freedom to implement trade remedies such as AD, CVDs or Safeguard measures on a national basis. Uzbekistan would still have the possibility to voice its concerns in the EAEU Council as a Member. Still, the final decision would be taken by the Union as trade remedies would impact the whole EAEU Membership.

Safeguard measures aim to prevent national industries from being injured by increased imports. Safeguard measures are temporary ‘emergency’ measures that can be taken by a member when increased imports of particular products have caused or threaten to cause serious injury to its domestic industry.

¹²⁹ HS classification 8459, see Uzbekistan’s tariffs and EAEU’s CCT; Ganiev (2012), 10.

¹³⁰ HS classification 8406, see Uzbekistan’s tariffs and EAEU’s CCT; Ganiev (2012), 10.

¹³¹ HS classification 8401, see Uzbekistan’s tariffs and EAEU’s CCT; Ganiev (2012), 10.

¹³² Art. 40, EAEU Treaty.

5.4.4 Financial Burden:

Financial costs associated with simultaneous accession would be another hindrance. For example, the Uzbek government's estimation of bringing its infrastructure in line with the EAEU requirements could cost as much as US\$1 billion.¹³³

5.4.5 Potential Risks for Uzbekistan's Economy:

EAEU Membership could have the effect to better protect Uzbek domestic industries against the competition of the 'rest of the world', but Uzbek products would still face increased competition from EAEU's Members. Such membership poses certain economic risks for Uzbekistan. During the first stage of the accession process to the EAEU, Uzbekistan would likely face a substantial influx of cheaper and of lesser-quality goods coming primarily from Russia, which may impact the local producers, as it was the case with Kazakhstan and Kyrgyzstan.¹³⁴ The impact of Russian goods influx is likely to have a negative impact on Uzbek citizens and businesses as the price of inputs is likely to rise while the quality lowers since cheaper and better quality goods e.g. from China will face higher tariffs.¹³⁵ The welfare of consumers and businesses is thus likely to be lower. For instance, it is expected that Kazakhstan will need to double its applied tariffs when it starts fully applying EAEU's CCT.¹³⁶

5.4.6 A less 'rule-based' organisation:

The EAEU is not as rule-based as the WTO. As indicated above, although the EAEU treaty governs many aspects of EAEU's Member relations, its disciplines are difficult to enforce in practice. The CCT is in its infancy; as seen [above](#), many exemptions are granted, the goods are still controlled at the borders of [some EAEU Members](#) to ensure compliance with technical or sanitary regulations. Indeed, EAEU Members have sometimes adjusted their policies and adopted protectionist measures

¹³³ KUNUZ, 'It is expedient for Uzbekistan to join the WTO first, and then the EAEU' — MP, 16 April 2020, see <<https://kun.uz/en/news/2020/04/16/it-is-expedient-for-uzbekistan-to-join-the-wto-first-and-then-the-eaeu-mp>> accessed 9 January 2021.

¹³⁴ Vielmini, Fabrizio, 'Uzbekistan and the Eurasian Economic Union: Pros and Cons', *CPRO Policy Brief*, March 2019; Tarr (2016), 5.

¹³⁵ Tarr (2016), 5.

¹³⁶ Andrei Yelisseyeu 'The Eurasian Economic Union: Expectations, Challenges, And Achievements' (2019) German Marshall Fund of the United States, 15.

in the form of technical regulations and standards to slow or reduce the amount of EAEU imported products in their markets. Sometimes, technical and sanitary justifications are even 'lip-service' to EAEU rules as the restrictions are rather implemented for political motives. (e.g., Belarus still imported European products despite Russian sanctions and Russia retaliated by imposing non-tariff barriers hindering Belarusian goods).¹³⁷ The presence of a court in the EAEU system does not appear to be a sufficient guarantee to enforce EAEU's disciplines in an effective way.¹³⁸ However, despite a limited jurisdiction, the Court is contributing to harmonising the application of EAEU's disciplines among members.¹³⁹

5.4.7 Risks with WTO Dispute Settlement

If Uzbekistan became an EAEU Member, it would offer more favourable treatment to its EAEU partners than WTO members. Although the WTO prohibits differential treatment among its members, such differential treatment can in principle be excused under Art. XXIV GATT as the EAEU is a Customs Union. However, given the high number of exceptions to the CCT granted to EAEU's Member's it is possible that the Union does not meet the requirement to be recognised as a Customs Union under the GATT as EAEUs may not be considered to be applying 'substantially the same duties'.¹⁴⁰

5.4.8 Potential Benefits of EAEU Membership:

As Uzbek tariffs are the highest in Central Asia, joining either the WTO or the EAEU will lower Uzbek tariff barriers. Nonetheless, if Uzbekistan wishes to maintain high tariffs, being an EAEU Member can prove useful as the rebalancing of concessions will include the whole EAEU Membership. For instance, Kazak tariffs will incrementally increase through its realignment process with EAEU's CCT. By joining the EAEU, Uzbekistan would be able to maintain higher tariffs through the Customs Union.

