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Part One: Chapter 3

SELECTED RECENT POLICY TRENDS: ACCESSION OF LDCs TO THE WTO



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Selected Recent Policy Trends: Accession of LDCs to the WTO

A. Introduction

Chapter

3

A rule-based multilateral trading system provides transparency, stability and predictability with respect to market access conditions and various other trade-related issues. The provision of these public goods is intended not simply to promote the development of trade relations but also to foster the economic prosperity of trading partners. As the preamble to the Agreement Establishing the World Trade Organization states, “relations in the field of trade and economic endeavours should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their [i.e. the Parties to the Agreement] respective needs and concerns at different levels of economic development”. Like their trading partners, the LDCs view their participation in the multilateral trading system as a means of integrating into the global economy and maximizing their benefits from international trade. However, achieving this depends on supportive terms of accession.

This chapter provides a comparative description of the terms of accession of the first three LDCs to have completed accession negotiations since the establishment of the WTO — Cambodia, Nepal and Vanuatu. Of these three countries, only Nepal has so far acceded to the WTO. On 23 April 2004 Nepal became the 147th member State of the WTO and it is so far the only LDC to have joined the WTO since its establishment in 1994.

Comparing these three cases with one another highlights the fact that the commitments made by the LDCs in question are characterized by significant differences, and a comparison of the three cases with countries that are already WTO members shows that the commitments made by these LDCs are often much greater than commitments made by existing WTO members, particularly in the area of market access commitments. It can, for example, be observed that while developing countries that are already WTO members benefit from different types of special and differential treatment, it is not guaranteed that the developing countries which are in the process of acceding to the WTO will automatically be granted the right to special and differential treatment. The outcomes reflect the fact that the current accession practice requires all developing countries, including the least developed ones, to negotiate all provisions on a case-by-case basis.

Like their trading partners, the LDCs view their participation in the multilateral trading system as a means of integrating into the global economy and maximizing their benefits from international trade. However, achieving this depends on supportive terms of accession.

B. The challenge of accession

All countries acceding to the WTO face substantial difficulties in their efforts to join the multilateral trading system. The accession process itself is long and complicated, requiring the pursuit of negotiations on three different tracks.

Difficulties for countries seeking accession also arise from increasing demands by some WTO members.

The challenges are particularly difficult for the least developed countries, which have extremely weak human and institutional capacities and limited technical know-how and financial resources.

All countries acceding to the WTO face substantial difficulties in their efforts to join the multilateral trading system.¹ The accession process itself is long and complicated, requiring the pursuit of negotiations on three different tracks. The first track is the systemic or multilateral track. It provides for examination of the foreign trade regime and economic system of the acceding country and their compatibility with the WTO Agreements. This examination is made on the basis of the Memorandum on the Foreign Trade Regime submitted by the acceding country and subsequent rounds of questions and answers, as well as delivery of the Working Party's report and the Protocol of Accession setting out detailed terms of accession. There are also two bilateral tracks of market access negotiations on goods and services with interested WTO members. Market access in the goods track includes negotiations of concessions in the area of trade in goods (mainly in the form of reductions and bindings of import tariffs). These negotiations are carried out bilaterally with the main trading partners of an acceding country. The list of concessions in a WTO format (a table) forms an integral part of the Protocol of Accession, and the concessions should be extended on an unconditional MFN basis to all other WTO members. Market access in the services track involves negotiations of commitments on trade in services, which are also conducted bilaterally and result in a schedule of specific commitments formatted appropriately (in a table) and annexed to the Protocol of Accession. Finally, there is a "sub-track", which is concerned with plurilateral discussions on agricultural domestic support and export subsidies commitments with interested WTO members.

Difficulties for countries seeking accession arise from:

- Substantive policy issues relating to adjustments in their development strategies and implementing instruments, economic and social goals, and legislative reforms — which are all necessary for compliance with the WTO Agreements;
- Insufficient knowledge, experience, resources, infrastructures and analytical capacities required for accession negotiations;
- Increasing demands by some WTO members that require from acceding countries, in one way or another, a higher level of obligations and commitments than the level of obligations and commitments made by the original WTO members in the Uruguay Round, which thus affect the balance of their WTO rights and obligations. WTO members have not agreed on common approaches to the terms of accession and often express different views on this matter. In this situation, those members that are most active in the accessions succeed in imposing their vision and demands on the acceding countries.

Although these difficulties apply to all developing countries and countries with economies in transition, it should be recognized that the challenges are particularly difficult for the least developed countries, which have extremely weak human and institutional capacities and limited technical know-how and financial resources. These problems were acknowledged by the WTO members in the Doha Ministerial Declaration (WTO, 2001a). Accordingly, they agreed "to work to facilitate and accelerate negotiations with acceding LDCs" and reaffirmed the commitments undertaken in the Programme of Action for the Least Developed Countries for the Decade 2001–2010 agreed at the Third United Nations Conference on the Least Developed Countries, held in Brussels in May 2001 (WTO, 2001a). In the Programme of Action, development partners

of LDCs agreed to facilitate the accession process of non-members “on the basis of terms that take into account their stage of development and the basic principles of special and differential treatment” and to “support efforts of LDCs seeking to accede” in various ways, including:

- “(i) Ensuring that the accession process is more effective and less onerous and tailored to their specific economic conditions, *inter alia* by streamlining WTO procedural requirements;
- (ii) Providing for automatic eligibility of all acceding LDCs for all provisions on special and differential treatment in existing WTO agreements;
- (iii) In view of LDCs’ special economic situation and their development, financial and trade needs, WTO members should exercise restraint, where appropriate, in seeking concessions in the negotiations on market access for goods and services in keeping with the letter and spirit of the provisions of the Ministerial Decision on Measures in Favour of the Least Developed Countries;
- (iv) Seeking from LDCs in the accession stage only commitments that are commensurate with their level of development;
- (v) Continuing to provide adequate and predictable assistance to LDCs for their accession process, including technical, financial or other forms of assistance;
- (vi) Accelerating the accession process for LDCs that are in the process of accession to WTO” (para. 68(o)).

