

CHALLENGES AND OPPORTUNITIES FOR DEVELOPING COUNTRIES IN WTO ACCESSION: A CASE STUDY OF UZBEKISTAN

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Abstract

The Accession to the World Trade Organization has been one of the challenging decisions of transition countries, to open market access from centrally governed economy to real market competition. Many states of the Commonwealth of Independence (CIS) successfully joined the WTO in recent years, and outcomes seem to be different according to the individual characteristics of each market. Uzbekistan has been processing for accession since 1994, however, the country has not progressed due to protectionist policies and favorable treatment, which impacted its attractiveness for foreign investors. The change of Cabinet in 2016 seems promising for economic and political reforms, the government considers Accession as one of the pivotal paths of development. This research paper discusses experiences of other transition states and provides some recommendations to Uzbek Accession, taking into account its national characteristics.

Keywords: World Trade Organization, Transition economies, Uzbekistan Commonwealth of Independent States (CIS), protectionist policies, foreign investment, economic reforms, market competition, bilateral agreements, copyright enforcement, trade remedies.

The paper is expected to be crucial for the responsible bodies of the Uzbek government (Ministry of Justice, and Ministry of Foreign Trade) to prepare for upcoming negotiations with the WTO on legal concerns. Also, it reminds the policy and procedural difficulties of the neighboring states with the same economic model during the Accession, so as to make an informed decision before signing relevant documents. As a former member of Ministry of Justice of the Republic of Uzbekistan, I believe that my research paper must be handful in creating general framework for the next phase and ensure flawless accession of the country to the WTO.

The findings and conclusions in this research paper are based on a comparative analysis of recently accessed WTO member countries from the Eurasian area. I evaluated the papers filed during the accession process of Eurasian WTO members, including Kazakhstan, Ukraine, and Georgia, as well as scholarly materials on such accession. It analyses Uzbekistan's present trade agreements in order to weigh the benefits and drawbacks of joining the WTO.

Every applicant to join the WTO must go through the set of phases (fact-finding, negotiating, and finalizing the Draft Working Party Report), according to an outline of the WTO accession procedure. In the case of Uzbekistan, the talks over accession conditions are crucial. From the standpoint of the government, it may be preferable for the Uzbek Oliy Majlis (Parliament) to become more involved in the negotiations or develop other types of legislative participation in the accession negotiations.

This paper identifies potential benefits such as lower tariffs, non-discriminatory treatment, better consistency in economic ties, and a binding adjudicatory mechanism as prospective 'pros' of Uzbekistan being a WTO member. Simultaneously, paper assesses the costs and disadvantages, including the loss of regulatory space and significant transition in internal businesses. Ultimately, I find that WTO participation will assist transition economies states like Uzbekistan to succeed in the long run, allowing them to eliminate the Non-Market Economy (hereafter NME) tag as a salient example.

This report also examines domestic laws of Uzbekistan on copyright and relevant rights, as well as the rules on free trade activity, to ensure if they were WTO-compliant. In summary, the primary difficulties raised by the current regulations of Uzbekistan are residency requirements and copyright enforcement rules upon import of foreign products, which may be in contradiction with the principles of WTO. Many laws affecting internal and external trade activities, such as security exclusions, quantitative restrictions, trade remedies, counters, and dispute settlement regulations, need to be amended to meet Uzbekistan's WTO responsibilities. I also focus on two major concerns that may arise during the accession talks: ip rights protection and enforcement. Finally, the paper makes a number of recommendations to the Uzbek government, restating general advantages and drawbacks, as well as certain revisions to the legislation stated above.

The World Trade Organization's membership is growing, and various applications to join the organization are increasing, indicating the organization's extraordinary effectiveness in regulating and maintaining worldwide trade. Since WTO membership tends to encourage governments in development to join the international community's expedited trade interactions, several states from diverse corners of the globe have consented and/or sought for accession in recent years. The strong desire of governments to join the WTO raises questions about its consequences and advantages for developing countries.