¹³⁷ Tarr (2016), 10.

¹³⁸ Yelisseyu (2020), 5, 21.

¹³⁹ Yelisseyu (2020), 5, 21.

¹⁴⁰ Art. XXIV:9 GATT.

5.5 Conclusion

Accession to either the WTO or the EAEU is tedious and a relatively long process. Uzbekistan could optimise its attention and resources solely on accession to a single organisation. To concentrate its resources, Uzbekistan could benefit from committing to accede a single organisation; as indicated above, a WTO Accession scenario in which EAEU Accession would be considered parallel by WTO Members would necessarily entail the presence of EAEU negotiators. Uzbekistan would thus have to split its resources on two negotiations ‘fronts’: EAEU and WTO.

If the main factor is time, Uzbekistan should prioritise its WTO membership over EAEU membership. Nevertheless, the choice ultimately depends on Uzbekistan’s priorities. Joining the EAEU first might help to avoid significant tariff movements that could result in more instability.

By acceding only to the WTO, Uzbekistan would retain more leeway than by joining both the EAEU and the WTO. In the WTO, Uzbekistan, although bound by its commitments, would have the freedom to implement trade remedies autonomously or to define its technical or phytosanitary regulations and norms. Such autonomy would nevertheless come at the cost of less tariff protection as tariffs are significantly higher within the EAEU framework.

Membership to the EAEU would entail higher tariff protection for Uzbek products vis-à-vis WTO Members. Nevertheless, such protection would only be relative as EAEU products from Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia will have almost unbound access to the Uzbek market through zero duties and harmonised technical and sanitary regulations. Kazakhstan seems to be the biggest ‘loser’ of the EAEU as it does not enjoy energy ‘subsidies’ or ‘loans’ as does Belarus or guarantees regarding its workers’ right to work in Russia as do Armenia and Kyrgyzstan.¹⁴¹ Kazakhstan was expecting more trade openness and opportunities with EAEU Members. Such opportunities did not materialise as many non-tariff barriers remain in place within the EAEU.¹⁴²

In the case of Uzbekistan, the amount of remittances from Uzbek workers in

¹⁴¹ Yelisseyeu (2020).

¹⁴² Tarr, (2016), 17-19.

Russia is more important in absolute numbers than for Armenia and Kyrgyzstan but account for less than 10% of Uzbekistan's GDP.¹⁴³ While Russia negotiated with Belarus or Kyrgystan, it informally indicated that the above-mentioned 'benefits' were conditional on joining the EAEU.¹⁴⁴ Thus, the Uzbek government and parliament should assess whether it is necessary to secure the free movement of labour through EAEU Membership. Being an EAEU Member could also augment the level of remittances as the EAEU facilitates labour movement. In any event, absent issues relating to workers' remittances, it would be better to join WTO first to facilitate the WTO Accession process.

Joining the WTO could also help Uzbekistan resist eventual political pressure to join the EAEU if Uzbekistan prefers to remain outside this customs union. For instance, if there are economic pressures from its EAEU partners, Uzbekistan could rely on the WTO Dispute Settlement Mechanism.

¹⁴³ See Eurasian Development Bank and UNDP, 'Labour Migration, Remittances, and Human Development in Central Asia'

¹⁴⁴ Yelisseyu (2019); Tarr, (2016), 17–19; Stephanie Ott, 'Russia tightens control over Kyrgistan' (2014) The Guardian <<https://www.theguardian.com/world/2014/sep/18/russia-tightens-control-over-kyrgyzstan>> accessed 9 January 2021.

6. Analysis of Potential Changes to Two Uzbek Legislations

By acceding to the WTO, the Republic of Uzbekistan would need to align its domestic legislation in compliance with its obligations as a WTO member. During the WTO accession process, acceding members submit a LAP,¹⁴⁵ accompanied by Rule-specific Action Plans for specific law areas.¹⁴⁶ Acceding members are also expected to answer questions from the Working Party and Member-specific questions.

To assist the LPRI in advising the Oliy Majlis, we set out below an overview of the TRIPS Agreement and delve more deeply into a thorough analysis on the Law on Copyright and Related Rights (2006) and the Law on Foreign Economic Activity (2000).¹⁴⁷ In this memorandum, we identify the main areas that may be discussed in WTO accession or be questioned for consistency with WTO disciplines.