In addition, on 10 December 2002, the WTO General Council, in pursuance of the Doha mandate, and in an attempt to mainstream the Brussels Programme of Action into WTO work and actions adopted a decision on the Accession of LDCs (WTO, 2003b). This is reproduced in box 2. It was expected that the decision (which is also called “guidelines”) would substantially facilitate LDC accessions, particularly by exercising restraint on WTO members in seeking concessions and commitments on trade in goods and services from acceding LDCs, and allowing acceding LDCs to benefit from the special and differential treatment provisions under the WTO Agreements. By mid-2003, 10 LDCs were still negotiating WTO accession and were at various stages of the process. However, at the Fifth WTO Ministerial Conference, held at Cancún in September 2003, the terms of accession for Cambodia and Nepal were approved.

This was an important breakthrough. However, as table 23 shows, of the LDCs seeking accession six — Bhutan, Cape Verde, Ethiopia, the Lao People’s Democratic Republic, Sudan and Yemen — are still in the initial stage of negotiations, although some of them have been in the negotiating process for six to nine years. One country (Vanuatu) completed accession negotiations in 2001, but the results were suspended by the acceding Government. Another country (Samoa) has reached an advanced stage in negotiations after more than five years. Afghanistan applied for accession in March 2003, but its application has not yet been considered. Eight other LDCs are not members of the WTO and have not yet applied to join.

This chapter describes the accession terms of Cambodia and Nepal, the first LDCs ever to have completed accession negotiations with the WTO under the full negotiating process laid down in Article XII of the Agreement establishing the WTO.² The accession terms are also compared with those for Vanuatu.

In September 2003, the terms of accession for Cambodia and Nepal were approved. They were the first LDCs ever to have completed accession negotiations with the WTO under the full negotiating process.

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BOX 2. ACCESSION OF LEAST DEVELOPED COUNTRIES

Decision of 10 December 2002

[The General Council] Decides that:

Negotiations for the accession of LDCs to the WTO be facilitated and accelerated through simplified and streamlined accession procedures, with a view to concluding these negotiations as quickly as possible, in accordance with the guidelines set out hereunder:

I. Market Access:

- WTO Members shall exercise restraint in seeking concessions and commitments on trade in goods and services from acceding LDCs, taking into account the levels of concessions and commitments undertaken by existing WTO LDCs' Members;
- acceding LDCs shall offer access through reasonable concessions and commitments on trade in goods and services commensurate with their individual development, financial and trade needs, in line with Article XXXVI.8 of GATT 1994, Article 15 of the Agreement on Agriculture, and Articles IV and XIX of the General Agreement on Trade in Services.

II. WTO Rules:

- Special and Differential Treatment, as set out in the Multilateral Trade Agreements, Ministerial Decisions, and other relevant WTO legal instruments, shall be applicable to all acceding LDCs, from the date of entry into force of their respective Protocols of Accession;
- transitional periods/transitional arrangements foreseen under specific WTO Agreements, to enable acceding LDCs to effectively implement commitments and obligations, shall be granted in accession negotiations taking into account individual development, financial and trade needs;
- transitional periods/arrangements shall be accompanied by Action Plans for compliance with WTO rules. The implementation of the Action Plans shall be supported by Technical Assistance and Capacity Building measures for the acceding LDCs. Upon the request of an acceding LDC, WTO Members may coordinate efforts to guide that LDC through the implementation process;
- commitments to accede to any of the Plurilateral Trade Agreements or to participate in other optional sectoral market access initiatives shall not be a precondition for accession to the Multilateral Trade Agreements of the WTO. As provided in paragraph 5 of Article IX and paragraph 3 of Article XII of the WTO Agreement, decisions on the Plurilateral Trade Agreements shall be adopted by the Members of, and governed by the provisions in, those Agreements. WTO Members may seek to ascertain acceding LDCs' interests in the Plurilateral Trade Agreements.

III. Process:

- The good offices of the Director-General shall be available to assist acceding LDCs and Chairpersons of the LDCs' Accession Working Parties in implementing this decision;
- efforts shall continue to be made, in line with information technology means and developments, including in LDCs themselves, to expedite documentation exchange and streamline accession procedures for LDCs to make them more effective and efficient, and less onerous. The Secretariat will assist in this regard. Such efforts will, *inter-alia*, be based upon the WTO Reference Centres that are already operational in acceding LDCs;
- WTO Members may adopt additional measures in their bilateral negotiations to streamline and facilitate the process, e.g., by holding bilateral negotiations in the acceding LDC if so requested;
- upon request, WTO Members may through coordinated, concentrated and targeted technical assistance from an early stage facilitate the accession of an acceding LDC.