On December 8, 1994, Uzbekistan sought to join the World Trade Organization (WTO). Following that, until October 14, 2005, three Working Party sessions were conducted. Talks for WTO membership remained inactive for over 15 years after the third conference, until 7 July 2020, when the Working Party on Uzbekistan's Accession convened for the first time. Uzbekistan has emphasized its commitment to WTO

membership as a top priority and a vital aspect of the government's continuing reforms at this time. Given significant improvements in domestic policy and foreign relations, Uzbekistan appears to be on track to join the World Trade Organization (WTO) and participate in global financial relationships. Comparative analysis with neighboring member states and assessment of domestic laws would aid relevant government bodies of Uzbekistan in considering current challenges and actively negotiating demanding terms in upcoming meetings, as the government of Uzbekistan is in the center of negotiations with the WTO working group.

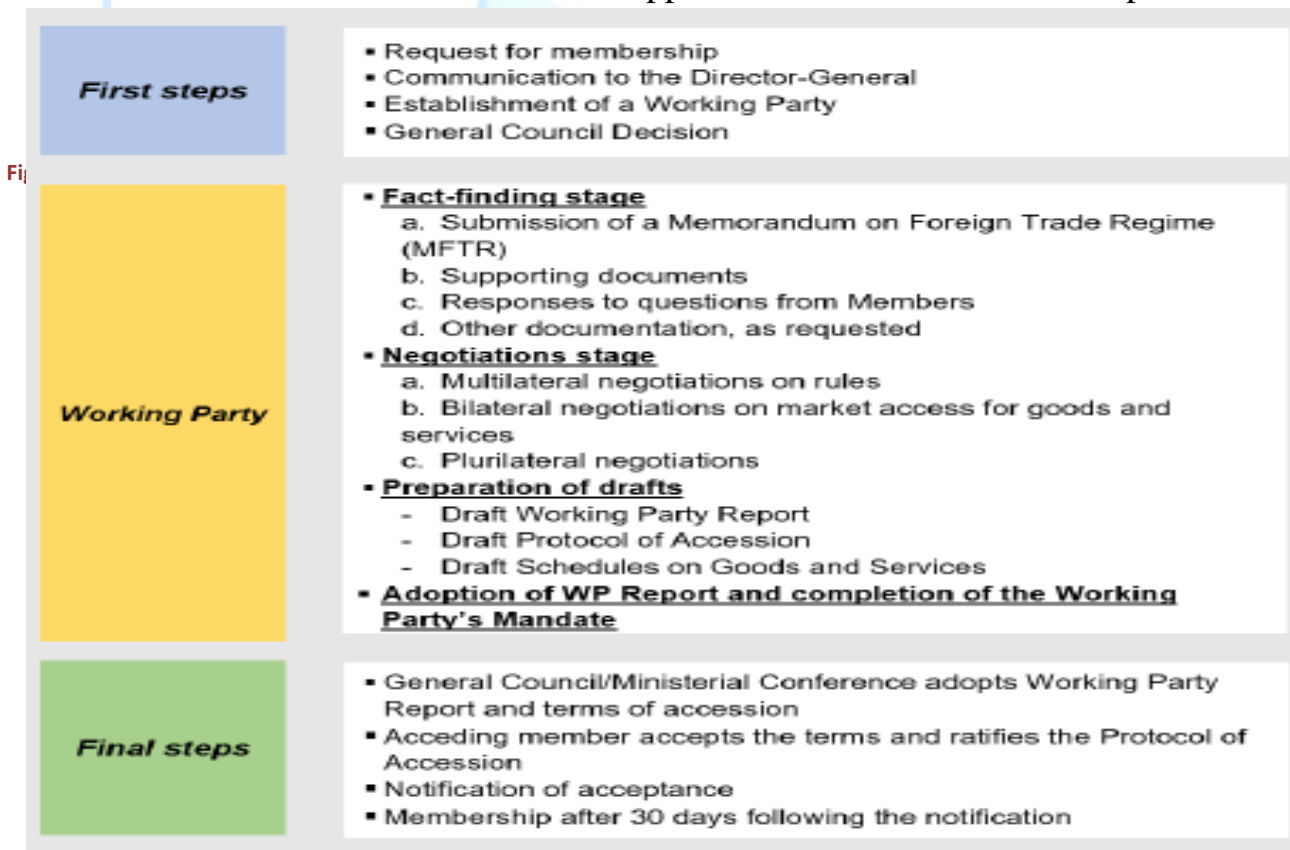
I reviewed relevant World Trade Organization regulations, laws, and instances in preparation for this paper, including the Marrakesh Agreement on the Establishment of the World Trade Organization, the General Agreement on Tariffs and Trade 1994 (referred as GATT agreement), the Agreement on Trade-Related Aspects of Intellectual Property Rights (referred as TRIPS agreement), the Agreement on Trade-Related Investment Measures, and other agreements on import licensing, subsidies and countervailing measures, safeguards, and trade facilitation. Also, I referred to number of scholar writings and previous research on accession to WTO and Uzbekistan related papers on its transition.