6.1 Overview of the TRIPS Agreement

The TRIPS was negotiated in the 1986-94 Uruguay Round, and for the first time introduced intellectual property rules into the multilateral trading system.

Intellectual property rights are the rights given to persons over the creations of their minds. They give the creator an exclusive right over the use of their creation for a certain period of time.

The TRIPS covers *five broad questions*:¹⁴⁸

- how basic principles of the trading system and other international intellectual property agreements should be applied;
- how to give adequate protection to intellectual property rights;
- how countries should enforce those rights adequately in their own territories;

¹⁴⁵ See, e.g., Kazakhstan's Comprehensive Legislative Action Plan, 27 Feb 2013, WT/ACC/KAZ/73.

¹⁴⁶ For example, Kazakhstan has submitted plans to amend its intellectual property legislations (IP), national standardization and certification legislations (TBT), and sanitary-epidemiological welfare, veterinary and plants quarantine system (SPS), at: https://www.wto.org/english/thewto_e/acc_e/a1_kazakhstan_e.htm accessed on 9 January 2021.

¹⁴⁷ This assessment is based on the understanding that the two legislations are in force and have not been amended as of the date of this memorandum.

¹⁴⁸ WTO Website.

- how to settle disputes on intellectual property between members of the WTO;
- special transitional arrangements during the period when the new system is being introduced.

The TRIPS covers the following areas of intellectual property:

- *copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organizations)*
- *trademarks including service marks*
- *geographical indications including appellations of origin*
- *industrial-design*
- *patents including the protection of new varieties of plants, the layout -designs of integrated circuits*
- *undisclosed information including trade secrets and test data.*

6.2 Law on Copyright and Related Rights (2006)

The TRIPS is a minimum standard agreement accepted by all member to the WTO. When reviewing the implementation of the TRIPS, the domestic laws regarding intellectual property rights of an Acceding Member will be checked against the WTO Checklist (WT/ACC/22/Add.2) for consistency with WTO disciplines.

6.2.1 Implementation of the TRIPS

For Uzbekistan, implementation of the TRIPS Agreement is important not only in preparing for accession but also after it becomes a WTO Member.

An acceding member will generally be expected to agree in its Accession Protocol to apply the TRIPS from the date on which they officially become a WTO Member, without the benefit of any transition period.¹⁴⁹ Also, under Article 63.3 of the TRIPS, Uzbekistan will be obligated to ‘*supply, in response to a written request from another Member, information*’ regarding laws, regulations, final judicial decisions, administrative rulings of general application, and bilateral agreements pertaining to the subject matter of TRIPS.

We have comprehensively reviewed the provisions of the Law on Copyright and Related Rights (2006) against the WTO Checklist on the implementation of the TRIPS

¹⁴⁹ WTO, Intellectual Property (TRIPS) frequently asked questions, at: <https://www.wto.org/english/tratop_eltrips_e/bipfq_e.htm#IdentlcaiRules> accessed 9 January 2021.

Agreement, and for that purpose, we have prepared a table as shown below. In the instances we found issues of implementation, we have identified and marked those provisions in yellow.

WTO Checklist—Copyright and Related Rights	
Compliance with Articles 1 through 21 of the Berne Convention for the Protection of Literary and Artistic Works ('Berne Convention') with the exception of Article 6 <i>bis</i> of the Berne Convention. TRIPS Article 9.1. The following items specify these Berne Convention standards in detail in the context of TRIPS (no reference is made to obligations separately undertaken by countries as Parties to the Berne Convention and members of the Berne Union).	✓
'Literary and artistic works' are defined as 'every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression', giving examples. Berne Convention, Article 2. Limitations related to speeches are provided in Article 2 <i>bis</i> .	✓
Protection is to be provided to the works of authors who are nationals of Members and to works of nationals of non-Member countries if those works are published in a member simultaneously with publication in the non-Member country. Berne Convention, Article 3.	✓
Protection must be provided to cinematographic works if the maker has headquarters or a habitual residence in a member; and to works of architecture or artistic works incorporated into a building or structure located in a Member. Berne Convention, Article 4.	
Authors enjoy the rights required by the Berne Convention and any other rights a country provides works on a national treatment basis without being subject to any formalities. Berne Convention, Article 5.	✓
The term of protection for copyright is required to run for 50 years following the death of the author. Special terms are authorised for cinematographic works, anonymous or pseudonymous works, photographic works and works of applied art. Berne Convention, Article 7.	✓
Authors of protected works have the exclusive right to make or authorize the making of translations of their works. Berne Convention, Article 8.	✓
Authors have the exclusive right to authorize reproduction of the work in any manner or form with only limited exceptions that do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author. Berne Convention, Article 9.	✓
Certain 'free uses of works' are permissible, subject to certain requirements. Berne Convention, Articles 10 and 10 <i>bis</i> .	✓
Authors of dramatic, dramatico-musical and musical works and any translation thereof and authors of literary and artistic works, have the exclusive right to authorize the public performance of their works, including by broadcast, public recitation and any communication to the public, in some respects subject to certain limitations. Berne Convention, Articles 11, 11 <i>bis</i> , and 11 <i>ter</i> .	✓
Authors of literary or artistic works have the exclusive right to authorize adaptations, arrangements and other alterations of their works. Berne Convention, Article 12.	✓
Reservations and conditions on the exclusive recording right granted to authors of musical works that are recorded, and to authors of words that are recorded with the musical work, are permitted. Berne Convention, Article 13.	✓
Authors of literary and artistic works have the exclusive right to authorize the cinematographic adaptation and reproduction of their works and the distribution,	✓