IV. Trade-related Technical Assistance and Capacity Building:

- Targeted and coordinated technical assistance and capacity building, by WTO and other relevant multilateral, regional and bilateral development partners, including *inter alia* under the Integrated Framework (IF), shall be provided, on a priority basis, to assist acceding LDCs. Assistance shall be accorded with the objective of effectively integrating the acceding LDC into the multilateral trading system;
- effective and broad-based technical cooperation and capacity building measures shall be provided, on a priority basis, to cover all stages of the accession process, i.e. from the preparation of documentation to the setting up of the legislative infrastructure and enforcement mechanisms, considering the high costs involved and in order to enable the acceding LDC to benefit from and comply with WTO rights and obligations.

The implementation of these guidelines shall be reviewed regularly in the agenda of the Sub-Committee on LDCs. The results of this review shall be included in the Annual Report of the Committee on Trade and Development to the General Council. In pursuance of their commitments on LDCs' accessions in the Doha Ministerial Declaration, Ministers will take stock of the situation at the Fifth Ministerial Conference and, as appropriate, at subsequent Ministerial Conferences.

TABLE 23. PROCESS OF LDCs' ACCESSION TO WTO (AS OF 1 OCTOBER 2003)

	Bhutan	Cambodia	Cape Verde	Ethiopia	Lao PDR	Nepal	Samoa	Sudan	Vanuatu	Yemen
Application	09/99	12/94	10/99	01/01	07/97	05/89	04/98	11/94	07/95	04/00
WTO Working Party established	10/99	12/94	07/00	02/03	02/98	06/89	07/98	11/94	07/95	07/00
Memorandum on the Foreign Trade Regime submitted	02/03	06/99	07/03		03/01	02/90 08/98	02/00	01/99	11/95	11/02
First meeting of Working Party		05/01				05/00	03/02	07/03	07/96	
Tariff offer and revisions submitted		12/00 07/02 03/03 07/03				07/00 05/02	08/01		11/97 05/98 11/99	
Services offer and revisions submitted		12/00 07/02 03/03 06/03				07/00 05/02 08/03	08/01		11/97 11/99	
Agricultural support data Accession package approved		12/01 07/02 09/03				09/98 07/99 09/03	08/00 06/03	06/03	09/99 10/01	
Length of accession process (as of 1 October 2003)	4 years, 1 month (ongoing)	8 years, 9 months (final)	4 years (ongoing)	9 months (ongoing)	6 years, 2 months (ongoing)	14 years 3 months (final)	5 years, 5 months (ongoing)	8 years, 11 months (ongoing)	8 years, 3 months (ongoing)	3 years (ongoing)

Source: UNCTAD compilation, based on WTO (2003).

C. Three country cases

The accession package for Cambodia, Nepal and Vanuatu consisted, as for any other acceding countries, of three major parts:

- (i) Protocol of Accession and the Report of the WTO Working Party, in which all of the “systemic” commitments and obligations (i.e. those reflecting consistency with the WTO rules) are undertaken with reference to the WTO rules and disciplines;
- (ii) Schedule of concessions on market access in goods, namely bound tariffs. This also includes data on domestic support measures and export subsidies in agriculture;
- (iii) Schedule of specific commitments in services.

Cambodia undertook 29 systemic commitments in its Protocol of Accession.

1. THE CASE OF CAMBODIA³

(a) Systemic commitments

Cambodia undertook 29 systemic commitments in its Protocol of Accession. It was granted four transition periods delaying implementation of:

- The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (excluding pharmaceuticals and agricultural chemicals) until 1 January 2007. Before adoption of the terms of accession, the WTO Ministerial Conference in Cancún (11 September 2003) agreed that “the terms of this accession do not preclude access to the benefits under the

Cambodia bound 100 per cent of tariff lines... On agricultural products, Cambodia's average bound rate is 30 per cent... For industrial products, the average bound rate is 18.2 per cent.

Doha Declaration on the TRIPS Agreement and Public Health to Cambodia as a (least-developed country)";

- The Agreement on Technical Barriers to Trade (TBT) until 1 January 2007;
- The Agreement on Sanitary and Phytosanitary Measures (SPS) until 1 January 2008;
- The Agreement on Customs Valuation until 1 January 2009.

Other main systemic commitments include:

- Non-application of the Agreement on Trade-Related Investment Measures (TRIMs) upon accession (these measures do not exist, and are not foreseen as a policy instrument, in Cambodia);
- *De minimis* levels (up to 10 per cent of the value of agricultural production) for domestic support in agriculture;
- Binding export subsidies in agriculture at zero and committing not to use any such subsidies in the future;
- Cambodia's right to use export subsidies in industrial sectors (allowed for LDCs under the Agreement on Subsidies and Countervailing Measures, although there were strong pressures from several members for that right to be forgone).

Cambodia did not join two plurilateral agreements — those on government procurement and trade in civil aircraft.

(b) Bound tariffs

Cambodia bound 100 per cent of tariff lines. This means that it has effectively set ceilings on the tariff rates of all imported products, which prevents it from increasing tariff rates on imported goods above the tariff rate to which it has committed. On agricultural products, Cambodia's average bound rate is 30 per cent, peak bound rates for the most sensitive products are 50–60 per cent and the lowest bound rates are 5 per cent. For industrial products, the average bound rate is 18.2 per cent, peak bound rates are 50 per cent and minimal rates are 0 per cent. Cambodia did not join any of the optional "tariff initiatives" – "zero-for zero", the Information Technology Agreement and "chemical tariff harmonization".