Main sections of the research paper includes general overview of the accession process and specific legal questions relating to Uzbekistan's WTO accession, advantages and disadvantages of the Accession, identifying potential effects to the regulatory space, evaluation of policy towards the Eurasian Economic Union, exemplifying experience of Kazakhstan, Ukraine, Kyrgyzstan to avoid mistakes made by those countries and how Russia and Ukraine war might affect on general trade relations and ways to amend WTO noncompliant legislatures of the Republic of Uzbekistan, including the laws on copyright and relevant IP rules as well as regulations on trade activities.

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. Even though the terms of the accession will be unique to each member, the main procedural steps remain the same for every individual accession request.

The process of becoming a member of the World Trade Organization (WTO) is distinct than other international agreements. It's a procedure, tailored to meet the unique needs of each new member. However, the core procedural stages for each accession are the same for all acceding states, even though the terms of the accession will be individualized to each member. The process of accession requires number of meetings with individual country, from fact-finding to concluding mandates related to the market needs of individual states.

When a country or a separate customs territory intends to initiate the WTO accession process, the first step is to formally inform the WTO Director-General by submitting a letter of request declaring the state's desire to join the organization and become a member. States or independent customs areas are referred to as acceding members in WTO term, and the request shall be reviewed by the office of Director General. After receiving the request letter, the Director General's office distributes it to all WTO members, where the General Council commences the accession process or a Ministerial Conference is convened to approve on the state's membership.



The most significant legal provision is Article XII (1) of the WTO Agreement (also known as the Marrakesh Agreement). The language of Article XII (1) is “any country or separate customs territory holding complete autonomy in the conduct of its external commercial dealings and other areas provided for in this Agreement and the Multilateral Trade Agreements may join to this Agreement, on terms to be agreed upon between it and the WTO”. Thus, the state or separate customs territory must ensure that it negotiates the specific trade terms with WTO, which may contradict some general agreements of WTO members. As the trade capacity and financial stability of each country differs, WTO allows individual acceding states to modify the terms in accordance with individual requests as long as they are approved by the Working Group of WTO. However, acceding state must enforce the application of all other commitments and multilateral agreements as a “single-package” policy in their domestic jurisdiction. Moreover, WTO Working Group may request the individual states to carry out enforcement of some additional obligations, usually different than

multilateral agreements, (known as WTO-plus) in response to modified bilateral agreement with WTO. In practical terms, the Secretariat Office of WTO in cooperation with other members, provides a “non-binding note” that shall serve as a material advice for the acceding member in order to simplify the negotiating process.