public performance and communication to the public of the adaptation or reproduction, without the limitations authorised under Article 13(1). Berne Convention, Article 14.	
A cinematographic work is to be protected as an original work without prejudice to any work that is adapted or reproduced and the author of the cinematographic work is to enjoy the same rights as the author of any other work. Berne Convention, Article 14 <i>bis</i>	✓
'Droit de suite' is required in connection with subsequent sales of works of art and manuscripts. Berne Convention, Article 14 <i>ter</i> .	✓
Ownership of a work, for purposes of litigation, is presumed to be that which appears on the work in the usual manner. Berne Convention, Article 15.	✓
Infringing copies of a work are subject to seizure whether domestically produced or imported. Berne Convention, Article 16.	
Apply copyright protection to all works which, at the moment TRIPS becomes effective, have not fallen into the public domain through the expiry of the term of protection in the country of origin, or in the country where protection is claimed. Berne Convention, Articles 18.1 and 18.2.	✓
Members are entitled to provide greater protection than that required by the Berne Convention. Berne Convention, Article 19.	✓
Members may enter into special agreements among themselves to provide more extensive rights than those provided by the Berne Convention. Berne Convention, Article 20. (The 1996 WIPO Copyright Treaty (WCT) is an agreement concluded within the meaning of Article 20 of the Berne Convention, but adherence to the WCT is not a TRIPS obligation.)	
Protect computer programs, whether in source or object code, as literary works under the Berne Convention. Compilations of data, whether in machine readable or other form are to be protected if they constitute intellectual creations. TRIPS Article 10.	✓
Provide rental rights at least for computer programs and cinematographic works with certain exceptions. TRIPS Article 11.	✓
Provide a term of protection of 50 years from the death of the author (Berne Article 7.1 and TRIPS Article 9.1); or, for works where the term is not measured on the basis of the life of the author, a term of 50 years from the end of the calendar year of authorised publication, or, if not published within 50 years from the making of the work, 50 years from the end of the calendar year of making. TRIPS Article 12.	✓
Confine limitations and exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the right holder's legitimate interests. TRIPS Article 13.	✓
Provide performers with the right for 50 years from the date of a performance to prevent unauthorized fixation of their unfixed performances and of reproductions of such fixations and to prevent the unauthorized broadcast by wireless means and communication to the public of their live performances. TRIPS Article 14.1 and 14.5.	✓
Provide phonogram producers with the right for 50 years from the date of first authorised fixation to prohibit unauthorized reproduction of their phonograms, directly or indirectly, and to prohibit rental of copies of their phonograms once sold or otherwise distributed. TRIPS Article 14.2, 14.4 and 14.5.	✓
Providing broadcasting organizations with the exclusive rights for 20 years of fixation, reproduction of fixations, and rebroadcasting by wireless means of their broadcasts and the communication to the public of broadcasts of their broadcasts or provide to the owners of the copyright in the material broadcast the possibility of exercising such rights. TRIPS Article 14.3 and 14.5.	✓

6.2.2 Analysis of Issues regarding Implementation of the TRIPS Agreement

Under Article 4 of the Berne Convention, copyrights of cinematographic works shall be protected if the maker has headquarters or a habitual residence in a member's territory. Whether a person has a 'habitual residence' will be generally determined according to the law of the State in which the action is brought (*lex fori*).¹⁵⁰

In this regard, Article 3 of the Law on Copyright and Related Rights (2006) includes cinematographic works under 'audiovisual works.' Under Article 4 of the law on Copyright and Related Rights (2006), copyright protection applies to:

- i) works of authors or copyright holders who are citizens or permanent residents in Uzbekistan;
- ii) works first published in Uzbekistan;
- iii) works protected in Uzbekistan in accordance with international treaties of Uzbekistan (in this case, the author is to be determined by the law of the state on the territory of which the legal fact for the basis of copyright holding existed).

