

# The Contribution of WTO Accessions to Rule-Making

7<sup>th</sup> China Round Table – Astana, 26-27 September 2018





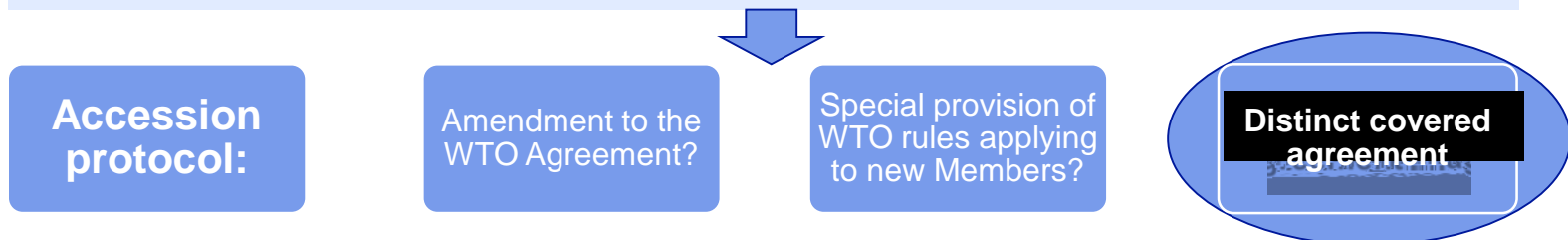
# What makes WTO accession commitments “rules”?

## Accession commitments and the WTO dispute settlement system

**Accession Protocols are linked to the multilateral framework of rules:** All accession Protocols provide that the Protocol “shall be an *integral part* of the WTO Agreement”.

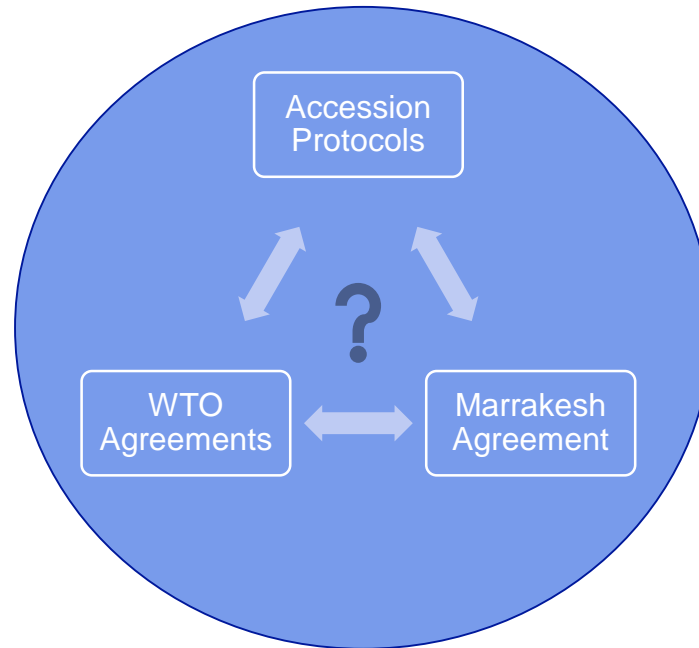
**Enforceable rights and obligations:** The WTO dispute settlement system treats accession commitments as “covered agreements”. Members have not questioned their enforceability.

**Accession commitments = Treaty text:** Panels and the Appellate Body have reasserted that accession commitments can be interpreted in accordance with the customary rules of interpretation of public international law codified in the Vienna Convention.



# What makes WTO accession commitments “rules”?

## Accession commitments in the WTO legal hierarchy



Substantive relationship not addressed in Article XII or in Accession Protocols.

Appellate Body in *China - Rare Earths*: “**A bridge of a general nature**”.

Need to analyze on a case-by-

# What makes WTO accession commitments “rules”?

## Relevant disputes

*China – Auto Parts* (AB Report adopted 2008)

The first case where a WTO Panel assumed enforceability of an Accession Protocol.

*China – Publications and Audiovisual Products* (AB Report adopted 2009)

Accession Protocol treated as a separate “covered agreement”.

*China – Raw Materials* (AB Report adopted 2012)

Accession Protocol treated as a separate “covered agreement”.

*China – Rare Earths* (AB Report adopted [AB Report adopted 2014)

Accession Protocol “builds a bridge” between Protocol provisions and the existing package of rights and obligations in the Marrakesh Agreement and the Multilateral Trade Agreements.



# What makes WTO accession commitments “rules”?

## A typology of accession commitments

**1500+ accession specific commitments undertaken by 36 Article XII Members:** tailored to individual circumstances, but some patterns have emerged.