The Republic of Uzbekistan submitted a request letter to become a member to Director General in 1994. In the same year, after approval of Ministerial Conference, country commenced its initial negotiation process with newly established WTO Working Group to discuss member specific terms. Nonetheless, previous administration of Uzbekistan created a new economic model, where protection of domestic businesses and industries became a priority. Upon protective model, WTO Working Group was suspended, and negotiations processes halted for around 15 years, as the government insisted to protect domestic production from foreign trade intervention. After change of Cabinet in 2016, newly elected President discontinued the protective economic model, which revived the negotiation process on active mode again. Since then, WTO Working Party had around four negotiation meetings with Uzbekistan, which is expected to end in July, 2023, when all bilateral agreements are agreed. On its last visit to Uzbekistan in July 2020, the Working Group raised number of domestic policy concerns regarding trade and copyright protection laws, that are in contradiction with WTO rules and regulation.

When all bilateral agreements and negotiations are completed, the Secretariat of WTO shall release the drafts on Schedules of Goods and Services, presenting commitments of Uzbekistan to all other member states. Such schedules shall contain agreements on maximum tariff that Uzbekistan can levy on its customs, list of concessions, and other relevant trade elements in future trade of the country. Once Working Group finalizes its report to represent to all other countries, its commitments are attached to special Accession Package, which must be approved by the General Council or Ministerial Conference (containing all WTO member countries) in consensus.

There is no concrete analysis scheme to determine whether WTO accession improves the trade or worsens the economic situation. In particular, each country from Euroasian continent had a quite distinct experience with WTO accession, where membership boosted trade and economy in some (Armenia, Kazakhstan), while some suffered tremendous losses in free trade relationship (Kyrgyzstan, Ukraine). In 2022, trade relations are even more complicated with lists of foreign services and globalization, it is unlikely to predict the effects of accession to the economic performance of Uzbekistan. Nevertheless, there are some identifiable policy and trade changes, indicating benefits to the Uzbek market along with some drawbacks on its regulatory domestic powers.

By accession to WTO, Uzbekistan shall liberalize its all-trade laws and regulations, which in return leads to equal treatment by other countries. Namely, Most Favored Nation treatment is one of the fundamental rules in WTO, which prohibits any member country to discriminate other members in any member. In other words, if the US (member state) lowers tariff of particular products to France (member), it must equally treat all other member countries. The Republic of Uzbekistan has been discriminated in trade many years, especially by neighboring countries and Russian Federation. For instance, when government of Uzbekistan decided not to join in military block of Russia with Belarus and Kazakhstan in 2014, the Russian President Vladimir Putin banned export of Uzbek automobiles and vegetables (amounting to 1.5 bln dollars) to its country. Thus, if Uzbekistan was the member of WTO, it could invoke MFN treatment against Russia in WTO panels to repudiate such discriminative bans. Due to its bilateral trade agreements, Uzbekistan enjoys equal treatment of around 27 countries, where the accession to WTO shall guarantee such treatment from 164 member states.

Uzbekistan agreed to have 20% tariff rate on automobiles, it may impose lower tariffs than 20 percent, but not allowed to exceed twenty. This commitment gives the government flexibility to lower tariffs when more export is needed, and impose maximum amount while protection becomes more actual. At the same time, Uzbekistan enjoys the predictable number of tariffs in all other members, knowing their tariffs cannot exceed fixed rate. The number of Uzbek industries, including but not limited to manufacturing, textile, agriculture and transport have promising perspectives in international market, thus, lowering tariffs will encourage them to be more productive, and compete globally. For example, neighboring Kazakhstan imposed higher transport tariffs for non-member countries, including Uzbekistan, which deters Uzbek manufacturers to compete with other brands in neighboring market, despite transportation costs are much lower. Also, consumers in Uzbekistan will be enjoying affordable foreign products, as fair-trade competition practices will be back in market. As a clear example, a bar of Hershey's chocolate brand costs 3 times more for Uzbek consumers than the ones in the US due to unreasonably high tariffs on foreign confectionery products.