Article 1130 of the Uzbekistan Civil Code states that legal protection of intellectual property objects arises by virtue of the fact of their creation or as a result of the provision of legal protection by an authorised state.

In sum, the question will be whether the meaning of 'permanent resident' in Uzbekistan law is construed to be the same as 'habitual resident' in the context of the Berne Convention. This question's answer is unclear, based on a review of Uzbekistan laws governing the permanent residence.¹⁵¹ The law does not define the meaning of 'permanent resident'. Under Article 37 of the law governing the permanent residence, 'permanent residence' is established by obtaining a permit from the Internal Affairs authorities at the place of one's permanent residence. In practice, it is criticised for being draconian and subject to delays.¹⁵²

¹⁵⁰ Annabelle Bennett and Sam Granata, *When Private International Law Meets Intellectual Property Law — A Guide for Judges*, WIPO and the HCCH (2019), 33.

¹⁵¹ Law of the Republic of Uzbekistan on Citizenship of the Republic of Uzbekistan, 28 February 2020, <<https://lex.uz/docs/4824096>> accessed 9 January 2021.

¹⁵² Uzbek-German Forum for Human Rights, *On the laws and practices of the Republic of Uzbekistan regarding the rights of citizens to free movement and choice of residence*,

Thus, for the interests of effective copyright protection, we advise including express reference to ‘habitual’ residence in Uzbekistan, or in the alternative, clarify that the meaning of permanent residence in the Law on Copyright and Related Rights (2006) is equal to the habitual residence under the Berne Convention.

6.2.3 Seizure of Infringing Copies regardless of whether Domestically Produced or Imported

Under Article 16 of the Berne Convention, the infringing copies of a work and reproductions should be subject to seizure regardless of whether the copy was domestically produced or imported.

The Law on Copyright and Related Rights (2006) is unclear on this matter. Article 66 of the Law on Copyright and Related Rights (2006) provides that infringing copies are subject to ‘confiscation in court in accordance with the law’, but it is silent on whether this provision applies in case of seizures upon importation. Imported copies are included in the scope of counterfeit in Article 62; thus arguably, Article 66 may be applicable in case the imported copy of a work is protected in Uzbekistan in accordance with the international treaties of Uzbekistan.¹⁵³ However, the remaining problem is that the legislation is silent on whether infringing copies will be confiscated or seized ‘upon importation.’ Therefore, for interests of clarity and effective copyright protection, we advise adding a wording ‘regardless of whether the copy was domestically produced or imported.’

6.2.4 Enforcement of Copyright Infringement in general

Article 41 of the TRIPS requires members to provide effective procedures for enforcement of intellectual property rights, including expeditious remedies to prevent infringement. While this does not obligate a member to put in a special judicial system for the enforcement of intellectual property rights or to modify the existing distribution of resources between IP enforcement and law enforcement, the procedures must be fair and equitable and not be unnecessarily complicated or costly or entail

<https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/UZB/INT_CCPR_NGO_UZB_98_10289_E.pdf>, accessed 9 January 2021, 5–6.

¹⁵³ Article 4 of the Law on Copyright and Related Rights (2006).

unreasonable time-limits or unwarranted delays.¹⁵⁴

Uzbekistan established the Agency on Intellectual Property in 2011 as a centralised agency for IP enforcement.¹⁵⁵ This was the result of a merge between the State Patent Office of the Republic of Uzbekistan and the Uzbek Republican Agency for Copyright.¹⁵⁶ However, some foreign governments expressed views that Uzbekistan needs to improve its procedures for enforcement of intellectual property rights, including expeditious remedies to prevent infringement.¹⁵⁷ The main reasoning was that under current Uzbek law, the court considers copyright infringement cases only after the copyright holder submits a claim of damages and that customs officials do not have an *ex-officio* function to determine infringement of imported products.¹⁵⁸

Although this is not strictly a matter of amendments to be made to the Law on Copyright and Related Rights (2006), we note that these issues may surface at the occasion of discussions with other members and within the Working Party.