(c) Services

Services commitments cover the 11 main service sectors under the WTO classification (excluding "other services not included elsewhere")⁴, some sectors with full sub-sector commitments, and other sectors with partial commitments and transition periods (for example, up to 1 January 2009 for the telecommunication sector). These commitments are carefully drafted and reflect Cambodia's development policies aimed, in particular, at attracting foreign investment.

2. THE CASE OF NEPAL⁵

(a) Systemic commitments

Nepal undertook 25 systemic commitments in its Protocol of Accession. It was granted transition periods until 1 January 2007 for implementing four WTO Agreements — TRIPS, the Agreement on Customs Valuation, TBT and SPS.

Nepal undertook 25 systemic commitments in its Protocol of Accession.

Other systemic commitments include:

- Non-application of TRIMs upon accession;
- *De minimis* levels (up to 10 per cent of the value of agricultural production) for domestic support in agriculture;
- Right to use export subsidies in industrial sectors (allowed for LDCs under the Agreement on Subsidies and Countervailing Measures).

Nepal did not join two plurilateral agreements — those on government procurement and trade in civil aircraft. Other commitments undertaken are usual for WTO members and reflect obligations under specific WTO Agreements.

(b) Bound tariffs

Nepal bound 100 per cent of tariff lines. Average bound tariffs on agricultural products are almost 44 per cent, while for industrial products they are 23 per cent. Tariff peaks on agricultural products include rates of 100 and 200 per cent, and minimal rates are 10 per cent. Peaks on industrial products amount to 130 per cent, and minimal rates are 0 per cent. Nepal did not join any of the optional “tariff initiatives” — “zero-for-zero”, the Information Technology Agreement and “chemical tariff harmonization”.

(c) Services

Nepal’s commitments specify the 11 main sectors, but the actual level of market openings is subject to different conditions in line with Nepal’s development goals, for example equity limitations for foreign services providers in individual sectors (WTO, 2003d).

3. THE CASE OF VANUATU⁶

Vanuatu applied for WTO membership in July 1995, and was expected to be the first LDC to accede to the WTO. However, the accession negotiations proved to be difficult for it. The rights that the LDC WTO members are entitled to were largely denied to Vanuatu, and the country was subjected to strong pressure to make sweeping liberalization commitments. In particular, Vanuatu had difficulty in meeting demands by the United States, and by the end of the 1990s accession negotiations has stalled.

In 2001, Vanuatu and the United States resumed their negotiations. By then the dynamics between the two negotiating teams had shifted in a more positive direction, owing in part to the compromises the two countries had reached on most of the outstanding issues. Just before the Fourth WTO Ministerial Conference in Doha, the Working Party met for the last time. After the meeting the world’s press reported that Vanuatu had completed its accession negotiations and that its membership would be announced in Doha. However, a few days later the Government of Vanuatu asked the WTO secretariat for a “technical delay” in its accession procedure. Since then the accession process has been on hold, and no steps have been taken to conclude the accession negotiations. There has been no official explanation as to why the Government resorted to the “technical delay”.

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D. Comparative assessment amongst the accession countries

Examination of the commitments made or agreed to by the three countries will indicate the extent to which the decision by the WTO General Council (Guidelines for Accession of LDCs) has been respected.

In their Sun City Declaration of 1999 the trade representatives of the LDCs asked for an open-ended transition period for the LDCs with respect to TRIMs, and in their Zanzibar Declaration of 2001 the trade ministers of the LDCs asked for a complete exemption of the LDCs from TRIMs

As will be shown below, the overall assessment indicates that this is not fully the case. With regard to market access commitments both in goods and in services, Cambodia and Nepal made substantially greater commitments than Vanuatu. In terms of transition periods Cambodia and Nepal were able to obtain better conditions than Vanuatu. Furthermore, as indicated below with regard to the textiles regime, the terms which Cambodia and Nepal obtained with respect to trade in textiles and clothing do not reflect the WTO members' agreement to help LDCs increase their exports.

1. IMPLEMENTATION OF AGREEMENTS

(a) Trade-related investment measures

Vanuatu and Cambodia undertook not to maintain any measure inconsistent with the TRIMs Agreement, while Nepal undertook not to introduce new measures unless they were in conformity with the requirements of the Agreement, which in practice means the same. Thus these three countries went further than the stated objective of the least developed country group in this area. In their Sun City Declaration of 1999 the trade representatives of the LDCs asked for an open-ended transition period for the LDCs with respect to TRIMs, and in their Zanzibar Declaration of 2001, the trade ministers of the LDCs asked for a complete exemption of the LDCs from TRIMs (WTO, 1999, 2001c).

(b) Trade-related aspects of intellectual property rights

In this area, Cambodia and Nepal obtained a three-year transition period, while Vanuatu obtained a two-year period. Cambodia made explicit commitments to comply with obligations concerning Part II, sections 5 and 7 of the TRIPS Agreement, namely patents and protection of undisclosed information, although the Doha Declaration on the TRIPS Agreement and Public Health exempted the LDC members from the obligations of these provisions for pharmaceutical products until 1 January 2016. Subsequently, the Fifth WTO Ministerial Conference assured Cambodia that it is entitled to all the rights of the LDCs.