In addition to Most Favored Nation principles, WTO Agreements obligates countries to enforce National Treatment rule, where domestic policies, taxes, and regulations shall be treated equally to foreign products. All WTO members ensure the equal treatment of their domestic products and foreign (Uzbek) products in their territory. In other words, no member states can impose any technical regulation or policy, discriminating Uzbek export products into their territory. Again, Uzbekistan always had conflicting arguments with Tajikistan and Kyrgyzstan on their domestic

protection rules, since government protected its own market, other countries increased domestic taxes to burden Uzbek products in their territory.

Once Uzbekistan becomes a member to the WTO, it will be entitled to protect its rights within WTO Dispute Settlement processes. If the government of Uzbekistan believes that one of the member states are not upholding its WTO commitments, such as imposing higher tariffs than agreed, obstructing transit of goods, imposing regulations on additional charges on Uzbek products in contradiction with WTO rules, Uzbekistan may bring this case before impartial adjudicating system of WTO. The remedies of WTO Dispute Settlement are binding and shall be enforced with no delay. In practice, main remedy by the WTO panels is to obligate other member state to bring its regulation in compliance with WTO rules. In case that member state continues to violate trade rights of Uzbekistan, government of Uzbekistan will be allowed formally to impose countermeasures as retaliation against non-complaint member. Many states have been successful in such WTO settlement mechanism, restoring their rights in compliance with WTO rules. For instance, Brazil succeeded to bring US cotton industry subsidies prohibited in 2012, which was very efficient movement in WTO action against developed market. Similarly, the US cotton policies have undermined the access of cotton from Uzbekistan to Western market, which is second largest industry in Uzbek market, resulting in suppression of price.

On the other hand, Dispute Settlement mechanism of WTO could act as a shield for Uzbekistan, defending its domestic rules from foreign retaliation. Namely, if Uzbekistan imposes any WTO non-complaint regulation, no other member country may impose sanctions against Uzbekistan unless formally approved by the adjudicating bodies of the WTO. This rule allows Uzbekistan to justify its non-complaint rule as list of exception under WTO agreements, thus, any government has due process to determine the violation in panels.

The benefits from WTO accession are clear and seems very promising from the first glance. However, the Republic of Uzbekistan will face number of challenges in transition period, as it should open protected market to 164 economies with gigantic market flows. Considering its current economic status and policies, accession might have number of negative effects on trade and domestic production of the country.

Some clear drawbacks would likely be:

Upon Accession to WTO, Uzbekistan will have to make number of new commitments to comply with guidelines of the organization. Such commitments undoubtedly undermine flexibility of Uzbek Oliy Majlis and executive to impose new laws and policies in some extent. Such trend would be notable in compliance with Agreement on Subsidies and Anti-dumping measures, where certain methods of doing so shall be followed. Namely, government may be restricted to subsidize its domestic industries, and conduct practices in accordance with WTO set agreements. Uzbekistan

has around 15 sensitive sectors, that are state-owned, including automobile, oil and gas, energy, wheat, heavy textile and others, which are run by the state, and subsidized by Parliamentary laws, which would bring up numerous conflicting disputes with other member states. For instance, the number of automobiles is artificially kept low by Uzbek government, as government attempted to ensure less reliance on fossil fuels by heavily subsidizing industry every year from state budget. Once Uzbekistan becomes a member to WTO, exporters of other countries would dispute to avoid such subsidies, where government may not be able to manage vehicle numbers in the country anymore. In addition, the government of Uzbekistan has to comply with AD duties strictly while issuing any dumping duties on foreign products. Duties of Uzbekistan will be scrutinized by other member countries, which undoubtedly changes previous practices of country. Previously, Uzbekistan used to impose high duties on confectionary and non-organic products, bringing public health concerns widely. Uzbekistan even banned some GMO and products with certain chemical substances flexibly to ensure the accessibility of organic products instead. In WTO, such justifications are unlikely to pass, since Agreement on SBS measures allow public health exception, if only harm is imminent and risky enough to invoke public health exceptions.