6.2.5 TRIPS Plus Commitments—foreign sound recording

According to Article XII:1 of the WTO Agreement, ‘Any State or separate customs territory [...] may accede to this Agreement, *on terms to be agreed between it and the WTO*’ (emphasis added). On this basis, an acceding member may have special commitments or reservations included in its protocol of accession that would prevail over GATT provisions.¹⁵⁹

For example, the protocols of Accession of Poland, Romania, and Hungary each set out special rules catering to the countries centrally planned economic system.¹⁶⁰ In Russia’s accession to the WTO, Russia accepted bilaterally towards the

¹⁵⁴ Article 41(5) of the TRIPS Agreement; WIPO, Implications of the TRIPS Agreement on Treaties Administered by WIPO, WIPO Publication No 464 (E), 2012, 57–58

¹⁵⁵ United States Trade Representative, 2014 National Trade Estimate Report on Foreign Trade Barriers, p.352.

¹⁵⁶ Uzbekistan Establishes Agency for Intellectual Property, 25 Jul 2011, Pravo.uz, at: <<https://www.petosevic.com/resources/news/2011/07/000708>> accessed 9 January 2021.

¹⁵⁷ United States Department of State, US Investment Climate Report 2018, <<https://www.state.gov/reports/2018-investment-climate-statements/uzbekistan/>> accessed 9 January 2021.

¹⁵⁸ *Ibid.*

¹⁵⁹ Julia Qin, ‘WTO-Plus’ Obligations and Their Implications for the World Trade Organization Legal System—An Appraisal of the China Accession Protocol, *Journal of World Trade* 37(3): 483–522, 2003, 485.

¹⁶⁰ *Ibid.*

United States to adopt TRIPS-plus measures, including pharmaceutical test data protection as a condition to its accession to the WTO.¹⁶¹

One of the potential TRIPS-plus commitments that other members may require could be the copyright protection for foreign sound recordings. This has been an issue for South Africa in the 1990s; in this case, the United States has repeatedly noted that Uzbekistan's lack of adequate protection for foreign sound recordings.¹⁶²

This stems from the fact that Uzbekistan is not a party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961, 'Rome Convention'). Although adherence to the Rome Convention is not an issue of consistency with the TRIPS, many acceding members—Armenia, Lithuania, Albania, Moldova, Macedonia, Croatia, Georgia, Estonia, Kyrgyz, Jordan—committed to ratifying the Rome Convention when acceding to the WTO.¹⁶³

Therefore, we anticipate that one of the issues that Uzbekistan will face during WTO accession is that other members may insist for Uzbekistan's commitment to ratify the Rome Convention as a condition to WTO accession.

Proposed changes to the Law on Copyright and Related Rights are to be found in Annexe I.

6.3 Law on Foreign Economic Activity (2000)

6.3.1 General Approach

We have assessed the Law on Foreign Economic Activity (2000 'LFEA') for conformity with the WTO disciplines. Specifically, we will highlight the main areas of potential change upon WTO accession by comparing specific provisions of LFEA against the provisions of the draft Law on Foreign Trade in Goods (26 November 2012) submitted by Afghanistan in its WTO accession process.¹⁶⁴ Afghanistan became the

¹⁶¹ Frederick M. Abbott and Carlos M. Correa, World Trade Organisation Accession Agreements: Intellectual Property Issues, Global Economic Issues Publication, Quaker United Nations Office, May 2007, at: <https://www.quno.org/sites/default/files/resources/QUNO%2BWTO%2Baccession%2BIP.pdf> accessed 9 January 2021, 2.

¹⁶² Office of the United States Trade Representative, 2020 Special 301 Report, p.69.

¹⁶³ Frederick M. Abbott and Carlos M. Correa, at p.14.

¹⁶⁴ Draft Law on Foreign Trade in Goods in WT/ACC/AFG/23, 26 November 2012.

164th WTO member on 29 July 2016.¹⁶⁵ This may serve as a useful example of one of the model draft legislation in the area of foreign economic activity that an acceding member has drafted for consistency with WTO disciplines.

6.3.2 Specific Provisions

6.3.2.1 General and Security Exceptions

Article 20 of the LFEA sets exceptions to the general trade regime. To assess the conformity of such provision, it is necessary to compare Article 20 with the relevant WTO exceptions. The GATT notably sets forth general exceptions, in article XX, a security exception, in article XXI, and an exception for measures necessary to safeguard a member's balance of payments, in article XII. The most relevant exceptions in line with Article 20 of the LFEA are outlined below, followed by potential changes to the LFEA.