(c) Anti-dumping, countervailing duties and safeguard regimes

All countries agreed that they would ensure compliance with the relevant rules and regulations of the WTO in this area. This is different from the desire expressed by the trade representatives of the least developed countries, which at their previous meetings had requested that (i) they benefit from an expansion of non-actionable subsidies; (ii) they should not be subjected to safeguard actions or anti-dumping measures; (iii) they should be able to impose safeguard actions without providing compensatory measures; (iv) they should benefit from simplified rules to initiate anti-dumping actions; and (v) they should not be subjected to other contingency measures (WTO, 1999, 2001c, 2003a).

These three countries went further than the stated objective of the least developed country group in the area of TRIMs.

(d) Other agreements

The countries also agreed to make progress in the implementation of the Agreement on Rules of Origin, and to ensure full compliance with the Agreement on Preshipment Inspections. Vanuatu also agreed to implement the provisions of the Agreement on Government Procurement, which ensures equal treatment of foreigners. The three countries also agreed to comply with the usual WTO rules and disciplines upon their accession, including (i) trade registration requirements/trading rights, (ii) fees and charges for services rendered, (iii) export regulations, (iv) publication of information on trade, and (v) notifications.

(e) Transition periods

In terms of transition periods, Cambodia and Nepal were able to negotiate with more flexibility than Vanuatu. Of the three countries, Cambodia obtained the longest transition period — five years for customs valuation, three years for technical barriers to trade, four years for sanitary and phytosanitary measures, and three years for TRIPS. Nepal negotiated a three-year period for customs valuation, TBT and SPS and TRIPS. Vanuatu had only a one-year transition period for customs valuation and a two-year period for TRIPS.

(f) Framework for making and enforcing policies

All countries agreed to put in place the legal and administrative conditions for the making and enforcement of policies related to the different negotiation commitments and the different trade agreements. Cambodia obtained a one-year transition period to establish its tribunal system, while Nepal and Vanuatu committed to establishing it upon accession.

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2. MARKET ACCESS IN AGRICULTURAL AND INDUSTRIAL GOODS

(a) Tariffs

Cambodia and Vanuatu agreed to implement their tariff offers largely upon accession, but Nepal delayed full implementation of its tariff cuts mostly until 2006. Simple-average agricultural bound tariff rates for the three countries were 43 per cent for Vanuatu, 30 per cent for Cambodia and 44 per cent for Nepal. The corresponding figures for industrial tariff rates were 49 per cent for Vanuatu, 18.2 per cent for Cambodia and 23 per cent for Nepal. Tariff peaks and minimal rates for agricultural products were 75 per cent and 0 per cent for Vanuatu, 60 per cent and 5 per cent for Cambodia, and 200 per cent and 10 per cent for Nepal. For industrial products the corresponding rates were 75 per cent and 0 per cent for Vanuatu, 50 per cent and 0 per cent for Cambodia, and 130 per cent and 0 per cent for Nepal.

For optional “tariff initiatives” — namely, the zero-for-zero tariff reduction initiatives, the Information Technology Agreement, and chemical tariff harmonization — Vanuatu committed to providing duty-free access for more than 160 tariff lines in aircraft, aircraft parts and pharmaceutical products by 2005. Cambodia and Nepal did not participate in the tariff initiatives.

Cambodia obtained a one-year transition period to establish its tribunal system, while Nepal and Vanuatu committed to establishing it upon accession.

(b) Other duties and charges

For other duties and charges, the three countries committed to binding at zero and complying with the relevant WTO provisions (especially Article II:1 (b) of the GATT 1994). Unlike Cambodia and Vanuatu, Nepal obtained a 10-year transition period for full implementation for a wide range of products — that is, the right to apply additional duties other than bound tariffs.

Nepal obtained the most flexible commitments in terms of tariff peaks and implementation periods for tariff cuts and zero-binding commitments for other duties and charges. However, simple-average bound tariff rates, especially for industrial goods, for the three countries indicate that Cambodia and Nepal have made significantly greater tariff cut commitments than Vanuatu. With regard to bound tariff reductions, Cambodia made the most significant commitments.

3. MARKET ACCESS IN TEXTILES AND SERVICES

(a) Trade in textiles

For Cambodia and Nepal, it was agreed that the first stage of the growth rate provisions of the Agreement on Textiles and Clothing would be applied. Textile products are very important for these two countries' exports. Both countries should have been granted the growth rate retroactively from the day before the entry into force of the WTO Agreement since they had accepted the obligations of the WTO rules and made substantial market access commitments. Moreover, application of the retroactive growth rate under the Agreement on Textiles and Clothing to LDC acceding countries would be in line with the WTO's policy of helping LDCs increase their exports.

(b) Trade in services

Cambodia and Nepal made substantially greater liberalization commitments than Vanuatu. The coverage of Cambodia's offer was slightly wider than that of Nepal. The number of services included in the three countries' service schedules totalled 21 with Cambodia including 19 categories, and Nepal and Vanuatu 17 and 12 respectively. At the sub-category level, Cambodia, Nepal and Vanuatu included 74, 61 and 46 sub-categories, respectively, in their schedules.

With regard to horizontal limitations and commitments, there was no noteworthy difference among the three countries. All of them scheduled Mode 4 (movement of persons) unbound except a few categories such as managers, executives, specialists and intra-corporate transferees. Other limitations scheduled included the obligation to train and promote local staff (Cambodia), and the right to provide subsidies only to domestic services providers (Cambodia and Nepal), the approval requirement for commercial presence (Cambodia and Nepal), and foreign exchange restrictions and fees (Nepal). As additional commitments, Nepal scheduled its offer to make decisions on approval of commercial presence within 30 days and to guarantee entitlement for repatriation.