**“WTO+” commitments:** obligations to abide by the rules created by the commitment paragraph and not contained in the multilateral trade agreements.

### “WTO+” obligations for the WTO and its Membership

WTO+ rulemaking for existing Members & provisions increasing the WTO’s institutional obligations

E.g. China’ transitional review mechanism

- Notifications to the General Council and subsidiary bodies.

E.g. Chinese Taipei and GATT Article XV:6

- Obligation on existing Members to sign a special exchange agreement, thus limiting options to enforce other exchange contracts

### “WTO-” obligations for new Members

New Members undertaking obligations which contain less than the relevant WTO rule.

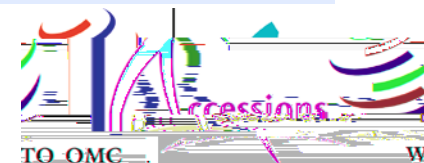
E.g. longer transition periods for implementing commitments

### “WTO+” obligations for new Members

Rule-of-law obligations

E.g. price controls, energy transit, transparency, administrative and judicial review

Accession to plurilateral WTO Agreements?





# From “WTO+” to “WTO normal”

## TRANSPARENCY: accession commitments v. WTO Trade Facilitation Agreement (2013)

### Trade Facilitation Agreement (TFA)

TFA Articles 1 to 5 aim to clarify and improve GATT Article X (Transparency)

**2004:** Launch of formal negotiations

**2013:** Adopted at MC9 in Bali

**2017:** Entry into force of the TFA

### Accession commitments

Accession commitments stipulate in detail how to implement the general obligations of GATT Article X

**2001:** 1<sup>st</sup> enquiry point commitment (China)

**2001:** 1<sup>st</sup> “opportunity to comment” commitment (C. Taipei)

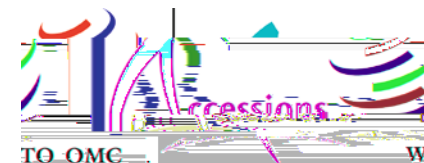
**2004:** 1<sup>st</sup> internet-related commitment (Cambodia)

...

**Before the TFA’s entry into force, WTO accessions contributed 37 commitments on transparency in dedicated “Transparency” section of WP Reports and 200+ commitments on transparency under other WP Report headings (e.g. RoO, SPS,TBT, TRIPS).**

**Notable areas of overlap / convergence between TFA and accession commitments:** online publication, enquiry points, opportunity to comment, appeal/review

**Similar objectives pursued:** promoting further transparency, more specificity and clarity, keeping pace with technological developments.





# From “WTO+” to “WTO normal”

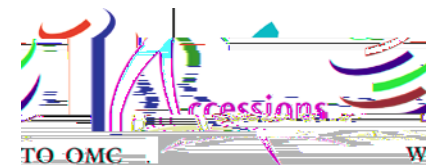
## TARIFF RATE QUOTAS: accession commitments v. Bali Decision on TRQs (2013)

- Tariff rate quotas (TRQs) introduced during Uruguay Round tariffication process
- WTO rules limited to GATT Article XIII: non-discriminatory application; allocation to approximate shares expected in the absence of restrictions; details negotiated with Members concerned
- No details on methodologies used to administer TRQs or to address TRQ underfill situations

### 2013 Bali Decision on TRQs

- TRQ administration = import licensing
  - Transparency obligations: re TRQ openings, applications, notifications
  - Re-allocation of underfilled TRQs
  - Absolute necessity test re TRQ admin
- Rules for related licensing procedures
  - Allocation of TRQ volume
  - Principles of reallocation of underfilled TRQs
  - Description of current/prospective legal authority
  - Opportunity for newcomers to have a TRQ share

**Similar objectives pursued:** disciplining the use of TRQs.



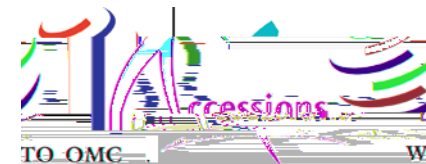
# From “WTO+” to “WTO normal”

## AGRICULTURE EXPORT SUBSIDIES: accession commitments v Nairobi Decision (2015)

*WT/MIN(15)/45*

- “Developed Members shall immediately eliminate their remaining scheduled export subsidy entitlements”
- “Developing country Members shall eliminate their export subsidy entitlements by the end of 2018”

**Since 1996, all Article XII Members have committed to bind export subsidies at zero, with seven new Members agreeing to eliminate existing export subsidies.**





# The contribution of WTO accessions to WTO rule-making





**Thank you**

[dimitar.bratanov@wto.org](mailto:dimitar.bratanov@wto.org)

