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CAMPUS KULMBACH
LEGAL WORKING PAPERS

№ 4/20 | 15 October 2020

Sustainable development commitments in the
WTO accession process?

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Suggested Citation:

Alexandra Molitorisová & Kai P Purnhagen, 'Sustainable development commitments in the WTO accession process', *Campus Kulmbach Legal Working Papers*, № 04/2020 (2020)

A final version of this paper is forthcoming in:

Panos Delimatsis & Leonie Reins (eds), *Encyclopedia of Environmental Law, Trade Law* (Elgar)

Keywords

sustainability, development, commitment, WTO, accession, trade

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THE BRUSSELS EFFECT IN ACTION: DO THE EU'S
STANDARDS TRAVEL ABROAD? A STUDY ON CONTROL
SYSTEMS FOR GEOGRAPHICAL INDICATIONS IN THE EU
AND THAILAND

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15 October 2020

ABSTRACT

Potential members of the WTO increasingly find themselves exposed to sustainability scrutiny in WTO accession negotiations. This contribution maps this phenomenon by first discussing the potential effects an accession to the WTO can have on urban and rural development. Subsequently, we look into the legal and factual procedures of WTO accession, before we turn to describing the sustainability commitments in these negotiations.

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I CONTRIBUTION

States or customs territories (candidates) may wish to accede to the WTO agreement, as economic benefits are being expected from such an accession to most parts of the deal. Take China as an example. Exports of US American goods to China have increased by 500 percent since accession to the WTO in 2001 until 2017, while the per capita urban household income in China rose by 431 per cent in the same time period. That is from a level of Sudan to the

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level of Brazil in only 16 years. In only 13 years, China had surpassed the EU as the world's largest exporter of goods, having been the fourth largest at the time when acceding to the WTO. In 15 years, China's gross domestic product (GDP) at purchasing power parity in constant 2011 international dollars multiplied by five, surpassing the United States of America. In terms of economic growth, becoming a member to the WTO is hence quite attractive to potential candidates. This economic growth, however, may come at the expense of sustainability. Economic prosperity is not divided equally in China, with over 150 million Chinese still living below 1.25 USD per day. Since accession to the WTO, China has also risen to be host to 20 of the world's 30 most polluted cities. The water of 43.2 per cent of state-monitored rivers was unsuitable for human contact in 2010. The overall cost of air pollution ranges from 3 to 7 per cent of the GDP. The costs for damage to human health come in addition.

If a candidate wishes to accede to the WTO agreement, it may do so "on the terms to be agreed" between it and the WTO (Art. XII WTO Agreement). Accordingly, accession to the WTO is subject to negotiations. There are two sets of negotiations. One set concerns bilateral (exceptionally multilateral) negotiation with major economic powers. These bilateral negotiations lead to specific commitments, concessions and schedules with a view to make trade in goods and services comply with the requirements of both the candidate and the respective economic power. Another set concerns general negotiations between the candidate and a working party of the WTO, making sure that the agreement complies with the rules of the WTO system on the one hand, and respect domestic socio-economic differences on the other. The results from both sets of negotiations are then merged into the final accession agreement between the WTO and the acceding candidate, which is called the "accession package".

While in the past such accession negotiations focused mainly on economic facets (such as the amount of tariffs etc.), more recent accession negotiations increasingly also include sustainable development commitments. While sustainability requirements have long been part of WTO law (see eg the preamble to the WTO agreement and some implicit elements of other parts of WTO law such as Art. XX GATT or the SPS agreement), it is probably thanks to the experience made with countries such as China that lately the WTO increasingly makes these sustainable requirements subject to negotiation in the accession agreements. In particular, the realization of the UN sustainability goals is more and more subject to the negotiations of a county's accession to the WTO.¹ These goals may include economic, environmental or social aspects of development.

¹ See eg. WTO Accessions, 2019 Annual Report by the Director General, available at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=261484,261053,260838,260815,260614,260442,260476,260510,260511,260394&CurrentCatalogueIdIndex=0&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True (accessed 14.10.2020).