The three countries made substantial liberalization offers in the areas of financial, professional, distribution, education and environmental services. However, it is interesting to note that for basic telecommunications services for the major liberalization of which the industrialized countries usually press hard, Nepal offered a notably limited market opening. The other two countries, however, made substantial liberalization commitments in this sector. The three countries kept Mode 4 unbound for all the services scheduled, but Mode 1 (cross-border supply) and Mode 2 (consumption abroad) usually had no restrictions. For Mode 3 (commercial presence) restrictions on equity participation were occasionally scheduled.

Application of the retroactive growth rate under the Agreement on Textiles and Clothing to LDC acceding countries would be in line with the WTO's policy of helping LDCs increase their exports.

Cambodia, Nepal and Vanuatu made substantial liberalization offers in the areas of financial, professional, distribution, education and environmental services.

4. TRADE AND COMPETITION POLICY

(a) Import restrictions, quantitative

The three countries agreed that they would not introduce, reintroduce or apply quantitative restrictions on imports, or other non-tariff measures such as licensing, quotas, prohibitions, bans and other restrictions having equivalent effect that cannot be justified under the provisions of the WTO Agreements.

(b) Import restrictions, tariff rate quota

Although Cambodia has not resorted to tariff rate quotas so far, it reserves the right to implement such quotas while it would respect WTO disciplines on tariff rate quotas. Nepal and Vanuatu made no commitment in this area.

(c) Export subsidies

Cambodia and Vanuatu made a commitment to bind export subsidies in agriculture at zero and not to apply such subsidies in the future, while Nepal did not make such a commitment. For Cambodia and Vanuatu this means that they have effectively forgone the right to use export subsidies for agricultural goods, a right that is granted to other least developed member countries by the Agreement on Agriculture. Cambodia, Nepal and Vanuatu have maintained the right to provide export subsidies for industrial goods, although Cambodia was encouraged to forgo this right in the negotiation process.

(d) Industrial policies

All three countries agreed to bring their industrial policies and export subsidy programmes into line with the Agreement on Subsidies and Countervailing Measures.

(e) Internal taxes

The countries agreed that they would apply internal taxes in a manner that does not discriminate between imported goods and domestically produced products. The taxes would be in compliance with WTO provisions.

(f) Pricing policies

The countries also agreed that price controls would be brought into line with WTO rules and regulations (especially Article III.9 of GATT 1994).

5. PUBLIC SECTOR

(a) State trading entities

Cambodia, Nepal and Vanuatu all agreed to ensure that current or potential State trading entities conformed with the rules and regulations of the WTO, especially Article XVII of the GATT.

(b) State ownership and privatization

Cambodia made commitments to ensure transparency with regard to its privatization programme and to make periodic reports on reforms of its economic and trade regimes, as well as on the progress of the privatization programme. Nepal and Vanuatu made no commitments in this area.

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6. OTHER TRADE ARRANGEMENTS

(a) Free-trade zones and special economic areas

All three countries made the commitment that the rules and regulations governing free-trade zones would be compatible with the rules and regulations governing international trade, namely the relevant agreements of the World Trade Organization. The countries also agreed to inform the WTO about the establishment of possible free-trade zones in the future.

(b) Regional trade agreements

All three countries made the commitment that the rules and regulations governing free-trade zones would be compatible with...the relevant agreements of the World Trade Organization.

Cambodia and Vanuatu agreed to provide notifications of regional trade agreements to the WTO under Article XXIV of GATT 1994 and Article V of GATS, although Cambodia's only free-trade agreement (within ASEAN) should be governed by the Enabling Clause as an agreement between developing countries and notified to the WTO Committee on Trade and Development. Nepal's commitment deals with this nuance by inserting a direct reference to the Enabling Clause (i.e. the 1979 GATT Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries).

E. Comparison with current WTO member States

While the comparison of the cases of Cambodia, Nepal and Vanuatu with one another highlights the fact that the different countries reached agreement about accession on very different terms, comparison of the commitments of these three countries with those of current WTO members reveals that the three LDCs made commitments that significantly exceed commitments made by current WTO members.

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The multilateral trading system has many provisions of special and differential treatment. The majority of the provisions grant developing countries flexibility with respect to the implementation of trade agreements and some also grant them flexibility with respect to trade policies. In many instances, special and differential treatment provisions are time-bound exemptions from obligations (see chapter 6). It is expected that the time frames provided, which typically differ for least developed countries and other developing countries, will give the different groups of developing countries sufficient time to advance their development and acquire the necessary capacities to comply with international trade rules. But the developed members of the multilateral trading system are also encouraged, although not obliged, to provide both technical and financial assistance to developing countries in order to help them acquire the necessary capacities to comply with those rules.

It is notable that Cambodia, Nepal and Vanuatu accepted a significant reduction of their rights to special and differential treatment compared with other least developed countries that are already members of the WTO. Unlike LDCs that have been WTO members for some time, Cambodia and Vanuatu have, for instance, forgone their rights to use export subsidies in the agricultural sector.