Article XX's GATT most relevant subparagraph for Uzbekistan

XX (a) necessary to protect public morals;

XX (b) necessary to protect human, animal or plant life or health;

XX (c) relating to the importations or exportations of gold or silver;

XX (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trademarks and copyrights, and the prevention of deceptive practices;

XX (f) imposed for the protection of national treasures of artistic, historic or archaeological value;

XX (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

Under the general exceptions, measures need to be justified under the chapeau of Article XX, which stipulates that measure must not be 'applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade'.

GATT security exception, article XXI most relevant paragraph for Uzbekistan

(b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests

165 World Trade Organization, Accessions: Afghanistan, at
<https://www.wto.org/english/thewto_e/acc_e/a1_afghanistan_e.htm>

- (i) relating to fissionable materials or the materials from which they are derived;
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
 - (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

GATT balance of payment 'exception', article XII most relevant paragraph

1. Notwithstanding the provisions of paragraph 1 of Article XI, any contracting party, in order to safeguard its external financial position and its balance of payments, may restrict the quantity or value of merchandise permitted to be imported, subject to the provisions of the following paragraphs of this Article.
2. (a) Import restrictions instituted, maintained or intensified by a contracting party under this Article shall not exceed those necessary:
 - (i) to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves, or
 - (ii) in the case of a contracting party with very low monetary reserves, to achieve a reasonable rate of increase in its reserves.

Most WTO Agreements contain such exceptions. Article XXI GATT is mirrored in Article XIV *bis* GATS and article 73 TRIPS. Article XX GATT is mirrored in article XIV GATS.

Potential Changes:

Article 20 of the LFEA provides for restrictions and prohibition of imports and exports and lists the justifications that Uzbekistan may resort to. In theory, there is a possibility that Uzbekistan may invoke exceptions not covered in the WTO Agreements, and it is advisable to minimise such a risk. In this regard, Uzbekistan should modify the ninth (fulfilment of international obligations) and eleventh (the protection of other interests of Uzbekistan) exception grounds set forth in the LFEA by adding a reference to the WTO Agreements, e.g., by adding the phrase 'in accordance with WTO Agreements' as those exceptions could otherwise be deemed inconsistent with WTO disciplines by other members.

Otherwise, the LFEA would gain from mirroring Articles XII, XX, and XXI GATT.

On the one hand, Uzbekistan would be more prone to apply the law in a WTO-consistent manner. On the other hand, drafting mirroring the WTO Agreement text would bring forth additional security for other WTO members. In any case, as international law prevails over Uzbek law, it would be simpler to harmonise the LFEA provisions with the WTO Agreements.

- If Uzbekistan does not envisage mirroring GATT exceptions, some modifications could contribute to greater clarity. First, phrases such as ‘international obligations of the Republic of Uzbekistan’ and ‘other interests of the Republic of Uzbekistan’ may need to be deleted or be given a narrower scope, e.g. ‘international obligations of the Republic of Uzbekistan pursuant to resolutions of the United Nations Security Council’. Second, some phrases would ideally need to be changed to respect the requirements set forth in GATT exceptions: ‘protecting the life and health of citizens, protecting the animal and plant world and the environment’ (to add ‘necessary to’)
- ‘prevent the exhaustion of irreplaceable natural resources’ (to add, ‘if such measures are made effective in conjunction with restrictions on domestic production or consumption’)
- ‘compliance with [...] the rule of law’ (to add, ‘necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement’)
- ‘national security’ (to be changed for ‘essential security interests.’)

6.3.2.2 Quantitative Restrictions

Articles 21–22 of the LFEA provide for import and export controls and restrictions. Under Article 21, Uzbekistan’s cabinet of ministers may establish quantitative restrictions on both imports and exports.

If Uzbekistan accedes to the WTO, it will be subject to Article XI GATT which requires a general elimination of quantitative restrictions for both exports and imports.

Therefore, Uzbekistan could keep the reference to quantitative restrictions but add the phrase ‘in line with the WTO Agreements’ in Article 21, which would entail a presumption of conformity with WTO Law.

Nonetheless, as seen in the section on question 3 (‘Pros’ and ‘Cons’), other

members in the region such as Kazakhstan and Kyrgyzstan had to undertake WTO-plus commitments to phase out export taxes or to limit them to a designated number of tariff lines with a bound rate. China also undertook similar commitments in its protocol of accession.¹⁶⁶

6.3.2.3 Countermeasures

Article 30 of the LFEA provides the possibility for Uzbekistan to impose ‘response measures in the field of foreign economic activity’ under general international law. Although the existence of the article is not as such tantamount to a WTO violation, measures taken pursuant to article 30 LFEA could nevertheless be problematic as Uzbekistan will commit to using WTO’s dispute settlement system when it considers that a foreign state has breached its obligations under WTO law. A possible solution could be to create a presumption of conformity by adding the phrase ‘in line with WTO Agreements’.