The level of such commitments with respect to market access as well as sustainable development varies considerably. Least developed countries, such as Nepal and Cambodia, are required to make stronger commitments as compared to developing countries, such as India or Pakistan, or developed countries². With respect to trade, candidates may, for example, commit themselves to bind a certain percentage of their tariff lines, to lower the tariff rates with respect to certain categories of goods, such as agricultural goods, and set up tariff peaks. In the services sectors, the accession requires liberalisation commitments. Before such commitments are made, acceding candidates are evaluated in a complex manner with respect to, *inter alia*, their growth, intellectual property rights system, trade and trade effecting policies (monetary or investment policies). This is done by submitting documents proving progress on policies and laws in the accession phase, as well as by several rounds of questions-replies within the working party. The goal is to demonstrate that laws and regulations reflect the WTO rules and requirements. A requesting candidate may be, for example, invited to explain how it helps producers to produce goods that are environmentally and socially sustainable in order to better understand its investment regime or to submit that certain activities, such as processing endangered species, are prohibited in its jurisdiction. It may be that the candidate's quantitative import restrictions or standardizations, that include measures adopted for the protection of the environment, are put under scrutiny. A candidate following an economic transformation may be asked which sectors have been excluded from privatisation; for example, those economic sectors that cater for the protection of the environment. With these examples in mind, the modernization and improvement of business environment remains the main preoccupation in the evaluation process.

If an inconsistency with WTO requirements is found, revision of laws is required with a carefully structured legislative action plan. For example, it may be required to update laws regulating the investment regime, standardisation and certification, including bringing technical regulations, standards and conformity assessment procedures in conformity with WTO rules. In other words, where appropriate, action plans for the implementation of specific rules administered by the WTO, such as the TBT Agreement, are being presented. On the basis of this scrutiny, a working party report is produced that contains draft commitments. China, for example, committed to enact and implement new laws and relevant regulations regarding assessment and control of chemicals for the protection of the environment with complete national treatment and full consistency with international practices. A significant portion of the legislation to be required in the accession process may be dedicated to the strengthening of transparency, ensuring impartial and independent judicial review –

² Ratnakar Adhikari, Navin Dahal and Manisha Pradhananga, *Ensuring Development-supportive Accession of Least-developed Countries to the WTO* (International Institute for Sustainable Development, 2008), available at https://www.iisd.org/system/files/publications/tnk_ensuring_dev_wto.pdf (accessed 14.10.2020).

aspirations that are mirrored in the SDG 16 – Peace, justice and strong institutions. Therefore, the need for a strong organization and institutional basis for accession to the WTO is often highlighted that would, for example, mitigate a risk of an economic downturn in certain regions affected by a potential sharp rise in imports of goods. In recent years, for example in the accession process with Algeria, the Bahamas or Azerbaijan, an emphasis has been put on reforms for sustainable and inclusive growth. A number of means may be recommended by the working party to advance such goal, including consumer loan restructuring programs or tax policy. With regard to other SDGs, it is the recurring notable case of China who agreed to direct bank loans to infrastructure constructions in energy, transportation, telecommunications and water conservancy, resources development in certain parts of China – a commitment seemingly relevant to SDG 6 (Clean water) and SDG 9 (Infrastructure). The commitment of and the promise for an acceding candidate is notably one of sustainable economic development – as an end by means of stabilisation and/or diversification of its national market with a dosage of competition.

However, WTO accession does not only bring prosperity. Negative consequences may include devastation of natural resources. Therefore, it may be part of the accession process to identify the negative externalities and adopt mitigation strategies in this regard. For example, one may negotiate such in order to ensure environmental security³ or prevent a breakdown of social security following the open market approach⁴. To that effect, notably in the area of environmental protection, methodologies assessing the impact of trade agreements on environment have been created. It is also important to say that many accession procedures may come to a halt due to one reason or another. However, if a government politically declares its willingness to pursue deep structural reforms and integration into the global economy, talks may be reinvigorated based on that promise.

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