Most Uzbek industries have been favorably treated by Uzbek government for last 20 years. Main exporters with the highest export rates receive 15% government bonus to cover their expenses and tremendous tax cuts. Uzavtosanoat, dominant automobile producer in the country enjoyed discriminative excise taxes against foreign car exporters, and around 1 billion USD government subsidies to export more cars outside of Uzbekistan. In the edge of no competition zone, and heavy state subsidies, these industries lost their international competitiveness and became less productive in global market. Upon Accession, government has to stop any form of subsidies for such industries, and discontinue internal fees for export products, which would create a tremendous disruption in domestic production. According to Economic Journal report 2019, almost 60 percent of textile products are domestically produced, where foreign exporters pay around 35% excise tax, losing in price competition. Once Uzbekistan becomes part of the WTO, it has to lower its internal barriers to trade, which would open literally new open market for Chinese and Turkish companies, whose products are cost effective in better quality than domestic products. In best case scenario, it may take 5-10 years for domestic industries to become more competitive and regain market share, which would have interim detrimental effects, including increased unemployment and less tax revenues. When local industries go bankrupt and government is handcuffed to subsidize as of WTO regulations, first 5 years are unpredictable and requires meticulous financial analysis.

The government should bring all its subsidiary and excise laws in compliance, since other members could bring action before DSU. Uzbekistan will have obligation

to abide to remedies of WTO Dispute settlement mechanism (the Panel and Appellate Body). Once any member state decides to challenge the certain rules or laws of Uzbekistan, which are non-complaint with WTO, Panel or Appellate Body might require the government of Uzbekistan to change its practices or laws in compliance with WTO.

Becoming WTO member has also its costs in terms of human resources and state budget. Mainly, the government has to set up institutions with sufficient resources to comply with the rules of WTO. For example, the work of Intellectual Property agency shall be reestablished to ensure compliance with TRIPS requirements and protocols on copyright enforcement. Besides this, when Uzbekistan participates in dispute resolution system, both as a defendant or respondent, it must cover all relevant expenses. Dispute Resolution mechanism, despite being organized effectively costs lots of money on Legal Counseling and evidence gathering processes. Despite costs are being used for a particular cause, such expenses shall not be neglected.

In terms of irreversibility, WTO allows member states to withdraw from the organization under Article XV of Marrakesh Agreement with notice, which becomes effective after six months. Nonetheless, as global integration is progressive attempt to integrity with the world market, withdrawing from it would signal negatively to all other members and traders. Thus, no member has ever withdrawn from WTO, as disintegration shows unwillingness of the country to fair international trade. Uzbekistan must join WTO with such a confidence, knowing there is no going back, and it should bear any challenges during integration process to the global market.

1. Procedural and legal issues faced by the neighboring countries and policy towards the EAEU

Uzbekistan is one of the former 16 Soviet Union countries, whose economy was centrally governed by Moscow for around country. The government used to control every single economic relation, including manufacturing, products, export, import, price and others. Therefore, systematic changes are very similar in all those independent Republics, which makes comparison reasonable. Most of those Republics acceded to WTO in early 2000 and 2015 latest (Kazakhstan), thus analyzing their accession experience with the accession of Uzbekistan might offer some predictability to a certain extent.