In comparison with other developing countries and with developed countries that are members of the WTO, the least developed countries that have just completed their negotiations for accession to the WTO have also made

relatively strong commitments with respect to market access. For example, in comparison with current WTO members, the three LDCs in question have committed to comparatively high levels of tariff bindings and low levels of tariff peaks.

By way of comparison, while Cambodia, Nepal and Vanuatu have agreed to bind 100 per cent of their tariff lines, other countries that are already members of the WTO have often bound a much smaller share of their tariff lines. For example, a least developed WTO member, United Republic of Tanzania, has a binding coverage of 13.3 per cent, another developing WTO member country, Cameroon, has a binding coverage of 13.3 per cent and a developed WTO member, Australia, has a binding coverage of 97 per cent. Furthermore, while Cambodia's bound rates are as high as 60 per cent for sensitive agricultural products, and Nepal's bound rates are as high as 200 per cent for selected agricultural goods, least developed WTO members have bound rates on agricultural goods as high as 550 per cent (Myanmar), other developing WTO member countries have bound tariff rates on agricultural goods as high as 3,000 per cent (Egypt), and developed WTO members have bound tariff rates on agricultural goods as high as 350 per cent (United States).⁷ It must be noted, however, that the extremely high tariff binding of Egypt (3,000 per cent) is an outlier, the next highest tariff binding being that of the Republic of Korea (887.4 per cent). Finally, while Cambodia has bound tariff rates on non-agricultural goods at a maximum level of 50 per cent, and Nepal has bound tariff rates on non-agricultural goods at a maximum level of 130 per cent, least developed WTO members have bound their tariffs in this product category as high as 550 per cent (Myanmar), and other developing WTO member countries have bound them as high as 220 per cent (Romania), while developed WTO members, which typically have a well developed industrial sector, have bound their tariff rates at a maximum level of 48 per cent (Australia).⁸ Amongst the least developed WTO members, Myanmar is followed by Maldives, which has bound tariff rates for agricultural goods as well as tariff rates for non-agricultural goods at 300 per cent. Other least developed countries also have relatively high tariff bindings in the non-agricultural goods sector. Bangladesh, Djibouti, Lesotho and Niger all have peaks in tariff bindings at levels as high as 200 per cent.

A comparison of the commitments made by Cambodia and Nepal on the one hand, and the commitments made by the Quad countries on the other hand, shows these two least developed countries were expected to make some commitments in the accession process that even exceed the commitments that have been made by some of the most advanced countries. The Quad countries, namely Canada, the European Union, Japan and the United States, are the most important importers of products from least developed countries, including Cambodia and Nepal. The binding coverage of both the European Union and the United States is 100 per cent, and Canada and Japan have a binding coverage of over 99 per cent. However, in the agricultural goods sector, all Quad countries have peaks in tariff bindings that exceed those of Cambodia, and both Canada and the United States also have peaks in tariff bindings that exceed those of Nepal. The tariff bindings in this sector are as high as 350 per cent for the United States, followed by 238.4 per cent for Canada, 74.9 per cent for the European Union, and 61.9 per cent for Japan. In the non-agricultural goods sector, however, the peaks in tariff bindings of all Quad countries are lower than those of Cambodia and Nepal, although the peak in tariff bindings of the United States is only 2 per cent lower than that of Cambodia. The tariff bindings in this sector are as high as 48 per cent for the United States, followed by 30 per cent for Japan, 26 per cent for the European Union, and 20 per cent for Canada. The relatively low peaks in tariff bindings in the non-agricultural

In comparison with current WTO members, the three LDCs in question have committed to comparatively high levels of tariff bindings and low levels of tariff peaks.

goods sector by the Quad countries should not come as a surprise, however, since those countries have strong international competitiveness in non-agricultural (i.e. industrial) products.⁹

LDCs that have just negotiated their WTO accession have accepted limitations with respect to trade policies...They also have forgone many of their rights to benefit from special and differential treatment, from which other developing countries, including least developed countries, benefit.

In short, this comparison shows that the LDCs that have just completed the accession negotiations with the WTO have made more stringent commitments than many of the developing countries and even more stringent commitments than some of the developed countries — including the Quad countries, which are the LDCs' most important export markets. The fact that each tariff line is bound implies that there is no single good in respect of which these countries can raise tariff rates without facing an upper limit, and the fact that many tariff rates are bound at relatively low levels implies that there are only very few goods in respect of which these countries can raise tariff rates to high levels. The combination of these factors effectively limits the ability of those countries to use tariffs in the future as an instrument to promote economic development.

However, the LDCs that have just negotiated their WTO accession have accepted limitations not only with respect to trade policies, but also limitations in other areas. These are, for instance, associated with the fact that they have forgone many of their rights to benefit from special and differential treatment, from which other developing countries, including least developed countries, benefit.

F. Conclusions

There is a continued need for clear and objective rules and disciplines for accession negotiations. These should ensure that the accession process is not excessively costly for the LDCs.

The terms of accession of Cambodia and Nepal to the WTO clearly reflect the spirit, but not the exact letter, of major decisions and commitments by the international community in the Third Programme of Action for the Least Developed Countries for the Decade 2001–2010 and the Doha Ministerial Declaration, as well as the decision of the WTO General Council on Accession of LDCs. Both LDCs were certainly given flexibilities, particularly in technically complex areas such as TRIPS, customs valuation, TBT and SPS, but normally all other special and differential treatment provisions (except for TRIMs, which applies to neither LDC) would also apply to the two LDCs. However, substantial questions remain about whether WTO members did really exercise restraint in seeking concessions and commitments on trade in goods and services from Cambodia and Nepal. The commitments undertaken by them certainly go well above and beyond the levels of concessions and commitments undertaken by the existing 30 WTO LDC members.