6.3.2.4 Trade Remedies

Articles 23–25 of the LFEA are trade remedies. To understand the scope of application of those articles, it is necessary to read the Law on Protective Measures, Anti-Dumping, and Compensative Duties (2003), the Resolution of the Cabinet of ministers ‘About measures for the implementation of the Law of the Republic of Uzbekistan About protective measures, anti-dumping and compensatory duties’ (2005), and the resolution of the State Customs Committee on ‘Approval of the Regulations on the Procedure of Calculation, Collection and Refund of Special, Anti-Dumping and Compensative Duties’ (2007).

Article 23 concerns ‘protective measures’ which are tantamount to safeguards in WTO. Safeguard measures are governed by Article XIX GATT and the Agreement on Safeguards.

Article 24 concerns ‘AD measures’ that can be taken in case of dumping. ADs are governed by Article VI GATT and the AD Agreement.

Article 25 concerns ‘compensation duties’ which are tantamount to CVDs in

¹⁶⁶ Protocol on the Accession of the People’s Republic of China to the WTO, WT/L/432, at para 11.3

WTO. CVDs are governed by Article III GATT and the SCM Agreement.

6.3.2.5 Free Economic Zones

Article 28 of the LFEA does not expressly address the contents of the special regime for free economic zones. There are 21 Free Economic Zones (Special Economic Zones, SEZ) in Uzbekistan.¹⁶⁷ The primary laws in Uzbekistan governing the types, features and procedures for granting benefits for participants in the free economic zones are the following:

- Law of the Republic of Uzbekistan ‘On Special Economic Zones’ dated February 17, 2020, No. 3PY-604;
- Chapter 68 (taxation of participants in special economic zones) of the Tax Code of the Republic of Uzbekistan.

What these entities have in common is that they are ‘parts of the territory of the country concerned where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the customs territory’.¹⁶⁸

With respect to free economic zones, acceding members are expected to provide information on regulations and incentives pertaining to existing zones and/or concrete plans to establish such zones in the future. Members will want to ascertain that goods manufactured and subsequently sold within the ordinary customs territory of the acceding member will be subject to the duties and taxes normally levied on imported products. Other members will also want to ensure that new members should not use prohibited subsidies as incentives to locate in its export processing zones.¹⁶⁹

¹⁶⁷ The list of FEZs can be found at this link: <<https://sez.gov.uz / ru>> accessed 9 January 2021.

¹⁶⁸ See International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto convention), June 1999, World Customs Organization, Specific Annexe D, Chapter 2, Free Zone,

¹⁶⁹ World Trade Organization, Substance of Accession Negotiations, Handbook on Accession to the WTO: Chapter 5, <https://www.wto.org/english/thewto_e/acc_e/cbt_course_e/c5s2p9_e.htm#txt367> accessed 9 January 2021.

The main elements of Protocol commitments

'The representative of [X] stated that [X] would administer free zones or special economic areas established in its territory in compliance with WTO provisions, including those addressing subsidies, TRIMs and TRIPS, and that goods produced within the zones under tax and tariff provisions that exempt imports and imported inputs from tariffs and certain taxes would be subject to normal customs formalities when entering the rest of [X], including the application of tariffs and any taxes and charges.'

The above model accession protocol has been accepted by many acceding countries, including Tonga, Saudi Arabia, Nepal, Cambodia, the former Yugoslav Republic of Macedonia, Armenia, China, Moldova, Lithuania, Croatia, Oman, Albania, Georgia, Jordan, Latvia, Kyrgyz Republic, Panama, Mongolia, and Ecuador.¹⁷⁰

6.3.2.6 Dispute Settlement

Article 30 governs the settlement of disputes arising under the LFEA. As indicated above, the LFEA deals with many subject matters, including investment and trade law. Article 30 appears to be governing dispute settlement in investment law as the Article refers to 'the procedure provided in the contract', and the 'norms of international private law'.

As indicated above, the WTO Dispute Settlement Understanding applies to disputes arising from trade measures implemented pursuant to the LFEA. For the sake of clarity and completeness, we advise that it would be best to either (i) clarify the scope of application of Article 30 to exclude WTO-related disputes or Member-to-Member disputes, or (ii) include the possibility of dispute settlement under DSU in subparagraph or as a separate provision.

¹⁷⁰ *Ibid.*

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