1.1.1 Experience of Uzbekistan and Kazakstan during accession, challenges with trade policies and WTO-obligations

The Republic of Kazakhstan, Uzbekistan's nearest Central Asian neighbor and a significant rival in the Central Asian market, joined the World Trade Organization on November 30, 2015. Nevertheless, the country's working party was formed somewhat later in 1996, and Kazakhstan's excellent internal measures and eager team of negotiators helped them make a significant jump among transitional states to expedite

their accession. After the accession for the previous 5 years, the quantitative and critical aspects of evaluation are completed, with positive indicators such as increased competitiveness included. In Kazakhstan, the WTO's benefits have been seen in a variety of areas, including improved access to non-CIS markets for a variety of specialty products. Kazakhstan's most favored status (MFN) has been carefully handled, and based on bilateral agreements, trade partners would not see immediate tariff reductions, and even if they do, they are unlikely to be significant. In considerations of tariff position, in inadequately competitive sectors, internal distribution would be improved, resulting in increased productivity of relevant (downstream sectors) and a reduction in the number of barriers to international service providers' operations.

General tariffs in Kazakhstan were much lower than the one in Uzbekistan, so it did not need to negotiate much about them in its schedules. Nonetheless, under General Agreement on Trade in Services (GATS), Kazakhstan had to make around 10 service and 116 subsector commitments on liberalization, despite its economy is not as protective as the one in Uzbekistan. The number of commitments will undoubtedly be higher for Uzbekistan, as it has many conflicting tariffs, inconsistent with WTO. From Accession, Kazakh economy did not gain much in first 5 years, since its GDP increased for around 1% only, as commodity prices fell down in this period, despite government is estimating long-term economic gains (around 10 percent GDP rise) positively. Apart from regular commitments, Kazakhstan also obligated itself for WTO-plus commitments (more obligations than regular member states), including fixed export tariffs, and zero duties for the export of fuels, aluminum and other natural resources by adopting internal regulations in compliance with WTO.

One of the positive outcomes of Accession in Kazakhstan was noticeable reduction of corruption in the country. As corruption is also very critical issue in Uzbekistan, similar outcomes could be expected while incorporating WTO complaint legislation. The Ministry of Trade in Kazakhstan also mentioned the increased trade protection for Kazakhstan, as country suffered from overwhelmingly high anti-dumping restrictions against its exports, especially in steel industry with no mechanism to challenge. In addition, WTO-plus commitments on export duties enhanced its long-term trade conflicts with Russia and Tajikistan, since both attempted to block Kazakh products into their territory with discriminative custom duties. As Uzbekistan constantly suffers from the same treatment from Russia and other neighboring countries, the accession to WTO eases such obstructions. Kazakh government also used to remunerate the export of agriculture products with subsidies as Uzbekistan does with them till now, it had to eliminate all subsidies to 0% as of requests of the Working Party. Thus, Uzbek government will unlikely convince working group of WTO to leave 15% bonus and tax exclusion to any types of products. Also, state-owned enterprises

were also common in Kazakhstan, especially in major industries of the country, receiving annual subsidies from the budget. In its bilateral agreement, Kazakh government committed to cut any forms of compensation or subsidies for state-owned enterprises and obliged to afford procurement access to businesses from member countries.

References

Economic Journal Report 2019: Uzbekistan's export industries and government subsidies. The report details the impact of the Uzbek government's support for domestic industries, including tax cuts, export bonuses, and subsidies, and how these have affected competitiveness in the global market.

WTO Dispute Settlement Understanding (DSU): The World Trade Organization's DSU framework provides the mechanisms for resolving trade disputes between member states. It includes the procedures for challenging trade practices that violate WTO rules, including the use of subsidies and internal barriers to trade.

Article XV of the Marrakesh Agreement Establishing the WTO: This article outlines the provisions for member states to withdraw from the WTO, emphasizing the irreversibility of membership and the economic consequences of withdrawal.

General Agreement on Trade in Services (GATS): The GATS framework that Kazakhstan had to comply with during its WTO accession includes commitments to liberalize services and subsectors. This serves as a comparative analysis for Uzbekistan's potential obligations under the WTO.

WTO Plus Commitments: The concept of "WTO-plus" obligations, which go beyond standard WTO requirements, as seen in Kazakhstan's commitments during accession, including export duties and zero tariffs on natural resources.