It is also necessary that accession terms reflect LDCs' levels of development, and, most importantly, their ability to implement their obligations.

There is a continued need for clear and objective rules and disciplines for accession negotiations. These should ensure that the accession process is not excessively costly for the LDCs. The lengthy accession process saps the meagre financial and technical resources of the LDCs, and there is much merit in the LDCs' proposal in the WTO that the LDC accession process be completed within a three-year period.

It is also necessary that accession terms reflect LDCs' levels of development, and, most importantly, their ability to implement their obligations. While weaker States *de jure* have the right to benefit from special and differential treatment, many of them are *de facto* stripped of this right in the accession process. The experience of Cambodia and Nepal shows that, rather than being integrated into the multilateral trading system on terms that are more favourable, weaker countries are integrated into that system on terms that are at best equal to those of other developing countries and at worst less favourable than those of more

advanced member States. There is a danger that the current process of accession of weaker countries is effectively overriding the provisions of special and differential treatment for those countries.

It cannot be expected that relatively underdeveloped countries will become the equals of the more advanced members of the multilateral trading system by encouraging them to make the same or even higher commitments. To ensure that such countries become the equals of relatively advanced members of the multilateral trading system, it is desirable that they first be the subject of strong international support measures. Accordingly, the trade ministers of the least developed countries have argued that WTO member States should automatically grant all LDCs the right to benefit from the special and differential treatment provisions contained in the WTO Agreements, and that the more advanced WTO member States should commit themselves to actively helping the LDCs develop the technical and financial capacities to comply with the rules and regulations required by the WTO Agreements (WTO, 1999, 2001c, 2003a).

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Notes

1. For more details, see UNCTAD (2002).
2. Article XII states: "1. 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. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto.
2. Decisions on accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO.
3. Accession to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement." The Plurilateral Trade Agreements mentioned in paragraph 3 are: the Agreement on Trade in Civil Aircraft and the Agreement on Government Procurement. Accession to these Agreements is not obligatory for WTO members.
3. Based on WTO (2003c).
4. The service offers were made on the basis of the WTO classification of services. There are 12 categories of services. These are: (i) business services, (ii) communication services, (iii) construction and related engineering services, (iv) distribution services, (v) education services, (vi) environmental services, (vii) financial services, (viii) health-related and social services, (ix) tourism and travel-related services, (x) recreational, cultural and sporting services, (xi) transport services, and (xii) other services not included elsewhere. Disaggregation of these categories differs widely from one category to another. For example, business services have three levels of disaggregation, and comprise 46 services, while tourism and travel-related services have two levels of disaggregation, and contain only four services.
5. Based on WTO (2003d).
6. Based on WTO (2001b).
7. While bound tariff rates are typically higher than the tariff rates actually applied, many OECD countries also apply relatively high tariff rates on agriculture imports, and in addition they provide very large subsidies for their domestically produced agricultural goods. This combination implies a relatively high rate of protection in both nominal terms and real terms.
8. The least developed countries that are already members of the WTO have an average tariff binding of 55 per cent, average bound tariff rates for agricultural goods of 79 per cent, and average bound tariff rates for non-agricultural goods of 44 per cent.
9. Information on tariffs is based on data provided by the WTO (2003e).

References

- UNCTAD (2002). *WTO Accessions and Development Policies*, UNCTAD/DITC/TNCD/11, October 2002.
- WTO (1999). Integrating least developed countries into the global economy: Proposals for a comprehensive new plan of action in the context of the Third WTO Ministerial Conference, Coordinating Workshop for Senior Advisers to Ministers of Trade in LDCs in Preparation for the Third WTO Ministerial Conference, Sun City, South Africa, 21–25 June 1999, WT/GC/W/251, 13 July 1999.
- WTO (2001a). Doha Declaration, Ministerial Conference, Fourth Session, 9–14 November 2001, Doha, Qatar, WT/MIN(01)/DEC/1, 20 November 2001.
- WTO (2001b). Draft Report of the Working Party on the Accession of Vanuatu, WT/ACC/VUT/13 and Add.1–2, 16 October 2001.
- WTO (2001c). Zanzibar Declaration, LDC Trade Ministers Meeting, Zanzibar, United Republic of Tanzania, 22–24 July 2001, WT/L/409, 6 August 2001.
- WTO (2003a). Dhaka Declaration, Second LDC Trade Ministers Meeting, Dhaka, Bangladesh, 31 May–2 June 2003, WT/L/521, 26 June 2003.
- WTO (2003b). Accession of Least Developed Countries, General Council's decision of 10 December 2002, WT/L/508, 20 January 2003.
- WTO (2003c). Report of the Working Party on the Accession of Cambodia, WT/ACC/KHM/21 and Add.1–2, 15 August 2003.
- WTO (2003d). Report of the Working Party on the Accession of the Kingdom of Nepal to the WTO, WT/ACC/NPL/16 and Add.1–2, 28 August 2003.
- WTO (2003e). *World Trade Report 2003*, online-version (www.wto.org/english/res_e/booksp_e/anrep_e/wtr03_append_IIB1_7_e.xls).